

B-260759

May 2, 1995

The Honorable Barbara Boxer
United States Senate

Dear Senator Boxer:

In your letter of March 3, 1995, written jointly with Senator Boxer, you asked our opinion on several issues relating to the \$130 million appropriated for the "State Criminal Alien Assistance Program" by the Violent Crime Control Appropriations Act, 1995 (Title VIII of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995), Pub. L. No. 103-317, 108 Stat. 1724, 1778 (August 26, 1994). Specifically, you raised three issues for our consideration. First, you asked whether this appropriation should be expended to implement section 501 of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1365, or to implement section 20301 of the Violent Crime Control and Law Enforcement Act (Crime Act), Pub. L. No. 103-322, 108 Stat. 1823 (September 13, 1994).¹ Second, you asked whether using the appropriation to implement section 501 of IRCA would violate sections 310001(c)(1) and 310004(b) of the Crime Act. Third, you asked whether the \$130 million authorized to be appropriated for fiscal year 1995 to implement section 20301 of the Crime Act would carry over to future fiscal years if we concluded that the fiscal year 1995 appropriation should be used to implement section 501 of IRCA rather than section 20301 of the Crime Act. We address each of these issues below.

BACKGROUND

Appropriations Act: The Violent Crime Control Appropriations Act, 1995, under the account heading "State Criminal Alien Assistance Program", provides:

¹Section 501 of IRCA and Section 20301 of the Crime Act each authorize federal reimbursement for the costs of incarcerating illegal or undocumented criminal aliens. The major difference between the programs is that section 501 authorizes reimbursement only to state governments while section 20301 permits reimbursement to local as well as state governments.

"For necessary expenses, as authorized by section 501 of the Immigration Reform and Control Act of 1986, as amended (8 U.S.C. 1365), \$130,000,000, to remain available until expended². . . ."

Pub. L. No. 103-317, 108 Stat. 1724, 1778 (emphasis added). The appropriations act goes on to provide:

"Upon enactment of a bill establishing the Violent Crime Reduction Trust Fund and reducing discretionary spending limits, amounts made available under each heading under this title shall be rescinded, and an amount equal to the amount under each such heading shall be made available from such Trust Fund under the same terms and conditions contained in this title."

108 Stat. at 1780 (emphasis added). The appropriations act became law August 26, 1994.

The Crime Act: The Crime Act became law on September 13, 1994. Among other things, it created the Violent Crime Reduction Trust Fund (Trust Fund) and reduced discretionary spending limits. Subsection 310001(a) of the Crime Act provides:

"There is established a separate account in the Treasury, known as the 'Violent Crime Reduction Trust Fund' . . . into which shall be transferred, in accordance with subsection (b), savings realized from implementation of section 5 of the Federal Workplace Restructuring Act of 1994 (5 U.S.C. § 3101 note; Public Law 103-226)."

108 Stat. 2102. Subsection 310001(b) sets forth the amounts that are to be transferred annually from the General Fund of the Treasury to the Trust Fund (including \$2,423,000,000 for fiscal year 1995). The Crime Act also reduced the discretionary spending limits under section 601(a)(2) of the Congressional Budget Act of 1974, as amended, for fiscal years 1995 through 1998. Section 310002, 108 Stat. 2105.

The Crime Act also created a new program to deal with the incarceration of undocumented criminal aliens. Section 20301(a) amends section 242 of the Immigration and Naturalization Act, 8 U.S.C. § 1252, by adding a new subsection (j) that provides that state or local governments may seek either compensation from the Trust Fund for the

²The appropriation requires the Attorney General to promulgate regulations implementing the State Criminal Alien Assistance Program that prescribe eligibility requirements, require verifications by the states with the Immigration and Naturalization Service, establish a formula for distributing assistance among the states, and award assistance to eligible states.

costs of incarcerating undocumented criminal aliens or have the aliens transferred to federal custody. Section 20301(a) also authorizes appropriations to carry out the program including amounts from the Trust Fund. For fiscal year 1995 the Congress authorized \$130 million to be appropriated from the Trust Fund. Id.

Implementing Regulation: In response to the mandate contained in the appropriations act, the Department of Justice (DOJ), on October 6, 1994, issued an interim rule to implement the State Criminal Alien Assistance Program. The supplementary information accompanying the rule indicated that DOJ, Office of Justice Programs, viewed the \$130 million appropriated by the appropriations act as available only to carry out section 501 of IRCA which authorizes the Attorney General to reimburse states for the costs associated with the incarceration of criminal illegal aliens. 59 Fed. Reg. 50830. The supplementary information recognized that the Crime Act had created a new program that would reimburse both state and local governments for the costs associated with illegal alien incarceration. However, it indicated that the fiscal year 1995 appropriation was available only for carrying out section 501; no funds had been appropriated to carry out the new Crime Act program. 59 Fed. Reg. at 50831.

DISCUSSION

Should the appropriation be expended to carry out section 501 of IRCA or section 20301 of the Crime Act?

Appropriated funds may only be used for the purposes for which they are appropriated unless otherwise provided by law. 31 U.S.C. § 1301(a). Clearly, the fiscal year 1995 State Criminal Alien Assistance Program appropriation is available for necessary expenses authorized by section 501 of IRCA. Therefore, unless there is some other statutory provision that changes the effect of the appropriation, it is available only to implement section 501 of IRCA, not section 20301 of the Crime Act.³

³In your letter you point out that it was the intent of the appropriations act to fund those programs authorized by the Crime Act. The Joint Explanatory Statement accompanying the conference report on the appropriations act does state:

"This title appropriates a total of \$2,345,000,000 for various Justice Department programs which would be authorized in the Violent Crime Control and Law Enforcement Act of 1994."

H.R. Rep. No. 708, 103d Cong., 2d Sess. 96 (1994). Regardless of what may have been the intent expressed by the conferees, the language that was enacted in the appropriations act refers only to section 501 of IRCA. It does not refer to the programs authorized in the Crime Act.

The appropriations act does provide that if a bill is enacted which both creates the Trust Fund and reduces discretionary spending limits, the appropriations in the act will be converted from appropriations from the General Fund of the Treasury to appropriations from the Trust Fund. As we indicated above, the Crime Act created the Trust Fund and reduced discretionary spending limits. Therefore, under the terms of the appropriations act, Congress directed in effect that the fiscal year 1995 appropriation is from the Trust Fund rather than the General Fund. However, the conversion language in the appropriations act states that the amounts made available from the Trust Fund are to be "under the same terms and conditions provided in the [appropriations act]." Thus, the appropriation for State Criminal Alien Assistance Program remains available only for expenses authorized by section 501 of IRCA.

Would use of the appropriation to implement section 501 of IRCA violate paragraph 310001(c)(1) of the Crime Act?

Your second question raises the issue whether language in the Crime Act changes the purposes for which the fiscal year 1995 appropriation may be used. Paragraph 310001(c)(1) of the act, in the title creating the Trust Fund, states that

"Amounts in the Fund may be appropriated exclusively for the purposes authorized in this Act and for those expenses authorized in any Act enacted before this Act that are expressly qualified for expenditure from the Fund."

108 Stat. 2103. You suggest that using moneys from the Trust Fund to implement section 501 of IRCA, a purpose not "authorized" in the Crime Act, would violate this provision.

It is not clear whether the restriction in paragraph 310001(c)(1) limits the purposes for which appropriated funds may be used or is merely a restriction on the purposes for which the Congress may appropriate funds. In either case, the implementation of section 501 of IRCA is consistent with the limitation. In addition to purposes authorized by the Crime Act, this provision anticipated the appropriation of funds for purposes authorized by legislation enacted before the Crime Act "that are expressly qualified for expenditure from the Fund". The Congress enacted the appropriations act before the Crime Act and, by virtue of the conversion provision in the appropriations act, expressly qualified the appropriation as one for expenditure from the Trust Fund. The conversion provision in the appropriations act states that the amounts from the Trust Fund that are appropriated to replace the amounts first appropriated from the General Fund of the Treasury are to be available "under the same terms and conditions contained in this title". 108 Stat. at 1780. Thus the \$130 million appropriated from the Trust Fund for the State Criminal Alien Assistance Program are specifically made available to carry out section 501 of IRCA. In

other words, the \$130 million are "expressly qualified" for expenditure from the Trust Fund. Thus, using the funds to implement section 501 is consistent with paragraph 310001(c)(1) of the Crime Act.⁴

Does unused appropriations authority contained in the Crime Act extend into future years?

Since the fiscal year 1995 State Criminal Alien Assistance Program appropriation is available to carry out section 501 of IRCA and not to implement section 20301 of the Crime Act, Congress has not utilized section 20301's \$130 million authorization of an appropriation from the Trust Fund for fiscal year 1995. Accordingly, you ask whether this authorization will remain available to support appropriations in future fiscal years.

As an initial matter, legislation authorizing appropriations is a directive to the Congress itself concerning the amount of funds it can appropriate. The rules of the House of Representatives prohibit appropriations for expenditures not previously authorized by law. Rules of the House of Representatives, Rule XXI (2). Although the Standing Rules of the Senate, Rule XVI, is more limited in its reach than the House Rule it is ultimately for the Congress, rather than this Office, to interpret such legislation. We do, however, offer the following observations:

Section 310003 of the Crime Act provides:

"If, in making an appropriation under any provision of this Act or amendment made by this Act that authorizes the making of an appropriation for a certain purpose for a certain fiscal year in a certain amount, the Congress makes an appropriation for that purpose for that fiscal year in a lesser amount, that provision or amendment shall be considered to authorize the making of appropriations for that purpose for later fiscal years in an amount equal to the difference between the amount authorized to be appropriated and the amount that has been appropriated."

108 Stat. at 2105-06 (emphasis added). The language of this provision specifically addresses the situation in which the Congress appropriates for a program but does so in an amount less than the amount authorized. In such instance section 310003 clearly preserves the unused authorization for future years. The issue is whether the provision also preserves an unused authorization when the Congress fails to appropriate any amount for a program. Under the literal language of section 310003 an authorization would not be

⁴You also suggested that the use of the \$130 million for section 501 of IRCA would violate subsection 310004(c) of the Crime Act. Subsection 310004(c) permits no more than 10 percent of the amount authorized to be appropriated for a state and local law enforcement program to be appropriated for another state or local law enforcement program. Since implementing section 501 is an authorized use of funds appropriated from the Trust Fund for fiscal year 1995, the 10 percent limitation is not applicable.

preserved in such instance. We think, however, that such a restrictive reading of the provision would defeat its purpose. As described in the Joint Explanatory Statement of the conferees,

"This section is an 'authorization extender' provision intended to assure the complete and efficient use of all authorizations contained in the Report and all monies transferred into the Violent Crime Reduction Trust Fund. Under this provision, if the amount appropriated from the Trust Fund for a given program in a particular fiscal year is less than the amount authorized for that program in that year, the unused portion of the authorization remains available for use for that program in later fiscal years."

H.R. Rep. No. 711, 103d Cong., 2d Sess. 401 (1994). Further, such an interpretation could produce anomalous results.⁵ For example, literally read under section 310003 if the Congress appropriates only one dollar for a program, the unused portion of the authorization would extend into future years. If, however, the Congress appropriates nothing for the program, none of the unused authorization would be preserved. We think that an interpretation that would preserve the unused portion of an authorization in both the situation in which the Congress appropriates less than the authorized amount and the situation in which it fails to appropriate for a program at all makes the most sense.⁶ We trust that this letter is responsive to the questions raised in your letters. Unless you or Senator Boxer releases it sooner, this letter will be made available to the public 10 days from today.

Sincerely yours,

/s/ James F. Hinchman
for Comptroller General
of the United States

⁵The courts and our Office have recognized that when giving effect to the plain meaning of the words of a statute leads to an absurd or unreasonable result, clearly at variance with the policy of the legislation as a whole, the purpose of the statute rather than its literal words will be followed. See 61 Comp. Gen. 461, 468 (1982); 50 Comp. Gen. 604, 605 (1971).

⁶We understand that legislation is pending which would provide that the amounts appropriated to carry out section 501 of IRCA are also available, although apparently not exclusively, to implement the program created by section 20301. Should Congress enact this legislation, there would be no unused appropriations authorization for fiscal year 1995 for this program.