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THE WHITE HOUSE

WASHINGTON

February 12, 1986

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS *JGR*
ASSOCIATE COUNSEL ~~TO THE~~ PRESIDENT

SUBJECT: Department of the Treasury Proposed Report
on H.R. 3506: "Pornography Forfeiture
Proceedings Venue Act of 1985"

Counsel's Office has reviewed the above-referenced proposed Treasury report. In suggesting new language for the subject bill on page two, the Treasury Department borrows language from United States v. Thirty-Seven (37) Photographs, 402 U.S. 363 (1971), to the effect that "no seizure or forfeiture shall be invalidated for delay...where proceedings are postponed pending the consideration of constitutional issues appropriate only for a three-judge court." The language made sense in 1971, when it appeared in Thirty-Seven (37) Photographs, but I am not certain it makes any sense today. In 1976 Congress repealed former 28 U.S.C. § 2282, which provided for the convening of three-judge district courts in cases challenging the constitutionality of Acts of Congress -- the situation of concern in Thirty-Seven (37) Photographs. Three-judge district courts are far rarer now than prior to 1976, and are convened only when specially required by Congress (as in the Gramm-Rudman litigation) or in apportionment cases. See 28 U.S.C. § 2284(a).

JV

ID # 381055 CU

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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J.R.

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
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Name of Correspondent: James Mun

☐ MI Mail Report

User Codes: (A) (B) (C)

Subject: TREAS. DOT proposed report on H.R. 3506 -
Pornography Forfeiture Proceedings
venue Act of 1985

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CUTROLL	CJ ORIGINATOR	86102104			1/1
Cut 18	R Referral Note:	86102105	CJ S	86102115	
	Referral Note:	1/1			1/1
	Referral Note:	1/1			1/1
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

381055 *lu*

February 3, 1986
LEGISLATIVE REFERRAL MEMORANDUM


TO: Department of Justice

SUBJECT: Department of the Treasury proposed report on H.R. 3506 --
"Pornography Forfeiture Proceedings Venue Act of 1985."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Circular A-19.

Please provide us with your views no later than February 28, 1986

Direct your questions to Gregory Jones (395-3454), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: John Cooney
Karen Wilson
Fred Fielding



DEPARTMENT OF THE TREASURY

WASHINGTON

GENERAL COUNSEL

Dear Mr. Chairman:

This responds to your request for the views of the Department of the Treasury on H.R. 3506, the "Pornography Forfeiture Proceedings Venue Act of 1985."

Current forfeiture law with respect to obscene material contains no express limitation on the time within which forfeiture actions must begin or be decided (19 U.S.C. 1305). The Supreme Court, however, in order to construe the statute in harmony with the First Amendment, interpreted it to include two fixed time requirements: (1) judicial proceedings for forfeiture of material seized under the statute are required to be instituted no more than 14 days from the time the material is seized and (2) the final decision in the action must be made within 60 days after the action is filed. United States v. Thirty-Seven (37) Photographs, 402 U.S. 363, 373-74 (1971); see Freedman v. Maryland, 380 U.S. 51, 58-59 (1965).

A sponsor of S. 1742, a bill identical to H.R. 3506, stated that the purpose of the bill is (1) to extend the time within which forfeiture actions must begin from 14 days to 30 days and (2) to permit stays of forfeiture actions pending the completion of any criminal matter (131 Cong. Rec. S12801 (daily ed. October 7, 1985)). Section 4 of the bill attempts to do this by adding a subsection (c) to 19 U.S.C. 1305.

The new 19 U.S.C. 1305(c), however, is unlikely to have the desired effect. The language that attempts to change the current 14-day time requirement to 30 days is ambiguous. Unlike the rule in Thirty-Seven (37) Photographs, the bill's time limit begins to run when the material is discovered rather than when the material is seized. These events may occur at different times and it is, therefore, not clear that the bill is intended to modify the limit set out in Thirty-Seven (37) Photographs. A court will be reluctant to resolve that ambiguity by extending the time limit set out by the Supreme Court despite evidence of the legislative intent because such a construction applied to new subsections (c)(2) and (c)(3) would allow indefinite delays that probably would be unconstitutional under Thirty-Seven (37) Photographs and Freedman v. Maryland, supra. Instead, a court would likely be compelled to construe the new time requirements to apply in addition to the current 14-day and 60-day requirements. That is, the fixed, 14-day requirement (from the date of seizure) would apply unless the action were already barred by the new 30-day requirement (from the date of discovery, the date the United States Attorney files an indictment or complaint, or the date the United States Attorney declines to prosecute).

We believe the bill could successfully extend the current time requirement from 14 days to 30 days if the new subsection "(c)" in section 4 of the bill were amended to read:

"(c) Notwithstanding the provisions in paragraphs (a) and (b) above, whenever a customs officer discovers any obscene material after such material has been imported or brought into the United States, or attempted to be imported or brought into the United States, he may refer the matter to the United States Attorney for the institution of forfeiture proceedings under this section. Such proceedings shall begin no more than thirty days from the time the material is seized, except that no seizure or forfeiture shall be invalidated for delay where the claimant is responsible for extending the action beyond the allowable time limits or where proceedings are postponed pending the consideration of constitutional issues appropriate only for a three-judge court.

This extension of the time requirement from 14 days to 30 days would likely withstand constitutional scrutiny because (1) the Court in Thirty-Seven (37) Photographs indicated that 14 days was not the outer limit of constitutional delay, and (2) 30 days is less time than the 40-day and 6-month delays the Court did not wish to sanction, 402 U.S. at 371-72. Please note that the "except" provision is taken, almost verbatim, from language in Thirty-Seven (37) Photographs, Id. at 374.

It would probably be held unconstitutional if the bill were to (1) extend the time for instituting a forfeiture action to 30 days after the United States Attorney makes a prosecution decision or (2) stay the forfeiture proceeding, upon motion of the United States, pending completion of any related criminal matter. The statute to be amended, 19 U.S.C. § 1305, deals with "obscenity," and, as such, raises First Amendment considerations. The ruling in Thirty-Seven (37) Photographs indicates that such considerations would not likely be satisfied by an open-ended time limitations.

In light of the above, the Department of the Treasury does not support the enactment of H.R. 3506 as presently drafted. The Department has no objection to the provisions of the bill allowing forfeiture proceedings to be instituted in the district to which the matter is addressed.

As an alternative to H.R. 3506 as proposed, we suggest that the provisions extending the referral time limits be limited in scope to child pornography as defined in 18 U.S.C. 2551. By

confining the 30-day referral requirement to child pornography, we believe the provisions would withstand judicial scrutiny on the First Amendment issue in light of New York v. Ferber, 458 U.S. 747 (1982). Moreover, this revision would effectively preserve the intent of the bill in that the United States Customs Service would be able to conduct criminal investigations (pursuant to the Child Protection Act of 1984, 18 U.S.C. 2251 et seq.) without alerting the target via current section 1305 referral requirements.

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

Sincerely yours,

Robert M. Kimmitt
General Counsel


The Honorable
Dan Rostenkowski, Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

February 12, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Draft Bill to Provide Posthumous Citizenship
for Aliens Killed in Action in Vietnam While
Serving in the Armed Forces of the United States

Counsel's Office has reviewed the above-referenced draft report, and finds no objection to it from a legal perspective. In the penultimate line of the penultimate paragraph, "given" should be inserted between "have" and "their."

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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User Codes: (A) _____ (B) _____ (C) _____

Subject: DOT draft bill to provide posthumous citizenship for aliens killed in Vietnam while serving in the armed forces of the US

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Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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<u>mat 18</u>		Referral Note: <u>R</u>	<u>86101129</u>		<u>586102103</u>	
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		Referral Note:	<u>1 1</u>			<u>1 1</u>

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

January 28, 1986

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Department of Defense - Werner Windus (697-1305)
Department of State - Lee Ann Berkenbile (647-4463)
Veterans Administration - Donald Ivers (389-3831)
Department of Health & Human Services - Frances White (245-7750)
Department of Education - Jo Ann Durako (732-2670)
Department of Agriculture - Sid Clemans (382-1516)
Department of Housing & Urban Development - Ed Murphy (755-7093)

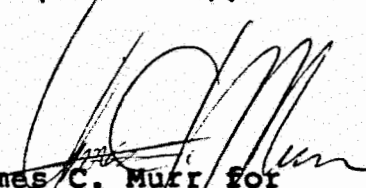
SUBJECT: Department of Justice draft bill to provide posthumous citizenship for aliens killed in action in Vietnam while serving in the armed forces of the United States.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than February 3, 1986.

(NOTE -- This bill is similar in purpose to a Department of Justice draft bill cleared last year, but would, in addition, authorize certain benefits which result from the granting of citizenship.)

Direct your questions to Branden Blum (395-3454), the legislative attorney in this office.


**James C. Murr for
Assistant Director for
Legislative Reference**

Enclosure

cc: Fred Fielding	Sarah Ducich	Matthew Caulfield
John Cooney	Jim Barie	
Tara Treacy	Sarah Brentlinger	



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

DRAFT

The Speaker
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker

Enclosed for your consideration and appropriate reference is a draft bill entitled, "To amend the Immigration and Nationality Act to provide that aliens who were killed while serving in the armed forces of the United States during military operations of the Vietnam conflict may be considered to have been citizens of the United States at the time of such aliens' death."

The 98th Congress passed and the President signed H.R. 960, which conferred citizenship on Cpl. Wladyslaw Staniszewski, a national of Great Britain, who was killed in action on July 7, 1967 in the Republic of Vietnam while serving in the United States Marine Corps. When the President signed the bill into law, he noted his intention to submit to the 99th Congress legislation which will provide United States citizenship for all of the 462 noncitizens killed in action in Vietnam while serving in the armed forces of the United States. A copy of the President's statement is enclosed. The enclosed draft bill was prepared pursuant to the President's statement.

The draft bill provides that an alien who was killed in action or died as a result of injuries sustained while participating in military operations involving hostile forces of the Vietnam conflict, while serving in the armed forces of the United States, shall, upon approval by the Attorney General, be considered a citizen of the United States at the time of the person's death. A request for granting such posthumous citizenship would be filed on behalf of said person by a family member or any other person designated by the Attorney General. The executive department wherein the deceased served would verify this fact and that the person was killed in action or died from injuries sustained during military operations of the Vietnam conflict. Upon approval, the person who filed the request shall be formally notified that the deceased is considered to have been a citizen of the United States at the time of his death. The immediate family, including parents,

spouse and children of the deceased citizen would be able to receive the benefit of the immigration laws as if the citizen were alive, thus permitting them to seek visa benefits and, ultimately, citizenship.

United States citizenship is a most valued asset. Present law provides for its safeguard by carefully prescribing the circumstances where it can be granted. Bestowing citizenship on those who gave their lives in the armed services of the United States during the Vietnam conflict upholds these standards. As the President stated when he signed H.R. 960 into law: "We cannot repay these men for their sacrifice, valor, or patriotism; but it is only right that we bestow upon each of them our nation's greatest honor: American citizenship." 20 Weekly Compilation of Presidential Documents 1543 (October 15, 1984). It is equally just that the spouse, parents and children of those aliens who have their lives for the United States should be welcomed as citizens by a grateful country. ?

The Office of Management and Budget has advised this Department that there is no objection to the submission of this draft bill to Congress and that its enactment would be in accord with the program of the President.

Sincerely,

EDWIN MEESE III
Attorney General

Enclosures

A BILL

To amend the Immigration and Nationality Act to provide that aliens who were killed while serving in the armed forces of the United States during military operations of the Vietnam conflict may be considered to have been citizens of the United States at the time of such aliens' death.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
that the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after section 329 the following new section:

"POSTHUMOUS NATURALIZATION THROUGH DEATH WHILE ON ACTIVE-DUTY SERVICE IN THE ARMED FORCES DURING THE VIETNAM HOSTILITIES.

"Sec. 329A. (a) Notwithstanding any other provision of this title, any person shall, upon the Attorney General's approval of a request under subsection (b)(2), be considered to have been a citizen of the United States at the time of such person's death if such person, while an alien or a noncitizen national of the United States --

"(1) served honorably in an active-duty status in the military, air, naval, or coast guard forces of the United States -- during a period beginning February 28, 1961, and ending on a date designated by the President by Executive Order as the date of termination of the Vietnam hostilities; and

"(2) was killed or died while on active duty status serving with American armed forces in the Vietnam conflict or as a result of injuries sustained while participating in the Vietnam conflict.

Within 180 days of enactment of this legislation, the executive department under which such person so served shall determine whether such person satisfied the requirements contained in paragraphs (1) and (2) and shall publish such determination in the Federal Register.

"(b)(1) A request for the granting of posthumous citizenship to a person described in subsection (a) may be filed on behalf of such person by a surviving spouse, surviving parent, surviving son or surviving daughter of such person or any other individual designated by the Attorney General as eligible to file such a request.

"(2) Any request so filed may be approved by the Attorney General at his sole, unreviewable discretion provided --

"(A) such request is filed not later than five years after the date of the enactment of this section and;

"(B) such request is accompanied by a duly authenticated certification from the executive department under which such person served which states that such person satisfied the requirements contained in subsection (a).

"(c) If the Attorney General approves a request to grant a person posthumous citizenship under subsection (b)(2), a formal notification to that effect shall be forwarded to the member of such person's family, or to any other individual, who filed such request.

"(d) No decision of the Attorney General or any executive department with regard to whether a deceased person satisfies the requirements of this section or whether any person is entitled to naturalization, or to receive a visa or any other benefit under the immigration laws based on a grant of citizenship under this section shall be reviewable in any court.

"(e) Any determination as to benefits received under the Immigration and Nationality law or any other law shall be revoked, retroactively as of the time of the effective date of the original grant of citizenship under this section if it is demonstrated in a court of the United States that such order of citizenship was illegally procured or was procured by concealment of a material fact or by willful misrepresentation, or in error.

Sec. 2. Section 321 of the Immigration and Nationality Act (section 1432 of Title 8) is amended by adding a new section (c) as follows:

"(c) If a parent of a child has been naturalized pursuant to section 329A of the Immigration and Nationality Act, the child may become a citizen of the United States.

Sec. 3. (a) Section 101 of the Immigration and Nationality Act is amended by adding at the end of subsection (27) a new subparagraph (I) which reads as follows:

"(I) an immigrant and his or her accompanying spouse and children who is the surviving spouse, surviving parent, surviving son, or surviving daughter of an individual granted citizenship under section 329A.

Sec. 4. Section 212 of the Immigration and Nationality Act is amended by adding at the end the following new subsection:

"(m) Notwithstanding subparagraph 212(a)(15), no alien claiming citizenship or visa benefits under section 329A on the ground that he or she is likely at any time to become a public charge."

Section-by-Section Analysis

On October 15, 1984, the President signed H.R. 960, which conferred posthumous citizenship on Cpl. Wladyslaw Staniszewski, a national of Great Britain who was killed in action in Vietnam while serving in the United States Marine Corps. The President stated his intention to submit to Congress legislation which would provide United States citizenship for all noncitizens killed in action in Vietnam while serving in the armed forces of the United States. The attached draft bill is submitted pursuant to the President's statement.

The draft bill would amend the Immigration and Nationality Act, 8 U.S.C. 1101, et seq., by creating a new section 329A. New section 329A would consist of four subsections.

Subsection (a) sets forth the statutory requirements that a deceased alien must meet in order to be considered a citizen of the United States at the time of his death. An alien or noncitizen national of the United States must have 1) served honorably in an active-duty status in the military, air, naval, or coast guard forces of the United States during the period of the Vietnam hostilities; 2) been killed or died as a result of injuries sustained while on active duty during the Vietnam conflict.

Subsection (a) also provides that the executive department in which such person served will publish a list of alien servicemen killed in the Vietnam conflict within 180 days of the enactment of the legislation. To facilitate the implementation of the legislation, this list will be published in the Federal Register.

Subsection (b) provides that a request for posthumous citizenship may be made by the deceased individual's surviving spouse, surviving parent, surviving son or daughter, or any other individual designated by the Attorney General. Subsection (b) also provides that the Attorney General may, in his unreviewable discretion, approve a request for posthumous citizenship if it is filed within five years of the enactment of this legislation and is accompanied by a certification of service from the executive department under which the deceased alien served.

Subsection (c) provides that the individual making the request shall be formally notified if the Attorney General approves the request.

Subsection (d) provides that there shall be no judicial review of either the Attorney General's or other executive branch officer's decision under the section.

Subsection (e) provides that any benefits received under the bill shall be null and void as of the time of the effective date of citizenship if found to have been procured as a result of fraud or misrepresentation.

Section 2 of the bill amends the Immigration and Nationality Act to provide that the child of an alien killed in the Vietnam conflict may become a citizen of the United States.

Section 3 provides that the surviving parents, surviving spouse, and surviving sons and daughters of any deceased alien naturalized pursuant to section 329A would also be able to seek visa benefits. This would permit them to apply, on their own behalf, for a visa to enter the United States as a resident alien without regard to numerical limitations. Then, following a period of five years of residence in the United States, (including two-and-one-half years of continuous physical presence) they could request and receive full citizenship. All other relatives of the deceased alien, including brothers and sisters, would not be entitled to any benefits under this legislation, but could enter the country as relatives of those who would be eligible to enter the United States pursuant to this legislation.

Section 4 amends section 212 to provide that no surviving parent, child or spouse of an alien killed in Vietnam may be excluded from the United States solely because he or she is without means of support and might therefore become a public charge. However all other grounds of exclusion set forth in section 212 -- eg., insanity, drug addiction, criminal record, etc. -- would still apply.

ENTITLEMENT BENEFITS AVAILABLE TO ALIENS
UNDER AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT

Aliens claiming benefits under the attached bill, which would amend the Immigration and Nationality Act to provide that aliens who were killed while serving in the armed forces of the United States during military operations of the Vietnam conflict may be considered to have been citizens of the United States at the time of such aliens' death, would be entitled to the following benefits:

1. Supplemental Security Income (SSI): The bill would have no apparent effect on SSI expenditures. The government does not pay SSI benefits to the dead, even if citizenship were made retroactive to birth. Widows, children or parents of these posthumous citizens would be treated as separate individuals, without regard to the citizenship of their spouse, parent or child. In order to be eligible to receive SSI benefits, one must be over 65 years of age, or blind, or disabled, and of a minimum income and resources. Payments are made only to residents, and only to 1) citizens, 2) aliens lawfully admitted for permanent resident status, or 3) aliens permanently residing in the United States under color of law. (We are involved in significant litigation over the meaning of "color of law". Asylum applicants have argued, for example, to be included within the meaning of this phrase.)
2. Retirement, Survivors & Disability Insurance Program: Under this program, there is no citizenship or alien status requirement. The key is work performed in the United States, or as a member of the U.S. Armed Forces abroad. Dependents of posthumous citizens would be entitled to Retirement, Survivors & Disability insurance benefits if the alien soldiers were given work credit under the Social Security system for their military service. (This assumes that no other work performed by the posthumous citizens was performed in the United States. If so, they would be entitled to credit for this work, too, without regard to the retroactivity of the citizenship bill.) This probably would need to be done expressly in the legislation, by providing that the posthumous citizen would receive deemed insured status or deemed quarters (three-month periods) for their military service. This was done by Congress, for example, when it awarded Social Security coverage for military service to Philippine scouts who fought with American forces in World War II, and Japanese-American internees for the period of internment.

3. Aid to Families with Dependent Children (AFDC):

Concerning the AFDC program, this bill would not appear to have any direct effect. AFDC benefits are awarded to residents, be they 1) citizens, 2) aliens lawfully admitted for permanent resident status, or 3) aliens permanently residing in the United States under color of law. The citizenship of a claimant's father or husband is irrelevant. The bill will have an indirect effect on entitlements to AFDC benefits, of course, in the sense that surviving dependents of these posthumous citizens may be entitled to come to the United States as citizens, or lawfully admitted aliens, and thereupon apply for AFDC benefits in their own right.

It is assumed that programs with similar eligibility criteria, including Food Stamps and Medicare and Medicaid, would be similarly affected by the bill.

4. Veterans' Benefits: Concerning eligibility for VA benefits, the statutory criteria for eligibility turn on whether the veteran was on active duty or service. Nothing in the statutory provisions mentions citizenship, so that this bill would not appear to affect VA benefit expenditures. Surviving dependents of soldiers who died in combat and who are otherwise entitled to receive benefits are entitled to receive them whether the dependents live in the United States or not. Again, to effectuate the apparent intent of the bill, it may be helpful to specify that for the purposes of eligibility for VA benefits, these posthumous citizens are to be considered to have been in active duty or service within the meaning of Title 38 United States Code.

As a final note, because the number of soldiers to whom this proposal would apply is small, the fiscal consequences would seem to be relatively minor. However, it should be mentioned that the granting of citizenship has a pyramid effect. The number of new citizens initially may be only 462, but as a result of this bill, potentially a multiple of this number would also be entitled to citizenship or lawful resident status, with all the concomitant benefits and privileges.