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James A. Elgass
University of Michigan Law School

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Federal Funding of United States Refugee Resettlement Before and After the Refugee Act of 1980

James A. Elgass*

INTRODUCTION

When Congress passed the Refugee Act of 1980, it explicitly recognized the federal responsibility for refugees:

Because refugees admitted to the United States are a result of a national policy decision and by federal action, the federal government clearly has a responsibility to assist States and local communities in resettling the refugees—assisting them until they are self-supporting and contributing members of their adopted communities.

The exodus of refugees from Cuba to the United States which occurred in 1980 was one of the most dramatic and highly publicized events in recent history, and the first major challenge to the new Act. While the situation has presented many policy questions, the potentially emotional issue of who is going to pay for the cash assistance, medical aid, and social services necessary to resettle the refugees is one of the most controversial.

From the end of World War II until the 1980 Refugee Act was passed, refugees were admitted to the United States under a series of ad hoc legislative and administrative authorizations, rather than under a regular statutory procedure. A review of refugee policy over the last thirty years reveals that the American response to refugee emergencies has been "hap-hazard, incoherent and often inadequate." In addition, previous decisions to admit refugees were made without adequate consideration of their resettlement needs.

The Refugee Act of 1980 implements reforms to remedy the defects of past refugee policy. The statute's objectives are "to provide a permanent and systematic procedure for the admission to this country of refugees of

* Class of 1982, University of Michigan Law School.
special humanitarian concern to the United States, and to provide comprehensive and uniform provisions for the effective resettlement and absorption of those refugees who are admitted."³ The Act envisages a careful consideration of the consequences of admitting refugees instead of enactment of successive temporary programs. It combines admissions and resettlement policies by permitting the executive branch to admit refugees only after consulting with the Judiciary Committees of both houses of Congress regarding the impact of refugee entry on resettlement assistance policy.⁹

This note begins with an examination of the problems of establishing, funding, and terminating previous resettlement programs involving Cuban and Indochinese refugees. These programs were limited to assisting refugees from specific geographic areas. Each refugee influx called for new legislation,¹⁰ and "new" programs frequently lingered on beyond their useful lives. Uncertainty about the timing of their eventual phaseout left state and local administrators unable to plan for a smooth transition following the termination of federal funding.¹¹

Part II discusses the resettlement funding innovation of the Refugee Act of 1980. The statute, applicable to refugees regardless of nation of origin,¹² requires the executive branch to consult with the Judiciary Committees and to project program costs before any refugees are admitted.¹³ The Act authorizes full federal funding for resettlement projects for the first three years following a refugee's arrival.¹⁴

Part III examines the failure of the executive branch to apply the new statute to the influx in 1980 of Cuban refugees by avoiding its consultation provisions. This evasion casts doubt on the statute's effectiveness in eliminating the problems of past resettlement efforts. However, as suggested in the Conclusion, the Refugee Act's financial innovation can indeed improve the resettlement process if future decision makers apply it more faithfully to crises such as the recent Cuban migration.

PRIOR RESETTLEMENT PROGRAMS

The Cuban Program

The Migration and Refugee Assistance Act of 1962¹⁵ authorized, for an indefinite period, appropriation of funds for refugees fleeing to the United States from any country in the Western Hemisphere—most notably, from Cuba. The program was funded through a yearly blanket appropriation. The Department of Health, Education and Welfare (HEW) estimated the monies needed for the entire package of resettlement programs, and Congress responded with a single appropriation each year. The money for various components of the program was then allocated through the administrative process.¹⁶
HEW used the existing bureaucratic structure of the Aid to Families with Dependent Children (AFDC) programs to provide cash assistance, and of state Medicaid programs to furnish medical assistance. The federal government fully reimbursed the states providing social services to refugees, and covered the administrative expenses involved in their various resettlement programs.

Because the Cuban resettlement program lacked a statutory time limit, individual Cuban refugees could conceivably receive federal benefits indefinitely. Congress began debating the gradual elimination of the Cuban program in fiscal year 1974. At that time, HEW proposed that Congress decrease its reimbursements to the states from 100 percent to the levels adopted in the regular system of federal-state welfare programs. Normally, under the AFDC and Medicaid programs, the states are obligated to cover 17 to 50 percent of their cost. HEW based its proposal on a 1972 Appropriations Conference Committee recommendation that “the Executive Branch exert every effort in bringing about the termination of this program as soon as reasonably possible.” The department asked Congress to respond by progressively reducing the Cuban program appropriation over five years, ending in complete termination in fiscal year 1977.

Normally, appropriations requests involve executive agencies seeking larger budgets than those approved for the previous fiscal year. Here, HEW concluded that the emergency situation which had existed fourteen years earlier was over, and that very few new Cuban refugees were entering the United States. The vast majority of Cuban refugees were now in the country’s economic mainstream, contributing their share of federal, state, and local taxes.

Appropriations for the Cuban program were customarily included in the foreign assistance budget. Because of political disputes over other portions of this budget, Congress failed to appropriate funds for the Cuban program when the deadline of the new fiscal year approached. HEW therefore indicated that if a new appropriation were not passed before the start of the fiscal year, it would implement the proposed phaseout without the direct support of an appropriations bill. The department argued that the earlier Appropriations Conference Committee recommendation provided the necessary source of legislative intent for the phaseout.

The governor of Florida filed a lawsuit to overturn the HEW proposal just before it was to be implemented. The governor argued that the full Congress must decide on the merits of the proposal to wind down the program, and that HEW should not proceed merely on the basis of a committee recommendation. Congress did eventually act, in a continuing resolution and final appropriation, to maintain the Cuban program at the nonphaseout level. The same result ensued in fiscal years 1975 and 1976.
After its earlier proposals were rejected, HEW initiated two research efforts. First, the department commissioned the accounting firm of Arthur Young and Co. to study the amount of state and local taxes paid by Cuban refugees in Florida. The report concluded that the difference in per capita income between Cubans and non-Cubans had been cut in half in the period between 1970 and 1976. Moreover, the remaining differential of 20 percent could be expected to be sharply reduced in the next three to five years. Second, an internal HEW review team completed an exhaustive study of program operations and recommended a five-year phaseout of the Cuban refugee program. HEW reported the conclusions of these two studies to Congress, and again recommended that the Cuban program be phased out. Congress finally embraced HEW's position, adopting it as section 313(c) of the Refugee Act of 1980. Relentless pressure from state and local governments had made it politically impossible for Congress to accept the HEW proposal until it had hard evidence that the refugees no longer needed federal assistance.

The Cuban program will have been in effect for twenty-two years by the time it is scheduled to end in 1984. By contrast, under the 1980 Act, federal assistance is tied to individual refugees, not to long-enduring bureaucratic structures, and is limited to the first three years following a refugee's arrival in the United States. But a time limit by itself would not have remedied the problems posed by the attempts to phase out the Cuban program. The executive branch had admitted the Cuban refugees without consulting with Congress, as the Refugee Act of 1980 now requires. Had the statute been in effect during the 1960s, consultation would have included discussions of the social, economic, and demographic impact of entry decisions. The 1980 Act authorizes resettlement programs, and anticipates that Congress will appropriate adequate funds since it was involved in the initial admissions decision. The experience under the Cuban program indicates that political pressure applied by state and local agencies will persuade Congress to approve the necessary funds. The statute makes clear to the states, however, that their programs must be geared toward moving refugees to a position of self-sufficiency within three years.

The Indochinese Refugee Assistance Program

The next major wave of refugees arriving in the United States consisted of people fleeing Cambodia and Vietnam during the withdrawal of American troops from Vietnam. As the Migration and Refugee Assistance Act of 1962 effectively applied only to Cuban refugees, the Administration had to obtain new authorizing legislation to assist the refugees from Southeast Asia. On May 23, 1975, the Indochina Migration and Refugee Assistance Act of 1975 and a companion bill providing the initial appro-
The State Department received $305 million for expenses incurred in transporting Indochinese refugees to the United States. HEW received $100 million to provide the social and rehabilitation services involved in resettling refugees.

One striking similarity between the Cuban and Indochinese programs is the provision for 100 percent federal reimbursement to the states. The Administration's initial budget request for the IRAP presumed that states would be reimbursed for 100 percent of their costs. "[HEW] feels it is appropriate for the Federal Government to pick up the expenses for the duration of the authorizing legislation, as we have done with the Cuban Program." Indeed, the Administration's actions demonstrated an awareness of state and local government's concern that they might be unduly burdened by the federal decision to admit refugees under the IRAP. The director of the President's Interagency Task Force sent a reassuring telegram to the governors of all fifty states:

State and local authorities will suffer no direct fiscal hardship and little indirect hardship from the influx. The Federal government is seeking authorization and funding from the Congress on an urgent basis to provide: resettlement, health, income maintenance, and social service funds to reimburse 100 percent of the costs incurred for these services. Backup Federal funding authorization exists for any residual problems which individual cases may present.

The hearings on the 1975 Act reveal that Congress did not want to establish another long term program:

The Committee is concerned that this program could develop into a permanent Federal undertaking similar to the present Cuban refugee program. The Committee wants to state categorically that this is not its intent nor should the Executive Branch or the various States interpret the appropriation of these funds as starting a permanent Federal program.

The initial authorization provided by the 1975 Act was due to expire on September 30, 1977, and the $405 million appropriation was limited to use during fiscal year 1976.

A series of amendments extended the IRAP despite the warning issued by the Appropriations Committee when the program began. On October 28, 1977, the program was extended through the end of fiscal year 1981. The amendment also provided for the program's phaseout, fixing the maximum amount of available money as a percentage of the cost in fiscal year 1978. The phaseout provisions were to apply only to refugees already admitted to the United States, but 15,000 newly arrived refugees were still
eligible for state programs that received 100 percent reimbursement from the federal government.\(^{51}\)

This first extension was designed to avoid the substantial and undue impact on the states expected to result from the termination of federal aid.\(^{52}\) As with the Cuban program, state and local government pressure gave rise to IRAP’s longevity.\(^{53}\) Expiration of the program on the original termination date would have cost state and local governments $115 million in cash and medical assistance, social services, and administrative expenses.\(^{54}\) At hearings on the proposed extension, local officials made their position clear:

> We believe that federal decisions carry certain responsibilities. The decision to admit refugees to the United States implies a commitment to provide the service and support they will require to attain self-sufficiency. We feel this is an obligation to the refugees which was assumed by the federal government when their admission was approved. The states in which refugees choose to settle should not be forced to assume this responsibility because of federal reluctance to provide the necessary funds to do the job.\(^{55}\)

In 1978, Congress again amended the IRAP, eliminating the phaseout provisions but moving the expiration date from 1981 to 1979.\(^{56}\) In 1979, Congress restored the 1981 termination date, again with no phaseout provision. Instead, the legislation granted 100 percent reimbursement through the end of fiscal year 1981, four years beyond the original 1977 deadline.\(^{57}\) The IRAP was eventually terminated in March 1980, by a provision in the Refugee Act of 1980.\(^{58}\)

A study of the IRAP by the General Accounting Office (GAO) concluded that the program’s two major defects were the unpredictability of refugee admissions and the uncertainty about future funding of resettlement programs.\(^{59}\) A GAO official stated that, “Funding uncertainties and the consequent ‘starting and stopping’ of programs have meant that in some states, experienced staff were lost and never replaced, and some social services like employment counseling and placement were never resumed.”\(^{60}\) According to the GAO report, some HEW officials said that efforts to monitor federally reimbursed contracts more carefully would be “out of proportion to the amount of funds involved, particularly since these were originally viewed to be temporary, one-time expenditures, and that these Federal reimbursements thus have tended to be administered on the assumption of the ‘good faith’ of the grantee.”\(^{61}\)

Much of the uncertainty about refugee admissions and the level of funding arose from the repeated amendments of the program as deadlines approached. As a result, HEW, state government officials, and voluntary agencies had to plan and manage the assistance programs on an ad hoc
basis. GAO noted that HEW's Indochina Refugee Program Office never formulated detailed program guidelines and that important evaluation and monitoring responsibilities had not been carried out. For example, HEW did not conduct systematic nationwide audits or evaluations of state refugee programs or of claims for federal reimbursement, although this was done occasionally on an individual state basis.

**REFORMS IMPLEMENTED BY THE REFUGEE ACT OF 1980**

**The Consultation Mechanism**

The drafters of the Refugee Act of 1980 addressed a number of the problems of the earlier resettlement programs. First, the statute authorizes federal funding of refugee assistance for three years. Resettlement programs may therefore run more smoothly than before because states will plan their resettlement programs with a specific cutoff point in mind.

A more important change is the new requirement for consultation between representatives of the president and the Judiciary Committee of both the Senate and the House of Representatives before a decision is made to admit refugees. Consultation, as defined by the Act, involves informing the legislators of proposed plans for resettlement and their estimated cost. This consultation mechanism, which links admissions and resettlement decisions, will in turn require the Department of Health and Human Services (HHS, HEW's successor) to devote more time to evaluating and monitoring existing refugee programs in order to project future costs accurately. Such data will be available before future refugees are admitted and will facilitate proper planning.

The statute also requires HHS to submit detailed reports to Congress. These reports must include "a summary of the results of the monitoring and evaluation" of the assistance provided under the Refugee Act of 1980. This provision will ensure a proper evaluation of the effectiveness of funded programs. It will also serve to detect possible fraud, abuse, or mismanagement.

In the past, the decision to admit refugees has largely been the prerogative of the executive branch. Congress has been restricted to considering requests for appropriations to assist refugees already admitted to the United States. The 1980 Refugee Act's consultation provisions recognize that decisions to admit refugees have both foreign and domestic policy implications and require the joint action of both branches of government. These provisions are designed to encourage planning and avoid possible disruptions of resettlement programs.

Because the Refugee Act of 1980 authorizes extensive federal benefits for all refugees allowed to enter the United States, the cost to the federal
government of resettlement programs is directly tied to the number of refugees admitted under the statute. 71 Thus, the new consultation mechanism mandates a realistic projection of program needs before refugees are admitted, 72 and eliminates the possibility of ad hoc program extensions by confining assistance to a three-year period. 73

Congressional debate documents the legislators' concern with the consultation provisions. The Senate Judiciary Committee's report states that:

In considering the bill, the Committee was concerned that the role of Congress should be explicitly stated in the decision-making process governing the admission of refugees. . . . The bill establishes what "consultation" with Congress means, thereby exerting Congressional control over each group of refugees admitted to the United States. 74

The House version of the statute contained a one-house veto procedure, which would have allowed Congress to change the president's final decision on admissions. 75 The conference committee's deletion of this provision from the bill was one of the reasons for the close vote on the House floor. 76

The statute creates a three-level admissions system. The first level consists of a normal flow of 50,000 refugees per fiscal year, through 1982. 77 If a greater need is foreseen prior to the start of a fiscal year, an additional number of refugees may be allowed to enter. 78 The determination to admit additional refugees can be made only after the president has conferred with members of the Judiciary Committees of both houses in accordance with the consultation provision. 79 The final category provides for emergency admissions resulting from a situation which could not have been anticipated at the beginning of the fiscal year. 80

Resettlement Assistance Under the Refugee Act of 1980

The Refugee Act of 1980 authorizes all future resettlement assistance programs and establishes the Office of Refugee Resettlement to administer these programs. 81 While most programs under the Act are identical to those in previous resettlement efforts, the statute rejects crisis-inspired domestic assistance programs:

The growth of domestic programs, through repeated statutory amendment, has resulted in a range of separate programs offering different services to different groups. While we hope to maintain the flexibility to respond to the specific needs of certain groups of refugees, we also want to assure that all refugees have access to the assistance necessary to become self-sufficient and contributing members of American society. 82
The provisions of Title III "assure that all refugees admitted for resettle-
ment will be eligible for the same basic benefits and assistance." The 100 percent reimbursement scheme "insure[s] that state and local
governments are not adversely impacted by Federal decisions to admit
refugees." During hearings on the Refugee Act of 1980, municipal repre-
sentatives emphasized the importance of maintaining community support
for refugee resettlement efforts within states receiving refugees. These
representatives argued that a time limit on full federal reimbursement
would increase the states' financial burden and could adversely affect
public attitudes toward newly resettled refugees: "Increases in highly visi-
ble taxes, such as property taxes, perceived to be related in part or in whole
to the refugee program could cause a significant reduction in the support
the program has both with the general public and elected officials."

The Carter Administration offered two reasons in support of a time limit
on full federal funding. First, a time limit would encourage refugees to
become self-sufficient members of the community. Second, it would be an
incentive to public and private agencies administering resettlement pro-
grams to integrate refugees into community life. Congress compromised
with municipal representatives by adopting a three-year time limit on
federal assistance.

Cash and Medical Assistance
Cash assistance is made available under the AFDC program. A refugee
is eligible for benefits if he or she meets the income level qualifications set
by HHS regulations and demonstrates a willingness to accept a job or
vocational training. Medical assistance is provided according to each state's
Medicaid program. States will receive 100 percent reimbursement for
cash and medical assistance provided to a refugee during the first three
years following arrival. The states are also entitled to full reimbursement
for the "identifiable and reasonable administrative costs of providing this
assistance."

Social Services
Refugees admitted under the 1980 Act are also eligible for social services.
These services are provided according to the existing plan for each state,
approved by the federal government, pursuant to the Social Security
Act. While these vary from state to state, they generally include pro-
grams such as day-care, family planning, hygiene, cultural counseling,
vocational services, job referral, and training in English as a second lan-
guage.

The statute authorizes an annual appropriation of $200 million for these
supportive services. HHS may award grants or contracts directly to public
and private agencies, or it may channel them through state governments.
In either case, "successful applicants would be directly accountable to the Federal government, because grants and contracts can be awarded only to those agencies which the Director determines can best perform the services." 94

THE REFUGEE ACT OF 1980 APPLIED:  
THE CUBAN EXODUS OF 1980

Action Taken by the Carter Administration

The Cuban refugees landing on the Florida shores in spring of 1980 presented the first opportunity for the application of the Refugee Act. The Carter Administration elected to treat the Cubans as applicants for asylum rather than as refugees. 95 Section 208 of the 1980 Act prescribes the asylum procedure for an alien physically present in the United States or at a land border or port of entry. The attorney general must determine, on a case-by-case basis, that an applicant is a refugee within the meaning of the statute. 96 Treatment of the Cubans as applicants for asylum rather than as refugees under the Refugee Act of 1980 has important consequences in the resettlement context.

The refugee and asylum provisions of the statute differ in two important ways relevant to this discussion. In the asylum context, no detailed consultation with the Judiciary Committees is mandated. No limit is placed on the number of people that can be granted asylum. Because of the absence of consultation before admitting the Cubans, analyses of social, economic, and demographic impact required by the Refugee Act of 1980 were not carried out. The admissions and resettlement decisions were separated, as in the past, and Congress became involved only after the Cubans were in the country and in need of resettlement assistance.

The Refugee Act of 1980 is to serve as the authority for the permanent funding necessary to support all future resettlement efforts. Those admitted as refugees under the statute are therefore entitled to the extensive benefits already described, 97 triggering 100 percent reimbursement to state and local governments. However, the asylum provisions of the Act do not authorize 100 percent federal reimbursement for aliens granted asylum. 98 Past experience suggests that the presence of the Cuban asylees in the United States will produce political pressure on Congress to enact legislation providing such reimbursement. 99 Programs for the Cubans, not subject to the built-in constraints of the 1980 Act, run the risk of spawning the problems of the past Cuban and Indochinese resettlement efforts.
The Need for Additional Legislation

The Carter Administration maintained that the Refugee Act of 1980 was not designed to meet the situation presented by the Cubans. Frank White, the associate director of President Carter's domestic policy staff, stated that the new law assumed an orderly flow of refugees into the United States, even in emergency situations. According to the Administration, the Refugee Act's procedures apply only to those refugees who have fled to another country and are awaiting permission to enter the United States. Therefore, the Carter Administration indicated that only new legislation would provide resettlement assistance for the Cubans. Yet Carter White House staffers agreed that the federal government should provide 100 percent reimbursement to state and local governments regardless of the option ultimately chosen to handle the Cubans.

On Capitol Hill, defenders of the statute argued that it could have been applied to the 1980 Cuban influx. Senator Edward Kennedy protested the Administration's failure to consult with Congress under the "emergency" flow provisions of the Act. Representative Elizabeth Holtzman supported 100 percent reimbursement as a necessary ingredient of any resettlement effort: "This is, after all, a federal problem, beyond the control of any state. . . . If President Carter decides this nation should open its arms to the Cubans, he should see that OMB opens its wallet as well." The legislative history undercuts the Carter Administration's position. The hearings on the Refugee Act of 1980 indicate that emergency situations are exactly those in which the consultation mechanism is designed to work. The drafters of the statute recognized the need for a permanent framework since refugee emergencies are likely to occur in the future:

Refugee flows, by their very nature, are unpredictable and their sources are often beyond our control. For this reason, the bill provides for further congressional consultation during the fiscal year in case of emergency refugee situations, including unforeseen and large-scale changes in existing refugee flows.

Some unresolved difficulties concerning the use of the consultation mechanism during emergency situations remain. The executive's plea for flexibility and control in emergencies having foreign policy implications is persuasive. None of the statutory requirements go so far as to give Congress the authority to change the president's final determination. The elimination in conference of the one-house veto provision in the House version of the statute demonstrates a congressional recognition of the preeminent role of the executive.

The consultation provisions require discussions only with the members of both Judiciary Committees, rather than with a larger and less manage-
able group, which might seem to supply the requisite flexibility to deal with emergency situations. However, the exclusion of members of the Appropriations Committees from the discussions could represent a significant defect in the statutory scheme, because of the eventual need to appropriate funds for resettlement projects. To meet the goal of comprehensive forward planning, congressional budgetary experts—in particular, Appropriation Committee members—should be included in any consultation proceedings.

CONCLUSION

One of the most significant reforms of the Refugee Act of 1980 is its link between admissions and resettlement policies through the mechanism of consultation. The Carter Administration failed to take advantage of this important combination to deal with the challenges posed by the 1980 Cuban influx. As a result, the impact of the Cubans' arrival has not been fully analyzed by legislators and administrators, and resettlement programs to assist them may be subject to disruption, indefinite extension, mismanagement, and financial abuse.

Despite this evasion of the consultation mechanism in regard to the Cuban entrants, consultation could prove effective when applied to future refugee emergencies. The legislative history indicates that the drafters fully expected the statute to be applied to rapidly changing future situations.

If it is applied, the combination has implications for refugee policy. First, the consultation provisions suggest that the legislative and executive branches must act together on admissions decisions because they affect foreign and domestic policy. Joint action under the statute would serve as a clear expression of American intentions and commitments. This would assist resettlement planning and "serve notice to other nations of the degree they must share in humanitarian refugee relief efforts." Secondly, the linkage between admissions and resettlement decisions has implications for the welfare of future refugees. The statute clarifies which forms of assistance will be funded by the federal government. While Congress is still fully empowered to disrupt the scheme by refusing to appropriate funds in a given fiscal year, it is unlikely to do so. The statute and supporting legislative history clearly acknowledge a federal obligation to assist refugees admitted to the United States. After consultation, Congress should be willing to appropriate the necessary funds, informed from the beginning by data on the social, economic, and demographic consequences, instead of ignored until bills are due.

Another benefit for refugee welfare lies in the coordination between the
states and the federal government in resettlement efforts. While the federal government had to balance competing interests, most of those involved agreed that it should give some type of guarantee of full federal reimbursement. Without federal assurances, states would be unable to plan their refugee resettlement programs efficiently. Now state programs can be designed and budgets drafted in reliance on the magnitude and duration of federal assistance.

Moreover, the drafters of the 1980 Act intended that the resettlement process move toward the goal of self-sufficiency for all refugees: the result is the three-year statutory time limit on federal assistance. The time limit may seem somewhat arbitrary. However, involving Congress in the entire process should counteract the effect of a limited program. Through consultation, Congress will be aware of the impact of refugee admissions. The Act authorizes basic resettlement programs, and Congress, because of political pressure or otherwise, should appropriate the necessary money to fund them adequately. At the same time, the states will know that their programs must be geared toward the ultimate goal of removing refugees from the welfare rolls within a three-year period.

The combination of admissions and resettlement policies through the mechanism of consultation has great potential for eliminating the problems inherent in previous resettlement efforts. The Carter Administration's response to the influx of Cubans in 1980 has not proven the Refugee Act of 1980 to be an ineffective instrument of reform. The challenge to American policy makers in the future lies in relying on the statute to avoid the problems which have plagued past resettlement programs.

NOTES

3 See, e.g., N.Y. Times, Apr. 24, 1980 § 1, at 1, col. 2; id., May 1, 1980 § 1, at 1, col. 2; id., May 5, 1980, § 1, at 1, col. 1; id., May 15, 1980, § 1, at 1, col. 6.
4 See, e.g. N.Y. Times, May 6, 1980, § 1, at 11, col. 1; id., May 10, 1980, § 1, at 1, col. 2; id., May 26, 1980, § 1, at 11, col. 1.
6 Id. at 5.
7 Id. at 19.
9 Id. § 207(d) (to be codified at 8 U.S.C. § 1157).


12 Refugee Act of 1980, § 201 (to be codified at 8 U.S.C. § 1101(a)).

13 Id. § 207(d), (e) (to be codified at 8 U.S.C. § 1157(d), (e)).

14 Id. § 412(d)(2)(A), (e)(1) (to be codified at 8 U.S.C. § 1522(d)(2)(A), (e)(1)).


16 The amounts allocated by HEW varied depending upon state claims for reimbursement.


20 Id.


22 42 U.S.C. §§ 603, 1396(b) (1976).


25 See id. at 397-98.


27 Id.

28 Id.

29 Id.

30 Pub. L. No. 93-52, 87 Stat. 130 (1973); Pub. L. No. 93-240, 87 Stat. 1049 (1974). See Foreign Assistance and Related Agencies—Appropriations for 1977: Hearings Before the Subcomm. on Foreign Operations and Related Agencies of the House Comm. on Appropriations, 94th Cong., 2d Sess. 410 (1976) [hereinafter cited as 1977 Appropriations Hearings]. The usual effect of a continuing resolution is to authorize spending at the previous year’s level, or the level specified in the president’s budget, whichever is lower. Had this principle been applied to the Cuban program, the effect would have been to implement the phaseout, because the president’s budget called for a cut in spending. However, a provision was added on the floor and agreed to in conference to suspend the usual rule and allow special funding.

The hearings indicate that the governor’s lawsuit was dropped after Congress passed the continuing resolution.

31 See 1977 Appropriations Hearings, supra note 30, at 410.


33 Id.

34 Id.

35 Id.


37 See id. § 412(d)(2)(A), (e)(1) (to be codified at 8 U.S.C. §§ 1522(d)(2)(A), 1522(e)(1)). The legislative history of this section is discussed in the text at notes 84-89 infra.

38 See id. § 207(e)(4) (to be codified at 8 U.S.C. § 1157).
39 See, e.g., N.Y. Times, March 30, 1975, § 1, at 1, col. 5; Apr. 23, 1975, § 1, at 1, col. 7; Apr. 25, 1975, § 1, at 1, col. 5; Apr. 30, 1975, § 1, at 1, col. 7.
43 The executive branch had requested $125 million, allocated as follows:
Welfare and social services $50,000,000
Medicaid 30,000,000
Bilingual and vocational training 30,000,000
Public health 15,000,000
46 Id. at 13.
48 See id.
50 FY 1979 — 75%
1980 — 50%
1981 — 25%
52 Id.
54 See Extension of Indochina Refugee Assistance Program, supra note 51, at 51.
59 See 1979 Hearings, supra note 55, at 153-54.
60 Id. at 154.
61 Id.
62 Id.
63 Id.
65 Refugee Act of 1980, § 207(e) (to be codified at 8 U.S.C. § 1157) provides the following definition of consultation:
For purposes of this section, the term “appropriate consultation” means, with respect to the admission of refugees and allocation of refugee admissions, discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing the proposed admission of refugees is justified by humanitarian concerns or is
otherwise in the national interest, and to provide such members with the following information:

(1) A description of the nature of the refugee situation.

(2) A description of the number and allocation of the refugees to be admitted in an analysis of conditions within the countries from which they came.

(3) A description of the proposed plans for their movement and resettlement and the estimated cost of their movement and resettlement.

(4) An analysis of the anticipated social economic and demographic impact of their admission to the United States.

(5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees.

(6) An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States.

(7) Such additional information as may be appropriate or requested by such members.

To the extent possible, information described in this subsection shall be provided at least two weeks in advance of discussions in person by designated representatives of the President with such members.

(Emphasis added).


67 Id. § 412(a)(7) (to be codified at 8 U.S.C. § 1522).


69 1979 Hearings, supra note 55 at 40.

70 Id. at 39.

71 These benefits are described in the text at notes 90-94 infra.

72 1979 Hearings, supra note 55, at 39.


75 The deletion of the one-house veto means that the executive conceivably could do anything it wants to after consulting with Congress.


77 Refugee Act of 1980, § 207(a)(1) (to be codified at 8 U.S.C. § 1157(a)(1)).

78 Id.

79 After fiscal year 1982, the "normal" flow category is eliminated and the number of yearly admissions is to be determined entirely through the consultation process. Id. § 207(a)(2) (to be codified at 8 U.S.C. § 1157(a)(2)).

80 Id. § 207(b) (to be codified at 8 U.S.C. 1157(b)).


82 1979 Hearings, supra note 55, at 40.


85 See 1979 Hearings, supra note 55, at 264-302.

86 Id. at 266.

87 Id. at 221.

88 HEW Secretary Joseph Califano testified:

[I] think it is important to keep some pressure on the States to move these people off the welfare rolls and into the mainstream of employment. I think that is an important
thing, and there is absolutely no incentive to do so if the Federal Government pays 100 percent. Remember, the Federal Government is not out there offering jobs. The States run those programs, and if the Federal Government is constantly picking up 100 percent of the tab, ad infinitum, there isn't one ounce of desire on any State government, there is no political pull or human pressure to get those people jobs. You might as well leave them on the welfare rolls forever, because somebody else is paying the bill. And I do not think that is healthy social policy.

Id. at 236.


95 See N.Y. Times, May 21, 1980, § 1, at 24, col. 1.
96 Refugee Act of 1980, § 201(a) (to be codified at 8 U.S.C. § 1101(a)) defines a refugee as:

(A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

97 See text at notes 90-94 supra.
98 See Cong. Q., May 31, 1980, at 1499. The statute only authorizes retroactive reimbursement to state and local governments for aliens who applied for asylum prior to November 1, 1979. This provision will benefit primarily Haitians in Florida whose applications for political asylum have been pending for long periods of time in both administrative and judicial forums. Refugee Act of 1980, § 401 (to be codified at 8 U.S.C. § 1522 note).

An interesting feature of the appropriations bill is that it cited the Refugee Act of 1980, the Immigration and Nationality Act, and the International Security and Development Assistance Act of 1980 (H.R. 6942, 96th Cong., 2d Sess.) as sources of funding authority. This
makes little sense: the Refugee Act amended the Immigration and Nationality Act, and was designed to be the only authorization for resettlement assistance. The International Security and Development Assistance Act of 1980, on the other hand, was still in conference committee when the appropriations bill was passed. Indeed, H.R. 6942 was never enacted into law by the 96th Congress!

100 See Cong. Q., supra note 98, at 1496.
101 Id.
103 See Cong. Q., supra note 98, at 1496.
104 Id. at 1499.
105 Id.
106 Id. at 1500 (emphasis added).
107 1979 Hearings, supra note 55, at 43. HEW Secretary Califano testified that, "After much thought and evaluation we are convinced that a single authority for domestic assistance will help us respond better to changing world circumstances and to all groups of refugees." Id. at 221.
108 This issue involves a question of legal theory which is beyond the scope of this note: what is the proper division of authority between the Congress and the executive, given the foreign and domestic policy implications of refugee admissions decisions.
111 See 1979 Hearings, supra note 55, at 151.
112 Id.