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105TH CONGRESS
1ST SESSION

H. R. 2716

To revise, codify, and enact without substantive change certain general and permanent laws, related to aliens and nationality, as title 8, United States Code, ''Aliens and Nationality''.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 1997

Mr. HYDE introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To revise, codify, and enact without substantive change certain general and permanent laws, related to aliens and nationality, as title 8, United States Code, ''Aliens and Nationality''.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TITLE 8, UNITED STATES CODE.

Certain general and permanent laws of the United States, related to aliens and nationality, are revised, codified, and enacted as title 8, United States Code, ''Aliens and Nationality'', as follows:

TITLE 8—ALIENS AND NATIONALITY

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II.	ALIENS	2101
III.	UNLAWFUL EMPLOYMENT PRACTICES	11101

IV. REFUGEE AND IMMIGRANT PROGRAMS 13101
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SUBTITLE I—GENERAL

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§ 101. Adjacent islands

In this title, ''adjacent islands'' includes the Bahamas, Barbados, Bermuda, Cuba, the Dominican Republic, Haiti, Jamaica, Martinique, Miquelon, Saint Pierre, Trinidad, the Windward and Leeward Islands, and other British, French, and Dutch territories and possessions in or bordering on the Caribbean Sea.

§ 102. Admission

In this title, ''admission'' means the lawful entry of an alien into the United States after inspection and authorization by an immigration officer. However—

(1) an alien who is paroled under section 6121 of this title or permitted to land temporarily as an alien crewmember is deemed not to have been admitted; and

(2) an alien lawfully admitted for permanent residence is not regarded as seeking an admission to the United States for purposes of the immigration laws unless the alien—

(A) has abandoned or relinquished that status;

(B) has been absent from the United States for a continuous period of more than 180 days;

(C) has engaged in illegal activity after having departed the United States;

(D) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this title and extradition proceedings;

(E) has committed an offense identified in section 6309(a)(1), (2), (3), (4), or (5) of this title, unless since that offense the alien has been granted relief under section 6309(b) or 6721(a) of this title; or

(F) is attempting to enter the United States at a time or place other than as designated by an immigration officer or has not been admitted to the United States after inspection and authorization by an immigration officer.

§ 103. Advocates

In this title, ''advocates'' includes advises, recommends, furthers by overt act, and admits belief in.

§ 104. Aggravated felony

(a) ACTIONS TAKEN AND VIOLATIONS OF SECTION 10149(a)(1) OCCURRING BEFORE SEPTEMBER 30, 1996.—(1) The definition of ''aggravated felony'' in this subsection applies to an action taken, or a violation of section 10149(a)(1) of this title occurring, before September 30, 1996.

(2)(A) Subject to paragraph (1) of this subsection, in this title, ''aggravated felony'' means any of the following, or an attempt or conspiracy to commit any of the following, committed in the United States:

(i) murder.

(ii) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), including a drug trafficking crime (as defined in section 924(c)(2) of title 18).

(iii) illicit trafficking in a firearm or destructive device (as defined in section 921(a) of title 18).

(B) Subparagraph (A) of this paragraph applies to an offense under a law of a State or the United States.

(3)(A) Subject to paragraph (1) of this subsection, in this title, ''aggravated felony'', in addition to its meaning under paragraph (2) of this subsection, means—

(i) any of the offenses specified in paragraph (2)(A) of this subsection, or an attempt or conspiracy to commit any of those offenses, committed outside the United States after November 28, 1990; and

(ii) any of the following, or an attempt or conspiracy to commit any of the following, committed in or outside the United States after November 28, 1990:

(I) a crime of violence (as defined in section 16 of title 18, except a purely political offense) for which the term of imprisonment is at least 5 years.

(II) an offense described in section 1956 of title 18 for which a conviction is entered before October 25, 1994.

(B) Subparagraph (A) of this paragraph applies to an offense under a law of—

(i) a State or the United States; or

(ii) a foreign country if the term of imprisonment for the offense was completed within the prior 15 years.

(4)(A) Subject to paragraph (1) of this subsection, in this title, ''aggravated felony'', in addition to its meaning under paragraphs (2) and (3) of this subsection, means any of the following, or an attempt or conspiracy to commit any of the following, for which a conviction is entered after October 24, 1994:

(i) illicit trafficking in an explosive material (as defined in section 841(c) of title 18).

(ii) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least 5 years.

(iii) an offense that relates to owning, controlling, managing, or supervising a prostitution business or that is described in section 1581, 1582, 1583, 1584, 1585, or 1588 of title 18.

(iv) an offense that—

(I) involves fraud or deceit in which the loss to the victim is more than $200,000; or

(II) is described in section 7201 of the Internal Revenue Code of 1986 (26 U.S.C. 7201) in which the loss to the Federal Government is more than $200,000.

(v) an offense related to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by a term of imprisonment of at least—

(I) 15 years if the conviction was entered before April 24, 1996; or

(II) 5 years if the conviction was entered after April 23, 1996.

(vi) an offense described in section 10147(a)(1)(A) or (2) of this title for which the term of imprisonment is at least 5 years.

(vii) an offense described in section 793, 798, 2153, 2381, or 2382 of title 18 or section 601 of the National Security Act of 1947 (50 U.S.C. 421).

(viii) an offense described in section 842(h) or (i), 844(d), (e), (f), (g), (h) or (i), 922(g)(1), (2), (3), (4) or (5), (j), (n), (*o*), (p), or (r), or 924(b) or (h) of title 18 or section 5861 of the Internal Revenue Code of 1986 (26 U.S.C. 5861).

(ix) an offense described in section 875, 876, 877, or 1202 of title 18.

(x) an offense described in section 1546(a) of title 18 for which the term of imprisonment is at least—

(I) 5 years if the conviction was entered before April 24, 1996; or

(II) 18 months if the conviction was entered after April 23, 1996.

(xi) an offense described in section 1956 or 1957 of title 18 if the amount is more than $100,000.

(xii) an offense described in section 1962 of title 18 for which a sentence of at least 5 years may be imposed.

(xiii) an offense described in section 2251, 2251A, or 2252 of title 18.

(B) Subparagraph (A) of this paragraph applies to an offense under a law of—

(i) a State or the United States; or

(ii) a foreign country if the term of imprisonment for the offense was completed within the prior 15 years.

(5)(A) Subject to paragraph (1) of this subsection, in this title, ''aggravated felony'', in addition to its meaning under paragraphs (2), (3), and (4) of this subsection, means any of the following, or an attempt or conspiracy to commit any of the following, for which a conviction is entered after April 23, 1996:

(i) an offense that is described in section 2421, 2422, or 2423 of title 18 if committed for commercial advantage.

(ii) an offense of falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 for which the term of imprisonment is at least 18 months.

(iii) an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of title 18 for which a sentence of at least 5 years may be imposed.

(iv) an offense described in section 10148(a) or 10149(a) of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in this section.

(v) an offense related to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which a sentence of at least 5 years may be imposed.

(vi) an offense related to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which a sentence of at least 5 years may be imposed.

(vii) an offense related to failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of at least 2 years may be imposed.

(B) Subparagraph (A) of this paragraph applies to an offense under a law of—

(i) a State or the United States; or

(ii) a foreign country if the term of imprisonment for the offense was completed within the prior 15 years.

(b) ACTIONS TAKEN AND VIOLATIONS OF SECTION 10149(a)(1) OCCURRING AFTER SEPTEMBER 29, 1996.—(1)(A) The definition of ''aggravated felony'' in this subsection applies to an action taken, or a violation of section 10149(a)(1) of this title occurring, after September 29, 1996.

(B) Notwithstanding any other provision of law (including any effective date), the definition of ''aggravated felony'' in this subsection applies no matter when a conviction is entered.

(2)(A) Subject to paragraph (1) of this subsection, in this title, ''aggravated felony'' means any of the following, or an attempt or conspiracy to commit any of the following:

(i) murder, rape, or sexual abuse of a minor;

(ii) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), including a drug trafficking crime (as defined in section 924(c)(2) of title 18).

(iii) illicit trafficking in a firearm or destructive device (as defined in section 921(a) of title 18) or in an explosive material (as defined in section 841(c) of title 18).

(iv) an offense described in section 1956 or 1957 of title 18 if the amount of the funds exceeded $10,000;

(v) an offense described in section 842(h) or (i), 844(d), (e), (f), (g), (h) or (i), 922(g)(1), (2), (3), (4) or (5), (j), (n), (*o*), (p), or (r), or 924(b) or (h) of title 18 or section 5861 of the Internal Revenue Code of 1986 (26 U.S.C. 5861).

(vi) a crime of violence (as defined in section 16 of title 18, except a purely political offense) for which the term of imprisonment is at least one year.

(vii) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least one year.

(viii) an offense described in section 875, 876, 877, or 1202 of title 18.

(ix) an offense described in section 2251, 2251A, or 2252 of title 18.

(x) an offense described in section 1962, 1084 (if it is a second or subsequent offense), 1955, or 1962 of title 18 for which a sentence of at least one year may be imposed.

(xi) an offense that—

(I) relates to owning, controlling, managing, or supervising a prostitution business;

(II) is described in section 2421, 2422, or 2423 of title 18 if committed for commercial advantage; or

(III) is described in section 1581, 1582, 1583, 1584, 1585, or 1588 of title 18.

(xii) an offense described in section 793, 798, 2153, 2381, or 2382 of title 18 or section 601 of the National Security Act of 1947 (50 U.S.C. 421).

(xiii) an offense that—

(I) involves fraud or deceit in which the loss to the victim is more than $10,000; or

(II) is described in section 7201 of the Internal Revenue Code of 1986 (26 U.S.C. 7201) in which the loss to the Federal Government is more than $10,000.

(xiv) an offense described in section 10147(a)(1)(A) or (2) of this title except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this title.

(xv) an offense described in section 10148(a) or 10149(a) of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in this section.

(xvi) an offense—

(I) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of title 18; and

(II) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this title.

(xvii) an offense related to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by a term of imprisonment of at least 5 years.

(xviii) an offense related to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year.

(xix) an offense related to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year.

(xx) an offense related to failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of at least 2 years may be imposed.

(B) Subparagraph (A) of this paragraph applies to an offense under a law of—

(i) a State or the United States; or

(ii) a foreign country if the term of imprisonment for the offense was completed within the prior 15 years.

§ 105. Alien

In this title, ''alien'' means an individual who is not a national of the United States.

§ 106. Application for admission

In this title, ''application for admission'' means an application for admission to the United States and not an application for a visa.

§ 107. Border crossing identification card

In this title, ''border crossing identification card'' means a document of identity—

(1) having the designation ''border crossing identification card'';

(2) issued by a consular officer or an immigration officer to an alien lawfully admitted for permanent residence or an alien residing in foreign territory contiguous to the United States; and

(3) to be used by the alien, under conditions for its issuance and use as may be prescribed by regulations, in crossing a border between the United States and foreign territory contiguous to the United States.

§ 108. Child

(a) SUBTITLES I–III.—In subtitles I–III of this title (except subchapter I of chapter 7 and chapter 47), ''child'' means an unmarried individual under 21 years of age who—

(1) is a child born in wedlock;

(2) is a stepchild, whether or not born out of wedlock, if the child was under 18 years of age when the marriage making the child a stepchild occurred;

(3) was legitimated under the law of the child's or father's residence or domicile if the legitimation occurred when the child was under 18 years of age and in the legal custody of the legitimating parent or parents;

(4) is a child born out of wedlock, but the individual is a child only in regard to the individual's—

(A) natural mother; or

(B) natural father if the father has or had a bona fide parent-child relationship with the child;

(5) was adopted under 16 years of age if the child has been in the legal custody of, and resided with, the adopting parent or parents for at least 2 years; or

(6)(A) is under 16 years of age when a petition is filed to classify the child as an immediate relative;

(B) is an orphan because both parents have died, disappeared, abandoned or deserted the child, or been separated from the child, or has only one parent and the parent is unable to provide the proper care and irrevocably in writing has released the child for emigration and adoption, except that in this clause the term ''parent'' does not include the natural father if—

(i) the child is a child born out of wedlock as described in clause (4) of this subsection and has not been legitimated as described in clause (3) of this subsection; and

(ii) the father has disappeared, abandoned or deserted the child, or irrevocably in writing released the child for emigration and adoption;

(C)(i) was adopted outside the United States by a citizen of the United States and the citizen's spouse, or by an unmarried citizen of the United States at least 25 years of age, who personally observed the child before or during the adoption proceedings; or

(ii) is coming to the United States for adoption by a citizen of the United States and the citizen's spouse, or by an unmarried citizen of the United States at least 25 years of age, who complied with the preadoption requirements of the child's proposed residence; and

(D) will be cared for properly, to the satisfaction of the Attorney General, if admitted to the United States.

(b) SUBTITLE V.—In part B of subtitle IV and subtitle V of this title, ''child'' means an unmarried individual under 21 years of age and includes a child who—

(1) is a child born in wedlock;

(2) was legitimated under the law of the child's or father's residence or domicile (even if outside the United States) if the legitimation occurred when the child was under 16 years of age and in the legal custody of the legitimating parent or parents; or

(3) except as provided in sections 20305 and 20306 of this title, was adopted in the United States if the adoption occurred when the child was under 16 years of age and in the legal custody of the adopting parent or parents.

§ 109. Consular officer

In this title, ''consular officer'' means an officer or employee of the Federal Government designated under regulations to issue visas.

§ 110. Conviction

(a) GENERAL.—In this title, ''conviction'' means a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

(1)(A) a judge or jury has found the alien guilty; or

(B) the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt; and

(2) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(b) A reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence.

(c) This section applies to convictions and sentences entered at any time.

§ 111. Crewmember

In this title, ''crewmember'' means an individual serving in any capacity on a vessel or aircraft.

§ 112. Executive capacity

(a) GENERAL.—In this title, ''executive capacity'' means a capacity in which an employee of an organization primarily—

(1) directs the management of the organization or a major component or function of the organization;

(2) establishes the goals and policies of the organization, component, or function;

(3) has wide latitude in making discretionary decisions; and

(4) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(b) STAFFING LEVELS AS FACTOR.—If staffing levels are used as a factor in deciding whether an individual is acting in an executive capacity, the Attorney General shall consider the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual is not acting in an executive capacity only because of the number of employees the individual supervises, directs, or has supervised or directed.

§ 113. Foreign country

In this title, ''foreign country'' includes the territories and possessions of a foreign country, but a self-governing dominion or a territory under trusteeship is deemed to be a separate foreign country.

§ 114. Good moral character

In this title, each of the following individuals is an individual not of good moral character:

(1) an individual who, during the period for which good moral character is required—

(A) was a habitual drunkard;

(B) was within a class of individuals, whether inadmissible or not, described in—

(i) section 6308 or 6309(a)(5), or 6319(a) of this title; or

(ii) section 6309(a)(1)–(4) of this title (except as section 6309(a)(3) relates to a single offense of simple possession of not more than 30 grams of marijuana), if the individual admits committing or was convicted of committing the offense and committed the offense during the period for which good moral character is required;

(C) derived income principally from unlawful gambling activities;

(D) committed at least 2 gambling offenses for which the individual has been convicted;

(E) gave false testimony to obtain a benefit under this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, and chapters 133 and 135); or

(F) served a total of at least 180 days in a penal institution for conviction of an offense or offenses, even if the offense or offenses were not committed during the period for which good moral character is required.

(2) an individual convicted of murder or, after November 28, 1990, of another aggravated felony, regardless of whether the offense or conviction was during the period for which good moral character is required.

(3) an individual found for other reasons to be not of good moral character.

§ 115. Graduate of a medical school

In this title, ''graduate of a medical school'' means an alien who has graduated from a medical school or has qualified to practice medicine in a foreign country, except an alien of national or international renown in the field of medicine.

§ 116. Immediate relative

In this title, ''immediate relative'' means—

(1) a child of a citizen of the United States;

(2) a spouse of a citizen of the United States, except that if the citizen has died, the spouse and each child of the spouse remains an immediate relative after the death only if the spouse—

(A) was married to the citizen for at least 2 years before the date of death;

(B) was not legally separated from the citizen on the date of death;

(C) files a petition under section 4301(a)(2) of this title not later than 2 years after the date of death; and

(D) has not remarried; and

(3) a parent of a citizen of the United States if the citizen is at least 21 years of age.

§ 117. Immigrant

In this title, ''immigrant'' means any alien except a nonimmigrant.

§ 118. Immigration judge

In this title, ''immigration judge'' means an attorney who is—

(1) appointed by the Attorney General as an administrative judge within the Executive Office for Immigration Review;

(2) qualified to conduct special classes of proceedings, including a hearing under section 6704 of this title; and

(3)(A) under the supervision of the Attorney General and who carries out duties and powers the Attorney General prescribes; but

(B) not employed by the Immigration and Naturalization Service.

§ 119. Immigration laws

In this title, ''immigration laws'' includes this title and all laws, conventions, and treaties of the United States related to the immigration, exclusion, removal, or deportation of aliens.

§ 120. Immigration officer

In this title, ''immigration officer'' means an officer or employee of the Federal Government designated by the Attorney General, individually or by regulation, to carry out the duties and powers of an immigration officer.

§ 121. Ineligible for citizenship

In this title, ''ineligible for citizenship'', notwithstanding any treaty related to military service, means permanently debarred at any time under this title or any other law from becoming a citizen of the United States.

§ 122. International organization

In this title, ''international organization'' means an international organization as defined in section 1 of the International Organizations Immunities Act (22 U.S.C. 288).

§ 123. Lawfully admitted for permanent residence

In this title, ''lawfully admitted for permanent residence'' means the status of lawfully having been given the privilege of residing permanently in the United States as an immigrant under the immigration laws, that status not having changed.

§ 124. Managerial capacity

(a) GENERAL.—In this title, ''managerial capacity'' means a capacity in which an employee of an organization primarily—

(1) manages the organization or a department, subdivision, component, or function of the organization;

(2) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function in the organization or a department or subdivision of the organization;

(3)(A) has the authority to hire and fire or recommend hiring, firing, and other personnel actions, if an employee is supervised directly; or

(B) works at a senior level in the organizational hierarchy or with regard to the function managed, if no employee is supervised directly; and

(4) has discretion over the day-to-day operations of the activity or function for which the individual has authority.

(b) FIRST-LINE SUPERVISOR.—A first-line supervisor is not acting in a managerial capacity only because of the supervisor's supervisory duties unless the employees supervised are professional.

(c) STAFFING LEVELS AS FACTOR.—If staffing levels are used as a factor in deciding whether an individual is acting in a managerial capacity, the Attorney General shall consider the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual is not acting in a managerial capacity only because of the number of employees the individual supervises, directs, or has supervised or directed.

§ 125. National

In this title, ''national'' means an individual owing permanent allegiance to a country.

§ 126. National of the United States

In this title, ''national of the United States'' means—

(1) a citizen of the United States; or

(2) an individual, not a citizen of the United States, owing permanent allegiance to the United States.

§ 127. Naturalization

In this title, ''naturalization'' means the conferring of nationality of a country on an individual after birth by any means.

§ 128. Nonimmigrant

In this title, ''nonimmigrant'' means an alien who has the status of a nonimmigrant classified under subchapter I of chapter 23 of this title.

§ 129. Parent, father, and mother

(a) SUBTITLES I–III.—In subtitles I–III of this title (except subchapter I of chapter 7), ''parent'', ''father'', and ''mother'' mean a parent, father, and mother of a child as defined in section 108(a) of this title.

(b) SUBTITLE V.—In subtitle V of this title, ''parent'', ''father'', and ''mother'' include a deceased parent, father, and mother of a posthumous child.

(c) EXCEPTIONS.—(1) In this title (except subchapter I of chapter 7 and chapter 151), ''parent'', ''father'', and ''mother'' do not include—

(A) the natural parent of a child as defined in section 108(a)(5) of this title; or

(B) the natural parent or prior adoptive parent of a child as defined in section 108(a)(6) of this title.

(2) In this title (except subchapter I of chapter 7), ''parent'', ''father'', and ''mother'' do not include the natural parent or prior adoptive parent of a special immigrant as defined in section 133(a)(12) of this title.

§ 130. Passport

In this title, ''passport'' means a travel document—

(1) granted by competent authority;

(2) showing the bearer's origin, identity, and nationality if any; and

(3) valid for the admission of the bearer into a foreign country.

§ 131. Refugee

(a) GENERAL.—In this title (except chapter 133), ''refugee''—

(1) means an individual who—

(A)(i) is outside a country of the individual's nationality or, if the individual has no nationality, is outside a country in which the individual last habitually resided; and

(ii) is unable or unwilling to return to, and make use 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 circumstances the President after appropriate consultation (as defined in section 5101(a) of this title) specifies—

(i) is in a country of the individual's nationality or, if the individual has no nationality, is in a country in which the individual is habitually residing; and

(ii) is persecuted or has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion; but

(2) does not include an individual who ordered, incited, assisted, or otherwise participated in the persecution of an individual on account of race, religion, nationality, membership in a particular social group, or political opinion.

(b) RESISTANCE TO COERCIVE POPULATION CONTROL METHODS.—For purposes of decisions under this title (except chapter 133), an individual—

(1) who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, is deemed to have been persecuted on account of political opinion; and

(2) who has a well founded fear that he or she will be forced to undergo such a procedure or be subject to persecution for such a failure, refusal, or resistance is deemed to have a well founded fear of persecution on account of political opinion.

§ 132. Residence

In this title, ''residence'' means the principal, actual dwelling place of an individual without regard to the individual's intent.

§ 133. Special immigrant

(a) GENERAL.—In this title, ''special immigrant'' means each of the following immigrants:

(1) an immigrant lawfully admitted for permanent residence returning from a temporary visit outside the United States (including a period of employment by the American University of Beirut).

(2) an immigrant who was a citizen of the United States and may be naturalized under section 20316 or 20319(a) of this title.

(3)(A) an immigrant who—

(i) for at least 2 years immediately before applying for admission has been a member of a religious denomination having a bona fide nonprofit religious organization in the United States;

(ii) is coming to the United States—

(I) only to serve as a minister of that religious denomination;

(II) before October 1, 1997, to work for the organization, at the request of the organization, in a professional capacity in a religious vocation or occupation; or

(III) before October 1, 1997, to work for the organization or for a bona fide organization affiliated with the religious denomination and exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)), at the request of the organization, in a religious vocation or occupation; and

(iii) has served as a minister or performed the work described in subclause (ii) of this clause continuously for at least the 2-year period described in subclause (i) of this clause; and

(B) the immigrant's spouse and children if accompanying or following to join the immigrant.

(4)(A) an immigrant who is an employee or an honorably retired former employee of the Federal Government outside the United States, or of the American Institute in Taiwan, who has performed faithful service for at least 15 years, if the principal officer of a Foreign Service establishment of the United States, or the director of the American Institute in Taiwan, respectively, recommends that the immigrant be granted special immigrant status because of exceptional circumstances and the Secretary of State approves the recommendation after finding that it is in the interest of the United States to grant the status; and

(B) the immigrant's spouse and children if accompanying the immigrant.

(5)(A) an immigrant who—

(i) resided in the Panama Canal Zone on April 1, 1979;

(ii) was an employee of the Panama Canal Company or the Canal Zone Government before October 1, 1979; and

(iii) performed faithful service as such an employee for at least one year; and

(B) the immigrant's spouse and children if accompanying the immigrant.

(6)(A) an immigrant who—

(i) is a national of Panama;

(ii) performed faithful service as an employee of the Federal Government in the Panama Canal Zone for at least 15 years before October 1, 1979; and

(iii) honorably retired from that employment at any time or continues to be employed by the Federal Government in an area of the former Canal Zone; and

(B) the immigrant's spouse and children if accompanying the immigrant.

(7)(A) an immigrant—

(i) who was an employee of the Panama Canal Company or the Canal Zone Government on April 1, 1979;

(ii) who performed faithful service as such an employee for at least 5 years; and

(iii) whose personal safety, or whose spouse's or child's personal safety, is placed in reasonable danger directly because of the Panama Canal Treaty of 1977 and the special nature of the immigrant's employment; and

(B) the immigrant's spouse and children if accompanying the immigrant.

(8)(A) an immigrant who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign country;

(ii) was completely and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date;

(iii) entered the United States as a nonimmigrant classified under any of sections 2312–2316 or 2325 of this title before January 10, 1978; and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of entry; and

(B) the immigrant's spouse and children if accompanying the immigrant.

(9) an immigrant who—

(A) is the unmarried son or daughter of a present or former officer or employee of an international organization;

(B) while maintaining the status of a nonimmigrant classified under section 2302(5) or 2324 of this title, has resided and been physically present in the United States for—

(i) periods totaling at least half of the 7 years before the date of application for a visa or for adjustment of status to special immigrant status under this clause (9); and

(ii) periods totaling at least 7 years between the ages of 5 and 21; and

(C) applies for a visa or adjustment of status to special immigrant status under this clause (9) not later than April 24, 1989, or the immigrant's 25th birthday, whichever is later.

(10) an immigrant who—

(A) is the surviving spouse of a deceased officer or employee of an international organization;

(B) while maintaining the status of a nonimmigrant classified under section 2302(5) or 2324 of this title, has resided and been physically present in the United States for—

(i) periods totaling at least half of the 7 years before the date of application for a visa or for adjustment of status to special immigrant status under this clause (10); and

(ii) periods totaling at least 15 years before the date of death of the officer or employee; and

(C) files a petition for special immigrant status under this clause (10) not later than April 24, 1989, or 6 months after the date of death of the officer or employee, whichever is later.

(11)(A) an immigrant who—

(i) is a retired officer or employee of an international organization;

(ii) while maintaining the status of a nonimmigrant classified under section 2302(5) of this title, has resided and been physically present in the United States for periods totaling at least half of the 7 years before the date of application for a visa or for adjustment of status to special immigrant status under this clause (11), and for periods totaling at least 15 years before the date of the officer's or employee's retirement from the international organization; and

(iii) files a petition for special immigrant status under this clause (11) not later than April 25, 1995, or 6 months after the date of retirement, whichever is later; and

(B) the immigrant's spouse if accompanying or following to join the immigrant as a member of the immediate family.

(12) an immigrant—

(A) who has been declared a dependent of a juvenile court in the United States or whom a juvenile court in the United States has committed to, or placed in custody of, an authority or department of a State and who has been found eligible by that court for long-term foster care; and

(B) for whom it has been decided in an administrative or judicial proceeding that it would not be in the alien's best interest to be returned to the alien's or alien's parent's previous country of nationality or country of last habitual residence.

(13)(A) an immigrant who—

(i) after October 15, 1978, and after original lawful enlistment outside the United States under a treaty or agreement in effect on October 1, 1991, has served honorably on active duty in the armed forces of the United States for—

(I) 12 years and, if separated from the service, was separated only under honorable conditions; or

(II) 6 years if the immigrant is on active duty when seeking special immigrant status under this clause (13) and has reenlisted to incur a total active duty obligation of at least 12 years; and

(ii) is recommended by the head of the executive department of the Federal Government under which the immigrant has served to receive special immigrant status under this clause (13); and

(B) the immigrant's spouse and children if accompanying or following to join the immigrant.

(b) TEMPORARY ABSENCES UNDER SUBSECTION (a)(9)–(11).—An alien who is a present or former officer or employee of an international organization, or is the surviving spouse, unmarried son, or unmarried daughter of a present or former officer or employee, is deemed under subsection (a)(9)–(11) of this section to be residing and physically present in the United States during a period in which the alien is residing in, but absent from, the United States if—

(1) the alien is absent because of the officer's or employee's need to conduct official business for the organization or because of customary leave; and

(2) during the absence—

(A) the officer or employee continues to have a duty station in the United States; and

(B) with respect to an unmarried son or daughter, the son or daughter is not enrolled in a school outside the United States.

§ 134. Spouse, wife, and husband

In this title, ''spouse'', ''wife'', and ''husband'' do not include a spouse, wife, or husband by a marriage ceremony during which both parties were not physically present, unless the parties consummated the marriage.

§ 135. State

In this title (except subchapter I of chapter 7, subchapters II and III of chapter 131, and chapters 133 and 135), ''State'' means a State of the United States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

§ 136. Stowaway

In this title, ''stowaway'' means an alien who obtains transportation without the consent of the owner, master, commanding officer, or charterer of a vessel or aircraft through concealment aboard the vessel or aircraft. However, a passenger who boards with a valid ticket is not a stowaway.

§ 137. Totalitarian dictatorship

In this title, ''totalitarian dictatorship'' means a system of government that is not representative and is characterized by—

(1) the existence of a single political party, organized on a dictatorial basis, whose policies are so closely identified with the governmental policies that the party and the government are indistinguishable; and

(2) the forcible suppression of opposition to the party.

§ 138. Totalitarian party

In this title, ''totalitarian party'' means an organization advocating the establishment of a totalitarian dictatorship in the United States.

§ 139. United States

In this title (except subchapter I of chapter 7, subchapters II and III of chapter 131, chapters 133 and 135, and section 13702), ''United States'' means the States of the United States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

§ 140. Unmarried

In this title, ''unmarried'', when used in reference to an individual as of a particular time, means an individual who was not married at that time, even if previously married.

§ 141. Visa

In this title, ''visa'' means an unexpired visa issued under section 2123 or 4313 of this title.

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SUBCHAPTER I—ORGANIZATION AND ADMINISTRATION

§ 301. General authority of the Attorney General

(a) GENERAL AUTHORITY.—(1) Except as otherwise provided by law, the Attorney General shall carry out this title and other immigration laws. The Attorney General's decision and ruling on a question of law is controlling.

(2) The Attorney General may prescribe regulations and forms of bonds to carry out the duties and powers of the Attorney General under this title.

(b) CONTROL OF BORDERS.—The Attorney General shall control the borders of the United States against the unlawful entry of aliens.

(c) DELEGATION.—In carrying out this title, the Attorney General, with the consent of the head of a federal department, agency, or instrumentality may require or authorize an officer or employee of the department, agency, or instrumentality to carry out a duty or power of an officer or employee of the Immigration and Naturalization Service.

(d) ESTABLISHMENT OF OFFICES IN FOREIGN COUNTRIES.—The Attorney General—

(1) with the concurrence of the Secretary of State, may establish an office of the Service in a foreign country; and

(2) after consulting with the Secretary, may detail an officer or employee of the Service for duty in a foreign country when the Attorney General considers the detail necessary to carry out this title.

§ 302. Immigration and Naturalization Service

(a) ORGANIZATION.—The Immigration and Naturalization Service is a service in the Department of Justice.

(b) COMMISSIONER OF IMMIGRATION AND NATURALIZATION.—The head of the Service is the Commissioner of Immigration and Naturalization. The Commissioner is appointed by the President, by and with the advice and consent of the Senate. The Commissioner must be a citizen of the United States.

(c) GENERAL AUTHORITY OF THE COMMISSIONER.—(1) The Commissioner shall—

(A) carry out duties and powers prescribed by the Attorney General; and

(B) maintain direct and continuous liaison with the Administrator designated under section 502 of this title to carry out the immigration and nationality laws in a coordinated, uniform, and efficient way.

(2) The Commissioner may make cooperative agreements with state and local law enforcement agencies to assist in enforcing the immigration laws.

(d) OFFICE, RECORDS, AND FACILITIES.—The Attorney General shall provide the Commissioner with a suitable office in the District of Columbia and records and facilities necessary to carry out the Commissioner's duties and powers.

(e) AVAILABILITY OF APPROPRIATION.—The appropriation "Immigration and Naturalization Service—Salaries and Expenses" is available to pay for the following:

(1) the costs of hiring privately owned horses for use on official business, under contract with officers or employees of the Service.

(2) the pay of interpreters and translators who are not citizens of the United States.

(3) the costs of distributing citizenship textbooks to aliens without charge to the aliens.

(4) at a rate specified by the applicable appropriation law, allowances to aliens for work performed when held in custody under the immigration laws.

(5) if authorized by an appropriation law, spending by the Attorney General for unforeseen emergencies of a confidential character.

(f) CERTIFICATE FOR CONFIDENTIAL EXPENDITURES.—The Attorney General shall make a certificate for any amount of expenditures under subsection (e)(5) of this section that the Attorney General considers advisable not to specify. The certificate is a sufficient voucher that the amount stated was expended.

§ 303. Working hours and premium pay for officers and employees of the Immigration and Naturalization Service

(a) REGULATING WORKING HOURS.—The Attorney General may regulate the working hours of officers and employees of the Immigration and Naturalization Service performing work at a port to coincide with the customary working hours at that port. This subsection does not change the length of a working day or the rate provided in subsection (b) of this section.

(b) PREMIUM PAY RATES.—An officer or employee of the Service performing work related to the inspection and landing of passengers and crew of a vessel, aircraft, or vehicle arriving in the United States from a foreign port is entitled to premium pay at the following rates:

(1) For overtime work, the rate is one-half day's pay for each 2 hours (or part of a 2-hour period of at least one hour), but the total pay for the period between the end of the individual's regular shift and the beginning of the individual's next regular shift may not be more than 2.5 days' pay.

(2) For work on a Sunday or holiday, the rate is 2 days' pay.

(c) METHOD OF PAYMENT.—(1) Except as provided in section 80503 of title 49, when an officer or employee of the Service performs work referred to in subsection (b) of this section, the master, owner, agent, or consignee of the vessel, aircraft, or vehicle shall pay to the Attorney General an amount equal to the pay to which the officer or employee is entitled under subsection (b). The amount shall be paid if the officer or employee was ordered to report for work and did report, even if an inspection did not take place. However, this paragraph does not apply to an inspection, at a designated port of entry, of passengers arriving by an international ferry, bridge, or tunnel, or by a vessel on the Great Lakes and connecting water-

ways, an aircraft, or a vehicle, when the vessel, aircraft, or vehicle is operating on a regular schedule.

(2) The Attorney General shall deposit in the Treasury an amount paid under this subsection. The amount shall be credited to the appropriation "Immigration and Naturalization Service—Salaries and Expenses". The amount credited to the appropriation is available for payment of the overtime, Sunday, and holiday pay.

§ 304. Providing immigration services for scheduled flights

Notwithstanding section 303(c)(1) of this title or any other law, the immigration services required to be provided to passengers on arrival in the United States on a scheduled flight shall be provided adequately, not later than 45 minutes after their presentation for inspection, when needed and at no cost to the air carrier or passengers, except for the fee specified in section 7308(a) of this title, at—

(1) airports at which immigration services are provided; and

(2) places outside the United States at which an immigration officer is stationed to provide immigration services.

§ 305. Reimbursement for immigration inspection services

(a) INSPECTIONS IN FOREIGN CONTIGUOUS TERRITORIES.—Section 209 of title 18 does not prohibit reimbursement for the services of an immigration officer related to inspecting aliens in a foreign contiguous territory. The reimbursement shall be credited to the appropriation "Immigration and Naturalization Service—Salaries and Expenses".

(b) REQUESTED INSPECTION SERVICES.—The Attorney General may receive reimbursement from the owner, operator, or agent of a private or commercial vessel or aircraft, or from a seaport or airport authority, for expenses incurred by the Attorney General in providing immigration inspection services requested by the owner, operator, agent, or authority, including the salaries and expenses of individuals employed by the Attorney General to provide the services. The Attorney General's authority to receive reimbursement under this section ends as soon as an amount is appropriated to provide the services.

§ 306. Travel expenses

(a) TRAVEL EXPENSES.—Under regulations prescribed by the Attorney General, an officer or employee of the Immigration and Naturalization Service is entitled to travel expenses when the officer or employee—

(1) is ordered to carry out duties and powers in a foreign country;

(2) is transferred from one station to another in the United States or in a foreign country; or

(3) in carrying out duties and powers in a foreign country, becomes eligible for voluntary retirement and returns to the United States.

(b) EXPENSES OF TRANSPORTING SPOUSE, CHILDREN, AND PROPERTY.—The Attorney General may reimburse an officer or employee described in subsection (a) of this section for expenses incurred in transporting the officer's or employee's spouse, dependent children, and personal property, including (as provided under subchapter II of chapter 57 of title 5) the expenses for packing, crating, freight, unpacking, temporary storage, and drayage.

§ 307. Interment expenses and other services to certain family members

(a) EXPENSES OF INTERMENT.—When an officer or employee of the Immigration and Naturalization Service dies when in, or in transit to, a foreign country on official business, the Attorney General may pay the ordinary and necessary expenses of interment.

(b) SERVICES TO FAMILY MEMBERS OF OFFICERS AND AGENTS KILLED IN THE LINE OF DUTY.—(1) To the extent provided in an appropriation law, when an immigration officer or border patrol agent is killed in the line of duty, the Attorney General may pay from appropriations available for the activity in which the officer or agent was engaged—

(A) the actual and necessary expenses of transportation of the remains of the officer or agent to a place of burial located in any State, American Samoa, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau;

(B) travel expenses, including per diem in lieu of subsistence, of the decedent's spouse and minor children to and from the place of burial at rates not more than those established for official government travel under subchapter I of chapter 57 of title 5; and

(C) the cost of any other memorial service authorized by the Attorney General.

(2) The Attorney General may prepay any expense authorized to be paid under this subsection.

§ 308. Providing services and articles at immigrant stations

(a) AWARDING CONTRACTS.—Subject to section 3709 of the Revised Statutes (41 U.S.C. 5), the Attorney General may award an exclusive contract to provide money exchange services, to transport passengers or baggage, to provide food and eating facilities, or to provide similar services at an immigrant station only to the lowest responsible and capable bidder (except an alien). The Attorney General may charge a reasonable rental for the use of federal property in providing the services. However, the Attorney General may provide a necessary service at an immigrant station if the Attorney General finds that it would be more economical and efficient.

(b) SALE OF NECESSARY ARTICLES BY THE ATTORNEY GENERAL.—If aliens detained at an immigrant station cannot readily obtain articles that the Attorney General decides are necessary to their health and welfare, the Attorney General may sell the articles to the aliens at reasonable prices through canteens operated by the Commissioner of Immigration and Naturalization.

(c) INTOXICATING LIQUORS.—Intoxicating liquors may not be sold at an immigrant station.

(d) DEPOSIT OF AMOUNTS RECEIVED.—The Attorney General shall deposit amounts received under this section in the Treasury to the credit of the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''.

§ 309. Providing services for individuals in administrative detention in non-federal institutions

In support of individuals in administrative detention in non-federal institutions, the Attorney General may—

(1) under an agreement with a State or political subdivision of a State, make payments from amounts appropriated for the administration and enforcement of the laws related to immigration, naturalization, and alien registration for necessary clothing, medical care, necessary guard hire, and the housing, care, and security of individuals detained by the Immigration and Naturalization Service under federal law; and

(2) make a cooperative agreement with any State, territory, or political subdivision of a State or territory, for the necessary construction, physical renovation, acquisition of equipment, supplies or materials required to establish acceptable conditions of confinement and detention services in any State or unit of local government which agrees to provide guaranteed bed space for individuals detained by the Service.

§ 310. Operation of photographic studios by welfare organizations

On recommendation of the Attorney General, an officer or employee in charge of property owned or leased by the Federal Government may provide space, without payment of rent, in a building occupied by the Immigration and Naturalization Service, for a photographic studio operated by a welfare organization without profit and only for the benefit of individuals seeking to comply with the immigration and nationality laws. The Attorney General shall supervise a studio operated under this section.

§ 311. Advisory committee on inspection services

(a) ESTABLISHMENT.—The Attorney General shall establish an advisory committee consisting of representatives from air carriers and other modes of transportation that may be subject to a fee authorized by law or proposed

by the Immigration and Naturalization Service to cover expenses incurred by the Service.

(b) MEETINGS AND ADVICE.—The advisory committee shall meet on a periodic basis and advise the Attorney General on issues related to the performance of the inspection services of the Service. This advice shall include such issues as the time periods during which the services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Attorney General shall give substantial consideration to the views of the committee.

§ 312. Reports

(a) REPORTS ON CERTAIN NONIMMIGRANTS.—Not later than April 1 of each year, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report describing for each class under sections 2313–2316, 2318–2320, and 2325 of this title the following:

(1) The number of petitions filed.

(2) The number of petitions approved and the number of workers (by occupation) included in the approved petitions.

(3) The number of petitions denied and the number of workers (by occupation) requested in the denied petitions.

(4) The number of petitions withdrawn.

(5) The number of petitions pending final action.

(b) REPORTS ON NATURALIZATION STATISTICS.—(1) The Attorney General shall prepare annually, from the records of the Immigration and Naturalization Service, a report in statistical form with analytical comment. The report shall show by nationality—

(A) the relation between the number of aliens seeking citizenship of the United States and the number of aliens arriving each year;

(B) the relation between the number of aliens seeking citizenship of the United States and the prevailing census populations of the foreign born; and

(C) the economic, vocational, and other classifications of aliens seeking citizenship of the United States.

(2) Payment for the equipment used in preparing the report under this subsection shall be made from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''.

(c) REPORTS ON PUBLIC CHARGE DEPORTATIONS, INDIGENT SPONSORS, AND REIMBURSEMENT ACTIONS.—Not later than 180 days after the end of each fiscal year, the Attorney General shall submit to the Inspector General of the Department of Justice and the Committees on the Judiciary of the House of Representatives and the Senate a report describing the following:

(1) The number of aliens deported on public charge grounds under section 6503 of this title during the prior fiscal year.

(2) The number of determinations made under section 15125(d) of this title during the prior fiscal year.

(3) The number of actions brought, and the amount of each action, for reimbursement under section 6331 of this title (including private collections) for the costs of providing public benefits.

(d) REPORTS ON CRIMINAL ALIENS.—The Attorney General shall submit annually to the Committees on the Judiciary of the House of Representatives and the Senate a report detailing—

(1) the number of illegal aliens incarcerated in federal and state prisons for having committed felonies, stating the number incarcerated for each type of offense;

(2) the number of illegal aliens convicted of felonies in a federal or state court, but not sentenced to incarceration, in the year before the report was submitted, stating the number convicted for each type of offense;

(3) programs and plans underway in the Department to ensure the prompt removal from the United States of criminal aliens subject to removal; and

(4) methods for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the United States and removed from the United States.

(e) REPORTS ON DETENTION SPACE AND ALIENS RELEASED INTO COMMUNITY.—(1) Not later than April 1 and October 1 of each year, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report estimating the amount of detention space that will be required, during the fiscal year in which the report is submitted and the succeeding fiscal year, to detain—

(A) all aliens subject to detention under section 6702(c) or 6715 of this title;

(B) all inadmissible or deportable aliens subject to proceedings under section 6704 or 6705 of this title; and

(C) other inadmissible or deportable aliens under priorities the Attorney General establishes.

(2) Each report submitted under paragraph (1) of this subsection shall include the following estimates:

(A) The number of criminal aliens who, in the 6-month period preceding the date of the submission of the report—

(i) were released from detention facilities of the Service (whether operated directly by the Service or through contract with other persons or entities); or

(ii) were not taken into custody or detention by the Service on completion of their incarceration.

(B) The number of criminal aliens described in clause (A) of this paragraph who were convicted of an aggravated felony.

(C) The number of inadmissible or deportable aliens who were released into the community due to a lack of detention facilities in the 6-month period preceding the date of the submission of the report notwithstanding circumstances that the Attorney General believed justified detention, for example, a significant probability that the released alien would not appear, as agreed, at subsequent exclusion or deportation proceedings.

(f) REPORTS ON ALIENS GRANTED REFUGEE STATUS OR ASYLUM.—Not later than 90 days after the end of each fiscal year, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report describing—

(1) the number and countries of origin of aliens granted refugee status or asylum under determinations pursuant to section 131(b) of this title; and

(2) projections on the number and countries of origin of aliens that are likely to be granted refugee status or asylum under determinations pursuant to section 131(b) of this title for the subsequent 2 fiscal years.

(g) REPORTS ON ALIENS PAROLED INTO THE UNITED STATES.—Not later than 90 days after the end of each fiscal year, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate with the following information:

(1) The number and categories of aliens paroled into the United States under section 6121 of this title.

(2) The total number of aliens paroled into and residing in the United States.

(3) Information and data for each country of origin concerning the number and categories of aliens paroled, the duration of parole, and the current status of aliens paroled.

(4) The number and categories of aliens returned to the custody from which they were paroled during the prior fiscal year.

SUBCHAPTER II—ENFORCEMENT

§ 321. Oaths and testimony

(a) GENERAL.—In carrying out this title, the Attorney General, immigration officers, other officers and employees of the Immigration and Naturalization Service designated by the Attorney General, and immigration judges may—

(1) administer oaths;

(2) take evidence; and

(3) subpena witnesses to testify and produce records.

(b) ENFORCEMENT OF SUBPENAS.—If a witness disobeys a subpena issued under subsection (a) of this section, the Attorney General, immigration officer, designated officer or employee of the Service, or immigration judge may bring a civil action to enforce the subpena in the district court of the United States for the judicial district in which the proceeding is being conducted, or, if the subpena is related to an application for naturalization, in any district court of the United States. The court may issue an order to obey the subpena and punish a refusal to obey as a contempt of court.

(c) DEPOSITIONS.—An officer or employee of the Service designated by the Attorney General may take a deposition without charge on a matter related to carrying out a naturalization or citizenship law. In a case involving a likelihood of hardship or unusual delay, the Attorney General may authorize the deposition to be taken before a postmaster without charge or before an individual authorized to administer oaths for general purposes.

§ 322. Enforcement authority

(a) CARRYING FIREARMS AND SERVING AND EXECUTING PROCESS.—Under regulations prescribed by the Attorney General, an officer or employee of the Immigration and Naturalization Service may—

(1) carry a firearm; and

(2) serve and execute an order, warrant, subpena, summons, or other process issued under the authority of the Federal Government.

(b) AUTHORITY WITHOUT WARRANT.—An officer or employee of the Service authorized by regulations prescribed by the Attorney General may, without a warrant—

(1) interrogate an individual believed to be an alien about the individual's right to be or remain in the United States;

(2) search an individual seeking admission to the United States and the personal effects in the possession of the individual if the officer or employee has reason to suspect that the search will disclose grounds for denying the individual admission to the United States;

(3) board a vehicle, aircraft, or other conveyance within a reasonable distance from a United States border, or board a vessel within the territorial waters of the United States, to search for aliens;

(4) within 25 miles from a United States border, have access to private land (but not a dwelling) to patrol the border to prevent the unlawful entry of aliens;

(5) arrest an alien who, in the presence or view of the officer or employee, is attempting to enter the United States unlawfully, or arrest an alien in the United States who the officer or employee has reason to believe is in the United States unlawfully and is likely to escape before a warrant for the alien's arrest can be obtained, but the alien arrested shall be taken without unnecessary delay for examination before an immigration officer having authority to examine aliens as to their right to enter or remain in the United States;

(6) arrest a person for an offense against the United States if—

(A) the officer or employee is performing duties related to enforcement of the immigration laws at the time of the arrest;

(B) the offense is committed in the presence of the officer or employee; and

(C) the person is likely to escape before a warrant for the person's arrest can be obtained;

(7) arrest a person for a felony against the United States under a law of the United States regulating the admission, exclusion, removal, or deportation of aliens if—

(A) the officer or employee has reason to believe the person has committed the felony; and

(B) the person is likely to escape before a warrant for the person's arrest can be obtained; and

(8) arrest a person for any other felony against the United States if—

(A) the officer or employee is performing duties related to enforcement of the immigration laws at the time of the arrest;

(B) the officer or employee has reason to believe the person is committing or has committed the felony;

(C) the person is likely to escape before a warrant for the person's arrest can be obtained; and

(D) the officer or employee has received certification of completion of a training program as required under subsection (d) of this section.

(c) RESTRICTION ON WARRANTLESS ENTRY OF OUTDOOR AGRICULTURAL OPERATIONS.—Except as provided in subsection (b)(4) of this sec-

tion, an officer or employee of the Service may not enter the premises of a farm or other outdoor agricultural operation, without a warrant or the consent of the owner or owner's agent, to interrogate an individual believed to be an alien about the individual's right to be or remain in the United States.

(d) REGULATIONS ON ENFORCEMENT ACTIVITIES.—An arrest may be made under subsection (b)(8) of this section only on and after the date the Attorney General prescribes final regulations that specify—

(1) the categories of officers and employees of the Service who may use force (including deadly force) and the circumstances under which the force may be used;

(2) standards for enforcement activities of the Service;

(3) a requirement that, before an officer or employee may make an arrest under subsection (b)(8) of this section, the officer or employee has received certification of completion of a training program covering the arrests and the standards described in clause (2) of this subsection; and

(4) an expedited, internal review process for violations of the standards, consistent with standard agency procedure regarding confidentiality of matters related to internal investigations.

(e) DETAINING ALIENS FOR CONTROLLED SUBSTANCES VIOLATIONS.—(1) An officer or employee of the Service designated by Attorney General shall decide promptly whether to issue a detainer to detain an alien if any federal, state, or local law enforcement official (or another official)—

(A) arrests an alien for violating a law related to controlled substances;

(B) has reason to believe that the alien is in the United States unlawfully;

(C) expeditiously informs the officer or employee of the arrest and of facts about the alien's status; and

(D) requests the Commissioner of Immigration and Naturalization to issue the detainer.

(2) If the detainer is issued and the alien is not otherwise detained by a federal, state, or local law enforcement official, the Attorney General shall take custody of the alien expeditiously.

§ 323. Authority to support control of borders

(a) LAND ACQUISITION.—(1) The Attorney General may contract for or buy any interest in land, including temporary use rights, adjacent to or in the vicinity of an international land border when the Attorney General decides the land is essential to control and guard the boundaries and borders of the United States against any violation of this title.

(2) The Attorney General may contract for or buy any interest in land identified under paragraph (1) of this subsection as soon as the lawful owner of that interest fixes a price for it and the Attorney General considers that price to be reasonable.

(3) When the Attorney General and the lawful owner of an interest identified under paragraph (1) of this subsection are unable to agree upon a reasonable price, the Attorney General may begin condemnation proceedings under the Act of August 1, 1888 (40 U.S.C. 257).

(4) The Attorney General may accept an interest in land identified under paragraph (1) of this subsection as a gift for the Federal Government.

(b) IMPROVEMENT OF BARRIERS AT BORDER.—(1) In consultation with the Commissioner of Immigration and Naturalization, the Attorney General shall take those actions necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.

(2)(A) In carrying out paragraph (1) of this subsection, the Attorney General shall provide for the construction along the 14 miles of the international land border of the United States, starting at the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence, and for roads between the fences. The Attorney General shall—

(i) acquire promptly under subsection (a) of this section those easements necessary to carry out this paragraph;

(ii) begin construction of fences immediately after acquiring those easements or part of those easements; and

(iii) while constructing the additional fencing under this paragraph, incorporate those safety features into the design of the fence system necessary to ensure the well-being of border patrol agents deployed within or in near proximity to that system.

(B) Not more than $12,000,000 may be appropriated to carry out this paragraph. Amounts appropriated remain available until expended.

(3) The provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) do not apply to actions taken under this subsection to the extent the Attorney General decides necessary to ensure expeditious construction of the barriers and roads under this subsection.

(c) IMPROVED BORDER EQUIPMENT AND TECHNOLOGY.—The Attorney General may acquire and use to detect, interdict, and reduce illegal immigration into the United States any federal equipment (including fixed wing aircraft, helicopters, four-wheel drive vehicles, sedans, night vision goggles,

night vision scopes, and sensor units) determined available for transfer by a federal department, agency, or instrumentality at the request of the Attorney General.

(d) DELEGATION OF AUTHORITY.—When the Attorney General decides that an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate federal response, the Attorney General may authorize any state or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, chapters 133 and 135, section 13702, and chapter 151) or regulations issued under this title (except any of those provisions) on officers or employees of the Immigration and Naturalization Service.

§ 324. Preclearance authority

After consultation with the Secretary of State, the Attorney General may authorize officers of a foreign country to be stationed at preclearance facilities in the United States to ensure that individuals traveling from or through the United States to that foreign country comply with that country's immigration and related laws. Those officers—

(1) may exercise the authority and perform the duties United States immigration officers are authorized to exercise and perform in that foreign country under reciprocal agreement; and

(2) shall enjoy those reasonable privileges and immunities necessary for the performance of their duties as the government of their country extends to United States immigration officers.

§ 325. Preinspection at foreign airports

(a) ESTABLISHMENT OF PREINSPECTION STATIONS.—(1) Not later than October 31, 1998, the Attorney General, in consultation with the Secretary of State, shall establish and maintain preinspection stations in at least 5 of the foreign airports that are among the 10 foreign airports which the Attorney General identifies as serving as last points of departure for the greatest numbers of inadmissible alien passengers who arrive by air at ports of entry within the United States. These preinspection stations shall be in addition to any preinspection stations established before September 30, 1996.

(2) Not later than October 31, 2000, the Attorney General, in consultation with the Secretary, shall establish preinspection stations in at least 5 additional foreign airports which the Attorney General, in consultation with the Secretary, determines, based on the data compiled under subsection (b)

of this section and other information as may be available, would most effectively reduce the number of aliens who arrive from abroad by air at points of entry within the United States who are inadmissible to the United States. These preinspection stations shall be in addition to those established before September 30, 1996, or under paragraph (1) of this subsection.

(3) Before establishing a preinspection station under paragraph (1) or (2) of this subsection, the Attorney General, in consultation with the Secretary, shall ensure that—

(A) federal employees stationed at the preinspection station and their accompanying family members will receive appropriate protection;

(B) those employees and their families will not be subject to unreasonable risks to their welfare and safety; and

(C)(i) the country in which the preinspection station is to be established maintains practices and procedures with respect to asylum seekers and refugees in accordance with the Convention Relating to the Status of Refugees (done at Geneva, July 28, 1951), or the Protocol Relating to the Status of Refugees (done at New York, January 31, 1967); or

(ii) that an alien in the country otherwise has recourse to avenues of protection from return to persecution.

(b) DATA COLLECTION.—Not later than November 1 of each year, the Attorney General shall compile data identifying—

(1) the foreign airports which served as last points of departure for aliens who arrived by air at United States ports of entry without valid documentation during the prior fiscal years;

(2) the number and nationality of aliens described in clause (1) of this subsection arriving from each foreign airport; and

(3) the primary routes those aliens followed from their country of origin to the United States.

(c) CARRIER CONSULTANT PROGRAM.—The Attorney General shall assign additional immigration officers to assist air carriers in the detection of fraudulent documents at foreign airports which, based on the records maintained under subsection (b) of this section, served as a point of departure for a significant number of arrivals at United States ports of entry without valid documentation, but where no preinspection station exists.

(d) REPORT.—Not later than October 31, 1998, the Attorney General shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the implementation of subsection (a)(1) of this section.

§ 326. Enforcement by States

(a) STATE PRESENCE.—To ensure the effective enforcement of this title, the Attorney General shall allocate to each State at least 10 full-time active duty agents of the Immigration and Naturalization Service to carry out the functions of the Service.

(b) ACCEPTANCE OF STATE SERVICES.—(1) Notwithstanding section 1342 of title 31, the Attorney General may make a written agreement with a State, or any political subdivision of a State, under which an officer or employee of the State or subdivision that the Attorney General decides is qualified to perform a function of an immigration officer related to the investigation, apprehension, or detention of aliens in the United States (including the transportation of those aliens across state lines to detention centers) may carry out that function at the expense of the State or subdivision and to the extent consistent with state and local law.

(2) An agreement under this subsection shall—

(A) require that an officer or employee of a State or political subdivision of a State performing a function under the agreement has knowledge of, and adheres to, federal law related to the function; and

(B) contain a written certification that the officer or employee performing the function under the agreement has received adequate training about the enforcement of relevant federal immigration laws.

(3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State—

(A) shall be subject to the direction and supervision of the Attorney General; and

(B) may use federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(4) For each officer or employee of a State or political subdivision of a State who is authorized to perform a function under this subsection, the written agreement between the Attorney General and the State or subdivision required under paragraph (1) of this subsection shall state—

(A) the specific powers and duties that may be, or are required to be, exercised or performed by the officer or employee;

(B) the duration of the authority of the officer or employee; and

(C) the position of the individual who is required to supervise and direct the officer or employee.

(5) The Attorney General may not accept a service under this subsection if the service will be used to displace any federal employee.

(6) Except as provided in paragraph (7) of this subsection, an officer or employee of a State or political subdivision of a State performing functions under this subsection may not be treated as a federal employee for any pur-

pose other than for purposes of chapter 81 of title 5 and chapter 171 of title 28.

(7) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under federal or state law.

(8) This subsection does not require—

(A) any State or political subdivision of a State to make an agreement with the Attorney General under this subsection; and

(B) an agreement under this subsection in order for any officer or employee of a State or subdivision—

(i) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or

(ii) to otherwise cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

§ 327. Local jurisdiction over immigrant stations

A law enforcement official responsible for enforcing the law of a State, territory, or possession of the United States in which an immigrant station is located has jurisdiction over the station and may enter the station to preserve the peace and make arrests for offenses under the laws of the State, territory, or possession. A court of the State, territory, or possession has jurisdiction over the immigrant station on a matter related to the enforcement of the law of the State, territory, or possession.

§ 328. Acceptance of state assistance for transporting deportable criminal aliens

(a) AUTHORITY.—Subject to subsection (b) of this section and notwithstanding any other provision of law, the Attorney General may accept, hold, administer, and use gifts of property and services (but not cash) from state and local governments to assist the Immigration and Naturalization Service in the transportation of deportable aliens who are arrested for misdemeanors or felonies under federal or state law and who are unlawfully in the United States or willing to submit to voluntary departure under safeguards. Property acquired under this section shall be acquired in the name of the Federal Government.

(b) LIMITATION.—If the Attorney General decides that the exercise of the authority under subsection (a) of this section has resulted in discrimination

by law enforcement officials on the basis of race, color, or national origin, the Attorney General shall terminate the exercise of that authority.

§ 329. Automated permit pilot projects

In consultation with the Secretary of the Treasury, the Attorney General may conduct pilot projects to demonstrate the use of designated ports of entry after working hours through the use of card reading machines or other appropriate technology.

§ 330. Automated entry-exit control system

(a) SYSTEM.—Not later than September 30, 1998, the Attorney General shall develop an automated entry and exit control system that will—

(1) collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States; and

(2) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General.

(b) USE OF INFORMATION ON OVERSTAYS.—Information about aliens who have remained in the United States beyond their authorized period of stay identified through the system developed under subsection (a) of this section shall be integrated into appropriate data bases of the Immigration and Naturalization Service and the Department of State, including those used at ports of entry and at consular offices.

(c) REPORT.—Not later than December 31 of each year following the development of the system under subsection (a) of this section, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate an annual report on the system. The report shall include the following information:

(1) The number of departure records collected, with an accounting by country of nationality of the departing alien.

(2) The number of departure records that were successfully matched to records of the alien's prior arrival in the United States, with an accounting by the alien's country of nationality and by the alien's classification as an immigrant or nonimmigrant.

(3) The number of aliens who arrived as nonimmigrants, or as visitors under the visa waiver program under section 2128 of this title, for whom no matching departure record has been obtained through the system or through other means as of the end of the alien's authorized period of stay, with an accounting by the alien's country of nationality and date of arrival in the United States.

SUBCHAPTER III—FINANCIAL ADMINISTRATION AND FEES

§ 341. Crediting appropriations

(a) LANDING STATIONS.—Amounts deposited in the Treasury to reimburse the Immigration and Naturalization Service for expenses paid by the Service from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses'' for a landing station referred to in section 6905(c) of this title and for detained aliens shall be credited to that appropriation for the fiscal year in which the expenses were incurred.

(b) AMOUNTS RECOVERED AFTER BUYING EVIDENCE.—Amounts expended from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses'' to buy evidence and later recovered shall be credited to that appropriation for the fiscal year in which the recovery is made.

§ 342. Interest on immigration bonds

(a) EARNING OF INTEREST.—The Attorney General shall deposit in the Treasury cash received as security on an immigration bond, with the cash to be held in trust for the obligor on the bond. The cash shall earn interest at a rate the Secretary of the Treasury prescribes, but the rate may not be more than 3 percent a year. Interest shall accrue from the date of deposit through the date of withdrawal or the date of breach of the bond, whichever is earlier. However, cash received as security on an immigration bond and deposited by the Attorney General in the postal savings system discontinued on April 27, 1966, shall earn interest under this subsection from the date the cash stopped earning interest under the system. Appropriations to the Department of the Treasury for interest on uninvested amounts are available for payment of the interest.

(b) DISPOSITION OF INTEREST.—Interest earned under this section shall be disposed of in the same way as the principal, except that interest earned before the date of a breach shall be paid to the obligor on the bond.

§ 343. Use of appropriations for undercover investigations

(a) GENERAL.—(1) With respect to any undercover investigative operation of the Immigration and Naturalization Service which is necessary for the detection and prosecution of crimes against the Federal Government—

(A) amounts appropriated for the Service may be used for leasing space within the United States and the territories and possessions of the United States without regard to the following provisions of law:

(i) sections 1341 and 3324 of title 31;

(ii) the third undesignated paragraph under the heading ''Miscellaneous'' of the Act of March 3, 1877 (40 U.S.C. 34);

(iii) section 3732(a) of the Revised Statutes (41 U.S.C. 11(a));

(iv) section 3741 of the Revised Statutes (41 U.S.C. 22);

(v) sections 304(a) and 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254 (a), 255);

(B) amounts appropriated for the Service may be used to establish or to acquire proprietary corporations or business entities as part of an undercover operation, and to operate those corporations or business entities on a commercial basis, without regard to section 9102 of title 31;

(C) amounts appropriated for the Service, and proceeds from the undercover operation, may be deposited in banks or other financial institutions without regard to section 648 of title 18 and section 3302(a) of title 31; and

(D) proceeds from the undercover operation may be used to offset necessary and reasonable expenses incurred in the operation without regard to section 3302(b) title 31.

(2) The authority in this subsection may be exercised only on written certification of the Commissioner of Immigration and Naturalization, in consultation with the Deputy Attorney General, that an action authorized by paragraph (1) of this subsection is necessary for the conduct of the undercover operation.

(b) DISPOSITION OF PROCEEDS NO LONGER REQUIRED.—As soon as practicable after the proceeds from an undercover investigative operation referred to in subsection (a)(1)(C) and (D) of this section are no longer necessary for the conduct of the operation, the proceeds or the balance of the proceeds remaining at the time shall be deposited in the Treasury as miscellaneous receipts.

(c) DISPOSITION OF CERTAIN CORPORATIONS AND BUSINESS ENTITIES.—If a corporation or business entity established or acquired as part of an undercover operation under subsection (a)(1)(B) of this section with a net value of more than $50,000 is to be liquidated, sold, or otherwise disposed of, the Service, as much in advance as the Commissioner or Commissioner's designee determines practicable, shall report the circumstances to the Attorney General, the Director of the Office of Management and Budget, and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury as miscellaneous receipts.

(d) FINANCIAL AUDITS.—The Commissioner shall conduct a detailed financial audit of each closed undercover operations on a quarterly basis and shall report the results of the audits in writing to the Deputy Attorney General.

§ 344. Breached Bond/Detention Fund

(a) ESTABLISHMENT.—There is a separate account in the Treasury known as the ''Breached Bond/Detention Fund''.

(b) REFUNDS.—(1) At least quarterly, the Secretary of the Treasury shall refund amounts from the Fund to the Immigration and Naturalization Service for—

(A) expenses incurred in collecting breached bonds; and

(B) expenses associated with the detention of illegal aliens.

(2) The amount required to be refunded for each fiscal year shall be refunded in accordance with estimates made in the budget request of the Attorney General for that fiscal year. However, any proposed change in the amount designated in the budget request may be made only after notification to the Committees on Appropriations of the House of Representatives and the Senate under section 606 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Public Law 102–395, 106 Stat. 1873).

(c) DEPOSITS.—All breached cash and surety bonds, more than $8,000,000, posted under this title and recovered by the Attorney General shall be deposited in the Fund as offsetting receipts.

(d) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Fund remain available until expended.

(e) REPORTS.—The Attorney General shall submit annually to Congress a statement on the financial condition of the Fund, including the beginning balance, receipts, refunds to appropriations, transfers to the general fund, and the ending balance.

§ 345. Immigration User Fee Account

(a) ESTABLISHMENT.—There is a separate account in the Treasury known as the ''Immigration User Fee Account''.

(b) REFUNDS.—(1) The Secretary of the Treasury shall refund out of the Account to any appropriation the amount paid out of that appropriation for expenses incurred by the Attorney General in—

(A) providing immigration inspection and preinspection services for a commercial vessel or aircraft;

(B) providing overtime, Sunday, or holiday immigration inspection services for a commercial vessel or aircraft;

(C) administering debt recovery, including establishing and operating a national collections office;

(D) expanding, operating, and maintaining information systems for nonimmigrant control and debt collection;

(E) detecting fraudulent documents used by passengers traveling to the United States, including training of, and technical assistance to, commercial airline personnel regarding that detection;

(F) providing detention and removal services for an inadmissible alien—

(i) arriving on a commercial vessel or aircraft; or

(ii) attempting to enter the United States illegally by avoiding immigration inspection at an air or sea port of entry; and

(G) providing removal and asylum proceedings at an air or sea port of entry for an inadmissible alien—

(i) arriving on a commercial vessel or aircraft, including providing removal proceedings resulting from presentation of fraudulent documentation or failure to present documentation; or

(ii) attempting to enter the United States illegally by avoiding immigration inspection at an air or sea port of entry.

(2) Amounts required to be refunded under paragraph (1) of this subsection shall be refunded at least quarterly on the basis of estimates, made by the Attorney General, of the expenses referred to in paragraph (1). Proper adjustments shall be made in the amounts subsequently refunded under paragraph (1) to the extent prior estimates were more or less than the amount required to be refunded.

(3) In each fiscal year, the Attorney General shall expend for training and assistance described in paragraph (1)(E) of this subsection an amount that is at least 5 percent of the total expenses the Attorney General incurs under paragraph (1) of this subsection in that fiscal year.

(c) DEPOSITS.—The following shall be deposited in the Account:

(1) Fees collected under section 7308(a) of this title, deposited as offsetting receipts.

(2) Civil penalties collected under sections 10120, 10122, and 10123 of this title.

(3) Liquidated damages and expenses collected under this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, chapters 133 and 135, section 13702, and chapter 151).

(d) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Account under subsection (c)(1) of this section remain available until expended.

(e) REPORTS.—(1) At the end of each 2-year period beginning with the establishment of the Account, the Attorney General, following a public rulemaking with notice and an opportunity for comment, shall submit a report to Congress—

(A) describing the status of the Account, including the balance; and

(B) recommending any change in the fee specified in section 7308(a) of this title to ensure that amounts collected from the fee for the succeeding 2 years equal, as closely as possible, the cost of providing the services for which the fee is charged.

(2) In addition to the reporting requirement under paragraph (1) of this subsection, the Attorney General shall submit to Congress not later than March 31 of each year a statement showing—

(A) the financial condition of the Account, including the beginning balance, revenues, withdrawals and their purpose, the ending balance, projections for the next fiscal year, and a complete workload analysis showing on a port-by-port basis the current and projected need for inspectors; and

(B) the success rate of the Immigration and Naturalization Service in meeting the 45-minute inspection standard imposed by section 304 of this title, detailed statistics on the number of passengers inspected within the standard, progress being made to expand the use of United States citizen by-pass, the number of passengers for whom the standard is not met and the length of their delay, locational breakdown of these statistics, and the steps being taken to correct any nonconformity.

§ 346. Immigration Examinations Fee Account

(a) ESTABLISHMENT.—There is a separate account in the Treasury known as the ''Immigration Examinations Fee Account''.

(b) USE OF AMOUNTS.—Amounts in the Account are available to the Attorney General to reimburse any appropriation by the amount paid from that appropriation for expenses in—

(1) providing immigration adjudication and naturalization services; and

(2) collecting, safeguarding, and accounting for fees deposited in, and amounts reimbursed from, the Account.

(c) DEPOSITS.—Immigration adjudication fees designated by the Attorney General by regulation shall be deposited in the Account as offsetting receipts, whether collected directly by the Attorney General or through clerks of courts. However, fees the Attorney General receives from applicants residing in the Virgin Islands or Guam shall be paid to the treasury of the Virgin Islands or the treasury of Guam, respectively.

(d) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Account remain available to the Attorney General until expended.

(e) REPORTS.—The Attorney General shall submit annually to Congress a statement on the financial condition of the Account, including the begin-

ning balance, revenues, withdrawals, the ending balance, and projections for the next fiscal year.

§ 347. Immigration Enforcement Account

(a) ESTABLISHMENT.—There is a separate account in the Treasury known as the ''Immigration Enforcement Account''.

(b) REFUNDS.—(1) The Secretary of the Treasury shall refund out of the Account to any appropriation the amount paid out of that appropriation for expenses incurred by the Attorney General in—

(A) identifying, investigating, apprehending, detaining, and removing criminal aliens;

(B) maintaining and updating a system to identify and track criminal aliens, deportable aliens, inadmissible aliens, and aliens illegally entering the United States; and

(C) repairing, maintaining, or constructing on the United States border, in areas experiencing high levels of apprehensions of illegal aliens, structures to deter illegal entry into the United States.

(2) Amounts required to be refunded under paragraph (1) of this subsection shall be refunded at least quarterly on the basis of estimates, made by the Attorney General, of the expenses referred to in paragraph (1). Proper adjustments shall be made in the amounts subsequently refunded under paragraph (1) to the extent prior estimates were more or less than the amount required to be refunded.

(3) Amounts required to be refunded from the Account shall be refunded in a fiscal year on the basis of estimates made in the budget request of the Attorney General for that fiscal year. However, any proposed changes in the amount designated in that budget request may be made only after notification to the Committees on Appropriations of the House of Representatives and the Senate under section 101(a) [§ 605] of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134, 110 Stat. 1321–63).

(c) DEPOSITS.—The following shall be deposited as offsetting receipts in the Account:

(1) amounts collected from the increase in penalties collected resulting from the amendments made by sections 203(b) and 543(a) of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5018, 5057).

(2) civil penalties collected under sections 10125, 10126, and 10127 of this title.

(d) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Account remain available until expended.

(e) REPORTS.—The Attorney General shall submit annually to Congress a statement on the financial condition of the Account, including the beginning balance, revenues, withdrawals, ending balance, and projections for the next fiscal year.

§ 348. Immigration Detention Account

(a) ESTABLISHMENT.—There is a separate account in the Treasury known as the ''Immigration Detention Account''.

(b) REFUNDS.—(1) The Secretary of the Treasury shall refund out of the Account to any appropriation the amount paid out of that appropriation for expenses incurred by the Attorney General for the detention of aliens under sections 6702(c) and 6715 of this title.

(2) Amounts required to be refunded under paragraph (1) of this subsection shall be refunded at least quarterly on the basis of estimates, made by the Attorney General, of the expenses referred to in paragraph (1). Proper adjustments shall be made in the amounts subsequently refunded under paragraph (1) to the extent prior estimates were more or less than the amount required to be refunded.

(3) Amounts required to be refunded from the Account shall be refunded in a fiscal year on the basis of estimates made in the budget request of the Attorney General for that fiscal year. However, any proposed changes in the amount designated in that budget request may be made only after notification to the Committees on Appropriations of the House of Representatives and the Senate under section 101(a) [§ 605] of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134, 110 Stat. 1321–63).

(c) DEPOSITS.—Amounts described in section 9102(d)(2) of this title shall be deposited as offsetting receipts in the Account.

(d) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Account remain available until expended.

(e) REPORTS.—The Attorney General shall submit annually to Congress a statement on the financial condition of the Account, including the beginning balance, revenues, withdrawals, ending balance, and projections for the next fiscal year.

§ 349. Land border inspection fees

(a) FEE AUTHORITY.—(1) The Attorney General may establish, by regulation, not more than 6 projects under which a fee may be charged and collected for inspection services at land border places of entry. A project may include commuter lanes to be made available to qualified citizens of the United States and aliens, as the Attorney General decides. Fees collected under this subsection shall be deposited as offsetting receipts in the Account established under subsection (b)(1) of this section.

(2) A project described in paragraph (1) of this subsection that was not authorized to be committed before September 30, 1996, may be implemented 30 days after the Attorney General submits a written plan detailing the proposed implementation of the project.

(b) LAND BORDER INSPECTION FEE ACCOUNT.—(1) There is a separate account in the Treasury known as the "Land Border Inspection Fee Account".

(2) At least quarterly, the Secretary of the Treasury shall refund out of the Account to any appropriation amounts for expenses incurred in providing inspection services at land border places of entry, including expenses of—

(A) providing overtime inspection services;

(B) expanding, operating, and maintaining information systems for nonimmigrant control;

(C) employing additional permanent and temporary inspectors;

(D) minor construction costs associated with the addition of new traffic lanes (with the concurrence of the Administrator of General Services);

(E) detecting fraudulent documents used by passengers traveling to the United States; and

(F) administering the Account.

(3) Amounts required to be refunded from the Account for each fiscal year shall be refunded in accordance with estimates made in the budget request of the Attorney General for that fiscal year. However, any proposed change in the amount designated in the budget request may be made only after notification to the Committees on Appropriations of the House of Representatives and the Senate under section 606 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990 (Public Law 101–162, 103 Stat. 1031).

(c) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Account remain available until expended.

(d) REPORTS.—(1) The Attorney General shall submit annually to Congress a statement on the financial condition of the Account, including the beginning balance, revenues, withdrawals, the ending balance, and projections for the next fiscal year.

(2) The Attorney General shall submit quarterly to Congress a status report on each land border inspection project established under this section.

(e) EXPIRATION.—This section expires on September 30, 2000.

§ 350. Immigration emergency fund

(a) ESTABLISHMENT.—There is an immigration emergency fund in the Treasury.

(b) USES.—(1) Amounts in the fund may be used—

(A) to provide for an increase in border patrol or other enforcement activities of the Immigration and Naturalization Service;

(B) to reimburse state and local governments for providing assistance requested by the Attorney General in meeting an immigration emergency, but only if the President has decided that an emergency exists and has certified the existence of the emergency to the Committees on the Judiciary of the House of Representatives and the Senate; and

(C) subject to paragraphs (2)–(4) of this subsection, to reimburse state and local governments for providing assistance required by the Attorney General, without the need for a decision by the President that an emergency exists—

(i) when a district director of the Service certifies to the Commissioner of Immigration and Naturalization that the number of asylum applications filed in the director's district during a calendar quarter is at least 1,000 more than the number of asylum applications filed in that district during the prior calendar quarter;

(ii) when the lives, property, safety, or welfare of the residents of a State or locality are endangered; or

(iii) in other circumstances that the Attorney General decides.

(2) Providing parole at a place of entry in a district shall be counted, under paragraph (1)(C)(i) of this subsection, as filing an application for asylum in that district.

(3) Not more than $20,000,000 may be made available for all state and local governments under paragraph (1)(C) of this subsection.

(4) A state or local government seeking reimbursement under paragraph (1)(C) of this subsection must file an application with the Attorney General. The Attorney General shall make a decision on the application not later than 15 days after receiving the application.

(c) REGULATIONS.—The Attorney General shall prescribe regulations to carry out this section including a delineation of—

(1) scenarios that constitute an immigration emergency;

(2) the process by which the President declares an immigration emergency;

(3) the role of the chief executive officer of a State and local officials of that State in requesting a declaration of emergency;

(4) a definition of ''assistance required by the Attorney General'' in subsection (b)(1)(C) of this subsection;

(5) the process by which state and local governments are reimbursed; and

(6) definitions of terms in subsection (b)(1)(C)(ii) of this section and the term ''in other circumstances'' in subsection (b)(1)(C)(iii).

(d) AUTHORIZATION OF APPROPRIATIONS.—An amount may be appropriated to the fund each fiscal year so that the balance in the fund is $35,000,000.

SUBCHAPTER IV—INFORMATION SERVICES

§ 361. Information system on impact of immigration laws

(a) ESTABLISHMENT.—In consultation with interested academicians, governmental authorities, and other parties, the Commissioner of Immigration and Naturalization shall provide for a system to collect and disseminate information not in individually identifiable form that is useful in evaluating the social, economic, environmental, and demographic impact of the immigration laws.

(b) TYPE OF INFORMATION TO BE COLLECTED AND DISSEMINATED.—Information collected under subsection (a) of this section shall include information on—

(1) the alien population in the United States;

(2) the rates of naturalization and emigration of resident aliens;

(3) aliens who have been admitted, paroled, or granted asylum;

(4) nonimmigrants in the United States (by occupation, basis for admission, and length of stay);

(5) aliens who have not been admitted or have been removed from the United States;

(6) the number of applications filed and granted for cancellation of removal; and

(7) the number of aliens estimated to be present unlawfully in the United States in each fiscal year.

(c) FREQUENCY OF COLLECTION AND DISSEMINATION AND RECIPIENTS OF INFORMATION.—The system shall provide that information be collected and disseminated at least annually to Congress and the public.

(d) REPORT.—The Commissioner shall submit annually to Congress a report containing—

(1) a summary of information collected under subsection (a) of this section;

(2) an analysis of trends in immigration and naturalization; and

(3) information on the number, and rate of denial administratively, of applications for naturalization, for each district office of the Immigration and Naturalization Service and by national origin group.

§ 362. Records on aliens

(a) CENTRAL FILE ON ALIENS.—For the use of security and enforcement agencies of the Federal Government, the Commissioner of Immigration and

Naturalization shall maintain a central file on aliens that is based on the records of the Immigration and Naturalization Service. The file shall contain—

(1) the name of each alien admitted or denied admission to the United States;

(2) the name of the alien's sponsor of record; and

(3) other information relevant to the enforcement of this title that the Attorney General may require.

(b) PROVIDING INFORMATION TO THE ATTORNEY GENERAL.—(1) On request of the Attorney General, the head of a federal department, agency, or instrumentality shall provide the Commissioner with information in the records of the department, agency, or instrumentality about the identity and location of an alien in the United States.

(2) The Attorney General may require an alien to provide the alien's social security account number for inclusion in any record of the alien maintained by the Attorney General or the Commissioner.

§ 363. Information about criminal aliens

(a) ALIENS ARRESTED FOR OR CONVICTED OF AGGRAVATED FELONIES.—(1) The Attorney General shall devise and carry out a system—

(A) to make the investigative resources of the Immigration and Naturalization Service available, daily and on a 24-hour basis, to federal, state, and local authorities to decide whether an individual arrested by any of those authorities for an aggravated felony is an alien;

(B) to designate and train officers and employees of the Service in each district to serve as liaison to federal, state, and local law enforcement and correctional agencies and courts in matters involving the arrest, conviction, and release of aliens charged with aggravated felonies; and

(C) to maintain a current record, using computer resources, showing aliens who have been convicted of aggravated felonies and indicating those who have been removed.

(2) The record referred to in paragraph (1)(C) of this subsection shall be made available to—

(A) inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States; and

(B) the Secretary of State for use in the Department of State's automated visa lookout system.

(3) On request of the chief executive officer of a State, the Commissioner of Immigration and Naturalization shall provide assistance to state courts

on the identification of aliens unlawfully present in the United States pending criminal prosecution.

(b) CRIMINAL ALIEN TRACKING CENTER.— (1) The Commissioner shall operate a criminal alien identification system under subsection (a) of this section. The system shall be used to assist federal, state, and local law enforcement authorities in identifying and locating aliens who may be subject to removal because they—

(A) have been convicted of aggravated felonies;

(B) are subject to prosecution under section 10148, 10153, or 10155 of this title;

(C) are not lawfully present in the United States; or

(D) are otherwise removable.

(2) The system shall allow for recording into appropriate automated fingerprint identification systems the fingerprint records of aliens who have been previously arrested and removed.

(3) Not more than $5,000,000 may be appropriated for each of the fiscal years ending September 30, 1998–2001, to carry out this subsection.

§ 364. Information about transporting alien females for prostitution and debauchery

To prevent the transportation in foreign commerce of alien females for prostitution and debauchery, and to carry out the arrangement adopted July 25, 1902, for the suppression of white-slave traffic, the Commissioner of Immigration and Naturalization shall—

(1) maintain a central file of information about the procurement of alien females for prostitution and debauchery;

(2) establish the identity of the alien females, take statements they may make, ascertain who induced them to leave their native countries, and supervise the females; and

(3) receive statements filed under this section and section 2424 of title 18, and provide receipts to individuals filing the statements.

§ 365. Communication between government entities and the Immigration and Naturalization Service

(a) GENERAL.—A federal, state, or local governmental entity or official may not prohibit, or in any way restrict, any governmental entity or official from sending to, or receiving from, the Immigration and Naturalization Service information about the citizenship or immigration status, lawful or unlawful, of any individual.

(b) ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES.—An individual, person, or entity may not prohibit, or in any way restrict, a federal, state, or local governmental entity from doing any of the following with re-

spect to information about the immigration status, lawful or unlawful, of any individual:

(1) Sending that information to, or requesting or receiving that information from, the Service.

(2) Maintaining that information.

(3) Exchanging that information with any other federal, state, or local governmental entity.

(c) OBLIGATION TO RESPOND TO INQUIRIES.—The Commissioner of Immigration and Naturalization shall respond to an inquiry by a federal, state, or local governmental entity, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the entity for any purpose authorized by law, by providing the requested verification or status information.

§ 366. Limitations on disclosure of information

(a) GENERAL.—(1) Excepted as provided in subsection (b) of this section, the Attorney General, or any other official or employee of the Department of Justice, may not—

(A) unless an alien has been convicted of a crime referred to in section 6506(a), (b), (c), (d), or (f) of this title, make an adverse determination of admissibility or deportability of the alien under this title using information furnished solely by—

(i) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty;

(ii) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in the battery or cruelty;

(iii) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty); or

(iv) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in the battery or cruelty and the alien did not actively participate in the battery or cruelty; or

(B) permit use by or disclosure to anyone (other than a sworn officer or employee of the Department for legitimate Department purposes) of any information related to an alien who is the beneficiary of an application for relief under section 4301(a)(3), (4), (6), or (7), 4506(b)(1)(C), or 6721(c) of this title as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty.

(2) The limitation under paragraph (1)(B) of this subsection ends when an application for relief is denied and all opportunities for appeal of the denial have been exhausted.

(b) EXCEPTIONS.—(1) The Attorney General may provide for the disclosure of information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13.

(2) The Attorney General may provide for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.

(3) Subsection (a) of this section does not prohibit disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of that information.

(4) Subsection (a)(1)(B) of this section does not apply if all the battered individuals in the case are adults and they have all waived the restrictions of that subsection.

(5) The Attorney General may disclose information to federal, state, and local public and private agencies providing benefits only to determine eligibility for benefits under section 15102(b)(8) and (c) of this title.

§ 367. Proof of nonexistence of records

A certification by the Attorney General, or by an officer or employee of the Immigration and Naturalization Service designated by the Attorney General, that a diligent search of the records of the Service has failed to disclose a particular record is admissible in any proceeding as evidence that the records of the Service do not contain the record.

CHAPTER 5—DEPARTMENT OF STATE

Sec.
501. General authority of the Secretary of State.
502. Administrator.
503. Passport Office, Visa Office, and other offices.
504. Sharing information about foreign traffickers in controlled substances.
505. Automated Visa Lookout System.
506. Surcharge for processing machine readable visas.
507. Confidentiality of records.

§ 501. General authority of the Secretary of State

(a) GENERAL AUTHORITY.—The Secretary of State shall carry out the provisions of this title, and other immigration and nationality laws, related to—

(1) duties and powers of the Administrator designated under section 502 of this title;

(2) duties and powers of diplomatic and consular officers, except duties and powers of consular officers related to issuing and refusing to issue visas; and

(3) a decision about the nationality of an individual not in the United States.

(b) DELEGATION.—In carrying out this title, the Secretary, with the consent of the head of a federal department, agency, or instrumentality may require or authorize an officer or employee of the department, agency, or instrumentality to carry out a duty or power of an officer or employee of the Department of State.

§ 502. Administrator

(a) DESIGNATION.—The Secretary shall designate an Administrator. The Administrator must be a citizen of the United States and be qualified by experience.

(b) DUTIES AND POWERS.—The Administrator shall—

(1) carry out duties and powers prescribed by the Secretary of State;

(2) maintain close liaison with the appropriate committees of Congress to advise them on the administration of this title by consular officers; and

(3) maintain direct and continuous liaison with the Commissioner of Immigration and Naturalization to carry out the immigration and nationality laws in a coordinated, uniform, and efficient way.

§ 503. Passport Office, Visa Office, and other offices

(a) GENERAL.—The Department of State has a Passport Office, a Visa Office, and other offices the Secretary of State decides are appropriate. The head of each office is a director. The Directors of the Passport Office and the Visa Office must be experienced in carrying out the immigration and nationality laws.

(b) FUNCTIONS.—The Passport Office carries out laws related to issuing passports. The Visa Office carries out immigration laws related to issuing visas.

(c) GENERAL COUNSEL OF VISA OFFICE.—The Visa Office has a General Counsel appointed by the Secretary. The General Counsel serves under the general direction of the Legal Adviser of the Department. The General Counsel may maintain liaison with the appropriate officers of the Immigration and Naturalization Service to achieve a uniform interpretation of this title.

§ 504. Sharing information about foreign traffickers in controlled substances

To ensure that foreign traffickers in controlled substances are denied visas to enter the United States (as required by section 6309(a)(3) of this title)—

(1) the Secretary of State shall cooperate with United States law enforcement agencies, including the Drug Enforcement Administration

and the Customs Service, in establishing a comprehensive information system on all drug arrests of foreign nationals in the United States so that the information can be communicated to the appropriate United States embassies; and

(2) the National Drug Enforcement Policy Board shall agree on uniform guidelines that would permit the sharing of information of foreign traffickers in controlled substances.

§ 505. Automated Visa Lookout System

(a) INCLUSION OF NAMES.—(1) Except as provided in paragraph (2) of this subsection, the Secretary of State may not include in the Automated Visa Lookout System, or in any other system or list that maintains information about the inadmissibility of aliens under this title, the name of an alien who is not inadmissible under this title.

(2) The Secretary may add to or retain in such a system or list the name of an alien who is not inadmissible only if included for otherwise authorized law enforcement purposes or other lawful purposes of the Department of State. A name included for other lawful purposes under this paragraph shall include a notation clearly and distinctly indicating that the individual is not presently inadmissible. The Secretary shall establish procedures to ensure that a visa is not denied to the individual for any reason not provided in this title.

(3) The Secretary shall publish in the Federal Register regulations on the maintenance and use by the Department of systems and lists for purposes described in paragraph (2) of this subsection.

(4) This subsection does not create new authority or expand existing authority for any activity not otherwise authorized by law.

(b) REQUIRED CHECK BEFORE ISSUING VISAS.—(1) Beginning May 1, 1996, when a consular officer issues a visa, the officer shall certify, in writing, that a check of the Automated Visa Lookout System, or any other system or list that maintains information about the inadmissibility of aliens under this title, has been made and that there is no basis under the system for excluding the alien.

(2) If, at the time an alien applies for a visa, the alien's name is included in the Department's visa lookout system and the consular officer to whom the application is made fails to follow the procedures in processing the application required by inclusion of the alien's name in the system, the officer's failure shall be made a matter of record and shall be considered as a serious negative factor in the officer's annual performance evaluation.

(3) If an alien to whom a visa was issued as a result of a failure described in paragraph (2) of this subsection is admitted to the United States and there subsequently is probable cause to believe that the alien was a par-

ticipant in a terrorist act causing serious injury, loss of life, or significant destruction of property in the United States, the Secretary shall convene an Accountability Review Board under title III of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4831 et seq.).

(c) UPGRADE TO SYSTEM.—Not later than October 30, 1995, the Secretary shall upgrade all overseas visa lookout operations to computerized systems with automated multiple-name search capabilities.

§ 506. Surcharge for processing machine readable visas

(a) GENERAL AUTHORITY.—Notwithstanding any other law, the Secretary of State may charge a fee or surcharge for processing machine readable nonimmigrant visas and machine readable combined border crossing identification cards and nonimmigrant visas.

(b) DEPOSIT OF AMOUNTS COLLECTED.—Fees and surcharges collected under subsection (a) of this section shall be deposited as an offsetting collection to any Department of State appropriation, to recover the costs of providing consular services. The amounts collected remain available for obligation until expended.

(c) LIMITATION.—For the fiscal year ending September 30, 1997, fees and surcharges deposited under subsection (b) of this section may not exceed a total of $150,000,000. For subsequent fiscal years, fees and surcharges may be collected under subsection (a) of this section only in amounts provided in subsequent authorization laws.

(d) NONAPPLICABILITY OF CERTAIN LAW.—Sections 1726–1728 of the Revised Statutes (22 U.S.C. 4212–4214) do not apply to fees and surcharges collected under this section.

(e) SIGNATORIES OF NORTH AMERICAN FREE TRADE AGREEMENT.—The Secretary may not charge a fee or surcharge under this section to a citizen of a country that is a signatory, as of April 30, 1994, to the North American Free Trade Agreement, unless the Secretary finds that the country charges a visa application or issuance fee to citizens of the United States.

§ 507. Confidentiality of records

A record of the Department of State or of a diplomatic or consular office related to issuing or refusing to issue a visa or permit to enter the United States is confidential. The record may be used only in developing, amending, or carrying out a law of the United States. However, the Secretary of State may provide a certified copy of the record to a court if the court certifies that it needs the record in the interest of justice in a case pending before the court.

CHAPTER 7—PASSPORTS AND TRAVEL REQUIREMENTS

SUBCHAPTER I—PASSPORTS

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701. Individuals eligible for passports.
702. Issuing and verifying passports.
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SUBCHAPTER II—TRAVEL REQUIREMENTS

711. Travel document requirements.
712. Certain rights to enter or leave unaffected.
713. Records about residents permanently leaving the United States.
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SUBCHAPTER I—PASSPORTS

§ 701. Individuals eligible for passports

(a) NATIONALS OF THE UNITED STATES.—A passport may be issued only to, or verified only for, a national of the United States.

(b) APPLICATIONS.—An individual may be issued a passport only if the individual submits a signed application containing all information required by law and regulations. If the individual previously has not been issued a United States passport, the application must be executed under oath before an individual authorized by the Secretary of State to administer oaths.

§ 702. Issuing and verifying passports

(a) INDIVIDUALS AUTHORIZED TO ISSUE AND VERIFY.—Under regulations prescribed by the President, the Secretary of State may—

(1) issue and verify passports; and

(2) authorize only the following to issue and verify passports:

(A) the chief executive officer of a territory or possession of the United States.

(B) in a foreign country, diplomatic and consular officers of the United States and other officers and employees of the Department of State who are citizens of the United States.

(b) REPORTS.—As required by the Secretary, an individual issuing or verifying a passport shall report to the Secretary—

(1) the issuing or verifying of the passport; and

(2) the information contained in the passport.

§ 703. Validity and use

(a) PERIOD OF VALIDITY.—A passport is valid for 10 years from the date it is issued. However, the Secretary of State may limit the validity of a passport to a shorter period in an individual case or on a general basis by regulation.

(b) RESTRICTIONS ON TRAVEL OR USE.—(1) Except as provided in paragraph (2) of this subsection or any other law, a passport may not be designated as restricted for travel to, or use in, any country.

(2) A passport may be designated as restricted for travel to, or use in, a country—

(A) with which the United States is at war;

(B) in which armed hostilities are in progress; or

(C) in which there is imminent danger to the public health or physical safety of United States travelers.

§ 704. Passport fees

(a) ESTABLISHING FEES.—The Secretary of State shall prescribe by regulation the fee for a passport and the fee for executing a passport application. However, the following individuals are exempt from paying the passport fee and, when executing the application before an officer or employee of the Federal Government, from paying the execution fee:

(1) An officer or employee of the Government going outside the United States on official business, and a member of the immediate family of the officer or employee.

(2) A sailor needing a passport for service on a vessel of the United States.

(3) A widow, child, parent, brother, or sister of a deceased member of the armed forces of the United States going outside the United States to visit the member's grave.

(b) COLLECTION AND RETENTION OF APPLICATION FEES.—The Secretary by regulation may authorize an official of a State or the United States Postal Service to collect and retain the fee for each passport application executed before the official or the Service.

(c) DEPOSITS IN THE TREASURY.—(1) Except for fees retained or transferred under subsection (b) of this section, fees collected under this section shall be deposited in the Treasury.

(2) Notwithstanding any other law and to the extent provided in an appropriation law, not more than $5,000,000 in passport fees collected by the Secretary may be credited each fiscal year to a Department of State account. Amounts credited to the account are available only for costs associated with acquiring and producing machine-readable United States passports and visas and compatible reading equipment. Amounts credited under this paragraph remain available until expended.

(3) Fees collected for expedited passport processing shall be deposited in the Administration of Foreign Affairs Account as offsetting receipts and are available until expended.

(d) REFUNDS.—(1) The Secretary may refund a passport fee—

(A) paid by an individual exempt from payment under subsection (a) of this section; or

(B) paid to an officer or employee of the Government by an individual issued a passport who is refused a visa in the United States by the appropriate officer of a government of a foreign country if the individual within 6 months from the date the passport is issued makes a written request and returns the unused passport.

(2) Amounts are appropriated to the Secretary to make refunds under paragraph (1)(B) of this subsection.

§ 705. Limitation on acquiring paper for passports

Amounts may not be used to acquire paper for passports if—

(1) the paper is manufactured outside the United States and the territories and possessions of the United States or would be acquired from an entity owned or controlled by a person that is not a citizen of the United States; and

(2) a domestic manufacturer for paper for passports exists.

SUBCHAPTER II—TRAVEL REQUIREMENTS

§ 711. Travel document requirements

(a) DEFINITIONS.—In this section—

(1) ''permit'' means a passport, visa, reentry permit, or other document used to enter or leave the United States.

(2) ''person'', in addition to its meaning under section 1 of title 1, includes a governmental entity.

(3) ''United States'' includes all territory and waters subject to the jurisdiction of the United States.

(b) ENTERING OR LEAVING THE UNITED STATES.—(1) Subject to conditions and exceptions prescribed by the President, a citizen of the United States may enter or leave, or attempt to enter or leave, the United States only if the citizen is in possession of a valid United States passport.

(2) An alien may enter or leave, or attempt to enter or leave, the United States only under regulations prescribed or orders issued by the President.

(c) OTHER RESTRICTIONS.—Unless otherwise ordered by the President, a person may not—

(1) transport or attempt to transport an individual into or out of the United States if the person has reason to believe that the entry or departure is prohibited by this section;

(2) knowingly make a false statement in an application for a permit with the intent to have the permit issued for any individual;

(3) knowingly give, attempt to give, or assist in giving an individual a permit not intended for the individual;

(4) knowingly use or attempt to use a permit not issued or intended for that person;

(5) forge, change, or mutilate a permit, or have a permit forged, changed, or mutilated; or

(6) knowingly use, attempt to use, or give to another for use, a permit that is forged, changed, mutilated, or invalid.

(d) ALIENS OTHERWISE INADMISSIBLE.—This title does not entitle an alien to be admitted to the United States if the alien is issued a permit but otherwise is inadmissible.

(e) REVOCATION OF REGULATION OR ORDER.—Revocation of a regulation prescribed or order issued under this section does not prevent prosecution, or imposition of penalties, for violation of the regulation or order before it was revoked.

§ 712. Certain rights to enter or leave unaffected

This title does not affect the rights of the following individuals to enter or leave the United States:

(1) an American Indian born in Canada who is at least 50 percent of American Indian descent.

(2) an alien member of the armed forces of the United States entering or leaving the United States under orders or with permission when the member is in uniform or carrying identification as a member of the armed forces.

§ 713. Records about residents permanently leaving the United States

The Attorney General may authorize an immigration officer to record the following information about a resident of the United States leaving the United States through Canada or Mexico for permanent residence in a foreign country:

(1) Name.

(2) Race, age, and sex.

(3) Country of birth.

(4) Marital status.

(5) Occupation.

(6) Whether the resident can read or write.

(7) Nationality.

(8) Country of which the resident is a citizen or subject.

(9) Last permanent residence in the United States.

(10) Intended future permanent residence.

(11) Time and port of last entry into the United States.

(12) If the resident claims to be a national of the United States, facts on which the claim is based.

§ 714. Travel restrictions on citizens of foreign countries

(a) GENERAL POLICY.—(1) To carry out the general principles of the Final Act of the Conference on Security and Cooperation in Europe emphasizing the lowering of international barriers to the free movement of people and ideas and in accordance with the Vienna Convention on Diplomatic Relations establishing the legal principles of nondiscrimination and reciprocity, it is the general policy of the United States to impose restrictions on travel within the United States by citizens of a foreign country only when the government of that foreign country imposes restrictions on travel by citizens of the United States within that country.

(2) This subsection does not limit a restriction on travel within the United States that the Federal Government, on a reciprocal basis, imposes on an official of a government of a foreign country.

(b) CONVEYANCE OF POLICY AND ELIMINATION OF RESTRICTIONS.—The Secretary of State shall—

(1) ensure that the policy of subsection (a) of this section is conveyed clearly to the government of a foreign country imposing travel restrictions on citizens of the United States; and

(2) seek the elimination, on a mutual and reciprocal basis, of travel restrictions imposed by that government and by the Federal Government on each other's citizens.

CHAPTER 9—GENERAL MISCELLANEOUS

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901. Liaison with internal security officers.
902. Disposition of receipts.
903. Setting immigration adjudication and naturalization fees.
904. Information on female genital mutilation.
905. Certain treaties unaffected.
906. Rules of construction related to organizations.
907. Construction of certain amendments.
908. Information related to certain social security account numbers.
909. Triennial immigration-impact report.

§ 901. Liaison with internal security officers

To exchange information for use in enforcing this title in the interest of the internal security of the United States, the Commissioner of Immigration and Naturalization and the Administrator designated under section 502 of this title may maintain direct and continuous liaison with the Directors of the Federal Bureau of Investigation and Central Intelligence and with other internal security officers of the Federal Government.

§ 902. Disposition of receipts

Except as otherwise provided in this title, an amount received in payment of a fee or administrative penalty shall be deposited in the Treasury as miscellaneous receipts. However, a fee received from an applicant residing in the Virgin Islands or Guam and paid under section 2126 of this title shall

be paid to the treasury of the Virgin Islands or the treasury of Guam, respectively.

§ 903. Setting immigration adjudication and naturalization fees

Fees for providing immigration adjudication and naturalization services may be set at a level that will ensure recovery of—

(1) the costs of providing those services;

(2) the costs of providing similar services without charge to asylum applicants or other immigrants; and

(3) any additional costs associated with the administration of the fees collected.

§ 904. Information on female genital mutilation

(a) DEFINITION.—In this section, ''female genital mutilation'' means the removal or infibulation, or both, of the whole or part of the clitoris, the labia minora, or the labia majora.

(b) INFORMATION PROVIDED.—In cooperation with the Secretary of State, the Commissioner of Immigration and Naturalization shall make available to each alien who is issued an immigrant or nonimmigrant visa, before or at the time of entry into the United States, the following information:

(1) information on the severe harm to physical and psychological health caused by female genital mutilation, compiled and presented in a manner which is limited to the practice itself and respectful to the cultural values of the societies in which the practice takes place.

(2) information about potential legal consequences in the United States under criminal or child protection laws or as a form of child abuse for—

(A) performing female genital mutilation; or

(B) allowing a child under his or her care to be subjected to female genital mutilation.

(c) LIMITATION.—In consultation with the Secretary, the Commissioner shall identify those countries in which female genital mutilation is commonly practiced and, to the extent practicable, limit the provision of information under subsection (b) of this section to aliens from those countries.

§ 905. Certain treaties unaffected

Except as provided in section 20702(c) of this title, this title does not affect a treaty ratified by the Senate before December 25, 1952.

§ 906. Rules of construction related to organizations

(a) ACTS CONSTITUTING AFFILIATION.—In this title, the giving, lending, or promising of support, money, or any other thing of value for any purpose

to an organization is presumed to constitute affiliation with the organization.

(b) ORGANIZATIONS ADVOCATING OVERTHROW OF FEDERAL GOVERNMENT.—This title may not be construed as declaring that any organization referred to in this title does not advocate the overthrow of the Federal Government by unconstitutional means.

§ 907. Construction of certain amendments

The amendments made by the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416, 108 Stat. 4305) do not create any substantive or procedural right or benefit that is legally enforceable by any party against the Federal Government or a department, agency, instrumentality, or officer of the Government or any other person.

§ 908. Information related to certain social security account numbers

(a) REPORTS.—Not later than 3 months after the end of each fiscal year, the Commissioner of Social Security shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the aggregate quantity of social security account numbers issued to aliens not authorized to be employed for which earnings in that fiscal year were reported to the Social Security Administration.

(b) INFORMATION PROVIDED TO ATTORNEY GENERAL.—If earnings are reported to the Administration on a social security account number issued to an alien not authorized to work in the United States, the Commissioner shall provide the Attorney General with the following information in an electronic form agreed on by the Commissioner and the Attorney General:

(1) The name and address of the alien.

(2) The name and address of the person reporting the earnings.

(3) The amount of the earnings.

§ 909. Triennial immigration-impact report

(a) REPORTING REQUIREMENT.—The President shall submit a comprehensive immigration-impact report to Congress not later than January 1, 1998, and not later than January 1 of each 3d year thereafter.

(b) CONTENT.—Each report shall include—

(1) the number and classification of aliens admitted and to be admitted (whether as immediate relatives, special immigrants, refugees, preference immigrants, or nonimmigrants), paroled and to be paroled, and granted and to be granted asylum during the periods specified in subsection (c) of this section;

(2) a reasonable estimate of the number of aliens who entered and will enter the United States during those periods without visas or who

became or will become deportable during those periods under chapter 65 of this title; and

(3) a description of the impact of—

(A) admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during those periods on the economy, labor and housing markets, educational system, social services, foreign policy, environmental quality and resources, and rate, size, and distribution of population growth in the United States; and

(B) high rates of immigration resettlement on state and local governments.

(c) HISTORY AND PROJECTIONS.—In each report, the information referred to in subsection (b) of this section shall be—

(1) described for the prior 3-year period; and

(2) projected for the next 5-year period, based on reasonable estimates substantiated by the best available evidence.

(d) RECOMMENDATIONS.—The President also may include recommendations on changes in numerical limitations or other policies under subtitles II and III of this title affecting the admission and entry of aliens into the United States.

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PART A—NONIMMIGRANTS

CHAPTER 21—ADMISSION AND DOCUMENTATION

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SUBCHAPTER I—ADMISSION

§ 2101. Admission

Except as otherwise provided, an alien may be admitted to the United States as a nonimmigrant for the time and under conditions the Attorney General prescribes by regulation. The Attorney General may require the alien to file a bond, in the amount and containing conditions the Attorney General prescribes, to ensure that the alien will leave the United States when—

(1) the time for which the alien is admitted expires; or

(2) the alien does not maintain the nonimmigrant status under which the alien was admitted or which the alien acquired under section 9108 of this title.

§ 2102. Presumption

An alien (except an alien described in section 2313, 2317, or 2325 of this title) is presumed to be an immigrant until the alien satisfies the consular officer, at the time of application for a visa, and the immigration officer, at the time of application for admission, that the alien is entitled to nonimmigrant status.

§ 2103. Application of certain provisions to diplomats

Except as otherwise provided in this title, the provisions of this title related to ineligibility for a visa and removal of an alien do not apply to a nonimmigrant described in—

(1) section 2301(1) of this title, except that the nonimmigrant is subject—

(A) to the provisions requiring a passport and visa for identification and proof of qualification for the nonimmigrant classification under that section; and

(B) under regulations prescribed by the President, to section 6310(a)–(c) of this title; or

(2) section 2301(2) or 2302(1)–(5) of this title, except that the nonimmigrant is subject to—

(A) the provisions requiring a passport and visa for identification and proof of qualification for the nonimmigrant classification under one of those sections; and

(B) section 6310(a)–(c) of this title.

SUBCHAPTER II—DOCUMENTATION

§ 2121. Documentation requirements

(a) GENERAL.—Except as provided in this section and section 2128 of this title, an alien classified as a nonimmigrant under subchapter I of chapter 23 of this title may be admitted to the United States only if, when applying for admission, the nonimmigrant is in possession of—

(1) a passport that—

(A) is valid for at least 6 months after the last day of the alien's initial period of admission or contemplated initial period of admission; and

(B) authorizes the alien during those 6 months to return to the foreign country from which the alien came or to enter another foreign country; and

(2) a nonimmigrant visa or border crossing identification card at the time of applying for admission.

(b) BORDER CROSSING IDENTIFICATION CARD.—The regulations referred to in section 107 of this title shall provide that—

(1) each border crossing identification card issued after March 30, 1998, include a biometric identifier, such as the fingerprint or handprint of the alien, that is machine readable; and

(2) an alien presenting a border crossing identification card after September 29, 1999, may not be permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(c) GENERAL WAIVERS.—The Attorney General and the Secretary of State jointly may waive a requirement of subsection (a) of this section—

(1) in an individual case because of an unforeseen emergency;

(2) on a reciprocal basis, for nationals of foreign contiguous territory or of adjacent islands and for residents of that territory or islands who have a common nationality with those nationals; or

(3) for an alien proceeding in immediate and continuous transit through the United States on a carrier operating under a contract authorized by section 7306(b)(1)(B) of this title.

(d) WAIVERS FOR VISITORS TO GUAM.—(1) The Attorney General, the Secretary of State, and the Secretary of the Interior jointly may waive subsection (a) of this section for an alien applying for admission as a nonimmigrant visitor classified under section 2303 of this title, but only for entry into and stay on Guam for not more than 15 days, if they jointly decide, after consulting with the Governor of Guam, that—

(A) an adequate arrival and departure control system has been developed on Guam; and

(B) the waiver does not represent a threat to the welfare, safety, or security of the United States or its territories or possessions.

(2) An alien may be granted a waiver under this subsection only if the alien waives any right—

(A) to a review or appeal under this title of an immigration officer's decision on the admissibility of the alien at the port of entry into Guam; or

(B) to contest (except on the basis of an application for asylum) an action for removal of the alien.

(3) An alien admitted to Guam without a visa under this subsection may not—

(A) stay in Guam for more than 15 days after the date of admission to Guam; or

(B) enter or stay in the United States under that admission, except in Guam.

(4) If adequate appropriated amounts to carry out this subsection are not available, the Attorney General may accept amounts tendered by the government of Guam to cover any part of the cost of carrying out this subsection.

§ 2122. Applications for nonimmigrant visas and registration

(a) APPLICATION REQUIREMENTS.—(1) An alien applying for a nonimmigrant visa must apply in the way prescribed by regulation. The application must contain the following information about the alien:

(A) the complete true name of the alien.

(B) the date and place of birth.

(C) nationality.

(D) marital status.

(E) the purpose in going to the United States.

(F) the period of intended stay in the United States.

(G) additional information prescribed by regulation that is necessary—

(i) to identify the alien;

(ii) to determine eligibility of the alien for a nonimmigrant visa; and

(iii) to enforce the immigration and nationality laws.

(2) At the discretion of the Secretary of State, application forms for the various classes of nonimmigrant admissions described in subchapter I of chapter 23 of this title may vary according to the class of visa being requested.

(b) ADDITIONAL REQUIREMENTS.—An alien applying for a nonimmigrant visa must—

(1) register if required by chapter 81 of this title when applying for the visa;

(2) take a physical or mental examination, or both, if required by the consular officer to decide whether the alien may receive a visa; and

(3) provide the consular officer, with the application, a certified copy of any documentation about the alien that may be required by regulation.

(c) STATEMENT ABOUT NO ENTITLEMENT TO ENTER THE UNITED STATES.—An application for a nonimmigrant visa shall inform the applicant that a visa or other documentation issued to an alien does not entitle the alien to enter the United States if, on arrival at a port of entry, the alien is found to be inadmissible.

(d) DISPOSITION OF APPLICATIONS.—An application for a nonimmigrant visa or other documentation as a nonimmigrant shall be disposed of as prescribed by regulation.

§ 2123. Issuing nonimmigrant visas and other documentation

(a) GENERAL.—Except as provided in subsection (b) of this section, a consular officer may issue a nonimmigrant visa to an eligible nonimmigrant who has made a proper application for the visa.

(b) PROHIBITIONS.—(1) A consular officer may not issue a nonimmigrant visa or other documentation to an alien if—

(A) the alien's application does not comply with this title or regulations prescribed under this title; or

(B) the consular officer has reason to believe the alien is ineligible for the visa or other documentation under subchapter I of chapter 63 of this title or any other provision of law.

(2) Notwithstanding paragraph (1)(B) of this subsection, a consular officer may issue a nonimmigrant visa or other documentation to—

(A) an alien to whom section 6306(a)–(c) of this title applies if—

(i) the alien otherwise may receive the visa or other documentation; and

(ii) the consular officer receives notice from the Attorney General that a bond approved by the Attorney General has been filed under section 6306(d) of this title; or

(B) an alien applying as a nonimmigrant classified under section 2303 or 2310 of this title if the alien otherwise may receive the visa or other documentation, and the consular officer receives notice from the Attorney General of the filing of a bond, in the amount and containing conditions the consular officer prescribes, to ensure that the alien will leave the United States when—

(i) the time for which the alien is admitted expires; or

(ii) the alien does not maintain the nonimmigrant status under which the alien was admitted or which the alien acquired under section 9108 of this title.

(c) FORM AND CONTENT OF VISAS.—Except as otherwise prescribed by regulation, the issuance of a nonimmigrant visa shall be shown by a stamp placed in the alien's passport. The visa shall specify—

(1) the alien's nonimmigrant classification under subchapter I of chapter 23 of this title;

(2) the period during which the visa is valid; and

(3) additional information that may be required.

§ 2124. Period of validity and revocation

(a) PERIOD OF VALIDITY.—A nonimmigrant visa is valid for the period prescribed by regulation. In prescribing the period of validity, the Secretary of State, to the extent practicable, shall treat nationals of a foreign country the same as the government of that country treats nationals of the United States within a similar class. However, in the case of an alien who is a national of a foreign country and who either is granted refugee status and firmly resettled in another foreign country or is granted permanent residence and residing in another foreign country, the Secretary may prescribe the period of validity of a nonimmigrant visa based on the treatment granted by the government of that other foreign country to alien refugees and permanent residents, respectively, in the United States.

(b) REVOCATION.—A consular officer or the Secretary may revoke a visa or other documentation issued to a nonimmigrant. A revocation invalidates the visa or documentation from the date the visa or documentation was issued. The Attorney General shall be notified of each revocation.

§ 2125. Readmission after overstay of nonimmigrant visa

(a) REQUIREMENT FOR READMISSION.—(1) When an alien who has been admitted on the basis of a nonimmigrant visa issued at any time remains in the United States beyond the period of stay authorized by the Attorney General, that visa is void beginning after the conclusion of that period of stay.

(2) An alien described in paragraph (1) of this subsection is ineligible to be readmitted to the United States as a nonimmigrant, except—

(A) on the basis of a visa (other than the visa described in paragraph (1) of this subsection) issued in a consular office located in the country of the alien's nationality or, if there is no office in that country, in another consular office the Secretary of State specifies; or

(B) where the Secretary finds that extraordinary circumstances exist.

(b) APPLICABILITY.—Subsection (a)(2) of this section applies to any alien applying for readmission to the United States after September 30, 1996, except an alien applying for readmission on the basis of a visa that—

(1) was issued before September 30, 1996; and

(2) is not void through the application of subsection (a)(1) of this section.

§ 2126. Fees

The Secretary of State shall prescribe fees for providing and verifying a nonimmigrant visa application for, and issuing a nonimmigrant visa to, a nonimmigrant of each foreign country. If practicable, the total amount of the fees shall correspond to the total of all visa, entry, residence, or similar fees the country imposes on nationals of the United States. A nonimmigrant visa issued to an alien described in section 11 of the Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations (61 Stat. 761) and in transit to or from the headquarters district of the United Nations shall be issued without charge.

§ 2127. Burden of proof

(a) ELIGIBILITY FOR VISA OR DOCUMENTATION.—An individual applying for a nonimmigrant visa or other documentation required for entering the United States as a nonimmigrant has the burden of proving that the individual is eligible for the visa or documentation. A consular officer may issue the visa or documentation only if satisfied that the individual is eligible for the visa or documentation.

(b) STATUS.—An alien claiming to be a nonimmigrant has the burden of proving that the alien is entitled to nonimmigrant status.

§ 2128. Visa waiver pilot program

(a) ESTABLISHMENT OF PROGRAM.—The Attorney General and the Secretary of State may maintain a pilot program for the fiscal years ending September 30, 1989–1997, under which the Attorney General, in consultation with the Secretary, may waive section 2121(a)(2) of this title for an alien eligible for a waiver under subsection (e) of this section.

(b) DESIGNATION OF PILOT PROGRAM COUNTRIES.—(1) The Attorney General, in consultation with the Secretary, may designate any foreign country as a pilot program country if the government of that country extends (or agrees to extend) reciprocal privileges to nationals of the United States and meets the requirements of paragraph (2) of this subsection. A designation is only for a fiscal year.

(2) Except as provided in subsection (c) of this section, a country may be designated as a pilot program country only if—

(A) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the prior 2 fiscal years was less than 2 percent of the number of nonimmigrant visitor visas for nationals of that country that were issued or refused during those years;

(B) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of those 2 years was less than 2.5 percent of the number of nonimmigrant visitor visas for nationals of that country that were issued or refused during that year;

(C) the government of that country certifies that it has or is developing a program to issue machine-readable passports to citizens of that country; and

(D) the Attorney General decides that the law enforcement interests of the United States would not be compromised by the designation of that country.

(c) PROBATIONARY STATUS AND TERMINATION OF DESIGNATION.—(1) In this subsection, ''disqualification rate'' means the percentage which—

(A) the total number of nationals of the pilot program country who—

(i) were denied admission at the time of arrival or withdrew their application for admission during the most recent fiscal year for which data is available; and

(ii) admitted as nonimmigrant visitors during that fiscal year and who violated the terms of that admission; bears to

(B) the total number of nationals of that country who applied for admission as nonimmigrant visitors during that fiscal year.

(2)(A) On determination by the Attorney General that a pilot program country's disqualification rate is 2 percent or more, the Attorney General shall notify the Secretary.

(B) If the program country's disqualification rate is—

(i) more than 2 percent but less than 3.5 percent, the Attorney General shall place the program country in probationary status for a period of not more than 2 full fiscal years following the year in which the Attorney General makes the determination under subparagraph (A) of this paragraph; or

(ii) at least 3.5 percent and the total number of nationals of the program country described in paragraph (1)(A) of this subsection is more than 100, the Attorney General shall terminate the country's designation as a pilot program country effective on the first day of the 2d fiscal year following the fiscal year in which the Attorney General makes the determination under subparagraph (A) of this paragraph.

(3)(A) If the Attorney General determines at the end of the probationary period described in paragraph (2)(B)(i) of this subsection that the program country placed in probationary status under that paragraph has failed to develop a machine-readable passport program as required by subsection (b)(2)(C) of this section, or has a disqualification rate of at least 2 percent, the Attorney General shall terminate the designation of the country as a pilot program country. A termination under this paragraph is effective on the first day of the first fiscal year following the fiscal year in which the Attorney General makes the determination under paragraph (2)(A) of this subsection.

(B) A national of a program country whose designation as a pilot program country is terminated under this paragraph remains eligible for a waiver under subsection (a) of this section until the effective date of the termination.

(4) If the Attorney General determines at the end of the probationary period described in paragraph (2)(B)(i) of this subsection that the program country placed in probationary status under that paragraph has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Attorney General shall redesignate the country as a pilot program country.

(5) A country designated as a pilot program country with probationary status under section 217(g) of the Immigration and Nationality Act, as in effect on September 29, 1996, shall be considered a pilot program country on September 30, 1996, subject to placement in probationary status or termination of that designation under this subsection.

(d) CONTINUATION OF PILOT PROGRAM COUNTRY STATUS.—A country that was a pilot program country in the prior fiscal year may be designated as a pilot program country in a subsequent fiscal year of the program only if the total number of nationals referred to in clauses (1) and (2) of this subsection is less than 2 percent of the number of nationals of that country who applied for admission as nonimmigrant visitors during that prior fiscal year:

(1) the number of nationals of that country who were denied admission at the time of arrival or who withdrew their application for admission during that prior fiscal year as nonimmigrant visitors.

(2) the number of nationals of that country who were admitted as nonimmigrant visitors during that prior fiscal year and who violated a condition of that admission.

(e) ELIGIBLE ALIENS.—An alien is eligible for a waiver under the program if the alien—

(1) is applying to be admitted not later than September 30, 1997, as a nonimmigrant visitor under section 2303 of this title for not more than 90 days;

(2) is a national of, and presents a passport issued by, a foreign country designated as a pilot program country under subsection (b) of this section;

(3) before admission, completes an immigration form prescribed by the Attorney General;

(4) before being provided a waiver under the program, waives any right—

(A) to a review or appeal under this title of an immigration officer's decision on the admissibility of the alien at the port of entry into the United States; or

(B) to contest (except on the basis of an application for asylum) an action for removal of the alien;

(5) when arriving by air or sea, arrives at the port of entry into the United States on a carrier that has an agreement with the Attorney General to guarantee transportation of the alien out of the United States if the alien is found inadmissible or deportable by an immigration officer;

(6) is in possession of a round-trip transportation ticket unless the Attorney General by regulation waives this requirement;

(7) is not a threat to the welfare, health, safety, or security of the United States; and

(8) complied with the conditions of any previous admission without a visa under the program.

(f) ADMISSION UNDER VISA WAIVER PILOT PROGRAM.—An alien admitted to the United States under this section without a visa may not stay in the United States as a nonimmigrant visitor for more than 90 days after the date of admission to the United States.

(g) CARRIER AGREEMENTS.—(1) A carrier and the Attorney General may make an agreement referred to in subsection (e)(5) of this section under which the carrier agrees, in consideration of the waiver of the visa requirement for a nonimmigrant visitor under the program—

(A) to indemnify the Federal Government against costs of transporting that visitor from the United States if the visitor is refused admission or remains in the United States unlawfully after the end of the period of admission referred to in subsection (e)(1) of this section;

(B) to submit each day to immigration officers any immigration forms received about nonimmigrant visitors given a waiver under the program; and

(C) to be liable, under regulations the Attorney General prescribes, for transporting a national of a pilot program country into the United States without a passport.

(2) If a carrier does not comply with an agreement made under paragraph (1) of this subsection, the Attorney General may end the agreement on 5 days' notice to the carrier.

(h) DENIAL OF WAIVERS.—Notwithstanding subsections (a)–(e) and (g) of this section, the Attorney General, in consultation with the Secretary, may—

(1) for any reason refuse to designate a foreign country that otherwise may qualify for designation under this section; or

(2) rescind at any time a waiver or designation previously issued under this section.

CHAPTER 23—CLASSIFICATIONS

SUBCHAPTER I—GENERAL

Sec.
2301. Officials of governments of foreign countries.
2302. Representatives to international organizations.
2303. Visitors for business and pleasure.
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2306. Aliens entitled to enter for trade or investment.
2307. Aliens entitled to enter for business activities at a professional level under certain trade agreements.
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2309. Aliens engaged to marry citizens.
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2312. Participants in programs designated by the Director of the United States Information Agency.
2313. Aliens employed temporarily in specialty occupations or as fashion models.
2314. Temporary and seasonal agricultural employees.

2315. Aliens performing labor or services for which United States workers are unavailable.
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2318. Aliens with extraordinary ability or with distinction in the arts, motion pictures, or television.
2319. Athletes and entertainers.
2320. Participants in international exchange programs.
2321. Aliens in religious occupations.
2322. Participants in cooperative research, development, and coproduction projects.
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SUBCHAPTER I—GENERAL

§ 2301. Officials of governments of foreign countries

An alien is classifiable as a nonimmigrant under this section if the alien is—

(1)(A) an ambassador, public minister, or career diplomatic or consular officer accredited by a government of a foreign country recognized de jure by the Federal Government who is accepted by the President or the Secretary of State; or

(B) a member of the immediate family of the ambassador, minister, or officer;

(2) on a reciprocal basis—

(A) another official or employee accredited by a government of a foreign country recognized de jure by the Federal Government who is accepted by the Secretary; or

(B) a member of the immediate family of the official or employee; or

(3) on a reciprocal basis—

(A) an attendant, servant, or personal employee of an alien described in clause (1)(A) or (2)(A) of this section; or

(B) a member of the immediate family of the attendant, servant, or personal employee.

§ 2302. Representatives to international organizations

An alien is classifiable as a nonimmigrant under this section if the alien is—

(1)(A) a designated principal resident representative of a government of a foreign country to an international organization if the government

is recognized de jure by the Federal Government and is a member of the international organization; or

(B) a member of the immediate family of the representative;

(2)(A) an accredited resident member of the staff of a representative described in clause (1)(A) of this section; or

(B) a member of the immediate family of the member;

(3)(A) an accredited representative (except a representative described in clause (1)(A) of this section) of a government of a foreign country to an international organization if the government is recognized de jure by the Federal Government and is a member of the international organization; or

(B) a member of the immediate family of the representative;

(4)(A) an alien described in clause (1)(A), (2)(A), or (3)(A) of this section, except that the government of the foreign country is not recognized de jure by the Federal Government or is not a member of an international organization; or

(B) a member of the immediate family of the alien;

(5)(A) an officer or employee of an international organization; or

(B) a member of the immediate family of the officer or employee; or

(6)(A) an attendant, servant, or personal employee of an alien described in clause (1)(A), (2)(A), (3)(A), (4)(A), or (5)(A) of this section; or

(B) a member of the immediate family of the attendant, servant, or personal employee.

§ 2303. Visitors for business and pleasure

An alien is classifiable as a nonimmigrant under this section if the alien—

(1) has a residence in a foreign country that the alien has no intention of abandoning; and

(2) is visiting the United States temporarily for business or pleasure (except to study, to perform skilled or unskilled labor, or to work as a representative of foreign information media).

§ 2304. Aliens in immediate and continuous transit

An alien is classifiable as a nonimmigrant under this section if the alien is—

(1) in immediate and continuous transit through the United States; or

(2) entitled to pass in transit between a foreign country and the headquarters district of the United Nations under section 11(3), (4), or (5) of the Agreement Between the United Nations and the United

States of America Regarding the Headquarters of the United Nations (61 Stat. 761).

§ 2305. Crewmembers

(a) GENERAL.—(1) Except as provided in subsection (c) of this section, an alien is classifiable as a nonimmigrant under this section if the alien—

(A) is a crewmember serving as a crewmember in a capacity required for normal operation and service on a vessel (except a fishing vessel having its home port or an operating base in the United States) or on an aircraft; and

(B) intends to land temporarily and only as a crewmember and to depart on a vessel or aircraft.

(2) Serving in a capacity required for normal operation and service on a vessel under paragraph (1)(A) of this subsection includes performing longshore work (as defined in section 2721(a) of this title) only to the extent provided in section 2723, 2724, or 2725 of this title.

(b) CREWMEMBERS OF FISHING VESSELS LANDING IN GUAM.—(1) Except as provided in subsection (c) of this section, an alien is classifiable as a nonimmigrant under this section if the alien—

(A) is a crewmember serving as a crewmember in any capacity required for normal operation and service on a fishing vessel having its home port or an operating base in the United States; and

(B) intends to land in Guam temporarily and only as a crewmember and to depart on the vessel on which the alien arrived.

(2) An alien is deemed to have departed from Guam under paragraph (1)(B) of this subsection after leaving the territorial waters of Guam without regard to whether the alien arrives in a foreign country before returning to Guam.

(c) CREWMEMBERS EMPLOYED IN LABOR DISPUTES.—(1) An alien who intends to land to perform service on a vessel of the United States (as defined in section 2101 of title 46) or on an aircraft of an air carrier (as defined in section 40102(a) of title 49) during a labor dispute in which there is a strike or lockout of the bargaining unit of the employer in which the alien intends to perform that service—

(A) is not entitled to the status of a nonimmigrant classified under this section;

(B) may not be paroled into the United States under section 6121 of this title, unless the Attorney General decides that the parole of the alien is necessary to protect the security of the United States; and

(C) is not a crewmember for purposes of section 2703(d) of this title.

(2) Paragraph (1) of this subsection does not apply to an alien if the air carrier or owner or operator of the vessel employing the alien provides documentation that satisfies the Attorney General that the alien—

(A) has been employed by that employer for at least a one-year period before the date that the strike or legal lockout began;

(B) has served as a qualified crewmember for that employer at least once in each of 3 months during the 12-month period before that date; and

(C) will continue to perform the same services that the alien provided during the alien's employment described in clause (B) of this paragraph.

§ 2306. Aliens entitled to enter for trade or investment

(a) DEFINITION.—In this section, ''citizen of Mexico'' has the same meaning given that term in Annex 1608 of the North American Free Trade Agreement.

(b) ELIGIBILITY UNDER TREATY.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1) is entitled to enter the United States under a treaty of commerce and navigation between the United States and the foreign country of which the alien is a national only—

(A) to carry on an amount of trade (including trade in services or technology) principally between the United States and the country of which the alien is a national that is substantial, as established by the Secretary of State after consulting with the heads of appropriate federal departments, agencies, and instrumentalities; or

(B) to develop and direct the operations of an enterprise in which the alien has invested or is actively in the process of investing an amount of capital that is substantial, as established by the Secretary after consulting with the heads of appropriate federal departments, agencies, and instrumentalities; or

(2) is the spouse or child of an alien described in clause (1) of this subsection if accompanying or following to join the alien.

(c) ELIGIBILITY UNDER LEGISLATION.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1) is a national of the Philippines who is coming to the United States, on a reciprocal basis under an agreement implemented under the Act of June 18, 1954 (ch. 323, 68 Stat. 264), only to engage in activities described in subsection (b)(1)(A) or (B) of this section;

(2) is a national of Australia or Sweden who is coming to the United States on a reciprocal basis only to engage in activities described in subsection (b)(1)(A) or (B) of this section;

(3)(A) is a citizen of Canada; and

(B) is coming to the United States on a reciprocal basis under the United States-Canada Free-Trade Agreement only for a purpose specified by Annex 1502.1 (United States of America), Part B—Traders and Investors, of the United States-Canada Free-Trade Agreement, but only if the purpose was specified by that Annex on January 1, 1989;

(4) subject to subsection (d) of this section—

(A) is a citizen of Canada or a citizen of Mexico; and

(B) is coming to the United States on a reciprocal basis under the North American Free Trade Agreement only for a purpose specified by section B of Annex 1603 of the Agreement, but only if the purpose was specified by Annex 1603 on January 1, 1994; or

(5) is the spouse or child of an alien described in clause (1), (2), (3), or (4) of this subsection if accompanying or following to join the alien.

(d) LABOR DISPUTES.—An alien described in subsection (c)(4) of this section is not entitled to be classified as a nonimmigrant under subsection (c)(4) if there is a strike or lockout in progress during a labor dispute in the occupational classification at the alien's place or intended place of employment, unless the alien establishes under regulations prescribed by the Attorney General that the alien's entry will not adversely affect the settlement of the strike or lockout or the employment of any individual who is involved in the strike or lockout. Notice of a decision by the Attorney General under this subsection shall be given in the way required by paragraph 3 of Article 1603 of the North American Free Trade Agreement.

§ 2307. Aliens entitled to enter for business activities at a professional level under certain trade agreements

(a) DEFINITION.—In this section, ''citizen of Mexico'' has the same meaning given that term in Annex 1608 of the North American Free Trade Agreement.

(b) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) is a citizen of Canada;

(B) is coming to the United States under Annex 1502.1 (United States of America), Part C—Professionals, of the United States-Canada Free-Trade Agreement to engage in business activities at a professional level as provided in that Annex; and

(C) may be admitted to the United States to engage in those activities under regulations prescribed by the Attorney General after consulting with the Secretaries of State and Labor; or

(2)(A) subject to subsections (c)–(e) of this section—

(i) is a citizen of Canada or a citizen of Mexico;

(ii) is coming to the United States under section D of Annex 1603 of the North American Free Trade Agreement to engage in business activities at a professional level as provided in Annex 1603; and

(iii) may be admitted to the United States to engage in those activities under regulations prescribed by the Attorney General after consulting with the Secretaries of State and Labor; or

(B) is the spouse or child of an alien described in subclause (A) of this clause if accompanying or following to join the alien.

(c) NUMERICAL LIMITATIONS ON CITIZENS OF MEXICO.—(1) The Attorney General shall establish an annual numerical limitation on the admission of citizens of Mexico classified under subsection (b)(2) of this section, as provided in Appendix 1603.D.4 of Annex 1603 of the North American Free Trade Agreement. Subject to paragraph (2) of this subsection, the limitation—

(A) may be increased after December 31, 1994, under paragraph 5(a) of section D of Annex 1603 of the Agreement; and

(B) shall cease to apply as provided in paragraph 3 of Appendix 1603.D.4.

(2) The limitation referred to in paragraph (1) of this subsection may be increased or shall cease to apply (other than under paragraph 3 of Appendix 1603.D.4) only if—

(A) the President has obtained advice about the proposed action from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155);

(B) the President has submitted a report to the Committees on the Judiciary of the Senate and the House of Representatives that states the action proposed to be taken, the reasons for the proposed action, and the advice obtained under clause (A) of this paragraph;

(C) at least 60 days have passed after the President meets the requirements of clauses (A) and (B) of this paragraph; and

(D) the President consults with those committees during that 60-day period about the proposed action.

(d) ADDITIONAL REQUIREMENTS FOR CITIZENS OF MEXICO.—During the period that Appendix 1603.D.4 of Annex 1603 of the North American

Free Trade Agreement applies, an alien who is a citizen of Mexico and enters under section D of Annex 1603 must comply—

(1) for a registered nurse, with the attestation requirements of section 2902 of this title, to the extent and in the way provided by regulations prescribed by the Secretary of Labor;

(2) for all other professions set out in Appendix 1603.D.1 of Annex 1603, with the application requirements of section 2351 of this title, to the extent and in the way provided by regulations prescribed by the Secretary of Labor; and

(3) with the employer petition requirements of this chapter, to the extent and in the way provided by regulations prescribed by the Attorney General.

(e) LABOR DISPUTES.—An alien who is a citizen of Canada or a citizen of Mexico and who is coming to the United States under section B, C, or D of Annex 1603 of the North American Free Trade Agreement is not entitled to be classified as a nonimmigrant under those sections if there is a strike or lockout in progress during a labor dispute in the occupational classification at the alien's place or intended place of employment, unless the alien establishes under regulations prescribed by the Attorney General that the alien's entry will not adversely affect the settlement of the strike or lockout or the employment of any individual who is involved in the strike or lockout. Notice of a decision by the Attorney General under this subsection shall be given in the way required by paragraph 3 of Article 1603 of the Agreement.

§ 2308. Media representatives

On a reciprocal basis, an alien is classifiable as a nonimmigrant under this section if the alien is—

(1) a representative of foreign information media who is coming to the United States only to work as a representative of foreign information media; or

(2) the spouse or child of an alien described in clause (1) of this section if accompanying or following to join the alien.

§ 2309. Aliens engaged to marry citizens

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien is—

(1) engaged to marry a citizen of the United States and is coming to the United States only to marry the citizen within 90 days after admission; or

(2) the child of an alien described in clause (1) of this subsection if accompanying or following to join the alien.

(b) FIANCEE OR FIANCE PETITIONS.—(1) The citizen fiancee or fiance of an alien described in subsection (a)(1) of this section must file a petition in the United States with the Attorney General. The petition must be in the form and contain the information the Attorney General prescribes by regulation. The Attorney General may approve the petition only if satisfied that the parties—

(A) previously have met in person during the 2 years before the date the petition was filed, except that the Attorney General may waive this requirement;

(B) intend to marry; and

(C) are legally able and willing to marry not later than 90 days after the alien arrives in the United States.

(2) The consular officer must receive the petition approved by the Attorney General before a visa may be issued to the alien.

§ 2310. Students in academic institutions and language training programs

(a) GENERAL.—Except as provided in subsection (c) of this section, an alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning;

(B) is a student qualified to take a full course of study; and

(C) is coming to the United States temporarily and only to take a full course of study at an established academic institution or in a language training program designated by the alien and approved by the Attorney General under subsection (b) of this section; or

(2) is the spouse or child of an alien described in clause (1) of this subsection if accompanying or following to join the alien.

(b) APPROVAL OF INSTITUTIONS AND PROGRAMS.—(1) The Attorney General may approve an institution or language training program referred to in subsection (a) of this section only after—

(A) the Attorney General has consulted with the Secretary of Education; and

(B) the institution or the place of study for the program has agreed to report promptly to the Attorney General the termination of attendance of each nonimmigrant student.

(2) The Attorney General shall withdraw the approval if the institution or place of study fails to report promptly.

(c) LIMITATIONS.—(1) An alien may not be granted the status of a nonimmigrant classified under subsection (a)(1) of this section in order to pursue a course of study—

(A) at a public elementary school or in a publicly funded adult education program; or

(B) at a public secondary school unless—

(i) the aggregate period of that status at a public secondary school does not exceed 12 months with respect to that alien; and

(ii) the alien demonstrates that the alien has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at the school for the period of the alien's attendance.

(2) If an alien who acquires the status of a nonimmigrant classified under subsection (a)(1) of this section in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded terminates or abandons that course of study at that school and undertakes a course of study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) of this subsection are met)—

(A) the alien shall be considered to have violated that status; and

(B) the alien's visa under subsection (a)(1) of this section shall be void.

(3) This subsection applies to an alien who acquires the status of a nonimmigrant classified under subsection (a)(1) of this section as well as to an alien whose status as such a nonimmigrant is extended.

(d) WORK AUTHORIZATIONS.—(1) During the 5-year period that began on October 1, 1991, the Attorney General may grant a work authorization for an alien admitted as a nonimmigrant classified under subsection (a)(1) of this section to be employed off-campus if—

(A) the alien has completed one academic year as such a nonimmigrant and is maintaining good academic standing at the educational institution;

(B) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer—

(i) has recruited for at least 60 days for the position; and

(ii) will pay the alien and other similarly situated workers not less than the actual wage level for the occupation at the place of employment, or the prevailing wage level for the occupation in the area of employment, whichever is greater; and

(C) the alien will be employed no more than 20 hours each week during the academic term.

(2) An alien described in this subsection may be employed on a full-time basis during vacation periods and between academic terms.

(3) If the Secretary of Labor determines that an employer has provided an attestation under this subsection that is materially false or has failed to pay wages in accordance with the attestation, the employer shall be disqualified from employing an alien under this subsection after the Secretary provides notice to the employer and an opportunity for a hearing.

(4) Not later than April 1, 1996, the Attorney General and the Secretary of Labor shall submit to Congress a report on—

(A) whether the program of work authorization under this subsection should be extended; and

(B) the impact of the program on the prevailing wages of workers.

§ 2311. Students in nonacademic institutions

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning; and

(B) is coming to the United States temporarily and only to take a full course of study (except in a language training program) at a recognized nonacademic institution designated by the alien and approved by the Attorney General under subsection (b) of this section; or

(2) is the spouse or child of an alien described in clause (1) of this subsection if accompanying or following to join the alien.

(b) APPROVAL OF INSTITUTIONS.—(1) The Attorney General may approve an institution referred to in subsection (a) of this section only after—

(A) the Attorney General has consulted with the Secretary of Education; and

(B) the institution has agreed to report promptly to the Attorney General the termination of attendance of each nonimmigrant student.

(2) The Attorney General shall withdraw the approval if the institution fails to report promptly.

§ 2312. Participants in programs designated by the Director of the United States Information Agency

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning;

(B) is a student, scholar, trainee, teacher, researcher, leader, or similar individual in a field of specialized knowledge or skill; and

(C) is coming to the United States temporarily to teach, lecture, study, observe, conduct research, consult, receive training, or demonstrate special skills in a program designated by the Director of the United States Information Agency, and, if coming to participate in a

program in which the alien will receive graduate medical education or training, satisfies the requirements of subsections (b) and (c) of this section; or

(2) is the spouse or child of an alien described in clause (1) of this subsection if accompanying or following to join the alien.

(b) ADDITIONAL REQUIREMENTS FOR ALIENS IN MEDICAL PROGRAMS.—The following additional requirements apply to an alien coming to the United States as a nonimmigrant classified under subsection (a)(1) of this section to participate in a program in which the alien will receive graduate medical education or training:

(1) A school of medicine or of another health profession accredited by a body approved by the Secretary of Education must agree in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to arrange for an appropriate public or nonprofit private agency or institution to provide the education or training. Before making the agreement, the school must be satisfied that the alien satisfies paragraph (2) of this subsection. If the agreement is by a school of medicine, any of its affiliated hospitals that will participate in providing the education or training must be a party to the agreement.

(2) The alien must—

(A) have graduated from a school of medicine accredited by a body approved by the Secretary of Education (regardless of whether the school is in the United States); or

(B)(i) have passed parts I and II of the National Board of Medical Examiners Examination or an examination the Secretary of Health and Human Services decides is equivalent;

(ii) be competent in oral and written English;

(iii) be able to adapt to the educational and cultural environment in which the alien will be receiving the education or training; and

(iv) have adequate prior education and training to participate satisfactorily in the program.

(3) The government of the foreign country of the alien's nationality or last residence must provide a written assurance satisfactory to the Secretary of Health and Human Services that the country needs individuals with the skills the alien will acquire in the program.

(4) The alien must agree to return to the foreign country of the alien's nationality or last residence on completing the program.

(5) The alien must give the Attorney General annually an affidavit (in the form prescribed by the Attorney General) attesting that the alien—

(A) is in good standing in the program; and

(B) will return to the foreign country of the alien's nationality or last residence on completing the program.

(6) The alien's participation in the program is limited to the period typically required to complete the program, as determined by the Director at the time of the alien's admission to the United States. The Director shall base the determination on criteria, established in coordination with the Secretary of Health and Human Services, that consider the published requirements of the medical specialty board administering the program. However—

(A) the period may be more than 7 years only if the alien satisfies the Director that the foreign country to which the alien will return on completing the program has an exceptional need for an individual with the skills the alien will acquire in the program; and

(B) the alien may change programs once within the first 2 years after the alien is admitted to the United States as a nonimmigrant classified under subsection (a)(1) of this section or acquiring the status of a nonimmigrant classified under subsection (a)(1) if the Director approves the change and a written assurance and an agreement are given for the new program as provided in paragraphs (3) and (4) of this subsection.

(c) SATISFACTION OF REQUIREMENTS BY CERTAIN MEDICAL SCHOOL GRADUATES.—An alien who is a graduate of a medical school satisfies subsection (b)(2)(B)(i) of this section if the alien on January 9, 1978—

(1) was completely and permanently licensed to practice medicine in a State; and

(2) was practicing medicine in a State.

(d) REPORT ON AFFIDAVITS.—The Director shall submit to Congress each year a report on aliens who have submitted affidavits under subsection (b)(5) of this section. The report shall include the name and address of each alien, the program of graduate medical education or training in which the alien is participating, and the status of the alien in the program.

§ 2313. Aliens employed temporarily in specialty occupations or as fashion models

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if—

(1)(A) the alien is coming to the United States temporarily to be employed in a specialty occupation (except as a registered nurse during

the period specified by section 2325(c) of this title or to perform services described in section 2314, 2318, or 2319 of this title) that requires theoretical and practical application of a body of highly specialized knowledge and a bachelor's, or higher, degree in the specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States;

(B) the alien—

(i) is fully licensed by a State to practice the occupation if a license is required to practice that occupation;

(ii) has completed the degree described in this subclause (A) of this paragraph for that occupation; or

(iii) has experience in the specialty equivalent to the completion of that degree and recognition of expertise in the specialty through progressively more responsible positions related to the specialty;

(C) the alien meets the requirements of subsection (d) of this section; and

(D) the Secretary of Labor has certified to the Attorney General that the employer intending to employ the alien has filed with the Secretary an application under section 2351 of this title;

(2)(A) the alien is coming to the United States temporarily to be employed as a fashion model and demonstrates distinguished merit and ability; and

(B) the Secretary of Labor has certified to the Attorney General that the employer intending to employ the alien has filed with the Secretary an application under section 2351 of this title; or

(3) the alien is the spouse or child of an alien described in clause (1) or (2) of this subsection if accompanying or following to join the alien.

(b) NUMERICAL AND TIME LIMITATIONS.—(1) The total number of aliens who may be issued visas or provided status as nonimmigrants classified under subsection (a)(1) and (2) of this section during a fiscal year is 65,000. Those aliens shall be classified as nonimmigrants under that subsection in the order in which petitions are filed for that classification.

(2) An alien classified as a nonimmigrant under subsection (a)(1) or (2) of this section may be admitted to the United States for not more than 6 years.

(c) EMPLOYER PETITIONS.—(1) An employer intending to bring to the United States an alien described in subsection (a)(1) or (2) of this section must file a petition with the Attorney General. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of

appropriate federal departments, agencies, and instrumentalities. The Attorney General must approve the petition before a visa may be issued to the alien. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(d) LIMITATIONS ON ADMISSION OF MEDICAL SCHOOL GRADUATES.—An alien who is a graduate of a medical school and is coming to the United States to perform services as a member of the medical profession may be admitted as a nonimmigrant classified under subsection (a)(1) of this section only if the alien—

(1) is coming to the United States at the invitation of a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for the institution or agency; or

(2)(A) has passed the licensing examination administered by the Federation of State Medical Boards of the United States or an examination the Secretary of Health and Human Services decides is equivalent; and

(B)(i) is competent in oral and written English; or

(ii) is a graduate of a medical school that is accredited by a body approved by the Secretary of Education (regardless of whether the school is in the United States).

(e) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—For purposes of obtaining a visa or acquiring or maintaining the status of a nonimmigrant classified under subsection (a)(1) or (2) of this section, the fact that an alien is the beneficiary of an application for a preference status filed under subchapter I of chapter 43 of this title or otherwise has sought permanent residence in the United States is not evidence of an intention to abandon a residence in a foreign country if the alien has acquired a change of status under section 9108 of this title to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

§ 2314. Temporary and seasonal agricultural employees

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning; and

(B) is coming to the United States temporarily to perform temporary or seasonal agricultural labor or services as defined by the Secretary

of Labor by regulation, including agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)) and agriculture as defined in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203); or

(2) is the spouse or child of an alien described in clause (1) of this subsection if accompanying or following to join the alien.

(b) EMPLOYER PETITIONS.—(1) An employer intending to bring to the United States an alien described in subsection (a)(1) of this section must file a petition with the Attorney General. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate federal departments, agencies, and instrumentalities, including the Secretaries of Labor and Agriculture. The Attorney General may approve the petition only after the petitioner has applied to the Secretary of Labor for a certification under section 2502 of this title. The Attorney General must approve the petition before a visa may be issued to the alien. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

§ 2315. Aliens performing labor or services for which United States workers are unavailable

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) is not a graduate of a medical school coming to the United States to perform services as a member of the medical profession;

(B) has a residence in a foreign country that the alien has no intention of abandoning; and

(C) is coming to the United States temporarily to perform temporary labor or services (except labor or services described in section 2314 of this title) for which unemployed workers able to perform the labor or services are unavailable in the United States; or

(2) is the spouse or child of an alien described in clause (1) of this subsection if accompanying or following to join the alien.

(b) NUMERICAL LIMITATIONS.—The total number of aliens who may be issued visas or provided status as nonimmigrants classified under subsection (a)(1) of this section during a fiscal year is 66,000. Those aliens shall be classified as nonimmigrants under that subsection in the order in which petitions are filed for that classification.

(c) EMPLOYER PETITIONS.—(1) An employer intending to bring to the United States an alien described in subsection (a)(1) of this section must

file a petition with the Attorney General. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate federal departments, agencies, and instrumentalities. The Attorney General must approve the petition before a visa may be issued to the alien. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(d) EMPLOYMENT IN THE VIRGIN ISLANDS.—The Attorney General may approve a petition filed for an alien described in subsection (a)(1) of this section for employment in the Virgin Islands only—

(1) if the alien is to be employed as an entertainer or athlete; and

(2) for not more than 45 days.

§ 2316. Aliens receiving training

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning; and

(B) is coming to the United States temporarily to receive training (except graduate medical education or training) in a training program that is not designed primarily to provide productive employment; or

(2) is the spouse or child of an alien described in clause (1) of this section if accompanying or following to join the alien.

(b) EMPLOYER PETITIONS.—(1) An employer intending to bring to the United States an alien described in subsection (a)(1) of this section must file a petition with the Attorney General. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate federal departments, agencies, and instrumentalities. The Attorney General must approve the petition before a visa may be issued to the alien. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

§ 2317. Intra-company transferees

(a) GENERAL.—(1) An alien is classifiable as a nonimmigrant under this section if the alien—

(A) within 3 years before applying for admission, has been employed continuously for at least one year by a corporation or other legal entity or an affiliate or subsidiary of the entity and is coming to the United States temporarily to continue employment with the same employer or an affiliate or subsidiary of the entity—

(i) in an executive or managerial capacity; or

(ii) that involves a specialized knowledge of the product of the entity, affiliate, or subsidiary and its application in international markets or an advanced level of knowledge of processes and procedures of the entity, affiliate, or subsidiary and the alien has that knowledge; or

(B) is the spouse or child of an alien described in clause (A) of this paragraph if accompanying or following to join the alien.

(2) The period of admission for an alien classified as a nonimmigrant under—

(A) paragraph (1)(A)(i) of this subsection may be not more than 7 years; and

(B) paragraph (1)(A)(ii) of this subsection may be not more than 5 years.

(3) In applying paragraph (1) of this subsection, a partnership or similar organization organized outside the United States to provide accounting services is deemed to be an affiliate of a partnership organized in the United States to provide accounting services if—

(A) the partnership or similar organization organized outside the United States markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization owned and controlled by the member accounting firms of which the United States partnership is also a member; and

(B) the United States partnership markets its accounting services under the same internationally recognized name under an agreement with the worldwide coordinating organization.

(b) EMPLOYER PETITIONS.—(1) An employer intending to bring to the United States an alien described in subsection (a)(1)(A) of this section must file a petition with the Attorney General. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate federal departments, agencies, and instrumentalities. The Attorney General must approve the petition before a visa may be issued to the alien. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) The Attorney General shall establish a procedure under which an employer that meets the requirements the Attorney General prescribes may file a petition for more than one alien described in subsection (a)(1)(A) of this section instead of filing individual petitions under paragraph (1) of this subsection for those aliens. The procedure shall allow the expedited processing of visas for the admission of aliens under such a petition.

(3) The Attorney General shall provide for a procedure for reviewing and acting on petitions filed under this subsection not later than 30 days after the date a completed petition is filed.

(4) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(c) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—For purposes of obtaining a visa or acquiring or maintaining the status of a nonimmigrant classified under subsection (a)(1)(A) of this section, the fact that an alien is the beneficiary of an application for a preference status filed under subchapter I of chapter 43 of this title or otherwise has sought permanent residence in the United States is not evidence of an intention to abandon a residence in a foreign country if the alien has acquired a change of status under section 9108 of this title to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

§ 2318. Aliens with extraordinary ability or with distinction in the arts, motion pictures, or television

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A)(i) has extraordinary ability in the sciences, education, business, or athletics as demonstrated by sustained national or international acclaim;

(ii) is distinguished in the arts as demonstrated by sustained national or international acclaim; or

(iii) with regard to motion picture and television productions has demonstrated a record of extraordinary achievement and whose achievements have been recognized in the field through extensive documentation; and

(B) is coming to the United States to continue work in the area of extraordinary ability, distinction, or extraordinary achievement;

(2) has a residence in a foreign country that the alien has no intention of abandoning and—

(A) is coming to the United States temporarily and only to accompany and assist in the artistic or athletic performance for any specific event by an alien described in clause (1) of this subsection;

(B) is an integral part of the actual performance; and

(C)(i) has critical skills and experience with the alien described in clause (1) of this section that are not general in nature and that cannot be performed by other individuals; or

(ii) for a motion picture or television production, has skills and experience with the alien described in clause (1) of this subsection that are not general in nature and are critical because of a long-standing working relationship or, for a specific production, because significant production (including pre-production and post-production work) will take place both inside and outside the United States and the continuing participation of the alien described in this clause is essential to the successful completion of the production; or

(3) is the spouse or child of an alien described in clause (1) or (2) of this subsection if accompanying or following to join the alien.

(b) PERIOD OF ADMISSION.—An alien classified as a nonimmigrant under this section may be admitted for the period the Attorney General specifies to provide for any event for which the nonimmigrant is admitted.

(c) EMPLOYER PETITIONS.—(1) An employer intending to bring to the United States an alien described in subsection (a) (1) or (2) of this section must file a petition with the Attorney General. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate federal departments, agencies, and instrumentalities. The Attorney General must approve the petition before a visa may be issued to the alien. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(d) CONSULTATION REQUIREMENTS.—The Attorney General may approve a petition under subsection (c) of this section only after the petitioner satisfies the consultation requirements of section 2352 of this title.

§ 2319. Athletes and entertainers

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1) has a residence in a foreign country that the alien has no intention of abandoning who—

(A)(i) performs as an athlete, individually or as a member of a group or team, at an internationally recognized level of performance; and

(ii) is coming to the United States temporarily and only to perform as an athlete for a specific athletic competition;

(B)(i) performs with, or is an integral and essential part of the performance of, an entertainment group that, except as provided in section 2353(b)(1)(A) of this title, has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time;

(ii) if a performer or entertainer, except as provided in section 2353(b) (1)(B) and (2) of this title, has had a sustained and substantial relationship with that group (ordinarily for at least one year) and performs functions integral to the performance of the group; and

(iii) is coming to the United States temporarily and only to perform as such a performer or entertainer or as an integral and essential part of a performance;

(C)(i) performs as an artist or entertainer, individually or as a member of a group, or is an integral part of the performance of that group; and

(ii) is coming to the United States temporarily and only to perform as such an artist or entertainer or with that group under a reciprocal exchange program between an organization in the United States and an organization in a foreign country that provides for the temporary exchange of artists and entertainers; or

(D)(i) performs as an artist or entertainer, individually or as a member of a group, or is an integral part of the performance of that group; and

(ii) is coming to the United States temporarily and only to perform, teach, or coach as such an artist or entertainer or with that group under a commercial or non-commercial program that is culturally unique; or

(2) is the spouse or child of an alien described in clause (1) of this section if accompanying or following to join the alien.

(b) PERIOD OF ADMISSION.—(1) Except as provided in paragraph (2) of this subsection, an alien classified as a nonimmigrant under this section may be admitted for the period the Attorney General specifies in order to provide for any competition, event, or performance for which the nonimmigrant is admitted.

(2) An alien classified as a nonimmigrant under this section and admitted as an individual athlete may be admitted for an initial period of not more than 5 years during which the nonimmigrant will perform as an athlete. The

Attorney General may extend that period for an additional period of not more than 5 years.

(c) PETITIONS.—(1) Any person may file a petition with the Attorney General for an alien described in subsection (a) of this section.

(2) An employer intending to bring to the United States an alien described in subsection (a)(1) (A) or (B) of this section must file a petition with the Attorney General. The petition filed under this paragraph must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate federal departments, agencies, and instrumentalities. The Attorney General must approve the petition before a visa may be issued to the alien. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(3) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(d) CONSULTATION REQUIREMENTS.—The Attorney General may approve a petition under subsection (c) of this section only after the petitioner satisfies the consultation requirements of section 2353 of this title.

§ 2320. Participants in international exchange programs

An alien is classifiable as a nonimmigrant under this section if the alien—

(1) has a residence in a foreign country that the alien has no intention of abandoning;

(2) is coming to the United States for a period of not more than 15 months to participate in an international cultural exchange program approved by the Attorney General that provides practical training, employment, and the sharing of history, culture, and traditions of the foreign country of the alien's nationality; and

(3) will be employed for the same wages and under the same working conditions as United States workers.

§ 2321. Aliens in religious occupations

An alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) for the 2 years immediately before the alien's application for admission, has been a member of a religious denomination that has a bona fide nonprofit religious organization in the United States; and

(B) is coming to the United States for a period of not more than 5 years to perform work described in section 133(a)(3)(A)(ii) (I), (II), or (III) of this title; or

(2) is the spouse or child of an alien described in clause (1) of this section if accompanying or following to join the alien.

§ 2322. Participants in cooperative research, development, and coproduction projects

(a) GENERAL.—On a reciprocal basis, an alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning; and

(B) is coming to the United States for not more than 10 years to provide services of an exceptional nature requiring merit and ability related to a cooperative research and development project or a coproduction project provided under a government-to-government agreement carried out by the Secretary of Defense; or

(2) is the spouse or child of an alien described in clause (1) of this section if accompanying or following to join the alien.

(b) NUMERICAL LIMITATION.—Not more than 100 aliens classified as nonimmigrants under this section may be admitted as, or granted the status of, a nonimmigrant classified under this section at any time.

§ 2323. Participants in special education programs

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning; and

(B) is coming to the United States for not more than 18 months to participate in a special education training program that provides practical training and experience in educating children with physical, mental, or emotional disabilities; or

(2) is the spouse or child of an alien described in clause (1) of this section if accompanying or following to join the alien.

(b) NUMERICAL LIMITATION.—Not more than 50 aliens classified as nonimmigrants under this section may be admitted as, or granted the status of, a nonimmigrant classified under this section in a fiscal year.

§ 2324. Relatives of special immigrants

An alien is classifiable as a nonimmigrant under this section if the alien is—

(1) the parent of an alien who is a special immigrant as defined in section 133(a)(9) of this title, but only when the alien is a child; or

(2) a child of—

(A) a parent described in clause (1) of this section; or

(B) an alien who is a special immigrant as defined in section 133(a)(10) or (11) of this title.

§ 2325. Registered nurses

(a) DEFINITION.—In this section, ''facility'' includes an employer that employs registered nurses in a home setting.

(b) GENERAL.—An alien is classifiable as a nonimmigrant under this section if the alien—

(1)(A) is coming to the United States temporarily to perform services as a registered nurse;

(B) has obtained a full and unrestricted license to practice professional nursing in the foreign country in which the alien obtained nursing education or has received nursing education in the United States or Canada;

(C) has passed an appropriate examination (recognized in regulations prescribed in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under state law to practice professional nursing in the State of intended employment;

(D) is fully qualified and eligible under the laws (including temporary licensing requirements authorizing the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately on admission to the United States and is authorized under those laws to be employed by the facility; and

(E) is one for whom the Secretary of Labor has certified to the Attorney General that each facility (including the petitioner under subsection (c)(1) of this section and each worksite, except a private household worksite, that is not the alien's employer or controlled by the employer) at which the alien will perform the services has an attestation on file and in effect under section 2902 of this title; or

(2) is the spouse or child of an alien described in clause (1) of this subsection if accompanying or following to join the alien.

(c) EMPLOYER PETITIONS.—(1) An employer intending to bring to the United States an alien described in subsection (b)(1) of this section must file a petition with the Attorney General. The Attorney General may approve a petition filed under this section only if the petition is filed during the period from September 1, 1990, through August 31, 1995. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate federal departments, agencies, and instrumentalities. The Attorney General must approve the petition before a visa may be issued to the alien. Approval of a petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(d) PERIOD OF ADMISSION.—An alien classified as a nonimmigrant under this section may be admitted for an initial period of not more than 3 years. The initial period may be extended for one or more periods, but the total period of admission may not be more than 5 years (or 6 years if the Attorney General decides there are extraordinary circumstances).

(e) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—For purposes of obtaining a visa or acquiring or maintaining the status of a nonimmigrant classified under this section, the fact that an alien is the beneficiary of an application for a preference status filed under subchapter I of chapter 43 of this title or otherwise has sought permanent residence in the United States is not evidence of an intention to abandon a residence in a foreign country if the alien has acquired a change of status under section 9108 of this title to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

(f) EXTENSION OF STAY FOR CERTAIN NURSES.—(1) The authorized period of stay in the United States of a nonimmigrant described in paragraph (2) of this subsection is extended through September 30, 1997.

(2) A nonimmigrant described in this paragraph is a nonimmigrant—

(A) who entered the United States as a nonimmigrant classified under subsection (b)(1) of this section;

(B) who was in the United States after August 31, 1995, and on September 30, 1996; and

(C) whose period of authorized stay has expired or would expire before September 30, 1997, but for this subsection.

(3) This subsection does not extend the validity of any visa issued to a nonimmigrant described in subsection (b)(1) of this section or to authorize the re-entry of any individual outside the United States on September 30, 1996.

(4) A nonimmigrant whose authorized period of stay is extended under this subsection is not eligible to change employers in accordance with section 214.2(h)(2)(i)(D) of title 8, Code of Federal Regulations, as in effect on September 29, 1996.

(5) A nonimmigrant whose authorized period of stay is extended under this subsection, and the spouse and child of such an immigrant, are considered to have continued to maintain lawful status as a nonimmigrant through September 30, 1997.

§ 2326. Aliens with information about criminal or terrorist organizations

(a) GENERAL.—An alien is classifiable as a nonimmigrant under this section if—

(1) the Attorney General decides that—

(A) the alien is in possession of critical reliable information about a criminal organization or enterprise;

(B) the alien is willing to supply or has supplied that information to federal or state law enforcement authorities or a federal or state court; and

(C) the presence of the alien in the United States is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise;

(2) the Secretary of State and the Attorney General jointly decide that the alien—

(A) is in possession of critical reliable information about a terrorist organization, enterprise, or operation;

(B) is willing to supply or has supplied that information to Government law enforcement authorities or a federal court;

(C) will be or has been placed in danger as a result of providing that information; and

(D) is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708(a)); or

(3)(A) the alien is the spouse, son or daughter, or parent of an alien described in clause (1) or (2) of this subsection accompanying or following to join that alien; and

(B) the Attorney General (with respect to an alien described in clause (1) of this subsection) or the Secretary and the Attorney General jointly (with respect to an alien described in clause (2) of this subsection) consider the nonimmigrant classification of the spouse, son or daughter, or parent appropriate.

(b) NUMERICAL AND TIME LIMITATIONS.—(1) Not more than—

(A) 200 aliens may be provided a visa as a nonimmigrant classified under subsection (a)(1) of this section in a fiscal year; and

(B) 50 aliens may be provided a visa as a nonimmigrant classified under subsection (a)(2) of this section in a fiscal year.

(2) An alien classified as a nonimmigrant under subsection (a)(1) or (2) of this section may be admitted to the United States for not more than 3 years. The Attorney General may not extend the period of admission.

(3) An alien classified as a nonimmigrant under subsection (a)(1) or (2) of this section may not be admitted to the United States after September 13, 1999.

(c) ALIEN REQUIREMENTS.—As a condition of admission and continued stay in lawful status, an alien classified as a nonimmigrant under subsection (a)(1) or (2) of this section—

(1) shall report at least quarterly to the Attorney General information concerning the alien's whereabouts and activities the Attorney General requires;

(2) may not be convicted, after the alien is admitted to the United States, of a criminal offense punishable by a term of imprisonment of at least one year;

(3) must have executed a form waiving the alien's right to contest, other than on the basis of an application for withholding of removal, any action for removal of the alien begun before the alien obtains lawful permanent resident status; and

(4) shall comply with any other condition, limitation, or restriction the Attorney General imposes.

(d) REPORT BY ATTORNEY GENERAL.—The Attorney General shall submit a report annually to the Committees on the Judiciary of the House of Representatives and the Senate on—

(1) the number of aliens classified as nonimmigrants under subsection (a)(1) or (2) of this section and admitted to the United States;

(2) the number of successful criminal prosecutions or investigations resulting from the cooperation of those aliens;

(3) the number of terrorist acts prevented or frustrated resulting from the cooperation of those aliens;

(4) the number of aliens classified as nonimmigrants under subsection (a)(1) or (2) of this section and admitted to the United States whose admission or cooperation has not resulted in successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and

(5) the number of aliens who have failed to report as required under subsection (c)(1) of this section or who have been convicted of crimes in the United States after the date of their admission as nonimmigrants classified under subsection (a)(1) or (2) of this section.

SUBCHAPTER II—SPECIAL REQUIREMENTS

§ 2351. Employer applications for aliens employed temporarily in specialty occupations or as fashion models

(a) GENERAL.—An alien may be admitted as, or granted the status of, a nonimmigrant classified under section 2313(a)(1) or (2) of this title only after the employer intending to employ the alien files an application with the Secretary of Labor stating the following:

(1) The employer—

(A) during the period of authorized employment, is offering and will offer the nonimmigrant wages that, based on the best information available at the time the application is filed, are at least the greater of—

(i) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

(ii) the prevailing wage level of the occupational classification in the area of employment; and

(B) will provide working conditions for the nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(2) There is no strike or lockout during a labor dispute in the occupational classification at the place of employment.

(3) At the time the application was filed, the employer—

(A) provided notice of the filing of an application under this subsection to the bargaining representative of the employer's employees in the occupational classification and area for which aliens are sought; or

(B) if there is no bargaining representative, posted notice of the filing in conspicuous locations at the place of employment.

(4) There is a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(b) PUBLIC AVAILABILITY OF APPLICATIONS AND APPLICATION LISTS.—(1) Not later than one working day after the date on which an application under this subsection is filed, the employer shall make available for public examination at the employer's principal place of business or worksite a copy of each application filed under subsection (a) of this section and necessary accompanying documentation.

(2) On a current basis and by employer and occupational classification, the Secretary shall compile a list of the applications filed. That list shall

include the wage rate, number of aliens sought, period of intended employment, and the date of need. The Secretary shall make that list available for public examination in the District of Columbia.

(c) SECRETARIAL REVIEW OF APPLICATIONS.—The Secretary shall review an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall make the certification described in section 2313(a)(1)(C) or (2)(B) of this title not later than 7 days after the date the application is filed.

(d) FAILURE TO MEET APPLICATION CONDITIONS AND MISREPRESENTATIONS.—(1) The Secretary shall establish a procedure for receiving, investigating, and disposing of complaints about a petitioner's failure to meet a condition specified by an application submitted under subsection (a) of this section or a petitioner's misrepresentation of a material fact in that application. An aggrieved person (including a bargaining representative) may file a complaint under this subsection but the complaint must be filed not later than 12 months after the date of the failure or misrepresentation. The Secretary shall conduct an investigation as provided in this subsection if there is reasonable cause to believe that a failure or misrepresentation has occurred.

(2) Not later than 30 days after the date a complaint is filed, the Secretary shall decide whether a reasonable basis exists to make a finding under paragraph (3) or (4) of this subsection. If the Secretary decides that a reasonable basis exists, the Secretary shall provide interested parties notice and an opportunity for a hearing under section 556 of title 5 about the complaint not later than 60 days after deciding that a reasonable basis exists. If a hearing is requested, the Secretary shall make a finding about the complaint not later than 60 days after the date of the hearing. The Secretary may consolidate hearings on similar complaints about the same applicant.

(3) If the Secretary finds, after notice and an opportunity for a hearing under paragraph (2) of this subsection, that there has been a failure to meet a condition of subsection (a)(2) of this section, a substantial failure to meet a condition described in subsection (a)(3) or (4) of this section, a willful failure to meet a condition of subsection (a)(1) of this section, or misrepresentation of a material fact in an application—

(A) the Secretary shall notify the Attorney General of that finding and may impose administrative remedies the Secretary decides are appropriate, including a civil penalty of not more than $1,000 for each violation; and

(B) the Attorney General may not approve a petition filed by the employer under any of sections 2313–2319 or 2325 of this title or subchapter I of chapter 43 for at least one year.

(4) If the Secretary finds after notice and an opportunity for a hearing under paragraph (2) of this subsection that an employer has not paid wages at the wage level specified under the application and required under subsection (a)(1) of this section, the Secretary shall order the employer to provide back pay required to comply with subsection (a)(1) whether or not a penalty has been imposed under paragraph (3) of this subsection.

§ 2352. Advisory opinions for aliens with extraordinary ability or with distinction in the arts, motion pictures, or television

(a) GENERAL REQUIREMENTS.—(1) The Attorney General may approve a petition—

(A) for an alien described in section 2318(a)(1)(A)(i) or (ii) of this title, only after the petitioner consults with a peer group or other person (including a labor organization) the petitioner chooses with expertise in the specific field involved by submitting with the petition an advisory opinion from that group or person;

(B) for an alien described in section 2318(a)(2)(A)–(C)(i) of this title, only after the petitioner consults with a labor organization with expertise in the area of the skills and experience involved by submitting with the petition an advisory opinion from that labor organization; or

(C) for an alien described in section 2318(a)(1)(A)(iii) or (2)(C)(ii) of this title, after consulting with the appropriate labor organization representing the alien's occupational peers and a management organization in the area of the alien's ability.

(2) An opinion by a labor organization or management organization about an alien referred to in paragraph (1)(C) of this subsection is coming to the United States for a motion picture or television production is advisory only. An opinion recommending denial of an application for that alien must be in writing. In making a decision on the petition, the Attorney General shall consider the exigencies and scheduling of the production. The Attorney General shall attach any advisory opinion to that decision.

(3)(A) If a petitioner does not submit an advisory opinion from an appropriate labor organization as required by paragraph (1)(A) or (B) of this subsection, the Attorney General shall forward a copy of the petition and supporting documents to the national office of an appropriate labor organization not later than 5 days after receiving the petition. If the employer's employees in the occupational classification for which the alien is being

sought have a collective bargaining representative, that representative is the appropriate labor organization.

(B) A person or labor organization receiving a copy of a petition as provided in subparagraph (A) of this paragraph has not more than 15 days after receiving the petition to submit a written advisory opinion or provide a letter stating that the person or organization has no objection. At the end of the 15-day period, the Attorney General shall give the petitioner an opportunity, when appropriate, to provide rebuttal evidence. The Attorney General shall act on the petition not later than 14 days after the end of the 15-day period, or if rebuttal evidence is provided, not later than 14 days after receiving that evidence. The Attorney General may shorten a time period under this paragraph for emergency reasons unless the shorter period is an unreasonable burden on a participant in the process.

(4) If a petitioner referred to in paragraph (1)(A) or (B) of this subsection establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall act on the petition without requiring an advisory opinion.

(5) The Attorney General shall prescribe regulations to establish expedited consultation procedures for nonimmigrant—

(A) artists and entertainers described in section 2318 of this title to accommodate the exigencies and scheduling of a given production or event; and

(B) athletes described in section 2318(a)(1) of this title in the case of emergency circumstances, including trades during a season.

(6) Consultation with a nongovernmental entity does not authorize the Attorney General to delegate authority under this subsection to a nongovernmental entity. The Attorney General shall give advisory opinions under this subsection the weight the Attorney General decides, in the Attorney General's sole discretion, is appropriate.

(b) WAIVERS.—The Attorney General shall prescribe regulations to provide for the waiver of the consultation requirement under subsection (a)(1)(A) of this section for an alien admitted to the United States as a nonimmigrant classified under section 2318(a)(1)(A)(ii) of this title because of distinction in the arts and who is seeking to be readmitted to perform similar services within 2 years after the date of a consultation under subsection (a)(1)(A) of this section. Not later than 5 days after a waiver is provided, the Attorney General shall forward a copy of the petition and supporting documents to the national office of the appropriate labor organization.

§ 2353. Advisory opinions for athletes and entertainers

(a) GENERAL REQUIREMENTS.—(1) The Attorney General may approve a petition for an alien described in—

(A) section 2319(a)(1)(A), (B), or (D) of this title, only after the petitioner consults with a labor organization with expertise in the specific field of athletics or entertainment involved by submitting with the petition an advisory opinion from that labor organization; or

(B) section 2319(a)(1)(C) of this title, only after consultation with labor organizations representing artists and entertainers in the United States.

(2) If a petitioner does not submit an advisory opinion from an appropriate labor organization required by paragraph (1)(A) of this subsection, the Attorney General shall forward a copy of the petition and supporting documents to the national office of an appropriate labor organization not later than 5 days after receiving the petition. If the employer's employees in the occupational classification for which the alien is being sought have a collective bargaining representative, that representative is the appropriate labor organization.

(3) A person or labor organization receiving a copy of a petition as provided in paragraph (2) of this subsection has not more than 15 days after receiving the petition to submit a written advisory opinion or provide a letter stating that the person or organization has no objection. At the end of the 15-day period, the Attorney General shall give the petitioner an opportunity, when appropriate, to provide rebuttal evidence. The Attorney General shall act on the petition not later than 14 days after the end of the 15-day period, or if rebuttal evidence is provided, not later than 14 days after receiving that evidence. The Attorney General may shorten a time period under this paragraph for emergency reasons unless the shorter period is an unreasonable burden on a participant in the process.

(4) If a petitioner referred to in paragraph (1)(A) of this subsection establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall act on the petition without requiring an advisory opinion.

(5) The Attorney General shall prescribe regulations to establish expedited consultation procedures for nonimmigrant—

(A) artists and entertainers under section 2319 of this title to accommodate the exigencies and scheduling of a given production or event; and

(B) athletes described in section 2319(a)(1)(A) of this title in the case of emergency circumstances, including trades during a season.

(6) Consultation with a nongovernmental entity does not authorize the Attorney General to delegate authority under this subsection to a nongovernmental entity. The Attorney General shall give advisory opinions under this subsection the weight the Attorney General decides, in the Attorney General's sole discretion, is appropriate.

(b) WAIVERS AND NONAPPLICATION.—(1) The Attorney General may waive—

(A) in consideration of special circumstances, the international recognition requirement of section 2319(a)(1)(B)(i) of this title for an entertainment group that is recognized nationally as being outstanding in its discipline for a sustained and substantial period of time; and

(B) the one-year relationship requirement of section 2319(a)(1)(B)(ii) of this title for an alien who—

(i) replaces an essential member of the group, because of illness or unanticipated or exigent circumstances; or

(ii) augments the group by performing a critical role.

(2) The one-year relationship requirement of section 2319(a)(1)(B)(ii) of this title does not apply to 25 percent of the performers in a group.

(3) The requirements of section 2319(a)(1)(B)(i) and (ii) of this title do not apply to an alien who performs as part of a circus or circus group or who is an integral and essential part of the performance of that circus or group, but only if the alien is coming to the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

SUBCHAPTER III—MISCELLANEOUS

§ 2371. Information on foreign students and other exchange program participants

(a) DEFINITIONS.—In this section—

(1) ''approved institution of higher education'' means a college or university the Attorney General approves, in consultation with the Secretary of Education, under section 2310(b) or 2311(b) of this title.

(2) ''designated exchange visitor program'' means a program that has been—

(A) designated by the Director of the United States Information Agency for purposes of section 2312(a)(1)(C) of this title; and

(B) selected by the Attorney General for purposes of the information collection program described in subsection (b) of this section.

(b) GENERAL.—(1) In consultation with the Secretaries of State and Education, the Attorney General shall develop and carry out a program to collect the information described in subsection (c) of this section from ap-

proved institutions of higher education and designated exchange visitor programs in the United States with respect to each alien who—

(A) has the status, or is applying for the status, of a nonimmigrant classified under section 2310, 2311, or 2312 of this title; and

(B) is a national of a country the Attorney General designates under paragraph (2) of this subsection.

(2) In consultation with the Secretary of State, the Attorney General shall initially designate at least 5 countries for purposes of paragraph (1)(B) of this subsection and may designate additional countries at any time while the information collection program under this section is being carried out.

(3) The Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g) does not apply to aliens described in paragraph (1) of this subsection to the extent the Attorney General determines necessary to carry out the information collection program under this section.

(c) INFORMATION TO BE COLLECTED.—(1) The following information shall be collected under subsection (b) of this section for each alien described in subsection (b)(1) of this section:

(A) the identity and current address in the United States of the alien.

(B) the nonimmigrant classification of the alien.

(C) the date on which—

(i) a visa under that classification was issued or extended; or

(ii) the Attorney General approved a change to that classification.

(D) in the case of a student at an approved institution of higher education—

(i) the current academic status of the alien, including whether the alien is maintaining status as a full-time student; and

(ii) any disciplinary action taken by the institution against the alien as a result of the alien's being convicted of a crime.

(E) in the case of a participant in a designated exchange visitor program—

(i) whether the alien is satisfying the terms of that program; and

(ii) any change in the alien's participation as a result of the alien's being convicted of a crime.

(2) The information described in paragraph (1) of this subsection shall be collected electronically, where practicable.

(3) To the extent practicable, the Attorney General shall—

(A) design the information collection program under this section in a way that permits approved institutions of higher education and designated exchange visitor programs to use existing software for the collection, storage, and data processing of information described in paragraph (1) of this subsection; and

(B) use or enhance existing software for the collection, storage, and data processing of information described in paragraph (1) of this subsection.

(d) PARTICIPATION BY INSTITUTIONS OF HIGHER EDUCATION AND EXCHANGE VISITOR PROGRAMS.— (1) The information described in subsection (c) of this section shall be provided by—

(A) an approved institution of higher education as a condition of the continued approval of the institution under section 2310 or 2311 of this title; and

(B) an approved institution of higher education or a designated exchange visitor program as a condition of the granting of authority to the institution or program to issue documents to an alien demonstrating the alien's eligibility for a visa under section 2310, 2311, or 2312 of this title.

(2) If an approved institution of higher education or a designated exchange visitor program fails to provide the specified information, the approvals and authority to issue documents referred to in paragraph (1) of this subsection shall be revoked or denied.

(e) FEES.—(1) An approved institution of higher education and a designated exchange visitor program shall charge and collect a fee in the amount the Attorney General establishes under paragraph (4) of this subsection from each alien—

(A) who has the status of a nonimmigrant classified under section 2310, 2311, or 2312 of this title (other than a nonimmigrant classified under section 2312 who has come to the United States as a participant in a program sponsored by the Federal Government); and

(B) for whom the institution or program is required by subsection (b) of this section to collect information.

(2) The institution or program shall collect the fee required under this subsection when—

(A) the alien first registers with the institution or program after entering the United States; or

(B) in a case where a registration referred to in subparagraph (A) of this paragraph does not exist, the alien first begins activities in the United States with the institution or program.

(3) Each institution and program shall remit the fees collected under paragraph (1) of this subsection to the Attorney General under a schedule established by the Attorney General.

(4)(A) The Attorney General shall establish the amount of the fee required under this subsection. The amount of the fee shall be based on the Attorney General's estimate of the cost per alien of carrying out the information collection program under this section. Except as provided in subsection (g)(3) of this section, the fee imposed on any individual may not be more than $100.

(B) Fees collected under this subsection shall be deposited as offsetting receipts into the Immigration Examinations Fee Account established under section 346 of this title. The amounts deposited remain available until expended by the Attorney General to reimburse any appropriation by the amount paid from that appropriation for expenses in carrying out this section.

(f) REPORT.—Not later than 4 years after the beginning of the information collection program under this section, the Attorney General and the Secretaries of State and Education shall jointly submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on the operations of the program and the feasibility of expanding the program to cover the nationals of all countries.

(g) WORLDWIDE EXPANSION OF PROGRAM.—(1) Not later than 6 months after the submission of the report required by subsection (f) of this section, the Attorney General, in consultation with the Secretaries of State and Education, shall begin expansion of the information collection program under this section to cover the nationals of all countries.

(2) The expansion shall be completed not later than one year after the submission of the report required by subsection (f) of this section.

(3) After the program has been expanded, the Attorney General may revise, on a periodic basis, the amount of the fee charged and collected under subsection (e) of this section to take into account changes in the cost of carrying out the program.

(h) DEADLINE.—The information collection program under this section shall begin not later than January 1, 1998.

§ 2372. Transportation costs payable by employers of certain nonimmigrants

(a) NONIMMIGRANTS CLASSIFIED UNDER SECTION 2313(a)(1) OR (2) OR 2315(a)(1).—If the employer of an alien who has the status of a nonimmigrant classified under section 2313(a)(1) or (2) or 2315(a)(1) of this title dismisses the alien from employment before the end of the period of

authorized admission, the employer is liable for the reasonable costs of return transportation of the alien.

(b) NONIMMIGRANTS CLASSIFIED UNDER SECTION 2318 OR 2319.—If the employment of an alien who is admitted to the United States as a nonimmigrant classified under section 2318 or 2319 of this title ends for reasons other than voluntary resignation, the employer whose offer of employment provided the basis of the nonimmigrant status of the alien and the petitioner are jointly and severally liable for the reasonable costs of return transportation of the alien. The petitioner shall provide satisfactory assurance to the Attorney General that the reasonable costs of that transportation will be provided.

CHAPTER 25—TEMPORARY AGRICULTURAL WORKERS

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§ 2501. Definitions

In this chapter—

(1) ''temporary agricultural worker'' means a nonimmigrant classified under section 2314 of this title.

(2) ''United States worker'' means an individual who is not an unauthorized alien (as defined in section 11101 of this title) with respect to particular employment.

§ 2502. Certification requirements

(a) REQUIREMENTS.—Before the Attorney General approves a petition filed under section 2314 of this title by a prospective employer of an alien to be employed as a temporary agricultural worker, the employer must apply to the Secretary of Labor for a certification that—

(1) there are not sufficient United States workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services described in the petition; and

(2) employment of the alien to provide the labor or services will not affect adversely the wages and working conditions of United States workers similarly employed.

(b) REGULATIONS.—The Secretary shall maintain regulations based on the findings the Secretary was required to make under section 218(c)(3)(B)(iii) of the Immigration and Nationality Act after considering the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 (Public Law 99–603, 100 Stat. 3441) as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date temporary agricultural workers depart for work with the employer.

§ 2503. Applications for certification

(a) DEADLINE FOR FILING.—The Secretary of Labor may not require that an application for a certification under section 2502 of this title be filed more than 60 days before the first date the employer requires the labor or services of a temporary agricultural worker.

(b) NOTICE OF DEFICIENCIES.—If an application does not meet the conditions for issuing a certification (except the conditions specified by section 2502(a)(1) of this title), the Secretary shall—

(1) notify the employer in writing not later than 7 days after the application is filed, giving the reasons the application does not meet the conditions; and

(2) allow the employer to submit promptly an amended application.

(c) FEE.—The Secretary may prescribe by regulation a fee to cover the reasonable costs of processing an application for certification.

§ 2504. Conditions for issuing certifications

Not later than 20 days before the labor or services of a temporary agricultural worker are first required, the Secretary of Labor shall issue a certification under section 2502 of this title if the following conditions are met:

(1) The conditions specified by section 2502(a) of this title are met.

(2) The employer has complied with the requirements for certification, including requirements the Secretary prescribes for recruiting United States workers.

(3) The Secretary concludes that the employer has made positive recruitment efforts within a multi-state region of traditional or expected labor supply in which the Secretary finds there are a significant number of qualified United States workers who, if recruited, would be willing to work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation of the employer's job offer through the interstate employment service system. The requirement to engage

in positive recruitment ends on the date the temporary agricultural workers depart for the employer's place of employment.

(4) The employer does not have, or has not been provided with referrals of, qualified United States workers who have indicated their availability to perform the labor or services on the terms of a job offer meeting the Secretary's requirements. In considering whether a specific qualification in a job offer is appropriate, the Secretary shall apply the normal and accepted qualifications required by employers not employing temporary agricultural workers in the same or comparable occupations and crops.

(5) The employer has provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by a state workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and during the worker's employment that will provide benefits at least equal to those provided under the state workers' compensation law for comparable employment.

(6) There is no strike or lockout during a labor dispute that, under regulations prescribed by the Secretary, precludes the certification.

(7) The employer employed temporary agricultural workers during the prior 2 years, and the Secretary, after notice and an opportunity for a hearing, has not found that the employer during that period substantially violated a material condition of the certification related to the employment of nonimmigrant or United States workers. The Secretary may decide not to approve a certification for not more than 3 years for an employer who commits a violation described in this paragraph.

§ 2505. Associations of agricultural producers

(a) PERMITTED FILINGS.—An association of agricultural producers using agricultural services may file—

(1) a petition under section 2314(b) of this title for an alien to be employed as a temporary agricultural worker; and

(2) an application for a certification under section 2502 of this title.

(b) ASSOCIATIONS ACTING AS EMPLOYERS.—If an association referred to in subsection (a) of this section is the joint or sole employer of a temporary agricultural worker, a certification issued under section 2502 of this title to the association may be used for the certified job opportunities of any of the members of the association. The worker may be transferred among the members to perform agricultural services of a temporary or seasonal nature for which the certification was issued.

(c) EFFECT OF VIOLATIONS.—(1) If a member of an association that is a joint employer of a temporary agricultural worker is found to have com-

mitted a violation that results in the Secretary of Labor deciding not to approve a certification of the member because the condition under section 2504(7) of this title has not been met, the decision applies only to that member unless the Secretary decides that the association or another member participated in, or knew or had reason to know of, the violation.

(2) If an association that is a joint employer is found to have committed a violation that results in the Secretary deciding not to approve a certification of the association because the condition under section 2504(7) of this title has not been met, the decision applies only to the association unless the Secretary decides that a member participated in, or knew or had reason to know of, the violation.

(3) If an association, certified as the sole employer of a temporary agricultural worker, is found to have committed a violation that results in the Secretary deciding not to approve a certification of the association because the condition under section 2504(7) of this title has not been met, a member of the association, during the period the decision is in effect, may not be the beneficiary of the services of temporary agricultural workers in the commodity and occupation in which the worker was employed by the association whose certification was not approved, unless the member employs the workers in the commodity and occupation directly or through an association that is a joint employer of the workers with the member.

§ 2506. Housing

(a) REQUIREMENT.—An employer shall provide housing for temporary agricultural workers as provided by regulations prescribed by the Secretary of Labor.

(b) REGULATIONS.—(1) Regulations prescribed under this section shall allow the employer, at the employer's option, to provide housing meeting applicable standards of the Federal Government for temporary labor camps or to secure housing that meets applicable local standards for rental or public accommodations or other substantially similar class of habitation. In the absence of applicable local standards, state standards for those accommodations or that class of habitation shall apply. In the absence of applicable local and state standards, standards of the Government for temporary labor camps shall apply.

(2) The regulations shall include specific requirements about housing for employees principally engaged in the range production of livestock.

(3) When the prevailing practice in the area and occupation of intended employment is to provide family housing, the employer shall provide family housing to workers with families requesting it.

(c) EXCEPTION.—This section does not require an employer to provide housing for workers not entitled to it under the temporary labor certification regulations in effect on June 1, 1986.

§ 2507. Expedited administrative review

(a) PROCEDURE FOR EXPEDITED REVIEW.—Regulations prescribed by the Secretary of Labor under this chapter shall provide for an expedited procedure for a review of a decision of the Secretary not to approve or to revoke a certification or, at the applicant's request, a new hearing on the decision.

(b) DECISIONS ON AVAILABILITY OF UNITED STATES WORKERS.—(1) The Secretary shall make a new decision about an application for certification under section 2502 of this title expeditiously, but not later than 72 hours after the time the new decision is requested, if the certification originally was not approved in any part because of the availability of able, willing, and qualified United States workers and they are not available at the time the labor or services are needed.

(2) An employer asserting that a United States worker referred to the employer is not able, willing, or qualified has the burden of proving that the worker is not able, willing, or qualified because of employment-related reasons.

§ 2508. Disqualification of aliens for violating conditions of prior admission

An alien may not be admitted to the United States as a temporary agricultural worker if, during the prior 5 years, the alien was admitted as a temporary agricultural worker and violated a term of that admission.

§ 2509. Enforcement authority of the Secretary of Labor

The Secretary of Labor may take actions necessary to ensure that employers comply with the terms of employment under this chapter, including—

(1) imposing appropriate penalties; and

(2) seeking appropriate equitable relief, including specific performance of contractual obligations.

§ 2510. Endorsement of entry and exit documentation

The Attorney General shall provide for the endorsement of entry and exit documentation of temporary agricultural workers necessary to carry out this chapter and to provide notice under chapter 111 of this title.

§ 2511. Preemption of state and local law

This chapter and sections 2101 and 2314 of this title preempt state and local law regulating the admissibility of nonimmigrant workers.

§ 2512. Biennial reports

(a) REPORTING REQUIREMENT.—Not later than November 6 of each even-numbered year, the President shall submit a report on the temporary agricultural worker program under this chapter to the Committees on the Judiciary of the Senate and the House of Representatives. The report shall include—

(1) the number of temporary agricultural workers permitted to be employed under the program in each year;

(2) the compliance of employers and temporary agricultural workers with the terms of the program;

(3) the impact of the program on the labor needs of United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

(4) recommendations for changing the program, including—

(A) improving the timeliness of decisions about the admission of temporary agricultural workers under the program;

(B) removing any economic disincentive to hiring United States workers for jobs for which temporary agricultural workers have been requested;

(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary agricultural workers; and

(D) the relative benefits to United States workers and burdens on employers of the policy of requiring employers, as a condition for certification under the program, to continue to accept qualified United States workers for employment after the date the temporary agricultural workers depart for work with the employer.

(b) RECOMMENDATIONS CONSISTENT WITH POLICY.—The recommendations under subsection (a)(4)(D) of this section shall be made in furtherance of the policy that aliens be admitted as temporary agricultural workers only if the conditions specified by section 2502(a) of this title are satisfied.

§ 2513. Approval of regulations

In consultation with the Secretaries of Labor and Agriculture, the Attorney General shall approve all regulations prescribed under this chapter and section 2314 of this title.

§ 2514. Authorization of appropriations

(a) GENERAL AUTHORIZATIONS.—Necessary amounts may be appropriated each fiscal year to—

(1) the Secretary of Labor to make findings and issue certifications under this chapter and section 4104(g)(2) of this title; and

(2) the Secretary of Agriculture to carry out the Secretary's duties and powers under section 2314 of this title related to this chapter.

(b) SPECIFIC AUTHORIZATIONS.—Not more than $10,000,000 may be appropriated each fiscal year—

(1) to recruit United States workers for temporary labor and services that otherwise might be performed by temporary agricultural workers; and

(2) to monitor the terms under which temporary agricultural workers and United States workers employed by the same employer are employed in the United States.

CHAPTER 27—ALIEN CREWMEMBERS

SUBCHAPTER I—GENERAL

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SUBCHAPTER I—GENERAL

§ 2701. Providing lists

(a) ON ARRIVAL.—Except as provided in subsection (c) of this section, when a vessel or aircraft arrives in the United States from a place outside the United States, the owner, agent, master, commanding officer, or consignee of the vessel or aircraft shall give an immigration officer at the port of arrival a list containing—

(1)(A) the name and position of each alien crewmember on the vessel or aircraft;

(B) information on when and where each alien crewmember was shipped or employed; and

(C) the name of each alien crewmember who is to be paid off or discharged in the port of arrival; or

(2) information the Attorney General prescribes by regulation.

(b) ON DEPARTURE.—Except as provided in subsection (c) of this section, before a vessel or aircraft departs from a port in the United States, the owner, agent, master, commanding officer, or consignee of the vessel or aircraft shall give an immigration officer at the port a list containing—

(1) the name of each alien crewmember—

(A) not employed on the vessel or aircraft when it arrived but who is leaving on the vessel or aircraft;

(B) paid off or discharged at the port; or

(C) who deserted or landed at the port; or

(2) information the Attorney General prescribes by regulation.

(c) EXCEPTION.—The Attorney General shall prescribe when a list under this section shall be given for a vessel operating only on the Great Lakes, the Saint Lawrence River, and a connecting waterway.

(d) REGULATIONS ON ARRIVAL AND DEPARTURE.—The Attorney General may prescribe by regulation when a vessel or aircraft is deemed under this chapter to be arriving in, or departing from, the United States or a port of the United States.

§ 2702. Reports on unlawful landings

As soon as it is discovered that an alien crewmember has landed unlawfully in the United States from a vessel or aircraft, the owner, agent, master, commanding officer, or consignee of the vessel or aircraft shall—

(1) report the unlawful landing in writing to an immigration officer; and

(2) give the immigration officer a description of the crewmember and information likely to lead to taking the crewmember into custody.

§ 2703. Conditional permits to land temporarily

(a) GENERAL REQUIREMENT.—An alien crewmember may land temporarily in the United States only as provided under this section or section 2705(b), 6121, or 6122 of this title.

(b) AUTHORITY TO ISSUE PERMITS.—Under regulations the Attorney General prescribes, an immigration officer may issue an alien crewmember a conditional permit to land temporarily in the United States if the officer finds, after inspection, that the crewmember—

(1) is a nonimmigrant classified under section 2305 of this title;

(2) otherwise is admissible; and

(3) has agreed to accept the permit.

(c) PERIOD OF VALIDITY.—A permit issued under subsection (b) of this section is valid for not more than—

(1) the period (but not more than 29 days) that the vessel or aircraft on which the alien crewmember arrived remains in port if the immigration officer is satisfied the crewmember intends to leave on that vessel or aircraft; or

(2) 29 days if the immigration officer is satisfied the crewmember intends to leave on another vessel or aircraft within the period for which the crewmember is allowed to land.

(d) REVOCATION.—(1) If an alien is issued a permit for a period under subsection (c)(1) of this section, and an immigration officer then decides the alien is not a crewmember or does not intend to leave on the vessel or aircraft on which the alien arrived, the immigration officer, under regulations prescribed by the Attorney General, may—

(A) revoke the permit;

(B) take the alien into custody; and

(C) if practicable, require the master or commanding officer of the vessel or aircraft on which the alien arrived to detain the alien on the vessel or aircraft.

(2) The owner of the vessel or aircraft on which an alien, detained under paragraph (1)(C) of this subsection, arrived in the United States shall pay the costs of detaining and removing the alien.

(3) An alien detained under paragraph (1)(C) of this subsection is not entitled to a removal proceeding under section 6704 of this title.

§ 2704. Control of alien crewmembers

(a) DETENTION AND REMOVAL.—The owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft arriving in the United States from a place outside the United States shall—

(1) detain an alien crewmember on the vessel, or, at the expense of the aircraft owner, detain an alien crewmember of an aircraft at a place an immigration officer designates, until—

(A) an immigration officer inspects, and a medical officer examines, the alien crewmember; and

(B) the alien crewmember is—

(i) issued a conditional permit to land temporarily under section 2703(b) of this title; or

(ii) allowed to land temporarily under section 2705(b) or 6121 of this title for medical or hospital treatment; and

(2) remove an alien crewmember if required by an immigration officer, whether before or after the crewmember is allowed to land temporarily under section 2703(b), 2705(b), or 6121 of this title.

(b) PROOF OF FAILURE TO DETAIN OR REMOVE.—Except as the Attorney General prescribes by regulation, proof that the name of an alien crewmember is not on the outgoing manifest of the vessel or aircraft on which the crewmember arrived in the United States from a place outside the United States, or that the master or commanding officer of the vessel or aircraft reported the crewmember as a deserter, is prima facie evidence of the failure to detain or remove the crewmember.

(c) REMOVAL ON ANOTHER VESSEL OR AIRCRAFT.—(1) If the Attorney General finds that removing an alien crewmember under this section on the

vessel or aircraft on which the crewmember arrived is impracticable or will cause unreasonable hardship to the crewmember, the Attorney General may require the crewmember to be removed from any port on another vessel or aircraft of the same owner unless the Attorney General finds removal on such a vessel or aircraft to be impracticable. The owner of the vessel or aircraft on which the crewmember arrived shall pay the costs of removing the crewmember as required by this subsection, including the costs of transferring the crewmember within the United States under conditions the Attorney General prescribes. The vessel or aircraft may be cleared only after the costs are paid or the Attorney General is satisfied that payment is guaranteed.

(2) A transfer under this subsection is not a landing under this title.

§ 2705. Alien crewmembers afflicted with certain disabilities and diseases

(a) EMPLOYMENT PROHIBITIONS.—An alien crewmember afflicted with feeble-mindedness, insanity, epilepsy, tuberculosis, leprosy, or a dangerous contagious disease may not be employed on a vessel or aircraft carrying passengers when the vessel or aircraft arrives in the United States from a place outside the United States.

(b) HOSPITALIZATION AND OBSERVATION.—An alien crewmember found on arrival at a port in the United States to be afflicted with feeble-mindedness, insanity, epilepsy, tuberculosis, leprosy, or a dangerous contagious disease shall be treated in a hospital designated by the immigration officer in charge of the port. An alien crewmember suspected of being afflicted may be removed from the vessel or aircraft on which the alien crewmember arrived to an appropriate place for observation to enable an examining medical officer to decide whether the crewmember is afflicted.

(c) PAYMENT OF COSTS.—The owner, agent, master, commanding officer, or consignee of the vessel or aircraft on which the alien crewmember arrived shall pay all costs incurred under subsection (b) of this section, including burial if the crewmember dies. The costs may not be deducted from the wages of the crewmember. The vessel or aircraft may be cleared only after the costs are paid or payment is guaranteed and the Secretary of the Treasury is notified by the immigration officer in charge of the port.

(d) RETURNING AN INCURABLE CREWMEMBER.—When the immigration officer in charge of the port is satisfied that a crewmember hospitalized under subsection (b) of this section cannot be cured within a reasonable time, the owner of the vessel or aircraft on which the crewmember arrived shall return the crewmember or pay the costs of returning the crewmember under conditions the Attorney General prescribes to ensure that the crew-

member is cared for properly and the spread of contagious disease is prevented.

§ 2706. Discharging alien crewmembers

A person may pay off or discharge an alien crewmember (except a crewmember lawfully admitted for permanent residence) employed on a vessel or aircraft arriving in the United States only with the consent of the Attorney General.

SUBCHAPTER II—LONGSHORE WORK

§ 2721. Definition and application

(a) DEFINITION.—In this subchapter, ''longshore work''—

(1) means an activity in the United States or the coastal waters of the United States related to—

(A) loading or unloading cargo of a vessel, whether or not integral to the vessel;

(B) operating cargo-related equipment; and

(C) handling mooring lines on the dock when the vessel is made fast or let go; but

(2) does not include loading or unloading cargo for which the Secretary of Transportation has prescribed regulations under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), chapter 37 of title 46, section 5103(b), 5104, 5106, 5107, or 5110 of title 49, or section 4106 of the Oil Pollution Act of 1990 (Public Law 101–380, 104 Stat. 513) on—

(A) handling or stowing that cargo;

(B) manning, and the duties, qualifications, and training of the officers and crewmembers of, vessels transporting that cargo; and

(C) reducing or eliminating discharge during ballasting, tank cleaning, or handling of that cargo.

(b) APPLICATION.—This subchapter and section 10118 of this title do not affect—

(1) the meaning or scope of longshore work under another provision of law, a collective bargaining agreement, or an international agreement; or

(2) the performance of longshore work by nationals of the United States.

§ 2722. General

An alien crewmember may perform longshore work only as provided in section 2723, 2724, or 2725 of this title.

§ 2723. Prevailing practice

(a) GENERAL.—(1) An alien crewmember performing a particular activity of longshore work in or around a port is serving in a capacity required for

normal operation and service on a vessel under section 2305(a) of this title if—

(A) each collective bargaining agreement for that port covering at least 30 percent of the employees performing longshore work allows that activity to be performed by alien crewmembers; or

(B)(i) there is no collective bargaining agreement for the port covering at least 30 percent of the employees performing longshore work; and

(ii) except as provided in paragraph (2) of this subsection, an employer of the alien crewmember or the employer's designated representative files an attestation described in subsection (b)(1) of this section with the Secretary of Labor at least 14 days before the date the activity will be performed or, if necessary because of an unanticipated emergency, not later than the date the activity will be performed.

(2) An employer must file an attestation under paragraph (1)(B)(ii) of this subsection for a particular activity of longshore work involving the use of an automated self-loading conveyor belt or vacuum-actuated system on a vessel only if the Secretary finds under subsection (f)(2) of this section that the particular activity of longshore work is not an activity described in subsection (b)(1)(A) of this section.

(b) ATTESTATION REQUIREMENTS.—(1) The attestation filed with the Secretary under subsection (a) of this section shall provide evidence that—

(A) the performance of the particular activity of longshore work by an alien crewmember is allowed under the prevailing practice at the port at the time of the filing and that the alien crewmember is not being employed for that activity—

(i) during a strike or lockout in a labor dispute; or

(ii) to influence an election of a bargaining representative for employees in the port; and

(B) the owner, agent, master, commanding officer, or consignee has given notice of the attestation—

(i) to the bargaining representative of longshore workers at the port; or

(ii) if there is no bargaining representative, to the longshore workers employed at the port.

(2) An attestation—

(A) expires at the end of the one-year period beginning on the date it is filed under subsection (a) of this section; and

(B) applies to alien crewmembers arriving in the United States during that period if the owner, agent, master, commanding officer, or consignee states in each list provided under section 2701 of this title

that the employer continues to comply with the conditions in the attestation.

(3) An owner, agent, master, commanding officer, or consignee may provide a single list under section 2701 of this title to meet the requirements of paragraph (2)(B) of this subsection for more than one alien crewmember.

(c) PUBLIC INFORMATION.—The Secretary shall compile and make available for public examination in a timely way in the District of Columbia—

(1) information identifying each owner, agent, master, commanding officer, and consignee that has filed a list under section 2701 of this title for an alien crewmember classified as a nonimmigrant under section 2305(a) of this title for whom an attestation under subsection (a) of this section or section 2725(b) of this title is filed; and

(2) for each employer a copy of—

(A) the attestation and accompanying documentation; and

(B) each list filed for the employer under section 2701 of this title and described in clause (1) of this subsection.

(d) COMPLAINTS.—(1) Any aggrieved person, including a bargaining representative, association the Secretary decides is appropriate, or other aggrieved person as provided under regulations of the Secretary, may file a complaint—

(A) about an employer's failure to meet conditions stated in an attestation filed under subsection (a) of this section;

(B) about an employer's misrepresentation of a material fact in the attestation; or

(C) for longshore work described in subsection (a)(2) of this section, that the particular activity of longshore work is not an activity described in subsection (b)(1)(A) of this section.

(2) The Secretary shall establish a procedure for receiving, investigating, and disposing of complaints filed under this subsection. The Secretary shall conduct an investigation under this subsection promptly if there is reasonable cause to believe the allegations of the complaint.

(3)(A) If the Secretary decides that reasonable cause exists to conduct an investigation about a complaint filed under paragraph (1)(A) or (B) of this subsection, the person making the complaint may request that the employer stop, during the hearing procedure under subsection (e) of this section, the particular activity of longshore work attested to by the employer. The employer shall be notified of the request and shall respond not later than 14 days after receiving the notice.

(B) If the Secretary makes an initial decision that the complaint is supported by a preponderance of the evidence submitted, the Secretary imme-

diately shall require that the employer stop that activity until after the hearing procedure under subsection (e) of this section.

(4)(A) If the Secretary decides that reasonable cause exists to conduct an investigation about a complaint under paragraph (1)(C) of this subsection, the person making the complaint may request that the employer stop, during the hearing procedure under subsection (e) of this section, the particular activity of longshore work involved in the complaint unless the employer files an attestation with the Secretary under subsection (a) of this section. The employer shall be notified of the request and shall respond not later than 14 days after receiving the notice.

(B) If the Secretary makes an initial decision that the complaint is supported by a preponderance of the evidence submitted, the Secretary immediately shall require that the employer stop that activity until after the hearing procedure under subsection (e) of this section, unless the employer files an attestation under subsection (a) of this section.

(e) PROCEEDINGS.—Not later than 180 days after a complaint is filed under subsection (d) of this section, or later for good cause shown, the Secretary shall decide whether a basis exists to make a finding described in subsection (f) of this section. The Secretary shall give interested persons notice of that decision and an opportunity for a hearing on the complaint not later than 60 days after making the decision.

(f) FINDINGS.—(1)(A) If, after notice and an opportunity for a hearing under subsection (e) of this section, the Secretary finds that an employer has failed to meet a condition, or has misrepresented a material fact, in an attestation filed under subsection (a) of this section, the Secretary—

(i) shall notify the Attorney General of the finding; and

(ii) may impose other administrative remedies, including a civil penalty under section 10118 of this title, the Secretary decides are appropriate.

(B) When the Attorney General receives notice under this paragraph, the Attorney General shall deny any vessel owned or chartered by the employer entry to a port of the United States for not more than one year.

(2) For longshore work described in subsection (a)(2) of this section, if the Secretary finds, after notice and an opportunity for a hearing under subsection (e) of this section and based on a preponderance of the evidence submitted by any interested person, that the particular activity of longshore work is not an activity described in subsection (b)(1)(A) of this section—

(A) the Secretary shall notify the Attorney General of the finding; and

(B) the employer shall file an attestation under subsection (a) of this section for that activity.

(3) When the Secretary finds that an alien crewmember is not allowed to perform a particular activity of longshore work under the prevailing practice at a port, another attestation under subsection (a) of this section about that activity in that port may not be filed for one year.

(g) LONGSHORE WORK IN ALASKA.—Except as provided in section 2725(c) of this title, this section does not apply to longshore work performed in Alaska.

§ 2724. Reciprocity

(a) DEFINITION.—In this section, ''practice'' means an activity normally performed in a foreign country during the one-year period before a vessel arrives in the United States or the coastal waters of the United States.

(b) GENERAL.—(1) An alien crewmember performing a particular activity of longshore work in or about a port is serving in a capacity required for normal operation and service on a vessel under section 2305(a) of this title, and the Attorney General shall allow an alien crewmember on a vessel to perform a particular activity of longshore work, if—

(A) that vessel is registered in a foreign country that by law, regulation, or practice does not prohibit that activity by crewmembers on United States vessels; and

(B) nationals of a foreign country that, by law, regulation, or practice does not prohibit that activity by crewmembers on United States vessels, hold a majority ownership interest in that vessel.

(2) The Secretary of State shall compile and annually maintain, under section 553 of title 5, a list, by particular activity of longshore work, of foreign countries in which crewmembers on United States vessels are prohibited by law, regulation, or practice from performing a particular activity of longshore work.

§ 2725. Longshore work in Alaska

(a) DEFINITIONS.—In this section—

(1) ''contract stevedoring companies'' means those stevedoring companies licensed to do business in Alaska that meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932).

(2) ''employer'' includes any agent or representative designated by the employer.

(b) GENERAL.—(1) An alien crewmember performing a particular activity of longshore work at a particular location in Alaska is serving in a capacity required for normal operation and service on a vessel under section 2305(a) of this title if an employer of the alien crewmember files an attestation with the Secretary of Labor at least 30 days before the date the activity will be performed or at least 24 hours before the activity will be performed if the

employer shows that the employer reasonably could not have anticipated the need to file an attestation for that location at that time.

(2) The attestation filed under paragraph (1) of this subsection shall provide evidence that—

(A) the employer will request from the parties to whom notice has been given under clause (D)(ii) and (iii) of this paragraph United States longshore workers who, under industry standards in Alaska, including safety considerations, are qualified and available in sufficient numbers to perform the activity at the particular time and location, except that—

(i) when 2 or more contract stevedoring companies have signed a joint collective bargaining agreement with a single labor organization described in clause (D)(i) of this paragraph, the employer may request longshore workers from only one of those companies; and

(ii) a request to a private dock operator for longshore workers may be made only for longshore work to be performed at that dock and only if the operator meets the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932);

(B) the employer will employ all those United States longshore workers made available under clause (A) of this paragraph who, under industry standards in Alaska, including safety considerations, are qualified and available in sufficient numbers and who are needed to perform the longshore activity at the particular time and location;

(C) using alien crewmembers for that activity is not intended or designed to influence an election of a bargaining representative for workers in Alaska; and

(D) the employer has given notice of the attestation—

(i) to labor organizations recognized as exclusive bargaining representatives of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 151 et seq.) and that make, or intend to make, workers available at the particular location where the longshore work is to be performed;

(ii) to contract stevedoring companies that employ or intend to employ United States longshore workers at the location; and

(iii) to operators of private docks at which the employer will use longshore workers.

(3)(A) During the period that an attestation an employer files under paragraph (1) of this subsection is valid, the employer must request and employ United States longshore workers as provided under paragraph (2)

before using alien crewmembers to perform the activity specified in the attestation. However, an employer is not required to request United States longshore workers from a person who has given the employer written notice that the person does not intend to make United States longshore workers available at the particular location where the longshore work is to be performed.

(B) If a person that provided notice under subparagraph (A) of this paragraph later gives the employer written notice that the person is prepared to make available United States longshore workers who, under industry standards in Alaska, including safety considerations, are qualified and available in sufficient numbers to perform the longshore activity at the particular location where the longshore work is to be performed, the obligation of the employer to that person under paragraph (2)(A) and (B) of this subsection begins 60 days after the date the notice was given under this clause.

(4)(A) An employer filing an attestation under paragraph (1) of this subsection is not required—

(i) to hire less than a full work unit of United States longshore workers needed to perform the longshore activity;

(ii) to provide overnight accommodations for the longshore workers while employed; or

(iii) to provide transportation to the particular location where the longshore activity will be performed, except where—

(I) surface transportation is available;

(II) that transportation may be accomplished safely;

(III) travel time to the vessel is not more than one-half hour each way; and

(IV) travel distance to the vessel from the point of embarkation is not more than 5 miles.

(B) In the case of Wide Bay, Alaska, and Klawock/Craig, Alaska, the travel time and distance described in clause (A)(iii) of this paragraph are extended to 45 minutes and 7.5 miles, respectively, unless the person responding to the request for longshore workers agrees to the lesser time and distance limitations described in clause (A)(iii).

(5) Except as provided in section 2723(c)–(e) of this title, an attestation filed under paragraph (1) of this subsection—

(A) expires at the end of the one-year period beginning on the date specified in the attestation that the employer anticipates the longshore work will begin; and

(B) applies to alien crewmembers arriving in the United States during that period if the owner, agent, master, commanding officer, or consignee states in each list provided under section 2701 of this title

that the employer continues to comply with the conditions in the attestation.

(c) APPLICATION OF SECTION 2723.—(1) Except as provided in paragraph (2) of this subsection, section 2723(b)(3)–(f)(2) of this title applies to an attestation filed under subsection (b)(1) of this section.

(2) Section 2723 of this title applies to the use of alien crewmembers to perform longshore work in Alaska involving the use of an automated self-loading conveyor belt or vacuum-actuated system on a vessel.

(d) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section.

CHAPTER 29—FACILITIES EMPLOYING REGISTERED NURSES

2901. Definition.
2902. Attestation requirements.
2903. State plans.
2904. Public availability of information.
2905. Complaints, investigations, and penalties.

§ 2901. Definition

In this chapter, ''facility'' includes an employer that employs registered nurses in a home setting.

§ 2902. Attestation requirements

(a) GENERAL.—Except as provided in subsection (b) of this section, a facility seeking to employ a nonimmigrant registered nurse under section 2325 of this title must file with the Secretary of Labor an attestation stating the following:

(1) A substantial disruption in the delivery of health care services of the facility would occur through no fault of the facility without the services of a nonimmigrant registered nurse.

(2) Employment of a nonimmigrant registered nurse will not adversely affect the wages and working conditions of other registered nurses similarly employed.

(3) A nonimmigrant registered nurse employed by the facility will be paid at the wage rate paid for other registered nurses similarly employed by the facility.

(4) The facility—

(A) has taken and is taking timely and significant steps to recruit and retain sufficient registered nurses who are citizens of the United States or immigrants authorized to perform nursing services, to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses; or

(B) is subject to a state plan for the recruitment and retention of nurses approved under section 2903 of this title.

(5) There is no strike or lockout in the course of a labor dispute, and the employment of nonimmigrant registered nurses is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(6) At the time of filing the petition under section 2325(c) of this title, the facility has given notice of the filing to the bargaining representative of the registered nurses employed by the facility or, if there is no bargaining representative, to the registered nurses employed by the facility by posting the notice in conspicuous locations.

(b) WAIVERS.—For a nonimmigrant registered nurse performing services at a worksite (except at the employer's worksite or at a worksite controlled by the employer) and for whom the employer has filed an attestation under subsection (a) of this section, the Secretary may waive the requirement to file an attestation for the worksite as may be appropriate—

(1) to avoid duplicative attestations;

(2) in temporary, emergency situations;

(3) for information the attestor does not know; or

(4) for other good cause.

(c) FAULT IF FACILITY HAS LAID OFF NURSES.—A facility does not meet subsection (a)(1) of this section if the facility has laid off registered nurses within the prior year. However, a facility that lays off a registered nurse (except a staff nurse) meets subsection (a)(1) if the facility has attested that it will not replace the nurse with a nonimmigrant registered nurse described in section 2325(b) of this title (either through promotion or otherwise) for one year after the date of the layoff.

(d) SIGNIFICANT STEPS TO RECRUIT AND RETAIN NURSES.—(1) Each of the following is a significant step reasonably designed to recruit and retain registered nurses meeting the requirement of subsection (a)(4)(A) of this section:

(A) operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(B) providing career development programs and other methods of facilitating health care workers to become registered nurses.

(C) paying registered nurses at a rate higher than that currently being paid to registered nurses similarly employed in the geographic area.

(D) providing adequate support services to free registered nurses from administrative and other non-nursing duties.

(E) providing reasonable opportunities for meaningful salary advancement by registered nurses.

(2) Paragraph (1) of this subsection is not an exclusive list of the steps that may be taken to meet the requirement of subsection (a)(4)(A) of this section. A facility is not required to take more than one step if the facility can demonstrate that taking an additional step is not reasonable.

(e) EFFECTIVENESS OF ATTESTATION.—(1) Subject to section 2905 of this title, an attestation under subsection (a) of this section—

(A) expires at the end of the one-year period beginning on the date the attestation is filed with the Secretary; and

(B) applies to petitions filed during that one-year period if the facility states in each petition filed under section 2325(c) of this title that it continues to comply with the conditions in the attestation.

(2) A facility may file a single petition to meet the requirements of this section for more than one registered nurse.

§ 2903. State plans

The Secretary of Labor shall provide for a procedure under which a State may submit to the Secretary of Labor a plan for the recruitment and retention of citizens of the United States and immigrants authorized to perform nursing services as registered nurses in facilities in the State. A plan may include counseling and educating health workers and other individuals about employment opportunities available to registered nurses. Annually in consultation with the Secretary of Health and Human Services, the Secretary of Labor shall provide for approving or disapproving the state plan as provided in section 2902(a)(4)(B) of this title. A plan may be approved in regard to a facility only if the plan provides for taking significant steps described in section 2902(a)(4)(A) of this title to recruit and retain registered nurses at that facility.

§ 2904. Public availability of information

The Secretary of Labor shall compile and make available for public examination in a timely manner in the District of Columbia—

(1) a list of facilities that have filed petitions to employ nonimmigrant registered nurses described in section 2325(b) of this title; and

(2) for each facility, a copy of the petitions, attestations, and accompanying documentation filed by each facility.

§ 2905. Complaints, investigations, and penalties

(a) COMPLAINTS AND INVESTIGATIONS.—(1) The Secretary of Labor shall establish a procedure for receiving, investigating, and disposing of complaints filed about a facility's failure to satisfy a condition attested to, or a facility's misrepresentation of a material fact, in an attestation.

(2) Any person aggrieved by a facility's failure to satisfy a condition attested to, or a facility's misrepresentation of a material fact, in an attesta-

tion under section 2902(a) of this title, including a bargaining representative, association the Secretary decides is appropriate, or other person the Secretary decides by regulation is aggrieved, may file a complaint with the Secretary. The Secretary shall conduct an investigation if there is reasonable cause to believe that the facility does not meet a condition attested to.

(3) Not later than 180 days after a complaint is filed, the Secretary shall decide whether a basis exists to make a finding described in subsection (b) of this section. If the Secretary decides that a basis exists, the Secretary shall give notice of that decision to the interested parties and an opportunity for a hearing on the complaint not later than 60 days after making the decision.

(b) FINDINGS AND PENALTIES.—(1) If the Secretary finds, after notice and an opportunity for a hearing, that a facility has failed to satisfy a condition attested to or has misrepresented a material fact in an attestation, the Secretary—

(A) shall notify the Attorney General of the finding;

(B) may impose other administrative remedies, including a civil penalty of not more than $1,000 for each violation; and

(C) if the facility has not paid the prevailing wage as attested to under section 2902(a)(3) of this title, shall order the facility to pay an amount of back pay necessary to comply with section 2902(a)(3).

(2) For at least one year after receiving notice under paragraph (1)(A) of this subsection, the Attorney General may not approve a petition filed under subsection 2325(c) of this title by that facility for the employment of a nonimmigrant registered nurse.

PART B—IMMIGRANTS

CHAPTER 41—NUMERICAL LIMITATIONS

Sec.
4101. General requirements.
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§ 4101. General requirements

Except for aliens described in section 4102(d) of this title, an alien may be issued an immigrant visa or otherwise acquire the status of an alien lawfully admitted for permanent residence only if—

(1)(A) the alien is a family-sponsored immigrant described in section 4103(b)–(e) of this title or admitted under section 4311(a)(1) of this title because a visa previously was issued to the accompanying parent under section 4103(b)–(e); and

(B) the numerical limitations of section 4102(a)(1) of this title are not exceeded;

(2)(A) the alien is an employment-based immigrant described in section 4104(b)–(f) of this title or admitted under section 4311(a)(1) of this title because a visa previously was issued to the accompanying parent under section 4104(b)–(f); and

(B) the numerical limitations of section 4102(b)(1) of this title are not exceeded; or

(3)(A) the alien is a diversity immigrant described in section 4105(c) and (h) of this title or admitted under section 4311(a)(1) of this title because a visa previously was issued to the accompanying parent under section 4105(c) and (h); and

(B) the numerical limitations of section 4102(c)(1) of this title are not exceeded.

§ 4102. Annual worldwide numerical limitations

(a) FAMILY-SPONSORED IMMIGRANTS.—(1) The worldwide numerical limitation for family-sponsored immigrants for a fiscal year is the greater of—

(A)(i) 480,000; minus

(ii) the sum of—

(I) the number of aliens described in subsection (d)(6)–(8) of this section issued immigrant visas or who otherwise acquire the status of an alien lawfully admitted for permanent residence in the prior fiscal year; and

(II) for fiscal years beginning after September 30, 1998, the number of aliens paroled into the United States under section 6121 of this title in the 2d prior fiscal year who do not depart from the United States (without advance parole) within 365 days and who do not acquire the status of an alien lawfully admitted for permanent residence in the 2 prior fiscal years or acquire that status in those years under a provision of law (except subsection (d) of this section) that exempts the adjustment from the numerical limitation on the worldwide level of immigration under this section; plus

(iii) any difference between the maximum number of employment-based immigrant visas that could have been issued and the number that were issued during the prior fiscal year; or

(B) 226,000.

(2) In each of the first 3 quarters of a fiscal year, the number of aliens issued visas and otherwise becoming aliens lawfully admitted for permanent residence as family-sponsored immigrants may not be more than 27 percent of the numerical limitation computed under paragraph (1) of this subsection for that fiscal year.

(3) An alien paroled into the United States under section 6121 of this title in the 2d prior fiscal year who does not depart from the United States (without advance parole) within 365 days and who does not acquire the status of an alien lawfully admitted for permanent residence in the 2 prior fiscal years but who subsequently is admitted as an alien lawfully admitted for permanent residence may not again be considered for purposes of paragraph (1) of this subsection.

(b) EMPLOYMENT-BASED IMMIGRANTS.—(1) The worldwide numerical limitation for employment-based immigrants for a fiscal year is—

(A) not more than 140,000; plus

(B) any difference between the maximum number of family-sponsored immigrant visas that could have been issued and the number that were issued during the prior fiscal year.

(2) In each of the first 3 quarters of a fiscal year, the number of aliens issued visas and otherwise becoming aliens lawfully admitted for permanent residence as employment-based immigrants may not be more than 27 percent of the numerical limitation computed under paragraph (1) of this subsection for that fiscal year.

(c) DIVERSITY IMMIGRANTS.—(1) The worldwide numerical limitation for diversity immigrants for a fiscal year is 55,000.

(2) In each of the first 3 quarters of a fiscal year, the number of aliens issued visas and otherwise becoming aliens lawfully admitted for permanent residence as diversity immigrants may not be more than 27 percent of the numerical limitation computed under paragraph (1) of this subsection for that fiscal year.

(d) NONAPPLICATION.—The numerical limitations of this section do not apply to—

(1) a special immigrant as defined in section 133(a)(1) or (2) of this title;

(2) an alien admitted under section 5105 of this title or whose status is adjusted under section 5107 of this title;

(3) an alien who becomes lawfully admitted for permanent residence under chapter 93 of this title or section 210 of the Immigration and Nationality Act;

(4) an alien whose removal is canceled under section 6721(a) of this title;

(5) an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under section 9104(a) of this title;

(6) an immediate relative;

(7) an alien admitted under section 4311(a)(1) of this title because the accompanying parent is an immediate relative previously issued a visa; and

(8) an alien born to an alien lawfully admitted for permanent residence during a temporary visit outside the United States.

§ 4103. Visa allocation for family-sponsored immigrants

(a) GENERAL.—Aliens subject to the worldwide numerical limitation of section 4102(a)(1) of this title for qualified family-sponsored immigrants shall be allocated visas each fiscal year as provided in this section.

(b) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Not more than 23,400 visas, plus visas not required under subsection (e) of this section, shall be made available to unmarried sons and unmarried daughters of citizens of the United States.

(c) FAMILIES OF ALIENS LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—(1) Not more than 114,200 visas, plus the number by which the worldwide numerical limitation is more than 226,000, plus visas not required under subsection (b) of this section, shall be made available to—

(A) spouses and children of aliens lawfully admitted for permanent residence; and

(B) unmarried sons and unmarried daughters (who are no longer children) of aliens lawfully admitted for permanent residence.

(2) At least 77 percent of visas made available under this subsection shall be made available to those spouses and children.

(d) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Not more than 23,400 visas, plus visas not required under subsections (b) and (c) of this section, shall be made available to married sons and married daughters of citizens of the United States.

(e) BROTHERS AND SISTERS OF CITIZENS.—Not more than 65,000 visas, plus visas not required under subsections (b)–(d) of this section, shall be made available to brothers and sisters of citizens of the United States if the citizens are at least 21 years of age.

§ 4104. Visa allocation for employment-based immigrants

(a) GENERAL.—Aliens subject to the worldwide numerical limitation of section 4102(b)(1) of this title for qualified employment-based immigrants shall be allocated visas each fiscal year as provided in this section.

(b) PRIORITY WORKERS.—(1) A number of visas equal to not more than 28.6 percent of the worldwide numerical limitation of section 4102(b)(1) of

this title, plus visas not required under subsections (e) and (f) of this section, shall be made available to the following aliens:

(A) A qualified immigrant—

(i) having extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim;

(ii) whose achievements have been recognized in the field through extensive documentation;

(iii) who is coming to the United States to continue work in the area of extraordinary ability; and

(iv) whose entry will benefit the United States substantially in the future.

(B) A qualified immigrant—

(i) recognized internationally as outstanding in a specific academic area;

(ii) with at least 3 years of teaching or research experience in the academic area; and

(iii) who is coming to the United States for a tenured (or tenure-track) position in a university or institution of higher education to teach in the academic area, for a comparable position with a university or institute of higher education to conduct research in the area, or for a comparable position to conduct research in the area with a department, division, or institute of a private employer that employs at least 3 individuals full-time in research activities and has achieved documented accomplishments in an academic field.

(C) A qualified immigrant—

(i) who, in the 3 years prior to the application for classification and admission to the United States under this paragraph, has been employed for at least one year by a firm, corporation, or other legal entity or an affiliate or subsidiary of the firm, corporation, or entity; and

(ii) who is coming to the United States to continue to provide services to the same employer, or an affiliate or subsidiary of the employer, in a managerial or executive capacity.

(2) In applying paragraph (1)(C) of this subsection, a partnership or similar organization organized outside the United States to provide accounting services is deemed to be an affiliate of a partnership organized in the United States to provide accounting services if—

(A) the partnership or similar organization organized outside the United States markets its accounting services under an internationally

recognized name under an agreement with a worldwide coordinating organization owned and controlled by the member accounting firms of which the United States partnership is also a member; and

(B) the United States partnership markets its accounting services under the same internationally recognized name under an agreement with the worldwide coordinating organization.

(c) MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—(1) A number of visas equal to not more than 28.6 percent of the worldwide numerical limitation of section 4102(b)(1) of this title, plus visas not required under subsection (b) of this section, shall be made available to qualified immigrants—

(A) who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business will benefit substantially the economy, cultural or educational interests, or welfare of the United States in the future; and

(B) whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(2) When the Attorney General considers it to be in the interest of the United States, the Attorney General may waive the requirement of paragraph (1) of this subsection that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(3) Possession of a degree, diploma, certificate, or similar award from an institution of learning, a license to practice, or certification for a profession or occupation is not sufficient evidence by itself under paragraph (1) of this subsection that an immigrant has exceptional ability.

(d) SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—(1) Except as provided in paragraph (2) of this subsection, a number of visas equal to not more than 28.6 percent of the worldwide numerical limitation of section 4102(b)(1) of this title, plus visas not required under subsections (b) and (c) of this section, shall be made available to the following aliens not described in subsection (c)(1) of this section:

(A) A qualified immigrant who is capable, at the time a petition is filed for classification under this subsection, of performing skilled labor requiring at least 2 years training or experience, that is not temporary or seasonal, and for which qualified workers are not available in the United States.

(B) A qualified immigrant who holds a baccalaureate degree and is a member of a profession.

(C) A qualified immigrant capable, when petitioning for classification under this subsection, of performing unskilled labor that is not tem-

porary or seasonal and for which qualified workers are not available in the United States.

(2) Not more than 10,000 of the visas made available under this subsection in a fiscal year are available for immigrants described in paragraph (1)(C) of this subsection.

(3) An alien may be issued an immigrant visa under this subsection only if the consular officer has received the decision and certification of the Secretary of Labor under subsection (g)(2) of this section.

(e) CERTAIN SPECIAL IMMIGRANTS.—A number of visas equal to not more than 7.1 percent of the worldwide numerical limitation of section 4102(b)(1) of this title shall be made available to qualified special immigrants as defined in section 133(a)(3)–(13) of this title, except that not more than 5,000 of those visas may be allocated in a fiscal year to special immigrants as defined in section 133(a)(3)(A)(ii)(II) and (III) of this title.

(f) EMPLOYMENT CREATION.—(1) In this subsection—

(A) ''targeted employment area'' means, at the time of investment, a rural area or an area that has experienced unemployment that is at least 150 percent of the national average.

(B) ''rural area'' means an area not in a metropolitan statistical area or not in the outer boundary of a city or town having a population, based on the latest United States decennial census, of at least 20,000.

(2) A number of visas equal to not more than 7.1 percent of the worldwide numerical limitation of section 4102(b)(1) of this title shall be made available to qualified immigrants is coming to the United States to engage in a new commercial enterprise—

(A) that the alien has established;

(B) in which the alien has invested after November 29, 1990, or is actively in the process of investing, at least $1,000,000; and

(C) that will benefit the United States economy and create full-time employment for at least 10 United States citizens, aliens lawfully admitted for permanent residence, or other immigrants lawfully authorized to be employed in the United States, except the qualified immigrant and the qualified immigrant's spouse, sons, and daughters.

(3) At least 3,000 of the visas allocated under paragraph (2) of this subsection in each fiscal year shall be reserved for qualified immigrants who establish a new commercial enterprise described in paragraph (2) that will create employment in a targeted employment area.

(4)(A) In consultation with the Secretaries of Labor and State, the Attorney General may prescribe regulations increasing the amount specified by paragraph (2)(B) of this subsection.

(B) For an investment made in a targeted employment area, the Attorney General may specify that the amount of capital required under paragraph (2)(B) of this subsection be less than, but at least 50 percent of, the amount specified by paragraph (2)(B).

(C) For an investment made in a metropolitan statistical area that at the time of investment is not a targeted employment area and has an unemployment rate significantly below the national average, the Attorney General may specify that the amount of capital required under paragraph (2)(B) of this subsection be more than, but not more than 3 times, the amount specified in paragraph (2)(B).

(g) ADDITIONAL REQUIREMENTS FOR EMPLOYMENT-BASED IMMIGRANTS.—(1) An alien applying for a visa under subsection (c) or (d) of this section who is a graduate of a medical school not accredited by an entity approved by the Secretary of Education and who is coming to the United States principally to perform services as a member of the medical profession may be issued the visa only if the alien—

(A) has passed parts I and II of the National Board of Medical Examiners Examination or an examination the Secretary of Health and Human Services decides is equivalent, or on January 9, 1978, was fully and permanently licensed to practice medicine in a State and was practicing medicine in a State on that date; and

(B) is competent in oral and written English.

(2)(A) An alien applying for a visa under subsection (c) or (d) of this section to perform skilled or unskilled labor may be issued the visa only if the Secretary of Labor decides and certifies to the Secretary of State and the Attorney General that—

(i) there are not enough workers who are able, willing, qualified (or equally qualified if the alien is a member of the teaching profession or has exceptional ability in the sciences or arts), and available when the alien applies for the visa and admission and at the place where the alien is to perform that labor; and

(ii) employment of the alien will not affect adversely the wages and working conditions of similarly employed workers in the United States.

(B)(i) For purposes of this subparagraph, ''professional athlete'' means an individual who is employed as an athlete by a team that is a member of an association of at least 6 professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage, or by a minor league team that is affiliated with such an association.

(ii) A certification made under paragraph (2)(A) of this subsection for a professional athlete remains valid with respect to the athlete after the athlete changes employers if the new employer is a team in the same sport as the team which employed the athlete when the athlete first applied for the certification.

(C) Before making a decision and certification under paragraph (2)(A) of this subsection, the Secretary of Labor shall provide that—

(i) a certification may be made only if the employer, when filing the application, has provided notice of the filing to the bargaining representative of the employer's employees in the occupational classification and area for which aliens are sought or, if there is no bargaining representative, to employees employed at the facility through posting at conspicuous locations; and

(ii) any person may submit documentary evidence related to the application, including information on available workers, wages and working conditions, and the employer's failure to meet conditions of employing alien workers and co-workers.

(3) An alien is coming to the United States to perform labor as a health-care worker (except a physician) is inadmissible unless the alien presents to the consular officer, or, in the case of an adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools, or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services, verifying that—

(A) the alien's education, training, license, and experience—

(i) meet all applicable statutory and regulatory requirements for entry into the United States under the classification specified in the application;

(ii) are comparable to that required for an American health-care worker of the same type; and

(iii) are authentic and, in the case of a license, unencumbered;

(B) the alien has the level of competence in oral and written English considered by the Secretary of Health and Human Services, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(C) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profes-

sion's licensing or certification examination, the alien has passed the test or examination.

(4) For purposes of paragraph (3) of this subsection, determination of the standardized tests required and of the minimum scores that are appropriate are within the sole discretion of the Secretary of Health and Human Services and are not subject to further administrative or judicial review.

§ 4105. Visa allocation for diversity immigrants

(a) DEFINITIONS.—In this section—

(1) ''high-admission foreign country'' means a foreign country for which the number determined under subsection (c) of this section is more than 50,000.

(2) ''high-admission region'' means a region for which the total of the numbers determined under subsection (c) of this section for foreign countries in the region is more than one-sixth of the total of the numbers for all foreign countries.

(3) ''low-admission foreign country'' means a foreign country that is not a high-admission foreign country.

(4) ''low-admission region'' means a region that is not a high-admission region.

(5) Northern Ireland is deemed to be a separate foreign country.

(6) an overseas dependent area of a foreign country is deemed to be part of the foreign country.

(7) the area in each of the following is a separate region:

(A) Africa.

(B) Asia.

(C) Europe.

(D) North America, except Mexico.

(E) Oceania.

(F) South America, Mexico, Central America, and the Caribbean.

(b) GENERAL.—Aliens subject to the worldwide numerical limitations of section 4102(c)(1) of this title for qualified diversity immigrants shall be allocated visas for each fiscal year as provided in this section.

(c) DETERMINATION OF NUMBERS OF CERTAIN ALIENS.—For the most recent prior 5-year period for which information is available, the Attorney General shall determine the total number of aliens who are natives of each foreign country and who—

(1) were admitted or otherwise acquired the status of an alien lawfully admitted for permanent residence (except under this section); and

(2) were subject to the numerical limitations for family-sponsored and employment-based immigrants under sections 4103 and 4104 of

this title or were admitted or otherwise acquired the status of an alien lawfully admitted for permanent residence as an alien described in section 4102(d)(6)–(8) of this title.

(d) IDENTIFICATION.—The Attorney General shall identify each high-admission foreign country and region and each low-admission foreign country and region.

(e) PERCENTAGE AND RATIO DETERMINATIONS.—The Attorney General shall determine—

(1) the percentage of the total of the number determined under subsection (c) of this section that applies to foreign countries in high-admission regions;

(2) based on available estimates for each region, the total population of each region, excluding the population of any high-admission foreign country;

(3) for each low-admission region, the ratio of the population of the region determined under clause (2) of this subsection to the total population determined under clause (2) for all low-admission regions; and

(4) for each high-admission region, the ratio of the population of the region determined under clause (2) of this subsection to the total population determined under clause (2) for all high-admission regions.

(f) AVAILABILITY OF VISAS.—(1) The percentage of visas made available under this section to natives of a high-admission foreign country is 0.

(2) Except as provided in subsection (g) of this section, the percentage of visas made available under this section to natives (except natives of a high-admission foreign country) in a low-admission region is the product of—

(A) the percentage determined under subsection (e)(1) of this section; multiplied by

(B) the population ratio for the region determined under subsection (e)(3) of this section.

(3) Except as provided in subsection (g) of this section, the percentage of visas made available under this section to natives (except natives of a high-admission foreign country) in a high-admission region is the product of—

(A) 100 percent minus the percentage determined under subsection (e)(1) of this section; multiplied by

(B) the population ratio for the region determined under subsection (e)(4) of this section.

(g) REDISTRIBUTION OF VISAS AND LIMITATION.—(1) Except as provided in paragraph (2) of this subsection, if the Secretary of State estimates that the number of immigrant visas to be issued for a fiscal year to natives

in a region under this section will be less than the number of immigrant visas made available for the fiscal year to those natives under this section, the excess visa numbers shall be made available to natives (except natives of a high-admission foreign country) of the other regions in proportion to the percentages specified in subsection (f)(2) and (3) of this section.

(2) The percentage of visas made available under this section for a fiscal year to natives of a single foreign country may not be more than 7 percent of the total number of visas made available under this section for the fiscal year.

(h) REQUIREMENT OF EDUCATION OR WORK EXPERIENCE.—An alien is eligible for a visa under this section only if the alien—

(1) has at least a high school education or its equivalent; or

(2) within the 5-year period preceding the date of applying for a visa has at least 2 years of work experience in an occupation requiring at least 2 years of training or experience.

(i) MAINTAINING INFORMATION.—The Secretary shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this section.

(j) FEES.—(1) The Secretary may establish a fee to be paid by each applicant for an immigrant visa under this section. The fee may be set at a level that will ensure recovery of the cost to the Department of State of allocating the visas, including the cost of processing all applications under this section.

(2) Fees collected under this section—

(A) shall be used for providing consular services;

(B) shall be deposited as an offsetting collection to any Department of State appropriation; and

(C) remain available until expended.

(3) Sections 1726–1728 of the Revised Statutes (22 U.S.C. 4212–4214) do not apply to fees collected under this subsection.

§ 4106. Availability of visas for special immigrants having honorable military service

(a) NONAPPLICATION OF NUMERICAL LIMITATIONS.— Except as provided in subsection (b) of this section, the numerical limitations of sections 4104 and 4110(a) and (b) of this title do not apply to immigrant visas made available to special immigrants as defined in section 133(a)(13) of this title.

(b) NUMBER OF AVAILABLE VISAS.—The number of visas made available in a fiscal year—

(1) under subsections (b), (c), and (d) of section 4104 of this title shall each be reduced by one-third of the number of visas allocated in

the prior fiscal year to special immigrants as defined in section 133(a)(13) of this title;

(2) to natives of a foreign country under section 4110(a) and (b) of this title shall be reduced by the number of visas allocated in the prior fiscal year to special immigrants as defined in section 133(a)(13) of this title who are natives of the foreign country; and

(3) under subsections (b), (c), and (d) of section 4104 of this title for a foreign country subject to section 4110(c) of this title in that fiscal year and the prior fiscal year shall be reduced by one-third of the number of visas allocated in the prior fiscal year to special immigrants as defined in section 133(a)(13) of this title who are natives of the foreign country.

§ 4107. Status of spouses and children

The spouse or child (as defined in section 108(a)(1)–(5) of this title) accompanying or following to join an alien who is in a class described in section 4103, 4104, or 4105 of this title is entitled to the same classification and to have the same priority date as the alien if the spouse or child otherwise is not entitled to immigrant status and the immediate issuance of a visa under section 4103, 4104, or 4105.

§ 4108. Estimating number of visas to be issued

In carrying out sections 4103–4107 and 4313(a) and (b) of this title, the Secretary of State may make estimates of the anticipated number of immigrant visas to be issued during any quarter of a fiscal year under each class of sections 4103–4105 of this title. The Secretary may rely on those estimates in authorizing the issuance of those visas.

§ 4109. Pilot program

(a) ESTABLISHMENT OF PROGRAM AND ALLOCATION OF VISAS.—In the fiscal year beginning October 1, 1997, the Secretary of State, with the Attorney General, shall set aside 300 visas from the visas otherwise available under section 4104(f) of this title for a pilot program to carry out section 4104(f). The program shall include a regional center in the United States for promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The visas are for aliens eligible for admission under section 4104(f) and spouses and children eligible under this title to accompany or follow to join the alien.

(b) DETERMINATION OF NUMBER OF JOBS CREATED.—In establishing compliance with section 4104(f)(2)(C) of this title and notwithstanding the requirements of section 204.6 of title 8, Code of Federal Regulations, the Attorney General shall allow aliens admitted under the program to establish reasonable methodologies for determining the number of jobs created by the

program, including jobs estimated to have been created indirectly through revenue produced from increased exports resulting from the program.

§ 4110. Numerical limitations on individual foreign countries

(a) TOTAL NUMBER OF VISAS AVAILABLE IN A FISCAL YEAR.—(1) Except as provided in this section, not more than 7 percent of the total number of immigrant visas made available under sections 4103 and 4104 of this title in a fiscal year are made available to natives of any single foreign country, and not more than 2 percent of the total number are made available to natives of any single dependent area.

(2) If, because of the application of paragraph (1) of this subsection to at least one foreign country or dependent area, the total number of visas made available under sections 4103 and 4104 of this title for a calendar quarter is more than the number of qualified immigrants who otherwise may be issued a visa, paragraph (1) does not apply to visas made available to any such foreign country or dependent area during the remainder of the calendar quarter.

(3) Except for the United States and American Samoa, an independent country, self-governing dominion, or territory under the international trusteeship system of the United Nations is a foreign country under this subsection when approved by the Secretary of State.

(4) Approval is deemed to have been given under paragraph (3) of this subsection to—

(A) Taiwan (China); and

(B) Hong Kong.

(5) The Secretary shall specify the foreign country to which any other inhabited land is to be attributed. The Secretary shall issue appropriate instructions to diplomatic and consular offices when the territorial limits of a foreign country change and the Secretary recognizes the change.

(b) SPECIAL RULES FOR SPOUSES AND CHILDREN OF ALIENS LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—(1) Of the visa numbers available under section 4103(c) of this title in a fiscal year to immigrants described in section 4103(c)(1)(A) of this title—

(A) 75 percent of the 77 percent of the total number of visas available under section 4103(c) of this title to those immigrants shall be issued without regard to the numerical limitation established under subsection (a)(1) of this section; and

(B) if a foreign country or dependent area is subject to subsection (c) of this section, the remaining 25 percent of the 77 percent shall be made available to natives of that country or area only to the extent that the total number of visas issued under subparagraph (A) of this

paragraph to those immigrants is less than 77 percent of the maximum number of visas available under subsection (c)(1)(B) of this section to immigrants described in section 4103(c) of this title who are natives of that country or area.

(2) For a foreign country or dependent area to which subsection (c) of this section applies—

(A) the number of immigrant visas that may be made available under section 4103(c) of this title to natives of the country or area who are described in section 4103(c)(1)(B) of this title may not be more than the greater of—

(i) 23 percent of the maximum number of visas available consistent with subsection (c) of this section to immigrants described in section 4103(c) of this title who are natives of the country or area; or

(ii) the number, if any, by which the maximum number of visas available under subsection (c)(1)(B) of this section to immigrants described in section 4103(c) of this title who are natives of the country or area is more than the number of visas issued to immigrants described in section 4103(c)(1)(A) of this title; and

(B) if the total number of visas issued under section 4103(c) of this title is more than the maximum number of visas available consistent with subsection (c) of this section to immigrants described in section 4103(c) who are natives of the country or area, all visas are deemed to have been required for the preferences specified in section 4103(b) and (c) of this title when applying section 4103(d) and (e) of this title under subsection (c)(1)(B) of this section.

(c) ALLOCATION WHEN NUMBER OF VISAS MADE AVAILABLE TO A COUNTRY EXCEEDS NUMERICAL LIMITATION.—(1) If it appears that the total number of immigrant visas made available under sections 4103 and 4104 of this title to natives of a foreign country or dependent area will be more than the applicable numerical limitation established under subsection (a)(1) of this section in a fiscal year, visa numbers for natives of that country or area shall be allocated under sections 4103 and 4104 (to the extent practicable and otherwise consistent with this section and sections 4103 and 4104) so that—

(A) the ratio of the visa numbers made available under section 4103 of this title to the visa numbers made available under section 4104 of this title equals the ratio of the worldwide numerical limitations of section 4102(a)(1) of this title to the worldwide numerical limitation under section 4102(b)(1) of this title;

(B) except as provided in paragraphs (3) and (4) of this subsection, the proportion of the visa numbers allocated under each of subsections (b), (c), (d), and (e) of section 4103 of this title equals the ratio of the total number of visas available under each of those subsections to the total number of visas available under section 4103; and

(C) the proportion of the visa numbers allocated under each of subsections (b), (c), (d), (e), and (f) of section 4104 of this title equals the ratio of the total number of visas available under each of those subsections to the total number of visas available under section 4104.

(2) Paragraph (1) of this subsection does not limit the number of visas that may be issued—

(A) to natives of a foreign country or dependent area under section 4103 of this title if there is insufficient demand for visas for those natives under section 4104 of this title;

(B) to natives of a foreign country or dependent area under section 4104 of this title if there is insufficient demand for visas for those natives under section 4103 of this title; or

(C) under subsection (b)(1)(A) of this section.

§ 4111. Charging immigrants to foreign countries

An immigrant is chargeable to the foreign country in which the immigrant was born except in the following circumstances:

(1) When an alien child is accompanied by or following to join an alien parent of the child, the child may be charged to the foreign country of either parent if—

(A) the parent has received or qualifies for an immigrant visa;

(B) necessary to prevent the separation of the child from the parent; and

(C) immigration charged to the foreign country to which the parent has been or would be chargeable has not reached the numerical limitation established by section 4110(a)(1) of this title.

(2) When an alien is chargeable to a foreign country different from that of the spouse of the alien, the alien may be charged to the foreign country of the spouse the alien is accompanying or following to join if—

(A) the spouse has received or qualifies for an immigrant visa;

(B) necessary to prevent the separation of the alien and spouse; and

(C) immigration charged to the foreign country to which the spouse has been or would be chargeable has not reached the numerical limitation established by section 4110(a)(1) of this title.

(3) An alien born in the United States is deemed to have been born in the foreign country of which the alien is a citizen or subject. If the alien is not a citizen or subject of a foreign country, the alien is deemed to have been born in the last foreign country in which the consular officer decides that the alien resided.

(4) An alien born in a foreign country in which neither parent of the alien was born and in which neither parent resided at the time of the birth of the alien may be charged to the foreign country of either parent.

(5) An alien born in a dependent area of a foreign country, except an alien described in section 4102(d) of this title, is chargeable to that country.

§ 4112. Burden of proof

An alien claiming to be an immigrant, a special immigrant, or an immediate relative has the burden of proving that the alien is entitled to immigrant, special immigrant, or immediate relative status.

CHAPTER 43—PETITIONS AND DOCUMENTATION

SUBCHAPTER I—PETITIONS

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SUBCHAPTER I—PETITIONS

§ 4301. General

(a) PETITIONS TO THE ATTORNEY GENERAL.—The following individuals may petition the Attorney General for the classification of aliens as follows:

(1) a citizen of the United States claiming an alien is entitled to immediate relative status or to be classified under section 4103(b), (d), or (e) of this title.

(2) an alien spouse described in section 116(2) of this title and desiring to acquire, or to have a child of the alien spouse acquire, immediate relative status.

(3) an alien eligible for immediate relative status (and a child of the alien if the child is not classified under clause (4) of this subsection) because the alien—

(A) is the spouse of a citizen of the United States;

(B) is an individual of good moral character;

(C) has resided in the United States with the spouse; and

(D) demonstrates to the Attorney General that—

(i) the alien is residing in the United States;

(ii) the marriage between the alien and the spouse was entered into in good faith by the alien;

(iii) during the marriage the alien or a child of the alien has been battered by, or has been the subject of extreme cruelty perpetrated by, the spouse; and

(iv) the alien's removal would result in extreme hardship to the alien or child.

(4) a child eligible for immediate relative status because the child—

(A) is the child of a citizen of the United States;

(B) is an individual of good moral character;

(C) has resided in the United States with the citizen parent; and

(D) demonstrates to the Attorney General that—

(i) the child is residing in the United States;

(ii) during the period of residence with the citizen parent the child has been battered by, or has been the subject of extreme cruelty perpetrated by, that parent; and

(iii) the child's removal would result in extreme hardship to the child.

(5) an alien lawfully admitted for permanent residence claiming classification for an alien entitled to be classified under section 4103(c) of this title.

(6) an alien eligible to be classified under section 4103(c) of this title (and a child of the alien if the child is not classified under clause (7) of this subsection) because the alien—

(A) is the spouse of an alien lawfully admitted for permanent residence;

(B) is an individual of good moral character;

(C) has resided in the United States with the spouse;

(D) demonstrates to the Attorney General that—

(i) the alien is residing in the United States;

(ii) the marriage between the alien and the spouse was entered into in good faith by the alien;

(iii) during the marriage the alien or a child of the alien has been battered by, or has been the subject of extreme cruelty perpetrated by, the spouse; and

(iv) the alien's removal would result in extreme hardship to the alien or child.

(7) a child eligible to be classified under section 4103(c) of this title because the child—

(A) is the child of an alien lawfully admitted for permanent residence;

(B) is an individual of good moral character;

(C) has resided in the United States with the permanent resident alien parent; and

(D) demonstrates to the Attorney General that—

(i) the child is residing in the United States;

(ii) during the period of residence with the permanent resident alien parent the child has been battered by, or has been the subject of extreme cruelty perpetrated by, that parent; and

(iii) the child's removal would result in extreme hardship to the child.

(8) an alien desiring to be classified under section 4104(b)(1)(A) of this title, or a person for the alien.

(9) an individual intending to employ in the United States an alien entitled to be classified under section 4104(b)(1)(B) or (C), (c), or (d) of this title.

(10) an alien (except a special immigrant as defined in section 133(a)(4) of this title) desiring to be classified under section 4104(e) of this title, or a person for the alien.

(11) an alien desiring to be classified under section 4104(f) of this title.

(b) PETITIONS TO THE SECRETARY OF STATE.—(1) An alien claiming status as a special immigrant as defined in section 133(a)(4) of this title may petition the Secretary of State to be classified under section 4104(e) of this title. The alien may file the petition only after being notified by the Secretary that special immigrant status under section 133(a)(4) has been recommended and approved as provided in section 133(a)(4).

(2)(A) An alien desiring to be classified under section 4105 of this title may petition the Secretary of State to be classified under section 4105.

(B) The alien shall file the petition at the place and time the Secretary of State decides by regulation. Only one petition may be filed during a petitioning period established by the Secretary. If more than one petition is filed during a period, all petitions filed by the alien during that period are void.

(C)(i) The Secretary of State shall designate a period during which a petition for a visa that may be issued under section 4105 of this title for the fiscal year beginning after the end of the period may be filed.

(ii) An alien who qualifies, through random selection, for a visa under section 4105 of this title remains eligible to receive the visa through the end of the fiscal year for which the alien was selected.

(iii) The Secretary of State shall prescribe regulations necessary to carry out this subparagraph.

(D) A petition under this paragraph shall—

(i) be in a form the Secretary of State prescribes by regulation; and

(ii) contain information and documentary evidence the Secretary requires.

(c) APPROVING PETITIONS.—(1) After investigating the facts about a petition, and after consulting with the Secretary of Labor about a petition to classify an alien under section 4104(c) or (d) of this title, the Attorney General shall approve the petition if the Attorney General decides the facts stated in the petition are true and the alien is an immediate relative or entitled to be classified as requested under section 4103 or 4104 of this title.

(2) When acting on a petition under subsection (a)(3), (4), (6), or (7) of this section, the Attorney General shall consider any credible evidence relevant to the petition. Only the Attorney General may decide what evidence is credible and the weight to be given that evidence.

(3) After approving the petition, the Attorney General shall submit one copy to the Secretary of State. The Secretary then shall authorize the appropriate consular officer to classify the alien as approved.

(d) PETITIONS FOR PROFESSIONAL ATHLETES.—(1) For purposes of this subsection, ''professional athlete'' means an individual who is employed as an athlete by—

(A) a team that is a member of an association of at least 6 professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(B) a minor league team that is affiliated with such an association.

(2) A petition under subsection (a)(9) of this section for classification of a professional athlete remains valid for the athlete after the athlete changes employers if the new employer is a team in the same sport as the team which was the employer who filed the petition.

(e) NONDISCRIMINATION.—Except as provided in sections 133, 4102(d)(6), 4103–4107, and 4110(a)(1) of this title, an alien may not receive a preference or priority or be discriminated against in issuing an im-

migrant visa under section 4313 of this title because of the alien's race, sex, nationality, place of birth, or place of residence. This subsection does not limit the authority of the Secretary of State to establish the procedures for processing immigrant visa applications or the locations where the applications will be processed.

(f) NO ENTITLEMENT TO BE ADMITTED TO THE UNITED STATES.—This subchapter does not entitle an immigrant for whom a petition is approved under this subchapter to be admitted to the United States if found not to be entitled to the classification on arrival in the United States.

§ 4302. Approving petitions for children

(a) FAVORABLE HOME STUDY REQUIREMENT.—Notwithstanding section 4301 of this title, a petition for a child as defined in section 108(a)(6) of this title may be approved only if a valid home study has been recommended favorably—

(1) by an agency of the State of the proposed residence of the child;

(2) by an agency that the State of the proposed residence of the child authorizes to conduct the study; or

(3) for a child adopted outside the United States, by an appropriate adoption agency licensed in the United States.

(b) PETITIONS FOR CERTAIN CHILDREN FATHERED BY CITIZENS OF THE UNITED STATES.—(1) An alien claiming to be an alien described in paragraph (2)(A) of this subsection, or a person for the alien, may petition the Attorney General to be classified as an immediate relative or under section 4103(b) or (d) of this title, as appropriate.

(2) After investigating the facts about a petition, the Attorney General shall approve the petition if—

(A) the Attorney General has reason to believe that the alien was born in Kampuchea, Korea, Laos, Thailand, or Vietnam after December 31, 1950, and before October 22, 1982, and was fathered by a citizen of the United States;

(B) the Attorney General has received an acceptable guarantee of legal custody and financial responsibility described in paragraph (5) of this subsection; and

(C) for an alien less than 18 years of age—

(i) an appropriate child welfare agency licensed in the United States and actively involved in the intercountry placement of children arranged the placement of the alien with a sponsor in the United States; and

(ii) the mother or guardian of the alien, in writing, irrevocably released the alien for emigration.

(3) In considering a petition filed under this subsection, the Attorney General shall—

(A) consult with appropriate government officials and officials of private voluntary organizations in the foreign country in which the alien was born in making the findings described in paragraph (2)(A) and (C)(i) of this subsection; and

(B) consider the physical appearance of the alien and evidence provided by the petitioner, including—

(i) birth and baptismal certificates;

(ii) local civil records;

(iii) photographs of, and letters or proof of financial support from, a putative father who is a citizen of the United States; and

(iv) relevant or probative testimony of witnesses.

(4) After approving the petition, the Attorney General shall submit one copy to the Secretary of State.

(5) A guarantee of legal custody and financial responsibility for an alien required by paragraph (2) of this subsection must—

(A) be signed in the presence of a consular officer or an immigration officer by a sponsor who is—

(i) at least 21 years of age;

(ii) of good moral character; and

(iii) a citizen of the United States or an alien lawfully admitted for permanent residence; and

(B) provide that the sponsor agrees—

(i) for an alien less than 18 years of age, to assume legal custody for the alien when the alien departs for the United States and until the alien becomes 18 years of age, as provided under the laws of the State in which the alien and the sponsor will reside; and

(ii) to provide, during the longer of the 5-year period beginning on the date the alien acquires the status of an alien lawfully admitted for permanent residence or the period beginning on that date and ending on the date the alien becomes 21 years of age, financial support necessary to maintain the family in the United States of which the alien is a member at a level equal to at least 125 percent of the current official poverty line (established by the Director of the Office of Management and Budget under section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2) and revised by the Secretary of Health and Human Services under section 673(2)) for a family the same size as that of the family of the alien.

(6) The Attorney General may bring a civil action against the sponsor in the district court of the United States for the judicial district in which the sponsor resides to enforce a guarantee of legal custody and financial responsibility made under paragraph (5) of this subsection. However, a sponsor or the estate of the sponsor is not liable under the guarantee if the sponsor dies or is adjudicated a bankrupt under title 11.

§ 4303. Petitions for married aliens

(a) LIMITATIONS ON APPROVING PETITIONS FOR CERTAIN SPOUSES.—(1) The Attorney General may approve a spousal petition under section 4103(c) of this title for the classification of the spouse of an alien if the alien, because of a prior marriage, had acquired the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or an alien lawfully admitted for permanent residence only if—

(A) 5 years have passed since the alien had acquired the status of an alien lawfully admitted for permanent residence; or

(B) the alien, by clear and convincing evidence, satisfies the Attorney General that the prior marriage was not entered into to evade the immigration laws.

(2) Paragraph (1) of this subsection does not apply to a petition for the classification of the spouse of an alien if the prior marriage of the alien was ended by the death of the alien's spouse.

(b) PROHIBITION ON APPROVING PETITIONS BECAUSE OF MARRIAGES TO EVADE IMMIGRATION LAWS.—Notwithstanding section 4301(c) of this title, a petition may not be approved if—

(1) an alien previously acquired, or sought to acquire, immediate relative status or previously was classified, or sought to be classified, under section 4103(c) of this title as a spouse of an alien lawfully admitted for permanent residence, because of a marriage the Attorney General decides was entered into to evade the immigration laws; or

(2) the Attorney General decides the alien has attempted or conspired to enter into a marriage to evade the immigration laws.

(c) REQUIRED RESIDENCE OUTSIDE THE UNITED STATES FOR CERTAIN ALIENS INVOLVED IN PROCEEDINGS.—(1) Notwithstanding section 4301(a) and (b) of this title, a petition to grant immediate relative status or to classify an alien under section 4103, 4104, or 4105 of this title because of a marriage entered into after November 9, 1986, and during the period described in section 9101(g)(1)(C) of this title, may not be approved until the alien resides outside the United States for 2 years after the marriage.

(2) Paragraph (1) of this subsection does not apply to a marriage if the alien establishes by clear and convincing evidence satisfactory to the Attorney General that—

(A) the marriage was entered into in good faith and under the laws of the place where the marriage took place;

(B) the marriage was not entered into to procure the alien's admission as an immigrant; and

(C) no consideration was given, except to an attorney for assistance in preparing a petition, for filing a petition under section 2309(b) or 4301(a) or (b) of this title for an alien spouse or alien son or daughter.

(3) Under regulations of the Attorney General, the Attorney General shall allow only one level of administrative appellate review for each alien under paragraph (2) of this subsection.

§ 4304. Revoking approved petitions

(a) GENERAL.—The Attorney General may revoke at any time a petition approved by the Attorney General under section 4301(c) of this title if the Attorney General considers that there is good cause to revoke. Revocation is effective as of the date of approval of the petition if notice of the revocation is mailed to the last known address of the petitioner and the Secretary of State notifies the alien for whom the petition was filed of the revocation before the alien begins traveling to the United States. If notice is not given as required by this section and the alien applies for admission to the United States, the admissibility of the alien shall be decided as provided in sections 6102 and 6704 of this title.

(b) EXCEPTION.—Legal termination of a marriage may not be the only basis for revoking a petition of an alien filed under section 4301(a)(3) or (6) of this title because of conditions described in section 4301(a)(3)(D)(i)–(iii) and (6)(D)(i)–(iii).

SUBCHAPTER II—DOCUMENTATION

§ 4311. Documentation requirements

(a) DOCUMENTS REQUIRED.—(1) An immigrant may be admitted to the United States only if, when applying for admission, the immigrant—

(A)(i) is in possession of an unexpired entry document required by this title; or

(ii) was born after an entry document was issued to the accompanying parent;

(B) is in possession of an unexpired travel document or document of identity and nationality when required by regulations the Attorney General prescribes; and

(C) except as otherwise provided in this title, is in possession of a visa issued as provided under sections 4103–4105, 4107, and 4313(b) of this title.

(2) This section does not apply to an alien admitted under section 5105 of this title.

(b) WAIVER FOR CERTAIN SPECIAL IMMIGRANTS.—Under conditions that may be prescribed by the Attorney General, the Attorney General may readmit a special immigrant as defined in section 133(a)(1) of this title who is returning to the United States, without the alien's having to obtain a passport, immigrant visa, reentry permit, or other documentation, if the alien otherwise is admissible.

§ 4312. Applications for immigrant visas and registration

(a) APPLICATION REQUIREMENTS.—An alien applying for an immigrant visa must apply in the way and at the place prescribed by regulation. The application must contain—

(1) the complete true name of the alien and each alias ever used;

(2) the age and sex of the alien;

(3) the date and place of birth of the alien; and

(4) additional information prescribed by regulation that is necessary to identify the alien and enforce the immigration and nationality laws.

(b) ADDITIONAL REQUIREMENTS.—(1) An alien applying for an immigrant visa must—

(A) register if required by chapter 81 of this title when applying for the visa;

(B) take a physical and mental examination prescribed by regulation;

(C) if required under regulations the Secretary prescribes, present a passport or other suitable travel document or a document of identity and nationality; and

(D) provide the consular officer, with the application, with—

(i) a copy of a certification by the appropriate police authorities stating what their records show about the alien;

(ii) a certified copy of any existing prison record, military record, and record of birth of the alien; and

(iii) a certified copy of any other record or documentation about the alien that the consular officer may require.

(2) Each copy provided under paragraph (1)(D) of this subsection shall be attached to the application and become a part of the application. If the alien satisfies the consular officer that it is not possible to obtain the copy, the consular officer may allow the alien to submit other satisfactory evidence of the fact to which the copy relates.

(c) SIGNATURE AND OATH.—Except as otherwise prescribed by regulation, an alien must—

(1) sign an application for an immigrant visa in the presence of a consular officer; and

(2) take an oath administered by the consular officer verifying the application.

(d) PROCESSING IMMIGRANT VISA APPLICATIONS OF CUBAN NATIONALS IN 3D COUNTRIES.—(1) In this subsection, ''process'' means accepting and reviewing an application and preparing necessary documents and making appropriate decisions related to the application.

(2) Notwithstanding sections 6108(a), 6109, and 8302 of this title, a consular officer shall process an application for an immigrant visa by a Cuban national located in a 3d country on the same basis as an application for an immigrant visa by a national of another country.

(e) STATEMENT ABOUT NO ENTITLEMENT TO ENTER THE UNITED STATES.—An application for an immigrant visa shall inform the applicant that a visa or other documentation issued to an alien does not entitle the alien to enter the United States if, on arrival at a port of entry, the alien is found to be inadmissible.

(f) CANCELLATION OF REGISTRATION.—The Secretary shall cancel the registration of an alien who does not apply for an immigrant visa within one year after being notified that a visa is available. However, the Secretary shall reinstate the registration if the alien establishes within 2 years after notification that the failure to apply was due to circumstances beyond the control of the alien.

§ 4313. Issuing immigrant visas and other documentation

(a) REGISTRATION ON WAITING LISTS.—Waiting lists of aliens entitled to an immigrant classification that is subject to the numerical limitations specified in chapter 41 of this title shall be maintained under regulations the Secretary of State prescribes.

(b) ORDER OF ISSUING VISAS.—(1) Immigrant visas made available under section 4103 or 4104 of this title shall be issued to qualified immigrants in the order in which a petition for each immigrant is filed with the Attorney General (or with the Secretary for special immigrants as defined in section 133(a)(4) of this title) under section 4301(a) or (b) of this title.

(2) Immigrant visas made available under section 4105 of this title shall be issued to qualified immigrants as the Secretary prescribes for the fiscal year involved.

(c) ISSUING VISAS.—(1) A consular officer issues an immigrant visa at the office of the consular officer outside the United States. A consular offi-

cer may issue an immigrant visa to an eligible immigrant who has made a proper application for the visa.

(2) A consular officer may issue a special immigrant or an immediate relative an immigrant visa as a special immigrant or an immediate relative on receiving satisfactory proof, under regulations prescribed under this title, that the applicant is entitled to special immigrant or immediate relative status.

(d) PROHIBITIONS.—(1) A consular officer may not issue an immigrant visa or other documentation to an alien if—

(A) the alien's application does not comply with this title or regulations prescribed under this title; or

(B) the consular officer has reason to believe the alien is ineligible for the visa or other documentation under subchapter I of chapter 63 of this title or any other provision of law.

(2) Notwithstanding paragraph (1)(B) of this subsection, a consular officer may issue an immigrant visa or other documentation to an alien to whom section 6306(a)–(c) of this title applies if—

(A) the alien otherwise may receive the visa or other documentation; and

(B) the consular officer receives notice from the Attorney General that a bond approved by the Attorney General has been filed under section 6306(d) of this title.

(e) CONTENTS OF VISAS.—An immigrant visa consists of the application for the visa, when visaed by the consular officer. The visa shall specify—

(1) the foreign country to which the immigrant is charged;

(2) the immigrant's particular status under that country;

(3) the preference classification or immediate relative or special immigrant status to which the immigrant is charged;

(4) the expiration date of the visa; and

(5) additional required information.

§ 4314. Period of validity and revocation

(a) VALIDITY.—An immigrant visa is valid for the period prescribed by regulation, but for not more than 6 months. However, an immigrant visa issued to a child legally adopted by a citizen of the United States and the spouse of the citizen when the citizen is serving outside the United States in the armed forces of the United States, is employed outside the United States by the Federal Government, or is temporarily outside the United States on business, is valid until the regular return of the citizen to the United States from the service, employment, or business, but for not more than 3 years.

(b) REVOCATION.—A consular officer or the Secretary of State may revoke at any time an immigrant visa or other documentation issued to an immigrant. A revocation invalidates the visa or documentation from the date the visa or documentation is issued. The Attorney General shall be notified of each revocation.

§ 4315. Unused immigrant visas

(a) REPLACING UNUSED VISAS.—A consular officer may replace an immigrant visa under its original number during the fiscal year it was issued if—

(1) the immigrant establishes to the satisfaction of the consular officer that the immigrant was unable to use the visa when it was valid for reasons that the immigrant did not cause and that were beyond the immigrant's control;

(2) the consular officer finds the immigrant is eligible for an immigrant visa; and

(3) the immigrant pays again the statutory fees for an application and immigrant visa.

(b) ISSUING UNUSED VISAS.—An eligible immigrant may be issued an unused immigrant visa that the immigrant qualifies for if the visa originally was issued to another immigrant—

(1) removed after being denied admission;

(2) not applying for admission before the visa expires; or

(3) as a preference immigrant and the immigrant is found not to be a preference immigrant.

§ 4316. Reentry permits

(a) APPLICATIONS.—An alien lawfully admitted for permanent residence who intends to leave the United States temporarily may apply to the Attorney General for a reentry permit to reenter the United States. The application must—

(1) state the length of, and reason for, the departure;

(2) be accompanied by photographs of the applicant, and state other information, that the Attorney General prescribes by regulation; and

(3) be made under oath.

(b) ISSUING REENTRY PERMITS.—The Attorney General may issue the reentry permit if the Attorney General finds—

(1) the application is made in good faith; and

(2) the alien's departure is not contrary to the interests of the United States.

(c) PERIOD OF VALIDITY.—A reentry permit may be issued for not more than 2 years from the date it is issued and may not be renewed. The alien may use the permit for any number of reentries into the United States. The

alien shall surrender the permit to the Commissioner of Immigration and Naturalization when the permit expires.

(d) PRESENTATION OF REENTRY PERMIT ON RETURNING TO THE UNITED STATES.—An alien issued a reentry permit shall present the permit to the immigration officer at the port of entry on returning to the United States. The immigration officer shall accept the permit as a substitute for any visa otherwise required under this title. The permit has no effect under the immigration laws except to establish that the alien is returning from a temporary departure. However, this section does not require a reentry permit as the only way that an alien may establish a return from a temporary departure.

(e) FORM OF APPLICATIONS AND PERMITS.—The Attorney General shall prescribe by regulation the form of the application and reentry permit, except that the permit shall be in a form to identify the alien completely and shall be printed on distinctive safety paper.

§ 4317. Burden of proof

An individual applying for an immigrant visa or other documentation required for entering the United States as an immigrant has the burden of proving that the individual is eligible to be issued the visa or documentation. A consular officer may issue the visa or documentation only if satisfied that the individual is eligible to receive the visa or documentation.

§ 4318. Documentation waivers

The Attorney General may waive sections 4311(a)(1) and 6301(a)(2) and (b) of this title for an immigrant who is in possession of an immigrant visa and otherwise is admissible if the Attorney General is satisfied that the immigrant did not know, and by reasonable diligence could not have known, of the immigrant's inadmissibility—

(1) before the vessel or aircraft on which the alien came to the United States left the last port outside the United States and outside foreign contiguous territory; or

(2) for an immigrant coming from foreign contiguous territory, before the immigrant applied for admission.

CHAPTER 45—CONDITIONAL PERMANENT RESIDENT STATUS

SUBCHAPTER I—CERTAIN ALIEN SPOUSES, SONS, AND DAUGHTERS

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SUBCHAPTER I—CERTAIN ALIEN SPOUSES, SONS, AND DAUGHTERS

§ 4501. Definitions

In this subchapter—

(1) ''alien son or daughter'' means an alien who acquires the status of an alien lawfully admitted for permanent residence because the alien is the son or daughter of an individual through a qualifying marriage.

(2) ''alien spouse''—

(A) means an alien who, because of a qualifying marriage, acquires the status of an alien lawfully admitted for permanent residence—

(i) as an immediate relative as the spouse of a citizen of the United States;

(ii) under section 2309(a) of this title as the fiancee or fiance of a citizen of the United States; or

(iii) under section 4103(c) of this title as the spouse of an alien lawfully admitted for permanent residence; but

(B) does not include an alien who acquires the status of an alien lawfully admitted for permanent residence because of section 4107 of this title.

(3) ''petitioning spouse'' means the spouse of a qualifying marriage, except the alien.

(4) ''qualifying marriage'' means a marriage entered into less than 24 months before the date an alien spouse acquires the status of an alien lawfully admitted for permanent residence because of the marriage.

§ 4502. Conditional basis of status

(a) GENERAL.—An alien spouse or an alien son or daughter, when acquiring the status of an alien lawfully admitted for permanent residence, acquires that status on a conditional basis as provided in this subchapter.

(b) NOTICE REQUIREMENTS.—When an alien spouse or alien son or daughter acquires the status of an alien lawfully admitted for permanent residence on a conditional basis under subsection (a) of this section, the Attorney General shall notify the spouse, son, or daughter about this sub-

chapter and the requirements of section 4503 of this title to have the conditional basis of the status removed. However, the failure of the Attorney General to provide notice does not affect the enforcement of this subchapter against the spouse, son, or daughter.

§ 4503. General requirements to remove conditional basis

To remove the conditional basis established under section 4502(a) of this title, the alien spouse and the petitioning spouse (if living)—

(1) jointly must submit to the Attorney General a petition requesting the removal of the conditional basis and containing, under penalty of perjury, the information required by section 4504(b) of this title; and

(2) must appear before an officer or employee of the Immigration and Naturalization Service for a personal interview about the information required by section 4504(b) of this title.

§ 4504. Petitions

(a) TIME FOR SUBMISSION.—(1) Except as provided in paragraph (2) of this subsection, the petition required by section 4503(1) of this title must be submitted during the 90-day period immediately before the 2d anniversary that the alien acquired the status of an alien lawfully admitted for permanent residence.

(2) A petition submitted after the 90-day period may be considered only if the alien satisfies the Attorney General that good cause and extenuating circumstances existed for not submitting the petition during that period.

(3) The Attorney General may stay a removal proceeding against an alien who did not submit a petition within the 90-day period required under paragraph (1) of this subsection pending the submission of the petition under paragraph (2) of this subsection.

(4) At or about the beginning of the 90-day period, the Attorney General shall try to notify the alien spouse or alien son or daughter of the requirements of section 4503 of this title. However, the failure of the Attorney General to provide notice does not affect the enforcement of this subchapter against the spouse, son, or daughter.

(b) CONTENTS.—Each petition shall contain the following information:

(1) That the qualifying marriage—

(A) complied with the laws of the place where the marriage took place;

(B) has not been annulled judicially or ended, except through the death of a spouse; and

(C) was not entered into to procure the admission of an alien as an immigrant.

(2) That no consideration was given, except to an attorney for assistance in preparing the petition, for filing under section 2309(b) or 4301

(a) or (b) of this title a petition for an alien spouse or an alien son or daughter.

(3) The actual residence of each party to the qualifying marriage since the date the alien spouse acquired the status of an alien lawfully admitted for permanent residence on a conditional basis under section 4502(a) of this title.

(4) Each employer and place of employment of each party since that date.

§ 4505. Personal interviews

(a) TIME AND LOCATION REQUIREMENTS.—(1) The personal interview required by section 4503(2) of this title shall be conducted—

(A) within 90 days after the date a petition is submitted as required by section 4503(1) of this title; and

(B) at a local office of the Immigration and Naturalization Service the Attorney General designates that is convenient to the parties involved.

(2) The Attorney General may waive the interview or the deadline for the interview when appropriate.

(b) DECISIONS ON TRUTHFULNESS OF STATEMENTS.—Within 90 days after an interview is conducted as required by section 4503(2) of this title, the Attorney General shall decide whether the information in the petition and required by section 4504(b) of this title about the qualifying marriage is true.

§ 4506. Favorable decisions on removing the conditional basis

(a) FAVORABLE DECISIONS.—If the Attorney General decides the information required by section 4504(b) of this title is true, the Attorney General shall notify the parties involved and shall remove the conditional basis of the status of the parties effective on the 2d anniversary that the alien acquired the status of an alien lawfully admitted for permanent residence.

(b) HARDSHIP WAIVERS.—(1) The Attorney General may remove the conditional basis of an alien spouse or alien son or daughter when the alien spouse does not comply with section 4503 of this title if the alien spouse or alien son or daughter shows that—

(A) extreme hardship would result if the alien spouse or alien son or daughter is removed;

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the marriage has been ended (except through the death of the spouse), and the alien spouse was not at fault in not complying with section 4503 of this title; or

(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or alien son or daughter was battered by, or was the subject of extreme cruelty committed by, the spouse of the alien spouse or the citizen or permanent resident parent of the alien son or daughter, and the alien spouse was not at fault in not complying with section 4503 of this title.

(2) When deciding whether extreme hardship would result, the Attorney General shall consider circumstances occurring only during the period the alien was lawfully admitted for permanent residence on a conditional basis.

(3) When acting on a petition under this subsection, the Attorney General shall consider any credible evidence relevant to the petition. Only the Attorney General may decide what evidence is credible and the weight to be given that evidence.

(4) The Attorney General shall establish by regulation ways to protect the confidentiality of information about an abused alien spouse or alien son or daughter, including information on the location of the spouse, son, or daughter.

§ 4507. Unfavorable decisions on removing the conditional basis

(a) IMPROPER QUALIFYING MARRIAGES.—The Attorney General shall end, as of the date the Attorney General makes a decision under this subsection, the status of an alien spouse or alien son or daughter as an alien lawfully admitted for permanent residence and shall so notify the parties involved if, before the 2d anniversary of the date the alien acquired the status, the Attorney General decides that—

(1) the qualifying marriage—

(A) was entered into to procure an alien's admission as an immigrant; or

(B) has been annulled judicially or ended, except through the death of a spouse; or

(2) consideration was given, except to an attorney for assistance in preparing the petition, for filing a petition for the alien under section 2309(b) or 4301 (a) or (b) of this title.

(b) UNTRUE PETITION INFORMATION.—If the Attorney General decides any information required by section 4504(b) of this title is not true, the Attorney General shall end, as of the date of the decision, the status of an alien spouse or alien son or daughter as an alien lawfully admitted for permanent residence and notify the parties involved.

(c) FAILURE TO FILE PETITIONS OR HAVE PERSONAL INTERVIEWS.—The Attorney General shall end, as of the 2d anniversary of the alien's law-

ful admission for permanent residence, the status of an alien spouse or alien son or daughter as an alien lawfully admitted for permanent residence if—

(1) a petition is not submitted as required by section 4503(1) of this title; or

(2) unless good cause is shown, the alien spouse and petitioning spouse do not appear at the interview required by section 4503(2) of this title.

(d) REVIEW OF DECISIONS.—(1) An alien whose permanent resident status is ended under subsection (a) or (b) of this section may request a review of the decision in a removal proceeding. The burden of proof is on the Attorney General to establish by a preponderance of the evidence that—

(A) if ended under subsection (a) of this section, a ground described in subsection (a) is met; or

(B) if ended under subsection (b) of this section, any information required by section 4504(b) of this title about the qualifying marriage is not true.

(2) An alien whose permanent resident status is ended under subsection (c) of this section has the burden of proof in a removal proceeding of establishing compliance with section 4503 of this title.

§ 4508. Treatment of conditional basis period for naturalization purposes

In carrying out subtitle V of this title, an alien who is in the United States as an alien lawfully admitted for permanent residence on a conditional basis under this subchapter is deemed to have been admitted and to be in the United States as an alien lawfully admitted for permanent residence.

§ 4509. Ending waivers

A waiver under section 6302(a)(2) or 6309(b) of this title obtained by an alien to acquire the status of an alien lawfully admitted for permanent residence on a conditional basis under this subchapter ends when the status ends under this subchapter.

SUBCHAPTER II—CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN

§ 4521. Definitions

In this subchapter—

(1) ''alien child'' means an alien who acquires the status of an alien lawfully admitted for permanent residence because the alien is the child of an alien entrepreneur.

(2) ''alien entrepreneur'' means an alien who acquires the status of an alien lawfully admitted for permanent residence under section 4104(f) of this title.

(3) ''alien spouse'' means an alien who acquires the status of an alien lawfully admitted for permanent residence because the alien is the spouse of an alien entrepreneur.

§ 4522. Conditional basis of status

(a) GENERAL.—An alien entrepreneur, alien spouse, or alien child, when acquiring the status of an alien lawfully admitted for permanent residence, acquires that status on a conditional basis as provided in this subchapter.

(b) NOTICE REQUIREMENTS.—When an alien entrepreneur, alien spouse, or alien child acquires the status of an alien lawfully admitted for permanent residence on a conditional basis under subsection (a) of this section, the Attorney General shall notify the entrepreneur, spouse, or child about this subchapter and the requirements of section 4523 of this title to have the conditional basis of the status removed. However, the failure of the Attorney General to provide notice does not affect the enforcement of this subchapter against the entrepreneur, spouse, or child.

§ 4523. General requirements to remove conditional basis

To remove the conditional basis established under section 4522(a) of this title, the alien entrepreneur must—

(1) submit to the Attorney General a petition requesting the removal of the conditional basis and containing, under penalty of perjury, the information described in section 4524(b) of this section; and

(2) appear before an officer or employee of the Immigration and Naturalization Service for a personal interview about the information required by section 4524(b) of this title.

§ 4524. Petitions

(a) TIME FOR SUBMISSION.—(1) Except as provided in paragraph (2) of this subsection, the petition required by section 4523(1) of this title must be submitted during the 90-day period immediately before the 2d anniversary that the alien acquired the status of an alien lawfully admitted for permanent residence.

(2) A petition submitted after the 90-day period may be considered only if the alien satisfies the Attorney General that good cause and extenuating circumstances exist for not submitting the petition during that period.

(3) The Attorney General may stay a removal proceeding against an alien who did not submit a petition within the 90-day period required under paragraph (1) of this subsection pending the submission of the petition under paragraph (2) of this subsection.

(4) At or about the beginning of the 90-day period, the Attorney General shall try to notify the alien entrepreneur, alien spouse, or alien child of the requirements of section 4523 of this title. However, the failure of the Attor-

ney General to provide notice does not affect the enforcement of this chapter against the entrepreneur, spouse, or child.

(b) CONTENTS.—Each petition shall contain information demonstrating that the alien—

(1) established a commercial enterprise;

(2) invested or was actively in the process of investing the required capital; and

(3) conducted the actions described in clauses (1) and (2) of this subsection during the entire period of the alien's residence in the United States.

§ 4525. Personal interviews

(a) TIME AND LOCATION REQUIREMENTS.—(1) The personal interview required by section 4523(2) of this title shall be conducted—

(A) within 90 days after the date a petition is submitted as required by section 4523(1) of this title; and

(B) at a local office of the Immigration and Naturalization Service the Attorney General designates that is convenient to the parties involved.

(2) The Attorney General may waive the interview or the deadline for the interview when appropriate.

(b) DECISIONS ON TRUTHFULNESS OF STATEMENTS.—Within 90 days after an interview is conducted under section 4523(2) of this title, the Attorney General shall decide whether the information in the petition and required by section 4524(b) of this title about the qualifying commercial enterprise is true.

§ 4526. Favorable decisions on removing the conditional basis

If the Attorney General decides the information required by section 4524(b) of this title is true, the Attorney General shall notify the alien involved and shall remove the conditional basis of the status of the alien effective on the 2d anniversary that the alien acquired the status of an alien lawfully admitted for permanent residence.

§ 4527. Unfavorable decisions on removing the conditional basis

(a) IMPROPER QUALIFYING ENTREPRENEURSHIPS.—The Attorney General shall end, as of the date the Attorney General makes a decision under this subsection, the status of an alien entrepreneur, alien spouse, and alien child as aliens lawfully admitted for permanent residence and shall so notify the alien entrepreneur if, before the 2d anniversary of the date the alien entrepreneur acquired the status, the Attorney General decides the alien entrepreneur—

(1) established the commercial enterprise only to evade the immigration laws of the United States;

(2)(A) did not establish a commercial enterprise;

(B) did not invest or was not actively in the process of investing the required capital; or

(C) was not conducting the actions described in subclauses (A) and (B) of this clause during the entire period of the alien's residence in the United States; or

(3) otherwise was not complying with the requirements of section 4104(f) of this title.

(b) UNTRUE PETITION INFORMATION.—If the Attorney General decides any information required by section 4524(b) of this title is not true, the Attorney General shall end, as of the date of the decision, the status of an alien entrepreneur, alien spouse, or alien child as an alien lawfully admitted for permanent residence and notify the alien involved.

(c) FAILURE TO FILE PETITIONS OR HAVE PERSONAL INTERVIEWS.—The Attorney General shall end, as of the 2d anniversary of the alien's lawful admission for permanent residence, the status of an alien entrepreneur as an alien lawfully admitted for permanent residence (and the status of the entrepreneur's spouse or child if acquired under section 4502(a) or 4522(a) of this title) if—

(1) a petition is not submitted as required by section 4523(1) of this title; or

(2) unless good cause is shown, the alien entrepreneur does not appear at the interview required by section 4523(2) of this title.

(d) REVIEW OF DECISIONS.—(1) An alien whose permanent residence status is ended under subsection (a) or (b) of this section may request a review of the decision in a removal proceeding. The burden of proof is on the Attorney General to establish by a preponderance of the evidence that—

(A) if ended under subsection (a) of this section, a ground described in subsection (a) is met; or

(B) if ended under subsection (b) of this section, the information required by section 4524(b) of this title about the qualifying commercial enterprise is not true.

(2) An alien whose permanent residence status is ended under subsection (c) of this section has the burden of proof in a removal proceeding of establishing compliance with section 4523 of this title.

§ 4528. Treatment of conditional basis period for naturalization purposes

In carrying out subtitle V of this title, an alien who is in the United States as an alien lawfully admitted for permanent residence on a condi-

tional basis under this subchapter is deemed to have been admitted and to be in the United States as an alien lawfully admitted for permanent residence.

CHAPTER 47—ALIENS BORN IN VIETNAM AND FATHERED BY CITIZENS OF THE UNITED STATES

Sec.
4701. Definitions and application.
4702. Validity and denial of visas.
4703. Admission.
4704. Rights, privileges, status, and benefits.
4705. Nonexclusive procedure for acquiring status.

§ 4701. Definitions and application

(a) DEFINITIONS.—In this chapter—

(1) ''child'' has the same meaning given that term in section 108(a)(1)–(5) of this title.

(2) ''principal alien'' means an alien born in Vietnam after January 1, 1962, and before January 1, 1976, and fathered by a citizen of the United States.

(b) APPLICATION.—This chapter applies to an alien who resided in Vietnam on December 22, 1987, and who satisfies a consular officer or an officer of the Immigration and Naturalization Service after a face-to-face interview that the alien is—

(1) a principal alien;

(2) the spouse or child of a principal alien and is accompanying or following to join the principal alien; or

(3) accompanying or following to join a principal alien and—

(A) is the natural mother of the principal alien or the spouse or child of the mother; or

(B) has acted in effect as the principal alien's mother, father, or next-of-kin or is the spouse or child of the alien who has acted in that capacity.

§ 4702. Validity and denial of visas

(a) VALIDITY.—An immigrant visa issued under this chapter is valid for one year.

(b) DENIAL OF VISA.—An immigrant visa may not be issued to an alien described in section 4701(b)(3) of this title unless the consular officer referred to in section 4701(b) of this title decides that the alien's relationship with the principal alien is similar to that which exists between close family members and the admission of the alien is necessary for humanitarian purposes or to ensure family unity.

§ 4703. Admission

(a) GENERAL.—Notwithstanding any numerical limitations specified in chapter 41 of this title, the Attorney General may admit an alien described in section 4701(b) of this title to the United States as an immigrant if the alien—

(1) is admissible as an immigrant; and

(2) is issued an immigrant visa and leaves Vietnam after March 21, 1988.

(b) NONAPPLICATION AND WAIVER.—When deciding on an alien's admissibility as an immigrant under this chapter—

(1) sections 6301 (a)(2)–(d) and 6306 (a)–(c) of this title do not apply; and

(2) the Attorney General, on the recommendation of a consular officer after an investigation by the consular officer, on an individual basis may waive any other provision of subchapter I of chapter 63 of this title (except sections 6309(a)(3), 6310(a)–(c), and 6311) in writing for the alien for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest.

§ 4704. Rights, privileges, status, and benefits

(a) RIGHTS, PRIVILEGES, AND STATUS.—The natural mother of the principal alien may not acquire any right, privilege, or status under this title because of that parentage after an alien described in section 4701(b)(3)(B) of this title is admitted to the United States.

(b) ELIGIBILITY FOR BENEFITS.—(1) An alien admitted (or awaiting admission) to the United States under this chapter is eligible for benefits under subchapter I of chapter 131 of this title to the same extent as an individual admitted (or awaiting admission) under section 5105 of this title.

(2) Paragraph (1) of this subsection applies to an individual who leaves Vietnam after October 1, 1988, and—

(A) is described in section 4701(b) of this section but is issued an immigrant visa—

(i) under section 4103 of this title; or

(ii) because the individual is an alien described in section 4102(d) of this title rather than an alien referred to in section 4102(a), (b), or (c) of this title; or

(B) would be described in section 4701(b) of this title if section 4701(b) also applied to principal aliens who were citizens of the United States.

§ 4705. Nonexclusive procedure for acquiring status

An alien eligible under this chapter to acquire the status of an alien lawfully admitted for permanent residence is not barred from seeking that status under any other provision of law under which the alien is eligible.

CHAPTER 49—MISCELLANEOUS

Sec.
4901. Eligibility for visa after departing the United States.
4902. Deposit of immigrant visa fees.

4901. Eligibility for visa after departing the United States

(a) GENERAL.—An alien who has been physically present in the United States is eligible to receive an immigrant visa within 90 days after departing the United States if the alien—

(1) was a lawful nonimmigrant at the time of the departure; or

(2)(A) is the spouse or unmarried child of an individual who at any time became lawfully admitted for temporary or permanent residence under chapter 93 of this title, section 210 of the Immigration and Nationality Act, or section 202 of the Immigration Reform and Control Act of 1986 (Public Law 99–603, 100 Stat. 3404);

(B) was the spouse or unmarried child of that individual on May 5, 1988;

(C) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(D) applied for benefits under section 301(a) of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5029).

(b) ENDING DATE.—This section ends on October 1, 1997.

§ 4902. Deposit of immigrant visa fees

Receipts received from an increase in the fee for an immigrant visa in effect on September 30, 1994, caused by processing an applicant's fingerprints shall be deposited in the Administration of Foreign Affairs Account as offsetting receipts and are available until expended.

PART C—REFUGEES

CHAPTER 51—ADMISSIONS

Sec.
5101. Definition.
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5104. Congressional consultation and hearings.
5105. Admissions.
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§ 5101. Definition

(a) APPROPRIATE CONSULTATION.—In this chapter, ''appropriate consultation'' means discussions in person between Cabinet-level representatives

of the President and members of the Committees on the Judiciary of the Senate and House of Representatives on refugee admissions and the allocation of refugee admissions that—

(1) review the worldwide refugee situation or an unforeseen emergency refugee situation and estimate possible United States participation in the situation;

(2) consider the reasons for believing that the proposed admissions are justified by humanitarian concerns or grave humanitarian concerns or otherwise are in the interest of the United States; and

(3) provide the members with—

(A) a description of the nature of the refugee situation;

(B) a description of the number and allocation of the refugees to be admitted and an analysis of conditions in the foreign countries from which they came;

(C) a description of the proposed plans and estimated cost of moving and resettling the refugees;

(D) an analysis of the anticipated social, economic, and demographic impact of the refugee admissions on the United States;

(E) a description of the extent to which other foreign countries will admit and assist in resettling the refugees;

(F) an analysis of the impact of United States participation in the resettlement of the refugees on the foreign policy interests of the United States; and

(G) additional information that may be appropriate or requested by the members.

(b) PROVIDING INFORMATION IN ADVANCE.—To the extent possible, information described in subsection (a)(3) of this section shall be provided at least 2 weeks before the discussions in person between the representatives of the President and the members.

§ 5102. Annual worldwide numerical limitations

(a) GENERAL.—Before the beginning of each fiscal year and after appropriate consultation, the President shall establish for the fiscal year the number of refugee admissions to the United States justified by humanitarian concerns or otherwise in the interest of the United States. For any fiscal year, not more than 1,000 refugees may be admitted under this subsection or granted asylum under section 5106 of this title following a decision under section 131(b) of this title.

(b) ALLOCATION OF ADMISSIONS.—After appropriate consultation, the President shall allocate admissions among refugees of special humanitarian concern to the United States.

(c) ENUMERATION OF NUMBER OF ALIENS GRANTED ASYLUM.—When establishing the number of refugee admissions under subsection (a) of this section, the President also shall enumerate the number of aliens granted asylum during the prior fiscal year.

§ 5103. Additional emergency numerical limitations

(a) ESTABLISHMENT OF NUMBER.—As provided in this section, the President may establish an additional number of refugee admissions to the United States for a succeeding period of not more than 12 months. The President may establish the additional number when the President decides, before the beginning of the period and after appropriate consultation, that—

(1) an unforeseen emergency refugee situation exists;

(2) the admission of certain refugees in response to the situation is justified by grave humanitarian concerns or otherwise is in the interest of the United States; and

(3) the admission of the refugees cannot be carried out under section 5102 of this title.

(b) ALLOCATION.—After appropriate consultation, the President shall allocate the admissions under subsection (a) of this section among refugees of special humanitarian concern to the United States.

§ 5104. Congressional consultation and hearings

(a) PRESIDENTIAL REPORTS AND DISCUSSIONS.—Before the beginning of each fiscal year, the President shall report to the Committees on the Judiciary of the Senate and House of Representatives on the foreseeable number of refugees who will need resettlement during the fiscal year and the anticipated allocation of refugee admissions during that year. The President shall provide for periodic discussions between representatives of the President and members of the Committees on—

(1) changes in the worldwide refugee situation;

(2) the progress of refugee admissions; and

(3) the possible need for changes in the allocation of admissions among refugees.

(b) PRINTING IN CONGRESSIONAL RECORD.—As soon as possible after representatives of the President initiate appropriate consultation on the number of refugee admissions under section 5102 or 5103 of this title, the Committees shall have the substance of the consultations printed in the Congressional Record.

(c) COMMITTEE HEARINGS.—After the President begins appropriate consultation before acting under section 5102 or 5103 of this title, each Committee shall hold a hearing to review the proposed action unless—

(1) public disclosure of the details of the action would jeopardize the lives or safety of individuals; and

(2) if an action under section 5103, the time and nature of the emergency refugee situation do not permit hearings.

§ 5105. Admissions

(a) AUTHORITY OF THE ATTORNEY GENERAL.—The Attorney General may admit a refugee under regulations the Attorney General prescribes and subject to the numerical limitations of sections 5102 and 5103 of this title. The Attorney General may admit the refugee when the refugee is—

(1) not resettled firmly in a foreign country;

(2) admissible (except as otherwise provided under subsections (d) and (e) of this section) as an immigrant under this title; and

(3) of special humanitarian concern to the United States.

(b) BURDEN OF PROOF.—An alien claiming refugee status has the burden of proving that the alien is entitled to that status.

(c) ADMISSION OF SPOUSES AND CHILDREN.—(1) The spouse or child (as defined in section 108(a) (1)–(5) of this title) of a refugee qualifying for admission under subsection (a) of this section is entitled to be admitted the same as the refugee if the spouse or child is—

(A) accompanying or following to join the refugee;

(B) not an individual referred to in section 131(a)(2) of this title;

(C) not admissible under subsection (a) of this section; and

(D) admissible (except as otherwise provided under subsections (d) and (e) of this section) as an immigrant under this title.

(2) The admission of the spouse or child shall be charged against the numerical limitation under which the refugee's admission is charged.

(d) NONAPPLICATION.—Sections 6301 (a)(2)–(d) and 6306 (a)–(c) of this title do not apply to an alien applying for admission under this section.

(e) WAIVERS.—(1) The Attorney General may waive subchapter I of chapter 63 of this title (except sections 6309(a)(3), 6310 (a)–(c), and 6311) for the alien—

(A) for humanitarian purposes;

(B) to ensure family unity; or

(C) when otherwise in the public interest.

(2) A waiver under paragraph (1) of this subsection shall be in writing and granted only after an investigation of the alien. The Attorney General shall report to Congress after the end of each fiscal year on the number of waivers granted in that fiscal year and a summary of the reasons for granting the waivers.

(f) CERTAIN CUBAN POLITICAL PRISONERS.—(1) In this subsection, "process" means accepting and reviewing an application and preparing nec-

essary documents and making appropriate decisions related to the application.

(2) Consistent with the procedure applicable to similar cases in other foreign countries, and except as necessary to ensure the orderly process of available applicants, consular officers and appropriate officers of the Immigration and Naturalization Service shall process an application for admission to the United States as a refugee from a Cuban national imprisoned for political reasons by the Cuban Government for any period of time after December 31, 1958.

(g) ENDING REFUGEE STATUS.—Under regulations the Attorney General prescribes, the Attorney General may end the refugee status of an alien and the spouse and child of the alien on finding that the alien was not a refugee at the time of the alien's admission.

§ 5106. Asylum

(a) AUTHORITY TO APPLY FOR ASYLUM.—(1) Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of the alien's status, may apply for asylum in accordance with this section or, where applicable, sections 6102(c)(1)(B) and 6105 of this title.

(2) Paragraph (1) of this subsection does not apply to an alien—

(A) if the Attorney General decides that the alien may be removed, under a bilateral or multilateral agreement, to a country (except the alien's country of nationality or, if the alien has no nationality, the country in which the alien last habitually resided) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a complete and fair procedure for deciding a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States;

(B) unless the alien demonstrates by clear and convincing evidence that the application has been filed within one year after the date of the alien's arrival in the United States; or

(C) if the alien has previously applied for asylum and the application has been denied.

(3) Notwithstanding paragraphs (2) (B) and (C) of this subsection, an application for asylum may be considered if the alien demonstrates to the satisfaction of the Attorney General the existence of—

(A) changed circumstances which materially affect the applicant's eligibility for asylum; or

(B) extraordinary circumstances related to the delay in filing an application within the period specified in paragraph (2)(B) of this subsection.

(4) No court may review a decision of the Attorney General under paragraph (2) or (3) of this subsection.

(b) CONDITIONS FOR GRANTING ASYLUM.—(1) The Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General decides that the alien is a refugee within the meaning of section 131 of this title.

(2) Paragraph (1) of this subsection does not apply to an alien if the Attorney General decides that—

(A) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) the alien, having been convicted by a final judgment of a particularly serious crime, is a danger to the community of the United States;

(C) there are serious reasons to believe that the alien has committed a serious nonpolitical crime outside the United States before the alien arrived in the United States;

(D) there are reasonable grounds to believe the alien is a danger to the security of the United States;

(E) the alien is inadmissible under section 6310(b)(2) (A)–(D) of this title or deportable under section 6508(b) of this title, unless, in the case only of an alien inadmissible under section 6310(b)(2)(D), the Attorney General decides that there are not reasonable grounds to believe that the alien is a danger to the security of the United States; or

(F) the alien was firmly resettled in another country prior to arriving in the United States.

(3) The Attorney General by regulation may establish additional limitations and conditions, consistent with this section, under which an alien is ineligible for asylum under paragraph (1) of this subsection.

(4)(A) For purposes of paragraph (2)(B) of this subsection, an alien who has been convicted of an aggravated felony is deemed to have been convicted of a particularly serious crime.

(B) The Attorney General by regulation may designate offenses that will be deemed to be a crime described in paragraph (2) (B) or (C) of this subsection.

(5) No court may review a decision of the Attorney General under paragraph (2)(E) of this subsection.

(c) GRANTING ASYLUM TO SPOUSES AND CHILDREN.—The spouse or child (as defined in section 108(a) (1)–(5) of this title) of an alien granted asylum under subsection (b) of this section may, if not otherwise eligible for asylum under subsection (b), be granted asylum under subsection (b) if the spouse or child is accompanying or following to join the alien.

(d) PROCEDURE.—(1) The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a) of this section. The procedure shall provide that—

(A) asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to establish any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(B) in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(C) in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed;

(D) any administrative appeal must be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge under section 6704 of this title, whichever is later; and

(E) for an applicant who, without prior authorization or in the absence of exceptional circumstances, does not appear for an interview or hearing, including a hearing under section 6704 of this title, the application may be dismissed or the applicant otherwise may be sanctioned for failing to appear.

(2) The Attorney General may require applicants to submit fingerprints and a photograph at the time and in the manner the Attorney General establishes by regulation.

(3) The Attorney General by regulation may provide for additional limitations or conditions, consistent with this title, on the consideration of an application for asylum.

(4) When an application for asylum is filed, the Attorney General shall—

(A) advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (5) of this subsection, of knowingly filing a frivolous application; and

(B) provide the alien a list of individuals (updated at least quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) If the Attorney General decides that an alien knowingly has made a frivolous application for asylum and has received the notice under paragraph (4)(A) of this subsection, the alien shall be ineligible permanently for any benefits under this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, and chapters 133 and 135), effective as of the date of a final decision on the application.

(6) This subsection does not create any substantive or procedural right or benefit that is legally enforceable by any party against the Federal Government or its departments, agencies, instrumentalities, or officers, or any other person.

(e) FEES.—The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 5107(b) of this title. The fees may not exceed the Attorney General's costs in adjudicating the applications. The Attorney General may provide for the assessment and payment of the fees over a period of time or by installments. This subsection does not—

(1) require the Attorney General to charge fees for adjudication services provided to asylum applicants; or

(2) limit the authority of the Attorney General to set adjudication and naturalization fees under section 903 of this title.

(f) EMPLOYMENT AUTHORIZATION.—An applicant for asylum is not entitled to employment authorization, but authorization may be provided under regulation by the Attorney General. An applicant who otherwise is not eligible for employment authorization may not be granted the authorization prior to 180 days after the date of filing the application for asylum.

(g) ASYLUM STATUS.—The Attorney General—

(1) may not remove or return an alien granted asylum under subsection (b) of this section to the alien's country of nationality or, if the alien has no nationality, the country in which the alien last habitually resided;

(2) must authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and

(3) may allow the alien to travel outside the United States with the prior consent of the Attorney General.

(h) TERMINATION OF ASYLUM.—(1) Asylum granted under subsection (b) of this section does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General decides that the alien—

(A) no longer meets the conditions described in subsection (b)(1) of this section because of a fundamental change in circumstances;

(B) meets a condition described in subsection (b)(2) of this section;

(C) may be removed, under a bilateral or multilateral agreement, to a country (except the alien's country of nationality or, if the alien has no nationality, the country in which the alien last habitually resided) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D) voluntarily has availed himself or herself of the protection of the alien's country of nationality or, if the alien has no nationality, the country in which the alien last habitually resided, by returning to the country with permanent resident status or the reasonable possibility of obtaining that status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) has acquired a new nationality and enjoys the protection of the country of the alien's new nationality.

(2) An alien described in paragraph (1) of this subsection is subject to any applicable grounds of inadmissibility or deportability under subchapter I of chapter 63 or subchapter I of chapter 65 of this title. The Attorney General shall direct the alien's removal or return as provided in sections 6704, 6715, and 6716 of this title.

(i) EXPEDITED REMOVAL FOR DENIED ASYLUM APPLICANTS.—(1) The Attorney General may provide for the expeditious adjudication of asylum claims and, unless an applicant for asylum remains in an otherwise valid nonimmigrant status, the expeditious removal of asylum applicants whose applications have been denied finally.

(2) Not more than $91,000,000 may be appropriated to the Attorney General for the fiscal year ending September 30, 1998, to carry out this subsection.

§ 5107. Adjustment of status

(a) INSPECTION AND EXAMINATION OF REFUGEES FOR ADMISSION AS IMMIGRANTS.—(1) An alien admitted as a refugee under section 5105 of this title and physically present in the United States for at least one year

shall return or be returned to the custody of the Commissioner of Immigration and Naturalization at the end of the year for inspection and examination for admission as an immigrant under sections 6102 and 6704 of this title if—

(A) the refugee's status as a refugee has not been ended by the Attorney General; and

(B) the refugee has not been lawfully admitted for permanent residence.

(2) A refugee found to be admissible (except as otherwise provided under subsections (d)(2) and (e) of this section) as an immigrant under this title at the time of the refugee's inspection and examination under paragraph (1) of this subsection shall be lawfully admitted for permanent residence as of the date of the refugee's arrival in the United States. Admission is without regard to the numerical limitations of this title.

(b) ALIENS GRANTED ASYLUM.—(1) Under regulations the Attorney General prescribes, not more than 10,000 of the refugee admissions authorized in a fiscal year under section 5102 of this title may be made available by the Attorney General to adjust the status of aliens granted asylum under section 5106 of this title to that of aliens lawfully admitted for permanent residence. The status of an alien may be adjusted when the alien—

(A) applies for the adjustment;

(B) has been physically present in the United States for at least one year after being granted asylum;

(C) continues to be a refugee within the meaning of section 131 of this title or a spouse or child of the refugee;

(D) is not resettled firmly in a foreign country; and

(E) is admissible (except as otherwise provided under subsections (d)(2) and (e) of this section) as an immigrant under this title at the time of examination for the adjustment.

(2) On approval of an application under paragraph (1) of this subsection, the Attorney General shall record the lawful admission for permanent residence of the alien as of the date one year before the date of approval.

(c) CERTAIN FORMER ASYLEES.—(1) Except as provided in paragraph (2) of this subsection and subsection (d)(1) of this section, subsection (b) of this section applies to an alien granted asylum before November 29, 1990 (even if asylum had been ended under section 5106 of this title) who—

(A) is no longer a refugee because of a change in circumstances in a foreign country; and

(B) was or would be qualified for adjustment of status under subsection (b) of this section on November 29, 1990, except for subsection (b)(1) (B) and (C) and the numerical limitation under subsection (b).

(2) The number of aliens who are natives of a foreign country who may adjust their status under paragraph (1) of this subsection in a fiscal year may not be more than the difference between the foreign country limitation established under section 4110(a) of this title and the number of aliens chargeable to the country in the fiscal year under section 4111 of this title.

(d) NONAPPLICATION.—(1) The numerical limitation of subsection (b) of this section does not apply to an alien described in subsection (c) of this section or to an alien who applied for adjustment of status under subsection (b) before June 2, 1990.

(2) Sections 6301 (a)–(d) and 6306 (a)–(c) of this title do not apply to an alien seeking adjustment of status under this section.

(e) WAIVER.—The Attorney General may waive subchapter I of chapter 63 of this title (except sections 6309(a)(3), 6310 (a)–(c), and 6311) for an alien—

(1) for humanitarian purposes;

(2) to ensure family unity; or

(3) when otherwise in the public interest.

PART D—ADMISSION AND REMOVAL

CHAPTER 61—INSPECTION AND ADMISSION

SUBCHAPTER I—GENERAL

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SUBCHAPTER I—GENERAL

§ 6101. Applicants for admission

(a) GENERAL.—An alien is deemed to be an applicant for admission if the alien—

(1) is present in the United States and has not been admitted; or

(2) arrives in the United States (whether or not at a designated port of arrival), including an alien who is brought to the United States after being interdicted in international or United States waters.

(b) STOWAWAYS.—(1) An arriving alien who is a stowaway—

(A) is not an applicant for admission;

(B) is not eligible to apply for admission or to be admitted; and

(C) is not eligible for a removal proceeding under section 6704 of this title.

(2) On inspection by an immigration officer, an arriving alien who is a stowaway shall be ordered removed. If the alien indicates an intention to apply for asylum under section 5106 of this title or a fear of persecution, the officer shall refer the alien for an asylum interview under section 6105 of this title. A stowaway may apply for asylum only if found to have a credible fear of persecution under section 6105.

(c) WITHDRAWAL OF APPLICATION FOR ADMISSION.—At any time, the Attorney General may permit an alien applying for admission to withdraw the application for admission and to depart immediately from the United States.

§ 6102. Inspection

(a) GENERAL.—An alien (including an alien crewmember) who is an applicant for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by an immigration officer.

(b) STATEMENTS.—An applicant for admission may be required to state under oath any information sought by an immigration officer about the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay, whether the applicant intends to remain permanently or become a citizen of the United States, and whether the applicant is inadmissible.

(c) INSPECTION OF ARRIVING ALIENS AND CERTAIN OTHER ALIENS NOT ADMITTED OR PAROLED.—(1) If an immigration officer decides that an alien (except an alien described in paragraph (3) of this subsection) who is arriving in the United States or is described in paragraph (2) of this subsection is inadmissible under section 6301(a) or 6303 (a) or (b) of this title—

(A) the officer shall order the alien removed from the United States without further hearing or review; or

(B) if the alien indicates an intention to apply for asylum under section 5106 of this title or a fear of persecution, the officer shall refer the alien for an asylum interview under section 6105 of this title.

(2)(A) The Attorney General may apply paragraph (1) of this subsection to any alien described in subparagraph (B) of this paragraph as designated by the Attorney General. A designation under this paragraph is in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(B) An alien described in this subparagraph is an alien who—

(i) is not described in paragraph (3) of this subsection;

(ii) has not been admitted or paroled into the United States; and

(iii) has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately before the date of the decision of inadmissibility under this subsection.

(3) This subsection does not apply to an alien who—

(A) is a native or citizen of a country in the Western Hemisphere with whose government the Federal Government does not have full diplomatic relations; and

(B) arrives by aircraft at a port of entry.

(d) INSPECTION OF OTHER ALIENS.—(1) Subject to paragraphs (2) and (3) of this subsection, if an immigration officer decides that an alien who is an applicant for admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 6704 of this title.

(2) Paragraph (1) of this subsection does not apply to an alien—

(A) who is a stowaway;

(B) who is a crewmember; or

(C) to whom subsection (c) of this section applies.

(3) If an alien described in paragraph (1) of this subsection arrives on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 6704 of this title.

(e) CHALLENGE OF DECISION.—The decision of the immigration officer conducting the inspection, if favorable to the admission of an alien, is subject to challenge by any other immigration officer. A challenge operates to take the alien before an immigration judge for a proceeding under section 6704 of this title.

§ 6103. Presentation of documentation

(a) IMMIGRANT ARRIVALS.—An alien arriving in the United States as an immigrant shall surrender the alien's immigrant visa to the immigration officer at the port of entry. The immigration officer shall endorse on the visa—

(1) the date and the port of arrival;

(2) the identity of the vessel, aircraft, or other means of transportation; and

(3) any other information required by regulation.

(b) NONIMMIGRANT ARRIVALS.—(1) Except as provided in paragraph (2) of this subsection, an alien arriving in the United States as a nonimmigrant shall present or surrender to the immigration officer at the port of entry any documentation required by regulation.

(2) An alien arriving in the United States as a nonimmigrant crewmember and in possession of a passport and no other documentation may be admitted until it is practicable to issue documentation to the alien if—

(A) the name of the crewmember is on the crew list of the vessel or aircraft on which the crewmember arrives;

(B) a consular officer has visaed the crew list (but the consular officer may exclude a crewmember from the crew list visa); and

(C) the alien is otherwise admissible.

(c) RECORDS OF ADMISSION.—The Attorney General shall file—

(1) as a record of an alien's admission, an immigrant visa surrendered by the alien under subsection (a) of this section; and

(2) a record of admission to the United States that the Attorney General considers necessary to enforce the immigration laws, on the admission of—

(A) a returning resident immigrant under section 4311(b) of this title; or

(B) a nonimmigrant.

§ 6104. Physical and mental examinations

(a) GENERAL.—An alien (including an alien crewmember) arriving in the United States shall be detained for a sufficient time for observation and a physical and mental examination under this section to determine whether the alien is inadmissible under section 6304 of this title.

(b) CONDUCT OF EXAMINATION.—(1) An examination under this section shall be conducted under administrative regulations prescribed by the Attorney General and medical regulations prescribed by the Secretary of Health and Human Services.

(2)(A) The examination shall be conducted by a medical officer of the Public Health Service. However, if a medical officer of the Public Health Service is not available, the Attorney General may employ, on terms the Attorney General prescribes, a civil surgeon with at least 4 years of professional experience.

(B) A physician of the armed forces of the United States with at least 4 years of professional experience is deemed to be a civil surgeon under subparagraph (A) of this paragraph if the alien to be examined is a special immigrant as defined in section 133(a)(13) of this title.

(c) OFFICERS TRAINED IN MENTAL EXAMINATIONS.—Medical officers of the Public Health Service, specially trained in diagnosing mental disorders, shall be assigned to ports of entry designated by the Attorney General. The Attorney General shall provide them with interpreters and suitable facilities for the detention and examination of arriving aliens suspected of being inadmissible under section 6304 of this title.

(d) CERTIFICATION OF MEDICAL CONDITIONS.—The physician conducting the examination shall certify, for the information of immigration officers and immigration judges, any observation by the physician that the alien has a condition described in section 6304 of this title. If the physician determines that the alien is inadmissible, is helpless from sickness, physical or mental disability, or infancy, and is accompanied by another alien whose protection or guardianship may be required, the physician may certify those facts for purposes of applying section 6305 of this title.

(e) APPEAL OF CERTIFICATION.—An alien certified under this section as having a condition described in section 6304 of this title may appeal the certification to a board of medical officers of the Public Health Service convened by the Secretary. The alien may present before the board, at the alien's expense, one expert medical witness.

§ 6105. Asylum interviews

(a) DEFINITIONS.—In this section—

(1) ''asylum officer'' means an immigration officer who—

(A) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 5106 of this title; and

(B) is supervised by an officer who meets the condition described in subclause (A) of this clause and has had substantial experience adjudicating asylum applications.

(2) ''credible fear of persecution'' means a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and other facts known to the officer, that the alien could establish eligibility for asylum under section 5106 of this title.

(b) CONDUCT OF INTERVIEW.—An asylum officer shall conduct an interview of an alien referred for an interview under this section. The interview may be conducted at a port of entry or other place designated by the Attorney General.

(c) CREDIBLE FEAR OF PERSECUTION.—If the asylum officer decides that the alien has a credible fear of persecution, the alien shall be detained for further consideration of the application for asylum.

(d) NO CREDIBLE FEAR OF PERSECUTION.—(1) Subject to paragraph (3) of this subsection, if the asylum officer decides that the alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(2) The officer shall prepare a written record of a decision under paragraph (1) of this subsection. The record shall include a summary of the ma-

terial facts as stated by the applicant, any additional facts relied on by the officer, and the officer's analysis of why, in the light of those facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(3) The Attorney General shall provide by regulation for prompt review by an immigration judge, on the alien's request, of a decision under paragraph (1) of this subsection that the alien does not have a credible fear of persecution. The review shall include an opportunity for the alien to be heard and questioned by the immigration judge, in person or by telephone or video connection. Review shall be concluded as expeditiously as possible, and to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the decision under paragraph (1).

(4) An alien subject to the procedures under this subsection shall be detained pending a final decision of credible fear of persecution and, if found not to have such a fear, until removed.

(e) INFORMATION AND CONSULTATION ABOUT INTERVIEWS.—(1) The Attorney General shall provide information about the asylum interview described in this section to aliens who may be eligible.

(2) Under regulations prescribed by the Attorney General, an alien who is eligible for an asylum interview may consult with one or more individuals of the alien's choosing before the interview and any review of the interview. The consultation shall be at no expense to the Federal Government and may not unreasonably delay the process.

§ 6106. Limitations on review

(a) LIMITATION ON ADMINISTRATIVE REVIEW.—Except as provided in section 6105(d)(3) of this title, a removal order entered under section 6102(c)(1)(A) or 6105(d)(1) of this title is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of an order under section 6102(c)(1)(A) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, after having been warned of the penalties for falsely making such a claim, to have been—

(1) lawfully admitted for permanent residence;

(2) admitted as a refugee under section 5105 of this title; or

(3) granted asylum under section 5106 of this title.

(b) LIMIT ON COLLATERAL ATTACK.—In an action brought against an alien under section 10148(b) or 10149(a) of this title, the court does not have jurisdiction to hear any claim attacking the validity of an order of removal entered under section 6102(c)(1)(A) or 6105(d) of this title.

§ 6107. Aliens inadmissible on security and related grounds

(a) ACTION BY IMMIGRATION OFFICER.—If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under section 6310 (a) (1)–(3), (b), or (c) of this title, the officer or judge shall—

(1) order the alien removed, subject to review under subsection (b) of this section;

(2) report the order of removal to the Attorney General; and

(3) not conduct any further inquiry or hearing until ordered by the Attorney General.

(b) REVIEW BY ATTORNEY GENERAL.—(1) The Attorney General shall review orders issued under subsection (a) of this section.

(2) The Attorney General may order the alien removed without further inquiry or hearing by an immigration judge if the Attorney General—

(A) is satisfied on the basis of confidential information that the alien is inadmissible under a provision referred to in subsection (a) of this section; and

(B) after consulting with appropriate security agencies of the Federal Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security.

(3) If the Attorney General does not order the removal of the alien under paragraph (2) of this subsection, the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(c) SUBMISSION OF STATEMENT AND INFORMATION.—The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

§ 6108. Presidential authority to limit admission of aliens

(a) GENERAL.—When the President finds that the admission of aliens or a class of aliens into the United States would be detrimental to the interests of the United States, the President, by proclamation, may suspend the admission of all aliens or a class of aliens or impose restrictions on their admission, for any period the President considers necessary.

(b) UNITED NATIONS REPRESENTATIVES ENGAGED IN ESPIONAGE.—The President shall use the authority of the President, including the authority contained in section 6 of the Joint Resolution of August 4, 1947 (known as the United Nations Headquarters Agreement Act) (22 U.S.C. 287 note), to deny admission of an individual to the United States as a representative to the United Nations if the President determines that the individual has been found to have been engaged in espionage activities directed against the United States or its allies and may pose a threat to the security interests of the United States. The President may waive this subsection if the Presi-

dent decides, and notifies Congress, that the waiver is in the security interests of the United States.

(c) IMMEDIATE RELATIVES AND BUSINESS PARTNERS OF DRUG TRAFFICKERS.—The President shall take all reasonable steps provided by law to ensure that the immediate relatives of an individual described in section 487(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291f(a)), and the business partners of an individual or entity described in section 487(a), are not admitted to the United States.

§ 6109. Suspension of admission of aliens transported on certain airlines

If the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General related to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in that detection), the Attorney General may suspend the admission of some or all aliens transported to the United States by that airline.

SUBCHAPTER II—ADMISSION OF CERTAIN ALIENS

§ 6121. Parole

(a) GENERAL.—Except as provided in section 2305(c) of this title, the Attorney General, on a case-by-case basis for urgent humanitarian reasons or significant public benefit, may parole temporarily into the United States an alien applying for admission. However, if the alien is a refugee, the Attorney General may parole the alien only if the Attorney General finds compelling reasons in the public interest requiring the alien to be paroled instead of admitted as a refugee. Parole of an alien under this section is—

(1) subject to conditions the Attorney General may prescribe; and

(2) not an admission to the United States.

(b) END OF PAROLE.—When the Attorney General is of the opinion that the purposes of the parole have been served, the alien immediately shall return or be returned to the custody from which the alien was paroled. Thereafter, the alien's application for admission shall continue to be considered in the same manner as the application of any other alien for admission.

§ 6122. Temporary admission of inadmissible nonimmigrants

(a) VISAS.—An alien applying for a nonimmigrant visa who a consular officer believes is ineligible for a visa under subchapter I of chapter 63 of this title may be issued a nonimmigrant visa and admitted temporarily as a nonimmigrant if the Attorney General approves a recommendation by the officer or the Secretary of State that the alien be admitted temporarily despite the alien's inadmissibility.

(b) ADMISSIONS.—An alien inadmissible under subchapter I of chapter 63 of this title may be admitted temporarily as a nonimmigrant if the alien is—

(1) in possession of appropriate documentation; or

(2) granted a waiver of the documentation requirements.

(c) CONDITIONS TO CONTROL ADMISSION AND RETURN.—The Attorney General shall prescribe conditions, including the filing of a bond as necessary, to control the admission and return of aliens applying for admission under this section.

(d) NONAPPLICATION.—Subsections (a) and (b) of this section do not apply to an alien who is inadmissible under section 6310(a) (1), (3), or (4) or (c) or 6311 of this title.

§ 6123. Accredited officials of foreign governments

On a reciprocal basis, an accredited official of a government of a foreign country, and the official's immediate family, attendants, servants, and personal employees, may be admitted for immediate and continuous transit through the United States without regard to subchapter I of chapter 63 of this title (except sections 6301(a)(1) and 6310 (a)–(c)).

§ 6124. Alien witnesses

(a) WAIVERS.—The Attorney General may waive the requirements of section 2121(a) of this title and the grounds of inadmissibility in subchapter I of chapter 63 of this title (except section 6311) for an alien applying as a nonimmigrant classified under section 2326 of this title if the Attorney General considers it in the national interest to do so.

(b) REMOVAL FOR NONDISCLOSURE OR SUBSEQUENT CONDUCT.—This section does not prevent initiation of a removal proceeding against an alien admitted as a nonimmigrant classified under section 2326 of this title, for—

(1) conduct or a condition that was not disclosed to the Attorney General before the alien's admission as a nonimmigrant classified under that section; or

(2) conduct committed after the alien's admission to the United States.

CHAPTER 63—INADMISSIBILITY

SUBCHAPTER I—GROUNDS

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SUBCHAPTER II—RELATED PROVISIONS

6331. Sponsor's affidavit of support.

SUBCHAPTER I—GROUNDS

§ 6301. Lack of documentation

(a) GENERAL.—An alien is ineligible for admission to the United States if the alien is seeking admission as—

(1) a nonimmigrant and does not satisfy the documentation requirements of section 2121 of this title; or

(2) an immigrant and does not satisfy the documentation requirements of section 4311 of this title.

(b) LABOR CERTIFICATIONS.—An alien is ineligible for a visa or admission to the United States if the alien is seeking admission as an immigrant to perform skilled or unskilled labor and the Secretary of Labor has not issued the certification required by section 4104(g)(2)(A) of this title.

(c) GRADUATES OF NON-ACCREDITED MEDICAL SCHOOLS.—An alien is ineligible for a visa or admission to the United States if the alien—

(1) is seeking admission as an immigrant principally to perform services as a member of the medical profession;

(2) is a graduate of a medical school not accredited by an entity approved by the Secretary of Education; and

(3) has not satisfied the requirements of section 4104(g)(1) of this title.

(d) UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.—An alien is ineligible for a visa or admission to the United States if the alien—

(1) is seeking admission to perform labor as a health-care worker other than as a physician; and

(2) has not satisfied the requirements of section 4104(g)(3) of this title.

§ 6302. Present without admission or parole

(a) GENERAL.—An alien is ineligible for a visa or admission to the United States if the alien—

(1) is present in the United States without having been admitted or paroled; or

(2) arrives in the United States at a time or place not designated by the Attorney General.

(b) EXCEPTION FOR BATTERED WOMEN AND CHILDREN.—Subsection (a) of this section does not apply to an alien who demonstrates that—

(1) the alien qualifies for immigrant status under section 4301(a)(3), (4), (6), or (7) of this title;

(2)(A) the alien has been battered or subjected to extreme cruelty by—

(i) a spouse or parent; or

(ii) a member of the spouse's or parent's family residing in the same household as the alien, with the spouse or parent consenting to or acquiescing in the battery or cruelty; or

(B) the alien's child has been battered or subjected to extreme cruelty by—

(i) a spouse or parent of the alien, without the alien actively participating in the battery or cruelty; or

(ii) a member of the spouse's or parent's family residing in the same household as the alien, with the spouse or parent consenting to or acquiescing in the battery or cruelty, and without the alien actively participating in the battery or cruelty; and

(3) a substantial connection exists between the battery or cruelty described in clause (1) or (2) of this subsection and the alien's unlawful entry into the United States.

(c) NONAPPLICATION.—The requirements of subsection (b)(2) and (3) of this section do not apply to an alien who demonstrates that the alien first arrived in the United States before April 1, 1997.

§ 6303. Fraud and misrepresentation

(a) GENERAL.—(1) An alien is ineligible for a visa or admission to the United States if the alien, by fraud or willful misrepresentation of a material fact, obtained, or attempted or attempts to obtain, a visa, other documentation, admission to the United States, or another benefit under this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, and chapters 133 and 135).

(2) The Attorney General may waive paragraph (1) of this subsection for an immigrant if—

(A) the immigrant is the spouse, son, or daughter of a citizen of the United States or of an alien lawfully admitted for permanent residence; and

(B) the Attorney General is satisfied that refusal of admission of the immigrant would result in extreme hardship to the citizen or lawfully resident spouse or parent of the immigrant.

(3) No court has jurisdiction to review a decision of the Attorney General about a waiver under paragraph (2) of this subsection.

(b) FALSE CLAIM OF CITIZENSHIP.—An alien is ineligible for a visa or admission to the United States if the alien falsely claims, or has falsely claimed, to be a citizen of the United States for any purpose or benefit under any federal or state law.

(c) SUBJECT TO CIVIL PENALTY FOR DOCUMENT FRAUD.—(1) An alien is ineligible for a visa or admission to the United States if the alien is the subject of a final order for violation of section 10125(b) of this title.

(2) The Attorney General may waive paragraph (1) of this subsection for humanitarian purposes or to ensure family unity if—

(A) the alien—

(i) is lawfully admitted for permanent residence, proceeded temporarily abroad voluntarily and not under an order of deportation or removal, and is otherwise admissible to the United States as a returning resident under section 4311(b) of this title; or

(ii) is seeking admission or readjustment of status under section 4102(d)(6) or (7) or 4103 of this title;

(B) a previous civil monetary penalty was not imposed against the alien under section 10125 of this title; and

(C) the offense was committed only to assist, aid, or support the alien's spouse or child (and no other individual).

(3) No court has jurisdiction to review a decision of the Attorney General about a waiver under paragraph (2) of this subsection.

§ 6304. Health

(a) COMMUNICABLE DISEASES.—(1) An alien is ineligible for a visa or admission to the United States if the alien is found, under regulations prescribed by the Secretary of Health and Human Services, to have a communicable disease of public health significance or to be infected with the etiologic agent for acquired immune deficiency syndrome.

(2)(A) The Attorney General may waive paragraph (1) of this subsection for an alien who—

(i) is the spouse, unmarried son, unmarried daughter, or adopted child of a citizen of the United States, of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa; or

(ii) has a son or daughter who is a citizen of the United States, an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa.

(B) A waiver under this paragraph is subject to any conditions, including the filing of a bond, that the Attorney General may prescribe by regulation after consultation with the Secretary.

(b) FAILURE TO BE VACCINATED.—(1) An alien is ineligible for a visa or admission to the United States if the alien—

(A) is seeking admission as an immigrant or adjustment of status to the status of an alien lawfully admitted for permanent residence; and

(B) has failed to present documentation of having received—

(i) vaccination against vaccine-preventable diseases, including at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B, and hepatitis B; and

(ii) any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices.

(2) The Attorney General may waive paragraph (1) of this subsection for an alien if—

(A) the alien receives vaccination against the vaccine-preventable diseases for which the alien has failed to present documentation of previous vaccination;

(B) a civil surgeon, medical officer, or panel physician (as those terms are defined by section 34.2 of title 42 of the Code of Federal Regulations) certifies, under regulations the Secretary may prescribe, that vaccination of the alien would not be medically appropriate; or

(C) under circumstances the Attorney General provides by regulation, the requirement of a vaccination would be contrary to the alien's religious beliefs or moral convictions.

(c) PHYSICAL OR MENTAL DISORDERS.—(1) An alien is ineligible for a visa or admission to the United States if the alien is found, under regulations prescribed by the Secretary in consultation with the Attorney General—

(A) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(B) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior.

(2) The Attorney General may waive paragraph (1) of this subsection for any alien. A waiver under this paragraph is subject to any conditions, including the filing of a bond, that the Attorney General may prescribe by regulation after consultation with the Secretary.

(d) DRUG ABUSERS OR ADDICTS.—An alien is ineligible for a visa or admission to the United States if the alien is found, under regulations prescribed by the Secretary, to be a drug abuser or addict.

§ 6305. Aliens accompanying aliens who are inadmissible for health or infancy

An alien is ineligible for a visa or admission to the United States if—

(1) the alien is accompanying another alien who is inadmissible and who is certified to be helpless from sickness, physical or mental disability, or infancy under section 6104(d) of this title; and

(2) the alien's protection or guardianship is required by the alien who is certified to be helpless as described in clause (1) of this subsection.

§ 6306. Public charges

(a) GENERAL.—(1) An alien is ineligible for a visa or admission to the United States if, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, the alien is likely at any time to become a public charge.

(2)(A) In determining whether an alien is likely to become a public charge, the consular officer or the Attorney General shall consider, at a minimum, the alien's—

(i) age;

(ii) health;

(iii) family status;

(iv) assets, resources, and financial status; and

(v) education and skills.

(B) In addition to the factors in subparagraph (A) of this paragraph, the consular officer or the Attorney General may also consider any affidavit of support under section 6331 of this title.

(b) FAMILY-SPONSORED IMMIGRANTS.—An alien seeking admission or adjustment of status under a visa number issued under section 4102(d) (6), (7), or (8) or 4103 of this title is ineligible for a visa or admission under subsection (a) of this section unless—

(1) the alien has obtained—

(A) status as a spouse or child of a United States citizen under section 4301(a) (2), (3), or (4) of this title; or

(B) classification under section 4301(a)(6) or (7) of this title; or

(2) the person petitioning for the alien's admission (including any additional sponsor required under section 6331(b)(5) of this title) has executed an affidavit of support described in section 6331 for the alien.

(c) CERTAIN EMPLOYMENT-BASED IMMIGRANTS.—An alien seeking admission or adjustment of status under a visa number issued under section 4104 of this title based on a classification petition filed by a relative of the alien (or by an entity in which the relative has a significant ownership interest) is ineligible for a visa or admission under subsection (a) of this section unless the relative has executed an affidavit of support described in section 6331 of this title for the alien.

(d) ADMISSION ON BOND.—(1) The Attorney General may admit an alien who is ineligible for a visa or admission under subsection (a) of this section if—

(A) the alien is otherwise admissible and files a bond or undertaking approved by the Attorney General; and

(B) the requirements for an affidavit of support and the attribution of sponsor's income and resources under section 6331 of this title are met.

(2) A bond or undertaking under this subsection shall—

(A) be in an amount and contain conditions the Attorney General prescribes; and

(B) be for the benefit of the United States, States, territories and possessions of the United States, and political subdivisions, holding them harmless against the alien's becoming a public charge.

(3) When the alien permanently departs from the United States, is naturalized, or dies, the bond terminates and the security held to secure performance, except to the extent forfeited for a violation of the bond, shall be returned to the person providing it or to the person's legal representative.

(4) The Attorney General may bring a civil action on the bond in the name of the United States for the benefit of the United States or of a State, territory, possession, or political subdivision in which the alien becomes a public charge, regardless of whether a demand for payment of public expenses has been made.

§ 6307. Stowaways

An alien who is a stowaway is ineligible for a visa or admission to the United States.

§ 6308. Encouraging others to enter illegally

(a) GENERAL.—An alien is ineligible for a visa or admission to the United States if the alien at any time knowingly encouraged, induced, or assisted another alien to enter or attempt to enter the United States in violation of law.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to an alien who—

(1) is an eligible immigrant under section 301(b) of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5029);

(2) was physically present in the United States on May 5, 1988;

(3) is seeking—

(A) admission as an immediate relative;

(B) admission under section 4103(c) of this title (including under section 112 of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 4987)); or

(C) benefits under section 301(a) of that Act (104 Stat. 5029); and

(4) before May 5, 1988, encouraged, induced, or assisted only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(c) WAIVERS.—The Attorney General may waive subsection (a) of this section for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest, for an alien who—

(1)(A) is lawfully admitted for permanent residence, proceeded temporarily abroad voluntarily and not under an order of removal, and is otherwise admissible as a returning resident under section 4311(b) of this title; or

(B) is seeking admission or adjustment of status as an immediate relative or immigrant under section 4103 (b), (c), or (d) of this title; and

(2) has encouraged, induced, or assisted only an individual who at the time of that action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

§ 6309. Criminal and immoral acts

(a) GENERAL.—Each of the following aliens is ineligible for a visa or admission to the United States:

(1) An alien who has been convicted of, admits having committed, or admits having committed acts that are the essential elements of, an offense involving moral turpitude (except a purely political offense) or an attempt or conspiracy to commit such an offense, but this clause does not apply to an alien who has committed only one offense if—

(A) the alien committed the offense when less than 18 years of age, and committed the offense and was released from any confinement to a correctional institution imposed for the offense more than 5 years before applying for a visa or other documentation and for admission; or

(B) the maximum imprisonment for the offense was not more than one year and the alien was not sentenced to more than 6

months, regardless of the extent to which the sentence was ultimately executed.

(2) An alien who has been convicted of, admits having committed, or admits having committed acts that are the essential elements of, a violation of, or an attempt or conspiracy to violate, a law or regulation of a State, the United States, or a foreign country related to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(3) An alien who a consular officer or an immigration officer knows or reasonably believes is or has been—

(A) unlawfully trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

(B) knowingly assisting, conspiring, or colluding with others in unlawfully trafficking in such a controlled substance.

(4) An alien who has been convicted of at least 2 offenses (except purely political offenses) for which the total sentences to confinement were at least 5 years, regardless of whether—

(A) the convictions were in a single trial;

(B) the offenses arose from a single scheme of misconduct; or

(C) the offenses involved moral turpitude.

(5) An alien who—

(A) is coming to the United States only, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of applying for a visa, admission, or adjustment of status;

(B)(i) procures or attempts to procure individuals for prostitution;

(ii) within that 10-year period, procured or attempted to procure or to import individuals for prostitution; or

(iii) receives or, within that 10-year period, received any part of the proceeds of prostitution; or

(C) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution.

(6) An alien who is coming to the United States to practice polygamy.

(7) An alien—

(A) who has committed in the United States at any time—

(i) a felony;

(ii) a crime of violence (as defined in section 16 of title 18); or

(iii) an offense of reckless driving or driving while intoxicated or under the influence of alcohol or a prohibited substance if the offense involved personal injury to another;

(B) for whom immunity from criminal jurisdiction was exercised for that offense;

(C) who as a consequence of the offense and exercise of immunity has left the United States; and

(D) who subsequently has not submitted completely to the jurisdiction of the court in the United States having jurisdiction of that offense.

(8) An alien who at any time has voted in violation of any federal, state, or local constitutional provision, statute, ordinance, or regulation.

(b) WAIVERS.—(1) Except as provided in paragraph (2) of this subsection, the Attorney General may waive subsection (a) (1), (4), (5), or (7) of this section, or subsection (a)(2) of this section for a single offense of simple possession of not more than 30 grams of marijuana, for an immigrant if—

(A)(i) the Attorney General is satisfied that—

(I) the immigrant is inadmissible only under subsection (a)(5)(A) or (B) of this section or the activities for which the immigrant is inadmissible occurred more than 15 years before the date of the immigrant's application for a visa, admission, or adjustment of status;

(II) the immigrant's admission would not be contrary to the welfare, safety, or security of the United States; and

(III) the immigrant has been rehabilitated; or

(ii) the immigrant is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted for permanent residence and the Attorney General is satisfied that the immigrant's inadmissibility would result in extreme hardship to the citizen or to the alien lawfully admitted for permanent residence; and

(B) the Attorney General consents (subject to conditions and procedures the Attorney General may prescribe by regulation) to the immigrant's applying or reapplying for a visa, admission, or adjustment of status.

(2) A waiver may not be granted under this subsection for an immigrant who—

(A) has been convicted of, or has admitted committing acts that constitute, murder or a criminal act involving torture or an attempt or conspiracy to commit murder or a criminal act involving torture; or

(B) previously has been lawfully admitted for permanent residence if the immigrant—

(i) has been convicted of an aggravated felony after the date of that admission; or

(ii) has not resided lawfully and continuously in the United States for at least 7 years immediately before the date of initiation of a proceeding to remove the alien from the United States.

(3) No court has jurisdiction to review a decision of the Attorney General about a waiver under this subsection.

§ 6310. National security

(a) GENERAL.—An alien is ineligible for a visa or admission to the United States if a consular officer or the Attorney General knows or reasonably believes that the alien seeks admission to engage only, principally, or incidentally in—

(1) an activity to violate a law of the United States related to espionage or sabotage;

(2) an activity to violate or evade a law prohibiting the export from the United States of goods, technology, or sensitive information;

(3) an activity a purpose of which is to oppose, control, or overthrow the Federal Government by force, violence, or other unlawful means; or

(4) any other unlawful activity.

(b) TERRORIST ACTIVITIES.—(1) In this subsection—

(A) ''engage in terrorist activity'' means to commit, in an individual capacity or as a member of an organization, a terrorist activity or an act that the actor knows or reasonably should know gives material support to an individual, organization, or government in conducting a terrorist activity at any time, including—

(i) preparing or planning a terrorist activity;

(ii) gathering information on potential targets for terrorist activity;

(iii) providing any type of material support, including a safe house, transportation, communications, money, false documentation or identification, weapons, explosives, or training, to an individual the actor knows or reasonably should know has committed or plans to commit a terrorist activity;

(iv) soliciting money or any other thing of value for a terrorist activity or a terrorist organization; or

(v) soliciting an individual for membership in a terrorist organization or terrorist government or to engage in a terrorist activity.

(B) ''representative'' means an officer, official, or spokesperson of an organization, and a person who directs, counsels, commands, or induces an organization or its members to engage in terrorist activity.

(C) ''terrorist activity'' means an activity that is unlawful under the laws of the place where it is committed or that, if committed in the United States, would be unlawful under the laws of the United States or any State, and that involves—

(i) highjacking or sabotaging a vessel, aircraft, vehicle, or other conveyance;

(ii) seizing or detaining, and threatening to kill, injure, or continue to detain, another individual to compel a third person (including a governmental entity) to do or abstain from doing an act as an explicit or implicit condition for the release of the individual seized or detained;

(iii) a violent attack on an internationally protected person (as defined in section 1116(b)(4) of title 18) or on the liberty of such a person;

(iv) an assassination;

(v) the use, with intent to endanger the safety of an individual or to cause substantial damage to property, of a biological agent, chemical agent, nuclear weapon or device, or, except for mere personal monetary gain, an explosive or firearm; or

(vi) a threat, attempt, or conspiracy to do an activity described in this paragraph.

(2) An alien is ineligible for a visa or admission to the United States if—

(A) the alien has engaged in a terrorist activity;

(B) a consular officer or the Attorney General knows or reasonably believes that the alien is engaged, or is likely to engage after admission, in terrorist activity;

(C) the alien, in circumstances indicating an intention to cause death or serious bodily harm, has at any time incited terrorist activity;

(D) the alien is a representative of a foreign terrorist organization (as designated by the Secretary of State under section 219 of the Immigration and Nationality Act); or

(E) the alien is a member of a foreign terrorist organization (as designated by the Secretary under section 219 of the Immigration and Nationality Act) that the alien knows or should have known is a terrorist organization.

(3) An alien who is an officer, official, representative, or spokesperson of the Palestine Liberation Organization is deemed under paragraph (1) of this subsection to be engaged in terrorist activity.

(c) FOREIGN POLICY.—(1) An alien is ineligible for a visa or admission to the United States if the Secretary of State reasonably believes that the alien's admission or proposed activities in the United States would have potentially serious adverse foreign policy consequences for the United States.

(2) An alien who is an official of a government of a foreign country or a purported government, or who is a candidate for election to a government office of a foreign country during the period immediately before the election for that office, may not be considered inadmissible or subject to restrictions or conditions on entry under paragraph (1) of this subsection only because of the alien's past, current, or expected beliefs, statements, or associations, if the beliefs, statements, or associations would be lawful in the United States.

(3) An alien not described in paragraph (2) of this subsection may not be considered inadmissible or subject to restrictions or conditions on entry under paragraph (1) of this subsection because of the alien's past, current, or expected beliefs, statements, or associations, if the beliefs, statements, or associations would be lawful in the United States, unless the Secretary personally decides that the alien's admission would compromise a compelling foreign policy interest of the United States.

(4) If the Secretary decides under paragraph (3) of this subsection that an alien's admission would compromise a compelling foreign policy interest of the United States, the Secretary shall give timely notice of the alien's identity and the reasons for the decision to the chairmen of the Committees on the Judiciary and International Relations of the House of Representatives and the Committees on the Judiciary and Foreign Relations of the Senate.

(d) MEMBERSHIP IN TOTALITARIAN PARTY.—(1) An immigrant is ineligible for a visa or admission to the United States if the immigrant is or has been a member of or affiliated with the Communist or any other domestic or foreign totalitarian party, including a subdivision or affiliate of that party.

(2) Paragraph (1) of this subsection does not apply to an immigrant because of membership or affiliation if the immigrant satisfies the consular officer when applying for a visa, or the Attorney General when applying for admission, that the membership or affiliation is or was—

(A) involuntary;

(B) only before the alien's 16th birthday;

(C) only by operation of law; or

(D) only to obtain employment, food rations, or other essentials of living and the membership or affiliation is or was necessary to obtain the employment, rations, or essentials.

(3) Paragraph (1) of this subsection does not apply to an immigrant because of membership or affiliation if the immigrant satisfies the consular officer when applying for a visa, or the Attorney General when applying for admission, that—

(A) the membership or affiliation ended at least—

(i) 2 years before the date of applying; or

(ii) 5 years before the date of applying, if the membership or affiliation was with the party controlling the government of a foreign country that is a totalitarian dictatorship as of that date; and

(B) the immigrant is not a threat to the security of the United States.

(4) The Attorney General may waive paragraph (1) of this subsection for an immigrant for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest, if the immigrant—

(A) is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or the spouse, son, or daughter of an alien lawfully admitted for permanent residence; and

(B) is not a threat to the security of the United States.

§ 6311. Participation in Nazi persecution or genocide

An alien is ineligible for a visa or admission to the United States if the alien—

(1) at any time during the period from March 23, 1933, through May 8, 1945, ordered, incited, assisted, or otherwise participated in the persecution of an individual on account of race, religion, national origin, or political opinion, under the direction of, or in association with—

(A) the Nazi government of Germany;

(B) any government in an area occupied by the military forces of the Nazi government of Germany;

(C) any government established with the assistance or cooperation of the Nazi government of Germany; or

(D) any government that was an ally of the Nazi government of Germany; or

(2) engaged in conduct that is defined as genocide under the International Convention on the Prevention and Punishment of Genocide.

§ 6312. Ineligible for citizenship

An immigrant is ineligible for a visa or admission to the United States if the immigrant is permanently ineligible for citizenship.

§ 6313. Former citizens who renounced citizenship to avoid taxation

An alien is ineligible for a visa or admission to the United States if—

(1) the alien is a former citizen of the United States who after September 30, 1996, officially renounces United States citizenship; and

(2) the Attorney General determines that the alien renounced United States citizenship to avoid taxation by the Federal Government.

§ 6314. Evasion of military service

An alien is ineligible for a visa or admission to the United States if the alien departed from or remained outside the United States to avoid or evade training or service in the armed forces of the United States during war or a period declared by the President to be a national emergency, unless the alien was a nonimmigrant at the time of the departure and is seeking to reenter the United States as a nonimmigrant.

§ 6315. Student visa abusers

An alien who, after November 28, 1996, acquires the status of a nonimmigrant classified under section 2310(a)(1) of this title (including an alien whose status is extended after that date) and violates a term or condition of that status under section 2310(c) is ineligible for a visa or admission to the United States until the alien has been outside the United States for a continuous period of 5 years after the date of the violation.

§ 6316. International child abduction

(a) GENERAL.—If, after a court in the United States has granted to an individual the custody of a child who is a citizen of the United States, an alien detains or withholds custody of the child outside the United States from the individual granted custody by the court, the alien is ineligible for a visa or admission to the United States until the child is surrendered to the individual granted custody by the court.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply as long as the child is located in a foreign country whose government is a party to the Hague Convention on the Civil Aspects of International Child Abduction.

§ 6317. Aliens leaving Guam, Puerto Rico, or the Virgin Islands

An alien who leaves Guam, Puerto Rico, or the Virgin Islands and is coming to the continental United States or another place under the jurisdiction of the United States is subject to this chapter (except section 6301(a)). An alien described in this section who is inadmissible shall be removed immediately as provided in section 6717 of this title.

§ 6318. Failure to attend removal proceeding

An alien is ineligible for a visa or admission to the United States if the alien—

(1) without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability; and

(2) seeks admission to the United States within 5 years after the alien's subsequent departure or removal.

§ 6319. Aliens previously removed

(a) CERTAIN ALIENS PREVIOUSLY REMOVED.—(1) An alien is ineligible for a visa or admission to the United States if the alien—

(A) has been ordered removed under section 6102(c) or 6105 of this title or at the end of a proceeding under section 6704 of this title initiated on the alien's arrival in the United States; and

(B) seeks admission—

(i) within 5 years after the date of that removal;

(ii) within 20 years after the date of that removal if it was a 2d or subsequent removal; or

(iii) at any time if the alien has been convicted of an aggravated felony.

(2) An alien not described in paragraph (1) of this subsection is ineligible for a visa or admission to the United States if the alien—

(A) has been ordered removed under any law or has departed the United States while an order of removal was outstanding; and

(B) seeks admission—

(i) within 10 years after the date of that departure or removal;

(ii) within 20 years after the date of that departure or removal if it was a 2d or subsequent removal; or

(iii) at any time if the alien has been convicted of an aggravated felony.

(3) Paragraphs (1) and (2) of this subsection do not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

(b) ALIENS UNLAWFULLY PRESENT.—(1) An alien not lawfully admitted for permanent residence is ineligible for a visa or admission to the United States if the alien—

(A)(i) was unlawfully present in the United States for a period of more than 180 days but less than one year;

(ii) voluntarily departed the United States (whether or not under section 6714(a) of this title) before the initiation of a proceeding under section 6102(c), 6105, or 6704 of this title; and

(iii) seeks admission within 3 years after the date of that departure or removal; or

(B)(i) has been unlawfully present in the United States for at least one year; and

(ii) seeks admission within 10 years after the date of the alien's departure or removal.

(2) Under paragraph (1) of this subsection, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(3) In determining the period of unlawful presence in the United States under paragraph (1) of this subsection—

(A) no period before April 1, 1997, may be included; and

(B) no period may be included during which the alien—

(i) is under 18 years of age;

(ii) has a bona fide application for asylum pending under section 5106 of this title, unless during that period the alien was employed without authorization in the United States; or

(iii) is a beneficiary of family unity protection under section 301 of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5029).

(4) Paragraph (1) of this subsection does not apply to an alien who would be described in section 6302(b) of this title if ''violation of the terms of the alien's nonimmigrant visa'' were substituted for ''unlawful entry into the United States'' in section 6302(b)(3).

(5) The calculation of the period of time specified in paragraph (1)(A) of this subsection shall be tolled (for not more than 120 days) during a period that an application described in clause (B) of this paragraph is pending if the alien—

(A) has been lawfully admitted or paroled into the United States;

(B) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General; and

(C) has not been employed without authorization in the United States before or during the pendency of that application.

(6)(A) The Attorney General has sole discretion to waive paragraph (1) of this subsection for an immigrant if—

(i) the immigrant is the spouse, son, or daughter of a citizen of the United States or of an alien lawfully admitted for permanent residence; and

(ii) the Attorney General is satisfied that refusal of admission of the immigrant would result in extreme hardship to the citizen or lawfully resident spouse or parent of the immigrant.

(B) No court has jurisdiction to review a decision of the Attorney General about a waiver under subparagraph (A) of this paragraph.

(c) ALIENS UNLAWFULLY PRESENT AFTER PREVIOUS IMMIGRATION VIOLATIONS.—(1) An alien is ineligible for a visa or admission to the United States if the alien—

(A)(i) has been unlawfully present in the United States for a total period of more than one year; or

(ii) has been ordered removed under any law; and

(B) enters or attempts to reenter the United States without being admitted.

(2) Paragraph (1) of this subsection does not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

SUBCHAPTER II—RELATED PROVISIONS

§ 6331. Sponsor's affidavit of support

(a) DEFINITION.—In this section, ''federal poverty line'' means the level of income equal to the official poverty line (as defined by the Director of the Office of Management and Budget, as revised annually by the Secretary of Health and Human Services, in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))) that is applicable to a family of the size involved.

(b) ELIGIBLE SPONSORS.—(1) An individual may sponsor an alien by executing an affidavit of support under this section if the individual—

(A) is a national of the United States or an alien lawfully admitted for permanent residence;

(B) is at least 18 years of age;

(C) is domiciled in a State, the District of Columbia, or a territory or possession of the United States;

(D) is petitioning for admission of the alien under section 4301 or 4302 of this title; and

(E) demonstrates (as provided in subsection (i) of this section) the means to maintain an annual income equal to at least 125 percent of the federal poverty line.

(2) An individual who does not meet the requirement of paragraph (1)(E) of this subsection may still be a sponsor if the individual accepts joint and several liability with an individual under paragraph (5) of this subsection.

(3) An individual who does not meet the requirement of paragraph (1)(E) of this subsection may still be a sponsor if the individual—

(A) is on active duty (other than active duty for training) in the armed forces of the United States;

(B) is petitioning for admission of the alien under section 4301 or 4302 of this title as the spouse or child of the individual; and

(C) demonstrates (as provided in subsection (i) of this section) the means to maintain an annual income equal to at least 100 percent of the federal poverty line.

(4) An individual who does not meet the requirement of paragraph (1)(D) of this subsection may still be a sponsor if the individual—

(A)(i) is the relative of the sponsored alien who filed a classification petition for the sponsored alien as an employment-based immigrant under section 4104 of this title; or

(ii) has a significant ownership interest in the entity that filed the petition; and

(B)(i) demonstrates (as provided in subsection (i) of this section) the means to maintain an annual income equal to at least 125 percent of the federal poverty line; or

(ii) does not meet the requirement of paragraph (1)(E) of this subsection but accepts joint and several liability with an individual under paragraph (5) of this subsection.

(5) An individual who does not meet the requirement of paragraph (1)(D) of this subsection may still be a sponsor if the individual—

(A) accepts joint and several liability with a petitioning sponsor under paragraph (2) of this subsection or a relative of an employment-based immigrant under paragraph (4) of this subsection; and

(B) demonstrates (as provided in subsection (i) of this section) the means to maintain an annual income equal to at least 125 percent of the federal poverty line.

(c) ENFORCEABILITY OF AFFIDAVIT AS CONTRACT.—(1) A consular officer or the Attorney General may not accept an affidavit of support to establish that an alien is not inadmissible as a public charge under section 6306 of this title, unless the affidavit is executed by a sponsor of the alien as a contract—

(A) in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income equal to at least 125 percent of

the federal poverty line during the period in which the affidavit is enforceable;

(B) that is legally enforceable against the sponsor by the sponsored alien, the Federal Government, a State or political subdivision of a State, or any other entity that provides any means-tested public benefit, consistent with this section; and

(C) in which the sponsor agrees to submit to the jurisdiction of any federal or state court for the purpose of a civil action brought under subsection (d)(2) of this section.

(2) An affidavit of support is enforceable with respect to benefits provided for an alien before the earlier of—

(A) the date the alien is naturalized as a citizen of the United States; or

(B) the termination date provided in paragraph (3) of this subsection.

(3)(A) An affidavit of support is not enforceable after the alien—

(i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act (42 U.S.C. 401 et seq.) or can be credited with those qualifying quarters as provided in subparagraph (B) of this paragraph; and

(ii) in the case of a qualifying quarter creditable for a period beginning after December 31, 1996, did not receive any federal means-tested public benefit (as provided in section 15124 of this title) during that period.

(B) Except as provided in subparagraph (C) of this paragraph, in determining for purposes of this section the number of qualifying quarters of coverage under title II of the Social Security Act (42 U.S.C. 401 et seq.), an alien shall be credited with—

(i) all the qualifying quarters worked by a parent of the alien while the alien was under 18 years of age; and

(ii) all the qualifying quarters worked by a spouse of the alien during their marriage if the alien remains married to the spouse or the spouse is deceased.

(C) A qualifying quarter of coverage that is creditable under title II of the Social Security Act (42 U.S.C. 401 et seq.) for a period beginning after December 31, 1996, may not be credited to an alien under subparagraph (B) of this paragraph if the parent or spouse received a federal means-tested public benefit (as provided in section 15124 of this title) during the period for which the qualifying quarter is credited.

(D) The Attorney General shall ensure that appropriate information about the application of this paragraph (3) is provided to the system for

alien verification of eligibility (SAVE) described in section 1137(d)(3) of the Social Security Act (42 U.S.C. 1320b–7(d)(3)).

(d) REIMBURSEMENT OF GOVERNMENT EXPENSES.—(1)(A) On notification that a sponsored alien has received any means-tested public benefit, the appropriate nongovernmental entity that provided the benefit or the appropriate entity of the Federal Government, a State, or a political subdivision of a State shall request reimbursement by the sponsor in an amount equal to the unreimbursed costs of the benefit.

(B) The Attorney General, in consultation with the heads of other appropriate federal departments, agencies, and instrumentalities shall prescribe regulations necessary to carry out subparagraph (A) of this paragraph.

(2)(A) If, within 45 days after a request for reimbursement under paragraph (1)(A) of this subsection, the appropriate entity has not received a response from the sponsor indicating a willingness to commence payment, a civil action may be brought against the sponsor pursuant to the affidavit of support.

(B) If the sponsor fails to comply with the repayment terms established by the appropriate entity, the entity may bring a civil action against the sponsor pursuant to the affidavit of support.

(C) A civil action under this paragraph must be brought within 10 years after the date on which the sponsored alien last received any means-tested public benefit to which the affidavit of support applies.

(3) If the appropriate entity under paragraph (1)(A) of this subsection requests reimbursement from the sponsor or brings a civil action against the sponsor pursuant to the affidavit of support, the appropriate entity may appoint or hire another person to act on behalf of the entity acting under the authority of law for purposes of collecting any amounts owed.

(e) BENEFITS NOT SUBJECT TO REIMBURSEMENT.—The requirement for reimbursement under this section does not apply to—

(1) medical assistance described in section 15121(b)(1)(A) of this title or assistance described in section 15142(b)(1) of this title;

(2) short-term, non-cash, in-kind emergency disaster relief;

(3) assistance or benefits under the National School Lunch Act (42 U.S.C. 1751 et seq.);

(4) assistance or benefits under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

(5) public health assistance (except assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.)) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not those symptoms are caused by a communicable disease;

(6) payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq., 670 et seq.) for a parent or child, but only if the foster or adoptive parent (or parents) of the child is a qualified alien as defined in section 15102(b) of this title;

(7) programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with the heads of appropriate federal departments, agencies, and instrumentalities, that—

(A) deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) are necessary for the protection of life or safety;

(8) programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq., 1101 et seq., 1134 et seq., 1135 et seq., 42 U.S.C. 2751 et seq.), and titles III, VII, and VIII of the Public Health Service Act (42 U.S.C. 241 et seq., 292 et seq., 296 et seq.);

(9) benefits under the Head Start Act (42 U.S.C. 9831 et seq.);

(10) means-tested programs under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.); or

(11) benefits under the Job Training Partnership Act (29 U.S.C. 1501 et seq.).

(f) REMEDIES.—Remedies available to enforce an affidavit of support under this section include the remedies described in sections 3201, 3203, 3204, and 3205 of title 28, an order for specific performance and payment of legal fees and other costs of collection, and corresponding remedies available under state law. A federal department, agency, or instrumentality may seek to collect amounts owed under this section as provided in subchapter II of chapter 37 of title 31.

(g) JURISDICTION.—A civil action to enforce an affidavit of support executed under this section may be brought against the sponsor in any appropriate court by—

(1) a sponsored alien, with respect to financial support; or

(2) the appropriate entity of the Federal Government, a State or political subdivision of a State, or any other nongovernmental entity under subsection (d)(2) of this section, with respect to reimbursement.

(h) NOTIFICATION OF CHANGE OF ADDRESS.—(1) The sponsor shall notify the Attorney General and the State in which the sponsored alien is currently a resident within 30 days of any change of address of the sponsor during the period in which an affidavit of support is enforceable.

(2) After notice and an opportunity for a hearing, a person found to have violated paragraph (1) of this subsection is liable to the Federal Government for a civil penalty of—

(A) at least $250 but not more than $2,000; or

(B) at least $2,000 but not more than $5,000, if the failure occurs with knowledge that the sponsored alien has received any means-tested public benefits (other than benefits described in section 15121(b) (1)–(3), 15124(b), or 15142(b) of this title).

(3) The Attorney General shall enforce paragraph (2) of this subsection under appropriate regulations.

(i) DEMONSTRATION OF MEANS TO MAINTAIN INCOME.—(1) An individual may demonstrate under this section the means to maintain income by providing—

(A) a certified copy of the individual's federal income tax return for the 3 most recent taxable years; and

(B) a written statement, executed under oath or as permitted under penalty of perjury under section 1746 of title 28, that the copies are certified copies of the returns.

(2) An alien may demonstrate the means to maintain income through demonstration of significant assets of the sponsored alien or of the sponsor, if the assets are available for the support of the sponsored alien.

(3) A reference to an annual income equal to at least a particular percentage of the federal poverty line means an annual income equal to at least that percentage for a family unit of a size equal to—

(A) the number of members of the sponsor's household, including family and non-family dependents; plus

(B) the total number of other dependents and aliens sponsored by that sponsor.

(4) The Secretary of State, or the Attorney General in the case of adjustment of status, may provide that the demonstration under this subsection applies only to the most recent taxable year.

(j) SPONSOR'S SOCIAL SECURITY ACCOUNT NUMBER.—(1) An affidavit of support shall include the social security account number of each sponsor.

(2) The Attorney General shall develop an automated system to maintain the social security account number data provided under paragraph (1) of this subsection.

(3) The Attorney General shall submit an annual report to the Committees on the Judiciary of the House of Representatives and the Senate setting forth—

(A) for the most recent fiscal year for which data are available, the number of sponsors under this section and the number of sponsors in compliance with the financial obligations of this section; and

(B) a comparison of those numbers with the numbers of the sponsors for the prior fiscal year.

CHAPTER 65—DEPORTABILITY

SUBCHAPTER I—GROUNDS

Sec.
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SUBCHAPTER I—GROUNDS

§ 6501. Inadmissible at time of admission or adjustment of status or in the United States illegally

(a) GENERAL.—An alien is deportable if the alien—

(1) was inadmissible at the time of admission or adjustment of status under the law in effect at that time; or

(2) is present in the United States in violation of a law of the United States.

(b) WAIVERS FOR CERTAIN MISREPRESENTATIONS.—(1) The Attorney General may waive subsection (a)(1) of this section for an alien (except an alien deportable under section 6509 of this title) who was inadmissible under section 6303(a)(1) of this title at the time of admission if the alien—

(A) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted for permanent residence;

(B) was in possession of an immigrant visa or equivalent documentation at the time of admission; and

(C) was otherwise admissible at the time of admission, except under section 4311(a)(1) or 6301(a)(2) or (b) of this title as a direct result of the fraud or misrepresentation.

(2) A waiver of deportation under paragraph (1) of this subsection for fraud or misrepresentation is also a waiver of deportation based on other

grounds of inadmissibility directly resulting from the fraud or misrepresentation.

§ 6502. Marriage fraud and failure to marry timely

(a) MARRIAGE FRAUD.—(1) An alien is deportable if—

(A) the alien obtained admission to the United States with an immigrant visa or other documentation obtained on the basis of a marriage that was entered into less than 2 years before the alien's admission and that was judicially annulled or terminated within 2 years after the alien's admission; or

(B) the Attorney General is satisfied that the alien failed or refused to fulfill the alien's marital agreement which, in the opinion of the Attorney General, was made to obtain admission to the United States as an immigrant.

(2) Paragraph (1)(A) of this subsection does not apply to an alien who satisfies the Attorney General that the marriage was not made to evade the immigration laws.

(b) FAILURE TO MARRY WITHIN 90 DAYS.—An alien admitted to the United States as a nonimmigrant classified under section 2309(a) of this title, and a minor child of the alien accompanying or following to join the alien, shall depart from the United States if, with 90 days after admission, the alien does not marry the citizen who filed the petition for the alien under section 2309(b) of this title. If they do not depart, they shall be removed.

§ 6503. Public charges

An alien is deportable if the alien, within 5 years after admission, has become a public charge from causes not affirmatively shown to have arisen since admission.

§ 6504. Failure to maintain status or satisfy conditions of admission

(a) NONIMMIGRANT STATUS NOT MAINTAINED.—(1) Subject to paragraph (2) of this subsection, an alien admitted to the United States as a nonimmigrant is deportable if the alien does not—

(A) maintain the nonimmigrant status under which the alien was admitted or which the alien acquired under section 9108 of this title; or

(B) comply with a condition of the nonimmigrant status.

(2) An alien admitted as a nonimmigrant classified under section 2301(1) or 2302(1) of this title and not maintaining the nonimmigrant status under which the alien was admitted is deportable only if—

(A) the Secretary of State approves; or

(B) the alien is deportable under section 6508 or 6509 of this title.

(b) NONCOMPLIANCE WITH HEALTH WAIVER CONDITIONS.—An alien admitted to the United States as a result of a waiver under section 6304 of this title is deportable if the Secretary of Health and Human Services certifies that the alien has not complied with a condition of the waiver.

(c) TERMINATION OF CONDITIONAL PERMANENT RESIDENT STATUS.—An alien lawfully admitted for permanent residence on a conditional basis under chapter 45 of this title is deportable if the status is terminated. However, this subsection does not apply if a waiver is granted under section 4506(b) of this title.

§ 6505. Encouraging others to enter illegally

(a) GENERAL.—An alien is deportable if the alien, before or within 5 years after admission, knowingly encouraged, induced, or assisted another alien to enter or attempt to enter the United States in violation of law.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to an alien who—

(1) is an eligible immigrant under section 301(b) of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5029);

(2) was physically present in the United States on May 5, 1988;

(3) is seeking—

(A) admission as an immediate relative;

(B) admission under section 4103(c) of this title (including under section 112 of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 4987)); or

(C) benefits under section 301(a) of that Act (104 Stat. 5029); and

(4) before May 5, 1988, encouraged, induced, or assisted only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(c) WAIVERS.—The Attorney General may waive subsection (a) of this section for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest, for an alien who—

(1) is lawfully admitted for permanent residence; and

(2) has encouraged, induced, or assisted only an individual who at the time of that action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

§ 6506. Criminal offenses

(a) GENERAL.—(1) An alien is deportable if—

(A)(i) the alien is convicted of an offense involving moral turpitude committed within 5 years after admission or, if the alien is granted the status of an alien lawfully admitted for permanent residence under section 9101(e) of this title, within 10 years after admission; and

(ii) a sentence of one year or more may be imposed for the offense;

(B) the alien is convicted, after admission, of at least 2 offenses involving moral turpitude not arising out of a single scheme of misconduct, regardless of whether the convictions were in a single trial or the alien was confined for the convictions;

(C) the alien is convicted, after admission, of an aggravated felony; or

(D) the alien is convicted of violating section 758 of title 18.

(2) Paragraph (1) of this subsection does not apply to a conviction of an alien if the President or the chief executive officer of a State has granted the alien a full and unconditional pardon.

(b) CONTROLLED SUBSTANCES.—An alien is deportable if the alien—

(1) is convicted, after admission, of violating, or conspiring or attempting to violate, a law or regulation of a State, the United States, or a foreign country related to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), except a single offense of possession for one's own use of not more than 30 grams of marijuana; or

(2) is, or at any time after admission has been, a drug abuser or addict.

(c) FIREARMS.—An alien is deportable if the alien, after admission, is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, in violation of law any weapon, part, or accessory that is a firearm or destructive device (as defined in section 921(a) of title 18).

(d) DOMESTIC VIOLENCE AND RELATED OFFENSES.—(1) In this subsection—

(A) ''offense of domestic violence'' means a crime of violence (as defined in section 16 of title 18) against an individual committed by—

(i) a current or former spouse of the victim;

(ii) an individual with whom the victim shares a child in common;

(iii) an individual with whom the victim is cohabiting or has cohabited as a spouse;

(iv) an individual similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the offense occurs; or

(v) any other individual against a victim who is protected from that individual's acts under the domestic or family violence laws

of the United States or a State, Indian tribal government, or unit of local government.

(B) ''protection order'' means an injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including a temporary or final order issued by a civil or criminal court (except a support or child custody order or provision) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

(2) A alien is deportable if the alien, after admission—

(A) is convicted of an offense of domestic violence, stalking, child abuse, child neglect, or child abandonment; or

(B) is enjoined under a protection order by a court and the court determines that the alien has violated a part of the order that involves protection against credible threats of violence, repeated harassment, or bodily injury to an individual for whom the protection order was issued.

(e) UNLAWFUL VOTERS.—An alien is deportable if the alien at any time has voted in violation of any federal, state, or local constitutional provision, statute, ordinance, or regulation.

(f) MISCELLANEOUS.—An alien is deportable if the alien has been convicted at any time (and the judgment on the conviction has become final) of violating or conspiring or attempting to violate—

(1) section 711 or 10151(a) of this title;

(2) chapter 37, 105, or 115 of title 18, if a term of imprisonment of at least 5 years may be imposed;

(3) section 871 or 960 of title 18;

(4) the Trading with the Enemy Act (50 App. U.S.C. 1 et seq.); or

(5) the Military Selective Service Act (50 App. U.S.C. 451 et seq.).

§ 6507. Failure to register and falsification of documents

(a) ADDRESS NOTIFICATION.—An alien is deportable if the alien has not complied with section 8104 of this title, unless the Attorney General is satisfied that the noncompliance was reasonably excusable or not willful.

(b) FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.—An alien is deportable if the alien has been convicted at any time of—

(1) violating section 10145 of this title;

(2) violating section 36(c) of the Alien Registration Act, 1940;

(3) violating, or attempting or conspiring to violate, the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.);

(4) violating the Act of August 1, 1956 (50 U.S.C. 851 et seq.) or a regulation under that Act; or

(5) violating, or attempting or conspiring to violate, section 1546 of title 18.

(c) FALSE CLAIM OF CITIZENSHIP.—An alien is deportable if the alien falsely claims, or has falsely claimed, to be a citizen of the United States for any purpose or benefit under any federal or state law.

(d) SUBJECT TO CIVIL PENALTY FOR DOCUMENT FRAUD.—(1) An alien is deportable if the alien is the subject of a final order for violation of section 10125(b) of this title.

(2) The Attorney General may waive paragraph (1) of this subsection if—

(A) the alien is lawfully admitted for permanent residence;

(B) a previous civil monetary penalty was not imposed against the alien under section 10125 of this title; and

(C) the offense was committed only to assist, aid, or support the alien's spouse or child (and no other individual).

(3) No court has jurisdiction to review a decision of the Attorney General about a waiver under paragraph (2) of this subsection.

§ 6508. National security

(a) GENERAL.—An alien is deportable if the alien has engaged or engages in—

(1) an activity to violate a law of the United States related to espionage or sabotage;

(2) an activity to violate or evade a law prohibiting the export from the United States of goods, technology, or sensitive information;

(3) an activity a purpose of which is to oppose, control, or overthrow the Federal Government by force, violence, or other unlawful means; or

(4) any other criminal activity that endangers public safety or the security of the United States.

(b) TERRORIST ACTIVITIES.—An alien is deportable if the alien has engaged or engages in a terrorist activity as defined in section 6310(b) of this title.

(c) FOREIGN POLICY.—(1) An alien is deportable if the Secretary of State reasonably believes that the alien's presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States.

(2) The exceptions described in section 6310(c) (2) and (3) of this title apply to deportability under this subsection in the same way that they apply to inadmissibility under section 6310(c)(1).

§ 6509. Participation in Nazi persecution or genocide

An alien described in section 6311 of this title is deportable.

SUBCHAPTER II—RELATED PROVISIONS

§ 6531. Nonapplication of certain grounds to special immigrants dependent on juvenile court

The following sections do not apply to a special immigrant as defined in section 133(a)(12) of this title, based on circumstances that existed before the date the alien acquired the special immigrant status:

(1) Sections 6501(a) and 6504 of this title, except to the extent related to a ground of inadmissibility described in section 6309(a) (1)–(5) or (7), 6310, or 6311 of this title.

(2) Section 6507(a) of this title.

CHAPTER 67—REMOVAL PROCEDURE

Sec.
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§ 6701. Definitions

In sections 6704 and 6721 of this title—

(1) ''exceptional circumstances'' means exceptional circumstances beyond the control of the alien, such as serious illness of the alien or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances.

(2) ''removable'' means—

(A) for an alien not admitted to the United States, that the alien is inadmissible under chapter 63 of this title; or

(B) for an alien admitted to the United States, that the alien is deportable under chapter 65 of this title.

§ 6702. Arrest and detention pending decision on removal

(a) GENERAL.—On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision whether to remove the

alien from the United States. Except as provided in subsection (c) of this section, the Attorney General, pending that decision—

(1) may continue to detain the alien;

(2) may release the alien on—

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an ''employment authorized'' endorsement or other appropriate work permit) unless the alien is lawfully admitted for permanent residence or would otherwise (without regard to a removal proceeding) be provided with work authorization.

(b) REVOCATION OF BOND OR PAROLE.—The Attorney General at any time may revoke a bond or parole authorized under subsection (a) of this section, rearrest the alien under the original warrant, and detain the alien.

(c) CRIMINAL ALIENS.—(1) This subsection applies to an alien who is—

(A) inadmissible under section 6309(a) (1)–(5) or (7) of this title;

(B) deportable under section 6506(a)(1)(A) of this title on the basis of an offense for which the alien has been sentenced to a term of imprisonment of at least one year;

(C) deportable under section 6506 (a)(1) (B) or (C), (b), (c), or (f) of this title; or

(D) inadmissible under section 6310(b) of this title or deportable under section 6508(b) of this title.

(2) The Attorney General shall take into custody an alien described in paragraph (1) of this subsection when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(3) The Attorney General may release an alien taken into custody under paragraph (2) of this subsection only if—

(A) the Attorney General decides under section 3521 of title 18 that release of the alien is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation; and

(B) the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or property and is likely to appear for any scheduled proceeding.

(4) A decision about releasing an alien under paragraph (3) of this subsection shall be made in accordance with a procedure that considers the severity of the offense committed by the alien.

(d) STATE AND LOCAL AUTHORITY.—(1) Subject to paragraph (2) of this subsection, state and local law enforcement officials, to the extent permitted by state and local law, may arrest and detain an alien who—

(A) is illegally present in the United States; and

(B) previously has been convicted of a felony in the United States and been deported or removed or has left the United States after the conviction.

(2) Before making an arrest under paragraph (1) of this subsection, the state and local law enforcement officials shall obtain appropriate confirmation from the Commissioner of Immigration and Naturalization of the status of the alien. The alien may be detained only as long as necessary for the Commissioner to take the alien into federal custody for purposes of removing the alien from the United States.

(3) The Attorney General shall cooperate with the States to ensure that information in the control of the Attorney General, including information in the National Crime Information Center, that would assist state and local law enforcement officials in carrying out duties under paragraphs (1) and (2) of this subsection is made available to the officials.

(e) JUDICIAL REVIEW.—The Attorney General's discretionary judgment about the application of subsections (a)–(c) of this section is not subject to review. No court may set aside an action or decision of the Attorney General under subsections (a)–(c) about the detention or release of an alien or the grant, revocation, or denial of bond or parole.

§ 6703. Initiation of removal proceeding

(a) NOTICE TO APPEAR.—(1) In a removal proceeding under section 6704 of this title, written notice to appear shall be given in person to the alien or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any. The notice shall state—

(A) the nature of the proceeding against the alien;

(B) the legal authority under which the proceeding is conducted;

(C) the acts or conduct alleged to be in violation of law;

(D) the charges against the alien and the statutory provisions alleged to have been violated;

(E) the right of the alien to be represented by counsel (as provided in section 6707(a) of this title) and to be provided—

(i) a period of time to secure counsel as provided in subsection (b)(1) of this section; and

(ii) a current list of counsel prepared under section 6707(b) of this title;

(F)(i) the requirement that, if the alien has not already done so, the alien shall immediately provide the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted about the proceeding;

(ii) the requirement that the alien shall immediately provide the Attorney General with a written record of any change of the alien's address or telephone number; and

(iii) the consequences under section 6704(f) of this title of failing to provide the address and telephone information; and

(G)(i) the time and place of the proceeding; and

(ii) the consequences under section 6704(f) of this title of failing, except under exceptional circumstances, to appear at the proceeding.

(2)(A) Except as provided in subparagraph (B) of this paragraph, if there is any change in the time or place of the proceeding, a written notice shall be given in person to the alien or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any. The notice shall state—

(i) the new time or place of the proceeding; and

(ii) the consequences under section 6704(f) of this title of failing, except under exceptional circumstances, to appear at the proceeding.

(B) Written notice under subparagraph (A) of this paragraph is not required if the alien is not in detention and has failed to provide the address required under paragraph (1)(F) of this subsection.

(3) The Attorney General shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F) of this subsection.

(b) TIME TO SECURE COUNSEL.—(1) To allow an alien the opportunity to secure counsel before the first hearing date in a proceeding under section 6704 of this title, the hearing date may not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date.

(2) This subsection does not prevent the Attorney General from proceeding against an alien under section 6704 of this title if the time period described in paragraph (1) of this subsection has elapsed and the alien has failed to secure counsel.

(c) SUFFICIENCY OF SERVICE BY MAIL.—Service by mail under this section is sufficient if there is proof of attempted delivery to the last address provided by the alien under subsection (a)(1)(F) of this section.

(d) PROMPT INITIATION AGAINST CRIMINAL ALIENS.—When an alien is convicted of an offense that makes the alien deportable, the Attorney General shall initiate a removal proceeding as expeditiously as possible after the date of the conviction.

(e) FINGERPRINTS AND PHOTOGRAPHS.—The Attorney General shall prescribe regulations providing for the fingerprinting and photographing of each alien at least 14 years of age against whom a removal proceeding under section 6704 of this title is initiated. The fingerprints and photographs shall be made available, on request, to federal, state, and local law enforcement agencies.

§ 6704. Removal proceeding

(a) GENERAL.—(1) An immigration judge shall conduct a proceeding under this section to decide the inadmissibility or deportability of an alien.

(2) An alien placed in a proceeding under this section may be charged with any applicable ground of inadmissibility under chapter 63 of this title or any applicable ground of deportability under chapter 65 of this title.

(3) Except as otherwise provided in this title, a proceeding under this section is the only procedure for deciding whether an alien may be admitted to the United States or, if the alien has been admitted, removed from the United States. This section does not affect a proceeding under section 6705 or 6706 of this title.

(b) FORM OF PROCEEDING AND PRESENCE OF ALIEN.—(1) A proceeding under this section may take place—

(A) in person;

(B) in the absence of the alien if the parties agree;

(C) through video conference; or

(D) through telephone conference, except that an evidentiary hearing on the merits may be conducted through a telephone conference only with the consent of the alien after the alien has been advised of the right to proceed in person or through video conference.

(2) If an alien's mental incompetency makes it impracticable for the alien to be present at the proceeding, the Attorney General shall prescribe safeguards to protect the rights and privileges of the alien.

(c) CONDUCT OF PROCEEDING.—(1) The immigration judge shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and witnesses. The immigration judge may issue subpenas for the attendance of witnesses and the presentation of evidence.

(2) The alien may be represented by counsel as provided in section 6707(a) of this title.

(3) The alien shall have a reasonable opportunity to examine the evidence against the alien, present evidence, and cross-examine witnesses presented

by the Federal Government. However, these rights do not entitle the alien to examine any national security information proffered by the Government in opposition to the alien's admission to the United States or the alien's application for discretionary relief under this title.

(4) A complete record shall be kept of all testimony and evidence produced at the proceeding.

(d) BURDEN OF PROOF.—(1) In a proceeding under this section, the alien has the burden of establishing—

(A) if the alien is an applicant for admission, that the alien is clearly and beyond a doubt entitled to be admitted and is not inadmissible; or

(B) by clear and convincing evidence that the alien is lawfully present in the United States pursuant to a prior admission.

(2) In meeting the burden of proof under paragraph (1)(B) of this subsection, the alien shall have access to the alien's visa or other entry document, if any, and any other records, not considered confidential by the Attorney General, pertaining to the alien's admission or presence in the United States.

(3) In a proceeding under this section, if the alien has been admitted to the United States, the Government has the burden of establishing by clear and convincing evidence that the alien is deportable. A decision that an alien is deportable must be based on reasonable, substantial, and probative evidence.

(e) DECISION.—(1) At the conclusion of a proceeding under this section, the immigration judge shall decide whether the alien is removable from the United States. The decision of the immigration judge shall be based only on the evidence produced at the proceeding.

(2) If the physician conducting a medical examination under section 6104 of this title has certified under that section that an alien has a condition that would make the alien inadmissible under section 6304 of this title, the decision of the immigration judge shall be based only on that certification.

(3) If the immigration judge decides that the alien is removable and orders the alien to be removed, the judge shall inform the alien of the right to appeal the decision and of the consequences for failure to depart under the order of removal, including civil and criminal penalties.

(f) REMOVAL ORDERED IN ABSENTIA.—(1) An alien who does not attend a proceeding under this section shall be ordered removed in absentia if the Government establishes by clear, unequivocal, and convincing evidence that—

(A) the written notice required by section 6703(a) (1) or (2) of this title was provided to the alien or to the alien's counsel of record; and

(B) the alien is removable.

(2) The notice referred to in paragraph (1)(A) of this subsection is sufficient if provided at the most recent address provided under section 6703(a)(1)(F) of this title. No notice is required if the alien has not provided the address required by that section.

(3) A removal order issued under this subsection may be rescinded only on a motion to reopen filed—

(A) within 180 days after the date of the order if the alien demonstrates that the failure to appear was because of exceptional circumstances; or

(B) at any time if the alien demonstrates that—

(i) the alien did not receive the notice required by section 6703(a) (1) or (2) of this title; or

(ii) the alien was in federal or state custody and the failure to appear was through no fault of the alien.

(4) The filing of a motion to reopen under paragraph (3) of this subsection stays the removal of the alien pending disposition of the motion by the immigration judge.

(5) Except as provided in section 6712(c)(6) of this title, a petition for review under section 6712 of an order issued in absentia under this subsection shall be confined to—

(A) the validity of the notice provided to the alien;

(B) the reasons for the alien's failure to attend the proceeding; and

(C) whether the alien is removable.

(6) This subsection applies to all aliens in a proceeding under this section, including any alien who remains in a foreign contiguous territory under section 6102(d)(3) of this title.

(g) STIPULATED REMOVAL.—The Attorney General shall provide by regulation for the entry by an immigration judge of an order of removal stipulated to by the alien (or the alien's representative) and the Government. A stipulated order constitutes a conclusive determination of the alien's removability from the United States.

§6705. Expedited removal proceeding for aliens convicted of aggravated felonies

(a) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony is conclusively presumed to be deportable from the United States.

(b) AVAILABILITY OF SPECIAL PROCEEDING.—(1) The Attorney General shall provide for the availability of a special removal proceeding at certain federal, state, and local correctional facilities for aliens convicted of a criminal offense described in—

(A) section 6506 (a)(1)(C), (b), (c), or (f) of this title; or

(B) section 6506(a)(1)(B) of this title if both predicate offenses referred to in that provision are, without regard to their date of commission, described in section 6506(a)(1)(A).

(2) A proceeding under paragraph (1) of this subsection shall be conducted—

(A) in conformity with section 6704 of this title (except as otherwise provided in this section);

(B) in a manner that eliminates the need for additional detention at a processing center of the Immigration and Naturalization Service; and

(C) in a manner that ensures expeditious removal following the end of the alien's incarceration for the underlying sentence.

(c) DETENTION AT SAME FACILITY.—To the maximum extent practicable, the Attorney General shall detain at the same facility aliens convicted of an aggravated felony and taken into custody under section 6702(c) of this title. In selecting the facility, the Attorney General shall make a reasonable effort to ensure that an alien's access to counsel and right to counsel under section 6707(a) of this title are not impaired.

(d) CONDUCT OF PROCEEDING BEFORE RELEASE.—The Attorney General shall provide for the initiation and, to the extent possible, the completion of a removal proceeding (including any administrative appeal) against an alien convicted of an aggravated felony before the alien is released from incarceration for the aggravated felony. This subsection does not require the Attorney General to remove an alien sentenced to incarceration before the alien is released from the incarceration.

(e) ALIENS WHO ARE NOT PERMANENT RESIDENTS.—(1) The Attorney General may determine the deportability of an alien under section 6506(a)(1)(C) of this title and issue an order of removal under the procedures in this subsection or section 6704 of this title if, at the time the proceeding under this section is initiated, the alien—

(A) is not lawfully admitted for permanent residence; or

(B) has permanent resident status on a conditional basis (as described in subchapter I of chapter 45 of this title).

(2) The Attorney General shall prescribe regulations for the conduct of a proceeding under this subsection. The regulations shall provide that—

(A) the alien shall be given reasonable notice of the charges and of the opportunity described in clause (C) of this paragraph;

(B) the alien may be represented by counsel as provided in section 6707(a) of this title;

(C) the alien shall be given a reasonable opportunity to inspect the evidence and rebut the charges;

(D) a determination shall be made for the record that the individual on whom notice of the proceeding was served (in person or by mail) is in fact the alien named in the notice;

(E) a record shall be maintained for judicial review; and

(F) the final order of removal may not be adjudicated by the same individual who issues the charges.

(3) The Attorney General may not execute an order described in paragraph (1) of this subsection until 14 calendar days have passed after the date the order was issued, to allow the alien an opportunity to apply for judicial review under section 6712 of this title. The alien may waive this limitation.

(f) INELIGIBILITY FOR RELIEF FROM REMOVAL.—An alien described in this section is ineligible for any relief from removal that the Attorney General may grant.

§ 6706. Judicial removal of criminal aliens

(a) JURISDICTION.—A district court of the United States has jurisdiction to enter a judicial order of removal at the time of sentencing against an alien who is deportable if—

(1) the United States Attorney, with the concurrence of the Commissioner of Immigration and Naturalization, requests the order; and

(2) the court chooses to exercise that jurisdiction.

(b) PROCEDURE.—(1) Before the beginning of trial or entry of a guilty plea, the United States Attorney shall file with the court, and serve on the defendant and the Commissioner, a notice of intent to request judicial removal.

(2) At least 30 days before the date set for sentencing, the United States Attorney, with the concurrence of the Commissioner, shall file a charge containing factual allegations about the alienage of the defendant and identifying each offense that makes the defendant deportable under section 6506(a) of this title.

(3) If the court finds that the defendant has presented substantial evidence to establish prima facie eligibility for relief from removal, the Commissioner shall provide the court with a recommendation and report on the alien's eligibility for relief. The court shall grant or deny the relief sought.

(4) The alien shall have a reasonable opportunity to examine the evidence against the alien, present evidence, and cross-examine witnesses presented by the Federal Government.

(5) In deciding whether to enter an order of removal, the court may consider only evidence that would be admissible in a proceeding under section 6704 of this title. This subsection does not limit the information the court may receive or consider for purposes of imposing an appropriate sentence.

(6) The court may order the alien to be removed if the Government demonstrates that the alien is deportable.

(c) NOTICE OF ORDER.—As soon as practicable after entry of a judicial order of removal, the Commissioner shall provide the defendant with written notice of the order. The notice shall designate the defendant's country of choice for removal and any alternate country as provided in section 6716 of this title.

(d) APPEAL.—The granting or denial of a judicial order of removal may be appealed to the court of appeals for the circuit in which the district court is located. Except as provided in subsection (e) of this section, consideration of the appeal shall be consistent with section 6712 of this title.

(e) FINALITY AND EXECUTION OF ORDER.—(1) A judicial order of removal becomes final when—

(A) the defendant executes a waiver of the right to appeal the conviction on which the order of removal is based;

(B) the period provided in section 6712(c)(2) of this title expires; or

(C) there is a final dismissal of an appeal from the conviction.

(2) The final judicial order of removal shall be executed, as provided in the order, at the end of the term of imprisonment.

(3) An order entered under this section is void if the conviction on which the order is based is reversed on direct appeal.

(f) FAILURE TO EXERCISE JURISDICTION.—Denial of a request for a judicial order of removal does not preclude the Attorney General from initiating a removal proceeding under section 6704 of this title on the same or any other ground of deportability.

(g) STIPULATED JUDICIAL ORDER OF REMOVAL.—The United States Attorney, with the concurrence of the Commissioner, may enter into a plea agreement under rule 11 of the Federal Rules of Criminal Procedure (18 App. U.S.C.) that calls for an alien who is deportable to waive the right to notice and a hearing under this section and to stipulate to the entry of a judicial order of removal as a condition of the plea agreement, as a condition of probation or supervised release, or both. The United States district court in a felony or misdemeanor case, and a United States magistrate judge in a misdemeanor case, has jurisdiction to enter a judicial order of removal in accordance with the stipulation.

§ 6707. Right to counsel

(a) GENERAL.—In a removal proceeding before an immigration judge and in an appeal proceeding before the Attorney General from the removal proceeding, the alien may be represented by counsel (authorized to practice in the proceeding) chosen by the alien, but at no expense to the Federal Government.

(b) LISTS OF AVAILABLE COUNSEL.—The Attorney General shall provide for lists (updated at least quarterly) of persons who have indicated their availability to represent aliens pro bono in proceedings under section 6704 of this title. The lists shall be provided under section 6703(a)(1)(E) of this title and also be made generally available.

§ 6708. Sanctions for frivolous behavior and contempt

(a) FRIVOLOUS BEHAVIOR.—(1) The Attorney General by regulation shall—

(A) define frivolous behavior for which attorneys may be sanctioned in a proceeding before an immigration judge or an appellate administrative body under this title;

(B) specify the circumstances under which an administrative appeal of a decision or ruling will be considered frivolous and will be summarily dismissed; and

(C) impose appropriate sanctions (which may include suspension and disbarment) for frivolous behavior.

(2) Paragraph (1) of this subsection does not limit the authority of the Attorney General to take action for inappropriate behavior.

(b) CONTEMPT.—Under regulations prescribed by the Attorney General, an immigration judge may sanction by civil money penalty any action or inaction in contempt of the judge's proper exercise of authority under this title.

§ 6709. Proof of convictions

(a) GENERAL.—In any proceeding under this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, and chapters 133, 135, and 151), a criminal conviction may be proved by any of the following (or by a certified copy of any of the following):

(1) An official record of judgment and conviction.

(2) An official record of plea, verdict, and sentence.

(3) A docket entry from court records indicating the existence of the conviction.

(4) Official minutes of a court proceeding or a transcript of a court hearing in which the court takes notice of the existence of the conviction.

(5) An abstract of a record of conviction prepared by the court in which the conviction was entered, or by a state official associated with the State's repository of criminal justice records, that indicates the charge or section of law violated, the disposition of the case, the existence and date of conviction, and the sentence.

(6) A document or record prepared by, or under the direction of, the court in which the conviction was entered that indicates the existence of a conviction.

(7) A document or record attesting to the conviction that is maintained by an official of a federal or state penal institution, which is the basis for that institution's authority to assume custody of the individual named in the record.

(b) ELECTRONIC RECORDS.—(1) In any proceeding under this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, and chapters 133, 135, and 151), any record of conviction or abstract that has been submitted by electronic means to the Immigration and Naturalization Service from a State or court is admissible as evidence to prove a criminal conviction if it is—

(A) certified by a state official associated with the State's repository of criminal justice records as an official record from its repository or by a court official from the court in which the conviction was entered as an official record from its repository; and

(B) certified in writing by an official of the Service as having been received electronically from the State's record repository or the court's record repository.

(2) A certification under paragraph (1)(A) of this subsection may be by means of a computer-generated signature and statement of authenticity.

§ 6710. Motions to reconsider or reopen

(a) MOTIONS TO RECONSIDER.—(1) An alien may file one motion to reconsider a decision that the alien is removable from the United States.

(2) The motion must be filed within 30 days after the date of entry of a final administrative order of removal.

(3) The motion shall specify the errors of law or fact in the previous order and shall be supported by pertinent authority.

(b) MOTIONS TO REOPEN.—(1) An alien may file one motion to reopen a removal proceeding under section 6704 of this title.

(2) The motion to reopen shall state the new facts that would be proved at a hearing to be held if the motion were granted, and shall be supported by affidavits or other evidentiary material.

(3)(A) Except as provided in subparagraphs (B) and (C) this paragraph, the motion to reopen must be filed within 90 days after the date of entry of the final administrative order of removal.

(B) There is no time limit on filing a motion to reopen if—

(i) the basis of the motion is to apply for relief under section 5106 or 6716(d) of this title;

(ii) the motion is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered; and

(iii) the evidence of changed country conditions is material and was not available and would not have been discovered or presented at the previous proceeding.

(C) The filing of a motion to reopen an order entered under section 6704(f) of this title is subject to the deadline specified in section 6704(f)(3).

§ 6711. Finality of administrative removal order

An administrative order of removal becomes final on the earlier of—

(1) a decision by the Board of Immigration Appeals affirming the order; or

(2) the expiration of the period for the alien to seek review of the order by the Board.

§ 6712. Judicial review

(a) APPLICABLE PROVISIONS.—(1) Except as provided in paragraph (2) of this subsection, judicial review of a final order of removal is governed only by chapter 158 of title 28 and subsection (c) of this section.

(2) Judicial review of an order of removal issued without a hearing under section 6102(c) or 6105 of this title is governed only by subsection (d) of this section.

(3) Judicial review of all questions of law and fact arising from any action taken or proceeding brought to remove an alien from the United States under this title is available only in judicial review of a final order under this section.

(b) LIMITATIONS ON JUDICIAL REVIEW.—(1) Except as otherwise provided in this section, no court has jurisdiction to hear any cause or claim by an alien arising from a decision or action of the Attorney General to commence a proceeding, adjudicate a case, or execute a removal order against the alien under this title.

(2) No court has jurisdiction to review—

(A) a final order of removal against an alien who is removable for having committed a criminal offense described in—

(i) section 6309(a)(1)–(5) or (7) or 6506(a)(1)(C), (b), (c), or (f) of this title; or

(ii) section 6506(a)(1)(B) of this title if both predicate offenses referred to in that provision are, without regard to their date of commission, described in section 6506(a)(1)(A);

(B) a decision granting or denying relief under section 6303(a)(2) 6309(b), 6714(a) or (b), 6721, 9101, or 9102 of this title; or

(C) any other decision or action of the Attorney General within the discretion of the Attorney General, except the granting of relief under section 5106(b) of this title.

(3) Regardless of the nature of the action or claim or the identity of any party bringing the action, no court (other than the Supreme Court) has jurisdiction to enjoin the operation of the following provisions, except as applied to an individual alien against whom a proceeding under those provisions has been initiated:

(A) sections 6101, 6102, 6103(c), and 6104–6107 of this title.

(B) chapter 65 of this title, except sections 6502(b) and 6507(b)(2) and (4).

(C) this chapter, except sections 6702(d), 6703(e), 6707(a), and 6711.

(D) chapter 71 of this title, except section 7110.

(E) sections 7301, 7302, 7304, and 7306.

(4) No court may enjoin the removal of an alien under a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of the order is prohibited as a matter of law.

(5) An alien may not appeal a decision of an immigration judge that is based only on a certification described in section 6704(e)(2) of this title.

(c) REQUIREMENTS FOR REVIEW OF ORDERS OF REMOVAL.—(1) The requirements in this subsection apply to judicial review of an order referred to in subsection (a)(1) of this section.

(2) The petition for review must be filed within 30 days after the date of the final order of removal. The petition shall be filed with the court of appeals for the circuit in which the immigration judge completed the proceeding.

(3) The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(4)(A) The respondent is the Attorney General. The petition shall be served on the Attorney General and on the officer or employee of the Immigration and Naturalization Service in charge of the Service district in which the final order of removal under section 6704 of this title was entered.

(B) Service of the petition on the officer or employee does not stay the removal of an alien pending the court's decision on the petition, unless the court orders otherwise.

(C) The alien shall serve and file a brief in connection with a petition for judicial review within 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the Attorney General. The court may not

extend the deadlines in this subparagraph except on motion for good cause shown. If an alien fails to file a brief within the time provided in this subparagraph, the court shall dismiss the appeal unless a manifest injustice would result.

(5) Except as provided in paragraph (6)(B) of this subsection—

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based;

(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary;

(C) a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law;

(D) the Attorney General's discretionary judgment whether to grant relief under section 5106(b) of this title is conclusive unless manifestly contrary to law and an abuse of discretion; and

(E) the court may not order the taking of additional evidence under section 2347(c) of title 28.

(6)(A) If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner's nationality is presented, the court shall decide the nationality claim.

(B) If the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the court shall transfer the proceeding to the district court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28.

(C) The petitioner may have the nationality claim decided only as provided in this paragraph.

(7) When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

(8)(A) If the validity of an order of removal has not been judicially decided, a defendant in a criminal proceeding charged with violating section 10152(a) of this title may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

(B) If the defendant claims in the motion to be a national of the United States and the district court finds that—

(i) no genuine issue of material fact about the defendant's nationality is presented, the court shall decide the motion only on the adminis-

trative record on which the removal order is based, and the administrative findings of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole; or

(ii) a genuine issue of material fact about the defendant's nationality is presented, the court shall hold a new hearing on the nationality claim and decide that claim as if an action had been brought under section 2201 of title 28.

(C) The defendant may have the nationality claim decided only as provided in subparagraph (B) of this paragraph.

(D) If the district court rules that the removal order is invalid, the court shall dismiss the indictment for violation of section 10152(a) of this title. The Federal Government may appeal the dismissal to the court of appeals for the appropriate circuit within 30 days after the date of the dismissal.

(E) The defendant in a criminal proceeding under section 10152(a) of this title may not file a petition for review under subsection (a) of this section during the criminal proceeding.

(9) This subsection does not—

(A) prevent the Attorney General, after a final order of removal has been issued, from detaining the alien under section 6715 of this title;

(B) relieve the alien from complying with sections 6715(d) and 8302 of this title; or

(C) require the Attorney General to defer removal of the alien.

(d) JUDICIAL REVIEW OF REMOVAL ORDERED WITHOUT HEARING.—(1) Except as provided in paragraph (2) of this subsection, no court has jurisdiction to review—

(A) an individual determination or to entertain any other cause or claim arising from or related to the implementation or operation of an order of removal under section 6102(c) or 6105 of this title;

(B) a decision by the Attorney General to invoke the provisions of those sections;

(C) the application of those sections to individual aliens, including the determination made under section 6105 of this title; or

(D) procedures and policies adopted by the Attorney General to implement section 6102(c) or 6105 of this title.

(2) Regardless of the nature of the action or claim or the identity of any party bringing the action, no court may—

(A) enter declaratory, injunctive, or other equitable relief in any action related to an order to exclude an alien under section 6102(c) or 6105 of this title except as specifically authorized in a subsequent paragraph of this subsection; or

(B) certify a class under rule 23 of the Federal Rules of Civil Procedure (28 App. U.S.C.) in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

(3) Judicial review of a decision made under section 6102(c) or 6105 of this title is available in a habeas corpus proceeding, but is limited to determining whether the petitioner—

(A) is an alien;

(B) was ordered removed under one of those sections; or

(C) can prove by a preponderance of the evidence that—

(i) the petitioner has been lawfully admitted for permanent residence, admitted as a refugee under section 5105 of this title, or granted asylum under section 5106 of this title;

(ii) the status has not been terminated; and

(iii) the petitioner is entitled to further inquiry as prescribed by the Attorney General under section 6106(a) of this title.

(4)(A) Judicial review of a determination under section 6102(c) or 6105 of this title or the implementation of those sections is available in an action brought in the United States District Court for the District of Columbia, but is limited to review of whether—

(i) those sections, and regulations prescribed under those sections, are constitutional; or

(ii) a regulation, written policy directive, written policy guideline, or written procedure issued by or under authority of the Attorney General to implement those sections is inconsistent with this title or otherwise in violation of law.

(B) An action under this paragraph must be filed within 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in subparagraph (A) of this paragraph is first implemented.

(C) A notice of appeal of an order issued by the District Court under this paragraph must be filed within 30 days after the date the order is issued.

(D) The District Court, the Court of Appeals, and the Supreme Court shall advance on the docket and expedite to the greatest possible extent the disposition of any case considered under this paragraph.

(5)(A) The only relief a court may order is that the petitioner be provided a hearing under section 6704 of this title if the court decides that the petitioner—

(i) is an alien who was not ordered removed under section 6102(c) or 6105 of this title; or

(ii) has demonstrated by a preponderance of the evidence that the petitioner has been lawfully admitted for permanent residence, admit-

ted as a refugee under section 5105 of this title, or granted asylum under section 5106 of this title.

(B) If the court orders a hearing under subparagraph (A) of this paragraph, the alien may obtain judicial review of any resulting final order of removal under subsection (a)(1) of this section.

(6) In determining whether an alien has been ordered removed under section 6102(c) or 6105 of this title, the court shall limit its inquiry to whether the order was issued and whether it relates to the petitioner. The court may not review whether the alien is inadmissible or entitled to any relief from removal.

(e) CONTENTS OF PETITIONS.—A petition for review or for habeas corpus of an order of removal shall—

(1) include a copy of the order; and

(2) state whether a court has upheld the validity of the order, and, if so, shall state the name of the court, the date of the court's ruling, and the kind of proceeding.

(f) ADDITIONAL REQUIREMENTS.—A court may review a final order of removal only if—

(1) the alien has exhausted all administrative remedies available to the alien as of right; and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

§ 6713. Limitation on discretionary relief for failure to appear

An alien is ineligible for relief under section 6714(a) or (b), 6721, 9101, 9104, or 9108 of this title for a period of 10 years after the date of entry of a final order of removal if—

(1) the final order of removal was entered in absentia under section 6704(f) of this title; and

(2) the alien, at the time of the required notice under section 6703(a) (1) or (2) of this title, was provided oral notice, in the alien's native language or another language the alien understands, of the time and place of the removal proceeding and the consequences under this section of failing (except because of exceptional circumstances) to attend.

§ 6714. Voluntary departure

(a) BEFORE OR DURING REMOVAL PROCEEDING.—(1) The Attorney General may permit an alien to depart voluntarily from the United States

at the alien's own expense in lieu of being subject to a removal proceeding under section 6704 of this title or prior to the completion of the proceeding. However, this subsection does not apply to—

(A) an alien deportable under section 6506(a)(1)(C) or 6508(b) of this title; or

(B) an alien arriving in the United States for whom a removal proceeding under section 6704 of this title is (or otherwise would be) initiated at the time of the alien's arrival, except that this clause does not prevent an alien from withdrawing the application for admission under section 6101(c) of this title.

(2) Permission to depart voluntarily under this subsection may not be valid for more than 120 days.

(3) The Attorney General may require an alien permitted to depart voluntarily under this subsection to post a voluntary departure bond, to be surrendered on proof that the alien has departed the United States within the time specified.

(b) AT CONCLUSION OF REMOVAL PROCEEDING.—(1) The Attorney General may permit an alien to depart voluntarily from the United States at the alien's own expense if, at the conclusion of a removal proceeding under section 6704 of this title, the immigration judge enters an order granting voluntary departure in lieu of removal and finds that—

(A) the alien has been physically present in the United States for at least one year immediately preceding the date the notice to appear was served under section 6703(a) of this title;

(B) the alien is, and has been for at least 5 years immediately preceding the alien's application for voluntary departure, an individual of good moral character;

(C) the alien is not deportable under section 6506(a)(1)(C), 6508, or 6509 of this title; and

(D) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so.

(2) Permission to depart voluntarily under this subsection may not be valid for more than 60 days.

(3) An alien permitted to depart voluntarily under this subsection shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered on proof that the alien has departed the United States within the time specified.

(c) ALIENS NOT ELIGIBLE.—The Attorney General may not permit an alien to depart voluntarily under subsection (a) or (b) of this section if the

alien previously was permitted to depart voluntarily after having been found inadmissible under section 6302 of this title.

(d) NOTICE OF PENALTIES.—An order permitting an alien to depart voluntarily under subsection (a) or (b) of this section shall inform the alien of the penalties under section 10127(a) of this title for failure to depart.

(e) ALIENS FALLING INTO DISTRESS.—(1) If an alien falls into distress or needs public aid from a cause that arises after the alien enters the United States, and the alien wants to be removed from the United States, the Attorney General may remove the alien to—

(A) the alien's native country;

(B) the country from which the alien came to the United States;

(C) the country of which the alien is a citizen or subject; or

(D) any other country to which the alien wishes to go if the government of that country will accept the alien.

(2) Except with the prior approval of the Attorney General, an alien removed under paragraph (1) of this subsection is ineligible for a visa or other documentation for readmission and ineligible for admission to the United States.

(f) VOLUNTARY DEPARTURE DEEMED REMOVAL.—An alien who departs the United States after being ordered removed is deemed to have been removed, regardless of the source from which the cost of transportation is paid or the place to which the alien departs.

(g) ADDITIONAL CONDITIONS.—The Attorney General by regulation may limit eligibility for voluntary departure under this section for any class of aliens. No court may review any regulation issued under this subsection.

(h) JUDICIAL REVIEW.—No court has jurisdiction of an appeal from denial of a request for an order of voluntary departure under subsection (b) of this section. A court may not order a stay of an alien's removal pending consideration of any claim related to voluntary departure.

§ 6715. Detention, release, and removal of aliens ordered removed

(a) REMOVAL PERIOD.—(1) Except as otherwise provided in this chapter, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within the 90-day period (referred to as the ''removal period'') beginning on the later of—

(A) the date the removal order becomes administratively final;

(B) if the removal order is judicially reviewed and a court orders a stay of the removal, the date of the court's final order; or

(C) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(2) The removal period shall be extended beyond 90 days and the alien may remain in detention during that extended period if the alien does not make timely application in good faith for travel or other documents necessary for the alien's departure or conspires or acts to prevent the alien's removal.

(b) DETENTION DURING REMOVAL PERIOD.—During the removal period, the Attorney General—

(1) shall detain the alien; and

(2) may not release an alien who has been found inadmissible under section 6309(a) (1)–(5) or (7) or 6310(b) of this title or deportable under section 6506 (a)–(d) or (f) or 6508(b) of this title.

(c) SUPERVISION AFTER REMOVAL PERIOD.—If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be supervised under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien to—

(1) appear before an immigration officer periodically for identification;

(2) submit, if necessary, to a medical and psychiatric examination at the expense of the Federal Government;

(3) give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(4) obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

(d) ALIENS IMPRISONED, ARRESTED, OR ON PAROLE, SUPERVISED RELEASE, OR PROBATION.—(1) Except as provided in section 343(a) of the Public Health Service Act (42 U.S.C. 259(a)) and paragraph (2) of this subsection, the Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of arrest or further imprisonment is not a reason to defer removal.

(2) The Attorney General may remove an alien before the alien has completed a sentence of imprisonment if—

(A) the alien is in the custody of the Attorney General and the Attorney General determines that—

(i) the alien is confined for a final conviction of a nonviolent offense (except an offense related to smuggling or harboring of aliens or an offense described in section 104(a)(2)(A) (ii) or (iii), (3)(A)(i) (related to (2)(A) (ii) or (iii)), or (4)(A) (i), (viii), or (xiii) or (b)(2)(A) (ii), (iii), (v), (ix), or (xii) of this title); and

(ii) the removal of the alien is appropriate and in the best interest of the United States; or

(B) the alien is in the custody of a State (or political subdivision of a State) and the chief state official exercising authority for the incarceration of the alien—

(i) determines that—

(I) the alien is confined for a final conviction of a nonviolent offense (except an offense described in section 104(a)(2)(A)(iii), (3)(A)(i) (related to (2)(A)(iii)), or (4)(A)(i) or (viii) or (b)(2)(A) (iii) or (v) of this title); and

(II) the removal is appropriate and in the best interest of the State; and

(ii) submits a written request to the Attorney General that the alien be removed.

(3) An alien removed under this subsection shall be notified of the penalties under the laws of the United States related to the reentry of removed aliens, particularly the expanded penalties for aliens removed under paragraph (2) of this subsection.

(e) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily under an order of removal—

(1) the prior order of removal is reinstated from its original date and may not be reopened or reviewed;

(2) the alien is not eligible for any relief under this title; and

(3) the alien shall be removed under the prior order any time after the reentry.

(f) INADMISSIBLE OR CRIMINAL ALIENS.—An alien ordered removed may be detained beyond the removal period and, if released, shall be supervised under subsection (c) of this section, if the alien—

(1) is inadmissible under chapter 63 of this title;

(2) is deportable under section 6504 (a) or (b), 6506 (a)–(d) or (f), 6508, or 6509 of this title; or

(3) has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal.

(g) EMPLOYMENT AUTHORIZATION.—An alien ordered removed is ineligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—

(1) the alien cannot be removed because all countries to which the alien would be removed under section 6716 of this title refuse to accept the alien; or

(2) the removal of the alien is otherwise impracticable or contrary to the public interest.

§ 6716. Countries to which aliens may be removed

(a) ARRIVING ALIENS.—(1) Except as otherwise provided in this subsection, if a removal proceeding under section 6704 of this title was initiated against an alien when the alien arrived in the United States, the alien shall be removed to the country in which the alien boarded the vessel or aircraft on which the alien arrived.

(2) If the alien boarded the vessel or aircraft on which the alien arrived in the United States in a foreign territory contiguous to the United States, an island adjacent to the United States, or an island adjacent to a foreign territory contiguous to the United States, and the alien is not a native, citizen, subject, or national of, or does not reside in, the territory or island, removal shall be to the country in which the alien boarded the vessel that transported the alien to the territory or island.

(3) If the government of the country in paragraph (1) or (2) of this subsection is unwilling to accept the alien into that country's territory, removal shall be to any of the following countries, as directed by the Attorney General:

(A) The country of which the alien is a citizen, subject, or national.

(B) The country in which the alien was born.

(C) The country in which the alien has a residence.

(D) A country with a government that will accept the alien into the country's territory if removal to each country described in clauses (A)–(C) of this paragraph is impracticable, inadvisable, or impossible.

(b) OTHER ALIENS.—(1) Except as otherwise provided in this subsection, an alien not described in subsection (a) of this section who has been ordered removed may designate one country to which the alien wants to be removed, and the Attorney General shall remove the alien to that country.

(2) An alien may not designate under paragraph (1) of this subsection a foreign territory contiguous to the United States, an adjacent island, or an island adjacent to a foreign territory contiguous to the United States unless the alien is a native, citizen, subject, or national of, or has resided in, the territory or island.

(3) The Attorney General may disregard a designation under paragraph (1) of this subsection if—

(A) the alien fails to designate a country promptly;

(B) the government of the country does not inform the Attorney General finally, within 30 days after the date the Attorney General first inquires, whether the government will accept the alien into the country;

(C) the government of the country is not willing to accept the alien into the country; or

(D) the Attorney General decides that removing the alien to the country is prejudicial to the United States.

(4) If an alien is not removed to a country designated under paragraph (1) of this subsection, the Attorney General shall remove the alien to a country of which the alien is a subject, national, or citizen unless the government of the country—

(A) does not inform the Attorney General or the alien finally, within 30 days after the date the Attorney General first inquires or within another period of time the Attorney General decides is reasonable, whether the government will accept the alien into the country; or

(B) is not willing to accept the alien into the country.

(5) If an alien is not removed to a country under the paragraphs (1)–(4) of this subsection, the Attorney General shall remove the alien to any of the following countries:

(A) The country from which the alien was admitted to the United States.

(B) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.

(C) A country in which the alien resided before the alien entered the country from which the alien entered the United States.

(D) The country in which the alien was born.

(E) The country that had sovereignty over the alien's birthplace when the alien was born.

(F) The country in which the alien's birthplace is located when the alien is ordered removed.

(G) If impracticable, inadvisable, or impossible to remove the alien to any country described in clauses (A)–(F) of this paragraph, another country whose government will accept the alien into that country.

(c) REMOVAL COUNTRY WHEN UNITED STATES AT WAR.—When the United States is at war and the Attorney General decides that it is impracticable, inadvisable, inconvenient, or impossible to remove an alien under this section because of the war, the Attorney General may remove the alien—

(1) to the country that is host to a government in exile of the country of which the alien is a citizen or subject if the government of the host country will permit the alien's entry; or

(2) if the recognized government of the country of which the alien is a citizen or subject is not in exile, to a country, or a political or

territorial subdivision of a country, that is very near the country of which the alien is a citizen or subject, or, with the consent of the government of the country of which the alien is a citizen or subject, to another country.

(d) RESTRICTION ON REMOVAL TO COUNTRY WHERE ALIEN'S LIFE OR FREEDOM WOULD BE THREATENED.—(1) Notwithstanding subsections (a)–(c) of this section, the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

(2) Paragraph (1) of this subsection does not apply to an alien deportable under section 6509 of this title or if the Attorney General decides that—

(A) the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual on account of race, religion, nationality, membership in a particular social group, or political opinion;

(B) the alien, having been convicted by a final judgment of a particularly serious crime, is a danger to the community of the United States;

(C) there are serious reasons to believe that the alien has committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

(D) there are reasonable grounds to believe that the alien is a danger to the security of the United States.

(3)(A) Under paragraph (2)(B) of this subsection, an alien who has been convicted of an aggravated felony for which the alien has been sentenced to a total term of imprisonment of at least 5 years is deemed to have committed a particularly serious crime. This subparagraph does not preclude the Attorney General from determining that, notwithstanding the length of sentence imposed, an alien has been convicted of a particularly serious crime.

(B) Under paragraph (2)(D) of this subsection, an alien described in section 6508(b) of this title is deemed to be an alien for whom there are reasonable grounds to believe that the alien is a danger to the security of the United States.

§ 6717. Immediate removal of arriving aliens

(a) GENERAL.—An alien arriving at a port of entry of the United States who is ordered removed, either without a hearing under section 6102(c), 6105(d), or 6107 of this title or pursuant to a removal proceeding under section 6704 of this title initiated at the time of the alien's arrival, shall be removed immediately on a vessel or aircraft owned by the owner of the vessel or aircraft on which the alien arrived in the United States, unless—

(1) it is impracticable to remove the alien on one of those vessels or aircraft within a reasonable time; or

(2)(A) the alien is a stowaway who has been ordered removed under section 6101(b) of this title;

(B) the alien has applied for asylum; and

(C) the asylum application has not been adjudicated or has been denied but the alien has not exhausted all appeal rights.

(b) STAY OF REMOVAL.—(1) The Attorney General may stay the removal of an alien under this section if the Attorney General decides that—

(A) immediate removal is not practicable or proper; or

(B) the alien is needed to testify in the prosecution of a person for a violation of a law of the United States or of any State.

(2) During the period an alien is detained because of a stay of removal under paragraph (1)(B) of this subsection, the Attorney General may pay from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''—

(A) the cost of maintenance of the alien; and

(B) a witness fee of $1 a day.

(3) The Attorney General may release an alien whose removal is stayed under paragraph (1)(B) of this subsection on—

(A) a bond of at least $500 with security approved by the Attorney General;

(B) condition that the alien appear when required as a witness and for removal; and

(C) other conditions the Attorney General may prescribe.

§ 6718. Requirements of persons providing transportation

(a) REMOVAL BY PERSON BRINGING ALIEN TO UNITED STATES.—An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing to the United States an alien who is ordered removed (except an alien crewmember) shall—

(1) receive the alien back on the vessel or aircraft or another vessel or aircraft owned or operated by the same interests; and

(2) take the alien to the foreign country to which the alien is ordered removed.

(b) ALIEN STOWAWAYS.—(1) An owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft arriving in the United States with an alien stowaway—

(A) shall detain the alien on the vessel or aircraft, or at a place the Attorney General designates, until completion of the inspection of the alien by an immigration officer;

(B) may not permit the stowaway to land in the United States, except under regulations of the Attorney General temporarily for—

(i) medical treatment;

(ii) detention by the Attorney General; or

(iii) departure or removal; and

(C) if ordered by an immigration officer, shall remove the stowaway on the vessel or aircraft or on another vessel or aircraft.

(2) The Attorney General shall grant a timely request to remove the stowaway under paragraph (1)(C) of this subsection on a vessel or aircraft other than the one on which the stowaway arrived if the requester has obtained any travel documents necessary for departure or repatriation of the stowaway and removal of the stowaway will not be unreasonably delayed.

(c) COMPLIANCE WITH ORDER OF ATTORNEY GENERAL.—An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel, aircraft, or other transportation line shall comply with an order of the Attorney General to take on board, guard safely, and transport to the destination specified any alien ordered to be removed under this title.

§ 6719. Costs of detention, maintenance, and removal

(a) COST OF DETENTION AND MAINTENANCE PENDING REMOVAL.—(1) Except as otherwise provided in this section, an owner of a vessel or aircraft bringing an alien to the United States shall pay the cost of detaining and maintaining the alien—

(A) while the alien is detained under section 6718(a) of this title; and

(B) if the alien is a stowaway, while the alien is detained under—

(i) section 6105(c) of this title for a period not to exceed 15 days (excluding Saturdays, Sundays, and holidays) beginning on the first day that begins on the earlier of—

(I) 72 hours after the time of the initial presentation of the stowaway for inspection; or

(II) the time the stowaway is determined to have a credible fear of persecution;

(ii) section 6718(b)(1) (A) or (B)(i) of this title; or

(iii) section 6718(b)(1)(B) (ii) or (iii) of this title for the period of time reasonably necessary for the owner to arrange for repatriation or removal of the stowaway, including obtaining necessary travel documents, but not to extend beyond the date on which it is ascertained that those travel documents cannot be obtained from the country to which the stowaway is to be returned.

(2) Paragraph (1) of this subsection does not apply if—

(A) the alien is a crewmember;

(B) the alien has an immigrant visa;

(C) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States and applies for admission within 120 days after the date the visa or documentation was issued;

(D) the alien has a reentry permit and applies for admission within 120 days after the date of the alien's last inspection and admission;

(E)(i) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States or a reentry permit;

(ii) the alien applies for admission more than 120 days after the date the visa or documentation was issued or after the date of the last inspection and admission under the reentry permit; and

(iii) the owner of the vessel or aircraft satisfies the Attorney General that the existence of the condition related to inadmissibility could not have been discovered by exercising reasonable care before the alien boarded the vessel or aircraft; or

(F) the individual claims to be a national of the United States and has a United States passport.

(b) COST OF REMOVAL AT TIME OF ARRIVAL.—(1) If an alien is a stowaway or is ordered removed, either without a hearing under section 6102(c), 6105(d), or 6107 of this title or pursuant to a removal proceeding under section 6704 of this title initiated at the time of the alien's arrival, the owner of the vessel or aircraft on which the alien arrived in the United States shall pay the transportation cost of removing the alien.

(2) If removal is on a vessel or aircraft not owned by the owner of the vessel or aircraft on which the alien arrived in the United States, the Attorney General may—

(A) pay the cost from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''; and

(B) recover the amount of the cost in a civil action from the owner, agent, or consignee of the vessel or aircraft (if any) on which the alien arrived in the United States.

(c) COST OF REMOVAL FOR ALIENS ADMITTED OR PERMITTED TO LAND.—(1) Except as otherwise provided in this subsection, the cost of removal of an alien who has been admitted or permitted to land and is ordered removed shall be paid from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''.

(2) The cost of removal from the port of removal may be charged to any owner of the vessel, aircraft, or other transportation line by which the alien came to the United States if the alien—

(A) is admitted to the United States (other than lawfully admitted for permanent residence) and is ordered removed within 5 years after the date of admission based on a ground that existed before or at the time of admission; or

(B) is a crewmember permitted to land temporarily under section 2703 of this title and is ordered removed within 5 years after the date of landing.

(3) The cost of removal from the port of removal may be paid from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses'' if—

(A) the alien has been granted voluntary departure under section 6714(a) or (b) of this title;

(B) the alien is financially unable to depart at the alien's own expense; and

(C) the Attorney General considers the alien's removal to be in the best interest of the United States.

§ 6720. Aliens requiring personal care during removal

(a) GENERAL.—If the Attorney General believes that an alien being removed requires personal care because of the alien's mental or physical condition, the Attorney General may employ a suitable individual to accompany and care for the alien until the alien arrives at the final destination.

(b) COST.—The cost of providing the service described in subsection (a) of this section shall be paid in the same manner as the cost of removing the accompanied alien under this chapter.

§ 6721. Cancellation of removal and adjustment of status

(a) PERMANENT RESIDENTS.—Except as provided in subsection (e) of this section, the Attorney General may cancel removal of an alien who is inadmissible or deportable if the alien—

(1) has been an alien lawfully admitted for permanent residence for at least 5 years;

(2) has resided in the United States continuously for at least 7 years after having been admitted in any status; and

(3) has not been convicted of an aggravated felony.

(b) NON-PERMANENT RESIDENTS.—Except as provided in subsection (e) of this section, the Attorney General may cancel removal of an alien who is inadmissible or deportable if the alien—

(1) has been physically present in the United States for a continuous period of at least 10 years immediately preceding the date of the application for cancellation;

(2) has been an individual of good moral character during that period;

(3) has not been convicted of an offense described in section 6309(a)(1)–(5) or (7), 6506 (a)–(d) or (f), or 6507 (except subsection (b)(4)) of this title; and

(4) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) BATTERED SPOUSES AND CHILDREN.—(1) The Attorney General may cancel removal of an alien who is inadmissible or deportable if the alien demonstrates that—

(A)(i) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident; or

(ii) the alien is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by that citizen or permanent resident parent;

(B) the alien has been physically present in the United States for a continuous period of at least 3 years immediately preceding the date of the application for cancellation;

(C) the alien has been an individual of good moral character during that period;

(D) the alien—

(i) is not inadmissible under section 6309(a)(1)–(5) or (7), 6310, or 6311 of this title;

(ii) is not deportable under section 6502, 6506(a)–(d) or (f), 6507 (except subsection (b)(4)), 6508, or 6509 of this title; and

(iii) has not been convicted of an aggravated felony; and

(E) the removal would result in extreme hardship to the alien, the alien's child, or, if the alien is a child, to the alien's parent.

(2) In acting on an application under this subsection, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the Attorney General.

(d) ADJUSTMENT OF STATUS.—The Attorney General may adjust to the status of an alien lawfully admitted for permanent residence any alien who the Attorney General determines meets the requirements of subsection (b) or (c) of this section. The number of adjustments under this subsection may not exceed 4,000 in any fiscal year. The Attorney General shall record the alien's lawful admission for permanent residence as of the date of the Attor-

ney General's cancellation of removal under subsection (b) or (c) or the determination under this subsection.

(e) ALIENS INELIGIBLE FOR RELIEF.—Subsections (a) and (b) of this section do not apply to the following aliens:

(1) An alien who entered the United States as a crewmember after June 30, 1964.

(2) An alien who was admitted to the United States as a nonimmigrant exchange alien classified under section 2312(a) of this title, or has acquired the status of such a nonimmigrant exchange alien after admission, to receive graduate medical education or training, regardless of whether the alien is subject to or has fulfilled the 2-year foreign residence requirement of section 8304(a) of this title.

(3) An alien who—

(A) was admitted to the United States as a nonimmigrant exchange alien classified under section 2312(a) of this title or has acquired the status of such a nonimmigrant exchange alien after admission, other than to receive graduate medical education or training;

(B) is subject to the 2-year foreign residence requirement of section 8304(a) of this title; and

(C) has not fulfilled or received a waiver of that requirement.

(4) An alien who is inadmissible under section 6310 or 6311 or deportable under section 6508 or 6509 of this title.

(5) An alien who is described in section 6716(d)(2)(A) of this title.

(6) An alien whose removal previously has been canceled under this section.

(7) An alien who has been granted relief under section 212(c) of the Immigration and Nationality Act or whose deportation was suspended under section 244(a) of that Act, as those sections were in effect before September 30, 1996.

(f) SPECIAL RULES RELATED TO CONTINUOUS RESIDENCE OR PHYSICAL PRESENCE.—(1) For purposes of this section, any period of continuous residence or continuous physical presence in the United States is deemed to end at the earlier of—

(A) when the alien is served a notice to appear under section 6703(a) of this title; or

(B) when the alien commits an offense referred to in section 6309(a)(1)–(5) or (7) of this title that makes the alien inadmissible under section 6309(a)(1)–(5) or (7) or deportable under section 6506(a)–(d) or (f), 6508, or 6509 of this title.

(2) An alien has not maintained continuous physical presence in the United States under subsections (b) and (c) of this section if the alien has departed from the United States for any one period of more than 90 days or any periods totaling more than 180 days.

(3) The requirements of continuous residence or continuous physical presence in the United States under subsections (a)–(c) of this section do not apply to an alien who—

(A) has served a minimum period of 24 months in an active-duty status in the armed forces of the United States;

(B) if separated from that service, was separated under honorable conditions; and

(C) was in the United States at the time of the alien's enlistment or induction.

(g) ANNUAL LIMITATION.—The Attorney General may not cancel the removal and adjust the status under this section of a total of more than 4,000 aliens in any fiscal year. This subsection applies regardless of when an alien applied for the cancellation and adjustment.

§ 6722. Places of detention

(a) GENERAL.—The Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal. When Federal Government facilities are unavailable or facilities adapted or suitably located for detention are unavailable for rental, the Attorney General may expend from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses'', without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities (including living quarters for immigration officers if not otherwise available) necessary for detention.

(b) DETENTION FACILITIES OF IMMIGRATION AND NATURALIZATION SERVICE.—Prior to initiating any project for the construction of any new detention facility for the Immigration and Naturalization Service, the Commissioner of Immigration and Naturalization shall consider the availability for purchase or lease of any existing prison, jail, detention center, or other comparable facility suitable for that use.

§ 6723. No enforceable rights created

Sections 6703(d), 6705, 6706, 6715–6720, 6722, and 6724 of this title do not create any substantive or procedural right or benefit that is legally enforceable by any party against the Federal Government, its departments, agencies, instrumentalities, or officers, or any other person.

§ 6724. Review by Attorney General and Comptroller General of certain proceedings

(a) ATTORNEY GENERAL.—The Attorney General shall review and evaluate removal proceedings conducted under sections 6705 and 6706 of this title.

(b) COMPTROLLER GENERAL.—The Comptroller General shall monitor, review, and evaluate removal proceedings conducted under sections 6705 and 6706 of this title.

CHAPTER 69—ALIEN TERRORIST REMOVAL PROCEDURES

Sec.
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§ 6901. Definitions

In this chapter—

(1) ''alien terrorist'' means an alien described in section 6508(b) of this title.

(2) ''classified information'' has the same meaning given that term in section 1(a) of the Classified Information Procedures Act (18 App. U.S.C.).

(3) ''national security'' has the same meaning given that term in section 1(b) of the Classified Information Procedures Act (18 App. U.S.C.).

(4) ''removal court'' means the court described in section 6902 of this title.

(5) ''removal hearing'' means the hearing described in section 6904 of this title.

(6) ''special attorney'' means an attorney on the panel established under section 6902(e) of this title.

§ 6902. Removal court

(a) DESIGNATION OF JUDGES.—The Chief Justice of the United States shall publicly designate 5 district court judges from 5 of the United States judicial circuits who shall constitute a removal court with jurisdiction to conduct all removal proceedings under this chapter. The Chief Justice may designate the same judges under this section as are designated under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

(b) TERMS.—Each judge designated under subsection (a) of this section shall serve for a term of 5 years and be eligible for redesignation, except that of the judges first designated—

(1) one shall serve for a term of one year;

(2) one shall serve for a term of 2 years;

(3) one shall serve for a term of 3 years; and

(4) one shall serve for a term of 4 years.

(c) CHIEF JUDGE.—(1) The Chief Justice shall publicly designate one of the judges of the removal court to be the chief judge of the removal court.

(2) The chief judge shall—

(A) prescribe rules to facilitate the functioning of the removal court; and

(B) assign the consideration of cases to the various judges on the removal court.

(d) EXPEDITIOUS AND CONFIDENTIAL NATURE OF PROCEEDINGS.—Section 103(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(c)) applies to removal proceedings under this chapter in the same manner as it applies to proceedings under that Act.

(e) PANEL OF SPECIAL ATTORNEYS.—The removal court shall provide for the designation of a panel of attorneys each of whom—

(1) has a security clearance that allows the attorney access to classified information; and

(2) has agreed to represent permanent resident aliens with respect to classified information under section 6904(e)(3) of this title in accordance with, and subject to the penalties under, this chapter.

§ 6903. Application for removal hearing

(a) FILING OF APPLICATION.—(1) If the Attorney General has classified information that an alien is an alien terrorist, the Attorney General may seek removal of the alien under this chapter by filing an application with the removal court. The application shall contain—

(A) the identity of the attorney in the Department of Justice making the application;

(B) a certification by the Attorney General or the Deputy Attorney General that the application satisfies the requirements of this section;

(C) the identity of the alien for whom authorization for the removal proceeding under this chapter is sought; and

(D) a statement of the facts and circumstances relied on by the Attorney General to establish probable cause that—

(i) the alien is an alien terrorist;

(ii) the alien is physically present in the United States; and

(iii) removal of the alien other than under this chapter would pose a risk to the national security of the United States.

(2) An application under this section shall be submitted ex parte and in camera and be filed under seal with the removal court.

(b) RIGHT TO DISMISS.—The Attorney General may dismiss a removal proceeding under this chapter at any stage of the proceeding.

(c) CONSIDERATION OF APPLICATION.—(1) In deciding whether to grant an application under this section, a single judge of the removal court may consider, ex parte and in camera, in addition to the information contained in the application—

(A) other information, including classified information, presented under oath or affirmation; and

(B) testimony received in any hearing on the application, of which a verbatim record shall be kept.

(2) The judge shall issue an order granting the application if the judge finds probable cause to believe that—

(A) the alien has been correctly identified and is an alien terrorist present in the United States; and

(B) removal of the alien other than under this chapter would pose a risk to the national security of the United States.

(3) If the judge denies the order requested in the application, the judge shall prepare a written statement of the reasons for the denial, taking all necessary precautions not to disclose any classified information contained in the application.

(d) EXCLUSIVE PROVISIONS.—If an order is issued under this section granting an application—

(1) the rights of the alien regarding removal shall be governed only by this chapter; and

(2) except as they are specifically referenced in this chapter, no other provisions of this title apply.

§ 6904. Removal hearing

(a) GENERAL.—If an application for an order is approved under section 6903(c)(2) of this title, a removal hearing shall be conducted under this section as expeditiously as practicable to determine whether the alien should be removed from the United States on the ground that the alien is an alien terrorist. The removal hearing shall be open to the public.

(b) NOTICE.—An alien who is the subject of a removal hearing under this chapter shall be given reasonable notice of—

(1) the nature of the charges against the alien, including a general account of the basis for the charges; and

(2) the time and place at which the hearing will be held.

(c) RIGHTS IN HEARING.—(1) The alien has a right to be present at the hearing and to be represented by counsel. An alien financially unable to obtain counsel is entitled to have counsel assigned to represent the alien. Assigned counsel shall be appointed by the judge pursuant to the plan for furnishing representation for any person financially unable to obtain adequate representation for the district in which the hearing is conducted, as provided for in section 3006A of title 18. That section applies and, for purposes of determining the maximum amount of compensation, the matter shall be treated as if a felony were charged.

(2) Subject to subsection (e) of this section, the alien shall have a reasonable opportunity to examine the evidence against the alien, present evidence, and cross-examine witness.

(3) A verbatim record of the proceedings and of all testimony and evidence offered or produced at the hearing shall be kept.

(4) The decision of the judge regarding removal shall be based only on the evidence introduced at the removal hearing.

(d) SUBPENAS.—(1) At any time before the conclusion of the removal hearing, the alien or the Attorney General may request the judge to issue a subpena for a witness on a satisfactory showing that the witness is necessary for the determination of a material matter. The subpena also may command the person to whom it is directed to produce records or other objects designated in the subpena. The request for the subpena may be made ex parte except that the judge shall inform the Attorney General of any request by the alien for a subpena if compliance with the subpena would reveal classified evidence or the source of classified evidence. The Attorney General shall be given a reasonable opportunity to oppose the issuance of such a subpena.

(2) If an application for a subpena by the alien also makes a showing that the alien is financially unable to pay for the attendance of a requested witness, the court may order the costs incurred by the process and the fees of the witness to be paid from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''.

(3) A subpena under this subsection may be served anywhere in the United States.

(4) A witness subpenaed under this subsection shall receive the same fees and expenses as a witness subpenaed in a civil proceeding in a court of the United States.

(5) This subsection does not allow an alien to have access to classified information.

(e) DISCOVERY.—(1) In a removal proceeding under this chapter—

(A) the Attorney General may use the fruits of electronic surveillance and unconsented physical searches authorized under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) without regard to section 106(c), (e), (f), (g), or (h) of that Act (50 U.S.C. 1806(c), (e), (f), (g), (h)), and discovery of information derived under that Act or otherwise collected for national security purposes may not be authorized if disclosure would present a risk to the national security of the United States;

(B) an alien may not suppress evidence that the alien alleges was unlawfully obtained; and

(C) section 3504 of title 18 and section 106(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(c)) do not apply if the Attorney General determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information or otherwise threaten the integrity of a pending investigation.

(2) This chapter does not prevent the Attorney General from seeking protective orders or asserting privileges ordinarily available to the Federal Government to protect against the disclosure of classified information, including the invocation of the military and State secrets privileges.

(3)(A) The judge shall examine, ex parte and in camera, any evidence for which the Attorney General determines that public disclosure would pose a risk to the national security of the United States or to the security of an individual because it would disclose classified information. The alien and the public may not be informed of the evidence or its sources except through reference to the summary provided under this paragraph. However, the Attorney General, after coordination with the originating agency, may elect to introduce classified information in open session.

(B) With respect to that information, the Attorney General shall submit to the removal court an unclassified summary of the specific evidence that does not pose that risk.

(C) Not later than 15 days after the summary is submitted, the judge shall approve the summary if the judge finds that it is sufficient to enable the alien to prepare a defense. The Attorney General shall deliver to the alien a copy of the unclassified summary approved under this subparagraph.

(D)(i) If an unclassified summary is not approved by the removal court under subparagraph (C) of this paragraph, the Attorney General shall be given 15 days to correct the deficiencies identified by the court and submit a revised unclassified summary.

(ii) If the revised unclassified summary is not approved by the court within 15 days after its submission under clause (i) of this subparagraph, the removal hearing shall be terminated unless the judge finds that—

(I) the continued presence of the alien in the United States would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any individual; and

(II) the provision of the summary would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any individual.

(E) If a judge makes the findings described in subparagraph (D)(ii)(I) and (II) of this paragraph—

(i) the removal hearing shall continue;

(ii) the Attorney General shall deliver to the alien a statement that no summary is possible;

(iii) the classified information submitted in camera and ex parte may be used as provided in this paragraph; and

(iv) if the alien is lawfully admitted for permanent residence, the judge (under rules of the removal court) shall designate a special attorney to assist the alien by—

(I) reviewing in camera the classified information on behalf of the alien; and

(II) challenging through an in camera proceeding the veracity of the evidence contained in the classified information.

(F) A special attorney receiving classified information under subparagraph (E)(iv) of this paragraph may not disclose the information to the alien or to any other attorney representing the alien. A special attorney who violates this restriction shall be fined under title 18, imprisoned for at least 10 years but not more than 25 years, or both.

(f) ARGUMENTS.—Following receipt of evidence, the Attorney General and the alien shall be given fair opportunity to present argument as to whether the evidence is sufficient to justify the removal of the alien. The Attorney General shall open the argument. The alien shall be permitted to reply. The Attorney General then shall be permitted to reply in rebuttal. The judge may allow any part of the argument that refers to evidence received in camera and ex parte to be heard in camera and ex parte.

(g) BURDEN OF PROOF.—In the hearing, the Attorney General has the burden of proving by a preponderance of the evidence that the alien is subject to removal because the alien is an alien terrorist.

(h) RULES OF EVIDENCE.—The Federal Rules of Evidence (28 App. U.S.C.) do not apply in a removal hearing under this section.

(i) FINDING THAT ALIEN IS REMOVABLE.—If the judge, after considering the evidence on the record as a whole, finds that the Attorney General has met the burden of proof, the judge shall order the alien removed and detained pending removal from the United States. If the alien was released pending the removal hearing, the judge shall order the Attorney General to take the alien into custody.

(j) WRITTEN ORDER.—At the time of issuing a decision whether the alien shall be removed, the judge shall prepare a written order containing a statement of facts found and conclusions of law. Any part of the order that would reveal the substance or source of information received in camera and ex parte under subsection (e) of this section may not be made available to the alien or the public.

(k) NO RIGHT TO ANCILLARY RELIEF.—The judge may not at any time consider or provide for relief from removal based on—

(1) asylum under section 5106 of this title;

(2) voluntary departure under section 6714(a) or (b) of this title;

(3) withholding of removal under section 6716(d) of this title;

(4) cancellation of removal under section 6721 of this title;

(5) adjustment of status under section 9101 or 9102 of this title; or

(6) registry under section 9104 of this title.

§ 6905. Appeals

(a) APPEAL OF DENIAL OF APPLICATION FOR REMOVAL HEARING.—(1) The Attorney General may seek a review of the denial of an order sought in an application filed under section 6903 of this title. The appeal must be filed in the United States Court of Appeals for the District of Columbia Circuit by notice of appeal filed within 20 days after the date of the denial.

(2) The entire record of the proceeding shall be transmitted to the Court of Appeals under seal, and the Court of Appeals shall hear the matter ex parte.

(3) The Court of Appeals shall—

(A) review questions of law de novo; and

(B) set aside a finding of fact only if the finding was clearly erroneous.

(b) APPEAL OF DECISION ABOUT SUMMARY OF CLASSIFIED INFORMATION.—(1) The Attorney General may take an interlocutory appeal to the United States Court of Appeals for the District of Columbia Circuit of—

(A) a decision by the judge under section 6904(e)(3) of this title; or

(B) the refusal of the judge to make the findings permitted by section 6904(e)(3) of this title.

(2) In an interlocutory appeal taken under this subsection, the entire record (including any proposed order of the judge, any classified information, and the summary of evidence) shall be transmitted to the Court of Appeals. The classified information shall be transmitted under seal. A verbatim record of the appeal shall be kept under seal in the event of any other judicial review.

(c) APPEAL OF DECISION IN HEARING.—(1) Subject to paragraph (2) of this subsection, the alien or the Attorney General may appeal the decision of the judge after a removal hearing to the United States Court of Appeals for the District of Columbia Circuit by filing a notice of appeal within 20 days after the date on which the order is issued. The order may not be enforced during the pendency of an appeal under this subsection.

(2)(A) Unless the alien waives the right to a review under this paragraph, in any case involving an alien lawfully admitted for permanent residence who is denied a written summary of classified information under section 6904(e)(3) of this title and with respect to which the procedures described in section 6904(e)(3)(E)(iv) apply, any order issued by the judge shall be reviewed by the Court of Appeals for the District of Columbia Circuit.

(B) With respect to any issue involving classified information that arises in the review, the alien shall be represented only by the special attorney designated under section 6904(e)(3)(E)(iv) of this title.

(3) In an appeal or review to the Court of Appeals under this subsection—

(A) the entire record shall be transmitted to the Court of Appeals;

(B) information received in camera and ex parte, and any part of the order that would reveal the substance or source of the information, shall be transmitted under seal;

(C) the appeal or review shall be heard as expeditiously as practicable and the court may dispense with full briefing and hear the matter only on the record of the judge of the removal court and on briefs or motions the court may require to be filed by the parties;

(D) the court shall review questions of law de novo;

(E) a finding of fact shall be accorded deference by the reviewing court and may not be set aside unless the finding was clearly erroneous, except that in a review under paragraph (2) of this subsection in which an alien lawfully admitted for permanent residence was denied a written summary of classified information under section 6904(c)(3) of this title, the Court of Appeals shall review questions of fact de novo; and

(F) the Court of Appeals shall issue an opinion within 60 days after the date of issuance of the final order of the district court.

(d) CERTIORARI.—Following a decision by the Court of Appeals under subsection (c) of this section, the alien or the Attorney General may petition the Supreme Court for a writ of certiorari. Any information transmitted to the Court of Appeals under seal, if also submitted to the Supreme Court, shall be transmitted under seal. An order of removal may not be stayed pending disposition of a writ of certiorari, except as provided by the Court of Appeals or a Justice of the Supreme Court.

(e) APPEAL OF DETENTION ORDER.—(1) Sections 3145–3148 of title 18 apply to an alien to whom section 6907(b)(1) of this title applies. For purposes of—

(A) section 3145 of title 18, an appeal shall be taken to the United States Court of Appeals for the District of Columbia Circuit; and

(B) section 3146 of title 18, the alien shall be considered released in connection with a charge of an offense punishable by life imprisonment.

(2) The determinations and actions of the Attorney General under section 6907(b)(2)(C) of this title are not subject to judicial review (including application for a writ of habeas corpus), except for a claim by the alien that continued detention violates the alien's rights under the Constitution. The United States Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction over such a claim.

§ 6906. Custody and release pending removal hearing

(a) ON FILING APPLICATION.—(1) Subject to paragraphs (2) and (3) of this subsection, the Attorney General may—

(A) take into custody any alien with respect to whom an application under section 6903 of this title has been filed; and

(B) retain the alien in custody in accordance with the procedures authorized by this chapter.

(2)(A) An alien lawfully admitted for permanent residence is entitled to a release hearing before the judge assigned to hear the removal hearing. The alien shall be detained pending the removal hearing, unless the alien demonstrates to the court that the alien—

(i) is lawfully admitted for permanent residence;

(ii) is not likely to flee if released on conditions the court may prescribe (including the posting of any monetary amount); and

(iii) will not endanger national security, or the safety of any individual or the community, if released.

(B) The judge may consider classified information submitted in camera and ex parte in deciding whether to release an alien pending the removal hearing.

(3)(A) Subject to subparagraph (B) of this paragraph, if a judge of the removal court denies the order sought in an application filed under section 6903 of this title, and the Attorney General does not seek review of the denial, the alien shall be released from custody.

(B) Subparagraph (A) of this paragraph does not prevent the arrest and detention of the alien under chapter 67 of this title.

(b) CONDITIONAL RELEASE IF ORDER DENIED AND REVIEW SOUGHT.—(1) If a judge of the removal court denies the order sought in an application filed under section 6903 of this title and the Attorney General seeks review of the denial, the judge shall release the alien from custody subject to the least restrictive condition, or combination of conditions, of release described in section 3142(b) and (c)(1)(B)(i)–(xiv) of title 18 that will—

(A) reasonably ensure the appearance of the alien at any future proceeding under this chapter; and

(B) not endanger the safety of any other individual or the community.

(2) If the judge finds no such condition or combination of conditions, as described in paragraph (1) of this subsection, the alien shall remain in custody until the completion of any appeal authorized by this chapter.

§ 6907. Custody and release after removal hearing

(a) RELEASE.—(1) Subject to paragraph (2) of this subsection, if the judge decides that an alien should not be removed, the alien shall be released from custody.

(2) If the Attorney General takes an appeal from the decision, the alien shall remain in custody, subject to section 3142 of title 18.

(b) CUSTODY AND REMOVAL.—(1) If the judge decides that an alien should be removed, the alien shall be detained pending the outcome of any appeal. After the conclusion of any judicial review that affirms the removal order, the Attorney General shall retain the alien in custody and remove the alien to a country specified under paragraph (2) of this subsection.

(2)(A) The removal of an alien shall be to any country the alien designates if the designation does not, in the judgment of the Attorney General, in consultation with the Secretary of State, impair the obligation of the United States under any treaty (including a treaty on extradition) or otherwise adversely affect the foreign policy of the United States.

(B) If the alien refuses to designate a country to which the alien wishes to be removed or if the Attorney General, in consultation with the Secretary, determines that removal of the alien to the designated country would impair a treaty obligation or adversely affect United States foreign policy, the Attorney General shall remove the alien to any country willing to receive the alien.

(C) If no country is willing to receive the alien, the Attorney General may retain the alien in custody. The Attorney General, in coordination with the Secretary, shall make periodic efforts to reach agreement with other countries to accept the alien and at least every 6 months shall provide to the attorney representing the alien at the removal hearing a written report on the Attorney General's efforts. An alien in custody under this subparagraph shall be released from custody only at the discretion of the Attorney General and subject to conditions the Attorney General considers appropriate.

(D) Before an alien is removed from the United States under this subsection, or under an order of removal because the alien is inadmissible under section 6310(b) of this title, the alien shall be photographed and fingerprinted, and shall be advised of the provisions of section 10149(a)(2) of this title.

(c) CONTINUED DETENTION PENDING TRIAL.—(1) The Attorney General may hold in abeyance the removal of an alien who has been ordered removed under this chapter to allow the trial of the alien on a federal or state criminal charge and the service of any sentence of confinement resulting from the trial.

(2) Pending the commencement of any service of a sentence of confinement by an alien described in paragraph (1) of this subsection, the alien shall remain in the custody of the Attorney General, unless the Attorney General determines that temporary release of the alien to the custody of state authorities for confinement in a state facility is appropriate and would not endanger national security or public safety.

(3) Following the completion of a sentence of confinement by an alien described in paragraph (1) of this subsection, or following the completion of state criminal proceedings that do not result in a sentence of confinement of an alien released to the custody of state authorities under paragraph (2) of this subsection, the alien shall be returned to the custody of the Attorney General, who shall proceed to the removal of the alien under this chapter.

(d) APPLICATION OF CERTAIN PROVISIONS RELATED TO ESCAPE OF PRISONERS.—For purposes of sections 751 and 752 of title 18, an alien in the custody of the Attorney General under this chapter is deemed to be in custody by virtue of an arrest on a charge of a felony.

(e) RIGHTS OF ALIENS IN CUSTODY.—(1) An alien in the custody of the Attorney General under this chapter shall be given reasonable opportunity, as determined by the Attorney General, to communicate with and receive visits from members of the alien's family, and to contact, retain, and communicate with an attorney.

(2) An alien in the custody of the Attorney General under this chapter has the right to contact an appropriate diplomatic or consular official of the

alien's country of citizenship or nationality or of any country providing representation services for the alien. The Attorney General shall notify the appropriate embassy, mission, or consular office of the alien's detention.

CHAPTER 71—TEMPORARY PROTECTED STATUS

Sec.
7101. General.
7102. Granting the status.
7103. Designation of foreign countries.
7104. Information and notices about status.
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§ 7101. General

The Attorney General may grant an alien temporary protected status in the United States as provided in this chapter. During the period that the status is in effect—

(1) the Attorney General may not detain the alien on the basis of the alien's immigration status in the United States;

(2) the Attorney General may not remove the alien from the United States;

(3) the Attorney General shall authorize the alien to work in the United States;

(4) the alien is not residing permanently in the United States under color of law;

(5) a State or political subdivision of a State that provides public assistance may find the alien ineligible for the assistance;

(6) the alien may travel outside the United States with the prior consent of the Attorney General; and

(7) the alien is deemed to be maintaining lawful status as a nonimmigrant for purposes of sections 9101(f)(3) and 9108 of this title.

§ 7102. Granting the status

(a) GENERAL REQUIREMENTS FOR GRANTING.—The Attorney General may grant temporary protected status in the United States to an alien who—

(1) is a national of a foreign country designated, or designated in part, under section 7103 of this title, or has no nationality but last habitually resided in such a county;

(2) has been physically present in the United States continuously since the effective date of the most recent designation of that country or part of that country under section 7103 of this title;

(3) has resided in the United States continuously since a date the Attorney General may specify;

(4) is admissible as an immigrant, except that for purposes of this clause—

(A) sections 4311(a) and 6301 of this title do not apply;

(B) the Attorney General may waive subchapter I of chapter 63 of this title (except as provided in subclause (C) of this clause) for an individual alien for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest; and

(C) the Attorney General may not waive section 6309(a)(1)–(4), 6310(a)–(c), or 6311 of this title, except as section 6309(a)(3) relates to a single offense of simple possession of not more than 30 grams of marijuana; and

(5) registers for the temporary protected status during a registration period of at least 180 days, to the extent and in the manner the Attorney General establishes.

(b) PROHIBITIONS ON GRANTING.—Notwithstanding subsection (a) of this section, the Attorney General may not grant temporary protected status to an alien if the Attorney General finds that the alien—

(1) has been convicted of a felony or more than one misdemeanor committed in the United States; or

(2) is described in section 5106(b)(2)(A) of this title.

(c) BRIEF, CASUAL, AND INNOCENT ABSENCES.—(1) An alien does not fail to maintain continuous physical presence in the United States under subsection (a)(2) of this section or section 7107(2) of this title because of a brief, casual, and innocent absence from the United States, whether or not authorized by the Attorney General.

(2) An alien does not fail to maintain continuous residence in the United States under subsection (a)(3) of this section because of a brief, casual, and innocent absence from the United States, whether or not authorized by the Attorney General, or because of a brief temporary trip outside the United States required by emergency or extenuating circumstances beyond the alien's control.

(d) STATUS PENDING REGISTRATION OR FINAL DECISION.—(1) If an alien can establish a prima facie case of eligibility for temporary protected status under this chapter except that the period of registration under subsection (a)(5) of this section has not begun, the Attorney General shall provide the alien with the benefits of the status until the alien has had a rea-

sonable opportunity to register during the first 30 days of the registration period.

(2) If an alien establishes a prima facie case of eligibility for temporary protected status under this chapter, the Attorney General shall provide the alien with the benefits of the status until a final decision is made on the alien's eligibility.

(e) CONFIDENTIALITY.—The Attorney General shall establish procedures to protect the confidentiality of information provided by an alien under this chapter.

(f) NO AUTHORIZATION TO APPLY FOR ADMISSION OR TO BE ADMITTED.—This chapter does not authorize an alien to apply for admission, or to be admitted, to the United States to apply for temporary protected status under this chapter.

§ 7103. Designation of foreign countries

(a) GENERAL.—After consultation with the heads of appropriate federal departments, agencies, or instrumentalities, the Attorney General may designate a foreign country or part of a foreign country under this section if the Attorney General finds that—

(1) there is an armed conflict in the country that would pose a serious threat to the personal safety of nationals of that country if they were required to return to that country or part of that country;

(2)(A) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the country resulting in a substantial, but temporary, disruption of living conditions in the area affected by the disaster;

(B) the country temporarily is unable to handle returning nationals adequately; and

(C) the government of the country officially has requested designation under this clause (2); or

(3) extraordinary and temporary conditions exist in the country that prevent nationals from returning to that country in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the interest of the United States.

(b) PUBLICATION OF DESIGNATIONS.—A designation under subsection (a) of this section is effective only if notice of the designation (including a statement of the findings under subsection (a) and the effective date of the designation) is published in the Federal Register. The Attorney General shall include in the notice an estimate of the number of nationals of the designated country who are, or within the effective period of the designation are likely to become, eligible for temporary protected status under this chapter and their immigration status in the United States.

(c) EFFECTIVE PERIOD OF DESIGNATIONS.—A designation under this section—

(1) takes effect on the date the notice is published under subsection (b) of this section or a later date the Attorney General specifies in the notice; and

(2) remains in effect until terminated under subsection (d) of this section.

(d) PERIODIC REVIEWS, EXTENSIONS, AND TERMINATIONS.—(1) The initial period of designation of a foreign country or part of a foreign country is the period specified by the Attorney General. The period shall be at least 6 months but not more than 18 months.

(2) At least 60 days before the end of the initial period of designation and any extended period of designation, the Attorney General, after consultation with the heads of appropriate federal departments, agencies, and instrumentalities, shall review the conditions in the designated country or part of the country and decide whether the conditions for the designation continue to be met.

(3)(A) If the Attorney General does not decide that the designated country or part of the country no longer meets the conditions for designation, the designation is extended for 6 months or, in the discretion of the Attorney General, for 12 or 18 months.

(B) If the Attorney General decides that the designated country or part of the country no longer meets the conditions for designation, the Attorney General shall terminate the designation. A termination is effective 60 days after notice of the termination is published in the Federal Register or when the most recent extension expires, whichever is later.

(4) The Attorney General shall publish in the Federal Register, on a timely basis, notice of each decision under this subsection, including the basis for the decision, and the period of any extension.

(e) INFORMATION ON PROTECTED STATUS AT TIME OF DESIGNATION.—When the Attorney General designates a foreign country or part of a foreign country under subsection (a) of this section, the Attorney General shall make available to nationals of that country information on the temporary protected status available under this chapter.

(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—(1) The Attorney General shall establish an administrative procedure to review a denial of benefits to an alien under this section. The procedure may not prevent an alien from asserting protection under this chapter in a removal proceeding if the alien demonstrates that the alien is a national of a foreign country designated, or designated in part, under this section.

(2) A designation, extension, or termination under this section is not subject to judicial review.

§ 7104. Information and notices about status

(a) INFORMATION ABOUT STATUS.—On granting temporary protected status to an alien under this chapter, the Attorney General shall provide the alien with information about the status.

(b) NOTICES OF AVAILABILITY AT DEPORTATION PROCEEDINGS.—The Attorney General promptly shall notify an alien of the temporary protected status that may be available under this chapter—

(1) if, when a removal proceeding is initiated against the alien, the foreign country of which the alien is a national has been designated, or designated in part, under section 7103 of this title; or

(2) if, during a removal proceeding pending against the alien, the country of which the alien is a national is designated, or designated in part, under section 7103 of this title.

(c) FORM AND LANGUAGE.—Information and notices under this section shall be in a form and language the alien can understand.

§ 7105. Temporary documentation and work authorization

(a) GENERAL.—On granting temporary protected status to an alien under this chapter, the Attorney General shall provide for the issuance of temporary documentation and work authorization necessary to carry out this chapter. The work authorization shall be an ''employment authorized'' endorsement or other appropriate work permit.

(b) PERIOD OF VALIDITY.—(1) Work authorization issued under subsection (a) of this section is valid during the period the alien is in temporary protected status under this chapter.

(2) Subject to subsection (c) of this section, the documentation and work authorization are valid for the initial period of designation of the foreign country or part of the foreign country involved and any extension of that period. The Attorney General may stagger the periods of validity of the documentation and authorization to provide for an orderly renewal of the documentation and authorization and for an orderly transition under subsection (c) when a designation is terminated.

(c) EFFECTIVE DATE OF TERMINATIONS.—A termination of a designation under section 7103(d)(3)(B) of this title applies only to documentation and work authorization issued or renewed after—

(1) the effective date of the termination; or

(2) a later date the Attorney General decides is appropriate to provide for an orderly transition.

§ 7106. Registration fees

(a) ALLOWABLE FEES.—The Attorney General may require payment of a reasonable fee of not more than $50 as a condition for registering an alien under section 7102(a)(5) of this title and an additional fee for providing a work authorization.

(b) CREDITING APPROPRIATION.—All fees collected under this section shall be credited to the appropriation to be used to carry out this chapter.

§ 7107. Withdrawal of status

The Attorney General shall withdraw temporary protected status granted to an alien under this chapter if—

(1) the Attorney General finds that the alien was not eligible for the status;

(2) except as provided in sections 7101(6) and 7102(c) of this title, the alien has not remained continuously physically present in the United States from the date the alien first was granted the status; or

(3) the alien, without good cause, does not register with the Attorney General annually, at the end of each 12-month period after the status is granted, in the form and manner specified by the Attorney General.

§ 7108. Relationship to cancellation of removal

Under section 6721(a) of this title, the period during which temporary protected status is in effect for an alien—

(1) is not counted as a period of physical presence in the United States unless the Attorney General decides that extreme hardship exists; and

(2) does not cause a break in the continuity of residence before and after the period during which the alien has that status.

§ 7109. Relationship to immigration status

(a) GENERAL.—This chapter does not authorize the Attorney General to deny temporary protected status to an alien based on the alien's immigration status or to require an alien, as a condition of being granted temporary protected status, to relinquish any other status the alien may have or to waive any right under this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, and chapters 133, 135, and 151).

(b) TEMPORARY PROTECTED STATUS NOT INCONSISTENT WITH NONIMMIGRANT STATUS.—Granting temporary protected status under this chapter is not inconsistent with granting nonimmigrant status under this title.

§ 7110. Immigration status and continuous physical presence not affected by temporary travel outside the United States

An alien granted temporary protected status under this chapter whom the Attorney General authorizes to travel outside the United States temporarily and who returns to the United States according to the authorization—

(1) shall be inspected and admitted in the same immigration status the alien had at the time of departure if the alien is found not to be inadmissible on a ground referred to in section 7102(a)(4)(C) of this title; and

(2) has not failed to maintain continuous physical presence in the United States under section 6721(a) of this title because of the departure if the absence meets the requirements of section 6721(c).

§ 7111. Exclusive remedy

Except as otherwise specifically provided, this chapter provides the exclusive authority of the Attorney General under law to allow an alien who is or may become otherwise removable or who has been paroled into the United States to remain in the United States temporarily because of the alien's nationality or region of foreign country of nationality.

§ 7112. Limitation on Senate consideration of legislation adjusting status

(a) GENERAL.—Except as provided in subsection (b) of this section, it is not in order in the Senate to consider a bill, resolution, or amendment that—

(1) provides for the adjustment to lawful temporary or permanent resident alien status for an alien receiving temporary protected status under this chapter; or

(2) has the effect of amending or limiting the application of this section.

(b) SUPERMAJORITY REQUIREMENT.—An affirmative vote of three-fifths of the members of the Senate chosen and sworn is required to—

(1) waive or suspend subsection (a) of this section; or

(2) sustain an appeal of the ruling of the Chair on a point of order raised under subsection (a) of this section.

(c) SENATE RULEMAKING POWER.—This section—

(1) is enacted as an exercise of the rulemaking power of the Senate;

(2) is deemed to be a part of the rules of the Senate on matters described in subsection (a) of this section;

(3) supersedes other rules of the Senate only to the extent inconsistent with this section; and

(4) is enacted with full recognition of the constitutional right of the Senate to change those rules at any time in the same manner as any other rule of the Senate.

§ 7113. Annual reports

(a) ATTORNEY GENERAL.—Not later than March 1 of each year, the Attorney General, after consultation with the heads of appropriate federal departments, agencies, and instrumentalities, shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the operation of this chapter during the prior year. The report shall include—

(1) a listing of foreign countries and parts of foreign countries designated under section 7103 of this title;

(2) the number of nationals of each country granted temporary protected status under this chapter and their immigration status before being granted temporary protected status; and

(3) an explanation of why each foreign country or part of a foreign country was designated under section 7103 of this title and why a designation was extended or terminated.

(b) COMMITTEE REPORTS.—Not later than 180 days after receiving a report under subsection (a) of this section, the Committees on the Judiciary of the House of Representatives and the Senate shall report to the House and Senate, respectively, on oversight findings and legislation the applicable Committee considers appropriate.

CHAPTER 73—ADDITIONAL REGULATION OF PERSONS PROVIDING TRANSPORTATION

Sec.
7301. Ports of entry for aircraft and civil air navigation regulation.
7302. Lists of passengers.
7303. Payment contingent on admission prohibited.
7304. Detention and delivery of arriving aliens.
7305. Duty to prevent unauthorized landing.
7306. Carrier contracts for inspection and admission.
7307. Prohibitions on bringing certain aliens to the United States.
7308. Fees for inspecting passengers.

§ 7301. Ports of entry for aircraft and civil air navigation regulation

The Attorney General by regulation may—

(1) designate as ports of entry for aliens arriving by aircraft in the United States any of the ports of entry designated for civil aircraft under section 2(b)(1)(A) of Public Law 103–272 (19 U.S.C. 1644a(b)(1)(A));

(2) require aircraft in civil air navigation to give notice of landing or intention to land as necessary to carry out this title; and

(3) apply this title to civil air navigation to the extent the Attorney General considers necessary.

§ 7302. Lists of passengers

(a) ARRIVING PASSENGERS.—An owner, agent, master, commanding officer, or consignee of a vessel or aircraft arriving in the United States from a place outside the United States shall give an immigration officer at the port of arrival a list of the passengers on the vessel or aircraft. The list shall be prepared at the time, be in the form, and contain the information the Attorney General prescribes by regulation as necessary to identify the passengers and enforce the immigration laws.

(b) DEPARTING PASSENGERS.—(1) A master, commanding officer, or agent of a vessel or aircraft taking on passengers in the United States who are destined to a place outside the United States shall give an immigration officer at the port a list of those passengers before departing. The list shall be in the form, contain the information, and be accompanied by other documentation the Attorney General prescribes by regulation as necessary to identify the passengers and enforce the immigration laws. The master, commanding officer, or agent shall state under oath that the list and accompanying documentation contain all of the required information.

(2) The vessel or aircraft may be cleared only after the master, commanding officer, or agent complies with paragraph (1) of this subsection. However, if the Attorney General decides that the vessel or aircraft is making regular trips to ports of the United States, the Attorney General, when it is expedient, may allow the master, commanding officer, or agent to give the list and documentation at a later date.

(c) EXCEPTIONS.—Subsections (a) and (b) of this section do not require that a list include—

(1) an alien crewmember; or

(2) except as required by regulations prescribed under section 7301 of this title, a passenger—

(A) arriving by air on a trip originating in foreign territory contiguous to the United States; or

(B) departing by air on a trip originating in the United States and destined for foreign territory contiguous to the United States.

(d) WAIVER.—The Attorney General may prescribe conditions under which the requirements of this section may be waived.

§ 7303. Payment contingent on admission prohibited

An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States may not take any consideration to be kept

or returned contingent on whether the alien is admitted to, or ordered removed from, the United States.

§ 7304. Detention and delivery of arriving aliens

An immigration officer may order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States to—

(1) detain the alien on the vessel or at the airport of arrival; and

(2) deliver the alien to an immigration officer for inspection or to a medical officer for examination.

§ 7305. Duty to prevent unauthorized landing

(a) GENERAL.—(1) A person bringing an alien to, or providing a means for an alien to travel to, the United States (including an alien crewmember not covered by section 2704(a) of this title) shall prevent the alien from landing in the United States at—

(A) a port of entry not designated by the Attorney General; or

(B) a time or place not designated by an immigration officer.

(2) Proof that an alien did not appear at the time and place designated by the immigration officer is prima facie evidence that the alien landed in the United States at a time or place not designated by the immigration officer.

(3) This subsection does not apply to a carrier that has made a contract as provided in section 7306(b) of this title.

(b) DILIGENCE DEFENSE.—(1) An owner or operator of a railroad line, international bridge, or toll road that satisfies the Attorney General that the owner or operator has acted diligently and reasonably to comply with subsection (a)(1) of this section is not liable for a penalty under section 10122 of this title for not complying with subsection (a)(1).

(2) On request of an owner or operator referred to in paragraph (1) of this subsection, the Attorney General shall inspect a facility established, or method used, by the owner or operator at a place of entry into the United States to comply with subsection (a)(1) of this section. The Attorney General shall approve, for the period of time the Attorney General prescribes, a facility or method the Attorney General decides is satisfactory to achieve compliance.

(3) Proof that an owner or operator referred to in paragraph (1) of this subsection has diligently maintained a facility, or used a method, approved by the Attorney General under paragraph (2) of this subsection (during the period the approval is in effect) is prima facie evidence that the owner or operator acted diligently and reasonably to comply with subsection (a)(1) of this section.

§ 7306. Carrier contracts for inspection and admission

(a) DEFINITION.—In this section, ''carrier'' includes the owner, agent, charterer, or consignee operating a vessel, aircraft, or railroad train bringing an alien to the United States, to foreign territory, or to an adjacent island.

(b) CARRIER CONTRACTS.—(1) The Attorney General may make a contract with a carrier for—

(A) the inspection and admission of aliens coming to the United States from foreign territory or an adjacent island; or

(B) a guarantee of passage through the United States in immediate and continuous transit of aliens destined for a foreign country.

(2) A carrier may not allow an alien coming from foreign territory or an adjacent island to land in the United States unless the carrier has made a contract required by the Attorney General under paragraph (1)(A) of this subsection.

(c) LANDING STATIONS.—A carrier engaged in transporting alien passengers for compensation to the United States from foreign territory or an adjacent island—

(1) shall provide and maintain at its expense suitable landing stations conveniently located at the places of entry in the United States; and

(2) may land alien passengers in the United States only if the Attorney General approves the landing stations and the maintenance of the stations.

§ 7307. Prohibitions on bringing certain aliens to the United States

(a) ALIENS NOT HAVING PASSPORTS AND VISAS.—A person may not bring to the United States (except from a foreign territory contiguous to the United States) an alien who does not have a passport and a visa, if a visa is required by this title or regulations prescribed under this title.

(b) ALIENS INADMISSIBLE BECAUSE OF HEALTH.—(1) An owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft may not bring to the United States an alien who is inadmissible under section 6304 of this title.

(2) Paragraph (1) of this subsection does not apply if—

(A) the alien is a crewmember;

(B) the alien is allowed to land in the United States;

(C) the alien is in possession of an immigrant visa;

(D) the alien is in possession of a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to

the United States and applies for admission within 120 days after the date the visa or documentation was issued;

(E) the alien is in possession of a reentry permit and applies for admission within 120 days after the date of the alien's last inspection and admission;

(F)(i) the alien is in possession of a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States or a reentry permit;

(ii) the alien applies for admission more than 120 days after the date the visa or documentation was issued or after the date of the last inspection and admission under the reentry permit; and

(iii) the owner, agent, master, commanding officer, charterer, or consignee of the vessel or aircraft satisfies the Attorney General that the existence of the condition causing inadmissibility could not have been discovered by exercising due diligence before the alien boarded the vessel or aircraft; or

(G) the alien is entitled by law to exemption from the grounds of inadmissibility in chapter 63 of this title.

§ 7308. Fees for inspecting passengers

(a) FEES.—In addition to any other fee authorized by law, the Attorney General shall charge and collect $6 for the immigration inspection of each passenger arriving at a port of entry in the United States, or for the preinspection of each passenger in a place outside the United States before arrival, on a commercial vessel or commercial aircraft. However, that fee may not be charged and collected for—

(1) a passenger on a commercial vessel if the passenger's journey originated in Canada, Mexico, a territory or possession of the United States, or an adjacent island; or

(2) a passenger in transit to a destination outside the United States and for whom immigration inspection services are not provided.

(b) COLLECTION.—(1) A person issuing a document or ticket to an individual for transportation on a commercial vessel or commercial aircraft to the United States shall—

(A) collect from the individual the fee charged under subsection (a) of this section when the document or ticket is issued; and

(B) identify on that document or ticket the fee charged under subsection (a) of this section as a federal inspection fee.

(2) If a document or ticket for transportation of a passenger to the United States is issued in a foreign country and the fee charged under subsection (a) of this section is not collected when the document or ticket is issued, the person providing the transportation shall collect the fee when the

passenger departs from the United States and give the passenger a receipt for payment of the fee.

(3) The person collecting a fee under this section shall pay the fee to the Attorney General within 30 days after the end of the calendar quarter in which the fee is collected, except that—

(A) the 4th quarter payment for fees collected from passengers on commercial aircraft shall be paid on the 10th day before the end of the fiscal year; and

(B) the first quarter payment shall include any collections made in the prior quarter that were not paid with the prior payment.

(4) Fees collected under this section shall be deposited as offsetting receipts in the Treasury in the Immigration User Fee Account established under section 345 of this title.

(c) REGULATIONS.—Regulations prescribed by the Attorney General for the collection of fees and payment of those fees under this section shall be consistent with regulations prescribed by the Secretary of the Treasury for the collection and remittance of taxes imposed by subchapter C of chapter 33 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 33, subch. C), but only to the extent the latter regulations are not inconsistent with this section.

PART E—ADDITIONAL REQUIREMENTS AND LIMITATIONS

CHAPTER 81—REGISTRATION AND FINGERPRINTING

Sec.
8101. Registration and fingerprinting requirements.
8102. Forms and oath.
8103. Certificates of alien registration and alien registration receipt cards.
8104. Address notification.
8105. Confidentiality of records.

§ 8101. Registration and fingerprinting requirements

(a) GENERAL REQUIREMENTS.—Except as provided in subsection (c) of this section—

(1) an alien applying for a visa shall be registered and shall provide signed copies of a photograph of the alien to be used as prescribed by regulation;

(2) an alien at least 14 years of age who remains in the United States for at least 30 days and has not been registered and fingerprinted under clause (1) of this subsection or section 30 or 31 of the Alien Registration Act, 1940, shall apply for registration and fingerprinting within those 30 days;

(3) if an alien less than 14 years of age remains in the United States for at least 30 days and has not been registered under clause (1) of

this subsection, the parent or legal guardian of the alien shall apply for registration of the alien within those 30 days; and

(4) an alien who becomes 14 years of age in the United States shall apply for registration and fingerprinting within 30 days after becoming 14 years of age.

(b) SPECIAL REQUIREMENTS FOR CERTAIN ALIENS.—The Attorney General may prescribe special regulations and forms for registering and fingerprinting—

(1) alien crewmembers;

(2) holders of border crossing identification cards;

(3) aliens confined in institutions in the United States;

(4) aliens under order of removal;

(5) aliens who are or have been on criminal probation or criminal parole in the United States; and

(6) aliens not lawfully admitted for permanent residence.

(c) WAIVERS AND NONAPPLICATION.—(1) The Secretary of State may waive subsection (a)(1) of this section for an alien described in section 2301 or 2302 of this title or an alien issued a diplomatic visa on a diplomatic passport or on equivalent documentation.

(2) On a reciprocal basis, the Attorney General may waive the fingerprinting requirement of subsection (a)(2)–(4) of this section for a nonimmigrant.

(3) Subsections (a)(2)–(4) and (b) of this section do not apply to an alien who has the status of a nonimmigrant classified under section 2301 or 2302 of this title.

§ 8102. Forms and oath

(a) FORMS.—The Attorney General and Secretary of State jointly shall prepare forms for registering aliens under section 8101(a)(1) of this title. The Attorney General shall prepare forms for registering and fingerprinting aliens under section 8101(a)(2)–(4) of this title. The forms shall request information on—

(1) the date and place of entry of the alien into the United States;

(2) activities and intended activities of the alien;

(3) the period of time the alien expects to remain in the United States;

(4) any police and criminal records of the alien; and

(5) additional information as prescribed.

(b) OATH.—Information required for registration under this chapter shall be given under oath. An individual authorized by regulations prescribed by the Attorney General to register aliens under this chapter may administer the oath.

§ 8103. Certificates of alien registration and alien registration receipt cards

(a) ISSUANCE.—An alien in the United States who has been registered and fingerprinted under this chapter or the Alien Registration Act, 1940, shall be issued a certificate of alien registration or an alien registration receipt card in the form and way, and at the time, the Attorney General prescribes by regulation.

(b) CARD TO BE CARRIED.—An alien at least 18 years of age shall carry at all times the certificate of alien registration or alien registration receipt card issued to the alien under this section.

§ 8104. Address notification

(a) NOTICE OF CHANGE OF ADDRESS.—Each alien in the United States who is required to register under this chapter shall—

(1) notify the Attorney General in writing of each new address of the alien within 10 days after the date of a change of address; and

(2) provide with the notice additional information the Attorney General may require by regulation.

(b) NOTICE OF NATIVES' CURRENT ADDRESSES.—The Attorney General may require, on 10 days' notice, the natives of a foreign country or a class or group of natives of a foreign country who are in the United States and required to register under this chapter to notify the Attorney General of their current addresses and to provide the Attorney General additional information the Attorney General may require.

(c) NOTICE FOR ALIENS LESS THAN 14 YEARS OF AGE.—A parent or legal guardian of an alien less than 14 years of age who is required to register shall be given the notice required by this section.

§ 8105. Confidentiality of records

A registration or fingerprinting record made under this chapter is confidential and may be made available only to—

(1) federal, state, and local law enforcement agencies; and

(2) persons and agencies the Attorney General designates.

CHAPTER 83—MISCELLANEOUS

Sec.
8301. Notice of denial of visa, admission, or adjustment of status.
8302. Discontinuing issuance of visas when country denies or delays accepting alien.
8303. Restriction on immigration of officers and employees of foreign governments and international organizations.
8304. Ineligibility of section 2312 nonimmigrants for certain benefits.
8305. Federal assistance in incarcerating undocumented criminal aliens.
8306. Reimbursement of certain expenses.

§ 8301. Notice of denial of visa, admission, or adjustment of status

(a) GENERAL.—If a consular officer or an immigration officer denies an alien's application for a visa or admission to the United States because the officer finds the alien to be inadmissible under section 2121(a), 4104(g), or 4311(a) or subchapter I of chapter 63 of this title, or denies an application for adjustment of status because the officer finds the alien to be ineligible for the adjustment because of the application of section 9106 of this title, the officer shall provide the alien with a timely written notice of the denial. The notice shall state the decision and list the specific provisions of law on which the denial is based.

(b) WAIVER.—The Secretary of State may waive subsection (a) of this section for an alien or for a class of inadmissible aliens.

(c) NONAPPLICATION.—Subsection (a) of this section does not apply to an alien inadmissible under section 6309(a)(1), (2), (3), (4), (5), or (7), 6310, or 6311 of this title.

§ 8302. Discontinuing issuance of visas when country denies or delays accepting alien

On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under section 6716 of this title, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas, nonimmigrant visas, or both, to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.

§ 8303. Restriction on immigration of officers and employees of foreign governments and international organizations

An officer or employee of a government of a foreign country or an international organization, and an attendant, servant, employee, or member of the immediate family of the officer or employee, may apply for and be issued an immigrant visa and be admitted to the United States as an immigrant only after executing the same waiver as provided in section 9105(c)(2) of this title.

§ 8304. Ineligibility of section 2312 nonimmigrants for certain benefits

(a) INELIGIBILITY.—An alien admitted to the United States as a nonimmigrant classified under section 2312 of this title, or provided status as a nonimmigrant classified under section 2312 after admission, is ineligible

to apply for an immigrant visa, permanent residence, or a nonimmigrant visa under any of sections 2313–2317 and 2325 of this title until it is established that the alien has resided and been physically present in the foreign country of the alien's nationality or last residence for a total of at least 2 years after leaving the United States, if—

(1) the alien's participation in the program for which the alien came to the United States was financed, directly or indirectly, in any part by the Federal Government or by the government of the foreign country of the alien's nationality or last residence;

(2) the alien, at the time the alien was admitted or provided status as a nonimmigrant classified under section 2312 of this title, was a national or resident of a foreign country that the Director of the United States Information Agency (under regulations the Director prescribed) designated as clearly requiring the services of individuals engaged in the alien's field of specialized knowledge or skill; or

(3) the alien came to the United States or acquired status as a nonimmigrant classified under section 2312 of this title to receive graduate medical education or training.

(b) WAIVERS.—Except as provided in subsection (c) of this section, the Attorney General may waive the 2-year residence requirement of subsection (a) of this section if the Attorney General finds that admitting the alien would be in the public interest, after receiving a favorable recommendation from—

(1) the Director—

(A) because of a request from the head of an interested federal department, agency, or instrumentality or, in the case of an alien described in subsection (a)(3) of this section, a request from a State Department of Public Health or its equivalent; or

(B) if the foreign country of the alien's nationality or last residence provides the Director with a written statement that it does not object to the waiver, except that this subclause does not apply to an alien described in subsection (a)(3) of this section; or

(2) the Commissioner of Immigration and Naturalization if the Commissioner finds that—

(A) departure from the United States would impose exceptional hardship on the alien's spouse or child when the spouse or child is a citizen of the United States or lawfully admitted for permanent residence; or

(B) the alien would be subject to persecution on account of race, religion, or political opinion if the alien returned to the foreign country of the alien's nationality or last residence.

(c) RESTRICTION ON WAIVER REQUESTS.—(1) The Attorney General may grant a waiver requested under subsection (b) of this section by a State Department of Public Health, or its equivalent, or by the head of an interested federal department, agency, or instrumentality, for an alien described in subsection (a)(3) of this section only if—

(A) in the case of an alien contractually obligated to return to a foreign country, the government of the country provides the Director with a written statement that the country does not object to the waiver;

(B) in the case of a request by a State Department of Public Health or its equivalent, the grant of the waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed 20;

(C) the alien demonstrates an offer of full-time employment at a health facility or health care organization, the Attorney General decides that the employment is in the public interest, and the alien agrees—

(i) to begin employment at the facility or organization not later than 90 days after receiving the waiver; and

(ii) to continue to work for at least 3 years unless the Attorney General decides that extenuating circumstances such as the closure of the facility or hardship to the alien justifies a shorter period of time, in which case the alien must demonstrate another offer of employment at a health facility or health care organization for the remainder of the 3-year period; and

(D) except in the case of a request by the head of the interested federal department, agency, or instrumentality to employ the alien full-time in medical research or training, the alien agrees to practice medicine as provided in paragraph (2) of this subsection for at least 3 years only in geographic areas the Secretary of Health and Human Services designates as having a shortage of health care professionals.

(2)(A) Notwithstanding section 9108(b)(3) of this title, the Attorney General may change the status of an alien who qualifies under this subsection and subsection (a) of this section to that of a nonimmigrant classified under section 2313 of this title.

(B) An alien who has acquired a change of status under subparagraph (A) of this paragraph and who has not fulfilled the terms of a contract with the health facility or health care organization is ineligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status until it is established that the alien has resided and been physically present in the foreign country of the alien's nationality or last residence for a total of at least 2 years after leaving the United States.

(C) The 2-year foreign residence requirement under subsection (a) of this section applies to an alien described in subsection (a)(3) of this section (ex-

cept a special immigrant under section 133(a)(8) of this title) and the waiver granted that alien under subsection (b) of this section is revoked if—

(i) the alien does not comply at any time with an agreement made under paragraph (1)(C) or (D) of this subsection; or

(ii) the alien's employment does not benefit the public interest at any time during the 3-year period described in paragraph (1)(C) of this subsection.

§ 8305. Federal assistance in incarcerating undocumented criminal aliens

(a) DEFINITION.—In this section, ''undocumented criminal alien'' means an alien who—

(1) has been convicted of a felony or at least 2 misdemeanors; and

(2)(A) entered the United States without inspection or at a time or place not designated by the Attorney General;

(B) was the subject of an exclusion or deportation proceeding when taken into custody by a State or political subdivision of a State; or

(C) was admitted as a nonimmigrant and, when taken into custody by a State or political subdivision of a State—

(i) had not maintained the nonimmigrant status under which the alien was admitted or which the alien acquired under section 9108 of this title; or

(ii) had not complied with a condition of the nonimmigrant status.

(b) FEDERAL GOVERNMENT RESPONSIBILITIES.—(1) If the chief executive officer of a State (or, if appropriate, a political subdivision of a State) exercising authority for the incarceration of an undocumented criminal alien submits a written request to the Attorney General, the Attorney General, as the Attorney General decides, shall—

(A) make a contract providing for compensation to the State or political subdivision of the State, as appropriate, for incarceration of the alien; or

(B) take the alien into the custody of the Federal Government and incarcerate the alien.

(2) Compensation under paragraph (1)(A) of this subsection shall be the average cost of incarceration of a prisoner in the relevant State as determined by the Attorney General.

(3)(A) In carrying out paragraph (1) of this subsection, the Attorney General shall give priority to the Government's incarceration of undocumented criminal aliens who have committed an aggravated felony.

(B) The Attorney General shall ensure that undocumented criminal aliens incarcerated in Government facilities under this section are held in facilities

that provide a level of security appropriate to the offenses of which they were convicted.

(c) USE OF AMOUNTS.—To the extent of available appropriations, the recipient of amounts otherwise made available under this section to a State or a political subdivision, including a municipality, of a State for incarceration of an undocumented criminal alien may use the amounts for the costs of imprisoning the alien in a state, local, or municipal prison or jail.

(d) AUTHORIZATION OF APPROPRIATIONS.—(1) Amounts necessary to carry out this section may be appropriated. Of those amounts, the following amounts may be appropriated from the Violent Crime Reduction Trust Fund:

(A) $350,000,000 for the fiscal year ending September 30, 1998.

(B) $350,000,000 for the fiscal year ending September 30, 1999.

(C) $340,000,000 for the fiscal year ending September 30, 2000.

(2) Beginning October 1, 2004, the requirements of this section are not subject to the availability of appropriations.

§ 8306. Reimbursement of certain expenses

(a) MEDICAL ASSISTANCE FOR CARE AND TREATMENT OF EMERGENCY MEDICAL CONDITION.—(1) In this section, ''emergency medical condition'' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention reasonably could be expected to result in—

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(2) Subject to amounts provided in advance in an appropriation law, each State or political subdivision of a State that after December 31, 1996, provides medical assistance for care and treatment of an emergency medical condition through a public hospital or other public facility (including a nonprofit hospital that is eligible for an additional payment adjustment under section 1886 of the Social Security Act (42 U.S.C. 1395ww)) or through a contract with another hospital or facility to an alien not lawfully present in the United States is eligible for payment from the Federal Government of its costs of providing the services that are not reimbursed otherwise through any other federal program and that cannot be recovered from the alien or another person.

(3) Payment may be made under this subsection only after the immigration status of the alien has been verified through appropriate procedures established by the Secretary of Health and Human Services and the Attorney General.

(4) The Attorney General, in consultation with the Secretary, shall carry out this subsection.

(b) EMERGENCY AMBULANCE SERVICES.—Subject to available appropriations, the Attorney General shall reimburse each State and political subdivision of that State completely for costs the State or subdivision incurs for emergency ambulance services provided to an alien who—

(1) is injured while crossing a land or sea border of the United States without inspection or at any time or place except as designated by the Attorney General; and

(2) is under the custody of the State or subdivision pursuant to a transfer, request, or other action by a federal authority.

PART F—ADJUSTMENT AND CHANGE OF STATUS

CHAPTER 91—ADJUSTMENT AND CHANGE OF STATUS

Sec.
9101. Aliens inspected and admitted or paroled into the United States.
9102. Aliens who entered the United States without inspection and certain other aliens.
9103. Aliens admitted as foreign government officials and their families.
9104. Aliens entering the United States before January 1, 1972.
9105. Aliens lawfully admitted for permanent residence.
9106. Additional requirements for aliens adjusting to certain employment-based immigrant status.
9107. Rescission of adjustment of status to alien lawfully admitted for permanent residence.
9108. Change of status.

§9101. Aliens inspected and admitted or paroled into the United States

(a) REQUIREMENTS.—Except as provided in subsections (e)–(g) of this section, the Attorney General may adjust the status of an alien inspected and admitted or paroled into the United States to that of an alien lawfully admitted for permanent residence if—

(1) the alien applies for the adjustment, is eligible to receive an immigrant visa, and is admissible to the United States for permanent residence; and

(2) an immigrant visa is immediately available to the alien when the application for adjustment is filed.

(b) RECORDATION OF ADJUSTMENT.—On approving an application for adjustment of status under subsection (a) of this section, the Attorney General shall record the lawful admission of the alien for permanent residence as of the date of approval.

(c) REDUCTION IN NUMBER OF AUTHORIZED IMMIGRANT VISAS.—For each alien lawfully admitted for permanent residence under this section, the Secretary of State shall reduce by one the number of immigrant visas that may be issued under sections 4103–4105 and 4110 of this title within the class to which the alien is chargeable for the current fiscal year.

(d) APPLICATION TO CERTAIN SPECIAL IMMIGRANTS.—(1) In applying this section to a special immigrant as defined in section 133(a)(12) of this title—

(A) the alien is deemed to have been paroled into the United States;

(B) when the Attorney General is deciding on the alien's admissibility as an immigrant—

(i) sections 4311(a), 6301(a)(2) and (b), 6306(a)–(c), and 9106 of this title do not apply;

(ii) the Attorney General may waive subchapter I of chapter 63 of this title (except as provided in subclause (iii) of this clause) for an alien for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest; and

(iii) the Attorney General may not waive section 6309(a)(1)–(4), 6310(a)–(c), or 6311 of this title, except as section 6309(a)(3) relates to a single offense of simple possession of not more than 30 grams of marijuana;

(C) the relationship between an alien and the alien's natural parents or prior adoptive parents is not a factor in making a waiver under clause (B)(ii) of this paragraph; and

(D) this paragraph and section 133(a)(12) of this title do not authorize an alien to apply for admission or be admitted to the United States to obtain the special immigrant status as defined in section 133(a)(12).

(2) In applying this section to a special immigrant as defined in section 133(a)(13) of this title, the alien is deemed to have been paroled into the United States.

(e) APPLICATION TO NONIMMIGRANTS CLASSIFIED UNDER SECTION 2326.—(1) The Attorney General may adjust the status of an alien admitted to the United States as a nonimmigrant classified under section 2326(a)(1) of this title (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under section 2326(a)(1)) to that of an alien lawfully admitted for permanent residence if—

(A) the alien is not described in section 6311 of this title; and

(B) the Attorney General finds the nonimmigrant has supplied information described in section 2326(a)(1)(A) of this title and providing that information has contributed substantially to the success of an authorized criminal investigation or the prosecution of an individual described in section 2326(a)(1)(C) of this title.

(2) The Attorney General may adjust the status of an alien admitted to the United States as a nonimmigrant classified under section 2326(a)(2) of this title (and the spouse, married and unmarried sons and daughters, and

parents of the alien if admitted under section 2326(a)(2)) to that of an alien lawfully admitted for permanent residence if—

(A) the alien is not described in section 6311 of this title;

(B) the Attorney General finds the nonimmigrant has supplied information described in section 2326(a)(2)(A) of this title and providing that information has contributed substantially to—

(i) the prevention or frustration of an act of terrorism against a person or property of the United States; or

(ii) the success of an authorized criminal investigation of, or the prosecution of, an individual involved in the act of terrorism; and

(C) the nonimmigrant has received a reward under section 36(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2708(a)).

(3) Only the Attorney General may make a finding under paragraph (2) of this subsection.

(4) On approving an adjustment of status under this subsection, the Attorney General shall record the alien's lawful admission for permanent residence as of the date of approval and the Secretary shall reduce by one the number of visas authorized to be issued under sections 4102(b)(1) and 4104(e) of this title for the current fiscal year.

(f) NONAPPLICATION.—Subsection (a) of this section does not apply to—

(1) an alien crewmember;

(2) an alien admitted in immediate and continuous transit without a visa under section 2121(c)(3) of this title;

(3) an alien (except an immediate relative and a special immigrant as defined in section 133(a)(8)–(13) of this title) who—

(A) after January 1, 1977, and before applying for an adjustment of status, engages in or accepts unauthorized employment;

(B) has an unlawful immigration status on the date of filing the application for an adjustment of status; or

(C) except through no fault of the alien or for technical reasons, has not maintained continuously a lawful status since entering the United States;

(4) an alien (except an immediate relative) admitted as a nonimmigrant visitor without a visa under section 2121(d) or 2128 of this title; or

(5) an alien who was admitted as a nonimmigrant classified under section 2326 of this title;

(6) an alien deportable under section 6508(b) of this title;

(7) an alien who is seeking adjustment of status to that of an immigrant under section 4104 of this title and who is not in a lawful nonimmigrant status; or

(8) an alien who was employed while the alien was an unauthorized alien, as defined in section 11101 of this title, or who otherwise has violated the terms of a nonimmigrant visa.

(g) ALIENS WHOSE STATUS MAY NOT BE ADJUSTED.—(1) The Attorney General may not adjust, under subsection (a) of this section, the status of—

(A) an alien lawfully admitted for permanent residence on a conditional basis under subchapter I of chapter 45 of this title;

(B) a nonimmigrant classified under section 2309(a) of this title, except to that of an alien lawfully admitted for permanent residence on a conditional basis under subchapter I of chapter 45 of this title, because of the marriage of the nonimmigrant (or, if a child, the parent) to the citizen who filed the petition under section 2309(b) of this title; or

(C) an alien seeking an immigrant visa because of a marriage entered into during the period an administrative or judicial proceeding on the alien's right to be admitted to or remain in the United States is pending.

(2)(A) Paragraph (1)(C) of this subsection does not apply to a marriage if the alien establishes by clear and convincing evidence satisfactory to the Attorney General that—

(i) the marriage was entered into in good faith and under the laws of the place where the marriage took place;

(ii) the marriage was not entered into to procure the alien's admission as an immigrant; and

(iii) no consideration was given, except to an attorney for assistance in preparing a petition, for filing a petition under section 2309(b) or 4301(a) or (b) of this title for an alien spouse or alien son or daughter.

(B) Under regulations of the Attorney General, the Attorney General shall allow only one level of administrative appellate review for each alien under this paragraph.

§ 9102. Aliens who entered the United States without inspection and certain other aliens

(a) WHO MAY APPLY.—An alien physically present in the United States who entered the United States without inspection or who is described in section 9101(f) of this title may apply to the Attorney General to adjust the status of the alien to that of an alien lawfully admitted for permanent residence.

(b) ACCEPTANCE OF APPLICATION.—(1) The Attorney General may accept the application only if the alien remits $1,000 with the application. The amount required under this subsection is in addition to the fee normally required for processing an application under section 9101 of this title.

(2) This subsection does not apply to—

(A) a child who is less than 17 years of age; or

(B) an alien who—

(i) is the spouse or unmarried child of an individual who at any time became lawfully admitted for temporary or permanent residence under chapter 93 of this title, section 210 of the Immigration and Nationality Act, or section 202 of the Immigration Reform and Control Act of 1986 (Public Law 99–603, 100 Stat. 3404);

(ii) was the spouse or unmarried child of that individual on May 5, 1988;

(iii) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(iv) applied for benefits under section 301(a) of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5029).

(c) ADJUSTMENT MADE.—On receiving the application and the required amount, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if—

(1) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(2) an immigrant visa is available to the alien immediately when the application is filed.

(d) DISPOSAL OF AMOUNTS.—(1) The part of each application fee (but not more than $200) remitted under this section that the Attorney General decides is required to process an application under this section shall be disposed of by the Attorney General as provided in section 346 of this title.

(2) The Attorney General shall deposit the remainder of the fee in the Immigration Detention Account established under section 348 of this title.

(e) FINGERPRINT IDENTIFICATION CHECKS.—The Commissioner of Immigration and Naturalization shall conduct complete fingerprint identification checks through the Federal Bureau of Investigation for all individuals over 16 years of age who are adjusting their immigration status under this section.

(f) ENDING DATE.—This section ends on October 1, 1997.

§ 9103. Aliens admitted as foreign government officials and their families

(a) REQUIREMENTS.—An alien admitted to the United States as a nonimmigrant classified under section 2301(1) or (2) or 2302(1), (2), or (3) of this title, who does not maintain nonimmigrant status under any of those provisions, may apply to the Attorney General to adjust the status of the alien to that of an alien lawfully admitted for permanent residence. After consulting with the Secretary of State, the Attorney General may adjust the status of the alien if the Attorney General is satisfied that—

(1) the alien has demonstrated compelling reasons why the alien cannot return to the country represented by the government that accredited the alien or a member of the alien's immediate family and that adjusting the status of the alien is in the interest of the United States;

(2) the alien is of good moral character;

(3) the alien is admissible for permanent residence under this title; and

(4) adjusting the alien's status under this subsection would not be contrary to the welfare, safety, or security of the United States.

(b) RECORDATION OF ADJUSTMENT AND REPORT TO CONGRESS.—If the Attorney General adjusts the status of an alien under subsection (a) of this section, the Attorney General—

(1) may record the lawful admission of the alien for permanent residence as of the date of the adjustment; and

(2) shall submit to Congress, on the first day of the next month in which Congress is in session—

(A) a complete and detailed report of the facts and law in the alien's case; and

(B) the Attorney General's reasons for the adjustment.

(c) REDUCTION IN NUMBER OF IMMIGRANT VISAS.—(1) For each alien lawfully admitted for permanent residence under this section, the Secretary shall reduce by one the number of immigrant visas for the foreign country to which the alien is chargeable under section 4111 of this title for the current fiscal year or the next fiscal year in which a visa is available if the alien was classifiable as an immigrant subject to the numerical limitations of sections 4102–4105 and 4110 of this title when the alien entered the United States.

(2) The Secretary may not reduce the numerical limitations for the foreign country under this section by more than 50 percent in a fiscal year.

(d) NUMERICAL LIMITATION.—The Attorney General may admit as aliens lawfully admitted for permanent residence under this section not more than 50 aliens in a fiscal year.

§ 9104. Aliens entering the United States before January 1, 1972

(a) REQUIREMENTS.—On approval of an application of an alien, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if—

(1) a record of the lawful admission of the alien for permanent residence is not available; and

(2) the alien satisfies the Attorney General that the alien—

(A) entered the United States before January 1, 1972, and has resided in the United States continuously since the alien's entry;

(B) is of good moral character;

(C) is not ineligible for citizenship and is not deportable under section 6508(b) of this title; and

(D) is not inadmissible under—

(i) section 6311 of this title; or

(ii) a provision of subchapter I of chapter 63 of this title related to criminals, immoral individuals, violators of narcotic laws, smugglers of aliens, or national security.

(b) RECORDATION OF ADJUSTMENT.—If the Attorney General adjusts the status of an alien under subsection (a) of this section, the Attorney General shall record the lawful admission of the alien for permanent residence as of the date—

(1) the alien entered the United States if the alien entered before July 1, 1924; or

(2) the Attorney General approves the alien's application for an adjustment of status under this section.

(c) PHOTOGRAPHS.—An alien applying for an adjustment of status under this section must provide the Attorney General with 3 identical photographs of the alien.

(d) NONAPPLICATION OF NUMERICAL LIMITATIONS.—The numerical limitations of sections 4102 and 4110 of this title do not apply to an alien whose status is adjusted under this section.

§ 9105. Aliens lawfully admitted for permanent residence

(a) ADJUSTMENT TO NONIMMIGRANT STATUS.—Except as provided in subsection (c) of this section, the Attorney General shall adjust the status of an alien lawfully admitted for permanent residence to that of a nonimmigrant classified under section 2301, 2302, or 2306 of this title if at the time of admission or after the alien is admitted to the United States the alien is engaged in an occupation that would entitle the alien to the status of a nonimmigrant classified under section 2301, 2302, or 2306 if the alien were seeking to be admitted to the United States.

(b) RECORD OF ADMISSION FOR PERMANENT RESIDENCE CANCELED.—The Attorney General shall cancel the record of the admission of the alien for lawful permanent residence as of the date the Attorney General adjusts the alien's status under this section.

(c) NONAPPLICATION.—This section does not apply to an alien who—

(1) requests the Attorney General not to adjust the alien's status under this section; and

(2) files with the Attorney General a written waiver of the rights, privileges, exemptions, and immunities that the alien otherwise would be entitled to under a law or executive order because the alien is engaged in an occupation that entitles the alien to the status of a nonimmigrant classified under section 2301, 2302, or 2306 of this title.

§ 9106. Additional requirements for aliens adjusting to certain employment-based immigrant status

Section 4104(g) (1) and (2)(A) and (B) of this title applies to aliens applying for an adjustment of status to that of an immigrant under section 4104 (c) or (d) of this title.

§ 9107. Rescission of adjustment of status to alien lawfully admitted for permanent residence

(a) RESCISSION OF ADJUSTMENT OF STATUS.—If, within 5 years after the Attorney General adjusts the status of an alien under any provision of law to that of an alien lawfully admitted for permanent residence, the Attorney General is satisfied that the alien was not eligible for the adjustment, the Attorney General shall rescind—

(1) the adjustment of the alien's status; and

(2) the cancellation of the alien's removal if the Attorney General canceled the removal.

(b) EFFECT OF RESCISSION.—When the Attorney General rescinds an adjustment under subsection (a) of this section, the alien becomes subject to this title as if the Attorney General had not changed the alien's status.

(c) NO REQUIREMENT TO RESCIND.—This section does not require the Attorney General to rescind the alien's status before procedures to remove the alien under section 6704 of this title are begun.

(d) SUFFICIENCY OF ORDER.—An order of removal issued by an immigration judge is sufficient to rescind the alien's status.

§ 9108. Change of status

(a) PREREQUISITES.—Except as provided in subsection (b) of this section, the Attorney General may change the status of an alien by changing the alien's nonimmigrant classification to another nonimmigrant classification under conditions prescribed by the Attorney General if the alien—

(1) is lawfully admitted to the United States as a nonimmigrant;

(2) continues to maintain that status; and

(3) is not inadmissible under section 6319(b)(1) of this title (or the alien's inadmissibility under section 6319(b)(1) is waived under section 6319(b)(6)).

(b) NONAPPLICATION.—The Attorney General may not make a change under subsection (a) of this section if the alien—

(1) is admitted to the United States for passage through the United States in immediate and continuous transit to a foreign country;

(2) is classified as a nonimmigrant under section 2304, 2305, 2309, or 2326 of this title;

(3) is classified as a nonimmigrant under section 2312 of this title and came to the United States or acquired the classification to receive graduate medical education or training;

(4) except an alien referred to in clause (3) of this subsection, is classified as a nonimmigrant under section 2312 of this title and is subject to, and has not received a waiver of, the 2-year foreign residence requirement of section 8304(a) of this title, unless the alien applies to have the alien's classification changed from a classification as a nonimmigrant under section 2312 to a classification as a nonimmigrant under section 2301 or 2302 of this title; or

(5) is admitted as a nonimmigrant visitor without a visa under section 2121(d) or 2128 of this title.

CHAPTER 93—ADJUSTMENT OF STATUS FOR CERTAIN ALIENS WHO ENTERED THE UNITED STATES BEFORE 1982

Sec.
9301. Numerical limitations and admissions.
9302. Adjustment of status to alien lawfully admitted for temporary residence.
9303. Applications for adjustment of status to alien lawfully admitted for temporary residence.
9304. Adjustment of status from temporary residence to permanent residence.
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§ 9301. Numerical limitations and admissions

(a) NUMERICAL LIMITATIONS.—The numerical limitations of sections 4102 and 4110 of this title do not apply to an adjustment of status of an alien to that of an alien lawfully admitted for permanent residence under this chapter.

(b) ADMISSIONS.—This chapter does not authorize an alien to apply for admission to, or be admitted to, the United States so that the alien may apply for an adjustment of status under section 9302 of this title.

§ 9302. Adjustment of status to alien lawfully admitted for temporary residence

(a) REQUIREMENTS.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) The alien applied for the adjustment as provided in section 9303 of this title after May 4, 1987, and before May 5, 1988.

(2) The alien entered the United States before January 1, 1982.

(3) The alien resided continuously in the United States in an unlawful status from January 1, 1982, through the date the application for the adjustment was filed under this section.

(4) If the alien—

(A) entered the United States as a nonimmigrant before January 1, 1982, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1982, or the Federal Government by January 1, 1982, knew of the unlawful status of the alien; or

(B) was a nonimmigrant exchange alien classified under section 2312 of this title, the alien was not subject to the 2–year foreign residence requirement of section 8304(a) of this title, fulfilled the requirement, or received a waiver.

(5) The alien has been physically present continuously in the United States, except for any brief, casual, and innocent absence, since November 6, 1986.

(6) The alien is admissible to the United States as an immigrant, except as provided in sections 9305 and 9306 of this title.

(7) The alien has not been convicted of a felony or of more than 2 misdemeanors committed in the United States.

(8) The alien has not assisted in the persecution of a person on account of race, religion, nationality, membership in a particular social group, or political opinion.

(9) The alien is registered or registering under the Military Selective Service Act (50 App. U.S.C. 451 et seq.) if the Act requires the alien to register.

(b) AUTHORIZED TRAVEL.—During the time an alien is an alien lawfully admitted for temporary residence under subsection (a) of this section, the Attorney General shall allow the alien to return to the United States after—

(1) any brief and casual trip outside the United States that reflects the alien's intent to have the alien's status adjusted under section 9304 of this title to that of an alien lawfully admitted for permanent residence; and

(2) any brief temporary trip outside the United States because of a family obligation involving the illness or death of a close relative or another family need.

(c) AUTHORIZED EMPLOYMENT.—During the time an alien is an alien lawfully admitted for temporary residence under subsection (a) of this section, the Attorney General shall grant the alien authorization to be employed in the United States and provide to the alien an ''employment authorized'' endorsement or other appropriate work permit.

(d) CUBAN OR HAITIAN ENTRANT.—In applying this section, a Cuban or Haitian entrant described in section 13151(1) or (2)(A) of this title is deemed to have entered the United States and to be in an unlawful status in the United States.

§ 9303. Applications for adjustment of status to alien lawfully admitted for temporary residence

(a) CONTENTS.—An application for an adjustment of status under section 9302(a) of this title shall contain information the Attorney General requires, including information on each living relative of the applicant with respect to whom the applicant may file a petition at a later date under section 4301 (a) or (b) of this title.

(b) WHO MAY RECEIVE APPLICATIONS.—The Attorney General shall provide that an application for an adjustment of status under section 9302(a) of this title may be filed with the Attorney General or with an entity designated under subsection (c) of this section if the applicant consents to having the application forwarded to the Attorney General.

(c) DESIGNATING ENTITIES TO RECEIVE APPLICATIONS.—To assist in the legalization program under this chapter, the Attorney General—

(1) shall designate qualified voluntary organizations and other qualified state, local, and community organizations; and

(2) may designate other persons the Attorney General decides are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in preparing and submitting applications for adjustment of status under section 5107, 9101, or 9102 of this title, the Act of November 2, 1966 (Public Law 89–732, 80 Stat. 1161), or the Act of October 28, 1977 (Public Law 95–145, 91 Stat. 1223).

(d) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—An entity designated under subsection (c) of this section must agree to forward

to the Attorney General only those applications filed with it under subsection (b) of this section that the applicants consent to being forwarded. An entity may not make a decision under this chapter required to be made by the Attorney General.

§ 9304. Adjustment of status from temporary residence to permanent residence

(a) REQUIREMENTS.—The Attorney General shall adjust the status of an alien lawfully admitted for temporary residence under section 9302 of this title to that of an alien lawfully admitted for permanent residence if the alien—

(1) applies for the adjustment during the 2-year period beginning with the 19th month that begins after the alien acquired the status of an alien lawfully admitted for temporary residence;

(2) has resided continuously in the United States since the alien acquired the status of an alien lawfully admitted for temporary residence;

(3) is admissible as an immigrant, except as provided in sections 9305 and 9306 of this title;

(4) has not been convicted of a felony or of more than 2 misdemeanors committed in the United States; and

(5)(A) meets the requirements of section 20301(a)(7) and (8) of this title; or

(B) is pursuing satisfactorily a course of study, recognized by the Attorney General, to meet the requirements of section 20301(a)(7) and (8) of this title.

(b) EXCEPTIONS.—(1) An alien does not violate the continuous residence requirement of subsection (a)(2) of this section because of an absence from the United States allowed under section 9302(b) of this title.

(2) The Attorney General may waive any part of the requirements of subsection (a)(5) of this section for an alien who is at least 65 years of age or developmentally disabled.

(c) RELATION TO NATURALIZATION EXAMINATION.—An alien demonstrating under subsection (a)(5)(A) of this section that the alien meets the requirements of section 20301(a)(7) and (8) of this title may be deemed to have satisfied those requirements for becoming naturalized as a citizen of the United States under subtitle V of this title.

§ 9305. Medical examination

An alien must undergo, at the alien's expense, an appropriate medical examination (including establishing the alien's immunization status) that complies with generally accepted professional standards of medical practice before a decision on the alien's admissibility under sections 9302(a)(6), 9304(a)(3), and 9311(2) of this title may be made.

§ 9306. Nonapplication and waiver of certain provisions of law

(a) GROUNDS OF EXCLUSION THAT DO NOT APPLY OR THAT MAY BE WAIVED.—When the Attorney General is deciding on an alien's admissibility under sections 9302(a)(6), 9304(a)(3), and 9311(2) of this title—

(1) sections 4311(a), 6301(a)(2) and (b)–(d), and 9106 of this title do not apply; and

(2) except as provided in subsection (b) of this section, the Attorney General may waive section 2121(a) and subchapter I of chapter 63 of this title for an individual alien—

(A) for humanitarian purposes;

(B) to ensure family unity; or

(C) when otherwise in the public interest.

(b) GROUNDS THAT MAY NOT BE WAIVED.—Notwithstanding subsection (a)(2) of this section, the Attorney General may not waive—

(1) section 6306(a)–(c) of this title to the extent it relates to an application for adjustment of status to an alien lawfully admitted for permanent residence, except that section 6306(a)–(c) may be waived for an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act (42 U.S.C. 1382c(a)(1)));

(2) section 6309(a)(1)–(4) of this title, except as section 6307(a)(3) relates to a single offense of simple possession of not more than 30 grams of marijuana; or

(3) section 6310 or 6311 of this title.

(c) SPECIAL RULE FOR DECIDING WHETHER ALIENS ARE PUBLIC CHARGES.—An alien is not ineligible for an adjustment of status under this chapter because of inadmissibility under section 6304(a) of this title if the alien demonstrates a history of employment in the United States showing self-support without receiving public cash assistance.

§ 9307. Fees

(a) FEE SCHEDULE.—The Attorney General shall establish a schedule of fees for applying for an adjustment of status under section 9302 or 9304 of this title. The Attorney General shall provide for an additional fee for applying for an adjustment of status under section 9304 of this title after the end of the first year of the 2-year period described in section 9304(a)(1) of this title.

(b) USE OF FEES.—The Attorney General shall deposit amounts received under subsection (a) of this section in a separate account. The amounts may be used, without fiscal year limitation, for expenses related to reviewing applications filed under section 9302 or 9304 of this title. Capital assets ac-

quired with amounts in the account are available for the general use of the Immigration and Naturalization Service when the assets are not needed for activities related to reviewing those applications.

§ 9308. Confidentiality of information

(a) LIMITATION ON ACCESS.—A record of an entity designated under section 9303(c) of this title, related to an alien seeking assistance or information about filing an application under this chapter, is confidential. The Attorney General and the Commissioner of Immigration and Naturalization may have access to the record only with the consent of the alien.

(b) LIMITATIONS ON USE.—(1) The Attorney General—

(A) may use information provided in making an application under this chapter only—

(i) to make a decision on the application; or

(ii) to enforce section 10154 of this title;

(B) may disclose information provided under this chapter in the same way that census information may be disclosed under section 8 of title 13;

(C) may not make a publication that allows the information provided by a particular individual to be identified; and

(D) may allow only a sworn officer or employee of the Department of Justice or of an entity designated under section 9303(c) of this title (for an application filed with the entity) to examine an application.

(2) The Attorney General shall provide the information provided in making an application under this chapter, and any other information derived from information provided in making the application, to a recognized law enforcement entity in connection with a criminal investigation or prosecution, when the entity makes a written request for the information, or to an official coroner for affirmatively identifying a deceased individual (whether or not the individual is deceased as a result of a crime).

(3) Information about whether the applicant has at any time been convicted of a crime may be used or released for immigration enforcement or law enforcement purposes.

(4) This subsection does not limit the use, or release, for immigration enforcement or law enforcement purposes, of information contained in files or records of the Immigration and Naturalization Service related to an application filed under section 9302 or 9304 of this title, except information provided in making the application, or any other information derived from the application, that is not available from any other source.

§ 9309. Temporary stay of deportation

(a) APPLICATION COULD NOT BE MADE.—If an alien was apprehended before May 5, 1987, and could have established a prima facie case of eligi-

bility for an adjustment of status under section 9302 of this title, except that the alien could not apply for the adjustment before May 5, 1987, the Attorney General shall provide that, unless the alien had an opportunity after May 4, 1987, and before June 4, 1987, to complete the filing of an application for an adjustment of status, the alien—

(1) may not be deported;

(2) may be employed in the United States; and

(3) shall be provided an ''employment authorized'' endorsement or other appropriate work permit.

(b) APPLICATION PRESENTED.—If an alien presented a prima facie application for adjustment of status under section 9302 of this title after May 4, 1987, and before May 5, 1988, the Attorney General shall provide that, until a final decision has been made on the application, the alien—

(1) may not be deported;

(2) may be employed in the United States; and

(3) shall be provided an ''employment authorized'' endorsement or other appropriate work permit.

§ 9310. Temporary ineligibility to receive certain assistance

(a) PERIOD OF INELIGIBILITY.—(1) Except as provided in paragraphs (3) and (4) of this subsection and subsection (b) of this section, an alien who acquires the status of an alien lawfully admitted for temporary residence under section 9302 of this title is not eligible for the following, during the 5-year period beginning on the date the alien was granted the status:

(A) Financial assistance under the state program of assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(B) Any other program of financial assistance—

(i) provided under a law of the United States on a financial-need basis; and

(ii) identified by the Attorney General in consultation with the heads of appropriate federal departments, agencies, and instrumentalities.

(C) Medical assistance under a state plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(D) Assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(2) To the extent consistent with this subsection and subsection (b) of this section, a State or political subdivision of a State may provide that the alien is not eligible for financial assistance referred to in paragraph (1)(A) and (B) of this subsection or for medical assistance referred to in paragraph (1)(C) of this subsection provided under a law of the State or political subdivision.

(3) Paragraph (1) of this subsection does not apply to—

(A) a Cuban or Haitian entrant (as defined in section 501(e)(1) or (2)(A) of the Refugee Education Assistance Act of 1980 (Public Law 96–422, 94 Stat. 1810) as in effect on April 1, 1983); or

(B) assistance (except assistance under a state program financed under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) provided an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act (42 U.S.C. 1382c(a)(1)).

(4) Assistance provided under the following laws is not financial assistance referred to in paragraph (1)(B) of this subsection:

(A) Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. and 42 U.S.C. 2751 et seq.).

(B) The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.).

(C) Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

(D) The Job Training Partnership Act (29 U.S.C. 1501 et seq.).

(E) The Public Health Service Act (42 U.S.C. 201 et seq.).

(F) Titles I, X, XIV, and XVI of the Social Security Act (42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.) as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972 (Public Law 92–603, 86 Stat. 1465).

(G) Parts B, D, and E of title IV and titles V, XVI, and XX of the Social Security Act (42 U.S.C. 620 et seq., 651 et seq., 670 et seq., 701 et seq., 1381 et seq., 1397 et seq.).

(H) The National School Lunch Act (42 U.S.C. 1751 et seq.).

(I) The Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(J) The Head Start Act (42 U.S.C. 9831 et seq.).

(b) RESTRICTED MEDICAL ASSISTANCE.—(1) In this subsection—

(A) "medical assistance" means medical assistance under a state plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

(B) an alien lawfully admitted for temporary residence under section 9302 of this title is deemed to be residing permanently in the United States under color of law as long as the alien's temporary residence status is not adjusted.

(2) Except as provided in paragraph (3) of this subsection and notwithstanding title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), an alien lawfully admitted for temporary residence under section 9302 of this title is eligible for only the following medical assistance during the 5-year

period beginning on the date the alien is granted temporary residence status:

(A) Emergency services as provided under section 1916(a)(2)(D) of the Social Security Act (42 U.S.C. 1396*o*(a)(2)(D)).

(B) Services for pregnant women as described in section 1916(a)(2)(B) of the Social Security Act (42 U.S.C. 1396*o*(a)(2)(B)).

(3) An alien lawfully admitted for temporary residence under section 9302 of this title is eligible for any medical assistance during the 5-year period beginning on the date the alien is granted temporary residence status if the alien is—

(A) an alien described in subsection (a)(3) of this section; or

(B) less than 18 years of age.

(c) ADJUSTMENT OF STATUS NOT AFFECTING CERTAIN BENEFITS.—Assistance under subchapter III of chapter 131 of this title shall be continued without regard to an adjustment of the alien's status under this chapter.

(d) ALIEN NOT RESIDING PERMANENTLY IN THE UNITED STATES.—Unless otherwise specifically provided, an alien lawfully admitted for temporary residence under section 9302 of this title is not residing permanently in the United States under color of law for purposes of a law of a State or political subdivision of a State providing for a program of financial assistance.

§ 9311. Unfavorable ending of temporary residence status

The Attorney General shall end the temporary residence status granted an alien under section 9302 of this title—

(1) if the Attorney General believes the alien was not eligible for that status;

(2) if the alien—

(A) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided in sections 9305 and 9306 of this title; or

(B) is convicted of a felony or of at least 3 misdemeanors committed in the United States; or

(3) at the end of the 43d month beginning after the date the alien is granted the status, unless the alien has applied under section 9304 of this title for an adjustment of status to that of an alien lawfully admitted for permanent residence and the application has not been denied.

§ 9312. Administrative and judicial review

(a) EXCLUSIVENESS OF REVIEW.—The only administrative and judicial reviews of a decision made under this chapter about an application for an adjustment of status of an alien shall be the reviews provided in this section.

(b) ADMINISTRATIVE REVIEW.—Except as provided in subsection (d) of this section, the Attorney General shall maintain an appellate authority to provide for a single level of administrative appellate review of a decision described in subsection (a) of this section. The review shall be based only on the administrative record established at the time of the decision and on additional or newly discovered evidence not available at the time the decision was made.

(c) JUDICIAL REVIEW.—(1) Except as provided in subsection (d) of this section, a decision made under this chapter denying an adjustment of status of an alien may be reviewed judicially only by judicial review of an order of deportation under section 106 of the Immigration and Nationality Act as in effect on September 30, 1996. The review shall be based only on the administrative record established at the time of the review by the appellate authority. The findings of fact and decisions contained in the record of the authority are conclusive unless the applicant establishes abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(2) As of November 6, 1986, a court does not have jurisdiction of a cause of action or claim by or on behalf of an individual asserting an interest under this chapter unless the individual—

(A) filed an application under this chapter within the period specified in section 9302(a)(1) of this title; or

(B) attempted to file a complete application and application fee with an authorized legalization officer of the Immigration and Naturalization Service but the officer refused the application and fee.

(d) NO REVIEW FOR LATE FILING.—A denial of an adjustment of status under this chapter because an application for the adjustment was filed late may not be reviewed in an administrative proceeding of the Federal Government or by a court of the United States or a State.

§ 9313. Administrative

(a) REGULATIONS.—After consulting with the Committees on the Judiciary of the House of Representatives and the Senate, the Attorney General shall prescribe—

(1) regulations establishing a definition of ''resided continuously'' for this chapter and evidence needed to establish that an alien has resided continuously in the United States under this chapter; and

(2) other regulations necessary to carry out this chapter.

(b) CONSIDERATIONS.—In prescribing regulations under subsection (a)(1) of this section, the Attorney General—

(1) shall specify individual and total periods of absence from the United States that will break a period of continuous residence in the

United States and shall consider any absence that is only a brief and casual trip outside the United States;

(2) shall provide that—

(A) an alien has not resided continuously in the United States if the alien was outside the United States, during a period for which continuous residence is required, because of a deportation order; and

(B) time during which an alien is outside the United States under the advance parole procedures of the Commissioner of Immigration and Naturalization is not part of the time during which an alien is outside the United States under this chapter;

(3) may provide for a waiver of the periods specified in clause (1) of this subsection if the absence is a brief temporary trip outside the United States required by an emergency or extenuating circumstance outside the control of the alien; and

(4) shall require that continuous residence and physical presence in the United States be established by documents (employment-related if available to the alien) and independent corroboration of the information the documents contain.

PART G—PENALTIES

CHAPTER 101—PENALTIES

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SUBCHAPTER I—GENERAL

§ 10101. Jurisdiction

(a) DISTRICT COURTS.—The district courts of the United States have jurisdiction over all civil and criminal actions the Federal Government brings after September 30, 1996, that arise under this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, chapters 133 and 135, section 13702, and chapter 151).

(b) JURISDICTION NOT PROVIDED.—This title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, chapters 133 and 135, section 13702, and chapter 151) does not provide jurisdiction for an action against the Government or a department, agency, instrumentality, or officer of the Government filed after September 30, 1996.

§ 10102. Settlement, compromise, and discontinuance of certain proceedings

A judicial proceeding for violating this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, chapters 133 and 135, section 13702, and chapter 151) may be settled, compromised, or discontinued only with the consent of the court. A settlement, compromise, or discontinuance, and the reasons for it, shall be entered on the record.

SUBCHAPTER II—CIVIL PENALTIES

§ 10111. Violating regulations related to ports of entry for aliens arriving by aircraft

(a) CIVIL PENALTY AND COMPROMISE.—A person violating a regulation prescribed under section 7301 of this title is liable to the Federal Government for a civil penalty of $2,000. The Attorney General may compromise the amount of the penalty. A decision on a penalty or compromise under this section is final.

(b) LIEN ON AIRCRAFT.—When the owner or individual in command of an aircraft violates a regulation referred to in subsection (a) of this section, the aircraft is subject to a lien for the civil penalty. The aircraft may be seized summarily by, and placed in the custody of, a person authorized under regulations prescribed by the Attorney General.

(c) RELEASE OF AIRCRAFT.—An aircraft seized under this section may be released from custody—

(1) on deposit of—

(A) an amount (but not more than $2,000) prescribed by the Attorney General; or

(B) a bond in an amount and with an insurer prescribed by the Attorney General; and

(2) conditioned on payment of the penalty decided on by the Attorney General.

(d) COLLECTION OF PENALTY.—A civil action in rem may be brought against the aircraft to collect the civil penalty. The action shall conform as nearly as practicable to civil actions in admiralty.

§ 10112. Failure to deliver lists of passengers

(a) CIVIL PENALTY.—If the Attorney General is satisfied that a person has not delivered an accurate list of passengers as required under section 7302 of this title, the person is liable to the Federal Government for a civil penalty of $300 for each passenger for whom the list is not sworn and delivered as required.

(b) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10113. Failure to provide lists and reports about alien crewmembers

(a) CIVIL PENALTY.—A person not delivering a list or report required by section 2701 or 2702 of this title is liable to the Federal Government for a civil penalty of $200 for each alien crewmember not listed or reported as required.

(b) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10114. Failure to control alien crewmembers

(a) CIVIL PENALTY.—A person not detaining or removing an alien crewmember as required by section 2704 of this title is liable to the Federal Government for a civil penalty of $3,000 for each alien crewmember not detained or removed.

(b) COMPROMISE.—The Attorney General may compromise the amount of a civil penalty under this section to not less than $500 for each alien crewmember involved.

§ 10115. Improper discharge of alien crewmembers

(a) CIVIL PENALTY.—If the Attorney General is satisfied that a person has violated section 2706 of this title, the person is liable to the Federal Government for a civil penalty of $3,000 for each violation.

(b) COMPROMISE.—The Attorney General may compromise the amount of a civil penalty under this section to not less than $1,500 for each violation.

§ 10116. Employing alien crewmembers having disabilities and diseases

(a) CIVIL PENALTY.—The owner, agent, master, commanding officer, or consignee of a vessel or aircraft is liable to the Federal Government for a civil penalty of $1,000 for each alien crewmember employed in violation of section 2705(a) of this title if the Attorney General is satisfied, from an examination certified by a medical officer of the Public Health Service, that—

(1) the crewmember was afflicted with a disability or disease referred to in section 2705(a) of this title when the crewmember was taken on board the vessel or aircraft; and

(2) the disability or disease could have been detected by a competent medical examination.

(b) COMPROMISE.—The Attorney General may compromise the amount of a civil penalty under this section.

§ 10117. Employing alien crewmembers for certain longshore work

(a) CIVIL PENALTY.—An owner, agent, master, commanding officer, or consignee of a vessel that hires an alien crewmember classified as a nonimmigrant under section 2305(a)(1) of this title to perform longshore work not included in the normal operation and service on a vessel under section 2723, 2724, or 2725 of this title is liable to the Federal Government for a civil penalty of $5,000.

(b) LIEN ON VESSEL.—A vessel referred to in subsection (a) of this section is subject to a lien for the amount of the civil penalty.

(c) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10118. Violations involving certifications for longshore work by alien crewmembers

If the Secretary of Labor finds under section 2723(f) of this title that an employer has failed to meet a condition, or misrepresented a material fact, in its attestation under section 2723(a) of this title, the Secretary may impose a civil penalty of not more than $5,000 for each alien crewmember the employer employs to perform unauthorized longshore work.

§ 10119. Bringing in aliens excludable because of health

(a) CIVIL PENALTY.—A person is liable to the Federal Government for a civil penalty of $3,000 for each alien the person brings to the United States in violation of section 7307(b) of this title.

(b) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10120. Bringing in aliens not having passports and visas

(a) CIVIL PENALTY.—If the Attorney General is satisfied that a person has brought an alien to the United States in violation of section 7307(a) of this title, the person is liable to the Federal Government for a civil penalty of—

(1) $3,000 for each such alien; plus

(2) except for an alien admitted or allowed to land temporarily, an amount equal to the amount the alien paid to be transported from the initial port of departure, as shown on the alien's ticket, to the port of arrival.

(b) RETURN OF AMOUNT TO ALIEN.—The amount paid under subsection (a)(2) of this section shall be paid to the alien brought in violation of section 7307(a) of this title.

(c) COMPROMISE AND WAIVER.—(1) The Attorney General may compromise the amount of a civil penalty under this section only if the Attorney General is satisfied that the person, before the vessel or aircraft carrying the alien left the last port outside the United States, did not know and could not have learned by reasonable diligence that the individual transported was an alien required to have a passport and visa.

(2) Under regulations the Attorney General prescribes, the Attorney General may compromise or waive a civil penalty under this section if—

(A) the carrier demonstrates that it screened all passengers on the vessel or aircraft under procedures the Attorney General prescribed; or

(B) the Attorney General decides that circumstances exist that justify the compromise or waiver.

(d) NONAPPLICATION.—This section does not apply to a carrier or an owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft relying on a visa or other documentation that has been revoked unless reasonable notice of the revocation is received before the alien leaves.

§ 10121. Assisting unlawful entry as alien crewmembers

(a) CIVIL PENALTY.—A person, including the owner, agent, master, commanding officer, or consignee of a vessel or aircraft arriving in the United States, is liable to the Federal Government for a civil penalty of not more than $10,000 for each alien whom the person—

(1) knowingly signs on the articles of the vessel, or brings to the United States as a crewmember of the vessel or aircraft, with intent to allow or assist the alien to enter or land in the United States unlawfully; or

(2) knowingly and falsely represents to a consular officer when the alien applies for a visa, or to an immigration officer at the port of arrival in the United States, that the alien is a crewmember.

(b) LIEN ON VESSEL OR AIRCRAFT.—A vessel or aircraft referred to in subsection (a) of this section is subject to a lien for the civil penalty and may be seized. A civil action in rem may be brought against the vessel or aircraft to collect the penalty.

§ 10122. Failure to prevent unauthorized landings

(a) CIVIL PENALTY.—A person violating section 7305(a) of this title is liable to the Federal Government for a civil penalty of $3,000 for each violation, to be imposed by the Attorney General.

(b) LIEN ON VESSEL OR AIRCRAFT.—The vessel or aircraft used in transporting an alien landed in violation of this section is subject to a lien for the civil penalty. A civil action in rem may be brought against the vessel or aircraft to collect the penalty.

(c) COMPROMISE.—The Attorney General may compromise the amount of a civil penalty under this section.

§ 10123. Failure to remove alien stowaways

(a) CIVIL PENALTY.—If the Attorney General is satisfied that a person has failed to remove an alien stowaway as required by section 6718(b) of this title, the person is liable to the Federal Government for a civil penalty of $5,000 for each alien stowaway not removed.

(b) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10124. Failure to carry out certain orders related to removal

(a) CIVIL PENALTY.—If the Attorney General is satisfied that a person has violated section 6718 or 6719(b) or (c) of this title, the person is liable to the Federal Government for a civil penalty of $2,000 for each violation.

(b) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10125. Document fraud

(a) DEFINITIONS.—In this section, ''falsely make'' means to prepare at any time, or provide after September 29, 1996, an application or document with knowledge or in reckless disregard of the fact that the application or document—

(1) contains a false, fictitious, or fraudulent statement or material representation;

(2) has no basis in law or fact; or

(3) otherwise fails to state a fact which is material to the purpose for which it was submitted.

(b) VIOLATIONS.—(1) A person or entity may not knowingly—

(A) forge, counterfeit, alter, or falsely make a document to satisfy a requirement of this title or to obtain a benefit under this title;

(B) use, attempt to use, possess, obtain, accept, receive, or provide a forged, counterfeit, altered, or falsely made document to satisfy a requirement of this title or to obtain a benefit under this title;

(C) use, provide, or attempt to use or provide, a document lawfully issued to or with respect to a person other than the possessor (including a deceased individual), to satisfy a requirement of this title or to obtain a benefit under this title;

(D) accept, receive, or provide a document lawfully issued to or with respect to a person other than the possessor (including a deceased individual), to comply with section 11103 of this title or to obtain a benefit under this title;

(E) prepare, file, or assist another in preparing or filing, any application for benefits under this title, document required under this title, or document submitted in connection with the application or document, with knowledge or in reckless disregard of the fact that the application or document was falsely made or does not relate to the person on whose behalf it was or is being submitted; or

(F)(i) present before boarding a common carrier for the purpose of coming to the United States a document that relates to the alien's eligibility to enter the United States; and

(ii) fail to present the document to an immigration officer on arrival at a United States port of entry.

(2) This subsection does not apply to subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, chapters 133 and 135, section 13702, and chapter 151 of this title.

(c) AUTHORITY IN CONDUCTING INVESTIGATIONS AND HEARINGS.—(1) In conducting an investigation or hearing under this section—

(A) an immigration officer or administrative law judge shall have reasonable access to examine evidence of a person or entity being investigated;

(B) an administrative law judge may subpena, if necessary, the attendance of witnesses and the production of evidence at any designated place; and

(C) an immigration officer designated by the Commissioner of Immigration and Naturalization may subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint under subsection (d) of this section.

(2) If a person or entity disobeys a subpena issued under this subsection, an appropriate district court of the United States, on application by the Attorney General, may issue an order to comply with the subpena. The court may punish a failure to comply with the order of the court as a contempt of court.

(d) HEARINGS.—(1) The Attorney General may issue an order referred to in subsection (e) of this section against a person or entity for violating subsection (b) of this section only after providing notice and an opportunity for a hearing. A hearing must be requested within a reasonable time (established by the Attorney General, but at least 30 days) after the date of the notice.

(2) If a timely request for a hearing is not made, the Attorney General may issue an order referred to in subsection (e) of this section without a hearing.

(3) If a timely request for a hearing is made, the hearing shall be conducted by an administrative law judge as provided in section 554 of title 5 at the nearest practicable place to the place where the person or entity resides or the alleged violation occurred. If the judge finds by a preponderance of the evidence that the person or entity has violated subsection (b) of this section, the judge shall—

(A) state findings of fact; and

(B) issue and have served on the person or entity an order referred to in subsection (e) of this section.

(e) CEASE AND DESIST ORDERS.—(1) For a violation of subsection (b) of this section, an order issued under this section shall require the person or entity to cease and desist from the violation and to pay a civil penalty of—

(A) at least $250, but not more than $2,000, for each document that is the subject of a violation under subsection (b) of this section; or

(B) at least $2,000, but not more than $5,000, for each document that is the subject of a violation under subsection (b) of this section, if the person or entity previously was subject to an order under this subsection.

(2) Under paragraph (1) of this subsection, if the person or entity is composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under control of or common control with, another subdivision, each subdivision is deemed a separate person or entity.

(f) FINALITY OF DECISIONS AND ORDERS.—(1) The decision and order of an administrative law judge become the final agency decision and order of the Attorney General unless—

(A)(i) within 30 days after the date of the decision and order, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order; and

(ii) within 30 days after the date of being modified or vacated, the decision and order are referred to the Attorney General pursuant to regulations; or

(B) within 60 days after the date of decision and order (if not modified or vacated), the decision and order are referred to the Attorney General pursuant to regulations.

(2) If the decision and order are referred to the Attorney General under paragraph (1) of this subsection, the decision and order of the Attorney General become the final decision and order.

(g) JUDICIAL REVIEW.—(1) Except as provided in paragraph (2) of this subsection, a person or entity adversely affected by a final order under this section may file a petition for review of the order in the court of appeals for the appropriate circuit within 45 days after the date the final order is issued.

(2) An order of the Attorney General issued without a hearing as provided in subsection (d)(2) of this section is not appealable.

(h) ENFORCEMENT OF ORDER.—If a person or entity does not comply with a final order issued under this section, the Attorney General shall bring a civil action in an appropriate district court of the United States to seek compliance with the order. The validity and appropriateness of the order may not be reviewed in the action.

(i) WAIVER OF PENALTY.—The Attorney General may waive the penalties imposed under this section with respect to an alien who knowingly violates subsection (b)(1)(F) of this section if the alien is granted asylum under section 5106 of this title or withholding of removal under section 6716(d) of this title.

(j) INVESTIGATIVE, PROTECTIVE, AND INTELLIGENCE ACTIVITIES NOT PROHIBITED.—This section does not prohibit—

(1) any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State or of an intelligence agency of the United States; or

(2) any activity authorized under chapter 224 of title 18.

(k) CONSTRUCTION.—This section does not affect a penalty that may be imposed for an activity prohibited under both this section and title 18.

§ 10126. Illegal entry

(a) GENERAL.—An alien apprehended while entering or attempting to enter the United States after March 31, 1997, at a time or place not designated by an immigration officer is liable to the Federal Government for a civil penalty of—

(1) at least $50 and not more than $250 for each entry or attempt; or

(2) twice the amount specified in clause (1) of this subsection if the alien previously was liable to the Government for a civil penalty under this section.

(b) OTHER PENALTIES NOT AFFECTED.—A civil penalty under this section is in addition to any criminal or other civil penalty that may be imposed.

§ 10127. Failure to depart

(a) VOLUNTARILY.—An alien allowed to depart voluntarily under section 6714(a) or (b) of this title who does not depart the United States voluntarily within the time period specified is—

(1) liable to the Federal Government for a civil penalty of at least $1,000 and not more than $5,000; and

(2) ineligible for 10 years for any further relief under section 6714(a) or (b), 6721, 9101, 9102, 9104, or 9108 of this title.

(b) SUBJECT TO FINAL ORDER OF DEPORTATION.—(1) An alien subject to a final order of removal is liable to the Government for a civil penalty of not more than $500 for each day after March 31, 1997, that the alien—

(A) willfully fails or refuses to—

(i) depart from the United States under the order;

(ii) make timely application in good faith for travel or other documents necessary for departure; or

(iii) present for removal at the time and place required by the Attorney General; or

(B) conspires to, or takes any action designed to, prevent or hamper the alien's departure under the order.

(2) Paragraph (1) of this subsection does not diminish or qualify any penalties to which an alien may be subject for activities proscribed by this title.

§ 10128. Improper use, publication, examination, or disclosure of information

An individual who—

(1) knowingly uses information, publishes information, or allows information to be examined in violation of section 9308(b) of this title

is liable to the Federal Government for a civil penalty of not more than $10,000; and

(2) willfully uses information, publishes information, or allows information to be disclosed in violation of section 366 of this title is—

(A) subject to appropriate disciplinary action; and

(B) liable to the Government for a civil penalty of not more than $5,000 for each violation.

§ 10129. Information dissemination by international matchmaking organization

(a) FINDINGS.—Congress finds the following:

(1) There is a substantial mail-order bride business in the United States. With approximately 200 companies in the United States, an estimated 2,000 to 3,500 men in the United States find wives through mail-order bride catalogs each year. However, there are no official statistics available on the number of mail-order brides entering the United States each year.

(2) The companies engaged in the mail-order bride business earn substantial profits.

(3) Although many of these mail-order marriages work out, in many other cases, anecdotal evidence suggests that mail-order brides find themselves in abusive relationships. There is also evidence to suggest that a substantial number of mail-order marriages are fraudulent under the laws of the United States.

(4) Many mail-order brides come to the United States unaware or ignorant of United States immigration law. Mail-order brides who are battered often think that if they flee an abusive marriage, they will be deported. Often the citizen spouse threatens to have them deported if they report the abuse.

(5) The Immigration and Naturalization Service estimates that the rate of marriage fraud between foreign nationals and United States citizens or aliens lawfully admitted for permanent residence is 8 percent. It is unclear what percentage of these marriage fraud cases originate as mail-order marriages.

(b) DEFINITIONS.—In this section—

(1) ''international matchmaking organization''—

(A) means a legal entity, whether or not organized under the laws of the United States or any State, that does business in the United States and for profit offers to United States citizens or aliens lawfully admitted for permanent residence, dating, matrimonial, or social referral services to nonresident noncitizens, by—

(i) an exchange of names, telephone numbers, addresses, or statistics;

(ii) selection of photographs; or

(iii) a social environment provided by the organization in a country other than the United States; but

(B) does not include a traditional matchmaking organization of a religious nature that otherwise complies with the laws of the countries of the recruits of the organization and the laws of the United States.

(2) ''recruit'' means a noncitizen, nonresident person recruited by the international matchmaking organization to provide dating, matrimonial, or social referral services to United States citizens or aliens lawfully admitted for permanent residence.

(c) DISSEMINATION OF INFORMATION.—(1) Each international matchmaking organization doing business in the United States shall disseminate to recruits, when recruited, immigration and naturalization information that the Service considers appropriate, including information on—

(A) conditional permanent residence status and the battered spouse waiver under that status;

(B) permanent resident status;

(C) marriage fraud penalties;

(D) the unregulated nature of the business engaged in by those organizations; and

(E) the study required under section 652(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208, div. C, 110 Stat. 3009–712).

(2) The information shall be disseminated in the recruit's native language.

(d) CIVIL PENALTY.—(1) An international matchmaking organization that the Attorney General decides has violated subsection (c) of this section is liable to the Federal Government for a civil penalty of not more than $20,000 for each violation.

(2) A penalty under paragraph (1) of this subsection—

(A) may be imposed only after notice and an opportunity for an agency hearing on the record in accordance with sections 554–557 of title 5; and

(B) is in addition to any other penalties that may be prescribed by law.

§ 10130. Clearing vessels and aircraft

(a) CLEARANCE BEFORE DECISION ON LIABILITY.—A vessel or aircraft may be granted clearance before a decision on liability is made under—

(1) section 10113–10117, 10119, or 10120 of this title only if a bond approved by the Attorney General or an amount sufficient to pay the civil penalty is deposited; and

(2) section 10112, 10123, or 10124 of this title only if a bond approved by the Attorney General or an amount sufficient to pay the civil penalty is deposited with the Commissioner of Immigration and Naturalization.

(b) PROHIBITION ON CLEARANCE WHEN PENALTY UNPAID.—A vessel or aircraft may not be granted clearance if a civil penalty imposed under section 10112–10117, 10119, 10120, 10123, or 10124 of this title is not paid.

SUBCHAPTER III—CRIMINAL PENALTIES

§ 10141. Violating period of conditional landing permit

An alien crewmember willfully remaining in the United States after the period allowed by a conditional permit issued under section 2703(b) of this title shall be fined under title 18, imprisoned for not more than 6 months, or both.

§ 10142. Failure to register and be fingerprinted

An alien required to apply for registration and to be fingerprinted in the United States and willfully failing to apply or to be fingerprinted, and a parent or legal guardian required to apply for the registration of an alien and willfully failing to apply, shall be fined under title 18, imprisoned for not more than 6 months, or both.

§ 10143. Failure to carry a certificate of alien registration or alien registration receipt card

An alien violating section 8103(b) of this title shall be fined under title 18, imprisoned for not more than 30 days, or both.

§ 10144. Failure to provide addresses

An individual violating section 8104 of this title shall be fined under title 18, imprisoned for not more than 30 days, or both.

§ 10145. False and fraudulent registration

An alien, or a parent or legal guardian of an alien, who files an application for registration knowing that the application contains a false statement, or who registers or attempts to register himself, herself, or another individual through fraud, shall be fined under title 18, imprisoned for not more than 6 months, or both.

§ 10146. Counterfeiting alien registration documents

A person that with unlawful intent makes an engraving, photograph, print, impression, or imitation of a certificate of alien registration or an alien registration receipt card, except when authorized under regulations prescribed by the Attorney General, shall be fined under title 18, imprisoned for not more than 5 years, or both.

§ 10147. Bringing in and harboring aliens

(a) CRIMINAL PENALTIES.—(1)(A) A person shall be punished as provided in subparagraph (B) of this paragraph if the person—

(i) knowing an individual is an alien, brings or attempts to bring the individual to the United States at a place not designated as a port of entry or not designated by the Commissioner of Immigration and Naturalization, even if the alien has received prior authorization to come to, enter, or reside in the United States, and regardless of any future official action that may be taken with respect to the alien;

(ii) knowing, or in reckless disregard of whether, an alien has come to, has entered, or remains in the United States in violation of law, transports or moves, or attempts to transport or move, the alien within the United States in furtherance of that violation;

(iii) knowing, or in reckless disregard of whether, an alien has come to, has entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, the alien;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing, or in reckless disregard of whether, the coming, entering, or residing is unlawful;

(v) engages in any conspiracy to commit any of the acts described in clauses (i)–(iv); or

(vi) aids or abets the commission of any of the acts described in clauses (i)–(iv).

(B) For each alien with respect to whom a violation of subparagraph (A) of this paragraph occurs, the person committing the violation—

(i) for a violation of subparagraph (A)(i) or (v), or for a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for commercial advantage or private financial gain, shall be fined under title 18, imprisoned for not more than 10 years, or both;

(ii) for a violation of subparagraph (A)(ii), (iii), (iv), or (vi), shall be fined under title 18, imprisoned for not more than 5 years, or both;

(iii) for a violation of subparagraph (A)(i), (ii), (iii), (iv), (v), or (vi) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18) to, or places in jeopardy the life of, any person, shall be fined under title 18, imprisoned for not more than 20 years, or both; and

(iv) for a violation of subparagraph (A)(i), (ii), (iii), (iv), (v), or (vi) resulting in death, shall be imprisoned for any term of years or for life or punished by death, fined under title 18, or both.

(2)(A) A person shall be punished as provided in subparagraph (B) of this paragraph if the person, knowing or in reckless disregard of whether an alien has not received prior authorization to come to, enter, or reside in the United States, brings or attempts to bring the alien to the United States, regardless of any future official action that may be taken with respect to the alien.

(B) For each alien in respect of whom a violation of subparagraph (A) of this paragraph occurs, the person committing the violation shall be fined under title 18, imprisoned for not more than one year, or both, except that if the violation is—

(i) a first or 2d violation done for commercial advantage or private financial gain or committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the Federal Government or any State punishable by imprisonment for more than 1 year, the person shall be fined under title 18 and imprisoned for not less than 3 nor more than 10 years;

(ii) a first or 2d violation in which the alien is not brought and presented to an immigration officer at a designated port of entry immediately on arrival, the person shall be fined under title 18 and imprisoned for not more than 10 years; or

(iii) any other violation described in clause (i) or (ii) of this subparagraph, fined under title 18 and imprisoned for not less than 5 nor more than 15 years.

(3) A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals—

(A) are unauthorized aliens (as defined in section 11101 of this title); and

(B) have been brought into the United States in violation of this subsection.

(b) SEIZURE AND FORFEITURE OF CONVEYANCE.—(1) A conveyance used in violating subsection (a) of this section shall be seized and may be forfeited. However, a conveyance—

(A) used by a person as a common carrier in carrying out common carrier business may be forfeited only if the owner or person in charge of the conveyance consented to, or was privy to, the violation; and

(B) may not be forfeited if the owner establishes that another person committed the violation when the conveyance was in the possession of another person in violation of the criminal laws of the United States or of a State.

(2) A conveyance may be seized under this section without a warrant if there is probable cause to believe it has been or is being used in violating subsection (a) of this section and circumstances exist in which a warrant is not required constitutionally.

(c) DISPOSITION OF FORFEITED CONVEYANCE.—When a conveyance is forfeited under this section, the Attorney General may—

(1) keep the conveyance for official use;

(2) sell the conveyance and shall use the proceeds to pay the expenses of the proceedings for forfeiture and sale, including seizure, maintenance of custody, advertising, and court costs;

(3) require the Administrator of General Services, or the Administrator of the Maritime Administration if appropriate under section 203(i) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(i)), to take custody of the conveyance and dispose of it under law; or

(4) dispose of the conveyance under a compromise made by the Attorney General.

(d) PROOF IN FORFEITURE ACTION.—In a civil action brought to forfeit a conveyance seized under this section, a person claiming the conveyance has the burden of proof. However, the Attorney General first must show probable cause in bringing the action. In deciding whether probable cause exists, each of the following is prima facie evidence that an alien involved in an alleged violation had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States unlawfully:

(1) A record of a judicial or administrative proceeding in which the alien's status was an issue and in which it was decided that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States unlawfully.

(2) Official records of the Immigration and Naturalization Service or the Department of State showing that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States unlawfully.

(3) Testimony by an immigration officer, having personal knowledge about the alien's status, that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States unlawfully.

(e) ADMISSIBILITY OF VIDEOTAPED TESTIMONY.—Notwithstanding the Federal Rules of Evidence (28 App. U.S.C.), the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection

(a) of this section who has been deported or otherwise expelled from the United States, or who otherwise is unable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination and the deposition otherwise complies with the Federal Rules of Evidence.

(f) APPLICATION OF LAWS RELATED TO SEIZURES AND FORFEITURES FOR VIOLATING CUSTOMS LAWS.—Laws related to the seizure, forfeiture, and condemnation of property for violating the customs laws, disposition of the property or the proceeds of sale of the property, compromise of the forfeiture or a related claim, and award of compensation to an informer because of the forfeiture apply to a seizure or forfeiture under this section if not inconsistent with this section. However, duties and powers of persons in seizing and forfeiting property under the customs laws shall be carried out by persons the Attorney General authorizes to conduct a seizure or forfeiture under this section.

(g) INDIVIDUALS AUTHORIZED TO MAKE ARRESTS.—Only officers and employees of the Service designated by the Attorney General, individually or by class, and all other officers and employees who enforce criminal laws, may make arrests for a violation of this section.

§ 10148. Improper entry of aliens

(a) CRIMINAL OFFENSES.—An alien shall be punished as provided in subsection (b) of this section if the alien—

(1) enters or attempts to enter the United States—

(A) at a time or place not designated by an immigration officer; or

(B) by a willfully false or misleading representation or the willful concealment of a material fact; or

(2) eludes inspection or examination by an immigration officer.

(b) CRIMINAL PENALTIES.—An alien violating subsection (a) of this section shall be—

(1) fined under title 18, imprisoned for not more than 6 months, or both, for a first violation; and

(2) fined under title 18, imprisoned for not more than 2 years, or both, for a subsequent violation.

(c) VENUE.—A proceeding under this section may be brought in any judicial district in which the violation occurs or in which the alien is apprehended.

§ 10149. Reentry of removed aliens

(a) CRIMINAL PENALTY.—(1) Except as otherwise provided in this section, an alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an exclusion, deporta-

tion, or removal order is outstanding and then enters, attempts to enter, or is found in the United States shall be fined under title 18, imprisoned for not more than 2 years, or both.

(2)(A) In subparagraphs (B)–(E) of this paragraph, ''removal'' includes an agreement in which an alien stipulates to removal at any time.

(B) If the alien's removal followed conviction of at least 3 misdemeanors involving drugs, crimes against the person, or both, or a felony (except an aggravated felony) and the alien enters, attempts to enter, or is found in the United States after November 17, 1988, the alien shall be fined under title 18, imprisoned for not more than 10 years, or both.

(C) If the alien's removal followed conviction of an aggravated felony and the alien enters, attempts to enter, or is found in the United States after November 17, 1988, the alien shall be fined under title 18, imprisoned for not more than 20 years, or both.

(D) If the alien has been removed from the United States under section 6107 of this title because the alien was inadmissible under section 6310(b) of this title or has been removed from the United States under chapter 69 of this title, and then, without the permission of the Attorney General, enters or attempts to enter the United States, the alien shall be fined under title 18 and imprisoned for 10 years. The sentence under this subparagraph may not run concurrently with any other sentence.

(E) If the alien has been removed from the United States under section 6715(d)(2) of this title and then, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General expressly has consented to the alien's reentry), the alien shall be fined under title 18, imprisoned for not more than 10 years, or both.

(b) COMPLETION OF SENTENCE OF IMPRISONMENT.—An alien removed under section 6715(d)(2) of this title who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General expressly has consented to the alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment that was pending at the time of removal without any reduction for parole or supervised release. The alien is subject to all other penalties related to the reentry of aliens who have been removed.

(c) NONAPPLICATION.—Subsection (a) of this section does not apply to an alien—

(1) when the Attorney General specifically consents to the alien's reapplying for admission before the alien—

(A) reboards at a place outside the United States; or

(B) applies for admission from a foreign territory contiguous to the United States; or

(2) previously denied admission and removed who establishes that prior consent by the Attorney General is not required under this title or other prior law.

(d) VENUE.—A proceeding under this section may be brought in any judicial district in which the violation occurs or in which the alien is apprehended.

(e) CHALLENGE TO VALIDITY OF ORDER.—In a proceeding under this section begun after April 24, 1996, an alien may not challenge the validity of the order described in subsection (a) of this section unless the alien demonstrates that—

(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

(2) the proceeding at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

(3) the entry of the order fundamentally was unfair.

§ 10150. Assisting certain excludable aliens to enter the United States

A person knowingly assisting or conspiring to assist an alien to enter the United States shall be fined under title 18, imprisoned for not more than 10 years, or both, if—

(1) the alien is inadmissible under section 6309(a)(1)–(5) or (7) of this title because of a conviction for an aggravated felony and the assistance occurred after November 17, 1988; or

(2) the alien is inadmissible under section 6310 of this title.

§ 10151. Importing aliens for immoral purposes

(a) CRIMINAL PENALTY.—A person shall be fined under title 18, imprisoned for not more than 10 years, or both, if the person—

(1) imports or attempts to import an alien into the United States for prostitution or another immoral purpose; or

(2) holds, attempts to hold, maintains, controls, supports, employs, or harbors an alien in furthering an importation violating clause (1) of this subsection.

(b) VENUE.—A proceeding under this section may be brought in any judicial district into which the alien is brought in violation of this section or in which a violation of this section occurs.

(c) TESTIMONY OF SPOUSE.—Testimony of a spouse is admissible and is competent evidence in a proceeding under this section.

§ 10152. Failure to depart

(a) CRIMINAL OFFENSES.—An alien against whom the Attorney General has issued a final order of removal because of any ground described in chapter 65 of this title shall be punished as provided in subsection (c) of this section if the alien—

(1) willfully does not—

(A) leave the United States within the 90-day period that begins on—

(i) the date of the Attorney General's final order; or

(ii) if judicial review occurs, the date of the court's final order.

(B) apply timely in good faith for a document the alien needs to leave the United States; or

(C) appear for removal at the time and place the Attorney General requires under the order of removal; or

(2) takes an action to prevent or hamper, or conspires to prevent or hamper, the alien from leaving the United States under the removal order.

(b) ATTEMPTED RELIEF NOT PROHIBITED.—Subsection (a) of this section does not prohibit an alien from trying to obtain—

(1) a cancellation of the removal order;

(2) an exemption from the removal order; or

(3) a release from incarceration or custody.

(c) CRIMINAL PENALTIES.—An alien violating subsection (a) of this section shall be fined under title 18, imprisoned for not more than 4 years, or both. However, if the alien is deportable because of a ground described in section 6505, 6506(a), (b), (c), (d), or (f), 6507(a), (b)(1), (2), (3), or (5), (c), or (d), 6508, or 6509 of this title, the alien shall be fined under title 18, imprisoned for not more than 10 years, or both.

(d) SUSPENSION OF SENTENCE AND RELEASE.—(1) For good cause, the court sentencing an alien convicted of violating subsection (a) of this section may suspend the sentence and order the alien released on conditions the court prescribes.

(2) In deciding whether good cause exists for releasing an alien under paragraph (1) of this subsection, the court shall consider factors such as—

(A) the age, health, and period of detention of the alien;

(B) the effect of the alien's release on the security of the United States and public peace or safety;

(C) the likelihood that the alien will resume or follow a course of conduct that made or would make the alien deportable;

(D) efforts the alien or a representative of a country to which the alien is ordered removed makes to expedite the alien's leaving the United States;

(E) the reason why the Federal Government cannot obtain a passport or other travel document or removal facilities from a country to which the alien is ordered removed; and

(F) the eligibility of the alien for discretionary release under the immigration laws.

§ 10153. Marriage to evade immigration laws

(a) CRIMINAL PENALTY.—An individual who knowingly marries to evade the immigration laws shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) VENUE.—A proceeding under this section may be brought in any judicial district in which the violation occurs or in which the individual is apprehended.

§ 10154. Misrepresentations in applications for adjustment of status

An individual knowingly and willfully making a material misrepresentation in an application or supporting document filed under section 9302 or 9304 of this title, or making or using a false document in connection with the application, shall be fined under title 18, imprisoned for not more than 5 years, or both.

§ 10155. Establishing a commercial enterprise to evade immigration laws

(a) CRIMINAL PENALTY.—An individual who knowingly establishes a commercial enterprise to evade the immigration laws shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) VENUE.—A proceeding under this section may be brought in any judicial district in which the violation occurs or in which the individual is apprehended.

§ 10156. Failure to disclose role as preparer of false application for immigration benefits

(a) DEFINITION.—In this section, ''falsely make'' means to prepare at any time, or provide after September 29, 1996, an application or document with knowledge or in reckless disregard of the fact that the application or document—

(1) contains a false, fictitious, or fraudulent statement or material representation;

(2) has no basis in law or fact; or

(3) otherwise fails to state a fact which is material to the purpose for which it was submitted.

(b) FIRST VIOLATION.—In any matter within the jurisdiction of the Immigration and Naturalization Service, an individual who knowingly and willfully does not disclose, conceals, or covers up the fact that the individual, for any person and for a fee or other remuneration, has prepared or assisted in preparing an application for immigration benefits which was falsely made shall be—

(1) fined under title 18, imprisoned for not more than 5 years, or both; and

(2) prohibited from preparing or assisting in preparing, whether or not for a fee or other remuneration, another similar application.

(c) SUBSEQUENT VIOLATIONS.—An individual convicted of violating subsection (b) of this section who knowingly and willfully prepares or assists in preparing an application for immigration benefits under this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, and chapters 133 and 135), or regulations prescribed under this title (except any of those provisions), whether or not for a fee or other remuneration and regardless of whether in any matter within the jurisdiction of the Service, shall be—

(1) fined under title 18, imprisoned for not more than 15 years, or both; and

(2) prohibited from preparing or assisting in preparing another similar application.

§ 10157. Failure to comply with terms of release under supervision

An alien who willfully does not comply with a regulation prescribed or requirement issued under section 6715(c) of this title or who knowingly gives false information in response to an inquiry under section 6715(c) shall be fined under title 18, imprisoned for not more than one year, or both.

SUBTITLE III—UNLAWFUL EMPLOYMENT PRACTICES

CHAPTER		Sec.
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CHAPTER 111—UNLAWFUL EMPLOYMENT OF ALIENS

Sec.
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§ 11101. Definitions

In this chapter—

(1) ''entity'' includes a federal department, agency, or instrumentality.

(2) ''unauthorized alien'' means, with respect to employment at a particular time, an alien who is not at that time—

(A) lawfully admitted for permanent residence; or

(B) authorized to be employed in that employment by this title or by the Attorney General.

§ 11102. Employment of unauthorized aliens

(a) PROHIBITIONS.—(1) A person or other entity—

(A) may not hire, or recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien;

(B) may not hire for employment in the United States an individual without complying with section 11103 of this title; or

(C) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802)), may not recruit or refer for a fee for employment in the United States an individual without complying with section 11103 of this title.

(2) A person or other entity may not continue to employ in the United States an alien knowing the alien is an unauthorized alien.

(b) USE OF LABOR THROUGH CONTRACT.—A person or other entity violates subsection (a)(1)(A) of this section if the person uses a contract, subcontract, or exchange that is made, renegotiated, or extended after November 6, 1986, to obtain the labor of an alien in the United States, knowing the alien is an unauthorized alien.

(c) DEFENSE.—Good faith compliance with section 11103 of this title is an affirmative defense under subsection (a)(1)(A) of this section.

(d) STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of subsections (a)(1)(B) and (C) and (c) of this section, a person or other entity hiring an individual referred by a State employment agency (as defined by the Attorney General) is deemed to have complied with section 11103 of this title if the person or entity has and retains (for the period and in the way described in section 11103(c)) appropriate documentation of the referral certifying that the agency complied with section 11103 for that individual.

(e) TREATMENT OF DOCUMENTATION FOR CERTAIN EMPLOYEES.—(1) For purposes of this section, an employer that is a member of an association of at least 2 employers is deemed to have complied with the requirements of section 11103 of this title with respect to the hiring of an em-

ployee and is not liable for civil penalties described in section 11105(e) of this title if—

(A) the individual hired is a member of a collective-bargaining unit and was employed, under a collective bargaining agreement between at least one employee organization and the association, by an employer that is a member of the association; and

(B) the prior employer (or an agent of the association for the employer) complied with the requirements of section 11103 of this title with respect to the employment of the individual, within the lesser of 3 years or the period of time that the individual is authorized to be employed in the United States.

(2)(A) For purposes of subsection (a)(1)(A) of this section, a member of an association that hires for employment in the United States an individual who is an alien not authorized to work in the United States and that relies on paragraph (1) of this subsection to comply with the requirements of section 11103 of this title is presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(B) The presumption may be rebutted by the employer only by presenting clear and convincing evidence that the employer did not know (and reasonably could not have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(C) Subparagraph (A) of this paragraph does not apply in a prosecution under section 11106(a) of this title.

(f) NONAPPLICATION.—(1) Subsection (a)(1) of this section does not apply to hiring, recruiting, or referring that occurred before November 6, 1986.

(2) Subsection (a)(2) of this section does not apply to continuing employment of an alien hired before November 6, 1986.

§ 11103. Employment verification system

(a) ATTESTATION AFTER EXAMINING DOCUMENTS.—(1) A person or other entity hiring, or recruiting or referring for a fee, an individual for employment in the United States must attest, under penalty of perjury and on a form the Attorney General prescribes by regulation, that the person or entity has verified that the individual is not an unauthorized alien by examining—

(A) a document specified in paragraph (3) of this subsection; or

(B)(i) a document specified in paragraph (4) of this subsection; and

(ii) a document specified in paragraph (5) of this subsection.

(2) A person or other entity has examined a document as required by paragraph (1) of this subsection if the person or entity has found that the

document reasonably appears on its face to be genuine. The person or entity is not required to request, and the individual is not required to provide, another document if the individual has provided a document or combination of documents complying with paragraph (1) that reasonably appear on their face to be genuine.

(3) A document required under paragraph (1)(A) of this subsection is an individual's—

(A) United States passport; or

(B) resident alien card, alien registration card, or other document the Attorney General designates if the document—

(i) contains the individual's photograph and other identifying information the Attorney General prescribes by regulation as acceptable;

(ii) is evidence of authorization of employment in the United States; and

(iii) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

(4) A document required under paragraph (1)(B)(i) of this subsection is an individual's—

(A) social security account number card (unless it states on its face that issuance of the card does not authorize employment in the United States); or

(B) other documentation providing authorization of employment in the United States that the Attorney General prescribes by regulation as acceptable.

(5) A document required under paragraph (1)(B)(ii) of this subsection is an individual's—

(A) driver's license or similar document issued for identification by a State, if it contains the individual's photograph or other identifying information the Attorney General prescribes by regulation as acceptable; or

(B) for an individual less than 16 years of age or in a State that does not issue an identification document other than a driver's license, documentation of personal identity that the Attorney General prescribes by regulation as providing a reliable means of identification.

(6) If the Attorney General finds, by regulation, that any document described in paragraph (3), (4), or (5) of this subsection as establishing employment authorization or identity does not reliably establish the authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this section.

(b) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury and on the form prescribed under subsection (a) of this section, that the individual is—

(1) a national of the United States;

(2) an alien lawfully admitted for permanent residence; or

(3) an alien authorized by this title or by the Attorney General to be hired, recruited, or referred for the employment.

(c) RETENTION OF VERIFICATION FORM.—After the form is completed as provided in subsections (a) and (b) of this section, the person or entity must retain the form and make it available for inspection by officers and employees of the Immigration and Naturalization Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Secretary of Labor during a period beginning on the date of the hiring, recruiting, or referral and ending—

(1) if the individual is recruited or referred for a fee but not hired, 3 years after the date of the recruiting or referral; or

(2) if the individual is hired, 3 years after the date of hire or one year after the date the employment ends, whichever is later.

(d) COPYING DOCUMENTATION.—A person or other entity may copy a document presented by an individual under this section and retain the copy, but only (except as otherwise permitted by law) to comply with this section.

(e) GOOD FAITH COMPLIANCE.—(1) Except as provided in paragraph (2) of this subsection, a person or other entity is deemed to have complied with a requirement of this section (notwithstanding a technical or procedural failure to meet the requirement that occurred after September 29, 1996) if there was a good faith attempt to comply with the requirement.

(2) Paragraph (1) of this subsection does not apply—

(A) if—

(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure;

(ii) the person or entity has been provided at least 10 business days (beginning after the date of the explanation) to correct the failure; and

(iii) the person or entity has not corrected the failure voluntarily within that time; or

(B) to a person or other entity that has engaged or is engaging in a pattern or practice of violations of section 11102(a)(1)(A) or (2) of this title.

(f) LIMITATION ON USE OF FORMS.—A form completed under this section, and information contained in or appended to the form, may be used

only to enforce this title and sections 1001, 1028, 1546, and 1621 of title 18.

(g) NATIONAL IDENTIFICATION CARD NOT AUTHORIZED.—This chapter does not authorize the establishment, issuance, or use of a national identification card.

§ 11104. Evaluating and changing employment verification system

(a) DEFINITION.—In this section, ''major change'' means a change that would—

(1) require an individual to present a new card or other document (designed specifically to verify identity, employment eligibility, or both) at the time of hiring, recruitment, or referral;

(2) provide for a telephone verification system under which—

(A) an employer, recruiter, or referrer must give an officer or employee of the Federal Government information about the immigration status of a prospective employee; and

(B) the officer or employee of the Government gives the employer, recruiter, or referrer a verification code that the employer, recruiter, or referrer must record; or

(3) require a change in a card used for accounting under the Social Security Act (42 U.S.C 301 et seq.), including a change requiring that the only social security account number card that may be presented to comply with section 11103(a)(4)(A) of this title is a card in a counterfeit-resistant form consistent with section 205(c)(2)(G) (last sentence) of the Social Security Act (42 U.S.C. 405(c)(2)(G) (last sentence)).

(b) PRESIDENTIAL MONITORING AND IMPROVEMENTS.—(1) The President shall—

(A) provide for monitoring and evaluating the degree to which the employment verification system under section 11103 of this title provides a secure system to verify employment eligibility in the United States; and

(B) examine the suitability of using existing federal and state identification systems to verify employment eligibility in the United States.

(2) To the extent the President finds the system is not a secure system to verify employment eligibility in the United States, the President shall make changes in and additions to the system necessary to establish a secure system to verify employment eligibility in the United States—

(A) subject to subsections (c)–(f) of this section; and

(B) after considering the results of any demonstration project conducted under subsection (g) of this section.

(c) CHANGE REQUIREMENTS.—A change proposed by the President under subsection (b) of this section must be designed so that the system, as changed, will meet the following requirements:

(1) The system must be able to verify reliably whether—

(A) an individual with the identity claimed by an employee or prospective employee is eligible to work; and

(B) the employee or prospective employee is claiming the identity of another individual.

(2) If the system requires that a document be presented to or examined by an employer, the document must be in a form resistant to counterfeiting and tampering.

(3) Personal information used by the system may be made available only to the extent necessary to verify that an individual is not an unauthorized alien.

(4) The system must protect the privacy and security of personal information and identifiers used in the system.

(5) A verification that an individual is eligible to be employed in the United States may be withheld or revoked only if the individual is an unauthorized alien.

(6) The system may not be used for law enforcement, except to enforce this title and sections 1001, 1028, 1546, and 1621 of title 18.

(7) If the system requires an individual to present a new card or other document (designed specifically to verify employment eligibility) at the time of hiring, recruitment, or referral, the document may not be required to be presented for another purpose (other than under this title (except subchapter I of chapter 7, chapter 47, subchapters II and III of chapter 131, and chapters 133 and 135) or for enforcement of sections 1001, 1028, 1546, and 1621 of title 18) or to be carried on the individual.

(d) NOTICES TO CONGRESS BEFORE MAKING CHANGES.—(1) Before implementing a change, the President must submit a written report of the proposed change to the Committees on the Judiciary of the Senate and the House of Representatives. If the President proposes a change affecting social security account number cards, the President also shall submit the report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. A report under this paragraph shall include recommendations for civil and criminal penalties for unauthorized use or disclosure of the information or identifiers used in the system. The report shall be submitted at least—

(A) 60 days before the date the change is to be implemented if the change is not a major change;

(B) one year before the date the change is to be implemented if the change is a major change as defined in subsection (a)(3) of this section; or

(C) 2 years before the date the change is to be implemented if the change is a major change as defined in subsection (a)(1) or (2) of this section.

(2) The President shall publish promptly in the Federal Register the substance of a major change reported to Congress under this subsection.

(e) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—(1) The Committees on the Judiciary of the Senate and the House of Representatives shall—

(A) publish in the Congressional Record the substance of a major change submitted by the President under subsection (d) of this section;

(B) hold hearings on the feasibility and desirability of the change; and

(C) within the 2-year period before the change is to be implemented, report to their respective Houses findings on whether the change should be made.

(2) A major change may be implemented only if an amount is appropriated by law specifically to implement the change.

(f) PAYMENT OF COSTS.—Costs incurred under this section in developing and implementing a change described in subsection (a)(3) of this section may not be paid out of a trust fund established under the Social Security Act (42 U.S.C. 301 et seq.).

(g) DEMONSTRATION PROJECTS.—The President may undertake demonstration projects consistent with subsection (c) of this section of different changes in the system. A project may not be for more than 5 years. The President shall report to Congress on the results of each project conducted under this subsection.

§ 11105. Compliance

(a) COMPLAINTS AND INVESTIGATIONS.—The Attorney General shall establish procedures for—

(1) an individual or entity to file a written, signed complaint of a violation of section 11102(a) or 11107(a) of this title;

(2) investigating a complaint that, on its face, has a substantial probability of validity;

(3) investigating other violations of section 11102(a) or 11107(a) of this title that the Attorney General considers appropriate; and

(4) designating a unit in the Immigration and Naturalization Service that has, as its primary duty, the prosecution under this section of violations of section 11102(a) or 11107(a) of this title.

(b) AUTHORITY IN CONDUCTING INVESTIGATIONS AND HEARINGS.—(1) In conducting an investigation or hearing under this section—

(A) the immigration officer or administrative law judge conducting the investigation or hearing shall have reasonable access to examine evidence of a person or other entity being investigated;

(B) the administrative law judge may subpena, if necessary, the attendance of witnesses and the production of evidence at any designated place; and

(C) an immigration officer the Commissioner of Immigration and Naturalization designates may subpoena the attendance of witnesses and the production of evidence at any designated place before a complaint is filed under paragraph (2) of this subsection.

(2) If a person or other entity disobeys a subpena issued under this subsection, an appropriate district court of the United States, on application by the Attorney General, may issue an order to comply with the subpena. The court may punish a failure to comply with the order of the court as a contempt of court.

(c) HEARINGS.—(1) The Attorney General may issue an order referred to in subsections (d)–(f) of this section against a person or other entity for violating section 11102(a) or 11107(a) of this title only after providing notice and an opportunity for a hearing. A hearing must be requested within a reasonable time (established by the Attorney General, but at least 30 days) after the date of the notice.

(2) If a timely request for a hearing is not made, the Attorney General may issue an order referred to in subsections (d)–(f) of this section without a hearing.

(3) If a timely request for a hearing is made, the hearing shall be conducted by an administrative law judge as provided in section 554 of title 5 at the nearest practicable place to the place where the person or entity resides or the alleged violation occurred. If the judge finds by a preponderance of the evidence that the person or entity has violated section 11102(a) or 11107(a) of this title, the judge shall—

(A) state findings of fact; and

(B) issue and have served on the person an order referred to in subsections (d)–(f) of this section.

(d) ORDERS INVOLVING HIRING, RECRUITING, AND REFERRAL VIOLATIONS.—(1) For a violation of section 11102(a)(1)(A) or (2) of this title, an order issued under this section—

(A) shall require the person or other entity to cease and desist from the violation and to pay a civil penalty of—

(i) at least $250, but not more than $2,000, for each unauthorized alien involved in the violation;

(ii) at least $2,000, but not more than $5,000, for each unauthorized alien involved in the violation if the person or entity previously was subject to one order under this subsection; or

(iii) at least $3,000, but not more than $10,000, for each unauthorized alien involved in the violation if the person or entity previously was subject to more than one order under this subsection; and

(B) may require the person or entity —

(i) to comply for not more than 3 years with section 11103 of this title or, if applicable, with section 11104 of this title, for individuals hired or recruited or referred for a fee; and

(ii) to take other appropriate remedial action.

(2) Under paragraph (1) of this subsection, if the person or entity is composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under control of or common control with, another subdivision, each subdivision is deemed a separate person or entity.

(e) ORDERS INVOLVING PAPERWORK VIOLATIONS.—For a violation of section 11102(a)(1) (B) or (C) of this title, an order issued under this section shall require the person or entity to pay a civil penalty of at least $100, but not more than $1,000, for each individual about whom the violation occurred. In deciding on the amount of the penalty, consideration shall be given to—

(1) the size of the business of the employer;

(2) the good faith of the employer;

(3) the seriousness of the violation;

(4) whether the individual was an unauthorized alien; and

(5) any history of prior violations.

(f) ORDERS INVOLVING INDEMNITY VIOLATIONS.—For a violation of section 11107(a) of this title, an order issued under this section may provide for the penalty described in section 11107(b) of this title.

(g) FINALITY OF DECISIONS AND ORDERS.—(1) The decision and order of an administrative law judge become the final decision and order of the Attorney General unless—

(A)(i) within 30 days after the date of the decision and order, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order; and

(ii) within 30 days after the date of being modified or vacated, the decision and order are referred to the Attorney General pursuant to regulations; or

(B) within 60 days after the date of the decision and order (if not modified or vacated), the decision and order are referred to the Attorney General pursuant to regulations.

(2) If the decision and order are referred to the Attorney General under paragraph (1) of this subsection, the decision and order of the Attorney General become the final decision and order.

(3) The Attorney General may not delegate the Attorney General's authority under this subsection to an entity having review authority over immigration-related matters.

(h) JUDICIAL REVIEW.—(1) Except as provided in paragraph (2) of this subsection, a person or other entity adversely affected by a final order imposing a civil penalty under this section may file a petition for review of the order in the court of appeals for the appropriate circuit within 45 days after the date the final order is issued.

(2) An order of the Attorney General issued without a hearing as provided in subsection (c)(2) of this section is not appealable.

(i) ENFORCEMENT OF ORDERS.—If a person or other entity does not comply with a final order issued under this section, the Attorney General shall bring a civil action in an appropriate district court of the United States to seek compliance with the order. The validity and appropriateness of the order may not be reviewed in the action.

§ 11106. Criminal penalties and civil actions for pattern or practice violations

(a) CRIMINAL PENALTY.—A person or other entity engaging in a pattern or practice of violations of section 11102(a)(1) (A) or (2) of this title shall be fined not more than $3,000 for each unauthorized alien involved in a violation (notwithstanding the provisions of title 18 on the amount of fines), imprisoned for not more than 6 months for the entire pattern or practice, or both.

(b) CIVIL ACTIONS.—If the Attorney General has reason to believe that a person or other entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of section 11102(a) (1)(A) or (2) of this title, the Attorney General may bring a civil action in the appropriate district court of the United States for relief the Attorney General considers necessary.

§ 11107. Indemnity prohibition

(a) GENERAL.—A person or other entity hiring, recruiting, or referring an individual for employment may not require the individual to post a bond

or security, to pay or agree to pay an amount, or to give another financial guarantee or indemnity, against potential liability arising under this chapter related to the hiring, recruiting, or referral.

(b) CIVIL PENALTY.—After notice and an opportunity for a hearing under section 11105 of this title, a person or other entity found to have violated subsection (a) of this section—

(1) is liable to the Federal Government for a civil penalty of $1,000; and

(2) may be ordered administratively to return any amount received in violation of subsection (a) of this section to the individual or, if the individual cannot be located, to pay that amount to the general fund of the Treasury.

§ 11108. Conspicuous statement requirement

In providing for the documentation or endorsement of authorization for employment in the United States for an alien (except an alien lawfully admitted for permanent residence), the Attorney General shall provide that a limitation on the period or type of employment or employer be stated conspicuously on the documentation or endorsement.

§ 11109. Preemption of state and local law

This chapter preempts state and local law imposing a civil or criminal penalty (except through licensing and similar laws) on a person employing, or recruiting or referring for a fee for employment, an unauthorized alien.

CHAPTER 113—IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES

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§ 11301. Definition

In this chapter, "protected individual"—

(1) means an individual who is—

(A) a national of the United States; or

(B) an alien lawfully admitted for permanent residence, lawfully admitted for temporary residence under section 9302 of this title or section 210(a) of the Immigration and Nationality Act, admit-

ted as a refugee under section 5105 of this title, or granted asylum under section 5106 of this title; but

(2) does not include an alien who—

(A) did not apply for naturalization within 6 months after first becoming eligible (because of a period of lawful permanent residence) to apply or, if later, before May 7, 1987; or

(B) timely applied but was not naturalized within 2 years after applying (excluding time taken by the Immigration and Naturalization Service in processing the application), unless the alien establishes that the alien is actively pursuing naturalization.

§ 11302. Immigration-related unfair employment practices

(a) IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES.—It is an immigration-related unfair employment practice for a person or other entity—

(1) to discriminate against an individual (except an unauthorized alien as defined in section 11101 of this title) in hiring, or recruiting or referring for employment for a fee, the individual or discharging the individual from employment because of the individual's national origin or, if the individual is a protected individual, because of the individual's citizenship status; or

(2) after November 28, 1990, to intimidate, threaten, coerce, or retaliate against an individual—

(A) for the purpose of interfering with a right or privilege under this chapter; or

(B) because the individual intends to file or has filed a charge or complaint or assisted or participated in an investigation, hearing, or proceeding under this chapter.

(b) CERTAIN DOCUMENT PRACTICES AS BEING UNFAIR.—It is an immigration-related unfair employment practice for a person or other entity to request, after September 29, 1996, for purposes of satisfying the requirements of section 11103 of this title, more or different documents than are required under section 11103, or to refuse to honor a document that on its face reasonably appears to be genuine, if the request or refusal is made for the purpose or with the intent of discriminating against an individual in violation of subsection (a)(1) of this section.

(c) NONAPPLICATION.—Subsection (a)(1) of this section does not apply to—

(1) a person or other entity employing fewer than 4 employees;

(2) discrimination by a person or other entity because of an individual's national origin if the discrimination by that person or entity

against that individual is covered by section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2); or

(3) discrimination because of citizenship status that is—

(A) required to comply with a law, regulation, or executive order;

(B) required by a contract of the Federal Government or a state or local government; or

(C) found by the Attorney General to be essential for an employer to do business with a federal department, agency, or instrumentality or a state or local governmental entity.

(d) PREFERENCE FOR EQUALLY QUALIFIED NATIONALS.—It is not an immigration-related unfair employment practice for a person or other entity to hire, recruit, or refer an individual who is a national of the United States instead of an individual who is an alien if both individuals are equally qualified.

§ 11303. Special Counsel for Immigration-Related Unfair Employment Practices

(a) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices. The Special Counsel serves in the Department of Justice for a term of 4 years. When the position is vacant, the President may designate an officer or employee of the Federal Government to act as Special Counsel during the vacancy.

(b) DUTIES AND POWERS.—The Special Counsel shall carry out the duties and powers given the Special Counsel under this chapter.

(c) DISSEMINATION OF INFORMATION.—(1) In cooperation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Labor, and the Administrator of the Small Business Administration, the Special Counsel shall conduct a campaign—

(A) to disseminate information on the rights and remedies prescribed under this chapter and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) related to immigration-related unfair employment practices; and

(B) to increase the knowledge of employers, employees, and the public about employer and employee rights, responsibilities, and remedies under this chapter and title VII.

(2) To carry out this subsection, the Special Counsel—

(A) to the extent considered appropriate and subject to the availability of appropriations, may make contracts with public and private organizations for outreach activities under the campaign; and

(B) shall consult with the Chairman, the Secretary, and the heads of other appropriate agencies.

(3) Not more than $10,000,000 may be appropriated for each fiscal year to carry out this subsection.

(d) OUTREACH PROGRAMS.—Not more than $3,000,000 of the unobligated balances remaining in the account described in section 9307(b) of this title is available in each fiscal year for grants, contracts, and cooperative agreements to community-based organizations for outreach programs and shall be administered by the Special Counsel for Immigration-Related Unfair Employment Practices. Amounts under this subsection are in addition to amounts appropriated to the Special Counsel for those purposes. Amounts available under this subsection may not be used by the Special Counsel to establish regional offices.

(e) PAY.—The Special Counsel is entitled to a rate of pay that is not more than the maximum annual rate of basic pay payable under section 5376 of title 5.

(f) REGIONAL OFFICES.—Under regulations prescribed by the Attorney General, the Special Counsel shall establish regional offices necessary to carry out the duties and powers of the Special Counsel.

§ 11304. Filing charges of unfair practices

(a) FILING CHARGES.—(1) Except as provided in subsection (c) of this section, a charge of an immigration-related unfair employment practice may be filed with the Special Counsel for Immigration-Related Unfair Employment Practices by—

(A) a person alleging to be adversely affected directly by the practice, or by another person for that person; or

(B) an officer of the Immigration and Naturalization Service alleging that the practice has occurred or is occurring.

(2) A charge filed under this subsection must be in writing and under oath and contain information the Attorney General requires.

(b) SERVICE OF NOTICE OF CHARGES.—The Special Counsel shall serve a notice of a charge filed under subsection (a) of this section (including the date, place, and circumstances of the alleged practice) on the person or other entity alleged to have committed the practice. The notice shall be served by certified mail not later than 10 days after the charge is filed.

(c) LIMITATIONS ON FILING CHARGES.—A charge of an immigration-related unfair employment practice involving discrimination because of national origin may not be filed under this section if a charge of that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), unless the charge is dismissed as being outside the

scope of title VII. A charge about an employment practice may not be filed with the Equal Employment Opportunity Commission under title VII if a charge about that practice based on the same set of facts has been filed under this section, unless the charge is dismissed as being outside the scope of this chapter.

§ 11305. Investigating charges and filing complaints

(a) SPECIAL COUNSEL.—(1) The Special Counsel for Immigration-Related Unfair Employment Practices shall investigate each charge filed under section 11304 of this title. Not later than 120 days after the charge has been filed, the Special Counsel shall decide whether there is reasonable cause to believe the charge is true and whether to file a complaint about the charge with an administrative law judge.

(2) On the Special Counsel's own initiative, the Special Counsel may investigate an immigration-related unfair employment practice and, subject to subsection (c) of this section, file a complaint about the practice with an administrative law judge.

(3) Failure to file a complaint within the 120-day period does not prevent the Special Counsel from investigating the charge or filing a complaint with an administrative law judge during the 90-day period referred to in subsection (b) of this section.

(b) PRIVATE ACTIONS.—Subject to subsection (c) of this section, if a charge alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, and the Special Counsel does not file a complaint with an administrative law judge within 120 days after the charge is filed with the Special Counsel under subsection (a)(1) of this section, the Special Counsel shall notify the person that filed the charge during the 120-day period of the decision not to file a complaint. The person may file a complaint directly with an administrative law judge not later than 90 days after receiving the notice.

(c) TIME LIMITATION.—A complaint about an immigration-related unfair employment practice may not be filed with an administrative law judge if the practice occurred more than 180 days before the charge about that practice was filed with the Special Counsel. This subsection does not prevent subsequently amending a charge or complaint under section 11306(c)(1) of this title.

(d) DISCRIMINATION DEEMED TO HAVE OCCURRED.—An individual intimidated, threatened, coerced, or retaliated against in violation of section 11302(a)(2) of this title is deemed to have been discriminated against under this section.

§ 11306. Hearings on complaints

(a) DESIGNATING ADMINISTRATIVE LAW JUDGES.—A hearing on a complaint alleging an immigration-related unfair employment practice shall be conducted by an administrative law judge who—

(1) is specially designated by the Attorney General as having special training in employment discrimination; and

(2) to the extent possible, conducts hearings only on complaints involving immigration-related unfair employment practices under this chapter.

(b) NOTICE OF HEARINGS.—When a complaint alleging an immigration-related unfair employment practice is filed with an administrative law judge, the judge shall issue and have served on the person or other entity named in the complaint a copy of the complaint and a notice of the hearing. The date of the hearing shall be at least 5 days after the complaint is served.

(c) PLEADINGS, APPEARANCES, AND PARTIES.—(1) On motion of the party that filed the complaint, the judge may amend the complaint at any time before issuing an order based on the complaint.

(2) The person or entity named in the complaint may file an answer to the original or amended complaint, appear in person or otherwise, and present testimony.

(3) The person that filed the charge with the Special Counsel for Immigration-Related Unfair Employment Practices is a party to the proceeding before the judge and in any appeal from that proceeding.

(4) The judge conducting the hearing may allow any other person to intervene and to present testimony.

(d) TRANSCRIPT AND ADDITIONAL TESTIMONY OR ARGUMENT.—A transcript shall be prepared of the testimony in the hearing. After the transcript is prepared, the judge, by notice, may provide for further testimony or hear argument.

§ 11307. Authority in conducting investigations and hearings

(a) GENERAL.—In conducting an investigation or hearing under this chapter—

(1) the Special Counsel for Immigration-Related Unfair Employment Practices and the administrative law judge conducting the investigation or hearing, under regulations prescribed by the Attorney General, shall have reasonable access to examine evidence of a person or other entity being investigated; and

(2) the administrative law judge may subpena the attendance of witnesses and the production of evidence at any designated place.

(b) JUDICIAL ENFORCEMENT OF SUBPENAS.—If a person or other entity disobeys a subpena issued under subsection (a)(2) of this section, an appropriate district court of the United States, on application by the administrative law judge, may issue an order to comply with the subpena. The court may punish a failure to comply with the order of the court as a contempt of court.

§ 11308. Orders of administrative law judges

(a) GENERAL.—In a proceeding by an administrative law judge under this chapter, the judge shall issue an order and have the order served on the parties to the proceeding. The order is final unless a petition for review is filed under section 11309 of this title.

(b) ORDERS FINDING UNFAIR PRACTICES.—(1) If the administrative law judge finds by a preponderance of the evidence that the person or other entity named in the complaint has engaged, or is engaging, in an immigration-related unfair employment practice, the judge shall state findings of fact about the practice and issue and have served on the person or entity an order requiring the person to cease and desist from the practice.

(2) The order also may require the person or entity—

(A) to comply with section 11103 of this title for not more than 3 years;

(B) to retain for not more than 3 years, and only for use as provided under section 11103(f) of this title, the name and address of each individual applying (whether in person or in writing) for an existing position, or for recruitment or referral for a fee, for employment in the United States;

(C) to hire an individual directly and adversely affected, with or without back pay;

(D) to pay to the Federal Government a civil penalty of—

(i) at least $250, but not more than $2,000, for each individual discriminated against;

(ii) at least $2,000, but not more than $5,000, for each individual discriminated against if the person or entity previously was subject to an order under this subsection;

(iii) at least $3,000, but not more than $10,000, for each individual discriminated against if the person or entity previously was subject to more than one order under this subsection; or

(iv) at least $100, but not more than $1,000, for each individual discriminated against, for an immigration-related unfair employment practice described in section 11302(b) of this title;

(E) to post notices to employees about their rights under this chapter and the obligations of employers under chapter 111 of this title;

(F) to educate all personnel involved in hiring or complying with this chapter and chapter 111 of this title about the requirements of this chapter and chapter 111;

(G) to remove, as appropriate, a false performance review or false warning from an employee's personnel file; and

(H) to lift, as appropriate, a restriction on an employee's assignments, work shifts, or movements.

(3) An order of back pay under paragraph (2)(C) of this subsection may not require back pay for more than the 2-year period occurring before the charge was filed with the Special Counsel for Immigration-Related Unfair Employment Practices. Back pay otherwise allowable shall be reduced by amounts earned, or earnable with reasonable diligence, during the period covered by the back pay order. An order may require hiring an individual or paying back pay to an individual only if the individual was refused employment for discrimination because of national origin or citizenship status.

(4) Under this section, if the person or entity is composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under control of or common control with, another subdivision, each subdivision is deemed a separate person or entity.

(c) DISCRIMINATION DEEMED TO HAVE OCCURRED.—An individual intimidated, threatened, coerced, or retaliated against in violation of section 11302(a)(2) of this title is deemed to have been discriminated against under this section.

(d) ORDERS FINDING NO UNFAIR PRACTICES.—If the administrative law judge finds by a preponderance of the evidence that the person or entity named in the complaint has not engaged, and is not engaging, in an immigration-related unfair employment practice, the judge shall state findings of fact about such a practice not existing and issue an order dismissing the complaint.

§ 11309. Judicial review of final orders

(a) GENERAL.—A person aggrieved by a final order issued by an administrative law judge under section 11308 of this title may file a petition for review of the order in the court of appeals for the circuit in which the alleged unfair practice occurred or in which the employer resides or does business. The petition must be filed within 60 days after the date the final order is issued.

(b) EXCLUSIVE JURISDICTION.—When the record of the proceedings is filed with the court, the court has exclusive jurisdiction to review the order.

§ 11310. Judicial enforcement of administrative orders

(a) CIVIL ACTIONS FOR ENFORCEMENT.—If a petition for review of an order of an administrative law judge under section 11308 of this title is not filed under section 11309 of this title, the Special Counsel for Immigration-Related Unfair Employment Practices or, if the Special Counsel does not act, the person that filed the charge with the Special Counsel, may bring a civil action to enforce the order. The action must be brought in the district court of the United States for the judicial district in which a violation of the order is alleged to have occurred or in which the person against whom the order is directed resides or does business. The order of the administrative law judge may not be reviewed in the action.

(b) ENFORCEMENT BY COURT OF APPEALS IN ORIGINAL REVIEW.—If the court of appeals does not reverse an order of an administrative law judge reviewed under section 11309 of this title, the court may issue an order enforcing the order of the judge.

§ 11311. Attorney fees

In a proceeding before an administrative law judge under this chapter, or in a judicial proceeding for review or enforcement of an order of an administrative law judge under section 11308 of this title, the prevailing party (except the Federal Government) may be awarded reasonable attorney fees if the losing party's argument is without reasonable foundation in law and fact.

§ 11312. Certain authority not affected

Except as specifically provided in this chapter, this chapter does not affect the authority of the Equal Employment Opportunity Commission to investigate allegations of unlawful employment practices.

SUBTITLE IV—REFUGEE AND IMMIGRANT PROGRAMS

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PART A—ASSISTANCE FOR INDIVIDUALS AND STATES

CHAPTER 131—REFUGEE ASSISTANCE

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SUBCHAPTER I—RESETTLEMENT ASSISTANCE

§ 13101. Congressional intent

It is the intent of Congress that in providing refugee assistance under this subchapter—

(1) employable refugees should be placed in jobs as soon as possible after the refugees arrive in the United States;

(2) social service expenditures should be focused on employment-related services, instruction in English-as-a-second-language (in non-work hours when possible), and case-management services; and

(3) local voluntary organization activities should be carried out in close cooperation and advance consultation with state and local governments.

§ 13102. Definition

In this subchapter, ''refugee'' includes a spouse or child described in section 5105(c) of this title.

§ 13103. Office of Refugee Resettlement

(a) OFFICE OF REFUGEE RESETTLEMENT.—The Office of Refugee Resettlement is an Office in the Department of Health and Human Services.

(b) DIRECTOR.—The head of the Office is a Director appointed by the Secretary of Health and Human Services.

(c) AUTHORITY OF THE DIRECTOR.—In consultation with the Secretary of State, the Director shall carry out this subchapter (directly or through

arrangements with other federal departments, agencies, or instrumentalities) except—

(1) that the Secretaries of Education, Health and Human Services, and State and the Attorney General may prescribe regulations that each Secretary or the Attorney General considers appropriate to carry out this subchapter; and

(2) as otherwise provided in this subchapter.

§ 13104. Initial resettlement assistance

(a) EDUCATION AND TRAINING.—The Director of the Office of Refugee Resettlement may develop programs of orientation, instruction in English, job training, and other education and training of refugees that will assist in their resettlement in the United States. The programs may be carried out by—

(1) the Director consistent with this subchapter, for refugees in the United States; and

(2) the Secretary of State, for refugees waiting to enter the United States.

(b) TEMPORARY CARE.—The Secretary of Health and Human Services may make arrangements (including cooperative arrangements with other federal departments, agencies, or instrumentalities) for the temporary care of refugees in the United States in emergency circumstances, including establishing necessary processing centers. The Secretary may carry out this subsection without regard to provisions of law (except section 13111(b) of this title) on making, carrying out, and modifying contracts and on Government expenditures.

(c) HEALTH ACTIVITIES.—(1) The Secretary of Health and Human Services shall—

(A) ensure that an adequate number of trained personnel are available at a location at which refugees enter the United States so that all necessary medical records are available and in order;

(B) provide for identifying refugees with medical conditions affecting the public health and requiring treatment;

(C) ensure that state and local health officials at a resettlement destination in the United States are notified promptly of the arrival of each refugee and are provided with all applicable medical records; and

(D) provide for monitoring refugees referred to in clause (B) of this paragraph to ensure that the refugees receive appropriate and timely treatment.

(2) The Secretary of Health and Human Services shall monitor and assess the quality of medical screening and related health services provided to refugees waiting to be resettled in the United States.

§ 13105. Initial resettlement assistance grants and contracts

(a) GENERAL AUTHORITY.—(1) The Director of the Office of Refugee Resettlement (or other officer if the President decides the Director should not administer this subsection) may make grants to, and contracts with, public agencies and private nonprofit organizations for the initial resettlement (including the initial reception and placement with sponsors) of refugees in the United States. A grant to, or contract with, a private nonprofit voluntary organization shall be consistent with the objectives of this subchapter, considering the different resettlement approaches and practices of that organization. Assistance under this subsection shall be provided in coordination with other assistance provided under this subchapter. The Federal administering agency shall use the criteria described in subsection (c) of this section in awarding or renewing a grant or contract under this section.

(2) An amount provided to an agency or organization under a grant or contract may be obligated or expended only during the fiscal year in which the amount is provided, or a subsequent fiscal period approved by the administering agency or officer making the contract, to carry out this section.

(b) REQUIREMENTS.—(1) Each grant to, and contract with, an agency or organization under subsection (a) of this section shall require that the agency or organization—

(A) provide quarterly performance and financial status reports to the administering agency;

(B) provide notice either directly or through its local affiliate—

(i) to the appropriate local welfare office when the agency or organization receiving the grant or contract becomes aware that a refugee is offered employment; and

(ii) to the refugee that notice to the local welfare office has been given;

(C) when requested by a local welfare office to which a refugee has applied for cash assistance, provide documentation to that office about cash or other resources provided directly by the agency or organization receiving the grant or contract to the refugee under this section and section 13104 of this title;

(D) ensure that, in the case of a refugee that the agency or organization receiving the grant or contract knows has been identified under section 13104(c)(1)(B) of this title as having a medical condition affecting the public health and requiring treatment, the refugee reports to the appropriate health agency when the refugee resettles in an area;

(E) fulfill its responsibility to provide for the basic needs (including food, clothing, shelter, and transportation for job interviews and train-

ing) of each refugee resettled, to develop and carry out a resettlement plan (including the early employment of each refugee resettled), and to monitor how the plan is being carried out; and

(F) submit to the administering agency an annual report on—

(i) the number of refugees placed (by county of placement) and the expenditures made during the year covered by the report under the grant or contract, including the proportion of the expenditures used for administrative purposes and for providing services;

(ii) the proportion of refugees that the agency or organization receiving the grant or contract has placed in the prior year who are receiving cash or medical assistance described in section 13108 of this title;

(iii) the efforts made by the agency or organization receiving the grant or contract to monitor placement of refugees and the activities of local affiliates of the agency or organization;

(iv) the extent to which the agency or organization receiving the grant or contract has coordinated its activities with local social service providers in a way that avoids duplication of activities, has provided notice to the local welfare offices as required under clause (B)(i) of this paragraph, and has reported medical conditions of certain aliens to local health departments as required under clause (D) of this paragraph; and

(v) other information the administering agency considers is appropriate in monitoring the effectiveness of the agency or organization receiving the grant or contract in carrying out its functions under the grant or contract.

(2) The administering agency shall submit promptly to the Committees on the Judiciary of the House of Representatives and the Senate a copy of each report submitted under paragraph (1)(F) of this subsection.

(3) Paragraph (1) (A), (C), and (F) of this subsection applies to a grant or contract made or renewed after December 5, 1986. Paragraph (1)(E) of this subsection applies to a grant or contract made or renewed after May 5, 1987.

(c) PERFORMANCE CRITERIA.—The administering agency shall prescribe criteria for the performance of each agency or organization in connection with a grant or contract under subsection (a) of this section. The prescribed criteria shall include criteria related to that agency's or organization's—

(1) efforts to reduce welfare dependency among refugees resettled by the agency or organization;

(2) collection of travel loans made to refugees resettled by the agency or organization for travel to the United States;

(3) arrangements for effective local sponsorship and other nonpublic assistance for refugees resettled by the agency or organization;

(4) cooperation with refugee mutual assistance associations, local social service providers, health agencies, and welfare offices;

(5) compliance with guidelines established by the Director for placing and resettling refugees in the United States; and

(6) compliance with other requirements contained in the grant or contract, including requirements under subsection (b) of this section.

(d) MEDICAL SCREENING AND INITIAL MEDICAL TREATMENT.—The Director may make a grant to, or contract with, a state or local health agency for payments to meet the agency's costs of providing medical screening and initial medical treatment to refugees.

§ 13106. Project grants and contracts for services

(a) SERVICE PROJECTS.—(1) The Director of the Office of Refugee Resettlement may make grants to, and contracts with, public agencies and private nonprofit organizations for projects specifically designed—

(A) to assist refugees in obtaining skills necessary for economic self-sufficiency, including projects for job training, employment services, day care, and professional refresher training and other recertification services;

(B) to provide instruction in English when necessary even when refugees are employed or are receiving assistance; and

(C) to provide health (including mental health) services, social services, and educational and other services when specific needs have been shown and recognized by the Director.

(2) Amounts available in a fiscal year for grants and contracts under this subsection shall be allocated among the States based on the total number of refugees who—

(A) arrived in the United States within the 36 months before the beginning of the fiscal year; and

(B) actually are residing in each State (taking into account secondary migration) at the beginning of the fiscal year.

(3) A limitation that the Director establishes on that part of amounts allocated to a State under this subsection that the State may use for services (except those services described in section 13101(2) of this title) does not apply if the Director—

(A) receives a plan that has been established by or with the consultation of political subdivisions; and

(B) decides that the plan provides for the maximum appropriate employment services for, and the maximum placement of, employable refugees consistent with the performance standards established under section 106 of the Job Training Partnership Act (29 U.S.C. 1516).

(b) TARGETED ASSISTANCE PROJECT GRANTS.—(1) The Director may make a grant to a State for assistance to a political subdivision in the State that has a demonstrated specific need for additional available resources for providing services to refugees because of factors such as—

(A) an unusually large refugee population (including secondary migration);

(B) high refugee concentrations; and

(C) high use of public assistance by refugees.

(2) The Director shall make a grant under this subsection—

(A) primarily to facilitate refugee employment and self-sufficiency; and

(B) in a way that does not supplant amounts available under other refugee programs and ensures that at least 95 percent of the amount of the grant is made available to the political subdivision.

(c) MAINTAINING LEVEL OF MATCHING GRANT PROGRAM.—To the extent of available appropriations, the Director may not—

(1) reduce the maximum average contribution level of the Federal Government for each refugee in the voluntary agency program, known as the matching grant program and financed under subsection (a) of this section, below the level in effect under the program for grants in the fiscal year that ended September 30, 1985; or

(2) increase the percentage grantee matching requirement under the program above the percentage in effect under the program for grants in the fiscal year that ended September 30, 1985.

§ 13107. Assistance for refugee children

(a) SPECIAL EDUCATIONAL SERVICES.—Where a need is shown, the Secretary of Education may make grants and contracts for projects to provide special educational services (including instruction in English) to refugee children in elementary and secondary schools.

(b) CHILD WELFARE SERVICES.—The Director of the Office of Refugee Resettlement may provide assistance, reimburse States, and make grants to, and contracts with, public agencies and private nonprofit organizations to provide child welfare services (including foster care maintenance payments and services and health care) to a refugee child during the 36-month period that begins with the first month the child is in the United States. If a refugee child is unaccompanied by a parent or other close adult relative (as defined by the Director), those services may be provided until the month after

the child becomes 18 years of age (or a later age prescribed in the State's child welfare services plan under part B of title IV of the Social Security Act (42 U.S.C. 620 et seq.) for the availability of those services to another child in the State).

(c) PLACING UNACCOMPANIED CHILDREN.—(1) The Director shall try to arrange, under the laws of the States, to place an unaccompanied refugee child referred to in subsection (b) of this section who has been accepted for admission to the United States. The Director shall make the arrangements before or as soon as possible after the child arrives in the United States. If necessary, the Director shall assume legal and financial responsibility for the child during the period before the child is placed when the child is in the United States or is in transit to the United States. The Director may make necessary decisions to provide for the child's immediate care.

(2) In carrying out this subsection, the Director may make contracts with appropriate public agencies and private nonprofit organizations under conditions the Director considers appropriate.

(3) The Director shall maintain a list of—

(A) all unaccompanied refugee children who have entered the United States after April 1, 1975;

(B) the name and last known residence of each living parent of each of those children at the child's time of arrival; and

(C) the locations, status, and progress of the children.

§ 13108. Cash and medical assistance

(a) GENERAL AUTHORITY.—The Director of the Office of Refugee Resettlement may provide assistance, reimburse States, and make grants to, and contracts with, public agencies and private nonprofit organizations for 100 percent of the cash and medical assistance provided to a refugee during the 36-month period that begins with the first month the refugee enters the United States. The Director also may pay for the identifiable and reasonable administrative costs of providing the assistance.

(b) CONDITIONS AND LIMITATION.—(1) Except for good cause shown, cash assistance may be provided to an employable refugee under this section only if the refugee—

(A) registers with an appropriate entity providing employment services described in section 13106(a)(1)(A) of this title, or, if such an entity is not available, with an appropriate state or local employment service;

(B) participates in an available and appropriate service or targeted assistance project grant financed under section 13106 of this title providing job or language training in the area in which the refugee resides; and

(C) accepts an appropriate offer of employment.

(2)(A) Cash assistance provided under this section shall be suspended for any alien entering the United States as a refugee after March 31, 1987, who refuses—

(i) an offer of employment that the public agency or private nonprofit organization providing initial resettlement assistance under section 13105(a) of this title or the appropriate state or local employment service decides is appropriate;

(ii) to go to a job interview that has been arranged through the agency, organization, or employment service; or

(iii) to participate in a service or targeted assistance project grant referred to in paragraph (1)(B) of this subsection that the agency, organization, or employment service decides is available and appropriate.

(B) The assistance shall be suspended for 3 months for the first refusal and for 6 months for any subsequent refusal. The refugee shall be given an opportunity for a hearing before cash assistance is suspended.

(3) A refugee who is a full-time student in an institution of higher education, as defined by the Director after consultation with the Secretary of Education, may not receive cash assistance.

(c) INSTRUCTION AND TRAINING FOR REFUGEES RECEIVING ASSISTANCE.—The Director shall develop plans to provide instruction in English and other appropriate services and training to a refugee receiving cash assistance.

(d) LIMITATION ON USE OF AMOUNTS.—If a refugee is eligible for aid or assistance under a state program financed under part A of title IV or under title XIX of the Social Security Act (42 U.S.C. 601 et seq., 1396 et seq.) or for supplemental security income benefits (including state supplementary payments) under the program established under title XVI of that Act (42 U.S.C. 1381 et seq.), amounts to carry out this section may be used only to pay the part of the aid or assistance not paid by the Federal Government under part A of title IV or under title XIX for cash and medical assistance provided the refugee, and for state supplementary payments.

(e) MEDICAL ASSISTANCE FOR REFUGEES OTHERWISE INELIGIBLE.—During the one-year period after a refugee enters the United States, the Director may authorize medical assistance of the kind provided under subsection (a) of this section to a refugee if—

(1) the refugee does not qualify for assistance under a state plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) because of financial resources or income requirements of the plan; and

(2) the Director decides that—

(A) providing the medical services will encourage economic self-sufficiency or avoid a significant burden on state and local governments; and

(B) the refugee meets alternative financial resources and income requirements the Director establishes.

(f) ALTERNATIVE ASSISTANCE PROJECTS.—(1) The Secretary of Health and Human Services shall develop and carry out alternative projects for refugees who have been in the United States less than 36 months. The projects shall provide refugees with interim support, medical services, support services, and case-management services, as needed, in a way that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among public agencies and private nonprofit organizations providing resettlement assistance and service providers. The Secretary may provide an alternative project to cover a specific group of refugees who have been in the United States at least 36 months if the Secretary decides that—

(A) refugees in the group have been significantly and disproportionately dependent on welfare;

(B) those refugees need the services provided under the project to become self-sufficient; and

(C) including those refugees under the project would be cost-effective.

(2) A refugee in an alternative project may not receive cash or medical assistance under another subsection of this section or under part A of title IV or under title XIX of the Social Security Act (42 U.S.C. 601 et seq., 1396 et seq.).

(3) Amounts authorized to be appropriated under section 13112 of this title or part A of title IV or title XIX of the Social Security Act (42 U.S.C. 601 et seq., 1396 et seq.) may be used to carry out and evaluate alternative projects under this subsection, to the extent the use of those amounts is consistent with the purposes for which amounts are authorized to be appropriated.

(g) NOTIFICATION OF APPLICATION BY REFUGEE FOR ASSISTANCE.—As a condition for an entity receiving assistance, reimbursement, or a contract under this section, the entity must ensure that when a refugee applies for cash or medical assistance for which assistance or reimbursement is provided under this section, the entity will notify promptly the public agency or private nonprofit organization (or local affiliate of the organization) that provided for the initial resettlement of the refugee under section 13105(a) of this title that the refugee has applied for the assistance.

§ 13109. Administrative

(a) AUTHORITY OF THE DIRECTOR.—In providing assistance under this subchapter, the Director of the Office of Refugee Resettlement, to the extent of available appropriations—

(1) shall make available sufficient resources for employment training and placement to permit refugees to achieve economic self-sufficiency as soon as possible;

(2) shall provide refugees with the opportunity to acquire sufficient instruction in English to enable them to become resettled effectively as quickly as possible;

(3) shall ensure that cash assistance is made available to refugees as provided under section 13108(b) of this title in a way that will not discourage economic self-sufficiency;

(4) shall ensure that women have the same opportunities as men to participate in training and instruction;

(5) shall make a periodic assessment, based on refugee population and other relevant factors, of the relative needs of refugees for assistance and services under this subchapter and the resources available to meet those needs;

(6) in allocating resources, shall avoid duplicating services and provide for maximum coordination among public agencies and private nonprofit organizations providing related services; and

(7) shall compile and maintain information on—

(A) the secondary migration of refugees in the United States; and

(B) the proportion of refugees, by State of residence and nationality, receiving cash or medical assistance described in section 13108 of this title.

(b) LIMITATION ON DELEGATION.—The Director may not delegate to a state government or political subdivision authority to review or approve a grant or contract under this subchapter or the terms under which a grant or contract is made.

(c) NONDISCRIMINATION.—Assistance and services under this subchapter shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion.

(d) CONSULTATION WITH STATE AND LOCAL GOVERNMENTS AND ORGANIZATIONS.—(1) The Director and the Federal administering agency under section 13105(a) of this title shall consult at least quarterly with state governments, political subdivisions, and private nonprofit voluntary organizations on the sponsorship process and the intended distribution of refugees

among the States and political subdivisions before placing refugees in each of the States and political subdivisions.

(2) In consultation with representatives of private nonprofit voluntary organizations, state governments, and political subdivisions, the Director shall develop and carry out policies and strategies for placing and resettling refugees in the United States. To the extent practicable and except under unusual circumstances the Director may recognize, the policies and strategies shall—

(A) ensure that a refugee is not placed or resettled initially in an area highly impacted (as decided under regulations prescribed by the Director after consultation with private nonprofit voluntary organizations, state governments, and political subdivisions) by the presence of refugees or comparable populations unless the refugee has a spouse, parent, sibling, or child residing in that area;

(B) provide for a mechanism for representatives of local affiliates of private nonprofit voluntary organizations to meet at least quarterly with representatives of state governments and political subdivisions to plan and coordinate, in advance of the arrival of the refugees, the appropriate placement of the refugees among the States and political subdivisions; and

(C) consider—

(i) the proportion of refugees and comparable entrants in the population in the area;

(ii) the availability of employment opportunities, affordable housing, and public and private resources for refugees in the area, including educational, health care, and mental health services;

(iii) the likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance; and

(iv) the secondary migration of refugees to and from the area that is likely to occur.

(3) To the maximum extent possible and consistent with the policies and strategies developed under paragraph (2) of this subsection, the Federal administering agency under section 13105(a) of this title shall consider the recommendations of the State in deciding where to place refugees in that State.

(4) In providing assistance to refugees, a state government or political subdivision shall consider the recommendations of, and assistance provided by, a public agency or private nonprofit organization receiving a grant or contract under section 13105(a) of this title.

(e) REQUIREMENTS FOR GRANTS AND CONTRACTS.—A grant or contract may be made under this subchapter only when an appropriate proposal and application (that includes a description of the ability of a public agency or private nonprofit organization to provide the services specified in the proposal) are submitted to and approved by the appropriate administering official. A grant shall be made to, or a contract shall be made with, a public agency or private nonprofit organization that the administering official decides can best provide the services. Payment under the grant or contract may be made in advance or by reimbursement.

(f) STATE REQUIREMENTS.—To receive assistance under this subchapter, a State—

(1) must submit to the Director a plan that—

(A) describes how the State plans to encourage effective refugee resettlement and to promote economic self-sufficiency as quickly as possible;

(B) describes how the State will ensure that instruction in English and employment services are made available to refugees receiving cash assistance;

(C) provides for the designation of a state officer or employee to be responsible for ensuring coordination of public and private resources in refugee resettlement;

(D) provides for the care and supervision of, and legal responsibility for, unaccompanied refugee children in the State; and

(E) provides for identifying refugees who at the time of resettlement in the State have medical conditions requiring, or medical histories indicating a need for, treatment or observation and provides necessary monitoring of the treatment or observation;

(2) must meet standards, goals, and priorities developed by the Director that—

(A) ensure effective resettlement of refugees;

(B) promote economic self-sufficiency of refugees as quickly as possible; and

(C) provide that services are provided efficiently; and

(3) within a reasonable time after the end of each fiscal year, must submit to the Director a report on the uses of amounts provided under this subchapter for which the State is responsible for administering.

(g) AUTHORITY TO MAKE LOANS AND ACCEPT GIFTS.—In carrying out this subchapter, each appropriate administering official may—

(1) make loans; and

(2) accept and use money, property, and services made available by gift, devise, bequest, grant, or otherwise to carry out this subchapter.

(h) SYSTEM TO MONITOR ASSISTANCE.—The Secretary of Health and Human Services, together with the Secretary of State in carrying out sections 13104 and 13105 of this title, shall maintain a system of monitoring assistance provided under this subchapter. The system shall include—

(1) evaluations of the effectiveness of the programs and projects carried out under this subchapter and the performance of States, grantees, and contractors;

(2) financial audits and other appropriate monitoring to detect fraud, abuse, and mismanagement in operating the programs and projects; and

(3) information collection on services provided and results achieved.

(i) INFORMATION PROVIDED BY REFUGEES.—The Attorney General shall provide the Director with information provided by refugees with their applications for adjustment of status. The Director shall compile, summarize, and evaluate the information.

§ 13110. Annual reports

The Secretary of Health and Human Services shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate not later than each January 31 on activities under this subchapter for the prior fiscal year. Each report shall include—

(1) a current profile of the employment and labor force statistics for refugees who entered the United States under this title—

(A) during the 5 fiscal years immediately before the fiscal year in which the report is submitted; and

(B) before that 5-year period and who have been significantly and disproportionately dependent on welfare;

(2) a description of the extent to which refugees received each kind of assistance and service under this subchapter during the 5 fiscal years immediately before the fiscal year in which the report is submitted;

(3) a description of the geographic locations of refugees;

(4) a summary of the results of the monitoring conducted under section 13109(h) of this title for the fiscal year;

(5) a description of—

(A) the activities, expenditures, and policies of the Office of Refugee Resettlement under this subchapter;

(B) the activities of States, voluntary organizations, and sponsors of refugees under this subchapter; and

(C) plans of the Director of the Office of Refugee Resettlement for improving refugee resettlement;

(6) evaluations of the extent to which—

(A) services provided under this subchapter are assisting refugees in achieving economic self-sufficiency, ability in English, and employment commensurate with their skills and abilities; and

(B) fraud, abuse, and mismanagement have been reported in providing assistance or services;

(7) a description of the assistance provided under section 13108(e) of this title;

(8) a summary of the locations and status of unaccompanied refugee children admitted to the United States; and

(9) a summary of the information compiled and evaluated under section 13109(i) of this title.

§ 13111. Limitations

(a) CONSOLIDATED GRANTS PROHIBITED.—Amounts made available to a State or political subdivision to carry out this subchapter (except section 13105(a) of this title) may not be in the form of a block grant, per capita grant, or similar consolidated grant. Amounts shall be made available under separate grants or contracts for—

(1) medical screening and initial medical treatment for refugees under section 13105(d) of this title;

(2) service projects for refugees under section 13106(a) of this title;

(3) targeted assistance project grants under section 13106(b) of this title; and

(4) assistance for refugee children under section 13107(b) and (c) of this title.

(b) CONTRACTS.—A contract made under this subchapter is effective only to the extent and in the amount provided in advance by an appropriation law.

§ 13112. Authorization of appropriations

Amounts necessary to carry out this subchapter and section 13701 of this title may be appropriated for the fiscal year ending September 30, 1997.

SUBCHAPTER II—EDUCATION ASSISTANCE

§ 13131. Definitions

In this subchapter—

(1) ''elementary school'', ''local educational agency'', ''secondary school'', ''State'', and ''state educational agency'' have the same meanings given those terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

(2) ''elementary or secondary nonpublic school'' means a school—

(A) complying with the compulsory education laws of the State in which it is located; and

(B) exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

(3) "eligible participant" means an alien—

(A) during the 36-month period that begins with the first month the alien entered the United States, who—

(i) has been admitted to the United States as a refugee under section 5105 of this title;

(ii) has been paroled into the United States as a refugee under section 6121 of this title; or

(iii) has fled from the alien's country of origin and, under an executive order, has been allowed to enter and remain in the United States indefinitely for humanitarian reasons;

(B) during the 36-month period that begins with the month the alien began applying for asylum, who is applying for, or has been granted, asylum in the United States; or

(C) during the 36-month period that begins with the first month the alien entered the United States as a Cuban-Haitian entrant or otherwise became a Cuban-Haitian entrant, who entered the United States after October 31, 1979, and is in the United States classified as a Cuban-Haitian entrant.

§ 13132. Basic educational services grants

(a) GRANTS.—The Secretary of Education shall make a grant to each state educational agency for each fiscal year to assist local educational agencies of the State in providing basic educational services for eligible participants enrolled in the elementary and secondary public schools under the jurisdiction of the local educational agencies of the State. The state educational agency may use the grant only as provided in its application approved under section 13135(b) of this title.

(b) APPLICATIONS.—To receive a grant under this section, the state educational agency must submit an application to the Secretary. In the application, the state educational agency must—

(1) agree that payments under the grant will be used as provided in subsection (a) of this section;

(2) agree to ensure that those payments will be allocated among the local educational agencies in the State using the same formula and reductions for the local educational agencies as the Secretary is required to use in making allocations to state educational agencies under subsection (d) of this section;

(3) specify the amounts referred to in subsection (d) of this section that are made available under other laws of the United States for expenditure in the State for the same purpose for which an amount is

made available under this section and the local educational agencies to which those amounts are available; and

(4) comply with section 13135(a) of this title.

(c) PRESCRIBING GRANT FORMULA.—As soon as possible, the Secretary shall prescribe a formula to be used in determining the amount of the grant to which each state educational agency (except the agencies for American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Virgin Islands) is entitled under this section for a fiscal year. The formula shall be based on the full amount authorized under section 13139(b) of this title. In prescribing the formula, the Secretary—

(1) shall consider—

(A) the number of years each eligible participant assisted under this section has resided in the United States; and

(B) the relative costs, by grade level, of educating elementary and secondary school children; and

(2) shall provide that amounts be allocated without regard to differences in educational costs among different geographical areas.

(d) ALLOCATIONS.—The Secretary shall allocate the amount appropriated to carry out this section for a fiscal year among the state educational agencies (except the agencies for American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Virgin Islands). Except as provided in section 13136 of this title, the amount of the grant to which an agency is entitled under this section for a fiscal year is equal to the amount allocated to it under the formula, reduced by the amounts available for that fiscal year under other laws of the United States for expenditure in the State for the same purpose for which an amount is made available under this section. However, the reduction shall be made only to the extent the amounts are available under the other laws—

(1) for that purpose specifically because the individuals served by the amounts have refugee, parolee, or asylum status; and

(2) to assist individuals eligible for services under this section.

(e) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The amounts of the grants to which the state educational agencies of American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Virgin Islands are entitled under this section are the amounts the Secretary determines they need based on criteria the Secretary prescribes. The total amount of those grants for a period may not be more than one percent of the amount authorized to be appropriated to carry out this section during

the period. If the total of the amounts the Secretary determines those agencies need is more than one percent, the amount of the grant to each of those agencies is reduced proportionately so that the total is not more than one percent.

§ 13133. Supplementary educational services grants

(a) DEFINITIONS.—In this section—

(1) ''enrolled eligible participant in the State'' means an eligible participant enrolled in an elementary or secondary public school under the jurisdiction of a qualified local educational agency in the State or in an elementary or secondary nonpublic school in the district served by a qualified local educational agency in the State.

(2) ''qualified local educational agency'' means a local educational agency that during the fiscal year for which a grant is to be made under this section, has enrolled in the elementary and secondary public schools under its jurisdiction and in the elementary and secondary nonpublic schools in the district it serves a number of eligible participants receiving supplementary educational services during the fiscal year at least equal to the lesser of—

(A) 500; or

(B) 5 percent of the total number of students enrolled in those public or nonpublic schools during that fiscal year.

(b) GENERAL AUTHORITY.—(1) The Secretary of Education shall make a grant, as provided in this subchapter, to each state educational agency for each fiscal year to provide supplementary educational services for enrolled eligible participants in the State. Those services include—

(A) services necessary to enable eligible participants to perform satisfactorily, including—

(i) instruction in English;

(ii) other bilingual educational services; and

(iii) special materials and supplies;

(B) additional basic instructional services directly attributable to the presence of eligible participants in the school districts, including—

(i) additional classroom supplies;

(ii) overhead;

(iii) construction;

(iv) acquiring or renting space; and

(v) transportation; and

(C) special inservice training of personnel who will provide the instructional services described in clauses (A) and (B) of this paragraph.

(2) The state educational agency may use the grant only as provided in its application as approved under section 13135(b) of this title.

(c) APPLICATIONS.—To receive a grant under this section, a state educational agency must submit an application to the Secretary. In the application, the state educational agency must—

(1) agree to administer, or supervise the administration of, the educational programs, services, and activities paid for under this section;

(2) agree to ensure that payments under the grant will be used as provided in subsection (b) of this section;

(3) agree to ensure that those payments will be allocated among the local educational agencies in the State using the same formula and reductions for the local educational agencies as the Secretary is required to use in making allocations to state educational agencies under subsection (d) of this section;

(4) specify the amounts referred to in subsection (d)(2) of this section that are made available under other laws of the United States to agencies or other entities for educational or education-related services or activities in the State because of a significant concentration of eligible participants and the local educational agencies that have jurisdiction over elementary and secondary public schools, or that serve elementary and secondary nonpublic schools, in which are enrolled eligible participants who receive services paid for by those amounts;

(5) agree to ensure the Secretary that—

(A) to the extent consistent with the number of eligible participants enrolled in elementary and secondary nonpublic schools in the district served by a local educational agency, the local educational agency, after consulting with the appropriate officials of the schools, will provide secular, neutral, and nonideological materials, equipment, and services necessary to educate those eligible participants;

(B) a public agency will—

(i) administer the amounts provided under this section for the materials, equipment, and services referred to in subclause (A) of this clause; and

(ii) own and administer property that is repaired, remodeled, or constructed with those amounts;

(C) those amounts will not be commingled with state or local money; and

(D) a public agency will provide to each of those elementary or secondary nonpublic schools the services referred to in subclause (A) of this clause through—

(i) officers and employees under the control of the agency; or

(ii) a contract with a person or agency that is under the control of the public agency and, when providing the services, is independent of the school and of any religious organization; and

(6) comply with section 13135(a) of this title.

(d) ALLOCATIONS.—(1) The Secretary shall allocate the amount appropriated to carry out this section for a fiscal year among the state educational agencies (except the agencies for American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Virgin Islands). Except as provided in this section and section 13136 of this title, the amount of the grant to which an agency is entitled under this section for a fiscal year is equal to the sum of—

(A) the product of—

(i) the number of aliens who are enrolled eligible participants in the State, during the period for which the determination of that number is made, and who have been eligible participants less than one year; multiplied by

(ii) $700;

(B) the product of—

(i) the number of aliens who are enrolled eligible participants in the State, during the period for which the determination is made, and who have been eligible participants at least one year but not more than 2 years; multiplied by

(ii) $500; and

(C) the product of—

(i) the number of aliens who are enrolled eligible participants in the State, during the period for which the determination is made, and who have been eligible participants more than 2 years but not more than 3 years; multiplied by

(ii) $300.

(2) If amounts are available for a fiscal year under other laws of the United States to agencies or other entities for educational or education-related services or activities in the State because of a significant concentration of eligible participants, the amount of the grant under paragraph (1) of this subsection for that fiscal year is reduced by those amounts.

(e) REALLOCATION OF UNUSED AMOUNTS.—When the Secretary determines that a part of a payment made to a state educational agency under this section for a fiscal year will not be used by the agency to carry out the purpose for which the payment was made, the Secretary shall make that part available to another state educational agency to the extent the Sec-

retary decides the other agency can use the additional amount to carry out the purpose. An amount made available under this subsection to a state educational agency from an appropriation for a fiscal year is deemed in this section to be a part of the grant (as determined under subsection (d) of this section) to that agency for that fiscal year, and remains available until the end of the next fiscal year.

(f) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The amounts of the grants to which the state educational agencies of American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Virgin Islands are entitled under this section are the amounts the Secretary determines they need based on criteria the Secretary prescribes. The total amount of those grants for a period may not be more than one percent of the amount authorized to be appropriated to carry out this section during the period. If the total of the amounts the Secretary determines those agencies need is more than one percent, the amount of the grant to each of those agencies is reduced proportionately so that the total is not more than one percent.

(g) PROVIDING ASSISTANCE TO NONPUBLIC SCHOOLS WHEN STATE DOES NOT.—If a State is prohibited by law from providing materials, equipment, and services for children enrolled in elementary and secondary nonpublic schools as required by subsection (c)(5) of this section, or if the Secretary decides that a local educational agency has failed substantially to or will not provide for the participation on an equitable basis of eligible participants enrolled in those schools, the Secretary—

(1) may waive the requirements of subsection (c)(5) of this section; and

(2) subject to the other requirements of this subchapter, shall arrange that materials, equipment, and services be provided for those eligible participants.

§ 13134. Adult education program grants

(a) GENERAL AUTHORITY.—(1) The Secretary of Education shall make a grant, as provided in this subchapter, to each state educational agency for each fiscal year to be used to provide adult education programs to eligible participants at least 16 years of age in need of the services and not enrolled in an elementary or secondary public school under the jurisdiction of a local educational agency. The grant may be used for—

(A) programs of instruction—

(i) to teach the eligible participants basic reading and mathematics;

(ii) to develop and enhance skills needed by the eligible participants; and

(iii) to promote literacy among the eligible participants;

(B) administrative costs of planning and operating the programs referred to in clause (A) of this paragraph;

(C) educational support services needed by the eligible participants, including services to guide and counsel the eligible participants about educational, career, and employment opportunities; and

(D) special projects designed to operate with existing programs and activities that develop occupational and related skills, particularly programs authorized under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) or the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.).

(2) The state educational agency may use the grant only as provided in its application as approved under section 13135(b) of this title.

(b) APPLICATIONS.—To receive a grant under this section, the state educational agency must submit an application to the Secretary. In the application, the state educational agency must—

(1) agree that payments under the grant will be used as provided in subsection (a) of this section;

(2) agree to make periodic reports to the Secretary evaluating the effectiveness of those payments;

(3) specify the amounts referred to in subsection (c)(2) of this section that are made available under other laws of the United States for expenditure in the State for the same purpose for which an amount is made available under this section; and

(4) comply with section 13135(a) of this title.

(c) ALLOCATIONS.—(1) The Secretary shall allocate the amount appropriated to carry out this section for a fiscal year among the state educational agencies (except the agencies for American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Virgin Islands). Except as provided in paragraph (2) of this subsection and section 13136 of this title, the amount of the grant to which an agency is entitled under this section for a fiscal year is equal to the product of—

(A) the number of eligible participants at least 16 years of age who, during the period for which the determination of that number is made, are enrolled in programs of instruction described in subsection (a)(1)(A) of this section and offered in the State, but who are not enrolled in elementary and secondary public schools under the jurisdiction of local educational agencies; multiplied by

(B) $300.

(2) If amounts are available for a fiscal year under other laws of the United States for expenditure in the State for the same purpose for which an amount is made available under this section, the amount of the grant under paragraph (1) of this subsection for that fiscal year is reduced by those amounts. However, the reduction is made only to the extent the amounts are available under the other laws—

(A) for that purpose specifically because the individuals served by the amounts have refugee, parolee, or asylum status; and

(B) to assist individuals eligible for services under this section.

(d) METHODS OF PROVIDING PROGRAMS.—(1) A state educational agency may provide adult education programs directly or may make grants to, or contracts with, local educational agencies, public agencies, and private nonprofit organizations to provide the programs. The state educational agency shall review an application for a grant or contract under this subsection in a way that is consistent with the purposes of section 381 of the Adult Education Act (20 U.S.C. 1213).

(2) The state educational agency shall use the grant it receives under this section in a way that enables the maximum number of eligible participants at least 16 years of age residing in the State to receive education under the programs of instruction described in subsection (a)(1)(A) of this section.

(e) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The amounts of the grants to which the state educational agencies of American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Virgin Islands are entitled under this section are the amounts the Secretary determines they need based on criteria the Secretary prescribes. The total amount of those grants for a period may not be more than one percent of the amount authorized to be appropriated to carry out this section during the period. If the total of the amounts the Secretary determines those agencies need is more than one percent, the amount of the grant to each of those agencies is reduced proportionately so that the total is not more than one percent.

§ 13135. Applications

(a) REQUIREMENTS.—(1) In its application for a grant under this subchapter, a state educational agency must agree—

(A) to ensure that it will not disapprove finally any part of a local educational agency's application for an amount of a grant to the state educational agency under section 13132, 13133, or 13134 of this title without giving the local educational agency reasonable notice and opportunity for a hearing; and

(B) to make reports the Secretary of Education reasonably requires to carry out this subchapter.

(2) The state educational agency must submit an application at the time, in the way, and containing or accompanied by information, the Secretary requires.

(b) APPROVAL.—The Secretary shall approve an application meeting the requirements of this section and section 13132, 13133, or 13134 of this title, as the case may be. The Secretary may not disapprove finally an application without giving the applicant reasonable notice and opportunity for a hearing on the record.

§ 13136. Use of estimated information and consultation with other agencies

(a) USE OF ESTIMATES.—When actual satisfactory information is not available, the Secretary of Education shall use estimates to determine for any period the number of eligible participants and the amount of a reduction required under section 13132(d), 13133(d)(2), or 13134(c)(2) of this title. A determination based on an overestimate or underestimate may not deprive a state educational agency of any part of the amount the agency would be entitled to receive under this subchapter if the determination were based on accurate information.

(b) CONSULTATION WITH OTHER AGENCIES.—To the extent it will make it easier to determine the amount of a reduction required under section 13132(d), 13133(d)(2), or 13134(c)(2) of this title, the Secretary shall consult with the heads of other agencies providing assistance to eligible participants—

(1) to obtain information about the amounts those agencies disburse for educational purposes under programs the agency heads administer; and

(2) when feasible, to coordinate the programs those agency heads administer and the programs under this subchapter.

§ 13137. State administrative costs

The Secretary of Education may pay each state educational agency an amount equal to the amount the agency expends in carrying out its duties and powers properly and efficiently under this subchapter. However, the total payments for a period may not be more than 2 percent of the amount the agency receives for the period under this subchapter.

§ 13138. Withholding payments

(a) AUTHORITY TO WITHHOLD.—When the Secretary of Education decides that a state educational agency receiving payments under section 13132, 13133, or 13134 of this title, or a local educational agency or other entity receiving payments from the state educational agency under section

13134, is not complying with a requirement of this subchapter that applies to the section, the Secretary, until satisfied that there is no longer a failure to comply—

(1) shall stop making payments to the state educational agency under section 13132, 13133, or 13134 of this title; or

(2) may prohibit the state educational agency from making payments under section 13134 of this title to the local educational agency or other entity that is causing, or involved in, the failure.

(b) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary—

(1) may act under subsection (a) of this section only after giving the state educational agency reasonable notice and opportunity for a hearing; and

(2) shall notify the state educational agency of the action the Secretary is taking under subsection (a) of this section.

§ 13139. Authorization of appropriations and allocation of total amount appropriated

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary to make grants to each state educational agency under this subchapter and to pay for administrative costs under section 13137 of this title may be appropriated for the fiscal year ending September 30, 19____. The amounts shall be appropriated in a lump sum for all programs under this subchapter.

(b) AUTHORIZATION OF APPROPRIATIONS FOR BASIC PUBLIC EDUCATIONAL SERVICES GRANTS.—To make grants to state educational agencies in the way provided under this section, an amount may be appropriated under subsection (a) of this section for each fiscal year equal to the product of—

(1) the number of eligible participants enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies in all States (except American Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Virgin Islands) during the fiscal year for which the determination of that number is made; multiplied by

(2) $400.

(c) ALLOCATIONS OF APPROPRIATIONS.—(1) If the amounts appropriated for a fiscal year to make grants under this subchapter are not enough to pay the total amount of the grants to which state educational agencies are entitled under sections 13132–13134 of this title for the fiscal year, the allocation to each agency under each of those sections shall be ratably reduced so that the total of the allocations is not more than the amounts appropriated.

(2) Allocations reduced under paragraph (1) of this subsection shall be increased on the same basis that they were reduced if amounts later become available to make grants under this subchapter for the period.

SUBCHAPTER III—CUBAN AND HAITIAN ENTRANTS

§ 13151. Definition

In this subchapter, ''Cuban or Haitian entrant'' means—

(1) an alien granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted another special status later established under law for nationals of Cuba or Haiti, without regard to the status of the alien when assistance is provided under this subchapter; and

(2) any other national of Cuba or Haiti—

(A)(i) paroled into the United States who has not acquired another status under this title;

(ii) who is the subject of removal proceedings under this title; or

(iii) having an application for asylum pending before the Attorney General; and

(B) about whom a final, nonappealable, and legally enforceable removal order has not been entered.

§ 13152. Presidential authority

The President has the same duties and powers related to a Cuban or Haitian entrant as the duties and powers vested under subchapter I of this chapter. Those duties and powers apply to assistance and services provided to a Cuban or Haitian entrant at any time after the entrant's arrival in the United States, including periods before October 10, 1980. The President may provide by regulation that benefits granted under a law of the United States (except this title) to an individual admitted to the United States under section 5105 of this title shall be provided in the same way and to the same extent to a Cuban or Haitian entrant.

§ 13153. General assistance

(a) TYPES OF ASSISTANCE.—Under the direction of the President, any agency may provide assistance (including materials, supplies, equipment, work, services, or facilities) for the processing, care, security, transportation, and initial reception and placement in the United States of a Cuban or Haitian entrant on terms the President prescribes. The President may direct the head of a federal department, agency, or instrumentality to detail personnel (on a reimbursable or nonreimbursable basis) for temporary duty with another federal department, agency, or instrumentality that the President has directed to supervise or manage assistance under this section.

(b) REIMBURSEMENT.—Amounts to carry out this section—

(1) shall be used to reimburse state governments and political subdivisions for expenses incurred in providing assistance under subsection (a) of this section; and

(2) may be used to reimburse a federal department, agency, or instrumentality providing assistance under subsection (a) of this section.

(c) APPLICATION OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—The carrying out of a duty or power under this section is not a major action of the Federal Government significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) AVAILABILITY OF APPROPRIATIONS.—Amounts—

(1) appropriated under section 13112 of this title are available to carry out this subchapter; and

(2) available to carry out this subchapter remain available until expended.

CHAPTER 133—INTERNATIONAL PARTICIPATION AND EMERGENCY ASSISTANCE

Sec.
13301. Participation in International Organization for Migration.
13302. Contributions to international organizations.
13303. Assistance to further foreign policy interests.
13304. Assistance to refugee women and children.
13305. Assistance for unexpected urgent needs.
13306. Allocation, transfer, availability, and accounting of amounts.
13307. Audits.
13308. Administrative.

§ 13301. Participation in International Organization for Migration

The President may continue United States membership in the International Organization for Migration. To assist in the movement of refugees and migrants and to enhance the economic progress of the developing countries by providing for a coordinated supply of a selected labor force, amounts necessary to pay for the Federal Government's contribution to the Organization and necessary salaries and expenses incident to the Government's participation in the Organization may be appropriated.

§ 13302. Contributions to international organizations

The President may make contributions to—

(1) the activities of the United Nations High Commissioner for Refugees for assistance to or for refugees and other persons assisted by the Commissioner;

(2) the International Organization for Migration;

(3) the International Committee of the Red Cross for assistance to or for refugees; and

(4) other international organizations for assistance to or for refugees.

§ 13303. Assistance to further foreign policy interests

The President may provide assistance to or for refugees outside the United States designated by the President when the President decides that the assistance will contribute to the foreign policy interests of the United States. The President shall designate the refugees by class, group, countries of origin, or areas of residence.

§ 13304. Assistance to refugee women and children

(a) STANDARDS.—(1) In providing for overseas assistance and protection of refugees and displaced persons, the Federal Government shall seek to address the protection and provision of basic needs of women and children who represent 80 percent of the world's refugee population.

(2) In accordance with the 1991 United Nations High Commissioner for Refugees Guidelines on the Protection of Refugee Women, the Secretary of State, working directly, through international organizations, or through nongovernmental voluntary organizations, shall seek to ensure that—

(A) the United Nations and relief organizations pay specific attention to recruiting and hiring female protection officers;

(B) gender awareness training is carried out for security personnel and other field staff;

(C) refugee women and children are protected from violence and abuse by governments or insurgent groups;

(D) women refugees are fully involved in planning and carrying out—

(i) the delivery of services and assistance; and

(ii) the repatriation process;

(E) education on and access to services in reproductive health, birth spacing, and other maternal and child health needs are incorporated into refugee health services and education;

(F) victims of rape, domestic violence, and other violence and abuse have available to them—

(i) protective services;

(ii) grievance processes; and

(iii) counseling and other services;

(G) educational programs are provided to refugee women, with special emphasis on female heads of households, in—

(i) literacy and numeracy;

(ii) vocational and income generating skills; and

(iii) other training to promote self-sufficiency;

(H) all refugee children receive education, ensuring equal access for girls, and that family tracing and other special services are provided for unaccompanied refugee minors;

(I) information clearly enumerating age and gender be collected so that appropriate health, education, and assistance programs can be planned;

(J) more women program professionals are recruited, hired, and trained in the international humanitarian field; and

(K) training is provided to program staff of the Commissioner and nongovernmental voluntary organizations on gender-awareness and carrying out the Guidelines.

(b) PROCEDURES.—The Secretary should adopt specific procedures to ensure that all recipients of Government amounts for refugee and migration assistance carry out the standards outlined in subsection (a) of this section.

(c) REQUIREMENTS FOR REFUGEE AND MIGRATION ASSISTANCE.—In providing refugee and migration assistance, the Secretary should support the protection efforts of this section by raising at the highest levels of government the issue of abuses against refugee women and children by governments or insurgent groups that engage in, allow, or condone—

(1) a pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial to life, liberty, and bodily security;

(2) the blockage of humanitarian relief assistance;

(3) gender-specific persecution such as systematic individual or mass rape, forced pregnancy, forced abortion, enforced prostitution, or any form of indecent assault or act of violence against refugee women, girls, and children; or

(4) continuing violations of bodily integrity against refugee women and children by armed insurgents, local security forces, or camp guards.

(d) INVESTIGATION OF REPORTS.—On receipt of credible reports of abuses under subsection (c) of this section, the Secretary should—

(1) investigate the reports immediately through emergency fact-finding missions or other means; and

(2) help identify appropriate remedial measures.

(e) MULTINATIONAL IMPLEMENTATION OF THE GUIDELINES.—The Secretary should work to—

(1) ensure that multilateral organizations completely incorporate the needs of refugee women and children into all elements of refugee assistance programs; and

(2) encourage other governments providing refugee assistance to adopt policies designed to encourage that the Guidelines be carried out completely.

§ 13305. Assistance for unexpected urgent needs

(a) GENERAL AUTHORITY.—The President may provide assistance to meet unexpected urgent refugee and migration needs on terms the President prescribes when the President decides the assistance is important to the interests of the United States.

(b) UNITED STATES EMERGENCY REFUGEE AND MIGRATION ASSISTANCE FUND.—There is a United States Emergency Refugee and Migration Assistance Fund to carry out this section. Amounts necessary for the Fund may be appropriated to the President. However, an amount may not be appropriated that, when added to amounts previously appropriated and not obligated, would cause the total amount in the Fund to be more than $100,000,000. Amounts appropriated remain available until expended.

(c) JUSTIFICATION OF APPROPRIATIONS.—When the President requests an appropriation under this section, the President shall justify the request to the Committee on Foreign Relations of the Senate, the Speaker of the House of Representatives, and the Committees on Appropriations of the Senate and House of Representatives.

§ 13306. Allocation, transfer, availability, and accounting of amounts

(a) ALLOCATION AND TRANSFER.—The President may allocate or transfer to a federal department, agency, or instrumentality an amount available to carry out this chapter. The amount is available for obligation and expenditure for the purpose for which the amount originally was made available under this chapter or under authority governing the activities of the federal department, agency, or instrumentality to which the amount was allocated or transferred. An amount allocated or transferred may be carried in a separate appropriation account of the Treasury.

(b) PURPOSES FOR WHICH AMOUNTS ARE AVAILABLE.—(1) An amount made available under this chapter may be used for—

(A) pay, allowances, and travel of personnel, including members of the Foreign Service whose services are used primarily in carrying out this chapter, without regard to any other law, that may be necessary to carry out this chapter;

(B) printing and binding, expenditure outside the United States for supplies and services, and administrative and operating purposes except pay, without regard to a law or regulation governing the obligation and expenditure of amounts of the Government, that may be necessary to carry out this chapter;

(C) employment and assignment of members of the Foreign Service serving under limited appointments when carrying out this chapter;

(D) the exchange of amounts without regard to loss by exchanges;

(E) making contracts for personal services outside the United States;

(F) expenses authorized by the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.) not otherwise provided for;

(G) expenses authorized by the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a, 2669 et seq.); and

(H) other expenses the President decides are necessary to carry out this chapter.

(2) An individual employed by contract with amounts made available under paragraph (1)(E) of this subsection is not an employee of the Government under any law carried out by the Director of the Office of Personnel Management. However, the Secretary of State may apply to that individual—

(A) section 2(f) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(f)); and

(B) any other law carried out by the Secretary as that law is related to employment of individuals by contract to perform personal services outside the United States.

(3) An individual receiving amounts under this section may provide administrative assistance to personnel assigned to a bureau charged with carrying out this chapter.

§ 13307. Audits

Amounts may be made available under this chapter or any other law to the United Nations High Commissioner for Refugees only if—

(1) an annual program audit will be conducted to determine the use of those amounts, including the use by implementing partners; and

(2) the audit will be made available through the Secretary of State for inspection by the Comptroller General.

§ 13308. Administrative

(a) AUTHORITY OF THE PRESIDENT.—To carry out this chapter, the President may—

(1) make loans, advances, and grants to, and agreements with, a person, government or government agency in or outside the United States, and international and intergovernmental organizations;

(2) accept and use money, property, and services made available to carry out this chapter; and

(3) provide assistance and make contributions, notwithstanding another provision of law that restricts assistance to foreign countries.

(b) WAIVER.—If the President decides that it carries out this chapter, the President may waive a provision of law on making, carrying out, and modifying contracts and on expenditures of the Federal Government.

(c) DELEGATION OF DUTIES AND POWERS.—If the President delegates to an officer under section 301 of title 3 a duty or power of the President under this chapter, the President also may authorize the officer to redelegate the duty or power to a subordinate officer or employee of the officer. However, the President may not authorize the redelegation of the waiver authority under subsection (b) of this section.

(d) INFORMING CONGRESSIONAL COMMITTEES.—The President shall keep appropriate committees of Congress currently informed on the use of expenditures and the exercise of duties and powers under this chapter.

CHAPTER 135—IMMIGRANT EDUCATION ASSISTANCE

Sec.
13501. Findings and purpose.
13502. Definitions and application.
13503. Enhanced instructional opportunities.
13504. Applications.
13505. State allocations.
13506. Grants to local educational agencies.
13507. Providing assistance to nonpublic schools when local educational agency does not.
13508. State administrative costs.
13509. Withholding payments.
13510. Reports.

§ 13501. Findings and purpose

(a) FINDINGS.—Congress finds that—

(1) the education of the children and youth of the United States is one of the most sacred government responsibilities;

(2) local educational agencies have struggled to finance education services adequately;

(3) in *Plyler* v. *Doe*, 457 U.S. 202 (1982), the Supreme Court held that States have a responsibility under the Equal Protection Clause of the Constitution to educate all children, regardless of immigration status; and

(4) only the Federal Government is responsible for immigration policy.

(b) PURPOSE.—The purpose of this chapter is to assist eligible local educational agencies that experience unexpectedly large increases in their student population due to immigration to—

(1) provide high-quality instruction to immigrant children and youth; and

(2) help immigrant children and youth—

(A) with their transition into American society; and

(B) meet the same challenging state performance standards expected of all children and youth.

§ 13502. Definitions and application

(a) DEFINITIONS.—In this chapter—

(1) the definitions in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801) apply, except ''local educational agency'' and ''Secretary''.

(2) ''immigrant children and youth'' has the same meaning given that term in section 7501 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7601).

(3) ''local educational agency'' has the same meaning given that term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), except that it includes only an agency for which the number of immigrant children and youth enrolled in public elementary and secondary schools under its jurisdiction and in nonpublic elementary and secondary schools in the district it serves, during the fiscal year for which a grant is to be made under this chapter, is at least equal to the lesser of—

(A) 500; or

(B) 3 percent of the total number of students enrolled in those public or nonpublic schools during that fiscal year.

(b) APPLICATION.—Sections 7404 and 7502(a) and parts B–H of title XIV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7574, 7602(a), 8821 et seq.) apply to this chapter.

§ 13503. Enhanced instructional opportunities

(a) PAYMENTS TO PROVIDE ENHANCED INSTRUCTIONAL OPPORTUNITIES.—The Secretary of Education shall make payments, as provided in this chapter, to state educational agencies for each of the fiscal years ending September 30, 1995–1999, for the purpose stated in section 13501(b) of this title by paying for enhanced instructional opportunities for immigrant children and youth.

(b) OPPORTUNITIES INCLUDED.—The enhanced instructional opportunities referred to in subsection (a) of this section include—

(1) family literacy, parent outreach, and training activities designed to assist parents to become active participants in the education of their children;

(2) salaries of personnel, including teacher aides who have been trained specifically, or are being trained, to provide services to immigrant children and youth;

(3) tutorials, mentoring, and academic or career counseling for immigrant children and youth;

(4) identifying and acquiring curricular materials, educational software, and technologies to be used in the program;

(5) basic instructional services directly attributable to the presence in the school district of immigrant children and youth, including the cost of providing additional classroom supplies, overhead costs, costs of construction, acquisition, or rental of space, transportation costs, or other costs directly attributable to these additional basic instructional services; and

(6) other activities related to the purpose of this chapter that the Secretary may authorize.

§ 13504. Applications

(a) REQUIREMENTS.—To receive a payment under this chapter for a fiscal year, a state educational agency must submit an application to the Secretary of Education at the time, in the way, and containing or accompanied by information the Secretary requires. In the application, the state educational agency must agree—

(1) to administer, or supervise the administration of, the educational programs, services, and activities paid for under this chapter;

(2) to ensure that payments under this chapter will be used for the purposes described in sections 13501(b) and 13503 of this title, including a description of how local educational agencies receiving amounts under this chapter will—

(A) use the amounts to meet those purposes; and

(B) coordinate with other programs assisted under the Goals 2000: Educate America Act (20 U. S. C. 5801 et seq.), the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), and other appropriate acts;

(3) to ensure that local educational agencies receiving amounts under this chapter will coordinate the use of those amounts with programs assisted under title I or part A of title VII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq., 7401 et seq.);

(4) to ensure that those payments (except payments received under section 13506(a) of this title) will be allocated among the local educational agencies in the State so that each agency receives an amount based on the number of immigrant children and youth counted for that agency under section 13505(a)(1) of this title;

(5) to ensure that it will not disapprove finally any part of a local educational agency's application for an amount under this chapter without giving the local educational agency reasonable notice and opportunity for a hearing;

(6) to make reports the Secretary requires to carry out this chapter;

(7) to ensure that—

(A) to the extent consistent with the number of immigrant children and youth enrolled in nonpublic elementary and secondary schools in the district served by a local educational agency, the local educational agency, after consulting with the appropriate officials of the schools, will provide for the benefit of those children and youth secular, neutral, and nonideological services, materials, and equipment necessary to educate those children and youth;

(B) a public agency will—

(i) control and administer amounts provided under this chapter; and

(ii) own and administer materials, equipment, and property that is repaired, remodeled, or constructed with those amounts;

(C) amounts under this clause (7) will not be commingled with state or local amounts; and

(D) a public agency will provide immigrant children and youth in nonpublic elementary or secondary schools the services referred to in subclause (A) of this clause through—

(i) employees under the control and supervision of the agency; or

(ii) a contract with a person or agency that is under the control and supervision of the public agency and, when providing the services, is independent of the school and of any religious organization;

(8) to award amounts reserved under section 13506(a) of this title on a competitive basis based on merit and need as provided in section 13506(a); and

(9) to ensure that state and local educational agencies receiving amounts under this chapter will comply with the requirements of section 1120(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6321(b)).

(b) APPROVAL.—The Secretary shall review all applications submitted under subsection (a) of this section and shall approve any application that meets the requirements of subsection (a). The Secretary shall disapprove any application not meeting those requirements but may not disapprove finally an application without giving the applicant reasonable notice, technical assistance, and an opportunity for a hearing.

(c) NOTIFICATION OF AMOUNT APPROVED.—Not later than June 1 of each year, the Secretary shall notify each state educational agency that has

an application approved of the amount of the agency's allocation under section 13505(a) of this title for the next fiscal year.

§ 13505. State allocations

(a) ALLOCATIONS.—The Secretary of Education shall allocate the amount appropriated to carry out this chapter for a fiscal year among the state educational agencies. Except as provided in this section, of the amount appropriated for each fiscal year for this chapter, each state participating in the program assisted under this chapter shall receive an allocation equal to the proportion of—

(1) the number of immigrant children and youth enrolled in public elementary and secondary schools under the jurisdiction of the local educational agencies of the State and in nonpublic elementary and secondary schools in the districts served by the local educational agencies of the State; relative to

(2) the total number of immigrant children and youth similarly enrolled in all the States participating in the program assisted under this chapter.

(b) DETERMINING NUMBER OF IMMIGRANT CHILDREN AND YOUTH.—(1) The Secretary shall determine the number of immigrant children and youth for a state educational agency under this section based on information or estimates provided by the agency under criteria prescribed by the Secretary. However, after notice and opportunity for a hearing, the Secretary may disregard information or estimates that the Secretary decides are clearly erroneous.

(2) A determination under this subsection based on an overestimate or underestimate may not deprive a state educational agency of the allocation the State otherwise would have received under this chapter if the determination were based on accurate information.

(c) REALLOCATION OF UNUSED AMOUNTS.—When the Secretary determines that a part of a payment made to a state educational agency under this chapter for a fiscal year will not be used by the agency to carry out the purpose for which the payment was made, the Secretary shall make that part available to one or more state educational agencies to the extent the Secretary decides the other agencies can use the additional amount to carry out the purpose. An amount made available under this subsection to a state educational agency from an appropriation for a fiscal year is deemed in this chapter to be a part of the payment (as determined under subsection (a) of this section) to that agency for that fiscal year, and remains available until the end of the next fiscal year.

§ 13506. Grants to local educational agencies

(a) DISTRIBUTION BY STATE EDUCATIONAL AGENCIES.—(1) If the amount appropriated to carry out this chapter is more than $50,000,000 for a fiscal year, a state educational agency may reserve not more than 20 percent of the agency's payment under this chapter for that year to award grants to local educational agencies in the State. The grants shall be awarded on a competitive basis.

(2)(A) At least one-half of the grants shall be made available to local educational agencies that have the highest numbers and percentages of immigrant children and youth.

(B) Amounts reserved under this subsection and not made available under paragraph (2)(A) of this subsection may be distributed to local educational agencies in the State that are experiencing a sudden influx of immigrant children and youth but otherwise are not eligible for assistance under this chapter.

(b) USE OF GRANT.—A local educational agency receiving a grant under subsection (a) of this section shall use the grant to carry out the activities described in section 13503(b) of this title.

(c) CONSORTIA.—A local educational agency receiving a grant under this chapter may collaborate or form a consortium with one or more local educational agencies, institutions of higher education, and nonprofit organizations to carry out the program described in an application approved under this chapter.

(d) SUBGRANTS.—With the approval of the Secretary of Education, a local educational agency receiving a grant under this chapter may make a subgrant to, or a contract with, an institution of higher education, a nonprofit organization, or a consortium of institutions of higher education or nonprofit organizations to carry out a program described in an application approved under this chapter, including a program to serve out-of-school youth.

(e) DISTRIBUTION OF INFORMATION.—Local educational agencies receiving amounts under subsection (a) of this section that have the highest number of immigrant children and youth may make information on serving immigrant children and youth available to local educational agencies in the State with sparse numbers of immigrant children and youth.

(f) SIMULTANEOUS SERVICE OF IMMIGRANT CHILDREN AND YOUTH.—This chapter does not prohibit a local educational agency from serving, in the same educational setting where appropriate, immigrant children and youth simultaneously with students with similar educational needs.

§ 13507. Providing assistance to nonpublic schools when local educational agency does not

(a) GENERAL AUTHORITY.—If a local educational agency is prohibited by law from providing educational services for children and youth enrolled in nonpublic elementary and secondary schools as required by section 13504(a)(7) of this title, or if the Secretary of Education decides that a local educational agency has failed substantially to, or will not, provide for the participation on an equitable basis of children and youth enrolled in those schools, the Secretary—

(1) may waive the requirements of section 13504(a)(7) of this title; and

(2) subject to the other requirements of this chapter, shall arrange for educational services to be provided for those children and youth.

(b) WAIVER REQUIREMENTS.—A waiver under this section is subject to consultation, withholding, notice, and judicial review requirements as provided in title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

§ 13508. State administrative costs

For any fiscal year, a state educational agency may reserve not more than 1.5 percent of the amount allocated to the agency under section 13505(a) of this title to pay the costs of its administrative duties and powers under this chapter.

§ 13509. Withholding payments

(a) AUTHORITY TO WITHHOLD.—When the Secretary of Education decides that a state educational agency receiving payments under this chapter, or a local educational agency receiving payments from the state educational agency, is not complying with a requirement of this chapter, the Secretary, until satisfied that there is no longer a failure to comply, shall—

(1) stop making payments to the state educational agency under this chapter; or

(2) prohibit the state educational agency from making payments under this chapter to the local educational agency that is causing, or involved in, the failure.

(b) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary—

(1) may act under subsection (a) of this section only after giving the state educational agency reasonable notice and opportunity for a hearing; and

(2) shall notify the state educational agency of the action the Secretary is taking under subsection (a) of this section.

§ 13510. Reports

(a) REPORTS BY STATE EDUCATIONAL AGENCIES.—Each state educational agency receiving amounts under this chapter shall submit a report once every 2 years to the Secretary of Education on the expenditure of amounts by local educational agencies under this chapter. Each local educational agency receiving amounts under this chapter shall submit to the state educational agency information necessary for the report.

(b) REPORTS BY THE SECRETARY.—The Secretary shall submit a report once every 2 years to the appropriate committees of Congress about programs assisted under this chapter as provided in section 14701 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8941).

CHAPTER 137—REIMBURSEMENT FOR COSTS OF IMPRISONING CUBAN NATIONALS AND ILLEGAL ALIENS

Sec.
13701. Payment of costs of imprisoning certain Cuban nationals.
13702. Reimbursement of costs of imprisoning certain Cuban nationals and illegal aliens.
13703. Limitation.

§ 13701. Payment of costs of imprisoning certain Cuban nationals

(a) PAYMENTS TO STATES AND COUNTIES.—The Attorney General shall pay a State or county for costs incurred by the State or county in imprisoning, during the fiscal year for which payment is made, a Cuban national who—

(1) was paroled into the United States in 1980 by the Attorney General;

(2) after being paroled, violated a state or county law for which a term of imprisonment was imposed; and

(3) at the time of the parole and violation, was not lawfully admitted for permanent residence or not admitted under an immigrant or nonimmigrant visa issued under this title.

(b) APPLICATIONS FOR PAYMENTS.—For a State or county to be paid under this section, the chief executive officer of the State or county shall submit an application to the Attorney General, under regulations prescribed by the Attorney General. The application shall contain—

(1) the number and names of Cuban nationals for whose imprisonment the State or county is entitled to be paid; and

(2) other information the Attorney General requires.

(c) REDUCTION IF APPROPRIATIONS INSUFFICIENT.—For each fiscal year, the Attorney General shall make payment under this section to States and counties the Attorney General decides are eligible under this section. However, if amounts appropriated for the fiscal year to carry out this section are not sufficient to make all payments, each payment shall be ratably reduced so that the total of the payments equals the amount appropriated.

(d) POLICY ON RETURN OF CUBAN NATIONALS.—It is the policy of the Federal Government that the President, in consultation with the Attorney General, other appropriate federal officials, and appropriate state and county chief executive officers referred to in subsection (b) of this section, shall place top priority on seeking the expeditious removal from the United States and return by any responsible means to Cuba of Cuban nationals described in subsection (a) of this section.

§ 13702. Reimbursement of costs of imprisoning certain Cuban nationals and illegal aliens

(a) GENERAL.—The Attorney General shall reimburse a State for costs incurred by the State in imprisoning any of the following Cuban nationals and illegal aliens convicted by the State of a felony:

(1) a Cuban national who—

(A) was paroled into the United States in 1980 by the Attorney General;

(B) after being paroled, violated a state or local law for which a term of imprisonment was imposed; and

(C) at the time of parole and violation, was not lawfully admitted for permanent or temporary residence or not admitted under an immigrant or nonimmigrant visa issued under this title.

(2) an illegal alien who is in the United States unlawfully and—

(A) whose most recent entry into the United States was without inspection; or

(B) who was admitted to the United States as a nonimmigrant and whose—

(i) period of authorized stay as a nonimmigrant expired before the date of committing the crime for which the illegal alien was convicted; or

(ii) unlawful status was known to the Federal Government before the date of committing the crime for which the alien was convicted.

(b) REGULATIONS.—The Attorney General shall prescribe regulations—

(1) providing eligibility requirements for States seeking reimbursement under subsection (a) of this section;

(2) requiring that States seeking reimbursement under subsection (a) of this section verify the eligible incarcerated population data with the Commissioner of Immigration and Naturalization;

(3) providing a formula for distributing assistance under subsection (a) of this section to eligible States; and

(4) awarding assistance to eligible States.

§ 13703. Limitation

The Attorney General may expend amounts under this chapter in a fiscal year only to the extent and in the amount provided in advance by an appropriation law.

PART B—RESTRICTIONS

CHAPTER 151—RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

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SUBCHAPTER I—GENERAL

§ 15101. Policy

Congress makes the following statements concerning national policy with respect to welfare and immigration:

(1) Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes.

(2) It continues to be the immigration policy of the Federal Government that—

(A) aliens within the borders of the United States not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations; and

(B) the availability of public benefits not constitute an incentive for immigration to the United States.

(3) Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from federal, state, and local governments at increasing rates.

(4) Current eligibility rules for public assistance and unenforceable financial support agreements have proved wholly incapable of ensuring that individual aliens not burden the public benefits system.

(5) It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to ensure that aliens be self-reliant in accordance with national immigration policy.

(6) It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.

(7) With respect to the authority of a State to decide on the eligibility of a qualified alien for public benefits in this chapter, a State that chooses to follow the federal classification in determining the eligibility of the alien for public assistance shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of ensuring that aliens be self-reliant in accordance with national immigration policy.

§ 15102. Definitions

(a) FEDERAL PUBLIC BENEFIT.—For purposes of this chapter ''federal public benefit''—

(1) means—

(A) a grant, contract, loan, professional license, or commercial license provided by a federal department, agency, or instrumentality or by appropriated amounts of the Federal Government; and

(B) a retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment, or other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by a federal department, agency, or instrumentality or by appropriated amounts of the Government; but

(2) does not apply to—

(A) a contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 (or a successor provision) of the applicable compact of free association, approved under the Compact of Free Association Act of 1985 (48 U.S.C. 1901 et seq.) or under the Act of November 14, 1986 (48 U.S.C. 1931 et seq.), is in effect; or

(B) benefits for an alien who, as a work authorized nonimmigrant or as an alien lawfully admitted for permanent resi-

dence under subtitle II of this title, qualified for the benefits and for whom the United States under reciprocal treaty agreements is required to pay the benefits, as determined by the Attorney General, after consultation with the Secretary of State.

(b) QUALIFIED ALIEN.—For purposes of this chapter, ''qualified alien'' means an alien who, at the time the alien applies for, receives, or attempts to receive a federal public benefit, is—

(1) an alien who is lawfully admitted for permanent residence under subtitle II of this title;

(2) an alien who is granted asylum under section 5106 of this title;

(3) a refugee who is admitted to the United States under section 5105 of this title;

(4) an alien who is paroled into the United States under section 6121 of this title for a period of at least one year;

(5) an alien whose removal is being withheld under section 6716(d) of this title (or whose deportation was withheld under section 243(h) of the Immigration and Nationality Act as in effect immediately before April 1, 1997);

(6) an alien who is granted conditional entry under section 203(a)(7) of the Immigration and Nationality Act as that Act was in effect prior to April 1, 1980;

(7) an alien who is a Cuban or Hatian entrant as defined in section 13151 of this title; or

(8) except during any period in which an individual responsible for battery or cruelty resides in the same household or family eligibility unit as the individual subjected to the battery or cruelty—

(A)(i) an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty, but only if (in the opinion of the agency providing the benefits) there is a substantial connection between the battery or cruelty and the need for the benefits to be provided;

(ii) an alien whose child (as defined in section 108(b) of this title) has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty, and the alien did not actively

participate in the battery or cruelty, but only if (in the opinion of the agency providing the benefits) there is a substantial connection between the battery or cruelty and the need for the benefits to be provided; or

(iii) an alien child who resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented to, or acquiesced in, the battery or cruelty, but only if (in the opinion of the agency providing the benefits) there is a substantial connection between the battery or cruelty and the need for the benefits to be provided; and

(B) who has been approved or has a petition pending which sets forth a prima facie case for—

(i) status as a spouse or a child of a United States citizen under section 4301(a)(2), (3), or (4) of this title;

(ii) classification under section 4301(a)(6) or (7) of this title;

(iii) cancellation of removal under—

(I) section 240A of the Immigration and Nationality Act as in effect prior to April 1, 1997; or

(II) section 6721(c) of this title; or

(iv) status as a spouse or child of a United States citizen under section 4301(a)(1) of this title or classification under section 4301(a)(5) of this title.

§ 15103. Guidance issued by Attorney General

After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and the heads of federal departments, agencies, or instrumentalities administering benefits that the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for the purposes of sections 15102(b)(8) and 15125(e) of this title, concerning the meaning of ''battery'' and ''extreme cruelty'', and the standards and methods to be used for deciding whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific federal, state, or local program.

SUBCHAPTER II—FEDERAL PUBLIC BENEFITS

§ 15121. Ineligibility of aliens who are not qualified aliens

(a) GENERAL.—Except as provided in subsection (b) of this section, an alien who is not a qualified alien is not eligible for any federal public benefit.

(b) EXCEPTIONS.—(1) Subsection (a) of this section does not apply to the following federal public benefits:

(A) medical assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), or any successor program, for care and services that are necessary for the treatment of an alien's emergency medical condition (as defined in section 1903(v)(3) of the Act (42 U.S.C. 1396b(v)(3))) and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the state plan approved under title XIX, other than the requirement of the receipt of aid or assistance under title IV of the Act (42 U.S.C. 401 et seq.), supplemental security income benefits under title XVI of the Act (42 U.S.C. 1381 et seq.), or a state supplementary payment.

(B) short-term, non-cash, in-kind emergency disaster relief.

(C) public health assistance, not including any assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(D) programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with the heads of appropriate federal departments, agencies, and instrumentalities that—

(i) deliver in-kind services at the community level, including through public or private nonprofit agencies;

(ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(iii) are necessary for the protection of life or safety.

(E) programs for housing or community development assistance or financial assistance administered by the Secretary of Housing and Urban Development, any program under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.), or any assistance under section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C.

1926c), to the extent that the alien is receiving the benefit on August 22, 1996.

(2) Subsection (a) of this section does not apply to any benefit—

(A) payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) to an alien who is lawfully present in the United States as determined by the Attorney General;

(B) payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) to which entitlement is based on an application filed before September 1, 1996;

(C) if nonpayment of the benefit would be contrary to an international agreement described in section 233 of the Social Security Act (42 U.S.C. 433); or

(D) if nonpayment of the benefit would be contrary to section 202(t) of the Social Security Act (42 U.S.C. 402(t)).

(3) Subsection (a) of this section does not apply to any benefit payable under—

(A) title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) to an alien—

(i) who is lawfully present in the United States as determined by the Attorney General; and

(ii) for a benefit payable under Part A of title XVIII (42 U.S.C. 1395c et seq.), who was authorized to be employed for any wages attributable to employment that are counted for eligibility for the benefit; or

(B) the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), or the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.) to an alien who is—

(i) lawfully present in the United States as determined by the Attorney General; or

(ii) residing outside the United States.

(4) For eligibility for benefits for the programs described in sections 15122(a)(1) and 15123(a)(1)(C) of this title, subsection (a) of this section does not apply to an individual who—

(1) is an American Indian born in Canada to whom section 712 of this title applies; or

(2) is a member of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))).

§ 15122. Limited ineligibility of qualified aliens for SSI and food stamps

(a) GENERAL.—Except as otherwise provided in this section, an alien who is a qualified alien is not eligible for—

(1) the supplemental security income program under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.), including—

(A) supplementary payments under an agreement for federal administration under section 1616(a) of the Social Security Act (42 U.S.C. 1382e(a)); and

(B) payments under an agreement made under section 212(b) of the Act of July 9, 1973 (42 U.S.C. 1382 note); or

(2) the food stamp program as defined in section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)).

(b) EXCEPTION FOR REFUGEES AND ASYLEES.—(1) For the supplemental security income program described in subsection (a)(1) of this section, subsection (a) of this section does not apply to an alien until 7 years after the date described in paragraph (3) of this subsection.

(2) For the food stamp program described in subsection (a)(2) of this section, subsection (a) of this section does not apply to an alien until 5 years after the date described in paragraph (3) of this subsection.

(3) The date referred to in paragraphs (1) and (2) of this subsection is the date—

(A) the alien is admitted to the United States as a refugee under section 5105 of this title;

(B) the alien is granted asylum under section 5106 of this title;

(C) the alien's removal is withheld under section 6716(d) of this title (or the alien's deportation was withheld under section 243(h) of the Immigration and Nationality Act as in effect immediately before April 1, 1997);

(D) the alien is granted status as a Cuban or Hatian entrant as defined in section 13151 of this title; or

(E) the alien is admitted to the United States under chapter 47 of this title.

(c) EXCEPTION FOR CERTAIN PERMANENT RESIDENT ALIENS.—Subsection (a) of this section does not apply to an alien who—

(1) is lawfully admitted for permanent residence under subtitle II of this title; and

(2)(A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act (42 U.S.C. 401 et seq.) or can be credited with the qualifying quarters as provided in section 15182 of this title; and

(B) in the case of a qualifying quarter creditable for a period beginning after December 31, 1996, did not receive any federal means-tested public benefit (as provided under section 15124 of this title) during the period.

(d) EXCEPTION FOR VETERANS AND ACTIVE DUTY PERSONNEL.—Subsection (a) of this section does not apply to an alien who is lawfully residing in any State and is—

(1) a veteran (as defined in section 101, 1101, or 1301 of title 38, or as described in section 107 of title 38), with a discharge characterized as an honorable discharge and not on account of alienage, who fulfills the minimum active duty service requirements of section 5303A(d) of title 38;

(2) on active duty (except active duty for training) in the armed forces of the United States; or

(3)(A) the spouse or unmarried dependent child of an individual described in clause (1) or (2) of this subsection; or

(B) the unremarried surviving spouse of an individual described in clause (1) or (2) of this subsection who is deceased, if the marriage fulfills the requirements of section 1304 of title 38.

(e) EXCEPTION FOR ALIENS WHO WERE RECEIVING SSI ON AUGUST 22, 1996.—For eligibility for benefits under the supplemental security income program described in subsection (a)(1) of this section, subsection (a) of this section does not apply to an alien who—

(1) is lawfully residing in the United States; and

(2) was receiving such benefits on August 22, 1996.

(f) EXCEPTION FOR DISABLED ALIENS WHO WERE LAWFULLY RESIDING IN THE UNITED STATES ON AUGUST 22, 1996.—For eligibility for benefits under the supplemental security income program described in subsection (a)(1) of this section, subsection (a) of this section does not apply to an alien who—

(1) was lawfully residing in the United States on August 22, 1996; and

(2) is blind or disabled, as defined in section 1614(a)(2) or 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)).

(g) SSI EXCEPTION FOR CERTAIN INDIANS.—For eligibility for benefits under the supplemental security income program described in subsection (a)(1) of this section, subsection (a) of this section does not apply to an individual who—

(1) is an American Indian born in Canada to whom section 712 of this title applies; or

(2) is a member of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))).

(h) SSI EXCEPTION FOR APPLICATIONS FILED BEFORE 1979.—For eligibility for benefits under the supplemental security income program described in subsection (a)(1) of this section, subsection (a) of this section does not apply to an individual—

(1) who is receiving the benefits for months after July 1996, on the basis of an application filed before January 1, 1979; and

(2) for whom the Commissioner of Social Security lacks clear and convincing evidence of ineligibility for benefits under this section.

(i) TRANSITION FOR ALIENS CURRENTLY RECEIVING SSI.—(1) During the period from August 22, 1996, through September 30, 1998, the Commissioner of Social Security shall redetermine the eligibility of each individual who, as of August 22, 1996, was receiving benefits under the program described in subsection (a)(1) of this section and whose eligibility for the benefits may terminate by reason of this section.

(2) For a redetermination under paragraph (1) of this subsection, the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits.

(3) For an individual described in paragraph (1) of this subsection, this section, and the redetermination of eligibility under paragraph (1) of this subsection, shall only apply to benefits for months beginning after September 30, 1998.

(j) TRANSITION FOR ALIENS CURRENTLY RECEIVING FOOD STAMPS.—(1) For the food stamp program as defined in section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)), ineligibility under subsection (a)(2) of this section does not apply until April 1, 1997, to an alien who received benefits under the program on August 22, 1996, unless the alien is determined to be ineligible to receive benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(2) The state agency shall recertify the eligibility of all aliens described in paragraph (1) of this subsection during the period from April 1, 1997, through August 22, 1997. For a recertification under this paragraph, the state agency shall apply the eligibility criteria for applicants for benefits under the program.

(3) This section and the recertification under paragraph (2) of this section shall only apply to the eligibility of an alien for a program for months beginning on or after the date of recertification, if on August 22, 1996, the alien is—

(A) lawfully residing in a State; and

(B) receiving benefits under the program.

§ 15123. State authorization to determine eligibility of qualified aliens

(a) GENERAL.—(1) Except as otherwise provided in this section and section 15124 of this title, a State may determine the eligibility of an alien who is a qualified alien for—

(A) the program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(B) the program of block grants to States for social services under title XX of the Act (42 U.S.C. 1397 et seq.); and

(C) a state plan approved under title XIX of the Act (42 U.S.C. 1396 et seq.), except medical assistance described in section 15121(b)(1)(A) of this title.

(2) Qualified aliens under subsections (b)–(f) of this section are eligible for the programs described in paragraph (1) of this subsection.

(b) EXCEPTION FOR REFUGEES AND ASYLEES.—(1) For the program described in subsection (a)(1)(C) of this section, subsection (a)(1) of this section does not apply to a qualified alien until 7 years after the date described in paragraph (3) of this subsection.

(2) For the programs described in subsection (a)(1) (A) and (B) of this section, subsection (a)(1) of this section does not apply to an alien until 5 years after the date described in paragraph (3) of this subsection.

(3) The date referred to in paragraphs (1) and (2) of this subsection is the date—

(A) the alien is admitted to the United States as a refugee under section 5105 of this title;

(B) the alien is granted asylum under section 5106 of this title;

(C) the alien's removal is withheld under section 6716(d) of this title (or the alien's deportation was withheld under section 243(h) of the Immigration and Nationality Act as in effect immediately before April 1, 1997);

(D) the alien is granted status as a Cuban or Hatian entrant as defined in section 13151 of this title; or

(E) the alien is admitted to the United States under chapter 47 of this title.

(c) EXCEPTION FOR CERTAIN PERMANENT RESIDENT ALIENS.—Subsection (a)(1) of this section does not apply to a qualified alien who—

(1) is lawfully admitted for permanent residence under subtitle II of this title; and

(2)(A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act (42 U.S.C. 401 et seq.) or can be credited with the qualifying quarters as provided in section 15182 of this title; and

(B) in the case of a qualifying quarter creditable for a period beginning after December 31, 1996, did not receive any federal means-tested public benefit (as provided under section 15124 of this title) during the period.

(d) EXCEPTION FOR VETERANS AND ACTIVE DUTY PERSONNEL.—Subsection (a)(1) of this section does not apply to a qualified alien who is lawfully residing in any State and is—

(1) a veteran (as defined in section 101, 1101, or 1301 of title 38, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage, who fulfills the minimum active duty service requirements of section 5303A(d) of title 38;

(2) on active duty (except active duty for training) in the armed forces of the United States; or

(3)(A) the spouse or unmarried dependent child of an individual described in clause (1) or (2) of this subsection; or

(B) the unremarried surviving spouse of an individual described in clause (1) or (2) of this subsection who is deceased, if the marriage fulfills the requirements of section 1304 of title 38.

(e) EXCEPTION FOR CERTAIN INDIANS.—For eligibility for benefits for the program described in subsection (a)(1)(C) of this section, subsection (a)(1) of this section does not apply to an individual who—

(1) is an American Indian born in Canada to whom section 712 of this title applies; or

(2) is a member of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e))).

(f) MEDICAID EXCEPTION FOR ALIENS RECEIVING SSI.—An alien who is receiving benefits under the program described in section 15122(a)(1) of this title is eligible for medical assistance under a state plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on the same terms that apply to other recipients of benefits under the program described in section 15122(a)(1).

§ 15124. Five-year ineligibility of qualified aliens for federal means-tested public benefit

(a) GENERAL.—Except as provided in this section, an alien who is a qualified alien and who enters the United States after August 21, 1996, is

not eligible for any federal means-tested public benefit for 5 years beginning on the date of the alien's entry into the United States with a status within the meaning of qualified alien.

(b) EXCEPTION FOR CERTAIN ASSISTANCE AND BENEFITS.—Subsection (a) of this section does not apply to the following assistance and benefits:

(1) medical assistance described in section 15121(b)(1)(A) of this title.

(2) short-term, non-cash, in-kind emergency disaster relief.

(3) assistance or benefits under the National School Lunch Act (42 U.S.C. 1751 et seq.).

(4) assistance or benefits under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(5) public health assistance, not including assistance under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(6) payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq. and 670 et seq.) for a parent or a child who would, in the absence of subsection (a) of this section, be eligible to have the payments made on the child's behalf, but only if the foster or adoptive parent of the child is a qualified alien.

(7) programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with the heads of appropriate federal departments, agencies, and instrumentalities, that—

(A) deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) are necessary for the protection of life or safety.

(8) programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq., 1101 et seq., 1134 et seq., 1135 et seq.), and titles III, VII, and VIII of the Public Health Service Act (42 U.S.C. 241 et seq., 292 et seq., 296 et seq.).

(9) means-tested programs under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

(10) benefits under the Head Start Act (42 U.S.C. 9831 et seq.).

(11) benefits under the Job Training Partnership Act (29 U.S.C. 1501 et seq.).

(c) EXCEPTION FOR REFUGEES AND ASYLEES.—Subsection (a) of this section does not apply to an alien—

(1) who is admitted to the United States as a refugee under section 5105 of this title;

(2) who is granted asylum under section 5106 of this title;

(3) whose removal is being withheld under section 6716(d) of this title (or whose deportation was withheld under section 243(h) of the Immigration and Nationality Act as in effect immediately before April 1, 1997);

(4) who is granted status as a Cuban or Hatian entrant as defined in section 13151 of this title; or

(5) who is admitted to the United States under chapter 47 of this title.

(d) EXCEPTION FOR VETERANS AND ACTIVE DUTY PERSONNEL.—Subsection (a) of this section does not apply to an alien who is lawfully residing in any State and is—

(1) a veteran (as defined in section 101, 1101, or 1301 of title 38, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage, who fulfills the minimum active duty service requirements of section 5303A(d) of title 38;

(2) on active duty (except active duty for training) in the armed forces of the United States; or

(3)(A) the spouse or unmarried dependent child of an individual described in clause (1) or (2) of this subsection; or

(B) the unremarried surviving spouse of an individual described in clause (1) or (2) of this subsection who is deceased, if the marriage fulfills the requirements of section 1304 of title 38.

(e) EXCEPTION FOR CERTAIN INDIANS.—For the programs specified in sections 15122(a)(1) and 15123(a)(1)(C) of this title, subsection (a) of this section does not apply to an individual described in section 15122(g) of this title.

§ 15125. Attribution of sponsor's income and resources to alien in determining a federal means-tested public benefit

(a) IN GENERAL.—In determining the eligibility and the amount of benefit of an alien for any federal means-tested public benefit (as provided under

section 15124 of this title), the income and resources of the alien are deemed to include the following:

(1) The income and resources of any individual who executed an affidavit of support under section 6331 of this title on behalf of the alien.

(2) The income and resources of the spouse (if any) of the individual described in clause (1) of this subsection.

(b) DURATION OF ATTRIBUTION PERIOD.—Subsection (a) of this section applies to an alien until the alien—

(1) achieves United States citizenship through naturalization under chapter 203 of this title; or

(2)(A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act (42 U.S.C. 401 et seq.) or can be credited with the qualifying quarters as provided in section 15182 of this title; and

(B) in the case of a qualifying quarter creditable for a period beginning after December 31, 1996, did not receive any federal means-tested public benefit (as provided under section 15124 of this title) during the period.

(c) REVIEW OF INCOME AND RESOURCES OF ALIEN ON REAPPLICATION.—The applicable agency shall review the income and resources attributed to an alien under subsection (a) of this section, when the alien is required to reapply for benefits under any federal means-tested public benefits program.

(d) INDIGENCE EXCEPTION.—(1) For an alien for whom an affidavit of support under section 6331 of this title has been executed, if a determination described in paragraph (2) of this subsection is made, the amount of income and resources of the sponsor or the sponsor's spouse which is attributed to the sponsored alien may not exceed the amount actually provided for the 12-month period beginning on the date of the determination.

(2) A determination described in this paragraph is a determination by an agency that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor. The agency shall notify the Attorney General of each determination, including the names of the sponsor and the sponsored alien involved.

(e) SPECIAL RULE FOR BATTERED SPOUSE AND CHILD.—(1) Subject to paragraph (2) of this subsection and notwithstanding any other provision of this section, subsection (a) does not apply to benefits—

(A) during a 12-month period if the alien demonstrates that—

(i)(I) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty;

(II) the alien's child has been battered or subjected to extreme cruelty in the United States by the spouse or parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to, or acquiesced in, and the alien did not actively participate in, the battery or cruelty; or

(III) the alien is a child whose parent (who resides in the same household as the alien child) has been battered or subjected to extreme cruelty in the United States by that parent's spouse, or by a member of the spouse's family residing in the same household as the parent and the spouse consented to, or acquiesced in, the battery or cruelty; and

(ii) the battery or cruelty (in the opinion of the agency providing the public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the public benefits applied for; and

(B) after a 12-month period (regarding the batterer's income and resources only) if the alien demonstrates that—

(i) the battery or cruelty under subclause (A) of this paragraph has been recognized in an order of a judge or administrative law judge or a prior determination of the Immigration and Naturalization Service; and

(ii) the battery or cruelty (in the opinion of the agency providing the public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the benefits.

(2) Paragraph (1) of this subsection does not apply to benefits for an alien during any period in which the individual responsible for the battery or cruelty resides in the same household or family eligibility unit as the individual who was subjected to the battery or cruelty.

§ 15126. Derivative eligibility for benefits

An alien who is ineligible under this chapter for benefits under the food stamp program (as described in section 15122(a)(2) of this title) is not eligible for the benefits because the alien receives benefits under the supple-

mental security income program (as described in section 15122(a)(1) of this title).

SUBCHAPTER III—STATE AND LOCAL PUBLIC BENEFITS

§ 15141. Definition

For purposes of this subchapter ''state or local public benefit''—

(1) means—

(A) a grant, contract, loan, professional license, or commercial license provided by an agency of a state or local government or by appropriated amounts of a state or local government; and

(B) a retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment, or other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a state or local government or by appropriated amounts of a state or local government; but

(2) does not apply to—

(A) a contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 (or a successor provision) of the applicable compact of free association, approved under the Compact of Free Association Act of 1985 (48 U.S.C. 1901 et seq.) or under the Act of November 14, 1986 (48 U.S.C. 1931 et seq.), is in effect;

(B) benefits for an alien who, as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under subtitle II of this title, qualified for the benefits and for whom the United States under reciprocal treaty agreements is required to pay the benefits, as determined by the Secretary of State, after consultation with the Attorney General; or

(C) any federal public benefit under section 15102(a) of this title.

§ 15142. Ineligibility of aliens who are not qualified aliens or nonimmigrants

(a) GENERAL.—Except as provided in this section, an alien is not eligible for any state or local public benefit if the alien is not—

(1) a qualified alien;

(2) a nonimmigrant under this title; or

(3) an alien who is paroled into the United States under section 6121 of this title for less than one year.

(b) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to the following state or local public benefits:

(1) assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of the Social Security Act (42 U.S.C. 1396b(v)(3))) of the alien involved and are not related to an organ transplant procedure.

(2) short-term, non-cash, in-kind emergency disaster relief.

(3) public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(4) programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with the heads of appropriate federal departments, agencies, and instrumentalities, that—

(A) deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) are necessary for the protection of life or safety.

(c) STATE AUTHORITY TO PROVIDE FOR ELIGIBILITY OF ILLEGAL ALIENS FOR STATE AND LOCAL PUBLIC BENEFITS.—A State may provide that an alien who is not lawfully present in the United States is eligible for a state or local public benefit for which the alien would otherwise be ineligible under subsection (a) of this section only through the enactment, after August 22, 1996, of a state law which affirmatively provides for the eligibility.

§ 15143. Ineligibility of aliens not lawfully present on basis of residence for higher education benefits

An alien who is not lawfully present in the United States is not eligible on the basis of residence within a State or a political subdivision of a State for any postsecondary education benefit provided after June 30, 1998, unless a national of the United States is eligible for the benefit (in no less an amount, duration, and scope) without regard to whether the national is a resident of the State or a political subdivision of the State.

§ 15144. State authority to limit eligibility of qualified aliens for state public benefits

(a) GENERAL.—Except as provided in this section, a State may determine the eligibility for any state public benefit of an alien who is—

(1) a qualified alien;

(2) a nonimmigrant under this title; or

(3) an alien who is paroled into the United States under section 6121 of this title for less than one year.

(b) EXCEPTION FOR REFUGEES AND ASYLEES.—A qualified alien is eligible for any state public benefit—

(1) until 5 years after the date—

(A) the alien is admitted to the United States as a refugee under section 5105 of this title;

(B) the alien is granted asylum under section 5106 of this title;

(C) the alien's removal is withheld under section 6716(d) of this title (or the alien's deportation was withheld under section 243(h) of the Immigration and Nationality Act as in effect immediately before April 1, 1997); or

(D) the alien is granted status as a Cuban or Hatian entrant as defined in section 13151 of this title; or

(2) if the alien is admitted to the United States under chapter 47 of this title.

(c) EXCEPTION FOR CERTAIN PERMANENT RESIDENT ALIENS.—A qualified alien is eligible for any state public benefit if the alien—

(1) is lawfully admitted for permanent residence under subtitle II of this title; and

(2)(A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act (42 U.S.C. 401 et seq.) or can be credited with the qualifying quarters as provided in section 15182 of this title; and

(B) in the case of a qualifying quarter creditable for a period beginning after December 31, 1996, did not receive any federal means-tested public benefit (as provided under section 15124 of this title) during the period.

(d) EXCEPTION FOR VETERANS AND ACTIVE DUTY PERSONNEL.—A qualified alien is eligible for any state public benefit if the alien is lawfully residing in any State and is—

(1) a veteran (as defined in section 101, 1101, or 1301 of title 38, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage, who fulfills the minimum active duty service requirements of section 5303A(d) of title 38;

(2) on active duty (except active duty for training) in the armed forces of the United States; or

(3)(A) the spouse or unmarried dependent child of an individual described in clause (1) or (2) of this subsection; or

(B) the unremarried surviving spouse of an individual described in clause (1) or (2) of this subsection who is deceased, if the marriage fulfills the requirements of section 1304 of title 38.

§ 15145. Authority of States and political subdivisions of States to limit assistance to aliens and to distinguish among classes of aliens in providing general cash public assistance

(a) GENERAL.—Subject to subsection (b) of this section, a State or political subdivision of a State may prohibit or otherwise limit or restrict the eligibility of aliens or classes of aliens for programs of general cash public assistance furnished under the law of the State or a political subdivision of a State.

(b) LIMITATION.—The authority provided for under subsection (a) of this section may be exercised only to the extent that any prohibitions, limitations, or restrictions imposed by a State or political subdivision of a State are not more restrictive than the prohibitions, limitations, or restrictions imposed under comparable federal programs. For purposes of this section, attribution to an alien of a sponsor's income and resources (as described in section 15125 of this title) for purposes of determining eligibility for, and the amount of, benefits shall be considered less restrictive than a prohibition of eligibility for those benefits.

§ 15146. Attribution of sponsor's income and resources to alien with respect to state programs

(a) OPTIONAL APPLICATION TO STATE PROGRAMS.—Except as provided in subsection (b) of this section, in determining the eligibility and the amount of benefits of an alien for any state or local public benefits, the State or political subdivision that offers the benefits may provide that the income and resources of the alien shall be deemed to include the income and resources of—

(1) an individual who executed an affidavit of support on behalf of the alien under section 6331 of this title; and

(2) the spouse of an individual described in clause (1) of this subsection.

(b) EXCEPTIONS.—Subsection (a) of this subsection does not apply with respect to the following state or local public benefits:

(1) assistance described in section 15142(b)(1) of this title.

(2) short-term, non-cash, in-kind emergency disaster relief.

(3) programs comparable to assistance or benefits under the National School Lunch Act (42 U.S.C. 1751 et seq.).

(4) programs comparable to assistance or benefits under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(5) public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by a communicable disease.

(6) payments for foster care and adoption assistance.

(7) programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General of a State, after consultation with the heads of appropriate departments, agencies, and instrumentalities, that—

(A) deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) are necessary for the protection of life or safety.

§ 15147. Authority to verify eligibility for State and local public benefits

A State or political subdivision of a State may require an applicant for a state or local public benefit to provide proof of eligibility.

SUBCHAPTER IV—VERIFICATION AND COMMUNICATION

§ 15161. Verification of eligibility for federal public benefits

(a) IN GENERAL.—(1)(A) No later than February 22, 1998, the Attorney General, after consultation with the Secretary of Health and Human Services, shall prescribe regulations requiring verification that an individual applying for a federal public benefit, to which the limitation under section 15121(a) and (b)(1)–(3) of this title applies, is a qualified alien and is eligible to receive the benefit. The regulations, to the extent feasible, shall require that information requested and exchanged be similar in form and manner to information requested and exchanged under section 1137 of the Social Security Act (42 U.S.C. 1320b–7).

(B) No later than November 3, 1997, the Attorney General, after consultation with the Secretary, shall issue interim verification guidance.

(2) No later than February 22, 1998, the Attorney General, in consultation with the Secretary, shall also establish procedures for an individual applying for a federal public benefit to provide proof of citizenship in a fair and nondiscriminatory manner.

(3) No later than November 3, 1997, the Attorney General shall prescribe regulations that set forth the procedures by which a state or local government, for purposes of determining whether the alien is eligible for benefits under section 15142 of this title, can verify whether an alien applying for a state or local public benefit is a qualified alien, a nonimmigrant under

this title, or an alien paroled into the United States under section 6121 of this title for less than one year.

(b) STATE COMPLIANCE.—No later than 24 months after the date the regulations described in subsection (a) are adopted, a State that administers a program that provides a federal public benefit shall have in effect a verification system that complies with the regulations.

§ 15162. Nonprofit charitable organizations not required to verify eligibility for federal public benefits or State or local public benefits

Subject to section 15161(a) of this title, a nonprofit charitable organization, in providing any federal public benefit or any state or local public benefit (as defined in section 15141 of this title), is not required under this chapter to determine, verify, or otherwise require proof of eligibility of any applicant for the benefits.

§ 15163. Communication between State and local governmental entities and the Immigration and Naturalization Service

Notwithstanding any other provision of federal, state, or local law, a state or local governmental entity may not be prohibited, or in any way restricted, from sending to, or receiving from, the Immigration and Naturalization Service information about the immigration status, lawful or unlawful, of an alien in the United States.

§ 15164. Notification and information reporting

Each federal department, agency, or instrumentality that administers a program to which subchapter II of this chapter applies shall, directly or through the States, post information and provide general notification to the public and to program recipients of changes in program eligibility under subchapter II.

SUBCHAPTER V—MISCELLANEOUS

§ 15181. Statutory construction

(a) LIMITATION.—(1) Nothing in this chapter may be construed as an entitlement or a determination of an individual's eligibility or fulfillment of the requisite requirements for any federal, state, or local governmental program, assistance, or benefits. For purposes of this chapter, eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage.

(2) Nothing in this chapter may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court in Plyler v. Doe, 457 U.S. 202 (1982).

(b) APPLICABLE ONLY TO ALIENS PRESENT IN UNITED STATES.—The limitations on eligibility for benefits under this chapter do not apply to the

eligibility for benefits of an alien who is not residing, or present, in the United States with respect to—

(1) wages, pensions, annuities, and other earned payments to which the alien is entitled resulting from employment, by or on behalf of a federal, state, or local government agency, that was not prohibited under this title during the period of the employment or service; or

(2) benefits under laws administered by the Secretary of Veterans Affairs.

(c) NOT APPLICABLE TO FOREIGN ASSISTANCE.—This chapter does not apply to any federal, state, or local governmental program, assistance, or benefits provided to an alien under any program of foreign assistance as determined by the Secretary of State in consultation with the Attorney General.

§ 15182. Qualifying quarters of coverage under the Social Security Act

(a) CREDITING QUARTERS FROM PARENT OR SPOUSE.—For purposes of this chapter, in determining the number of qualifying quarters of coverage under title II of the Social Security Act (42 U.S.C. 401 et seq.), an alien shall be credited with—

(1) all the qualifying quarters of coverage worked by a parent of the alien before the date on which the alien attains 18 years of age; and

(2) all the qualifying quarters of coverage worked by the spouse of the alien during their marriage if—

(A) the alien remains married to the spouse; or

(B) the spouse is deceased.

(b) LIMITATION.—A qualifying quarter of coverage that is creditable under title II of the Social Security Act (42 U.S.C. 401 et seq.) for a period beginning after December 31, 1996, may not be credited to an alien under subsection (a) of this section if the parent or spouse of the alien received a federal means-tested public benefit (as provided under section 15124 of this title) during the period for which the qualifying quarter is credited.

(c) AUTHORIZATION TO DISCLOSE INFORMATION.—Notwithstanding section 6103 of the Internal Revenue Code of 1986 (26 U.S.C. 6103), the Commissioner of Social Security may disclose quarters of coverage information about an alien and an alien's spouse or parents to a government agency for the purposes of this chapter.

§ 15183. Child nutrition programs

(a) SCHOOL LUNCH AND BREAKFAST PROGRAMS.—Notwithstanding any other provision of this chapter, an individual who is eligible to receive free public education benefits under state or local law is not ineligible to receive benefits provided under the school lunch program under the National School

Lunch Act (42 U.S.C. 1751 et seq.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) on the basis of citizenship, alienage, or immigration status.

(b) OTHER PROGRAMS.—This chapter does not prohibit or require a State to provide, to an individual who is not a citizen or a qualified alien, benefits under any of the following programs or provisions of law:

(1) Programs (except the school lunch program and the school breakfast program) under the National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(2) Section 4 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

(3) The Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note).

(4) The food distribution program on Indian reservations established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)).

SUBTITLE V—CITIZENSHIP AND NATIONALITY

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CHAPTER 201—CITIZENSHIP AND NATIONALITY AT BIRTH AND COLLECTIVE NATURALIZATION

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20110. Individuals born in Puerto Rico after April 10, 1899, and before January 13, 1941.
20111. Individuals born in or residing in the Virgin Islands after January 17, 1917, and before June 28, 1932.

§ 20101. Individuals born in the United States

(a) CITIZEN AT BIRTH.—The following individuals are citizens of the United States at birth:

(1) An individual born in, and subject to the jurisdiction of, the United States.

(2) An individual born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe.

(b) PROPERTY RIGHTS NOT AFFECTED.—Subsection (a)(2) of this section does not affect property rights.

§ 20102. Individuals born in American Samoa

(a) CITIZEN AT BIRTH.—An individual born in American Samoa is a citizen of the United States at birth if one of the individual's parents is a citizen of the United States who was physically present in the United States or American Samoa for at least one continuous year before the individual's birth.

(b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—An individual born in American Samoa who is not a citizen of the United States at birth under subsection (a) of this section is a national, but not a citizen, of the United States at birth.

§ 20103. Individuals found in the United States or American Samoa

(a) CITIZEN AT BIRTH.—An individual of unknown parents found in the United States before becoming 5 years of age is a citizen of the United States at birth unless shown, before the individual becomes 21 years of age, that the individual was not born in the United States.

(b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—An individual of unknown parents found in American Samoa before becoming 5 years of age is a national, but not a citizen, of the United States at birth unless shown, before the individual becomes 21 years of age, that the individual was not born in American Samoa.

§ 20104. Individuals born outside the United States and American Samoa

(a) CITIZEN AT BIRTH.—An individual born outside the United States and American Samoa is a citizen of the United States at birth if—

(1) both parents are citizens of the United States and at least one parent had a residence in the United States or American Samoa before the individual's birth;

(2) one parent is a national, but not a citizen, of the United States and the other parent is a citizen of the United States who was physically present in the United States or American Samoa for at least one continuous year before the individual's birth; or

(3) one parent is an alien and the other parent is a citizen of the United States who, before the individual's birth, was physically present in the United States or American Samoa for at least 5 years, at least 2 of which were after the citizen parent became 14 years of age.

(b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—(1) An individual born outside the United States and American Samoa is a national, but not a citizen, of the United States at birth if—

(A) both parents are nationals, but not citizens, of the United States who had a residence in the United States or American Samoa before the individual's birth; or

(B) one parent is an alien and the other parent is a national, but not a citizen, of the United States who, before the individual's birth, was physically present in the United States or American Samoa for at least 7 years in any continuous 10–year period—

(i) during which the national parent was not outside the United States and American Samoa for more than one continuous year; and

(ii) at least 5 years of which were after the national parent became 14 years of age.

(2) An individual born before August 27, 1986, is a national, but not a citizen, of the United States under paragraph (1)(B) of this subsection only as of the date the individual satisfies the Secretary of State that the individual meets the requirements of paragraph (1)(B).

(c) TIME OUTSIDE THE UNITED STATES INCLUDED IN PERIOD OF PRESENCE.—In subsections (a)(3) and (b)(1)(B) of this section, the period of physical presence includes, for an individual born after December 23, 1952, any period the citizen parent or national parent spent outside the United States and American Samoa—

(1) serving honorably in the armed forces of the United States or employed by the Federal Government or an international organization; or

(2) as a dependent unmarried son or daughter and member of the household of an individual serving honorably in the armed forces or employed by the Government or an international organization.

(d) INDIVIDUAL BORN BETWEEN 1941 AND 1952.—Subsection (a)(3) of this section also applies to an individual if—

(1) the individual was born outside the United States and American Samoa after January 12, 1941, and before December 24, 1952;

(2) one of the individual's parents is a citizen of the United States who served in the armed forces of the United States after December 31, 1946, and before December 24, 1952; and

(3) the individual did not become a citizen under section 201(g) or (i) of the Nationality Act of 1940 (ch. 876, 54 Stat. 1139).

(e) INDIVIDUAL BORN BEFORE MAY 24, 1934, WHOSE MOTHER WAS CITIZEN.—(1) An individual is a citizen of the United States at birth if—

(A) the individual was born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States;

(B) the individual's father was an alien; and

(C) the individual's mother was a citizen of the United States at the time of the individual's birth and had resided in the United States before the individual's birth.

(2) When an individual is claiming citizenship of the United States based on descent from an individual described in paragraph (1) of this subsection, any law that provided for loss of citizenship or nationality for failure to come to, reside in, or be physically present in the United States does not apply, including—

(A) the provisos of section 201(g) of the Nationality Act of 1940 (ch. 876, 54 Stat. 1139); and

(B) section 301(b) of the Immigration and Nationality Act (ch. 477, 66 Stat. 236) as in effect before October 10, 1978.

(3)(A) Except as provided in subparagraphs (B) and (C) of this paragraph, the immigration laws of the United States shall be applied to an individual as though paragraphs (1) and (2) of this subsection had been in effect on the date of the individual's birth.

(B) Retroactive application of paragraphs (1) and (2) of this subsection does not affect the citizenship of an individual who obtained citizenship under section 1993 of the Revised Statutes as in effect before May 24, 1934.

(C) Retroactive application of paragraphs (1) and (2) of this subsection does not confer citizenship on, or affect the validity of any denaturalization, exclusion, deportation, or removal action against, an individual who—

(i) is ineligible for admission to the United States under section 6311 of this title or was excludable from the United States under any predecessor provision; or

(ii) was excluded from, or would have been ineligible for admission to, the United States under the Displaced Persons Act of 1948 (ch. 647, 62 Stat. 1009) or section 14 of the Refugee Relief Act of 1953 (ch. 336, 67 Stat. 406).

(4) This subsection does not affect the application of any provision of law related to residence or physical presence in the United States for purposes of granting United States citizenship to an individual whose claim is based on paragraph (1) of this subsection or through whom the claim is derived.

§ 20105. Individuals born out of wedlock

(a) NATIONALITY AT BIRTH THROUGH MOTHER.—An individual born out of wedlock outside the United States after December 23, 1952, is—

(1) a citizen of the United States at birth if the mother is a citizen of the United States who was physically present in the United States or American Samoa for at least one continuous year before the individual's birth; or

(2) a national, but not a citizen, of the United States at birth if the mother is a national, but not a citizen, of the United States who was physically present in the United States or American Samoa for at least one continuous year before the individual's birth.

(b) NATIONALITY AT BIRTH THROUGH FATHER.—(1) Sections 20102(a) and 20104(a), (b)(1)(A), and (c) of this title apply to an individual born out of wedlock after December 23, 1952, if—

(A) a blood relationship between the individual and the father is established by clear and convincing evidence;

(B) the father—

(i) is a citizen of the United States or a national, but not a citizen, of the United States when the individual is born; and

(ii) if alive when the individual is born, agrees in writing to provide financial support for the individual until the individual is 18 years of age; and

(C) before the individual becomes 18 years of age—

(i) the individual is legitimated under the law of the individual's residence or domicile;

(ii) the father acknowledges paternity in writing under oath; or

(iii) a court of competent jurisdiction establishes paternity.

(2) Section 20104(a)(3) and (c) of this title applies to an individual born out of wedlock after January 12, 1941, and before December 24, 1952, if paternity is established and the individual is legitimated before becoming 21 years of age.

§ 20106. Individuals born in the Republic of Panama or the Canal Zone

(a) INDIVIDUAL BORN IN REPUBLIC OF PANAMA.—An individual born in the Republic of Panama after February 25, 1904, is a citizen of the United States at birth if one parent is a citizen of the United States employed by the Federal Government or the Panama Canal Commission or its successor when the individual is born.

(b) INDIVIDUAL BORN IN CANAL ZONE.—An individual born in the Canal Zone after February 25, 1904, and before October 1, 1979, is a citizen of the United States at birth if one parent was a citizen of the United States when the individual was born.

§ 20107. Noncitizen Indians born in Alaska after March 29, 1867, and before June 2, 1924

A noncitizen Indian born in Alaska after March 29, 1867, and before June 2, 1924, is a citizen of the United States as of June 2, 1924.

§ 20108. Citizens of the Republic of Hawaii and individuals born in Hawaii after August 11, 1898, and before April 30, 1900

The following individuals are citizens of the United States as of April 30, 1900:

(1) a citizen of the Republic of Hawaii on August 12, 1898.

(2) an individual born in Hawaii after August 11, 1898, and before April 30, 1900.

§ 20109. Individuals residing in or born in Guam after April 10, 1899, and before August 1, 1950

(a) CITIZENSHIP.—Except as provided in this section, the following individuals are citizens of the United States as of August 1, 1950:

(1) a Spanish subject or an individual born in Guam who resided in Guam on April 11, 1899, and continued to reside in the United States or a territory or possession of the United States through August 1, 1950.

(2) an individual born after April 11, 1899, and before August 1, 1950, whose parents are citizens under clause (1) of this subsection.

(3) an individual born in Guam after April 10, 1899, and before August 1, 1950, and subject to the jurisdiction of the United States.

(b) INDIVIDUAL WHO TOOK AFFIRMATIVE STEP TO PRESERVE OR ACQUIRE NATIONALITY OF A FOREIGN COUNTRY.—Subsection (a) of this section does not apply to an individual who took an affirmative step to preserve or acquire the nationality of a foreign country before August 1, 1950.

(c) INDIVIDUAL WHO DECLARED DESIRE TO REMAIN A NATIONAL OF A FOREIGN COUNTRY.—An individual under this section who was a national of a foreign country before August 1, 1950, and who declared under oath before August 1, 1952, in a way prescribed by the Attorney General, a desire to remain a national of the foreign country is not a national of the United States as of the date the declaration is made.

§ 20110. Individuals born in Puerto Rico after April 10, 1899, and before January 13, 1941

An individual is a citizen of the United States as of January 13, 1941, if the individual was—

(1) born in Puerto Rico after April 10, 1899, and before January 13, 1941;

(2) subject to the jurisdiction of the United States; and

(3) residing in the United States or a territory or possession of the United States on January 13, 1941.

§ 20111. Individuals born in or residing in the Virgin Islands after January 17, 1917, and before June 28, 1932

The following individuals are citizens of the United States as of February 25, 1927:

(1) an individual born in the Virgin Islands who—

(A) resided in the Virgin Islands on January 17, 1917, resided in the United States on February 25, 1927, and was not a citizen or subject of a foreign country on February 25, 1927;

(B) resided in the United States on January 17, 1917, resided in the Virgin Islands on February 25, 1927, and was not a citizen or subject of a foreign country on February 25, 1927;

(C) resided in the continental United States or a territory or possession of the United States on June 28, 1932, and was not a citizen or subject of a foreign country on June 28, 1932; or

(D) after January 16, 1917, and before February 25, 1927, was subject to the jurisdiction of the United States.

(2) a citizen of Denmark who—

(A) resided in the Virgin Islands on January 17, 1917;

(B) resided in the United States on February 25, 1927; and

(C) did not make the declaration to preserve Danish citizenship under article 6 of the treaty of August 4, 1916, between the United States and Denmark, or made the declaration and renounced it, or renounces it by a declaration before a court of record.

(3) an individual born after January 17, 1917, and before February 25, 1927, whose parents are citizens of the United States under clause (1) or (2) of this section.

CHAPTER 203—NATURALIZATION ELIGIBILITY

SUBCHAPTER I—ELIGIBILITY

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SUBCHAPTER I—ELIGIBILITY

§ 20301. General requirements

(a) NATURALIZATION REQUIREMENTS.—Except as otherwise provided, an individual may be naturalized as a citizen of the United States only if the individual satisfies the following requirements:

(1) The individual must be at least 18 years of age when the application for naturalization is filed.

(2) The individual must be lawfully admitted for permanent residence.

(3) The individual must have resided in the United States, after being lawfully admitted for permanent residence, continuously for at least 5 years immediately before filing the application.

(4) The individual must have been physically present in the United States for at least half of the 5 years immediately before filing the application.

(5) The individual must have resided in the State or district of the Immigration and Naturalization Service in the United States in which the application is filed for at least 3 months immediately before filing the application.

(6) The individual must reside in the United States continuously from the date of filing the application through the time the individual is naturalized.

(7) The individual must be able to demonstrate an understanding of the English language, including the ability to speak words in ordinary usage and the ability to read and write simple words and phrases in ordinary usage, without extraordinary or unreasonable conditions being required.

(8) The individual must be able to demonstrate knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.

(9) The individual must have been of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States for at least 5 years immediately before filing the application, and remain so from the date of filing the application through the time the individual is naturalized.

(b) CONDUCT MORE THAN 5 YEARS BEFORE APPLICATION FILED.—Conduct more than 5 years before an application is filed may be considered in deciding whether an individual satisfies the requirements of subsection (a)(9) of this section.

(c) TEMPORARY ABSENCES.—(1) An absence from the United States of not more than 6 months does not break the continuity of residence required under subsection (a) of this section.

(2) An absence of more than 6 months but less than one year breaks the continuity of residence, unless the individual satisfies the Attorney General that the individual did not abandon residence in the United States during the absence.

(3) Except as otherwise provided, an absence of one year breaks the continuity of residence.

(d) PROHIBITION ON DISCRIMINATION.—The right of an individual to be naturalized as a citizen of the United States may not be denied or abridged because of race or sex or because the individual is married.

§ 20302. Temporary absences for certain employment

(a) RESIDENCE.—An individual temporarily absent from the United States (even though for a year or more) is deemed to be residing in the United States under section 20301(a)(3) and (6) of this title during the absence if—

(1) the individual has resided and been physically present in the United States, after being lawfully admitted for permanent residence, continuously for at least one year;

(2) after the one-year period described in clause (1) of this subsection—

(A) the individual is employed by or under a contract with the Federal Government;

(B) the individual is employed by or under a contract with, and carrying out scientific research for, a United States research institution recognized by the Attorney General;

(C)(i) the individual is employed by a United States firm or corporation developing foreign trade and commerce of the United States, or by a subsidiary of the firm or corporation more than 50 percent of the stock of which is owned by the firm or corporation; and

(ii) the individual is developing foreign trade and commerce of the United States or the individual's residence outside the United States is necessary to protect the property rights of the firm or corporation in a foreign country; or

(D) the individual—

(i) is employed by a public international organization of which the United States is a member by treaty or law; and

(ii) was not employed by the organization until after being lawfully admitted for permanent residence;

(3) before beginning the employment and before the end of one year of continuous absence from the United States, the individual satisfies the Attorney General that the absence will be for a purpose described in clause (2) of this subsection; and

(4) the individual satisfies the Attorney General that the absence was for the purpose for which the absence was approved.

(b) PHYSICAL PRESENCE.—(1) Except as provided in paragraph (2) of this subsection, an individual satisfying subsection (a) of this section still must satisfy the physical presence requirement of section 20301(a)(4) of this title.

(2) An individual employed by or under a contract with the Government and satisfying subsection (a) of this section does not have to satisfy the physical presence requirement of section 20301(a)(4) of this title.

(3) An individual employed by or under a contract with the Central Intelligence Agency may satisfy the physical presence requirement of subsection (a)(1) of this section by physical presence at any time before filing the application for naturalization.

(c) SPOUSES, UNMARRIED SONS, AND UNMARRIED DAUGHTERS.—A spouse, unmarried son, or unmarried daughter of an individual satisfying subsection (a) of this section is entitled to the same benefits under subsection (a) as the individual during the period the spouse, son, or daughter resided outside the United States as a dependent member of the household of the individual.

§ 20303. Temporary absences to perform religious functions

An individual temporarily absent from the United States is deemed to be residing and physically present in the United States under section 20301(a)(3), (4), and (6) of this title during the absence if the individual—

(1) has resided and been physically present in the United States, after being lawfully admitted for permanent residence, continuously for at least one year before filing the application for naturalization;

(2)(A) is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization in the United States; or

(B) is serving only as a missionary, brother, nun, or sister of a religious denomination or an interdenominational mission organization having an organization in the United States; and

(3) satisfies the Attorney General that the absence was only to perform the functions or service described in clause (2) of this section.

§ 20304. Individuals married to citizens of the United States

(a) GENERAL.—An individual married to a citizen of the United States may be naturalized without regard to section 20301(a)(3) or (4) of this title if the individual—

(1) resided in the United States, after being lawfully admitted for permanent residence, continuously for at least 3 years immediately before filing the application for naturalization;

(2) lived in marriage with the citizen spouse for the 3-year period, with the spouse being a citizen during all of that period; and

(3) was physically present in the United States for at least half of the 3-year period.

(b) CITIZEN SPOUSES EMPLOYED OUTSIDE UNITED STATES.—An individual married to a citizen of the United States may be naturalized without regard to section 20301(a) (3)–(6) of this title if—

(1) the citizen spouse is—

(A) employed by the Federal Government;

(B) employed by a United States research institution recognized by the Attorney General;

(C) employed by a United States firm or corporation developing foreign trade and commerce of the United States or by a subsidiary of the firm or corporation;

(D) employed by a public international organization of which the United States is a member by treaty or law;

(E) authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization in the United States; or

(F) serving only as a missionary of a religious denomination or an interdenominational mission organization having a bona fide organization in the United States;

(2) the citizen spouse is regularly stationed outside the United States in the employment or activity described in clause (1) of this subsection;

(3) the individual declares in good faith to the Attorney General an intention to reside in the United States immediately after the employ-

ment or activity of the citizen spouse outside the United States ends; and

(4) the individual is in the United States at the time of naturalization.

(c) SURVIVING SPOUSES OF CITIZENS IN ARMED FORCES.—(1) An individual may be naturalized without regard to section 20301(a) (3)–(6) of this title if—

(A) the individual is the surviving spouse of a citizen of the United States who died when serving honorably on active duty in the armed forces of the United States; and

(B) the individual and the citizen spouse were living in marriage at the time of the death.

(2) This subsection does not apply to an individual who is the surviving spouse of a citizen granted citizenship posthumously under section 20315 of this title.

§ 20305. Children born of an alien parent and a citizen parent

(a) GENERAL.—A child born outside the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents at the time of the child's birth was a citizen of the United States and remains a citizen, is naturalized as a citizen of the United States when the following events occur, if they occur before the child becomes 18 years of age:

(1) The alien parent is naturalized.

(2) The child begins residing in the United States after being lawfully admitted for permanent residence.

(b) ADOPTED CHILD.—Subsection (a) of this section applies to an adopted child only if the child, at the time of the naturalization of the alien parent, is—

(1) in the custody of the adoptive parents; and

(2) residing in the United States after being lawfully admitted for permanent residence.

§ 20306. Children born of alien parents or a parent who lost citizenship

(a) GENERAL.—A child born outside the United States of alien parents, or of one alien parent and one parent who was a citizen of the United States at the time of the child's birth but later lost citizenship, is naturalized as a citizen of the United States when the following events occur, if they before the child becomes 18 years of age:

(1)(A) Both parents are naturalized;

(B) the surviving parent is naturalized if one parent is deceased;

(C) the parent with legal custody is naturalized if the parents are legally separated; or

(D) the mother is naturalized if the child was born out of wedlock and paternity is not established by legitimation.

(2) The child begins residing in the United States after being lawfully admitted for permanent residence.

(b) ADOPTED CHILD.—Subsection (a) of this section applies to an adopted child only if the child, at the time of the naturalization of the alien parent or parents, is—

(1) in the custody of the adoptive parents; and

(2) residing in the United States after being lawfully admitted for permanent residence.

§ 20307. Children having a citizen parent at time of application

(a) FILING OF APPLICATION.—A parent who is a citizen of the United States may file an application with the Attorney General for a certificate of citizenship for a child born outside the United States. The application may be filed outside the United States.

(b) REQUIREMENTS.—The Attorney General shall approve the application if satisfied that—

(1) the parent is a citizen of the United States;

(2) the child is—

(A) less than 18 years of age;

(B) lawfully admitted to, and physically present in, the United States; and

(C) in the legal custody of the citizen parent;

(3) if the child is adopted, the child—

(A) was adopted under 16 years of age by the citizen parent; and

(B) meets the requirements of section 108(a) (5) or (6) of this title; and

(4) if the citizen parent has not been physically present in the United States or American Samoa for at least 5 years, at least 2 of which were after becoming 14 years of age—

(A) the child is residing permanently in the United States with the citizen parent after being lawfully admitted for permanent residence; or

(B) a citizen parent of the citizen parent has been physically present in the United States or American Samoa for at least 5 years, at least 2 of which were after becoming 14 years of age.

(c) OATH.—The child must take, and sign, in front of an immigration officer in the United States the oath required by section 20509 of this title, unless waived under section 20509(c).

(d) CERTIFICATE OF CITIZENSHIP.—When the requirements of this section are met, the child becomes a citizen of the United States and shall be issued a certificate of citizenship by the Attorney General.

§ 20308. Disabled and elderly individuals

(a) DISABLED INDIVIDUALS.—An individual may be naturalized without regard to section 20301(a) (7) or (8) of this title if the individual is unable to satisfy those requirements because of physical or developmental disability or mental impairment.

(b) ELDERLY INDIVIDUALS.—(1) An individual may be naturalized without regard to section 20301(a)(7) of this title if, on the date the application for naturalization is filed, the individual is—

(A) at least 50 years of age and has lived in the United States for at least 20 years after being lawfully admitted for permanent residence; or

(B) at least 55 years of age and has lived in the United States for at least 15 years after being lawfully admitted for permanent residence.

(2) The Attorney General shall prescribe regulations providing for special consideration (as decided by the Attorney General) in satisfying section 20301(a)(8) of this title for an individual who, on the date the application for naturalization is filed, is at least 65 years of age and has lived in the United States for at least 20 years after being lawfully admitted for permanent residence.

§ 20309. Individuals employed by United States nonprofit organizations disseminating information

An individual may be naturalized without regard to section 20301(a)(3)–(6) of this title if the individual—

(1) is employed by a nonprofit organization incorporated in the United States that is principally engaged outside the United States in disseminating, through communication media, information significantly promoting United States interests outside the United States and that is recognized by the Attorney General;

(2) has been employed by the organization continuously for at least 5 years after being lawfully admitted for permanent residence;

(3) files the application for naturalization when employed by the organization or within 6 months after ending the employment;

(4) is in the United States at the time of naturalization; and

(5) declares in good faith to the Attorney General an intention to reside in the United States immediately after the employment ends.

§ 20310. Individuals making extraordinary contributions to the security of the United States

(a) RESIDENCE AND PHYSICAL PRESENCE.—(1) An individual may be naturalized without regard to section 20301(a) (3)–(6) of this title if—

(A) the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration and Naturalization decide that the individual has made an extraordinary contribution to the security of the United States or to the conduct of United States intelligence activities; and

(B) the individual resides in the United States continuously for at least one year before being naturalized.

(2) This section does not apply to an individual described in section 5106(b)(2) (A)–(E) of this title.

(b) NONAPPLICATION OF CERTAIN GROUNDS OF INADMISSIBILITY.—Section 20331 of this title does not apply to an individual described in subsection (a) of this section.

(c) ADMINISTRATION OF OATH.—An applicant for naturalization under this section may be administered the oath required by section 20509 of this title by any district court of the United States, without regard to the residence of the applicant. A proceeding under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods, and activities.

(d) NUMERICAL LIMIT.—Not more than 5 individuals may be naturalized in a fiscal year under this section.

(e) NOTICE TO CONGRESSIONAL COMMITTEES.—The Director shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives within a reasonable time before an application is filed under this section.

§ 20311. Spouses and children of aliens who participated in United States intelligence activities

(a) DEFINITIONS.—In this section—

(1) ''child'' has the same meaning given that term in section 108(b)(1) (A)–(E) of this title, without regard to age or marital status.

(2) ''spouse'' means the wife or husband of a deceased alien referred to in subsection (b) of this section who was married to the alien during the time the alien participated in the conduct of United States intelligence activities.

(b) RESIDENCE AND PHYSICAL PRESENCE.—(1) An individual may be naturalized without regard to section 20301(a) (3)–(6) of this title if—

(A) the individual is the spouse or child of a deceased alien whose death resulted from the intentional and unauthorized disclosure of classified information regarding the alien's participation in the conduct of United States intelligence activities;

(B) after being lawfully admitted for permanent residence, the individual resides in the United States continuously for at least one year before being naturalized; and

(C) the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration and Naturalization approve.

(2) This section does not apply to an individual described in section 5106(b)(2) (A)–(E) of this title.

(c) NONAPPLICATION OF CERTAIN GROUNDS OF INADMISSIBILITY.—Section 20331 of this title does not apply to an individual described in subsection (b) of this section.

(d) ADMINISTRATION OF OATH.—An applicant for naturalization under this section may be administered the oath required by section 20509 of this title by the Attorney General or any district court of the United States, without regard to the residence of the applicant. A proceeding under this subsection shall be conducted in a manner consistent with the protection of intelligence sources, methods, and activities.

§ 20312. Individuals with service on American vessels

(a) DEFINITION.—In this section, ''American vessel'' means a vessel—

(1)(A) operated by the Federal Government; and

(B) the full legal and equitable title to which is held by the Government; or

(2)(A) whose home port is in the United States; and

(B)(i) documented under chapter 121 of title 46; or

(ii) the full legal and equitable title to which is held by a citizen of the United States or a corporation organized under the laws of a State.

(b) RESIDENCE AND PHYSICAL PRESENCE.—An individual serving honorably or with good conduct in any capacity (except as a member of the armed forces of the United States) on an American vessel is deemed to be residing and physically present in the United States under section 20301(a) (3), (4), and (6) of this title during the period of service if the service is—

(1) after the individual has been lawfully admitted for permanent residence; and

(2) within 5 years immediately before the date the individual files an application for naturalization.

(c) PROOF OF SERVICE ON VESSEL.—Service on a vessel described in subsection (a)(1) of this section shall be proved by a certificate from the department, agency, or instrumentality in the executive branch of the Gov-

ernment having custody of the records of the service. Service on a vessel described in subsection (a)(2) of this section may be proved by a certificate from the master of the vessel.

§ 20313. Individuals with 3 years of service in the armed forces

(a) RESIDENCE AND PHYSICAL PRESENCE.—(1) Except as provided in paragraph (2) of this subsection, an individual may be naturalized without regard to section 20301(a) (3)–(5) of this title if the individual—

(A) has served honorably in the armed forces of the United States for periods totaling at least 3 years;

(B) has never been discharged from the service except honorably; and

(C) files an application for naturalization when still in the service or within 6 months after being discharged from the service.

(2) If the service was not continuous, the individual must establish the individual's residence in the United States and the State or district of the Immigration and Naturalization Service in the United States in which the application is filed for—

(A) any period between periods of service during the 5 years immediately before filing the application; and

(B) any period between the end of the individual's service and the filing of the application.

(b) PROOF OF HONORABLE SERVICE.—(1) Before a hearing on the individual's application, the individual shall provide the Attorney General with a certificate from the appropriate executive department of the Federal Government showing that—

(A) the individual served honorably during all periods on which the individual relies for naturalization under this section; and

(B) the individual has never been discharged from the service except honorably.

(2) A certificate under paragraph (1) of this subsection is conclusive evidence of the service and discharge.

(c) PROOF OF GOOD MORAL CHARACTER, ATTACHMENT TO PRINCIPLES, AND FAVORABLE DISPOSITION.—Proof of honorable service under this section is proof that the individual was of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States during the period of the service.

(d) EFFECT OF FINDING OF DEPORTABILITY.—Notwithstanding section 20504(b) of this title, an individual may be naturalized immediately under this section if the individual is in the armed forces when being naturalized

and was examined by a representative of the Service before filing an application for naturalization.

(e) APPLICATIONS FILED MORE THAN 6 MONTHS AFTER DISCHARGE.—An individual who satisfies subsection (a)(1)(A) and (B) of this section, but files an application for naturalization more than 6 months after being discharged, is deemed to be residing and physically present in the United States during any periods of service within 5 years immediately before filing the application.

§ 20314. Individuals with service in the armed forces during war or military hostilities

(a) GENERAL.—Notwithstanding sections 20317 and 20504(b) of this title, an individual may be naturalized without regard to section 20301(a)(1) and (3)–(6) of this title if—

(1) the individual served honorably on active duty in the armed forces of the United States as an alien or as a national, but not a citizen, of the United States at any time during a period—

(A) from April 6, 1917, through November 11, 1918;

(B) from September 1, 1939, through December 31, 1946;

(C) from June 25, 1950, through July 1, 1955;

(D) from February 28, 1961, through October 15, 1978; or

(E) the President designates by executive order as a period in which the armed forces are engaged in military operations involving armed conflict with a hostile foreign force;

(2) the individual was—

(A) in the United States or American Samoa at the time of enlistment or induction into the armed forces;

(B) in the Canal Zone at the time of enlistment or induction if the enlistment or induction was before October 1, 1979; or

(C) lawfully admitted for permanent residence after the enlistment or induction; and

(3) the individual, if discharged from the armed forces, was discharged honorably.

(b) SERVICE IN REGULAR ARMY UNDER THE ACT OF JUNE 30, 1950.—(1) Notwithstanding sections 20317 and 20504(b) of this title, an individual may be naturalized without regard to section 20301(a)(1) and (3)–(6) of this title if the individual—

(A) enlisted or re-enlisted as an alien in the Regular Army under the Act of June 30, 1950 (ch. 443, 64 Stat. 316);

(B) served at least 5 years in the Regular Army; and

(C) was discharged honorably from the Regular Army.

(2) An individual described in paragraph (1) of this subsection is deemed to have been lawfully admitted for permanent residence if the individual—

(A) entered the United States, American Samoa, or the Canal Zone under military orders after enlistment; and

(B) is otherwise eligible to be naturalized.

(c) PERIOD OF SERVICE AVAILABLE ONLY ONCE.—A period of service in the armed forces may not be used as the basis for naturalization under this section if the individual has been naturalized previously because of the same period of service.

(d) PROOF OF HONORABLE SERVICE AND DISCHARGE.—Service required by this section shall be proved by a certificate from the executive department of the Federal Government under which the individual served. The head of the executive department shall decide, and the certificate shall state, whether the individual served honorably on active duty during a period specified in this section and was discharged honorably. An individual's service and discharge are not honorable under this section if the individual was discharged from the armed forces because of alienage or was a conscientious objector who performed no active duty or refused to wear the uniform.

§ 20315. Posthumous naturalization of individuals who die during service in the armed forces during war or military hostilities

(a) GRANTING CITIZENSHIP.—The Attorney General shall grant posthumous citizenship, as of the time of death, to an individual eligible under subsection (b) of this section if the Attorney General approves a request for posthumous citizenship for the individual under subsection (c) of this section.

(b) ELIGIBILITY.—(1) An individual is eligible for posthumous citizenship under this section if the individual—

(A) served honorably on active duty in the armed forces of the United States as an alien or as a national, but not a citizen, of the United States during any period described in section 20314(a)(1) of this title;

(B) died as a result of injury or disease incurred in or aggravated by that service; and

(C) satisfied the requirements of section 20314(a)(2) of this title.

(2) The head of the executive department of the Federal Government under which the individual served shall decide whether the individual satisfied the requirements of paragraph (1)(A) and (B) of this subsection.

(c) REQUESTS.—A request to grant posthumous citizenship to an individual under this section may be filed only by an individual who is, as defined by the Attorney General, the next of kin or another representative. The Attorney General shall approve the request if—

(1) the request is filed not later than 2 years after the date of the individual's death;

(2) the request includes a certificate from the executive department under which the individual served stating that the individual satisfied the requirements of subsection (b)(1)(A) and (B) of this section; and

(3) the Attorney General finds that the individual satisfied the requirements of subsection (b)(1)(C) of this section.

(d) DOCUMENTATION.—If the Attorney General approves a request under this section, the Attorney General shall provide the individual who filed the request with a document stating that the Government considers the individual for whom the request was filed to have been a citizen of the United States at the time of the individual's death.

(e) NO BENEFITS TO SURVIVORS.—The granting of posthumous citizenship to an individual under this section does not provide any benefits under this title for any relative of the individual.

§ 20316. Individuals who lost citizenship by entering the armed forces of a foreign country

(a) GENERAL.—An individual may be naturalized without regard to section 20301(a)(3)–(6) or (9) of this title if—

(1) the individual, when a citizen of the United States, served in the armed forces of a foreign country at any time during the period from September 1, 1939, through September 2, 1945;

(2) that foreign country was at war with a foreign country with which the United States was at war after December 7, 1941, and before September 2, 1945;

(3) the individual lost citizenship of the United States by entering, serving in, or taking an oath or obligation to enter or serve in, those armed forces;

(4) the individual intends to reside permanently in the United States; and

(5) the individual has been of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States for at least 5 years immediately before taking the oath required for naturalization.

(b) PREVIOUS STATUS REACQUIRED.—An individual naturalized under this section or section 323 of the Nationality Act of 1940 (ch. 876, 54 Stat. 1149) has, from the date of naturalization, the same status as a citizen at birth or a naturalized citizen that the individual had before losing citizenship. Naturalization of the individual does not confer citizenship retroactively on the individual for the period that the individual was not a citizen of the United States.

(c) NONAPPLICATION TO CERTAIN INDIVIDUALS.—This section does not apply to an individual who served in the armed forces of a foreign country at any time during the period from September 1, 1939, through September 2, 1945, when that country was at war with the United States.

§ 20317. Alien enemies

(a) WHEN INDIVIDUAL IS ALIEN ENEMY.—In this section, an alien enemy is an individual who is a native, citizen, subject, or denizen of a country or sovereignty at war with the United States. That individual ceases to be an alien enemy when the hostilities between the United States and the individual's country or sovereignty are declared ended by proclamation of the President or concurrent resolution of Congress.

(b) SPECIFIC CONDITIONS FOR NATURALIZATION.—An alien enemy may be naturalized as a citizen of the United States only if—

(1) the alien enemy's application for naturalization was filed before the war began, except that the Attorney General may waive this requirement;

(2) the alien enemy's loyalty is established on investigation by the Attorney General; and

(3) the alien enemy is otherwise eligible to be naturalized.

(c) NOTICE AND CONTINUANCE.—An examination or hearing on an alien enemy's application for naturalization may be held only after 90 days' notice to the Attorney General. If the Attorney General objects to consideration of the application, the application shall be continued for as long as the Attorney General requires.

(d) LAWFUL APPREHENSION AND REMOVAL ALLOWED.—This section does not prevent the lawful apprehension and removal of an alien enemy.

§ 20318. Individuals born outside the United States who lost citizenship by not coming to the United States

(a) GENERAL.—An individual may be naturalized by taking the oath required for naturalization, without filing an application for naturalization or complying with any other requirement for naturalization, if the individual—

(1) was a citizen of the United States at birth;

(2) lost that citizenship by failing to comply with the physical presence requirement of section 301(b) of the Immigration and Nationality Act (ch. 477, 66 Stat. 236) as in effect before October 10, 1978; and

(3) is not ineligible to be naturalized under section 20331 of this title.

(b) OATH PROCEDURE.—(1) An individual satisfying subsection (a) of this section may take the oath—

(A) in the United States before the Attorney General or a judge or a clerk of a court described in section 20511 of this title; or

(B) outside the United States before a diplomatic or consular officer.

(2) The Attorney General, court, embassy, legation, or consulate, as appropriate, shall—

(A) enter the oath in the records of the Attorney General, court, embassy, legation, or consulate; and

(B) deliver to the individual, on the individual's request, a certified copy of the proceedings and oath, under seal of the Department of Justice, court, embassy, legation, or consulate, at a cost of not more than $5.

(3) A certified copy of the proceedings and oath delivered under paragraph (2) of this subsection is evidence of the facts stated in the copy in any court of record, judicial tribunal, or federal department, agency, or instrumentality.

(c) PREVIOUS STATUS REACQUIRED.—An individual naturalized under this section has, from the date of naturalization, the status of a citizen of the United States at birth. Naturalization of the individual does not confer citizenship on the individual retroactively for any period that the individual was not a citizen of the United States.

§ 20319. Women who lost citizenship through marriage

(a) GENERAL.—(1) A woman may be naturalized without regard to section 20301(a)(3)–(6) of this title if she—

(A) lost citizenship of the United States—

(i) by marrying an alien before September 22, 1922;

(ii) by marrying after September 21, 1922, an alien who was ineligible to become a citizen of the United States; or

(iii) through her husband's loss of citizenship of the United States before September 22, 1922; and

(B) has taken no affirmative action to acquire the nationality of another country except by marriage.

(2) A woman described in paragraph (1) of this subsection may be naturalized without regard to section 20301(a)(2) of this title if she has resided in the United States continuously since the date of her marriage.

(b) NATURALIZATION ON TAKING OATH FOR CERTAIN WOMEN.—(1) A woman may be naturalized by taking the oath required for naturalization, without filing an application for naturalization or complying with any other requirement for naturalization, if—

(A) she was a citizen of the United States at birth;

(B) she lost that citizenship by marrying—

(i) an alien before September 22, 1922; or

(ii) after September 21, 1922, an alien who was ineligible to become a citizen of the United States;

(C) her marriage to that alien ended after January 12, 1941;

(D) she has taken no affirmative action to acquire the nationality of another country except by marriage; and

(E) she is not ineligible to be naturalized under section 20331 of this title.

(2) A woman satisfying paragraph (1) of this subsection may take the oath—

(A) in the United States before the Attorney General or a judge or a clerk of a court described in section 20511 of this title; or

(B) outside the United States before a diplomatic or consular officer.

(3) The Attorney General, court, embassy, legation, or consulate, as appropriate, shall—

(A) enter the oath in the records of the Attorney General, court, embassy, legation, or consulate; and

(B) deliver to the woman, on her request, a certified copy of the proceedings and oath, under seal of the Department of Justice, court, embassy, legation, or consulate, at a cost of not more than $5.

(4) A certified copy of the proceedings and the oath delivered under paragraph (3) of this subsection is evidence of the facts stated in the copy in any court of record, judicial tribunal, or federal department, agency, or instrumentality.

(c) PREVIOUS STATUS REACQUIRED.—A woman naturalized under this section or section 317(a) or (b) of the Nationality Act of 1940 (ch. 876, 54 Stat. 1146) has, from the date of naturalization, the same status as a citizen at birth or a naturalized citizen that she had before losing citizenship. Naturalization of the woman does not confer citizenship on the woman retroactively for any period that she was not a citizen of the United States.

§ 20320. Nationals residing in American Samoa

Residence and physical presence in American Samoa are deemed to be residence and physical presence in the United States under section 20301(a)(3), (4), and (6) of this title for an individual who—

(1) is a national, but not a citizen, of the United States; and

(2) becomes a resident of a State.

§ 20321. Philippine citizens who entered before May 1, 1934

An individual who was a citizen of the Commonwealth of the Philippines on July 2, 1946, entered the United States before May 1, 1934, and has resided in the United States continuously since entry, is deemed to have been lawfully admitted for permanent residence.

SUBCHAPTER II—INELIGIBILITY

§ 20331. Individuals dangerous to the welfare, safety, and security of the United States

(a) GROUNDS FOR DISALLOWING NATURALIZATION.—An individual may not be naturalized as a citizen of the United States if, at any time during the 10 years before filing the application for naturalization or from the filing of the application through the time the individual is naturalized, the individual—

(1) advocates establishing—

(A) a totalitarian communist dictatorship in a country through an internationally coordinated communist movement; or

(B) a totalitarian dictatorship in the United States;

(2) advocates or teaches—

(A) opposition to all organized government;

(B) the overthrow by unconstitutional means of the Federal Government or of all forms of law;

(C) the duty, necessity, or propriety of unlawfully assaulting or killing a particular officer or officers generally of an organized government because of the official position of the officer or officers;

(D) unlawfully damaging or destroying property; or

(E) sabotage;

(3) writes, publishes, causes to be written or published, knowingly distributes, prints, displays, or causes to be distributed, printed, published, or displayed, or knowingly possesses to publish, distribute, or display, written material—

(A) advocating or teaching opposition to all organized government; or

(B) advocating—

(i) the overthrow by unconstitutional means of the Federal Government or of all forms of law;

(ii) the duty, necessity, or propriety of unlawfully assaulting or killing of a particular officer or officers generally of an organized government because of the official position of the officer or officers;

(iii) unlawfully damaging or destroying property;

(iv) sabotage;

(v) establishing a totalitarian communist dictatorship in a country through an internationally coordinated communist movement; or

(vi) establishing a totalitarian dictatorship in the United States; or

(4) is a member of or affiliated with—

(A) the Communist Party of the United States;

(B) another totalitarian party of the United States;

(C) the Communist Political Association;

(D) the Communist or another totalitarian party of a State, a foreign country, or a political or geographical subdivision of a foreign country;

(E) a section, subsidiary, branch, affiliate, or subdivision of an organization described in subclauses (A)–(D) of this clause (4);

(F) the direct predecessor or successor of an organization described in subclauses (A)–(D) of this clause (4), regardless of the name the organization uses or used;

(G) an organization advocating establishing a totalitarian communist dictatorship in a country through an internationally coordinated communist movement, or establishing a totalitarian dictatorship in the United States, through—

(i) the organization's statements; or

(ii) written material issued or published under the authority of or with the consent of the organization, or paid for by money provided by the organization;

(H) an organization advocating or teaching—

(i) opposition to all organized government;

(ii) the overthrow by unconstitutional means of the Federal Government or of all forms of law;

(iii) the duty, necessity, or propriety of unlawfully assaulting or killing a particular officer or officers generally of an organized government because of the official position of the officer or officers;

(iv) unlawfully damaging or destroying property; or

(v) sabotage; or

(I) an organization writing, distributing, printing, publishing, displaying, causing to be written, distributed, printed, published, or displayed, or possessing to distribute, publish, issue, or display, written material described in clause (3) of this subsection.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to an individual who satisfies the Attorney General that the individual's membership or affiliation with an organization described in subsection (a)—

(1) is or was involuntary;

(2) ended before the individual's 16th birthday;

(3) is or was by operation of law; or

(4) was for the purpose of, and necessary for, obtaining employment, food rations, or other essentials of living.

§ 20332. Deserters and draft evaders

An individual convicted of desertion under section 885 of title 10 or of draft evasion under section 12(h) of the Military Selective Service Act (50 App. U.S.C. 462(h)) is ineligible to become a citizen of the United States.

§ 20333. Aliens exempted or discharged from the armed forces or the National Security Training Corps

(a) GENERAL.—Except as provided in subsection (b) of this section, an alien who applies for and is granted an exemption or discharge from serving or training in the armed forces of the United States or the National Security Training Corps because of alienage is ineligible to become a citizen of the United States. Records of the Selective Service System and the Department of Defense are conclusive about whether the alien was granted an exemption or discharge because of alienage.

(b) EXEMPTION PROVIDED UNDER TREATY.—An alien exercising a right under a treaty to be exempted from serving or training in the armed forces of the United States is not ineligible under this section or any other law to become a citizen of the United States if, before exercising the right, the alien served in the armed forces of a foreign country of which the alien was a national.

CHAPTER 205—NATURALIZATION PROCEDURE

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§ 20501. Authority to naturalize

(a) AUTHORITY OF ATTORNEY GENERAL.—Only the Attorney General has authority to naturalize an individual as a citizen of the United States.

(b) ONLY PROCEDURE.—An individual may be naturalized as a citizen of the United States only as provided in this subtitle.

§ 20502. Declarations of intention

(a) GENERAL.—An individual at least 18 years of age who is residing in the United States as an alien lawfully admitted for permanent residence may make a declaration of intention to be naturalized as a citizen of the United States. However, a declaration is not required for naturalization, does not confer nationality or the right to nationality on an alien, and is not evidence of lawful admission for permanent residence.

(b) PROCEDURE.—(1) A declaration under this section must be filed with the Attorney General in duplicate, accompanied by an application for the declaration. The application must be approved by the Attorney General.

(2) The application must include 3 identical photographs of the alien. One photograph shall be attached to the declaration issued by the Attorney General and the others to the copies of the declaration retained by the Attorney General.

(c) REPLACEMENT DECLARATION.—The Attorney General shall issue a new declaration to an alien applying to replace a declaration that the Attorney General finds is lost, destroyed, or mutilated, and if mutilated, is surrendered to the Attorney General. A person coming into possession of a declaration that was lost shall surrender the declaration to the Attorney General.

§ 20503. Applications for naturalization

(a) GENERAL.—An application for naturalization must be filed—

(1) with the Attorney General, in the office of the Immigration and Naturalization Service for the district in which the individual resides; and

(2) in person, except when the Attorney General decides the individual has an illness or other disability sufficiently incapacitating to prevent the individual from filing in person.

(b) FORM AND CONTENTS.—The application for naturalization must—

(1) include a statement that the individual has been lawfully admitted for permanent residence;

(2) include a statement of facts the Attorney General believes may be material to the individual's naturalization and required to be proved under this subtitle;

(3) include 3 identical photographs of the individual signed by the individual;

(4) be sworn to by the individual; and

(5) be signed by the individual if physically able to write.

(c) EARLY FILING FOR INDIVIDUALS SUBJECT TO CONTINUOUS RESIDENCE REQUIREMENT.—An individual subject to a continuous residence requirement under chapter 203 of this title may file an application for natu-

ralization not more than 3 months before the date the individual would first satisfy that requirement.

(d) TRANSFER TO ANOTHER DISTRICT.—If an individual applying for naturalization moves from the district of the Service in the United States in which the application is pending, the individual may request the Attorney General to transfer the application to another district. If the Attorney General transfers the application, the proceedings on the application shall continue as though the application had been filed originally in the district to which it is transferred.

(e) WITHDRAWAL AND LACK OF PROSECUTION.—An application for naturalization may be withdrawn only with the consent of the Attorney General. If the Attorney General does not consent to the withdrawal, the application shall be decided on its merits. If the applicant does not prosecute the application, the Attorney General may dismiss it for lack of prosecution. If the Attorney General does not dismiss the application for lack of prosecution, it shall be decided on its merits.

§ 20504. Proof of lawful entry and effect of removal proceedings

(a) PROOF OF LAWFUL ENTRY.—An applicant for naturalization has the burden of proving that the applicant entered the United States lawfully. To prove a lawful entry, the applicant is entitled to the production of—

(1) the applicant's immigrant visa or other entry document; and

(2) any other record in the custody of the Attorney General related to the applicant's entry that the Attorney General does not consider confidential.

(b) EFFECT OF REMOVAL PROCEEDINGS.—(1) Except as provided in sections 20313(d) and 20314 of this title—

(A) an application for naturalization may not be considered if a removal proceeding is pending under an arrest warrant; and

(B) an individual may not be naturalized as a citizen of the United States if a final finding of deportability is outstanding under an arrest warrant.

(2) The Attorney General's findings in ending removal proceedings or canceling removal are not binding in deciding whether an individual satisfies the eligibility requirements for naturalization.

§ 20505. Investigations

An employee of the Immigration and Naturalization Service, or other federal employee designated by the Attorney General, shall conduct a personal investigation of an applicant for naturalization in each vicinity in which the applicant has lived or been employed during at least the 5-year period im-

mediately before the application was filed. However, the Attorney General may waive the investigation in a particular case or class of cases.

§ 20506. Examinations

(a) GENERAL.—The Attorney General shall designate employees of the Immigration and Naturalization Service to conduct examinations of applicants for naturalization. Examinations shall be uniform throughout the United States and be limited to inquiring about whether the applicant meets the eligibility requirements for naturalization. At the time of the examination, the employee conducting the examination shall inform the applicant of the remedies available to the applicant under sections 20507 (a) and (b) and 20508(a) of this title.

(b) DECISIONS.—The employee conducting the examination shall decide whether the application for naturalization should be granted or denied and give the reasons.

(c) TRANSMITTAL OF RECORD OF EXAMINATION AND DECISION.—In the discretion of the Attorney General, the record of the examination may be transmitted to the Attorney General. When a record is transmitted to the Attorney General, the decision of the employee conducting the examination also shall be transmitted to the Attorney General when it is made.

§ 20507. Hearings before immigration officers

(a) GENERAL.—An individual whose application for naturalization is denied after an examination under section 20506 of this title may request a hearing before an immigration officer. Hearings under this section shall be held at regular intervals specified by the Attorney General.

(b) SUBPENAS.—(1) On the applicant's request at the time of requesting a hearing, the immigration officer shall subpena witnesses named by the applicant to appear at the hearing. If a witness cannot be produced at the hearing, other witnesses may be subpenaed after notice to the Attorney General, in the way and at the time prescribed by the Attorney General by regulation.

(2) A subpena issued under this subsection may be enforced as provided in section 321(b) of this title.

(3) A witness willfully disobeying a subpena to appear and testify at a final hearing under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

(c) APPEARANCE OF ATTORNEY GENERAL.—At a hearing under this section, the Attorney General may call, examine, and cross-examine witnesses, including the applicant, produce other evidence, and argue for or against granting the application for naturalization.

(d) ADMISSIBILITY OF RECORDS OF EXAMINATION.—The record of the examination conducted under section 20506 of this title is admissible as evidence in a hearing conducted under this section.

§ 20508. Judicial review

(a) FAILURE TO MAKE TIMELY DECISIONS AFTER EXAMINATIONS.—If the employee conducting an examination under section 20506 of this title does not make a decision on an application for naturalization within 120 days after the date of the examination, the applicant may request the district court of the United States for the district in which the applicant resides to hold a hearing on the matter. The court may—

(1) order the application granted or denied; or

(2) remand the matter, with appropriate instructions, to the employee conducting the examination.

(b) DENIALS AFTER HEARINGS.—An individual whose application for naturalization is denied after a hearing under section 20507 of this title may obtain review of the denial in the United States district court for the district in which the individual resides. At the individual's request, the court shall hold a new hearing. Regardless of whether the court holds a new hearing, the court shall make its own findings of fact and conclusions of law.

§ 20509. Oath requirement

(a) OATH OF ALLEGIANCE.—To be naturalized as a citizen of the United States, an individual must take an oath, in substance—

(1) to support the Constitution;

(2) to support and defend the Constitution and laws of the United States against all enemies foreign and domestic;

(3) to bear true faith and allegiance to the Constitution and laws of the United States;

(4) to renounce all allegiance to any foreign prince, potentate, country, or sovereignty of which the individual was a citizen or subject; and

(5) to comply with a requirement of law—

(A) to bear arms for the United States;

(B) to perform noncombatant service in the armed forces of the United States when wearing the uniform of a branch of the armed forces and subject to military discipline and court martial; or

(C) to perform work of national importance under civilian direction.

(b) OMISSIONS FROM OATH BECAUSE OF RELIGIOUS BELIEF.—(1) In this subsection, ''religious belief'' means belief in a relation to a Supreme Being involving duties superior to those arising from a human relation, but does not include essentially political, sociological, or philosophical views or a personal moral code.

(2) If an individual satisfies the Attorney General by clear and convincing evidence that, because of religious belief, the individual opposes—

(A) bearing arms in the armed forces of the United States, the individual may omit from the oath the substance of subsection (a)(5)(A) of this section; or

(B) any kind of service in the armed forces of the United States, the individual may omit from the oath the substance of subsection (a)(5) (A) and (B) of this section.

(c) WAIVER FOR YOUNG CHILD.—If the Attorney General believes that a child is unable to understand the meaning of the oath, the Attorney General may waive the requirement that the child take the oath.

(d) OATH RENOUNCING HEREDITARY TITLES AND ORDERS.—In addition to taking the oath under subsection (a) of this section, an individual who has a hereditary title or belongs to an order of nobility must take an oath expressly renouncing the title or order. The oath under this subsection must be taken in the same public ceremony as the oath under subsection (a) and shall be recorded as a part of the proceeding.

§ 20510. Methods of oath administration

(a) PUBLIC CEREMONY.—To be naturalized as a citizen of the United States, an individual must take the oath required for naturalization in a public ceremony. However, the Attorney General may waive the public ceremony requirement if the Attorney General decides the individual has an illness or other disability sufficiently incapacitating to prevent the individual's personal appearance.

(b) RIGHT TO CHOOSE.—(1) The individual may choose to take the oath before the Attorney General or a court authorized by section 20511 of this title, except when—

(A) a court has exclusive authority under section 20511(c) of this title; or

(B) a court has referred the applicant to the Attorney General for an expedited oath administration under subsection (c)(3) of this section.

(2) The individual shall notify the Attorney General of the choice to take the oath before a court.

(c) EXPEDITED OATH ADMINISTRATION.—(1) On demonstrating sufficient cause, an individual may be granted an expedited oath administration by the Attorney General or a court.

(2) When a court is deciding whether to grant an expedited oath administration, the court shall consider—

(A) special circumstances such as serious illness of the applicant or a member of the applicant's immediate family, permanent disability

sufficiently incapacitating to prevent the applicant's personal appearance at the scheduled ceremony, developmental disability, or advanced age; and

(B) exigent circumstances related to travel or employment.

(3) If an expedited oath administration by a court is impracticable, the court shall refer the individual to the Attorney General. The Attorney General then may provide for immediate administration of the oath.

(d) PUBLIC CEREMONIES CONDUCTED BY ATTORNEY GENERAL.—The Attorney General shall prescribe regulations to ensure that oath administration ceremonies conducted by the Attorney General are public, dignified, and conducted frequently and at regular intervals.

§ 20511. Court authority to administer oaths

(a) DEFINITION.—In this section, ''eligible court'' means—

(1) a district court of the United States in any State; and

(2) any other court of record in a State if the court has a seal, a clerk, and jurisdiction in actions at law, equity, or both, in which the amount in controversy is unlimited.

(b) GENERAL AUTHORITY.—An eligible court may administer the oath required for naturalization to individuals residing within the jurisdiction of the court.

(c) EXCLUSIVE AUTHORITY.—(1) Subject to paragraphs (2) and (4) of this subsection, an eligible court that wishes to have exclusive authority to administer the oath to individuals residing within the jurisdiction of the court has that authority on notifying the Attorney General.

(2) The exclusive authority of a court to administer the oath applies to an individual—

(A) only during the 45-day period beginning on the date the Attorney General certifies to the court that the individual is eligible to be naturalized; and

(B) only if, before the date of that certification, the court has notified the Attorney General of the dates during that 45-day period when oath administration ceremonies by the court are scheduled.

(3) Subject to paragraph (4) of this subsection, the Attorney General may not administer the oath to an individual during the period of a court's exclusive authority under paragraph (2) of this subsection.

(4) A court may waive the exclusive authority to administer the oath to an individual if the Attorney General has not provided the court the certificate of eligibility for that individual within a reasonable time before the day scheduled by the court for the oath administration ceremony. When notified of a court's waiver, the Attorney General promptly shall notify the applicant.

(d) NAME CHANGES.—On petition of an individual applying for naturalization, the court may order a change in the name of the individual as part of the administration of the oath by the court. The certificate of naturalization shall be issued with the new name.

§ 20512. Address to newly naturalized citizens

To enlist the aid of the judiciary, in cooperation with civil and educational authorities, and patriotic organizations in a continuous effort to dignify and emphasize the significance of citizenship, the judge or someone designated by the judge shall address the newly naturalized citizen, either at the time of the rendition of the decree of naturalization or at another time the judge may fix, on the form and genius of the Federal Government and the privileges and responsibilities of citizenship.

§ 20513. Duties of Attorney General when court is to administer oath

(a) GENERAL.—When a court is to administer the oath to an individual applying for naturalization, the Attorney General shall—

(1) provide the court with information necessary to administer the oath to the individual, and if the court has exclusive authority under section 20511(c) of this title, provide the information not later than 10 days after approving the application for naturalization; and

(2) promptly provide the court a certificate of naturalization prepared by the Attorney General for the individual.

(b) NOTICE TO APPLICANTS OF COURT'S EXCLUSIVE AUTHORITY.—(1) If a court has exclusive authority to administer the oath, the Attorney General shall inform the applicant, at the time of approval of the application for naturalization, of—

(A) the court's exclusive authority to administer the oath during the period specified in section 20511(c)(2)(A) of this title; and

(B) the dates when oath administration ceremonies by the court are scheduled.

(2) If more than one court in an area has exclusive authority to administer the oath, the Attorney General shall allow the applicant, at the time of approval, to choose the court to administer the oath.

§ 20514. Forms and records

(a) FORMS.—The Attorney General shall prescribe and provide forms to carry out this chapter and sections 20901 and 20902 of this title. Only those forms are lawful. Certificates of naturalization and certificates of citizenship shall be printed on safety paper and numbered consecutively in separate series.

(b) DECLARATIONS OF INTENTION AND APPLICATIONS FOR NATURALIZATION.—Each district office of the Immigration and Naturalization Service

in the United States shall maintain, in chronological order, consecutively numbered, and indexed, as a permanent record, all declarations of intention and applications for naturalization filed in that office.

(c) DUTIES OF CLERKS OF COURTS.—The clerk of a court administering oaths to applicants for naturalization shall—

(1) take responsibility for all blank certificates of naturalization received from the Attorney General;

(2) return to the Attorney General any certificate of naturalization that is unusable because damaged;

(3) account to the Attorney General for blank certificates of naturalization when required by the Attorney General;

(4) give a certificate of naturalization prepared by the Attorney General under section 20513(a)(2) of this title to each individual administered the oath by the court;

(5) provide the Attorney General with a list of individuals taking the oath at each scheduled ceremony, and information about each of those individuals, not later than 30 days after the end of the month in which the oath was administered; and

(6) provide the Attorney General with a certified copy of other proceedings in, and orders by, the court related to the naturalization of individuals, when required by the Attorney General.

(d) COPIES OF OATHS OF INDIVIDUALS WHO LOST CITIZENSHIP BY ENTERING ARMED FORCES OF FOREIGN COUNTRIES.—When an individual described in section 20316 of this title is naturalized, a certified copy of the oath taken by the individual shall be provided by—

(1) the Attorney General to the Secretary of State if the oath was administered by the Attorney General; and

(2) the clerk of the court to the Attorney General and the Secretary if the oath was administered by a court.

§ 20515. Fees

(a) GENERAL.—The Attorney General shall charge, collect, and account for fees prescribed by the Attorney General under section 9701 of title 31 for—

(1) filing a declaration of intention and issuing a duplicate declaration; and

(2) filing an application for naturalization, holding a hearing on the application, and issuing a certificate of naturalization.

(b) SUBPENA AND WITNESS FEES.—When filing an application for naturalization, an individual requesting the issuance of a subpena under section 20507(b) of this title shall deposit with the Attorney General an amount sufficient to cover the cost of subpenaing each witness and paying the wit-

ness the usual witness fee. On final discharge of the witness and demand for payment, the Attorney General shall pay the witness the usual witness fee from the amount deposited. The Attorney General shall return any remaining amount to the individual.

(c) EXEMPTION FOR INDIVIDUALS SERVING IN ARMED FORCES DURING WAR OR MILITARY OPERATIONS.—(1) Except as provided in paragraph (2) of this subsection, an individual serving in the armed forces of the United States may not be charged a fee for filing an application for naturalization or for issuance of a certificate of naturalization when the United States is at war or engaged in military operations involving armed conflict with a hostile foreign force as designated by the President by executive order.

(2) If a state law requires a fee to be charged, the clerk of a state court may charge that part of the fee required to be paid to the State.

(3) The clerk of a court shall report all transactions made under this subsection to the Attorney General not later than 30 days after the end of the month in which the transaction was made.

(d) EXEMPTION FROM REPLACEMENT FEES FOR INDIVIDUALS WHO SERVED IN ARMED FORCES.—An individual may not be charged a fee for filing an application to replace a declaration of intention or a certificate of naturalization that is lost, destroyed, or mutilated if the individual served in the armed forces of the United States after September 16, 1940, and was not—

(1) discharged other than honorably;

(2) discharged because of alienage; or

(3) a conscientious objector who performed no military duty or refused to wear the uniform.

(e) DISPOSITION OF FEES.—(1) Except as otherwise provided in this subsection, the Attorney General shall deposit all fees collected by the Attorney General under this subtitle in the ''Immigration Examinations Fee Account'' established under section 346(a) of this title.

(2) Fees collected by the Attorney General under this subtitle from residents of the Virgin Islands or Guam shall be paid to the treasury of the Virgin Islands or Guam, respectively.

(3) A percentage of the fees described in subsection (a)(1) of this section collected by the Attorney General shall be paid to courts administering oaths under this chapter. In consultation with the courts, the Attorney General shall determine the percentage each year based on—

(A) the costs incurred by the courts for essential services directly related to the naturalization process; divided by

(B) the total of those costs incurred by the courts and the Immigration and Naturalization Service.

(f) REPORTS AND CONSULTATIONS.—The Attorney General shall—

(1) provide an annual report to the Committees on the Judiciary of the Senate and House of Representatives on the use of the fees described in subsection (e)(3) of this section; and

(2) consult with those committees before increasing those fees.

CHAPTER 207—LOSS OF NATIONALITY

SUBCHAPTER I—BY VOLUNTARY ACTS

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20731. Burden of proof.

SUBCHAPTER I—BY VOLUNTARY ACTS

§ 20701. Acts resulting in loss of nationality

Except as provided in section 20702 of this title, a national of the United States loses nationality of the United States under this subchapter only by voluntarily performing any of the following acts with the intention of relinquishing nationality of the United States:

(1) becoming a national of a foreign country, after becoming 18 years of age—

(A) on application of the national; or

(B) on application for the national filed by an agent of the national.

(2) taking an oath or making a declaration of allegiance to a foreign country or a political subdivision of a foreign country after becoming 18 years of age.

(3) entering or serving in the armed forces of a foreign country if—

(A) the armed forces are engaged in hostilities against the United States; or

(B) the individual serves as a commissioned or noncommissioned officer.

(4) accepting, serving in, or carrying out the duties and powers of an office, a post, or employment under the government of a foreign country or a political subdivision of a foreign country, after becoming 18 years of age, if—

(A) the individual is or becomes a national of the foreign country; or

(B) the office, post, or employment requires an oath or declaration of allegiance.

(5) making a formal renunciation of nationality in a foreign country before a diplomatic or consular officer in the way the Secretary of State prescribes.

(6) making a formal written renunciation of nationality in the United States in the way the Attorney General prescribes before an officer or employee the Attorney General designates when the United States is in a state of war and the Attorney General approves the renunciation as not against the defense interests of the United States.

(7) committing any of the following offenses for which the individual is convicted by a court or court martial:

(A) treason against the Federal Government.

(B) attempting by force to overthrow the Government.

(C) bearing arms against the Government.

(D) violating or conspiring to violate section 2383 of title 18.

(E) violating section 2384 of title 18 by conspiring to overthrow, put down, or destroy by force the Government or to carry on war against the Government.

(F) willfully violating section 2385 of title 18.

§ 20702. Acts not resulting in loss of nationality

(a) WHEN NATIONAL IN THE UNITED STATES OR AMERICAN SAMOA.—A national of the United States does not lose nationality under section 20701(1)–(4) of this title when the national is in the United States or American Samoa. However, an act specified in section 20701(1)–(4) and carried out in the United States or American Samoa results in the loss of nationality when the national establishes a residence outside the United States and American Samoa.

(b) WHEN ENTERING OR SERVING IN ARMED FORCES OF FOREIGN COUNTRY OR RENOUNCING NATIONALITY AS MINOR.—A national of the United States does not lose nationality under section 20701(3) or (5) of this title when less than 18 years of age if the national claims the nationality within 6 months after becoming 18 years of age. The claim shall be made in the way the Secretary of State prescribes by regulation.

(c) WHEN MARRYING MALE ALIEN.—Notwithstanding any treaty ratified by the Senate before December 25, 1952—

(1) a woman who was a national of the United States did not lose nationality only because of marriage after—

(A) September 21, 1922, to an alien; or

(B) March 2, 1931, to an alien who was ineligible to become a citizen of the United States because of race; and

(2) a woman who was a citizen of the United States at birth did not lose nationality because of residence outside the United States after a marriage referred to in clause (1) of this subsection.

§ 20703. Presumption that act is done voluntarily

An individual carrying out an act resulting in the loss of nationality under this subchapter or any other law is presumed to have carried out the act voluntarily. The presumption may be rebutted on a showing by a preponderance of the evidence that the act was not carried out voluntarily.

SUBCHAPTER II—REVOCATION OF NATURALIZATION

§ 20711. Application

This subchapter applies to any naturalization and certificate of naturalization issued under this title or any other law.

§ 20712. Grounds

(a) GENERAL.—A court in which a civil action is brought under section 20713 of this title shall revoke the order of naturalization of an individual as a citizen of the United States and cancel the individual's certificate of naturalization if the court decides—

(1) the order and certificate were obtained unlawfully, by concealment of a material fact, or by willful misrepresentation; or

(2) for an individual naturalized under section 20314 of this title, the individual was discharged from the armed forces of the United States other than honorably.

(b) REFUSAL TO TESTIFY BEFORE CONGRESSIONAL COMMITTEE.—The refusal of an individual within 10 years after naturalization of the individual to testify as a witness before a congressional committee about subversive activities of the individual is concealment of a material fact or willful misrepresentation under subsection (a)(1) of this section if the individual is convicted of contempt for the refusal.

(c) MEMBERSHIP IN, OR AFFILIATION WITH, CERTAIN ORGANIZATIONS.—If an individual naturalized after December 24, 1952, became a member of or affiliated with an organization within 5 years after naturalization and the membership or affiliation at the time of naturalization would have prevented the individual from being naturalized under section 20331 of this title, the membership or affiliation is prima facie evidence that the individual was not attached to the principles of the Constitution and was not well disposed to the good order and happiness of the United States at the time of naturalization. If there is no contrary evidence, a court may act under subsection (a)(1) of this section on the ground that the naturalization was obtained by concealment of a material fact or by willful misrepresentation.

(d) ADJUSTMENT OF STATUS.—An individual is deemed to have obtained naturalization by concealment of a material fact or by willful misrepresentation if—

(1) the individual was naturalized as a citizen of the United States based on a record of lawful admission for permanent residence made as a result of an adjustment of the individual's status;

(2) the individual was not eligible for the adjustment of status; and

(3) the Attorney General rescinds the adjustment of status under section 9107(a) of this title.

(e) PROOF OF DISCHARGE FROM ARMED FORCES.—Discharge from the armed forces of the United States other than honorably shall be proved by a certification from the head of the executive department of the Federal Government under which the individual served.

(f) COURTS TO REVOKE NATURALIZATION ORDERS WHEN NATURALIZATION CONVICTIONS INVOLVED.—A court having jurisdiction to try a violation of section 1425 of title 18 has jurisdiction to revoke orders of naturalization and cancel certificates of naturalization. A court in which an individual is convicted of knowingly obtaining naturalization in violation of section 1425 shall revoke the order of naturalization of the individual as a citizen and cancel the certificate of naturalization of the individual.

§ 20713. Procedure

(a) BRINGING CIVIL ACTIONS TO REVOKE.—If grounds exist under section 20712 of this title, the Attorney General shall bring a civil action to revoke the order of naturalization of an individual as a citizen of the United States and to cancel the certificate of naturalization. When bringing the action, the Attorney General shall file an affidavit showing good cause.

(b) VENUE.—An action under this section shall be brought in a district court of the United States for the judicial district in which the individual resides. If the individual does not reside in a judicial district in the United States, the action may be brought in the United States District Court for the District of Columbia or the district in which the individual last resided.

(c) NOTICE AND ANSWER.—The individual shall be given personal notice and, unless waived, 60 days to answer in an action brought under this section. If the individual is absent from the United States or the judicial district in which the individual last resided, notice shall be given by personal service or by publication in the way provided for service by publication or on absentees by the law of the State or place in which the action is brought.

(d) EFFECTIVE DATE OF REVOCATION AND CANCELLATION.—Revocation and cancellation under this subchapter are effective from the date of the naturalization order and certificate of naturalization.

§ 20714. Effect on automatic naturalization

An individual claiming citizenship of the United States through the naturalization of a parent or spouse loses that citizenship when the order of naturalization of the parent or spouse as a citizen is revoked and the certificate of naturalization is canceled under—

(1) section 20712(a)(1) of this title because the order and certificate were obtained by concealment of a material fact or by willful misrepresentation;

(2) section 20712(a)(2) of this title on a ground other than that the order and certificate were obtained by concealment of a material fact or by willful misrepresentation, if the individual does not reside in the United States when the order is revoked and the certificate is canceled; or

(3) section 20712(c) of this title, if the individual does not reside in the United States when the order is revoked and the certificate is canceled.

§ 20715. Cancellation of certificate of naturalization

(a) DUTIES OF COURT.—A court revoking an order of naturalization as a citizen of the United States or canceling a certificate of naturalization, or both, under this subchapter shall prepare an order canceling the certificate and send a certified copy to the Attorney General.

(b) SURRENDER OF CANCELED CERTIFICATE.—On notice by the court canceling a certificate of naturalization or by the Attorney General, an individual holding a canceled certificate of naturalization shall surrender it to the Attorney General.

§ 20716. Authority not affected

This subchapter does not affect the authority of the Attorney General to reopen, change, or vacate an order of naturalization of an individual as a citizen of the United States.

SUBCHAPTER III—MISCELLANEOUS

§ 20731. Burden of proof

A person claiming that an individual has lost nationality of the United States under this chapter or any other law has the burden of proving, by a preponderance of the evidence, that the loss occurred.

CHAPTER 209—NATIONALITY DOCUMENTS

Sec.
20901. Certificates of naturalization.
20902. Certificates of citizenship.
20903. Certificates of nationality.
20904. Other documents to prove citizenship.
20905. Cancellation of documents and records.
20906. Certificates of loss of nationality.
20907. Certifications of records.

§ 20901. Certificates of naturalization

(a) ISSUANCE AND CONTENT.—The Attorney General shall issue a certificate of naturalization to an individual when the individual is naturalized as a citizen of the United States. The certificate shall contain—

(1) the number of the individual's application for naturalization;

(2) the number of the certificate;

(3) the individual's name (as changed if a change of name is granted by a court as part of the administration of the oath required for naturalization);

(4) the individual's signature;

(5) the individual's place of residence;

(6) a signed photograph of the individual;

(7) a personal description of the individual, including age, sex, and marital status;

(8) the individual's prior nationality;

(9) a statement that the Attorney General, having decided that the individual has satisfied the applicable provisions of this title, ordered the individual naturalized as a citizen;

(10) the date of the naturalization;

(11) the location of the district office of the Immigration and Naturalization Service in which the application was filed;

(12) the title, authority, and location of the official or court administering the oath required for naturalization; and

(13) the attestation of an immigration officer and the seal of the Department of Justice.

(b) REPLACEMENT CERTIFICATES.—(1) On application to the Attorney General, the Attorney General shall issue to a naturalized citizen—

(A) a new certificate of naturalization to replace a certificate that the Attorney General finds is lost, destroyed, or mutilated, and if mutilated, is surrendered to the Attorney General; or

(B) a new certificate of naturalization with the citizen's new name when the Attorney General finds that the citizen's name has been changed by marriage or order of a court of competent jurisdiction after naturalization.

(2) The Attorney General shall notify the court that naturalized the citizen of the issuance of a new certificate under paragraph (1)(B) of this subsection.

(c) SPECIAL CERTIFICATES TO OBTAIN RECOGNITION BY FOREIGN COUNTRIES.—On application by a naturalized citizen to the Attorney General, the Attorney General shall issue for the citizen a special certificate of naturalization to be used only to obtain recognition as a citizen of the Unit-

ed States by the government of a foreign country. The certificate shall be submitted to the Secretary of State for submission to the proper authority of the government of the foreign country.

(d) PHOTOGRAPHS.—An application to the Attorney General for a certificate of naturalization or a special certificate of naturalization shall include 3 identical photographs of the individual applying. One photograph shall be attached to the certificate and the others to the copies of the certificate retained by the Commissioner of Immigration and Naturalization.

(e) SURRENDER OF FOUND CERTIFICATES.—A person coming into possession of a certificate of naturalization that was lost shall surrender the certificate to the Attorney General.

§ 20902. Certificates of citizenship

(a) APPLICATIONS.—An individual may apply to the Attorney General for a certificate of citizenship if the individual claims to be a citizen of the United States because of—

(1) the naturalization of a parent of the individual;

(2) the naturalization or citizenship of the individual's husband;

(3) section 1993 of the Revised Statutes;

(4) the Act of May 7, 1934 (ch. 221, 48 Stat. 667);

(5) the Act of August 4, 1937 (ch. 563, 50 Stat. 558);

(6) section 201(c), (d), (e), (g), or (i), 203, or 205 of the Nationality Act of 1940 (ch. 876, 54 Stat. 1138, 1139); or

(7) section 20102(a), 20104(a), or 20106 of this title.

(b) PHOTOGRAPHS.—An application under subsection (a) of this section shall include 3 identical photographs of the individual applying. One photograph shall be attached to the certificate and the others to the copies of the certificate retained by the Commissioner of Immigration and Naturalization.

(c) ISSUANCE.—The Attorney General shall issue a certificate of citizenship to an individual if—

(1) the Attorney General is satisfied that the individual is a citizen as claimed under subsection (a) of this section;

(2) the individual takes, and signs, in front of an immigration officer the oath required for naturalization, unless waived under section 20509(c) of this title; and

(3) the individual is in the United States when the oath is taken and the certificate is issued.

(d) REPLACEMENT CERTIFICATES.—The Attorney General shall issue a new certificate of citizenship to a citizen applying to replace a certificate that the Attorney General finds is lost, destroyed, or mutilated, and if mutilated, is surrendered to the Attorney General. A person coming into posses-

sion of a certificate that was lost shall surrender the certificate to the Attorney General.

§ 20903. Certificates of nationality

(a) CERTIFICATES FOR USE IN FOREIGN COUNTRY PROCEEDINGS.—Under regulations the Secretary of State prescribes, the Secretary may issue a certificate of nationality for an individual if the Secretary is satisfied that the individual is a national of the United States at birth and that the certificate is needed for an administrative or judicial proceeding of a foreign country. The certificate is only for use in the proceeding for which it is issued. The Secretary shall submit the certificate to the appropriate foreign administrative or judicial officer.

(b) CERTIFICATES ISSUED TO INDIVIDUALS.—An individual claiming to be a national, but not a citizen, of the United States may apply to the Secretary for a certificate of non-citizen national status. The Secretary shall issue the certificate if—

(1) the Secretary is satisfied that the individual is a national, but not a citizen, of the United States;

(2) for an individual born outside the United States or American Samoa, the individual takes, and signs, in front of an immigration officer in the United States or American Samoa, the oath required for naturalization; and

(3) the individual is in the United States or American Samoa when the certificate is issued.

§ 20904. Other documents to prove citizenship

The following documents have the same effect as a certificate of naturalization or a certificate of citizenship to prove that an individual is a citizen of the United States:

(1) A passport issued by the Secretary of State to a citizen of the United States during its period of validity if the period is the maximum allowed by law.

(2) A "Report of Birth Abroad of a Citizen of the United States" issued by a consular officer to document a citizen born outside the United States.

§ 20905. Cancellation of documents and records

(a) ATTORNEY GENERAL.—(1) The Attorney General may cancel a citizenship or nationality document or record issued by the Attorney General if satisfied that it was obtained fraudulently or unlawfully.

(2) The Attorney General shall send written notice of an intention to cancel the document or record, and the reason for the cancellation, to the individual to whom the document or record was issued, at the individual's last

known address. The Attorney General shall give the individual at least 60 days to show cause why the document or record should not be canceled.

(b) SECRETARY OF STATE.—(1) The Secretary of State may cancel a United States passport or a ''Report of Birth Abroad of a Citizen of the United States'' issued by a consular officer to document a citizen born outside the United States, or a certified copy, if it appears to have been obtained fraudulently, unlawfully, or erroneously.

(2) The Secretary shall send written notice of the cancellation to the individual to whom the document was issued, at the individual's last known address. The notice shall include notice of the procedure to seek a prompt post-cancellation hearing.

(c) EFFECT OF CANCELLATION.—Cancellation of a document or record showing the citizenship status of an individual under this section affects only the record and not the citizenship status of the individual.

§ 20906. Certificates of loss of nationality

(a) CERTIFICATE BY DIPLOMATIC OR CONSULAR OFFICER.—When a diplomatic or consular officer believes that an individual in a foreign country has lost the nationality of the United States under section 20701 of this title or chapter IV of the Nationality Act of 1940 (ch. 876, 54 Stat. 1168), the officer shall certify in writing to the Secretary of State, under regulations the Secretary prescribes, the facts on which the officer's belief is based.

(b) APPROVAL BY SECRETARY OF STATE.—(1) If the Secretary approves the certificate, the Secretary shall provide a copy to the Attorney General and direct the officer to provide a copy to the individual.

(2) The Secretary's approval of the certificate is—

(A) a final administrative decision of loss of nationality, subject to procedures for administrative appeal the Secretary may prescribe by regulation; and

(B) a denial of a right or privilege under section 21101 of this title.

§ 20907. Certifications of records

The Attorney General may make a certification of any part of a naturalization record of a court, a certificate of naturalization, or a certificate of citizenship, for use in complying with a law or in a judicial proceeding. The clerk of a court may make such a certification only on order of the court.

CHAPTER 211—MISCELLANEOUS

Sec.
21101. Procedure if denied a right or privilege as a national.
21102. Information about citizenship.

§ 21101. Procedure if denied a right or privilege as a national

(a) INDIVIDUALS IN THE UNITED STATES.—(1) Except as provided in paragraph (4) of this subsection, an individual in the United States may bring a civil action under section 2201 of title 28 against the head of a department or independent agency for a judgment declaring that the individual is a national of the United States if—

(A) the individual claims a right or privilege as a national of the United States; and

(B) any official of the department or independent agency denies the claim because the individual is not a national of the United States.

(2) The action must be brought—

(A) in the district court of the United States for the judicial district in which the individual resides or claims a residence; and

(B) within 5 years after the final administrative denial of the right or privilege.

(3) A court referred to in paragraph (2)(A) of this subsection has jurisdiction over the head of the department or agency in that action.

(4) An individual may not bring an action under this subsection if the issue of the individual's nationality arose in connection with a removal proceeding.

(b) INDIVIDUALS NOT IN THE UNITED STATES.—(1) An individual not in the United States may apply to a consular officer or diplomatic officer of the United States in the country in which the individual resides for a certificate of identity to travel to the United States and apply for admission if—

(A) the individual claims a right or privilege as a national of the United States;

(B) any official of a department or independent agency denies the claim because the individual is not a national of the United States; and

(C) the individual—

(i) had been physically present in the United States at some time before applying for the certificate; or

(ii) is less than 16 years of age and was born outside the United States to a parent who is a citizen of the United States.

(2) The diplomatic or consular officer shall issue the certificate if satisfied that the application is made in good faith and has a substantial basis. If the officer denies the application, the individual may appeal to the Secretary of State. If the Secretary approves the denial, the Secretary shall state the reasons in writing.

(3) An individual in possession of a certificate issued to that individual under this subsection may apply for admission to the United States. The individual is subject to the provisions of this title related to the conduct of proceedings for aliens seeking admission to the United States. A final decision by the Attorney General that the individual is not entitled to admission is subject to review only in a habeas corpus proceeding by any court of competent jurisdiction.

(4) The Secretary shall prescribe regulations for the issuance of certificates under this subsection.

(c) APPLICATION OF LAWS ON ADMISSION OF ALIENS.—An individual described in this section who is finally denied admission to the United States is subject to all the provisions of this title applicable to aliens seeking admission to the United States.

§ 21102. Information about citizenship

(a) PROMOTING UNITED STATES CITIZENSHIP.—To promote the opportunities and responsibilities of citizenship of the United States, the Attorney General shall distribute broadly information about the benefits individuals may receive under this subtitle and the requirements to obtain those benefits. In carrying out this subsection, the Attorney General shall seek the assistance of appropriate community groups, private voluntary agencies, and other relevant organizations.

(b) INSTRUCTION IN CITIZENSHIP RESPONSIBILITIES.—The Attorney General may promote instruction and training in citizenship responsibilities of applicants for naturalization, including—

(1) giving names of applicants for naturalization to public schools;

(2) preparing citizenship textbooks and distributing the textbooks without charge to applicants receiving instruction in citizenship responsibilities under the supervision of public schools;

(3) preparing and distributing a monthly immigration and naturalization bulletin; and

(4) seeking the cooperation of official state and national organizations, including organizations concerned with vocational education.

(c) REIMBURSEMENT.—Based on a statement by the Attorney General that the citizenship textbooks have been prepared and distributed as provided in subsection (b)(2) of this section, naturalization fees deposited in the Treasury by the Attorney General may be used to reimburse the appropriation of the Department of Justice for the cost of preparing and distributing the textbooks.

SEC. 2. CONFORMING PROVISIONS.

(a) TITLE 8.—Effective June 1, 2002, section 8304 of title 8, United States Code, is amended as follows:

(1) Subsection (b) is amended to read as follows:

"(b) WAIVERS.—The Attorney General may waive the 2-year residence requirement of subsection (a) of this section if the Attorney General finds that admitting the alien would be in the public interest, after receiving a favorable recommendation from—

"(1) the Director—

"(A) because of a request from an interested agency; or

"(B) if the foreign country of the alien's nationality or last residence provides the Director with a written statement that it does not object to the waiver, except that this subclause does not apply to an alien described in subsection (a)(3) of this section; or

"(2) the Commissioner of Immigration and Naturalization if the Commissioner finds that—

"(A) departure from the United States would impose exceptional hardship on the alien's spouse or child when the spouse or child is a citizen of the United States or lawfully admitted for permanent residence; or

"(B) the alien would be subject to persecution on account of race, religion, or political opinion if the alien returned to the foreign country of the alien's nationality or last residence.".

(2) Strike subsection (c).

(b) TITLE 10.—Section 885 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(d) Any person found guilty of desertion in time of war may not—

"(1) hold an office of trust or profit under the United States; or

"(2) exercise the rights of a citizen of the United States.".

(c) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—In the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), strike the heading for part C of title VII.

(d) ACT OF AUGUST 1, 1956.—Section 6(a) of the Act of August 1, 1956 (50 U.S.C. 855(a)), is amended by—

(1) striking the subsection designation "(a)"; and

(2) striking "make" and substituting "makes".

(e) MILITARY SELECTIVE SERVICE ACT.—Section 12 of the Military Selective Service Act (50 App. U.S.C. 462) is amended by adding at the end the following new subsection:

"(h) On conviction by a court of competent jurisdiction, a person registered under this Act who leaves the district in which registered, or a person (whether or not registered under this Act) who leaves the United States, with the intent to evade a lawfully ordered draft while the United States is at war, may not—

"(1) hold an office of trust or profit under the United States; or

"(2) exercise the rights of a citizen of the United States.".

(f) An alien provided benefits under section 301 of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5029) whom the Attorney General authorizes to travel outside the United States temporarily and who returns to the United States according to that authorization—

(1) shall be inspected and admitted in the same immigration status the alien had at the time of departure if the alien is found not to be inadmissible on a ground referred to in section 301(a)(1) of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5029); and

(2) has not failed to maintain continuous physical presence in the United States under section 6721(a) of this title because of the departure if the absence meets the requirements of section 6721(c).

SEC. 3. CONFORMING CROSS-REFERENCES.

(a) TITLE 5.—Section 5549(2) of title 5, United States Code, is amended by striking "sections 1353a and 1353b" and substituting "section 303".

(b) TITLE 10.—Title 10, United States Code, is amended as follows:

(1) In section 374(b)(4)(A)(ii), strike "Any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328)" and substitute "Any of sections 10126, 10147–10151, 10153, and 10155 of title 8".

(2) In section 1060a(f)(2)(B), strike "in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)" and substitute "under title 8".

(3) In section 2864(a), strike "section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))" and substitute "section 2314 or 2315 of title 8".

(4) In sections 3253 and 8253, strike "the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)" and substitute "title 8".

(5) In sections 12102(b)(1) and 12201(b)(1), strike "the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)" and substitute "title 8".

(c) TITLE 18.—Title 18, United States Code, is amended as follows:

(1) In section 32(b), strike "section 101(a)(22) of the Immigration and Nationality Act" and substitute "section 126 of title 8".

(2) In section 37(b)(2)(B), strike "section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))" and substitute "section 126 of title 8".

(3) In section 178(5), strike "section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))" and substitute "section 126 of title 8".

(4) In section 831(f)(6), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''.

(5) In section 982(a)(6)(A)(ii), strike ''section 274A(a)(1) or 274A(a)(2) of the Immigration and Nationality Act'' each place it appears and substitute ''section 11102(a) of title 8''.

(6) In section 1091(d)(2), strike ''section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)'' and substitute ''section 126 of title 8''.

(7) In section 1116(b)(7), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''.

(8) In section 1119(a), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''.

(9) In section 1201(e), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''.

(10) In section 1203(c), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''.

(11) In section 1546(b), strike ''section 274A(b) of the Immigration and Nationality Act'' and substitute ''section 11103 of title 8''.

(12) In section 1961(1)(F), strike ''the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act'' and substitute ''section 10147, 10150, or 10151 of title 8 if the act indictable under that section''.

(13) In section 2280(e), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))''and substitute ''section 126 of title 8''.

(14) In section 2281(d), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''.

(15) In section 2331(2), strike ''section 101(a)(22) of the Immigration and Nationality Act'' and substitute ''section 126 of title 8''.

(16) In section 2332a(c)(1), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''.

(17) In section 2332c(b)(1), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''

(18) In section 2441(b), strike ''section 101 of the Immigration and Nationality Act'' and substitute ''section 126 of title 8''.

(19) Section 2516(1) is amended as follows:

(A) In subsection (m), strike ''section 274, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324, 1327, or 1328) (relating to the smuggling of aliens)'' and substitute ''section 10147, 10150, or 10151 of title 8''.

(B) In subsection (p), as designated by section 201(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104-208, 110 Stat. 3009–565), strike ''section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens)'' and substitute ''section 10147, 10150, or 10151 of title 8''.

(20) Section 3077(2) is amended as follows:

(A) In clause (A), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''.

(B) In clause (B), strike ''section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))'' and substitute ''section 123 of title 8''.

(21) In section 3142(d)(1)(B), strike ''section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))'' and substitute ''section 123 of title 8''.

(22) In section 3181(c), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''.

(23) In section 3563(b)(21), strike ''section 238(d)(5) of the Immigration and Nationality Act'' and substitute ''section 6706(g) of title 8''.

(24) Section 4113 is amended as follows:

(A) In subsection (a), strike ''section 240B of the Immigration and Nationality Act'' and substitute ''section 6714 of title 8''.

(B) In subsections (b) and (c), strike ''section 240 of the Immigration and Nationality Act'' and substitute ''section 6704 of title 8''.

(d) INTERNAL REVENUE CODE OF 1986.—The Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) is amended as follows:

(1) In section 871(c), strike ''subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q))'' and substitute ''section 2310, 2311, 2312, or 2320 of title 8, United States Code''.

(2) In sections 872(b)(3), strike ''subparagraph (F), (J), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended'' and substitute ''section 2310, 2312, or 2320 of title 8, United States Code''.

(3) In section 1441(b), strike ''subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act'' and substitute ''section 2310, 2311, 2312, or 2320 of title 8, United States Code,''.

(4) Section 3121(b) is amended as follows:

(A) In clause (18), strike ''section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))'' and substitute ''section 2314 or 2315 of title 8, United States Code''.

(B) In clause (19), strike ''subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended'' and ''in subparagraph (F), (J), (M), or (Q)'' and substitute ''section 2310, 2311, 2312, or 2320 of title 8, United States Code'' and ''in section 2310, 2311, 2312, or 2320'', respectively.

(5) In section 3231(e)(1), strike ''subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended'' and ''in subparagraph (F), (J), (M), or (Q)'' and substitute ''section 2310, 2311, 2312, or 2320 of title 8, United States Code'' and ''in section 2310, 2311, 2312, or 2320'', respectively.

(6) In section 3304(a)(14)(A), strike ''section 212(d)(5) of the Immigration and Nationality Act'' and substitute ''section 6121 of title 8, United States Code''.

(7) Section 3306(c) is amended as follows:

(A) In clause (1)(B), strike ''sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act'' and substitute ''section 2314 of title 8, United States Code''.

(B) In clause (19), strike ''subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C 1101(a)(15)(F), (J), (M), or (Q))'' and ''in subparagraph (F), (J), (M), or (Q)'' and substitute ''section 2310, 2311, 2312, or 2320 of title 8, United States Code'' and ''in section 2310, 2311, 2312, or 2320'', respectively.

(8) Section 6039G(c) is amended as follows:

(A) In clause (1), the words ''paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5))'' and substitute ''section 20701(5) of title 8, United States Code''.

(B) In clause (2), the words ''paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4))'' and substitute ''section 20701(1), (2), (3), or (4) of title 8, United States Code''.

(9) In section 6103(m)(4)(A)(ii)(II), strike ''section 3(a)(1) of the Migration and Refugee Assistance Act of 1962'' and substitute ''section 13308(a)(1) of title 8, United States Code,''.

(10) Section 7701(b)(5) is amended as follows:

(A) In paragraph (C)(i), strike ''subparagraph (J) or (Q) of section 101(15) of the Immigration and Nationality Act'' and substitute ''section 2312 or 2320 of title 8, United States Code''.

(B) In paragraph (D)(i)(I), strike ''subparagraph (F) or (M) of section 101(a)(15) of the Immigration and Nationality Act'' and substitute ''section 2310 or 2311 of title 8, United States Code''.

(C) In paragraph (D)(i)(II), strike ''subparagraph (J) or (Q) of such section 101(15)'' and substitute ''section 2312 or 2320 of title 8, United States Code''.

(e) TITLE 28.—Title 28, United States Code, is amended as follows:

(1) In section 751(e), strike ''naturalization fees listed in section 742 of Title 8 and''.

(2) In section 1605(a)(7)(B)(ii), strike ''section 101(a)(22) of the Immigration and Nationality Act'' and substitute ''section 126 of title 8''.

(3) In section 1821(e), strike ''section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5))'' and ''section 240 of such Act (8 U.S.C. 1252(b))'' and substitute ''section 6121 of title 8'' and ''section 6704 of title 8'', respectively.

(f) TITLE 46.—Title 46, United States Code, is amended as follows:

(1) In section 2101(3a), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 126 of title 8''.

(2) In section 8103(i)(1)(C), strike ''the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)'' and substitute ''title 8''.

(3) In section 8704, strike ''section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a)'' and substitute ''chapter 111 of title 8''.

(g) TITLE 49.—Section 46502(b)(3) of title 49, United States Code, is amended by striking ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substituting ''section 126 of title 8''.

SEC. 4. LEGISLATIVE PURPOSE AND CONSTRUCTION.

(a) NO SUBSTANTIVE CHANGE.—Sections 1 and 2 of this Act restate, without substantive change, laws enacted before September 16, 1997, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after September 15, 1997, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

(b) REFERENCES.—A reference to a law replaced by section 1 or 2 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) CONTINUING EFFECT.—An order, rule, or regulation in effect under a law replaced by section 1 or 2 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) ACTIONS AND OFFENSES UNDER PRIOR LAW.—An action taken or an offense committed under a law replaced by section 1 or 2 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) INFERENCES.—An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of a caption or catch line of the provision.

(f) SEVERABILITY.—If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

SEC. 5. REPEALS.

(a) INFERENCES OF REPEAL.—The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

(b) REPEALER SCHEDULE.—The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
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1875						
Feb. 18	80	1 (14th par. on p. 318)	18	318	8	359
1879						
Mar. 3	182	2	20	402	8	63
1887						
Feb. 8	119	6 (2d sentence less provisos)	24	390	8	3
					25	349
1888						
Feb. 1	4	1 (last par. under heading "Pay Department")	25	9	8	63
1891						
Mar. 3	551	1, 4, 6–13	26	1084, 1085	8	1552
1893						
Mar. 3	206	1–7, 9, 10	27	569, 571		
1894						
Mar. 17	Art. III		28	1211	8	298
Aug. 18	301	1 (last par. on p. 390)	28	390	8	174
1895						
Mar. 2	177	1 (last par. beginning on p. 780)	28	780	8	103, 1552, 1554
1898						
July 1	546	1 (2d par. under heading "Back Pay and Bounty").	30	640	8	63
1900						
Apr. 30	339	4	31	141	48	494
1901						
Mar. 2	853	1 (next-to-last par. before heading "Quarantine Service").	31	1168		
	868		31	1447	8	8
1902						
June 14	1088	2	32	386	22	212
July 1	1351	(3d complete par. on p. 556)	32	556	8	64
1903						
Feb. 14	552	4 (related to immigration), 7 (related to immigration).	32	826, 828	8	121, 261, 1551
1904						
Apr. 28	1762	1 (par. under heading "Enforcement of the Chinese-Exclusion Act").	33	478	8	298
	Pub. H. 33		33	591	8	140, 1552
1906						
May 8	2348	"Sec. 6 (2d sentence less provisos)"	34	182	8	3
June 29	8692	26	34	603		
	8624		34	630	8	407
1910						
June 25	395	6 (1st par.)	36	826	8	1557
	401	2	36	830		
1913						
Mar. 4	141	3 (related to Commissioner of Naturalization and "known as the Commissioner General of Immigration, the Commissioners of Immigration, the Bureau of Immigration and Naturalization, the Division of Information, the Division of Naturalization, and the Immigration Service at Large" in 1st–3d sentences).	37	737	8	1551, 1552
1915						
Mar. 4	147	1 (par. under heading "Immigration Service")	38	1151	8	112
1917						
Mar. 2	145	5, 5a (provisos)	39	953	8	5, 5a
Mar. 3	163	1 (pars. under headings "Bureau of Immigration" and "Bureau of Naturalization").	39	1118	8	1552
June 12	27	1 (1st provisos on pp. 170, 171)	40	170, 171	8	118, 402
June 15	30	1	40	227	22	213
1918						
May 9	69	2 (less last proviso), 3 (1st par.)	40	546, 548	8	359, 395, 406, 416
1919						
Aug. 15	50		41	280	8	114
1920						
June 4	223	1, 2, 4, 5	41	750, 751	22	214, 215, 216
1921						
Mar. 3	120	3 (1st sentence 1st–29th words)	41	1250	8	3
Mar. 4	161	1 (2d par. under heading "Immigration Service").	41	1424	8	1353c

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1922						
Mar. 28	117	(pars. under headings "Bureau of Immigration", "Immigration Stations", and "Bureau of Naturalization").	42	486	8	118, 1552
Sept. 22	411	6, 7	42	1022	8	10
1923						
Jan. 3	22	(1st proviso on p. 1101)	42	1101	8	117
Jan. 5	24	(pars. under headings "Bureau of Immigration", "Immigration Stations", and "Bureau of Naturalization").	42	1127	8	118, 1552
1924						
May 28	204	(2d proviso on p. 240)	43	240	8	118
June 2	233		43	253	8	173, 224
June 7	379		43	669	8	228
1925						
Feb. 27	364	(2d proviso on p. 1049)	43	1049	8	118
1926						
Apr. 29	195	(2d proviso on p. 371)	44	371	8	118
May 25	388		44	652	8	374
July 3	738	2	44	812		
	772		44	887	22	211, 211a, 214a, 217, 217a
1927						
Jan. 26	58	(1st proviso on p. 1038)	44	1038	8	117
Feb. 24	189	(2d proviso on p. 1223)	44	1223	8	118
Feb. 25	192	1–3	44	1234	8	5b, 5c, 377a
Mar. 4	503	2 "Sec. 5a (provisos)"	44	1418	8	5a
1928						
Feb. 15	57	(1st proviso on p. 107)	45	107	8	118
1929						
Jan. 25	102	(2d proviso on p. 1137)	45	1137	8	118
Mar. 2	536	6(a), 7(b)	45	1514, 1515	8	361, 402a
Mar. 4	683	2, 3	45	1545	8	392a
1930						
Apr. 18	184	title IV, § 1 (last par. 2d proviso under heading "Bureau of Immigration").	46	216	8	118
June 19	544		46	787	8	3a
July 1	782		46	839	22	217a
July 3	826		46	849	8	137a
1931						
Feb. 23	277	(last proviso on p. 1228)	46	1228	8	117
Mar. 2	368		46	1467	8	1353a, 1353b
Mar. 3	442	4 (b)	46	1512	8	370
1932						
May 16	187		47	157	22	217a
May 25	203	1	47	165	8	392b–392d
June 28	283		47	336	8	5b, 204a–204d
July 5	430	(1st proviso on p. 591)	47	591	8	117
1933						
Mar. 3	212	(1st proviso on p. 1500)	47	1500	8	117
1934						
Mar. 15	70	(1st proviso on p. 435)	48	435	8	117, 176
May 7	221		48	667	8	3b, 3c
May 24	344	5	48	798	8	137a, 371, 375
1935						
June 15	255		49	376	8	376
1937						
Aug. 23	735		50	743	8	392b–392d
1939						
May 6	115	(1st proviso on p. 668)	53	668	8	117
June 21	234		53	851	8	392b–392d
1940						
June 28	439	22, 40, 41	54	673, 676	8	137, 137–1
Aug. 22	688		54	858	8	1353d
1941						
June 28	258	(2d proviso on p. 292)	55	292	8	103a
1942						
July 2	472	(1st proviso on p. 483)	56	483	8	103a
1943						
July 1	182	(1st proviso on p. 288)	57	288	8	103a
July 12	221	(1st proviso on p. 507 words before semicolon)	57	507	8	117
Dec. 17	344	1	57	600		

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1944						
June 28	294	(1st proviso on p. 412)	58	412	8	103a
	302	(1st proviso on p. 558)	58	558	8	117
1945						
May 21	129	(1st proviso on p. 185)	59	185	8	103a
Dec. 28	591	1, 2, 4–6	59	659	8	232–237
1946						
June 29	520		60	339	50 App.	1851–1855
July 5	541	(proviso on p. 462)	60	462	8	103a
1947						
June 28	160		61	190	50 App.	1851
July 9	211	(2d proviso on p. 292 words before semicolon)	61	292	8	103a
July 22	289		61	401	8	237
July 23	304	1	61	414	8	3b
1948						
Mar. 24	141		62	84	50 App.	1851
June 1	360	2	62	283		
June 25	647		62	1009	50 App.	1951–1965
1949						
Apr. 21	85		63	56	50 App.	1851–1855 note
Oct. 15	695	5(a) (related to Commissioner of Immigration and Naturalization).	63	880	8	102
1950						
June 19	262		62	219	50 App.	1951–1965
June 30	423		64	306	8	1184 note
	443		64	316	8	1440 note
July 28	503	6	64	380	8	1555
Aug. 19	759		64	464	8	239
1951						
Mar. 19	9		65	5	8	239
June 19	144	21	65	89		
June 28	167	2	65	96	50 App.	1951, 1952, 1954
Aug. 16	321		65	191	8	723, 1435 note
1952						
Feb. 29	49	2, 3	66	10	8	398a, 727a
Apr. 9	171		66	50	8	1184 note
June 27	477	1, 101(a)(1)–(23), (25)–(49), (b)(1)–(5), (c), (e), (f)(less (2)), (g), (h), 102–104(e), 105, 201–210, 211, 212(a), (b), (d)(1), (3)–(5), (7), (8), (11), (12), (e)–(*o*), 213–218, 221–224, 231–237(a)(1)(E), (G), (H), (2)–(6), (b), (c), 238–242, 243–258, 261–266, 271–273(*c*), (e), 274, 274A(a)–(h), 274B–295, 301–322, 324–329(c), 329A–344, 346, 347, 349, 351, 356–361, 402(e), (h)–(j), 403–407, 411–414, 501–507.	66	163, 169, 171, 172, 175, 181, 187, 188, 204, 228, 246, 251, 266, 267, 269, 272, 276, 277.	8	1101, 1101 notes, 1102–1105, 1151, 1152–1160, 1181, 1182, 1183–1184, 1185, 1186a–1188, 1201, 1202–1204, 1221–1231, 1252, 1253, 1254a–1255a, 1256–1260, 1281–1288, 1301–1306, 1321–1330, 1351–1353, 1353a, 1353d, 1354–1363b, 1401, 1402–1409, 1421–1433, 1435, 1435 note, 1436–1440, 1440 note, 1440–1, 1441–1455, 1457, 1458, 1481, 1483, 1488, 1489, 1501–1504, 1521–1524, 1531–1537, 1552
					48	1421l
					50 App.	1952–1955, 1961
1953						
June 30	162		67	108	8	1440a–1440d
July 29	268		67	229	50 App.	1975–1975e
Aug. 7	336		67	400	50 App.	1971–1971q

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1954						
June 18	323		68	264	8	1184a
July 20	553		68	495	8	1435 note
Aug. 31	1169		68	1044	50 App.	1971b–1971e
Sept. 3	1254	1–3	68	1145	8	1154 note
	1256		68	1146	8	1481, 1481 note
	1263	6, 17, 18	68	1227, 1232	8	1252, 1353e, 1451
1955						
July 7	279	(2d proviso on p. 272)	69	272	8	1553
1956						
Feb. 10	31		70	11	22	214
Mar. 16	85		70	50	8	1401a
June 20	414	201 (1st proviso on p. 307)	70	307	8	1553
July 18	629	301(a), (b)	70	575	8	1182, 1227
Aug. 1	841	33			22	2705
	849	6(b)	70	900	50	855
1957						
Sept. 11	85–316	1–3, 10, 12A–14	71	639, 642	8	1101, 1151 note, 1153, 1153 note, 1201a note, 1255b
1958						
July 7	85–508	21–25	72	351	8	1101, 1182, 1404 note, 1421
July 18	85–531		72	375	8	1184 note
July 25	85–559		72	419	8	1182 note
Aug. 8	85–616		72	546	8	1259
Aug. 20	85–697	2	72	687	8	1430
Aug. 21	85–700		72	699	8	1153 note, 1255
Sept. 2	85–892		72	1712		
1959						
Mar. 18	86–3	20	73	13	8	1101, 1182, 1405 note, 1421
Sept. 14	86–267		73	552	22	217a
Sept. 22	86–363	1–3, 5	73	644	8	1153, 1153 note, 1155
1960						
July 14	86–648	3–6, 8–10	74	505	8	1182, 1182 note, 1227, 1255
1961						
Sept. 21	87–256	109	75	534	8	1101, 1182, 1258
Sept. 26	87–301	2–4, 5(b), 6, 8–15, 18, 19, 21–24, 25(b)	75	650, 653, 654, 656, 657.	8	1101, 1105a note, 1152, 1153 note, 1155, 1182–1182c, 1201, 1202, 1205, 1251a, 1255a note, 1440, 1451, 1481
1962						
June 28	87–510		76	121	8	1104, 1182 note
					22	1925, 1951, 2601, 2601 note, 2602–2605
Oct. 24	87–885	3	76	1247	8	1153 note, 1154
1964						
Aug. 14	88–426	305(43)	78	428	8	1104
Oct. 7	88–634	201 (proviso under heading "assistance to refugees in the United States").	78	1021	22	2601
1965						
Apr. 11	89–10	7301–7309			20	7541–7549
Oct. 3	89–236	1–11, 13–20, 21(a)–(d), (f), 22–24	79	911, 918, 921	8	1101, 1151, 1151 note, 1152–1156, 1181, 1182, 1182 note, 1201, 1202, 1204, 1227, 1253, 1255, 1255 note, 1259, 1322, 1351

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Nov. 2	89–710		80	1104	8	1101
	89–732	3	80	1161	8	1255 note
Nov. 6	89–770		80	1322	8	1401
1967						
Dec. 18	90–215		81	661	8	1430
1968						
June 29	90–369		82	279	8	1430
July 26	90–428		82	446	22	213, 214, 217a, 217a note
Oct. 21	90–609		82	1199	8	1351, 1455
Oct. 24	90–633		82	1343	8	1429, 1439, 1440, 1440e
1970						
Apr. 7	91–225		84	116	8	1101, 1182, 1184
July 10	91–313		84	413	8	1183, 1363
Oct. 26	91–510	421, 422	84	1189	8	1106, 1106 note
1971						
May 14	92–14		85	38	22	214, 214 note
1972						
Oct. 27	92–584	2	86	1289	8	1401b
1974						
Sept. 17	93–417		88	1151	22	214
Oct. 20	93–461		88	1387	8	331–339
1975						
Nov. 28	94–141	501(a)	89	771	22	2601
Dec. 16	94–155		89	824	8	1101
1976						
Apr. 21	94–274	118	90	389	8	1151 note, 1151a note
Sept. 14	94–412	501(a)	90	1258	8	1481
Oct. 12	94–484	601, 602(e), (d), 906	90	2300, 2325	8	1101, 1101 note, 1182, 1182 note
Oct. 18	94–550	7	90	2686	8	1357
Oct. 20	94–571	1–6, 7(a), (c)–(e), (g), 9, 10	90	2706, 2706, 2707.	8	1101, 1101 note, 1151–1153, 1153 note, 1181, 1182, 1227, 1255
1977						
Aug. 1	95–82	307(q)(1), (2), (3) "Sec. 609(e), (d)"	91	394, 395	8	1101, 1101 note, 1182
Aug. 17	95–105	109(b)	91	347	8	1101, 1104, 1104 note, 1105
Oct. 28	95–145	101–107	91	1228	8	1255 note
1978						
Sept. 17	95–370	401	92	627	8	1182 note
Oct. 5	95–412		92	907	8	1151, 1151 note, 1152, 1155, 1182 note
	95–417		92	917	8	1153, 1154, 1431–1434
Oct. 7	95–426	124, 126, 707	92	971, 992	8	1185
					22	211a
Oct. 10	95–431	605	92	1045	8	1182 note
	95–432		92	1046	8	1401, 1401 note, 1481, 1482, 1484–1487
Oct. 30	95–549	101–104, 202	92	2065, 2066	8	1182, 1227, 1258
Nov. 2	95–579	3	92	2474	8	1423
	95–582	2	92	2479	8	1324
1979						
Sept. 27	96–70	3201(a), (d)	93	496, 497	8	1101, 1101 note, 1182 note
Nov. 30	96–132	10, 22, 23	93	1047, 1050	8	1151 note, 1551 note

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Mar. 17	96–212	1, 201, 202, 203(a)–(h), (i) (related to §101(a)(3) of Pub. L. 95–145), 204, 311, 312, 313(a)–(e)(1), (d).	94	102, 108, 110, 117.	8	1101, 1101 note, 1151–1153, 1153 note, 1157, 1157 note, 1158, 1158 note, 1159, 1181, 1182, 1182 note, 1253, 1255 note, 1521, 1521 note, 1522, 1522 note, 1523–1525
					22	2601, 2601 note
Oct. 10	96–422	1, 101–106, 201–203, 301–304, 401–403, 501(a)–(e)(4), (d), (e).	94	1799, 1810	8	1522 note
	96–424		94	1820	8	1522 note
Oct. 17	96–465	2206(a)(10)	94	2162	22	2605
Dec. 16	96–533	716	94	3162	8	1552 note
Dec. 17	96–538	404	94	3192	8	1182
1981						
Aug. 13	97–35	525, 526, 541–547, 1502	95	450, 458, 750	8	1522 note, 1524 note
					20	239a
Dec. 29	97–113	714	95	1548	8	1152 note
	97–116	1–3, 4(1), (3), 5, 6, 10–15, 17, 18(a), 18(e)–(h)(1), (i), (k)–(t), (u)(2)–21.	95	1611, 1612, 1617, 1619, 1620, 1621.	8	1101, 1101 note, 1151, 1151 note, 1152, 1154, 1182, 1182 note, 1201, 1203, 1221, 1252, 1253, 1255, 1255b, 1258, 1305, 1324, 1356, 1361, 1401a, 1409, 1427, 1431–1433, 1439, 1440, 1445–1448, 1452, 1481, 1483
1982						
Aug. 24	97–241	116, 117 "Sec. 33"	96	279	22	214, 217a, 217a note, 2705
Sept. 30	97–271		96	1157	8	1255 note
Oct. 22	97–359		96	1716	8	1154
Oct. 25	97–363		96	1734	8	1101 note, 1522, 1522 note, 1523, 1524
1983						
Nov. 22	98–164	1011(a)(1), (b)	97	1061	8	1522
1984						
Oct. 5	98–454	602	98	1737	8	1182, 1184
Oct. 12	98–473	101(d) (last par.), 220	98	1877, 2027	8	1182, 1252, 1522, 1522 note
Oct. 30	Priv. L. 98–47	3	98	3435	8	1101
	Priv. L. 98–53		98	3437	8	1101 note
1985						
Aug. 16	99–93	111–113, 132	99	410, 420	8	1182 note
					22	2601, 2605, 2605 note, 2606
Dec. 4	99–169	601	99	1007	8	1427
1986						
Aug. 27	99–396	14(a), 15, 16	100	842	8	1182, 1408, 1408 note, 1452, 1452 note
Oct. 18	99–500	101(b) [§§205(a) "Sec. 286(d)–(k)", (b), 206(a) (related to §232), (b)(1)].	100	1783–53, 1783–56.	8	1222, 1356
Oct. 21	99–505		100	1806	8	1101, 1101 note
Oct. 27	99–570	1751	100	3207–47	8	1103 note, 1182, 1182 note, 1227, 1357

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(c) ACT OF FEBRUARY 14, 1917.—The Act of February 14, 1917 (ch. 64, 39 Stat. 919), is repealed. An action taken or offense committed under that Act is deemed to have been taken or committed under section 871 of title 18, United States Code.

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