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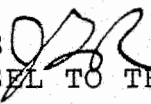
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THE WHITE HOUSE

OFFICE OF LEGAL COUNSEL

February 18, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Draft DOJ Report on Proposed Amendment to
S. 397, the "Foreign Trade Antitrust
Improvements Act of 1985"

Counsel's Office has reviewed the above-referenced draft report
and finds no objection to it from a legal perspective.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 / 1Name of Correspondent: James Mun☐ MI Mail Report

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

Subject: DOT draft report on proposed
amendments to S. 397, the "Foreign
Trade Antitrust Improvements 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
<u>CUHOLL</u>	ORIGINATOR	<u>86,02,18</u>			<u>1 / 1</u>
<u>CUHOLL</u>	Referral Note:	<u>R</u>		<u>S</u>	<u>86,02,18</u>
	Referral Note:				<u>2pm</u>
		<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note:				
		<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note:				
		<u>1 / 1</u>			<u>1 / 1</u>
	Referral Note:				

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
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FOR OUTGOING CORRESPONDENCE:

Type of Response = Initials of Signer
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Comments: _____

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

February 14, 1986

LEGISLATIVE REFERRAL MEMORANDUM

TO:

Department of State - Lee Ann Berkenbile (647-4463)
Department of Commerce - Joyce Smith (377-4264)
Department of Transportation - John Collins (426-4694)
U.S. Trade Representative - Gail Golay (395-3150)
Council of Economic Advisers
Federal Trade Commission

SUBJECT: Draft Department of Justice report on proposed amendment to S. 397, the "Foreign Trade Antitrust Improvements 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 OMB Circular A-19.

Please provide us with your views no later than 2:00 p.m. -- 2/18/86

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


for James C. Murr for
Assistant Director for
Legislative Reference

Enclosure

cc: Fred Fielding Mike Margeson
John Cooney Chuck Goldfarb
Karen Wilson Penny Jacobs



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond
Chairman, Committee on the
Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the Department's comments on a revision of S. 397, the "Foreign Trade Antitrust Improvements Act of 1985." We understand that this revision has been submitted as an amendment in the form of a substitute and has been designated DeConcini Amendment No. 1324. This revision reflects efforts to take account of the Administration's concerns with the bill as originally drafted.

A key feature of the revision is the listing of factors courts should consider "as appropriate and without limitation" in determining whether to dismiss an antitrust action that involves trade or commerce with a foreign nation under the so-called "jurisdictional rule of reason." We support the statutory enumeration of such factors. We believe, however, that they should be exclusive, and differ slightly from those listed in the revision, in order to prevent courts from attempting to weigh the foreign policy considerations that are properly within the purview of the Executive Branch. We also believe that a simple direction to the courts to consider whether the exercise of jurisdiction would be unreasonable is preferable to reference to a general "jurisdictional rule of reason." The precise language we recommend is contained in a bill recently submitted by the Administration as a formal proposal for legislation in this area, a copy of which is attached.

The revision also contains two provisions directing the courts to consider jurisdictional motions in antitrust cases involving international trade or commerce prior to other proceedings in such cases, except for good cause shown. As indicated by the Administration's proposal, we support such provisions, although we suggest that they be more uniform grammatically.

The Administration has carefully considered the provision in the revision directing the courts to dismiss an antitrust case involving trade or commerce with a foreign nation upon certification by the Attorney General that the case will interfere with the conduct of the foreign relations of the United States, and has concluded that any such device would be more problematic than beneficial. We therefore recommend its deletion from this legislation.

With regard to the proposed revision's treatment of the treble-damage issue in antitrust cases involving international trade or commerce, we believe that the damage provisions of the antitrust laws should be modified generally, not simply as they apply to such cases. The Administration's recommendation for general reform of the treble-damage remedy is contained in another recently-submitted bill.

Finally, the revision contains a provision affirming the applicability of the doctrine of forum non conveniens in antitrust cases involving trade or commerce with foreign nations. The Administration's proposal also contains such a provision.

We appreciate the opportunity to comment on this revision to S. 397. We look forward to working with you and the Committee on this legislation.

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

Sincerely,

John R. Bolton
Assistant Attorney General

99th Congress
2nd Session

A BILL

To amend the Sherman and the Clayton Acts to improve and clarify the application of such Acts to international commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Trade Antitrust Improvements Act of 1986".

SEC. 2. Section 7 of the Sherman Act (15 U.S.C. 6a) is amended by--

- (1) inserting "(a)" before "This Act"; and
- (2) adding at the end thereof the following new subsection:

"(b) Whenever a motion to dismiss for lack of subject matter jurisdiction under this section shall be made, the court shall, except for good cause shown, hear and determine such motion, after such discovery or other proceedings directly related to the motion as the court deems appropriate, before conducting or permitting the parties to conduct any further proceedings in the action.".

SEC. 3. The Clayton Act (15 U.S.C. 12 et seq.) is amended by adding after section 20 the following new section:

"Sec. 21. (a) Notwithstanding any other provision of the antitrust laws or any provision of any State laws similar to the antitrust laws, in any action brought by any person or State under the antitrust laws or similar State laws which involves trade or commerce with a foreign nation, the court shall enter a judgment dismissing the action as to all parties whenever it determines that the exercise of jurisdiction would be unreasonable in light of the following factors, which shall be exclusive:

(1) the relative significance, to the violation alleged, of conduct within the United States as compared to conduct abroad;

(2) the nationality of the parties and the principal place of business of corporations;

(3) the presence or absence of a purpose to affect United States consumers or competitors;

(4) the relative significance and foreseeability of the effects of the conduct on the United States as compared with the effects abroad;

(5) the existence of reasonable expectations that would be furthered or defeated by the action; and

(6) the degree of conflict with foreign law.

(b) Whenever a motion to dismiss on the ground that the exercise of jurisdiction would be unreasonable under this section shall be made, the court shall, except for good cause shown, hear and determine such motion, after such discovery or other proceedings directly related to the motion as the court deems appropriate, before conducting or permitting the parties to conduct any further proceedings in the action."

SEC. 4. Section 12 of the Clayton Act (15 U.S.C. 22) is amended by--

(1) inserting "(a)" before "That suit"; and

(2) adding at the end thereof the following new subsection:

"(b) The doctrine of forum non conveniens shall be applicable in any suit, action, or proceeding under the antitrust laws that involves trade or commerce with a foreign nation, and nothing contained in this section or any other venue provision applicable to such suits, actions, or proceedings shall be construed to prevent dismissal of such a suit, action, or proceeding on the ground of forum non conveniens."

"FOREIGN TRADE ANTITRUST IMPROVEMENTS ACT OF 1986"

ANALYSIS

The "Foreign Trade Antitrust Improvements Act of 1986" ("the Act") improves and clarifies the application of the antitrust laws in cases involving trade or commerce with foreign nations. The Act amends the Sherman and Clayton Acts generally to direct courts to hear and determine jurisdictional motions in such cases prior to conducting proceedings on the merits, to clarify the factors courts should consider in deciding whether the exercise of U.S. antitrust jurisdiction in such cases would be reasonable, and to affirm the applicability of the doctrine of forum non conveniens in such cases. The Act carries the same name and is in substantial part a refinement of similar legislation introduced in the 1st session of the 99th Congress.

Section 2 of the Act amends section 7 of the Sherman Act, which provides that the substantive provisions of that Act apply to conduct involving trade or commerce (other than import trade or commerce) with foreign nations only if such conduct has a "direct, substantial, or reasonably foreseeable effect" on trade or commerce that is not trade or commerce with foreign nations, on import trade or commerce, or on export trade or

commerce with foreign nations of a person engaged in such trade or commerce in the United States. Section 2 adds a new subsection (b) to section 7, generally requiring the court to hear and determine the merits of a motion to dismiss an action under section 7 prior to conducting or permitting the parties to conduct any further proceedings in the action.

Notwithstanding its general rule, new section 7(b) permits discovery on the merits or other proceedings "for good cause shown" while motions under subsection (a) are under consideration. While early decisions on jurisdictional issues generally should help minimize international conflicts in such cases, discovery on the merits may nonetheless be appropriate in some situations. Indeed, in some cases facts relating to jurisdiction may be intertwined with those relating to the merits.

Section 3 of the Act adds a new section 21 to the Clayton Act, clarifying the factors courts are to consider in deciding whether the exercise of U.S. antitrust jurisdiction in private antitrust cases involving trade or commerce with foreign nations is reasonable. Designed to lessen uncertainty over jurisdiction in private antitrust cases involving foreign commerce, new section 21(a) instructs the courts to dismiss such a case when the exercise of jurisdiction would be unreasonable, taking into account six specified, exclusive factors. By designating the specified factors as the exclusive

factors to be considered in determining the reasonableness of U.S. jurisdiction, new section 21(a) makes clear that courts are not to base their judgments on an open-ended interest balancing test or make the foreign policy determinations that are properly within the sphere of the Executive Branch. On the other hand, by instructing courts to take into account the extent of the challenged conduct's connections with the United States as compared with its connections with foreign jurisdictions, the new provision lessens the likelihood of unnecessary conflict with foreign governments arising from private antitrust challenges.

The first factor specified by new section 21(a) is "the relative significance, to the violation alleged, of conduct within the United States as compared to conduct abroad." This criterion, in conjunction with the other specified factors, will assist the courts in determining the relative strength of the alleged violation's connection with the United States. In the antitrust context, the conduct that is relevant to this determination includes not only meetings and agreements, but also the whole range of economic activity that is involved in an alleged violation. For example, an agreement to fix U.S. prices that was reached in a meeting held abroad and implemented by charging the agreed-upon prices in the United States would constitute substantial conduct within the United

States. Inclusion of this factor is not intended to give individuals or firms an opportunity to evade U.S. antitrust laws simply by moving some or all of their activities offshore.

The second factor the courts are to consider is "the nationality of the parties and the principal place of business of corporations" involved in and affected by the challenged conduct. This criterion is not intended as a departure from the general principle that United States antitrust laws are applied in a nationality-blind way that neither favors nor discriminates against parties of foreign nationality. But in some cases consideration of the parties' nationality may assist the courts in determining the relative strength of the United States' interest in regulating the challenged conduct and, accordingly, the reasonableness of an assertion of U.S. jurisdiction. In particular, this factor may be significant in a merger case in which the merging parties and the relevant productive facilities are located abroad.

The third factor specified in new section 21(a) is "the presence or absence of a purpose to affect United States consumers or competitors." In considering this factor, courts should apply their usual construction of purpose--that people intend the ordinary consequences of their acts. Thus, courts should consider not only whether there were overt declarations

of intention to affect United States markets, but also whether the facts make it apparent that an effect on United States markets was expected.

The fourth factor courts are to consider is "the relative significance and foreseeability of the effects of the conduct on the United States as compared with the effects abroad." The United States' antitrust laws are basically designed to protect U.S. markets against anticompetitive restraints. They are not designed to interfere with the prerogative of foreign governments to shape their own economies. There are, however, circumstances in an economically interdependent world in which the effects of conduct will be felt both in the U.S. and in other nations' economies. Consideration by the courts of this factor and the previous factor will assist in identifying circumstances in which U.S. jurisdiction is appropriately asserted because of the significance of actual or intended effects in our economy. At the same time, it will weigh against the exercise of jurisdiction where the actual or intended domestic effects are insignificant as compared with those abroad and where regulation of the conduct may be more appropriately exercised by other governments.

The fifth factor specified in new section 21(a) is "the existence of reasonable expectations that would be furthered or defeated by the action." This factor recognizes the

desirability of predictability regarding the rules applicable to international business transactions.

The final factor courts are to consider under new section 21(a) in deciding whether the exercise of jurisdiction in antitrust cases would be reasonable is "the degree of conflict with foreign law." Under this criterion, the courts will consider the extent to which application of U.S. antitrust law to the challenged conduct would require action or inaction inconsistent with relevant foreign laws, or would otherwise clearly frustrate the implementation of the laws of other countries. If the challenged conduct were also unlawful under foreign law, or if foreign law were neutral or merely permissive with respect to the conduct, there likely would be little or no conflict between U.S. and foreign law of a kind that would weigh heavily against the assertion of jurisdiction. On the other hand, if the challenged conduct were affirmatively mandated by foreign law, or if the application of U.S. antitrust law would frustrate the enforcement or implementation of the laws of a foreign sovereign, those facts would weigh against the exercise of U.S. jurisdiction. The presence of such a conflict would not necessarily mean that United States law would always have to yield to foreign law, but consideration of such a conflict should help courts to determine the reasonableness of the exercise of U.S. antitrust jurisdiction.

In most cases, no single factor among the six the courts are directed to consider by new section 21(a) is likely to be dispositive, nor is it possible to instruct the courts in advance on how to weigh the factors to determine the reasonableness of asserting jurisdiction. Nonetheless, considered in conjunction with one another, these factors will provide a basis for accommodating the United States' interests in applying its antitrust laws to protect against harm from anticompetitive restraints with the legitimate interests of foreign governments in regulating their own economic affairs.

New section 21(b) generally requires the court to hear and determine the merits of a motion to dismiss an action under new section 21(a) prior to other proceedings in the action, in the manner of new section 7(b) of the Sherman Act, as added by section 2 above. As is the case with new Sherman Act section 7(b), exceptions to this general rule may be made "for good cause shown."

Section 4 of the Act adds a new subsection (b) to section 12 of the Clayton Act, which provides venue in antitrust cases in any district which a corporate defendant inhabits, or in which it may be found or transacts business. New section 12(b) clarifies the applicability of the doctrine of forum non conveniens in antitrust cases involving trade or

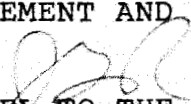
commerce with foreign nations. This provision makes clear to the courts that they are not foreclosed from concluding, in appropriate cases, that a foreign court would be a preferable forum for litigating the claims asserted in a U.S. antitrust case, consistent with applicable legal standards as set out in the Supreme Court's 1981 decision in Piper Aircraft Co. v. Reyno, 454 U.S. 235.

THE WHITE HOUSE

WASHINGTON

March 24, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Departments of State and Justice Reports on
H.R. 1302, a Bill to Permit the Naturalization
of Certain Filipino War Veterans

Counsel's Office has reviewed the above-referenced reports and
finds no objection to them from a legal perspective.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence Received (YY/MM/DD) 1 / 1 / 1Name of Correspondent: James Mun☐ MI Mail Report

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

Subject: DOS + DOJ report on H.R. 1302, a bill to permit the naturalization of certain Filipino war veterans**ROUTE TO:****ACTION****DISPOSITION**

Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CUTOLL</u>		ORIGINATOR	<u>86.03.13</u>			<u>1 1</u>
		Referral Note:				
<u>Cut 18</u>		<u>S</u>	<u>86.03.13</u>		<u>S</u>	<u>86.04.09</u>
		Referral Note:				
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		Referral Note:				
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		Referral Note:				
			<u>1 1</u>			<u>1 1</u>
		Referral Note:				

ACTION CODES:

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

March 13, 1986

LEGISLATIVE REFERRAL MEMORANDUM

TO:

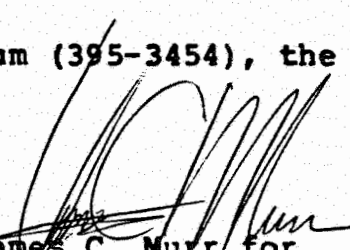
Department of State
Department of Justice
Department of Defense

SUBJECT: Departments of State and Justice reports on H.R. 1302, a bill to permit the naturalization of certain Filipino war veterans.

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 April 9, 1986.

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 Tara Treacy
John Cooney Mike Margeson

(State)

DRAFT

Dear Mr. Chairman:

I refer to your letter of December 11, 1985 requesting an expression of the views of the Department of State on the proposed H.R. 1302 to permit the naturalization of certain Filipino war veterans.

The Department of State has no objection to the proposed legislation, and defers to the judgment of the Department of Justice as to the advisability of this proposed bill. The Justice Department has been involved in litigation of the Filipino veterans cases and thus, is in a position to comment as to what effect, if any, the proposed bill might have upon pending litigation.

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

With best wishes,

Sincerely,

William L. Ball, III
Assistant Secretary
Legislative and Intergovernmental Affairs

The Honorable
Peter W. Rodino, Jr.,
Chairman,
Committee on the Judiciary,
House of Representatives.



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

CO 703.785

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on H.R. 1302, a bill to permit the naturalization of certain Filipino war veterans. For the reasons set forth below, this Department recommends enactment of this legislation, with one revision.

The bill would permit the naturalization of certain nationals of the Philippines who might previously have qualified for naturalization under the provisions of Title III of the Nationality Act of 1940, as in effect before December 24, 1952. Under Sections 701 and 702 of that Act, non-citizens who had served honorably in the Armed Forces of the United States during World War II could petition for naturalization. A petition had to be filed no later than December 31, 1946.

For some time following the expiration of the time limit established by Congress for claiming naturalization, it appeared that few persons were interested in asserting any claim to naturalization under this provision. However, in 1967, a Filipino veteran filed suit, claiming that the U.S. Government was estopped from denying this petition for naturalization because it had engaged in affirmative misconduct. The government action attacked by the veteran was the revocation, in 1945, of the authority granted to a vice-consul in the Philippines to confer naturalization benefits, and the decision to not assign a naturalization officer in his place until August 1946. This action was taken pursuant to a request by the newly independent Philippine Government, which had become concerned that naturalized Filipino veterans were leaving the Philippines immediately upon naturalization. The Supreme Court held that the Government had not engaged in affirmative misconduct, and that the veteran was not entitled to naturalization. INS v. Hibi, 414 U.S. 5 (1973).

Peter W. Rodino, Jr.

Since that time, numerous lawsuits have been filed on various theories, all claiming that Philippine veterans previously eligible under the terms of the Act of 1940 are entitled to naturalization. These suits have been filed on behalf of veterans in the United States and in the Philippines. In the major lawsuit on this subject, three categories of veterans were established by the court, with varying levels of claims recognized. Matter of Naturalization of 68 Filipino War Veterans, 406 F. Supp. 931 (N.D. Cal. 1975). The claims were based on the court's finding that "constructive" filing of petitions had occurred where the veteran had applied or made efforts to apply, or where the veteran would have applied if the naturalization officer had not been withdrawn. Since that time, other lawsuits based on 68 Filipino War Veterans, *supra*, have been tried. A substantial number of cases is being held in abeyance, pending the outcome of a second category case presently on appeal. Pangilinan, et al., v. INS, No. 81-5427 (9th Cir.)

More recently, the Chief Judge of the Central District of California issued an ex parte order to his clerk ordering him to accept filing by all veterans, in and outside the United States, an order which we consider highly improper.

The situation we are faced with, almost forty years after the expiration of the naturalization provision, is an unceasing stream of litigation by veterans claiming naturalization. It is clearly in the Government's interest to put this matter to rest.

The bill in question could go far toward resolving this issue, as well as affording naturalization to certain persons who may have been unable to apply for naturalization because of the agreement made between the Governments of the United States and the Philippines. Congress previously recognized the contribution made by the Filipino veterans during World War II, and is clearly free once more to provide the privilege of naturalization in recognition of that service.

The bill would allow Filipino national veterans within the United States present both on the date of enactment and on the date of filing of the application for naturalization, to become naturalized citizens. The veteran must have been eligible for naturalization under the Nationality Act of 1940, as amended, but have failed to file a petition for naturalization before January 1, 1947. The application must be filed no later than 90 days after enactment of the bill.

The Department believes that paragraph (3) should be revised to extend the filing time from 90 to 180 days. This will insure that no eligible veteran misses the opportunity to file an application.

-3-

Peter W. Rodino, Jr.

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

Sincerely,

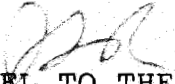
John R. Bolton
Assistant Attorney General

THE WHITE HOUSE

WASHINGTON

March 31, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Draft Statement on H.R. 23, a bill to
Permit Certain Cuban and Haitian Nationals
to Adjust Their Immigration Status to That
of Permanent Resident Aliens

Counsel's Office has reviewed the above-referenced DOJ draft statement and finds no objection to it from a legal perspective.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 / 1 /Name of Correspondent: James Murr☐ MI Mail Report

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Subject: DOJ draft statement on H.R. 23, a bill
to permit certain Cuban & Haitian nationals
to adjust their immigration status to
that of permanent resident aliens

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CN HOLL</u>	<u>ORIGINATOR</u>	<u>86.03.31</u>			<u>1 1</u>
<u>Chat 18</u>	<u>Referral Note:</u>	<u>R</u>		<u>S</u>	<u>86.04.02</u>
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 28, 1986

LEGISLATIVE REFERRAL MEMORANDUM

SPECIAL

SPECIAL

TO:

Department of State - Lee Ann Berkenbile (647-4463)
Department of Health & Human Services - Fran White (245-7750)
National Security Council

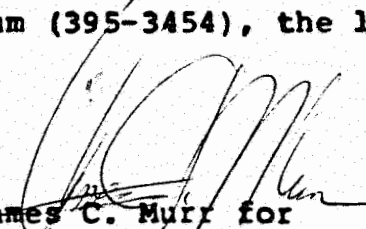
SUBJECT: Department of Justice draft statement on H.R. 23, a bill to permit certain Cuban and Haitian nationals to adjust their immigration status to that of permanent resident aliens.

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 10:00 a.m. -- 4/2/86.

(NOTE -- The House Judiciary Immigration subcommittee is expected to schedule a hearing on H.R. 23 in early April after the Congress returns from the Easter recess.)

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 Tara Treacy
John Cooney Mike Margeson

103 MAR 31 1986 9:09



Department of Justice

STATEMENT

OF

RICHARD NORTON

ASSOCIATE COMMISSIONER

EXAMINATIONS

U.S. DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

CONCERNING

H.R. 23

ON

April —,
~~MARCH 25~~, 1986

~~9:00 AM~~

Mr. Chairman, Members of the Subcommittee:

Thank you for the opportunity to offer the views of the Department of Justice on H.R. 23.

The bill is designed to permit certain Cuban and Haitian nationals to adjust their immigration status to permanent resident aliens.

The Department of Justice concurs with the members of the subcommittee in the belief that there should be parity in the treatment of those designated Cuban/Haitian Entrants. The Department further believes that immigration reform and relief for specific nationality groups should not be accomplished piecemeal by nationality specific legislation. While we support the intent of H.R. 23, we again take the position that the preferable response rests with enactment of the immigration reform legislation. ~~Until the outcome of the reform legislation is decided, we believe it is premature to take a position on H.R. 23.~~

We will continue in our support of a similar provision for legalization of this group contained in the reform legislation currently pending.

The Department does have some technical concerns with the language of H.R. 23. In part, the bill calls for the adjustment of status of Cuban nationals who have been designated "Cuban/Haitian Entrants ((Status Pending))". These nationals, who entered during the Mariel time period, are eligible for the provisions of P.L. 89-732, the Cuban Refugee Adjustment Act of 1966. Since April 1, 1985, the Service has accepted applications for adjustment of status from over 53,000 Mariel Cubans, and has completed processing and adjusted the status of approximately 23,000 applicants. As H.R. 23 does not repeal the

Cuban Refugee Adjustment Act and specifically provides in section (f) that nothing shall preclude an alien from seeking permanent resident status under any other provision of law for which he or she may be eligible, we shall continue to enforce the provisions of the Cuban Adjustment Act. This will have the effect of treating nationals from Cuba differently from nationals of Haiti. We therefore recommend that repeal of PL 89-732 be included in this proposal.

We also continue to be concerned with section (b)(2) of HR 23. This section provides permanent residence for an alien who "is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982" It is unclear what the subcommittee intends by the term "any record," as the term is not defined under the present law or in this legislation.

We are also concerned with the proposed cutoff date of January 1, 1982. It should be noted that the Executive Order and Presidential Proclamation authorizing the interdiction of illegal aliens on the high seas were both signed on September 29, 1981, and the first interdictions occurred some fifteen days later. We do not feel it appropriate to reward those individuals who successfully evaded this interdiction, which the present proposal would do. We therefore recommend that the cutoff date be established at October 1, 1981. Similarly, we would not oppose a roll-back date for adjustment of status to that same date.

This completes my prepared testimony. I would be glad to respond to any questions which you may have.

THE WHITE HOUSE

WASHINGTON

April 3, 1986

MEMORANDUM FOR BRANDEN BLUM
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: DOJ Draft Report on H.R. 2184, a Bill to
Provide for Administrative Naturalization

Counsel's Office has reviewed the above-referenced draft report and finds no objection to it from a legal perspective.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

March 31, 1986

LEGISLATIVE REFERRAL MEMORANDUM

SPECIAL

SPECIAL

TO:

Department of State - Lee Ann Berkenbile (647-4463)
National Security Council
Administrative Office of the U.S. Courts

SUBJECT: Department of Justice draft report on H.R. 2184, a bill to provide for administrative naturalization.

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 noon, April 3, 1986.

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 Tara Treacy
 John Cooney Mike Margeson



U.S. Department of Justice

Office of Legislative and Intergovernmental Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This respond to your request for the views of the Department of Justice on H.R. 2184, a bill to amend title III of the Immigration and Nationality Act to provide for administrative naturalization. For the reasons set forth below, this Department recommends against enactment of this legislation in its present form.

As proposed, H.R. 2184 would:

- vest naturalization authority in the Attorney General;
- limit authority to naturalize to immigration judges;
- provide de novo review of denied cases by federal district courts; and
- reduce residence in a State from six months to three months to establish residence for naturalization.

The transfer of naturalization authority from the courts to the Attorney General represents an excellent change in current practice, and the Department wholeheartedly endorses it. The Department also supports the reduction in the State residence requirement, as well as several other alternatives to existing law, such as substitution of the word "application" for the word "petition".

The Department strongly opposes, however, the provisions for limiting naturalization authority to immigration judges (IJs), and for de novo review by the federal courts.

Many Immigration and Naturalization Service (INS) offices do not have judges assigned to them, and those that do are very heavily backlogged. At some location, new cases are being docketed for IJ hearing three years hence because of the heavy caseload. A conservative estimate of the number of additional IJs needed to accommodate the naturalization workload upon passage of H.R. 2184 shows that at least 22 new judges would be required, and these would have to travel at least half their time. The annual cost per judge, including travel would be \$78,629, for a total of \$1,572,580, assuming the 22 new IJs were hired.

Cost estimates for administrative naturalization where the INS handles the naturalization and the ceremony in all cases reflect a total savings of \$1,294,900. Thus, it appears that the government would actually be out of pocket some \$300,000 to achieve administrative naturalization under H.R. 2184.

In the event that IJs are granted authority to naturalize aliens, judicial review of their decisions should be restricted to the record of proceedings. The standard of review should be "abuse of discretion". As a practical matter, it would be anomalous for immigration judges to have the authority to naturalize aliens without review by the Attorney General, as is generally exercised through the Board of Immigration Appeals.

We therefore cannot support passage of H.R. 2184 as introduced. If, however, the bill were to be amended to remove the requirement that immigration judges perform the naturalization, as well as the provision for de novo review by federal courts, then our position would be a favorable one.

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

Sincerely,

John R. Bolton
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs