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ARTICLES

UNITED STATES COMMISSION ON IMMIGRATION REFORM: THE INTERIM AND FINAL REPORTS

Carlos Ortiz Miranda

I. INTRODUCTION AND LEGISLATIVE BACKGROUND

Immigration law and policy in Congress during the latter part of the twentieth century has been formulated, in large part, by the recommendations made by commissions established through legislation. The first of these commissions was the Select Commission on Immigration and Refugee Policy ("Select Commission"), created in 1978. Major immigration policy recommendations made by the Select Commission eventually became law through two legislative enactments; one dealing with illegal immigration, the Immigration Reform and Control Act of 1986 ("IRCA"), the other with le-

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2. Statutory changes aimed at closing the door on illegal immigration were made in the Immigration Reform and Control Act ("IRCA") of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended in scattered sections of 8 U.S.C.). IRCA tried to resolve the problem of illegal immigration in two ways. First, IRCA established a legalization program which resulted in more than two million aliens were granted legal residence. See id. § 201, 100 Stat. at 3394. Second, IRCA enacted the "employer sanctions" program which makes it un-
gal immigration, the Immigration Act of 1990 ("1990 Act"). The 1990 Act—a comprehensive overhaul of the entire legal immigration system—established a successor commission to the Select Commission, the Commission on Legal Immigration Reform ("the Commission"). This Commission was originally chartered to review and make recommendations related to legal immigration. However, in 1991 Congress removed the word "legal," leaving the Commission latitude to address a variety of immigration policy issues. At the time of the Commission's establishment, certain Congressional members interested in immigration issues praised it because "[n]ever again will we have to wait twenty five years to reform our immigration laws." Indeed, the Interim Reports submitted by the Commission to Congress have been the basis for certain statutory changes to the body of immigration law before the Commission's work concluded with publication of its Final Report in September 1997. While accepting some of the Commission's policy recommendations, Congress rejected other major ones made in the Interim Reports.

The bi-partisan Commission consisted of nine members, and the President appointed its chairperson. Its immediate

2. Id. § 141, 104 Stat. at 5001.
3. Id. § 141, 104 Stat. at 5002, 5003 (providing particular considerations related to legal immigration).
6. The influential role played the Commission on Immigration Reform has been acknowledged by some commentators. See STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 220 (1997).
7. There was an attempt to expand the Commission to thirteen members, but that attempt failed. See S. 3090, 102d Cong. (1992), reprinted in 138 CONG. REC. S10498 (daily ed. July 28, 1992) (per Sen. Kennedy (D-Mass.)). In addition to the Chairman, two members were appointed by the Speaker of the House of Representatives, another two members were appointed by the House Minority Leader, and the remaining four members in a similar manner. See Immigration Act of 1990, Pub. L. No. 101-649, § 141(a)(1)(B)-(E), 104 Stat. 4978, 5001-02 (1990). All members were appointed for life, except for the Chairman, whose first term expired on January 20, 1993, the presidential in-
mission was to review specific topics such as family-based and employment-based visas; the impact of immigration reform on social, demographic and natural resources; foreign policy and national security; per county levels on family-sponsored immigration; adjustment of status and asylees; numerical limitations on certain nonimmigrants; and diversity immigration. In addition to these particular topics, in its Final Report the Commission was free to include "such recommendations for additional changes . . . as the Commission deems appropriate." The Commission's work touched upon social, economic, humanitarian, diversity, and national security factors often cited in the current immigration debate. But it did not directly discuss some of the prevalent

auguration day. Id. § 141(a)(3), 104 Stat. at 5002. President Bush appointed Bernard Cardinal Law, Archbishop of Boston as the First Chairman; however, when President Clinton became President, he appointed Barbara Jordan as Chairwoman on December 14, 1993. See Barbara Jordan Appoint to Chair Immigration Reform Commission, 70 INTERPRETER RELEASES 1669, 1669 (1993). Ms. Jordan died on January 17, 1996, while serving as Chairwoman; See Adam Clymer, Barbara Jordan Dies, N.Y. TIMES, Jan. 21, 1996, § 4, at 2. Other Commission members include: Lawrence Fuchs, former Executive Director of the Select Commission; Harold Ezell, former Immigration and Naturalization Service Regional Commissioner; Bruce Morrison, Immigration Attorney, former Congress and former Chairman of the House Subcommittee on Immigration, Refugees and International Law of the Judiciary Committee; Warren Leiden, Executive Director of the American Immigration Lawyers Association; Richard Estrada, Columnist for the Dallas Morning News; Michael Teitelbaum, Alfred P. Sloan Foundation; Robert C. Hill, Immigration Attorney, Graham & James; and Nelson Merced, Massachusetts State Legislator. See Barbara Jordan Appoint to Chair Immigration Reform Commission, 70 INTERPRETER RELEASES 1669, 1670 (1993). The Executive Director of the Commission was Susan Forbes Martin, who served as Research Director to the Select Commission. Id.


12. The social factor involves family reunification, which has been the historic cornerstone of United States immigration policy. NATIONAL RESEARCH COUNCIL, THE NEW AMERICANS, ECONOMIC, DEMOGRAPHIC AND FISCAL EFFECTS OF IMMIGRATION 2-13 (James P. Smith & Barry Edmonston eds., 1997). Economic factors are emerging as important goals in seeking migrants who possess skills in demand. See id. Diversity has been an element since 1990, with programs enacted to bring in more immigrants from countries of "low admissions" to counterbalance the large admissions in the last decades from Latin America and Asia. See id. Humanitarian factors revolve around the acceptance of refugees and asylees who presently account for fifteen percent of admissions. See id. Finally, national security is an important factor involving border control and management, and removal of those aliens deemed undesirable. See id. at 2-13.
cultural factors which may have an impact on immigration policy.  

This article discusses several of the Commission's policy recommendations included in its three interim, and one final, reports to Congress. The Commission's first Interim Report, Restoring Credibility, focused on immigration enforcement and control and was submitted to Congress in September 1994. A series of public hearings and consultations with experts throughout the country were held in the eighteen months leading to its submission. Two basic principles underscored the Commission's work in preparing Restoring Credibility: first, hostility and discrimination against immigrants is antithetical to the tradition of the United States; second, efforts to control immigration are not "inherently anti-immigrant." This report is discussed more fully in Part II.

In June 1995, the Commission issued its second Interim Report, Setting Priorities. The Commission focused on legal immigration in two main areas: nuclear family immigration and skill-based immigration. However, Setting Priorities

13. Immigration policy and legal development can be related to prevailing cultural attitudes in society. See LEGOMSKY, supra note 8, at 204. Since the beginning of Congressional attempts at immigration control, commentators have noted that there has been a tendency to influence admission policy based on national origins. Id. In general terms, national origin has a cultural dimension to it because persons with the same nationality tend to come from a similar cultural background. Id. The latest example of cultural and national origins immigration control by Congress has been the Diversity Visa program, which was part of the Immigration Act of 1990. Id. at 204-07. The Diversity Visa program is intended to counterbalance the overwhelming admissions from Asia and Latin America during the last few decades (1970s and 1980s) through the addition of 55,000 visas annually from countries with low admissions. Id. While it would seem that diversification is a positive development, some scholars consider the program "anti-diversity" because it encourages immigration from European-based cultures where the majority of Americans can trace their ancestry. Id. at 207-10.


15. Id. at 239-40 (providing a complete list of the public hearings and expert consultations appears in the appendix of the interim report).

16. Id. at 1. According to the Commission, democratic societies have a right and responsibility to manage immigration in the national interest. Id.

17. See infra Part II.A.


19. Id. at 45-80.
also briefly discussed refugee resettlement, nonimmigrant admissions, and the process of "Americanization." Some of the recommended changes in the legal immigration system were included in omnibus immigration legislation introduced during the 104th Congress where Congress decided to "split the bill" between illegal and legal immigration, leaving the latter mostly out of the final legislation enacted by Congress. A major recommendation in Setting Priorities was to cut the overall level of legal immigration. President Clinton supported the original call to cut legal immigration when the second Interim Report was issued.

The Commission began Setting Priorities by supporting the basic framework of the current legal immigration system, but emphasized the need to redefine priorities and to reallocate existing admission numbers in order to ensure that the system better serves the national interest. The Commission applied a cost-benefit analysis to its study with the underlying premise that the United States needs a properly regulated legal immigration system as a matter of national interest. To accomplish this objective, the Commission recommended a tripartite immigration policy consisting of nuclear family immigration with admission of 400,000 aliens, skills-based immigration with admission of 100,000 aliens, and refugee resettlement of 50,000 aliens. Thus, the core admission level should be 550,000 per year. Commissioner Leiden issued a dissenting statement in Setting Priorities,
which will be discussed more fully in Part II. 27

In Summer 1997, Commission issued its third, and last, Interim Report, Taking Leadership, to tackle United States refugee policy. 28 Over the last fifty years or so, most refugee resettlement in the United States was connected to the Cold War. 29 The Commission stated that the focus of United States refugee policy should correspond to the reality that refugee producing situations occur throughout the world, not just as a foreign policy dimension to the Cold War. 30 A 1996 survey of world refugees found some 15,337,000 refugees and asylum seekers throughout the world. 31 Millions more are in refugee-like situations. 32 No part of the world is immune from refugees or asylum seekers. 33 The Commission recognized that refugee resettlement is an important component of United States foreign and domestic policy, and proposes an allocation of 50,000 admission numbers each year for refugee resettlement. 34 The Commission further recommended that the United States should take a leadership role in international refugee crisis response. 35 The Commission recommended a reassessment of the criteria used to admit refugees. 36 It also expanded on the recommendations made in

27. See infra Parts II.B, II.D.
28. U.S. COMMISSION ON IMMIGRATION REFORM, 1997 REFUGEE POLICY REPORT, U.S. REFUGEE POLICY: TAKING LEADERSHIP (1997) [hereinafter TAKING LEADERSHIP]. The question of refugee resettlement had been briefly discussed in Setting Priorities. SETTING PRIORITIES, supra note 18, at 121-60. The Commission had noted that refugee resettlement is a tradition as old as the United States itself with refugees fleeing from England seeking relief from religious persecution. TAKING LEADERSHIP, supra, at 1.
29. SETTING PRIORITIES, supra note 18, at 121.
30. Id.
32. Id. at 5, tbl. 2.
33. A breakdown of the 1995 totals is as follows: Africa (5,222,000); Europe (2,521,000); the Americas and the Caribbean (256,000); East Asia and the Pacific (453,000); the Middle East (5,499,000); and South and Central Asia (1,386,000). WORLD REFUGEE SURVEY, supra note 31, at 4-5, tbl. 1.
34. SETTING PRIORITIES, supra note 18, at 121, 129, 131. The 50,000 limit would not include adjustment of status for asylees granted asylum in the United States as opposed to being brought into the United States from overseas. Id.
35. Id. at 129.
36. See id. at 149. Specific reference was made reviewing existing criteria used in prioritizing refugee selection, in-country processing, country specific legislation, procedural issues, congressional and executive branch roles, the role of international organizations, parole authority, and domestic assistance to
Setting Priorities on the topic of refugee resettlement.\textsuperscript{37} Taking Leadership will also be discussed more fully in Part II.\textsuperscript{38}

The Final Report, \textit{Becoming an American}, was submitted to Congress on September 30, 1997.\textsuperscript{39} This report completed the Commission's work "to assess the national interest in immigration and report how it can be best achieved."\textsuperscript{40} \textit{Becoming an American} is divided into three main topics: (1) the americanization and integration of immigrants; (2) establishing a credible framework for immigration policy; and (3) achieving immigration policy goals.\textsuperscript{41} Commissioner Leiden again issued a dissenting statement.\textsuperscript{42} The topics covered in \textit{Becoming an American}, including the dissent, will also be discussed below.\textsuperscript{43}

To conclude, this article provides some observations concerning the possible impact that the Commission's recommendations may have upon federal immigration legal policies in the United States.\textsuperscript{44} For instance, the author notes that economic considerations have become the leading focus behind the Commission's recommendations, departing from prior focus on family reunification. In comparison, the general immigration policy debate has focused more upon cultural aspects such as the "English Only" movement. Finally, this article provides guidelines for and advice to Congress that it ought to consider before embarking upon an extensive overhaul of the legal immigration system.\textsuperscript{45}

\begin{thebibliography}{99}
\bibitem{37} \textit{Id.} at 149-59.
\bibitem{38} \textit{Id.}
\bibitem{39} \textit{U.S. COMMISSION ON IMMIGRATION REFORM, 1997 REPORT TO CONGRESS, BECOMING AN AMERICAN: IMMIGRATION AND IMMIGRANT POLICY 1 (1997) [hereinafter BECOMING AN AMERICAN].}
\bibitem{41} \textit{See generally BECOMING AN AMERICAN, supra} note 12, at 25, 59, 147.
\bibitem{42} \textit{Id.} at 224-32.
\bibitem{43} \textit{See infra} Parts II.B, II.D, II.E.
\bibitem{44} \textit{See infra} Part III.
\bibitem{45} \textit{See infra} Part III.
\end{thebibliography}
II. THE REPORTS

A. Enforcement

1. Border Management and Control

A key component of credible immigration policy should consist of curbing "illegal entries while also facilitating legal entry of people who have a right to be in the country." This is a formidable task given the estimate that approximately 500 million people seek entry into the United States through its land and air borders every year. With regard to land borders, the Commission supported the Immigration and Naturalization Services' strategy, known as "Operation Hold the Line," which emphasizes the prevention of unlawful entry at the border, as opposed to apprehension after unlawful entry. To achieve success in the prevention strategy, the Commission recommended increased resources for a comprehensive border management strategy, increased training of border control officers, the formation of a mobile, rapid response team to assist in anticipating new smuggling sites, and the use of services to reduce border violence. Operation Hold the Line, which had been implemented in the El Paso, Texas area, entails increased border patrol agents, new equipment such as helicopters, motion sensors, night-vision scopes, high-powered lights, and low-light television cameras,

46. RESTORING CREDIBILITY, supra note 14, at 10.
47. Id. at 9. Responsibility for border management rests with the Immigration and Naturalization Service ("INS"), the primary federal agency located within the Department of Justice, responsible for administering and enforcing United States immigration law and regulation. Id. Within the INS, border enforcement is the chief responsibility of the Border Patrol and the Office of Inspection. Id. Other federal agencies are involved with Border enforcement including the Department of State, the U.S. Department of State, the U.S. Department of Agriculture, U.S. Customs Service, and the Coast Guard. Id. For a broad view of federal agencies and immigration, see generally 1 CHARLES GORDON ET AL., IMMIGRATION LAW AND PROCEDURE chs. 3-7 (rev. ed. 1997).
49. RESTORING CREDIBILITY, supra note 14, at 15-17. The Select Commission cautioned that the use of fences should be used only to reduce violence. Id. at 17. It made other recommendations regarding human rights abuses against aliens seeking entry, expedited adjudication of border crossing cards for Mexicans, including that each card should be stamped "not for work authorization." Id. at 17-29.
in an effort to plug holes in the 2,000 mile long border that the United States shares with Mexico.\textsuperscript{50} The original border operations, similar to Operation Hold the Line, began in 1993 and were aimed at urban areas, such as El Paso and Brownsville, Texas, and the Imperial Valley south of San Diego, California, used for unlawful border crossings.\textsuperscript{51} While the INS has been somewhat successful in preventing border crossings in traditional urban areas in which aliens could easily disappear into the general population, aliens, including suspected smuggling rings, have moved to more porous rural areas along the border,\textsuperscript{52} forcing would-be unlawful entrants to use more rugged and rural areas. This seems to indicate that the prevention strategy is working; but there is some indication that the overall number of illegal entrants remains the same.\textsuperscript{53}

The Commission made several recommendations regarding airport border management including the use of new technologies to expedite inspection of passengers, and programs that enhance the ability of airline carriers to identify and to refuse transport to unauthorized persons.\textsuperscript{54} The Commission also discussed aliens arriving at airports with fraudulent documents and applying for asylum, but made no recommendation to establish summary or expedited removal of such persons.\textsuperscript{55} While the Commission did not recommend summary exclusion of noncitizens arriving at ports of entry with no documents, fraudulent documents, or improper documents, Congress enacted summary exclusion procedures in the Illegal Immigration and Immigrant Responsibility Act of 1996.\textsuperscript{56} The Commission also recommended that the INS,

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\textsuperscript{50} See Brinkley, supra note 48, at A1.
\textsuperscript{51} RESTORING CREDIBILITY, supra note 14, at 11.
\textsuperscript{52} William Branigin, Border Patrol Reinforcements to Be Sent to Porous Sectors, WASH. POST, Oct. 8, 1997, at A2 (stating that the rural southwest shows a sharp rise in immigrant traffic).
\textsuperscript{53} Id.
\textsuperscript{54} RESTORING CREDIBILITY, supra note 14, at 31-41.
\textsuperscript{55} Id. at 37-38.
\textsuperscript{56} Illegal Immigration and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 302, 110 Stat. 3009, 3009-579 to 3009-585 (1996) (Act codified in scattered sections of 8 U.S.C.). Summary removal may occur if an immigration officer at a port of entry makes a determination that the arriving alien in question is inadmissible due to fraud or willful misrepresentation, the alien has improper or missing documents, and the alien does not demonstrate the desire to request asylum nor shows a fear of persecution. \textit{Id.} § 302, 110 Stat. at 3009-580. The removal order is considered final administrative action unless the arriving alien claims, under oath, that he or she is a lawful permanent resident,
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and not the airline carrier, be the entity responsible for the physical custody of inadmissible aliens.\textsuperscript{57}

There had already been a federal court decision reaching the same conclusion.\textsuperscript{58} Thus, the recommendations regarding border management were not very controversial when compared to the Commission's recommendations in the area of worker verification for employment purposes discussed below.

2. Worksite Enforcement

One of the more controversial recommendations contained in \textit{Restoring Credibility} relates to worksite enforcement. As a general premise, the Commission recognized the need for developing and implementing a simple, fraud resistant system for the verification of work authorization.\textsuperscript{59} The question of work authorization and verification arises in the context of employer sanctions, which was an integral part of the Immigration Reform and Control Act of 1986.\textsuperscript{60}

The Select Commission had recommended employer sanctions as a mechanism to control illegal immigration by turning off the economic magnet that produces it.\textsuperscript{61} The

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\item has already been admitted as a refugee, or has been granted asylum. \textit{Id.} § 302, 110 Stat. at 3009-582. If these sworn allegations are made, regulations provide for prompt review by an immigration judge. \textit{Id.} Should the alien express a credible fear of persecution, which is defined as a significant possibility, supported by credible statements, that the alien would be eligible for asylum, the claim will be referred to an asylum officer, but the alien will be detained during the process. \textit{Id.} § 302, 110 Stat. at 3009-581. Absent a showing of credible fear, the arriving alien will be removed without a hearing. \textit{Id.} The asylum officer's negative determination may be reviewed within seven days by an immigration judge. \textit{Illegal Immigration and Immigrant Responsibility Act} § 302. The immigration judge's decision is considered final administrative action. \textit{Id.} § 302. The entire summary removal process may be challenged in any U.S. district court, and such review is limited to whether the law and implementing regulations are constitutional, or whether the regulation or operating instructions are consistent with the statute. \textit{See Immigration and Nationality Act} § 235, 8 U.S.C. § 1225 (1994).
\item \textsuperscript{57} \textit{Restoring Credibility}, supra note 14, at 41-43.
\item \textsuperscript{58} \textit{See Linea Aerea Nacional de Chile v. Sale}, 865 F. Supp. 971 (E.D.N.Y. 1994) (holding that INS policy of holding air carriers indefinitely responsible for persons traveling without proper documents and applying for asylum in the United States was unreasonable).
\item \textsuperscript{59} \textit{Restoring Credibility}, supra note 14, at 54-60.
\item \textsuperscript{61} After November 6, 1986, employers who knowingly hire unauthorized workers are subject to civil and possibly criminal penalties. Employer sanctions require employers, with few exceptions, to verify the citizenship or immi-
Commission's recommendation reads: "The Commission believes that the most promising option for secure, nondiscriminatory verification is a computerized registry using data provided by the Social Security Administration [SSA] and the Immigration and Naturalization Service [INS]." 62

The Commission recommended that the President begin a pilot program for a computerized worker registry in the five states having the highest amounts of unauthorized workers, and other less-affected states. 63 The Commission also suggested the elements of such a pilot program. 64

At the same time that the Commission issued its worker registry verification recommendation, a group of organizations held a press conference to oppose it. 65 Various reasons for opposing the computerized worker registry included the potential threat to civil liberties, the fear that the registry would increase discrimination, and that the registry would depend partially on INS databases, already considered unreliable by the Commission, such that a computerized registry would be "built on a foundation of quicksand." 66 For its part, the Clinton Administration has not warmed up to the registry idea, citing possibly high implementation costs. 67 Even

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62. RESTORING CREDIBILITY, supra note 14, at 60. The information contained in the computerized registry is provided infra in Table 2.

63. RESTORING CREDIBILITY, supra note 14, at 63.

64. Id. at 64-72. These elements include a means by which employers will access the verification system to verify the accuracy of information provided by workers, measures to ensure the accuracy of an access to the specific information needed, measures to ensure anti-discrimination and disparate treatment of foreign-looking or foreign-sounding persons, measures to protect civil liberties, measures to protect the privacy of information contained in the database, estimates of the start-up time and financial costs, specification of the rights, responsibilities, and impact on individual workers and employers, and a plan for phoning in the system. Id.

65. Robert Pear, Federal Panel Proposes Register to Curb Hiring of Illegal Aliens, N.Y. TIMES, Oct. 4, 1994, at A1. The coalition included various conservative groups, the American Civil Liberties Union, the American Bar Association, the National Council of La Raza, the American Immigration Lawyers Association, and the United States Catholic Conference. Id.


the Washington Post offered its opinion in favor of the recommendation and urged the Clinton Administration to consider it carefully. 68 Congress liked the idea and included a weakened version of it in the Illegal Immigration and Immigrant Responsibility Act of 1996 ("1996 Act"). 69 The pilot programs for electronic verification of employment eligibility by accessing government databases were not codified in the Immigration and Nationality Act—the basic statute governing immigration matters. 70 The pilot verification programs were mandated to be in place by September 30, 1997, and would last four years. 71 These pilot verification programs would essentially establish a confirmation system responding to questions concerning the identity and employment eligibility of persons through a toll-free number. 72

Apart from the controversial recommendation in the area of worksite verification, the Commission supported INS efforts to improve its telephone verification system, also known as SAVE, and recommended actions to reduce fraudulent access to so-called "breeder documents." 73 The Commission also recommended greater penalties for those producing and selling fraudulent documents. 74 This recommendation found its way into the 1996 Act through enhanced criminal penalties for persons who "knowingly and willfully" engage in

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71. Illegal Immigration and Immigrant Responsibility Act § 401(b). The Attorney General is to submit reports to Congress on the pilot programs within three months after the end of the third and fourth years. Id. § 404, 110 Stat. at 3009-664.
72. Toll free may be accomplished telephonically or by other electronic media. See INS Invites Employers to Participate in Verification Pilots, 74 INTERPRETER RELEASES 1369, 1369 (1997). The system must retain records of both confirmation and unconfirmation, it must be established through the Social Security Administration, and the Attorney General is encouraged to use non-government contractors for its implementation. Id.
73. RESTORING CREDIBILITY, supra note 14, at 73-74. Particular mentioned was given to "breeder documents" such as birth certificates which can encourage fraud regarding identity through altering the birth certificate itself, or the birth certificate is obtained through fraudulent means. Id. at 74-75; see Illegal Immigration and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 211, 110 Stat. 3009, 3009-569 (1996) (increased criminal penalties for fraudulent use of government-issued documents).
74. RESTORING CREDIBILITY, supra note 14, at 76.
document fraud. Among the most interesting remaining recommendations in worksite enforcement, the Commission supported a careful review of the enforcement of employer sanctions complemented by an enforcement of labor standards. It also urged the federal government to abide by employer sanctions requirements. In fact, President Clinton issued an Executive Order debarring contractors who violate employer sanctions provisions the following year. Furthermore, the Commission noted that cooperation between the INS and the Department of Labor, who are jointly responsible for enforcing employer sanctions, was not working well. It vowed to monitor this joint effort and if there was no improvement, the Commission was prepared "to designate a single agency to enforce employer sanctions." A few years after issuing Restoring Credibility, the Commission recommended that the Labor Department take over all responsibility for enforcing employer sanctions. This will be discussed more fully below.

3. Public Assistance

Another controversial area in which the Commission issued policy recommendations was welfare benefits to aliens. Recognizing that the "intersection of immigration policy and public benefits is a complex topic" among policy makers and the general public, the Commission stated that the public benefits ought to support the overall goals of federal immigration policy to deter unlawful immigration, and to encourage legal immigration and citizenship. Accordingly, it recommended that undocumented aliens should not receive any public benefits except for emergency reasons, or for compelling reasons to protect public health and safety, or to conform to constitutional requirements. As a general matter, this

76. RESTORING CREDIBILITY, supra note 14, at 89-102.
78. RESTORING CREDIBILITY, supra note 14, at 102-03.
79. Id. at 103.
81. Id. at 111-13. The Commission cited Matthews v. Diaz, 426 U.S. 67 (1976), for the proposition that Congress is not bound by the Constitution to provide all aliens with welfare benefits provided to citizens. RESTORING CREDIBILITY, supra note 14, at 112.
82. Id. at 115-26.
recommendation mirrored the law at the time *Restoring Credibility* was issued. Only United States citizens or lawful permanent residents or persons residing under color of law were eligible for a variety of public benefits.\(^8\) However, with regard to public education, the Commission reiterated Supreme Court case law which holds that states may not deny free public education to undocumented alien children in violation of the Fourteenth Amendment.\(^8\)

The Commission encouraged federal legislation to allow states to deny public assistance eligibility to undocumented aliens.\(^8\) Without such authority, general immigration enforcement is weakened.\(^8\) To better achieve this recommendation, the Commission advised establishing pilot programs for verification of benefit eligibility similar to work authorization program.\(^7\) In cases of mixed household in which some family members are undocumented and others are not, the Commission recommended that benefits be prorated providing them only to eligible family members.\(^8\)

Contrary to what Congress would do in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Act"),\(^8\) the Commission advised against broad,

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83. *Id.* at 116. The programs included Aid to Families with Dependent Children, Medicaid, Supplemental Security Income, except for emergency situations, Food Stamps, public housing, legal services, unemployment compensation, post-secondary education, financial assistance, and job training. *Id.*

84. *Id.* (citing Plyler v. Doe, 457 U.S. 202 (1982)).

85. *Id.* at 117.

86. *RESTORING CREDIBILITY*, *supra* note 14, at 117-18. The Commission acknowledged that such grant of authority could raise judicial questions. *Id.* at 118. In 1971, the Supreme Court held that State restrictions on citizenship and alienage requirements violated both federal preemption in controlling immigration and the Equal Protection Clause of the Fourteenth Amendment. *See* Graham v. Richardson, 403 U.S. 365 (1971).


88. *Id.* at 122-26.

89. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C. and 8 U.S.C.) [hereinafter Welfare Act]. The Welfare Act generally prohibits lawful permanent residents from accessing federal public assistance benefits in means-tested programs for the first five years of their residency in the United States. *Id.* § 403, 110 Stat. at 2265. This bar does not cover refugees, asylees, aliens granted withholding of deportation, and members of the armed forces (including their spouses and unmarried children). *Id.* § 403(b), 110 Stat. at 2265-66. While there is no definition to federal means-tested program, the Welfare Act includes those programs that are not considered means-tested and almost all relate to public health or safety (emergency medical assistance; short-term, non-cash, in-kind emergency disaster assistance; the Na-
categorical denial of public benefits to legal immigrants. The Commission recognized the need for a safety net for legal immigrants who have been accepted as legal immigrants. Creating a line between legal immigrants and citizens establishes a “false dichotomy” that merely works against the Commission’s recommended policy of integration.

Perhaps the harshest provision of the Welfare Act was the denial of supplemental security income and food stamps to legal residents. In 1997, however, Congress substantially ameliorated this provision through the grandfathering of all legal residents who received supplemental security income (and derivative medicaid eligibility) at the time that the Welfare Act was enacted, or August 22, 1996. In addition, Congress provided for a safety net for all otherwise “qualified” aliens who were legal residents as of August 22, 1996, but who were not receiving supplemental security income bene-

90. RESTORING CREDIBILITY, supra note 14, at 126-38.
91. Id. at 128-29.
93. See supra note 89.
fits. These aliens will be eligible prospectively if they are needy and disabled when applying for assistance.

Another major recommendation was to require sponsors of legal immigrants to be held financially responsible for the immigrants that they bring into the country through affidavits of support. An important element in the issuance of visas at a consulate abroad or adjustment of status while in the United States is whether the incoming lawful permanent resident will become a public charge. Legally enforceable affidavits of support became a reality with the 1996 Act. It revised the public charge ground for admission by requiring a family-sponsored noncitizen to obtain a legally enforceable affidavit of support. The same obligation would extend to employment-based visas which are filed by a relative of the noncitizen or by an organization in which the sponsoring alien has a significant interest. The affidavit of support has to be executed as a contract with the following terms: (1) the sponsor must agree to support the alien and family at an annual income of not less than 125% of federal poverty guidelines, until such time that the alien becomes a naturalized United States citizen, or until the alien, their parents or spouse, has worked in the United States for forty qualifying quarters (i.e., ten years); (2) the affidavit is legally enforceable against the executing sponsor by the sponsored alien, the federal government, any state, or by any other entity providing means-tested public benefits to the aliens; and (3) the sponsor must agree to submit to the jurisdiction of any state or local court.

On October 20, 1997, the INS finally issued an interim rule on affidavits of support on behalf of immigrants. It

95. Id. § 5301, 111 Stat. at 251.
96. Id.
97. RESTORING CREDIBILITY, supra note 14, at 129-34.
98. Illegal Immigration and Immigrant Responsibility Act of 1996, Pub. L. 104-208, §551, 110 Stat. 3009, 3009-675 (1996). Exemptions in the law extend to alien spouses, or children of United States citizens or lawful permanent residents who are victims of abuse by the citizen or permanent resident are self-petitioning; other exemptions include an alien widow(er) of a United States citizen and the alien's children. Id. § 552, 110 Stat. at 3009-680.
99. Id. § 551.
100. Id.
101. 62 Fed. Reg. 54,346 (1997) (to be codified at 8 C.F.R. pts. 213a & 299). Under the interim rule, the new affidavits of support will be used for visa applications (either processed abroad at consulates, or in adjustment of status requests in the United States) beginning December 19, 1997. Id. New require-
remains to be seen if the new affidavits of support will be challenged in the federal courts as unenforceable given existing case law which holds that the old affidavits of support were only moral obligations lacking legally enforceable contractual terms. This might also hold for the limits of liability imposed by both the law and the new affidavits of support implemented through regulation.

4. Detention and Removal

Restoring Credibility advised that a top priority of enforcement strategy is to remove criminal aliens from the United States in a way to minimize their return to the United States. To obtain this goal, the Commission recommended increased resources for INS investigations, to use an institutional hearing program that would ensure that criminal aliens receive final orders of deportation before they are released from incarceration, that repatriation to Mexico be accomplished in the interior of that county as opposed to the border, and the use of bilateral treaties to transfer criminal aliens to serve their sentences in home countries.
In *Becoming an American*, the Commission also included recommendations on removing aliens from the United States. The Commission simply found the current removal system ineffective. For example, in 1996 there were 131,000 removal orders, but only 69,000 actual removals. It is important to have a removal system that guarantees that those aliens subject to removal are actually removed. The first step would be to establish priorities and numerical targets for removing both criminal and noncriminal aliens. Presently, criminal aliens are a removal priority, but the same priority should be, according to the Commission, applied to those who are caught trying to enter with fraudulent documents. In San Diego, those aliens caught trying to enter with fraudulent documents are singled out for priority removal with an exclusion order. Under previous practice in San Diego, and presumably at other border crossings, the alien has been allowed to withdraw the entry application with no resulting penalties.

Significant attention was given to legal rights and representation issues by the Commission, especially in the detention context. While the federal government does not have to provide for legal representation to aliens subject to removal process because the proceedings are civil in nature, the Commission recommends that Congress authorize the Executive Branch to assist nongovernment representation projects with particular focus on aliens in detention. It is well known that if alien are represented by counsel in removal proceeding, it provides for a more efficient, economical...
and expeditious handling of cases. The reasons are basic: a represented alien is more likely to show up at hearings, there are fewer continuances needed or granted, the hearings take less time, the issues before the immigration court and any appeal are narrow and more focused, petitions for relief are better prepared, and appeals are made cogently.\textsuperscript{114}

**B. Admission**

1. **Nonimmigrants**

In the area of nonimmigrant (i.e., temporary) admissions, the Commission advocated for consideration of a more integrated system with immigrant (i.e., permanent) immigration.\textsuperscript{115} The Commission described twelve categories of nonimmigrant visas and noted that there are a number of areas that need to be addressed.\textsuperscript{116} Setting Priorities deferred specific recommendations on most nonimmigrant issues, however, it noted two areas of interest. First, it intended to review carefully the relationship between temporary workers and foreign students.\textsuperscript{117} Second, the Commission unanimously believed that agricultural guestworker programs, also known as the "bracero agreement," should not be revis-

\textsuperscript{114} Id. at 136-37. The Commission described its experience when visiting the Florence Project located in Arizona. Id. at 137. The Project has been recognized for its success in moving cases efficiently through the system using a triage system. It screens detainees for eligibility of immigration benefits, including any relief from removal, and informs aliens of their rights. Id. In addition, it directly represents as many detainees as possible and has a pro bono network for overflow cases. BECOMING AN AMERICAN, supra note 39, at 137. The Commission also found that representation can decrease anxiety and behavioral problems among aliens subject to the process. Id.

\textsuperscript{115} SETTING PRIORITIES, supra note 18, at 161.

\textsuperscript{116} The Commission described the following nonimmigrant visas: (1) D visa (foreign crewmen); (2) E visa (treaty and investors); (3) F visa (foreign students); (4) H visas (temporary workers), H visas are farther divided into H-IA (nurses), H-IB (workers in specialty occupations), H-2A (agricultural workers), and H-2B (nonagricultural workers)); (5) J-1 visa (exchange visitors); (6) L-visas (intracompany transfers); (7) M-visas (vocational students); (8) O-visas (aliens with exceptional ability in sciences, arts, education, business, or athletics, and those assisting in athletic or artistic performances of an O-visa alien; (9) P-visa (internationally recognized entertainers and athletes, artists, or entertainers on exchange programs or under a culturally-unique program); (10) Q-visa (participant in international exchange program); and (11) R-visa (religious program). Id. at 161-67. The specific areas that need to be addressed include the nonimmigrant visa system in relationship to the permanent system, complexity, labor market tests, wages and working conditions, numerical limitations, duration of stay, and job contractors. Id. at 169-71.

\textsuperscript{117} Id. at 171-72.
ited because it is not in the national interest. The Commission echoed the findings of the Commission on Agricultural Workers stating that there was an oversupply of domestic farm labor throughout the country. Both Commissions recommended against new agricultural guest worker programs.120

In 1996, the year following the second Interim Report, the Commission issued a fact-finding report written by scholars and policy makers on nonimmigrants. These were the research papers to be used by the Commission in preparation for its final report.

In Becoming an American, the Commission expanded its recommendations related to nonimmigrant admissions. Nonimmigrants are described by the Commission as “limited duration admissions.” Some 24,842,503 nonimmigrants were admitted into the United States in 1996. While recognizing positive aspects to nonimmigrant presence in the United States, the Commission found that they pose two problems. First, those who overstay their period of admission are a significant contribution to the problem of unlawful immigration. Second, it is difficult to keep track of many nonimmigrants who are admitted for longer periods of time, especially students. Accordingly, the Commission recommended a complete overhaul and reorganization of these visa categories through the creation of five limited duration admission groups consisting of official representatives of foreign governments or international organizations, short-term visitors for personal or commercial purposes, foreign workers, students, and certain transitional family members. Furthermore, the Commission recommended establishing a

118. Id. at 172-73.
119. Id.
120. See generally COMMISSION ON AGRICULTURAL WORKERS, REPORT OF THE COMMISSION ON AGRICULTURAL WORKERS (Nov. 1992) (on file with author).
121. See U.S. COMMISSION ON IMMIGRATION REFORM, RESEARCH PAPERS, TEMPORARY MIGRANTS IN THE UNITED STATES (Lindsay Lowell ed., 1996) (the content of the research papers is divided into system overview, workers, and students).
122. BECOMING AN AMERICAN, supra note 39, at 76.
123. Id. at 77.
124. Id. at 78. Those who do overstay constitute a small fraction of overall nonimmigrant admissions. Id.
125. Id. Some 426,903 foreign students were admitted in 1996. Id. at 77.
126. BECOMING AN AMERICAN, supra note 12, at 84-88.
"coherent and understandable" system for limited stay duration visas.127

2. Immigrants

i. Nuclear Family Immigration

As stated earlier, the Commission recommended 400,000 admissions for nuclear family immigration.128 The Commission also restructured the family-based categories for admission from the current five preferences to three.129 The proposed system would prioritize family-based admission into three categories: (1) first priority, which would consist of

127. Such a system would extend the Visa Waiver Pilot program for short term duration-visitors who come from countries with low incidence of visa abuse. Once an entry-exit control system is in place, the program should be extended permanently. Foreign workers should be classified into three groups: (1) a labor market test exempt group who would provide high benefits, but pose little threat in undermining the wages and working conditions of domestic workers; (2) foreign workers who are subject to treaty obligations; and (3) foreign workers subject by law to labor market protection standards. Id. at 92-94. Labor market tests should be commensurate with the particular skill and experience of the foreign worker to be admitted. In addition, there should be regular monitoring of those employers who are more likely to violate labor market standards, and greater monitoring and enforcement related to fraudulent admission applications and post-admission violations of labor market standards. Finally, no provision for the admission of guest workers and greater scrutiny of those employers who file requests for lesser-skilled or unskilled workers. Id. at 88-102; see also, Out of Many, One: Commission on Immigration Reform Issues Final Report, 74 INTERPRETER RELEASES 1509, 1512 (1997).

128. See supra Part I.

129. Current categories are as follows:

FAMILY-SPONSORED PREFERENCE

First: Unmarried Sons and Daughters of Citizens: 23,400 any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit.

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: Brothers and Sisters of Adult Citizens: 65,000, plus any number not required by first three preferences.

spouses and minor children of United States citizens; (2) second priority, which would consist of parents of United States citizens, with the caveat that the continued admission of parents is contingent on legally enforceable affidavits of support discussed earlier; and (3) the third priority, which would consist of spouses and minor children of lawful permanent residents. The proposed priorities would eliminate current categories of adult unmarried sons and daughters of United States citizens, adult unmarried sons and daughters of permanent residents, married sons and daughters of citizens, and siblings of United States citizens. The charts at Appendix A compare current law and proposed changes.

In order to eliminate the substantial backlog created by IRCA's legalization program, the Commission recommended allocating 150,000 interim visas to the core numbers of 400,000. These additional visas would terminate once the IRCA-related backlog, a one time backlog, is eliminated. While the Commission gave various reasons for eliminating other family-based categories, the underlying premise seems to be that immigrants should be chosen on the basis of skills contributed to the economy. Recognizing that nuclear families and refugees are a compelling national interest, the reunification of adult children and siblings of adult children does not rise to the level of a national compelling interest. In his dissenting statement, Commissioner Leiden agreed with the majority that spouses, children, and parents should receive immediate relative status and be allowed to immigrate without regard to numerical limitations. The dissent stated that reprioritization of the family preference categories should be accomplished through clear definitions and enforceable limits. While advocating for no specific numerical limitations, the dissent recommended that family preference immigration should have an annual ceiling of 535,000. In

130. SETTING PRIORITIES, supra note 18, at 45-64.
131. Id.
132. See infra Appendix A.
133. SETTING PRIORITIES, supra note 18, at 64-70.
134. Id. at 72.
135. Id.
136. Id.
137. Id. at 232-33.
138. Id. at 233.
139. SETTING PRIORITIES, supra note 18, at 233.
addition, the dissenting opinion believed that family-based visas should be allocated through a "spilldown" mechanism in which all the annual visas should be made available first to the top family category with the unused visas cascading to each lower level sequentially. A floor on annual admissions would be established at 281,000. The dissent acknowledged that certain visas under this scheme would be closed down or backlogged once IRCA-legalized aliens are naturalized; however, this would only be a temporary phenomenon.

Like the majority, the dissent also believed that spouses and minor children of lawful permanent residents should be included in top preference after immediate relatives of United States citizens. However, the dissent departed from the majority recommendation by allowing the continued immigration of adult sons and daughters of United States citizens. The majority recommendation to eliminate this category was considered "drastic and historic," as well as a "shortsighted and rigid approach in an effort to reduce overall legal immigration." Further, the dissent would have preserved the current visa category for siblings of United States citizens.

ii. Skill-Based Immigration

Important policy recommendations in Setting Priorities covered the area of skill-based immigration. Under current law, there are five employment-based visa categories. Most

140. Id. There may be a backlog or close down during the time that the legalization population is processed. Id. at 234.
141. Id. at 233. The 281,000 visas would include the current floor of 226,000 numbers plus 55,000 visas made available after the elimination of the diversity program. Id.
142. Id. at 233-34.
143. SETTING PRIORITIES, supra note 18, at 234-35.
144. Id. at 235-36. These would receive second priority. Id. at 234.
145. Id. at 236.
146. Id. at 237. The dissent recognized that the fourth preference category has the largest backlog. Id. Nonetheless, it should be preserved throughout the IRCA-legalization bulge and be reviewed in the future. SETTING PRIORITIES, supra note 18, at 237.
147. Id. at 81-120.
148. Employment-Based Preferences
First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.
Second: Members of the Professions Holding Advanced Degrees or
of these categories either promote the immigration of skilled workers, whether through education, experience, or achievement. Labor certifications, also known as labor market tests, apply to some, but not all, of the categories.\textsuperscript{149} The Commission recommended that skill-based immigrants be organized into two categories, one subject to a labor test which would be the norm, the other exempt from such a test because of specific policy reasons.\textsuperscript{150} The category exempt from the labor market test would include aliens with extraordinary ability, multinational executives and managers, entrepreneurs, ministers and nonminister religious workers.\textsuperscript{151}

The labor market tested category would include professionals with advanced degrees, professionals with baccalaureate degrees, and skilled workers.\textsuperscript{152} The Commission recommended that the admission of unskilled worker should be eliminated in its entirety.\textsuperscript{153} Citing various commentators, the Commission found that the admission of unskilled foreign workers has had a great negative impact on minorities and recent permanent residents considered a vulnerable group in the economy.\textsuperscript{154} With regard to recommended admission numbers, the Commission preferred a ceiling of 100,000, down from the current ceiling of 140,000.\textsuperscript{155} Certain business interests criticized this reduction.\textsuperscript{156} Further, it was recommended that, in the interest of market adjustments

Persons of Exceptional Ability: 28.6\% of the worldwide employment-based preference level, plus and numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6\% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 or which to “Other Workers.”

Fourth: Certain Special Immigrants: 7.1\% of the worldwide level.

Fifth: Employment Creation: 7.1\% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 300 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.


149. \textit{See} LEGOMSKY, \textit{supra} note 8, at 171-204 (discussing employment-based visas).

150. \textit{Setting Priorities, supra} note 18, at 87-102.

151. \textit{Id.} at 88-99.

152. \textit{Id.} at 87, 99-102.

153. \textit{Id.} at 102-04.

154. \textit{Id.} at 103-04 (naming commentators, including Thomas Muller, Vernon M. Briggs, Jr., and George Borjas).

155. \textit{Id.} at 88.

and flexibility, any skill-based visas not used during a particular fiscal year should be carried over to the next fiscal year.\footnote{157}

Another significant proposed change was the overhaul of the labor certification, or market test process and related eligibility requirements.\footnote{158} To achieve this objective the Commission recommended a three part labor market test that would require: (1) employers to pay a “substantial fee” into a certified private sector initiative whose goal is to increase the competitiveness of domestic workers; (2) employers to demonstrate “appropriate attempts” to find domestic workers including paying at least five percent over the prevailing wage; and (3) that sponsored employees would be subject to a two-year residency requirement whose conditionality would be removed if, at the end of the two-year period, the sponsored employee is still working for the employer at the same or higher wage.\footnote{159}

Again dissenting, Commissioner Leiden opposed the “substantial fee” idea, labeling it an unneeded tax which could be harmful to the ability of the United States to compete in the global economy.\footnote{160} In addition, Commissioner Leiden recommended keeping the admission numbers at 140,000, and that the “unskilled worker” category needed “rationalization, not elimination.”\footnote{161} Commissioner Leiden further disagreed with the majority’s position on granting employment-based visas for a conditional two-year period.\footnote{162} He found no evidence presented to the Commission that there existed post-admission problems with employment-based admissions. According to Commissioner Leiden, duplicative petitions to remove the conditional residency would only result in more expense, time expended, effort, and re-

\footnote{157. Setting Priorities, supra note 18, at 104.}
\footnote{158. Id. at 104-11. The Commission found the current labor certification bureaucratic process to be tedious, lengthy and costly. See id. at 109. It relied on Department of Labor regulatory attempts to make fundamental changes to the program. Id.}
\footnote{159. Id. at 111-20. The Commission would allow for a waiver of the two-year conditional permanent residency requirements under certain circumstances (e.g., lay-off; business failure), but would authorize penalties against the employers to discourage fraud and abuse. Id. at 120.}
\footnote{160. Setting Priorities, supra note 18, at 240-42; see also Robert Pear, Clinton Embraces a Proposal to Cut Immigration by a Third, N.Y. Times, June 8, 1995, at B10.}
\footnote{161. Setting Priorities, supra note 18, at 238-40.}
\footnote{162. Id. at 243.}
sources on the part of employers. Furthermore, the dissent opined that requiring workers to remain with the sponsoring employer could result in abusive or exploitative employment conditions. The conditional status might also have a negative effect on the wages of other workers who are not subject to the two-year conditional residency status. Finally, the dissent opposed the proposal to carry over unused employment visas members to the following fiscal year, and proposed that the unused members be used to help with any backlog of family-based immigration.

In Becoming an American, the Commission essentially reiterated its position on overhauling legal permanent admission categories that it took in 1995 through the establishment of a tripartite admission system. Again Commissioner Leiden dissented, arguing that while there may be a need to reorganize needs and priorities, the present levels of admission are in the national interest.

C. Refugee and Asylum Policy

Taking Leadership, the third Interim Report, recommended designating an office within the National Security Council whose responsibility would be the coordination and oversight of both domestic and international refugee concerns. Because the number of refugees and displaced persons would continue to increase, the Commission believed that United States leadership would have a significant impact if policymaking in this area came directly from the White House.

163. Id.
164. Id.
165. Id.
166. Id. at 244.
168. Id. at 224. The dissent believes that a prioritization of family-based admissions can occur without eliminating basic family reunification. Id. at 224-25. Commissioner Leiden strongly criticized the Commission for wanting to eliminate adult sons and daughters, or siblings of United States citizens: “It is wholly unnecessary to impose this hardship when simple priority setting can accomplish the same end.” Id. at 225. The dissent reiterated its earlier position that present employment-based admission levels should be maintained and that labor market tests can be reformed without penalizing employers. Id. at 226-27.
170. Id. at 9-10.
1. **International Refugee Policy and Programs**

The Commission urged the federal government to demonstrate its leadership in generating responses to refugee and related humanitarian problems. The White House was urged to create a task force, under the auspices of the National Security Council, to establish criteria and guidelines for the involvement of the military in humanitarian operations arising out of refugee or displacement situations.

2. **Mass Migration Emergencies**

The Commission recommended that federal immigration policy needed to acquire the ability to respond effectively and humanly to immigration emergencies. During the late 1970s and throughout the 1980s the United States has been the recipient of major migration outflows from Central America (El Salvador, Guatemala, and Nicaragua) and the Caribbean (Cuba and Haiti). To deal more effectively with these immigration emergencies, the Commission recommended setting up early warning systems, contingency plans and emergency preparedness, special immigration status determinations, country specific responses and other refugee-related matters.

Having learned valuable lessons during the Cuban and Haitian mass migration during 1994, the United States should establish a regional temporary protection system. Taking advantage of the present situation of no mass migration crisis, the Commission urged the federal government to negotiate and agree with various countries in the Americas

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171. Id. at 11-12. United States response in formulating refugee policy should include the anticipation and action, or preventive measures in emergencies; to respond in a timely and humanitarian manner; to facilitate protection and assistance of refugees in situ; endeavor to ensure humanitarian aid and protection to internally or displaced persons; and to seek durable solutions to refugee and humanitarian crises. Id. To achieve these policy goals, the United States should engage in preventive diplomacy, policy leadership, timely and appropriate financial contributions, support programs targeting assistance and protection to the most vulnerable populations, and create clear, comprehensive domestic refugee policy that adheres to international standards. Id. at 12-13.

172. Id. at 16-17.

173. TAKING LEADERSHIP, supra note 28, at 20.

174. Id. at 7.

175. Id. at 20-30.

176. Id. at 20-25; see also Carlos Ortiz Miranda, Haiti and the United States During the 1980s and 1990s: Refugees, Immigration and Foreign Policy, 32 SAN DIEGO L. REV. 673 (1995).
and the Caribbean concerning sites close to the source country, places for processing of those individuals who reach borders beyond the primary protection sites, measures to avert and resolve crises, feeling durable solutions, and a financing plan.\textsuperscript{177}

In addition, the Commission recommended that the federal contingency plan for migration emergencies should be finalized after more than a decade in the making.\textsuperscript{178} Again, the focal point should be the National Security Council.\textsuperscript{179}

3. \textit{Asylum}

With regard to asylum, the Commission supported certain regulatory changes made to the adjudications process resulting in "professionalized and streamlined decision making while reducing abusive claims."\textsuperscript{180} On the other hand, the Commission expressed serious concerns over statutory changes made to the asylum process in the 1996 Act. More specifically, the expedited removal process was criticized as unnecessary given the low number of persons (3,600) who requested asylum at ports of entry.\textsuperscript{181} The Commission asserted that Congress take corrective measures with regard to certain asylum provisions of the 1996 Act.\textsuperscript{182} In particular, the "credible fear" determinations in the expedited removal process should be eliminated.\textsuperscript{183} These were established on the perceived abuse of the asylum system. However, given the low number of asylum applicants at ports of entry these can be handled through the normal adjudication system.\textsuperscript{184}

The Commission also urged Congress to repeal the 1996 Act's mandate that asylum applicants' who meet the "credible fear" standard during expedited removal should be

\textsuperscript{177} \textit{TAKING LEADERSHIP, supra} note 28, at 20-25.
\textsuperscript{178} \textit{Id.} at 25.
\textsuperscript{179} \textit{Id.} at 26. The Commission stated that it was the National Security Council that took an active role in handling the Cuban and Haitian mass migrations during 1994. \textit{Id.} Other related recommendations include granting statutory authority to particular federal agencies with some operational responsibilities for responding to mass migrations. \textit{Id.} at 26-28.
\textsuperscript{180} \textit{Id.} at 29.
\textsuperscript{181} \textit{TAKING LEADERSHIP, supra} note 28, at 28-30. The Commission stated that expedited removal may be appropriate during migration emergencies, or other exceptional circumstances. \textit{Id.} at 30.
\textsuperscript{182} \textit{Id.} at 28-29.
\textsuperscript{183} \textit{Id.}
\textsuperscript{184} \textit{Id.} at 29-31.
detained pending a full asylum hearing before an Immigration Judge.\textsuperscript{185} Forcing the incarceration of these individuals was an unsound use of scarce detention facilities, according to the Commission.\textsuperscript{186} Furthermore, the Commission expressed concern over the 1996 Act's expansion of the bar to asylum and withholding of deportation to those who are convicted of "aggravated felony."\textsuperscript{187} Since the term is expansive, as redefined in 1996 Act, it could affect individuals who do not pose a danger on the community.\textsuperscript{188} The last part of the 1996 Act found by the Commission as wanting was the numerical limitations on the grants of asylum made during any one year.\textsuperscript{189} This potentially violated a U.S. international obligation not to return bona fide refugees to persecutory conditions on account of reaching an artificial limitation.\textsuperscript{190} This treaty obligation was a result of the 1967 Protocol Relating to the Status of Refugees incorporating the 1951 Convention Relating to the Status of Refugees.\textsuperscript{191} Both the 1967 Protocol and 1951 Convention were incorporated into domestic legislation in the Refugee Act of 1980.\textsuperscript{192}

The Commission further recommended against the current statutory provision which grants a successful asylum applicant a one year period before the asylee is eligible for permanent residency.\textsuperscript{193} There is an additional limitation of 10,000 visa per year to adjust the status of an asylee to permanent residence.\textsuperscript{194} The Commission recommended granting successful asylum applicants lawful permanent residency immediately.\textsuperscript{195}

\textsuperscript{185} Id.
\textsuperscript{186} TAKING LEADERSHIP, supra note 28, at 29-31. According to the Commission, those individuals who have expressed a credible fear are not likely to abscond. Id. at 29.
\textsuperscript{187} Id. at 30-33.
\textsuperscript{188} Id. at 33.
\textsuperscript{189} Id. at 34.
\textsuperscript{190} Id. at 34-35.
\textsuperscript{193} TAKING LEADERSHIP, supra note 28, at 35.
\textsuperscript{194} Id.
\textsuperscript{195} Id. at 32-35.
4. Overseas Refugees Admissions

The United States has resettled over 2 million refugees during the past two decades. The Commission recommended that the United States continue its commitment to resettle refugees because this reaffirms the exercise of leadership in this area and manifests one of the country's strongest-traditions, as a refuge to the world's persecuted. Resettlement policy should encompass various elements including protection as a core priority, obligations to persons persecuted because of close associations with the U.S. government, promotion of human rights and democratization, leadership in promoting durable solutions, the effects of resettlement decisions on protection and assistance of refugees worldwide, proportionality of support for resettlement, flexibility both in policy and program implementation, and coordination and consultation with affected agencies.

Every fiscal year, the Bureau of Population, Refugees and Migration, Department of States, establishes a priority system for refugee admissions. The Commission proposed that this prioritization be based on human rights and humanitarian considerations. Any allocation of priorities should be accomplished according to these categories. In addition, the Commission suggested that there should be no statutory ceiling on the admission of refugees and that the consultation process between the administrative and legislative branches of government should be strengthened.

196. Id. at 35-37. The two million refugees came from Vietnam, Laos, Cambodia, the former Soviet Union, Bosnia, Iran, Iraq, Afghanistan, Liberia, Ethiopia, Somalia, and Cuba. Id.
197. Id. at 36-38.
198. TAKING LEADERSHIP, supra note 28, at 36-41.
200. TAKING LEADERSHIP, supra note 28, at 42. The Commission recommends establishing two priorities. Priority one would include refugees who are in immediate need of rescue and refugees who are immediate relatives, (i.e., spouses, minor children, and parents) of U.S. citizens, permanent residents, previously admitted refugees, asylees, and certain others. Id. Priority two would include refugee members from designated subgroups, refugees with close family ties in the United States and refugees in need of durable solutions in accord with international principles of responsibility sharing. Id.
201. Id. at 46. Annual consultation should include a forecast for at least two years beyond the current fiscal year and that the consultation process include public hearings. Id. at 47. Other matters of interest regarding refugee admissions are caution against excessive use of in-country processing and a need to
5. Transitional Assistance and Services

The last section of *Taking Leadership* dealt with transitional refugee assistance and services.\(^{202}\) In this part, the Commission endorsed a resettlement program that fosters the civil and social integration of refugees into local communities, while at the same time encouraging economic self-sufficiency.\(^{203}\) The Commission supported the current array of transitional services such as reception and placement in local communities, health screening, transitional cash assistance, and transitional health benefits.\(^{204}\) Of special importance was the preparation of newly arrived refugees for naturalization.\(^{205}\) Other sets of recommendations in this area were: the continuation of public and private partnership to assist refugees obtain self-sufficiency; inclusion of a three year trial period to evaluate its effectiveness; strengthening the funding of the refugee program; and having the National Security Council take a leadership role in coordinating the effort of federal agencies to develop an operational plan.\(^{206}\)

D. Becoming an American

1. Americanization

The last section of *Setting Priorities* focused upon the process through which immigrants become “americanized.”\(^{207}\) In this section, the Commission made only one recommendation: urging assistance to legal immigrants in preparing for naturalization.\(^{208}\) It proffered that assistance by both private and public sectors can be accomplished to provide English language instruction and civics education to immigrants.\(^{209}\) In addition, the Commission called for targeted outreach programs to educate eligible immigrants concerning naturaliza-

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\(^{202}\) *Id.* at 49. Lastly, and like its recommendation for asylees, the Commission recommends that refugees be admitted as lawful permanent residents.

\(^{203}\) *Id.* at 63-54.

\(^{204}\) *Id.* at 54.

\(^{205}\) *Id.*

\(^{206}\) *Id.* at 54-59.

\(^{207}\) *Setting Priorities*, supra note 18, at 175-200.

\(^{208}\) *Id.* at 193.

\(^{209}\) *Id.* at 196-98 (calling on private industry, churches, community groups, and volunteers to assist in the educational endeavor).
The Final Report would contain various recommendations on amerikanization. Use of the word itself provoked a certain controversy considering its historical association with coercive practices to assimilate immigrants in the early decades of the twentieth century.

Recognizing that the United States is "one of the world’s successful multiethnic nations," the Commission expanded on earlier recommendations made in Setting Priorities to "amerikanize" newcomers in Becoming an American, the Final Report. More importantly, the Commission recommended that all levels of government, from federal to local, participate in helping to orient newcomers regarding their rights and responsibilities. Other important activities for encouraging americanization included renewed commitments to education, for both immigrant children and adults, and to the area of naturalization.

2. Naturalization, English Language and Civics

For a permanent resident to become a naturalized citizen, he or she must meet statutory requirements, submit a naturalization application, and pass an English language and a civics test before taking the oath of allegiance. These tests are presently administered by six organizations. A congressional hearing held in 1996 demonstrated that these organizations, including their affiliates, are not properly su-

210. Id. at 198-200.
211. BECOMING AN AMERICAN, supra note 12 at 25-46.
212. See HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS 153 (Stephen Thernstrom et al. eds., 1980); see also PHILIP PERLMUTTER, DIVIDED WE FALL, A HISTORY OF ETHNIC, RELIGIOUS, AND RACIAL PREJUDICE IN AMERICA 215 (1992) (describing years following World War One where “foreign languages were banned in private and public schools, and in public places...state laws and city ordinances multiplied in restrictions, jobs, and land-owning opportunities to Americans only”); and JERRE MANGIONE & BEN MORREALE, LA STORIA: FIVE CENTURIES OF THE ITALIAN AMERICAN EXPERIENCE 222 (1992) (describing school policy to Americanize immigrant children).
213. BECOMING AN AMERICAN, supra note 12, at 25-30.
214. Id. at 30. Specific actions would include providing orientation materials to legal immigrants upon their admission, to encourage state governments to establish data clearinghouses in large immigrant receiving communities, and promoting public/private partnerships to orient and help immigrants in adopting to their new life in the United States. Id. at 30-37.
215. Id. at 37-58.
217. BECOMING AN AMERICAN, supra note 39, at 55.
supervised, or disciplined by the INS. Contracting with a nationally-recognized testing service would help to ensure a quality product. Other recommendations in the area of naturalization are to staff adequately naturalization operations, to improve the integrity and processing of fingerprints, and to contract with one English and civics testing organization. In addition, the one-hundred questions that serve as the basis for the civics test should be modernized to make them more meaningful to the contemporary American experience. The Commission even recommended a new naturalization oath:

Solemnly, freely, and without mental reservation, I, [name] hereby renounce under oath [or upon affirmation] all former political allegiances. My sole political fidelity and allegiance from this day forward is to the United States of America. I pledge to support and respect its Constitution and laws. Where and if lawfully required, I further commit myself to defend them against all enemies, foreign and domestic, either by military or civilian service. This I do solemnly swear [or affirm].

The Commission believed that revising the oath of allegiance was needed to make it more solemn, comprehensible, and meaningful to the core experience of what is means to become an American citizen. Some commentators have noted that the revised oath is essentially the same as the current oath, but written into plain English. In addition,

218. Id.
219. Id.
220. Id. at 52-55.
221. Id. at 51. The elements of the current oath are contained in the Immigration and Nationality Act § 337, 8 U.S.C. § 1448 (1994). The current oath reads:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereign, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true and faithful allegiance to the same; that I will bear arms on behalf of the United States when required by law; that I will perform noncombatant service in the Armed Forces of the United States when required by law; that I will perform work of national importance under civilian direction when required by law; and that I take this opportunity freely, without any mental reservation or purpose of evasion; so help me God.

56 Fed. Reg. 50,475 (codified at 8 C.F.R. § 337.1(a) (1997)).
222. BECOMING AN AMERICAN, supra note 12, at 50.
223. Alexander Aleinikoff, Remarks at a Meeting at the Carnegie Endow-
the revised oath (or the current one for that matter) does not take into consideration the fact that many countries where naturalized citizens come from recognize dual nationality. Thus, those naturalized citizens who retain dual citizenship cannot possibly take the "sole . . . allegiance . . . to the United States" portion seriously. Rather, the suggestion has been to craft an oath that does not focus on the "sole" allegiance to the United States, but rather "primary" allegiance based on loyalty and commitment to the ongoing endeavor of United States citizenship.

In both Setting Priorities and Becoming an American, the Commission recommended instituting efficiency in the naturalization process and improving the integrity and processing of fingerprinting. In partial response to the Commission’s finding, an increasing naturalization caseload due to the legislative enactments discussed in this article relating to the Welfare Act (as of July 31, 1997, the INS received 1,405,000 naturalization application for fiscal year 1997, a 75% increase from fiscal year 1995), Congressional critics, and the need to streamline the naturalization process, the INS established an Office of Naturalization. INS’s goal is to standardize and fully automate the entire naturalization process, including returning the fingerprinting functions to the INS by April 1998. Fingerprinting for immigration benefits has been performed by thousands of private providers. There were attempts in Congress to require not only naturalization application fingerprints, but asylum and permanent residency applicants to be fingerprinted by the INS, or a combination of the INS and local law enforcement agencies. Fundamental changes to the fingerprinting process became a reality in early 1998. There is already a two-year wait for...
naturalization, and these provisions could prolong the entire naturalization by several years.\textsuperscript{229} A delay on the part of Congress to approve the INS blueprint for the Office of Naturalization, to impose greater bureaucratic burdens on the INS, or perhaps change the eligibility criteria for naturalization may only serve to exacerbate the problem. Clearly, the whole area of civics and English language tests and naturalization is one that needs careful review and concerted action by nongovernmental groups, but especially the federal government.

E. Restructuring Federal Immigration Agencies

During the month before the Final Report was issued, the Commission circulated to Congress a discussion draft on options for restructuring the INS.\textsuperscript{230} This Discussion Draft asked, "What structure, organizational or management improvements could enable the overall immigration system to function effectively and efficiently?"\textsuperscript{231} The answer to this question was revolutionary: the elimination of the INS as presently structured. In essence, the Commission found that there was "mission overload."\textsuperscript{232} No one federal agency is probably capable to accomplish the goals of an efficient and effective immigration system:

Our legal system should strive to serve the national interest helping families to reunify and employers to obtain skills not available in the U.S. labor force; our refugee system should reflect both our humanitarian beliefs and international refugee law; and our enforcement system should seek to deter unlawful immigration through employer sanctions and tighten border control and have an


\textsuperscript{230} Id. at 1. The first section of the Discussion Draft reviewed the federal agencies involved in the immigration system (Departments of Justice, State and Labor), and their respective responsibilities. The second section focused on the specific issues of policy development, organizational relationships, program accountability, and options for addressing each of these issues. Id.

\textsuperscript{232} Id. at 13.
effective mechanism for removal of those who do enter illegally.\textsuperscript{233}

The Discussion Draft on structural changes became an important part of the Final Report. The Commission examined various options for improving the immigration system and decided that the four core immigration functions should be separated among four different federal agencies.\textsuperscript{234} The first core function, border management, investigations, detention, and deportations, should be consolidated in a Bureau of Immigration Enforcement located with the Department of Justice, according to the Commission.\textsuperscript{235} The Bureau of Immigration Enforcement would be a new federal agency whose responsibility would encompass planning, implementing, managing and evaluating all immigration enforcement activities both domestically and internationally.\textsuperscript{236} The Final Report further detailed the “units” within the Bureau for Immigration Enforcement.\textsuperscript{237}

The second core function—adjudication of immigration benefits, services, and visas—would be performed by the Department of State.\textsuperscript{238} The activities associated with the second core function would create “a seamless process beginning with nonimmigrant and immigrant processing through naturalization to passport issuance and overseas citizenship

\textsuperscript{233} Id.

\textsuperscript{234} BECOMING AN AMERICAN, supra note 39, at 148-53. The four core functions are as follows: (1) border and interior enforcement; (2) adjudication of benefits and visas (immigrant, nonimmigrant, and naturalization); (3) immigration-related labor standards enforcement; and (4) appeals of administrative decisions. Id. at 148.

\textsuperscript{235} Id. at 154. An consolidated enforcement agency would be modeled after more traditional police activities such as pre and post-trial probation services and prosecution. Id.

\textsuperscript{236} Id. More specific functions would include preinspection facilities overseas, inspections and admissions at air, port, and land borders in the United States, apprehending, prosecuting, and removing undocumented aliens, document fraud, alien smuggling, and deterrence activities. Id.

\textsuperscript{237} BECOMING AN AMERICAN, supra note 39, at 158-61. These units would include an Intelligence Division, an Assets Forfeiture Unit, Pre- and Post-Trial Probation Officers, Trial Attorneys, and Field Offices. Id.

\textsuperscript{238} Id. at 161-69. The Commission recommends that a new position of Undersecretary of State, who would have direct access to the Secretary of State. Id. at 161, 165. The new Undersecretary would be responsible for domestic and overseas immigration, citizenship, and refugee functions. Id. at 165. The operating entities would consist of a Bureau of Immigration Affairs, a Bureau of Refugee Admissions and Asylum Affairs, a Bureau of Citizenship and Passport Affairs, and Quality Assurance Officers. Id. at 165-68.
services. The Commission noted that the Department of State already has the responsibility for some of the services and has both a domestic and international infrastructure in place. The Commission acknowledged that its recommendations to consolidate benefits, visa issuance, and naturalization within the Department of State was not an easy decision. Nonetheless, it believed that removing immigration and citizenship services from the Department of Justice would send the correct message that these activities are not law enforcement-related. In addition, the Commission noted that the doctrine of consular nonreviewability would need to be changed. Pursuant to this doctrine, no formal administrative or judicial review is possible if there has been a visa denial. The Commission recommends that denial of immigrant visas and certain nonimmigrant (or limited duration) visas should be subject to review in a newly created independent agency for immigration review to be discussed below.

The third core function, immigration-related employment standards enforcement, would be performed by the Department of Labor ("Labor") because it is the best equipped federal agency to investigate and regulate employer compliance with labor standards relating to payment of prevailing wages and protecting United States workers. Labor's enhanced role would include the authority to sanction employers who fail to comply with employment authorization verification requirements, enforcing requirements related to skill-

239. BECOMING AN AMERICAN, supra note 39, at 164.
240. Id. at 163.
241. Id. at 162.
242. Id. at 162-63. The Commission emphasized that there already exists a considerable bureaucracy within the Department of State in adjudicating immigration and citizenship services. Id. at 163. This bureaucracy adjudicates 500,000 immigrant visas per year, 6,000,000 nonimmigrant visas per year, more than 700,000 passport requests per year in consulates and embassies spread over two hundred countries throughout the world. Id. at 163.
243. BECOMING AN AMERICAN, supra note 39, at 163.
244. See Ortiz Miranda, An Agenda, supra note 10, at 717-18.
245. BECOMING AN AMERICAN, supra note 39, at 169-70. Presently, the INS is jointly responsible with the Department of Labor for the enforcement of employer sanctions. Id. at 170. The Department of Labor, through the Employment Training Administration, has responsibility for labor market test procedures. Id. at 173. Three Department of Labor entities, Employment Standards Administration, Wage and Hour Division, and the Office of Federal Contracts Compliance Programs, would be consolidated. Id.
based immigrants, and limited duration admissions. The Commission recognized that increased staff and resources would be needed to enhance Labor's role in regulating work-sites for the purpose of protecting United States workers.

The fourth core function, the appellate process, would be performed by a newly created independent review agency that would hear appeals of all immigration-related administrative decisions. This new review agency would consolidate appeals of all formal administrative immigration-related decisions. Presently, administrative review is shared between the Departments of Justice, Labor, and State. An important consideration behind the call for an independent review agency is insulation to ensure complete independence of the enforcement and benefits adjudications and that the reviewing officials should not ultimately be accountable to the head of the particular Department. The independent review agency would be housed in the Executive Branch.

Commissioner Leiden dissented on the issue of restructuring. He agreed with the recommendation to separate adjudications from enforcement, but believed that these should remain with the Department of Justice including the appeals function. The dissent noted that there exists too much of an administrative "crisscross" in which INS personnel trained primarily in one mission are asked to participate in areas in which they have little or no expertise. Commissioner Leiden asserted that this situation can be prevented if personnel are restricted to the primary area of training and mission. The dissent then cited two recent examples of adjudication programs that have been extremely successful: IRCA's 1986 legalization program; and the establishment of an independent corps of asylum officers in 1990. According to the dissent, these "real world" programs readily make the case for the separation of adjudication and enforcement.

246. Id. at 170-74.
247. Id. at 170.
248. BECOMING AN AMERICAN, supra note 39, at 175-83.
249. Id. at 180-83.
250. Id. at 179-80.
251. Id. at 179.
252. Id.
253. Id. at 227-32.
254. BECOMING AN AMERICAN, supra note 39, at 229.
255. Id.
256. Id.
addition, the dissent noted that it would be cost effective to keep these functions within the Department of Justice because the personnel, training, facilities, and management structures are already part of, and integrated within, the Department. The strongest part of the dissent was against the recommendation to move the benefits adjudication function to the Department of State. The dissenting opinion stated that the Department of State would be embarking on a new mission in an area (immigration and related matters) with which it has little experience or demonstrated interest. Most importantly, the dissent found that the historical attitude of the Department of State regarding basic concepts of legal process, both administrative and judicial review, precedent decisions, and the right to counsel totally lacking.

Reaction to the proposal to terminate the existence of INS has been mixed. Certain members of Congress have already supported the breakup going as far as instructing the Attorney General to create a plan to be submitted by April 1, 1998. Sources at the Department of Justice had mixed reaction as well. For its part, the INS has proposed a major reorganization. Nongovernmental parties were more skeptical.
tical.

The National Council of La Raza, a civil rights organization, stated that it was not clear whether the restructuring would "fix the fact that the service side of INS has traditionally gotten short shrift."263 A senior associate at the Carnegie Endowment for International Peace speculated that the Commission's intent was to "generate a conversation" instead of generating a blueprint.264 The American Immigration Lawyers Association, the official immigration bar, stated that immigrants would probably not receive better treatment from the Department of State than they currently do from the Department of Justice because Department of State officials "are opposed to review their decisions, have no mechanisms in place to assure due process of law and are ill equipped to deal with the volume and complexity of cases that I.N.S. must adjudicate on a daily basis."265 The official immigration bar established a task force to review and examine the Commission's recommendation to split the INS into several agencies.266 On October 27, 1997, the AILA Board of Governors ("AILA") passed a preliminary resolution opposing the dismemberment of the INS.267 However, AILA has struggled to take a position on alternative INS models.268 A former INS Commissioner has proposed that instead of breaking up INS, it should be turned into an independent agency.269 The Carnegie Endowment for International Peace has put forth its restructurization plan, to create a new cabi-

264. Id. (quoting Demetrios Papademetriou).
265. Id. (quoting Jeanne A. Butterfield).
268. Id. at S-1.
269. See Gene McNary, No Authority, No Accountability: Don't Abolish the INS, Make It an Independent Agency, 74 INTERPRETER RELEASES 1281, 1281 (1997).
net-level agency for immigration much like the Environmental Protection Agency.\footnote{270} In the alternative, this plan proposes to establish within the Department of Justice an Office of Associate Attorney General for Immigration.\footnote{271}

III. CONCLUDING OBSERVATIONS

It is too early to discern the historical impact that the Commission’s work and recommendations may have in shaping federal immigration legal policies. If the actions by Congress in the recent past are any measure, some of the recommendations will be used to reform immigration law immediately, even if congressional actions go beyond the scope envisioned by the Commission. Such has been the case with the public assistance provisions of the Welfare Act, and the harsh summary removal provisions of the 1996 Act.

One thing is certain, the Commission’s work reflects an historical departure from having family reunification be the cornerstone of immigration policy in the United States. Instead, economic considerations have become the leading force behind the immigration debate. Such factors as the fiscal impact of immigration on the national economy through cutting legal immigration under the tripartite system, especially extended family, and ensuring the those family members who are sponsored will not access public assistance through enforceable affidavits of support were important aspects of the Commission’s work demonstrating the shift to economics as cornerstone to federal immigration policy. Representatives of pro-immigration groups criticized the overall objectives to reduce legal immigration.\footnote{272} In Congress, some members were questioning why legal immigration needs to be reduced at all, characterizing those aspects of the Commission’s recommendations as “long on recommendations, short on results.”


\footnote{271. Id. at 22-23.}

\footnote{272. See John F. Harris & Barbara Vobejda, Clinton Backs Call to Reduce Immigration, WASH. POST, June 8, 1995, at A1 (statement by Frank Sherry, Executive Director, National Immigration Forum); Robert Pear, Clinton Embraces a Proposal to Cut Immigration by a Third, N.Y. TIMES, June 8, 1995, at B11 (statement by Cecilia Muñoz, Deputy Vice President, National Council of La Raza).}
but short on analysis. The fact that the legal immigration reforms recommended by the Commission never made it in the 1996 Act is indicative that the present system will probably continue for the foreseeable future.

Of course, this author predicts that those members of Congress who favor lower admission numbers will take a piecemeal approach to obtain their goals since they were unable to prevail in the omnibus 1996 immigration legislation. For example, it should not come as a surprise to have all unskilled employment-based admissions eliminated through some type of immigration-related legislation. In addition, some commentators have suggested that legally enforceable affidavits of support is a "back door" mechanism to reduce legal immigration because twenty nine percent of current sponsors, and twenty seven percent of American families would not qualify under the new law and implementing regulation. At the very least, Congress should wait until IRCA-related admissions subside before attempting to legislate a reduction of legal immigration.

Careful consideration should be given to the Commission's recommendation regarding border management and enforcement, but Congress should not rush to militarize the Mexican border since this has the potential to increase human rights abuses by both federal authorities and local law enforcement. It is ironic that the economic borders are collapsing due to the free trade agreements between Canada, the United States and Mexico, but the human barriers are increasing.

The Commission's recommendations in the area of refugee and asylum are to be commended; however, it would not

274. See supra note 21.
275. See William Branigin, Income, Support Requirements Imposed on Immigrant Sponsors, WASH. POST, Oct. 21, 1997, at A3 (quoting Frank Sharry, Executive Director, National Immigration Forum). Others disagree noting that the current backlog of 3.5 million intending immigrants should provide for sustained immigration, others opined that the INS did not go far enough since the rule exempts certain programs, such as job training and residential energy assistance. Id.
be surprising that the attempt to move the overall coordination and implementation of refugee policy to the National Security Council would be resisted by the Department of State.\textsuperscript{277} In addition, the idea of negotiating agreements with other countries to accommodate and house refugees in safe havens during migration emergencies might be wishful thinking. The United States attempted to accomplish this goal during the Haitian migration outflow in the Caribbean during the mid-1990s with very little success.\textsuperscript{278} Congress should review the implementation of expedited removal in the aftermath of the 1996 Act, and revisit its application in light of the Commission's finding that the summary removal of asylum seekers contrasts with United States non-refoulement obligations.

An interesting debate will surely follow the recommendation to abolish the INS. Most would probably concur that separating adjudicating immigration benefits from enforcement is a good idea. But Congress should submit the Commission's recommendations to a long and thoughtful examination. Particular attention needs to be given to the role of the Department of State in adjudicating benefits because of the way that it has treated its immigration-related responsibilities to date. Commissioner Leiden's dissent reflects the insight of immigration practitioners who are fully cognizant of that Department's attitude to due process generally and reviewability in particular.

General immigration policy debate across the United States has taken place, in large measure, in the cultural arena, whereas the Commission's work has mainly been in the political and socio-economic arena. The use of the term "americanization" is unfortunate because it may promote the notion that the United States is not culturally united on account of immigration. In other words, "americanization" conveys the message that there is disunity in the United States on account of the cultural diversity caused by immigration. On its face, it dismisses the notion that multiculturalism is

\textsuperscript{277} Such reservations were expressed by Phyllis E. Oakley, Assistant Secretary for Population, Refugees, and Migration, Department of State, at a Carnegie Endowment for International Peace forum held to discuss the release of \textit{Taking Leadership} on June 13, 1997 (notes on file with author).

\textsuperscript{278} For historical reasons, it was very difficult to have Caribbean basin countries accept Haitians, it may be more palatable if other nationality groups were involved. \textit{See supra} note 176 and accompanying text.
acceptable as part of the social fabric of the country. The “English Only” movement—opponents of bilingual education, and English-language worksite rules are an expression of this cultural debate.

One final thought, Congress should go slow and prudently consider its immigration policies. It should not be in the business of micromanaging affairs through legislation.\(^{279}\) At the very least, it should pursue the timeline for enacting immigration reform legislation after the Select Commission issued its final report: four years of debate between the passage of IRCA’s attempt to control unlawful immigration, and the 1990 Act’s overhaul of legal immigration. Congress passed the 1996 Act, again attempting to control unlawful immigration, it should wait at least until the year 2000 before embarking on an extensive overhaul of legal immigration.

\(^{279}\) See Carnegie Proposal, supra note 269, at 26 (stating that while overseeing functions by congressional committees are vital, micromanagement of the federal agency actually hinders the operational ability of the INS).
Family-Based Immigration: Categories and Admission Numbers

**TABLE 1**

<table>
<thead>
<tr>
<th>CATEGORIES</th>
<th>USAGE - FY 1994</th>
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<tbody>
<tr>
<td>Unlimited Spouses/Minor Children of UCSs</td>
<td>193,394</td>
</tr>
<tr>
<td>Unlimited Parents of UCS</td>
<td>56,370</td>
</tr>
<tr>
<td>First Preference Adult Unmarried Sons/Daughters of UCS</td>
<td>56,370</td>
</tr>
<tr>
<td>First Preference Adult Unmarried Sons/Daughters of UCS</td>
<td>13,181</td>
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<tr>
<td>Second Preference 2A-Spouses/Children of LPRs (88,673)</td>
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</tr>
<tr>
<td>2B-Adult unmarried Sons/Daughters of LPRs (26,327)</td>
<td>115,000</td>
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<tr>
<td>Third Preference Adult Married Sons/Daughters of USC</td>
<td>22,191</td>
</tr>
<tr>
<td>Fourth Preference Brothers/Sisters of USC</td>
<td>61,589</td>
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<tr>
<td>TOTAL</td>
<td>461,725</td>
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**TABLE 2**

<table>
<thead>
<tr>
<th>CATEGORIES</th>
<th>ADMISSIONS (Transition)</th>
<th>ADMISSIONS (Core)</th>
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<tbody>
<tr>
<td>First priority Spouses/Minor Children of USC</td>
<td>Up to 400,000</td>
<td>400,000</td>
</tr>
<tr>
<td>Children of USC</td>
<td>(Current usage about 200,000)</td>
<td></td>
</tr>
<tr>
<td>Second priority Parents of USC</td>
<td>400,000 less number admitted under first priority (current admitted under usage about 55,000)</td>
<td>400,000 less number admitted under first priority</td>
</tr>
<tr>
<td>Third priority Spouses/Minor Children of LPR</td>
<td>400,000 less number admitted under first and second priorities plus 150,000 for backlog clearance</td>
<td>400,000 less number admitted under first and second priorities</td>
</tr>
</tbody>
</table>

**Source:** SETTING PRIORITIES, supra note 18, at 89.
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