Appendix I

Congress of the United States

Washington, DC 20515

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November 4, 1999

The Honorable Janet Reno
Attorney General
Department of Justice
10th St. & Constitution Ave. NW
Washington, DC 20530

The Honorable Doris M. Meissner
Commissioner
Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Re: Guidelines for Use of Prosecutorial Discretion in Removal Proceedings

Dear Attorney General Reno and Commissioner Meissner:

Congress and the Administration have devoted substantial attention and resources to the difficult yet essential task of removing criminal aliens from the United States. Legislative reforms enacted in 1996, accompanied by increased funding, enabled the Immigration and Naturalization Service to remove increasing numbers of criminal aliens, greatly benefitting public safety in the United States.

However, cases of apparent extreme hardship have caused concern. Some cases may involve removal proceedings against legal permanent residents who came to the United States when they were very young, and many years ago committed a single crime at the lower end of the "aggravated felony" spectrum, but have been law-abiding ever since, obtained and held jobs and remained self-sufficient, and started families in the United States. Although they did not become United States citizens, immediate family members are citizens.

There has been widespread agreement that some deportations were unfair and resulted in unjustifiable hardship. If the facts substantiate the presentations that have been made to us, we must ask why the INS pursued removal in such cases when so many other more serious cases existed.

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We write to you because many people believe that you have the discretion to alleviate some of the hardships, and we wish to solicit your views as to why you have been unwilling to exercise such authority in some of the cases that have occurred. In addition, we ask whether your view is that the 1996 amendments somehow eliminated that discretion. The principle of prosecutorial discretion is well established. Indeed, INS General and Regional Counsel have taken the position, apparently well-grounded in case law, that INS has prosecutorial discretion in the initiation or termination of removal proceedings (see attached memorandum). Furthermore, a number of press reports indicate that the INS has already employed this discretion in some cases.

True hardship cases call for the exercise of such discretion, and over the past year many Members of Congress have urged the INS to develop guidelines for the use of its prosecutorial discretion. Optimally, removal proceedings should be initiated or terminated only upon specific instructions from authorized INS officials, issued in accordance with agency guidelines. However, the INS apparently has not yet promulgated such guidelines.

The undersigned Members of Congress believe that just as the Justice Department's United States Attorneys rely on detailed guidelines governing the exercise of their prosecutorial discretion, INS District Directors also require written guidelines, both to legitimate in their eyes the exercise of discretion and to ensure that their decisions to initiate or terminate removal proceedings are not made in an inconsistent manner. We look forward to working with you to resolve this matter and hope that you will develop and implement guidelines for INS prosecutorial discretion in an expeditious and fair manner.

Sincerely,

Rep. Henry J. Hyde

Rep. Barney Frank

Rep. Lamar Smith

Rep. Sheila Jackson Lee

Rep. Bill McCollum

Rep. Martin Frost

Rep. Bill Barrett

Rep. Howard L. Berman

Appendix I, continued

Rep. Brian P. Bilbray

Rep. Corrine Brown

Rep. Charles T. Canady

Rep. Barbara Cubin

Rep. Nathan Deal

Rep. Lincoln Diaz-Balart

Rep. David Dreier

Rep. Bob Filner

Rep. Eddie Bernice Johnson

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Rep. Henry A. Waxman

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Rep. Gene Green

Rep. Lucille Roybal-Allard