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FAX TRANSMITTAL SHEET

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TO: Bernard Zimmerman

AT: Third Northern Mariana Islands Constitutional Convention

FROM: Robert Rubin

Bernie:

It was good to hear from you. I must say that my reaction to many of the issues raised in your memo is to recall Yogi Berra's famous line: "It's like deja vu all over again." I realize that you're not seeking my political judgments although, in this area, it's often difficult to separate legal from policy judgments.

1) Charging alien workers a fee for using local services, including schools.

Do these alien workers pay taxes? If so, aren't they already paying for local services? As lawful workers, it seems quite Wilson-esque to reap the benefits of their labor and then deny them (and their families) access to essential services. Unless and until we lose the Prop. 187 case, Plyler v. Doe, 457 U.S. 202 (1982), remains good law and undocumented children cannot be denied a public education.

A more equitable approach might be to charge fees to employers who hire foreign workers. This could be justified as a legitimate incentive to rely on the domestic work force (although I'm not clear that there are domestic workers who would perform the type of work you describe). In any event, the "fee" ought to relate to the importation of the worker and not to the use of services. I believe that dangerous precedents are established when governments create barriers to essential social services for lawful foreign workers whose labor they rely upon.

2) **Fraudulent marriages.**

The Immigration Marriage Fraud Amendments of 1986 (IMFA), 8 U.S.C. §§ 1154(h), 1186a and 1255(e), were enacted in response to various studies that showed that as many as one-third of marriage-based petitions involved some type of marriage fraud. IMFA imposed severe restrictions on marriage-based immigration to the U.S. For example, aliens who marry while in deportation proceedings must live abroad for two years before they are eligible for an immigrant visa. Severe penalties are imposed on persons found to have entered into a fraudulent marriage.

Two important exceptions to IMFA were enacted in 1990. First, an exception to the two-year foreign residency requirement is created if the alien can show through clear and convincing evidence that the marriage is bona fide. 8 U.S.C. § 1255(e). Second, IMFA imposed a two-year conditional status for many aliens who obtain permanent residence based on marriage. The statute requires that the alien spouse and the petitioning spouse must jointly petition to remove the conditional residency status at the end of the two-year conditional period. The 1990 amendments create an exception to the joint petition requirement if "the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse." 8 U.S.C. § 1186a(c)(4).

3) **Children born to foreign workers.**

Under the Fourteenth Amendment, "all persons born . . . in the United States . . . are citizens." As you probably know, there have been rumblings in the Congress to change this constitutional guarantee of citizenship and specifically, to deny citizenship to children of undocumented immigrants. No one has suggested, however, that citizenship be denied to legal immigrants. Again, if a woman is allowed to immigrate because an employer needs her services, why should the child be denied citizenship? Unlike the case of an undocumented immigrant, one cannot even argue that the reason that the employer-sponsored immigrant came was to give birth to a U.S. citizen child. Presumably, an employer seeking her services would know whether she was pregnant and could refuse to hire her if the employer believed that she was immigrating in order to gain citizenship for the child. (I will not address whether this raises a pregnancy-based discrimination claim.) Particularly with regard to legal immigrants, I believe that it is extremely difficult to justify denial of citizenship to their children when the same Fourteenth Amendment protects them being denied "equal protection of the laws."

4) Criminal grounds for deportation.

One of the most common grounds for deportation from the United States involves the commission of crimes involving moral turpitude or controlled substances. 8 U.S.C. § 1251(a)(2). Additionally, persons who at the time of entry were within one of the classes of excludable aliens is deportable upon discovery of the excludable offense. 8 U.S.C. § 1251(a)(1).

I realize that you have been hired by the government that may have a greater interest in a "restrictionist" model than an "inclusionist" one. But then again, you have asked for my perspective and you certainly know my general philosophy about these questions. By the way, is the Northern Mariana Islands government aware that the Biblical admonition to welcome the stranger is mentioned 44 times in the Torah? I, and I am sure Rabbi Lew, will be terribly disappointed if you have not initiated Torah study sessions for all top government officials.

Please let me know if I can be of any further assistance. I don't know the time difference but if it's easier to reach me at home, the number is 415-664-4842. I look forward to hearing from you. Take care.

Best regards,

Robert

Robert Rubin
Assistant Director