

FOR THE RELIEF OF HERACLIO TOLLEY

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JUNE 10, 1997.—Referred to the Committee of the Whole House and ordered to be printed

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Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 378]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 378) for the relief of Heraclio Tolley, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE AND SUMMARY

This legislation would classify the beneficiary as a child for purposes of approval of a relative visa petition filed by his adoptive parent and the filing of an application for an immigrant visa or adjustment of status.

BACKGROUND AND NEED FOR THE LEGISLATION

Heraclio and his brother, Florencio, became orphans when their mother died and their father abandoned them at the ages of 2 and 4 respectively, leaving them to be raised by their maternal grandparents in Mexico. Several year later, when their uncle visited, he learned that the boys were living with little or no supervision, so he brought them back to the United States with him and took over full responsibility and care for the boys. The uncle, who worked for the adopting family, was killed in an auto accident a year later. At that time, the Tolleys contacted an adoption attorney and instructed him to start proceedings for guardianship so that they could become legally responsible for the boys as well as enroll them in school. However, because they began guardianship proceedings

prior to adoption proceedings, it set back the completion of the adoption process 4 months past Heraclio's 16th birthday.

Immigration law requires that in order for an adopted child to qualify for permanent residence status as a "child" of an American citizen, the child must have been adopted by the age of 16. The petition for adoption was filed prior to Heraclio Tolley's sixteenth birthday. Had the Tolleys began adoption proceedings before the guardianship proceedings, the adoption would have been finalized before he turned 16.

#### HEARINGS

The Committee's Subcommittee on Immigration and Claims held no hearings on H.R. 378.

#### COMMITTEE CONSIDERATION

On March 13, 1997, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 378, by voice vote, a quorum being present.

On May 13, 1997, the Committee on the Judiciary met in open session and ordered reported favorably the bill H.R. 378, by voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 378, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, May 16, 1997.

Hon. HENRY J. HYDE,  
 Chairman, Committee on the Judiciary,  
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Office has prepared the enclosed cost estimate for H.R. 378, a bill for the relief of Heraclio Tolley.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

*H.R. 378, A bill for the relief of Heraclio Tolley*

CBO estimates that enacting this legislation would have no significant impact on the federal budget. H.R. 378 would not affect direct spending or receipts; therefore, pay-as-you-go procedures do not apply. This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments.

H.R. 378 would classify Heraclio Tolley, who is 18 years of age, as a child for the purposes of a petition for an immigrant visa or for adjustment of status to permanent residence. This bill would not provide any special preference for Mr. Tolley and would not affect the total level of immigration. Thus, enacting this legislation would have no significant impact on the federal budget.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226-2860. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, claus 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article 1, Section 8, Clause 10 of the Constitution.

#### AGENCY VIEWS

The comments of the Immigration and Naturalization Service on H.R. 2346, the bill's predecessor in the 104th Congress, are as follows:

DEPARTMENT JUSTICE,  
 IMMIGRATION AND NATURALIZATION SERVICE,  
 Washington, DC, October 10, 1996.

Hon. HENRY HYDE,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: In response to your request for a report relative to H.R. 2346 for the relief of Heraclio Tolley, there is enclosed a memorandum of information concerning the beneficiary.

The bill would provide that the 19 year old adopted son of Dawn and Daniel Tolley may be classified as a child under Section 101(b)(1)(E) of the Immigration and Nationality Act (Act). The bill further provides that the natural parents, brothers or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Act. The bill further requires payment of the required visa fees and the proper visa number deduction.

Absent enactment of the bill, the beneficiary, a native and citizen of Mexico, appears to be ineligible for permanent residence until such time as his brother, Florencio, obtains United States citizenship and meets the other requirements to petition for him.

Sincerely,

PAMELA BARRY, *Executive Director,*  
*Congressional and Intergovernmental Relations.*

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND  
 NATURALIZATION SERVICE FILES RE: H.R. 2346

Information concerning this case was obtained from the beneficiary, Heraclio Tolley, and the interested parties, Mr. and Mrs. Daniel Lloyd Tolley.

The beneficiary, Heraclio Tolley a native and citizen of Mexico was born October 16, 1977. The beneficiary entered the United States with his uncle, Cleso Martinez-Rivera, and his younger brother, Florencio, on January 14, 1992 near the port of entry at San Ysidro, California. They all entered without inspection.

The beneficiary and Florencio were brought to the United States by their uncle due to a complete collapse of their immediate family structure. The beneficiary's mother, Viviana Martinez died in July 1982. At about the same time the boys were abandoned by their father, Juventino Mendez. Their uncle, Cleso Martinez, visited the family and learned of the boys predicament. Heraclio, at age fourteen, had moved to Guanajuato and was picking vegetables. Florencio was living with aged grandparents, but was rarely home. Neither of the boys was attending school.

After their arrival in the United States the two brothers lived with and were supported by Mr. Martinez in El Cajon/Lakeside California. Mr. Martinez was, at that time, employed as a construction worker by the Weingarten Fletcher Group. His foreman was Daniel Lloyd Tolley. The interested parties had known Heraclio and Florencio since shortly after their arrival in the United States. On January 27, 1993, Mr. Martinez was involved in an automobile

accident which resulted in his death and serious injury to the beneficiary.

The interested parties then decided to adopt Heraclio and Florencio, as they had no family capable of caring for them in the United States or Mexico. Mr. and Mrs. Tolley initially became legal guardians of Heraclio and Florencio. On February 18, 1994, the final adoption decree was awarded, making the Tolleys the legal adoptive parents. However, this occurred four months after Heraclio's sixteenth birthday, negating his eligibility to immigrate. Florencio, because of his age, was allowed to immigrate and is now pursuing United States citizenship. It is the Tolleys' desire that the two brothers be allowed to live together.

Daniel Lloyd Tolley was born on June 29, 1957 in the United States. Dawn Ann Tolley was born on May 4, 1948 in the United States. They were married in 1989. Mrs. Tolley has 2 daughters from a previous marriage. Mr. Tolley has no other children in addition to Heraclio and Florencio.

Heraclio Tolley is a graduate of Valhalla High School in El Cajon, California and is currently attending Community College, he is not currently employed. Mr. and Mrs. Tolley are both employed and have a combined annual income of approximately \$75,000. Heraclio and his brother are financially supported by the Tolleys.