

KF 27
.J8645

1989m







Orderly Departure

**ORDERLY DEPARTURE PROGRAM AND U.S. POLICY
REGARDING VIETNAMESE BOAT PEOPLE**

D449
54

HEARING

BEFORE THE

**SUBCOMMITTEE ON IMMIGRATION, REFUGEES,
AND INTERNATIONAL LAW**

OF THE

**COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES**

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

JUNE 23, 1989

Serial No. 29



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

21-976 22

WASHINGTON : 1990

COMMITTEE ON THE JUDICIARY

JACK BROOKS, Texas, *Chairman*

ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California
JOHN CONYERS, Jr., Michigan
ROMANO L. MAZZOLI, Kentucky
WILLIAM J. HUGHES, New Jersey
MIKE SYNAR, Oklahoma
PATRICIA SCHROEDER, Colorado
DAN GLICKMAN, Kansas
BARNEY FRANK, Massachusetts
GEO. W. CROCKETT, Jr., Michigan
CHARLES E. SCHUMER, New York
BRUCE A. MORRISON, Connecticut
EDWARD F. FEIGHAN, Ohio
LAWRENCE J. SMITH, Florida
HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
HARLEY O. STAGGERS, Jr., West Virginia
JOHN BRYANT, Texas
BENJAMIN L. CARDIN, Maryland
GEORGE E. SANGMEISTER, Illinois

HAMILTON FISH, Jr., New York
CARLOS J. MOORHEAD, California
HENRY J. HYDE, Illinois
F. JAMES SENSENBRENNER, Jr.,
Wisconsin
BILL McCOLLUM, Florida
GEORGE W. GEKAS, Pennsylvania
MICHAEL DRWINE, Ohio
WILLIAM E. DANNEMEYER, California
HOWARD COBLE, North Carolina
D. FRENCH SLAUGHTER, Jr., Virginia
LAMAR S. SMITH, Texas
LARKIN I. SMITH, Mississippi
CHUCK DOUGLAS, New Hampshire
CRAIG T. JAMES, Florida

WILLIAM M. JONES, *General Counsel*
ROBERT H. BRINK, *Deputy General Counsel*
ALAN F. COFFEY, Jr., *Minority Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

BRUCE A. MORRISON, Connecticut, *Chairman*

BARNEY FRANK, Massachusetts
CHARLES E. SCHUMER, New York
HOWARD L. BERMAN, California
JOHN BRYANT, Texas
ROMANO L. MAZZOLI, Kentucky

LAMAR S. SMITH, Texas
BILL McCOLLUM, Florida
D. FRENCH SLAUGHTER, Jr., Virginia
HAMILTON FISH, Jr., New York

EUGENE PUGLIESE, *Counsel*
NGRA ENGEL, *Assistant Counsel*
BERNADETTE MAGUIRE, *Legislative Assistant*
MARY RAE MCGILLIS, *Legislative Assistant*
MARGARET L. WEBBER, *Minority Counsel*

90-600203 B/81

KF27
J 8645
1989m

CONTENTS

HEARING DATE

June 28, 1989..... Page 1

OPENING STATEMENT

Morrison, Hon. Bruce A., a Representative in Congress from the State of Connecticut, and chairman, Subcommittee on Immigration, Refugees, and International Law 1

WITNESSES

Atkins, Hon. Chester, a Representative in Congress from the State of Massachusetts 3

Combs, Delia B., Assistant Commissioner for Refugees, Asylum and Parole, Immigration and Naturalization Service, Department of Justice 23

Funseth, Robert, Deputy Assistant Secretary, Bureau of Refugee Affairs, Department of State 7

Holman, Philip A., Acting Director, Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services 43

Taylor, Rear Admiral James E., Director, Politico-Military Policy and Current Plans Division, Office of the Chief of Naval Operations 38

Thomas, Ralph, Assistant Commissioner for Refugees, Asylum and Parole, Immigration and Naturalization Service, Department of Justice 66

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Combs, Delia B., Assistant Commissioner for Refugees, Asylum and Parole, Immigration and Naturalization Service, Department of Justice:

Notes on the Attorney General's Parole Authority 75

Prepared statement 25

Question and answer 65

Funseth, Robert, Deputy Assistant Secretary, Bureau of Refugee Affairs, Department of State:

Department of State telegram 71

Prepared statement 11

Holman, Philip A., Acting Director, Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services:

AFDC Action Transmittal FSA-AT-88-4 93

Prepared statement 45

Taylor, Rear Admiral James E., Director, Politico-Military Policy and Current Plans Division, Office of the Chief of Naval Operations: Prepared statement 40

APPENDIX

Funseth, Robert, Deputy Assistant Secretary, Bureau of Refugee Affairs, Department of State: Answers to supplemental questions regarding Orderly Departure Program (ODP) 99

05-22-90

ORDERLY DEPARTURE PROGRAM AND U.S. POLICY REGARDING VIETNAMESE BOAT PEOPLE

WEDNESDAY, JUNE 28, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, REFUGEES,
AND INTERNATIONAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:40 a.m., in room 2237, Rayburn House Office Building, Hon. Bruce A. Morrison (chairman of the subcommittee) presiding.

Present: Representatives Bruce A. Morrison and Lamar S. Smith.
Also present: Eugene Pugliese, counsel; Mary Rae McGillis, legislative assistant; Debra James-Morris, clerk; and Margaret L. Webber, minority counsel.

OPENING STATEMENT OF CHAIRMAN MORRISON

Mr. MORRISON. The committee will come to order. I would like to convene this hearing of the Subcommittee on Immigration, Refugees, and International Law.

Today, we will look at the situation with respect to refugees and immigrants from Vietnam, in particular focusing on the Orderly Departure Program.

Prior this hearing, I wrote to the Vice President, Mr. Quayle, because he had recently paid a visit to Southeast Asia and, among other activities, looked at the situation of refugee populations. I requested that he consider providing this subcommittee with testimony.

Although, in keeping with tradition, at least alleged tradition, about vice presidents not testifying before the Congress, he kindly offered an informal meeting to discuss his observations and his perspective on the matter, and I appreciate that and will look forward to following up and having that kind of a conversation with Mr. Quayle.

We have, at the staff level, engaged in investigation of the Orderly Departure Program, especially as a result of concerns that arose as we were looking into the situation of refugees departing the Soviet Union, because in the course of hearing on that subject, we were informed of radical changes in the rates of approval of Vietnamese participating in the Orderly Departure Program as far as the determination of whether or not they were refugees, and that gave rise to a lot of questions which might be summarized as is the

Orderly Departure Program a refugee program or is a family reunification-immigration program? Is it something else? Is it both, and does it meet either of those objectives, and how does its operation enhance or interfere with the allocation of refugee numbers to other Vietnamese who apply for admission from outside of Vietnam?

We also want to look at the implication in the longer run of the fate of people who leave Vietnam clandestinely, come to be known as "boat people." We have had a recent international conference and a recent international agreement on a new set of procedures with respect to the treatment of individuals who arrive in first-asylum countries from Vietnam, having left clandestinely. I think it would be fair to say that the new agreement is an outline of objectives but needs a lot of filling in, and there are a lot of questions about how it is going to interact with our expectations as a country as far as who will be admitted to the United States.

In looking at the questions that have arisen about the Orderly Departure Program, there have been many issues that have arisen regarding the role of the State Department and the role of INS and the interaction of those two roles and who is setting policy, who is carrying it out, the extent to which those roles are being performed in a consistent manner.

We also have asked the Navy to testify here, because the Navy has been charged with certain responsibilities with respect to confronting the boats in which people have left Vietnam clandestinely on the high seas, and we want to know about what the policies are, what the practices are, and how we can prevent tragedies that would, in some sense, be traced to action or inaction by the U.S. Navy.

Finally, all of this relates, as well, to the resettlement of Vietnamese in the United States, and we've asked the Department of Health and Human Services to give us testimony this morning as it relates to their activities in that regard. It is a broad subject and we may not cover it all, but we have a broad panel of experts to give us some help, and before they testify, we also will have a congressional expert who has placed a lot of attention on the situation in Southeast Asia, and that is Congressman Chester Atkins of Massachusetts, but before we hear from him, I would like to yield to the gentleman from Texas, ranking member, Mr. Smith, for his opening statement.

Mr. SMITH of Texas. Mr. Chairman, like you, I look forward to hearing from our witnesses today on oversight of the Orderly Departure Program and U.S. policy regarding Vietnamese boat people.

The Orderly Departure Program has its origins with the exodus of boat refugees from Vietnam. Since December 1978, the United States has been involved in international efforts to establish an orderly exit mechanism as an alternative and also a deterrent to the dangers of an illegal journey by boat from Vietnam to other parts of Indochina.

Since 1978, the United States has worked with the U.S. High Commission on Refugees and the Vietnamese Government to keep up with the number of boat people arrivals. During this period,

processing has been, at times, temporarily suspended but is currently operating in Bangkok.

In addition, Congress passed the American Homecoming Act of 1987 to provide for Amerasians. Processing of Amerasian applications is also handled by the U.S. Orderly Departure Program Office in Bangkok.

Of concern to us as well as the international community is the more recent increase of Vietnamese boat refugees arriving in Hong Kong. This issue and others were discussed in Geneva at the recent Indochinese Conference. I'm interested in learning more about the results of this conference at today's hearing.

I want to add, Mr. Chairman, that I believe the United States should be complimented on our past generous humanitarian commitments in aiding the many Indochinese who have successfully entered the United States. I support our participation in international discussions aiming toward an ultimate resolution of Indochinese refugee and migrant problems in this area of the world.

I look forward to hearing from our witnesses today and especially our colleague, Chester Atkins.

Mr. MORRISON. Thank you very much.

Chet, if you would come forward and join us. Thank you very much for making yourself available, and we look forward to your statement. Any written statement you submit will be made a part of the record in full, and please proceed as you see fit.

STATEMENT OF HON. CHESTER ATKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. ATKINS. Thank you very much, Mr. Chairman, and let me thank you for this opportunity to testify before your subcommittee on the Orderly Departure Program, and also, in particular, let me thank this committee for its very strong leadership on refugee issues and its aggressive oversight of the program. I think that has been extremely helpful and is appreciated, I think, by all who follow refugee and immigration issues in this country.

Last February, the Immigration and Naturalization Service changed American policy governing refugees coming out of Vietnam. Where there was formerly a presumption of eligibility for refugee status on the part of people applying to leave Vietnam, an administrative decision by INS has changed that.

While there were certainly some problems which existed with the administration of the U.S. Orderly Departure Program, I do not believe that it was necessary or appropriate to completely scrap that program and particularly to do it by administrative fiat.

The INS originally made the policy change to adopt worldwide adjudication standards to address concerns which they had with Soviet emigres. They expanded that policy to include the Vietnamese in order to establish consistency within the overall policy.

The situation in the Soviet Union is vastly different from the situation in Vietnam, and whether you agree with the administration's policy changes in the Soviet Union—and I certainly strongly disagreed with them, and I know the position of the subcommittee has been in disagreement—to change our policy and to extrapolate

the policy toward Vietnam from our policy with the Soviet Union, I think, was a significant mistake.

I think, certainly, the attempt to adopt worldwide adjudication standards made sense, but to do so without exception, for every country in the world, I think does a significant disservice to our refugee policy. I think it is important for us to have the capacity to, under certain unique and special circumstance, have exceptions to the worldwide adjudication standards.

In place of the presumption of eligibility for the Vietnamese, the INS has liberalized the public interest parole provisions of the Refugee Act. There are several things we should be concerned about when we address this issue.

I might add that I have a chance, yesterday, to review the preliminary data. I do not think that they have been made available to the subcommittee, quite yet, in terms of the turndown rates and the other data on people who have applied through the public interest parole provisions.

I think that INS and the people administering that program out of Bangkok have done quite a good job and a commendable job. Of course, it is too early to particularly assess the program, but I think notwithstanding their success so far with the use of public interest parole, I think that there are a number of things which we should be particularly concerned about when we address this issue, the first of which is that public interest parolees are required to obtain affidavits from relatives in the United States or from other sources indicating that they will be provided for when they arrive there.

That may be, particularly for parolees, an extremely difficult task for them, and to create a situation, which I don't any of us would find tolerable, of having people—people who have risked life and limb to obtain an exit visa from the Vietnamese Government, who have been approved by our Government, were then unable to leave the country because they cannot secure affidavits for support.

The refugee interviews, which are conducted for the Vietnamese under the ODP, are held right in Saigon. They are held using Vietnamese Government interpreters, and they are done under heavy security. The atmosphere, to say the least, is not conducive to complete candor, and it does not take a great deal of imagination to conjure up the myriad of fears that must face every single applicant going through that program. The Soviet Union and Vietnam, as far as I know, are unique in terms of refugees actually being interviewed in their own countries.

Applicants for emigration from Vietnam lose almost all of the benefits that accompany Vietnamese citizenship. Those benefits include all of their educational opportunities and most types of employment. So, anybody who takes the risk of entering this program does so facing enormous, enormous risks.

Proponents of the new parole policy point to the Vietnamese who receive regular immigrant visas and show that they have little trouble acquiring the necessary papers and financing, and while that is certainly true, it has clearly not been proven that this pattern will hold true for the public interest parolees as well. As a matter of fact, there is significant evidence to indicate that there will be problems there.

We should not be willing to risk the future of Vietnamese refugees on this assumption, and the present policy of liberalization of the public interest parole provisions could change on a whim. The Vietnamese who use the ODP have taken enormous risks and any changes in our policy should not be solely dependent on the good intentions and the good will of the INS and of INS personnel.

Mr. Chairman, the United States is currently in a transition period in its refugee policy. This committee has taken a very strong leadership role in that transition, and it has been, I believe, a bipartisan effort within this subcommittee.

The legislation that you have proposed, which has been reported out of committee, takes what I believe is a rational approach to the problems that we are facing, the interim problems that we are facing. It acknowledges the need to deal with changes, but it does so in a way that does not cause harm to any refugees attempting to come to the United States under the previous assumptions.

The Congress is expected to reauthorize the Refugee Act this year. We need to take a close look at what we want the U.S. policy on refugees to be, and if change is called for in relation to specific country programs, then those changes should be made, but they should be made by the Congress, working through the committee system, and working in conjunction with the administration, not simply by administrative order. That is the proper atmosphere and the proper environment for us to revisit our policies on refugees.

In the meantime, I believe we should restore our treatment of the Orderly Departure Program to where it was prior to this past February. All Vietnamese that are interviewed by our Embassy staff should have the presumption of refugee status. By the time they have reached the interview stage, they have come so far and risked so much that we simply cannot make them the victims of the whims of a particular program.

The ODP has worked well for a number of years, too well for it to be dismantled without any congressional oversight or input from other interested parties.

Mr. Chairman, I know that you have entertained language on your bill that you reported out of this committee last week. I would hope that you would consider and that this subcommittee would be open to some kind of adjustment to your language. I think that bill was a significant, significant step, and I certainly endorse it. I know that you had wanted to hold back on any changes in that ODP policy until you had had the time for this hearing. I would hope that as a result of the hearing that you might be open to making changes in that legislation to deal with the ODP.

I thank you very much.

Mr. MORRISON. Just on your last point, we did report the legislation which creates presumptive status, really directs the Attorney General to consider the creation of categories for whom a prima facie case of refugee status would be made by identifying oneself with a particular group that has a history of persecution. And the legislation, as reported, directs that specifically Jews and Evangelical Christians leaving the Soviet Union be accorded that presumptive status and that at least one category be created for Southeast Asia, but it does not direct what that category ought to be.

I know that Mr. Fish considered the offer of an amendment to be more direct as to the Vietnamese and after the conclusion of this hearing, when we've had a chance to look at the circumstances, I'm certainly open to considering some adjustment of that language on the floor.

Mr. ATKINS. I appreciate that. I've had an opportunity to review the Fish language. There are, I believe, some modest technical changes that need to be there related to the practices involving letters of introduction. But other than that, I think the approach and the intentions of it are excellent and I certainly would hope that you would be able to and I appreciate your considering that.

I may make one other note, Mr. Chairman, and I know part of this hearing deals with the Navy policies in rescue of people who are in disabled boats in the Gulf of Thailand and the South China Sea. I know that this subcommittee has been particularly concerned with the tens and tens of thousands of Southeast Asian refugees who have died at sea and been victims of piracy.

I think the principal tool that we have to change that, in conjunction with the changes that will be coming out of the Geneva Convention, is a rational, stable, understandable ODP. I think one of the great problems we face is that if there is any kind of instability, if there are any changes in that ODP, if there isn't a sense that that ODP is a continuing program, then people will take the choice to try to escape Vietnam and escape the horrendous conditions there by sea.

And I think we all know, oftentimes, the tragic conclusions of those efforts and I think the extent to which this program is a program that's perceived as one which the U.S. Government has a continuing commitment to, we will be doing an important service in terms of assuring that we reduce and save the lives of literally thousands of people.

Mr. MORRISON. Thank you very much. I have no further questions. The gentleman from Texas.

Mr. SMITH of Texas. I don't have any questions, Mr. Chairman.

Mr. MORRISON. Thank you very much, Mr. Atkins. We will now move to our single panel of administration witnesses. If you will please come forward and remain standing so you may be placed under oath. First, Delia B. Combs, Assistant Commissioner for Refugees, Asylum and Parole of the INS, Department of Justice; Robert Funseth, Deputy Assistant Secretary, Bureau of Refugee Affairs, the Department of State, will be accompanied by Davis Lambertson, Deputy Assistant Secretary for East Asian and Pacific Affairs; Philip A. Holman, Acting Director, Office of Refugee Resettlement, the Family Support Administration of the Department of Health and Human Services; and Rear Adm. James E. Taylor, Director of the Politico-Military Policy and Current Plans Division of the Office of the Chief of Naval Operations.

Thank you all for being with us and please raise your right hands.

[Witnesses sworn.]

Mr. MORRISON. Please be seated. Mr. Funseth, we'd like you to proceed first, if you will. Your written testimony will be fully made part of the record and we'd appreciate your trying to emphasize

the high points in 5 minutes, and I know we'll have plenty of questions.

STATEMENT OF ROBERT FUNSETH, DEPUTY ASSISTANT SECRETARY, BUREAU OF REFUGEE AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY DAVID LAMBERTSON, DEPUTY ASSISTANT SECRETARY FOR EAST ASIAN AND PACIFIC AFFAIRS

Mr. FUNSETH. Thank you, Mr. Chairman. I am pleased to have this opportunity to discuss developments in the Orderly Departure Program in the context of the evolving Southeast Asia refugee situation. This innovative admissions program is designed to provide Vietnamese a viable alternative to dangerous clandestine departure by boat or over land and has enjoyed broad bipartisan support. With the adoption on June 14, of the comprehensive plan of action at the International Conference on Indochinese Refugees in Geneva, Switzerland, the central role of the Orderly Departure Program in reducing the extreme suffering and hardship caused by the clandestine departures was unanimously reaffirmed.

I will review briefly the outcome of the International Conference, the existing and projected agreements and arrangements for boat people rescued at sea, and how orderly departures from Vietnam for the United States are conducted. The ODP was instituted at the first International Conference on Indochinese Refugees in Geneva in 1979. At the conclusion of that Conference, the Socialist Republic of Vietnam and the Office of the U.N. High Commissioner for Refugees concluded a memorandum of understanding for this Orderly Departure Program.

By that memorandum, Vietnam agreed to authorize the exit of those people who wished to leave Vietnam and settle in foreign countries, family reunion, and other humanitarian cases. Unfortunately, the number of exit permits issued by Vietnam never kept pace with either the number of applications from eligible persons or the capacity of resettlement countries. Nearly 30 nations participate in this program, coordinated by the U.N. High Commissioner for Refugees, under which more than 160,000 people have been able to leave Vietnam legally without the risk to their lives that boat departures entail.

During the past year, over 75,000 Vietnamese refugees have resettled in the United States via the ODP. However, during that same period, hundreds of thousands of persons fled Vietnam by boat. Thus, the Orderly Departure Program did not become the truly viable alternative to clandestine departure its authors envisaged.

The comprehensive plan of action, called the CPA, adopted by acclamation at the Conference in Geneva on June 14, declares that the ODP should be fully encouraged and promoted. It states that "emigration through regular departure procedures and migration programs should be accelerated and expanded with a view to making such programs the primary and eventually the sole mode of departure."

In order to achieve this goal, the plan of action called for several measures to be undertaken, including widely publicized media campaign to increase awareness of regular departure procedures and

migration programs for departure from Vietnam. Another very important measure was that all persons eligible under regular third-country migration programs, Amerasians and former reeducation center detainees will have full access to regular departure procedures and migration programs. It provided that the problem of former reeducation center detainees will be further discussed separately by the parties concerned.

Although the Conference in Geneva reached agreement on actions and procedures to be taken to encourage Vietnamese not to resort to dangerous boat departures, agreement was not reached on how to handle cases of Vietnamese rescued at sea. Currently, there are two programs that facilitate the rescue and disembarkation of Vietnamese asylum seekers at ports of call in Southeast Asia and elsewhere in the world.

These are called the Rescue-At-Sea Resettlement Offers Program [RASRO] and the Disembarkation Resettlement Offers Program [DISERO]. Virtually all governments agreed that a new system to replace RASRO and DISERO must be developed that preserves incentives to shipowners and shipmasters to rescue boat people in distress on the high seas, and is consistent with the new procedures adopted by the Conference. Final agreement on such a system has not yet been reached.

We would like to see the automatic resettlement guarantees provided by RASRO and DISERO replaced by refugee determination screening, as called for by the Conference. UNHCR is actively seeking agreement on such a system. Until it is settled, however, our first priority is to continue guarantees to shipmasters and ports of call so that no asylum seekers' lives will be needlessly put in danger.

The U.S. Orderly Departure Program started off with only 2,219 departures in fiscal years 1980 and 1981, and expanded gradually until 13,371 persons left safely in fiscal 1985. In fiscals 1984 and 1985, the goal of the ODP to provide a safe and legal means of departure Vietnamese wishing to immigrate seemed to be obtainable as more Vietnamese departed via the ODP than by boat during both years.

On January 1, 1986, however, unfortunately, Vietnam unilaterally suspended interviewing for the U.S. ODP and severely restricted access of other resettlement countries, as well. The hiatus in interviewing lasted until September 1987, when new procedures agreed to during a series of technical talks were implemented which are the basis for the regular programs in operation today.

We began this fiscal year with a level of 25,000 for the admission for refugees and Amerasian immigrants in the ODP, nearly triple that of the previous year. This ceiling represents programs funded under the migration and refugee assistance account and is in addition to the 20,000 immigrant visas which may be issued under the preference visa system and the unlimited number of immediate relatives of American citizens who may be admitted in any year.

When it became clear that Vietnam would not agree to a resumption of talks on the reeducation center detainees, we reallocated numbers originally intended for this population to the regional ceiling for Soviet and East European refugees. The resulted fully funded ceiling of 19,500 for the ODP appeared to be all that the

transportation and processing system out of Vietnam would be able to handle. With the help of the Intergovernmental Committee for Migration [ICM] which assists us in the processing and movement of refugees worldwide, the transportation difficulties eased somewhat in the spring.

We included in both our supplemental request and the emergency consultations proposal the restoration of 2,500 of the previously reallocated numbers to the ODP for a final revised level of 22,000. I'm pleased that we now have a Presidential determination establishing that ceiling and the supplemental appropriations from Congress to make it possible to use these admissions numbers. However, it remains uncertain, as of today, whether we will be successful in moving that many people out of Vietnam.

At the Geneva Conference, the United States called on Vietnam to set an initial target of 6,000 departures under ODP to all resettlement countries per month. We plan to assign additional personnel to the program so that our interviews in Vietnam can increase from 3,000 to 4,500 per month. Authorization to accomplish this has already been transmitted to our Embassy in Bangkok and will commence with the August interview trips to Ho Chi Minh City.

Since the beginning of the program, there are two groups of Vietnamese refugees who have been of special humanitarian concern, not only for the U.S. Government, but for all Americans. I refer, of course, to Amerasian children fathered by Americans in Vietnam and to Vietnamese who suffered detention in reeducation centers because of their association with the United States or with the former South Vietnamese Government.

In September 1984, Secretary Shultz, in statements before this committee and the Senate Judiciary Committee, announced on behalf of President Reagan a major U.S. humanitarian initiative to settle the Amerasian children and to seek the release and resettlement of those persons imprisoned in Vietnam so-called reeducation centers. We are having considerable success with the Amerasian part of the initiative, with more than 6,000 children and 10,000 relatives, totaling 16,000 persons having been resettled so far.

We are also gratified that the reeducation center detainee population has been reduced; according to the Vietnamese, from 7,000 persons in 1985 to about 200 at present. We remain profoundly disappointed, however, that only 600 detainees and 2,400 of their family members, totaling 3,000 persons, have been allowed to leave Vietnam and continued detention of at least 200 persons remain, along with the unresolved POW/MIA issue, the last, most painful unhealed wound of the war and the cause of anguish and suffering within the Vietnamese-American community in this country.

After 6 years of unrelenting U.S. diplomatic efforts, we finally succeeded in having the Vietnamese begin negotiations to Hanoi last July, achieving an agreement in principle. Shortly thereafter, the Vietnamese temporarily suspended further negotiations. Since that date, the Vietnamese rebuffed all of our efforts to resume talks, until the breakthrough on June 14 in Geneva when, in a bilateral meeting, the Vietnamese agreed to resume the talks in Hanoi next month. We are gratified at this positive response of Vietnam to resume negotiations.

Mr. Chairman, I have touched only on the most important developments in the Orderly Departure Program and its central role in reducing the suffering caused by dangerous clandestine departure. The success of the comprehensive plan of action will rest in a substantial manner on the successful implementation of the measures designed to ensure that emigration through regular departure procedures and migration programs should be accelerated and expanded with a view to making such programs the primary and eventually the sole mode of departure.

Reuniting Americans with their family members in Vietnam, beginning the Amerasian Immigration Program, expanding refugee, immigrant and Amerasian departures to more than double the previous year's levels and, now, the possibility that we might be able to increase substantially our resettlement of reeducation center detainees are all significant accomplishments of a humanitarian program which contributes significantly to the U.S. foreign policy goal of safeguarding first asylum in Southeast Asia. Thank you.

Mr. MORRISON. Thank you very much, Mr. Funseth.

[The prepared statement of Mr. Funseth follows:]

Statement
of

Robert L. Funseth
Acting Director
Bureau for Refugee Programs
Department of State

Thank you, Mr. Chairman.

I am pleased to have this opportunity to discuss developments in the Orderly Departure Program, in the context of the evolving Southeast Asia refugee situation. This innovative admissions program is designed to provide Vietnamese a viable alternative to dangerous clandestine departure by boat or over land and has enjoyed broad bipartisan support. With the adoption on June 14 of the Comprehensive Plan of Action (CPA) at the International Conference on Indochinese Refugees (ICIR) by nations in Geneva, Switzerland, the central role of the Orderly Departure Program in eliminating the extreme human suffering and hardship caused by clandestine departures was unanimously reaffirmed.

I will review briefly the outcome of the International Conference, the existing and projected agreements and arrangements for boat people rescued at sea, and describe how orderly departures from Vietnam for the United States are conducted.

The Orderly Departure Program was instituted at the first International Conference on Indochinese Refugees in Geneva in 1979 ("U.N. meeting on Refugees and Displaced Persons in Southeast Asia").

At the conclusion of that Conference, the Socialist Republic of Vietnam and the Office of the U.N. High Commissioner for Refugees on May 30, 1979 concluded a Memorandum of Implementation of an Orderly Departure Program. By this Memorandum, Vietnam agreed to authorize the exit of those people who wish to leave Vietnam and settle in foreign countries -- family reunion and other humanitarian cases -- and that this program would be carried out as soon as possible and to the maximum extent. The Memorandum stated that the number of such people would depend both on the volume of applications for the exit from Vietnam and on receiving countries ability to issue entry visas.

Unfortunately, the number of exit permits issued by Vietnam never kept pace with either the number of applications from eligible persons or the capacity of resettlement countries.

Nearly thirty nations participate in this program coordinated by the U.N. High Commissioner for Refugees, under which more than 160,000 people have been able to leave Vietnam legally, without the risk to their lives that boat departures entail. During the past 10 years, over 75,000 Vietnamese have resettled in the United States via the ODP.

However, during that same period hundreds of thousands of persons fled Vietnam by boat. Thus, the Orderly Departure Program did not become the truly visible alternative to clandestine departure its authors envisaged.

Comprehensive Plan of Action

The Comprehensive Plan of Action adopted by acclamation at the International Conference in Geneva on June 14 declares that the Orderly Departure Program should be fully encouraged and promoted. It states that *"emigration through regular departure procedures and migration programs should be accelerated and expanded with a view to making such programs the primary and eventually the sole mode of departure."*

In order to achieve this goal, the Plan of Action calls for the following measures to be undertaken:

- o All persons eligible under regular third-country migration programs, Amerasians and former re-education center detainees will have full access to regular departure procedures and migration programs. The problem of former re-education center detainees will be further discussed separately by the parties concerned.*
- o Exit permits and other resettlement requirements will be facilitated for all persons eligible under regular departure procedures and migration programs.*
- o Vietnam will fully co-operate with the United Nations High Commissioner for Refugees (UNHCR) and the Intergovernmental Committee for Migration (ICM) in expediting the improving of processing, including medical processing, for departures under regular departure procedures and migration programs and will ensure that medical records of those departing comply with standards acceptable to receiving countries.*
- o Vietnam, UNHCR, ICM and resettlement countries will co-operate to ensure that air transportation and logistics are sufficient to move expeditiously all those accepted under regular departure procedures and migration programs.*
- o If necessary, countries in South-East Asia through which people emigrating under regular departure procedures and migration programs must transit will, with external financial support as appropriate, expand transit facilities and expedite exit and entry procedures in order to help facilitate increased departures under such programs.*

Rescue at Sea

Although the Conference in Geneva reached agreement on actions and procedures to be taken to encourage Vietnamese not to resort to dangerous boat departures, agreement was not reached on how to handle cases of Vietnamese rescued at sea. Currently there are two programs that facilitate the rescue and disembarkation of Vietnamese asylum seekers at ports of call in Southeast Asia and elsewhere in the world. These are called the Rescue-at-Sea Resettlement Offers Program (RASRO) and the Disembarkation Resettlement Offers Program (DISERO). Virtually all governments agreed that a new system to replace RASRO and DISERO must be developed that preserves incentives to shipowners and shipmasters to rescue boat people in distress on the high seas, and is consistent with the new procedures adopted by the Conference. Final agreement on such a system has not yet been reached.

The RASRO program is a humanitarian arrangement to pool and divide evenly for resettlement those asylum seekers rescued by participating nations' flag ships. Sixteen refugee resettlement nations, including the United States, participate in this UNHCR-coordinated program. Under the arrangement, resettlement guarantees are provided by the flag state to the port-of-call to permit disembarkation of the rescued asylum-seekers, and financial reimbursement is provided the shipmasters to compensate for any costs they underwent because of the rescue. UNHCR coordinates the actual resettlement by assigning the rescued asylum seekers to resettlement countries within the pool based on family ties and other considerations.

The DISERO program is also a humanitarian arrangement for providing resettlement guarantees to ports-of-call and financial assistance to shipowners, but applies to cases of asylum-seekers rescued on ships of nations that do not traditionally resettle refugees. The United States is one of eight resettlement countries contributing resettlement places to DISERO.

The total number of Indochinese rescued by passing ships -- whether or not part of the above programs -- has averaged between 3,000 and 4,000 per year for the past three years.

We would like to see the automatic resettlement guarantees provided by RASRO and DISERO replaced by refugee determination screening as called for by the International Conference. UNHCR is actively seeking agreement on such a system. Until it is settled, however, our first priority is to continue guarantees to shipmasters and ports-of-call so that no asylum-seekers' lives will be needlessly put in danger.

Orderly Departure Program

The Orderly Departure started off with only 2,219 departures in Fiscal Years 1980 and 1981 and expanded gradually until 13,371 persons left safely in FY 1985. In FY 84 and FY 85, the goal of the ODP -- to provide a safe and legal means of departure for Vietnamese wishing to emigrate -- seemed to be attainable, as more Vietnamese departed via the ODP than by boat during both years.

On January 1, 1986, however, Vietnam unilaterally suspended interviewing for the U.S. ODP, and severely restricted access of other resettlement countries as well. The hiatus in interviewing lasted until September 1987, when new procedures agreed to during a series of technical talks were implemented which are the basis for the regular program's operation today.

Refugee and Amerasian Admissions in FY 1989

We began this fiscal year with a level of 25,000 for the admission for refugees and Amerasian immigrants in the ODP -- nearly triple that of the previous year. This ceiling represents programs funded under the Migration and Refugee Assistance account, and is additional to the 20,000 immigrant visas which may be issued under the preference visa system and the unlimited number of immediate relatives of American citizens who may be admitted in any year.

The 25,000 ceiling for refugees and Amerasians for FY 89 reflected the large growth in Amerasian processing, planning for resettlement of reeducation detainees in the sincere hope that talks with the Vietnamese on reeducation center detainees would be fruitful, and was based on ambitious movement schedules out of Vietnam, including increasing numbers of immigrants which would double the departure from the previous year's high. This was justified because of the agreement of the Philippines and Vietnam to institute direct flights to the Philippines, where Amerasians and their families go for English language training and cultural orientation programs. The inefficient management of the transportation system and medical processing in Vietnam, however, resulted in sporadic movements in the first months of the year.

When it became clear that Vietnam would not agree to a resumption of talks on reeducation center detainees, we reallocated numbers originally intended for this population to the regional ceiling for Soviet and East European refugees. The resulting fully-funded ceiling of 19,500 appeared to be all that the transportation and processing system out of Vietnam would be able to handle. As a result, we estimated in February at a hearing before the House Foreign Affairs Subcommittee on Asian and Pacific Affairs that we could not admit more than 19,500 refugees and Amerasians under the ODP. With the help of the Intergovernmental Committee for Migration (ICM), which assists us in the processing and movement of refugees worldwide, the transportation difficulties eased in the spring. We included in both our supplemental request and in the Emergency Consultations proposal the restoration of 2,500 of the previously reallocated numbers to the ODP, for a final revised level of 22,000. I am pleased that we now have both a Presidential Determination establishing the ceiling and the supplemental appropriations from Congress to make it possible to use these admissions numbers. However, it remains uncertain as of today whether we will be successful in moving that many people out of Vietnam.

At the Geneva Conference the United States called on Vietnam to set an initial target of 6,000 departures under ODP to all resettlement countries per month. We plan to assign additional personnel to the program so that our interviews in Vietnam can increase from 3,000 to 4,500 per month. Authorization to accomplish this has already been transmitted to our Embassy in Bangkok, and will commence with the August interview trips to Ho Chi Minh City.

Amerasians and Reeducation Center Detainees

Since the beginning of the program, there are two groups of Vietnamese refugees who have been of special humanitarian concern, not only for the U.S. government, but for all Americans who remember the Vietnam war and its effects. I refer, of course, to Amerasian children fathered by Americans in Vietnam and to Vietnamese who suffered detention in reeducation camps because of their support for the United States or for the former South Vietnamese government.

In September 1984, Secretary Shultz in statements before the Committee and the Senate Judiciary Committee announced on behalf of President Reagan a major U.S. humanitarian initiative to resettle the Amerasian children and seeking the release and resettlement of those persons imprisoned in Vietnam's so-called "reeducation centers."

We are having considerable success with the Amerasian part of the initiative with more than 6,000 children and 10,000 relatives totaling 16,000 persons having been resettled so far.

We are also gratified that the reeducation center detainee population has been reduced, according to the Vietnamese, from 7,000 persons in 1985 to about 200 at present.

We remain profoundly disappointed, however, that only 600 detainees and 2,400 of their family members, totaling 3,000 persons have been allowed to leave Vietnam and the continued "detention" of at least 200 persons remain (along with the unresolved POW/MIA issue) the last, most painful, unhealed wound of the war -- and the cause of anguish and suffering within the Vietnamese-American community in this country.

Amerasians

We have resettled Amerasians under the ODP since the beginning of the program. After a eighteen month hiatus in interviews, in the summer of 1987 the first bilateral meetings between the U.S. and the SRV yielded an agreement to begin Amerasian interviews in October of that year. Since then, more than 9,000 Amerasians and their family members have departed Vietnam under the bilateral Amerasian program. Estimates of the total number of Amerasians and family members to be resettled approached 40,000 after the war, of whom nearly 20,000 have departed Vietnam through the ODP. We have adapted our regular five-month training and orientation programs in the Philippines to provide the special attention that Amerasians -- now teenagers and young adults -- need before coming to this country. We expect to admit more than 10,000 Amerasians and their family members in FY 1989, and our current budget request includes funding for 13,000 in FY 90.

We have benefited from strong bipartisan Congressional interest in this program, especially that of Representative Robert Mrazek, who introduced special legislation to provide for this special group of new Americans. Under his Amerasian Immigration legislation which took effect in March 1988, Amerasians and their families are processed as immigrants to the U.S., but with benefits identical to those that refugees receive. I am pleased to report to you that ground has been broken in Ho Chi Minh City for an Amerasian transit center, a project which should ease access of Amerasians and their families to the admissions program.

Reeducation Center Detainees

After six years of unrelenting diplomatic efforts, we finally succeeded in having the Vietnamese begin negotiations to Hanoi last July, achieving an agreement in principle. Shortly thereafter, the Vietnamese "temporarily suspended" further negotiations.

Since that date the Vietnamese rebuffed all of our efforts to resume talks until the breakthrough on June 14 in Geneva when, in a bilateral meeting, the Vietnamese agreed to resume the talks in Hanoi next month.

At the Conference, the Head of the U.S. Delegation, Deputy Secretary Lawrence S. Eagleburger declared:

"The world looks to Vietnam to provide full opportunity for resettlement to those who have been detained in reeducation camps. Nothing the Socialist Republic of Vietnam could do in this area would be more favorably received by the United States and the international community. In 1984, President Reagan affirmed the commitment of the American people to welcome with open arms prisoners and their families from reeducation camps. Today, I reaffirm that commitment on behalf of President Bush. And I call upon Vietnam to resume negotiations with the United States, looking toward the day when this large group of excluded persons will be allowed to emigrate. Only then will the Orderly Departure Program become a true alternative to clandestine departure."

We are gratified at the positive response of Vietnam to our request.

Current Issues in the ODP

Access. The only effective way Vietnamese wishing to emigrate will be persuaded not to flee clandestinely is if they see the Orderly Departure Program as a "viable alternative," are permitted to make application, and, if eligible for a resettlement country's program, receive an exit permit.

Vietnam has now stated in supporting the adoption of the Comprehensive Plan of Action that it is committed to opening orderly departure to everyone.

Logistics. Vietnam has also committed itself to resolving the present backlog of persons awaiting medical examination and transportation. We welcome this positive attitude, and are pleased to report that Vietnam has granted permission to the Intergovernmental Committee on Migration (ICM) to open an office in Ho Chi Minh City. The United States has been a strong supporter of this action.

Letters of Introduction (LOIs). Letters of Introduction are issued to persons who appear to fall within three ODP categories:

Category I -- family reunification. Reuniting American citizens with their families is a high priority. The American Embassy in Bangkok has more than 60,000 current immigrant visa (IV) petitions on file now, with many more files containing non-current petitions, and several hundred new petitions arriving each month.

Category II -- former U.S. government employees, U.S. firms or organizations, former Vietnamese government, civil and military personnel or those who had a close association with U.S. government policies and programs. There are 7,500 cases in this category.

Category III -- reeducation center detainees. There are presently applications from 18,000 detainees who have served five years or more in reeducation centers, who with family members total approximately 72,000 persons.

Processing. The new ODP adjudication procedures, wherein all applicants not qualifying for immigrant visas were examined as to their meeting worldwide refugee guidelines criteria, went into effect with the February (1989) interview trip. The following figures provide the number of people approved at the time of interview for February through June. The figures do not include Amerasian adjudications. They indicate that 66% of those considered for refugee status could not meet refugee criteria, and were approved under the Attorney General's Public Interest Parole program.

	Granted Refugee Status (101(a)42)	Granted Parole Status	Total Refugee Interviews	Approved as Immigrant	Total Number Interviewed
February	198 (26%)	551	749	1,100	1,849
March	169 (20%)	661	830	863	1,693
April	193 (35%)	363	556	871	1,427
May	225 (50%)	234	459	625	1,084
June	352 (46%)	416	768	826	1,217
Total	1,137 (34%)	2,225	3,362	4,285	7,647

While there are slight variations from trip to trip, the overall rate of approval -- i.e., as either refugee or parolee -- at the time of interview in family reunification cases has averaged over 85%, with the remainder either rejected for resettlement in any category, placed in a pending category, or placed on hold pending a close family member's having access to ODP. Most of those in pending status have their cases favorably resolved within 3 or 4 months, for an overall approval rate of well over 90%. This compares with an overall approval rate of about 88% which applicants applying for ODP experienced in the pre-1986 days, when cases were not actually adjudicated in Vietnam.

Mr. Chairman, I have touched on only a few areas of interest in only one region of the world. If I appear to be giving you "the good news," it is because of the successes we have seen in the operation of the ODP over the past decade, but especially since we began interviewing again in 1987. Reuniting Americans with their family members in Vietnam; beginning the Amerasian immigration program; expanding refugee, immigrant, and Amerasian departures to more than double the previous year's levels; and now the possibility that we might be able to increase substantially our resettlement of reeducation center detainees are all sound accomplishments in a solid program. I thank you for the opportunity to discuss them with you today.

Mr. MORRISON. Ms. Combs, would you proceed next.

STATEMENT OF DELIA B. COMBS, ASSISTANT COMMISSIONER FOR REFUGEES, ASYLUM AND PAROLE, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Ms. COMBS. Mr. Chairman, it is a pleasure to appear before this subcommittee to discuss with you many of the aspects of current processing of Vietnamese family reunification cases under the Orderly Departure Program. We appreciate this opportunity to explain in greater detail what we are doing. The administration policies toward Soviet immigration and toward Vietnamese emigrees under ODP are rooted in the decision taken last year at the highest levels of the previous administration to adjudicate all refugee and asylum applications according to a uniform standard equitably applied worldwide.

In addition, and most importantly, the decision was made to continue the open door which the United States has had over the past decades to the eventual entry of all qualified Vietnamese through ODP and Soviet applicants who have not had access to normal immigration procedures in their country of origin.

Under the new adjudication procedures, no Vietnamese who would have previously entered the United States as a refugee by way of ODP is being denied the opportunity of entry into the United States. While adjudicating refugee status according to the worldwide standard, we are keeping faith with these to whom expectations of entry into the United States have been given through the dissemination inside Vietnam of ODP eligibility criteria and more formally through the issuance of official letters of introduction by extending the use of the Attorney General's parole authority to all those applicants interviewed by found ineligible for refugee status.

To accept parole and enter the United States, an applicant has to produce an acceptable affidavit of support or valid job offer. This requirement is exactly the same as and no more onerous than that for the admission of Vietnamese as immigrants under ODP and in fact is a statutory requirement for immigrant admission worldwide.

The Vietnamese Government currently allows us access in large number to only two categories of Vietnamese Amerasians who are being adjudicated for admission under the Amerasian Homecoming Act and those Vietnamese applying to use ODP for purposes of family reunification under category I.

Category I applicants are almost exclusively holders of LOI's from the U.S. Government and its beneficiaries of either approved current or approved noncurrent immigrant visa petitions from relatives in the United States. The families of ODP reunification cases are already aware of the requirement for filing acceptable affidavits for support before their relatives may enter the United States and many relatives have already filed these affidavits with the ODP office in Bangkok.

Primarily these persons have submitted their applications to ODP in order to emigrate and join their relatives in the United States. As ODP category I now operates, it is first and foremost a category for family reunification under immigrant-like procedures

and requirements. ODP categories II and III are primarily nonfamily refugee categories. The United States currently does not have access in large numbers of persons in these other nonfamily reunification categories.

Once again, Mr. Chairman, we would like to thank you for this opportunity to clarify our role and objectives in the Orderly Departure Program. We would be happy to answer any questions you may have.

Mr. MORRISON. Thank you very much, Ms. Combs.
[The prepared statement of Ms. Combs follows:]

TESTIMONY OF

**DELIA COMBS, ASSISTANT COMMISSIONER
REFUGEES, ASYLUM, AND PAROLE
IMMIGRATION AND NATURALIZATION SERVICE**

Mr. Chairman,

It is a pleasure to appear before this Subcommittee to discuss with you many of the important aspects of current processing of Vietnamese family reunification cases under the Orderly Departure Program (ODP).

IMPLEMENTATION OF WORLDWIDE STANDARD

We appreciate this opportunity to explain in greater detail what we are doing, and to clarify some of the misconceptions which have developed concerning INS adjudication of refugee applications under the Orderly Departure Program (ODP) in Vietnam.

The Administration's policies toward Soviet emigration, and toward Vietnamese emigres under ODP, are rooted in the decision taken last year at the highest levels of the previous Administration to adjudicate all refugee and asylum applications according to a uniform standard, equitably applied worldwide.

In addition, and most importantly, the decision was made to continue the "open door" which the United States has had over the past decades to the eventual entry of all qualified Vietnamese (through ODP) and Soviet applicants who do not have access to normal emigration procedures in their countries of origin. To this end, a special program has been developed for these people

who must obtain hard-to-get and time-limited official government exit permission in order to depart, and therefore do not have the flexibility to wait for their turn in the U.S. immigration or refugee processing queues.

The Need for a Worldwide Adjudications Standard

Since the passage of the Refugee Act of 1980, observers in the Congress, in previous Administrations, and in private voluntary and advocacy organizations, have remarked about the need for adjudication according to current definition of refugee. Other observers remarked that refugee and asylum applications were still not being adjudicated according to a uniform standard.

As these observers noted, such lack of uniformity runs contrary to the intent of Congress in adopting an international, country-neutral definition of refugee: "... to eliminate discrimination in the granting of refugee status on the basis of outmoded geographical and ideological considerations" (GAO Report GGD-87-33BR, dated January 1987 refers). Since the February 1989 application of the worldwide standard to the adjudication of Vietnamese refugee applicants inside Vietnam, considerable misinformation and misconceptions have developed about just what is being done, who is being interviewed, who is getting out under which status, and what effects this will have on the entry of

Vietnamese under the ODP and on the overall situation of Indochinese asylum-seekers in East Asia.

Therefore, we look forward to clarifying these points in our discussions with you. We have been very pleased by the close cooperation between the Sub-committee's staff and our staff in the preparations for this hearing. We hope that such close cooperation can and will continue in the future.

Current Procedures

Under the new adjudications procedures, no--repeat, no--Vietnamese who would previously have entered the U. S. as a refugee via ODP is being denied the opportunity of entry into the United States.

While adjudicating refugee status according to the worldwide standard, we are keeping faith with these to whom expectations of entry into the United States have been given through the dissemination inside Vietnam of US/ODP eligibility criteria and after their receipt of Vietnamese exit permission, and more formally, through the issuance of official "Letters of Introduction (LOIs)" by extending the use of the Attorney General's authority to offer entry under "public interest parole" for those applicants interviewed but found ineligible for refugee status. These LOIs are issued by the U.S. Department of

State in Bangkok after initial screening of an ODP application received either directly from the applicant or from someone who knows the applicant's circumstances well; in many cases, applications will be accompanied by documentation and affidavits and/or other documentation.

To accept parole and enter the United States, an applicant has to produce an acceptable Affidavit of Support (AOS: INS Form I-134) or a valid job offer. This requirement is exactly the same as, and no more onerous than, that for the admission of Vietnamese as immigrants under the ODP, and in fact is a statutory requirement for immigrant admission worldwide. And I might add, Mr. Chairman, no one seems to be complaining about these statutory requirements for immigrants.

Therefore, we were somewhat surprised by the negative early reaction some observers had to these changed procedures and to the requirement of AOSs for parolees. In subsequent discussions with these same observers, many previous misconceptions and objections have been resolved.

Interviews

Let's take a moment to recall exactly who is currently being interviewed for entry into the United States via ODP. Contrary to what some observers may have thought, the Vietnamese

Government currently allows us access in large numbers to only two categories of Vietnamese: Amerasians who are being adjudicated for admission under the Amerasian Homecoming Act and those Vietnamese applying to use ODP for purposes of "family reunification," ODP Category I. Applicants being interviewed under ODP Category I are:

- . since recently, almost exclusively holders of LOIs from the U.S. Government; and,
- . almost exclusively beneficiaries of either approved current, or approved non-current, immigrant visa petitions filed by relatives in the United States.

There are a few ODP Category I applicants being interviewed who are not yet holders of official U.S. Government LOIs nor beneficiaries of approved visa petitions; they are nevertheless family reunification cases who would eventually qualify for LOIs once their relatives in the United States have completed their own adjustments of status and are eligible to apply on behalf of eligible relatives still in Vietnam.

The families of all ODP family reunification cases are already aware of the requirement for filing acceptable Affidavits of Support before their relatives may enter the United States; and

many relatives have already filed these Affidavits with the ODP office in Bangkok.

ODP Category I was established as a category for the admission of refugees with immediate family links to relatives in the United States. But primarily, these persons submitted their applications to ODP in order to emigrate and join their relatives in the United States. As ODP Category I now operates under State Department criteria and procedures, it is first and foremost a category for family reunification under immigration-like procedures and requirements.

On the other hand, ODP Categories II and III are primarily non-family reunification refugee categories: ODP Category II is for former employees of the U.S. Government, while ODP Category III is for "other Vietnamese of interest to the United States": defined to include former employees of U.S. private firms, persons trained in or closely associated with the United States, present or former re-education camp detainees and recipients of U.S. awards. However, the U.S. currently does not have access to large numbers of persons in these other, non-family reunification ODP categories.

Who is Getting Out, and Under Which Status?

With the above in mind, Vietnamese are being approved for entry under a variety of channels of emigration; as Amerasian immigrants, as regular immigrants, as refugees, and as parolees.

The Attorney General's use of public interest parole is meant to be an additional -- although time limited -- channel of departure under ODP. This use of parole is an additional avenue of entry until the Administration's proposed "special interest immigrant" legislation, the Special Immigrant Protection Act of 1989, recently introduced by Congressman Lamar Smith (H.R. 2646), is passed which would permit Vietnamese in these kinds of circumstances to be considered for admission under that new statutory immigrant category.

Statistics

In order to better understand the program since we began using the worldwide standard, we need look at the statistical results of the INS adjudications trips into Vietnam since February. ODP statistics since the worldwide standard was extended to Vietnam in February 1989 are attached as Annex A. Although these statistics may sound a bit confusing, they are essential to an understanding of who is being interviewed and under which status they are being offered entry into the United States. Let's take

a look at the statistics for the most recent ODP interview trip:
June 1989.

June 1989

A total of 2,979 persons were interviewed in June, 1989. Of this total, 2,656 were approved for entry under one of the available channels, 157 were pending, 41 were placed on family hold, and 125 were rejected as ineligible for the ODP in general. There has always been a very small percentage, averaging around 5 percent, of prospective ODP applicants who were found ineligible for consideration under any channel, most commonly for misrepresentation of their qualifying link to the U.S. and/or to relatives in the U.S., or for their inability to substantiate and/or document that link. For the June ODP trip, most of those rejected were ineligible for entry as qualified accompanying family members of Amerasians.

Of the total approved after interview: 1,062 (or 40 percent) were applicants applying as Amerasians or accompanying family members; 1,594 (or 60 percent) were applicants applying under Category I family reunification. Of the approved family reunification applicants, 826 (or 52 percent) were approved for entry as immigrants; only the remaining 768 (or 48 percent) family reunification applicants were approved for entry as refugees or under parole after an INS refugee status

adjudication. Of the 768, 352 (or 46 percent) were approved as refugees, while the remaining 416 (or 54 percent) were offered entry under parole.

I would like to re-emphasize these statistics: of the total 2,979 applicants interviewed during the June 1989 ODP trip into Vietnam, only around 780 were subject to INS refugee status adjudication. Therefore, the much discussed INS approval rate-- for example, 46 percent for the month of June 1989 -- refers only to about 780 of the 2,979 persons interviewed; it does not refer to 46 percent of the entire 2,979. This is an important distinction and clarification: the offer of entry under parole affected less than fourteen (14) percent of those interviewed during the June trip.

There are a number of outstanding policy and procedural issues with the ODP as it is currently operating, but we at the Immigration and Naturalization Service (INS) feel that current ODP refugee approval rates under the INS worldwide standard are perfectly justified and accurately reflect the type of cases presented to us for adjudication.

INS Training and GAO Oversight

Although the INS staff in the Bangkok District are among the most experienced refugee adjudications officers the Service has anywhere around the world, we always believe that additional training can and does produce even better adjudications. To this end, INS is conducting an intensive week-long training seminar in Bangkok, Thailand, for all INS officers in the District. This seminar is currently in progress: taking place from 26 -30 June 1989.

Among the topics being discussed in Bangkok are: The results and implications of the June 1989 International Conference on Indochinese Refugees (ICIR) convened in Geneva, Switzerland, a follow-up to the 1979 international conference which established many of the original understandings concerning the situation of Indochinese asylum-seekers in East Asia; current refugee policy and procedures, issues and concerns; and-- in a comprehensive training program for INS refugee adjudicators similar to those held by INS since October 1988 October 1988 in Frankfurt, West Germany; February 1989 in Rome, Italy; March 1988 in Harlingen, Texas, Miami, Florida and New York, New York; May 1989 in Glynco, Georgia and Los Angeles, California -- an in-depth review of refugee adjudication policies, international responsibilities, U.S. legal requirements, adjudication interview techniques, past

and current conditions in Indochinese refugee-producing countries of origin.

In addition, Mr. Chairman, we understand that -- under your direction -- the General Accounting Office (GAO) is undertaking a comprehensive review of ODP policies and procedures, including a visit to Vietnam to observe INS adjudications of refugee applicants.

We welcome such a visit -- as we welcomed their visit to Rome and Moscow last February; a lot of good information comes from such trips. Information from their February trip proved useful to INS, to the Committee and to concerned public interest groups in further explaining and clarifying the complexities of the program. We hope the same useful results will come from the GAO's planned oversight review of ODP.

The Effect This Change Will Have on ODP

Primarily, the extension of the worldwide standard to the adjudication of Category I family reunification cases inside Vietnam, and the concomitant use of parole for those applicants found ineligible for admission as immigrants or refugees, means that more -- not fewer -- Vietnamese will have an avenue of exit from Vietnam. To this effect, the United States, at the June 1989 International Conference on Indochinese Refugees (ICIR) in

Geneva, Switzerland, announced that U.S. interviewing of ODP cases would be increased. Instructions to this effect have already gone out to Bangkok and the additional interviews will begin with the August 1989 trip into Ho Chi Minh City. Overall U.S. off-take from Vietnam via ODP will increase correspondingly over the ensuing months.

This increase furthers the objectives of the Comprehensive Plan of Action (CPA) adopted by the ICIR in Geneva which sets a comprehensive integrated international framework for coordinating national policies and actions for those countries involved in the situation and its various avenues for resolution. The United States is proud to have been among the first ODP recipient countries to augment its off-take as an incentive for prospective emigres to leave Vietnam via regular channels and thereby avoid the hazards of clandestine departures and the potentially fatal journeys over land or sea to a country of refuge.

The Administration's proposed Special Immigrant Protection Act of 1989 (H.R. 2646), as an official channel of departure via ODP, would, if passed and signed into law, be an important addition to the statutory mechanisms under which entry into the U. S. could most appropriately be effected.

Conclusion

Once again, Mr. Chairman, we would like to thank you for this opportunity to clarify our role and objectives in the Orderly Department Program (ODP). We would be glad to answer any questions you may have.

Thank you.

ADJSTATS

ANNEX A

BREAKDOWN OF AMERASIAN APPROVALS

INTERVIEW TRIP	AMCITS	% IMM*	% REF	% PAROLE	% TOTAL				
13MAR89-24MAR89	2	0%	290	83%	54	16%	2	0%	348
10APR89-21APR89	9	0%	631	81%	127	16%	13	0%	780
08MAY89-19MAY89	0	0%	1244	79%	339	21%	0	0%	1583
05JUN89-16JUN89	2	0%	882	83%	156	15%	22	0%	1062
10JUL89-21JUL89									0
07AUG89-18AUG89									0
04SEP89-15SEP89									0
02OCT89-13OCT89									0
30OCT89-10NOV89									0
27NOV89-08DEC89									0

TATOL 13 0% 3047 81% 676 18% 37 0% 3773

* Includes American Immigrants

NOTE: Parole cases had AC-list nos. & US relatives, but contained no Amerasians

BREAKDOWN OF REGULAR PROGRAM APPROVALS

INTERVIEW TRIP	IMM	% REF	% PAROLE	% TOTAL			
13FE889-26FE889	1100	59%	198	11%	551	30%	1849
13MAR89-24MAR89	863	51%	169	10%	661	39%	1693
10APR89-21APR89	871	61%	193	14%	363	25%	1427
08MAY89-19MAY89	625	58%	225	21%	234	22%	1084
05JUN89-16JUN89	826	52%	352	22%	416	26%	1594
10JUL89-21JUL89							0
07AUG89-18AUG89							0
04SEP89-15SEP89							0
02OCT89-13OCT89							0
30OCT89-10NOV89							0
27NOV89-08DEC89							0

TOTAL 4285 56% 1137 15% 2225 29% 7647

ADJUDICATION OF REFUGEE APPLICANTS (CATEGORY I)

INTERVIEW TRIP	PIP	ADJUDICATED		ADJUDICATED	TOTAL
		% REF	% TOTAL		
13FE889-26FE889	551	74%	198	26%	749
13MAR89-24MAR89	661	80%	169	20%	830
10APR89-21APR89	363	65%	193	35%	556
08MAY89-19MAY89	234	51%	225	49%	459
05JUN89-16JUN89	416	54%	352	46%	768
10JUL89-21JUL89	0		0		0
07AUG89-18AUG89	0		0		0
04SEP89-15SEP89	0		0		0
02OCT89-13OCT89	0		0		0
30OCT89-10NOV89	0		0		0
27NOV89-08DEC89	0		0		0

TOTAL 2225 66% 1137 34% 3362

Mr. MORRISON. Admiral Taylor, if you would go next.

STATEMENT OF REAR ADM. JAMES E. TAYLOR, DIRECTOR, POLITICO-MILITARY POLICY AND CURRENT PLANS DIVISION, OFFICE OF THE CHIEF OF NAVAL OPERATIONS

Admiral TAYLOR. Thank you, Mr. Chairman. On behalf of the Secretary of the Navy, I would like to express my appreciation for this opportunity to discuss with you the U.S. Navy's policies and practices regarding individuals encountered on the high seas fleeing Southeast Asia by boat.

The U.S. Navy has a well established policy of rendering assistance to persons in distress at sea. Navy policy comports with United States and international law as well as maritime, custom and traditions. U.S. Navy regulations require commanding officers to render assistance to any person found at sea at danger of being lost and afford all reasonable assistance to distressed ships insofar as it can be done without serious danger to his ship or crew.

Detailed guidance on rendering assistance to Southeast Asian refugees is promulgated by fleet commanders in operational orders. These are in effect standing orders for commanding officers of Navy ships and aircraft. The operational orders specify that within the limits of normal operations, every unit operating in the South China Sea is to be vigilant to the possibility of encountering refugees.

All Navy units operating in or transiting through areas where refugee craft may be encountered are directed to make every reasonable effort to detect and identify refugee vessels through the use of all normal onboard sensors.

When instructed to do so, commanding officers will adjust routes or port visits specifically for purposes of searching for refugees. When a refugee craft is encountered, commanding officers must ascertain whether those embarked require assistance such as food, water, medical assistance, mechanical repairs, navigational equipment or position information.

If refugees encountered at sea are experiencing or apt to experience undue hardship or if circumstances including adverse weather, pirates in the vicinity, unseaworthy vessel or other are such that death might ensue, commanding officers should embark the refugees. U.S. Navy aircraft sighting refugee vessels are instructed to notify U.S. Navy ships in the vicinity or in the absence of Navy ship, request merchant ship assistance as necessary to effect rescue of the refugees.

If there are no ships in the vicinity able to assist, U.S. Navy aircraft note and report to higher authority the position and general seaworthiness of the vessel. Additionally, Navy aircraft report any circumstances which suggest the vessel or those on board are in or about to be in danger or otherwise in distress.

Dedicated flights to relocate reported refugee vessels are ordered when required to preserve life. Since 1983, 1,380 refugees including 247 to date in 1989 have been embarked or assisted by the Navy. I'd like to add that those figures are adjusted from the distributed statement due to the embarkation of 92 refugees.

Mr. MORRISON. Could you give me those numbers again?

Admiral TAYLOR. Since 1983, 1,380 including 247 to date in 1989. This past Monday on June 26, 1989, U.S.S. *Reeves* and U.S.S. *Fife* embarked 92 refugees. They're on board. They picked them up 340 miles east of Vietnam in the South China Sea.

When refugees are embarked aboard a Navy vessel, they are cared for and transported to the ship's next port of call. Although embarkation of refugees may disrupt the ship's schedule, to the maximum extent possible, rerouting termination of normal ship's operations or delays of onward movement are avoided.

Upon embarking refugees in the South China Sea, the ship's commanding officer contacts his operational commander and the commander, U.S. Naval Forces Philippines, which is the area coordinator. The area coordinator in turn notifies the U.S. Embassy and the U.N. High Commissioner for Refugees representative for debarkation instructions.

Once a port of debarkation is identified, the commanding officer is given instructions accordingly. The Navy's primary responsibility under these circumstances is to transport the refugees to the appropriate port of debarkation. The decision as to the port of debarkation and the ultimate country of resettlement is made by the Department of State in conjunction with the U.S. High Commissioner for Refugees and the country accepting the refugees for resettlement.

Mr. Chairman, having experienced the perils and rigors of sea, I'd like to assure you that naval personnel have great compassion and empathy for refugees encountered on the high seas attempting to flee Southeast Asia. The U.S. Navy's policies have resulted in what we consider to be an outstanding record of responsiveness, swift compassion to sea rescues in the South China Sea. The existing operational guidance provides an internationally accepted level of assistance for refugees and minimum interference with current and projected operations.

Thank you, sir. That completes my statement.

Mr. MORRISON. Admiral, thank you very much.

[The prepared statement of Admiral Taylor follows:]

STATEMENT OF
REAR ADMIRAL JAMES E. TAYLOR, U. S. NAVY
DIRECTOR, POLITICO-MILITARY POLICY AND CURRENT PLANS DIVISION
OFFICE OF THE CHIEF OF NAVAL OPERATIONS

Mr. Chairman and members of the subcommittee:

I am Rear Admiral James E. Taylor, Director, Politico-Military Policy and Current Plans Division, Office of the Chief of Naval Operations. On behalf of the Secretary of the Navy, I wish to express my appreciation for this opportunity to discuss with you the U.S. Navy's policies and practices regarding individuals encountered on the high seas fleeing Southeast Asia by boat.

The U.S. Navy has a well-established policy of rendering assistance to persons in distress at sea. Navy policy comports with U.S. and international law, as well as maritime custom and tradition. U.S. Navy Regulations (Article 0925) requires commanding officers to "render assistance to any person found at sea in danger of being lost" and "afford all reasonable assistance to distressed ships" in so far as it can be done "without serious danger to his ship or crew."

Detailed guidance on rendering assistance to Southeast Asian refugees is promulgated by fleet commanders in operational orders that are, in effect, "standing orders" for commanding officers of Navy ships and aircraft. The operational orders specify that, within the limits of normal operations, every unit operating in the South China Sea is to be vigilant to the possibility of encountering refugees. All Navy units operating in, or transiting through, areas where refugee craft may be encountered are directed to make every reasonable effort to detect and identify refugee vessels through the use of all normal onboard

sensors. When instructed to do so, commanding officers will adjust routes or port visits specifically for purposes of searching for refugees.

When a refugee craft is encountered, commanding officers must ascertain whether those embarked require assistance, such as food, water, medical assistance, mechanical repairs, navigation equipment or position information. If refugees encountered at sea are experiencing, or are apt to experience, undue hardship, or if circumstances including adverse weather, pirates in the vicinity, unseaworthy vessel, or other factors are such that death might ensue, commanding officers should embark the refugees. U.S. Navy aircraft sighting refugee vessels are instructed to notify U.S. Navy ships in the vicinity or, in the absence of Navy ships, request merchant ship assistance as necessary to effect rescue of the refugees. If there are no ships in the vicinity able to assist, U.S. Navy aircraft note and report to higher military authority the position and general desirability of the vessel. Additionally, Navy aircraft report any circumstances which suggest the vessel or those aboard are in, or about to be in, danger or otherwise in distress. Dedicated flights to relocate reported refugee vessels are ordered when required to preserve life.

Since 1983, 1,288 refugees, including 155 to date in 1989, have been embarked or assisted by the Navy. When refugees are embarked aboard a Navy vessel, they are cared for and transported to the ship's next port of call. Although embarkation of refugees may disrupt the ship's schedule, to the maximum extent possible,

rerouting, termination of normal ship's operations or delays of onward movement are avoided. Upon embarking refugees in the South China Sea, the ship's commanding officer contacts his operational commander and the Commander, U.S. Naval Forces Philippines (the area coordinator). The area coordinator in turn notifies the U.S. Embassy and the United Nations High Commissioner for Refugees representative for debarkation instructions. Once a port of debarkation is identified, the commanding officer is given instructions accordingly. The Navy's primary responsibility under these circumstances is to transport the refugees to the appropriate port of debarkation. The decision as to a port of debarkation and the ultimate country of resettlement is made by the Department of State, in conjunction with the United Nations High Commissioner for Refugees, and the country accepting the refugees for resettlement.

Having experienced the perils of the sea, Naval personnel have a great deal of compassion and empathy for refugees encountered on the high seas attempting to flee Southeast Asia. The U.S. Navy's policies have resulted in what we consider to be an outstanding record of responsive, swift and compassionate at sea rescues in the South China Sea. The Navy's existing operational guidance provides an internationally accepted level of assistance to refugees and minimum interference with current and projected operations.

Thank you for allowing me this opportunity to outline the Navy's policies on this issue.

Mr. MORRISON. We will take a short recess of 5 to 8 minutes and Mr. Holman, we'll ask for your statement as soon as I can get back from voting. Thank you. The committee will stand in recess.

[Recess.]

Mr. MORRISON. The hearing will reconvene.

We will turn now to Mr. Holman.

Thank you for being with us. Once again, your written statement will be made part of the record, and please summarize that.

STATEMENT OF PHILIP A. HOLMAN, ACTING DIRECTOR, OFFICE OF REFUGEE RESETTLEMENT, FAMILY SUPPORT ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. HOLMAN. Thank you, Mr. Chairman.

I am pleased to have this opportunity to be here to speak about the domestic aspects of refugee assistance and services for which the Office of Refugee Resettlement is responsible.

Our statement for the record endeavors to respond to your letter of invitation, which focuses on the types of assistance available to various refugee groups and the anticipated budgetary needs for the remainder of this fiscal year and next fiscal year.

Basically, there are five major categories of assistance and services which are carried out through Federal refugee funds appropriated to ORR. Most of these funds go to the States. Most are provided either under formula allocations or to meet actual costs of the States, to the extent of available funds. These includes cash and medical assistance, the care of unaccompanied minors, social services, target assistance, preventive health, and a separate voluntary agency matching-grant program under which Federal grants to national voluntary refugee resettlement agencies are matched by equal contributions from the private sector.

In addition to these reimbursement and formula funds, ORR also provides a number of discretionary types of grants where we have identified special needs and impacts that might be addressed. A few examples of these—and these funds are drawn from the targeted assistance activity and from the social service funds—a few examples are aid to the Dade County, FL, public schools on behalf of the impact of Cuban and Haitian entrants; to Jackson Memorial Hospital in Miami, reflecting the same type of impact; to the Lowell, MA, public schools, which has experienced a recent, rather sudden influx of Cambodian refugees; to Los Angeles County to provide additional services to Armenian refugees.

Then, we have special projects under the Fish-Wilson amendment in both California and Oregon to provide an emphasis on the rapid placement of refugees in jobs and reduction of dependency. Finally, to mention another example, we have placed emphasis this year working with Interaction, the umbrella agency for the voluntary resettlement agencies, on assistance in communities which are cluster sites for Amerasians, where the funds are intended to enable the Amerasians to receive the types of available services in the community that they need, to put the Amerasians and the service providers in touch with each other and to see that services are provided. We are allocating about \$1 million to that effort this year.

All of these activities, the major focus of all them is on providing transitional assistance to refugees and doing our best to enable refugees to become employed and self-supporting.

To turn to the second aspect, that of funding, for fiscal year 1989, the Department, as we indicated an intent earlier, the Department, last week, has proposed to the Congress as reprogramming of \$21.9 million from the State-administered cash and medical assistance activity to the voluntary agency matching-grant activity. The purpose of this is to be able to address the additional refugees who will be admitted under the President's increase in the 1989 ceiling.

For 1990, we have, of course, pending with the Appropriations Committees our 1990 budget request. The administration believes, to state it briefly—the administration believes that under the bipartisan budget agreement, the 5.9-percent increase which is allowed for all domestic discretionary programs will provide the flexibility for appropriate adjustments in reaching a final figure for fiscal year 1990.

Thank you, Mr. Chairman. I will be glad to try to respond to any questions.

Mr. MORRISON. Thank you very much.

[The prepared statement of Mr. Holman follows:]

Statement by

Philip A. Holman
Acting Director
Office of Refugee Resettlement
Family Support Administration
Department of Health and Human Services

before the

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

June 28, 1989

Mr. Chairman and Members of the Committee, I am pleased to have this opportunity to provide current information on the domestic aspects of refugee resettlement and assistance for which the Office of Refugee Resettlement (ORR) is responsible.

Your letter of invitation focuses on "the types of assistance available to various refugee groups and the anticipated budgetary needs for the remainder of this fiscal year and fiscal year 1990."

Assistance available through ORR falls into the following major types:

-- The State-administered program of cash and medical assistance and care for unaccompanied minors. Under the FY 1989 appropriation \$261.8 million is available for these purposes. Awards to the States are based on State estimates and expenditure reports.

-- The State-administered program of social services. Approximately 85 percent of the funds appropriated for social services are allocated to the States under a statutory formula which prescribes that the allocation be based on each State's share of the national population of refugees who entered the U.S. during the three fiscal years preceding the year for which the funds are appropriated. A total of \$55.2 million is being allocated in this manner for FY 1989. The remaining 15 percent of social service funds are used by ORR for discretionary purposes. Most of these funds are also awarded to the States. Principal uses are for special projects in high-dependency States to help increase employment and self-support -- which we term the Key States Initiative -- and projects to advance resettlement and employment in areas that appear to offer good opportunities for further resettlement.

-- Funds for preventive health services are made available by ORR to the Public Health Service. These funds cover both oversight of overseas screening and grants to State and local public health departments for health screenings and followup in the U.S. For FY 1989, \$5.8 million is available for these purposes.

-- Under the voluntary agency matching grant program, ORR makes awards to national voluntary refugee resettlement agencies to provide assistance and services designed to lead to self-support. Federal awards of up to \$957 per refugee are made under this program. The Federal funds must be matched on a dollar-for-dollar basis by private-sector funds. \$15.8 million is being awarded in FY 1989 for the matching grant program.

-- Targeted assistance is the final budget category. These funds are awarded to States for designated counties with high concentrations of refugees in order to provide additional services directed mainly toward employment and self-support. In addition to a formula allocation for this purpose, some targeted assistance funds are used for discretionary awards to meet special needs. In FY 1989, these discretionary awards include the Dade County (Florida) public schools, Jackson Memorial Hospital in Miami, the Lowell (Massachusetts) public schools, and Los Angeles County to provide services for recently arrived Armenian refugees. A total of \$34.1 million will be awarded for targeted assistance in FY 1989, including both the formula allocations and the discretionary projects.

All of these types of assistance and services are available to all refugee groups. In the State-administered and targeted

assistance programs, the major determinants of utilization are numbers of refugees and need. Within the requirements of the Refugee Act and ORR regulations and guidelines, State and local governments determine the exact uses of their social service and targeted assistance allocations.

In the matching grant program, grants are awarded in response to applications from national voluntary resettlement agencies which agree to provide the required private-sector matching funds. Since the matching grant program began in 1979, the major participant has been the Council of Jewish Federations, resettling principally Soviet Jewish refugees. Other agencies currently participating are the International Rescue Committee, the Lutheran Immigration and Refugee Service, and the United States Catholic Conference.

ORR's discretionary grants are generally based on the identification of particular needs where supplementation of regular allocations is appropriate. For example, two of the Key States Initiative projects focus primarily on Hmong refugees, who are dependent on assistance, to help them move toward self-support. The discretionary targeted assistance awards to Florida reflect the impacts of Cuban and Haitian entrants on the schools and public hospital. An allocation of approximately \$1 million aims at helping communities designated as Amerasian "clusters" to coordinate the services available in those communities to help this very vulnerable population.

For more than 12 years, ORR has also strongly supported the concept of refugee organizations assisting their fellow-refugees in the resettlement process. We have consulted with refugee organizations, both informally and formally; our most recent national consultation was held last October. In terms of funding, we have focused financial support in three ways over the years:

-- Through technical assistance, to help refugee organizations increase their capacity to provide services. Since 1980 we have provided approximately \$1.5 million to help refugee organizations develop the capacity needed to deliver services economically and effectively.

-- Through direct discretionary service grants to refugee organizations. Since 1980 we have provided about \$4 million in direct awards for refugee mutual assistance associations. This fiscal year, we expect to award approximately \$1 million to refugee organizations for planned secondary resettlement projects and another \$300,000 to two California counties which will contract with refugee organizations to address unmet refugee needs in the Central Valley of California.

-- Through setting aside a portion of each State's social service formula allocation to be used to fund the provision of services by refugee mutual assistance associations (MAAs). This year's MAA set-aside is \$2.5 million. Since 1982, these awards have totaled over \$18 million.

Mr. Chairman, let me turn now to the second aspect of the Committee's invitation -- the anticipated budgetary needs for the remainder of FY 1989 and for FY 1990.

The Administration's position with respect to FY 1989 has not changed since the testimony on April 6 before this Subcommittee by Catherine Bertini, our Acting Assistant Secretary for Family Support. In that testimony, she indicated that, if the President made a final determination to increase the FY 1989 refugee admissions ceiling from 94,000 to 116,500, the Department intended to propose a reprogramming of \$21.9 million from the funds available for the 100 percent federally subsidized State-administered cash and medical assistance program and State administrative costs to the voluntary agency matching grant program. Last week, following the President's decision to increase the admissions ceiling, the Department sent letters proposing this reprogramming to the House and Senate.

This proposed reprogramming represents 8.4 percent of the \$261,280,000 appropriated for cash assistance, medical assistance, and State administration for FY 1989. We are notifying the States

of this proposal and advising them, if the reprogramming is approved, of the priorities that they must observe in the event that the remaining funds are insufficient to cover full funding for assistance to refugees during their first 24 months in the United States.

With respect to FY 1990, the Bipartisan Budget Agreement provides a 5.9 percent increase in total domestic discretionary spending in FY 1990 over the FY 1989 levels. The Administration believes there is ample funding within the confines of this budget agreement to fund the resettlement needs of newly arriving refugees and hopes to work with the Congress to set the appropriate funding level.

Mr. Chairman, that concludes my opening statement. I will be pleased to try to answer any questions you and Members of the Subcommittee may have.

Mr. MORRISON. Let me start with you, Mr. Holman, since a number of the things that you just mentioned piqued my interest.

Your written statement says that now that the President has approved the increase in refugee numbers for fiscal 1989 as a result of the emergency consultation, you are formally submitting a reprogramming request to the Appropriations Committees. Is that correct?

Mr. HOLMAN. That is correct, Mr. Chairman. The Department sent the letters to the Appropriations Committees last week.

Mr. MORRISON. The representative of your Department who testified here the last time this came up, at that time, took the position that reprogramming approval was not required. I take it the Department has revised its view on that subject?

Mr. HOLMAN. Yes. The statement made at that time was not completely correct and, in fact—

Mr. MORRISON. It was not really correct all, was it?

Mr. HOLMAN. That is correct, that it was not correct. Therefore, in reviewing the written testimony of that hearing, we submitted some additional information suggested as inserts to the written record. One of those inserts would, indeed, have clarified that to conform to what I have said.

Mr. MORRISON. OK. Well, I just wanted to make sure that we now all—we have all got it right.

Mr. HOLMAN. Yes, Sir.

Mr. MORRISON. Let me ask you this question: Precisely why, as the administration asked for \$85 million and received \$85 million in State Department funds for this population and not asked for, at the same time, an increase in budget authority to deal with the problem of resettlement? Is care and maintenance in Europe a higher priority in the administration than resettlement assistance in the United States?

Mr. HOLMAN. My understanding is that there were two aspects to the administration decision on this; one being the overall consideration of the Federal deficit; the second, the feeling that these costs could, indeed, be absorbed within the available funds.

Mr. MORRISON. When you say "absorbed within the available funds," you mean deducted from the reimbursement for the States, don't you?

Mr. HOLMAN. Exactly, Mr. Chairman.

Mr. HOLMAN. So, that is not absorbed except if "absorbed" means absorbed by the States. Isn't that right?

Mr. HOLMAN. That is correct. The \$21.9 million would, indeed, be absorbed by the States.

Mr. MORRISON. In other words, the new federalism—send the bill to the States. That is a rhetorical question.

What is the intention of the Department if the reprogramming is denied?

Mr. HOLMAN. If the reprogramming is denied, we would simply proceed with the appropriation as it now exists. In other words, the \$21.9 million that we have proposed for reprogramming would remain in the activity for cash and medical assistance and would be available to the States.

Mr. MORRISON. But how would you deal with the additional refugees?

Mr. HOLMAN. We do not have any further proposal on that.

Mr. MORRISON. Well, exactly what is to be done with the individuals who come? Are you saying to the voluntary agencies involved in the matching-grant program that you have suggested need \$21.9 million additional money to resettle the additional numbers of Soviet Jews that they should not undertake that activity, that they should expect to undertake it with private funds alone, or that the administration has another idea?

Mr. HOLMAN. First of all, let me say that the refugees would be eligible for assistance. There is not a question as to the eligibility of refugees for assistance. naturally, we would hope that the—

Mr. MORRISON. They would be eligible for assistance from the States under the usual standards for AFDC as it applies to refugees, right?

Mr. HOLMAN. Yes, including the special initial program of refugee cash and medical assistance.

Mr. MORRISON. That was not what the \$21.9 million is for. Isn't the \$21.9 million for additional funds for the matching-grant program, which is especially targeted to Soviet Jews?

Mr. HOLMAN. That is correct, and the matching-grant program, of course, provides for several months an alternative to the State-administered cash—

Mr. MORRISON. And it is experience that that alternative seems to be effective in reducing welfare dependency in the long run. Isn't that right?

Mr. HOLMAN. Yes, Sir.

Mr. MORRISON. So, in other words, you are telling me that the administration's position is unless we gun the States \$21.9 million out of the cash and medical assistance program, we are willing to waste money of both the States and the Federal Government in the long run rather than find another way to come up with the \$21.9 million?

Mr. HOLMAN. It is correct that we are limited by this policy to the funds currently available to us. I would say, of course, that we would hope that the voluntary agencies would do the most that they could under that circumstance, if that circumstance occurs.

Mr. MORRISON. So, in addition to shifting the burden to the States, we would like to now shift the burden to the voluntary agencies, as well.

Are we so impecunious as a Nation and as a government that we would screw up our refugee resettlement policies over \$21.9 million?

Mr. HOLMAN. We are limited, Mr. Chairman, by this policy to the funds already appropriated.

Mr. MORRISON. "This policy"—what do you mean "this policy?" You mean the policy of OMB?

Mr. HOLMAN. That is correct.

Mr. MORRISON. I do not know how much advocacy has gone on from your level on up to the Secretary of HHS, but it does seem to me extraordinary that we would incur long-term higher costs and distribute the costs of national and, in fact, foreign policy of the United States with respect to refugees onto the backs of the States and the private agencies over an amount of \$22 million which, with

all due respect, in the Federal deficit, comes out to a rounding error.

So, it is really kind of sad news that you lost this battle with OMB. I think the reprogramming is in a lot of trouble, because I do not think the Appropriations Committee wants to send as bill to the States.

I will have some more questions.

The gentleman from Texas.

Mr. SMITH of Texas. Thank you, Mr. Chairman.

Ms. Combs, let me ask you a question in regard to your testimony.

You probably did not have time with your oral testimony to talk about some of the things that are in your written testimony, and I would like to call this committee's attention to something that was mentioned in your written testimony. This is on page 9, or it begins on page 9.

You talk about, for instance, using the most recent month, June 1989, and the statistics from that month in regard to the ODP interview process, and you mentioned that of a total of 2,979 persons interviewed, you conclude that the offer of entry under parole affected less than 14 percent of those interviewed during the June trip.

Would you explain to us how you go from—follow the process through and how you get to that 14 percent?

Ms. COMBS. Yes. Thank you.

In June 1989, 2,979 people were interviewed. Of that close to 3,000 number, 2,656 were approved under some channel. Of the 2,656 approved, 157 were also pending additional information, 41 put on family hold, and 125 were rejected. We have an average of about 5 percent of those who misrepresent their circumstances and are not eligible for the program. Most of this 125 who were rejected were not qualified as family members of Amerasians.

Mr. SMITH of Texas. Does that mean basically they were using fraudulent documents to try to prove something that was not true?

Ms. COMBS. They may or may not have had fraudulent documents but were not able to indicate that they were, indeed, related to the Amerasian family nor had they been part of a foster family relationship, having been together for a period of time.

Of the 2,656 approved, 1,062, or 40 percent of the total, were Amerasians and family members; 1,594, or 60 percent of those approved, fell into the category I family reunification channel. Of the 1,594, 52 percent, or 826, were approved as immigrants. Of the 1,594, 768, or 48 percent, were approved as refugees or offered parole. Of the 768 approved as refugees or parolees, 352, or 46 percent, were approved as refugees; 416, or 54 percent, were offered parole.

So, of the 2,979 total interviews, only about 780 were refugee-like cases. So, the 46-percent approved as refugees refers to 780 cases, not 46 percent of the close to 3,000 cases. Therefore, the offer of parole affected less than 14 percent of the total number who were interviewed during the month of June.

Mr. SMITH of Texas. Thank you. I think that 14 percent is probably a lot lower than people thought, and I just wanted to bring that out. At the same time, let me say to you that I also completely

concur with the INS policy of having a uniform standard that is equally applied throughout the world. Whatever the figure happens to be, whether it is 14 percent, 28 percent, 56 percent, I think the important thing is to adhere to that uniform standard and come up with the right number.

Mr. Funseth, let me ask you about an amendment that was alluded to this morning by a colleague of ours from Massachusetts. This was an amendment to H.R. 2022. As I understood it, basically the amendment says or would say that aliens who are from Vietnam who hold letters of introduction issued by the U.S. Embassy in Thailand should basically be deemed refugees.

Let me ask you to comment on the pros and cons of that amendment and specifically answer two questions. First of all, how many LOI's or letter of introduction are currently seeking entry into the United States? Second, under Senator Lautenberg's version of H.R. 2022 in the Senate, LOI's are presumed to have refugee status. Do you agree with that provision, and if not, why?

Mr. FUNSETH. To answer the second question, we don't agree with it because people who are approved for immigrants as immigrants receive letters of introduction, so by definition they are not refugees. We issue letters of introduction not to people who qualify as refugees but people who are eligible for admission to the United States, either as immigrants, either as refugees or under the Amerasian program.

We have over 60,000 approved immigrant visa petitions at our Embassy in Bangkok, all of whom have letters of introduction. I believe that the present total of letters of introduction are about 110,000, and we issue approximately 600 new letters a month.

Mr. SMITH of Texas. Thank you.

Mr. Chairman, I have some more questions.

Mr. MORRISON. We will go round and round.

Let's pick up right there, Mr. Funseth. Letters of introduction go whenever there is an approved immigrant petition; is that correct? That is one of the circumstances?

Mr. FUNSETH. A letter of introduction is issued to a person based on an examination of his application that he or she may be eligible for admission to the United States and we therefore request that that person be presented for interview by the Vietnamese authorities.

Mr. MORRISON. Right. Now, one of the categories is when there is an approved immigrant petition.

Mr. FUNSETH. Right.

Mr. MORRISON. The approved immigrant petition does not have to be current at the time of the LOI, or does it?

Mr. FUNSETH. It does.

Mr. MORRISON. In other words, you do not issue the LOI until the immigrant petition is current.

Mr. FUNSETH. Correct.

Mr. MORRISON. And to what other groups aside from petitioning immigrants do you issue LOI's, and what is the timing of the issuance?

Mr. FUNSETH. The LOI in addition to the immigrants is issued to persons who on an examination of the file would appear to be eligible for admission as refugees. Examples of that would be persons

who have been in reeducation, people who have worked for the United States Government, people who have been associated with the Vietnamese Government.

Mr. MORRISON. How long have you been issuing letters of introduction? As long as ODP has been in existence?

Mr. FUNSETH. Yes, sir.

Mr. MORRISON. To what extent do these LOI issuances to the nonimmigrants track the categories that were established for Vietnamese under the 1983 national security directive of President Reagan regarding the establishment of categories of individuals in Indochina who would be prima facie considered to be refugees?

Mr. FUNSETH. It should track with those categories.

Mr. MORRISON. So essentially those are the people.

Mr. FUNSETH. Right.

Mr. MORRISON. When was the National Security Directive revoked, repealed, rescinded or amended by the President of the United States?

Mr. FUNSETH. I don't believe it has been.

Mr. MORRISON. Isn't a national security directive of the President of the United States only subject to alteration by the President of the United States?

Mr. FUNSETH. Yes, sir.

Mr. MORRISON. Then how is it that we are proceeding under any other standard than that contained in the Presidential directive and implemented subject to the Presidential directive?

Mr. FUNSETH. I don't believe we are. I don't believe that what you are referring to, this establishment of worldwide standards, I don't believe that changes the basis of 93, which established categories. It permitted the granting of parole to persons who were found not to be eligible for—

Mr. MORRISON. What permitted the granting of parole?

Mr. FUNSETH. The directive of the Attorney General.

Mr. MORRISON. Let's back up. 1983 is the national security directive that directed that categories be established. Categories were established. They were published as a part of a document which has as its title "Worldwide Refugee Processing Standards." So at least in 1983 it was our opinion that the establishment of categories for certain individuals in Vietnam was a part of and consistent with the Refugee Act of 1980 and the establishment of worldwide processing standards, correct?

Mr. FUNSETH. Correct.

Mr. MORRISON. That structure, which gave a certain kind of presumptive treatment to these individuals which we have now established are the nonimmigrants who get LOI's, has or has not been altered?

Mr. FUNSETH. The categories of Vietnamese that were established pursuant to NSDD 93 are still in full force and effect in refugee processing under the ODP. What has happened in the subsequent directive, and perhaps the Assistant Commissioner should add because it came from the Attorney General, is that it is only people who were denied refugee status who are offered public interest parole.

Mr. MORRISON. I will get to parole later because I am not really asking about parole. I am asking just about the rules and the law.

You say we are using exactly the same legal structure as we were using a year ago. Nobody has changed any of the legal structure, the Presidential directive is in place, the categories are in place, we are issuing LOI's to people who we believe to be in those categories.

So then I am having trouble understanding what changed. In other words, something happened in January 1989. That is, instructions were given to the Bangkok office to do something different, and what was the something different? Either you or Ms. Combs can answer that.

Mr. FUNSETH. I will defer to Ms. Combs, but we believe that the subsequent INS decision to apply worldwide refugee processing standards is consistent with NSDD 93.

Mr. MORRISON. Does that mean doing nothing different from what was done before January? Is there a change or isn't there a change? If there is a change, what were we doing before the change that is different from what we are doing after the change?

Ms. COMBS. There is no change in our adjudicating refugee applications from NSDD 93. NSDD 93 created categories of people who were likely to be targets of persecution. This is very much a two-step process. NSDD 93 did not create a presumption.

Mr. MORRISON. What did create a presumption; nothing?

Ms. COMBS. There was no presumption. An individual could show that they were a member of a class of people who were likely to be persecuted if under NSDD 93 that person could show that perhaps they were a member of a religious group who historically had been persecuted in Vietnam. They then still had to show under the second part of NSDD 93 that they had been persecuted because of that membership in that particular religious organization.

For years and historically, refugees in Vietnam were given a benefit that other refugees in first asylum, for instance, were not given because the Immigration Service was unable to go into Vietnam to adjudicate refugees in a face-to-face interview. With the decision at high levels of the administration, the Attorney General and the Secretary of State, to implement a worldwide standard of refugee adjudications, refugee interviews became much more like other refugee interviews around the world.

However, because of the expectations of Vietnamese to come to the United States because this has been historically true, the Attorney General used his parole authority to offer to everyone who was not adjudicated in Vietnam to be a refugee.

Mr. MORRISON. See this document? It says "Immigration and Naturalization Service Worldwide Guidelines for Overseas Refugee Processing." It is dated August 1983. Is this still a current official document of INS?

Ms. COMBS. Absolutely.

Mr. MORRISON. Has it been superseded?

Ms. COMBS. No.

Mr. MORRISON. Chapter 4 is "Categories of Refugees." I would like to read from it. It says, "The categories have been identified and established on the basis of careful review and extensive factual evidence. The facts are sufficiently known and established to permit what is in essence 'judicial notice' to be taken of them without further proof."

“Thus, if the applicant clearly proves that he comes with an established category”—and the categories are not about persecution, they are about membership in particular groups of individuals—“thus, if the applicant clearly proves that he comes within an established category, he has also established that he is a likely target of persecution.”

It doesn't say that he has to then go on and prove by additional facts that he has a reasonable fear of persecution, because in fact he has established that he is a likely target of persecution, which is the standard. So you have just told me something that is not consistent with what this official document says.

What is going on?

Ms. COMBS. May I respond?

Mr. MORRISON. Yes, you certainly may. That is the question.

Ms. COMBS. Two operative words there, three, actually, but two phrases there, “judicial notice” and “likely target.” Judicial notice to me is not the same as a presumption. Judicial notice means that each applicant does not have to prove to INS that there was a war in Vietnam or that one time Catholics were persecuted.

The adjudicating INS officer will take judicial notice that yes, indeed, those things happened. Each applicant does not have to show that to us again. But being a likely target of persecution is one of the steps. That is the first step.

Mr. MORRISON. What is the second step?

Ms. COMBS. The second step is showing that one has been persecuted as a result of membership in—

Mr. MORRISON. I am sorry. The law is well-founded fear of persecution. There is no standard in the law that says you must prove you have been persecuted. In fact, what this document says in other parts is if you prove that you were persecuted, then you don't have to prove anything else about your fear because if you have been persecuted once, it is, in fact, taken that you are likely—it is well founded to fear that you might be persecuted again. If you have not been persecuted before, you have to prove that your fear is more than mere speculation, and what you have to prove is that you are a likely target of persecution.

You are just plain wrong. It may well be that you are not doing this any more, in which case you have changed the rules, but you have just told me that you haven't changed the rules.

Is it your testimony that someone who demonstrates—a finding is made, that is, someone who establishes that he is a likely target of persecution does not qualify as a refugee. Is that your testimony?

Ms. COMBS. Yes. A person who is a likely target of persecution is not then automatically a refugee.

Mr. MORRISON. In other words, such a person as a matter of law as INS interprets it does not have a well-founded fear of persecution.

Ms. COMBS. He may have a well-founded fear of persecution.

Mr. MORRISON. What more does he have to show?

Ms. COMBS. Once there is a case-by-case determination in the refugee—

Mr. MORRISON. I am sorry. We really spend a lot of time with case by case as if that has somehow changed the fact that cases are

about finding facts as they relate to the law. It is all case by case, even if you make presumptions or judicial notices or prima facie rules or whatever you do.

Now let's get back to what we are going to do. We have now got somebody who it is established—let's leave aside how it got established, by hearing or a presentation of facts or by a legal presumption of judicial notice. It is established that this person is a likely target of persecution. This person has applied for refugee status and they are established to be a likely target of persecution.

What more does that person have to demonstrate in order to be ruled to have a well founded fear of persecution and therefore be a refugee?

Ms. COMBS. The person who is likely to be a target of persecution is more than likely going to be a refugee but that person must establish that he is or has been persecuted on one of the refugee grounds.

Mr. MORRISON. In other words, you're saying that in addition to establishing that he is a likely target of persecution, he cannot be a refugee unless he proves that he has in the past been persecuted; is that your testimony?

Ms. COMBS. I'm uncomfortable with the word "prove" because of course we do not expect people to prove by documentation or whatever—

If we find the applicant to be very credible then of course, the applicant would be approved.

Mr. MORRISON. No, I'm sorry, you're saying they don't have to prove it. Then what do they have to do if they don't have to prove it?

Ms. COMBS. They must make a credible statement that they are a member of a group likely to be targeted for persecution and indeed a refugee could be persecuted without being one of—

Mr. MORRISON. Please don't slip off the point. You may think this is a hopelessly legalistic discussion and that you don't feel that you're prepared to answer these questions but quite frankly, I think this is exactly what this hearing is about and I am tired of representatives of the Immigration and Naturalization Service up here who don't know what the law is.

We had a hearing about Haiti and we heard from the Deputy Commissioner, now Acting Commissioner, that Haitians could get asylum at Port au Prince. So you know, let's try to know the law when we come before the committee and I'm still intent on finding out what the current INS position is on what the law is.

Now, don't go back to likely target of persecution. We're not dealing with that. Either someone has to show something else or they don't. Now, you said that they had to show that they had in fact been persecuted. Now, are you standing by that or not? Do they have to show that in addition to being a likely target they have to show that they've in fact been persecuted.

Ms. COMBS. Or would be persecuted.

Mr. MORRISON. Now wait a minute—or would be persecuted. In other words, in addition to showing that they're a likely target of persecution, they have to show that they would be persecuted.

Ms. COMBS. No, sir.

Mr. MORRISON. Then what are you telling me? I think you're telling me that in fact, they have to show that they're a likely target of persecution and then they qualify; is that your testimony?

Ms. COMBS. They either show that they have been persecuted or could be persecuted. They don't have to do both.

Mr. MORRISON. That's right. Oh, now we're getting somewhere. They don't have to do both.

Ms. COMBS. They might be able to do both.

Mr. MORRISON. But they don't have to do both.

Ms. COMBS. But a Catholic—

Mr. MORRISON. Don't give me an example. They don't have to do both. Are we back to that now?

Mr. SMITH of Texas. Mr. Chairman, if you would yield for a minute.

Mr. MORRISON. No, I won't yield. I'll finish my questions. You can ask whatever you like on this. No, I won't yield.

Mr. SMITH of Texas. I'll return the favor at the appropriate time.

[Laughter.]

Mr. MORRISON. No, the point is, we're not going to have a debate about this. We're going to get this pinned down.

Ms. COMBS. And I'm happy to do so.

Mr. MORRISON. So now, let's get back to this.

They do either. They could establish that they were persecuted in fact. That's one route that they can go; right? They can also show that they're a likely target of persecution as a second possibility; right?

Ms. COMBS. Yes.

Mr. MORRISON. Now, this document says that if they clearly prove that they come within an established category, then they have established that they're a likely target for persecution. Now, I read that to say that once they've proved that they're in the category, then they're a refugee and you're still saying no.

Ms. COMBS. The Immigration Service and the Department of Justice reads that differently.

Mr. MORRISON. Well, you can't seem to tell me what more they have to show. We'll go around this one more time.

I don't want to know about the people who make a showing that they were persecuted in the past. If you have someone here from the counsel's office at INS who understands what you understand the law to be, I'll be happy to have them come forward, be sworn, and explain this to me, but the issue here is whether or not you're changing the law, changing the provisions or whether you're doing what this says and I can't understand it until you can tell me.

Now, one more time. I got somebody who has established that he is a likely target of persecution. Does he or does he not have to show additional facts to become approved as a refugee and if he does have to show additional facts, what are they?

Ms. COMBS. A fear of persecution, that he has been persecuted or that he has a fear of future persecution once he has established that he is a member of that category. It is a two-step process under the NSDD 93. The first step is a subjective test—I'm sorry—a very objective test. He is a member of that category. He is a Catholic. He or she is this, is that, or the other thing.

The second part of NSDD 93 is the subjective fear of persecution in the past or in the future.

Mr. MORRISON. He can't fear persecution in the past. You can only fear persecution in the future.

Ms. COMBS. I misspoke. You're right.

Mr. MORRISON. So in addition to being found to be a likely target, he has to show that he fears persecution. That's the additional fact.

Ms. COMBS. One of them, yes.

Mr. MORRISON. What are the components of fearing it? What do you have to show? What kind of statements do you have to make to show that you fear it having shown that it's likely to happen to you? No, I'm serious. It's a very serious question.

Ms. COMBS. May I give an example?

Mr. MORRISON. Sure. That's a good place for an example.

Ms. COMBS. A Catholic would be a member of a category that is listed in the NSDD 93. We would take judicial notice that being a Catholic in Vietnam would make someone a likely target of persecution.

If however—and this is the “and” portion, that person does not articulate to us that they have been persecuted because of religion or have no fear of future persecution because of religion which is one of the grounds under the definition, then that person would not qualify as a refugee.

If the person, despite being Catholic, which is a likely target of persecution, has been able to practice his or her religion and has had no difficulty doing so, the person will not be eligible as a refugee despite being a member of that category.

Mr. MORRISON. We're having a problem again. In other words, if someone has not been persecuted in the past, in other words, you said they were able to practice their religion. They have not been persecuted in the past, then the fact that they are in the group and they fear it in the future is not enough.

In other words, you have to have it in the past to fear it in the future.

Ms. COMBS. I have answered the question as many ways as I am able to answer it and my staff is passing me notes indicating that perhaps our General Counsel's Office could give a more legalistic response than I can.

I would be happy to introduce Paul Virtue, our Deputy General Counsel to discuss the issue or we will submit a more formal response in writing.

Mr. MORRISON. Well, I'll be happy to hear from him. In the next round, I'm going to give the gentleman from Texas a chance to ask some questions and we'll come back to it but with all due respect and you're not the legal expert, perhaps, but you are the person who is here who is the person charged with administering this law, you don't have it right even by what's written down here.

There are two ways of going at this question in your own document here. One way is people who were persecuted in the past and if they come forward and say they're in fear of persecution and they show that they have been persecuted in the past, then they're refugees.

Then there's another group of people who don't have past persecution but want to show that they would now be persecuted and

that's the future fear and they don't have to show past persecution. They have to show that they have some reasonable basis to fear it and I don't understand why those people, once they make it into the established group and say I fear it and I'm in the group, don't make it.

I think that's what your guidelines say here and I don't think it takes any more than a statement that I'm afraid of being persecuted and I think we ought to be careful as to whether or not what we're running here is a word game. In other words, if those people who know the magic word, I fear future persecution and I'm a Catholic, make it, and those who don't say the magic words but say I'm a Catholic, don't make it and I'm trying to find out whether that's what we're really doing.

The gentleman from Texas.

Mr. SMITH of Texas. Ms. Combs, let me read from the same immigration guidelines that the chairman just did but let me read the paragraph after the paragraph that he just read which goes as follows. This is on page 26. "The categories are to direct the work of the interviewing officer. They will save the officer valuable interviewing time and result in a fair assessment of refugee applications based on experience with many thousands of refugees from the region and conditions in the countries of origin."

There is nothing automatic in that paragraph that I see. Furthermore, I think that there may be some real confusion on the difference between definition of refugee and the process itself and I think perhaps that one of the reasons you're having a hard time answering as I would as well because of the possible confusion between the definition itself and the process and they are distinct and you can't assume one from the other.

Perhaps you all can continue in a minute. Mr. Funseth, let me ask for some edification as far as the beginning of the process goes itself.

What do you think is the primary reason for the influx of Vietnamese that are now leaving the country and I guess the second part of that question is, do you feel that they're being driven out or leaving because of economic factors as much as anything else?

Mr. FUNSETH. Well, it's hard to just answer that yes or no. People leave Vietnam for a mix of reasons and what the adjudication is designed for, is to determine whether a person who may have economic reasons also has a well-founded fear of persecution, or those economic reasons in fact amount to persecution. It's very clear that conditions in Vietnam are very bad. Deprivation is widespread. There are different places in Vietnam that people are fleeing from.

People who leave from North Vietnam, for example, to Hong Kong, who have spent their entire lives in North Vietnam, have more difficulty establishing their eligibility, of having a well-founded fear of persecution than for example, someone who has lived in South Vietnam who was associated with that Government or society and is now perhaps victimized because of that association.

Clearly, the continued economic depression in Vietnam is causing people to leave and Vietnamese officials in their public statements have acknowledge that fact. The dilemma for us is that Vietnam is still Vietnam and there are still people leaving who have

well-founded fears of persecution and what I was referring to in our statement and what we're hoping will come out of this new structure called a comprehensive plan of action is that Vietnam will live up to its commitment to allow these people who are now fleeing by boat to leave legally through normal procedures.

Mr. SMITH of Texas. What I'm trying to get at, it seems to me and you said that one of the reasons for the great tide leaving the country right now might well be the fact that the economy seems to be deteriorating.

My question goes beyond that which as it seems to me, everyone coming from Vietnam is either categorized as a refugee or parolee. Why would everybody fall into one of those two categories? Why wouldn't there be some individuals who would not qualify for either under either definition?

Mr. FUNSETH. Well, Mr. Smith, there are two separate procedures. We have been talking about the termination of eligibility in Ms. Combs' testimony about people being interviewed in Ho Chi Minh City. People who leave Vietnam now and seek asylum, when they are presented for interview, they will either be screened in as people potentially eligible for refugee status or people found not to have refugee status.

We would only have access to those people who are screened in as refugees who meet the definition. I must say there is one other third group that we need to mention in relation to the program in Vietnam and that is immigrants. We have both refugees, parolees and immigrants.

I might just add to your first question, a number of the refugees who have arrived in Hong Kong have told the authorities there that one of the reasons they left, mistakenly, unfortunately, is that they knew there was going to be an international conference in Geneva and somehow the rules were going to change and they wanted to get out before the rules were changed. They were mistaken because the countries of first asylum have already adopted cutoff dates in March that anyone who arrived in first asylum after March would come under the new structure that is now being developed.

Mr. SMITH of Texas. Thank you, Mr. Funseth.

Mr. MORRISON. Let's step aside from our legal dispute for a moment, and I would be interested in your counsel's writing something that explains the answer to the question: Once someone has, by the definition here, made it into likelihood of being a target of persecution because of their group, precisely what it is that you train your adjudicators they must find in addition to that fact, what the components are of it, or whatever, because that really does determine the question of most of these people who are getting LOI's, other than immigrants, are, by definition, in these groups. So, the question becomes what it is that failing? Why are they not qualifying? There is something that is being used.

We have some statistics that the committee has been supplied with in your testimony, Ms. Combs, and it has breakdowns of various groups, and I want to pass the Amerasians for a minute and refer you to the breakdown of regular program approvals, which, as I understand your testimony, has as a subset adjudication of refugee applicants.

This is the combination of immigrants and punitive or potential refugees, people who are, for one way or another, also considered as refugees, and under that, just looking at the 2-week period, February 13 to February 26, for the moment, there are 1,100 here that are under the category of "immigrant." Is that right?

Ms. COMBS. That is correct.

Mr. MORRISON. Now, those are the people who were approved as immigrants? In other words, they came in for an interview, they have a current petition pending? Is that what that means?

Ms. COMBS. That is correct.

Mr. MORRISON. They make it into this 1,100 if they pass the other tests about the petitioner's support or whatever it is, non-membership in the Communist Party or whatever kinds of exclusions there are, they go through an interview and they pass the test and they're going to be able to go to the United States as an immigrant. They are one of this 1,100. Is that right?

Ms. COMBS. That is correct.

Mr. MORRISON. Now, I take it some people in that group who have current immigrant petitions do not make it, because they have some excludable facts about them.

Ms. COMBS. Yes.

Mr. MORRISON. Are they anywhere on this? Where do they go in the statistical array?

Ms. COMBS. They do not appear here. The percentage is the percentage of the total, not the percentage that is approved.

Mr. MORRISON. The percentage here is of the 1,849 and the 1,849 are the people who, at the end of the day, are all being told they can come to the United States.

Ms. COMBS. I'm sorry. You will have to say that again.

Mr. MORRISON. The 1,849, for that 2-week period, which is called "total."

Ms. COMBS. Yes.

Mr. MORRISON. That is everybody who has made it to the United States in one of three categories, either as an immigrant, a refugee, or a parolee.

Ms. COMBS. That is correct.

Mr. MORRISON. There is some group of people to which we say "No on all three counts?"

Ms. COMBS. That is correct.

Mr. MORRISON. Do we know what those numbers are?

Ms. COMBS. No, I do not have them before me.

Mr. MORRISON. Can you supply us with those numbers so we can put these in context?

Ms. COMBS. Sure.

[Additional information follows:]

Denied Vietnamese Applicants

Question: Are there any Vietnamese applicants interviewed in Vietnam under the Orderly Departure Program (ODP) by either INS or State Consular Officers who are denied entry into the U.S. by any means at all? If so, how many are involved?

Answer: Yes, as I mentioned in my prepared testimony at the June 28, 1989, hearing (page 9 refers), a certain very small percentage of ODP applicants are interviewed and rejected as unqualified for entry under any of the available avenues of entry. This percentage has averaged around 5 percent of the total number interviewed.

Using the February 1989 statistics cited by Congressman Morrison in his question on this subject at the hearing, of the 3,164 persons interviewed by INS and Consular Officers, 2,745 were approved for entry into the United States by one avenue or another (as Amerasian immigrants, as non-Amerasian immigrants, as refugees or as parolees), while 173 were rejected outright. The most common reason for such outright rejection was material misrepresentation of the basic facts, relationships, and/or other qualifying linkages on which their initial and tentative eligibility for the ODP had been determined. These problems surfaced only during the course of the INS or Consular Affairs interviews and led to their rejections.

Since the Orderly Departure Program (ODP) recommenced in September 1987, only some 2,500 persons -- out of some 40,000 persons interviewed -- were rejected outright for entry into the United States; this represents an average of only 5 percent of those interviewed.

Mr. MORRISON. This 1,100 that are approved as immigrants, that is a current status, right? It is not that they have a petition pending and their date will come up later. The date has to be now. They have to pass their priority date for admission.

Ms. COMBS. That is correct.

Mr. MORRISON. Now, we have the 749 who are either refugees or parolees, and in this particular week, 74 percent of them are parolees and 26 percent of them are refugees.

Is that entire group of 749 people who are being screened for refugee status, or are there any people in there who are family members of immigrants who have noncurrent petitions?

Ms. COMBS. No. Yes. I am sorry.

Mr. MORRISON. The question is this: You have got 749 people being screened for refugee status.

Ms. COMBS. Is that the total of—

Mr. MORRISON. It is either on the first line, where we were talking—either add the 198 to the 551, or look at the next chart, which has got those broken down, and it is entitled "Adjudication of Refugee Applicants," and what I am asking is are any of those parolees noncurrent immigrant petition holders, and I think the answer is yes, isn't it?

Ms. COMBS. The parolees could be—

Mr. MORRISON. The parolees are family members of people who have current petitions but whose petitions are not, themselves, current.

Ms. COMBS. That could be true, yes.

Mr. MORRISON. Now, could it also be true that they are family members of current petition holders who have no petition pending at all?

Ms. COMBS. Let me introduce Ralph Thomas, the Deputy Commissioner of Refugees, Asylum and Parole, who can answer that.
[Witness sworn.]

Mr. MORRISON. Please identify yourself and bring up a chair, please.

STATEMENT OF RALPH THOMAS, ASSISTANT COMMISSIONER FOR REFUGEES, ASYLUM AND PAROLE, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Mr. THOMAS. My name is Ralph Thomas, and I am the Deputy Assistant Commissioner for Refugees, Asylum and Parole.

Mr. MORRISON. I will ask you the general question and you may be able to answer it more quickly than my asking each one.

Within the 551 parolees, could you please denominate who ends up on that category? Who is being offered parole? What are the different categories of people being offered parole?

Mr. THOMAS. On this particular trip, there were a number of so-called deferred cases, and these were cases where they were non-LOI holders. So, I do not know exactly what the total makeup was. That is, they had not been given a letter of introduction, but they were presented, they were on the list, and we had initially told the Vietnamese that we would not interview those persons, then we gathered them together and we said we'll interview a certain portion of them in this trip.

So, I cannot say that they were all nonfamily—they were all extended family members of other persons who were there for immigrant interviews, but the majority were. They were persons who, under their breakdown of regular program approvals—if you look at the 1,849, that is the total for that group. Virtually all of those persons were LOI holders.

Now, in the distant past, we did always—we gave LOI's to persons who did not have current visa petitions. We gave them to persons when it was expected it would come up in the future. In the very distant past, we gave them to persons rather early after the petition was approved. So, we keep getting persons who are noncurrent who happen to have an LOI, and so, they are on the list and we agree to interview them.

We interview them, and they cannot be granted immigrant status, and prior to the change in our procedure, they frequently were given refugee status, virtually automatically.

Mr. MORRISON. Prior to January.

Mr. THOMAS. Yes.

Mr. MORRISON. So, that is one of the changes that happened in January that individuals who presented themselves with noncurrent immigrant petitions were not paroled but were brought in as refugees.

Mr. THOMAS. That is right.

Mr. MORRISON. Were they made to make a showing about group membership, or were they just brought in willy-nilly, because there they were and we were interviewing them?

Mr. THOMAS. We would have interview them, and clearly, some of the persons could make that claim and did so. Not all Vietnamese come in because they are members of categories.

Mr. MORRISON. I understand that. That is exactly what I am trying to get at. Would it be fair to say that some of the people given refugee status in the past did not have categorical relationship or specific facts of persecution nor any basis for a well-founded fear but were just people who, one way or another, got an LOI and got interviewed, and if they did not get out as immigrants, they got out as refugees.

Mr. THOMAS. That is right.

Many times they were persons who—I apologize for interrupting the hearing, but they were nonderivative family members. That is, they could not accompany the person who was a valid visa beneficiary, yet they had been living the family group. They present themselves all at one time, and there we are and we make up a decision, and for purposes of family reunification, we gave very sympathetic consideration to their claims and we wanted to assure their removal from Vietnam and so we gave them refugee status.

The parole authority, which was made available to our interviewers, beginning with this February trip, is an alternate channel and, I think, a proper channel for this kind of person, and so, you see a substantial number of parolees who, on a January trip, might have come as refugees, but in this trip, they came as parolees.

Mr. MORRISON. I want to find out who is getting parole at the moment.

One group of people who is getting parole are people who have noncurrent immigrant petitions.

Mr. THOMAS. That would be the largest group.

Mr. MORRISON. Now, noncurrent immigrant petitions without any family relationship—are any of those being paroled?

I am the head of the household. I have a noncurrent petition and—I show up to be interviewed. I do not know quite how I get there, but now I am there. In other words, it is not that my wife has got a current petition. I have got the petition and I am not up for another 6 months, for instance. Do I get paroled?

Mr. THOMAS. Yes, today you would be paroled.

Mr. MORRISON. You get paroled.

Mr. THOMAS. You get approved for parole.

Mr. MORRISON. And the reason I get approved for parole is that you are interviewing me.

Mr. THOMAS. We had agreed to interview you, and you were either an LOI holder that was issued in the past, before the present procedure, which is to only give it to near-current—

Mr. MORRISON. Let us take a second group.

I am there. I do not have an LOI, but I am in this group that has been presented by the Vietnamese to be interviewed, and there is no one in my family group with a pending petition. Do I get paroled if I do not make it as a refugee?

Mr. THOMAS. You would first be interviewed as an refugee.

Mr. MORRISON. Do I get interviewed as a refugee even if I make no claim to refugee status? Would I automatically get screened as refugee?

Mr. THOMAS. Yes, you would.

Mr. MORRISON. I do not have an LOI. The Vietnamese present me for an interview for whatever their reason is, however I get swept up in this group. There are such individuals. Isn't that correct?

Mr. THOMAS. There are some.

Mr. MORRISON. I get screened as refugee. I do not qualify, but the fact that I am there means I get offered parole, unless I am excludable.

Mr. THOMAS. That is right.

Mr. MORRISON. So, that is another group of people.

A third group of people who get parole are people with LOI's who come and present themselves as refugees and do not make it as refugees. They get parole.

Mr. THOMAS. That would be correct. There would be very few of those who we had issued LOI's to based on past associations with the U.S. Government or on reeducation experience.

Mr. MORRISON. So, in other words, the group that Mr. Funseth talked about, the nonimmigrant LOI receivers, which is based on the 1983 categories—those people are refugees, right? I mean they, almost uniformly, qualify because of their past group associations.

Mr. THOMAS. It would be a very high approval rate, yes.

Mr. MORRISON. So, maybe this legalistic debate that I foisted on Ms. Combs earlier on does not amount to a hill of beans in the real world. In fact, those people who we have identified as within the category and we interview, they almost all get to be refugees.

Mr. THOMAS. Well, I think that, again, giving the example that she did, a high percentage of South Vietnamese are Roman Catholic in background. So, in theory they fit a category. I mean they

may not be regular participants in communion or anything else, but they are Roman Catholics. So, let us say 50 percent of these people that we might see would fit the Roman Catholic category, but they apparently alleged nothing regarding persecution related to that membership.

Mr. MORRISON. But we do not give LOI's to every Catholic in Vietnam.

Mr. THOMAS. No, we do not.

Mr. MORRISON. So, the LOI's, Mr. Funseth, go to a subgroup of the group. Is that right?

Mr. FUNSETH. Yes.

Mr. MORRISON. Who gets derivative benefit from the finding of refugee status? Who is entitled to a visa when head of household comes in and demonstrates refugee eligibility?

Mr. THOMAS. Well, we are very generous in defining who is within a household. I think the issue of nonderivatives would relate to the immigrants.

Mr. MORRISON. In other words, you would approve as a refugee the household, when anyone in the household is a refugee?

Mr. THOMAS. Where the principal applicant—

Mr. MORRISON. Makes a showing.

When you say within a household you are "very generous," you mean you do not require blood relationship or you allow any blood relationship?

Mr. THOMAS. I would say there is probably some adopted nephews and nieces that we have definitely brought in.

Mr. MORRISON. So, basically, anybody who lives together travels together.

The nonderivatives that you are talking about are people who are in the immigrant category, whether they get paroled.

Mr. THOMAS. A grandparent or a parent of a brother and sister who has been issued a LOI, the grandparent cannot accompany them. A minor child could, but a grandparent could not. Yet, the parent has been living in the household. The grandparent has been living in the household with them. We would interview her for refugee status. She probably would fail to meet that test, but we would parole her in.

Mr. MORRISON. Is there anyone who is interviewed in this process who does not get paroled, other than somebody who is excludable?

Mr. THOMAS. Yes, there are some. It would be the persons who would be nonfamily members or nonfoster family members of Amerasians. We have those hangers-on who also are presented to us, and if they cannot fall into the category, we will interview them and consider them for refugee status, but are not bringing them on for parole.

Mr. MORRISON. The only document I am aware of in which the Attorney General has authorized the use of the parole authority in this kind of a broad way for refugee immigrant populations speaks entirely about the Soviet Union. That is the Meese letter to Colin Powell of August 1988.

Is there any other document signed by the Attorney General which directs the use of parole in the way it is being used at the current time in Southeast Asia in Vietnam by the Bangkok office?

Mr. THOMAS. I do not know that there is a specific document, but the parole authority is a delegated authority from the Attorney General.

Mr. MORRISON. Who is it delegated to?

Mr. THOMAS. To the Commissioner of Immigration.

Mr. MORRISON. To whom?

Mr. THOMAS. To the Commissioner of Immigration.

Mr. MORRISON. Well, is there a document signed by the Commissioner with respect to the use of parole as it is being currently used with respect to Vietnam?

Mr. THOMAS. There is not a specific document that I am aware of signed by the Commissioner, but that authority is further delegated and there are instructions to the field.

Mr. MORRISON. When you say it "is further delegated," is there a document about that further delegation? I assume it is not—is the delegation from the Attorney General to the Commissioner a matter of a specific document, also? Is there a piece of paper where the Attorney General has made this delegation?

Mr. THOMAS. It is part of the regulations that he carries out and executes.

Mr. MORRISON. I take it that there is some document. I mean this parole authority is legally confined. It has to at least be within the terms of the Immigration and Naturalization Act, at the very least.

Mr. THOMAS. In terms of emergent circumstances and the fact that we are looking at humanitarian and public interest circumstances that would qualify for parole, but it would be just the general regulations.

Mr. MORRISON. Let me request—I think we did request, in preparation for this hearing, and I was shown by the State Department one confidential document on this subject, which was not a document of the Department of Justice nor a document of the Attorney General nor a document of the Commissioner of Immigration.

Mr. FUNSETH. It cleared with INS and the Department of Justice. [The document referred to follows:]

Department of State

OUTGOING TELEGRAM



0 070022Z JAN 80

FM SECSTATE WASHDC
TO AMEMBASSY BANGKOK PRIORITY
INFO AMEMBASSY GENEVA PRIORITY
INFOCONS BANGKOK
AMEMBASSY JAKARTA
AMEMBASSY HUALA LINGPUN
AMEMBASSY MANILA
AMEMBASSY SINGAPORE 0045

STATE 005004
BANGKOK FOR RVA/ODP, GENEVA FOR RVA, OTHERS FOR REC00RDS
SUBJECT: THE RECOGNITION OF REFUGEE STATUS
REFS: (U) STATE (T)SIB (U) STATE 000010

STATE 005004

RESERVING LIMITED REFUGEE NUMBERS FOR HIGH PRIORITY REFUGEE CASES. HOWEVER, IN LINE WITH THE GENERAL U.S. POSITION ON THE CURRENT SOUTHEAST ASIAN REFUGEE SITUATION REF. AS, THERE ARE NO PLANS AT PRESENT FOR A SIMILAR PAROLE PROGRAM TO FIRST ASYLUM CAMPS IN SOUTHEAST ASIA, SINCE THAT WOULD UNDERMINE THE INCENTIVE TO REMAIN IN VIETNAM TO TAKE ADVANTAGE OF ODP AND COULD CATALYZE A WAGNET GRABING FURTHER ENIGMAS OUT OF VIETNAM IN SEARCH OF THE RESETTLEMENT ADVANTAGES OF SUCH A PAROLE PROGRAM. PAROLE MAY BECOME APPROPRIATE IN THE FUTURE FOR SOME LONGSTAYERS AS PART OF AN INTERNATIONALLY AGREED UPON REGIONAL STRATEGY.

- 5. ALTHOUGH GRANTING OF PUBLIC INTEREST PAROLS MAY SERVE AS A SHORT-TERM MEASURE, BOTH THE ATTORNEY GENERAL AND SECRETARY OF STATE BELIEVE THAT IT WILL BE NECESSARY FOR THE ADMINISTRATION TO EXAMINE AND CONSULT WITH THE CONGRESS ON THE FEASIBILITY OF NEW LEGISLATION CREATING A SPECIAL IMMIGRATION CATEGORY. SUCH A NEW CATEGORY WOULD ALLOW ADMISSION FOR FOREIGN PUBLIC INTEREST REASONS WHO ARE INELIGIBLE FOR CURRENT IMMIGRANT VISA OR REFUGEE STATUS.
- 6. ACTION REQUEST: RVA/ODP IS REQUESTED TO COMMENT ON ANY POSSIBLE PROBLEMS WHICH COULD ARISE IN IMPLEMENTATION OF THIS POLICY AND TO PROVIDE SUGGESTED TIMETABLE FOR ITS EARLY IMPLEMENTATION. END ACTION REQUEST.
- 7. LNS/ODAP CONCURS WITH THIS MESSAGE.

2. THE ATTORNEY GENERAL, IN CONSULTATION WITH THE SECRETARY OF STATE, HAS INSISTED THAT EVERY EFFORT MUST BE MADE TO ENSURE THAT ALL ADJUDICATIONS OF REFUGEE CLAIMS BE MADE ACCORDING TO A UNIFORM STANDARD. AN ADVISORY LETTER FROM THE ATTORNEY GENERAL TO THE USC ADVISOR SET FORTH THIS POLICY AND STEPS INVOLVED IN ITS IMPLEMENTATION IN ADJUDICATING SOVIET REFUGEE APPLICATIONS. REF IN A NOVEMBER 17 LETTER TO THE ATTORNEY GENERAL, THE SECRETARY OF STATE WROTE QUOTE "THE DEPARTMENT AGREES THAT ITS SHOULD NOW BE APPLYING THE REFUGEE DEFINITION PROPERLY AND CONSISTENTLY TO ALL REFUGEE APPLICANTS... WE HOPE THAT ... WE CAN ENSURE THAT THOSE WHO ARE REFUGEES WILL BE RECOGNIZED AS SUCH AND THAT OUR LIMITED REFUGEE NUMBERS AND RESOURCES WILL NOT BE MISALLOCATED. END QUOTE.

2. IMPLEMENTATION OF THIS POLICY IN ADJUDICATING ODP REFUGEE APPLICATIONS SHOULD TAKE PLACE AS SOON AS POSSIBLE. INS RECOGNIZES THAT THIS MAY RESULT IN A SIGNIFICANT NUMBER OF DENIALS OF REFUGEE STATUS. HOWEVER, IN KEEPING WITH CURRENT USC POLICIES AND PROCEDURES CONCERNING ADMISSION OF VIETNAMESE AS REFUGEES UNDER ODP, INS WILL OFFER THE POSSIBILITY OF ENTRY INTO THE UNITED STATES THROUGH PUBLIC INTEREST PAROLE UNQUOTE TO THOSE DIVERGENTLY ADJUDICABLE ODP REFUGEE APPLICANTS FOUND INELIGIBLE FOR REFUGEE STATUS. ACCEPTABLE AFFIDAVITS OF SUPPORT (A-134) WILL BE REQUIRED FOR ALL PROSPECTIVE PAROLEES BEFORE THEY CAN BE APPROVED FOR ENTRY INTO THE UNITED STATES AND DEPARTURE FROM VIETNAM.

4. IN THE LONGER TERM, INS SEES THIS PUBLIC INTEREST PAROLE FOR ODP AS AN IMPORTANT ACCELERATED IMMIGRATION ROUTE FOR BENEFICIARIES OF NON-CURRENT IMMIGRANT VISA INVOLVATION, PERMITTING TIMELY DEPARTURE OF ODP-QUALIFIED VIETNAMESE WHO DIFFICULT TO OBTAIN (U) PERMISSION WILL

Mr. MORRISON. It was a set of instructions to State Department officials based on consultation between the Attorney General and the Secretary of State. I understand that.

What I am trying to get at is what we are doing here, because frankly, one of the things that is being said is the implementation of a worldwide standard. In other words, one of the criticisms of H.R. 2022, which relates to the treatment of Jews and Evangelical Christians leaving the Soviet Union and the creation of categories, as well, for Southeast Asia, is that this is a targeted single-nation or several-nation approach to something which the administration is trying to implement on a worldwide basis.

Now, I would be correct in saying, would I not, that noncurrent immigrants do not get paroled into the United States if they show up at most U.S. Embassies and try to see the consular officer.

Right? I mean this is unusual. We're paroling essentially everybody who has either a refugee claim or makes a refugee claim and doesn't get it approved or has some immigrant potential, actual or potential, immigrant status somewhere down the road.

It's a very broad use of parole and it's being done because of the special circumstances as we see them in Vietnam and the importance that we see in the orderly departure in competition to clandestine departure.

Is that a fair statement?

I see lots of nods. Can you just say yes?

Mr. FUNSETH. Yes.

Ms. COMBS. Yes.

Mr. MORRISON. OK. So it's not really a worldwide approach. This is a Vietnam specific approach where parole is being plugged in along with immigration and refugee status in order to address what we see as a national objective.

True?

Ms. COMBS. The parole authority is, yes.

Mr. MORRISON. Right, and the rest of it we now think we are going by the book.

Ms. COMBS. Yes.

Mr. MORRISON. Right, OK. Now turning to this parole authority, I want to turn to what the statute says about that.

This is section 212 of the Immigration Nationality Act and it says "The Attorney General may except as provided in subparagraph B, in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States."

It goes on to say that that's not an admission, that those people are not admitted.

Could you explain to me how the admission of these individuals—let me just go on. Subsection B which is exempted out is for people who are refugees and are paroled instead of coming in as refugees, I assume because there aren't numbers available but the point is the subsection B doesn't alter for these individuals we have been talking about the statutory restriction on parole that these people may be admitted temporarily.

Could you explain to me how this admission process that we're engaged in is temporary admission under the statute?

Ms. COMBS. The use of the Attorney General's parole authority for Vietnamese who do not qualify as refugees is done to respond to a situation to be able to get as many people out of Vietnam who have had the expectation of coming.

I would agree with you that temporary is what the statute says and that we do parole these people into the United States indefinitely. That is done however as a term of art because when the program began we expected to have special immigrant legislation which would allow these people to adjust their status once they are in the United States.

We do—

Mr. MORRISON. Excuse me, first of all, when the program began—

Ms. COMBS. And we still hope.

Mr. MORRISON. No, I understand, but when the program began meaning August, October, or January?

Ms. COMBS. It has been an evolving program in discussions but certainly in February when the use of the Attorney General's parole began.

Mr. MORRISON. Here, but of course the use of the Attorney General's parole was going on before that in Ladispoli and in Moscow.

Ms. COMBS. Well—yes.

Mr. MORRISON. OK, but when you say you expected to have special immigrant legislation, that's the legislation that was sent to this committee or the Congress actually by the Attorney General, the Secretary of State at the beginning of April 1989—so I mean you didn't expect, you hoped to have it some time in the future.

Ms. COMBS. Certainly.

Mr. MORRISON. It's not that it's some piece of legislation that was pending in the Congress last year.

Ms. COMBS. That is correct.

Mr. MORRISON. Right, OK.

Ms. COMBS. We also misuse the term "indefinite parole" in other cases when we have the case of an 85-year-old Iranian woman living with a refugee family of which she is not a blood part but has lived in a camp for years.

We parole her into the United States for humanitarian reasons because she is a part of that family unit, although not by blood relationship.

We parole her into the United States indefinitely knowing that she will not ever be able to adjust her status in any other way but not be able to come to the United States through any normal immigration channel nor is she a refugee.

To preserve the exact definition of "temporary" we could ask her to come into an INS—give her a year to year parole. We could ask her to come in to the INS office every year to renew her status but that does not seem a reasonable use of INS resources nor her time so the word "indefinite" is misused in that context, yes.

Mr. MORRISON. Yes, OK. What you are saying is that it is your understanding that "indefinite" is temporary or you're saying that maybe it's not really right to say indefinite when the statute says temporary?

Ms. COMBS. We use the term "indefinite" as a term of art within Immigration as opposed to "temporary."

Does indefinite parole end with death? You know, we could go around and around about that as well. We could call it anything you like and I agree that it's not an accurate word to reflect what we do.

Mr. MORRISON. Mr. Funseth.

Mr. FUNSETH. Mr. Chairman, may I just make two points to perhaps clarify this issue.

First, it is my understanding or recollection that in the Attorney General's letter to General Powell's National Security Adviser last summer he made reference to the fact that in granting this parole authority that the Justice Department was contemplating a legislative remedy. In other words, it was not indefinite.

Then in the letter that was sent to the two Houses transmitting the legislation from both the State Department and the Justice Department it said the necessity in transmitting the special immigrant legislation, "The necessity for enactment of this proposal arises from the Attorney General's desire to avoid continued use of his parole authority in providing short term relief for otherwise ineligible aspiring immigrants whose admission to the United States is found for foreign policy reasons to be in the national interest."

Mr. MORRISON. Thank you. I certainly understand the connection between these two, the proposal and what's going on. It is not usually the case that if the law doesn't permit you to do something that you think you ought to do and you'd like the law to be changed to permit you to do that you say well, we'll fudge on the law and we'll send the bill up to Congress and hope that they pass it to make the law comport with what we think we ought to do.

It usually works the other way around and I think that generously speaking the law in terms of parole has been stretched perhaps to its breaking point in order to implement what is going on here but the law had already been stretched perhaps beyond its breaking point by giving refugee status to a whole lot of people who weren't refugees, so I mean this is perhaps, fairly put, a transition back to getting the refugee program more back in line with its own rules and we've created a new category but we have gone way beyond that because it's not just putative refugees who are being turned down, it's all kinds of immigrants who are being paroled in and it would be fair to say that there are lots of intending or desiring immigrants all over the world who would love to be able to come and wait out their time in the United States as parolees. This is a very special status and there may be very special reasons but there are standards in this decision. This is not really consistent with the standard.

I would like to suggest that in preparation for hearings on the specifics of this legislation regarding special immigrant status that it would be useful for the Department, for INS to submit to the subcommittee subsequent to this hearing an analysis of the uses of parole since it sounds to me like you are looking for this legislation to be in lieu of parole, the instances where you have found yourself needing to use parole. An analysis of that say for the last calendar year that used all of those examples would be very useful.

[The information follows:]

NOTES ON THE ATTORNEY GENERAL'S PAROLE AUTHORITY
(section 212(d) of the Immigration and Nationality Act refers)

Purposes of Parole

Parole is a means by which aliens outside the United States are permitted to enter the U.S. notwithstanding their ineligibility under any other provision of immigration law. Normally, the length of the parole authorization is specified, limited, and determined by the purpose for which the alien wishes to come to the United States.

The Attorney General's parole authority is discretionary and is not used when other means of lawful entry are available. Parole is not to be used to circumvent normal visa issuing procedures. Neither is it to be used as a means of convenience, such as to merely speed up the eventual entry for beneficiaries of approved visa petitions.

Persons Eligible for Parole

Parole is reserved for:

(a) those who need to enter the United States for emergent reasons ("humanitarian parole") but for whom other avenues of entry are not available;

(b) those who are needed in the United States for reasons of public interest ("public interest parole"); or,

(c) specified, otherwise admissible, designated categories of persons whose entry into the United States is deemed to be in the national interest ("public interest parole" for Soviets from Rome and Moscow, and Vietnamese directly from Vietnam) despite their having been found ineligible for refugee status.

Requests for Parole

A request for humanitarian parole may be submitted by a sponsoring relative, an attorney acting on behalf of a client, a member of the United States Congress, or any other interested individual or organization (such as a national voluntary agency). A parole request should include information which is specific, verifiable and complete. It should include discussion of the emergent reason(s) why the parole request is needed and therefore should be given. Such reasons should clearly demonstrate the difference between this particular circumstance and that of other aliens in similar situations elsewhere in the world.

Parole in the public interest is generally reserved for individuals who are needed in administrative or court proceedings as defendants or witnesses. Normally these requests are routed through the Office of International Affairs in the Criminal Division of the U.S. Department of Justice.

Since the August 1988 directive of the Attorney General concerning the adoption of a uniform adjudication standard for refugee applications worldwide, entry under parole in the public interest has been offered to those otherwise admissible Soviet and Vietnamese applicants in Rome and Moscow, and in Ho Chi Minh City, respectively, found ineligible for refugee status by the Service.

Limited Benefits Available Under Parole

Entry under parole is a much more restrictive and limited benefit than is normal immigrant or refugee admission. For example, persons paroled into the United States:

- (a) are not eligible for many standard assistance programs and services;
- (b) are not able to adjust their immigration status [absent other qualifying factors or special legislation];
- (c) are not eligible for employment without prior permission; and,
- (d) are subject to higher levels of sponsorship assurance requirements.

Affidavits of Support (AOS) or Valid Job Offers Needed

In order to effect entry into the United States under parole, and to satisfy the bar against becoming a public charge once admitted, a valid job offer or an acceptable Affidavit of Support (INS Form I-134) must be filed by a U.S. sponsor covering each prospective parolee. Job offers must be valid, verifiable, and at an annual salary higher than the minimum poverty level for a family the size of the prospective parolee. Affidavits of Support (AOSs) must clearly indicate the sponsor's ability to financially assist a family the size of that of the parolee's, in addition to his/her own, at a level above the minimum poverty level established by federal regulations for a family of that combined size.

Humanitarian Parole (Individuals)

Humanitarian parole is basically divided into the following two categories:

A. An alien who has a medical emergency and cannot obtain the needed treatment in the country he or she is presently in, or the emergency is such that there is no time to apply for a visa as the disease or injury is life-threatening. This situation also applies to an alien in the United States who is ill and dying, and his or her parents or immediate relatives are outside the United States and will not arrive in the United States in time to see their relative alive for the last time if they proceed with normal visa processes.

B. An alien who is not in a life-threatening situation, but the humanitarian aspects of whose case are so strong that parole should be used to enable this individual to come to the States.

Each parole case is adjudicated on an individual basis and whether the case is approved or denied is decided strictly on its own merits. The following examples from both categories illustrate the various types of humanitarian parole cases:

1. An alien who has an immigrant visa interview in the country of last residence and has left the United States for his or her interview and the Department of State erred in the scheduling of the appointment. For example, the spouse of a lawful permanent resident is scheduled for her immigrant visa interview, but an immigrant visa number will not be available for her for over 3 years. The alien has two small children at home in the United States, and would have never left the States, but did so in order to "legalize her stay." The error was beyond her control, and her two United States children need to be cared for. The only avenue to enter the United States legally is through the parole process.

2. Aliens whose spouses are in the U.S. military as lawful permanent residents, and who have a petition approved in their behalf, but are in an oversubscribed category for visa issuance are paroled in for the tour of duty to be with their husbands; this also applies to their children.

3. The parole applicant's immediate relative in the United States, such as a mother, unexpectedly dies and the funeral is within a week, or the mother's death is imminent and the consul does not have time to process the case for a

nonimmigrant visa, or the consul refuses to issue a nonimmigrant visa until a waiver has been approved which takes months in most instances. Parole is the only relief.

4. In the case of an adopted child who does not qualify as an orphan (usually because both natural parents are living and have agreed to give the child up for adoption), there is a two year residency and legal custody requirement to be fulfilled before a visa can be issued to the child. The situation happens repeatedly with the U.S. military, a child is adopted and the military person gets transferred, and the requisites cannot be fulfilled. Parole is the only relief.

5. Parole is sometimes used to bring unaccompanied minors who are in refugee camps and have anchor relatives in the States, such as a brother or sister, aunt or uncle, etc.

6. Where aliens whose brothers or sisters, sons or daughters, etc. are in the United States and are in need of a transplant, such as a bone marrow transplant, parole may be used.

7. Lawful permanent residents who have children outside the United States, but fail to bring their child with them on their first return to the States after the birth of the child, must file a petition for the child and if the numbers are oversubscribed will not be able to have the child immigrate for several years. Parole keeps the child and mother together.

8. Applicant has been in the process for years for visa issuance, and by the time the applicant's interview takes place, the applicant has turned 21 years of age and now has lost the benefit due to age. Parole may be used to bring that alien to the United States.

This is a small sampling of the many situations where the use of parole has resolved Immigration and State Department problems.

Public Interest Parole (Individuals)

Parole in the public interest is much more straight forward, and these requests are also adjudicated on a case by case basis with each case standing on its own merits.

1. Public interest parole is used to bring into the United States aliens, who are being held for extradition for crimes ranging from fraud to drug smuggling to murder. These requests are usually generated by the Office of International Affairs, Criminal Division of DOJ.

2. Public interest parole is used to bring in informants for DEA, FBI, U.S. Customs, INS, and etc.

3. Public interest parole is used to bring into the States material witnesses for international type court cases, these witnesses do not have time to process through normal procedures, and many have excludable charges from prior criminal involvement.

4. Public interest parole has been used for persons in the Witness Program who have been admitted to the program and are outside the United States, or for family members who have been threatened with murder by an informant's enemies.

5. Public interest parole is used to bring in persons who may well affect the national security of the United States, a Soviet defector with valuable military information, a world renowned scientist who has the latest techniques in fighting AIDS or any other types of diseases, and others whose knowledge and skill will contribute on a worldwide scale to the welfare of the United States. Each situation with a international renowned figure is reviewed individually, and depending upon the situation, the need, the safety of the individual involved; parole is used as only a last resort to bring the person to the United States and then only with the prospect of adjustment to another lawful status in the U.S.

6. Public interest parole has been used in situations where a high level espionage type person has been exposed and his life is in danger if he is not brought to the U.S. quickly.

7. Former United States citizens who have renounced their American citizenship, and find out belatedly that their choice was wrong and are still being discriminated against because of their race or for other reasons, such as being deported from a country after renouncing citizenship, public interest parole is used.

Public interest parole is requested frequently by government agencies and other interested parties who need to bring an alien to the U.S. immediately to contribute to the public welfare. Less than 10 per cent of the total number of persons paroled into the United States each year are in the public interest.

Public Interest Parole (Specific Designated Categories)

Parole in the public interest is an offer given to Soviet refugee applicants found ineligible for refugee status by INS in Rome and Moscow, and similarly, to denied Vietnamese applicants -- usually these are Category I (family reunification) cases -- under the Orderly Departure Program (ODP) out of Ho Chi Minh City, Vietnam.

This offer of parole began in September 1988 in conjunction with implementation of the August 1988 directive of then-Attorney General Meese concerning the use of a uniform worldwide standard to adjudicate all refugee applicants. Attorney General Dick Thornburgh specifically reconfirmed this policy in his December 8, 1988, announcement of the parole program for Soviets. In January 1989 this parole program was extended to Vietnamese ODP applicants found ineligible for refugee status.

This parole program was announced only after inter-agency consultations at the highest levels of the Reagan Administration and only then after written concurrence by then-Secretary of State Shultz. Due to continuing limitations within the Soviet Union and Vietnam concerning the freedom to emigrate when opportunities arise, parole is offered to take advantage of this difficult to obtain exit permission.

The Attorney General has specified that this use of public interest parole is limited and should be phased out once legislation already proposed by the Administration to establish a new "special interest immigrant" category of entry into the United States has been considered by the Congress and signed by the President. This new category would permit the entry of 30,000 persons annually for five years. Those groups to be offered such entry would be designated by the President after consultation with the Congress.

Mr. SMITH of Texas. Let me pursue that same line of questioning in this regard and that is that it seems to me that the United States has shown a great deal of humanitarian instincts by allowing virtually anyone to come from Vietnam and either giving them refugee or parolee status.

We do the same think when it comes to the Soviet emigrees as well.

Aren't we pretty much applying the same standards for both the Soviets as for the Vietnamese as far as upholding a standard of humanitarian and public interest reasons for admitting them and should the two be seen together or are they separate policies?

Ms. COMBS. They can be seen together of course in that the generous benefit of parole is given to those who do not qualify as refugees for both Vietnam and the Soviet Union.

Mr. SMITH of Texas. OK. That's my point is I think that virtually—or very similar policies apply to both and we are very generous. We are very much giving them the benefit of the doubt and allowing individuals to come in as parolees if not as refugees.

By the way the line of questioning that has been undertaken by both of us today makes me wonder if there is not a lesson here which is to say that we are now seeing perhaps the unintended consequences of special interest policy which is to say that we have made a special exemption to those coming from the Soviet Union. Now we are making a special exception from the usual laws for those coming from Vietnam and some of us have been concerned about the precedent that that sets and rather than relying upon legislation to determine our policy we are coming up with these humanitarian public interest arguments which may be fine except, you know, why not apply them to one country after another after another after another and pretty soon you don't really have uniform standards.

It makes me wonder about the special exceptions that we are giving individuals.

We obviously have a vote coming up. I don't have any other questions other than to thank the witnesses and particularly Ms. Combs for her fortitude and patience today.

Ms. COMBS. Thank you.

Mr. MORRISON. I have a few more questions for the panel and I am going to go and vote and then come back.

The hearing will stand in recess.

[Recess.]

Mr. MORRISON. Mr. Funseth, I would like to go back and explore ODP. Would you give me an idea of ideally how this program would work and who it is that would be brought out of Vietnam and to the United States if we get the full cooperation of Vietnam in accordance with the international agreement that was just concluded?

In talking about that, I would like to understand the extent to which ODP by definition envisions the extraordinary use of parole or some statutory change that would give comparable discretionary power for some other status as opposed to—well, I would just like to know where parole fits in this picture if ODP were working in accordance with our vision of it rather than the troubles we have

had of being presented with not the people we ask for and things of that sort.

Mr. FUNSETH. I will try, Mr. Chairman.

First, what we want, as I said in my statement, we want orderly departure—in small caps, not the “Orderly Departure.” We want orderly departure to be the primary if not the only mode of departure from Vietnam, and that is what is behind the comprehensive plan of action. The comprehensive plan of action addresses the situation in Southeast Asia into three components: Countries of origin, first asylum countries, and resettlement countries.

If Vietnam allowed people to leave freely—and we are not the only country, incidentally, Mr. Chairman, that has a backlog. Practically every Government participating in the Orderly Departure Program have backlogs of people that are eligible for admissions to their countries who have not been able to obtain exit permits for one reason or another.

So we would hope that Vietnam will live up to its commitment, and indeed it has. It is really greatly expanding, as I indicated in the testimony, and they have said it would continue to expand. There is one identifiable group that you and I have talked about that are excluded, and that is the reeducation center detainees.

Vietnam has said in agreeing to the comprehensive plan of action that they should be included but that it would be subject to separate bilateral discussions. As you know, we are looking forward to a resumption of those, so we assume that group will be included.

We want Vietnam to issue exit permits. We and other countries want Vietnam to issue exit permits and present people for interview who they can identify or they have reason to believe would be eligible for immigration. There is no point in Vietnam issuing exit permits who are not eligible for admission to any country that is participating in the program.

The other point I would make addressing parole is what is behind the administration's introduction of the special immigration legislation, which we are very grateful that Mr. Smith is now sponsoring in the House. It provides a legislative remedy. In other words, parole is short term. It is not a very good status for a person coming in, and the special immigration legislation would provide a remedy for that. People brought in under it would be able to regularize their status in the United States and become citizens. That is for a short period of time.

Mr. MORRISON. We will hold hearings in conjunction with both the Refugee Act Reauthorization and the Legal Immigration Reform. We will hold hearings that will include within their ambit this proposal. There is not a lack of interest here in giving the administration an opportunity to put the best face on this proposal.

We have chosen to look in the first round at the facts on the ground as opposed to the statutory proposals in the air, and that is why we have been holding hearings on various refugee populations rather than on statutory pronouncements about them.

Just to say on its face the statutory proposal does not speak to narrowly defined special circumstances of application but an extraordinarily broad grant of discretionary authority to the President subject only to consultation with the Congress, and that consultation requires only the attendance at a meeting, doesn't require

listening to anything that was said at the meeting, we are talking about a high degree of discretion almost like a new form of statutory parole, the only difference being that people would be immigrants rather than parolees.

There are lots of advantages to everybody that they be immigrants rather than parolees, but it is not clear that there is advantage to having that kind of discretionary admission authority in the hands of the President.

Now, are you saying that to make ODP work, there is going to have to be a lot of granting of admission to the United States of people who are neither refugees nor admissible under our current legal immigration standards?

Mr. FUNSETH. First of all, again referring to previous conversations we have had, everyone recognizes we are in a transition period in migration, whether it is in Europe or in Asia, and there are changes under way, both political, economic and social. What we are trying to do is to come up with procedures that catch up with the reality on the ground, like what do you do with a family unit in Vietnam, in today's Vietnam, in which a person does not have a current petition and to whom we are now granting parole?

We think that in this present time, this year, next year, maybe the year after, until the situation clarifies there that there ought to be some sort of a discretion within the United States, and the refugee program is more than an executive branch program. It is a program between the Congress and the United States on behalf of the American people.

The point is we believe there is a population there to which we don't have a legislative remedy other than parole, and as has come out on both sides of the table, that is not a satisfactory solution.

Mr. MORRISON. So the answer is yes.

Mr. FUNSETH. Yes, that is what is in the administration's proposed legislation.

Mr. MORRISON. I understand, but the administration's proposal has been suggested as a remedy for people leaving the Soviet Union, it is now being discussed as a remedy for people in Vietnam, and I imagine if we find another knotty problem somewhere, that when we ask about the use of parole or some other discretionary authority, we will hear that we have special immigrant status.

I mean sooner or later 30,000 won't be enough numbers either, even if we were to adopt that on an annual basis. What I am getting at is you are saying that as the administration conceives ODP, after we take everybody who is a refugee and after we take people in an orderly process as immigrants, we are going to want to take another group of people that are neither refugees nor current immigrants who we will want to bring into the United States.

Mr. FUNSETH. That is correct, and that is what is in the proposed legislation.

Mr. MORRISON. No, that is not what is in the proposed legislation. The proposed legislation creates a legal framework in which that could be done.

Mr. FUNSETH. Right, and that is its intent, to address situations like we are now confronted with in the Soviet Union and in Vietnam.

Mr. MORRISON. What I would like, if we might, is a 5-year projection with respect to ODP of how many of the three kinds of admissions to the United States we are thinking of, assuming that we get the cooperation of Vietnam. The questions are: How many refugees do we think we are going to admit from Vietnam; number two, how many immigrants in the ordinary course of administering the immigrant admission standards are we going to take; and number three, how many other people do we expect to take in each of the next 5 years from Vietnam who don't qualify as either of those two; and to what extent do we believe that that is a sufficient number to be successful?

I take it ODP is successful when it minimizes or virtually eliminates clandestine departures. Is that fair?

Mr. FUNSETH. Right.

Mr. MORRISON. So I would hope that in preparation for the conference that has just occurred, we have something like that in mind, and if you could supply it for the record of this hearing, I would appreciate it because I think that will give us a basis to evaluate not only the special immigrant status legislation but also what is going on at the present time.

Mr. FUNSETH. Let me just respond. We will provide that for the record, but let me just say in advance there are three groups.* The first two you mentioned are predictable, and the third, the other is not as predictable with the precision that I think you are searching for. The first group IV's, obviously up to 20,000 per year. That is the present ceiling for immigrants from any one country.

We think that if Vietnam would use that ceiling to the maximum, it would have a very positive impact on discouraging people from leaving clandestinely, even for those people who perhaps right now do not have an intent to leave, because they could see in that situation that over a 5-year period if 100,000 people could leave Vietnam, that that is predictable under immigrant visas, it might create a different psychology in that country.

On the second category of refugees, we have two groups that, not with great precision, but we have some idea of numbers. The reeducation center detainees, for example, including the detainees and their families, are approximately 70,000 persons now on file in our Embassy in Bangkok. It may go up as we reach an agreement; or as it appears we are going to have an agreement, more people will come forward and apply.

Then the other group are Amerasians. It has been very difficult to get an estimate of that population. About 20,000 have left, I believe. I mention in my testimony that 16,000 have been admitted. There is a time lag, as you know, Mr. Chairman. The Amerasians have 6 months training in the Philippines before they come to the United States, so there are always more who have left than we have admitted at any one time. There may be as many as another 20,000 of that caseload. I am not sure. We won't know until they come forward. No census has ever been taken.

* See appendix.

So there are two groups that certainly come in either as refugees or with refugee benefits. There may be others who would qualify, but at least that gives you some idea of what we are talking about.

Mr. MORRISON. What I want you to explain when you give me this analysis is, beyond the refugees which we consult over and have numbers each year, although with not the necessary precision, perhaps, about exactly which groups are going to get the benefit, and then on the other hand there are people coming in under a regular legal immigration system, why this particular extra number, what purpose they are going to serve that is going to make the ODP work rather than not work.

We can go to lots of countries in the world which are using their ceiling or they are bumping up against one or another limit because the 20,000 is not the only limit. There are worldwide limits on various preferences that cause countries not to use—every country in the world sends 20,000 a year. There are all kinds of reasons why, even if you have more than 20,000 waiting in line, they don't qualify because of worldwide limits on various preferences that are capped.

So you can't be sure that 20,000 can come in any given year under our existing system, and all over the world we could clear backlogs if people could just jump over those various hurdles that exist in the law for good reason. So I am curious about what you want to use these extra numbers for.

Second, I guess I want to know why Vietnam and people of Vietnamese nationality are in need of this special intervention by the United States in contrast to—let me use as the best example, perhaps, Cambodians. Why is it that we feel an obligation to clear everybody as quickly as possible who might want to come to the United States from Vietnam but that we would have Cambodians wait in as long a line as it takes, in the camps, in Thailand and wherever else they might be.

Mr. FUNSETH. Let me take a stab at trying to answer that. First, what we are trying to do is address the situation in Southeast Asia. That is what this whole international effort has been about. What is the situation? The situation is that people, for whatever reason, in very large numbers are continuing to flee Vietnam and seeking asylum in neighboring countries. This is causing in their eyes problems to the extent that last year one of those countries de facto stopped first asylum and people were drowned and there were lives lost.

That is what we are trying to avoid. We are trying to preserve first asylum for the time that it takes so that hopefully the situation will evolve there, and there are developments happening almost daily in Southeast Asia, and I am referring to a hopeful settlement of the Cambodian question that will cause fewer and fewer people to leave. So we want to preserve first asylum.

And one of the reasons that the administration wants the special legislative remedy is we don't want the people who would not qualify as refugees or as immigrants to take to the boats.

Mr. MORRISON. So the answer is Vietnam's special because people leave by sea?

Mr. FUNSETH. People are—yes, and because Vietnam has this long sea coast, people can leave. It's very difficult for Vietnam to

prevent that, and people do have the means for getting out, and they do. It isn't just because the waters around Vietnam. It also has something to do with the conditions inside Vietnam that causes people to leave for political and economic reasons.

Mr. MORRISON. But you would concede that if we'd go back the last decade and we could bear the conditions that have existed in Vietnam and the conditions that existed in Cambodia, you would allow, I assume, that people had good reason to leave Cambodia.

Mr. FUNSETH. And we resettled large numbers of Cambodians. But there are still large numbers of Cambodians in camps——

Mr. MORRISON. On the border.

Mr. FUNSETH. We don't have access to.

Mr. MORRISON. Well, some we do have access to and we just got access to 700 of them and we sent them back to a camp where we don't have access, as I understand it, according to the New York Times. That is, that the people fled a Khmer Rouge camp and came to another camp and were sent back. Is that true?

Mr. FUNSETH. I hope it's not true. The latest information we have on that from our Embassy in Bangkok is that we have assurances, we the international community as well as ourselves, that these people have not been sent back.

Mr. MORRISON. OK, but it is fair to say that there are a lot of Cambodians under very, very lousy conditions and some of them are under the control of a regime that murdered at least a million Cambodians when it was in power, right?

Mr. FUNSETH. Right.

Mr. MORRISON. So it's no picnic to be a Cambodian over the last decade and a half, any more than it's been a picnic to be in Vietnam. I mean fewer Vietnamese were killed in the last decade and a half than Cambodians, and I'm trying to understand why the United States feels it has to go the extra miles, and if you're telling me it's because of clandestine departure, and that's the distinction, I'm willing to accept that. But I want to know.

Mr. FUNSETH. It's the continued exodus of people seeking first asylum in neighboring countries.

And we want to protect first asylum. We don't want people pushed off, and we don't in fact want people to leave clandestinely. It's a very dangerous way to try to seek asylum. Despite a lot of efforts by ourselves and the Thai Government, Malaysian Government, international organizations, piracy is still prevalent in that part of the world.

People are assaulted or drowned or raped. It's a terrible human tragedy that's happening out there and we're trying to avoid it. The way we're trying to avoid it is to encourage people to leave in an orderly way, and it doesn't happen overnight.

Mr. MORRISON. OK, and what you're saying is that Vietnam, that particular country with its particular geography, its particular political history, is a special case, and ought to be looked at on its own terms in a very special way, different from even its neighboring countries of Laos and Cambodia, who lived much of the same political history?

Mr. FUNSETH. Well, but we accept refugees from Laos.

Mr. MORRISON. No, I didn't say we didn't, you are asking for the exercise of a lot more generosity, as my colleague has correctly put

it, with respect to the admission of Vietnamese and facilitating more Vietnamese coming out. You haven't said well, we're going to use special immigrant status for the Cambodians too. Or, I welcome you to say that if you wish.

Mr. FUNSETH. What the purpose of the legislation is to give the President, in consultation with the Congress, discretion to address humanitarian situations like the one in Vietnam and in other parts of the world. I mean we try to address a refugee policy which is responsive to what we see as our own role.

Our primary—the primary part of our refugee policy in fact is not resettlement, although that's the major focus usually of debate and discussion. The major focus of U.S. refugee policy is to help the situation for over 13 million persons, nearly 14 million persons who are refugees.

The whole thrust of our refugee policy and program is to support efforts first of all that protect first asylum wherever it may be, whether it's in Southeast Asia, Africa, Pakistan, the Middle East, Europe, wherever, Central America. Then the next step in our policy is to bring about through diplomatic means a situation where the person can return home. That's the best solution.

The next best solution is settlement in place, and that happens in a lot of regions in the world—Central America, it happens in Africa. Then the third is a relatively small resettlement program ranging between 50,000 and 100,000 people over the past decade out of a population of nearly 14 million people, for which that seems the only humane alternative.

Mr. MORRISON. But we also understand that there are lots of boat people now who are not qualifying as refugees in the international definition, not to use the vernacular definition. You're talking about bringing to the United States lots of people from Vietnam who don't qualify as refugees.

If we were just talking about refugees and refugee numbers, we wouldn't have this discussion of parole. We wouldn't have the discussion. I mean it's a lot more beyond that that we're doing in terms of Vietnam. If we are specially concerned about clandestine departures and people taking to the boats, this question really goes to both you and INS, shouldn't we have a similar concern about people taking to the boats in Haiti, where there is no Orderly Departure Program and in fact those making claims of asylum have nowhere to go.

I mean there's no place to go. If you don't get to the United States and therefore get the right to claim asylum, you have to be within the United States to claim asylum. There is nowhere, as I understand it in the world right now, where a Haitian can orderly depart to the United States if he's not a current petitioned immigrant. Shouldn't we have a similar concern?

Mr. FUNSETH. I think you already had a very interesting hearing on the Haitian subject, and I'm not prepared to expand on the testimony that's already been given. I wasn't present at that hearing, and it's not within my direct area of responsibility.

Mr. MORRISON. Because they're not refugees?

Mr. FUNSETH. Because they're not—

Mr. MORRISON. Because they're not a country of special humanitarian concern?

Mr. FUNSETH. Because the people are asylum-seekers and they're not coming in as refugees.

Mr. MORRISON. I mean the only distinction between an asylum-seeker and a refugee is that someone's within the United States, exactly the same legal definition, right?

Mr. FUNSETH. Right.

Mr. MORRISON. And an individual who was an asylum-seeker in Florida, who was Haitian, could be a refugee applicant outside of Haiti but somewhere else in the world if he were able to get himself interviewed in that regard, right?

Mr. FUNSETH. Right.

Mr. MORRISON. So these are potential. Someone who is an asylum-seeker from Haiti or from somewhere else where you can physically get yourself to the United States is a potential refugee applicant somewhere else, and we could pay attention to them in that regard, with concern about orderly departure.

Mr. FUNSETH. Well, we could and we do in Central America, Mr. Chairman. Haiti is a different case, but we do have a refugee program in Central America. We do try to help in the international effort on people who are refugees in neighboring countries, and we do have an admissions program for people who are interviewed for refugee status by INS officers in Central America.

There are different situations all over the world and we try to address them. In Africa, for example, the main effort of our refugee effort is to help feed and keep alive the 4 million people. But we still have an admissions program for those Africans for whom settlement, resettlement is the best option.

Because the numbers are relatively small, only in Africa and in the Soviet Union do we take all priorities. In other words, we accept applicants from African refugees who have no family ties to the United States. We don't do that in Southeast Asia. We don't do that in other regions of the world. We do that in consultation with the Congress and with this committee.

Mr. MORRISON. But my suggestion, because we did have a very interesting hearing on Haitians, and regardless of intent and I would suggest no intent by what I'm about to say, there are many who have testified before this committee have made expressions to members of this committee that perceive that the treatment of Haitians has a discriminatory history, compared with the treatment of other groups.

It does seem to me, in light of our hearing, in light of the positions that we've taken on orderly departure rather than clandestine departure, the positions we've taken on forced repatriation as opposed to voluntary repatriation, that we forcibly repatriate Haitians regularly, 20,000 of them in the last decade, that it would be appropriate for you in your area of responsibility in the upcoming consultation, in considering whether or not there ought to be a designation of special humanitarian concern with respect to Haitians, and a processing vehicle other than taking to the boats for Haitians who wish to make claims of refugee status, to do that.

It seems to me it would be quite consistent with what we're doing in Southeast Asia and Vietnam and elsewhere, and I would hope that it would get some consideration rather than try to defend how we got to where we are, which may be totally defensi-

ble under different sets of facts. It seems to me there are also many similarities to what we've been discussing here about Vietnam.

It would be useful and I think wise, in terms of the perceptions of various groups and individuals about how we've dealt with Haitians over the years, if we were to think about that and discuss that and it may well be that the numbers are very small, and much could be gained by a relatively small program that would give greater opportunity to Haitians, rather than take to the boats. It's just a suggestion.

OK. I have just a couple of more questions. First, Admiral Taylor and I've kept you here a long time to ask just a couple of questions. But as I understand it, it is the policy of the Navy—when confronted with boats on the high seas in the South China Sea, to intervene to the extent of making certain determinations about whether there are individuals fleeing from Vietnam or other such countries. Is that right?

Admiral TAYLOR. Our responsibility with regard to a ship encountered at sea is to make sure that the people are not in distress, that the boat is seaworthy, that they have all the equipment that they need, that they are medically sound, and provide them whatever assistance is necessary. We do not determine whether or not they are fleeing from Vietnam.

Mr. MORRISON. OK, but in other words—if a ship has a lot of people—how is the determination made as what are the conditions under which you make these inquiries? How do you get this information?

Admiral TAYLOR. The commanding officer is responsible for making that determination. As a general rule, he would—I would propose that he would send members of his crew to the ship, board the ship, inspect it. If there were people with that language ability, they would converse with the people on board the board.

We have also sent doctors aboard ships to inspect their—the sanitary conditions and the health of the people on board, try to determine whether or not they have sufficient charts, navigational equipment, whether the engines to the boats are operating properly, whether they have sufficient fuel and food and water. The final determination on what assistance to be provided is made by the commanding officer of the U.S. carrier.

Mr. MORRISON. Now what is the range of assistance that the commanding officer can give?

Admiral TAYLOR. From zero to taking them on board.

Mr. MORRISON. So that's the extreme, would be taking them on board and in between it might be providing food or providing some medical supplies or a repair of an engine or something of that sort?

Admiral TAYLOR. We have done that on numerous occasions.

Mr. MORRISON. Are there guidelines? I mean is this just a practical matter, anybody who was in the Navy would know when you saw one of these ships that it was one of the ones that you had to take a look at, or are there some guidelines for when a close inquiry—I assume there are a lot of ships out in the South China Sea, and you don't stop to take a look at each of them?

Admiral TAYLOR. Well, there are ships—we encounter ships all over the world, and I believe it would be—you could imagine that a

ship in distress would be able to give you some signal that they needed assistance in numerous ways.

If the boat is obviously on course, does not give you any type of flashing light signal or any type of a signal of hands or waving of arms, you could probably assume that boat knows where it's going and it's under satisfactory conditions. If in fact the boat is dead in the water, you have numerous people on board which is the common way I think that you'd find the boats in the South China Sea.

I think it would be very evident to the commanding officer that he should investigate those boats to see if assistance is required.

Mr. MORRISON. Have there been any instances of which you are aware where the condition—where there's a problem that people on board the boats are in some sense being mistreated, but that the boat itself is seaworthy and doesn't seem to be having any problems but where it's a problem of the treatment of the population on the boat. You're aware of that distinction ever being observed?

Admiral TAYLOR. To my knowledge, we have boarded boats, found people in poor health, provided medical assistance and I cannot determine—I don't know whether or not that has happened congruently with having a good boat. I don't know if that's what your question is.

Mr. MORRISON. And are you comfortable that the current procedures with respect to what happens in a port of call with people that you take on board is sufficient to give your commanding officers the ability to take people—all the people on board that should be taken on board, rather than have such a hassle resulting from that action that your officers would be very disinclined to do it for fear that it would greatly interfere with their other missions?

In other words, is the processing that now exists and the way in which this all works out, if you do take people on board sufficiently efficient and well-funded and well thought-out that your commanders don't feel like they're in a catch-22, that they're concerned about the individuals who they see, but that if they take these people on board there are a whole lot of mission-oriented activities that are going to get screwed up and that—they'd be very worried about that half of their responsibility or primary responsibility.

Admiral TAYLOR. Mr. Chairman, I think it's safe to say that commanding officers of our ships at sea are primarily interested in saving and providing assistance to those people who need it at sea, not how they're going to be treated once they're disembarked at a port of debarkation that has been determined by the State Department and higher authority.

Mr. MORRISON. But my point is that obviously there's a diversion to a point where this has to take place, and I assume it's not an easy thing. Obviously, the problems of taking care of the people on board, that has whatever problems that are always attached to it. We can't do anything about that.

But what we can do something about is the effectiveness of the program that responds when your commander radios ahead and says that they've taken on board 100 Vietnamese who were in this boat that was foundering and they're now going to enter Port X, whatever port that is. I'm curious as to whether that program, that

Mr. Funseth's testimony suggests that there are need for changes in that program.

I'm trying to get your perspective on particular problems that the Navy has had with those programs, if any, that would inform the process of beefing up those responses.

Admiral TAYLOR. Mr. Chairman, that's really outside of my area of expertise. I'd go back to my original statement when I answered your question earlier, is that after we turn the refugees over to the receiving authorities, I have no knowledge of how they're treated.

Mr. MORRISON. No, I understand your answer and I just ask you, you know, as you review your testimony when it's provided to you, this is just an opportunity for you to be helpful and to allow us to be helpful to you if there are any concerns in that regard. This isn't an attack on the Navy or an attack on the State Department.

This is a focal point of oversight on one interaction between the Navy and the State Department, and we want to make sure that the humanitarian mission that we have unfortunately had to assign to the Navy, which is not its primary mission out there in the South China Sea. We want you to be able to perform that humanitarian mission and we don't want disincentives to your doing something that have nothing to do with your responsibility but have to do with some other department of the Government, which might—which just doesn't have to worry about the things you have to worry about.

So your answer is you don't know. I heard your answer. You don't know of any such problems. I'm just giving you an opening on consulting with your staff, if there had been any instances of that, let us know so that we can send it over to the State Department through a different route from the Cabinet route and just say what about this and what's being done to deal with it.

Admiral TAYLOR. Thank you, Mr. Chairman.

Mr. MORRISON. OK, my final questions are for you, Mr. Holman, and they are this. Does your Department have any knowledge or data on what happens to parole populations or what is happening to parole populations coming into this country in the situation that you've been hearing us talk about with respect to Vietnam or with respect to the Soviet Union? Do you have any experience with large parole populations in the past? Do you have any information on welfare dependency rates and the like, or are these invisible populations, just buried in the usual welfare populations of the States?

Mr. HOLMAN. Mr. Chairman, these populations are not visible to us, since they're not under the refugee program by virtue of being parolees rather than refugees or having been granted asylum. So that States do not report any information to us on them.

Mr. MORRISON. Would a parolee be eligible for AFDC?

Mr. HOLMAN. Yes.

Mr. MORRISON. On the same basis as a refugee or on the same basis as a U.S. citizen or on some other basis?

Mr. HOLMAN. It's going to depend in part on whether the parolee comes in with an affidavit of support on that person's behalf.

Mr. MORRISON. What difference does that make?

Mr. HOLMAN. Under the law that regulates AFDC, if there is an affidavit of support, during the person's first 3 years in the United

States the income and resources of the sponsor, that is the person who signed the affidavit—

Mr. MORRISON. Are taken into account in terms of eligibility?

Mr. HOLMAN. Exactly. They are deemed to the applicant for AFDC. I don't believe that any separate data exists that would permit parolees to be identified separately as AFDC recipients, but I'll be very pleased to check that out and see whether we can provide any data.

[The information follows:]

No data exist that would permit parolees to be identified separately as recipients of Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI).

Under the AFDC program, States are not required to report what proportion of their caseloads are U.S. citizens or how many fall into the various alien categories, such as parolees. Therefore, it would not be possible to compute a welfare dependency rate for parolees in general, nor could we determine a dependency rate for persons recently paroled from Vietnam or the Soviet Union.

With regard to the SSI program, the Social Security Administration reports the total number of aliens receiving benefits, broken down into the number of legal permanent residents and a second category, labeled "color-of-law category" how many of the aliens have been granted refugees status, parole status, stay of deportation, etc. Therefore, information on the number of parolees receiving SSI benefits is not available.

Mr. MORRISON. I'd be interested in that, and otherwise, other than this affidavit of support situation, what is the difference between AFDC eligibility of a refugee family and a parolee? A parolee would just have to qualify like another resident of the United States, not like a refugee—refugees have broader eligibility, don't they?

Mr. HOLMAN. The refugee has broader eligibility in the sense that we have the separate program which we call refugee cash assistance, which is for a refugee who meets the same financial needs standards as apply in the State's AFDC program, but is not, for example, a single parent—

Mr. MORRISON. Not categorically related, right?

Mr. HOLMAN. Exactly, exactly.

Mr. MORRISON. To use the jargon of that trade.

Mr. HOLMAN. Yes sir.

Mr. MORRISON. So but a parolee would have to be categorically related?

Mr. HOLMAN. That's correct.

Mr. MORRISON. So that's two differences, because a refugee would not have to have an affidavit of support, and so that issue doesn't arise with refugees, and a parolee would have to be categorically related to be eligible for AFDC. Otherwise, they'd become a general welfare, town welfare, State welfare whatever, program-eligible.

Is there no bar under current law on the basis of alienage within the AFDC? Don't you have to have some particular legal status in order to be eligible?

Mr. HOLMAN. You have to be permanently residing in the United States under color of law, as the technical term that applies to that.

Mr. MORRISON. Are parolees permanently residing in the United States under color of law? Is there an opinion from somewhere that parolees who are temporarily admitted or indefinitely admitted are permanently residing in the United States under color of law?

Mr. HOLMAN. I'll be pleased to provide the AFDC interpretations that relate to that question, and those categories of aliens who are considered to meet that definition.

[The information follows:]

Attached for the record is a copy of the AFDC Action Transmittal FSA-AT-88-4 dated March 3, 1988. This document was issued to State welfare agencies to clarify policy on eligibility of aliens permanently residing in the United States under color of law (PRUCOL). The Action Transmittal restates the statutory provision at section 402(a)(33) of the Social Security Act that any alien who is granted temporary parole status pursuant to section 212(d)(5) of the Immigration and Nationality Act is considered to be PRUCOL, and thus meets the citizenship and alienage requirement for receiving AFDC.

However, section 415 of the Social Security Act contains a separate eligibility requirement that the income and resources of a sponsored alien for three years after the alien enters the United States. The attached Action Transmittal only addresses the citizenship and alienage requirement; it does not address the additional sponsor-to-alien deeming requirement described by Mr. Holman, which might result in an alien's failing to meet financial program eligibility requirements.

Aid To Families with Dependent Children (AFDC) Action Transmittal

U.S. Department of
Health and Human Services
Family Support Administration
Office of Family Assistance
Washington, D.C. 20201

Transmittal No. FSA-AT-88-4

Date March 3, 1988

TO : State Administrators and Other Interested Agencies and Organizations

SUBJECT : Aliens Permanently Residing in the United States Under Color of Law

PURPOSE : To Update and Clarify Policy on Eligibility of Aliens Permanently Residing in the United States Under Color of Law (PRUCOL)

APPLICABILITY : OAA, AFDC, AB, APTD, and AABD

BACKGROUND : The basis for including otherwise eligible aliens who are permanently residing in the United States under color of law (PRUCOL) in the Aid to Families with Dependent Children (AFDC) program is found at section 402(a)(33) of the Social Security Act and regulations at 45 CFR 233.50. The Department of Health and Human Services' policy for the AFDC program on whether an alien is PRUCOL is predicated on evidence confirming the following two factors: first, evidence of an official determination by the Immigration and Naturalization Service (INS) that an alien is legitimately present in this country and second, evidence of a determination that the alien is legitimately present for an indefinite period of time. This policy was upheld by the United States Court of Appeals for the Ninth Circuit in its decision on Sudomir v. McMahon, 767 F. 2d 1456 (9th Cir. 1985).

The court declared that aliens "permanently residing" does not necessarily mean "forever" permanent. An alien is considered "permanently residing" where INS has granted permission to remain in the United States "so long as he is in a particular condition." In other words, a PRUCOL designation does not necessarily remain the same and INS can withdraw permission to remain and enforce deportation proceedings. These two factors serve as the basis for meeting the alien factor of eligibility under PRUCOL.

GUIDELINES:

The following guidelines are provided to facilitate a determination of PRUCOL as an alien eligibility factor. These INS status categories are not all inclusive. Where appropriate, we have also listed the customary INS forms or documents depicting the PRUCOL designation.

1. Refugees admitted pursuant to section 207(c) of the Immigration and Nationality Act (INA) in effect after March 21, 1980 and conditional entrant refugees admitted pursuant to section 203(s)(7) of INA prior to April 1, 1980. (See I-94.)
2. Political asylees who were granted political asylum by the Attorney General pursuant to section 208 of the INA. (See I-94.)
3. Aliens granted temporary parole status pursuant to section 212(d)(5) of the INA. (See I-94.)
4. Cuban/Haitian entrants with a notation "Status Pending Reviewable January 15, 1981" pursuant to section 212(d)(5) of the INA. (See I-94.)
5. Aliens under an INS Order of Supervision pursuant to section 242(d) of the INA. Although aliens have been found deportable, INS will not enforce deportation because of certain factors such as humanitarian concerns, lack of an accepting country, etc. INS conducts periodic reviews to determine whether factors impeding deportation continue to exist. (See I-220 B)
6. Aliens granted an indefinite stay of deportation. INS defers deportation indefinitely due to humanitarian reasons. (See I-94 and/or a letter from INS.)
7. Aliens granted an indefinite voluntary departure status under section 244 of the INA. This is a status whereby the alien informs INS that he/she is able to leave the country on his/her own resources and INS does not issue a deportation order. No specific timeframes are stipulated for the departure and INS allows these aliens to remain in the United States for an indefinite period. (See I-94 or a letter from INS.)
8. Aliens granted a voluntary departure status under section 242(b) of the INA with a deportation date of not less than one year. This status must be subject to renewal. (See I-94 or I-210.)

9. Aliens granted deferred action status which defers departure. (See I-210 and/or a letter.)
10. Aliens granted suspension of deportation pursuant to section 244 of the INA. (See I-94, court order, or a letter.)
11. Aliens who can produce evidence of entry in to the United States prior to January 1, 1972 and continuous residence since that date pursuant to section 249 of the INA.
12. Aliens granted lawful temporary resident status pursuant to section 201 or 302 of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) who are either: (1) a Cuban and Haitian entrant as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96-422, as in effect on April 1, 1983; or (2) an adult assistant applicant for OAA, AB, APTD, or AABD; or (3) an applicant for AFDC who is not a Cuban or Haitian entrant applicant under (1) above who was adjusted to lawful temporary resident status more than five years prior to application. All other aliens granted lawful temporary or permanent resident status pursuant to section 201 or 302 are disqualified for five years from the date lawful temporary resident status is granted.

The following are INS categories which do not meet the alien eligibility factor under FRUCOL:

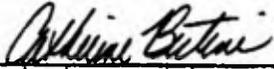
1. Aliens granted a voluntary departure status for whom INS provides a specific departure date allowing the alien time for obtaining a visa. INS advises that this is a deportable status and is subject to enforcement of deportation proceedings.
2. Aliens without a current alien status who are initially applying for a status, or aliens applying for an adjustment of status and currently in possession of a non-FRUCOL status. Aliens in the former group have no official sanctioning of their presence by INS. Aliens in both groups have no official determination that they may remain in the United States for an indefinite period. However, aliens in possession of a voluntary departure status who can provide evidence that an immediate relative petition has been approved by INS and will result in a change to that of permanent status will be considered eligible under FRUCOL.

Reference to INS forms are provided as a guide and should not be construed as the sole evidence for determining eligibility under PRUCOL. The same alien status may be reflected by different issuances from different INS offices. State agency discretion should be exercised and contacts with INS offices may be necessary to correctly determine an alien's status.

PRUCOL designations which are known to be subject to further review by INS before final determinations are made on enforcement of deportation proceedings, (e.g., deferred actions, suspensions of deportations, orders of supervision, or conditional resident aliens, etc.) will require further follow up action to ensure correctness of the alien factor of eligibility.

INQUIRIES
TO :

Regional Administrators, FSA



Catherine Bertini
Director
Office of Family Assistance

Mr. MORRISON. OK. I have one last question. This goes either to INS or to Mr. Funseth, and that is are parolees under these current program in Vietnam required to have affidavits of support to enter? How is the public charge rule applied to these individuals?

Ms. COMBS. They must have a valid affidavit of support or a job offer, employment offer.

Mr. MORRISON. So in other words, they're subject to the same public charge processing that the immigrants are subject to?

Ms. COMBS. That is correct.

Mr. MORRISON. OK. I thank you all very much, and I appreciate all the information. We'll look forward to the submissions that have been requested, and we may have further written questions as we review the record. I thank you very much. The hearing is adjourned.

[Whereupon, at 1:58 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

After the hearing, the Administration provided the following information for the record:

For FY 90, the Administration projects up to 51,000 total admissions from Vietnam through the Orderly Departure Program. Of these, 26,500 are funded admissions, to be authorized under the President's proposed worldwide refugee ceiling. 24,500 are unfunded admissions of non-refugees, and are not included in the President's proposed refugee ceiling.

Of the proposed 26,500 funded admissions, we project that 15,000 would be Amerasian immigrants and their accompanying family members, 7,000 would be former reeducation center detainees with their family members, and 4,500 would be other refugees eligible under the Orderly Departure Program.

Of the 24,500 admissions not under the refugee ceiling, we project that 17,000 would be admitted as qualifying immigrants under the Immigration and Nationality Act and 7,500 would be admitted under the Attorney General's parole authority. The majority of the parolees are persons who are members of a family headed by the recipient of an immigrant visa, but whose own immigrant visa petitions are not yet current.

Projecting numbers in each of these categories for future years is exceedingly difficult. We have no definitive information on the number of potential applicants in Vietnam who would meet the respective criteria, and we can only judge on the basis of applications received to date by the U.S. Government. Actual program levels in future years will be affected by political developments, by Vietnamese government policies and administrative regulations, and by available appropriations. We can, however, indicate our program objectives for the next five years.

For former reeducation center detainees, U.S. Government files contain information covering approximately 100,000 persons, including family members. Since the resettlement program agreement was just signed in July, we cannot yet assess whether the news of the agreement will bring forth a substantial number of additional applicants. Nor do we know for certain that all persons on whom we now have information will seek to emigrate to the United States. Our plan is to begin interviews at the rate of 1,000 persons per month and to expand this program as the Amerasian program winds down. We are hopeful that the program will work and that Vietnamese cooperation will continue. If these assumptions hold, we should have the capacity to bring out almost all of the 100,000 people over the five-year period.

For Amerasians, it is again true that no one knows for certain the total number, since there has never been a census of this population. We expect to bring out about 15,000 in FY 90, and we hope that a comparable number in FY 91 would enable us to complete the resettlement of all Amerasians who wish to emigrate to the United States. There may, however, be some small number of Amerasians who are unable to leave Vietnam during this period who may need to be resettled in FY 92 or future years.

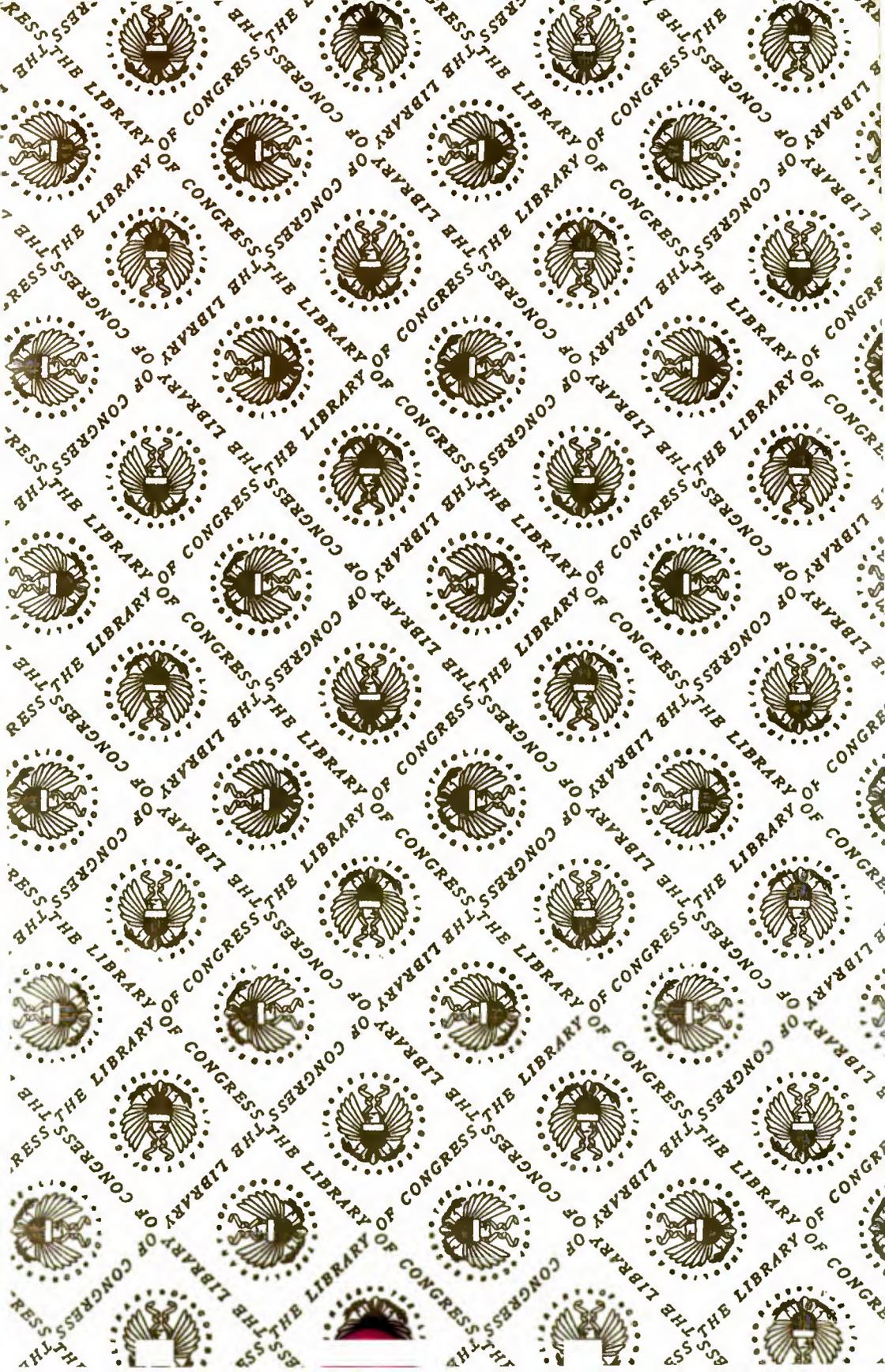
For other refugees eligible under the Orderly Departure Program, the FY 90 ceiling of 26,500 allows for 4,500 other refugee admissions (usually for family members of immigrant visa holders) if the full number of reeducation camp detainees and Amerasians are admitted. The exact number will be determined as the year progresses and needs in the three subprograms -- Amerasians, reeducation detainees, and other refugees -- become clearer.

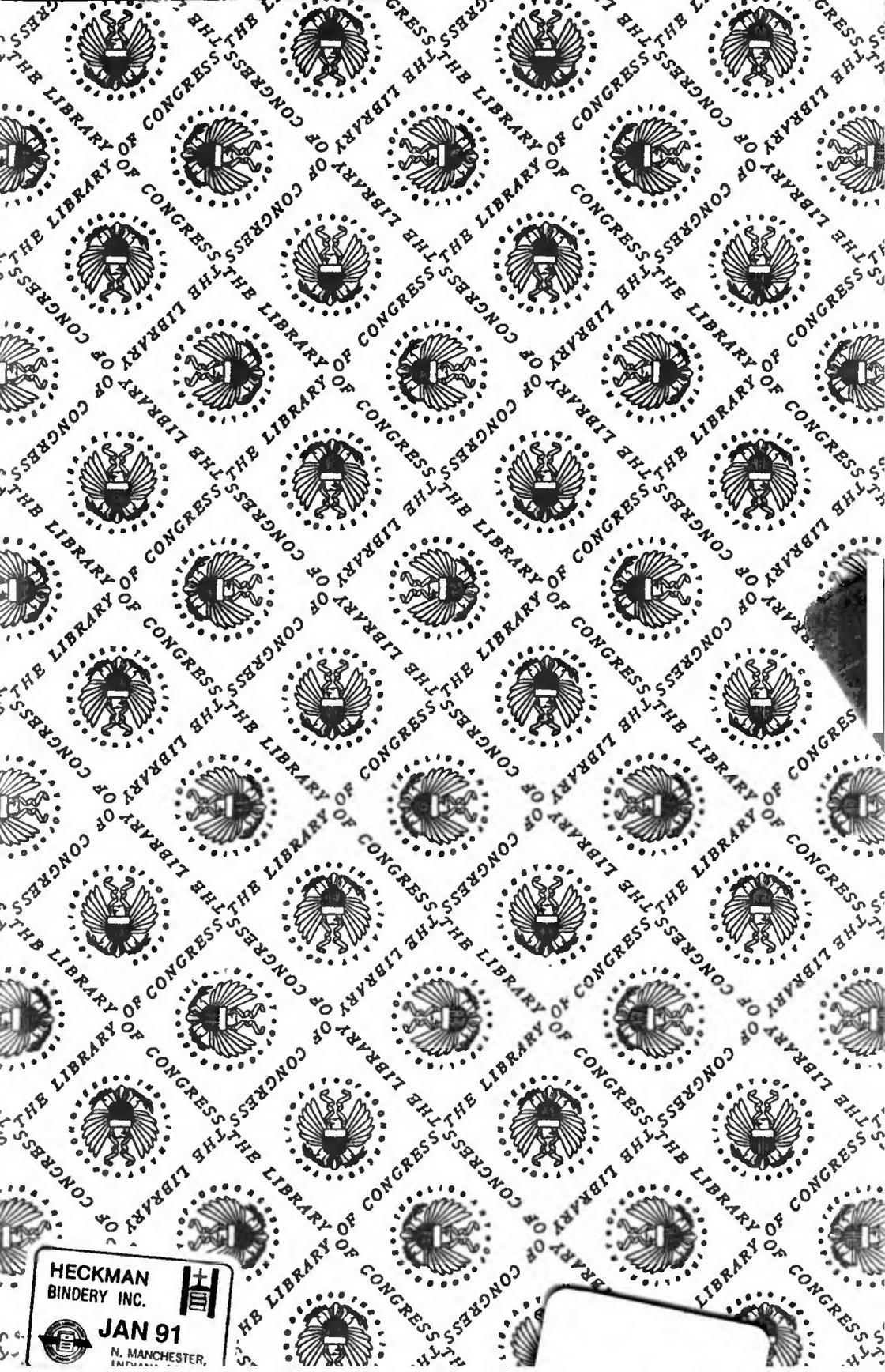
Concerning immigrant admissions, it is longstanding Administration policy to make maximum use of normal immigration for eligible Vietnamese and other Indochinese applicants. This is always a principal subject on the agenda of our talks with the Vietnamese on expanding the Orderly Departure Program. As a rule of thumb, we cite a target figure of 20,000 immigrants per year, that number being equivalent to the annual national quota for preference immigrant visas. Recognizing (a) that immediate relative immigrants do not count against the national quota and (b) that the actual number of preference immigrant visas issued for any nationality depends on a complex analysis of caseload composition and eligibility dates, we maintain that the 20,000 figure is a valuable benchmark or target figure. Given that we now have on file in the Orderly Departure Program about 70,000 persons with current immigrant visa petitions and more coming in all the time, we can project immigrant numbers on the order of 20,000 for each of the next five years.

Parole is a short-term expedient. The Administration is on record as viewing parole as an imperfect means for bringing people to the United States for permanent residence, but it is the only statutory authority now available for certain types of applicants. We have proposed legislation, introduced by Rep. Smith as H.R. 2646, to create a new class of special interest immigrant to replace parole for persons who do not qualify for refugee admission but whose admission is deemed to be in the national interest of the United States. As stated, parole is used almost exclusively for Vietnamese applicants who have non-current immigrant visa petitions but who are members of a family where the principal applicant has a current petition. In order to keep families together, accompanying family members who have non-current petitions (and thus would qualify for admission to the United States at a later date) and who do not meet the refugee criteria, are offered parole admission.

○

76 91





HECKMAN
BINDERY INC. 
 JAN 91
N. MANCHESTER,
INDIANA

LIBRARY OF CONGRESS



0 018 387 926 1

