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IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1996

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Mr. HATCH, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 1664]

The Committee on the Judiciary reports an original bill (S. 1664) to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigative personnel, and detention facilities; improving the system used by employers to verify citizenship or work-authorized alien status; increasing penalties for alien smuggling and document fraud; reforming asylum, exclusion, and deportation law and procedures; and to reduce the use of welfare by aliens; and for other purposes; and recommends that the bill do pass.

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I. Purpose and Summary

The committee bill is intended, first, to increase control over immigration to the United States—decreasing the number of persons becoming part of the U.S. population in violation of this country's immigration law (through visa overstay as well as illegal entry); expediting the removal of excludable and deportable aliens, especially criminal aliens; and reducing the abuse of parole and asylum provisions. It is also intended to reduce aliens' use of welfare and certain other government benefits.

Title I proposes a number of law enforcement and other control measures. Law enforcement measures include: (1) Providing additional enforcement personnel and detention facilities; (2) Authorizing a series of pilot projects on systems to verify eligibility to be employed in the United States (and eligibility to receive public assistance or certain other government benefits), and also requiring improvements in birth certificates and driver's licenses to reduce their vulnerability to fraudulent acquisition and use; (3) Providing additional investigative authority and heavier penalties for document fraud and alien smuggling; (4) Streamlining exclusion and deportation procedures, and increasing the disincentives for repeated illegal entry or visa overstay; (5) Establishing special procedures to expedite the removal of criminal aliens; and (6) Miscellaneous other enforcement-related provisions.

Other control measures in title I include: (1) Tightening the Attorney General's parole authority (which authorizes the entry into the U.S. of otherwise excludable aliens); (2) Amending the procedures used to consider asylum applications, to reduce the likelihood that fraudulent or frivolous applications will enable deportable or excludable aliens to remain in the U.S. for substantial periods; and (3) Repealing the Cuban Adjustment Act (which allows any Cuban national to obtain permanent resident status outside normal immigration and refugee channels), with certain exceptions.

Title II of the committee bill contains several sections relating to financial responsibility: (1) Provisions to reduce the likelihood aliens will become a burden on the taxpayers of this country—including a prohibition on use by illegal aliens of welfare and certain other government benefits; a modification of current law on the deportation of aliens if they become a "public charge"; a requirement that sponsor affidavits of support be legally enforceable; a requirement that when welfare agencies calculate financial need, they "deem" that the income and assets of a sponsored alien include that of his or her sponsor; and (2) Provisions to reimburse States for providing Federally mandated emergency medical services to illegal aliens.

II. Need for Current Legislation

The committee bill is needed to address the high current levels of illegal immigration; the abuse of humanitarian provisions such as asylum and parole; and the substantial burden imposed on the taxpayers of this country as the result of aliens' use of welfare and other government benefits.

No matter how successful Congress might be in crafting a set of immigration laws that would—in theory—lead to the most long-term benefits to the American people, such benefits will not actually occur if those laws cannot be enforced. Unfortunately, U.S. immigration law is violated on a massive scale.

Just one indication is the number of foreign nationals apprehended while in violation of U.S. immigration law. Apprehensions rose dramatically in the 1970's, reaching a total of 8.3 million for the decade. The increase continued in the 1980's, reaching a high of 1.8 million in fiscal year 1986. Following passage of the Immigration Reform and Control Act of 1986, apprehensions declined sharply in 1987, returning to the levels of 1983–84. By 1989, total apprehensions fell below one million for the first time since 1982. However, apprehensions began to rise again in 1990 and have been above one million every year since.

The committee bill proposes numerous measures to reduce illegal entry and visa overstays; to reduce alien smuggling and document fraud; and to expedite exclusion and deportation, especially of criminal aliens. These are described in the section-by-section analysis for sec. 101–108 (Additional Enforcement Personnel); sec. 111–120E (Verification of Eligibility to Work and to Receive Public Assistance); sec. 121–133 (Alien Smuggling; Document Fraud); sec. 141–159 (Exclusion and Deportation); sec. 161–170E (Criminal Aliens); and sec. 171–184 (Miscellaneous).

The bill's proposals to reform several humanitarian provisions of current law are described in the section-by-section analysis for sec. 191–192 (Parole Authority); sec. 193–196 (Asylum); and sec. 197 (Cuban Adjustment Act).

Measures related to financial responsibility, including provisions to reduce use by aliens of welfare—and, with respect to illegal aliens, certain other government benefits—and provisions to reimburse the States for certain Federally mandated emergency medical services, are described in the section-by-section analysis of sec. 201–210 (Receipt of Certain Government Benefits) and sec. 211–212 (Miscellaneous Provisions).

Two issues deserve some comment and analysis in addition to what is contained in the section-by-section analysis. These are: (1) to "Employer sanctions" (i.e., the penalties against knowingly employing illegal aliens) and verification systems, and (2) Alien' use of welfare, including the subjects of sponsor liability and "deeming" (the requirement that when calculating the financial need of sponsored aliens, for purposes of eligibility and benefit amount, welfare agencies attribute the income and assets of a sponsor to the alien).

Employer sanctions and verification systems

It has been recognized for many years that the primary magnet for most illegal immigrants is the availability of jobs—jobs that pay much better than what is available in their home countries.

It is also widely recognized that satisfactory prevention of illegal border entry is unlikely to be achieved solely by patrolling the very long U.S. border. Our border is over 7,000 miles on land and 12,000 miles along what is technically called "coastline." Furthermore, the real sea border consists of over 80,000 miles of what the experts call "shoreline," including the shoreline of the outer coast, offshore islands, sounds, bays, and other major inlets.

And, patrol of the border is, of course, inadequate to deal with foreign nationals who enter the U.S. *legally*—for example, as tourists or students—and then choose to violate the terms of their entry, by not leaving when their period of authorized stay expires or by working at jobs for which they are not authorized. The committee strongly believes in increased investigation and punishment of visa overstayers. However, this is not by itself likely to solve the problem. As is well known by experts—and evident through common sense—the *certainty* of punishment is often at least as important as its *severity*. Unfortunately, the probability that a visa overstayer will face punishment is now quite small and is likely to remain so. These individuals are not, by and large, engaged in illicit behavior that may occasionally be observed. There need not be anything in the way they behave to show their immigration status. Indeed, with the proper set of fraudulent documents, a visa overstayer can appear just like anyone else, especially in an area with many immigrants. He or she can even pose as a U.S. citizen.

Most authoritative analyses of the problem of illegal immigration—illegal entry as well as visa overstay—have recommended a provision such as that in the 1986 Immigration Reform law making it unlawful to employ illegal aliens. These studies include that of 10 years ago by the Select Commission on Immigration and Refugee Policy and the current work being done by the U.S. Commission on Immigration Reform.

Such studies also recognize that an employer sanctions law cannot be effective without a reliable and easy-to-use method for employers to verify work authorization. Accordingly, the 1986 law instituted an interim verification system. This system requires the presentation of one or two documents (depending on whether the document is an identification document as well as a document showing work authorization) from a list of 29. Most of these are not resistant to tampering or counterfeiting. Further, it is surprisingly easy to obtain *genuine* documents, including a birth certificate. Thus, it was believed by Congress and the President that the system would most likely need to be significantly improved. In fact the law called for studies of telephone verification systems and counterfeit-resistant social security cards.

Unfortunately, the interim system is still in place today, 10 years later. This is true even though—as was feared—there is widespread fraud in its use. While most employers try to comply with the law, it is impossible for honest employers to distinguish genuine documents from high-quality (but inexpensive) counterfeit ones.

As a result, the employer sanctions law has not been as effective in deterring illegal immigration as it could be—and should be. That is why apprehensions have continued to be so high.

The committee believes that an improved system to verify eligibility to work in this country must be developed—in order that the enforcement tool with the greatest potential to deter illegal entry and visa abuse will actually have that effect. Effective enforcement requires effective employer sanctions, and effective employer sanctions requires an effective verification system. It is just that simple.

Accordingly, the committee bill directs the President to conduct, over a period of three to six years, local or regional pilot projects (and one in the legislative branch) on improved verification systems. The committee anticipates that the cost to employers of participating in any pilot project in which participation is mandatory would not be significantly greater than the cost under current law.

The bill also directs the President to recommend a system that should be implemented on a nationwide basis. The recommended system could not be implemented until a statute or joint resolution had been passed authorizing it. The bill explicitly states that the system could not require a "national I.D. card" and could not be used except to verify eligibility to work or to receive certain government benefits, or to enforce criminal statues related to document fraud. The bill also provides protections for the privacy and security of any personal information obtained for or utilized by the system. (See the section-by-section analysis for sec. 111 through 114.)

In addition, the committee bill proposes a number of provisions to improve the effectiveness of the current verification system. These include provisions to reduce the list of documents that may be accepted by employers; to require improvements in the birth certificate and driver's license; and to modify the current law providing that under certain circumstances an employer's request for more or different documents than the law requires is an unlawful "unfair immigration-related employment practice" (the committee bill would require a purpose or intent to unlawfully discriminate). (See the section-by-section analysis for sec. 116 through 118.)

Aliens' use of welfare

The committee believes that aliens in this country should be self-sufficient. There is a controversy whether immigrants as a whole—or illegal aliens as a whole—pay more in taxes than they receive in welfare (noncash plus cash), public education, and other government services. The committee believes that at least with respect to immigrant *households* (i.e., a household consisting of immigrant parents, *plus their U.S.-citizen children*, who are in this country because of the immigration of their parents), there is considerable evidence that there is a net cost to taxpayers. See, e.g., George J. Borjas, Immigration and Welfare, 1970–1990, p. 23 (Nat'l Bur. Econ. Res. Working Paper No. 4872, Sept 1994). However, the committee believes that the most relevant question is whether any *particular* immigrant is a burden, not immigrants as a whole.

An immigrant may be admitted to the United States only if the immigrant provides adequate assurance to the consular officer and immigration inspector that he or she is not "likely at any time to

become a public charge." Similar provisions have been part of our law since the 19th century and part of the law of some of the 13 colonies even before Independence. In effect, immigrants make a promise to the American people that they will not become a financial burden.

The committee believes that there is a compelling Federal interest in enacting new rules on alien welfare eligibility and on the financial liability of the U.S. sponsors of immigrants—in order to increase the likelihood that aliens will be self-sufficient, in accordance with the nation's longstanding policy, and to reduce any additional incentive for illegal immigration provided by easy availability of welfare and other taxpayer-funded benefits.

The committee bill provides that if an alien, within 5 years of entry, does become a "public charge"—which the bill defines as someone receiving an aggregate of 12 months of welfare—he or she is deportable. It is even more important in this era that there be such a law, since the welfare state has changed the pattern of immigration and emigration that existed earlier in our history. Before the welfare state, if an immigrant could not succeed in the U.S., he or she often returned to "the old country." This happens less often today, because of the welfare "safety net."

The changes proposed by the bill clarify when the use of welfare would lead to deportability. These changes are likely to lead to less use of welfare by recent immigrants or more deportations of immigrants who do become a burden on the taxpayers.

One of the ways immigrants are permitted to show that they are not likely to become a public charge is by providing an affidavit of support by a sponsor, who is often the U.S. relative petitioning for their entry under an immigrant classification for family reunification. Under current law, sponsors agree to provide support only for three years. Furthermore, the agreement is not legally enforceable.

The committee believes that the sponsor affidavit should be legally enforceable and should be in effect until the sponsored alien (a) has worked for a reasonable period in this country, paying taxes and making a positive economic contribution, or (b) becomes a citizen, whichever occurs first. The committee believes that a reasonable maximum period for the sponsor's liability is 40 "Social Security quarters" (about 10 years), the period it takes any citizen to qualify for benefits under Social Security retirement and certain Medicare programs.

The committee believes that "deeming" of the sponsor's income and assets to the sponsored alien should be required in nearly all welfare programs and for as long as the sponsor is legally liable for support, or 5 years (the period in which an alien can be deported as a public charge), whichever is longer.

It is not unreasonable of the taxpayers of this country to require recently arrived immigrants to depend on their sponsors for at least the first 5 years, regardless of the specific terms in the affidavit of support signed by their sponsors. It was only on the basis of the assurance of the immigrant and the sponsor that the immigrant would not *at any time* become a public charge that the immigrant was allowed in this country.

It should be made clear to immigrants that the taxpayers of this country expect them to be able to make it in this country on their own and with the help of their sponsors.

At this point, there is a fundamental committee intent that should be clearly expressed—an intent that should be taken into account in the interpretation of every provision of this bill. The committee intends that aliens within the jurisdiction of this country be required to fully obey all State and Federal laws—including the immigration laws.

Some Americans appear to be ambivalent about the enforcement of the Immigration and Nationality Act. This includes a number of judges, perhaps reflecting a tension they feel between their duty to apply the law and their inclination to be humane toward those seeking a better life in this country, in accordance with our immigrant heritage. For example, while the U.S. Supreme Court has recognized that the making of immigration policy is reserved to the political branches under our constitutional system and should be largely immune from judicial control (*Fiallo* v. *Bell,* 430 U.S. 787, 792, 796 (1977)), and that relief from deportation may be left to the unfettered discretion of the Attorney General (*Jay* v. *Boyd,* 351 U.S. 345, 357-58 (1956)), the Court on other occasions has characterized deportation as a grave penalty (*Bridges* v. *Wixon,* 326 U.S. 135, 147 (1945)) and suggested that statutory ambiguities should be resolved in favor of the alien (*INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 449 (1987)).

If the United States is to have an immigration policy that is both fair and effective, the law and the commitment of those with the duty to apply or enforce it must be clear. There should be no confusion about the intent of Congress that U.S. immigration law be fully binding on all persons at or within the borders of this country. This is a nation governed by law, and the law includes the immigration statutes and the regulations promulgated thereunder.

Aliens who violate U.S. immigration law should be removed from this country as soon as possible. Exceptions should be provided only in extraordinary cases specified in the statute and approved by the Attorney General. Aliens who are required by law or the judgment of our courts to leave the United States are not thereby subjected to a penalty. The opportunity that U.S. immigration law extends to aliens to enter and remain in this county is a privilege, not an entitlement.

The committee also wishes to note once more the frequently stated reality that the attitude of the American people toward *legal* immigrants and the resources which they willingly devote to immigrants is affected by the level of *illegal* immigration that burdens the society. Aliens who enter or remain in the United States in violation of our law are effectively taking immigration opportunities that might otherwise be extended to others, potential legal immigrants whose presence would be more consistent with the judgment of the elected government of this country about what is in the national interest. Those who are reluctant to enforce the immigration laws should keep this reality in mind.

III. History of Current Legislation

S. 269, the "Immigrant Control and Financial Responsibility Act of 1995," was introduced on January 24 (legislative day January 10), 1995, by Senator Robert J. Dole on behalf of Senator Alan K. Simpson. This legislation was referred to the Committee on the Judiciary, Subcommittee on Immigration, which ordered it favorably reported with amendments on June 14, 1995. The Committee on the Judiciary ordered it favorably reported with amendments on March 21, 1996.

The legislation has its roots in legislation introduced in the 103d Congress, S. 1884, the "Comprehensive Immigration and Asylum Reform Act of 1994," introduced by Senator Alan Simpson on March 2, 1994. Other major immigration bills in the Senate during the 103d Congress included S. 1333, introduced by Senator Edward M. Kennedy on July 30, 1993 (on behalf of the Clinton Administration) and S. 1571, introduced by Senator Dianne Feinstein on October 20, 1993.

The legislation was also influenced by the recommendations of the U.S. Commission on Immigration Reform, chaired by the late Hon. Barbara Jordan. This commission, which was established by Congress in 1990, issued a series of recommendations in the area of illegal immigration in its September 1994 report to Congress, "U.S. Immigration Policy: Restoring Credibility."

IV. Section-by-Section Analysis

TITLE I—IMMIGRATION CONTROL

Subtitle A—Law Enforcement

PART 1—ADDITIONAL ENFORCEMENT PERSONNEL AND FACILITIES

Sec. 101—Border patrol agents

Adds 700 Border Patrol Agents for fiscal year 1996, and 1,000 new Agents for each of the next four fiscal years (a total increase of 90 percent above the current level).

Sec. 102—Investigators

Authorizes the addition of 300 full-time INS investigators for each of the next three fiscal years (a total increase of almost 100 percent), all of whom would be used to enforce laws against alien smuggling and the unlawful employment of aliens.

Sec. 103—Land border inspectors

Directs the Attorney General and Secretary of the Treasury to increase the number of inspectors to assure full staffing of all land border crossing lanes during peak times.

Sec. 104—Investigators of visa overstayers

Authorizes 300 INS officers to investigate aliens who entered legally on a temporary (visitor's) visa, but overstayed their authorized period of stay and remain in the U.S. illegally.

Sec. 105—Increased personnel levels for the Labor Department

Authorizes the addition of 350 Wage and Hour investigators in each of the next two fiscal years to enforce labor standards in areas of the U.S. with high concentrations of illegal aliens. The Secretary of Labor shall give preference to bilingual agents when making the hiring decisions.

Sec. 106—Increase in INS detention facilities

Requires the Attorney General to increase detention space to at least 9,000 beds (an increase of 66 percent) by the end of FY 1997.

Sec. 107—Hiring and training standards

Requires a report from the Attorney General on all prescreening, hiring, and training standards used by the INS when hiring the additional personnel authorized by this act.

Sec. 108—Construction of fencing and road improvements in the border area near San Diego, California

Requires the Attorney General to construct a three-tier fence along 14 miles of the southern border near San Diego in order to deter illegal entry.

PART 2—VERIFICATION OF ELIGIBILITY TO WORK AND TO RECEIVE PUBLIC ASSISTANCE

Subpart A—Development of New Verification System

Sec. 111—Establishment of new system.

Requires the President to develop and recommend to Congress a plan for a system to enable employers to verify that an employee is authorized to work and welfare administrators to verify that an applicant is authorized to receive welfare. The recommendation must be submitted to Congress within 3 or 6 years (depending on the duration of the demonstration projects that are conducted pursuant to sec. 112). Implementation of the recommended system could occur only through subsequent legislation by Congress.

The President must report to Congress on: (1) The proposed system and any alternatives considered; (2) Whether the system reduces the number of illegal immigrants in the workplace; (3) Data on the costs (to the government and to employers), privacy protections, and the accuracy rate of the system; and (4) Whether the system causes new employment discrimination.

The recommended plan would have the following objectives: (1) To reduce the employment of illegal immigrants; (2) To assist employers in complying with the laws against knowingly employing illegal aliens; (3) To prevent unlawful discrimination and privacy violations; (4) To minimize the burden on business; and (5) To ensure that illegal aliens do not receive public assistance or certain other government benefits.

The system would be required to reliably determine whether the person with the identity claimed by an individual is eligible to work and to apply for public assistance, and whether such individual is an imposter, fraudulently claiming another person's identity. The President may not test or recommend a "national I.D. card."

Any documents which are used in such a verification system must be resistant to tampering and counterfeiting, and may not be used for any purpose other than enforcing the immigration laws or laws related to document fraud (or for their original purpose; e.g., as a license to drive a motor vehicle). The bill provides extensive protections against and remedies for violations of privacy.

Sec. 112—Verification system demonstration projects

Directs the President, through the Attorney General, to conduct several local or regional pilot projects (including one in the legislative branch of the Federal Government), during the 3 years following enactment, to test the feasibility of proposed verification systems, and requires regular consultations with Congress. Additional or renewed projects are possible, and a final evaluation and recommendation is required after completion of the projects. The pilot projects would also be subject to the rules applicable to the permanent system, with the exception that the standards of accuracy are not expected to be immediately met in such projects.

The committee intends that the projects be truly local or regional. During consideration of the bill, some concern was expressed that a broader pilot program, such as one covering several high-immigration States, could be tantamount to a national program. The committee believes that a pilot program of such magnitude would violate the provisions of sec. 111 requiring that a statute or joint resolution approve a new system before it could be implemented nationwide.

If the Attorney General determines that a pilot project is sufficiently accurate, then employers who participate need not also follow the verification procedures of current law, including the completion of the "I–9" form.

Sec. 113—Comptroller General monitoring and reports

Requires the General Accounting Office to monitor the pilot programs required under sec. 112 and to provide Congress with an evaluation of the final verification system proposed by the President.

Sec. 114—General nonpreemption of existing rights and remedies

Provides that nothing in sections 111–113 may be construed to impair any rights or remedies available under Federal, State or local law after enactment, except to the extent inconsistent with a provision in one or more of such sections.

Sec. 115—Definitions

Defines "Administration," "Employment Authorized Alien," and "Service."

Subpart B—Strengthening Existing Verification Procedures

Sec. 116—Changes in list of acceptable employment-verification documents

Reduces the number of acceptable employment-verification documents to the U.S. passport, resident alien card (old), alien registration card (new), social security card, and other documents des-

ignated by the Attorney General. Authorizes the Attorney General to require social security account numbers on the verification form.

Sec. 117—Treatment of certain documentary practices as unfair immigration-related employment practices

Provides that a request for documents beyond those required for employment verification shall be treated as an unfair immigration-related employment practice only if made with discriminatory purpose or intent.

Sec. 118—Improvements in identification-related documents

Establishes Federal standards for birth certificates and State-issued drivers licenses (developed in consultation with the States). The section also establishes grants for States to facilitate the matching of birth and death records (to reduce the likelihood that copies of the birth certificate of a deceased person will be provided to other individuals).

Sec. 119—Enhanced civil penalties if labor standards violations are present

Provides that civil penalties for knowing employment of unauthorized aliens may be doubled for employers who have willfully or repeatedly violated Federal labor standards.

Sec. 120—Increased numbers of U.S. Attorneys to prosecute cases of unlawful employment of aliens or document fraud

Authorizes the Attorney General to hire additional Assistant U.S. Attorneys to prosecute immigration-related cases.

Sec. 120A—Subpoena authority for cases of unlawful employment of aliens or document fraud

Grants subpoena power to designated INS officers and to the Secretary of Labor to facilitate the investigation of document fraud and the unauthorized employment of aliens.

Sec. 120B—Task Force to improve public education regarding unlawful employment of aliens and unfair immigration-related employment practices

Establishes a Task Force within the Department of Justice to educate and assist employers in complying with the laws against the knowing employment of aliens who are not authorized to work and the laws against unfair immigration-related employment practices.

Sec. 120C—Nationwide fingerprinting of illegal aliens

Authorizes additional appropriations so that current programs to fingerprint illegal aliens upon apprehension are expanded nationwide.

Sec. 120D—Application of verification procedures to State agency referrals of employment

Requires State employment agencies to comply with the same requirements, and be subject to the same penalties, under the employer sanctions law as private referral agencies.

Sec. 120E—Retention of verification form

Eliminates employer liability for retaining the I–9 form in cases of disaster or other "Acts of God" beyond the control of the employer.

PART 3—ALIEN SMUGGLING; DOCUMENT FRAUD

Sec. 121—Wiretap authority

Provides wiretap authority for investigations of alien smuggling and document fraud.

Sec. 122—Additional coverage in RICO for offenses relating to alien smuggling and document fraud

Adds coverage of certain alien smuggling and document fraud offenses to the RICO (Racketeer Influenced and Corrupt Organizations) statute.

Sec. 123—Increased criminal penalties

Increases criminal penalties for alien smuggling and harboring, and provides guidance to the U.S. Sentencing Commission on possible adjustments to the alien smuggling penalties (such as the smuggling of aliens who intend to commit crimes).

Sec. 124—Admissibility of videotaped witness testimony

Authorizes admission of videotaped witness testimony in smuggling prosecutions.

Sec. 125—Expanded forfeiture for alien smuggling or document fraud

Authorizes asset forfeiture for certain crimes related to alien smuggling and document fraud.

Sec. 126—Criminal forfeiture

Extends criminal forfeiture to cover assets which are derived from or facilitate alien smuggling and document fraud.

Sec. 127—Increased criminal penalties for fraudulent use of government-issued documents

Increases from $250,000 to $500,000 the maximum criminal fine, and from 5 years to 15 years the maximum sentence, for fraudulent or unauthorized use of official government stamp or seal (with enhanced penalties when the fraudulent documents are used to facilitate drug trafficking or international terrorism). This section also provides guidance to the U.S. Sentencing Commission on possible adjustments to the document fraud penalties.

Sec. 128—Criminal penalty for false statement in a document required under the immigration laws or knowingly presenting a document which fails to contain a reasonable basis in law or fact

Establishes criminal penalty of up to 5 years and/or maximum fine of $250,000 for making a false statement in a document required by the immigration laws, or for knowingly presenting a document which lacks a reasonable basis in fact.

Sec. 129—New criminal penalties for failure to disclose role as preparer of false application for asylum or for preparing certain post-conviction applications

Imposes a new criminal penalty for failing to disclose role as the preparer, for a fee, of a fraudulent application for asylum, and—after such a conviction—for preparing *any* immigration application, even if not for a fee and not for asylum. The offender is forced "out of the business" of preparing immigration applications.

Sec. 130—New document fraud offenses; new civil penalties for document fraud

Imposes new civil penalties for using fraudulent documents to obtain immigration benefits, and adds to the statute the presentation of false documents to a common carrier for the purpose of coming to the U.S., and the failure to present documents to an immigration officer upon arrival. Enhances the penalties for document fraud where employers have wilfully or repeatedly violated labor standards. Allows the Attorney General to waive penalties imposed for aliens ultimately granted asylum, or withholding of deportation, in the U.S.

Sec. 131—New exclusion for document fraud or for failure to present documents

Adds new ground of exclusion: failure to present to the immigration inspector at a port of entry the documents that the alien used to board a common carrier to come to the United States, or presenting any document that the inspector determines is forged, counterfeit, altered, falsely made, inapplicable to that alien, or contains a material misrepresentation.

Sec. 132—Limitation on withholding of deportation and other benefits for aliens excludable for document fraud or failing to present documents, or excludable aliens apprehended at sea

Provides that aliens excludable because of document fraud, and excludable aliens apprehended at sea, may not qualify for "withholding of deportation," unless found to have a "credible fear of persecution."

Sec. 133—Penalties for involuntary servitude

Increases the maximum penalty for peonage, involuntary servitude, and slave trade offenses to 10 years. Directs the U.S. Sentencing Commission to review the existing guidelines for slavery and peonage offenses and ensure that they are comparable to the penalties for alien smuggling and kidnapping and that they adequately reflect the heinous nature of such offenses. Also directs the Sentencing Commission to consider the appropriate enhancements for these offenses.

Sec. 134—Exclusion relating to material support to terrorists

Expands definition of "engage in terrorist activity," for purposes of the terrorism ground of exclusion, to include providing false documentation.

PART 4—EXCLUSION AND DEPORTATION

Sec. 141—Special exclusion procedure

Establishes special exclusion proceeding (with limited administrative and judicial review) that may be used (1) for aliens who entered without inspection within the past 2 years; present false documents, or fail to present documents, at a port of entry; are brought ashore in the U.S. from an intercepted vessel and are otherwise excludable; and (2) in an "extraordinary migration situation". Exempts from special exclusion any alien who is eligible to seek and does seek asylum, and is determined to have a "credible fear of persecution." Permits aliens who enter from Canada or Mexico to be returned to those countries pending their exclusion hearing.

Sec. 142—Streamlining judicial review of orders of exclusion or deportation

Provides for the clarification and streamlining of judicial review of deportation and exclusion orders. Prohibits judicial review of the Attorney General's judgment regarding certain forms of discretionary relief from exclusion or deportation, voluntary departure, or adjustment of status. Also eliminates review of final orders of exclusion or deportation for certain criminal aliens (those described in the definition of "specially deportable alien" in bill sec. 164). Limits review of special exclusion orders and cases involving document fraud, and narrows review in asylum cases.

Sec. 143—Civil penalties and visa ineligibility, for failure to depart

Makes aliens subject to a final exclusion or deportation order liable for additional penalties of $500 per day for willful failure or refusal to depart the U.S. Provides that any lawfully admitted nonimmigrant who remains 60 days beyond the authorized period of stay shall be ineligible for any additional nonimmigrant or immigrant visa for 3 years (except an immigrant visa for a spouse of a citizen or permanent resident). The Attorney General may waive this 3-year exclusion for aliens who demonstrate good cause for failure to leave.

Sec. 144—Conduct of proceedings by electronic means

Authorizes the Attorney General to conduct deportation proceedings by electronic or telephonic means, or, with the consent of the parties, in the absence of the alien.

Sec. 145—Subpoena authority

Provides immigration judges with subpoena authority for exclusion and deportation hearings.

Sec. 146—Language of deportation notice; right to counsel

Eliminates the requirement that aliens be notified of deportation proceedings in both English and Spanish. Provides that deportation proceedings may begin within three days after a deportation notice has been provided to an alien held in custody, whether or not the alien has secured counsel during that time. Clarifies that privilege

of counsel is conditioned upon no expense to the government and no unreasonable delay to the proceedings.

Sec. 147—Addition of nonimmigrant visas to types of visas denied for countries refusing to accept deported aliens

Provides an additional incentive for countries to accept deported aliens who are their nationals. Current law authorizes the withholding of immigrant visas to nationals of such countries. This section adds nonimmigrant visas and clarifies that such withholding is mandatory except if a treaty otherwise requires or in the national interest.

Sec. 148—Authorization of special fund for costs of deportation

Authorizes $10 million to facilitate deportation and detention.

Sec. 149—Pilot program to increase efficiency in removal of detained aliens

Authorizes appropriations for pilot programs to increase the efficiency of deportation and exclusion proceedings by providing pro bono legal representation.

Sec. 150—Limitations on relief from exclusion and deportation

Reduces an alien's incentive to delay an exclusion or deportation proceeding by providing that the 7-year period of U.S. residence required to qualify for section 212(c) relief or section 244 suspension of deportation (renamed "cancellation of deportation") no longer includes time after proceedings have begun. Denies relief from deportation or exclusion to lawful permanent residents who receive sentences for one or more felonies totaling more than 5 years. Denies cancellation of deportation to aggravated felons who are not permanent residents, regardless of sentence. Provides standards for cancellation of deportation for permanent residents. Authorizes, but does not require, the Attorney General to adjust to legal status any alien who receives cancellation of deportation. Gives the Attorney General greater control of "voluntary departure" (which allows deportable aliens to leave the U.S. without formal deportation, and therefore without being subject to the temporary ban on reentry that follows deportation). Prohibits judicial review of a denial of a request for voluntary departure.

Sec. 151—Definition of stowaway; excludability of stowaway; carrier liability for costs of detention

Adds formal definition of "stowaway," and provides that a stowaway who is inspected upon arrival in the U.S. is, by definition, an excluded alien and must be immediately deported unless applying for asylum. Stowaways who have applied for asylum may not be removed until the asylum application has been finally adjudicated. Restores carrier liability for detaining stowaways. Increases fine for failing to remove stowaways from U.S. from $3,000 to $5,000.

Sec. 152—Pilot program on interior repatriation and other methods to deter multiple unlawful entries

Requires the Attorney General, in consultation with Secretary of State, to establish a 2-year pilot program to deter multiple illegal

entrants. Provides that such pilot programs may include repatriation to the interior (rather than the border) of the country of nationality, repatriation to a third country, or other disincentives.

Sec. 153—Pilot program on use of closed military bases for the detention of excludable or deportable aliens

Requires the Attorney General and Secretary of Defense to establish a 2-year pilot program to study the feasibility of using closed military bases as detention centers for aliens apprehended by INS.

Sec. 154—Requirement for immunization against vaccine-preventable diseases for aliens seeking permanent residency

Requires aliens seeking entry as lawful permanent residents to show they have been immunized against vaccine-preventable diseases.

Sec. 155—Certification requirements for foreign health-care workers

Requires aliens seeking entry in order to perform health-care work, other than physicians, to be certified by an independent agency concerning their education, training, experience, foreign licenses, English-language ability, and (under certain circumstances) performance on a test. The committee intends that independent credentialing organizations other than the Commission on Graduates of Foreign Nursing Schools shall be approved if they demonstrate to the Attorney General's satisfaction the ability to competently conduct the required certification functions.

Sec. 156—Increased bar to reentry for aliens previously removed

Increases exclusion period to 5 years for aliens who have previously been deported or removed. The bar is increased to 20 years if the alien has been deported or removed two or more times.

Sec. 157—Elimination of consulate shopping for visa overstays

Provides that aliens who overstay their nonimmigrant visas must return to their country of nationality for a subsequent nonimmigrant visa unless the Secretary of State determines that extraordinary circumstances exist.

Sec. 158—Incitement as a basis for exclusion from the United States

Makes excludable those aliens who have incited terrorism, targeted racial vilification, advocated the overthrow of the U.S. government, or serious bodily harm to any U.S. citizen or government official.

Sec. 159—Conforming amendment to withholding of deportation

Makes clear that the Attorney General has discretion to refrain from deporting an individual if such action would be contrary to U.S. obligations under the refugee treaty (the 1967 United Nations Protocol Relating to the Status of Refugees).

PART 5—CRIMINAL ALIENS

Sec. 161—Amended definition of aggravated felony

Lowers fine and imprisonment thresholds in the definition (from 5 years to 1 year, from $200,000 or $100,000 to $10,000), thereby broadening the coverage of money laundering, illegal transactions in property, theft, violence, document fraud, tax evasion, fraud and deceit, and racketeering. Adds new offenses relating to gambling, bribery, perjury, revealing the identity of undercover agents, and transporting prostitutes. Deletes the requirement that alien smuggling be for commercial advantage, but excepts a first offense involving solely the alien's spouse, child or parent. Provides that the amended definition of "aggravated felony" applies to offenses that occurred before, on, or after the date of enactment, except with respect to the criminal provisions of INA section 242(f)(2) (added by bill sec. 164). Certain aggravated felons are made ineligible for withholding of deportation relief (based on fear of persecution), subject to the Attorney General's discretion referred to sec. 159.

Sec. 162—Ineligibility of aggravated felons for adjustment of status

Makes aliens convicted of aggravated felonies ineligible for adjustment of status after cancellation of deportation. Because of the expanded definition of "aggravated felony" provided by sec. 161 of the bill, aliens who have been convicted of most felonies, if sentenced to at least 1 year in prison, will be ineligible for this relief.

Sec. 163—Expeditious deportation creates no enforceable right for aggravated felons

Ensures that the expedited deportation procedures for aggravated felons available under current law does not create any enforceable right against the U.S., which could lead to additional administrative or judicial review, delaying deportation.

Sec. 164—Custody of aliens convicted of aggravated felonies

Permits the release of an excludable or deportable alien convicted of an aggravated felony if the release is necessary to protect a witness or a person cooperating with a criminal investigation, or an immediate family member of such a person, and such release would not threaten the community.

Defines "specially deportable criminal aliens" as any alien who has committed an aggravated felony or at least two crimes of "moral turpitude" which have each resulted in imprisonment for at least one year. Provides that the Attorney General shall take such an alien into custody and remove the alien within 30 days of a final order of deportation or, if later, the alien's release from incarceration.

Sec. 165—Judicial deportation

Authorizes Federal district judges to order the deportation of a criminal alien at the time of sentencing if the alien is deportable on any ground and to order deportation as a condition of a plea agreement or of probation or supervised release. Authorizes State courts to make a find that an alien is deportable as a "specially deportable criminal alien."

Sec. 166—Stipulated exclusion or deportation

Permits special inquiry officers (immigration judges) to enter an order of exclusion or deportation stipulated to by the Service and the alien. Such order may be entered without a personal appearance by the alien.

Sec. 167—Deportation as a condition of probation

Permits a sentencing Federal court to order deportation pursuant to a stipulation by the alien and the U.S. or as a condition of probation.

Sec. 168—Annual report on criminal aliens

Directs the Attorney General to submit an annual report to Congress on criminal aliens and their removal.

Sec. 169—Undercover investigation authority

Authorizes INS to conduct various property and financial transactions as part of undercover investigations.

Sec. 170—Prisoner transfer treaties

Authorizes bilateral agreements for the transfer of deportable alien convicts to serve their sentences in their home countries. Expresses the Sense of Congress that priority to be given to countries with high numbers of deportable alien prisoners in the U.S. and that the prisoner's consent should not be required before transfer under any future treaty, and that the Federal Government and the States should be authorized to keep the original prison sentence in force so that transferred persons who return to the U.S. prior to the completion of their original sentence can be returned to custody for the balance of their sentence.

Sec. 170A—Prisoner transfer treaties study

Directs the Secretary of State and the Attorney General to submit a report on the effectiveness of current prisoner transfer treaties and to recommend how to improve their effectiveness.

Sec. 170B—Using alien for immoral purposes, filing requirement

Requires those who control or harbor alien prostitutes to register with the INS earlier than required by current law, and expands the law to cover all countries.

Sec. 170C—Technical corrections to Violent Crime Control Act and Technical Corrections Act

Redesignates the second section 245(i) in the Immigration and Nationality Act as section 245(j). Authorizes the Attorney General to initiate deportation proceedings after a request for a judicial order of deportation has been denied. The denial no longer would have to be without a decision on the merits.

Sec. 170D—Demonstration project for identification of illegal aliens in incarceration facility of Anaheim, California

Authorizes the Attorney General to conduct a pilot project using INS personnel to demonstrate the feasibility of identifying incarcerated illegal aliens prior to their arraignment on criminal charges.

PART 6—MISCELLANEOUS

Sec. 171—Immigration emergency provisions

Delegates powers to the Attorney General to control a mass influx of illegal aliens, should such an emergency develop. Authorizes distributions from the Immigration Emergency Fund, without the explicit declaration of an immigration emergency by the President, and use of the fund for costs associated with the repatriation of illegal aliens. Upon a declaration by the Attorney General that the mass influx of individuals to the United States is underway or imminent, provisions permit vessels to be seized at sea and allow the Attorney General to authorize any State or local law enforcement officer to perform law enforcement functions ordinarily reserved to Federal authorities.

Sec. 172—Authority to determine visa processing procedures

Clarifies that the nondiscrimination language of INA section 202(a)(1) does not limit the Secretary of State's authority to determine where and how immigrant visa applications should be processed.

Sec. 173—Joint study of automated data collection

Requires the Attorney General, with other Federal agencies and representatives of the air transport industry, to report within 9 months on a plan for automated data collection at ports of entry.

Sec. 174—Automated entry-exit control system

Requires the Attorney General, within 2 years of enactment, to develop an automated system that will permit the computer identification of nonimmigrants lawfully admitted to the United States on temporary (visitor's) visas who have overstayed their authorized period of stay.

Sec. 175—Use of legalization and special agricultural worker information

Requires the Attorney General to release information provided to the INS by an alien in connection with an application for legalization or the special agricultural work program in order to assist law enforcement authorities with a criminal investigation or to assist in the identification of a deceased person.

Sec. 176—Rescission of lawful permanent resident status

Clarifies that the Attorney General need not undertake separate proceedings to rescind an alien's legal status before commencing deportation proceedings involving that alien. An order of deportation shall be sufficient to rescind such status.

Sec. 177—Communication between Federal, State, and local government agencies, and the Immigration and Naturalization Service

Prohibits any restriction on the exchange of information between the Immigration and Naturalization Service and any Federal, State, or local agency regarding a person's immigration status. Effective immigration law enforcement requires a cooperative effort between all levels of government. The acquisition, maintenance,

and exchange of immigration-related information by State and local agencies is consistent with, and potentially of considerable assistance to, the Federal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act.

Sec. 178—Authority to use volunteers

Authorizes the Attorney General to use volunteers to assist in the administration of naturalization programs, port of entry adjudications, and criminal alien removal, but not to administer examinations or to adjudicate.

Sec. 179—Authority to acquire Federal equipment for border

Authorizes the Attorney General to acquire U.S. Government surplus equipment (including aircraft, vehicles, and surveillance equipment) as required to improve the detection, interdiction, and reduction of illegal immigration (including drug trafficking) into the United States.

Sec. 180—Limitation on legalization litigation

Provides that no court shall have jurisdiction to hear any suit arising under the legalization provisions of the Immigration Reform and Control Act of 1986, except by a person who in fact submitted an application and fee before the statutory deadline, or attempted to do so but had the application and fee returned by an INS officer.

Sec. 181—Limitation on adjustment of status

Prevents the adjustment to legal status by any alien who seeks employment-based adjustment but is not currently in lawful nonimmigrant status, or by any alien who has been employed unlawfully within the U.S. at any time or otherwise violated the terms of a nonimmigrant visa.

Sec. 182—Report on detention space

Requires the Attorney General to submit a report to Congress within 1 year which details the amount of detention space that would be necessary under various detention policies, and the number of excludable or deportable aliens who have been released into U.S. communities within each of the 3 prior years because of a lack of detention facilities.

Sec. 183—Compensation of special inquiry officers

Increases the compensation of special inquiry officers (referred to in this section as "immigration judges").

Sec. 184—Acceptance of State services to carry out immigration enforcement

Authorizes the Attorney General to enter into written agreements with a State, or any political subdivision of a State, to permit specially trained State officers to arrest and detain aliens.

Sec. 185—Alien witness cooperation

Authorizes the provision of 250 nonimmigrant visas per year to aliens assisting in the investigation and prosecution of criminal enterprises and terrorist organizations. Current law permits issuance of 125 such visas per year.

Subtitle B—Other Control Measures

PART 1—PAROLE AUTHORITY

Sec. 191—Useable only on a case-by-case basis for humanitarian reasons or significant public benefit

Tightens The Attorney General's parole authority by (a) changing the criterion from "emergent reasons" and "reasons deemed strictly in the public interest" to "urgent humanitarian reasons or significant public benefit," and (b) requiring case-by-case determination.

Sec. 192—Inclusion in world-wide level of family-sponsored immigrants

Provides that the number of parolees who remain in the country for more than a year must be subtracted from the world-wide level of immigrants for the subsequent year.

PART 2—ASYLUM

Sec. 193—Limitations on asylum applications by aliens using documents fraudulently or by excludable aliens apprehended at sea; use of special exclusions procedures

Bars an alien seeking entry to the U.S. with false, stolen or no identification documents from applying for asylum, unless the alien is found to have a "credible fear of persecution." Aliens requesting asylum will be examined by specially trained asylum officers to determine whether the "credible fear" standard is met. Permits supervisory, but not judicial review. Requires the Attorney General to provide information regarding procedures for requesting asylum to potentially eligible persons.

Sec. 194—Time limitation on asylum claims

Provides that an application for asylum which is filed for the first time after the alien has been given an "Order to Show Cause," which commences an exclusion or deportation proceeding, shall not be considered if the proceeding was commenced more than one year after the alien's entry into the United States. Provides an exception if the alien shows good cause for not having filed within a year after entry. "Good cause" could include, but is not necessarily limited to, circumstances that changed after the applicant entered the U.S. and that are relevant to the applicant's eligibility for asylum; physical or mental disability; threats of retribution against the applicant's relatives abroad; or other circumstances that could reasonably prevent a deserving asylum seeker from applying within the required period, as determined by the Attorney General.

Sec. 195—Limitation on work authorization for asylum applicants

Allows the Attorney General to deny, suspend, or limit work authorization for an asylum applicant.

Sec. 196—Increased resources for reducing asylum application backlogs

Authorizes the Attorney General, for 2 years after enactment, to lease property and employ Federal retirees to reduce the current asylum backlog and process new asylum applications.

PART 3—CUBAN ADJUSTMENT ACT

Sec. 197—Repeal and exception

Repeals the act, but provides that the act's provisions will continue to apply on a case-by-case basis to aliens paroled into the country pursuant to the U.S.-Cuba Migration Agreement of 1995. Cubans attaining lawful permanent resident status in this way will be considered family-sponsored immigrants for purposes of annual numerical limits on immigration.

Subtitle C—Effective Dates

Sec. 198—Effective dates

Provides that amendments made by this title shall take effect on the date of enactment, unless otherwise specified. Permits the changes relating to special exclusion, exclusion for document fraud, limitation on withholding of deportation for aliens excludable for document fraud, and limitation on work authority for asylum applicants may be implemented through interim final regulations at any time after enactment of this act (exempts these provisions from the requirement of first issuing a "proposed rule" for public comment).

TITLE II—FINANCIAL RESPONSIBILITY

Subtitle A—Receipt of Certain Government Benefits

Sec. 201—Ineligibility of excludable, deportable, and nonimmigrant aliens

Prohibits receipt of any Federal, State or local government benefit by an "ineligible alien," which is defined as any alien who is not (1) a lawful permanent resident, (2) a refugee, (3) an asylee, or (4) an alien who has been in the U.S. in parole status for at least one year. Ineligible aliens *may* receive emergency medical services, prenatal and postpartum pregnancy services under Title XIX of the Social Security Act, short-term emergency disaster relief, benefits under the National School Lunch Act, the Child Nutrition Act, and public health assistance for immunizations and (if approved by the Secretary of HHS) testing and treatment for communicable diseases.

State or local governments may not treat an ineligible alien as a resident, if such action would treat the alien more favorably than a non-resident U.S. citizen. Only citizens and work-authorized aliens may receive unemployment benefits or Social Security benefits—and benefits may be based only on periods of authorized work. The Secretary of Housing and Urban Development must report on the implementation of current law barring the provision of housing assistance to ineligible aliens. Nonprofit charitable organizations are exempt from the requirements under this title.

Sec. 202—Definition of "public charge" for purposes of deportation

Clarifies that aliens who receive welfare benefits for more than 12 months during the first 5 years after entry (or adjustment to legal permanent resident status, if the immigrant entered first as a nonimmigrant) are deportable. Exceptions are provided for noncitizens who entered prior to enactment, refugees, asylees, and immigrants who, after entry, suffer (1) a physical disability so severe the alien cannot take any job, or (2) a mental disability which requires continuous hospitalization.

Sec. 203—Requirements for sponsor's affidavit of support

Requires that future affidavits of support (in which a sponsor promises to support the immigrant) must be legally enforceable against the sponsor by the sponsored immigrant, and the Federal, State or local governments. An affidavit will be legally enforceable until the immigrant has worked 40 "qualifying quarters" in the United States or until the immigrant naturalizes (whichever is earlier). A qualifying quarter is a 3-month period, during which the immigrant (1) earned enough for the period to count as a quarter for Social Security coverage; (2) did not use welfare; and (3) which occurs in a year in which the immigrant paid Federal income taxes.

A sponsor must be a citizen or lawful permanent resident domiciled in the U.S. or its possessions; 18 or older; who demonstrates the ability to support the sponsor's family and the immigrant by showing an annual income of at least 125 percent of the poverty line (except that for active-duty members of the U.S. armed forces, the required minimum income is 100 percent of the poverty line).

Sec. 204—Attribution of sponsor's income and resources to family-sponsored immigrants

Provides that, when determining a sponsored immigrant's eligibility for any needs-based Federal program, the applicant's income shall be deemed to include the income of the sponsor and sponsor's spouse for the "deeming period." The deeming period is 5 years after entry (for those currently in the U.S.) or the length of time that the affidavit is legally enforceable (see sec. 203). Students who have been approved for Pell grants or other higher education assistance for the academic year in which this act is passed are exempted from deeming for such educational assistance for the remainder of their course of study. States have the option to deem sponsor income when determining eligibility for State or local government-assistance programs.

Sec. 205—Verification of student eligibility for postsecondary Federal student financial assistance

Provides that within one year of enactment, the Secretary of Education must submit a report to Congress which details the operation of the Department's "computer matching program" to ensure ineligible aliens do not receive higher educational assistance by providing fraudulent Social Security numbers on their financial aid applications.

Sec. 206—Authority to States and localities to limit assistance to aliens and to distinguish among classes of aliens in providing general public assistance

Authorizes States to limit the eligibility of any alien for needs-based assistance, provided the State restrictions based upon alienage are not more restrictive than those imposed by the Federal government.

Sec. 207. Earned income tax credit denied to individuals not authorized to be employed in the United States

Denies earned income tax credit to anyone who has not been a citizen or lawful permanent resident for the entire tax year.

Sec. 208—Increased maximum criminal penalties for forging or counterfeiting seal of a Federal department or agency to facilitate benefit fraud by an unlawful alien

Increases from $250,000 to $500,000 the maximum criminal fine, and increases from 5 years to 15 years the maximum sentence, that may be imposed for the unauthorized or fraudulent use, or the possession or transfer of a facsimile or counterfeit, of an official government stamp, seal or other similar instrument of authorization when the crime is intended to facilitate (or has facilitated) an unlawful alien's fraudulent application for (or receipt of) a Federal benefit.

Sec. 209—State option under the Medicaid program to place anti-fraud investigators in hospitals

Permits reimbursement of expenses incurred by a State when hospital staff is supplemented with State or County fraud investigators to facilitate the investigation of potentially fraudulent Medicaid claims.

Sec. 210—Computation of targeted assistance

Provides that targeted assistance for refugees (except for the Targeted Assistance Ten Percent Discretionary Program) is to be allocated on the basis of the number of refugees in the qualifying counties who arrived within the previous five years. This codifies the current allocation formula established by the Office of Refugee Resettlement and is consistent with Congress's original intent.

Subtitle B—Miscellaneous Provisions

Sec. 211—Reimbursement of States and localities for emergency medical assistance for certain illegal aliens

Authorizes Federal reimbursement (subject to appropriations) for emergency ambulance services provided to illegal aliens who are apprehended while crossing the border.

Sec. 212—Treatment of expenses subject to emergency medical services exception

Permits full Federal reimbursement (subject to advance appropriations) of the cost of emergency medical services provided to illegal aliens. In order to qualify for reimbursement, the hospital must

follow guidelines established by the Secretary of Health and Human Services to ensure the individual served is an illegal alien.

Sec. 213—Pilot programs

Authorizes two additional "commuter lane" pilot projects (one each on the northern and southern borders), and pilot projects on expanded hours for ports of entry on the northern border, and on the use of ports of entry after hours through use of card-reading machines or other appropriate technology.

Subtitle C—Effective Dates

Sec. 221—Effective dates

This title shall be effective upon enactment of this act, except where otherwise * * *.

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V. Committee Action

The committee met on 6 separate days (February 29, March 6, 13, 14, 20, and 21, 1996) to mark up the subject legislation, and on March 21, 1996, with a quorum present, by a vote of yeas to nays, the committee ordered an original bill containing provisions from S. 269, "The Immigration Control and Responsibility Act of 1995" offered by Senator Simpson, to be favorably reported, as amended. A number of amendments were agreed to by unanimous consent, voice vote, and rollcall votes. Other amendments were rejected. Following is a list of the amendments considered by the committee:

RECORDED VOTES

1. The Simpson amendment to strike sections 127 (civil penalties for bringing inadmissible aliens from contiguous territories) and 177 (transportation line responsibility for aliens transmitting without visa); to require a study of automated data collection systems; and to revise section 151, the definition of "stowaway" was agreed to by a roll call vote of 11 yeas to 6 nays.

YEAS	NAYS
Hatch	Grassley
Thurmond (by proxy)	Thompson
Simpson	Simon
Specter	Kohl
Brown	Feinstein
Kyl	Feingold
DeWine	
Abraham	
Kennedy	
Leahy	
Heflin	

2. The first part of an Abraham amendment which was divided into two parts by motion, to strike sections 111–113 and section 116 failed by a roll call vote of 9 yeas to 9 nays. The second part,

to insert "Penalties against visa-overstayers and authorization for 300 visa-overstayer investigators was agreed to by voice vote.

YEAS	NAYS
Hatch	Simpson
Thurmond (by proxy)	Grassley
Specter (by proxy)	Brown
Thompson	Kyl
DeWine	Biden (by proxy)
Abraham	Kennedy
Leahy (by proxy)	Simon
Heflin (by proxy)	Kohl (by proxy)
Feingold	Feinstein

3. The Kennedy Amendment to strike sections 111–113 and insert the following, "Part 2—System to Verify Eligibility to Work and to Receive Public Assistance" was agreed to by a rollcall vote of 11 yeas to 5 nays.

YEAS	NAYS
Hatch	Specter (by proxy)
Thurmond (by proxy)	Thompson
Simpson	DeWine
Grassley	Abraham
Brown	Feingold
Kyl	
Biden (by proxy)	
Kennedy	
Simon	
Kohl (by proxy)	
Feinstein	

4. The Hatch amendment to delete provisions increasing civil and criminal penalties for violations of the employer sanctions provisions was agreed to by a vote of 10 yeas to 8 nays.

YEAS	NAYS
Hatch	Simpson
Thurmond	Grassley
Specter (by proxy)	Biden (by proxy)
Brown (by proxy)	Kennedy
Thompson (by proxy)	Leahy
Kyl	Simon
DeWine	Kohl
Abraham	Feinstein
Heflin (by proxy)	
Feingold	

5. Kennedy's amendment to strike Section 115, Intentional Discrimination was defeated by a roll call vote of 7 yeas to 9 nays.

YEAS	NAYS
Thompson	Hatch
Biden	Thurmond
Kennedy	Simpson
Leahy	Grassley (by proxy)
Simon	Brown

Kohl (by proxy)	Kyl
Feingold	DeWine
	Abraham
	Feinstein

6. Simon's amendment to strike Section Criminalizing Voting by Legal Aliens was passed by a vote of 9 yeas to 7 nays.

YEAS	NAYS
Thompson	Hatch
DeWine (by proxy)	Thurmond
Abraham	Simpson
Biden	Grassley (by proxy)
Kennedy	Brown (by proxy)
Leahy (by proxy)	Kyl
Simon	Feinstein
Kohl	
Feingold	

7. Simon's amendment to strike Death Penalty Provisions was defeated by a roll call vote of 5 yeas to 11 nays.

YEAS	NAYS
Kennedy	Hatch
Leahy	Thurmond
Simon	Simpson
Kohl	Grassley
Feingold	Brown
	Thompson
	Kyl
	DeWine
	Abraham
	Biden
	Feinstein

8. Abraham's amendment to define serious crimes committed by aliens as crimes for which the sentence of imprisonment imposed is at least one year for purposes of exclusion or deportation by a vote of 12 yeas to 5 nays.

YEAS	NAYS
Hatch	Biden (by proxy)
Thurmond (by proxy)	Kennedy
Simpson	Leahy (by proxy)
Grassley (by proxy)	Simon (by proxy)
Brown	Feingold
Thompson	
Kyl	
DeWine	
Abraham	
Heflin (by proxy)	
Kohl	
Feinstein	

9. Abraham's amendment to eliminate additional judicial review of orders of exclusion or deportation for aliens who have been convicted of felonies by a vote of 12 yeas to 6 nays.

YEAS	NAYS
Hatch	Specter (by proxy)
Thurmond	Biden (by proxy)
Simpson	Kennedy
Grassley	Leahy
Brown	Simon
Thompson	Feingold
Kyl	
DeWine	
Abraham	
Heflin (by proxy)	
Kohl	
Feinstein	

10. Abraham's amendment to prevent criminal aliens from being released from custody prior to deportation by a vote of 13 yeas to 4 nays.

YEAS	NAYS
Hatch	Kennedy
Thurmond (by proxy)	Leahy
Simpson	Simon
Grassley (by proxy)	Feingold
Brown	
Thompson	
Kyl	
DeWine	
Abraham	
Heflin (by proxy)	
Kohl (by proxy)	
Feinstein	

11. Abraham's amendment to increase adminstrative efficiency by authorizing State Court's to make findings of fact regarding the deportability of criminal aliens during the criminal sentencing by a vote of 11 yeas to 5 nays.

YEAS	NAYS
Hatch	Kennedy
Thurmond (by proxy)	Leahy
Simpson	Simon
Grassley	Kohl (by proxy)
Brown	Feingold
Thompson	
Kyl	
DeWine	
Abraham	
Heflin (by proxy)	
Feinstein	

12. Leahy's amendment to strike restrictions against withholding of deportation and asylum applications by a vote of 8 yeas to 8 nays.

YEAS	NAYS
DeWine	Hatch
Abraham	Thurmond

Biden (by proxy)	Simpson
Kennedy	Grassley
Leahy	Brown
Simon	Thompson
Kohl	Kyl
Feingold	Feinstein

13. Simpson's amendment to revise the bill's requirements for improvements in birth certificates to by a vote of 9 yeas to 7 nays.

YEAS	NAYS
Simpson	Hatch
Grassley	Thurmond (by proxy)
Brown	Thompson
Kyl	DeWine
Kennedy	Abraham
Heflin (by proxy)	Leahy (by proxy)
Simon	Feingold
Kohl	
Feinstein	

14. Abraham's Motion to divide the bill into two separate bills, one addressing illegal immigration and one addressing legal immigration by a vote of 12 yeas to 6 nays.

YEAS	NAYS
Hatch	Simpson
Thurmond (by proxy)	Grassley
Specter (by proxy)	Brown
Thompson	Kyl
DeWine	Heflin
Abraham	Feinstein
Biden (by proxy)	
Kennedy	
Leahy (by proxy)	
Simon	
Kohl (by proxy)	
Feingold	

15. Simon second degree amendment to Senator Specter's amendment to make technical changes to Section 155 of the bill.

YEAS	NAYS
Simon	Hatch
Kohl (by proxy)	Thurmond (by proxy)
Feingold	Simpson
	Grassley
	Specter (by proxy)
	Brown
	Kyl
	DeWine
	Abraham
	Kennedy
	Leahy (by proxy)
	Feinstein

16. Senator DeWine's amendment to strike section 194: Time limitation on asylum claims, was agreed to by a roll call vote of 16 yeas to 1 nay.

YEAS	NAYS
Hatch	Simpson
Thurmond (by proxy)	
Grassley	
Specter	
Brown (by proxy)	
Thompson	
Kyl	
DeWine	
Abraham	
Kennedy	
Leahy (by proxy)	
Heflin (by proxy)	
Simon	
Kohl (by proxy)	
Feinstein	
Feingold	

17. Senator DeWine's amendment to strike section 172: Open-Field searches was agreed to by a roll call vote of 12 yeas to 5 nays.

YEAS	NAYS
Hatch	Thurmond (by proxy)
Specter (by proxy)	Simpson
Brown	Grassley
Kyl	Thompson
DeWine	Feinstein
Abraham	
Biden (by proxy)	
Kennedy	
Leahy (by proxy)	
Simon (by proxy)	
Kohl (by proxy)	
Feingold	

18. Senator Kyl's amendment to authorize funding for a three-tier fence in the San Diego Area. The amendment provides for construction along 14 miles near San Diego, of second and third fences, in addition to the existing reinforce fences, and for roads in between the fences was agreed to by a roll call vote of 12 yeas to 4 nays.

YEAS	NAYS
Hatch	Kennedy
Thurmond (by proxy)	Leahy (by proxy)
Simpson	Simon
Grassley	Feingold
Specter (by proxy)	
Brown	
Thompson (by proxy)	
Kyl	
DeWine	

Abraham
Kohl
Feinstein

19. Senator Simpson's amendment to require sponsors to submit most recent 3 years of income tax returns, in order to show that the sponsor would be able to fulfill his or her contractual obligation to provide assistance when the sponsored person is in financial need was agreed by a roll call vote of 13 yeas to 2 nays.

YEAS	NAYS
Hatch	DeWine
Thurmond (by proxy)	Simon
Simpson	
Grassley (by proxy)	
Brown	
Thompson	
Kyl	
Abraham	
Kennedy	
Leahy (by proxy)	
Kohl	
Feinstein	
Feingold	

20. Senator Kennedy's amendment to limit public assistance safety net restriction for legal immigrants to programs of cash assistance was defeated by a roll call vote of 4 yeas to 12 nays.

YEAS	NAYS
Specter (by proxy)	Hatch
Kennedy	Thurmond (by proxy)
Leahy (by proxy)	Simpson
Simon	Grassley (by proxy)
	Brown
	Thompson
	Kyl
	DeWine
	Abraham
	Kohl
	Feinstein
	Feingold

21. Senator Simon's amendment to strike of Retroactive Deeming Requirements was defeated by a roll call vote of 7 yeas to 9 nays.

YEAS	NAYS
Hatch	Thurmond (by proxy)
Specter (by proxy)	Simpson
DeWine	Grassley
Kennedy	Brown
Leahy (by proxy)	Thompson
Simon	Kyl
Feinstein	Abraham
	Kohl (by proxy)
	Feingold

22. Senator Kennedy's amendment to provide exceptions to sponsor deeming for legal immigrants when public health is at stake, for school lunches, for child nutrition programs, and for other purposes was defeated by a roll call vote of 7 yeas to 8 nays.

YEAS	NAYS
Specter (by proxy)	Hatch
DeWine	Thurmond (by proxy)
Kennedy	Simpson
Leahy (by proxy)	Grassley
Simon	Brown
Feinstein	Thompson
Feingold	Kyl
	Abraham

23. Senator Kennedy's amendment to exempt legal immigrants from restrictions on educational assistance for aliens was defeated by a roll call vote of 7 yeas to 9 nays.

YEAS	NAYS
Specter (by proxy)	Hatch
DeWine	Thurmond (by proxy)
Kennedy	Simpson
Leahy (by proxy)	Grassley
Simon	Brown
Kohl (by proxy)	Kyl
Feingold	Thompson
	Abraham
	Feinstein

24. Senator Kyl's amendment offered by Senator Leahy to strike sections 212, the Border Crossing Fee was agreed to by a roll call vote of 13 yeas to 4 nays.

YEAS	NAYS
Hatch	Thurmond (by proxy)
Specter (by proxy)	Simpson
Brown (by proxy)	Grassley
Thompson	Feinstein
Kyl	
DeWine	
Abraham	
Kennedy	
Leahy	
Heflin (by proxy)	
Simon	
Kohl (by proxy)	
Feingold	

25. Senator Kennedy's amendment to limit pregnancy services for undocumented aliens was agreed to by a roll call vote of 8 yeas to 7 nays.

YEAS	NAYS
Hatch	Thurmond (by proxy)
Specter (by proxy)	Simpson
DeWine (by proxy)	Grassley

Kennedy	Brown
Leahy (by proxy)	Thompson
Simon	Kyl
Feinstein	Abraham
Feingold	

26. Senator Brown's amendment to strike section 213, Cruise Line Fees by a roll call vote of 9 yeas to 7 nays.

YEAS	NAYS
Hatch	Thurmond (by proxy)
Specter (by proxy)	Simpson
Brown	Grassley
Thompson	Kennedy (by proxy)
Kyl	Simon
DeWine	Feinstein
Abraham	Feingold
Leahy	
Heflin	

27. Senator Feinstein's amendment to end deeming at citizenship (Strike lines 14–18, Title II–9, and insert the following) was agreed to by a roll call vote of 11 yeas to 5 nays.

YEAS	NAYS
Hatch	Thurmond (by proxy)
Specter (by proxy)	Simpson
Thompson	Grassley
DeWine	Brown
Abraham	Kyl
Kennedy	
Leahy (by proxy)	
Simon	
Kohl (by proxy)	
Feinstein	
Feingold	

28. Senator Feingold's amendment to Strike Section 209, Limitation on the Award of Costs and Fees was agreed to by a vote of 10 yeas to 5 nays.

YEAS	NAYS
Hatch	Thurmond (by proxy)
Specter (by proxy)	Simpson
Thompson	Grassley
DeWine	Brown
Abraham	Kyl
Kennedy	
Leahy (by proxy)	
Simon	
Kohl (by proxy)	
Feingold	

29. To report the bill favorably as an original bill:

YEAS	NAYS
Hatch	Kennedy
Thurmond (by proxy)	Leahy (by proxy)

Simpson
Grassley
Specter (by proxy)
Brown
Thompson
Kyl
DeWine
Abraham
Heflin (by proxy)
Kohl (by proxy)
Feinstein

Simon
Feingold

The following amendments were agreed to by unanimous consent:

1. Simpson Amendment to require report by the Attorney General on need for detention space.

2. Simpson technical amendment to prevent double counting of long-term parolees.

3. Simpson amendment to provide that a stay of deportation or exclusion is not automatic when an alien seeks judicial review [bill would allow appeals to be pursued from abroad].

4. Simpson amendment with respect to motions to reopen in absentia deportation orders, provides that automatic stay of deportation applies only until judge decides on the motion (thereafter, stay ends unless there are "individually compelling circumstances").

5. Simpson amendment regarding new cancellation of exclusion and deportation provision [which replaces suspension of deportation under 212(c) and 244(a)], restore two provisions from current law which provide more generous treatment for battered spouses and less generous treatment for criminal aliens.

6. Simpson amendment to bar to re-entry after exclusion is increased to 5 years [currently 1 year].

7. Simpson amendment to require fingerprinting of illegal aliens apprehended anywhere in the U.S.

8. Simpson amendment to add conspiracy to the offenses listed in bill sec. 125 (expanded forfeiture) and 126 (criminal forfeiture) and 126 (criminal forfeiture)

9. Simpson amendment to add 18 U.S.C. 1541 (passport issuance without authority) to bill sec. 128 (increased criminal penalties for fraudulent use of government-issued documents)

10. Simpson amendment to add coverage of 18 U.S.C. 1541 to sentencing guidelines for various offenses relating to document fraud.

11. Simpson amendment that for purposes of the terrorism ground of exclusion, to expand definition of "engage in terrorist activity" to include providing false documentation.

12. Grassley amendment designating Congress as one of the five verification system demonstration projects.

13. Kyl amendment to limit liability of employers complying with any verification system or pilot project verification system.

14. Kyl amendment to require that any alien who has overstayed a visa return to his or her home country to obtain an-

other visa from the consular office there. It was agreed that Senators would work to modify the amendment further.

15. Kennedy's Omnibus Amendment to Improve Criminal Provisions.

16. Feinstein's amendment to increase personnel levels for the Labor Department was accepted after being modified by a Simon amendment to add a section on Preference for bilingual wage and hour inspectors.

17. Kyl's amendment to expand detention facilities to at least 9,000 beds by fiscal year 1997.

18. Kyl's amendment to advise the President to add a component to the prison transfer treaty language that states that if a transferred prisoner returns to the United States prior to the completion of his original U.S. sentence, the U.S. sentence is not discharged.

19. Kyl's amendment to Judicial Review Provisions of Section 142.

20. Senator Grassley's amendment, with a modification made by Senator Kennedy, regarding acceptance of state services to carry out immigration enforcement.

21. Senator Specter's amendment to make technical changes to Section 155 of the bill.

22. Senator Feingold's amendment to build some accountability into the process of hiring all of the new agents authorized by the bill.

23. Senator Kyl's amendment to increase the number of Border Patrol agents by 1,000 per year over the next five years, with a modification.

24. Senator Brown's amendment to provide similar treatment to employment agencies that refer for a fee and State employment agencies.

25. Senator Brown's amendment to deny asylum for those who file for the first time in deportation proceedings which began more than 1 year after entry into the United States with some exceptions, was agreed to with a commitment to further modify the language.

26. Senator Kennedy's amendment to ensure compliance with treaty obligations pertaining to refugees, with a modification.

27. Senator Kyl's amendment to add a new section XXX Immigration Judges and Compensation.

28. Senator Brown's modified amendment to deny asylum for those who file for the first time in deportation proceedings which began more than 1 year after entry into the United States with some exceptions.

29. Senator Brown's modified amendment to provide for an exception to the strict liability for record keeping requirements in cases of disaster, acts of God, and other events beyond the control of the person or entity.

30. Senator Simpson's amendment to provide exception from deeming requirement if sponsored individual is in hardship.

31. Senator Kyl's amendment to require the states and localities be reimbursed for transporting illegal aliens injured while attempting to cross the U.S. border.

32. Senator Kyl's amendment to require the federal government to reimburse states and localities for the costs associated with providing emergency services to illegal aliens; that all hospitals and facilities that are contracted out by local and state governments would be eligible for reimbursement; that the non-profit and for-profit hospitals that service a disproportionate share of low income patients, as defined by Medicare provision in the Social Security Act, are eligible for reimbursement.

33. Senator Kyl's amendment to require the Department of Education together with the Social Security Administrator to report within one year on the effectiveness of their program to verify the status of all applicants applying for higher education benefits.

34. Senator Kyl's modified amendment to strike section 120A: Office for the enforcement of employer sanctions.

35. Senator Kyl's modified amendment to section 111(b), to limit the amount employers will have to spend complying with the verification system.

36. Senator Kyl's modified amendment to require that any alien who has overstayed a visa return to his or her home country to obtain another visa from the consular office there.

37. Senator Grassley's amendment to create an exemption from deeming for nonprofits, with an understanding that the parties would continue to work out language if necessary.

38. Senator Kennedy's amendment to preclude immigration checks by community-based service organizations for certain assistance programs, as determined by the Attorney General.

39. Simpson amendment, as modified, to require the State Department to deny visas to nationals of countries that refuse to accept nationals (waiver if denial would be inconsistent with a treaty or executive agreement).

The following amendments were agreed to by voice vote:

1. Kyl amendment to strike section 118: Retention of fines for purposes of law enforcement.

2. Kyl amendment to strike the asset forfeiture provisions regarding unlawful employment of aliens.

3. Feinstein's amendment to establish a Demonstration Project for Identification of Illegal Aliens in Incarceration Facility of Anaheim, CA.

4. Brown's amendment to exclude aliens that incite violence or terrorist acts against the U.S. Government, citizens, or officials.

The following amendment was rejected by voice vote:

Simon amendment to Judicial Review Provisions of section 142.

VI. Cost Estimate

The Congressional Budget Office estimate of the costs of this measure and compliance with the requirements of the Unfunded Mandates Reform Act has been requested but had not been received at the time the report was filed. When the report is available, the chairman will request that it be printed in the Congressional Record for the advice of the Senate.

VII. Regulatory Impact Statement

In compliance with Rule 26.11b of the Standing Rules of the Senate, the committee hereby states that the committee bill's only significant regulatory impacts will result from the following provisions: sec. 111 and 112 direct the President to conduct pilot projects on systems to verify eligibility to work and eligibility to receive welfare benefits, and to recommend such a system to Congress for implementation; sec. 116(b) provides for a reduction in the number of acceptable documents for purposes of the law against knowing employment of unauthorized aliens and authorizes the Attorney General to prohibit use of additional documents; Sec. 118 provides for regulations of the Secretary of Health and Human Services to set standards for U.S. birth certificates, and for regulations of the Secretary of Transportation to set standards for State-issued drivers licenses and identification documents; and Sec. 151(c) provides that the Attorney General may by regulation take immediate custody of any stowaway and charge the owner, charterer, agent, consignee, agent, commanding officer, or master of the vessel or aircraft on which the stowaway has arrived the costs of detaining the stowaway.

VIII. ADDITIONAL VIEWS OF SENATOR HATCH

I am gratified that the committee supported my amendment to strike increases in civil and criminal penalties against employers for violations of the sanctions provisions under current law. I am similarly gratified that the committee adopted several Kyl/Hatch amendments. These amendments struck civil and criminal asset forfeiture penalties for employer sanctions violations; rejected the notion of a revolving fund for fines assessed against employers going back to the INS; and dedicated more funds to educating employers in lieu of a separate Office of Sanctions Enforcement.

About 10 years ago, Congress enacted what was described as a key component of a program to control illegal immigration, making it illegal for employers to hire knowingly persons unauthorized to work in the United States.

This employer sanctions regime is well-intentioned. In my view, however, the employer sanctions regime is mistaken. While I have in the past supported an outright repeal, the intent of my amendment and those amendments offered by Senator Kyl was simply to ensure that this bill did not make the current situation worse.

First, I do not believe we should, in effect, convert our nation's employers into guardians of our borders—that is a job for the Border Patrol and the INS. We should beef up our effort to control illegal immigration at the border and to track visa overstayers, and I am pleased that the bill reported by this committee does exactly that. Our employers, however, have enough to do competing in the global marketplace while complying with hundreds of other federal rules and regulations.

Second, employer sanctions do not work. If they did, we would not be debating a verification system. If sanctions worked, we would not have the level of concern we presently have about the very issue of illegal immigration. We would not have seen so much television footage of persons illegally crossing our borders by running against traffic on highways in order to defeat vehicular pursuit. We would not have seen a ship grounded off of our New Jersey shore a few years ago loaded with aliens to be smuggled into our country. We would not be reading about illegal aliens loaded onto box cars which are then sealed south of our border on their way north.

Third, employer sanctions have had serious adverse consequences. These are unintended, but still very real. A cottage industry of phony documents used to beat to system has been further spurred by employer sanctions. Moreover, employer sanctions are an unintended, but inevitable, incentive to employers to discriminate against persons who look and sound foreign. And while such discrimination is forbidden by the 1986 Immigration Reform and Control Act, not all such discrimination can be uncovered and remedied.

The problem with employer sanctions is not in the details, it is in the very concept. We should resist the notion that they need to be "tightened up" or "made tougher." All we will achieve is placing more burdens on business.

Finally, the bill retains significant increases for personnel directed to investigate and prosecute employers for sanctions violations. I remain concerned about those increases. These new investigators and prosecutors, in my view, should be dedicated to going after smugglers and document fraud, not American employers.

ORRIN HATCH.

IX. ADDITIONAL VIEWS OF SENATOR ABRAHAM

I would like to express my support for the final illegal immigration reform bill (S. 269) worked out by this committee. It is, in my view, much improved over the original. This final version of the bill makes needed, substantive reforms because it now focuses on the real problem of illegal immigration without punishing law-abiding employers and immigrants who play by the rules. It now concentrates on better enforcement, both at the border and in dealings with visa overstayers and criminal aliens. It restricts welfare use by immigrants. It no longer includes a harmful border tax. And, while progress in my view remains to be made in this area, it no longer institutes a mandatory identification system that would needlessly harm workers, employers and law-abiding citizens. These are changes I believed were called for in the original bill. Indeed, I introduced my own immigration reform bill, S. 1535, in part as an effort to put on the table a number of changes that I am happy to say ended up as amendments incorporated in the final bill.

First let me say that I am gratified that the committee voted overwhelmingly, 12 to 6, for my amendment to split the bill back into its original two parts—one dealing with illegal and the other with legal immigration. I argued throughout that this presented a threshold issue, which would determine whether we would place sufficient emphasis on stemming the tide of illegal immigrants without endangering the rights and well-being of Americans and law-abiding immigrants. It is my firm intention to seek to maintain the separation of illegal and legal immigration reform when these matters reach the Senate floor, and throughout the legislative process.

By splitting the bill, we allowed ourselves to focus on immigrants who flout our laws. Thus, the committee adopted the Kyl-Abraham amendment to increase by 300 the number of extra border patrol agents the bill would add each year, to a total of 1,000 per year. Further, recognizing that roughly one half of all illegal aliens enter this country legally, then overstay their visas, the committee adopted my amendment to apply real sanctions to those who overstay their allotted time. My amendment imposes a forced waiting period of at least three years before any visa overstayer can be considered for another visa.

As important, we made real progress toward ridding our nation of the 450,000 criminal aliens in our jails and on our streets. A package of four amendments that I sponsored was adopted. This package will: (1) Prohibit the Attorney General from releasing convicted criminal aliens from custody; (2) End judicial review for orders of deportation entered against these criminal aliens—while maintaining the right to administrative review and the right to review the underlying conviction; (3) Require the Attorney General to

deport criminal aliens within thirty days of the conclusion of the alien's prison sentence—with exceptions made only for national security reasons or on account of the criminal alien's cooperation with law enforcement officials; and (4) Permit state criminal courts to enter conclusive findings of fact, during sentencing, that an alien has been convicted of a deportable offence. These provisions will aim our efforts toward the real problem of criminal activity, and away from measures that do more to hurt Americans and others who play by the rules than the law-flouters we are after.

The committee also approved the Kyl-Leahy-Abraham amendment to strike the border tax that would have hurt our burgeoning trade with both Canada and Mexico. Canada alone purchased $115 billion of U.S. goods last year. The increased congestion at border crossings, the increased expense and the increased delay for truckload shipping could only hurt this trade, and the many workers engaged in it.

Finally, Mr. Chairman, I would like to mention one area in which I believe we did not go far enough in changing the original illegal immigration reform bill. I am pleased that we did away with the original mandatory employee verification system. The costs would have been staggering, the system horribly inefficient and the burden on workers misidentified by mistake-riddled government records appalling. Unfortunately, the bill now contains a provision, authored by Senator Kennedy, that provides for "local and regional" pilot programs in states with high numbers of illegal aliens.

I oppose this provision, Mr. Chairman, and intend to offer an amendment with Senators Feingold and DeWine to strike it from the bill when it reaches the floor. Why do we oppose it? Because the new system would be inefficient and, before long, both national and mandatory. That the scope of the provision will expand seems clear. Only the "regional" language imposes any limit. There is no bar to the creation of a comprehensive national database. And projects, while "regional" could be of unlimited number. What is more, this provision sets up the bureaucracy, imposes employer mandates, and imposes new liabilities on employers which would make transition to a national system almost automatic. Indeed, the provision calls for the President to present Congress with a plan for a nationwide system after just four years. It is my firm belief that we should stick with reforms in the existing identification structure without imposing this new burden on workers and employers.

So overall, Mr. Chairman, I am satisfied that this bill now includes the prudent law enforcement measures needed to get illegal immigration under control. I remain concerned, however, that the Kennedy provision will produce a costly, intrusive, and ineffective national employee verification system, and I intend to fight the provision on the floor.

Senator DeWine joins in these views.

SAM ABRAHAM.

X. ADDITIONAL VIEWS OF SENATORS DE WINE, ABRAHAM, AND FEINGOLD

We wish to note our strong opposition to the provision that relates to identification-related documents.

The committee amended the bill as it pertains to national standards for birth certificates and drivers licenses. Section 118 no longer, by its terms, requires that such identification documents include fingerprints or other biometrics data; it nevertheless charges the Secretary of Health and Human Services with developing federal standards to make these documents less susceptible to counterfeiting. The committee also removed the requirement that states develop methods for matching death certificates and birth certificates. This requirement was replaced by a section that would encourage states to establish pilot programs that would implement certificate matching systems.

Notwithstanding these changes, we remain strongly opposed to section 118.

First, since this provision dictates to state agencies the type of documents they may accept and the form of documents they must issue, even for solely state purposes, we believe it raises serious concerns regarding federalism. States should be free to determine the standards of their own documents of record.

Second, the burdens imposed on the states by the requirements regarding document safety features appears to be a substantial unfunded mandate. Additionally, proponents have failed to provide any estimate as to what these mandates would cost.

Likewise, the federal costs associated with this section are also unspecified. Neither the federal document issuance costs nor the cost of pilot programs has been estimated. To commit to the funding of a federally-mandated program without any notion of the likely cost of that mandate is ill-advised.

Finally, leaving decisions regarding what features these documents should contain to federal bureaucrats is unwise and potentially dangerous. Under the current language, HHS could develop standards even more intrusive and costly than those articulated in the original legislation. We do not believe that the setting of such standards should be left to the federal bureaucracy with nothing more than a requirement that they consult with the states who will be burdened by those standards. The bill does not provide for any congressional review of the standards, nor does it impose any limit on what HHS can mandate. The provision is ill-conceived, and contrary to any reasonable concern for civil liberties.

MIKE DEWINE.
SPENCER ABRAHAM.
RUSS FEINGOLD.

XI. ADDITIONAL VIEWS OF SENATORS DEWINE, KENNEDY, AND FEINGOLD

We wish to note our serious reservations regarding Section 194, the provision dealing with a time limitation on asylum claims.

As originally written, that section would have required aliens seeking asylum to file for such asylum within thirty days of arriving in the United States. Along with Senators Abraham and Feingold, we introduced an amendment to strike this time limit. We noted that, since INS had imposed new asylum application regulations in late 1994, the flagrant abuses of the asylum process had been substantially reduced. Further, we and other amendment sponsors noted that the persons most deserving of asylum status—those under threat of retaliation, those suffering physical or mental disability, especially when abuse resulting from torture—would most be hurt by the imposition of any filing deadline, and particularly so, if the deadline was thirty days. We are pleased that the committee, by a 16 to 1 vote, agreed, and struck the thirty day time limit.

The committee then passed an amendment to section 194 offered by Senator Brown, which imposed a one year filing deadline, but permitted persons to file later than one year if they can show good cause for not filing sooner. While this language is far better than the original thirty day time limit, we remain concerned that any limit creates unnecessary hardship on those who are deserving of asylum, but who may find it difficult to show good cause under the standard of amended section 194.

Our concern is borne out by report language which states that "[g]ood cause" *could include* circumstances that changed after the applicant entered the U.S. and that are relevant to the applicant's eligibility for asylum; physical or mental disability; threats of retribution against the applicant's relatives abroad; or other extenuating circumstances, as determined by the Attorney General." (Emphasis added.) By a 16-to-1 vote, the committee agreed that 30 days was insufficient time to allow persons to file for asylum. The discussion on this section also illustrated clearly that the types of circumstances indicated in the report language were not only things that "good cause" could include, but were things that "good cause" *did* include. Unfortunately, the report, as written, would allow the issuance of federal regulations that might exclude the very types of applicants that the committee specifically intended to include. As a result, we wish to express my continuing concern with the imposition of any time limits on asylum seekers. In the alternative, we urge that "good cause" be broadly defined to include all reasonable circumstances that could prevent a deserving asylum seeker from applying for asylum. This action is completely consistent with the historical precedents that have long made the United

States a haven for those persecuted for their political and religious beliefs.

MIKE DEWINE,
TED KENNEDY,
RUSS FEINGOLD.

XII. MINORITY VIEWS OF SENATORS KENNEDY, SIMON, AND LEAHY

Any serious legislative effort to better control illegal immigration not only must enhance border enforcement, but also must deny the magnet of jobs to those in the United States unlawfully. This bill represents major progress in addressing both these facets of the illegal immigration problem by increasing border patrol agents, immigration inspectors, and Labor Department inspectors, and, as discussed in greater detail below, by imposing stiff new penalties for alien smuggling, document fraud, and operation of sweatshops. While we may disagree on the merits of the bill's employment eligibility verification proposals, we can agree that there is much to be said for the bill's efforts in the area of illegal immigration.

However, at the same time it accomplishes the worthy goal of deterring and preventing *illegal* immigration, the bill also proceeds at the expense of *legal* immigrants, refugees, and American citizens. It jeopardizes our tradition of providing haven to those fleeing political persecution. It denies a safety net to legal immigrant families who are here legally, playing by the rules, and contributing to our communities—but who may fall on hard times through no fault of their own—and in so doing, places the public health and safety at risk. Finally, it fosters discrimination against American citizens and legal immigrants by limiting the available remedies against employers who treat foreign-looking or foreign-sounding American job applicants different from the rest of Americans.

I. Bad News: Denial of Safety Net to Legal Immigrants

While the bill ostensibly focuses on illegal immigration, title II mainly contains limitations on *legal immigrants*' access to a wide array of public programs. Many of these individuals, who have played by the rules while other aliens have chosen to flout them, will under this bill find themselves effectively barred from receiving virtually any means-tested government assistance for at least 5 years, including:

- Assistance that this bill, in the public interest, makes freely available to *illegal* immigrants, such as emergency medical care, emergency disaster relief, and immunization assistance.
- Child Nutrition programs, Head Start, and school lunches.
- Higher education and job training assistance—the very tools that would enable immigrants to escape welfare dependence in the future.

The committee's decision to disaggregate the legal and illegal immigration proposals approved by the subcommittee arose from the belief that the two subjects are distinct, and that the national furor over illegal immigration should not be allowed to poison our view of immigrants who have come to the United States legally, paid taxes, served in our military, and been productive members of our

communities. Yet the bill's treatment of legal immigrants in the welfare reform context reflects exactly what we sought to avoid in separating illegal from legal immigration legislation.

The bill's welfare reform provisions are premised on the twin notions that: (1) As a matter of fact, many immigrants come to, or stay in, this country not to work hard and earn a living, but to feed from the public trough at taxpayer expense;[1] and (2) As a matter of policy, immigrants' sponsors, not the United States government, should assume responsibility for immigrants' welfare until the immigrant has sufficiently paid into the system.[2] Because of these concerns, the bill:

- Renders deportable any immigrant who has received almost any means-tested state or federal benefits for an aggregate of 12 months within his first five years in the United States;
- Requires an immigrant sponsor to undertake a binding contractual obligation to support the immigrant until he has worked 40 "qualifying quarters" or has naturalized; and
- Requires an immigrant sponsor's income to be "deemed" to the immigrant for the duration of the sponsor's contract of support when determining the immigrant's eligibility for *any* means-tested federal benefit.

While we are sensitive to some of the concerns motivating these provisions, and in fact agree with many of the underlying principles of sponsor responsibility that they embody, these proposals betray a fundamental misconception about immigrants' utilization of government assistance. Moreover, they are simply too inflexible and harsh in their restrictions on immigrants' access to an overly broad array of government assistance programs.

The bill's benefits provisions have a variety of other, unintended consequences that furnish additional justification for our opposition to this bill. First, with the bill's removal of the federal safety net for immigrants, state and local assistance providers will face an unexpected and substantial cost-shift as immigrants who are barred from federal assistance look elsewhere for aid. This cost shift is incompatible with the federal government's plenary power over immigration, and likely an unlawful unfunded mandate. Second, these provisions will create innumerable bureaucratic problems for federal, state, local, and private service providers, who will now be saddled with the administrative burdens of determining which immigrant applicants for assistance are entitled to benefits, which have sponsors, and what their sponsors' income is. While the worst of these problems were solved by amendments offered successfully by Senators Kennedy and Grassley to exclude non-profits and certain community-based organizations from having to conduct immigration inspections, the administrative problems caused by these rules persist with a variety of other providers, and threaten not only immigrants' access to benefits but the ability of *native-born Americans* to access these services in an efficient manner.

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[1] See Committee Report at (''Before the welfare state, if an immigrant could not succeed in the U.S., he or she often returned to the 'old country.' This happens less often today, because of the welfare 'safety net.'")

[2] *Id.* at ("It should be made clear to immigrants that the taxpayers of this country expect them to be able to make it in this country on their own and with the help of their sponsors.")

THE FACTS

Despite concerns about immigrants' use, or abuse, of government benefits, the facts are that:

- The overwhelming majority of legal immigrants (over 93 percent) do not use "welfare" as conventionally defined—i.e., Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), or General Assistance.[3]
- While immigrants have slightly higher welfare use rates than native-born Americans, (6.6 percent of immigrants access welfare versus 4.9 percent of the native-born population),[4] welfare use among immigrants is concentrated among refugees and elderly immigrants receiving SSI. These two subpopulations make up 21 percent of the immigrant population, but comprise 40 percent of immigrant welfare users.[5] Refugees—who are not sponsored into the United States, and to whom we owe distinct obligations as a matter of international law—are not subject to most of the restrictions in the bill.
- Poor immigrants are less likely than poor native-born Americans to use welfare. 16 percent of poor immigrants used welfare versus 25 percent of poor native-born Americans.[6]
- There is real evidence of immigrants' disproportionate use of SSI. In 1993, elderly immigrants comprised 28 percent of SSI users, but only 9 percent of the total elderly population.[7] However, there is *no* evidence of immigrant abuse with respect to other government assistance programs.[8]

- Welfare use among non-refugee immigrants of working age is about the same as that for natives, 5.1 percent versus 5.3 percent.[9]

Clearly, claims of widespread immigrant abuse of government assistance programs are unfounded. Like their predecessors, from whom most of us are descended, today's legal immigrants work hard, contribute to our coffers more than they take,[10] and shun dependence on government assistance whenever possible. This is not to say that no areas of abuse exist, or that all immigrants fit into this mold, but rather that any reforms of immigrant eligibility for government benefits must be carefully crafted to provide assistance to those who deserve and need it, and to reserve the most severe restrictions for those programs that have been prone to some abuse. The bill falls short of achieving this careful balance, and instead takes a cookie-cutter approach that treats all government as-

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[3] See Fix, Passel, and Zimmerman, "The Use of SSI and Other Welfare Programs by Immigrants," Written Testimony of the Urban Institute Before the Senate Subcommittee on Immigration and Refugee Affairs, February 6, 1996 ("Urban Institute Testimony"), at 2.

[4] *Ibid.* See also March 1994 Current Population Survey (CPS).

[5] Fix, Zimmerman, "When Should Immigrants Receive Public Benefits," *The Urban Institute, Immigrant Policy Program*, May 1995, at 4–5. See also March 1994 CPS.

[6] *Id.* at 6.

[7] *Id.* at 5. See also Scott and Ponce, "Aliens Who Receive SSI Benefits," Office of Supplemental Security Income, Social Security Administration, March 1994.

[8] "It would appear that the disproportionate use of benefit programs by immigrants is confined largely to the Supplemental Security Income program for the aged, blind, and disabled." Written Testimony of Susan Forbes Martin, Executive Director, U.S. Commission on Immigration Reform, before the Senate Subcommittee on Immigration and Refugee Affairs, February 6, 1996 ("Commission Testimony"), at 2.

[9] Urban Institute Testimony at 5. See also March 1994 CPS.

[10] The Urban Institute has estimated that post-1970 legal immigrants have generated a net surplus of $25 billion in government revenues. See Fix and Passel, *Immigration and Immigrants: Setting the Record Straight*, The Urban Institute, May 1994, at 60.

sistance as identical and fungible, at the expense of sensible, far-sighted policy making.

THE BENEFITS PROVISIONS OF THE LEGISLATION

A. *Public Charge*—As noted, section 202 renders deportable as a "public charge" an immigrant who receives virtually any means-tested federal or state benefit for an aggregate of 12 months during his first 5 years in the United States. Notwithstanding the majority's claims that section 202 simply clarifies existing law, which denies entry to any immigrant who is likely to become a "public charge" in his first 5 years in the United States, section 202's *definition* of who constitutes a "public charge" is new, and of such an overwhelming sweep as to be at odds with fundamental fairness.

First, and most important, section 202 includes absolutely no limitations period cabining the Attorney General's ability to deport a "public charge." Thus, an individual who received 12 months worth of public assistance between 1997 and 2002 could still be deported as a public charge in 2025, or 2045, or 2065, after she got settled, found steady work, raised a family, and became a productive member of society.[11] Fairness and predictability require that the Attorney General not be given authority in perpetuity to deport an immigrant for conduct occurring during the immigrant's first five years here.

Second, even if some suitable limitations period were added to the public charge provisions, section 202 sweeps far too broadly. The array of government programs that serve as predicates for deportation under these provisions is astounding. It includes, in addition to cash programs traditionally defined as welfare: Head Start; Pensions for veterans; rural housing loans; student loans; low income energy assistance; job training programs; and many, many other non-cash programs. Thus, for example, an immigrant who arrives in 1996 and receives a one-year Pell Grant in 1998 to complete his education is deportable because of that transgression. While there is merit to the notion that immigrants should not arrive in the United States and immediately fall into reliance on government assistance, the list of programs giving rise to deportability under section 202 includes assistance that falls outside our traditional notions of welfare, that should be available to all individuals in the public interest, and that will ultimately enable legal immigrants from escaping the kind of welfare dependency that the majority frowns on. The House Immigration Bill, H.R. 2202, chose precisely this route, limiting the public charge predicate programs to six: AFDC, Food Stamps, SSI, Medicaid, Housing Assistance, and State general assistance.

We will be offering amendments on the floor to address our concerns with this section.

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[11] The lack of a limitations period is particularly problematic given that "[a]verage household incomes of legal * * * immigrant households rise with time in the United States and surpass those of natives after ten years in this country." See Fix and Passel, *Immigration and Immigrants: Setting the Record Straight*, at 69. Thus, while an immigrant may at an early point in her tenure in this country rely on government benefits, it is likely that at a later point, she will become a contributing member of society, and may in fact have the wherewithal to reimburse the government for services rendered in the past. Nothing in the bill's public charge provisions accounts for this likelihood.

B. *Binding Affidavits of Support*—Under current law, the affidavit of support signed by an immigrant sponsor as a condition of an immigrant's entry into the United States has no legal effect, and imposes no enforceable obligation on the part of the sponsor to support the immigrant once he enters *the* United States. Section 203 of the bill requires anyone sponsoring an immigrant after the bill's enactment to sign a new, legally enforceable document imposing on the sponsor a contractual obligation to support the immigrant until he works 40 "qualifying quarters" or naturalizes. This obligation is enforceable by government agencies that have provided services to the immigrant, or by the immigrant himself, if she has been denied government benefits on the basis of the deeming rules contained in section 204.

We support the committee's decision to give the affidavit of support binding effect. Doing so disciplines sponsors, protects immigrants, and safeguards taxpayers.[12] We also support the committee's decision to pass an amendment offered by Senators Feinstein, Simon, and Kennedy to end the affidavit of support's effect—as well as the bill's deeming provisions—at the moment the immigrant naturalizes. While this approach arguably creates the incentive to naturalize for the purpose of obtaining benefits, this is a cynical view of immigrants' behavior that is not consistent with the facts.[13] More important, extending the affidavit of support and the deeming provisions to naturalized citizens creates serious constitutional problems, given the Supreme Court's holding that under the equal protection component of the fifth amendment, "the rights of citizenship of the native born and of the naturalized person are of the same dignity and coextensive." *Schneider* v. *Rusk*, 377 U.S. 163, 165 (1964). Conditioning the ability of naturalized citizens—but not native-born citizens—to receive government assistance surely flies in the face of this holding, and creates a second-class citizenry.

However, we oppose the affidavit of support as found in section 203. First, this section imposes an indefinite obligation on the part of the sponsor to support an immigrant; while this obligation may terminate in 5 years (when the immigrant could naturalize) or in 10 years (after the immigrant has worked for 40 qualifying quarters), it could also extend indefinitely if neither of these events occur. Certainly, in the case of children, who may not naturalize until adulthood and who would not likely work 40 qualifying quarters until well over the age of majority, section 203 could impose an obligation on sponsors for 30–40 years. While there is merit to making sponsors primarily responsible for immigrants, designating a specific duration for the affidavit of support promotes certainty and fairness. The Commission on Immigration Reform, the Administration, and outside commentators have all endorsed this approach.[14]

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[12] This proposal has the strong support of the Commission on Immigration Reform. See Commission on Immigration Reform, *U.S. Immigration Policy: Restoring Credibility*, September 1994, at 170.

[13] See "Immigrant Citizens Reshape New York Politics", New York Times, March 10, 1996, pp. 1, 28 (noting the "Idealistic Fervor Of the New Citizen.")

[14] See February 14, 1996 Letter from Deputy Attorney General Jamie Gorelick to Chairman Hatch, p. 54; Commission Testimony at 5; and Fix, Zimmerman, "When Should Immigrants Re-

Continued

In addition, section 203's requirement that sponsors demonstrate an annual income equal to 125 percent of the poverty line in order to bring in an immigrant is nothing less than a back-door way of reducing legal immigration, and threatens to turn our immigration system into the province of the well-to-do. Its impact on certain sectors of our population cannot be overstated; for example, requiring immigrant sponsors to demonstrate an income that is 125 percent of the poverty level would preclude approximately *40 percent of all Latinos and 18 percent of Asians* from sponsoring an immigrant into the United States.[15] Given the affidavit of support, public charge, and deeming provisions that are already in the bill, this requirement simply "piles on," in a manner designed not to protect immigrants or taxpayers, but to deny outright family reunification, one of the cornerstones of our immigration policy.

We will also offer amendments to section 203 to address these concerns.

C. *Deeming*—In addition to the bill's public charge and sponsor responsibility provisions, section 204 of the bill requires that 100 percent of the immigrant sponsor's income be attributed to the immigrant in determining the immigrant's eligibility for *any* federal means-tested benefit—including those freely available to illegal immigrants—until the immigrant has worked 40 qualifying quarters or naturalized. Section 204 also provides that any immigrant already in the United States is subject to deeming requirements for the first 5 years of his time here.

It is these deeming provisions, above all, that cause us to oppose the bill. While we applaud the committee's decision not to expressly bar legal immigrants from any government programs, as did the Welfare Reform Conference Report, the bill's deeming provisions will have the similar effect of excluding legal individuals—who, it must be said again, pay taxes, serve in our military, and contribute in myriad ways to society—from virtually all means-tested government services for a minimum of 5 years, and maybe longer.[16] Unlike the public charge provisions or the affidavit of support section, the deeming rules in the bill will *deny* many legal immigrants any government assistance, pure and simple.

The effects of the bill's deeming rules flow largely from the fact that they require the *full* income of the immigrant sponsor to be deemed to the immigrant for purposes of determining immigrant eligibility for assistance. Clearly, some of this income must go to the sponsor's—and his family's—own needs; thus, in reality, the sponsor will not have the full amount of his income to devote to the immigrant, and the income deemed to the immigrant for purposes of determining immigrant benefits eligibility will be in excess of that actually available to the immigrant.[17]

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ceive Public Benefits," *The Urban Institute, Immigrant Policy Program*, May 1995, at 15–16 (proposing 5-year sponsorship period).

[15] See March 1994 CPS.

[16] We note that H.R. 2202, the House Immigration bill, placed finite limits on many deeming requirements—e.g., spouses are subject to deeming for 7 years, or until naturalization, whichever comes first; and children are subject to deeming until they reach age 21 or naturalize, whichever comes first.

[17] See March 12, 1996 Testimony of David A. Martin, General Counsel, Immigration and Naturalization Service, before the Senate Budget Committee, at 4, noting that "[a]ttributing 100 percent of a sponsor's income and resources to the sponsored immigrant does not take into account the needs of the sponsor or the sponsor's family and is inconsistent with current practice in the major entitlement programs."

In the end, this approach denies government assistance to the immigrant though neither the immigrant or the sponsor can provide that assistance, and forces immigrant sponsors to internalize for an indefinite period costs that they simply cannot absorb. Under the bill, these include the costs of educational assistance, nutritional assistance for children, medical assistance, job training, housing assistance, energy assistance, pensions for veterans, and others. While increased sponsor and immigrant responsibility may be the laudable goal of proponents of these rules, the end result will be that poor immigrants with poor sponsors will not receive assistance that should be available as a matter of public health, or that will enable them to avoid welfare dependency in the future. This makes no sense as a matter of public policy.

Consider the following hypothetical. An immigrant with an income under the poverty line seeks a student loan. The immigrant's spouse and sponsor, who was laid off after sponsoring her husband into the United States and who has three children with the immigrant, also has an income under the poverty line. With 100 percent of the sponsor's income attributed to the immigrant under the new rules, however, the immigrant is deemed to have an income that makes him ineligible for the loan. Because neither the immigrant nor the sponsor—nor the two jointly—can pay the necessary tuition in light of their other responsibilities, the immigrant receives no assistance, and is denied the means to develop into a productive member of society.

For another example, consider a legal immigrant, with three siblings, who is in need of emergency surgery, and whose parents and sponsors, while making enough money to render them ineligible under the deeming rules, simply cannot afford the substantial costs associated with the surgery, given their own needs and the needs of their other children. While the bill makes such services available to *illegal* immigrants, on the grounds that denial of such services would be incompatible with the public health, the new deeming rules would serve to deny the legal immigrant such assistance.

Such situations could become all too common under section 204, and demand some flexibility in the deeming rules that bill simply does not provide. We intend to offer amendments to this section on the floor in an effort to add some balance and common sense to this section.

D. *Illegal Immigrants*—Section 201 of the bill provides that "ineligible" aliens—defined to include illegal immigrants as well as a variety of immigrants with legal status—while ineligible for the vast majority of benefits, are eligible for certain types of assistance, on the grounds that universal access to such services is essential in order to preserve the public health and safety. One such program—prenatal services for undocumented mothers—was added to this list by the Committee pursuant to an amendment offered by Senator Kennedy. The children of these mothers are American citizens at birth and should be assured a healthy start on life like any other American child. We applaud the Committee's recognition that certain programs should be universally available, and wish that the same understanding had resulted in making these services available to legal immigrants as well.

One issue the Committee wisely did not address in this area was public education for undocumented aliens. The Supreme Court in *Plyler* v. *Doe*, 457 U.S. 202 (1982), held that States could not deny illegal immigrant children a free public education. While this holding was premised in part on the federal government's plenary power over immigration and on equal protection principles, the Court also relied heavily on the policy implications of such a denial, noting "the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests." 457 U.S. at 221. Even Chief Justice Burger, while dissenting from the Court's *constitutional* holding, remarked that:

> Were it [the Court's] business to set the Nation's social policy, I would agree without hesitation that it is senseless for an enlightened society to deprive any children—including illegal aliens—of an elementary education. I would agree that it would be folly—and wrong—to tolerate creation of a segment of society made up of illiterate persons, many having a limited or no command of our language.

457 U.S. at 242 (Burger, C.J., dissenting).

While it may not be the Court's business to set national policy in this area, it certainly is *Congress*' business to do so, and any effort to deprive children—*any* children—of public elementary and secondary education would be, in Chief Justice Burger's words, "foolish." The House immigration bill provides States with the option of depriving illegal alien children of a public education, and we urge our colleagues to combat any effort in the Senate to do the same.

II. More Bad News: The Danger of Increased Employment Discrimination

In addition to denying legal immigrants an adequate safety net, the bill also adds onerous new proof requirements which will make it impossible for American citizens and legal immigrants who are victims of discrimination to obtain redress. There is widespread agreement that the employer sanctions provisions of the 1986 act resulted in discrimination against foreign looking and foreign sounding job applicants. A 1989 GAO Report, a 1990 Bush Administration Task Force on IRCA related discrimination, as well as recent reports from the Justice Department's Office of the Special Counsel for Immigration-Related Unfair Employment Practices have all documented this pervasive problem.

In response, Congress in 1990 enacted a provision which created a balance between the legitimate needs of employers to verify eligibility of prospective employees, and the rights of foreign looking and foreign sounding American citizens and legal immigrants to be free from discrimination. Under current law, there is a list of government approved documents that are clearly displayed on the back of the employment verification form. Once an applicant produces a document from this list, and the document appears authentic, the employer is off the hook, plain and simple, and cannot be sued for employer sanctions violations.

Once the applicant or employee produces this document, and it appears authentic, it is illegal under current law for the employer to request additional or different documents from the person. The purpose of this provision is to prevent employers from harassing foreign looking and foreign sounding American citizens and legal immigrants by requesting additional or different documents as a condition of employment.

Unfortunately, employers have continued to discriminate against foreign looking and foreign sounding people. For example, the Justice Department has pursued a number of cases against employers who have refused to hire applicants of Puerto Rican descent unless they produced a green card. A naturalized citizen of Middle Eastern descent who spoke with an accent was fired for not complying with his employer's demand that he produce a green card. When he explained that he was a United States citizen, and produced a driver's license, social security card and voter registration card, the employer refused to accept them.

The motives of those who discriminate against foreign-looking or foreign-sounding job applicants are often mixed. Many claim that they do so purely out of a fear of employer sanctions, and not because they intend to treat certain Americans different from others. Whether these accounts are true, the bottom line is that it is virtually impossible to separate out the proper and improper motivations behind employers' discriminatory action. The bill ignores this reality and adds language in section 117 that would require a person filing a discrimination claim to demonstrate that the employer intended to discriminate on the basis of national origin or citizenship. This provision would impose a burden that is impossible to meet, and would exacerbate the already serious problem of discrimination. Under this provision, for example, employers who demand green cards from Puerto Ricans or naturalized Americans can escape liability for their actions.

There is also widespread agreement that the problems of discrimination are a function of employer concerns about the widespread availability of fraudulent documents. The bill addresses this problem in a number of constructive ways. For example, section 116 reduces the number of acceptable documents for establishing employment eligibility from 29 to six, and there are other provisions to prevent the production of fraudulent documents. It is unwise to attack discrimination by giving employers license to discriminate further.

It is important to keep in mind whom the victims are. They are American citizens and legal immigrants—law abiding people who have been playing by the rules and are simply attempting to make ends meet. In an era when we are attempting to promote economic self-sufficiency, it is unwise to erect new barriers to self-sufficiency.

III. Even More Bad News: Abandoning Our Tradition of Asylum for Political Refugees

In addition to its other flaws, the bill imposes unnecessary and harmful new bars to an individual's ability to seek political asylum in the United States, and is contrary to our most cherished traditions of providing safe haven to those fleeing persecution.

Under current law, an individual claiming asylum may prove his entitlement to this status before an immigration judge. This bill instead requires individuals seeking to enter the United States with false documents to establish a "credible fear of persecution" before an asylum officer—in reality, a low-level bureaucrat—before being eligible to apply for asylum. In addition, before even being eligible to apply for asylum, the person claiming asylum must prove that he used the false documents to flee directly from a country where, if returned, a significant danger of persecution remains. Failure to meet these tests results in the exclusion of the individual from the United States, and in many instances in his return to the country of persecution.

These new provisions are both unreasonable and unnecessary.

First, the notion that a person fleeing persecution with the aid of false documents should be subjected to a barrage of new procedural requirements before being able even to apply for that status ignores the fact that those fleeing from persecution often need false documents to escape the country that persecutes them. Indeed, America has consistently honored the memory of Raoul Wallenberg, who saved countless lives during the Holocaust by issuing unofficial travel documents to individuals fleeing persecution. Under this bill, each of the people helped by Wallenberg would, at the moment of entry into the United States, after a long journey from persecution, without counsel or other assistance, before a non-judicial or quasi-judicial official, have to demonstrate that she (1) had a "credible fear of persecution" that caused her to leave; (2) took a direct route to the United States in escaping persecution;[18] (3) used her false documents to get away; and (4), if she were sent back, would face a "significant" danger of further persecution. This approach represents a 180-degree turn from our past.

The bill's draconian approach to asylum seekers is also unnecessary, and is a vestige of a time when the Immigration and Naturalization Service was struggling to assert control over a system run rampant. Less than two years ago, an individual could arrive in the United States without proper documentation, claim asylum, receive work authorization, disappear into the interior, and avoid ever having the asylum claim adjudicated. Needless to say, the rules in place at this time encouraged and resulted in fraudulent applications, and drove calls for the kind of measures included in this bill.

To its great credit, however, INS published regulations in March 1995 that altered the asylum landscape. These regulations denied work authorization to individuals claiming asylum, and placed all asylum cases on a fast-track review that enables a newly-expanded corps of immigration judges to adjudicate virtually all claims within 180 days. With the elimination of automatic work authorization and the guarantee of an expeditious determination of asylum has come a *57 percent reduction in asylum claims over the past year.* Clearly, our asylum system today creates little inducement for

[18] This "direct departure" requirement is particularly problematic given that a number of countries—including many in Asia or Africa—do not have direct carrier routes to the United States, and that a person seeking asylum in the United States may first have to stop off in a country that does not have asylum laws or is equally hostile to the escapee as his native country.

fraudulent claims. In approving the asylum provisions in this bill, however, the Committee has ignored recent developments and taken steps that are wholly obsolete today.

The Department of Justice has not asked for these new asylum provisions, and in fact opposes them on the grounds that "absent smuggling or an extraordinary migration situation, [it] can handle asylum applications for excludable aliens under our regular procedures."[19] Moreover, the United Nations High Commissioner for Refugees (UNHCR) has expressed serious concerns that the new provisions also are inconsistent with U.S. obligations under international law since the bill lacks the minimal procedural safeguards to prevent the mistaken return of a genuine refugee to certain persecution. In short, UNHCR "fear[s] that many bona fide refugees will be returned to countries where their lives or freedom will be threatened" if the new bars to asylum become law.[20] It is UNHCR's further concern that any action taken by the United States—long a leader in providing relief to victims of persecution—to restrict asylum will be taken as a signal by other countries seeking to do the same. The Committee has failed to consider this important ripple effect of its action.

In conclusion, we note that, in addition to the bars on people who travel without valid documents, the bill restricts the ability to obtain asylum in a number of other ways. For example:

- Section 141 precludes a person from applying for asylum—and renders him excludable from the United States—if he cannot prove a "credible fear of persecution," and (1) has lived in the United States for less than 2 years without ever being formally "admitted" into the United States; (2) has been interdicted at sea; or (3) has fled to the United States as a result of an "extraordinary migration situation."
- Section 142 broadly restricts judicial review of exclusion orders based on the individual's ability to demonstrate a credible fear of persecution or any of the other criteria required of an asylee, thereby eliminating most judicial oversight over the process and denying the federal judiciary its historic function of reviewing the implementation and execution of immigration laws.

As the Administration notes, these and the other provisions of the bill relating to asylum are simply not consistent "with a fair and humanitarian immigration policy."[21]

IV: Good News: Cracking Down on Alien Smuggling, Sweatshops, and Other Criminal Acts

While we have focused thus far on the flaws in this bill—flaws which were considerable enough to cause us to oppose it—there is much in the legislation to recommend it as well. In particular, we are gratified that the bill undertakes long-needed reform of the criminal enforcement scheme for immigration-related crimes.

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[19] See February 14, 1996 Letter from Deputy Attorney General Jamie Gorelick to Chairman Hatch, p. 46.

[20] Letter from Anne Willem Bijleveld, Representative of UNHCR, to Chairman Hatch, March 6, 1996, at 1.

[21] See February 14, 1996 Letter from Deputy Attorney General Jamie Gorelick to Chairman Hatch, p. 22.

There is unanimous agreement that under current law, the penalties for all types of immigration offenses—alien smuggling, document fraud, and sweatshop offenses—are simply too weak, and do not adequately deter or punish these offenses. As a result, the bill establishes a tough, carefully calibrated sentencing scheme for these offenses. This system establishes tougher sentences, ensures longer sentences for the most violent or flagrant offenders, provides additional sentencing enhancements for repeat offenders, and provides limited but much needed flexibility for prosecutors and courts in certain cases to effectively perform their jobs of dispensing justice.

The sentencing structure established in this bill is the product of careful consultation with various experts—career prosecutors at the Department of Justice and United States Attorney's offices nationwide, Republicans and Democrats alike, people who are in the trenches every day prosecuting alien smugglers, sweatshop operators and manufacturers of false passports, and sentencing experts at the non-partisan Sentencing Commission. As a result of the bipartisan involvement of various groups, these criminal provisions were adopted by unanimous consent of the committee.

In the alien smuggling context, the bill, in addition to raising the statutory penalties substantially, provides a series of specific directives to the Sentencing Commission that will ensure that the defendant in the typical alien smuggling case receives a sentence that is at least 3–4 times longer than the current sentence. In addition, there are provisions which guarantee that alien smugglers who use a firearm or otherwise injure or endanger the lives of others, as well as those who are repeat offenders, receive substantial additional sentencing enhancements. There are also provisions that ensure that the smuggler who transports 100 undocumented people across the country for profit is treated substantially differently—and much harsher—than the person who smuggles his mother or father into the country to unify his family.

Alien smuggling and involuntary servitude frequently go hand in hand, as aliens are smuggled into the country and then put to work in sweatshop conditions at slave wages in order to pay off the massive debt. This exploitation of aliens by unscrupulous sweatshop operators is on the rise, as tragic cases have documented in New York City and Los Angeles. The bill recognizes this sad reality, and doubles the statutory penalties for sweatshop operators. The bill also provides directives to the Sentencing Commission that will ensure that the most egregious offenders receive the stiffest sentences.

The bill establishes a sentencing structure in document fraud offenses which is similar to alien smuggling offenses. In addition to raising the statutory maximum penalties substantially, the bill contains specific provisions that guarantee that the most serious and repeat offenders receive the largest sentencing enhancements and the longest sentences. Moreover, the sentences for document fraud violations were already raised substantially in 1995. When combined with the additional enhancements of this bill, the net result is that prosecutors will now have tough, effective tools in their battle against document fraud.

Criminal alien tracking center

Another way that criminal matters can receive greater attention in immigration law enforcement is the Criminal Alien Tracking Center (Law Enforcement Support Center) established by the INS Commissioner under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)) to assist Federal, State and local law enforcement agencies in identifying and locating aliens arrested or convicted of serious criminal offenses. We encourage the center, located in South Burlington, VT, to continue a close and cooperative working relationship with Federal, State and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their criminal records.

To improve the coordination of tracking criminal aliens, we recommend that the Center be designated as the national repository for all INS fingerprint records relating to criminal aliens. Information from the fingerprints would be most accessible if the center stored this information in an AFIS/IDENT database with a link to FBI databases. The Center should also serve as the repository for INS "A-files" (the INS alien registration number assigned to cases) relating to aggravated felons and aliens listed in the NCIC Deported Felon File. Locating these files at the Tracking Center will improve their accessibility to INS agents and U.S. Attorney offices throughout the United States.

PAUL SIMON.
TED KENNEDY.
PATRICK LEAHY.

XIII. MINORITY VIEWS OF SENATORS KENNEDY AND SIMON

While the minority views joined by ourselves and Senator Leahy reflect most of our positions on this bill, we also write separately to express our position on an issue that has divided both supporters and opponents of this legislation: the issue of verification of employment eligibility. The majority report fails to emphasize adequately the importance of developing a reliable means in the future for determining who is and is not eligible to work in the United States.

We strongly believe that notwithstanding claims that many immigrants come to the United States illegally in order to receive government assistance, the main incentive for illegal immigrants is jobs, pure and simple.

Over the past 15 years, Congress created two blue-ribbon commissions to provide recommendations for controlling illegal immigration. In both instances—with the Select Commission on Immigration and Refugee Policy in 1981 (chaired by Father Ted Hesburgh) and the current Commission on Immigration Reform (chaired by the late Representative Barbara Jordan)—the Commissions concluded that the United States must eliminate the job magnet for illegal immigrants by making it illegal for employers to hire them.

In 1986, Congress took this step in the Immigration Reform and Control Act of 1986. For the first time in our history, it was made illegal for an employer knowingly to hire illegal immigrants, and employer sanctions were established to penalize those employers who violated this new law.

The Immigration Reform and Control Act of 1986 also provided protections against employment discrimination in response to concerns that employers would respond to employer sanctions by engaging in discriminatory employment practices. According to the U.S. General Accounting Office and several other independent studies, discriminatory practices resulting from employer sanctions include: employers avoiding job applicants whose surnames, appearance, or speech accents suggest that they might be immigrants; employers selectively checking the documents only of "foreign looking" employees or job applicants; employers establishing "U.S. citizens only" policies, thereby discriminating against legal residents; and employers requiring that employees present specific documents, such as requiring that any Latino or Asian employee present a "green card" or other INS document.

The 1986 act required employers to check the documents of all persons hired after its enactment in order to verify their eligibility. In response to the Act's requirements, the Immigration and Naturalization Service established a list of 29 different documents which employers were required to accept from job applicants to prove their identity and eligibility to work in the United States. This list

was included as part of a new form—the "I–9"—which every employer is required to complete for each new hire. As long as the new hire produces the required document or documents listed on the I–9, and each document provided "reasonably appears on its face to be genuine," the employer is absolved of any liability if the individual turns out to be an unauthorized worker.[22]

THE PROBLEM: DOCUMENT FRAUD

While there was a decline in levels of illegal immigration immediately after passage of the 1986 reforms, illegal immigration is on the rise once again. It is far too easy for illegal immigrants to get jobs illegally by providing employers with false documents.

The Jordan Commission observed that "reducing the employment magnet is the linchpin of a comprehensive strategy to reduce illegal immigration." The Commission went on to state:

> The ineffectiveness of employer sanctions, prevalence of fraudulent documents, and continued high numbers of unauthorized workers, combined with confusion for employers and reported discrimination against employees, have challenged the credibility of current worksite enforcement efforts.[23]

While the illegal immigrant population is still lower today than it was before passage of immigration reforms in 1986, the population is growing once again. INS estimates that in 1992, there were 3.3 million illegal immigrants in the country compared with 4.7 million when the Immigration Reform and Control Act was enacted in 1986. The illegal immigrant population had dropped to just over 2 million following passage of the 1986 Act due in large part to the legalization of hundreds of thousands of formerly undocumented immigrants. While over one million illegal immigrants are estimated to enter the United States each year, an estimated 300,000 end up remaining permanently as illegal immigrants, according to INS.[24]

THE RESPONSE: PILOT PROGRAMS UNDER CONGRESSIONAL SCRUTINY

The Committee agreed that something must be done to help employers determine reliably who can and cannot work in the United States. The committee voted 11 to 5 in favor of a Kennedy-Simpson amendment (sections 111 through 113) to require the Justice Department to conduct "several" pilot programs over the next three years to test new and better ways of verifying employment eligibility. The amendment set clear standards for these pilot programs related to privacy, minimal impact on business, prevention of discrimination, accuracy and other criteria. Because of concerns that the pilot programs could become so large as to be tantamount to implementing a national program, the Kennedy-Simpson amendment required the pilots to be tested only locally or regionally.

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[22] See section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a).

[23] Commission on Immigration Reform, *U.S. Immigration Policy: Restoring Credibility*, September 1994, p. xii.

[24] Robert Warren, *Estimates of the Unauthorized Immigrant Population Residing in the United States, By Country of Origin and State of Residence: October 1992*, Immigration and Naturalization Service, April 29, 1994.

As a key safeguard, an important element of the Kennedy-Simpson amendment was that the President would be required to seek congressional approval before implementing any new or permanent approach beyond the authorized 3-year pilot programs.

It was also our intention, as supporters of the amendment, that any new approach that is developed be accurate and reliable. We intend that it reliably verify employment authorization within five business days in 99 percent of all inquiries. It must also provide an accessible and reliable process for authorized workers to examine the contents of their records and correct errors within ten business days.

Any new approach also must contain safeguards against unlawful discrimination. These include, for example, advising all employees that they are being verified by computer and providing a list of resources available to them in the event that discrimination occurs; and monitoring employer behaviors (for informational purposes, and not for enforcement) in a manner which provides policymakers and others with information about how the system will be used.

In short, while we opposed the bill's initial proposal giving the President blanket authority in eight years to implement a nationwide verification system, we believe that pilot programs, measured against a series of strict criteria and subject to Congressional review prior to implementation of a nationwide system, provides the proper balance between elimination of the jobs magnet, on one hand, and protection of the values we as Americans all share, on the other.

PAUL SIMON.
TED KENNEDY.

XIV. MINORITY VIEWS OF SENATOR LEAHY

This bill was improved by amendment during the Judiciary Committee's deliberations, but much still needs to be done. I join in the minority views and add these additional comments.

BORDER FEES

I am delighted that the committee voted overwhelmingly to strike border crossing fees from this bill. I worked closely with Senators Kyl and Abraham on this issue and commend them on their efforts.

Border crossing fees are a bad idea. They are bad for residents of border States, for visitors to border States and bad for business.

They are not a "user" fee. Instead, they would burden residents, tourists, business and commerce in certain States in order to benefit the rest of the country. That is the wrong approach to our national immigration problem. The cost of these efforts ought to be born by the nation as a whole and not fall disproportionately on border States.

As I explained during our committee debate, calling border crossing fees "user" fees is like saying that the driver whose vehicle speed was tested by radar and found to be in accordance with the speed limit ought to pay the State Police a $1 fee for the "use" of the radar gun.

The problem of illegal immigration along our Nation's southern border has led to significantly increased enforcement and inspection efforts over the past 3 years. If we need more inspection services and more border patrol agents, let us authorize and pay for them as a nation. The Violent Crime Control and Law Enforcement Act of 1994 added extraordinary resources to this effort. This bill augments them further.

If a State tried to impose a border crossing fee, it would likely be declared unconstitutional as an unreasonable burden on interstate commerce and an infringement on the right to travel. Similarly, we in the Federal Government should not venture down this road. If the proposal were to impose border crossing fees *between* States to pay for INS and other obligations of the Federal Government, there would be a national uproar.

Border crossing fees should be understood to be equally offensive when limited to States with international borders.

None of us should want to impose this burden on the economy. Legal visitors from Canada and Mexico spend nearly $10 billion a year in the United States. If we tax these visits, there will be fewer dollars spent in the U.S. and might be fewer visits. There will be further delay and congestion at the borders and travel to the United States will be made more difficult.

Vermont businesses warn me that a border crossing fee could cut off a portion of the $120 million a year spent in the Green Moun-

tain State by Canadian visitors. Vermont ships $2.4 billion in goods and services to Canada annually, which accounts for 75 percent of the State's exports. There is no reason to think that Canada would tolerate our imposition of border crossing fees without responding by imposing its own fees. It makes little sense to have worked so hard to remove trade barriers only to reinvent them as border fees.

I hope that the action by the Judiciary Committee on this ill-conceived idea will put an end, once and for all, to the notion of border crossing fees as a way to finance INS activities.

CRIMINAL ALIEN TRACKING CENTER

I commend my colleagues for their recognition of the contribution that is being made to immigration law enforcement by the Law Enforcement Support Center in South Burlington, Vermont ("LESC'). This is among the most significant capacities being developed to assist Federal, State and local law enforcement to deal more effectively with criminal aliens. Improving the identification and expediting the deportation of criminal aliens responsible for violent crimes are goals on which there is universal agreement.

The Violent Crime Control and Law Enforcement Act of 1994 authorized the Law Enforcement Support Center. Last September, I had a colloquy on the Senate floor with the Senate Appropriations Subcommittee Chairman clarifying that the Senate-passed appropriations bill allowed the LESC to continue to receive its authorized funding.

This is the only on-line national database available to identify criminal aliens. It is a valuable and essential asset for improving our national immigration enforcement effort. The LESC provides local, State and Federal law enforcement agencies with 24-hour access to data on criminal aliens. By assisting in the identification of these aliens, the LESC allows law enforcement agencies to expedite deportation proceedings against them.

In its first year of operation, the LESC identified over 10,000 criminal aliens as aggravated felons. After starting up with a link to law enforcement agencies in one county in Arizona, the LESC expanded its coverage to that entire state. The LESC is expected to be on-line with California, Florida, Illinois, Iowa, Massachusetts, New Jersey, Texas and Washington, as well as Arizona this year.

The Law Enforcement Support Center deserves our full support.

NATIONAL EMPLOYMENT IDENTIFICATION VERIFICATION

I remain concerned that the national employment verification system included in the bill, while improved, still extends too far, is too invasive and contains too few privacy protections. Senator Kennedy is to be commended for the effort he is making in this regard and for the progress being achieved. The Kennedy-Simpson amendment is an improvement over the provisions included in the bill presented to the Committee. I hope that we can do better.

None of us want to see a national ID card. None of us want the Federal Government imposing costly burdens on our State and local authorities without providing the funding and other assistance necessary to comply with the federal mandate. None of us want the Government creating vast data banks that are not secure. We need to be sure that protections at least as strong as those con-

tained in the Privacy Act apply to records on individuals held by the Government. I want to be sure that violations of privacy and misuse of personal information are effectively deterred and that any violations of privacy rights that might occur are detected and remedied.

PUBLIC ASSISTANCE

As indicated in the minority views, I am not satisfied with the bill's provisions regarding public assistance. For example, the attribution of a sponsor's resources to legal immigrants for purposes of nutrition, education and health programs will yield results too harsh and short-sighted to be acceptable. Senators Kennedy and Simon have made a number of suggestions to improve these provisions in which I join.

The WIC program, for example, ought to be available to children. For every dollar spent on WIC, three dollars are saved in future medical costs. Regardless of citizenship status of their mothers, children born in this country will be American citizens. Further, school budgets and school administrators are already stretched to the limit without imposing upon them the administrative burden of additional paperwork to ascertain immigrant status of tens of millions of school children before they can participate in child nutrition programs. Sponsor "deeming" may be sensible with bureaucracies able to handle the added complexity, but these additional requirements have no place in nutrition programs.

While the bill would correctly allow nutrition program benefits to be received by the children of illegal immigrants, it would deny them through "deeming" to the children of legal immigrants. Even the previous Senate-passed welfare bill and the welfare conference report exempted child nutrition and WIC from their onerous "deeming" provisions. Let us not punish immigrants' children and create a class of undernourished and poorly nourished infants and children.

In addition, I remain concerned with the provisions of the bill that would create a rigid rule on so-called "public charges." The bill provides no mechanism by which an immigrant could ever terminate the status of public charge. The bill would penalize legal immigrants who are not wealthy and begin their lives in this country as members of the working poor. It is too quick to label people as public charges for utilizing the same public assistance that many Americans need to get on their feet. The bill treats each situation as static, irretrievable and irredeemable.

Unlike the bill, I believe that people can work hard and become contributing citizens. Under the bill, even if an immigrant becomes successful, pays taxes, invents something, or starts a company that employs hundreds of other Americans and becomes a shining realization of the American Dream, there is no way to terminate the status of public charge.

Because people can succeed—even people who may need a little help at some time or another due to illness, or the need for additional education—I believe that our law ought to encourage and recognize that possibility. Thus, I suggest that the law provide that people who achieve self-sufficiency no longer be labeled public charges.

In addition, I am disturbed that the definition of public charge goes too far in including a vast array of programs none of us think of as welfare. I understand the desire to prevent immigrants from coming to this country in order to become perpetual welfare recipients. I do not believe that is why people do come and struggle and work to make a better life for their families, but I recognize that this perception exists. If we want to make the acceptance of cash payment over an extended period of time under SSI, AFDC or State general assistance programs—what most people mean when they refer to welfare—a basis for imposing the remedy of deportation, let the Congress carefully construct such provisions, not the overreaching bill approved by the Committee.

The bill would affect the working poor who are striving against difficult odds to become self-sufficient. The bill includes the receipt of medical services and nutritional programs as bases for disqualification. It includes a catch-all for programs that are means tested but which the bill has not identified. Do the supporters of this bill really mean to include Headstart, child care, student loans, Stafford loans, Pell grants, and job training as public assistance that can accumulate to label immigrants public charges? Do they mean to include federally subsidized programs as well as those administered by the Federal Government? Do they mean to include tax credits for the working poor? The bill is unnecessarily uncertain and will yield harsh and idiosyncratic results that no one should intend. It needs to be fixed before it deserves our support.

ASYLUM

We also need to reconsider the restrictions on applications for political asylum proposed in this bill. During the committee's deliberations I offered an amendment to strike provisions that would alter our asylum process, but failed on a tie vote.

The bill is extreme and fails to reflect the unfortunate reality of oppression in other parts of the world. The bill goes too far and sends the signal that "direct" travel to the United States is an essential element for an asylum claim. To require a refugee to travel directly from his or her country to ours in order to be allowed even to apply for asylum ignores the reality that many refugees must escape to a neighboring country before they can travel to American.

There is the recent example of Fidel Castro's daughter, who defected with a phony passport and disguised as a Spanish tourist to arrive here after traveling through Spain. For every well-known refugee, there are tens of less famous but deserving refugees from oppressive regimes.

Raoul Wallenberg received international recognition for rescuing tens of thousands from Nazi persecution by issuing Swedish identity papers and arranging transport to Sweden. Oskar Schindler saved many lives by securing false documents and identities. As many as 10,000 Jews fled the Holocaust through Asia with the noble assistance of Chiune Sugihara, a Japanese diplomat who disobeyed his government and issued them visas. Do we really mean to prohibit the claims of those who, like the beneficiaries of the courageous work of Oskar Schindler, Raoul Wallenberg and Chiune Sugihara during World War II, needed false documents to survive? I hope not.

I am confident that consideration of asylum claims can take false documents into account without making them a barrier to full review. The asylum provisions in the bill would place undue burdens on unsophisticated refugees who are truly in need of sanctuary but may not be able to explain their situation to an overworked asylum officer.

The bill would establish summary exclusion procedures and invest low-level immigration officers with unprecedented authority to deport refugees without allowing them a fair opportunity to establish a valid claim to asylum. Even before being permitted to apply for asylum, refugees who flee persecution without valid documents, would be met with a series of procedural hurdles virtually impossible to understand or overcome.

This is a radical departure from current procedures that afford an asylum hearing before an immigration judge during which an applicant may be represented by counsel, may cross-examine and present witnesses, and after which review is available by the Board of Immigration Appeals. Such hearings have been vitally important to refugees who may face torture, imprisonment or death as a result of an initial, erroneous decision by an INS official.

Indeed, human rights organizations have documented a number of cases of people who were ultimately granted political asylum by immigration judges after the INS denied their release from INS detention for not meeting a "credible fear" standard. Under the summary screening proposed in the bill, these refugees would have been sent back to their persecutors without any opportunity for a hearing.

Under international law, an individual may be denied an opportunity to prove an asylum claim only if the claim is "manifestly unfounded." This bill would establish a summary screening mechanism that utilizes a "credible fear" standard without meaning or precedent in international law. These summary exclusion provisions have been criticized by international human rights organizations and the United Nations High Commissioner for Refugees.

Furthermore, the proposed legislation would deny the Federal courts their historic role in overseeing the implementation of our immigration laws and review of individual administrative decisions. The bill would allow no judicial review whether a person is actually excludable and would create unjustified exceptions to rulemaking procedural protections under the Administrative Procedure Act. These proposals thereby portent a fundamental change in the role of our coordinate branches of Government and a dangerous precedent.

Besides being fundamentally unfair to a traumatized and fatigued refugee, who would be allowed no assistance and no interpreter, the proposed summary screening process would impose a burdensome and costly diversion of INS resources. In 1995 for example, only 3,287 asylum seekers arrived without valid documents—hardly the tens of thousands purported to justify these changes. The bill would require that a phalanx of specially-trained asylum officers be created and posted at airports, sea ports and other ports of entry across the country to be available to conduct summary screenings at the border. There is simply no need to di-

vert these resources in this way when the asylum process has already been brought under control.

In fact, the President reformed the asylum process in 1994. Since then, annual applications have greatly decreased, from approximately 125,000 a year to 54,000 and they are being processed in a timely fashion. Only approximately 20 percent are being granted. There are no exigent circumstances that require this nation to turn its back on its traditional role as a refuge from oppression and to resort to summary exclusion processes. Neither the Department of Justice nor the INS support these provisions or believe them necessary.

PATRICK LEAHY.

XV. MINORITY VIEWS OF SENATOR FEINGOLD

The bill reported by the Senate Judiciary Committee made substantial improvements over the measure originally brought before the Committee. Nevertheless, it contains some fundamental flaws that compelled me to cast my vote against this legislation.

First and foremost, however, I want to note the importance of a key decision of the Judiciary Committee to adopt by a 12-to-6 vote the bipartisan motion offered by Senators Abraham, Simon, DeWine, Specter and myself to split the proposed immigration reform legislation into two separate measures, one dealing with questions relating to legal immigration and the other dealing with illegal immigration. The House of Representatives took similar action when it voted 238 to 183 to strike provisions relating to legal immigration from its immigration reform legislation.

As originally presented to the Judiciary Committee, legal and illegal immigration reform proposals were treated as if they dealt with the same problems. That is simply not true.

Much of the historical growth and development of our great Nation can be attributed to immigration policies which have allowed individuals from many backgrounds to come to America, to seek to build better futures for themselves and their families. This melting pot of cultures, traditions and backgrounds has contributed to the strength of our nation and it has long represented a source of great pride for Americans. I oppose efforts to close these doors to legal immigrants.

At the same time, however, illegal immigration is a serious problem and a paramount issue in some areas of the country. Congress has the responsibility to strengthen our border security and augment other efforts to prevent undocumented persons from unlawfully entering our country or remaining without legal authority.

There was broad agreement within the Judiciary Committee about the need to increase border enforcement efforts and to impose swift and strong penalties against those who attempt to enter the United States by unlawful means. S. 269 authorizes the hiring over 4,500 new Border Patrol agents over the course of the next five years. This massive increase in personnel will nearly double the existing number of Border Patrol agents under the jurisdiction of the INS. I was therefore pleased that an amendment I offered was adopted by the committee which provides that these new personnel will be hired and trained pursuant to appropriate standards of law enforcement. The men and women hired to fill these positions should receive appropriate training to confront the enormous challenges of controlling this nation's borders. My amendment was drafted with the cooperation of the Department of Justice and INS, and will help ensure a professionally trained expansion of the Border Patrol.

In addition to increasing the strength of the Border Patrol, S. 269 provides additional enforcement tools to the Department of Labor and the U.S. Customs Service to assist in the efforts of these agencies in stemming the tide of illegal immigration. In regard to criminal sanctions, S. 269 contains language, offered by Senator Kennedy, to enhance the penalties for virtually all forms of alien smuggling and document fraud as well as related offenses. Additionally, the language provides stiff penalties for those individuals who operate sweatshops which force people, many in this country illegally, to work in often inhumane conditions for minimal compensation. I am pleased that this important amendment has been included in this legislation.

Unfortunately, while this legislation contains provisions that I support to strengthen our efforts at preventing illegal entry into our country, it also calls for the development of what is intended to lead to a massive "national worker verification" system that would require millions of U.S. citizens to have their identities verified by the Federal Government every time they apply for a new job or government assistance. This proposal is opposed by a broad coalition of groups, ranging from the National Federation of Independent Business, the National Association of Manufacturers to the National Council of La Raza and the American Civil Liberties Union.

Recognizing that the proper way to combat illegal immigration is to target those who break our laws and not impose burdens upon law-abiding citizens and businesses, Senator Abraham and I offered a bipartisan amendment to strike the worker verification proposal and replace it with stronger enforcement and penalties for those who overstay their legal visas.

The Abraham-Feingold approach was aimed at targeting the 2 percent of the population here illegally—not the other 98 percent of the population. It seems both unnecessary and inappropriate to turn our Nation's employers into a quasi-internal border patrol, charged with the responsibility of rooting illegal immigrants out of an enormous American workforce. We should not be promoting a system that would require every employer to go through a burdensome, onerous and potentially expensive process of dealing with a Federal bureaucrat every time they consider a job application. Nor should average Americans be forced to have their identity verified by a government bureaucrat in Washington, DC, every time they apply for a job or seek a student loan.

While employers are currently required to ask potential employees for documentation to establish their identity, the new verification system envisioned under this legislation would create a massive, new system to be established and navigated by employers, job seekers and virtually every American who applies for some form of government assistance.

Although the committee bill was modified to create a pilot program, it is clearly intended to lead to a national worker verification system—a step which I think is unwise. Although the committee accepted the provisions of the Abraham-Feingold amendment which focused upon strengthening enforcement efforts against those who overstay their visas, the committee unfortunately deadlocked, 9 to 9, on the portions of the Abraham-Feingold amendment

which would have deleted the worker verification provisions entirely.

Moreover, I am also deeply concerned by provisions in S. 269 which require the development of uniform Federal birth certificates. Again, although the original provisions were changed by the committee to eliminate the requirement that individuals personalize their birth certificates and driver's licenses with a fingerprint or "other biometric data", I am concerned that the bill continues to represent a tremendous unfunded mandate for local and state agencies responsible for issuance of birth certificates and driver's licenses.

Finally, while many of the law enforcement and criminal sanction provisions of this bill are reasonable, targeted responses to legitimate problems, I am unable to support others. In particular, I oppose the expansion of the death penalty as included in the bill. I also am troubled by aspects of "anti-terrorism" provisions particularly those which allow aliens to be excluded for a category of speech which includes "racial vilification". Current law (8 U.S.C. 1182(a)(3)(B)) provides the Attorney General with the authority to exclude aliens who have engaged in terrorist activity, or where reasonable grounds exist to believe that an alien is likely to engage in terrorist activity after entry into the United States. The existing standard is based upon the conduct of the alien and provides the Attorney General with the powers to protect against terrorist threats. Expansion of this authority into new areas poses issues of constitutional concern that should not be ignored.

In conclusion, while I am unable to support the bill reported by the committee, I do support many provisions in the bill and I am hopeful that when the full Senate considers this legislation, improvements will be made that will transform the legislation into a sensible, targeted approach focused upon those who break our laws, not those who abide by them.

RUSS FEINGOLD.

XVI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 605, as reported, are shown as follows: existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

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CHAPTER 25—COUNTERFEITING AND FORGERY

Sec.
471. Obligations or securities of United States.

* * * * * * *

505. Seals of courts; signatures of judges or court officers.
[506. Seals of departments or agencies.]
506. Seals of departments or agencies.
507. Ship's papers.
508. Transportation requests of Government.
509. Possessing and making plates or stones for Government transportation requests.

[§ 506. Seals of departments or agencies

[Whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States; or

[Whoever knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal to or upon any certificate, instrument, commission, document, or paper, of any description; or

[Whoever, with fraudulent intent, possesses any such seal, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered—

[Shall be fined not more than $5,000 or imprisoned not more than five years, or both.]

(a) Whoever—

(1) falsely makes, forges, counterfeits, mutilates, or alters the seal of any department or agency of the United States, or any facsimile thereof;

(2) knowingly uses, affixes, or impresses any such fraudulently made, forged, counterfeited, mutilated, or altered seal or

facsimile thereof to or upon any certificate, instrument, commission, document, or paper of any description; or

(3) with fraudulent intent, possesses, sells, offers for sale, furnishes, offers to furnish, gives away, offers to give away, transports, offers to transport, imports, or offers to import any such seal or facsimile thereof, knowing the same to have been so falsely made, forged, counterfeited, mutilated, or altered,

shall be fined under this title, or imprisoned not more than 5 years, or both.

(b) Notwithstanding subsection (a) or any other provision of law, if a forged, counterfeited, mutilated, or altered seal of a department or agency of the United States, or any facsimile thereof, is—

(1) so forged, counterfeited, mutilated, or altered;

(2) used, affixed, or impressed to or upon any certificate, instrument, commission, document, or paper of any description; or

(3) with fraudulent intent, possessed, sold, offered for sale, furnished, offered to furnish, given away, offered to give away, transported, offered to transport, imported, or offered to import,

with the intent or effect of facilitating an unlawful alien's application for, or receipt of, a Federal benefit, the penalties which may be imposed for each offense under subsection (a) shall be two times the maximum fine, and 3 times the maximum term of imprisonment, or both, that would otherwise be imposed for an offense under subsection (a).

(c) For purposes of this section—

(1) the term "Federal benefit" means—

(A) the issuance of any grant, contract, loan, professional license, or commercial license provided by any agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, Social Security, health (including treatment of an emergency medical condition in accordance with section 1903(v) of the Social Security Act (19 U.S.C. 1396b(v))), disability, veterans, public housing, education, food stamps, or unemployment benefit, or any similar benefit for which payments or assistance are provided by an agency of the United States or by appropriated funds of the United States;

(2) the term "unlawful alien" means an individual who is not—

(A) a United States citizen or national;

(B) an alien lawfully admitted for permanent residence under the Immigration and Nationality Act;

(C) an alien granted asylum under section 208 of such Act;

(D) a refugee admitted under section 207 of such Act;

(E) an alien whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act; or

(F) an alien paroled into the United States under section 215(d)(5) of such Act for a period of at least 1 year, and

(3) each instance of forgery, counterfeiting, mutilation, or alternation shall constitute a separate offense under this section.

* * * * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

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§ 1028. Fraud and related activity in connection with identification documents

(a) Whoever, in a circumstance described in subsection (c) of this section—

* * * * * * *

[(b) The punishment for an offense under subsection (a) of this section is—

[(1) a fine of not more than $25,000 or imprisonment for not more than five years, or both, if the offense is—

[(A) the production or transfer of an identification document or false identification document that is or appears to be—

[(i) an identification document issued by or under the authority of the United States; or

[(ii) a birth certificate, or a driver's license or personal identification card;

[(B) the production or transfer of more than five identification documents or false identification documents; or

[(C) an offense under paragraph (5) of such subsection;

[(2) a fine of not more than $15,000 or imprisonment for not more than three years, or both, if the offense is—

[(A) any other production or transfer of an identification document or false identification document; or

[(B) an offense under paragraph (3) of such subsection; and

[(3) a fine of not more than $5,000 or imprisonment for not more than one year, of both, in any other case.]

(b)(1)(A) An offense under subsection (a) that is—

(i) the production or transfer of an identification document or false identification document that is or appears to be—

(I) an identification document issued by or under the authority of the United States; or

(II) a birth certificate, or a driver's license or personal identification card;

(ii) the production or transfer of more than five identification documents or false identification documents; or

(iii) an offense under paragraph (5) of such subsection (a);

shall be punishable under subparagraph (B).

(B) Except as provided in paragraph (4), a person who violates an offense described in subparagraph (A) shall be punishable by—

(i) a fine under this title, imprisonment for not more than 10 years, or both, for a first or second offense; or

(ii) a fine under this title, imprisonment for not more than 15 years, or both, for a third or subsequent offense.

(2) A person convicted of an offense under subsection (a) that is—

(A) any other production or transfer of an identification document or false identification document; or

(B) an offense under paragraph (3) of such subsection;

shall be punishable by a fine under this title, imprisonment for not more than three years, or both.

(3) A person convicted of an offense under subsection (a), other than an offense described in paragraph (1) or (2), shall be punishable by a fine under this title, imprisonment for not more than one year, or both.

(4) Notwithstanding any other provision of this section, the maximum term of imprisonment that may be imposed for an offense described in paragraph (1)(A) shall be—

(A) if committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title), 15 years; and

(B) if committed to facilitate an act of international terrorism (as defined in section 2331 of this title), 20 years.

* * * * * * *

CHAPTER 69—NATIONALITY AND CITIZENSHIP

* * * * * * *

§ 1425. Procurement of citizenship or naturalization unlawfully

(a) Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or

(b) Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of naturalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing—

Shall [be fined not more than $5,000 or imprisoned not more than five years, or both.] *, except as otherwise provided in this section, be—*

(1) fined under this title, imprisoned for not more than 10 years, or both, for a first or second offense; or

(2) fined under this title, imprisoned for not more than 15 years, or both, for a third or subsequent offense.

"Notwithstanding any other provision of this section, the maximum term of imprisonment that may be imposed for an offense under this section—

(1) if committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title), is 15 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331 of this title), is 20 years.

§ 1426. Reproduction of naturalization or citizenship papers

(a) Whoever falsely makes, forges, alters or counterfeits any oath, notice, affidavit, certificate of arrival, declaration of intention, certificate or documentary evidence of naturalization or citizenship or any order, record, signature, paper or proceeding or any copy there-

of, required or authorized by any law relating to naturalization or citizenship or registry of aliens; or

* * * * * * *

(h) Whoever, without lawful authority, prints, photographs, makes or executes any print or impression in the likeness of a certificate of arrival, declaration of intention to become a citizen, or certificate of naturalization or citizenship, or any part thereof—

Shall [be fined not more than $5,000 or imprisoned not more than five years, or both.], *except as otherwise provided in this section, be—*

(1) fined under this title, imprisoned for not more than 10 years, or both, for a first or second offense; or

(2) fined under this title, imprisoned for not more than 15 years, or both, for a third or subsequent offense.

Notwithstanding any other provision of this section, the maximum term of imprisonment that may be imposed for an offense under this section—

(1) if committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title), is 15 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331 of this title), is 20 years.

§ 1427. Sale of naturalization or citizenship papers

Whoever unlawfully sells or disposes of a declaration of intention to become a citizen, certificate of naturalization, certificate of citizenship or copies or duplicates or other documentary evidence of naturalization or citizenship, shall [be fined not more than $5,000 or imprisoned not more than five years, or both], *except as otherwise provided in this section, be—*

(1) fined under this title, imprisoned for not more than 10 years, or both, for a first or second offense; or

(2) fined under this title, imprisoned for not more than 15 years, or both, for a third or subsequent offense.

Notwithstanding any other provision of this section, the maximum term of imprisonment that may be imposed for an offense under this section—

(1) if committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title), is 15 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331 of this title), is 20 years

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CHAPTER 75—PASSPORTS AND VISAS

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§ 1541. Issuance without authority

Whoever, acting or claiming to act in any office or capacity under the United States, or a State or possession, without lawful authority grants, issues, or verifies any passport or other instrument in the nature of a passport to or for any person whomsoever; or

Whoever, being a consular officer authorized to grant, issue, or verify passports, knowingly and willfully grants, issues, or verifies

any such passport to or for any person not owing allegiance, to the United States, whether a citizen or not—

Shall [be fined under this title, imprisoned not more than 10 years, or both.] *, except as otherwise provided in this section, be—*

(1) fined under this title, imprisoned for not more than 10 years, or both, for a first or second offense; or

(2) fined under this title imprisoned for not more than 15 years, or both, for a third or subsequent offense.

Notwithstanding any other provision of this section, the maximum term of imprisonment that may be imposed for an offense under this section—

(1) if committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title), is 15 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331 of this title), is 20 years.

§ 1542. False statement in application and use of passport

Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or

Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement—

Shall [be fined under this title, imprisoned not more than 10 years, or both.] *, except as otherwise provided in this section, be—*

(1) fined under this title, imprisoned for not more than 10 years, or both, for a first or second offense; or

(2) fined under this title, imprisoned for not more than 15 years, or both, for a third or subsequent offense.

Notwithstanding any other provision of this section, the maximum term of imprisonment that may be imposed for an offense under this section—

(1) if committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title), is 15 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331 of this title), is 20 years.

§ 1543. Forgery or false use of passport

Whoever falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

Whoever willfully and knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same—

Shall [be fined under this title, imprisoned not more than 10 years, or both.] *, except as otherwise provided in this section, be—*

(1) fined under this title, imprisoned for not more than 10 years, or both, for a first or second offense; or

(2) fined under this title, imprisoned for not more than 15 years, or both, for a third or subsequent offense.

Notwithstanding any other provision of this section, the maximum term of imprisonment that may be imposed for an offense under this section—

(1) if committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title), is 15 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331 of this title), is 20 years.

§ 1544. Misuse of passport

Whoever willfully and knowingly uses, or attempts to use, any passport issued or designed for the use of another; or

Whoever willfully and knowingly uses or attempts to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports; or

Whoever willfully and knowingly furnishes, disposes of, or delivers a passport to any person, for use by another than the person for whose use it was originally issued and designed—

Shall [be fiend under this title, imprisoned not more than 10 years, or both.] *except as otherwise provided in this section, be—*

(1) fined under this title, imprisoned for not more than 10 years, or both, for a first or second offense; or

(2) fined under this title, imprisoned for not more than 15 years, or both, for a third or subsequent offense.

Notwithstanding any other provision of this section, the maximum term of imprisonment that may be imposed for an offense under this section—

(1) if committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title), is 15 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331 of this title), is 20 years.

* * * * * * *

§ 1546. Fraud and misuse of visas, permits, and other documents

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant of nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United State, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

* * * * * * *

[Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States

Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement—]

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact—

Shall [be fined under this title or imprisoned not more than 10 years*, or both], *except as otherwise provided in this subsection, be—*

(1) fined under this title, imprisoned for not more than 10 years, or both, for a first or second offense; or

(2) fined under this title, imprisoned for not more than 15 years, or both, for a third or subsequent offense.

Notwithstanding any other provision of this subsection, the maximum term of imprisonment that may be imposed for an offense under this subsection—

(1) if committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title), is 15 years; and

(2) if committed to facilitate an act of international terrorism (as defined in section 2331 of this title), is 20 years.

* * * * * * *

CHAPTER 77—PEONAGE AND SLAVERY

* * * * * * *

§ 1581. Peonage; obstructing enforcement

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined not more than $5,000 or imprisoned not more than [five] *10* years, or both.

* * * * * * *

§ 1583. Enticement into slavery

Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or

Whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held—

Shall be fined not more than $5,000 or imprisoned not more than [five] *10* years, or both.

* * * * * * *

§ 1584. Sale into involuntary servitude

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than [five] *10* years, or both

* * * * * * *

§ 1588. Transportation of slaves from United States

Whoever, being the master or owner or person having charge of any vessel, receives on board any other person with the knowledge or intent that such person is to be carried from any place within the United States to any other place to be held or sold as a slave, or carries away from any place within the United States any such person with the intent that he may be so held or sold as a slave, shall be fined not more than $5,000 or imprisoned not more than [five] *10* years, or both.

* * * * * * *

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

* * * * * * *

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), sections 1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relat-

ing to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity, section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), section 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, [or] (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act; *or* (F) any act, or conspiracy to commit any act, in violation of—

(i) section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), or section 1544 (relating to misuse of passports) of this title, or, for personal financial gain, section 1546 (relating to fraud and misuse of visas, permits, and other documents) of this title; or

(ii) section 274, 277, or 278 of the Immigration and Nationality Act.

CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES

* * * * * * *

§ 2424. Filing factual statement about alien individual

(a) Whoever keeps, maintains, controls, supports, or harbors in any house or place for the purpose of prostitution, or for any other immoral purpose, any [alien] individual, *knowing or in reckless disregard of the fact that the individual is an alien* [within three years after that individual has entered the United States from any country, party to the arrangement adopted July 25, 1902, for the suppression of the white-slave traffic], shall file with the Commissioner of Immigration and Naturalization a statement in writing setting forth the name of such [alien] individual, the place at which that individual is kept, and all facts as to the date of that

individual's entry into the United States, the port through which that individual entered, that individual's age, nationality and parentage, and concerning that individual's procuration to come to this country within the knowledge of such person; and

Whoever fails within [thirty] *five business* days after commencing to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien individual [within three years after that individual has entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic], to file such statement concerning such alien individual with the Commissioner of Immigration and Naturalization, or

Whoever knowingly and willfully states falsely or fails to disclose in such statement any fact within that person's knowledge or belief with reference to the age, nationality, or parentage of any such alien individual, or concerning that individual's procuration to come to this country—

Shall be fined under this title or imprisoned not more than [two] *10* years, or both.

(b) In any prosecution brought under this section, if it appears that any such statement required is not on file in the office of the Commissioner of Immigration and Naturalization, the person whose duty it is to file such statement shall be presumed to have failed to file said statement, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement as required by this section, on the ground or for the reason that the statement so required by that person, or the information therein contained, might tend to criminate that person or subject that person to a penalty or forfeiture, but no information contained in the statement or any evidence which is directly or indirectly derived from such information may be used against any person making such statement in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with this section, *or for enforcement of the provisions of section 274A of the Immigration and Nationality Act.*

CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

* * * * * * *

§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) * * *

* * * * * * *

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 1014 (relating to loans and credit applications generally; renewals and discounts), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential and Presidential staff assassination, kidnaping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), sections 2251 and 2252 (sexual exploitation of children), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening of retaliating against a Federal official), and section 1341 (relating to mail fraud), section 351 (violations) with respect to congressional, Cabinet, or Supreme Court assassinations, kidnaping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), **[**or section 1992 (relating to wrecking trains**]**; *section 1992 (relating to wrecking trains), a felony violation of section 1028 (relating to production of false identification documentation), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the*

reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1541 (relating to passport issuance without authority), section 1542 (relating to false statements in passport applications), section 1543 (relating to forgery or false use of passports), section 1544 (relating to misuse of passports), or section 1546 (relating to fraud and misuse of visas, permits, and other documents)

* * * * * * *

(*l*) the location of any fugitive from justice from an offense described in this section; **[**or**]**

(m) a violation of 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);

[(m)**]***(n)* any felony violation of sections 922 and 924 of title 18, United States Code (relating to firearms);

[(n)**]***(o)* any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms); and

[(*o*)**]***(p)* any conspiracy to commit any offense described in any subparagraph of the paragraph.

* * * * * * *

CHAPTER 227—SENTENCE, JUDGMENT, AND EXECUTION

* * * * * * *

§ 3563. Conditions of probation

(a) MANDATORY CONDITIONS.—The court shall provide, as an explicit condition of sentence of probation—

* * * * * * *

(b) DISCRETIONARY CONDITIONS.—The court may provide as further conditions of sentence of probation, to the extent that such conditions are reasonably related to factors set forth in section 3553(a)(1) and (a)(2) and to the extent that such condition involve only such deprivations of liberty or property as are reasonably necessary for purposes indicated in section 3553(a)(2), that the defendant—

(1) * * *

* * * * * * *

(21) comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by the defendant for the support and maintenance of a child or of a child and the parent with whom the child is living; **[**or**]**

(22) satisfy such other conditions as the court may impose**[**.**]***; or*

(23) be ordered deported by a United States District Court, or United States Magistrate Court, pursuant to a stipulation entered into by the defendant and the United States under section 242A(c) of the Immigration and Nationality Act (8 U.S.C. 1252a(c)), except that, in the absence of a stipulation, the United States District Court or the United States Magistrate Court, may order deportation as a condition of probation, if, after notice and hearing pursu-

ant to section 242A(c) of the Immigration and Nationality Act, the Attorney General demonstrates by clear and convincing evidence that the alien is deportable.

* * * * * * *

CHAPTER 306—TRANSFER TO OR FROM FOREIGN COUNTRIES

* * * * * * *

§ 4113. Status of alien offender transferred to a foreign country

(a) An alien who is deportable from the United States but who has been granted voluntary departure pursuant to [section 1252(b)] *section 1252(b)(1)* or section 1254(e) of title 8, United States Code, and who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have voluntarily departed from this country.

* * * * * * *

TITLE 26—INTERNAL REVENUE CODE

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

§ 32. Earned income

(a) Allowance of credit.—

* * * * * * *

(c) Definitions and special rules.—For purposes of this section—

(1) Eligible individual.—

(A) In general.—The term "eligible individual" means—

* * * * * * *

(E) Abode must be in the United States.—The requirements of subparagraphs (A)(ii) and (B)(iii)(II) shall be met only if the principal place of abode is in the United States.

(F) IDENTIFICATION NUMBER REQUIREMENT.—The term "eligible individual" does not include any individual who does not include on the return of tax for the taxable year—

(i) such individual's taxpayer identification number, and

(ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse.

* * * * * * *

(j) COORDINATION WITH CERTAIN MEANS-TESTED PROGRAMS.—For purposes of—

(1) the United States Housing Act of 1937,

(k) IDENTIFICATION NUMBERS.—Solely for purposes of subsections (c)(1)(F) and (c)(3)(D), a taxpayer identification number means a so-

cial security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act).

* * * * * * *

CHAPTER 61—INFORMATION AND RETURNS

* * * * * * *

§ 6213. Restrictions applicable to deficiencies; petition to Tax Court

(a) TIME FOR FILING PETITION AND RESTRICTION ON ASSESSMENT.—* * *

* * * * * * *

(g) DEFINITIONS.—For purposes of this section—

(1) RETURN.—The term "return" includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

(2) MATHEMATICAL OR CLERICAL ERROR.—The term "mathematical or clerical error" means—

(A) an error in addition, subtraction, multiplication, or division shown on any return,

(B) an incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,

(C) an entry on a return of an item which is inconsistent with another entry of the same or another item on such return,

(D) an omission of information which is required to be supplied on the return to substantiate an entry on the return, [and]

(E) an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed—

(i) as a specified monetary amount, or

(ii) as a percentage, ratio, or fraction, and if the items entering into the application of such limit appear on such return[.], and

(F) an unintended omission of a correct taxpayer identification number required under section 32 (relating to the earned income tax credit) to be included on a return.

* * * * * * *

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

* * * * * * *

CHAPTER 119—EVIDENCE; WITNESSES

* * * * * * *

§ 1821. Per diem and mileage generally; subsistence

(a)(1) Except as otherwise provided by law, a witness in attendance at any court of the United States, or before a United States Magistrate, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall be paid the fees and allowances provided by this section.

* * * * * * *

(e) An alien who has been paroled into the United States for prosecution, pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined pursuant to [section 242(b) of such Act (8 U.S.C. 1252(b))] *section 242(b)(1) of such Act (8 U.S.C. 1252(b)(1))* to be deportable, shall be ineligible to receive the fees or allowances provided by this section.

* * * * * * *

TITLE 42—THE PUBLIC HEALTH AND WELFARE

* * * * * * *

CHAPTER 7—SOCIAL SECURITY

* * * * * * *

§ 1396a. State plans for medical assistance

(a) CONTENTS.—A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if

* * * * * * *

(61) provide that the State must demonstrate that it operates a medicaid fraud and abuse control unit described in section 1396b(q) of this title that effectively carries out the functions and requirements described in such section, as determined in accordance with standards established by the Secretary, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the State plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit; [and]

(62) provide for a program for the distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with section 1396s of this title[.] *; and*

(63) in the case of a State that is certified by the Attorney General as a high illegal immigration State (as determined by the Attorney General), at the election of the State, establish and operate a program for the placement of anti-fraud investigators in State, county, and private hospitals located in the State to verify the immigration status and income eligibility of applicants for medical assistance under the State plan prior to the furnishing of medical assistance.

* * * * * * *

§ 1396b. Payment to States

(a) COMPUTATION OF AMOUNT.—From the sums appropriated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing January 1, 1966—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title, subject to subsections (g) and (j) of this section and section 1396r–4(f) of this title) of the total amount expended during such quarter as medical assistance under the State plan; plus

* * * * * * *

(6) subject to subsection (b)(3) of this section, an amount equal to—

(A) 90 per centum of the sums expended during such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and

(B) 75 per centum of the sums expended during each succeeding calendar quarter,

with respect to costs incurred during such quarter (as found necessary by the Secretary for the elimination of fraud in the provision and administration of medical assistance provided under the State plan) which are attributable to the establishment and operation of (including the training of personnel employed by) a State medicaid fraud control unit (described in subsection (q) of this section); [plus]

(7) subject to section 1396r(g)(3)(B) of this title, an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan[.]*; plus*

"(8) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b)) of the total amount expended during such quarter which is attributable to operating a program under section 1902(a)(63).

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TITLE 50—WAR AND NATIONAL DEFENSE

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CHAPTER 12—VESSELS IN TERRITORIAL WATERS OF UNITED STATES

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§ 191. Regulation of anchorage and movement of vessels during national emergency

Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, *or whenever the Attorney General determines that an actual or anticipated mass migration of aliens en route to or arriving off the coast of the United States presents urgent circumstances requiring an immediate Federal response,* the Secretary of Transportation may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States , or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specifically authorized by him to go or remain on the board thereof.

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Immigration and Nationality Act

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TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

* * * * * * *

(43) The term "aggravated felony" means—

* * * * * * *

(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded **[**$100,000**]** *$100,000*;

* * * * * * *

(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) [is at least 5 years] *at least one year*;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) [is at least 5 years] *at least one year*;

(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);

(J) an [offense described] *offense described in section 1084 of title 18 (if it is a second or subsequent offense), section 1955 of such title (relating to gambling offenses), or* in section 1962 of title 18, United States Code relating to racketeer influenced corrupt organizations) for which a sentence of 5 years' imprisonment] *sentence of one year imprisonment* or more may be imposed;

(K) an offense that—

(i) relates to the owning, controlling, managing, or supervising of a prostitution business; [or]

(ii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude); *or*

(iii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution), if committed for commercial advantage.

(L) an offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code; [or]

(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421 (relating to protecting the identity of undercover intelligence agents); *or*

(iii) section 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $200,000; or

(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds [$200,000] *$10,000*;

(N) an offense described in section 274(a)(1) [of title 18, United States Code] (relating to alien smuggling) [for the purpose of commercial advantage], *except, for a first of-*

fense, if 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 Act;

(O) an offense described in section 1546(a) of title 18, United States Code (relating to document fraud) [which constitutes trafficking in the documents described in such section for which the term of imprisonment imposed (regardless of any suspicion of such imprisonment) [is at least 5 years] (*at least one year) a first offense, if 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 Act*;

(P) any offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles whose identification numbers have been altered for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least one year;

(Q) any offense relating to perjury or subornation of perjury for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least one year;

[(P)] *(R)* an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of [15] *5* years or more; and

[(Q)] *(S)* an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. *Notwithstanding any other provision of law, the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph, except that, for purposes of section 242(f)(2), the term has the same meaning as was in effect under this paragraph on the date the offense was committed.*

* * * * * * *

(46) The term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

(b) As used in titles I and II—

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(A) a legitimate child;

* * * * * * *

(f) For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1) a habitual drunkard;

(3) a member of one or more of the classes of persons, whether excludable or not, described in paragraphs (2)(D), (6)(E), and

[(9)(A)[36] of section 212(a) *(10)(A) of section 212(a)* of this Act; or subparagraphs (A) and (B) of section 212(a)(2) and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana); if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(47) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master, or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

* * * * * * *

POWERS AND DUTIES OF THE ATTORNEY GENERAL AND THE COMMISSIONER

SEC. 103. (a) The Attorney General shall be charged with the administration and enforcement of this Act and all other laws relating to the immigration and naturalization of aliens, except insofar as this Act or such laws relate to the powers, functions, and duties conferred upon the President, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided, however,* That determination and ruling by the Attorney General with respect to all questions of law shall be controlling. He shall have control, direction, and supervision of all employees and of all the files and records of the Service. He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this Act. He may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon any other employee of the Service. He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service. He may, with the concurrence of the Secretary of State, establish offices of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this Act, detail employees of the Service for duty in foreign countries. *In the event the Attorney General determines 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 specially designated 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 Act or regulations issued thereunder upon officers or employees of the Service.

* * * * * * *

[JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION

[SEC. 106. (a) The procedure prescribed by, and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under [section 242(b)] *section 242(b)(1)* or pursuant to section 242A of this Act or comparable provisions of any prior Act, except that—

[(1) a petition for review may be filed not later than 90 days after the date of the issuance of the final deportation order, or, in the case of an alien convicted of an aggravated felony (including an alien described in section 242A), not later than 30 days after the issuance of such order;

[(2) the venue of any petition for review under this section shall be in the judicial circuit in which the administrative proceedings before a special inquiry officer were conducted in whole or in part, or in the judicial circuit wherein is the residence, as defined in this Act, of the petitioner, but not in more than one circuit;

[(3) the action shall be brought against the Immigration and Naturalization Service, as respondent. Service of the petition to review shall be made upon the Attorney General of the United States and upon the official of the Immigration and Naturalization Service in charge of the Service district in which the office of the clerk of the court is located. The service of the petition for review upon such official of the Service shall stay the deportation of the alien pending determination of the petition by the court, unless the court otherwise directs or unless the alien is convicted of an aggravated felony (including an alien described in section 242A), in which case the Service shall not stay the deportation of the alien pending determination of the petition of the court unless the court otherwise directs;

[(4) except as provided in clause (B) of paragraph (5) of this subsection, the petition shall be determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive;

[(5) whenever any petitioner, who seeks review of an order under this section, claims to be a national of the United States and makes a showing that his claim is not frivolous, the court shall (A) pass upon the issues presented when it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or (B) where a genuine issue of material fact as to the petitioner's nationality is pre-

sented, transfer the proceedings to a United States district court for the district where the petitioner has his residence for hearing de novo of the nationality claim and determination as if such proceedings were originally initiated in the district court under the provisions of section 2201 of title 28, United States Code. Any such petitioner shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise;

[(6) whenever a petitioner seeks review of an order under this section, any review sought with respect to a motion to reopen or reconsider such an order shall be consolidated with the review of the order;

[(7) if the validity of a deportation order has not been judicially determined, its validity may be challenged in a criminal proceeding against the alien for violation of subsection (d) or (e) of section 242 of this Act only by separate motion for judicial review before trial. Such motion shall be determined by the court without a jury and before the trial of the general issue. Whenever a claim to United States nationality is made in such motion, and in the opinion of the court, a genuine issue of material fact as to the alien's nationality is presented, the court shall accord him a hearing de novo on the nationality claim and determine that issue as if proceedings had been initiated under the provisions of section 2201 of title 28, United States Code. Any such alien shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise. If no such hearing de novo as to nationality is conducted, the determination shall be made solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial and probative evidence on the record considered as a whole, shall be conclusive. If the deportation order is held invalid, the court shall dismiss the indictment and the United States shall have the right to appeal to the court of appeals within thirty days. The procedure on such appeals shall be as provided in the Federal rules of criminal procedure. No petition for review under this section may be filed by an alien during the pendency of a criminal proceeding against such alien for violation of subsection (d) or (e) of section 242 of this Act;

[(8) nothing in this section shall be construed to require the Attorney General to defer deportation of an alien after the issuance of a deportation order because of the right of judicial review of the order granted by this section, or to relieve any alien from compliance with subsections (d) and (e) of section 242 of this Act. Nothing contained in this section shall be construed to preclude the Attorney General from detaining or continuing to detain an alien or from taking him into custody pursuant to subsection (c) of section 242 of this Act at any time after the issuance of a deportation order;

[(9) it shall not be necessary to print the record or any part thereof, or the briefs, and the court shall review the proceedings on a typewritten record and on typewritten briefs; and

[(10) any alien held in custody pursuant to an order of deportation may obtain judicial review thereof by habeas corpus proceedings.

[(b) Notwithstanding the provisions of any other law, any alien against whom a final order of exclusion has been made heretofore or hereafter under the provisions of section 236 of this Act or comparable provisions of any prior Act may obtain judicial review of such order by habeas corpus proceedings and not otherwise.

[(c) An order of deportation or of exclusion shall not be reviewed by any court if the alien has not exhausted the administrative remedies available to him as of right under the immigration laws and regulations or if he has departed from the United States after the issuance of the order. Every petition for review or for habeas corpus shall state whether the validity of the order has been upheld in any prior judicial proceeding, and, if so, the nature and date thereof, and the court in which such proceeding took place. No petition for review or for habeas corpus shall be entertained if the validity of the order has been previously determined in any civil or criminal proceeding, unless the petition presents grounds which the court finds could not have been presented in such prior proceeding, or the court finds that the remedy provided by such prior proceeding was inadequate or ineffective to test the validity of the order.

[(d)(1) A petition for review or for habeas corpus on behalf of an alien against whom a final order of deportation has been issued pursuant to section 242A(b) may challenge only—

[(A) whether the alien is in fact the alien described in the order;

[(B) whether the alien is in fact an alien described in section 242A(b)(2);

[(C) whether the alien has been convicted of an aggravated felony and such conviction has become final; and

[(D) whether the alien was afforded the procedures required by section 242A(b)(4).

[(2) No court shall have jurisdiction to review any issue other than an issue described in paragraph (1).**]**

JUDICIAL REVIEW OF ORDERS OF DEPORTATION, EXCLUSION, AND SPECIAL EXCLUSION

SEC. 106. (a) APPLICABLE PROVISIONS.—Except as provided in subsection (b), judicial review of a final order of exclusion or deportation is governed only by chapter 158 of title 28 of the United States Code, but in no such review may a court order the taking of additional evidence pursuant to section 2347(c) of title 28, United States Code.

(b) REQUIREMENTS.—(1)(A) A petition for judicial review must be filed not later than 30 days after the date of the final order of exclusion or deportation, except that in the case of any specially deportable criminal alien (as defined in section 242(k)), there shall be no judicial review of any final order of deportation.

(B) The alien shall serve and file a brief in connection with a petition for judicial review not later than 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, and the court may not extend these deadlines except upon motion for good cause shown.

(C) If an alien fails to file a brief in connection with a petition for judicial review within the time provided in this paragraph, the Attorney General may move to dismiss the appeal, and the court shall grant such motion unless a manifest injustice would result.

(2) A petition for judicial review shall be filed with the court of appeals for the judicial circuit in which the special inquiry officer completed the proceedings.

(3) The respondent of a petition for judicial review shall be 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 exclusion or deportation was entered. Service of the petition on the officer or employee does not stay the deportation of an alien pending the court's decision on the petition, unless the court orders otherwise.

(4)(A) Except as provided in paragraph (5)(B), the court of appeals shall decide the petition only on the administrative record on which the order of exclusion or deportation is based and the Attorney General's findings of fact shall be conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary.

(B) The Attorney General's discretionary judgment whether to grant relief under section 212 (c) or (i), 244 (a) or (d), and 245 shall be conclusive and shall not be subject to review.

(C) The Attorney General's discretionary judgment whether to grant relief under section 208(a) shall be conclusive unless manifestly contrary to law and an abuse of discretion.

(5)(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, United States Code.

(C) The petitioner may have the nationality claim decided only as provided in this section.

(6)(A) If the validity of an order of deportation has not been judicially decided, a defendant in a criminal proceeding charged with violating subsection (d) or (e) of section 242 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 no genuine issue of material fact about the defendant's nationality is presented, the court shall decide the motion only on the administrative record on which the deportation order is based. The administrative findings

of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole.

(C) If the defendant claims in the motion to be a national of the United States and the district court finds that 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, United States Code.

(D) If the district court rules that the deportation order is invalid, the court shall dismiss the indictment. The United States Government may appeal the dismissal to the court of appeals for the appropriate circuit within 30 days. The defendant may not file a petition for review under this section during the criminal proceeding. The defendant may have the nationality claim decided only as provided in this section.

(7) This subsection—

(A) does not prevent the Attorney General, after a final order of deportation has been issued, from detaining the alien under section 242(c);

(B) does not relieve the alien from complying with subsection (d) or (e) of section 242; and

(C) except as provided in paragraph (3), does not require the Attorney General to defer deportation of the alien.

(8) The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten and on typewritten briefs.

(c) REQUIREMENTS FOR PETITION.—A petition for review of an order of exclusion or deportation shall 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.

(d) REVIEW OF FINAL ORDERS.—

(1) A court may review a final order of exclusion or deportation only if—

(A) the alien has exhausted all administrative remedies available to the alien as a matter of right; and

(B) another court has not decided the validity of the order, unless, subject to paragraph (2), 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.

(2) Nothing in paragraph (1)(B) may be construed as creating a right of review if such review would be inconsistent with subsection (e), (f), or (g), or any other provision of this section.

(e) NO JUDICIAL REVIEW FOR ORDERS OF DEPORTATION OR EXCLUSION ENTERED AGAINST CERTAIN CRIMINAL ALIENS.—Notwithstanding any other provision of law, any order of exclusion or deportation against an alien who is excludable or deportable by reason of having committed any criminal offense described in subparagraph (A)(iii), (B), (C), or (D) of section 241(a)(2), or two or more offenses described in section 241(a)(2)(A)(ii), at least two of which resulted in a sentence or confinement described in section 241(a)(2)(A)(i)(II), is not subject to review by any court.

(f) LIMITED REVIEW FOR SPECIAL EXCLUSION AND DOCUMENT FRAUD.—(1) Notwithstanding any other provision of law, except as provided in this subsection, no court shall have jurisdiction to review any individual determination or to hear any other cause of action or claim arising from or relating to the implementation or operation of sections 208(e), 212(a)(6)(iii), 235(d), and 235(e).

(2)(A) Except as provided in this subsection, there shall be no judicial review of—

(i) a decision by the Attorney General to invoke the provisions of section 235(e);

(ii) the application of section 235(e) to individual aliens, including the determination made under paragraph (5); or

(iii) procedures and policies adopted by the Attorney General to implement the provisions of section 235(e).

(B) Without regard to the nature of the action or claim, or the identity of the party or parties bringing the action, no court shall have jurisdiction or authority to enter declaratory, injunctive, or other equitable relief not specifically authorized in this subsection, or to certify a class under Rule 23 of the Federal Rules of Civil Procedure.

(3) Judicial review of any cause, claim, or individual determination made or arising under or relating to section 208(e) 212(a)(6)(iii), 235(d), or 235(e) shall only be available in a habeas corpus proceeding, and shall be limited to determinations of—

(A) whether the petitioner is an alien;

(B) whether the petitioner was ordered specially excluded; and

(C) whether the petitioner can prove by a preponderance of the evidence that he or she is an alien lawfully admitted for permanent residence and is entitled to such further inquiry as is prescribed by the Attorney General pursuant to section 235(e)(6).

(4)(A) In any case where the court determines that the petitioner—

(i) is an alien who was not ordered specially excluded under section 235(e), or

(ii) has demonstrated by a preponderance of the evidence that he or she is a lawful permanent resident,

the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 236 or a determination in accordance with section 235(c) or 273(d).

(B) Any alien who is provided a hearing under section 236 pursuant to these provisions may thereafter obtain judicial review of any resulting final order of exclusion pursuant to this section.

(5) In determining whether an alien has been ordered specially excluded under section 235(e), the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually excludable or entitled to any relief from exclusion.

(g) NO COLLATERAL ATTACK.—In any action brought for the assessment of penalties for improper entry or reentry of an alien under section 275 or 276, no court shall have jurisdiction to hear claims attacking the validity or orders of exclusion, special exclusion, or deportation entered under section 235, 236, or 242.

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

WORLDWIDE LEVEL OF IMMIGRATION

SEC. 201. (a) IN GENERAL.—Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

* * * * * * *

(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—(1)(A) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is, subject to subparagraph (B), equal to—

(i) 480,000, minus

[(ii) the number computed under paragraph (2), plus]

(ii) the sum of the number computed under paragraph (2) and the number computed under paragraph (4), plus

(iii) the number (if any) computed under paragraph (3).

* * * * * * *

(3)(A) The number computed under this paragraph for fiscal year 1992 is zero.

* * * * * * *

(4) The number computed under this paragraph for a fiscal year is the number of aliens who were paroled into the United States under section 212(d)(5) in the second preceding fiscal year and who did not depart from the United States within 365 days.

(5) If any alien described in paragraph (4) is subsequently admitted as an alien lawfully admitted for permanent residence, such alien shall not again be considered for purposes of paragraph (1).

* * * * * * *

NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. (a) PER COUNTRY LEVEL.—

(1) NONDISCRIMINATION.—*(A)* Except as specifically provided in paragraph (2) and in sections 101(a)(27), 201(b)(2)(A)(i), and 203, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence.

(B) Nothing in this paragraph shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed.

* * * * * * *

(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—If it is determined that the total number of immigrant visas made available under subsections (a) and (b) of section 203 to natives of any single foreign state or dependent area will exceed the numerical limita-

tion specified in subsection (a)(2) in any fiscal year, in determining the allotment of immigrant visa numbers to natives under subsections (a) and (b) of section 203, visa numbers with respect to natives of that state or area shall be allocated (to the extent practicable and otherwise consistent with this section and section 203) in a manner so that—

(1) the ratio of the visa numbers made available under section 203(a) to the visa numbers made available under section 203(b) is equal to the ratio of the worldwide level of immigration under section 201(c) to such level under section 201(d);

* * * * * * *

(3) the proportion of the visa numbers made available under each of paragraphs (1) through (5) of section 203(b) is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 203(b).

Nothing in this subsection shall be construed as limiting the number of visas that may be issued to natives of a foreign state or dependent area under section 203(a) or 203(b) if there is insufficient demand for visas for such natives under section 203(b) or 203(a), respectively, or as limiting the number of visas that may be issued under section 203(a)(2)(A) pursuant to subsection (a)(4)(A).

(f)(1) For purposes of subsection (a)(2), an immigrant visa shall be considered to have been made available in a fiscal year to any alien who is not an alien lawfully admitted for permanent residence but who was paroled into the United States under section 212(d)(5) in the second preceding fiscal year and who did not depart from the United States within 365 days.

(2) If any alien described in paragraph (1) is subsequently admitted as an alien lawfully admitted for permanent residence, an immigrant visa shall not again be considered to have been made available for purposes of subsection (a)(2).

* * * * * * *

ASYLUM PROCEDURE

SEC. 208. (a) **[**The**]**, *(1) Except as provided in paragraph (2), the* Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A).

(2)(A) An application for asylum filed for the first time during an exclusion or deportation proceeding shall not be considered if the proceeding was commenced more than one year after the alien's entry or admission into the United States.

(B) An application for asylum may be considered, notwithstanding subparagraph (A), if the applicant shows good cause for not having filed within the specified period of time.

* * * * * * *

[(e) An applicant for asylum is not entitled to employment authorization except as may be provided by regulation in the discretion of the Attorney General.]

(e)(1) Notwithstanding subsection (a), any alien who, in seeking entry to the United States or boarding a common carrier for the purpose of coming to the United States, presents any document which, in the determination of the immigration officer, is fraudulent, forged, stolen, or inapplicable to the person presenting the document, or otherwise contains a misrepresentation of a material fact, may not apply for or be granted asylum, unless presentation of the document was necessary to depart from a country in which the alien has a credible fear of persecution, or from which the alien has a credible fear of return to persecution, and the alien traveled from such country directly to the United States.

(2) Notwithstanding subsection (a), an alien who boards a common carrier for the purpose of coming to the United States through the presentation of any document which relates or purports to relate to the alien's eligibility to enter the United States, and who fails to present such document to an immigration officer upon arrival at a port of entry into the United States, may not apply for or be granted asylum, unless presentation of such document was necessary to depart from a country in which the alien has a credible fear of persecution, or from which the alien has a credible fear of return to persecution, and the alien traveled from such country directly to the United States.

(3) Notwithstanding subsection (a), an alien described in section 235(d)(3) may not apply for or be granted asylum, unless the alien traveled directly from a country in which the alien has a credible fear of persecution, or from which the alien has a credible fear of return to persecution.

(4) Notwithstanding paragraph (1), (2), or (3), the Attorney General may, under extraordinary circumstances, permit an alien described in any such paragraph to apply for asylum.

(5)(A) When an immigration officer had determined that an alien has sought entry under either of the circumstances described in paragraph (1) or (2), or is an alien described in section 235(d)(3), or is otherwise an alien subject to the special exclusion procedure of section 235(e), and the alien has indicated a desire to apply for asylum or for withholding of deportation under section 243(h), the immigration officer shall refer the matter to an asylum officer.

(B) Such asylum officer shall interview the alien, in person or by video conference, to determine whether the alien has a credible fear of persecution (or of return to persecution) in or from—

(i) the country of such alien's nationality or, in the case of a person having no nationality, the country in which such alien last habitually resided, and

(ii) in the case of an alien seeking asylum who has sought entry under either of the circumstances described in paragraph (1) or (2), or who is described in section 235(d)(3), the country in which the alien was last present prior to attempting entry into the United States.

(C) If the officer determines that the alien does not have a credible fear of persecution in (or of return to persecution from) the country

or countries referred to in subparagraph (B), the alien may be specially excluded and deported in accordance with section 235(e).

(D) The Attorney General shall provide by regulation for the prompt supervisory review of a determination under subparagraph (C) that an alien physically present in the United States does not have a credible fear of persecution in (or of return to persecution from) the country or countries referred to in subparagraph (B).

(E) The Attorney General shall provide information concerning the procedure described in this paragraph to persons who may be eligible. An alien who is eligible for such procedure pursuant to subparagraph (A) may consult with a person or persons of the alien's choosing prior to the procedure or any review thereof, in accordance with regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not delay the process.

(6) An alien who has been determined under the procedure described in paragraph (5) to have a credible fear of persecution shall be taken before a special inquiry officer for a hearing in accordance with section 236.

(7) As used in this subsection, the term "asylum officer" means an immigration officer who—

(A) has had professional training in country conditions, asylum law, and interview techniques; and

(B) is supervised by an officer who meets the condition in subparagraph (A).

(8) As used in this section, the term "credible fear of persecution" means that—

(A) there is a substantial likelihood that the statements made by the alien in support of the alien's claim are true; and

(B) there is a significant possibility, in light of such statements and of country conditions, that the alien could establish eligibility as a refugee within the meaning of section 101(a)(42)(A).

(f)(1) An applicant for asylum may not engage in employment in the United States unless such applicant has submitted an application for employment authorization to the Attorney General and, subject to paragraph (2), the Attorney General has granted such authorization.

(2) The Attorney General may deny any application for, or suspend or place conditions on any grant of, authorization for any applicant for asylum to engage in employment in the United States.

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SPECIAL AGRICULTURAL WORKERS

SEC. 210. (a) LAWFUL RESIDENCE.—

(1) IN GENERAL.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien meets the following requirements:

* * * * * * *

(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) TO WHOM MAY BE MADE.—

(A) WITHIN THE UNITED STATES.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

* * * * * * *

6. CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application including a determination under subparagraph (a)(3)(B), or for enforcement of paragraph (7).

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications[.], *except that the Attorney General shall provide information furnished under this section to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).*

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CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF EXCLUDABLE ALIENS.—Except as otherwise provided in this Act, the following describes classes of excludable aliens who are ineligible to receive visas and who shall be excluded from admission into the United States:

(1) HEALTH-RELATED GROUNDS.—

(A) IN GENERAL.—Any alien—

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome,

(ii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)—

(I) 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]

(II) 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, or

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict, *or*

(iv) who seeks admission as a lawful permanent resident, or who seeks adjustment of status to that of an alien lawfully admitted for permanent residence, and who has failed to present documentation showing that the alien has been vaccinated against vaccine-preventable diseases (including mumps, measles, rubella, polio, tetanus, diphtheria toxoids, pertussis, haemophilus-influenza type B, hepatitis type B, and any other diseases specified as vaccine-preventable diseases by the Advisory Committee on Immunization Practices),

* * * * * * *

(3) SECURITY AND RELATED GROUNDS.—

(A) IN GENERAL.—Any alien who a consular officer of the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

* * * * * * *

(B) TERRORIST ACTIVITIES.—

(i) IN GENERAL.—Any alien who—

(I) has engaged in a terrorist activity, [or]

(II) a consular officer or the Attorney General knows, or has reasonable ground to believe, is likely to engage after entry in any terrorist activity (as defined in clause (iii)), *or*

* * * * * * *

(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorism, engaged in targeted racial vilification, or advocated the overthrow of the United States Government or death or serious bodily harm to any United States citizen or United States Government official,

* * * * * * *

(iii) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this Act, the term "engage in terrorist activity" means to commit, in an individual capacity or as a member of an organization, an act of terrorist activity or an act which the actor knows, or reasonably should know, affords material support to any individual, organization, or government in conducting a terrorist activity at any time, including any of the following acts:

(I) The preparation or planning of a terrorist activity.

(II) The gathering of information on potential targets for terrorist activity.

(III) The providing of any type of material support, including a safe house, transportation, communications, funds, false *documentation or* identification, weapons, explosives, or training, to any individual the actor knows or has reason to believe has committed or plans to commit a terrorist activity.

* * * * * * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.—

(A) ALIENS PREVIOUSLY DEPORTED.—Any alien who has been excluded from admission and deported and who again seeks admission within [one year] *five years* of the date of such deportation, *or within 20 years of the date of any second or subsequent deportation,* is excludable, unless prior to 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) CERTAIN ALIENS PREVIOUSLY REMOVED.—Any alien who—

(i) has been arrested and deported,

(ii) has departed the United States while an order of deportation is outstanding,

[(ii)] *(iii)* has fallen into distress and has been removed pursuant to this or any prior Act,

[(iii)] *(iv)* has been removed as an alien enemy, or

[(iv)] *(v)* has been removed at Government expense in lieu of deportation pursuant to [section 242(b)], *section 242(b)(1)* and (a) who seeks admission within 5 years of the date of such deportation or removal, [or] (b) who seeks admission within 20 years in the case of an alien convicted of an aggravated felony, *or (c) who seeks admission within 20 years of a second or subsequent deportation or removal,* is excludable, unless before the date of the alien's embarkation or 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 applying or reapplying for admission.

[(C) MISREPRESENTATION]. *(C) Fraud, misrepresentation, and failure to present documents—*

(i) IN GENERAL.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or entry into the United States or other benefit provided under this Act is excludable.

(ii) WAIVER AUTHORIZED.—For provision authorizing waiver of clause (i), see subsection (i).

(iii) FRAUD, MISREPRESENTATION, AND FAILURE TO PRESENT DOCUMENTS.—

(I) Any alien who, in seeking entry to the United States or boarding a common carrier for the pur-

pose of coming to the United States, presents any document which, in the determination of the immigration officer, is forged, counterfeit, altered, falsely made, stolen, or inapplicable to the person presenting the document, or otherwise contains a misrepresentation of a material fact, is excludable.

(II) any alien who is required to present a document relating to the alien's eligibility to enter the United States prior to boarding a common carrier for the purpose of coming to the United States and who fails to present such document to an immigration officer upon arrival at a port of entry into the United States is excludable.

* * * * * * *

(8) INELIGIBLE FOR CITIZENSHIP.—

(A) IN GENERAL.—Any immigrant who is permanently ineligible to citizenship is excludable.

(B) DRAFT EVADERS.—Any person who has departed from or who has remained outside the United States to avoid or evade training or service in the armed forces in time of war or a period declared by the President to be a national emergency is excludable, except that this subparagraph shall not apply to an alien who at the time of such departure was a nonimmigrant and who is seeking to reenter the United States as a nonimmigrant.

(9) UNCERTIFIED FOREIGN HEALTH-CARE WORKERS.—(A) Any alien who seeks to enter the United States for the purpose of performing labor as a health-care worker, other than a physician, is excludable 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—

(i) 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 with that required for an American health-care worker of the same type; and

(III) are authentic and, in the case of a license, unencumbered;

(ii) 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

(iii) if a majority of States licensing the profession in which the alien intends to work recognize a test predicting

the success on the profession's licensing and certification examination, the alien has passed such a test.

(B) For purposes of subparagraph (A)(ii), 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.

[(9)] *(10)* MISCELLANEOUS.—

(A) PRACTICING POLYGAMISTS.—Any immigrant who is coming to the United States to practice polygamy is excludable.

[(c) Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawfully unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) (other than paragraphs (3) and [(9)(C)]*(10)(C)*). Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion vested in him under section 211(b). The first sentence of this subsection shall not apply to an alien who has been convicted of one or more aggravated felonies and has served for such felony or felonies a term of imprisonment of at least 5 years.]

(c)(1) Subject to paragraphs (2) through (5), an alien who is and has been lawfully admitted for permanent residence for at least 5 years, who has resided in the United States continuously for 7 years after having been lawfully admitted, and who is returning to such residence after having temporarily proceeded abroad voluntarily and not under an order of deportation, may be admitted in the discretion of the Attorney General without regard to the provisions of subsection (a) (other than paragraphs (3) and (9)(C)).

(2) For purposes of this subsection, any period of continuous residence shall be deemed to end when the alien is placed in proceedings to exclude or deport the alien from the United States.

(3) Nothing contained in this subsection shall limit the authority of the Attorney General to exercise the discretion authorized under section 211(b).

(4) Paragraph (1) shall not apply to an alien who has been convicted of one or more aggravated felonies and has been sentenced for such felony or felonies to a term or terms of imprisonment totalling, in the aggregate, at least 5 years.

(5) This subsection shall apply only for an alien in; proceedings under 236.

(d)(1) The Attorney General shall determine whether a ground for exclusion exists with respect to nonimmigrant described in section 101(a)(15)(S). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(S), if the Attorney General considers it to be in the national interest to do so. Nothing in this section shall be regarded as prohibiting the Immigration and Naturalization Service from instituting deportation proceedings against an alien admitted as a nonimmigrant under section 101(a(15)(S) for conduct committed after the alien's admission into the United States, or for conduct

or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under section 101(a)(15)(S).

* * * * * * *

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe [for emergent reasons or for reasons deemed strictly in the public interest] *on a case-by-case basis for urgent humanitarian reasons or significant public benefit* any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

* * * * * * *

(g) The Attorney General may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

(A) is the spouse or the unmarried son or daughter, or the minor unmarried lawfully adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or of an alien who has been issued an immigrant visa, or

(B) has a son or daughter who is a United States citizen, or an alien lawfully admitted for permanent residence, or an alien who has been issued an immigrant visa, [or]

(2) subsection (a)(1)(A)(ii) in the case of any alien, *or*

(3) subsection (a)(1)(A)(iv) in the case of any alien described in that subsection—

(A) who receives vaccination against the vaccine-preventable diseases described in that subsection for which the alien cannot present documentation showing that the alien had been vaccinated previously, or

(B) for whom a civil surgeon, medical officer, or panel physician (as such terms are defined in section 34.2 of title 42, Code of Federal Regulations) certifies, in accordance with such regulations as the Secretary of Health and Human Services may prescribe, that vaccination against such diseases would not be medically appropriate,

* * * * * * *

(p)(1) Any lawfully admitted nonimmigrant who remains in the United States for more than 60 days beyond the period authorized by the Attorney General shall be ineligible for additional nonimmigrant or immigrant visas (other than visas available for spouses of United States citizens or aliens lawfully admitted for permanent residence) until the date that is—

(A) 3 years after the date the nonimmigrant departs the United States in the case of a nonimmigrant not described in paragraph (2); or

(B) 5 years after the date the nonimmigrant departs the United States in the case of a nonimmigrant who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the nonimmigrant's deportability.

(2)(A) Paragraph (1) shall not apply to any lawfully admitted nonimmigrant who is described in paragraph (1)(A) and who demonstrates good cause for remaining in the United States for the entirety of the period (other than the first 60 days) during which the nonimmigrant remained in the United States without the authorization of the Attorney General.

(B) A final order of deportation shall not be stayed on the basis of a claim of good cause made under this subsection.

(3) The Attorney General shall by regulation establish procedures necessary to implement this section.

* * * * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a)(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248, such alien will depart from the United States. No alien admitted to Guam without a visa pursuant to section 2121(l) may be authorized to enter or stay in the United States other than in Guam or to remain in Guam for a period exceeding fifteen days from date of admission to Guam. No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

* * * * * * *

(j)(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S)(i) in any fiscal year may not exceed [100] *200.* The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S)(ii) in any fiscal year may not exceed [25] *50.*

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CHAPTER 3—ISSUANCE OF ENTRY DOCUMENTS

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APPLICATIONS FOR VISAS

SEC. 222. (a) Every alien applying for an immigrant visa and for alien registration shall make application therefor in such form and manner and at such place as shall be by regulations prescribed. In the application the alien shall state his full and true name, and any other name which he has used or by which he has been known; age and sex; the date and place of his birth; and such additional information necessary to the identification of the applicant and the

enforcement of the immigration and nationality laws as may be by regulations prescribed.

* * * * * * *

(f) The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

(g)(1) In the case of an alien who has entered and remained in the United States beyond the authorized period of stay, the alien's nonimmigrant visa shall thereafter be invalid for reentry into the United States.

(2) An alien described in paragraph (1) shall be ineligible to be readmitted to the United States as a nonimmigrant subsequent to the expiration of the alien's authorized period of stay, except—

(A) on the basis of a visa issued in a consular office located in the country of the alien's nationality (or, if there is no office in such country, in such other consular office as the Secretary of State shall specify); or

(B) where extraordinary circumstances are found by the Secretary of State to exist.

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CHAPTER 4—PROVISIONS RELATING TO ENTRY AND EXCLUSION

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INSPECTION BY IMMIGRATION OFFICERS

SEC. 235. (a) * * *

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[b**]***(b)(1)* Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 273(d), who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer. The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before a special inquiry officer for further inquiry.

(2) If an alien subject to such further inquiry has arrived from a foreign territory contiguous to the United States, either at a land port of entry or on the land of the United States other than at a designated port of entry, the alien may be returned to that territory pending the inquiry.

* * * * * * *

(d)(1) Subject to paragraph (2), any alien who has not been admitted to the United States, and who is excludable under section 212(a)(6)(C)(iii) or who is an alien described in paragraph (3), is ineligible for withholding of deportation pursuant to section 243(h), and may not apply therefor or for any other relief under this Act, except that an alien found to have a credible fear of persecution or of return to persecution in accordance with section 208(e) shall be taken before a special inquiry officer for exclusion proceedings in accordance with section 236 and may apply for asylum, withholding of deportation, or both, in the course of such proceedings.

(2) An alien described in paragraph (1) who has been found ineligible to apply for asylum under section 208(e) may be returned under the provisions of this section only to a country in which (or from which) he or she has no credible fear of persecution (or of return to persecution). If there is no country to which the alien can be returned in accordance with the provisions of this paragraph, the alien shall be taken before a special inquiry officer for exclusion proceedings in accordance with section 236 and may apply for asylum, withholding of deportation, or both, in the course of such proceedings.

(3) Any alien who is excludable under section 212(a), and who has been brought or escorted under the authority of the United States—

(A) into the United States, having been on board a vessel encountered seaward of the territorial sea by officers of the United States; or

(B) to a port of entry, having been on board a vessel encountered within the territorial sea or internal waters of the United States;

shall either be detained on board the vessel on which such person arrived or in such facilities as are designated by the Attorney General or paroled in the discretion of the Attorney General pursuant to section 212(d)(5) pending accomplishment of the purpose for which the person was brought or escorted into the United States or to the port of entry, except that no alien shall be detained on board a public vessel of the United States without the concurrence of the head of the department under whose authority the vessel is operating.

(e)(1) Notwithstanding the provisions of subsection (b) of this section and section 236, the Attorney General may, without referral to a special inquiry officer or after such a referral, order the exclusion and deportation of any alien if—

(A) the alien appears to an examining immigration officer, or to a special inquiry officer if such referral is made, to be an alien who—

(i) has entered the United States without having been inspected and admitted by an immigration officer pursuant to this section, unless such alien affirmatively demonstrates to the satisfaction of such immigration officer or special inquiry officer that he has been physically present in the United States for an uninterrupted period of at least two years since such entry without inspection;

(ii) is excludable under section 212(a)(6)(iii);

(iii) is brought or escorted under the authority of the United States into the United States, having been on board

a vessel encountered outside of the territorial waters of the United States by officers of the United States;

(iv) is brought or escorted under the authority of the United States to a port of entry, having been on board a vessel encountered within the territorial sea or internal waters of the United States; or

(v) has arrived on a vessel transporting aliens to the United States without such alien having received prior official authorization to come to, enter, or reside in the United States; or

(B) the Attorney General has determined that the numbers or circumstances of aliens en route to or arriving in the United States, by land, sea, or air, present an extraordinary migration situation.

(2) As used in this section, the phrase "extraordinary migration situation" means the arrival or imminent arrival in the United States or its territorial waters of aliens who by their numbers or circumstances substantially exceed the capacity for the inspection and examination of such aliens.

(3)(A) Subject to subparagraph (B), the determination of whether there exists an extraordinary migration situation or whether to invoke the provisions of paragraph (1)(A) or (B) is committed to the sole and exclusive discretion of the Attorney General.

(B) The provisions of this subsection may be invoked under paragraph (1)(B) for a period not to exceed 90 days, unless, within such 90-day period or an extension thereof authorized by this subparagraph, the Attorney General determines, after consultation with the Committees on the Judiciary of the Senate and the House of Representatives, that an extraordinary migration situation continues to warrant such procedures remaining in effect for an additional 90-day period.

(4) When the Attorney General invokes the provisions of clause (iii), (iv), or (v) of paragraph (1)(A) or paragraph (1)(B), the Attorney General may, pursuant to this section and sections 235(e) and 106(f), suspend, in whole or in part, the operation of immigration regulations regarding the inspection and exclusion of aliens.

(5) No alien may be ordered specially excluded under paragraph (1) if—

(A) Such alien is eligible to seek, and seeks, asylum under section 208; and

(B) the Attorney General determines, in the procedure described in section 208(e), that such alien has a credible fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, in the country of such person's nationality, or in the case of a person having no nationality, the country in which such person last habitually resided.

An alien may be returned to a country in which the alien does not have a credible fear of persecution and from which the alien does not have a credible fear of return to persecution.

(6) A special exclusion order entered in accordance with the provisions of this subsection is not subject to administrative review, except that the Attorney General shall provide by regulation for prompt review of such an order against an applicant who claims

under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to be, and appears to be, lawfully admitted for permanent residence.

(7) A special exclusion order entered in accordance with the provisions of this subsection shall have the same effect as if the alien had been ordered excluded and deported pursuant to section 236, except that judicial review of such an order shall be available only under section 106(f).

(8) Nothing in this subsection may be construed as requiring an inquiry before a special inquiry officer in the case of an alien crewman.

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EXCLUSIONS OF ALIENS

SEC. 236. (a) A special inquiry officer shall conduct proceedings under this section, administer oaths, present and receive evidence, *issue subpoenas,* and interrogate, examine, and cross-examine the alien or witnesses. He shall have authority in any case to determine whether an arriving alien who has been detained for further inquiry under section 235 shall be allowed to enter or shall be excluded and deported. * * *

* * * * * * *

(e)(1) Pending a determination of excludability, the Attorney General shall take into custody any alien convicted of an aggravated felony upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense.).

(2) Notwithstanding any other provision of this section, the Attorney General shall not release such felon from custody unless *(A) the Attorney General determines, pursuant to section 3521 of title 18, United States Code, that release from custody 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 that after such release the alien would not be a threat to the community, or (B)* the Attorney General determines that the alien may not be deported because the condition described in section 243(g) exists.

(f) The Attorney General shall provide by regulation for the entry by a special inquiry officer of an order of exclusion and deportation stipulated to by the alien and the Service. Such an order may be entered without a personal appearance by the alien before the special inquiry officer. A stipulated order shall constitute a conclusive determination of the alien's excludability and deportability from the United States.

IMMEDIATE DEPORTATION OF ALIENS EXCLUDED FROM ADMISSION OR ENTERING IN VIOLATION OF LAW

SEC. 237. (a)(1) Any alien (other than an alien crewman) arriving in the United States who is excluded under this Act, shall be immediately deported, in accommodations of the same class in which

he arrived, unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper, *or unless the alien is an excluded stowaway who has applied for asylum or withholding of deportation and whose application has not been adjudicated or whose application has been denied but who has not exhausted every appeal right.* [Deportation] *Subject to section 235(d)(2), deportation* shall be to the country in which the alien boarded the vessel or aircraft on which he arrived in the United States, unless the alien boarded such vessel or aircraft in foreign territory contiguous to the United States or in any island adjacent thereto or adjacent to the United States and the alien is not a native, citizen, subject, or national of, or does not have a residence in, such foreign contiguous territory or adjacent island, in which case the deportation shall instead be to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island. The cost of the maintenance including detention expenses and expenses incident to detention of any such alien while he is being detained, shall be borne by the owner or owners of the vessel or aircraft on which he arrived, except that the cost of maintenance (including detention expenses and expenses incident to detention while the alien is being detained prior to the time he is offered for deportation to the transportation line which brought him to the United States) shall not be assessed against the owner or owners of such vessel or aircraft if (A) the alien was in possession of a valid, unexpired immigrant visa, or (B) the alien (other than an alien crewman) was in possession of a valid, unexpired nonimmigrant visa or other document authorizing such alien to apply for temporary admission to the United States or an unexpired reentry permit issued to him, and (i) such application was made within one hundred and twenty days of the date of issuance of the visa or other document, or in the case of an alien in possession of a reentry permit, within one hundred and twenty days of the date on which the alien was last examined and admitted by the Service, or (ii) in the event the application was made later than one hundred and twenty days of the date of issuance of the visa or other document or such examination and admission, if the owner or owners of such vessel or aircraft established to the satisfaction of the Attorney General that the ground of exclusion could not have been ascertained by the exercise of due diligence prior to the alien's embarkation, or (C) the person claimed United States nationality or citizenship and was in possession of an unexpired United States passport issued to him by competent authority. *Any alien stowaway inspected upon arrival in the United States is an alien who is excluded within the meaning of this section. For purposes of this section, the term "alien" includes an excluded stowaway. The provisions of this section concerning the deportation of an excluded alien shall apply to the deportation of a stowaway under section 273(d).*

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(2) [If] *Subject to section 235(d)(2), if* the government of the country designated in paragraph (1) will not accept the alien into its territory, the alien's deportation shall be directed by the Attorney General, in his discretion and without necessarily giving any

priority or preference because of their order as herein set forth, either to—

* * * * * * *

CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 241. (a) CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in the United States shall, upon the order of the Attorney General, be deported if the alien is within one or more of the following classes of deportable aliens:

(1) EXCLUDABLE AT TIME OF ENTRY OR OF ADJUSTMENT OF STATUS OR VIOLATES STATUS.—

* * * * * * *

(2) CRIMINAL OFFENSES.—

(A) GENERAL CRIMES.—

(i) CRIMES OF MORAL TURPITUDE.—Any alien who—

(I) is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under **[**section 245(i)**]** *)section 245(j))* the date of entry, and

* * * * * * *

[(5) PUBLIC CHARGE.—Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.

[(b) An alien, admitted as an nonimmigrant under the provisions of either section 101(a)(15)(A)(i) or 101(a)(15)(G)(i), and who fails to maintain a status under either of those provisions, shall not be required to depart from the United States without the approval of the Secretary of State, unless such alien is subject to deportation under paragraph (4) of subsection (a).

[(c) Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) (other than so much of paragraph (1) as relates to a ground of exclusion described in paragraph (2) or (3) of section 212(a)) shall not apply to a special immigrant described in section 101(a)(27)(J) based upon circumstances that existed before the date the alien was provided such special immigrant status.**]**

(5) PUBLIC CHARGE.—

(A) IN GENERAL.—Any alien who during the public charge period becomes a public charge, regardless of when the cause for becoming a public charge arises is deportable.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply if the alien is a refugee or has been granted asylum, or if—

(i) the cause of the alien's becoming a public charge arose after entry (in the case of an alien who entered as an immigrant) or after adjustment to lawful permanent resident status (in the case of an alien who entered as a nonimmigrant), and

(ii) was a physical illness, or physical injury, so serious the alien could not work at any job, or a mental disability that required continuous hospitalization.

(C) DEFINITIONS.—

(i) PUBLIC CHARGE PERIOD.—For purposes of subparagraph (A), the term "public charge period" means the period beginning on the date the alien entered the United States and ending—

(I) for an alien who entered the United States as an immigrant, 5 years after entry, or

(II) for an alien who entered the United States as a nonimmigrant, 5 years after the alien adjusted to permanent resident status.

(ii) PUBLIC CHARGE.—For purposes of subparagraph (A), the term "public charge" includes any alien who receives benefits under any program described in subparagraph (D) for an aggregate period of more than 12 months.

(D) PROGRAMS DESCRIBED.—The programs described in this subparagraph are the following:

(i) The aid to families with dependent children program under title IV of the Social Security Act.

(ii) The medicaid program under title XIX of the Social Security Act.

(iii) The food stamp program under the Food Stamp Act of 1977.

(iv) The supplemental security income program under title XVI of the Social Security Act.

(v) Any State general assistance program.

(vi) Any other program of assistance funded, in whole or in part, by the Federal Government or any State or local government entity, for which eligibility for benefits is based on need, except the programs listed as exceptions in clauses (i) through (vi) of section 201(a)(1) of the Immigration Reform Act of 1996.

APPREHENSION AND DEPORTATION OF ALIENS

SEC. 242. [8 U.S.C. 1252] (a)(1) Pending a determination of deportability in the case of any alien as provided in [subsection (b)] *subsection (b)(1)* of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. * * *

* * * * * * *

[(2)(A) The Attorney General shall take into custody any alien convicted of an aggravated felony upon release of the alien (regardless of whether or not such release is on parole, supervised release, or probation, and regardless of the possibility of rearrest or further confinement in respect of the same offense). Notwithstanding paragraph (1) or subsections (c) and (d) but subject to subparagraph (B), the Attorney General shall not release such felon from custody.

[(B) The Attorney General may not release from custody any lawfully admitted alien who has been convicted of an aggravated felony, either before or after a determination of deportability, unless the alien demonstrates to the satisfaction of the Attorney General that such alien is not a threat to be community and that the alien is likely to appear before any scheduled hearings.]

(2)(A) The Attorney General shall take into custody any specially deportable criminal alien upon release of the alien from incarceration and shall deport the alien as expeditiously as possible. Notwithstanding any other provision of law, the Attorney General shall not release such felon from custody.

(B) The Attorney General shall have sole and unreviewable discretion to waive subparagraph (A) fro aliens who are cooperating with law enforcement authorities or for purposes of national security.

* * * * * * *

[Except as provided in section 242A(d), the procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section.]

(2) The Attorney General shall further provide by regulation for the entry by a special inquiry officer of an order of deportation stipulated to by the alien and the Service. Such an order may be entered without a personal appearance by the alien before the special inquiry officer. A stipulated order shall constitute a conclusive determination of the alien's deportability from the United States.

(3) The procedures prescribed in this subsection and in section 242A(c) shall be the sole and exclusive procedures for determining the deportability of an alien.

(b)*(1)* A special inquiry officer shall conduct proceedings under this section to determine the deportability of any alien, and shall administer oaths, present and receive evidence *issue subpoenas,* interrogate, examine, and cross-examine the alien or witnesses, and as authorized by the Attorney General, shall make determinations, including orders of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before a special inquiry officer, at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the Attorney General shall prescribe necessary and proper safeguards for the rights and privileges of such alien. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the special inquiry officer may proceed to a determination in like manner as if the alien were present. In any case or class of cases in which the Attorney General believes that such procedure would be of aid in making a determination, he may require specifically or by regulation that an additional immigration officer shall be assigned to present the evidence on behalf of the United States and in such case additional immigration officer shall have authority to present evidence, and to interrogate, examine and cross-examine the alien or other witnesses in the proceedings. Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special inquiry officer conducting such proceedings. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions. [Proceedings before a special inquiry officer acting under the provisions of this section shall be in accordance with such regulations, not inconsistent

with this Act, as the Attorney General shall prescribe. Such regulations shall include requirements that are consistent with section 242B and that provide that—]

[(1)] *(A) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held,*

[(2)] *(B) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.*

[(3)] *(C) the alien shall have a reasonable opportunity to examine the evidence against him, to present on his own behalf, and to cross-examine witnesses presented by the Government, and*

[(4)] *(D) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.*

(4) In any case in which an alien is ordered deported from the United States under the provisions of this Act, or of any other law or treaty, the decision of the Attorney General shall be final.

(5) In the discretion of the Attorney General, and under such regulations as he may prescribe, deportation proceedings, including issuance of a warrant of arrest, and a finding of deportability under this section need not be required in the case of any alien who admits to belonging to a class of aliens who are deportable under section 241 if such alien voluntarily departs from the United States at his own expense, or is removed at Government expense as hereinafter authorized, unless the Attorney General has reason to believe that such alien is deportable under paragraph (2), (3) or (4) of section 241(a). If any alien who is authorized to depart voluntarily under the preceding sentence is financially unable to depart at his own expense and the Attorney General deems his removal to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for the enforcement of this Act. *Nothing in this subsection precludes the Attorney General from authorizing proceedings by video electronic media, by telephone, or, where a requirement for the alien's appearance is waived or the alien's absence is agreed to by the parties, in the absence of the alien. Contested full evidentiary hearings on the merits may be conducted by telephone only with the consent of the alien.*

[(c)] *(c)* (1) (other than an alien described in paragraph (2)) When a final order of deportation under administrative processes is made against any alien, the Attorney General shall have a period of six months from the date of such order, or, if judicial review is had, then from the date of the final order of the court, within which to effect the alien's departure from the United States, during which period, at the Attorney General's discretion, the alien may be detained, released on bond in an amount and containing such conditions as the Attorney General may prescribe, or released on such other conditions as the Attorney General may prescribe. * * *

(2)(A) When a final order of deportation is made against any specially deportable criminal alien, the Attorney General shall have a period of 30 days from the later of—

(i) the date of such order, or

(ii) the alien's release from incarceration, within which to effect the alien's departure from the United States.

(B) The Attorney General shall have sole and unreviewable discretion to waive subparagraph (A) for aliens who are cooperating with law enforcement authorities or for purposes of national security.

(3) Nothing in this subsection shall be construed as providing a right enforceable by or on behalf of any alien to be released from custody or to challenge the alien's deportation.

* * * * * * *

(f) *(1)* Should the Attorney General find that any alien has unlawfully reentered the United States after having previously departed or been deported pursuant to an order of deportation, whether before or after the date of enactment of this Act, on any ground described in any of the paragraphs enumerated in subsection (e), the previous order of deportation shall be deemed to be reinstated from its original date and such alien shall be deported under such previous order at any time subsequent to such reentry. For the purposes of subsection (e) the date on which the finding is made that such reinstatement is appropriate shall be deemed the date of the final order of deportation.

(2) Any alien who has unlawfully reentered or is found in the United States after having previously been deported subsequent to a conviction for any criminal offense covered in section 241(a)(2)(A)(iii), (B), (C), or (D), or two or more offenses described in clause (ii) of section 241(a)(2)(A), at least two of which resulted in a sentence or confinement described in section 241(a)(2)(A)(i)(II), shall, in addition to the punishment provided for any other crime, be punished by imprisonment of not less than 15 years.

* * * * * * *

(k) For purposes of this section, the term "specially deportable criminal alien" means any alien convicted of an offense described in subparagraph (A)(iii), (B), (C), or (D) of section 241(a)(2), or two or more offenses described in section 241(a)(2)(A)(ii), at least two of which resulted in a sentence or confinement described in section 241(a)(2)(A)(i)(II).

EXPEDITED DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES

SEC. 242A. (a) DEPORTATION OF CRIMINAL ALIENS.—

* * * * * * *

(b) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

(1) The Attorney General may, in the case of an alien described in paragraph (2), determine the deportability of such alien under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony) and issue an order of deportation pursuant to the procedures set forth in this subsection or [section 242(b)] *section 242(b)(1).*

[(d)] *(c)* JUDICIAL DEPORTATION.—

[(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A), if such an order has

been requested by the United States Attorney with the concurrence of the Commissioner and if the court chooses to exercise such jurisdiction.]

(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien—

(A) whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony);

(B) who has at any time been convicted of a violation of section 276 (a) or (b) (relating to reentry of a deported alien);

(C) who has at any time been convicted of a violation of section 275 (relating to entry of an alien at an improper time or place and to misrepresentation and concealment of facts); or

(D) who is otherwise deportable pursuant to any of the paragraphs (1) through (5) of section 241(a).

A United States Magistrate shall have jurisdiction to enter a judicial order of deportation at the time of sentencing where the alien has been convicted of a misdemeanor offense and the alien is deportable under this Act.

(2) PROCEDURE.—

(A) The United States Attorney shall file with the United States district court, and serve upon the defendant and the Service, prior to commencement of the trial or entry of a guilty plea a notice of intent to request judicial deportation.

* * * * * * *

(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to [section 242(b)] *section 242(b)(1).*

(4) DENIAL OF JUDICIAL ORDER.—Denial [without a decision on the merits] of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a).

(5) STATE COURT FINDING OF DEPORTABILITY.—(A) On motion of the prosecution or on the court's own motion, any State court with jurisdiction to enter judgments in criminal cases is authorized to make a finding that the defendant is deportable as a specially deportable criminal alien (as defined in section 242(k)).

(B) The finding of deportability under subparagraph (A), when incorporated in a final judgment of conviction, shall for all purposes be conclusive on the alien and may not be reexamined by any agency or court, whether by habeas corpus or other-

wise. The court shall notify the Attorney General of any finding of deportability.

(6) STIPULATED JUDICIAL ORDER OF DEPORTATION.—The United States Attorney, with the concurrence of the Commissioner, may, pursuant to Federal Rule of Criminal Procedure 11, enter into a plea agreement which calls for the alien, who is deportable under this Act, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of deportation from the United States as a condition of the plea agreement or as a condition of probation or supervised release, or both. The United States District Court, in both felony and misdemeanor cases, and the United States Magistrate Court in misdemeanors cases, may accept such a stipulation and shall have jurisdiction to enter a judicial order of deportation pursuant to the terms of such stipulation.

DEPORTATION PROCEDURES

SEC. 242B. (a) NOTICES.—

(1) ORDER TO SHOW CAUSE.—* * *

* * * * * * *

(3) FORM OF INFORMATION.—Each order to show cause or other notice [under this subsection—

[(A) shall be in English and Spanish, and

[(B) shall specify that the alien may be represented by an attorney in deportation proceedings under section 242 and will be provided, in accordance with subsection (b)(1), a period of time in order to obtain counsel and a current list described in subsection (b)(2).] *under this subsection.*

* * * * * * *

(b) SECURING OF COUNSEL.—

(1) IN GENERAL.—In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 242, the hearing date shall not be scheduled earlier than 14 days after the service of the order to show cause, unless the alien requests in writing an earlier hearing date, *except that a hearing may be scheduled as early as 3 days after the service of the order to show cause if the alien has been continued in custody subject to section 242.*

* * * * * * *

(3) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to section 242 if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

* * * * * * *

(c) CONSEQUENCES OF FAILURE TO APPEAR.—

(1) IN GENERAL.—Any alien who, after written notice required under subsection (a)(2) has been provided to the alien or the alien's counsel of record, does not attend a proceeding under section 242, shall be ordered deported under [section 242(b)(1)] *section 242(b)(1)(A)* in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the

written notice was so provided and that the alien is deportable. The written notice by the Attorney General shall be considered sufficient for purposes of this paragraph if provided at the most recent address provided under subsection (a)(1)(F).

* * * * * * *

(3) RESCISSION OF ORDER.—Such an order may be rescinded only—

(A) upon a motion to reopen filed within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (f)(2)), or

(B) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with subsection (a)(2) or the alien demonstrates that the alien was in Federal or State custody and did not appear through no fault of the alien[.], *by the special inquiry officer, but there shall be no stay pending further administrative or judicial review, unless ordered because of individually compelling circumstances.*

The filing of the motion to reopen described in subparagraph (A) or (B) shall stay the deportation of the alien pending disposition of the motion.

* * * * * * *

(e) LIMITATION ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR—

(1) AT DEPORTATION PROCEEDINGS.—Any alien against whom a final order of deportation is entered in absentia under this section and who, at the time of the notice described in subsection (a)(2), was provided oral notice, either in the alien's native language or in another language the alien understands, of the time and place of the proceedings and of the consequences under this paragraph of failing, other than because of exceptional circumstances (as defined in subsection (f)(2)) to attend a proceeding under section 242, shall not be eligible for relief described in paragraph (5) for a period of 5 years after the date of the entry of the final order of deportation

(2) VOLUNTARY DEPARTURE.—

(A) IN GENERAL.—Subject to subparagraph (B), any alien allowed to depart involuntarily under section 244(e)(1) *section 244(e)* or who has agreed to depart voluntarily at his own expense under [section 242(b)(1)] *section 242(b)(5)* who remains in the United States after the scheduled date of departure, other than because of exceptional circumstances, shall not be eligible for relief described in paragraph (5) for a period of 5 years after the scheduled date of departure or the date of unlawful reentry, respectively.

* * * * * * *

(5) RELIEF COVERED.—The relief described in this paragraph is—

(A) voluntary departure under [section 242(b)(1)] *section 242(b)(5),*

(B) [suspension of deportation]*cancellation of deportation* or voluntary departure under section 244, and

(C) adjustment or change of status under section *244,* 245, 248 or 249.

* * * * * * *

COUNTRIES TO WHICH ALIENS SHALL BE DEPORTED; COST OF DEPORTATION

SEC. 243. (a) The deportation of an alien in the United States provided for in this Act, or any other Act or treaty, shall be directed by the Attorney General to a country promptly designated by the alien if that country is willing to accept him into its territory, unless the Attorney General, in his discretion, concludes that deportation to such country would be prejudicial to the interests of the United States. * * *

* * * * * * *

[(g) Upon the notification by the Attorney General that any country upon request denies or unduly delays acceptance of the return of any alien who is a national, citizen, subject, or resident thereof, the Secretary of State shall instruct consular officers performing their duties in the territory of such country to discontinue the issuance of immigrant visas to nationals, citizens, subjects, or residents of such country, until such time as the Attorney General shall inform the Secretary of State that such country has accepted such alien.]

(g)(1) If the Attorney General determines that any country upon request denies or unduly delays acceptance of the return of any alien who is a national, citizen, subject, or resident thereof, the Attorney General shall notify the Secretary of such fact, and thereafter, subject to paragraph (2), neither the Secretary of State nor any consular officer shall issue an immigrant or nonimmigrant visa to any national, citizen, subject, or resident of such country.

(2) The Secretary of State may waive the application of paragraph (1) if the Secretary determines that such a waiver is necessary to comply with the terms of a treaty or international agreement or is in the national interest of the United States.

* * * * * * *

(h)(1) The Attorney General shall not deport or return any alien (other than an alien described in section 241(a)(4)(D)[162]) to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

* * * * * * *

(3) The Attorney General may refrain from deporting any alien if the Attorney General determines that—

(A) such alien's life or freedom would be threatened, in the country to which such alien would be deported or returned, on account of race, religion, nationality, membership in a particular social group, or political opinion, and

(B) Deporting such alien would violate the 1967 United Nations Protocol relating to the Status of Refugees.

[For purposes of subparagraph (B), an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime.]
For purposes of subparagraph (B), an alien shall be considered to have committed a particularly serious crime if such alien has been convicted of one or more of the following:

(1) An aggravated felony, or attempt or conspiracy to commit an aggravated felony, for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least one year.

(2) An offense described in subparagraph (A), (B), (C), (E), (H), (I), (J), (L), or subparagraph (K)(ii), of section 101(a)(43), or an attempt or conspiracy to commit an offense described in one or more of such subparagraphs.

[SUSPENSION OF DEPORTATION; VOLUNTARY DEPARTURE

[SEC. 244. (a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien (other than an alien described in section 241(a)(4)(D)) who applies to the Attorney General for suspension of deportation and—

[(1) is deportable under any law of the United States except the provisions specified in paragraph (2) of this subsection; has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence;

[(2) is deportable under paragraph (2), (3), or (4) of section 241(a); has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

[(3) is deportable under any law of the United States except section 241(a)(1)(G) and the provisions specified in paragraph (2); has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application; 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 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 such citizen or permanent resident parent); and proves that during all of such

time in the United States the alien was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.

[(b)(1) The requirement of continuous physical presence in the United States specified in paragraphs (1) and (2) of subsection (a) of this section shall not be applicable to an alien who (A) has served for a minimum period of twenty-four months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and (B) at the time of his enlistment or induction was in the United States.

[(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.

[(c) Upon application by any alien who is found by the Attorney General to meet the requirements of subsection (a) of this section the Attorney General may in his discretion suspend deportation of such alien. *No person who has been convicted of an aggravated felony shall be eligible for relief under this subsection.*

[(d) Upon the cancellation of deportation in the case of any alien under this section, the Attorney General shall record the alien's lawful admission for permanent residence as of the date the cancellation of deportation of such alien is made.

[(e)(1) Except as provided in paragraph (2), the Attorney General may, in his discretion, permit any alien under deportation proceedings, other than an alien within the provisions of paragraph (2), (3), or (4) of section 241(a) (and also any alien within the purview of such paragraphs if he is also within the provisions of paragraph (2) of subsection (a) of this section), to depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and has been, a person of good moral character for at least five years immediately preceding his application for voluntary departure under this subsection.

[(2) The authority contained in paragraph (1) shall not apply to any alien who is deportable because of a conviction for an aggravated felony.

[(f) The provisions of subsection (a) shall not apply to an alien who—

[(1) entered the United States as a crewman subsequent to June 30, 1964;

[(2) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J), or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education, or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 212(e); or

[(3)(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 101(a)(15)(J) 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 two-year foreign residence requirement of section 212(e), and (C) has not fulfilled that requirement or received a waiver thereof.

[(g) In acting on applicants under subsection (a)(3), 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 shall be within the sole discretion of the Attorney General.]

CANCELLATION OF DEPORTATION; ADJUSTMENT OF STATUS; VOLUNTARY DEPARTURE

SEC. 244 (a) CANCELLATION OF DEPORTATION.—(1) The Attorney General may, in the Attorney General's discretion, cancel deportation in the case of an alien who is deportable from the United States and—

(A) is, and has been for at least 5 years, a lawful permanent resident; has resided in the United States continuously for not less than 7 years after being lawfully admitted; and has not been convicted of an aggravated felony or felonies for which the alien has been sentenced to a term or terms of imprisonment totaling, in the aggregate, at least 5 years;

(B) has been physically present in the United States for a continuous period of not less than 7 years since entering the United States; has been a person of good moral character during such period; and establishes that deportation would result in extreme hardship to the alien or the alien's spouse, parent, or child, who is a citizen or national of the United States or an alien lawfully admitted for permanent residence;

(C) has been physically present in the United States for a continuous period of not less than three years since entering the United States; 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 is the parent of a child who is a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent); has been a person of good moral character during all of such period in the United States; and establishes that deportation would result in extreme hardship to the alien or the alien's parent or child; or

(D) is deportable under paragraph (2) (A), (B), or (D), or paragraph (3) of section 241(a); has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(2)(A) For purposes of paragraph (1), any period of continuous residence or continuous physical presence in the United States shall

be deemed to end when the alien is served an order to show cause pursuant to section 242 or 242B.

(B) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1) (B), (C), or (D) if the alien was absent from the United States for any single period of more than 90 days or an aggregate period of more than 180 days.

(C) A person who is deportable under section 241(a)(2)(C) or 241(a)(4) shall not be eligible for relief under this section.

(D) A person who is deportable under section 241(a)(2) (A), (B), or (D) or section 241(a)(3) shall not be eligible for relief under paragraph (1) (A), (B), or (C).

(E) A person who has been convicted of an aggravated felony shall not be eligible for relief under paragraph (1) (B), or (C), (D).

(F) A person who is deportable under section 241(a)(1)(G) shall not be eligible for relief under paragraph (1)(C).

(b) CONTINUOUS PHYSICAL PRESENCE NOT REQUIRED BECAUSE OF HONORABLE SERVICE IN ARMED FORCES AND PRESENCE UPON ENTRY INTO SERVICE.—The requirements of continuous residence or continuous physical presence in the United States specified in subsection (a)(1) (A) and (B) shall not be applicable to an alien who—

(1) has served for a minimum period of 24 months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(2) at the time of his or her enlistment or induction, was in the United States.

(c) ADJUSTMENT OF STATUS.—The Attorney General may cancel deportation and adjust to the status of an alien lawfully admitted for permanent residence any alien who the Attorney General determines meets the requirements of subsection (a)(1) (B), (C), or (D). The Attorney General shall record the alien's lawful admission for permanent residence as of the date the Attorney General decides to cancel such alien's removal.

(d) ALIEN CREWMEN; NONIMMIGRANT EXCHANGE ALIENS ADMITTED TO RECEIVE GRADUATE MEDICAL EDUCATION OR TRAINING; OTHER.—The provisions of subsection (a) shall not apply to an alien who—

(1) entered the United States as a crewman after June 30, 1964;

(2) was admitted to the United States as a nonimmigrant alien described in section 101(a)(15)(J), or has acquired the status of such a nonimmigrant alien after admission, in order to receive graduate medical education or training, without regard to whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 212(e); or

(3)(A) was admitted to the United States as a nonimmigrant alien described in section 101(a)(15)(J), or has acquired the status of such a nonimmigrant alien after admission, other than to receive graduate medical education or training;

(B) is subject to the two-year foreign residence requirement of section 212(e); and

(C) has not fulfilled that requirement or received a waiver thereof, or, in the case of a foreign medical graduate who has

received a waiver pursuant to section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416), has not fulfilled the requirements of section 214(k).

(e) VOLUNTARY DEPARTURE.—(1)(A) The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense—

(i) in lieu of being subject to deportation proceedings under section 242 or prior to the completion of such proceedings, if the alien is not a person deportable under section 241(a)(2)(A)(iii) or section 241(a)(4); or

(ii) after the completion of deportation proceedings under section 242, only if a special inquiry officer determines that—

(I) the alien is, and has been for at least 5 years immediately preceding the alien's application for voluntary departure, a person of good moral character;

(II) the alien is not deportable under section 241(a)(2)(A)(iii) or section 241(a)(4); and

(III) the alien establishes by clear and convincing evidence that the alien has the means to depart the United States and intends to do so.

(B)(i) In the case of departure pursuant to subparagraph (A)(i), the Attorney General may require the alien to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.

(ii) If any alien who is authorized to depart voluntarily under this paragraph is financially unable to depart at the alien's own expense and the Attorney General deems the alien's removal to be in the best interest of the United States, the expense of such removal may be paid from the appropriation for enforcement of this Act.

(C) In the case of departure pursuant to subparagraph (A)(ii), the alien shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified.

(2) If the alien fails voluntarily to depart the United States within the time period specified in accordance with paragraph (1), the alien shall be subject to a civil penalty of not more than $500 per day and shall be ineligible for any further relief under this subsection or subsection (a).

(3)(A) The Attorney General may by regulation limit eligibility for voluntary departure for any class or classes of aliens.

(B) No court may review any regulation issued under subparagraph (A).

(4) No court shall have jurisdiction over an appeal from denial of a request for an order of voluntary departure under paragraph (1), nor shall any court order a stay of an alien's removal pending consideration of any claim with respect to voluntary departure.

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) * * *

* * * * * * *

(c) Subsection (a) shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H), (I), (J), or (K)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 212(d)(4)(C); (4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217; [or (5)] *(5)* an alien who was admitted as a nonimmigrant described in section 101(a)(15)(S)*; (6) any alien who seeks adjustment of status as an employment-based immigrant and is not in a lawful nonimmigrant status; or (7) any alien who was employed while the alien was an unauthorized alien, as defined in section 274A(h)(3), or who has otherwise violated the terms of a nonimmigrant visa.*

* * * * * * *

ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

SEC. 245A. (a) TEMPORARY RESIDENT STATUS.—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:

* * * * * * *

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

* * * * * * *

(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6) or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986,

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications;

[except that the Attorney General] *except that the Attorney General shall provide information furnished under this section to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, when such information*

is requested in writing by such entity, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime) and may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code. Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

* * * * * * *

(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

* * * * * * *

(4) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106.

* * * * * * *

(C) JURISDICTION OF COURTS.—Notwithstanding any other provision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1), or attempted to file a complete application and application fee with an authorized legalization officer of the Immigration and Naturalization Service but had the application and fee refused by that officer.

* * * * * * *

RESCISSION OF ADJUSTMENT OF STATUS

SEC. 246. (a)*(1)* If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 245 or 249 of this Act or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling deportation in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made. *Nothing in this subsection requires the Attorney General to rescind the alien's status prior to commencement of procedures to deport the alien under section 242 or 242A,*

and an order of deportation issued by a special inquiry officer shall be sufficient to rescind the alien's status.

* * * * * * *

CHAPTER 8—GENERAL PENALTY PROVISIONS

* * * * * * *

SEC. 273. (a) It shall be unlawful for any person, including any transportation company, or the owner, master, commanding officer, agent, charterer, or consignee of any vessel or aircraft, to bring to the United States from any place outside thereof (other than from foreign contiguous territory) any alien who does not have a valid passport and an unexpired visa, if a visa was required under this Act or regulations issued thereunder.

* * * * * * *

[(d) The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside the United States who fails to deport any alien stowaway on the vessel or aircraft on which such stowaway arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which such stowaway arrived when required to do so by an immigration officer, shall pay to the Commissioner the sum of $3,000 for each alien stowaway, in respect of whom any such failure occurs. Pending final determination of liability for such fine, or such vessel or aircraft shall be granted clearance, except that clearance may be granted upon the deposit of an amount sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner. The provisions of section 235 for detention of aliens for examination before special inquiry officers and the right of appeal provided for in section 236 shall not apply to aliens who arrive as stowaways and no such alien shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Attorney General may prescribe for the ultimate departure or removal or deportation of such alien from the United States.**]**

(d)(1) it shall be the duty of the owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside the United States to detain on board or at such other place as may be designated by an immigration officer any alien stowaway until such stowaway has been inspected by an immigration officer.

(2) Upon inspection of an alien stowaway by an immigration officer, the Attorney General may by regulation take immediate custody of any stowaway and shall charge the owner, charterer, agent, consignee, commanding officer, or master of the vessel or aircraft on which the stowaway has arrived the costs of detaining the stowaway.

(3) It shall be the duty of the owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside the United States to deport any alien stowaway on the vessel or aircraft on which such stowaway arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which such stowaway arrived when required to do so by an immigration officer.

(4) Any person who fails to comply with paragraph (1) or (3), shall be subject to a fine of $5,000 for each alien for each failure to comply, payable to the Commissioner. The Commissioner shall deposit amounts received under this paragraph as offsetting collections to the applicable appropriations account of the Service. Pending final determination of liability for such fine, no such vessel or aircraft shall be granted clearance, except that clearance may be granted upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the commissioner.

(5) An alien stowaway inspected upon arrival shall be considered an excluded alien under this Act.

(6) The provisions of section 235 for detention of aliens for examination before a special inquiry officer and the right of appeal provided for in section 236 shall not apply to aliens who arrive as stowaways, and no such aliens shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Attorney general may prescribe for the departure, removal, or deportation of such alien from the United States.

(7) A stowaway may apply for asylum under section 208 or withholding of deportation under section 243(h), pursuant to such regulation as the Attorney General may establish.

* * * * * * *

BRINGING IN AND HARBORING CERTAIN ALIENS

SEC. 274. (a) CRIMINAL PENALTIES.—(1)(A) Any person who—

(i) * * *

* * * * * * *

(iii) knowing or in reckless disregard of the fact that an alien has come to, 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, such alien in any place, including any building or any means of transportation; [or]

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law[,]*; or*

(v)(I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts, shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

(i) in the case of a violation of subparagraph (A)(i) *or (v)(I),* be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A) (ii), (iii), [or (iv)] *(iv), or (v)(II),* be fined under title 18, United States Code, imprisoned not more than 5 years, or both;

(iii) in the case of a violation of subparagraph (A) (i), (ii), (iii), [or (iv)] *(iv), or (v),* during and in relation to which the

person causes serious bodily injury (as defined in section 1365 of title 18, United States Code) to, or places in jeopardy the life of, any person, be fined under title 18, United States Code, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A) (i), (ii), (iii), [or (iv)] *(iv), or (v)* resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, United States Code, or both.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, [for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved] *for each alien in respect to whom a violation of this paragraph occurs—*

(A) be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both; or

(B) in the case of—

(i) a second or subsequent offense,

(ii) an offense done for the purpose of commercial advantage or private financial gain, [or]

(iii) an offense committed with the intent, or with substantial reason to believe, that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year; or

[(iii)] *(iv)* an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

[be fined in accordance with title 18, United States Code, or in the case of a violation of subparagraph (B)(ii), imprisoned not more than 10 years, or both; or in the case of a violation of subparagraph (B)(i) or (B)(iii), imprisoned not more than 5 years, or both.] *be fined under title 18, United States Code, and shall be imprisoned for a first or second offense, not more than 10 years, and for a third or subsequent offense, not more than 15 years.*

(3) Any person who hires for employment an alien—

(A) knowing that such alien is an unauthorized alien (as defined in section 274A(h)(3)), and

(B) knowing that such alien has been brought into the United States in violation of this subsection,

shall be fined under title 18, United States Code, and shall be imprisoned for not more than 5 years.

(b) [(1) Any conveyance, including any vessel, vehicle, or aircraft, which has been or is being used in the commission of a violation of subsection (a) shall be seized and subject to forfeiture, except that—

[(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to the illegal act; and

[(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.]

(1) Any property, real or personal, which facilitates or is intended to facilitate, or has been or is being used in or is intended to be used in the commission of, a violation of, or conspiracy to violate, subsection (a) or section 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of title 18, United States Code, or which constitutes, or is derived from or traceable to, the proceeds obtained directly or indirectly from a commission of a violation of, or conspiracy to violate, subsection (a) or section 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of title 18, United States Code, shall be subject to seizure and forfeiture, expect that—

(A) no property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such property was a consenting party or privy to the unlawful act;

(B) no property shall be forfeited under this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of, or in conspiracy to violate, the criminal laws of the United States or of any State; and

(C) no property shall be forfeited under this paragraph to the extend of an interest of any owner, by reason of any act or omission established by such owner to have been committed or omitted without the knowledge or consent of such owner, unless such act or omission was committed by an employee or agent of such owner, and facilitated or was intended to facilitate, the commission of a violation of, or a conspiracy to violate, subsection (a) or section 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of title 18, United States Code, or was intended to further the business interests of the owner, or to confer any other benefit upon the owner.

(2) Any [conveyance] *property* subject to seizure under this section may be seized without warrant if there is probable cause to believe the [conveyance] *property* has been use or [is being used in] *is being used in, is facilitating, has facilitated, or was intended to facilitate* a violation of subsection (a) and circumstances exist where a warrant is not constitutionally required.

(3) *(A)* All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for the violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation for informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section,insofar as applicable and not inconsistent with the provisions hereof, except that duties imposed

on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

(B) Before the seizure of any real property pursuant to this section, the Attorney General shall provide notice and an opportunity to be heard to the owner of the property. The Attorney General shall prescribe such regulations as may be necessary to carry out this subparagraph.

(4) Whenever [a conveyance] *property* is forfeited under this section the Attorney General may—

(A) retain the [conveyance] *property* for official use;

(B) sell the [conveyance] *property*, in which case the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs;

(C) require that the General Services Administration, or the Maritime Administration if appropriate under section 203(i) of the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 484(i)), take custody of the [conveyance] *property* and remove it for disposition in accordance with law; [or]

(D) dispose of the [conveyance] *property* in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General[.] *; or*

(E) transfer custody and ownership of forfeited property to any Federal, State, or local agency pursuant to section 616(c) of the Tariff Act of 1930 (19 U.S.C. 1616a(c)).

(5) In all suits or actions brought for the forfeiture of any [conveyance] *property* seized under this section, where the [conveyance] *property* is claimed by any person, the burden of proof shall lie upon such claimant, except that probable cause shall be first shown for the institution of such suit or action. In determining whether probable cause exists, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

* * * * * * *

(c) CRIMINAL FORFEITURE.—(1) Any person convicted of a violation of, or a conspiracy to violate, subsection (a) or section 274A(a) (1) or (2) of this Act, or section 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of title 18, United States Code, shall forfeit to the United States, regardless of any provision of State law—

(A) any conveyance, including any vessel, vehicle, or aircraft used in the commission of a violation of, or a conspiracy to violate, subsection (a); and

(B) any property real or personal—

(i) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of a violation of, or a conspiracy to violate, subsection (a), section 274A(a) (1) or (2) of this Act, or section

1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of title 18, United States Code; or

(ii) that is used to facilitate, or is intended to be used to facilitate, the commission of a violation of, or a conspiracy to violate, subsection (a), section 274A(a) (1) or (2) of this Act, or section 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of title 18, United States Code.

The court, in imposing sentence on such person, shall order that the person forfeit to the United States all property described in this subsection.

(2) The criminal forfeiture of property under this subsection, including any seizure and disposition of the property and any related administrative or juridical proceeding, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsections (a) and (d) of such section 413.

[(c)**]** *(d)* No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

(e) Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audio-visually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise 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 complies with the Federal Rules of Evidence.

UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.

(1) IN GENERAL.—It is unlawful for a person or other entity—

* * * * * * *

(6) STATE AGENCY REFERRALS.—A State employment agency that refers any individual for employment shall comply with the procedures specified in subsection (b). For purposes of the attestation requirement in subsection (b)(1), the agency employee who is primarily involved in the referral of the individual shall make the attestation on behalf of the agency.

(b) EMPLOYMENT VERIFICATION SYSTEM.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

* * * * * * *

(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTIFY.—A document described in this subparagraph is an individual's—

(i) United States passport; *or*

[(ii) certificate of United States citizenship;]

[(iii) certificate of naturalization;]

[(iv) unexpired foreign passport, if the passport has an appropriate, unexpired endorsement of the Attorney General authorizing the individual's employment in the United States; or]

[[(v)] *(ii)* resident alien card or other alien registration card, if the card—]

(ii) resident alien card, alien registration card, or other document designated by regulation by the Attorney General, if the document—

(I) contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection, [and]

(II) is evidence of authorization of employment in the United. States[.], *and*

(III) contains appropriate security features.

(C) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is an individual's—

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); *or*

[(ii) certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section; or]

(iii)*(ii)* other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

* * * * * * *

(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment. *The Attorney General is authorized to require an individual to provide on the form described in paragraph (1)(A) the individual's social security account number for purposes of complying with this section.*

(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form *(except in any case of disaster, act of God, or other event beyond the control of the person*

or entity) and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices,[209] or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

* * * * * * *

(e) COMPLIANCE.—

(1) COMPLAINTS AND INVESTIGATIONS.—The Attorney General shall establish procedures—

* * * * * * *

(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated, **[**and**]**

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing**[**.**]**, *and*

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

* * * * * * *

(9) ENFORCEMENT OF ORDERS.—If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(10)(A) The administrative law judge shall have the authority to require payment of a civil money penalty in an amount up to two times the amount of the penalty prescribed by this subsection in any case in which the employer has been found to have committed a willful violation or repeated violations of any of the following statutes:

(i) The Fair Labor Standards Act (29 U.S.C. 201 et seq.) pursuant to a final determination by the Secretary of Labor or a court of competent jurisdiction.

(ii) The Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.) pursuant to a final determination by the Secretary of Labor or a court of competent jurisdiction.

(iii) The Family and Medical Leave Act (29 U.S.C. 2601 et seq.) pursuant to a final determination by the Secretary of Labor or a court of competent jurisdiction.

(B) The Secretary of Labor and the Attorney General shall consult regarding the administration of this paragraph.

* * * * * * *

UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

(1) GENERAL RULE.—It is an unfair immigration-related employment practice practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in section 274A(h)(3)) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

* * * * * * *

(6) TREATMENT OF CERTAIN DOCUMENTARY PRACTICES AS EMPLOYMENT PRACTICES.—[For purposes of paragraph (1), a]*A* person's or other entity's request, for purposes of satisfying the requirements of section 274A(b), for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice [relating to the hiring of individuals] *if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1).*

* * * * * * *

PENALTIES FOR DOCUMENT FRAUD

SEC. 274C. (a) ACTIVITIES PROHIBITED.—It is unlawful for any person or entity knowingly—

(1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of this Act *or to obtain a benefit under this Act,*

(2) to use, attempt to sue, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act *or to obtain a benefit under this Act,*

(3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to *or with respect to* a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this Act *or obtaining a benefit under this Act,* [or]

(4) to accept or receive or to provide any document lawfully issued to *or with respect to* a person other than the possessor (including a deceased individual) for the purpose of complying with section 274A(b) *or obtaining a benefit under this Act, or*

(5) to prepare, file, or assist another in preparing or filing, any application for benefits under this Act, or any document required under this Act, or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was

falsely made or, in whole or in part, does not relate to the person on whose behalf it was or is being submitted; or

(6) to (A) present before boarding a common carrier for the purpose of coming to the United States a document which relates to the alien's eligibility to enter the United States, and (B) fail to present such document to an immigration officer upon arrival at a United States port of entry.

* * * * * * *

(d) ENFORCEMENT.—

(1) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated, [and]

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing[.], *and*

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

* * * * * * *

(3) CEASE AND DESIST ORDER WITH CIVIL, MONEY PENALTY.—With respect to a violation of subsection (a), the order under this subsection shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(A) not less than $250 and not more than $2,000 for [each document used, accepted, or created and each instance of use, acceptance, or creation] *each document that is the subject of a violation under subsection (a),* or

(B) in the case of a person or entity previously subject to an order under this paragraph, not less than $2,000 and not more than $5,000 for [each document used, accepted, or created and each instance of use, acceptance, or creation] *each document that is the subject of a violation under subsection (a).*

In applying this subsection in the case of a person or entity 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 the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

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(7) CIVIL PENALTY.—(A) The administrative law judge shall have the authority to require payment of a civil money penalty in an amount up to two times the level of the penalty prescribed by this subsection in any case where the employer has been found to have committed willful or repeated violations of any of the following statutes:

(i) The Fair Labor Standards Act (29 U.S.C. 201 et seq.) pursuant to a final determination by the Secretary of Labor or a court of competent jurisdiction.

(ii) The Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.) pursuant to a final determination by the Secretary of Labor or a court of competent jurisdiction.

(iii) The Family and Medical Leave Act (29 U.S.C. 2601 et seq.) pursuant to a final determination by the Secretary of Labor or a court of competent jurisdiction.

(B) The Secretary of Labor and the Attorney General shall consult regarding the administration of this paragraph.

(8) WAIVER BY ATTORNEY GENERAL.—The Attorney General may waive the penalties imposed by this section with respect to an alien who knowingly violates paragraph (6) if the alien is granted asylum under section 208 or withholding of deportation under section 243(h).

(e) CRIMINAL PENALTIES FOR FAILURE TO DISCLOSE ROLE AS DOCUMENT PREPARER.—

(1) Whoever, in any matter within the jurisdiction of the Service under section 208 of this Act, knowingly and willfully fails to disclose, conceals, or covers up the fact that they have, on behalf of any person and for a fee or other remuneration, prepared or assisted in preparing an application which was falsely made (as defined in subsection (f)) for immigration benefits pursuant to section 208 of this Act, or the regulations promulgated thereunder, shall be guilty of a felony and shall be fined in accordance with title 18, United States code, imprisoned for not more than 5 years, or both, and prohibited from preparing or assisting in preparing, whether or not for a fee or other remuneration, any other such application.

(2) Whoever, having been convicted of a violation of paragraph (1), knowingly and willfully prepares or assists in preparing an application for immigration benefits pursuant to this Act, or the regulations promulgated thereunder, whether or not for a fee or other remuneration and regardless of whether in any matter within the jurisdiction of the Service under section 208, shall be guilty of a felony and shall be fined in accordance with title 18, United States Code, imprisoned for not more than 15 years, or both, and prohibited from preparing or assisting in preparing any other such application.

(f) FALSELY MAKE.—For purposes of this section, the term "falsely make" means to prepare or provide an application or document, with knowledge or in reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted.

CIVIL PENALTIES FOR FAILURE TO DEPART

SEC. 274D. (a) Any alien subject to a final order of exclusion and deportation or deportation who—

(1) willfully fails or refuses to—

(A) depart on time from the United States pursuant to the order;

(B) make timely application in good faith for travel or other documents necessary for departure; or

(C) present himself or herself for deportation at the time and place required by the Attorney General; or

(2) conspires to or takes any action designed to prevent or hamper the alien's departure pursuant to the order,

shall pay a civil penalty of not more than $500 to the Commissoner for each day the alien is in violation of this section.

(b) The Commissioner shall deposit amounts received under subsection (a) as offsetting collections in the appropriate appropriations account of the Service.

(c) Nothing in this section shall be construed to diminish or qualify any penalties to which an alien my be subject for activities proscribed by section 242(e) or any other section of this Act

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REENTRY OF DEPORTED ALIEN

SEC. 276. (a) Subject to subsection (b), any alien who—

[(1) has been arrested and deported or excluded and deported, and thereafter]

(1) has been arrested and deported, has been excluded and deported, or has departed the United States while an order of exclusion or deportation is outstanding, and thereafter

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CHAPTER 9—MISCELLANEOUS

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POWERS OF IMMIGRATION OFFICERS AND EMPLOYEES

SEC. 287. (a) Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

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(f)(1) Under regulations of the Attorney General, the Commissioner shall provide for the fingerprinting and photographing of each alien 14 years of age or older against whom a proceeding is commenced under section 242.

(2) Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies, upon request.

(g)(1) Notwithstanding section 1342 of title 31, United States Code, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the arrest or detention of aliens

in the United States, may carry out such function at the expense of the State or political subdivision and to extent consistent with State and local law.

(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding 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 shall be subject to the direction and supervision of the Attorney General.

(4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual shall be set forth in a written agreement between the Attorney General and the State or political subdivision.

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

(7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of title 5, United States Code, (relating to compensation for injury) and sections 2671 through 2680 of title 28, United States Code (relating to tort claims).

(8) 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.

(9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—

(A) 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

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

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RIGHT TO COUNSEL

SEC. 292. In any exclusion or deportation proceedings before a special inquiry officer and in any appeal proceedings before the Attorney General from any such exclusion or deportation proceedings, the person concerned shall have the privilege of being represented [(at no expense to the Government)] *(at no expense to the Government or unreasonable delay to the proceedings)* by such counsel, authorized to practice in such proceedings, as he shall choose.

SECRETARY OF LABOR SUBPOENA AUTHORITY

SEC. 294. The Secretary of labor may issue subpoenas requiring the attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing conducted in the enforcement of any immigration program for which the Secretary of Labor has been delegated enforcement authority under the Act. In such hearing, the Secretary of Labor may administer oaths, examine witnesses, and receive evidence. For the purpose of any such hearing or investigation, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall be available to the Secretary of Labor.

TITLE IV—MISCELLANEOUS AND REFUGEE ASSISTANCE

CHAPTER 1—MISCELLANEOUS

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AUTHORIZATION OF APPROPRIATIONS

SEC. 404. (a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act (other than chapter 2 of title IV).

(b)(1) There are authorized to be appropriated (for fiscal year 1991 and any subsequent fiscal year) to an immigration emergency fund, to be established in the Treasury, an amount sufficient to provide for a balance of $35,000,000 in such fund, to be used to carry out paragraph (2) [and], to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of [State] *other Federal agencies and States* and localities in providing assistance as requested by the Attorney General in meeting an immigration emergency, *and for the costs associated with repatriation of aliens attempting to enter the United States illegally, whether apprehended within or outside the territorial sea of the United States* except that no amounts may be withdrawn from such fund with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate. *The fund may be used for the costs of such repatriations without the requirement for a determination by the President that an immigration emergency exists.*

(2)(A) Funds which are authorized to be appropriated by paragraph (1), subject to the dollar limitation contained in subparagraph (B), shall be available *to Federal agencies providing support to the Department of Justice, or* by application for the reimbursement of States and localities providing assistance as required by the Attorney General, to States and localities, whenever—

(i) a district director of the Service certifies to the Commissioner that the number of asylum applications filed in the respective district during a calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter,

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CHAPTER 2—REFUGEE ASSISTANCE

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AUTHORIZATION FOR PROGRAMS FOR DOMESTIC RESETTLEMENT OF AND ASSISTANCE TO REFUGEES

SEC. 412. (a) CONDITIONS AND CONSIDERATIONS.—(1)(A) In providing assistance under this section, the Director shall, to the extent of available appropriations, (i) make available sufficient resources for employment training and placement in order to achieve economic self-sufficiency among refugees as quickly as possible, (ii) provide refugees with the opportunity to acquire sufficient English language training to enable them to become effectively resettled as quickly as possible, (iii) insure that cash assistance is made available to refugees in such a manner as not to discourage their economic self-sufficiency, in accordance with subsection (e)(2), and (iv) insure that women have the same opportunities as men to participate in training and instruction.

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(c) PROJECT GRANTS AND CONTRACTS FOR SERVICES FOR REFUGEES.—(1)(A) The Director is authorized to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—

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(2)(A) The Director is authorized to make grants to States for assistance to counties and similar areas in the States where, because of factors such as unusually large refugee populations (including secondary migration), high refugee concentrations, and high use of public assistance by refugees, there exists and can be demonstrated a specific need for supplementation of available resources for services to refugees.

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(C) Except for the Targeted Assistance Ten Percent Discretionary Program, all grants made available under this paragraph for a fiscal year shall be allocated by the Office of Refugee Resettlement in a manner that ensures that each qualifying county receives the same amount of assistance for each refugee and entrant residing in the county as of the beginning of the fiscal year who arrived in the

United States not earlier than 60 months before the beginning of such fiscal year.

P. IMMIGRATION AND NATIONALITY TECHNICAL CORRECTIONS ACT OF 1994

(Public Law 103–416, October 25, 1994)

SECTION 1. SHORT TITLE.

This Act may be cited as the "Immigration and Nationality Technical Corrections Act of 1994".

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SEC. 225. CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.

No amendment made by this Act and nothing in [section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i))] *sections 242(i) or 242A of the Immigration and Nationality Act (8 U.S.C. 1252(i) or 1252a)* shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

IMMIGRATION ACT OF 1990

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TITLE V—ENFORCEMENT

Subtitle A—Criminal Aliens

SEC. 501. AGGRAVATED FELONY DEFINITION.

(a) IN GENERAL.—Paragraph (43) of section 101(a) (8 U.S.C. 1101(a)) is amended—

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SEC. 512. AUTHORIZATION OF ADDITIONAL IMMIGRATION JUDGES FOR DEPORTATION PROCEEDINGS INVOLVING CRIMINAL ALIENS.

There are authorized to be appropriated in each of fiscal years 1991 through 1995 such sums as are necessary to provide for 20 additional immigration judges in the Department of Justice, to be used to conduct proceedings under section [242A(d)] *242A(c)* of the Immigration and Nationality Act (8 U.S.C. 1252a(d)).

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TITLE XIII OF THE VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

(Public Law 103–322, September 13, 1994)

TITLE XIII—CRIMINAL ALIENS AND IMMIGRATION ENFORCEMENT

SEC. 130001. ENHANCEMENT OF PENALTIES FOR FAILING TO DEPART, OR REENTERING, AFTER FINAL ORDER OF DEPORTATION.

(a) FAILURE TO DEPART.—**[**Omitted; amended section 242(e) of the INA.**]**

(b) REENTRY.—**[**Omitted; amended section 276(b) of the INA.**]**

SEC. 130007. EXPANDED SPECIAL DEPORTATION PROCEEDINGS.

(a) IN GENERAL.—Subject to the availability of appropriations, the Attorney General may expand the program authorized by section **[**242A(d)**]***242A(c)* and 2542(i) of the Immigration and Nationality Act to ensure that such aliens are immediately deportable upon their release from incarceration.

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