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Justice Department May 22 Reprogramming
Proposal Concerning the Immigration and
Naturalization Service

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Before the
Subcommittee on Immigration, Refugees
and International Law
Committee on the Judiciary
United States House of Representatives



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the Justice Department's May 22 reprogramming proposal concerning the Immigration and Naturalization Service (INS).

The INS receives funding for its programs--including the Detention and Deportation, Border Patrol, Legal Proceedings, Refugees and Overseas, and Adjudications and Naturalization programs--from a Salaries and Expenses appropriation contained in the annual Department of Justice Appropriation Act.^{1/} This is a lump-sum appropriation which provides a total amount of funds without differentiation among individual programs. The total amount of the 1989 Salaries and Expenses account is \$822,023,000.^{2/} Since this is a lump-sum account, INS is free, upon compliance with congressional notification requirements, to shift or "reprogram" funds among individual programs.^{3/}

^{1/} See the Department of Justice Appropriation Act, 1989, Pub. L. No. 100-459 (Oct. 1, 1988), title II, 102 Stat. at 2196.

^{2/} This figure reflects an initial appropriation of \$800 million in Pub. L. No. 100-459; a supplemental appropriation of \$26.2 million in Pub. L. No. 100-690 (Nov. 18, 1988), 102 Stat. 4540; and a transfer of \$4,177,000 to another account.

^{3/} Section 606 of Pub. L. No. 100-459, 102 Stat. 2227, requires 15 days advance notice to the House and Senate Appropriations Committees for certain reprogramming actions.

As noted above, Adjudications and Naturalization is one of the programs funded by the annual Salaries and Expenses appropriation. However, section 209 of the Department of Justice Appropriation Act, 1989,^{4/} created an additional source of funds for this program. It established an "Immigration Examinations Fee Account" for the deposit of adjudication fees and provided that deposits into the Immigration Examinations Fee Account in excess of \$50 million--

"shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the 'Immigration Examinations Fee Account'. . . ." (Emphasis supplied)

The Justice Department has notified Congress of a proposed reprogramming of INS resources in order to respond to the Central American asylee influx in South Texas and the

^{4/} Pub. L. No. 100-459, § 209, 102 Stat. 2203, amending ⁸ U.S.C. § 1356.

increase in Soviet emigres.^{5/} The proposal is to reprogram up to \$30 million from the Adjudications and Naturalization program to the Detention and Deportation, Border Patrol, Legal Proceedings, and Refugees and Overseas programs. The Adjudications and Naturalization program would then be replenished from the Immigration Examinations Fee Account. The effect of the reprogramming proposal is to use \$30 million in proceeds from the Immigration Examinations Fee Account for purposes other than enhancing adjudications and naturalization services.

Under section 209 of Pub. L. No. 100-459, excess deposits from the Immigration Examinations Fee Account are available "to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services." Therefore, excess deposits can be paid into the INS Salaries and Expenses account only to the extent that this account has incurred expenses for adjudication and naturalization services. INS budget documents indicate that approximately \$53.8 million from the fiscal year 1989 Salaries and Expenses account is currently allocated for the Adjudication and Naturalization program. According to INS officials,

^{5/} Letter dated May 22, 1989, from the Assistant Attorney General for Administration to the Chairman of the House Committee on the Judiciary.

actual obligations for this program from the 1989 appropriation total \$35,647,000 as of the end of May 1989. Based on these figures, payment of \$30 million in excess fee deposits into the Salaries and Expenses account, as proposed in the reprogramming notice, complies with section 209 of Pub. L. No. 100-459.6/

Once excess deposits are paid into an appropriation account as reimbursement for adjudication and naturalization services in compliance with section 209, that section imposes no restrictions on their use. Thus, in this case, such deposits would become available for any of the programs within the 1989 Salaries and Expenses lump-sum account. For this reason, the deposits can be applied to programs other than Adjudication and Naturalization. Whether the Adjudication and Naturalization program is first depleted by reprogramming its funds to other programs and is then "replenished" by the excess deposits or whether the

6/ The reprogramming notice indicates that an additional \$21 million in excess deposits will be paid into the 1989 Salaries and Expenses account and used for adjudication and naturalization services. This amount also can be accommodated if the 1989 account incurs the currently anticipated level of \$53.8 million in Adjudications and Naturalization program obligations.

excess deposits are applied directly to other programs is more a matter of form than substance.^{7/}

While the proposed reprogramming does not violate section 209, it is inconsistent with congressional expectations that were expressed at the time section 209 was enacted. The conference report on the legislation enacted as Pub. L. No. 100-459 stated with respect to the Immigration Examinations Fee Account: "The conferees expect that funds generated by this Account shall not be used for any purpose other than enhancing naturalization and adjudication programs."^{8/} The basic effect of the reprogramming proposal, of course, is to use \$30 million in excess fee deposits to enhance programs other than Adjudications and Naturalization. In fact, it appears that the current Adjudications and Naturalization program level will remain the same as it would have been without the \$30 million. It should be recognized, however, that one necessary consequence of enacting section 209 of Pub. L. No. 100-459

^{7/} Indeed, a portion of the excess deposits will have to be applied directly to other programs under the Justice Department proposal since, given the existing obligations (\$35,647,000) against funds allocated to the Adjudications and Naturalization program (\$53.8 million), this program does not have \$30 million available for reprogramming.

^{8/} H.R. Rep. No. 100-979, 100th Congress, 2d Sess. 38 (1988). To the same effect is an exchange of letters between the INS Commissioner and the Chairman of the Subcommittee on Immigration, Refugees, and International Law of the House Judiciary Committee.

as an additional or even an alternate source of funding for adjudication and naturalization services was to create the potential for benefiting other programs at least indirectly by freeing up for such programs appropriations that would otherwise have funded adjudication and naturalization services.

To summarize, subject to compliance with congressional notification requirements, INS is free to reprogram funds among the individual programs covered by its lump-sum Salaries and Expenses appropriation. Therefore, it can reprogram appropriated funds allocated to Adjudications and Naturalization from that program to other programs within the lump-sum appropriation. Under section 209 of Pub. L. No. 100-459, deposits in excess of \$50 million from the Immigration Examinations Fee Account can be paid into the INS Salaries and Expenses account only to the extent that the latter account has incurred expenses for adjudication and naturalization services. According to INS, the account has incurred such expenses in excess of \$35 million. Therefore, the proposal to pay \$30 million in excess deposits into the Salaries and Expenses account complies with section 209.

The effect of the proposed reprogramming is to use the entire \$30 million in excess deposits for purposes other

than enhancing adjudication and naturalization services. This runs counter to congressional expectations concerning the use of excess deposits expressed at the time section 209 of Pub. L. No. 100-459 was enacted. However, section 209 does not restrict the use of excess deposits once they are legitimately paid into the Salaries and Expenses account. Instead, they merge with the rest of the account and become legally available for any program or purpose covered by the lump-sum account. Therefore, such payments are subject to INS's reprogramming discretion and their use for purposes other than adjudication and naturalization services is not illegal.

This concludes my prepared statement. I will be happy to answer any questions you may have.