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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1994

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

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A BILL

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

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

SECTION 1. TITLE 8, UNITED STATES CODE.

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

TITLE 8—ALIENS AND NATIONALITY

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CHAPTER 1—DEFINITIONS

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§ 101. Adjacent islands

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

§ 102. Advocates

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

§ 103. Advocating a doctrine

In this title, ''advocating a doctrine'' includes giving, lending, or promising support, money, or other value to be used for advocating a doctrine.

§ 104. Affiliating with an organization

In this title, ''affiliating with an organization'' is presumed from giving, lending, or promising support, money, or other value to an organization for any purpose.

§ 105. Agency

In this title, ''agency'' means a department, agency, or instrumentality of the United States Government.

§ 106. Aggravated felony

(a) GENERAL.—In this title, ''aggravated felony'' means any of the following, or an attempt or conspiracy to commit any of the following:

(1) murder.

(2) illicit trafficking in a controlled substance (as defined by section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)), including a drug trafficking crime (as defined by section 924(c)(2) of title 18).

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

(4) an offense described by section 1956 of title 18.

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

(b) APPLICABLE LAW.—Subsection (a) of this section applies to an offense under a law of—

(1) a State or the United States; or

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

§ 107. Alien

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

§ 108. Application for admission

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

§ 109. Border crossing identification card

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

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

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

(3) to be used by the alien in crossing a border between the United States and foreign territory contiguous to the United States.

§ 110. Child

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

(1) is a legitimate child;

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

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

(4) is illegitimate, but the individual is a child only in regard to the individual's—

(A) natural mother; or

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

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

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

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

(i) the child is illegitimate as described by clause (4) of this subsection and has not been legitimated as described by clause (3) of this subsection; and

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

(C)(i) was adopted outside the United States by a citizen of the United States and the citizen's spouse, or by an unmarried citizen of

the United States at least 25 years of age, who observed the child before or during the adoption proceedings; or

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

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

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

(1) is a legitimate child;

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

(3) except as provided by sections 20305–20307 of this title, was adopted in the United States if the adoption occurred when the child was under 16 years of age and in the legal custody of the adopting parent or parents.

§ 111. Consular officer

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

§ 112. Crewmember

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

§ 113. Doctrine

In this title, ''doctrine'' includes a policy, practice, purpose, aim, or procedure.

§ 114. Entry

In this title, ''entry'' means a coming of an alien into the United States from a foreign port or place or from American Samoa and includes a coming into the United States involuntarily. However, an alien having a lawful permanent residence in the United States is deemed not to be making an entry under the immigration laws if the alien—

(1) satisfies the Attorney General that the alien did not intend or reasonably expect to depart to a foreign port or place or to American Samoa or that the alien's departure was involuntary; and

(2) did not depart because of deportation, extradition, or other legal process.

§ 115. Executive agency

In this title, ''executive agency'' means a department, agency, or instrumentality in the executive branch of the United States Government.

§ 116. Executive capacity

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

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

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

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

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

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

§ 117. Foreign country

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

§ 118. Good moral character

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

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

(A) was a habitual drunkard;

(B) was within a class of individuals, whether excludable or not, described by—

(i) section 6306 or 6307(a)(5) or (6) of this title; or

(ii) section 6307(a)(1)–(4) of this title (except as section 6307(a)(3) is related to a single offense of simple possession of not more than 30 grams of marijuana), if the individual admits committing or was convicted of committing the offense and committed the offense during the period for which good moral character is required;

(C) derived income principally from unlawful gambling activities;

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

(E) gave false testimony to obtain a benefit under this title (except subchapter I of chapter 5, subchapters III and IV of chapter 131, and chapters 133–137); or

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

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

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

§ 119. Graduate of a medical school

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

§ 120. Immediate relative

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

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

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

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

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

(C) files a petition under section 4301(a)(1) of this title not later than 2 years after the date of death; and

(D) has not remarried; and

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

§ 121. Immigrant

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

§ 122. Immigration laws

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

§ 123. Immigration officer

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

§ 124. Ineligible for citizenship

In this title, ''ineligible for citizenship'' means permanently debarred at any time under this title or another law from becoming a citizen of the United States.

§ 125. International organization

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

§ 126. Lawfully admitted for permanent residence

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

§ 127. Managerial capacity

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

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

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

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

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

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

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

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

§ 128. National

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

§ 129. National of the United States

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

(1) a citizen of the United States; or

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

§ 130. Naturalization

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

§ 131. Nonimmigrant

In this title, ''nonimmigrant'' means an alien classified as a nonimmigrant under subchapter I of chapter 23 of this title.

§ 132. Organization

In this title, ''organization'' includes a corporation, partnership, association, trust, foundation, fund, or group of persons associated together with joint action on any subject.

§ 133. Parent, father, and mother

(a) SUBTITLES I–III.—In subtitles I–III of this title, ''parent'', ''father'', and ''mother'' mean a parent, father, and mother of a child, but do not include—

(1) the natural parent of a child as defined by section 110(a)(5) of this title; or

(2) the natural parent or prior adoptive parent of a child as defined by section 110(a)(6) of this title.

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

§ 134. Passport

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

(1) granted by competent authority;

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

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

§ 135. Refugee

In this title (except chapters 133 and 135), ''refugee''—

(1) means an individual who—

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

(ii) is unable or unwilling to return to, and make use of the protection of, that country because of persecution or a well-founded fear of persecution because of race, religion, nationality, membership in a particular social group, or political opinion; or

(B) in circumstances the President after appropriate consultation (as defined by section 5101(a) of this title) specifies—

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

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

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

§ 136. Residence

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

§ 137. Special immigrant

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

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

(2) an immigrant who was a citizen of the United States and may be naturalized under section 20315 or 20317(a) of this title.

(3)(A) an immigrant who—

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

(ii) is coming to the United States—

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

(II) before October 1, 1994, to work for the organization, at the request of the organization, in a professional capacity in a religious vocation or occupation; or

(III) before October 1, 1994, to work for the organization or for an organization affiliated with the religious denomination and exempt from taxation as an organization described by section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)), at the request of the organization, in a religious vocation or occupation; and

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

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

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

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

(5)(A) an immigrant who—

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

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

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

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

(6)(A) an immigrant who—

(i) is a national of Panama;

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

(iii) honorably retired from that employment at any time; and

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

(7)(A) an immigrant—

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

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

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

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

(8)(A) an immigrant who—

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

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

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

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

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

(9) an immigrant who—

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

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

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

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

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

(10) an immigrant who—

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

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

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

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

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

(11)(A) an immigrant who—

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

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

(iii) files a petition for special immigrant status under this clause (11) not later than 6 months after the date of retirement or April 24, 1989, whichever is later, but before January 1, 1993; and

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

(12) an immigrant—

(A) who has been declared a dependent of a juvenile court in the United States and found eligible by that court for long-term foster care; and

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

(13)(A) an immigrant who—

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

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

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

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

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

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

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

(2) during the absence—

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

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

(c) RIGHTS, PRIVILEGES, OR STATUS NOT ACQUIRED BY PARENTS OF CERTAIN SPECIAL IMMIGRANTS.—A natural parent or prior adoptive parent of a special immigrant as defined by subsection (a)(12) of this section may not be given a right, privilege, or status under this title (except subchapter I of chapter 5, subchapters III and IV of chapter 131, and chapters 133–137) because of the relationship.

§ 138. Special inquiry officer

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

§ 139. Spouse, wife, and husband

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

§ 140. State

In this title (except subchapter I of chapter 5, subchapters I, III, and IV of chapter 131, chapters 133–137, and section 13902), ''State'' means a State of the United States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

§ 141. Totalitarian dictatorship

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

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

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

§ 142. Totalitarian party

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

§ 143. United States

In this title (except subchapter I of chapter 5, subchapters I, III, and IV of chapter 131, chapters 133–137, and section 13902), ''United States'' means the States of the United States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

§ 144. Unmarried

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

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SUBCHAPTER I—DEPARTMENT OF JUSTICE

§ 301. General authority of the Attorney General

(a) GENERAL AUTHORITY.—(1) Except as otherwise provided by law, the Attorney General shall carry out this title and other laws related to the immigration and naturalization of aliens.

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

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

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

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

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

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

(e) PLACES OF DETENTION.—The Attorney General shall arrange for appropriate places of detention for aliens detained pending deportation or a decision on deportation. When United States Government facilities are unavailable or facilities adapted or suitably located for detention are unavailable for rental, the Attorney General may expend from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses'', without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) or section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities (including living quarters for immigration officers if not otherwise available) necessary for detention.

§ 302. Immigration and Naturalization Service

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

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

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

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

(2) maintain direct and continuous liaison with the Assistant Secretary of State for Consular Affairs to carry out the immigration and nationality laws in a coordinated, uniform, and efficient way.

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

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

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

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

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

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

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

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

§ 303. Oaths and testimony

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

(1) administer oaths;

(2) take evidence; and

(3) subpena witnesses to testify and produce records.

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

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

§ 304. Enforcement authority

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

(1) carry a firearm; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) RESTRICTION ON WARRANTLESS ENTRY OF OUTDOOR AGRICULTURAL OPERATIONS.—Except as provided by subsection (b)(4) of this section, an officer or employee of the Service may not enter the premises of a farm or other outdoor agricultural operation, without a warrant or the consent of the owner or owner's agent, to interrogate an individual believed

to be an alien about the individual's right to be or remain in the United States.

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

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

(2) standards for enforcement activities of the Service;

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

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

(e) DETAINING ALIENS FOR CONTROLLED SUBSTANCES VIOLATIONS.—(1) The Attorney General shall decide promptly whether to issue a detainer to detain an alien if any United States, State, or local law enforcement official—

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

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

(C) expeditiously informs the Attorney General of the arrest and of facts about the alien's status; and

(D) requests the Attorney General to issue the detainer.

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

§ 305. Local jurisdiction over immigrant stations

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

§ 306. Records on aliens

(a) CENTRAL FILE ON ALIENS.—For the use of security and enforcement agencies of the United States Government, the Attorney General shall maintain in the Immigration and Naturalization Service a central file on aliens that is based on the records of the Service. The file shall contain—

(1) the name of each alien admitted to or excluded from the United States;

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

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

(b) PROVIDING INFORMATION TO THE ATTORNEY GENERAL.—On request of the Attorney General—

(1) the head of an agency shall provide the Attorney General with information in the records of the agency about the identity and location of an alien in the United States; and

(2) the Secretary of Health and Human Services shall notify the Attorney General when an alien is issued a social security account number.

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

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

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

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

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

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

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

(b) PREMIUM PAY RATES.—An officer or employee of the Service performing work related to the inspection and landing of passengers and crew

of a vessel, aircraft, or vehicle arriving in the United States from a foreign port is entitled to premium pay at the following rates:

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

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

(c) METHOD OF PAYMENT.—(1) Except as provided by section 53 of the Airport and Airway Development Act of 1970 (49 App. U.S.C. 1741), when an officer or employee of the Service performs work referred to in subsection (b) of this section, the master, owner, agent, or consignee of the vessel, aircraft, or vehicle shall pay to the Attorney General an amount equal to the pay to which the officer or employee is entitled under subsection (b). The amount shall be paid if the officer or employee was ordered to report for work and did report, even if an inspection did not take place. However, this paragraph does not apply to an inspection, at a designated port of entry, of passengers arriving by an international ferry, bridge, or tunnel, or by a vessel on the Great Lakes and connecting waterways, an aircraft, or a vehicle, when the vessel, aircraft, or vehicle is operating on a regular schedule.

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

§ 309. Providing immigration services for scheduled flights

Notwithstanding section 308(c)(1) of this title or another law, the immigration services required to be provided to passengers on arrival in the United States on a scheduled flight shall be provided adequately, not later than 45 minutes after their presentation for inspection, when needed and at no cost to the air carrier or passengers, except for the fee specified in section 6909(a) of this title, at—

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

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

§ 310. Reimbursement for immigration inspection services

(a) INSPECTIONS IN FOREIGN CONTIGUOUS TERRITORIES.—Section 209 of title 18 does not prohibit reimbursement for the services of an immigration officer related to inspecting aliens in a foreign contiguous territory. The

reimbursement shall be credited to the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''.

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

§ 311. Travel expenses and expenses of interment

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

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

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

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

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

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

§ 312. Providing services and articles at immigrant stations

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

grant station if the Attorney General finds that it would be more economical and efficient.

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

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

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

§ 313. Operation of photographic studios by welfare organizations

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

§ 314. Crediting appropriations

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

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

(c) INCREASED PENALTIES RESULTING FROM CERTAIN AMENDMENTS.—Notwithstanding section 3302 of title 31, the amounts collected from the increase in penalties resulting from the amendments made by sections 203(b), 543(a), and 544 of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5018, 5057, 5059) shall be credited to the appropriation—

(1) ''Immigration and Naturalization Service—Salaries and Expenses'' for activities that enhance enforcement of subtitles I–III of this title (except subchapter I of chapter 5), including—

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

(B) implementing the system described by section 6531(c)(4) of this title; and

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

(2) for the Executive Office for Immigration Review in the Department of Justice to remove the backlogs in preparing transcripts of deportation proceedings conducted under section 6532 of this title.

§ 315. Interest on immigration bonds

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

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

§ 316. Breached Bond/Detention Fund

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

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

(A) expenses incurred in collecting breached bonds; and

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

(2) The amount required to be refunded for the fiscal year ending September 30, 1994, and each subsequent fiscal year, shall be refunded in accordance with estimates made in the budget request of the Attorney General for that fiscal year. However, any proposed change in the amount designated in the budget request may be made only after notification to the Committees on Appropriations of the House of Representatives and the Senate under section 606 of the Departments of Commerce, Justice, and State,

the Judiciary, and Related Agencies Appropriations Act, 1993 (Public Law 102–395, 106 Stat. 1873).

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

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

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

§ 317. Immigration User Fee Account

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

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

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

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

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

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

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

(F) providing detention and deportation services for an excludable alien—

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

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

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

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

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

(2) Amounts required to be refunded under paragraph (1) of this subsection shall be refunded at least quarterly on the basis of estimates, made

by the Attorney General, of the expenses referred to in paragraph (1). Proper adjustments shall be made in the amounts subsequently refunded under paragraph (1) to the extent prior estimates were more or less than the amount required to be refunded.

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

(1) fees collected under section 6909 of this title.

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

(3) liquidated damages and expenses collected under this title.

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

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

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

(B) recommending any change in the fee specified in section 6909(a) of this title to ensure that amounts collected from the fee for the succeeding 2 years equal, as closely as possible, the cost of providing the services for which the fee is charged.

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

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

(B) the success rate of the Immigration and Naturalization Service in meeting the 45-minute inspection standard imposed by section 309 of this title, detailed statistics on the number of passengers inspected within the standard, progress being made to expand the use of United States citizen by-pass, the number of passengers for whom the standard is not met and the length of their delay, locational breakdown of these statistics, and the steps being taken to correct any nonconformity.

§ 318. Immigration Examinations Fee Account

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

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

(1) providing immigration adjudication and naturalization services; and

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

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

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

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

§ 319. Land border inspection fees

(a) FEE AUTHORITY.—The Attorney General may continue, only on the northern border of the United States, the land border inspection fee pilot project authorized under section 286(q) of the Immigration and Nationality Act. The project may include commuter lanes to be made available to qualified citizens of the United States and aliens, as the Attorney General decides. Fees collected under this subsection shall be deposited in the Account established under subsection (b)(1) of this section.

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

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

(A) providing overtime inspection services;

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

(C) employing additional permanent and temporary inspectors;

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

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

(F) administering the Account.

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

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

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

(2) The Attorney General shall submit quarterly to Congress a status report on the project.

(e) EXPIRATION.—This section expires on September 30, 1996.

§ 320. Advisory committee on inspection services

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

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

§ 321. Immigration emergency fund

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

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

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

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

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

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

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

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

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

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

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

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

§ 322. Reports

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

(1) the number of petitions filed.

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

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

(4) the number of petitions withdrawn.

(5) the number of petitions pending final action.

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

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

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

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

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

§ 323. Information system on impact of immigration laws

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

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

(1) the alien population in the United States;

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

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

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

(5) aliens who have been excluded or deported from the United States;

(6) the number of applications filed and granted for suspension of deportation; and

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

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

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

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

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

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

SUBCHAPTER II—DEPARTMENT OF STATE

§ 331. General authority of the Secretary of State

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

(1) duties and powers of the Bureau of Consular Affairs;

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

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

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

§ 332. Bureau of Consular Affairs

(a) ORGANIZATION.—The Bureau of Consular Affairs is a bureau in the Department of State.

(b) ASSISTANT SECRETARY FOR CONSULAR AFFAIRS.—The head of the Bureau is the Assistant Secretary of State for Consular Affairs. The Assistant Secretary must be a citizen of the United States and be qualified by experience.

(c) GENERAL AUTHORITY OF THE ASSISTANT SECRETARY.—The Assistant Secretary shall—

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

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

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

(d) OFFICES OF THE BUREAU.—(1) The Bureau has a Passport Office, a Visa Office, and other offices the Secretary decides are appropriate. The head of each office is a director. The Directors of the Passport Office and

the Visa Office must be experienced in carrying out the immigration and nationality laws.

(2) The Passport Office carries out laws related to granting passports. The Visa Office carries out immigration laws related to granting visas.

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

§ 333. Sharing information about foreign traffickers in controlled substances

To ensure that foreign traffickers in controlled substances are denied visas to enter the United States (as required by section 6307(a)(3) of this title)—

(1) the Secretary of State shall cooperate with United States law enforcement agencies, including the Drug Enforcement Administration and the Customs Service, in establishing a comprehensive information system on all drug arrests of foreign nationals in the United States so that the information can be communicated to the appropriate United States embassies; and

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

SUBCHAPTER III—MISCELLANEOUS

§ 341. Liaison with internal security officers

To exchange information for use in enforcing this title in the interest of the internal security of the United States, the Commissioner of Immigration and Naturalization and the Assistant Secretary of State for Consular Affairs may maintain direct and continuous liaison with the Directors of the Federal Bureau of Investigation and Central Intelligence and with other internal security officers of the United States Government.

§ 342. Confidentiality of records and proof of nonexistence

(a) CONFIDENTIALITY OF VISA AND PERMIT RECORDS.—A record of the Department of State or of a diplomatic or consular office related to granting or refusing a visa or permit to enter the United States is confidential. The record may be used only in developing, changing, or carrying out a law of the United States. However, the Secretary of State may provide a certified copy of the record to a court if the court certifies that it needs the record in the interest of justice in a case pending before the court.

(b) PROOF OF NONEXISTENCE OF RECORD.—A certification by the Attorney General, or by an officer or employee of the Immigration and Natu-

ralization Service designated by the Attorney General, that a diligent search of the records of the Service has failed to disclose a particular record is admissible in any proceeding as evidence that the records of the Service do not contain the record.

§ 343. Disposition of receipts

Except as otherwise provided by this title, an amount received in payment of a fee or administrative penalty shall be deposited in the Treasury as miscellaneous receipts. However, a fee received from an applicant residing in the Virgin Islands or Guam and paid under section 2125 of this title shall be paid to the treasury of the Virgin Islands or the treasury of Guam, respectively.

§ 344. Triennial immigration-impact report

(a) REPORTING REQUIREMENT.—The President shall submit a comprehensive immigration-impact report to Congress not later than January 1, 1989, and not later than January 1 of each 3d year thereafter.

(b) CONTENT.—Each report shall include—

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

(2) a reasonable estimate of the number of aliens who entered and will enter the United States during those periods without visas or who became or will become deportable during those periods under chapter 65 of this title; and

(3) a description of the impact of—

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

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

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

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

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

(d) RECOMMENDATIONS.—The President also may include recommendations on changes in numerical limitations or other policies under subtitles

II and III of this title affecting the admission and entry of aliens into the United States.

§ 345. Setting immigration adjudication and naturalization fees

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

(1) the costs of providing those services;

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

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

CHAPTER 5—PASSPORTS AND TRAVEL REQUIREMENTS

SUBCHAPTER I—PASSPORTS

Sec.
501. Individuals eligible for passports.
502. Granting and verifying passports.
503. Validity and use.
504. Passport fees.
505. Limitation on acquiring paper for passports.

SUBCHAPTER II—TRAVEL REQUIREMENTS

511. Travel document requirements.
512. Certain rights to enter or leave unaffected.
513. Records about residents permanently leaving the United States.
514. Travel restrictions on citizens of foreign countries.

SUBCHAPTER I—PASSPORTS

§ 501. Individuals eligible for passports

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

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

§ 502. Granting and verifying passports

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

(1) grant and verify passports; and

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

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

(B) in a foreign country, diplomatic representatives of the United States, consuls general, consuls, and vice consuls when in charge.

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

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

(2) the information contained in the passport.

§ 503. Validity and use

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

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

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

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

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

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

§ 504. Passport fees

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

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

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

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

(b) COLLECTION AND RETENTION OF APPLICATION FEES.—The Secretary by regulation may—

(1) authorize an official of a State to collect and retain the fee for each passport application executed before the official; and

(2) transfer to the United States Postal Service the fee for each application executed before the Service.

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

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

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

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

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

(e) FEES USED FOR MACHINE-READABLE PASSPORTS AND VISAS.—Notwithstanding another law and to the extent provided by an appropriation law, not more than $5,000,000 in passport fees collected by the Secretary of State may be credited each fiscal year to a Department of State account. Amounts credited to the account are available only for costs associated with acquiring and producing machine-readable United States passports and visas and compatible reading equipment. Amounts credited under this subsection remain available until expended.

§ 505. Limitation on acquiring paper for passports

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

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

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

SUBCHAPTER II—TRAVEL REQUIREMENTS

§ 511. Travel document requirements

(a) DEFINITIONS.—In this section—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 512. Certain rights to enter or leave unaffected

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

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

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

§ 513. Records about residents permanently leaving the United States

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

(1) name.

(2) race, age, and sex.

(3) country of birth.

(4) marital status.

(5) occupation.

(6) whether the resident can read or write.

(7) nationality.

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

(9) last permanent residence in the United States.

(10) intended future permanent residence.

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

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

§ 514. Travel restrictions on citizens of foreign countries

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

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

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

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

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

CHAPTER 7—GENERAL MISCELLANEOUS

Sec.
701. Certain treaties unaffected.
702. Construing references to organizations about advocating overthrow of United States Government.

§ 701. Certain treaties unaffected

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

§ 702. Construing references to organizations about advocating overthrow of United States Government

A reference in this title to an organization may not be construed as a declaration that the organization does not advocate the overthrow of the United States Government by unconstitutional means.

SUBTITLE II—ALIENS

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PART A—NONIMMIGRANTS

CHAPTER 21—ADMISSION AND DOCUMENTATION

SUBCHAPTER I—ADMISSION

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SUBCHAPTER II—DOCUMENTATION

2121. Documentation requirements.
2122. Applications for nonimmigrant visas and registration.
2123. Granting nonimmigrant visas and other documentation.
2124. Period of validity and revocation.
2125. Fees.
2126. Burden of proof.
2127. Visa waiver pilot program.

SUBCHAPTER I—ADMISSION

§ 2101. Admission

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

the Attorney General prescribes, to ensure that the alien will leave the United States when—

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

(2) the alien does not remain a member of the nonimmigrant class under which the alien was admitted or to which the Attorney General changes the alien under section 9108 of this title.

§ 2102. Presumption

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

§ 2103. Application of certain provisions to diplomats

Except as otherwise provided by this title, those provisions of this title related to ineligibility for a visa and exclusion or deportation of an alien do not apply to a nonimmigrant described by—

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

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

(B) under regulations prescribed by the President, to section 6308(a)–(c) of this title; or

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

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

(B) section 6308(a)–(c) of this title.

SUBCHAPTER II—DOCUMENTATION

§ 2121. Documentation requirements

(a) GENERAL.—Except as provided by this section and section 2127 of this title, an alien classified as a nonimmigrant under chapter 23 of this title may be admitted to the United States only if, when applying for admission, the nonimmigrant has—

(1) a passport that—

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

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

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

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

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

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

(3) for an alien proceeding in immediate and continuous travel through the United States on a carrier operating under a contract authorized by section 6905(b)(1)(B) of this title.

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

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

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

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

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

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

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

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

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

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

§ 2122. Applications for nonimmigrant visas and registration

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

(1) the complete true name of the alien.

(2) a personal description, including height, complexion, color of hair and eyes, and marks of identification.

(3) the date and place of birth.

(4) nationality.

(5) marital status.

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

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

(8) additional information prescribed by regulation that is necessary to identify the alien and enforce the immigration and nationality laws.

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

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

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

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

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

(d) SIGNATURE AND OATH.—Except as otherwise prescribed by regulation, an alien must—

(1) sign an application for a nonimmigrant visa in the presence of a consular officer; and

(2) take an oath administered by the consular officer verifying the application.

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

§ 2123. Granting nonimmigrant visas and other documentation

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

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

(A) the alien is required to be registered under section 8101(a)(1) of this title and is not registered;

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

(C) the alien is excludable from admission to the United States; or

(D) the consular officer has reason to believe the alien is ineligible for the visa or other documentation.

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

(A) an alien to whom section 6304(a) of this title applies if—

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

(ii) the consular officer receives notice from the Attorney General that the alien filed a bond or undertaking under section 6304(b) of this title; or

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

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

(ii) the alien does not remain a member of the nonimmigrant class under which the alien was admitted or to which the Attorney General changes the alien under section 9108 of this title.

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

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

(2) the expiration date of the visa; and

(3) additional information that may be required.

§ 2124. Period of validity and revocation

(a) PERIOD OF VALIDITY.—A nonimmigrant visa is valid for the period prescribed by regulation. In prescribing the period of validity, the Secretary of State, to the extent practicable, shall treat nationals of a foreign country the same as the government of that country treats nationals of the United States within a similar class.

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

§ 2125. Fees

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

§ 2126. Burden of proof

An individual applying for a nonimmigrant visa or other documentation required for entering the United States as a nonimmigrant has the burden of proving that the individual is eligible to be granted the visa or documentation. A consular officer may grant the visa or documentation only if satisfied that the individual is eligible to receive the visa or documentation.

§ 2127. Visa waiver pilot program

(a) ESTABLISHMENT OF PROGRAM.—The Attorney General and the Secretary of State jointly may maintain a pilot program for the fiscal years ending September 30, 1989–1994, under which they jointly may waive section 2121(a)(2) of this title for an alien eligible for a waiver under subsection (c) of this section.

(b) DESIGNATION OF PILOT PROGRAM COUNTRIES.—(1) The Attorney General and the Secretary jointly may designate any foreign country as a pilot program country if the government of that country extends (or agrees to extend) reciprocal privileges to nationals of the United States and meets the requirements of paragraphs (2) and (3) of this subsection. A designation is only for a fiscal year.

(2) Subject to paragraph (3) of this subsection, a country may be designated as a pilot program country only if—

(A) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the prior 2 fiscal years was less than 2 percent of the number of nonimmigrant visitor visas for nationals of that country that were granted or refused during those years;

(B) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of those 2 years was less than 2.5 percent of the number of nonimmigrant visitor visas for nationals of that country that were granted or refused during that year;

(C) the government of that country certifies that it has or is developing a program to issue machine-readable passports to citizens of that country; and

(D) the Attorney General decides that the law enforcement interests of the United States would not be compromised by the designation of that country.

(3) A country that was a pilot program country in the prior fiscal year may be designated as a pilot program country in a subsequent fiscal year of the program only if the total number of nationals referred to in clauses (A) and (B) of this paragraph is less than 2 percent of the number of nationals of that country who applied for admission as nonimmigrant visitors during that prior fiscal year:

(A) the number of nationals of that country who were excluded from admission or withdrew their application for admission during that prior fiscal year as nonimmigrant visitors; plus

(B) the number of nationals of that country who were admitted as nonimmigrant visitors during that prior fiscal year and who violated a condition of that admission.

(c) ELIGIBLE ALIENS.—An alien is eligible for a waiver under the program if the alien—

(1) is applying to be admitted not later than September 30, 1994, as a nonimmigrant visitor under section 2303 of this title for not more than 90 days;

(2) is a national of, and presents a passport issued by, a foreign country designated as a pilot program country under subsection (b) of this section;

(3) before admission, completes an immigration form prescribed by the Attorney General;

(4) before being provided a waiver under the program, waives any right—

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

(B) to contest (except on the basis of an application for asylum) an action for deportation against the alien;

(5) when arriving by air or sea, arrives at the port of entry into the United States on a carrier that has an agreement with the Attorney General to guarantee transportation of the alien out of the United States if the alien is found inadmissable or deportable by an immigration officer;

(6) has a round-trip transportation ticket unless the Attorney General by regulation waives this requirement;

(7) is not a threat to the welfare, health, safety, or security of the United States; and

(8) complied with the conditions of any previous admission without a visa under the program.

(d) ADMISSION UNDER VISA WAIVER PILOT PROGRAM.—An alien admitted to the United States under this section without a visa may not stay in the United States as a nonimmigrant visitor for more than 90 days after the date of admission to the United States.

(e) CARRIER AGREEMENTS.—(1) A carrier and the Attorney General may make an agreement referred to in subsection (c)(5) of this section under which the carrier agrees, in consideration of the waiver of the visa requirement for a nonimmigrant visitor under the program—

(A) to indemnify the United States Government against costs of transporting that visitor from the United States if the visitor is refused admission or remains in the United States unlawfully after the end of the period of admission referred to in subsection (c)(1) of this section;

(B) to submit each day to immigration officers any immigration forms received about nonimmigrant visitors given a waiver under the program; and

(C) to be liable, under regulations the Attorney General prescribes, for transporting a national of a pilot program country into the United States without a passport.

(2) If a carrier does not comply with an agreement made under paragraph (1) of this subsection, the Attorney General may end the agreement on 5 days' notice to the carrier.

(f) DENIAL OF WAIVERS.—Notwithstanding subsections (a)–(c) and (e) of this section, the Attorney General and the Secretary jointly may—

(1) for any reason refuse to waive the visa requirement for a national of a foreign country that otherwise may qualify for designation as a pilot program country under this section; or

(2) rescind at any time a waiver or designation previously granted under this section.

CHAPTER 23—CLASSIFICATIONS

SUBCHAPTER I—GENERAL

Sec.
2301. Officials of governments of foreign countries.
2302. Representatives to international organizations.
2303. Visitors for business and pleasure.
2304. Aliens in immediate and continuous travel.
2305. Crewmembers.
2306. Aliens entitled to enter under treaties of commerce and navigation.
2307. Philippine nationals.
2308. Media representatives.
2309. Aliens engaged to marry citizens.
2310. Students in academic institutions and language training programs.
2311. Students in nonacademic institutions.
2312. Participants in programs designated by the Director of the United States Information Agency.
2313. Aliens employed temporarily in specialty occupations or as fashion models.
2314. Temporary and seasonal agricultural employees.
2315. Aliens performing labor or services for which United States workers are unavailable.
2316. Aliens receiving training.
2317. Intra-company transferees.
2318. Aliens with extraordinary ability or with distinction in the arts, motion pictures, or television.
2319. Athletes and entertainers.
2320. Participants in international exchange programs.
2321. Aliens in religious occupations.
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SUBCHAPTER I—GENERAL

§ 2301. Officials of governments of foreign countries

An alien is classified as a nonimmigrant under this section if the alien is—

(1)(A) an ambassador, public minister, or career diplomatic or consular officer accredited by a government of a foreign country recognized de jure by the United States Government who is accepted by the President or the Secretary of State; or

(B) a member of the immediate family of the ambassador, minister, or officer;

(2) on a reciprocal basis—

(A) another official or employee accredited by a government of a foreign country recognized de jure by the United States Government who is accepted by the Secretary; or

(B) a member of the immediate family of the official or employee; or

(3) on a reciprocal basis—

(A) an attendant, servant, or personal employee of an alien described by clause (1)(A) or (2)(A) of this section; or

(B) a member of the immediate family of the attendant, servant, or personal employee.

§ 2302. Representatives to international organizations

An alien is classified as a nonimmigrant under this section if the alien is—

(1)(A) a designated principal resident representative of a government of a foreign country to an international organization if the government is recognized de jure by the United States Government and is a member of the international organization; or

(B) a member of the immediate family of the representative;

(2)(A) an accredited resident member of the staff of a representative described by clause (1)(A) of this section; or

(B) a member of the immediate family of the member;

(3)(A) an accredited representative (except a representative described by clause (1)(A) of this section) of a government of a foreign country to an international organization if the government is recognized de jure by the United States Government and is a member of the international organization; or

(B) a member of the immediate family of the representative;

(4)(A) an alien described by clause (1)(A), (2)(A), or (3)(A) of this section, except that the government of the foreign country is not recognized de jure by the United States Government or is not a member of an international organization; or

(B) a member of the immediate family of the alien;

(5)(A) an officer or employee of an international organization; or

(B) a member of the immediate family of the officer or employee; or

(6)(A) an attendant, servant, or personal employee of an alien described by clause (1)(A), (2)(A), (3)(A), (4)(A), or (5)(A) of this section; or

(B) a member of the immediate family of the attendant, servant, or personal employee.

§ 2303. Visitors for business and pleasure

An alien is classified as a nonimmigrant under this section if the alien—

(1) has a residence in a foreign country that the alien has no intention of abandoning; and

(2) is visiting the United States temporarily for business or pleasure (except to study, to perform skilled or unskilled labor, or to work as a representative of foreign information media).

§ 2304. Aliens in immediate and continuous travel

An alien is classified as a nonimmigrant under this section if the alien is—

(1) in immediate and continuous travel through the United States; or

(2) entitled to travel between a foreign country and the headquarters district of the United Nations under section 11(3), (4), or (5) of the Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations (61 Stat. 761).

§ 2305. Crewmembers

(a) GENERAL.—(1) Except as provided by subsection (c) of this section, an alien is classified as a nonimmigrant under this section if the alien—

(A) is a crewmember serving as a crewmember in a capacity required for normal operation and service on a vessel (except a fishing vessel having its home port or an operating base in the United States) or on an aircraft; and

(B) intends to land temporarily and only as a crewmember and to depart on a vessel or aircraft.

(2) Serving in a capacity required for normal operation and service on a vessel under paragraph (1)(A) of this subsection only includes performing longshore work (as defined by section 2721 of this title) to the extent provided under sections 2723–2725 of this title.

(b) CREWMEMBERS OF FISHING VESSELS LANDING IN GUAM.—(1) Except as provided by subsection (c) of this section, an alien is classified as a nonimmigrant under this section if the alien—

(A) is a crewmember serving as a crewmember in any capacity required for normal operation and service on a fishing vessel having its home port or an operating base in the United States; and

(B) intends to land in Guam temporarily and only as a crewmember and to depart on the vessel on which the alien arrived.

(2) An alien is deemed to have departed from Guam under paragraph (1)(B) of this subsection after leaving the territorial waters of Guam without regard to whether the alien arrives in a foreign country before returning to Guam.

(c) CREWMEMBERS EMPLOYED IN LABOR DISPUTES.—(1) An alien who intends to land to perform service on a vessel of the United States (as defined by section 2101 of title 46) or on an aircraft of an air carrier (as defined by section 101 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301)) during a labor dispute in which there is a strike or lockout of the

bargaining unit of the employer in which the alien intends to perform that service—

(A) is not entitled to be classified as a nonimmigrant under this section;

(B) may not be paroled into the United States under section 6123 of this title, unless the Attorney General decides that the parole of the alien is necessary to protect the security of the United States; and

(C) is not a crewmember under section 2703(d) of this title.

(2) Paragraph (1) of this subsection does not apply to an alien if the air carrier or owner or operator of the vessel employing the alien provides documentation that satisfies the Attorney General that the alien—

(A) has been employed by that employer for at least a one-year period before the date that the strike or illegal lockout began;

(B) has served as a qualified crewmember for that employer at least once in each of 3 months during the 12-month period before that date; and

(C) will continue to perform the same services that the alien provided during the alien's employment described by clause (B) of this paragraph.

§ 2306. Aliens entitled to enter under treaties of commerce and navigation

(a) DEFINITION.—In this section, ''citizen of Mexico'' has the same meaning given that term in Annex 1608 of the North American Free Trade Agreement.

(b) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1)(A) is entitled to enter the United States under a treaty of commerce and navigation between the United States Government and the government of the foreign country of which the alien is a national only—

(i) to carry on an amount of trade (including trade in services or technology) principally between the United States and the country of which the alien is a national, that the Secretary of State decides, after consulting with appropriate agencies, is substantial; or

(ii) to develop and direct the operations of an enterprise in which the alien has invested or is actively in the process of investing an amount of capital that the Secretary of State decides, after consulting with appropriate agencies, is substantial; or

(B) is the spouse or child of an alien described by subclause (A) of this clause if accompanying or following to join the alien;

(2) on a reciprocal basis under the United States-Canada Free-Trade Agreement—

(A)(i) is a citizen of Canada; and

(ii) is coming to the United States only for a purpose specified by Annex 1502.1 (United States of America), Part B—Traders and Investors, of the United States-Canada Free-Trade Agreement, but only if the purpose is specified by that Annex on January 1, 1989; or

(B) is the spouse or child of an alien described by subclause (A) of this clause if accompanying or following to join the alien;

(3)(A)(i) is a citizen of Canada;

(ii) is coming to the United States under Annex 1502.1 (United States of America), Part C—Professionals, of the United States-Canada Free-Trade Agreement to engage in business activities at a professional level as provided by that Annex; and

(iii) may be admitted to engage in those activities under regulations prescribed by the Attorney General after consulting with the Secretaries of State and Labor; or

(B) is the spouse or child of an alien described by subclause (A) of this clause if accompanying or following to join the alien;

(4) subject to subsection (e) of this section, on a reciprocal basis under the North American Free Trade Agreement—

(A)(i) is a citizen of Canada or a citizen of Mexico; and

(ii) is coming to the United States only for a purpose specified by section B of Annex 1603 of the Agreement but only if the purpose is specified by Annex 1603 on January 1, 1994; or

(B) is the spouse or child of an alien described by subclause (A) of this clause if accompanying or following to join the alien; or

(5)(A) subject to subsections (c)–(e) of this section—

(i) is a citizen of Canada or a citizen of Mexico;

(ii) is coming to the United States under section D of Annex 1603 of the North American Free Trade Agreement to engage in business activities at a professional level as provided by Annex 1603; and

(iii) may be admitted to engage in those activities under regulations prescribed by the Attorney General after consulting with the Secretaries of State and Labor; or

(B) is the spouse or child of an alien described by subclause (A) of this clause if accompanying or following to join the alien.

(c) NUMERICAL LIMITATIONS ON CITIZENS OF MEXICO.—(1) The Attorney General shall establish an annual numerical limitation on the number

of citizens of Mexico classified under subsection (b)(5) of this section, as provided by Appendix 1603.D.4 of Annex 1603 of the North American Free Trade Agreement. Subject to paragraph (2) of this subsection, the limitation—

(A) may be increased after December 31, 1994, under paragraph 5(a) of section D of Annex 1603 of the Agreement; and

(B) shall cease to apply as provided by paragraph 3 of Appendix 1603.D.4.

(2) The limitation referred to in paragraph (1) of this subsection may be increased or shall cease to apply (other than under paragraph 3 of Appendix 1603.D.4) only if—

(A) the President has obtained advice about the proposed action from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155);

(B) the President has submitted a report to the Committees on the Judiciary of the Senate and the House of Representatives that states the action proposed to be taken, the reasons for the proposed action, and the advice obtained under clause (A) of this paragraph;

(C) at least 60 days have passed after the President meets the requirements of clauses (A) and (B) of this paragraph; and

(D) the President consults with those committees during that 60-day period about the proposed action.

(d) ADDITIONAL REQUIREMENTS FOR CITIZENS OF MEXICO.—During the period that Appendix 1603.D.4 of Annex 1603 of the North American Free Trade Agreement applies, an alien who is a citizen of Mexico and enters under section D of Annex 1603 must comply—

(1) for a registered nurse, with the attestation requirements of section 2902 of this title, to the extent and in the way provided by regulations prescribed by the Secretary of Labor;

(2) for all other professions set out in Appendix 1603.D.1 of Annex 1603, with the application requirements of section 2351 of this title, to the extent and in the way provided by regulations prescribed by the Secretary of Labor; and

(3) with the employer petition requirements of this chapter, to the extent and in the way provided by regulations prescribed by the Attorney General.

(e) LABOR DISPUTES.—An alien who is a citizen of Canada or a citizen of Mexico and who is coming to the United States under section B, C, or D of Annex 1603 of the North American Free Trade Agreement is not entitled to be classified as a nonimmigrant under those sections if there is a strike or lockout during a labor dispute in the occupational classification at

the alien's place or intended place of employment, unless the alien establishes under regulations prescribed by the Attorney General that the alien's entry will not adversely affect the settlement of the strike or lockout or the employment of any individual who is involved in the strike or lockout. Notice of a decision by the Attorney General under this subsection shall be given in the way required by paragraph 3 of Article 1603 of the Agreement.

(f) COUNTRIES WITHOUT TREATIES.—Each of the following foreign countries shall be deemed to be a foreign country described by subsection (b)(1) of this section if the government of the foreign country extends reciprocal nonimmigrant treatment to nationals of the United States:

(1) the largest country in each region (as defined by section 4105(a)(7) of this title) that—

(A) has at least one dependent area as determined for purposes of sections 4111 and 4112 of this title; and

(B) does not have a treaty of commerce and navigation with the United States Government.

(2) the country that—

(A) was identified as an adversely affected foreign country under section 314 of the Immigration Reform and Control Act of 1986 (Public Law 99–603, 100 Stat. 3439);

(B) had a treaty of commerce and navigation with the United States before 1925; and

(C) does not have a treaty of commerce and navigation with the United States Government.

§ 2307. Philippine nationals

On a reciprocal basis secured by agreement between the Presidents of the United States and of the Philippines, an alien is classified as a nonimmigrant under this section if the alien is—

(1) a national of the Philippines who is coming to the United States only—

(A) to carry on an amount of trade (including trade in services or technology) principally between the United States and the Philippines, that the Secretary of State decides, after consulting with appropriate agencies, is substantial; or

(B) to develop and direct the operations of an enterprise in which the alien has invested or is actively in the process of investing an amount of capital that the Secretary decides, after consulting with the appropriate agencies, is substantial; or

(2) the spouse or child of an alien described by clause (1) of this section if accompanying or following to join the alien.

§ 2308. Media representatives

On a reciprocal basis, an alien is classified as a nonimmigrant under this section if the alien is—

(1) a representative of foreign information media who is coming to the United States only to work as a representative of foreign information media; or

(2) the spouse or child of an alien described by clause (1) of this section if accompanying or following to join the alien.

§ 2309. Aliens engaged to marry citizens

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien is—

(1) engaged to marry a citizen of the United States and is coming to the United States only to marry the citizen within 90 days after entry; or

(2) the child of an alien described by clause (1) of this subsection if accompanying or following to join the alien.

(b) PETITIONS TO CLASSIFY.—A visa may be granted to an alien applying to be classified as a nonimmigrant under this section only after the consular officer receives a petition filed in the United States by the citizen fiancee or fiance of the alien and approved by the Attorney General. The petition must be in the form and contain the information the Attorney General prescribes by regulation. The Attorney General may approve the petition only if satisfied that the parties—

(1) previously have met in person during the 2 years before the date the petition was filed, except that the Attorney General may waive this requirement;

(2) intend to marry; and

(3) are legally able and willing to marry not later than 90 days after the alien arrives in the United States.

§ 2310. Students in academic institutions and language training programs

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning;

(B) is a student qualified to take a full course of study; and

(C) is coming to the United States temporarily and only to take a full course of study at an established academic institution or in a language training program designated by the alien and approved by the Attorney General under subsection (b) of this section; or

(2) is the spouse or child of an alien described by clause (1) of this subsection if accompanying or following to join the alien.

(b) APPROVAL OF INSTITUTIONS AND PROGRAMS.—(1) The Attorney General may approve an institution or language training program referred to in subsection (a) of this section only after—

(A) the Attorney General has consulted with the Secretary of Education; and

(B) the institution or the place of study for the program has agreed to report promptly to the Attorney General the termination of attendance of each nonimmigrant student.

(2) The Attorney General shall withdraw the approval if the institution or place of study fails to report promptly.

§ 2311. Students in nonacademic institutions

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning; and

(B) is coming to the United States temporarily and only to take a full course of study (except in a language training program) at a recognized nonacademic institution designated by the alien and approved by the Attorney General under subsection (b) of this section; or

(2) is the spouse or child of an alien described by clause (1) of this subsection if accompanying or following to join the alien.

(b) APPROVAL OF INSTITUTIONS.—(1) The Attorney General may approve an institution referred to in subsection (a) of this section only after—

(A) the Attorney General has consulted with the Secretary of Education; and

(B) the institution has agreed to report promptly to the Attorney General the termination of attendance of each nonimmigrant student.

(2) The Attorney General shall withdraw the approval if the institution fails to report promptly.

§ 2312. Participants in programs designated by the Director of the United States Information Agency

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning;

(B) is a student, scholar, trainee, teacher, researcher, leader, or similar individual in a field of specialized knowledge or skill; and

(C) is coming to the United States temporarily to teach, study, observe, conduct research, consult, or demonstrate skills in a program

designated by the Director of the United States Information Agency, and, if coming to participate in a program of graduate medical education or training, satisfies the requirements of subsections (b) and (c) of this section; or

(2) is the spouse or child of an alien described by clause (1) of this subsection if accompanying or following to join the alien.

(b) ADDITIONAL REQUIREMENTS FOR ALIENS IN MEDICAL PROGRAMS.—The following additional requirements apply to an alien coming to the United States as a nonimmigrant under subsection (a)(1) of this section to participate in a program of graduate medical education or training:

(1) A school of medicine or of another health profession accredited by a body approved by the Secretary of Education must agree in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to arrange for an appropriate public or nonprofit private agency or institution to provide the education or training. Before making the agreement, the school must be satisfied that the alien satisfies paragraph (2) of this subsection. If the agreement is by a school of medicine, any of its affiliated hospitals that will participate in providing the education or training must be a party to the agreement.

(2) The alien must—

(A) have graduated from a school of medicine accredited by a body approved by the Secretary of Education (regardless of whether the school is in the United States); or

(B)(i) have passed parts I and II of the National Board of Medical Examiners Examination or an examination the Secretary of Health and Human Services decides is equivalent;

(ii) be competent in oral and written English;

(iii) be able to adapt to the educational and cultural environment in which the alien will be receiving the education or training; and

(iv) have adequate prior education and training to participate satisfactorily in the program.

(3) The government of the foreign country of the alien's nationality or last residence must provide a written assurance satisfactory to the Secretary of Health and Human Services that the country needs individuals with the skills the alien will acquire in the program.

(4) The alien must agree to return to the foreign country of the alien's nationality or last residence on completing the program.

(5) The alien must give the Attorney General annually an affidavit (in the form prescribed by the Attorney General) attesting that the alien—

(A) is in good standing in the program; and

(B) will return to the foreign country of the alien's nationality or last residence on completing the program.

(6) The alien's participation in the program is limited to the period typically required to complete the program, as determined by the Director at the time the alien enters the United States. The Director shall base the determination on criteria, established in coordination with the Secretary of Health and Human Services, that consider the published requirements of the medical specialty board administering the program. However—

(A) the period may be more than 7 years only if the alien satisfies the Director that the foreign country to which the alien will return on completing the program has an exceptional need for an individual with the skills the alien will acquire in the program; and

(B) the alien may change programs once within the first 2 years after entering the United States (or after being reclassified) as a nonimmigrant under subsection (a) of this section if the Director approves the change and a written assurance and an agreement are given for the new program as provided by paragraphs (3) and (4) of this subsection.

(c) SATISFACTION OF REQUIREMENTS BY CERTAIN MEDICAL SCHOOL GRADUATES.—An alien who is a graduate of a medical school satisfies subsection (b)(2)(B)(i) of this section if the alien on January 9, 1978—

(1) was completely and permanently licensed to practice medicine in a State; and

(2) was practicing medicine in a State.

(d) REPORT ON AFFIDAVITS.—The Director shall submit to Congress each year a report on aliens who have submitted affidavits under subsection (b)(5) of this section. The report shall include the name and address of each alien, the program of graduate medical education or training in which the alien is participating, and the status of the alien in the program.

§ 2313. Aliens employed temporarily in specialty occupations or as fashion models

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien is—

(1) coming to the United States temporarily to be employed—

(A) in a specialty occupation (except as a registered nurse during the period specified by section 2325(c) of this title or to per-

form services described by section 2314, 2318, or 2319 of this title) that requires theoretical and practical application of a body of highly specialized knowledge and a bachelor's, or higher, degree in the specialty, or its equivalent, as a minimum for entry into the occupation in the United States and who—

(i) is fully licensed by a State to practice the occupation if a license is required to practice that occupation;

(ii) has completed the degree described by this subclause (A) of this paragraph for that occupation; or

(iii) has experience in the specialty equivalent to the completion of that degree and recognition of expertise in the specialty through progressively more responsible positions related to the specialty; and

(B) for whom the Secretary of Labor has certified to the Attorney General that the employer intending to employ the alien has filed with the Secretary an application under subsection (d) of this section;

(2)(A) coming to the United States temporarily to be employed as a fashion model and demonstrates distinguished merit and ability; and

(B) for whom the Secretary of Labor has certified to the Attorney General that the employer intending to employ the alien has filed with the Secretary an application under subsection (d) of this section; or

(3) the spouse or child of an alien described by clause (1) or (2) of this subsection if accompanying or following to join the alien.

(b) NUMERICAL AND TIME LIMITATIONS.—(1) The total number of aliens who may be issued visas or classified as nonimmigrants under subsection (a)(1) and (2) of this section during a fiscal year may be not more than 65,000. Those aliens shall be issued visas or classified as a nonimmigrant under that subsection in the order in which petitions are filed for those visas or that classification.

(2) An alien classified as a nonimmigrant under subsection (a)(1) or (2) of this section may be admitted to the United States for not more than 6 years.

(c) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien applying to be classified as a nonimmigrant under subsection (a)(1) or (2) this section only after the Attorney General approves a petition filed by the prospective employer. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate agencies. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(d) EMPLOYER APPLICATION REQUIREMENT.—An alien may be classified as a nonimmigrant under subsection (a)(1) or (2) of this section only if the employer files an application with the Secretary of Labor as required by section 2351 of this title.

(e) LIMITATIONS ON CLASSIFICATION AND ADMISSION OF MEDICAL SCHOOL GRADUATES.—An alien who is a graduate of a medical school and is coming to the United States to perform services as a member of the medical profession may be classified and admitted as a nonimmigrant under subsection (a)(1) or (2) of this section only if the alien—

(1) has been invited by a public or nonprofit private educational or research institution or agency in the United States to come to the United States to teach or conduct research, or both, at or for the institution or agency; or

(2)(A) has passed the licensing examination administered by the Federation of State Medical Boards of the United States or an examination the Secretary of Health and Human Services decides is equivalent; and

(B)(i) is competent in oral and written English; or

(ii) is a graduate of a medical school that is accredited by a body approved by the Secretary of Education (regardless of whether the school is in the United States).

(f) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—In obtaining a visa or obtaining or maintaining the classification as a nonimmigrant under in subsection (a)(1) or (2) of this section, the fact that an alien has applied for a classification under subchapter I of chapter 43 of this title or otherwise has sought permanent residence in the United States is not evidence of an intention to abandon a residence in a foreign country if the alien had obtained a change of classification under section 9108 of this title to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

§ 2314. Temporary and seasonal agricultural employees

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning; and

(B) is coming to the United States temporarily to perform temporary or seasonal agricultural labor or services as defined by the Secretary of Labor by regulation, including agricultural labor as defined by sec-

tion 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)) and agriculture as defined by section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)); or

(2) is the spouse or child of an alien described by clause (1) of this subsection if accompanying or following to join the alien.

(b) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien applying to be classified as a nonimmigrant under subsection (a)(1) of this section only after the Attorney General approves a petition filed by the prospective employer. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate agencies, including the Secretaries of Labor and Agriculture. The Attorney General may approve the petition only if the Secretary of Labor has issued a certification under section 2504 of this title. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

§ 2315. Aliens performing labor or services for which United States workers are unavailable

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1)(A) is not a graduate of a medical school coming to the United States to perform services as a member of the medical profession;

(B) has a residence in a foreign country that the alien has no intention of abandoning; and

(C) is coming to the United States temporarily to perform temporary labor or services (except labor or services described by section 2314 of this title) for which unemployed workers able to perform the labor or services are unavailable in the United States; or

(2) is the spouse or child of an alien described by clause (1) of this subsection if accompanying or following to join the alien.

(b) NUMERICAL LIMITATIONS.—The total number of aliens who may be issued visas or classified as nonimmigrants under subsection (a)(1) of this section during a fiscal year may be not more than 66,000. Those aliens shall be issued visas or classified as such a nonimmigrant in the order in which petitions are filed for those visas or that classification.

(c) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien applying to be classified as a nonimmigrant under subsection (a)(1) of this section only after the Attorney General approves a petition filed by the prospective employer. The petition must be in the form and contain the infor-

mation the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate agencies. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(d) EMPLOYMENT IN THE VIRGIN ISLANDS.—The Attorney General may approve a petition filed for an alien applying to be classified as a nonimmigrant under subsection (a)(1) of this section for employment in the Virgin Islands only—

(1) if the alien is to be employed as an entertainer or athlete; and

(2) for not more than 45 days.

§ 2316. Aliens receiving training

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning; and

(B) is coming to the United States temporarily to receive training (except graduate medical education or training) in a training program that is not designed primarily to provide productive employment; or

(2) is the spouse or child of an alien described by clause (1) of this section if accompanying or following to join the alien.

(b) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien applying to be classified as a nonimmigrant under subsection (a)(1) of this section only after the Attorney General approves a petition filed by the prospective employer. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate agencies. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

§ 2317. Intra-company transferees

(a) GENERAL.—(1) An alien is classified as a nonimmigrant under this section if the alien—

(A) within the 3 years before applying for admission, has been employed continuously for at least one year by a corporation or other legal entity or an affiliate or subsidiary of the entity and is coming to the

United States temporarily to continue employment with the same employer or an affiliate or subsidiary of the entity—

(i) in an executive or managerial capacity; or

(ii) that involves a specialized knowledge of the product of the entity, affiliate, or subsidiary and its application in international markets or an advanced level of knowledge of processes and procedures of the entity, affiliate, or subsidiary; or

(B) is the spouse or child of an alien described by clause (A) of this paragraph if accompanying or following to join the alien.

(2) The period of admission for an alien classified as a nonimmigrant under—

(A) paragraph (1)(A)(i) of this subsection may be not more than 7 years; and

(B) paragraph (1)(A)(ii) of this subsection may be not more 5 years.

(3) In applying paragraph (1) of this subsection, a partnership or similar organization organized outside the United States to provide accounting services is deemed to be an affiliate of a partnership organized in the United States to provide accounting services if—

(A) the partnership or similar organization organized outside the United States markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization owned and controlled by the member accounting firms of which the United States partnership is also a member; and

(B) the United States partnership markets its accounting services under the same internationally recognized name under an agreement with the worldwide coordinating organization.

(b) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien applying to be classified as a nonimmigrant under subsection (a)(1)(A) of this section only after the Attorney General approves a petition filed by the prospective employer. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate agencies. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) The Attorney General shall establish a procedure under which an employer that meets the requirements the Attorney General prescribes may file a petition for more than one alien applying to be classified as a nonimmigrant under subsection (a)(1)(A) of this section instead of filing individual petitions under paragraph (1) of this subsection for those aliens. The procedure shall allow the expedited processing of visas for the entry of aliens under such a petition.

(3) The Attorney General shall provide for a procedure for reviewing and acting on petitions filed under this subsection not later than 30 days after the date a completed petition is filed.

(4) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(c) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—In obtaining a visa or obtaining or maintaining the classification as a nonimmigrant under subsection (a)(1)(A) of this section, the fact that an alien has applied for a classification under subchapter I of chapter 43 of this title or otherwise has sought permanent residence in the United States is not evidence of an intention to abandon a residence in a foreign country if the alien has obtained a change of classification under section 9108 of this title to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

§ 2318. Aliens with extraordinary ability or with distinction in the arts, motion pictures, or television

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1)(A)(i) has extraordinary ability in the sciences, education, business, or athletics as demonstrated by sustained national or international acclaim;

(ii) is distinguished in the arts as demonstrated by sustained national or international acclaim; or

(iii) with regard to motion picture and television productions has demonstrated a record of extraordinary achievement and whose achievements have been recognized in the field through extensive documentation; and

(B) is coming to the United States to continue work in that field of extraordinary ability or distinction;

(2) has a residence in a foreign country that the alien has no intention of abandoning and—

(A) is coming to the United States temporarily and only to accompany and assist an alien classified under clause (1) of this subsection in the artistic or athletic performance for any specific event;

(B) is an integral part of the actual performance; and

(C)(i) has critical skills and experience with the alien admitted under clause (1) of this section that are not general in nature and that cannot be performed by other individuals; or

(ii) for a motion picture or television production, has skills and experience with the alien admitted under clause (1) of this subsection that are not general in nature and are critical because of a longstanding working relationship or, for a specific production, because significant production (including pre-production and post-production work) will take place both inside and outside the United States and the continuing participation of the alien described by this clause is essential to the successful completion of the production; or

(3) is the spouse or child of an alien described by clause (1) or (2) of this subsection if accompanying or following to join the alien.

(b) PERIOD OF ADMISSION.—An alien classified as a nonimmigrant under this section may be admitted for the period the Attorney General specifies to provide for any event for which the nonimmigrant is admitted.

(c) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien applying to be classified as a nonimmigrant under subsection (a)(1) or (2) of this section only after the Attorney General approves a petition filed by the prospective employer. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate agencies. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(d) CONSULTATION REQUIREMENTS.—The Attorney General may approve a petition under subsection (c)(1) of this section only after the petitioner satisfies the consultation requirements of section 2352 of this title.

§ 2319. Athletes and entertainers

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1) has a residence in a foreign country that the alien has no intention of abandoning who—

(A)(i) performs as an athlete, individually or as a member of a group or team, at an internationally recognized level of performance; and

(ii) is coming to the United States temporarily and only to perform as an athlete for a specific athletic competition;

(B)(i) performs with, or is an integral and essential part of the performance of, an entertainment group that, except as provided by section 2353(b)(1)(A) of this title, has been recognized inter-

nationally as being outstanding in the discipline for a sustained and substantial period of time;

(ii) if a performer or entertainer, except as provided by section 2353(b)(1)(B) and (2) of this title, has had a sustained and substantial relationship with that group (ordinarily for at least one year) and performs functions integral to the performance of the group; and

(iii) is coming to the United States temporarily and only to perform as such a performer or entertainer or as an integral and essential part of a performance;

(C)(i) performs as an artist or entertainer, individually or as a member of a group, or is an integral part of the performance of that group; and

(ii) is coming to the United States temporarily and only to perform as such an artist or entertainer or with that group under a reciprocal exchange program between an organization in the United States and an organization in a foreign country that provides for the temporary exchange of artists and entertainers; or

(D)(i) performs as an artist or entertainer, individually or as a member of a group, or is an integral part of the performance of that group; and

(ii) is coming to the United States temporarily and only to perform, teach, or coach as such an artist or entertainer or with that group under a commercial or non-commercial program that is culturally unique; or

(2) is the spouse or child of an alien described by clause (1) of this section if accompanying or following to join the alien.

(b) PERIOD OF ADMISSION.—(1) Except as provided by paragraph (2) of this subsection, an alien classified as a nonimmigrant under this section may be admitted for the period the Attorney General specifies in order to provide for any competition, event, or performance for which the nonimmigrant is admitted.

(2) An alien classified as a nonimmigrant under this section and admitted as an individual athlete may be admitted for an initial period of not more than 5 years during which the nonimmigrant will perform as an athlete. The Attorney General may extend that period for an additional period of not more than 5 years.

(c) PETITIONS.—(1) A person may petition the Attorney General for classification of an alien as a nonimmigrant under this section.

(2) A visa may be granted to an alien applying to be classified as a nonimmigrant under subsection (a)(1)(A) or (B) of this section only after the

Attorney General approves a petition filed by the prospective employer. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate agencies. Approval of the petition does not establish by itself that the alien is a nonimmigrant.

(3) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(d) CONSULTATION REQUIREMENTS.—The Attorney General may approve a petition under subsection (c) of this section only after the petitioner satisfies the consultation requirements of section 2353 of this title.

§ 2320. Participants in international exchange programs

An alien is classified as a nonimmigrant under this section if the alien—

(1) has a residence in a foreign country that the alien has no intention of abandoning;

(2) is coming to the United States for a period of not more than 15 months to participate in an international cultural exchange program approved by the Attorney General that provides practical training, employment, and the sharing of history, culture, and traditions of the foreign country of the alien's nationality; and

(3) will be employed for the same wages and under the same working conditions as United States workers.

§ 2321. Aliens in religious occupations

An alien is classified as a nonimmigrant under this section if the alien—

(1)(A) for the 2 years immediately before the alien's application for admission, has been a member of a religious denomination that has a nonprofit religious organization in the United States; and

(B) is coming to the United States for a period of not more than 5 years to perform work described by section 137(a)(3)(ii)(I), (II), or (III) of this title; or

(2) is the spouse or child of an alien described by clause (1) of this section if accompanying or following to join the alien.

§ 2322. Participants in cooperative research, development, and coproduction projects

(a) GENERAL.—On a reciprocal basis, an alien is classified as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning; and

(B) is coming to the United States for not more than 10 years to provide services of an exceptional nature requiring merit and ability related to a cooperative research and development project or a

coproduction project provided under a government-to-government agreement carried out by the Secretary of Defense; or

(2) is the spouse or child of an alien described by clause (1) of this section if accompanying or following to join the alien.

(b) NUMERICAL LIMITATION.—Not more than 100 aliens classified as nonimmigrants under this section may be admitted to the United States at any time.

§ 2323. Participants in special education programs

(a) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1)(A) has a residence in a foreign country that the alien has no intention of abandoning; and

(B) is coming to the United States for not more than 18 months to participate in a special education training program that provides practical training and experience in educating children with physical, mental, or emotional disabilities; or

(2) is the spouse or child of an alien described by clause (1) of this section if accompanying or following to join the alien.

(b) NUMERICAL LIMITATION.—Not more than 50 aliens classified as nonimmigrants under this section may be admitted to the United States in a fiscal year.

§ 2324. Relatives of special immigrants

An alien is classified as a nonimmigrant under this section if the alien is—

(1) the parent of an alien who is a special immigrant as defined by section 137(a)(9) of this title, but only when the alien is a child; or

(2) a child of—

(A) a parent described by clause (1) of this section; or

(B) an alien who is a special immigrant as defined by section 137(a)(10) or (11) of this title.

§ 2325. Registered nurses

(a) DEFINITION.—In this section, ''facility'' includes an employer that employs registered nurses in a home setting.

(b) GENERAL.—An alien is classified as a nonimmigrant under this section if the alien—

(1)(A) is coming to the United States temporarily to perform services as a registered nurse;

(B) has obtained a full and unrestricted license to practice professional nursing in the foreign country in which the alien obtained nursing education or has received nursing education in the United States or Canada;

(C) has passed an appropriate examination (recognized in regulations prescribed in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment;

(D) is fully qualified and eligible under the laws (including temporary licensing requirements authorizing the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately on admission to the United States and is authorized under those laws to be employed by the facility; and

(E) is one for whom the Secretary of Labor has certified to the Attorney General that each facility (including the petitioner under subsection (c)(1) of this section and each worksite, except a private household worksite, that is not the alien's employer or controlled by the employer) at which the alien will perform the services has an attestation on file and in effect under section 2902 of this title; or

(2) is the spouse or child of an alien described by clause (1) of this subsection if accompanying or following to join the alien.

(c) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien applying to be classified as a nonimmigrant under subsection (b)(1) of this section only after the Attorney General approves a petition filed by the prospective employer. The Attorney General may approve a petition filed under this section only if the petition is filed during the period from September 1, 1990, through August 31, 1995. The petition must be in the form and contain the information the Attorney General prescribes. Before approving a petition, the Attorney General shall consult with the heads of appropriate agencies. Approval of a petition does not establish by itself that the alien is a nonimmigrant.

(2) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the decision and the reasons for the denial and the way in which the petitioner may appeal the decision.

(d) PERIOD OF ADMISSION.—An alien classified as a nonimmigrant under this section may be admitted for an initial period of not more than 3 years. The initial period may be extended for one or more periods, but the total period of admission may not be more than 5 years (or 6 years if the Attorney General decides there are extraordinary circumstances).

(e) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—In obtaining a visa or obtaining or maintaining the classification as a nonimmigrant under this section, the fact that an alien has applied for a classification under subchapter I of chapter 43 of this title or otherwise has sought permanent residence in the United States is not evidence of an in-

tention to abandon a residence in a foreign country if the alien has obtained a change of classification under section 9108 to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

SUBCHAPTER II—SPECIAL REQUIREMENTS

§ 2351. Employer applications for aliens employed temporarily in specialty occupations or as fashion models

(a) GENERAL.—An alien may be classified and admitted to the United States as a nonimmigrant under section 2313(a)(1) or (2) of this title only if the employer files an application with the Secretary of Labor stating the following:

(1) The employer—

(A) during the period of authorized employment, is offering and will offer the alien classified or admitted as a nonimmigrant under section 2313(a)(1) or (2) of this title wages that, based on the best information available at the time the application is filed, are at least the greater of—

(i) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

(ii) the prevailing wage level of the occupational classification in the area of employment; and

(B) will provide working conditions for the nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(2) There is no strike or lockout during a labor dispute in the occupational classification at the place of employment.

(3) At the time the application was filed, the employer—

(A) provided notice of the filing of an application under this subsection to the bargaining representative of the employer's employees in the occupational classification and area for which aliens are sought; or

(B) if there is no bargaining representative, posted notice of the filing in conspicuous locations at the place of employment.

(4) There is a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(b) PUBLIC AVAILABILITY OF APPLICATIONS AND APPLICATION LISTS.—(1) Not later than one working day after the date on which an application under this subsection is filed, the employer shall make available for public

examination at the employer's principal place of business or worksite a copy of each application filed under subsection (a) of this section and necessary accompanying documentation.

(2) On a current basis and by employer and occupational classification, the Secretary shall compile a list of the applications filed. That list shall include the wage rate, number of aliens sought, period of intended employment, and the date of need. The Secretary shall make that list available for public examination in the District of Columbia.

(c) SECRETARIAL REVIEW OF APPLICATIONS.—The Secretary shall review an application only for completeness and obvious inaccuracies. Unless the Secretary finds that the application is incomplete or obviously inaccurate, the Secretary shall make the certification described by section 2313(a)(1)(B) or (2)(B) of this title not later than 7 days after the date the application is filed.

(d) FAILURE TO MEET APPLICATION CONDITIONS AND MISREPRESENTATIONS.—(1) The Secretary shall establish a procedure for receiving, investigating, and disposing of complaints about a petitioner's failure to meet a condition specified by an application submitted under subsection (a) of this section or a petitioner's misrepresentation of a material fact in that application. An adversely affected person (including a bargaining representative) may file a complaint under this subsection but the complaint must be filed not later than 12 months after the date of the failure or misrepresentation. The Secretary shall conduct an investigation as provided by this subsection if there is reasonable cause to believe that a failure or misrepresentation has occurred.

(2) Not later than 30 days after the date a complaint is filed, the Secretary shall decide whether a reasonable basis exists to make a finding under paragraph (3) or (4) of this subsection. If the Secretary decides that a reasonable basis exists, the Secretary shall provide interested parties notice and an opportunity for a hearing under section 556 of title 5 about the complaint not later than 60 days after deciding that a reasonable basis exists. If a hearing is requested, the Secretary shall make a finding about the complaint not later than 60 days after the date of the hearing. The Secretary may consolidate hearings on similar complaints about the same applicant.

(3) If the Secretary finds, after notice and an opportunity for a hearing under paragraph (2) of this subsection, that there has been a failure to meet a condition of subsection (a)(2) of this section, a substantial failure to meet a condition described by subsection (a)(3) or (4) of this section, a willful failure to meet a condition of subsection (a)(1) of this section, or misrepresentation of a material fact in an application—

(A) the Secretary shall notify the Attorney General of that finding and may impose administrative remedies the Secretary decides are appropriate, including a penalty of not more than $1,000 for each violation; and

(B) the Attorney General may not approve a petition filed by the employer under section 2352 of this title or subchapter I of chapter 43 for at least one year.

(4) If the Secretary finds after notice and an opportunity for a hearing under paragraph (2) of this subsection that an employer has not paid wages at the wage level specified under the application and required under subsection (a)(1) of this section, the Secretary shall order the employer to provide back pay required to comply with subsection (a)(1) in addition to any other penalty imposed under paragraph (3) of this subsection.

§ 2352. Advisory opinions for aliens with extraordinary ability or with distinction in the arts, motion pictures, or television

(a) GENERAL REQUIREMENTS.—(1) The Attorney General may approve a petition—

(A) for an alien applying to be classified as a nonimmigrant under section 2318(a)(1)(A)(i) or (ii) of this title, only after the petitioner consults with a peer group or other person (including a labor organization) the alien chooses with expertise in the specific field involved by submitting with the petition an advisory opinion from that group or person;

(B) for an alien applying to be classified as a nonimmigrant under section 2318(a)(2)(A)–(C)(i) of this title, only after the petitioner consults with a labor organization with expertise in the area of the skills and experience involved by submitting with the petition with an advisory opinion from that labor organization; or

(C) for an alien applying to be classified as a nonimmigrant under section 2318(a)(1)(A)(iii) or (2)(C)(ii) of this title for a motion picture or television production, after consulting with the appropriate labor organization representing the alien's occupational peers and a management organization in the area of the alien's ability.

(2) An opinion by a labor organization about an alien referred to in paragraph (1)(C) of this subsection trying to enter the United States for a motion picture or television production is advisory only. An opinion recommending denial of an application for that alien must be in writing. In making a decision on the petition, the Attorney General shall consider the exigencies and scheduling of the production. The Attorney General shall attach any advisory opinion to that decision.

(3)(A) If a petitioner does not submit an advisory opinion from the appropriate labor organization as required by paragraph (1)(A) or (B) of this subsection, the Attorney General shall forward a copy of the petition and supporting documents to the national office of an appropriate labor organization not later than 5 days after receiving the petition. If the employer's employees in the occupational classification for which the alien is being sought have a collective bargaining representative, that representative is the appropriate labor organization.

(B) A person or organization receiving a copy of a petition as provided by subparagraph (A) of this paragraph has not more than 15 days after receiving the petition to submit a written advisory opinion or provide a letter stating that the person or organization has no objection. At the end of the 15-day period, the Attorney General shall give the petitioner an opportunity, when appropriate, to provide rebuttal evidence. The Attorney General shall act on the petition not later than 14 days after the end of the 15-day period, or if rebuttal evidence is provided, not later than 14 days after receiving that evidence. The Attorney General may shorten a time period under this paragraph for emergency reasons unless the shorter period is an unreasonable burden on a participant in the process.

(4) If a petitioner referred to in paragraph (1)(A) or (B) of this subsection establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall act on the petition without requiring an advisory opinion.

(5) The Attorney General shall prescribe regulations to establish expedited consultation procedures for nonimmigrant—

(A) artists and entertainers described by section 2318 of this title to accommodate the exigencies and scheduling of a given production or event; and

(B) athletes described by section 2318(a)(1) of this title in the case of emergency circumstances, including trades during a season.

(6) Consultation with a nongovernmental entity does not authorize the Attorney General to delegate authority under this subsection to a nongovernmental entity. The Attorney General shall give advisory opinions under this subsection the weight the Attorney General decides, in the Attorney General's sole discretion, is appropriate.

(b) WAIVERS.—The Attorney General shall prescribe regulations to provide for the waiver of the consultation requirement under subsection (a)(1)(A) of this section for an alien admitted as a nonimmigrant under section 2318(a)(1)(A)(ii) of this title because of distinction in the arts and who is trying to be readmitted to perform similar services within 2 years after the date of a consultation under subsection (a)(1)(A) of this section. Not

later than 5 days after a waiver is provided, the Attorney General shall forward a copy of the petition and supporting documents to the national office of the appropriate labor organization.

§ 2353. Advisory opinions for athletes and entertainers

(a) GENERAL REQUIREMENTS.—(1) The Attorney General may approve a petition for an alien applying to be classified as a nonimmigrant—

(A) under section 2319(a)(1)(A), (B), or (D) of this title, only after the petitioner consults with a labor organization with expertise in the specific field of athletics or entertainment involved by submitting with the petition an advisory opinion from that labor organization; or

(B) under section 2319(a)(1)(C) of this title, only after consultation with labor organizations representing artists and entertainers in the United States.

(2) If a petitioner does not submit an advisory opinion from the appropriate labor organization required by paragraph (1)(A) of this subsection, the Attorney General shall forward a copy of the petition and supporting documents to the national office of an appropriate labor organization not later than 5 days after receiving the petition. If the employer's employees in the occupational classification for which the alien is being sought have a collective bargaining representative, that representative is the appropriate labor organization.

(3) A person or organization receiving a copy of a petition as provided by paragraph (2) of this subsection has not more than 15 days after receiving the petition to submit a written advisory opinion or provide a letter stating that the person or organization has no objection. At the end of the 15-day period, the Attorney General shall give the petitioner an opportunity, when appropriate, to provide rebuttal evidence. The Attorney General shall act on the petition not later than 14 days after the end of the 15-day period, or if rebuttal evidence is provided, not later than 14 days after receiving that evidence. The Attorney General may shorten a time period under this paragraph for emergency reasons unless the shorter period is an unreasonable burden on a participant in the process.

(4) If a petitioner referred to in paragraph (1)(A) of this subsection establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall act on the petition without requiring an advisory opinion.

(5) The Attorney General shall prescribe regulations to establish expedited consultation procedures for nonimmigrant—

(A) artists and entertainers under section 2319 of this title to accommodate the exigencies and scheduling of a given production or event; and

(B) athletes described by section 2319(a)(1)(A) of this title in the case of emergency circumstances, including trades during a season.

(6) Consultation with a nongovernmental entity does not authorize the Attorney General to delegate authority under this subsection to a nongovernmental entity. The Attorney General shall give advisory opinions under this subsection the weight the Attorney General decides, in the Attorney General's sole discretion, is appropriate.

(b) WAIVERS AND NONAPPLICATION.—(1) The Attorney General may waive—

(A) in consideration of special circumstances, the international recognition requirement of section 2319(a)(1)(B)(i) of this title for an entertainment group that is recognized nationally as being outstanding in its discipline for a sustained and substantial period of time; and

(B) the one-year relationship requirement of section 2319(a)(1)(B)(ii) of this title for an alien who—

(i) replaces an essential member of the group, because of illness or unanticipated or exigent circumstances; or

(ii) augments the group by performing a critical role.

(2) The one-year relationship requirement of section 2319(a)(1)(B)(ii) of this title does not apply to 25 percent of the performers in a group.

(3) The requirements of section 2319(a)(1)(B)(i) and (ii) of this title do not apply to an alien who performs as part of a circus or circus group or who is an integral and essential part of the performance of that circus or group, but only if the alien is coming to the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

CHAPTER 25—TEMPORARY AGRICULTURAL WORKERS

Sec.
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§ 2501. Definitions

In this chapter—

(1) ''temporary agricultural worker'' means a nonimmigrant described by section 2314 of this title.

(2) ''United States worker'' means an individual who is not an unauthorized alien (as defined by section 11101 of this title) with respect to particular employment.

§ 2502. Certification requirements

(a) REQUIREMENTS.—The Attorney General may approve a petition filed under section 2314 of this title by a prospective employer of an alien applying to be classified as a temporary agricultural worker only if the Secretary of Labor, on application by the employer, has certified that—

(1) there are not sufficient United States workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services described by the petition; and

(2) employment of the alien to provide the labor or services will not affect adversely the wages and working conditions of United States workers similarly employed.

(b) REGULATIONS.—The Secretary shall prescribe regulations based on findings in furtherance of the policy that aliens be admitted as temporary agricultural workers only if the conditions specified by subsection (a) of this section are satisfied.

§ 2503. Applications for certification

(a) DEADLINE FOR FILING.—The Secretary of Labor may not require that an application for a certification under this chapter be filed more than 60 days before the first date the employer requires the labor or services of a temporary agricultural worker.

(b) NOTICE OF DEFICIENCIES.—If an application does not meet the conditions for issuing a certification (except the conditions specified by section 2502(a)(1) of this title), the Secretary shall—

(1) notify the employer in writing not later than 7 days after the application is filed, giving the reasons the application does not meet the conditions; and

(2) allow the employer to submit promptly an amended application.

(c) FEE.—The Secretary may prescribe by regulation a fee to cover the reasonable costs of processing an application for certification.

§ 2504. Conditions for issuing certifications

Not later than 20 days before the labor or services are first required, the Secretary of Labor shall issue a certification if the following conditions are met:

(1) The conditions specified by section 2502(a) of this title are met.

(2) The employer has complied with the requirements for certification, including requirements the Secretary prescribes for recruiting United States workers.

(3) The Secretary concludes that the employer has made positive recruitment efforts within a multi-State region of traditional or expected labor supply in which the Secretary finds there are a significant number of qualified United States workers who, if recruited, would be willing to work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation of the employer's job offer through the interstate employment service system. The requirement to engage in positive recruitment ends on the date the temporary agricultural workers depart for the employer's place of employment.

(4) The employer does not have, or has not been provided with referrals of, qualified United States workers who have indicated their availability to perform the labor or services on the terms of a job offer meeting the Secretary's requirements. In considering whether a specific qualification in a job offer is appropriate, the Secretary shall apply the normal and accepted qualifications required by employers not employing temporary agricultural workers in the same or comparable occupations and crops.

(5) The employer has provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by a State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and during the worker's employment that will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(6) There is no strike or lockout during a labor dispute that, under regulations prescribed by the Secretary, precludes the certification.

(7) The employer employed temporary agricultural workers during the prior 2 years, and the Secretary has decided, after notice and an opportunity for a hearing on the record, that the employer during that period did not substantially violate a material condition of the certification related to the employment of nonimmigrant or United States workers. The Secretary may decide not to approve a certification for not more than 3 years for an employer who commits a violation described by this paragraph.

§ 2505. Associations of agricultural producers

(a) PERMITTED FILINGS.—An association of agricultural producers using agricultural services may file—

(1) a petition under section 2314 of this title for an alien applying to be classified as a temporary agricultural worker; and

(2) an application for a certification under this chapter.

(b) ASSOCIATIONS ACTING AS EMPLOYERS.—If an association referred to in subsection (a) of this section is the joint or sole employer of a temporary agricultural worker, a certification granted under this chapter to the association may be used for the certified job opportunities of any of the members of the association. The worker may be transferred among the members to perform agricultural services of a temporary or seasonal nature for which the certification was granted.

(c) EFFECT OF VIOLATIONS.—(1) If the Secretary of Labor has decided that a member of an association that is a joint employer of a temporary agricultural worker has committed an act resulting in a decision by the Secretary not to approve a certification of the member under section 2504(7) of this title, the decision applies only to that member unless the Secretary decides that the association or another member participated in, or knew or had reason to know of, the violation.

(2) If the Secretary has decided that an association that is a joint employer has committed an act resulting in a decision by the Secretary not to approve a certification of the association under section 2504(7) of this title, the decision applies only to the association unless the Secretary decides that a member participated in, or knew or had reason to know of, the violation.

(3) If the Secretary has decided that an association, certified as the sole employer of a temporary agricultural worker, has committed an act resulting in a decision by the Secretary not to approve a certification of the association under section 2504(7) of this title, a member of the association, during the period the decision is in effect, may not be the beneficiary of the services of temporary agricultural workers in the commodity and occupation in which the worker was employed by the association whose certification was not approved, unless the member employs the workers in the commodity and occupation directly or through an association that is a joint employer of the workers with the member.

§ 2506. Housing

(a) REQUIREMENT.—An employer shall provide housing for temporary agricultural workers as provided by regulations prescribed by the Secretary of Labor.

(b) REGULATIONS.—(1) Regulations prescribed under this section shall allow the employer, at the employer's option, to provide housing meeting applicable standards of the United States Government for temporary labor camps or to secure housing that meets applicable local standards for rental or public accommodations or other substantially similar class of habitation. In the absence of applicable local standards, State standards for those accommodations or that class of habitation shall apply. In the absence of ap-

plicable local and State standards, standards of the Government for temporary labor camps shall apply.

(2) The regulations shall include specific requirements about housing for employees principally engaged in the range production of livestock.

(3) When the prevailing practice in the area and occupation of intended employment is to provide family housing, the employer shall provide family housing to workers with families requesting it.

(c) EXCEPTION.—This section does not require an employer to provide housing for workers not entitled to it under the temporary labor certification regulations in effect on June 1, 1986.

§ 2507. Expedited administrative review

(a) PROCEDURE FOR EXPEDITED REVIEW.—Regulations prescribed by the Secretary of Labor under this chapter shall provide for an expedited procedure for a review of a decision of the Secretary not to approve or to revoke a certification or, at the applicant's request, a de novo administrative hearing on the record on the decision.

(b) DECISIONS ON AVAILABILITY OF UNITED STATES WORKERS.—(1) The Secretary shall make a new decision about an application for certification under this chapter expeditiously, but not later than 72 hours after the time the new decision is requested, if the certification originally was not approved in any part because of the availability of able, willing, and qualified United States workers and they are not available at the time the labor or services are needed.

(2) An employer asserting that a United States worker referred to the employer is not able, willing, or qualified has the burden of proving that the worker is not able, willing, or qualified because of employment-related reasons.

§ 2508. Disqualification of aliens for violating conditions of prior admission

An alien may not be admitted to the United States as a temporary agricultural worker if, during the prior 5 years, the alien was admitted as a temporary agricultural worker and violated a term of that admission.

§ 2509. Enforcement authority of the Secretary of Labor

The Secretary of Labor may take actions necessary to ensure that employers comply with the terms of employment under this chapter, including—

(1) imposing appropriate penalties; and

(2) seeking appropriate equitable relief, including specific performance of contractual obligations.

§ 2510. Endorsement of entry and exit documentation

The Attorney General shall provide for the endorsement of entry and exit documentation of temporary agricultural workers necessary to carry out this chapter and to provide notice under chapter 111 of this title.

§ 2511. Preemption of State and local law

This chapter and sections 2101 and 2314 of this title preempt State and local law regulating the admissibility of nonimmigrant workers.

§ 2512. Biennial reports

(a) REPORTING REQUIREMENT.—Not later than November 6 of each even-numbered year, the President shall submit a report on the temporary agricultural worker program under this chapter to the Committees on the Judiciary of the Senate and the House of Representatives. The report shall include—

(1) the number of temporary agricultural workers permitted to be employed under the program in each year;

(2) the compliance of employers and temporary agricultural workers with the terms of the program;

(3) the impact of the program on the labor needs of United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

(4) recommendations for changing the program, including—

(A) improving the timeliness of decisions about the admission of temporary agricultural workers under the program;

(B) removing any economic disincentive to hiring United States workers for jobs for which temporary agricultural workers have been requested;

(C) improving cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary agricultural workers; and

(D) the relative benefits to United States workers and burdens on employers of the policy of requiring employers, as a condition for certification under the program, to continue to accept qualified United States workers for employment after the date the temporary agricultural workers depart for work with the employer.

(b) RECOMMENDATIONS CONSISTENT WITH POLICY.—The recommendations under subsection (a)(4)(D) of this section shall be made in furtherance of the policy that aliens be admitted as temporary agricultural workers only if the conditions specified by section 2502(a) of this title are satisfied.

§ 2513. Approval of regulations

In consultation with the Secretaries of Labor and Agriculture, the Attorney General shall approve all regulations prescribed under this chapter and section 2314 of this title.

§ 2514. Authorization of appropriations

(a) GENERAL AUTHORIZATIONS.—Necessary amounts may be appropriated each fiscal year to—

(1) the Secretary of Labor to make findings and issue certifications under this chapter and section 4104(g)(2) of this title; and

(2) the Secretary of Agriculture to carry out the Secretary's duties and powers under section 2314 of this title related to this chapter.

(b) SPECIFIC AUTHORIZATIONS.—Not more than $10,000,000 may be appropriated each fiscal year—

(1) to recruit United States workers for temporary labor and services that otherwise might be performed by temporary agricultural workers; and

(2) to monitor the terms under which temporary agricultural workers and United States workers employed by the same employer are employed in the United States.

CHAPTER 27—ALIEN CREWMEMBERS

SUBCHAPTER I—GENERAL

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2703. Conditional permits to land temporarily.
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SUBCHAPTER I—GENERAL

§ 2701. Providing lists

(a) ON ARRIVAL.—Except as provided by subsection (c) of this section, when a vessel or aircraft arrives in the United States from a place outside the United States, the owner, agent, master, commanding officer, or consignee of the vessel or aircraft shall give an immigration officer at the port of arrival a list containing—

(1)(A) the name and position of each alien crewmember on the vessel or aircraft;

(B) information on when and where each alien crewmember was shipped or employed; and

(C) the name of each alien crewmember who is to be paid off or discharged in the port of arrival; or

(2) information the Attorney General prescribes by regulation.

(b) ON DEPARTURE.—Except as provided by subsection (c) of this section, before a vessel or aircraft departs from a port in the United States, the owner, agent, master, commanding officer, or consignee of the vessel or aircraft shall give an immigration officer at the port a list containing—

(1) the name of each alien crewmember—

(A) not employed on the vessel or aircraft when it arrived but who is leaving on the vessel or aircraft;

(B) paid off or discharged at the port; or

(C) who deserted or landed at the port; or

(2) information the Attorney General prescribes by regulation.

(c) EXCEPTION.—The Attorney General shall prescribe when a list under this section shall be given for a vessel operating only on the Great Lakes, the Saint Lawrence River, and a connnecting waterway.

(d) REGULATIONS ON ARRIVAL AND DEPARTURE.—The Attorney General may prescribe by regulation when a vessel or aircraft is deemed under this chapter to be arriving in, or departing from, the United States or a port of the United States.

§ 2702. Reports on unlawful landings

As soon as it is discovered that an alien crewmember has landed unlawfully in the United States from a vessel or aircraft, the owner, agent, master, commanding officer, or consignee of the vessel or aircraft shall—

(1) report the unlawful landing in writing to an immigration officer; and

(2) give the immigration officer a description of the crewmember and information likely to lead to taking the crewmember into custody.

§ 2703. Conditional permits to land temporarily

(a) GENERAL REQUIREMENT.—An alien crewmember may land temporarily in the United States only as provided under this section or section 2705(b), 6122, or 6123 of this title.

(b) AUTHORITY TO GRANT PERMITS.—Under regulations the Attorney General prescribes, an immigration officer may grant an alien crewmember a conditional permit to land temporarily in the United States if the officer finds, after inspection, that the crewmember—

(1) is a nonimmigrant under section 2305 of this title;

(2) otherwise is admissible; and

(3) has agreed to accept the permit.

(c) PERIOD OF VALIDITY.—A permit granted under subsection (b) of this section is valid for not more than—

(1) the period (but not more than 29 days) that the vessel or aircraft on which the alien crewmember arrived remains in port if the immigration officer is satisfied the crewmember intends to leave on that vessel or aircraft; or

(2) 29 days if the immigration officer is satisfied the crewmember intends to leave on another vessel or aircraft within the period for which the crewmember is allowed to land.

(d) REVOCATION.—(1) If an alien is granted a permit for a period under subsection (c)(1) of this section, and an immigration officer then decides the alien is not a crewmember or does not intend to leave on the vessel or aircraft on which the alien arrived, the immigration officer, under regulations prescribed by the Attorney General, may—

(A) revoke the permit;

(B) take the alien into custody; and

(C) if practicable, require the master or commanding officer of the vessel or aircraft on which the alien arrived to detain the alien on the vessel or aircraft.

(2) The owner of the vessel or aircraft on which an alien, detained under paragraph (1)(C) of this subsection, arrived in the United States shall pay the costs of detaining and deporting the alien.

(3) An alien detained under paragraph (1)(C) of this subsection is not entitled to a deportation proceeding under section 6532 of this title.

§ 2704. Control of alien crewmembers

(a) DETENTION AND DEPORTATION.—The owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft arriving in the United States from a place outside the United States shall—

(1) detain an alien crewmember on the vessel, or, at the expense of the aircraft owner, detain an alien crewmember of an aircraft at a place an immigration officer designates, until—

(A) an immigration officer inspects, and a medical officer examines, the alien crewmember; and

(B) the alien crewmember is—

(i) granted a conditional permit to land temporarily under section 2703(b) of this title; or

(ii) allowed to land temporarily under section 2705(b) or 6123 of this title for medical or hospital treatment; and

(2) deport an alien crewmember if required by an immigration officer, whether before or after the crewmember is allowed to land temporarily under section 2703(b), 2705(b), or 6123 of this title.

(b) PROOF OF FAILURE TO DETAIN OR DEPORT.—Except as the Attorney General prescribes by regulation, proof that the name of an alien crew-

member is not on the outgoing manifest of the vessel or aircraft on which the crewmember arrived in the United States from a place outside the United States, or that the master or commanding officer of the vessel or aircraft reported the crewmember as a deserter, is prima facie evidence of the failure to detain or deport the crewmember.

(c) DEPORTATION ON ANOTHER VESSEL OR AIRCRAFT.—(1) If the Attorney General finds that deporting an alien crewmember under this section on the vessel or aircraft on which the crewmember arrived is impracticable or will cause unreasonable hardship to the crewmember, the Attorney General may require the crewmember to be deported from any port on another vessel or aircraft of the same owner unless the Attorney General finds deportation on such a vessel or aircraft to be impracticable. The owner of the vessel or aircraft on which the crewmember arrived shall pay the costs of deporting the crewmember as required by this subsection, including the costs of transferring the crewmember within the United States under conditions the Attorney General prescribes. The vessel or aircraft may be cleared only after the costs are paid or the Attorney General is satisfied that payment is guaranteed.

(2) A transfer under this subsection is not a landing under this title.

§ 2705. Alien crewmembers afflicted with certain disabilities and diseases

(a) EMPLOYMENT PROHIBITIONS.—An alien crewmember afflicted with feeble-mindedness, insanity, epilepsy, tuberculosis, leprosy, or a dangerous contagious disease may not be employed on a vessel or aircraft carrying passengers when the vessel or aircraft arrives in the United States from a place outside the United States.

(b) HOSPITALIZATION AND OBSERVATION.—An alien crewmember found on arrival at a port in the United States to be afflicted with feeble-mindedness, insanity, epilepsy, tuberculosis, leprosy, or a dangerous contagious disease shall be treated in a hospital designated by the immigration officer in charge of the port. An alien crewmember suspected of being afflicted may be removed from the vessel or aircraft on which the alien crewmember arrived to an appropriate place for observation to enable an examining medical officer to decide whether the crewmember is afflicted.

(c) PAYMENT OF COSTS.—The owner, agent, master, commanding officer, or consignee of the vessel or aircraft on which the alien crewmember arrived shall pay all costs incurred under subsection (b) of this section, including burial if the crewmember dies. The costs may not be deducted from the pay of the crewmember. The vessel or aircraft may be cleared only after the costs are paid or payment is guaranteed and the Secretary of the Treasury is notified by the immigration officer in charge of the port.

(d) RETURNING AN INCURABLE CREWMEMBER.—When the immigration officer in charge of the port is satisfied that a crewmember hospitalized under subsection (b) of this section cannot be cured within a reasonable time, the owner of the vessel or aircraft on which the crewmember arrived shall return the crewmember or pay the costs of returning the crewmember under conditions the Attorney General prescribes to ensure that the crewmember is cared for properly and the spread of contagious disease is prevented.

§ 2706. Discharging alien crewmembers

A person may pay off or discharge an alien crewmember (except a crewmember lawfully admitted for permanent residence) employed on a vessel or aircraft arriving in the United States only with the consent of the Attorney General.

SUBCHAPTER II—LONGSHORE WORK

§ 2721. Definition

In this subchapter, ''longshore work''—

(1) means an activity in the United States or the coastal waters of the United States related to—

(A) loading or unloading cargo of a vessel;

(B) operating cargo-related equipment; and

(C) handling mooring lines on the dock when the vessel is made fast or let go; but

(2) does not include loading or unloading cargo for which the Secretary of Transportation has prescribed regulations under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), chapter 37 of title 46, section 105 or 106 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1804, 1805), or section 4106 of the Oil Pollution Act of 1990 (Public Law 101–380, 104 Stat. 513) on—

(A) handling or stowing that cargo;

(B) manning, and the duties, qualifications, and training of the officers and crewmembers of, vessels transporting that cargo; and

(C) reducing or eliminating discharge during ballasting, tank cleaning, or handling of that cargo.

§ 2722. General

An alien crewmember may perform longshore work only as provided by section 2723, 2724, or 2725 of this title.

§ 2723. Prevailing practice

(a) GENERAL.—(1) An alien crewmember performing a particular activity of longshore work in or around a port is serving in a capacity required for normal operation and service on a vessel under section 2305(a) of this title if—

(A) each collective bargaining agreement for that port covering at least 30 percent of the employees performing longshore work allows that activity to be performed by alien crewmembers; or

(B)(i) there is no collective bargaining agreement for the port covering at least 30 percent of the employees performing longshore work; and

(ii) except as provided by paragraph (2) of this subsection, an employer of the alien crewmember or the employer's designated representative files an attestation described by subsection (b)(1) of this section with the Secretary of Labor at least 14 days before the date the activity will be performed or, if necessary because of an unanticipated emergency, not later than the date the activity will be performed.

(2) An employer must file an attestation under paragraph (1)(B)(ii) of this subsection for a particular activity of longshore work involving the use of an automated self-loading conveyor belt or vacuum-actuated system on a vessel only if the Secretary finds under subsection (f)(2) of this section that the activity is not an activity described by subsection (b)(1)(A) of this section.

(b) ATTESTATION REQUIREMENTS.—(1) The attestation filed with the Secretary under subsection (a) of this section shall provide evidence that—

(A) the performance of the particular activity of longshore work by an alien crewmember is allowed under the prevailing practice at the port at the time of the filing and that the alien crewmember is not being employed for that activity—

(i) during a strike or lockout in a labor dispute; or

(ii) to influence an election of a bargaining representative for employees in the port; and

(B) the owner, agent, master, commanding officer, or consignee has given notice of the attestation—

(i) to the bargaining representative of longshore workers at the port; or

(ii) if there is no bargaining representative, to the longshore workers employed at the port.

(2) An attestation—

(A) expires at the end of the one-year period beginning on the date it is filed under subsection (a) of this section; and

(B) applies to alien crewmembers arriving in the United States during that period if the owner, agent, master, commanding officer, or consignee states in each list provided under section 2701 of this title that the employer continues to comply with the conditions in the attestation.

(3) An owner, agent, master, commanding officer, or consignee may provide a single list under section 2701 of this title to meet the requirements of paragraph (2)(B) of this subsection for more than one alien crewmember.

(c) PUBLIC INFORMATION.—The Secretary shall compile and make available for public examination in a timely way in the District of Columbia—

(1) information identifying each owner, agent, master, commanding officer, and consignee that has filed a list under section 2701 of this title for an alien crewmember classified as a nonimmigrant under section 2305(a) of this title for whom an attestation under subsection (a) of this section or section 2725(b) of this title is filed; and

(2) for each employer a copy of—

(A) the attestation and accompanying documentation; and

(B) each list filed for the employer under section 2701 of this title and described by clause (1) of this subsection.

(d) COMPLAINTS.—(1) Any adversely affected person, including a bargaining representative, association the Secretary decides is appropriate, or other adversely affected person as provided under regulations of the Secretary, may file a complaint—

(A) about an employer's failure to meet conditions stated in an attestation filed under subsection (a) of this section;

(B) about an employer's misrepresentation of a material fact in the attestation; or

(C) for longshore work described by subsection (a)(2) of this section, that the particular activity of longshore work is not an activity described by subsection (b)(1)(A) of this section.

(2) The Secretary shall establish a procedure for receiving, investigating, and disposing of complaints filed under this subsection. The Secretary shall conduct an investigation under this subsection promptly if there is reasonable cause to believe the allegations of the complaint.

(3)(A) If the Secretary decides that reasonable cause exists to conduct an investigation about a complaint filed under paragraph (1)(A) or (B) of this subsection, the person making the complaint may request that the employer stop, during the hearing procedure under subsection (e) of this section, the particular activity of longshore work attested to by the employer. The employer shall be notified of the request and shall respond not later than 14 days after receiving the notice.

(B) If the Secretary makes an initial decision that the complaint is supported by a preponderance of the evidence submitted, the Secretary immediately shall require that the employer stop that activity until after the hearing procedure under subsection (e) of this section.

(4)(A) If the Secretary decides that reasonable cause exists to conduct an investigation about a complaint under paragraph (1)(C) of this subsection, the person making the complaint may request that the employer stop, during the hearing procedure under subsection (e) of this section, the particular activity of longshore work involved in the complaint unless the employer files an attestation with the Secretary under subsection (a) of this section. The employer shall be notified of the request and shall respond not later than 14 days after receiving the notice.

(B) If the Secretary makes an initial decision that the complaint is supported by a preponderance of the evidence submitted, the Secretary immediately shall require that the employer stop that activity until after the hearing procedure under subsection (e) of this section, unless the employer files an attestation under subsection (a) of this section.

(e) PROCEEDINGS.—Not later than 180 days after a complaint is filed under subsection (d) of this section, or later for good cause shown, the Secretary shall decide whether a basis exists to make a finding described by subsection (f) of this section. The Secretary shall give interested persons notice of that decision and an opportunity for a hearing on the complaint not later than 60 days after making the decision.

(f) FINDINGS.—(1)(A) If, after notice and an opportunity for a hearing under subsection (e) of this section, the Secretary finds that an employer has failed to meet a condition, or has misrepresented a material fact, in an attestation filed under subsection (a) of this section, the Secretary—

(i) shall notify the Attorney General of the finding; and

(ii) may impose other administrative remedies, including a civil penalty under section 10118 of this title, the Secretary decides are appropriate.

(B) When the Attorney General receives notice under this paragraph, the Attorney General shall deny any vessel owned or chartered by the employer entry to a port of the United States for not more than one year.

(2) For longshore work described by subsection (a)(2) of this section, if the Secretary finds, after notice and an opportunity for a hearing under subsection (e) of this section and based on a preponderance of the evidence submitted by any interested person, that the particular activity of longshore work is not an activity described by subsection (b)(1)(A) of this section—

(A) the Secretary shall notify the Attorney General of the finding; and

(B) the employer shall file an attestation under subsection (a) of this section for that activity.

(3) When the Secretary finds that an alien crewmember is not allowed to perform a particular activity of longshore work under the prevailing prac-

tice at a port, another attestation under subsection (a) of this section about that activity in that port may not be filed for one year.

(g) LONGSHORE WORK IN ALASKA.—Except as provided by section 2725(c) of this title, this section does not apply to longshore work performed in Alaska.

§ 2724. Reciprocity

(a) DEFINITION.—In this section, ''practice'' means an activity normally performed in a foreign country during the one-year period before a vessel arrives in the United States or the coastal waters of the United States.

(b) GENERAL.—(1) An alien crewmember preforming a particular activity of longshore work in or about a port is serving in a capacity required for normal operation and service on a vessel under section 2305(a) of this title, and the Attorney General shall allow an alien crewmember on a vessel to perform a particular activity of longshore work, if—

(A) that vessel is registered in a foreign country that by law, regulation, or practice does not prohibit that activity by crewmembers on United States vessels; or

(B) nationals of a foreign country that, by law, regulation, or practice does not prohibit that activity by crewmembers on United States vessels, hold a majority ownership interest in that vessel.

(2) The Secretary of State shall compile and annually maintain, under section 553 of title 5, a list, by particular activity of longshore work, of foreign countries in which crewmembers on United States vessels are prohibited by law, regulation, or practice from performing a particular activity of longshore work.

§ 2725. Longshore work in Alaska

(a) DEFINITIONS.—In this section—

(1) ''contract stevedoring companies'' means those stevedoring companies licensed to do business in Alaska that meet the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932).

(2) ''employer'' includes any agent or representative designated by the employer.

(b) GENERAL.—(1) An alien crewmember performing a particular activity of longshore work at a particular location in Alaska is serving in a capacity required for normal operation and service on a vessel under section 2305(a) of this title if an employer of the alien crewmember files an attestation with the Secretary of Labor at least 30 days before the date the activity will be performed or at least 24 hours before the activity will be performed if the employer shows that the employer reasonably could not have anticipated the need to file an attestation for that location at that time.

(2) The attestation filed under paragraph (1) of this subsection shall provide evidence that—

(A) the employer will request from the parties to whom notice has been given under clause (D) (ii) and (iii) of this paragraph United States longshore workers who, under industry standards in Alaska, including safety considerations, are qualified and available in sufficient numbers to perform the activity at the particular time and location, except that—

(i) when 2 or more contract stevedoring companies have signed a joint collective bargaining agreement with a single labor organization described by clause (D)(i) of this paragraph, the employer may request longshore workers from only one of those companies; and

(ii) a request to a private dock operator for longshore workers may be made only for longshore work to be performed at that dock and only if the operator meets the requirements of section 32 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 932);

(B) the employer will employ all those United States longshore workers made available under clause (A) of this paragraph who, under industry standards in Alaska, including safety considerations, are qualified and available in sufficient numbers and who are needed to perform the longshore activity at the particular time and location;

(C) using alien crewmembers for that activity is not intended or designed to influence an election of a bargaining representative for workers in Alaska; and

(D) the employer has given notice of the attestation—

(i) to labor organizations recognized as exclusive bargaining representatives of United States longshore workers within the meaning of the National Labor Relations Act (29 U.S.C. 141 et seq.) and that make, or intend to make, workers available at the particular location where the longshore work is to be performed;

(ii) to contract stevedoring companies that employ or intend to employ United States longshore workers at the location; and

(iii) to operators of private docks at which the employer will use longshore workers.

(3)(A) During the period that an attestation an employer files under paragraph (1) of this subsection is valid, the employer must request and employ United States longshore workers as provided under paragraph (2) before using alien crewmembers to perform the activity specified in the attestation. However, an employer is not required to request United States

longshore workers from a person who has given the employer written notice that the person does not intend to make United States longshore workers available at the particular location where the longshore work is to be performed.

(B) If a person that provided notice under subparagraph (A) of this paragraph later gives the employer written notice that the person is prepared to make available United States longshore workers who, under industry standards in Alaska, including safety considerations, are qualified and available in sufficient numbers to perform the longshore activity at the particular location where the longshore work is to be performed, the obligation of the employer to that person under paragraph (2) (A) and (B) of this subsection begins 60 days after the date the notice was given under this clause.

(4)(A) An employer filing an attestation under paragraph (1) of this subsection is not required—

(i) to hire less than a full work unit of United States longshore workers needed to perform the longshore activity;

(ii) to provide overnight accommodations for the longshore workers while employed; or

(iii) to provide transportation to the particular location where the longshore activity will be performed, except where—

(I) surface transportation is available;

(II) that transportation may be accomplished safely;

(III) travel time to the vessel is not more than one-half hour each way; and

(IV) travel distance to the vessel from the point of embarkation is not more than 5 miles.

(B) In the case of Wide Bay, Alaska, and Klawock/Craig, Alaska, the travel time and distance described by clause (A)(iii) of this paragraph are extended to 45 minutes and 7.5 miles, respectively, unless the person responding to the request for longshore workers agrees to the lesser time and distance limitations described by clause (A)(iii).

(5) Except as provided by section 2723(c)–(e) of this title, an attestation filed under paragraph (1) of this subsection—

(A) expires at the end of the one-year period beginning on the date specified in the attestation that the employer anticipates the longshore work will begin; and

(B) applies to alien crewmembers arriving in the United States during that period if the owner, agent, master, commanding officer, or consignee states in each list provided under section 2701 of this title that the employer continues to comply with the conditions in the attestation.

(c) APPLICATION OF SECTION 2723.—(1) Except as provided by paragraph (2) of this subsection, section 2723(b)(3)–(f)(2) of this title applies to an attestation filed under subsection (b)(1) of this section.

(2) Section 2723 of this title applies to the use of alien crewmembers to perform longshore work in Alaska involving the use of an automated self-loading conveyor belt or vacuum-actuated system on a vessel.

(d) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section.

§ 2726. Relationship to other laws and application

This section does not affect—

(1) the meaning or scope of longshore work under another provision of law, a collective bargaining agreement, or an international agreement; or

(2) the performance of longshore work by nationals of the United States.

CHAPTER 29—FACILITIES EMPLOYING REGISTERED NURSES

2901. Definition.
2902. Attestation requirements.
2903. State plans.
2904. Public availability of information.
2905. Complaints, investigations, and penalties.

§ 2901. Definition

In this chapter, ''facility'' includes an employer that employs registered nurses in a home setting.

§ 2902. Attestation requirements

(a) GENERAL.—Except as provided by subsection (b) of this section, a facility seeking to employ a nonimmigrant registered nurse under section 2325 of this title must file with the Secretary of Labor an attestation stating the following:

(1) A substantial disruption in the delivery of health care services of the facility would occur through no fault of the facility without the services of a nonimmigrant registered nurse.

(2) Employment of a nonimmigrant registered nurse will not adversely affect the wages and working conditions of other registered nurses similarly employed.

(3) A nonimmigrant registered nurse employed by the facility will be paid at the wage rate paid for other registered nurses similarly employed by the facility.

(4) The facility—

(A) has taken or is taking timely and significant steps to recruit and retain sufficient registered nurses who are citizens of the United States or immigrants authorized to perform nursing serv-

ices, to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses; or

(B) is subject to a State plan for the recruitment and retention of nurses approved under section 2903 of this title.

(5) There is no strike or lockout in the course of a labor dispute, and the employment of nonimmigrant registered nurses is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(6) At the time of filing the petition under section 2325(c) of this title, the facility has given notice of the filing to the bargaining representative of the registered nurses employed by the facility or, if there is no bargaining representative, to the registered nurses employed by the facility by posting the notice in conspicuous locations.

(b) WAIVERS.—For a nonimmigrant registered nurse performing services at a worksite (except at the employer's worksite or at a worksite controlled by the employer) and for whom the employer has filed an attestation under subsection (a) of this section, the Secretary may waive the requirement to file an attestation for the worksite as may be appropriate—

(1) to avoid duplicative attestations;

(2) in temporary, emergency situations;

(3) for information the attestor does not know; or

(4) for other good cause.

(c) FAULT IF FACILITY HAS LAID OFF NURSES.—A facility does not meet subsection (a)(1) of this section if the facility has laid off registered nurses within the prior year. However, a facility that lays off a registered nurse (except a staff nurse) meets subsection (a)(1) if the facility has attested that it will not replace the nurse with a nonimmigrant registered nurse described by section 2325(b) of this section for one year after the date of the layoff.

(d) SIGNIFICANT STEPS TO RECRUIT AND RETAIN NURSES.—(1) Each of the following is a significant step reasonably designed to recruit and retain registered nurses meeting the requirement of subsection (a)(4)(A) of this section:

(A) operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(B) providing career development programs and other methods of facilitating health care workers to become registered nurses.

(C) paying registered nurses at a rate higher than that currently being paid to registered nurses similarly employed in the geographic area.

(D) providing adequate support services to free registered nurses from administrative and other non-nursing duties.

(E) providing reasonable opportunities for meaningful salary advancement by registered nurses.

(2) Paragraph (1) of this subsection is not an exclusive list of the steps that may be taken to meet the requirement of subsection (a)(4)(A) of this section. A facility is not required to take more than one step if the facility can demonstrate that taking an additional step is not reasonable.

(e) EFFECTIVENESS OF ATTESTATION.—(1) Subject to section 2905 of this title, an attestation under subsection (a) of this section—

(A) expires at the end of the one-year period beginning on the date the attestation is filed with the Secretary; and

(B) applies to petitions filed during that one-year period if the facility states in each petition filed under section 2325(c) of this title that it continues to comply with the conditions in the attestation.

(2) A facility may file a single petition to meet the requirements of this section for more than one registered nurse.

§ 2903. State plans

The Secretary of Labor shall provide for a procedure under which a State may submit to the Secretary of Labor a plan for the recruitment and retention of citizens of the United States and immigrants authorized to perform nursing services as registered nurses in facilities in the State. A plan may include counseling and educating health workers and other individuals about employment opportunities available to registered nurses. Annually in consultation with the Secretary of Health and Human Services, the Secretary of Labor shall provide for approving or disapproving the State plan as provided by section 2902(a)(4)(B) of this title. A plan may be approved in regard to a facility only if the plan provides for taking significant steps described by section 2902(a)(4)(A) of this title to recruit and retain registered nurses at that facility.

§ 2904. Public availability of information

The Secretary of Labor shall compile and make available for public examination in a timely manner in the District of Columbia—

(1) a list of facilities that have filed petitions to employ nonimmigrant registered nurses applying to be classified under section 2325 of this title; and

(2) for each facility, a copy of the petitions, attestations, and accompanying documentation filed by each facility.

§ 2905. Complaints, investigations, and penalties

(a) COMPLAINTS AND INVESTIGATIONS.—(1) The Secretary of Labor shall establish a procedure for receiving, investigating, and disposing of

complaints filed about a facility's failure to satisfy a condition attested to, or a facility's misrepresentation of a material fact, in an attestation.

(2) Any person adversely affected by an attestation under section 2902(a) of this title, including a bargaining representative, association the Secretary decides is appropriate, or other adversely affected person, may file a complaint with the Secretary. The Secretary shall conduct an investigation if there is reasonable cause to believe that the facility does not meet a condition attested to.

(3) Not later than 180 days after a complaint is filed, the Secretary shall decide whether a basis exists to make a finding described by subsection (b) of this section. If the Secretary decides that a basis exists, the Secretary shall give notice of that decision to the interested parties and an opportunity for a hearing on the complaint not later than 60 days after making the decision.

(b) FINDINGS AND PENALTIES.—(1) If the Secretary finds, after notice and an opportunity for a hearing, that a facility has failed to satisfy a condition attested to or has misrepresented a material fact in an attestation, the Secretary—

(A) shall notify the Attorney General of the finding;

(B) may impose other administrative remedies, including a civil penalty of not more than $1,000 for each violation; and

(C) if the facility has not paid the prevailing wage as attested to under section 2902(a)(3) of this title, shall order the facility to pay an amount of back wages necessary to comply with section 2902(a)(3).

(2) For at least one year after receiving notice under paragraph (1)(A) of this subsection, the Attorney General may not approve a petition filed under subsection 2325(c) of this title by that facility for the employment of a nonimmigrant registered nurse.

PART B—IMMIGRANTS

CHAPTER 41—NUMERICAL LIMITATIONS

Sec.
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§ 4101. General requirements

Except for aliens described by section 4102(d) of this title, an alien may be granted an immigrant visa or otherwise become an alien lawfully admitted for permanent residence only if—

(1)(A) the alien is a family-sponsored immigrant described by section 4103(b)–(e) of this title or admitted under section 4311(a)(1) of this title because a visa previously was granted to the accompanying parent under section 4103(b)–(e) of this title; and

(B) the numerical limitations of section 4102(a) of this title are not exceeded;

(2)(A) the alien is an employment-based immigrant described by sections 4104(b)–(f) and 4106(a) of this title or admitted under section 4311(a)(1) of this title because a visa previously was granted to the accompanying parent under section 4104(b)–(f) or 4106(a) of this title; and

(B) the numerical limitations of section 4102(b) of this title are not exceeded; or

(3)(A) for fiscal years beginning after September 30, 1994, the alien is a diversity immigrant described by section 4105(c)–(h) of this title or admitted under section 4311(a)(1) of this title because a visa previously was granted to the accompanying parent under section 4105(c)–(h) of this title; and

(B) the numerical limitations of section 4102(c) of this title are not exceeded.

§ 4102. Annual worldwide numerical limitations

(a) FAMILY-SPONSORED IMMIGRANTS.—(1) The worldwide numerical limitation for family-sponsored immigrants for a fiscal year is the greater of—

(A)(i) 480,000 (except that for the fiscal year ending September 30, 1994, the maximum number is 465,000); minus

(ii) the number of aliens described by subsection (d)(6)–(8) of this section granted immigrant visas or who otherwise became aliens lawfully admitted for permanent residence in the prior fiscal year; plus

(iii) any difference between the maximum number of employment-based immigrant visas that could have been granted and the number that were granted during the prior fiscal year; or

(B) 226,000.

(2) In each of the first 3 quarters of a fiscal year, the number of aliens granted visas and otherwise becoming aliens lawfully admitted for permanent residence as family-sponsored immigrants may not be more than 27 percent of the numerical limitation computed under paragraph (1) of this section for that fiscal year.

(b) EMPLOYMENT-BASED IMMIGRANTS.—(1) The worldwide numerical limitation for employment-based immigrants for a fiscal year is—

(A) not more than 140,000; plus

(B) any difference between the maximum number of family-sponsored immigrant visas that could have been granted and the number that were granted during the prior fiscal year.

(2) In each of the first 3 quarters of a fiscal year, the number of aliens granted visas and otherwise becoming aliens lawfully admitted for permanent residence as employment-based immigrants may not be more than 27 percent of the numerical limitation computed under paragraph (1) of this section for that fiscal year.

(c) DIVERSITY IMMIGRANTS.—(1) The worldwide numerical limitation for diversity immigrants for a fiscal year is 55,000.

(2) In each of the first 3 quarters of a fiscal year, the number of aliens granted visas and otherwise becoming aliens lawfully admitted for permanent residence as diversity immigrants may not be more than 27 percent of the numerical limitation computed under paragraph (1) of this section for that fiscal year.

(d) NONAPPLICATION.—The numerical limitations of this section do not apply to—

(1) a special immigrant as defined by section 137(a)(1) or (2) of this title;

(2) an alien admitted under section 5105 of this title or whose status is changed under section 5107 of this title;

(3) an alien who becomes lawfully admitted for permanent residence under chapter 93 of this title or section 210 or 210A of the Immigration and Nationality Act (ch. 477, 66 Stat. 163);

(4) an alien whose deportation is suspended under section 6538(a) of this title;

(5) an alien whose status is changed to that of an alien lawfully admitted for permanent residence under section 9104 of this title;

(6) an immediate relative;

(7) an alien admitted under section 4311(a)(1) of this title because the accompanying parent is an immediate relative previously granted a visa; and

(8) an alien born to an alien lawfully admitted for permanent residence during a temporary visit outside the United States.

§ 4103. Visa allocation for family-sponsored immigrants

(a) GENERAL.—Aliens subject to the worldwide numerical limitation of section 4102(a) of this title for qualified family-sponsored immigrants shall be allocated visas each fiscal year as provided by this section.

(b) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Not more than 23,400 visas, plus visas not required under subsection (e) of this section, shall be allocated to unmarried sons and unmarried daughters of citizens of the United States.

(c) FAMILIES OF ALIENS LAWFULLY ADMITTED.—Not more than 114,200 visas, plus the number by which the worldwide numerical limitation is more than 226,000, plus visas not required under subsection (b) of this section, shall be allocated to the spouses, children, and unmarried sons and unmarried daughters (but not children) of aliens lawfully admitted for permanent residence. At least 77 percent of visas allocated under this subsection shall be made available to those spouses and children.

(d) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Not more than 23,400 visas, plus visas not required under subsections (b) and (c) of this section, shall be allocated to married sons and married daughters of citizens of the United States.

(e) BROTHERS AND SISTERS OF CITIZENS.—Not more than 65,000 visas, plus visas not required under subsections (b)–(d) of this section, shall be allocated to brothers and sisters of citizens of the United States who are at least 21 years of age.

§ 4104. Visa allocation for employment-based immigrants

(a) GENERAL.—Aliens subject to the worldwide numerical limitation of section 4102(b) of this title for qualified employment-based immigrants shall be allocated visas each fiscal year as provided by this section.

(b) PRIORITY WORKERS.—(1) A number of visas equal to not more than 28.6 percent of the worldwide numerical limitation of section 4102(b) of this title, plus visas not required under subsections (e) and (f) of this section, shall be allocated to the following aliens:

(A) a qualified immigrant—

(i) having extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim;

(ii) whose achievements have been recognized in the field through extensive documentation;

(iii) who is seeking to enter the United States to continue work in the area of extraordinary ability; and

(iv) whose entry will benefit the United States substantially.

(B) a qualified immigrant—

(i) recognized internationally as outstanding in a specific academic area;

(ii) with at least 3 years of teaching or research experience in the academic area; and

(iii) who is seeking to enter the United States for a tenured (or tenure-track) position in a university or institution of higher education to teach in the academic area, for a comparable position with a university or institute of higher education to conduct research in the area, or for a comparable position to conduct research in the area with a department, division, or institute of a private employer that employs at least 3 individuals full-time in research activities and has achieved documented accomplishments in an academic field.

(C) a qualified immigrant—

(i) who, in the 3 years prior to the application for classification and admission to the United States under this paragraph, has been employed for at least one year by an entity or an affiliate or subsidiary of the entity; and

(ii) who is seeking to enter the United States to continue to provide services to the same employer, or an affiliate or subsidiary of the employer, in a managerial or executive capacity.

(2) In applying paragraph (1)(C) of this subsection, a partnership or similar organization organized outside the United States to provide accounting services is deemed to be an affiliate of a partnership organized in the United States to provide accounting services if—

(A) the partnership or similar organization organized outside the United States markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization owned and controlled by the member accounting firms of which the United States partnership is also a member; and

(B) the United States partnership markets its accounting services under the same internationally recognized name under an agreement with the worldwide coordinating organization.

(c) MEMBERS OF PROFESSIONS.—(1) A number of visas equal to not more than 28.6 percent of the worldwide numerical limitation of section 4102(b) of this title, plus visas not required under subsection (b) of this section, shall be allocated to qualified immigrants—

(A) who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business will benefit substantially the economy, cultural or educational interests, or welfare of the United States; and

(B) whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(2) An alien may be granted an immigrant visa under this subsection only if the consular officer has received the decision and certification of the Secretary of Labor under subsection (g)(2) of this section.

(3) When the Attorney General considers it to be in the interest of the United States, the Attorney General may waive the requirement of paragraph (1) of this subsection that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(4) Possession of a degree, diploma, certificate, or similar award from an institution of learning, a license to practice, or certification for a profession or occupation is not sufficient evidence by itself under paragraph (1) of this subsection that an immigrant has exceptional ability.

(d) SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—(1) Except as provided by paragraph (2) of this subsection, a number of visas equal to not more than 28.6 percent of the worldwide numerical limitation of section 4102(b) of this title, plus visas not required under subsections (b) and (c) of this section, shall be allocated to the following aliens not described by subsection (c)(1) of this section:

(A) a qualified immigrant who is capable, when petitioning for classification under this subsection, of performing skilled labor that requires at least 2 years training or experience, that is not temporary or seasonal, and for which qualified workers are not available in the United States.

(B) a qualified immigrant who holds a baccalaureate degree and is a member of a profession.

(C) a qualified immigrant capable, when petitioning for classification under this subsection, of performing unskilled labor that is not temporary or seasonal and for which qualified workers are not available in the United States.

(2) Not more than 10,000 of the visas allocated under this subsection in a fiscal year are available for immigrants described by paragraph (1)(C) of this subsection.

(3) An alien may be granted an immigrant visa under this subsection only if the consular officer has received the decision and certification of the Secretary of Labor under subsection (g)(2) of this section.

(e) CERTAIN SPECIAL IMMIGRANTS.—A number of visas equal to not more than 7.1 percent of the worldwide numerical limitation of section 4102(b) of this title shall be allocated to qualified special immigrants as defined by section 137(a)(3)–(13) of this title, except that not more than 5,000 of those visas may be allocated in a fiscal year to special immigrants as defined by section 137(a)(3)(A)(ii)(II) and (III) of this title.

(f) EMPLOYMENT CREATION.—(1) In this subsection—

(A) ''targeted employment area'' means, at the time of investment, a rural area or an area that has experienced unemployment that is at least 150 percent of the national average.

(B) ''rural area'' means an area not in a metropolitan statistical area or not in the outer boundary of a city or town having a population, based on the latest United States decennial census, of at least 20,000.

(2) A number of visas equal to not more than 7.1 percent of the worldwide numerical limitation of section 4102(b) of this title shall be allocated to qualified immigrants seeking to enter the United States to engage in a new commercial enterprise—

(A) that the alien has established;

(B) in which the alien has invested after November 29, 1990, or is actively in the process of investing, at least $1,000,000; and

(C) that will benefit the United States economy and create full-time employment for at least 10 United States citizens, aliens lawfully admitted for permanent residence, or other immigrants lawfully authorized to be employed in the United States, except the qualified immigrant and the qualified immigrant's spouse, sons, and daughters.

(3) At least 3,000 of the visas allocated under paragraph (1) of this subsection in each fiscal year shall be reserved for qualified immigrants who establish a new commercial enterprise described by paragraph (1) that will create employment in a targeted employment area.

(4)(A) In consultation with the Secretaries of Labor and State, the Attorney General may prescribe regulations increasing the amount specified by paragraph (2)(B) of this subsection.

(B) For an investment made in a targeted employment area, the Attorney General may specify that the amount of capital required under paragraph (2)(B) of this subsection be less than, but at least 50 percent of, the amount specified by paragraph (2)(B).

(C) For an investment made in a metropolitan statistical area that at the time of investment is not a targeted employment area and has an unemployment rate significantly below the national average, the Attorney General may specify that the amount of capital required under paragraph (2)(B) of this subsection be more than, but not more than 3 times, the amount specified in paragraph (2)(B).

(g) ADDITIONAL REQUIREMENTS FOR EMPLOYMENT-BASED IMMIGRANTS.—(1) An alien applying for a visa under subsection (c) or (d) of this section who is a graduate of a medical school not accredited by an entity approved by the Secretary of Education and who is coming to the Unit-

ed States principally to perform services as a member of the medical profession may be granted the visa only if the alien—

(A) has passed parts I and II of the National Board of Medical Examiners Examination or an examination the Secretary of Health and Human Services decides is equivalent, or on January 9, 1978, was fully and permanently licensed to practice medicine in a State and was practicing medicine in a State on that date; and

(B) is competent in oral and written English.

(2) An alien applying for a visa under subsection (c) or (d) of this section to perform skilled or unskilled labor may be granted the visa only if the Secretary of Labor decides and certifies to the Secretary of State and the Attorney General that—

(A) there are not enough workers who are able, willing, qualified (or equally qualified if the alien is a member of the teaching profession or has exceptional ability in the sciences or arts), and available when the alien applies for the visa and admission and where the alien is to perform that labor; and

(B) employment of the alien will not affect adversely the pay and working conditions of similarly employed workers in the United States.

(3) Before making a decision and certification under paragraph (2) of this subsection, the Secretary of Labor shall provide that—

(A) a certification may be made only if the applicant, when filing the application, has provided notice of the filing to the bargaining representative of the employer's employees in the occupational classification and area for which aliens are sought or, if there is no bargaining representative, to employees employed at the facility through posting at conspicuous locations; and

(B) any person may submit documentary evidence related to the application, including information on available workers, pay and working conditions, and the employer's failure to meet conditions of employing alien workers and co-workers.

§ 4105. Visa allocation for diversity immigrants

(a) DEFINITIONS.—In this section—

(1) ''high-admission foreign country'' means a foreign country for which the number determined under subsection (c) of this section is more than 50,000.

(2) ''high-admission region'' means a region for which the total of the numbers determined under subsection (c) of this section for foreign countries in the region is more than one-sixth of the total of the numbers for all foreign countries.

(3) ''low-admission foreign country'' means a foreign country that is not a high-admission foreign country.

(4) ''low-admission region'' means a region that is not a high-admission region.

(5) Northern Ireland is deemed to be a separate foreign country.

(6) an overseas dependent area of a foreign country is deemed to be part of the foreign country.

(7) the area in each of the following is a separate region:

(A) Africa.

(B) Asia.

(C) Europe.

(D) North America, except Mexico.

(E) Oceania.

(F) South America, Mexico, Central America, and the Caribbean.

(b) GENERAL.—Aliens subject to the worldwide numerical limitations of section 4102(c) of this title for qualified diversity immigrants shall be allocated visas for each fiscal year as provided by this section.

(c) DETERMINATION OF NUMBERS OF CERTAIN ALIENS.—For the most recent prior 5-year period for which information is available, the Attorney General shall determine the total number of aliens who are natives of each foreign country and who—

(1) were admitted or otherwise acquired the status of an alien lawfully admitted for permanent residence (except under this section); and

(2) were subject to the numerical limitations for family-sponsored and employment-based immigrants under sections 4103 and 4104 of this title or were admitted or otherwise acquired the status of an alien lawfully admitted for permanent residence as an alien described by section 4102(d)(6)–(8) of this title.

(d) IDENTIFICATION.—The Attorney General shall identify each high-admission foreign country and region and each low-admission country and region.

(e) PERCENTAGE AND RATIO DETERMINATIONS.—The Attorney General shall determine—

(1) the percentage of the total of the number determined under subsection (c) of this section that applies to foreign countries in high-admission regions;

(2) based on available estimates for each region, the total population of each region, excluding the population of any high-admission foreign country;

(3) for each low-admission region, the ratio of the population of the region determined under clause (2) of this subsection to the total population determined under clause (2) for all low-admission regions; and

(4) for each high-admission region, the ratio of the population of the region determined under clause (2) of this subsection to the total population determined under clause (2) for all high-admission regions.

(f) ALLOCATION OF VISAS.—(1) The percentage of visas allocated under this section to natives of a high-admission foreign country is 0.

(2) Except as provided by subsection (g) of this section, the percentage of visas allocated under this section to natives (except natives of a high-admission foreign country) in a low-admission region is the product of—

(A) the percentage determined under subsection (e)(1) of this section; multiplied by

(B) the population ratio for the region determined under subsection (e)(3) of this section.

(3) Except as provided by subsection (g) of this section, the percentage of visas allocated under this section to natives (except natives of a high-admission foreign country) in a high-admission region is the product of—

(A) 100 percent minus the percentage determined under subsection (e)(1) of this section; multiplied by

(B) the population ratio for the region determined under subsection (e)(4) of this section.

(g) REDISTRIBUTION OF VISAS AND LIMITATION.—(1) Except as provided by paragraph (2) of this subsection, if the Secretary of State estimates that the number of immigrant visas to be granted for a fiscal year to natives in a region under this section will be less than the number of immigrant visas allocated for the fiscal year to those natives under this section, the excess visa numbers shall be made available to natives (except natives of a high-admission foreign country) of the other regions in proportion to the percentages specified in subsection (f)(2) and (3) of this section.

(2) The percentage of visas allocated under this section for a fiscal year to natives of a single foreign country may not be more than 7 percent of the total number of visas allocated under this section for the fiscal year.

(h) REQUIREMENT OF EDUCATION OR WORK EXPERIENCE.—An alien is eligible for a visa under this section only if the alien—

(1) has at least a high school education or its equivalent; or

(2) not later than 5 years after the date of the application for a visa has at least 2 years of work experience in an occupation requiring at least 2 years of training or experience.

(i) MAINTAINING INFORMATION.—The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants granted visas under this section.

§ 4106. Special immigrants having honorable military service

(a) TREATY AND AGREEMENT LIMITATION.—(1) The number of immigrant visas allocated in a fiscal year to special immigrants as defined by section 137(a)(13) of this title (except the spouse and children of such an immigrant) may not be more than—

(A) 2,000 for aliens who are nationals of a foreign country for which there was a treaty or agreement in effect on October 1, 1991, that authorized and limited the number of aliens who are nationals of the foreign country who may enlist each year in the armed forces of the United States; and

(B) 100 for aliens who are nationals of another foreign country.

(2) This subsection does not apply to individuals who met the definition of section 137(a)(13) on October 1, 1991.

(b) NONAPPLICATION OF NUMERICAL LIMITATIONS.—(1) Except as provided by paragraph (2) of this subsection, the numerical limitations of sections 4104 and 4111(a) and (b)(3) and (4) of this title do not apply to immigrant visas made available to special immigrants as defined by section 137(a)(13) of this title.

(2) The number of visas allocated in a fiscal year—

(A) under subsections (b), (c), and (d) of section 4104 of this title shall each be reduced by one-third of the number of visas allocated in the prior fiscal year to special immigrants as defined by section 137(a)(13) of this title;

(B) to natives of a foreign country under section 4111(a) and (b)(3) and (4) of this title shall be reduced by the number of visas allocated in the prior fiscal year to special immigrants as defined by section 137(a)(13) who are natives of the foreign country; and

(C) under subsections (b), (c), and (d) of section 4104 for a foreign country subject to section 4111(b)(1) and (2) of this title in that fiscal year and the prior fiscal year shall be reduced by one-third of the number of visas allocated in the prior fiscal year to special immigrants as defined by section 137(a)(13) who are natives of the foreign country.

§ 4107. Special immigrants employed in Panama

Not more than 15,000 aliens may be admitted to the United States as special immigrants as defined by section 137(a)(5)–(7) of this title. Not more than 5,000 aliens may be admitted in a fiscal year as special immigrants as defined by section 137(a)(5)–(7).

§ 4108. Status of spouses and children

The spouse or child (as defined by section 110(a)(1)–(5) of this title) accompanying or following to join an alien who is in a class described by section 4103, 4104, 4105, or 4106 of this title is entitled to be placed in the same class and preference order as the alien if the spouse or child otherwise is not entitled to immigrant status and the immediate granting of a visa under section 4103, 4104, 4105, or 4106.

§ 4109. Estimating number of visas to be granted

In carrying out sections 4103–4106, 4108, and 4313(a) and (b) of this title, the Secretary of State may make estimates of the anticipated number of immigrant visas to be granted during any quarter of a fiscal year under each class of sections 4103–4106 of this title. The Secretary may rely on those estimates in authorizing the granting of those visas.

§ 4110. Pilot program

(a) ESTABLISHMENT OF PROGRAM AND ALLOCATION OF VISAS.—The Secretary of State, with the Attorney General, shall set aside 300 visas each year for 5 years from the visas otherwise available under section 4104(f) of this title for a pilot program to carry out section 4104(f). The program shall include a regional center in the United States for promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The visas are allocated for aliens eligible for admission under section 4104(f) and spouses and children eligible under this title to accompany or follow to join the alien.

(b) DETERMINATION OF NUMBER OF JOBS CREATED.—In establishing compliance with section 4104(f)(2)(C) of this title and notwithstanding the requirements of section 204.6 of title 8, Code of Federal Regulations, the Attorney General shall allow aliens admitted under the program to establish reasonable methodologies for determining the number of jobs created by the program, including jobs estimated to have been created indirectly through revenue produced from increased exports resulting from the program.

§ 4111. Limitations on admissions from individual foreign countries

(a) TOTAL NUMBER OF VISAS AVAILABLE IN A FISCAL YEAR.—(1) Except as provided by this section, not more than 7 percent of the total number of immigrant visas allocated under sections 4103, 4104, and 4106 of this title in a fiscal year are allocated to natives of a foreign country, and not more than 2 percent of the total number are allocated to natives of a dependent area.

(2) If, because of the application of paragraph (1) of this subsection to at least one foreign country or dependent area, the total number of visas allocated under sections 4103, 4104, and 4106 of this title for a calendar

quarter is more than the number of qualified immigrants who otherwise may be granted a visa, paragraph (1) does not apply to visas allocated to any such foreign country or dependent area during the remainder of the calendar quarter.

(3) Except for the United States and American Samoa, an independent country, self-governing dominion, or territory under the international trusteeship system of the United Nations is a foreign country under this subsection when approved by the Secretary.

(4) Approval is deemed to have been given under paragraph (3) of this subsection to—

(A) Taiwan (China); and

(B) Hong Kong.

(5) The Secretary of State shall specify the foreign country to which any other inhabited land is to be attributed. The Secretary shall issue appropriate instructions to diplomatic and consular offices when the territorial limits of a foreign country change and the Secretary recognizes the change.

(b) ALLOCATION WHEN MAXIMUM NUMBER OF VISAS ALLOCATED.—(1) If the total number of immigrant visas allocated under sections 4103, 4104, and 4106 of this title to natives of a foreign country or dependent area is more than the applicable numerical limitation established under subsection (a)(1) of this section in a fiscal year, visa numbers for natives of that country or area shall be allocated under sections 4103, 4104, and 4106 (to the extent practicable and otherwise consistent with this section and sections 4103, 4104, and 4106) so that—

(A) the ratio of the visa numbers allocated under section 4103 of this title to the visa numbers made available under sections 4104 and 4106 of this title equals the ratio of the worldwide numerical limitations of section 4102(a) of this title to the worldwide numerical limitation under section 4102(b) of this title;

(B) except as provided by paragraphs (3) and (4) of this subsection, the proportion of the visa numbers allocated under each of subsections (b), (c), (d), and (e) of section 4103 of this title equals the ratio of the total number of visas allocated under each of those subsections to the total number of visas allocated under section 4103; and

(C) the proportion of the visa numbers allocated under each of subsections (b), (c), (d), (e), and (f) of section 4104 of this title equals the ratio of the total number of visas allocated under each of those subsections to the total number of visas allocated under sections 4104 and 4106.

(2) Paragraph (1) of this subsection does not limit the number of visas that may be granted—

(A) to natives of a foreign country or dependent area under section 4103 of this title if there is insufficient demand for visas for those natives under sections 4104 and 4106 of this title;

(B) to natives of a foreign country or dependent area under sections 4104 and 4106 of this title if there is insufficient demand for visas for those natives under section 4103 of this title; or

(C) under paragraph (3)(A) of this subsection.

(3) Of the visa numbers allocated under section 4103(c) of this title in a fiscal year to qualified immigrants who are the spouses and children of aliens lawfully admitted for permanent residence—

(A) 75 percent of the 77 percent of the total number of visas allocated to those immigrants shall be granted without regard to the numerical limitation established under subsection (a)(1) of this section; and

(B) 25 percent of the 77 percent shall be allocated for a foreign country or dependent area subject to paragraph (1) of this subsection only to the extent the total number of visas granted under subparagraph (A) of this paragraph to natives of the country or area is less than 77 percent of the maximum number of visas that may be allocated under section 4103(c) of this title to immigrants who are natives of the country or area under section 4103(c) consistent with paragraph (1).

(4) For a foreign country or dependent area to which paragraph (1) of this subsection applies—

(A) the number of immigrant visas that may be allocated under section 4103(c) of this title to natives of the country or area who are qualified immigrants and the unmarried sons and unmarried daughters (but not children) of aliens lawfully admitted for permanent residence may not be more than the greater of—

(i) 23 percent of the maximum number of visas that may be allocated under section 4103(c) of this title to immigrants of the country or area described by section 4103(c) consistent with paragraph (1) of this subsection; or

(ii) the number, if any, by which the maximum number of visas that may be allocated under section 4103(c) of this title to immigrants of the country or area described by section 4103(c) is more than the number of visas granted under section 4103(c) to qualified immigrants who are the spouses and children of aliens lawfully admitted for permanent residence; and

(B) if the total number of visas granted under section 4103(c) of this title is more than the maximum number of visas that may be allocated to immigrants of the country or area under section 4103(c), all

visas are deemed to have been required for the preferences specified in section 4103(b) and (c) of this title when applying section 4103(d) and (e) of this title under paragraph (1)(B) of this subsection.

§ 4112. Charging immigrants to foreign countries

An immigrant is chargeable to the foreign country in which the immigrant was born except in the following circumstances:

(1) When an alien child is accompanied by or following to join an alien parent of the child, the child may be charged to the foreign country of either parent if—

(A) the parent has received or qualifies for an immigrant visa;

(B) necessary to prevent the separation of the child from the parent; and

(C) immigration charged to the foreign country to which the parent has been or would be chargeable has not reached the numerical limitation established by section 4111(a)(1) of this title.

(2) When an alien is chargeable to a foreign country different from that of the spouse of the alien, the alien may be charged to the foreign country of the spouse the alien is accompanying or following to join if—

(A) the spouse has received or qualifies for an immigrant visa;

(B) necessary to prevent the separation of the alien and spouse; and

(C) immigration charged to the foreign country to which the spouse has been or would be chargeable has not reached the numerical limitation established by section 4111(a)(1) of this title.

(3) An alien born in the United States is deemed to have been born in the foreign country of which the alien is a citizen or subject. If the alien is not a citizen or subject of a foreign country, the alien is deemed to have been born in the last foreign country in which the consular officer decides that the alien resided.

(4) An alien born in a foreign country in which neither parent of the alien was born and in which neither parent resides at the time of the birth of the alien may be charged to the foreign country of either parent.

(5) An alien born in a dependent area of a foreign country, except an alien described by section 4102(d) of this title, is chargeable to that country.

§ 4113. Burden of proof

An alien claiming to be an immigrant described by sections 4103–4106 and 4108 of this title, a special immigrant, or an immediate relative has

the burden of proving that the alien is such an immigrant or an immediate relative.

CHAPTER 43—PETITIONS AND DOCUMENTATION

SUBCHAPTER I—PETITIONS

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SUBCHAPTER II—DOCUMENTATION

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SUBCHAPTER I—PETITIONS

§ 4301. General

(a) PETITIONS TO THE ATTORNEY GENERAL.—The following individuals may petition the Attorney General for the classification of aliens as follows:

(1) a citizen of the United States claiming classification for an alien entitled to be classified as an immediate relative or under section 4103(b), (d), or (e) of this title.

(2) an alien lawfully admitted for permanent residence claiming classification for an alien entitled to be classified under section 4103(c) of this title.

(3) an alien desiring to be classified under section 4104(b)(1)(A) of this title, or a person for the alien.

(4) an individual intending to employ in the United States an alien entitled to be classified under section 4104(b)(1)(B) or (C), (c), or (d) of this title.

(5) except a special immigrant (as defined by section 137(a)(4) of this title), an alien desiring to be classified under section 4104(e) of this title, or a person for the alien.

(6) an alien desiring to be classified under section 4104(f) of this title.

(b) PETITIONS TO THE SECRETARY OF STATE.—(1) An alien claiming classification as a special immigrant (as defined by section 137(a)(4) of this title) may petition the Secretary of State to be classified as that special immigrant. The alien may file a petition only after being notified by the Secretary that the classification has been recommended and approved as provided by section 137(a)(4).

(2)(A) An alien desiring to be classified under section 4105 of this title may petition the Secretary of State to be classified under section 4105.

(B) The alien shall file the petition at the place and time the Secretary of State decides by regulation. Only one petition may be filed during a petitioning period established by the Secretary. If more than one petition is filed during a period, all petitions filed by the alien during that period are void.

(C)(i) The Secretary of State shall designate a period during which a petition for a visa that may be granted under section 4105 of this title for the fiscal year beginning after the end of the period may be filed.

(ii) An alien who qualifies for a visa under section 4105 of this title remains eligible to receive the visa through the end of the fiscal year for which the alien was selected.

(iii) The Secretary of State shall prescribe regulations necessary to carry out this subparagraph.

(D) A petition under this paragraph shall—

(i) be in a form the Secretary of State prescribes by regulation; and

(ii) contain information and documentary evidence the Secretary requires.

(c) APPROVING PETITIONS.—After investigating the facts about a petition, and after consulting with the Secretary of Labor about a petition to classify an alien under section 4104(c) or (d) of this title, the Attorney General shall approve the petition if the Attorney General decides the facts stated in the petition are true and the alien is entitled to be classified as requested as an immediate relative or under section 4103, 4104, or 4106 of this title. After approving the petition, the Attorney General shall submit one copy to the Secretary of State. The Secretary then shall authorize the appropriate consular officer to classify the alien as approved.

(d) NONDISCRIMINATION.—Except as provided by sections 137, 4102(d)(6)–(8), 4103–4106, 4108, and 4111(a)(1) of this title, an alien may not be classified or be discriminated against in granting an immigrant visa under section 4313 of this title because of the alien's race, sex, nationality, place of birth, or place of residence.

(e) NO ENTITLEMENT TO ENTER THE UNITED STATES.—This subchapter does not entitle an immigrant for whom a petition is approved under this subchapter to enter the United States if found not to be entitled to the classification on arrival in the United States.

§ 4302. Approving petitions for children

(a) FAVORABLE HOME STUDY REQUIREMENT.—Notwithstanding section 4301 of this section, a petition for a child (as defined by section 110(a)(6) of this title) may be approved only if a valid home study has been recommended favorably—

(1) by an agency of the State of the proposed residence of the child;

(2) by an agency authorized to conduct the study by the State of the proposed residence of the child; or

(3) for a child adopted outside the United States, by an appropriate adoption agency licensed in the United States.

(b) PETITIONS FOR CERTAIN CHILDREN FATHERED BY CITIZENS OF THE UNITED STATES.—(1) An alien claiming to be an alien described by paragraph (2)(A) of this subsection, or a person for the alien, may petition the Attorney General to be classified as an immediate relative or under section 4103(b) or (d) of this title, as appropriate.

(2) After investigating the facts about a petition, the Attorney General shall approve the petition if—

(A) the Attorney General has reason to believe that the alien was born in Kampuchea, Korea, Laos, Thailand, or Vietnam after December 31, 1950, and before October 22, 1982, and was fathered by a citizen of the United States;

(B) the Attorney General has received an acceptable guarantee of legal custody and financial responsibility described by paragraph (5) of this subsection; and

(C) for an alien less than 18 years of age—

(i) an appropriate child welfare agency licensed in the United States and actively involved in the intercountry placement of children arranged the placement of the alien with a sponsor in the United States; and

(ii) the mother or guardian of the alien, in writing, irrevocably released the alien for emigration.

(3) In considering a petition filed under this subsection, the Attorney General shall—

(A) consult with appropriate government officials and officials of private voluntary organizations in the foreign country in which the alien was born in making the findings described by paragraph (2)(A) and (C)(i) of this subsection; and

(B) consider the physical appearance of the alien and evidence provided by the petitioner, including—

(i) birth and baptismal certificates;

(ii) local civil records;

(iii) photographs of, and letters or proof of financial support from, a putative father who is a citizen of the United States; and

(iv) relevant or probative testimony of witnesses.

(4) After approving the petition, the Attorney General shall submit one copy to the Secretary of State.

(5) A guarantee of legal custody and financial responsibility for an alien required by paragraph (2) of this subsection must—

(A) be signed in the presence of a consular officer or an immigration officer by a sponsor who is—

(i) at least 21 years of age;

(ii) of good moral character; and

(iii) a citizen of the United States or an alien lawfully admitted for permanent residence; and

(B) provide that the sponsor agrees—

(i) for an alien less than 18 years of age, to assume legal custody for the alien when the alien departs for the United States and until the alien becomes 18 years of age, as provided under the laws of the State in which the alien and the sponsor will reside; and

(ii) to provide, during the longer of the 5-year period beginning on the date the alien acquires the status of an alien lawfully admitted for permanent residence or the period beginning on that date and ending on the date the alien becomes 21 years of age, financial support necessary to maintain the family in the United States of which the alien is a member at a level equal to at least 125 percent of the current official poverty line (established by the Director of the Office of Management and Budget under section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2) and revised by the Secretary of Health and Human Services under section 673(2)) for a family the same size as that of the family of the alien.

(6) The Attorney General may bring a civil action against the sponsor in the district court of the United States for the judicial district in which the sponsor resides to enforce a guarantee of legal custody and financial responsibility made under paragraph (5) of this subsection. However, a sponsor or the estate of the sponsor is not liable under the guarantee if the sponsor dies or is adjudicated a bankrupt under title 11.

§ 4303. Petitions for married aliens

(a) LIMITATIONS ON APPROVING PETITIONS FOR CERTAIN SPOUSES.—The Attorney General may approve a spousal petition under section 4103(c) of this title filed by an alien who, because of a prior marriage, had become an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or an alien lawfully admitted for permanent residence only if—

(1) 5 years have passed since the alien had become an alien lawfully admitted for permanent residence;

(2) the alien, by clear and convincing evidence, satisfies the Attorney General that the prior marriage was not entered into to evade the immigration laws; or

(3) the prior marriage of the alien ended by the death of the alien's spouse.

(b) PROHIBITION ON APPROVING PETITIONS BECAUSE OF MARRIAGES TO EVADE IMMIGRATION LAWS.—Notwithstanding section 4301(c) of this title, a petition to classify an alien may not be approved if—

(1) an alien previously was classified, or sought to be classified, as an immediate relative or under section 4108 of this title as a spouse of a citizen of the United States or an alien lawfully admitted for permanent residence because of a marriage the Attorney General decides was entered into to evade the immigration laws; or

(2) the Attorney General decides the alien has attempted or conspired to enter into a marriage to evade the immigration laws.

(c) REQUIRED RESIDENCE OUTSIDE THE UNITED STATES FOR CERTAIN ALIENS INVOLVED IN PROCEEDINGS.—(1) Notwithstanding section 4301(a) and (b) of this title, a petition to classify an alien as an immediate relative or under section 4103, 4104, 4105, or 4106 of this title because of a marriage entered into after November 9, 1986, and during the period described by section 9101(f)(1)(C) of this title may not be approved until the alien resides outside the United States for 2 years after the marriage.

(2) Paragraph (1) of this subsection does not apply to a marriage if the alien establishes by clear and convincing evidence satisfactory to the Attorney General that—

(A) the marriage was entered into in good faith and under the laws of the place where the marriage took place;

(B) the marriage was not entered into to procure the alien's entry as an immigrant; and

(C) no consideration was given, except to an attorney for assistance in preparing a petition, for filing a petition under section 2329(b) or 4301(a) or (b) of this title for an alien spouse or alien son or daughter.

(3) Under regulations of the Attorney General, the Attorney General shall allow only one level of administrative appellate review for each alien under paragraph (2) of this subsection.

§ 4304. Revoking approved petitions

The Attorney General may revoke at any time a petition approved by the Attorney General under section 4301(c) of this title if the Attorney General considers that there is good cause to revoke. Revocation is effective as of the date of approval of the petition if notice of the revocation is mailed to the last known address of the petitioner and the Secretary of State notifies

the alien for whom the petition was filed of the revocation before the alien begins traveling to the United States. If notice is not given as required by this section and the alien applies for admission to the United States, the admissibility of the alien shall be decided as provided by sections 6103, 6331(a)–(d) and (f)–(h), and 6332 of this title.

SUBCHAPTER II—DOCUMENTATION

§ 4311. Documentation requirements

(a) DOCUMENTS REQUIRED.—(1) An immigrant may be admitted to the United States only if, when applying for admission, the immigrant—

(A)(i) has an unexpired entry document required by this title; or

(ii) was born after an entry document was granted to the accompanying parent;

(B) has an unexpired travel document or document of identity and nationality when required by regulations the Attorney General prescribes; and

(C) has a visa granted as provided under sections 4103–4106 and 4313(b) of this title.

(2) This section does not apply to an alien admitted under section 5105 of this title.

(b) WAIVER FOR CERTAIN SPECIAL IMMIGRANTS.—Under conditions that may be prescribed by regulations of the Attorney General, the Attorney General may readmit a special immigrant (as defined by section 137(a)(1) of this title) returning to the United States, without the alien's having to obtain a passport, immigrant visa, reentry permit, or other documentation, if the alien otherwise is admissible.

§ 4312. Applications for immigrant visas and registration

(a) APPLICATION REQUIREMENTS.—An alien applying for an immigrant visa must apply in the way and at the place prescribed by regulation. The application must contain the following information about the alien:

(1) the complete true name of the alien and each alias ever used.

(2) a personal description, including age, sex, height, complexion, color of hair and eyes, and marks of identification.

(3) the date and place of birth.

(4) present and prior addresses.

(5) marital status and the names and addresses of the alien's spouse and children.

(6) the names and addresses of parents, and if neither parent is living, the name and address of a next of kin in the foreign country from which the alien is coming.

(7) occupation.

(8) any language the alien can speak, read, or write.

(9) whether the alien is going to join a relative or friend in the United States and, if so, the name and address of the relative or friend.

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

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

(12) the port of entry into the United States.

(13) any final destination beyond the port of entry, and whether the alien has a ticket through to the final destination.

(14) whether the alien has ever been arrested, convicted, imprisoned, or in a poorhouse.

(15) whether the alien has ever been granted a pardon or amnesty.

(16) whether the alien has ever been treated for mental disease.

(17) whether the alien is claiming to be an immediate relative, an immigrant entitled to be classified under section 4103, 4104, 4105, or 4106 of this title, or a special immigrant, and the facts supporting the claim.

(18) whether the alien may be excluded under the immigration laws from admission to the United States, and whether the alien is claiming exemption from exclusion.

(19) additional information prescribed by regulation that is necessary to identify the alien and enforce the immigration and nationality laws.

(b) ADDITIONAL REQUIREMENTS.—(1) An alien applying for an immigrant visa must—

(A) register as provided by chapter 81 of this title when applying for the visa;

(B) take a physical and mental examination prescribed by regulation;

(C) if required under regulations the Secretary of State prescribes, present a passport or other suitable travel document or a document of identity and nationality; and

(D) provide the consular officer, with the application, with a certified copy of—

(i) a statement from the appropriate police authorities stating what their records show about the alien;

(ii) any existing prison record, military record, and record of birth of the alien; and

(iii) any other record or documentation about the alien that the consular officer may require.

(2) Each certified copy provided under paragraph (1)(D) of this subsection shall be attached to the application and become a part of the application. If the alien satisfies the consular officer that it is not possible to

obtain the certified copy, the consular officer may allow the alien to submit other satisfactory evidence of the fact to which the copy relates.

(c) SIGNATURE AND OATH.—Except as otherwise prescribed by regulation, an alien must—

(1) sign an application for an immigrant visa in the presence of a consular officer; and

(2) take an oath administered by the consular officer verifying the application.

(d) PROCESSING IMMIGRANT VISA APPLICATIONS OF CUBAN NATIONALS IN 3D COUNTRIES.—(1) In this subsection, ''process'' means accepting and reviewing an application and preparing necessary documents and making appropriate decisions related to the application.

(2) Notwithstanding sections 4313(f) and 6106 of this title, a consular officer shall process an application for an immigrant visa by a Cuban national located in a 3d country on the same basis as an application for an immigrant visa by a national of another country.

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

§ 4313. Granting immigrant visas and other documentation

(a) REGISTRATION ON WAITING LISTS.—Waiting lists of aliens applying for immigrant visas shall be maintained under regulations the Secretary of State prescribes.

(b) ORDER OF GRANTING VISAS.—(1) Immigrant visas allocated under section 4103 or 4104 of this title shall be granted to qualified immigrants in the order in which a petition for each immigrant is filed with the Attorney General (or with the Secretary of State for special immigrants as defined by section 137(a)(4) of this title) under section 4301 (a) or (b) of this title.

(2) Immigrant visas allocated under section 4105 of this title shall be granted to qualified immigrants randomly as the Secretary prescribes for the fiscal year involved.

(c) GRANTING VISAS.—(1) A consular officer grants an immigrant visa at the office of the consular officer outside the United States. A consular officer may grant an immigrant visa to an eligible immigrant who has made a proper application for the visa.

(2) A consular officer may grant a special immigrant or an immediate relative an immigrant visa as a special immigrant or an immediate relative on receiving satisfactory proof, under regulations prescribed under this title,

that the applicant is entitled to be classified as a special immigrant or an immediate relative.

(d) PROHIBITIONS.—(1) A consular officer may not grant an immigrant visa or other documentation to an alien if—

(A) the alien is required to be registered under section 8101(a)(1) of this title and is not registered;

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

(C) the alien is excludable from admission to the United States; or

(D) the consular officer has reason to believe the alien is ineligible for the visa or other documentation.

(2) Notwithstanding paragraph (1)(D) of this subsection, a consular officer may grant an immigrant visa or other documentation to an alien to whom section 6304(a) of this title applies if—

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

(B) the consular officer receives notice from the Attorney General that the alien filed a bond or undertaking under section 6304(b) of this title.

(e) CONTENTS OF VISAS.—An immigrant visa consists of the application for the visa, when visaed by the consular officer. The visa shall specify—

(1) the foreign country and the classification to which the immigrant is charged;

(2) the expiration date of the visa; and

(3) additional required information.

(f) DISCONTINUING GRANTING VISAS WHEN COUNTRY DENIES OR DELAYS ACCEPTING ALIEN.—On being notified by the Attorney General that the government of a foreign country denies or unreasonably delays accepting an alien who is a citizen, subject, national, or resident of that country after the Attorney General asks whether the government will accept the alien under section 6537(a)(2)(B) of this title, the Secretary of State shall order consular officers in that foreign country to discontinue granting immigrant visas to citizens, subjects, nationals, and residents of that country until the Attorney General notifies the Secretary that the country has accepted the alien.

§ 4314. Period of validity and revocation

(a) VALIDITY.—An immigrant visa is valid for the period prescribed by regulation, but for not more than 4 months. However, an immigrant visa granted to a child legally adopted by a citizen of the United States or a spouse of the citizen when the citizen is serving outside the United States in the armed forces of the United States, is employed outside the United

States by the United States Government, or is temporarily outside the United States on business, is valid until the regular return of the citizen to the United States from the service, employment, or business, but for not more than 3 years.

(b) REVOCATION.—A consular officer or the Secretary of State may revoke at any time an immigrant visa or other documentation granted to an immigrant. A revocation invalidates the visa or documentation from the date the visa or documentation is granted. The Attorney General shall be notified of each revocation.

§ 4315. Unused immigrant visas

(a) REPLACING UNUSED VISAS.—A consular officer may replace an immigrant visa under its original number during the fiscal year it was granted if—

(1) the immigrant establishes to the satisfaction of the consular officer that the immigrant was unable to use the visa when it was valid for reasons that the immigrant did not cause and that were beyond the immigrant's control;

(2) the consular officer finds the immigrant is eligible for an immigrant visa; and

(3) the immigrant pays again the statutory fees for an application and immigrant visa.

(b) GRANTING UNUSED VISAS.—An eligible immigrant may be granted an unused immigrant visa that the immigrant qualifies for if the visa originally was granted to another immigrant—

(1) deported after being excluded from admission;

(2) not applying for admission before the visa expires; or

(3) as a preference immigrant and the immigrant is found not to be a preference immigrant.

§ 4316. Reentry permits

(a) APPLICATIONS.—An alien lawfully admitted for permanent residence who intends to leave the United States temporarily may apply to the Attorney General for a reentry permit to reenter the United States. The application must—

(1) state the length of, and reason for, the departure;

(2) state other information and be accompanied by photographs of the applicant that the Attorney General prescribes by regulation; and

(3) be made under oath.

(b) GRANTING REENTRY PERMITS.—The Attorney General may grant the reentry permit if the Attorney General finds—

(1) the application is made in good faith; and

(2) the alien's departure is not contrary to the interests of the United States.

(c) PERIOD OF VALIDITY.—A reentry permit may be granted for not more than 2 years from the date it is granted and may not be renewed. The alien may use the permit for any number of reentries into the United States. The alien shall surrender the permit to the Attorney General when the permit expires.

(d) PRESENTATION OF REENTRY PERMIT ON RETURNING TO THE UNITED STATES.—An alien granted a reentry permit shall present the permit to the immigration officer at the port of entry on returning to the United States. The immigration officer shall accept the permit as a substitute for any visa otherwise required under this title. The permit has no effect under the immigration laws except to establish that the alien is returning from a temporary departure. However, this section does not require a reentry permit as the only way that an alien may establish a return from a temporary departure.

(e) FORM OF APPLICATIONS AND PERMITS.—The Attorney General shall prescribe by regulation the form of the application and reentry permit, except that the permit shall be in a form to identify the alien completely and shall be printed on distinctive safety paper.

§ 4317. Burden of proof

An individual applying for an immigrant visa or other documentation required for entering the United States as an immigrant has the burden of proving that the individual is eligible to be granted the visa or documentation. A consular officer may grant the visa or documentation only if satisfied that the individual is eligible to receive the visa or documentation.

§ 4318. Documentation waivers

The Attorney General may waive sections 4311(a)(1) and 6313(a)(2) and (c) of this title for an immigrant who has an immigrant visa and otherwise is admissible if the Attorney General is satisfied that the immigrant did not know, and by reasonable diligence, could not have known, of the immigrant's excludability—

(1) before the vessel or aircraft on which the alien came to the United States left the last port outside the United States and outside foreign contiguous territory; or

(2) for an immigrant coming from foreign contiguous territory, before the immigrant applied for admission.

CHAPTER 45—CONDITIONAL PERMANENT RESIDENT STATUS

SUBCHAPTER I—CERTAIN ALIEN SPOUSES, SONS, AND DAUGHTERS

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4521. Definitions.
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SUBCHAPTER I—CERTAIN ALIEN SPOUSES, SONS, AND DAUGHTERS

§ 4501. Definitions

In this subchapter—

(1) ''alien son or daughter'' means an alien who acquires the status of an alien lawfully admitted for permanent residence because the alien is the son or daughter of an individual through a qualifying marriage.

(2) ''alien spouse''—

(A) means an alien who, because of a qualifying marriage, acquires the status of an alien lawfully admitted for permanent residence—

(i) as an immediate relative as the spouse of a citizen of the United States;

(ii) under section 2309(b) of this title as the fiancee or fiance of a citizen of the United States; or

(iii) under section 4103(c) of this title as the spouse of an alien lawfully admitted for permanent residence; but

(B) does not include an alien who acquires the status of an alien lawfully admitted for permanent residence because of section 4108 of this title.

(3) ''petitioning spouse'' means the spouse of a qualifying marriage, except the alien.

(4) ''qualifying marriage'' means a marriage entered into less than 24 months before the date an alien spouse acquires the status of an alien lawfully admitted for permanent residence because of the marriage.

§ 4502. Conditional basis of status

(a) GENERAL.—An alien spouse or an alien son or daughter, when acquiring the status of an alien lawfully admitted for permanent residence, acquires that status on a conditional basis as provided by this subchapter.

(b) NOTICE REQUIREMENTS.—When an alien spouse or alien son or daughter acquires the status of an alien lawfully admitted for permanent residence on a conditional basis under subsection (a) of this section, the Attorney General shall notify the spouse, son, or daughter about this subchapter and the requirements of section 4503 of this title to have the conditional basis of the status removed. However, the failure of the Attorney General to provide notice does not affect the enforcement of this subchapter against the spouse, son, or daughter.

§ 4503. General requirements to remove conditional basis

To remove the conditional basis established under section 4502(a) of this title, the alien spouse and the petitioning spouse (if living)—

(1) jointly must submit to the Attorney General a petition requesting the removal of the conditional basis and containing, under penalty of perjury, the information required by section 4504(b) of this title; and

(2) must appear before the Attorney General for a personal interview about the information required by section 4504(b).

§ 4504. Petitions

(a) TIME FOR SUBMISSION.—(1) Except as provided by paragraph (2) of this subsection, the petition required by section 4503(1) of this title must be submitted during the 90-day period immediately before the 2d anniversary that the alien acquired the status of an alien lawfully admitted for permanent residence.

(2) A petition submitted after the 90-day period may be considered only if the alien satisfies the Attorney General that good cause and extenuating circumstances existed for not submitting the petition during that period.

(3) The Attorney General may stay a deportation proceeding against an alien who did not submit a petition within the 90-day period required under paragraph (1) of this subsection pending the submission of the petition under paragraph (2) of this subsection.

(4) At or about the beginning of the 90-day period, the Attorney General shall try to notify the alien spouse or alien son or daughter of the requirements of section 4503 of this title. However, the failure of the Attorney General to provide notice does not affect the enforcement of this subchapter against the spouse, son, or daughter.

(b) CONTENTS.—Each petition shall contain the following information:

(1) that the qualifying marriage—

(A) complied with the laws of the place where the marriage took place;

(B) has not been annulled judicially or ended, except through the death of a spouse; and

(C) was not entered into to procure the entry of an alien as an immigrant.

(2) that no consideration was given, except to an attorney for assistance in preparing the petition, for filing under section 2309(b) or 4301 (a) or (b) of this title a petition for an alien spouse or an alien son or daughter.

(3) the actual residence of each party to the qualifying marriage since the date the alien spouse acquired the status of an alien lawfully admitted for permanent residence on a conditional basis under section 4502(a) of this title.

(4) each employer and place of employment of each party since that date.

§ 4505. Personal interviews

(a) TIME AND LOCATION REQUIREMENTS.—(1) The personal interview required by section 4503(2) of this title shall be conducted—

(A) within 90 days after the date a petition is submitted as required by section 4503(1) of this title; and

(B) at a local office of the Immigration and Naturalization Service the Attorney General designates that is convenient to the parties involved.

(2) The Attorney General may waive the interview or the deadline for the interview when appropriate.

(b) DECISIONS ON TRUTHFULNESS OF STATEMENTS.—Within 90 days after an interview is conducted as required by section 4503(2) of this title, the Attorney General shall decide whether the information in the petition and required by section 4504(b) of this title about the qualifying marriage is true.

§ 4506. Favorable decisions on removing the conditional basis

(a) FAVORABLE DECISIONS.—If the Attorney General decides the information required by section 4504(b) of this title is true, the Attorney General shall notify the parties involved and shall remove the conditional basis of the status of the parties effective on the 2d anniversary that the alien acquired the status of an alien lawfully admitted for permanent residence.

(b) HARDSHIP WAIVERS.—(1) The Attorney General may remove the conditional basis of an alien spouse or alien son or daughter when the alien spouse does not comply with section 4503 of this title if the alien spouse or alien son or daughter shows that—

(A) extreme hardship would result if the alien spouse or alien son or daughter is deported;

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the marriage has been ended (except through the death of the spouse), and the alien spouse was not at fault in not complying with section 4503 of this title; or

(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or alien son or daughter was battered by, or was the subject of extreme cruelty committed by, the spouse of the alien spouse or the citizen or permanent resident parent of the alien son or daughter, and the alien spouse was not at fault in not complying with section 4503 of this title.

(2) When deciding whether extreme hardship would result, the Attorney General shall consider circumstances occurring only during the period the alien was lawfully admitted for permanent residence on a conditional basis.

(3) The Attorney General shall establish by regulation ways to protect the confidentiality of information about an abused alien spouse or alien son or daughter, including information on the location of the spouse, son, or daughter.

§ 4507. Unfavorable decisions on removing the conditional basis

(a) IMPROPER QUALIFYING MARRIAGES.—The Attorney General shall end, as of the date the Attorney General makes a decision under this subsection, the status of an alien spouse or alien son or daughter as an alien lawfully admitted for permanent residence and shall so notify the parties involved if, before the 2d anniversary of the date the alien acquired the status, the Attorney General decides that—

(1) the qualifying marriage—

(A) was entered into to procure an alien's entry as an immigrant; or

(B) has been annulled judicially or ended, except through the death of a spouse; or

(2) consideration was given, except to an attorney for assistance in preparing the petition, for filing a petition for the alien under section 2309(b) or 4301(a) or (b) of this title.

(b) UNTRUE PETITION INFORMATION.—If the Attorney General decides any information required by section 4504(b) of this title is not true, the Attorney General shall end, as of the date of the decision, the status of an alien spouse or alien son or daughter as an alien lawfully admitted for permanent residence and notify the parties involved.

(c) FAILURE TO FILE PETITIONS OR HAVE PERSONAL INTERVIEWS.—The Attorney General shall end, as of the 2d anniversary of the alien's law-

ful admission for permanent residence, the status of an alien spouse or alien son or daughter as an alien lawfully admitted for permanent residence if—

(1) a petition is not submitted as required by section 4503(1) of this title; or

(2) unless good cause is shown, the alien spouse and petitioning spouse do not appear at the interview required by section 4503(2) of this title.

(d) REVIEW OF DECISIONS.—(1) An alien whose permanent resident status is ended under subsection (a) or (b) of this section may request a review of the decision in a proceeding to deport the alien. The burden of proof is on the Attorney General to establish by a preponderance of the evidence that—

(A) if ended under subsection (a) of this section, a ground described by subsection (a) is met; or

(B) if ended under subsection (b) of this section, any information required by section 4504(b) of this title about the qualifying marriage is not true.

(2) An alien whose permanent resident status is ended under subsection (c) of this section has the burden of proof in a deportation proceeding of establishing compliance with section 4503 of this title.

§ 4508. Treatment of conditional basis period for naturalization purposes

In carrying out subtitle V of this title, an alien who is in the United States as an alien lawfully admitted for permanent residence on a conditional basis under this subchapter is deemed to have been admitted and to be in the United States as an alien lawfully admitted for permanent residence.

§ 4509. Ending waivers

A waiver under section 6301(b) or 6307(b) of this title obtained by an alien to acquire the status of an alien lawfully admitted for permanent residence on a conditional basis under this subchapter ends when the status ends under this subchapter.

SUBCHAPTER II—CERTAIN ALIEN ENTREPRENEURS, SPOUSES, AND CHILDREN

§ 4521. Definitions

In this subchapter—

(1) ''alien child'' means an alien who acquires the status of an alien lawfully admitted for permanent residence because the alien is the child of an alien entrepreneur.

(2) ''alien entrepreneur'' means an alien who acquires the status of an alien lawfully admitted for permanent residence under section 4104(f) of this title.

(3) ''alien spouse'' means an alien who acquires the status of an alien lawfully admitted for permanent residence because the alien is the spouse of an alien entrepreneur.

§ 4522. Conditional basis of status

(a) GENERAL.—An alien entrepreneur, alien spouse, or alien child, when acquiring the status of an alien lawfully admitted for permanent residence, acquires that status on a conditional basis as provided by this subchapter.

(b) NOTICE REQUIREMENTS.—When an alien entrepreneur, alien spouse, or alien child acquires the status of an alien lawfully admitted for permanent residence on a conditional basis under subsection (a) of this section, the Attorney General shall notify the entrepreneur, spouse, or child about this subchapter and the requirements of section 4523 of this title to have the conditional basis of the status removed. However, the failure of the Attorney General to provide notice does not affect the enforcement of this subchapter against the entrepreneur, spouse, or child.

§ 4523. General requirements to remove conditional basis

To remove the conditional basis established under section 4522(a) of this title, the alien entrepreneur must—

(1) submit to the Attorney General a petition requesting the removal of the conditional basis and containing, under penalty of perjury, the information described by section 4524(b) of this section; and

(2) appear before the Attorney General for a personal interview about the information required by section 4524(b).

§ 4524. Petitions

(a) TIME FOR SUBMISSION.—(1) Except as provided by paragraph (2) of this subsection, the petition required by section 4523(1) of this title must be submitted during the 90-day period immediately before the 2d anniversary that the alien acquired the status of an alien lawfully admitted for permanent residence.

(2) A petition submitted after the 90-day period may be considered only if the alien satisfies the Attorney General that good cause and extenuating circumstances exist for not submitting the petition during that period.

(3) The Attorney General may stay a deportation proceeding against an alien who did not submit a petition within the 90-day period required under paragraph (1) of this subsection pending the submission of the petition under paragraph (2) of this subsection.

(4) At or about the beginning of the 90-day period, the Attorney General shall try to notify the alien entrepreneur, alien spouse, or alien child of the

requirements of section 4523 of this title. However, the failure of the Attorney General to provide notice does not affect the enforcement of this chapter against the entrepreneur, spouse, or child.

(b) CONTENTS.—Each petition shall contain information demonstrating that the alien—

(1) established a commercial enterprise;

(2) invested or was actively in the process of investing the required capital; and

(3) conducted the actions described by clauses (1) and (2) of this subsection during the entire period of the alien's residence in the United States.

§ 4525. Personal interviews

(a) TIME AND LOCATION REQUIREMENTS.—(1) The personal interview required by section 4523(2) of this title shall be conducted—

(A) within 90 days after the date a petition is submitted as required by section 4523(1) of this title; and

(B) at a local office of the Immigration and Naturalization Service the Attorney General designates that is convenient to the parties involved.

(2) The Attorney General may waive the interview or the deadline for the interview when appropriate.

(b) DECISIONS ON TRUTHFULNESS OF STATEMENTS.—Within 90 days after an interview is conducted under section 4523(2) of this title, the Attorney General shall decide whether the information in the petition and required by section 4524(b) of this title about the qualifying commercial enterprise is true.

§ 4526. Favorable decisions on removing the conditional basis

If the Attorney General decides the information required by section 4524(b) of this title is true, the Attorney General shall notify the alien involved and shall remove the conditional basis of the status of the alien effective on the 2d anniversary that the alien acquired the status of an alien lawfully admitted for permanent residence.

§ 4527. Unfavorable decisions on removing the conditional basis

(a) IMPROPER QUALIFYING ENTREPRENEURSHIPS.—The Attorney General shall end, as of the date the Attorney General makes a decision under this subsection, the status of an alien entrepreneur, alien spouse, and alien child as aliens lawfully admitted for permanent residence and shall so notify the alien entrepreneur if, before the 2d anniversary of the date the alien

entrepreneur acquired the status, the Attorney General decides the alien entrepreneur—

(1) established the commercial enterprise only to evade the immigration laws of the United States;

(2)(A) did not establish a commercial enterprise;

(B) did not invest or was not actively in the process of investing the required capital; or

(C) was not conducting the actions described by subclauses (A) and (B) of this clause during the entire period of the alien's residence in the United States; or

(3) otherwise was not complying with the requirements of section 4104(f) of this title.

(b) UNTRUE PETITION INFORMATION.—If the Attorney General decides any information required by section 4524(b) of this title is not true, the Attorney General shall end, as of the date of the decision, the status of an alien entrepreneur, alien spouse, or alien child as an alien lawfully admitted for permanent residence and notify the alien involved.

(c) FAILURE TO FILE PETITIONS OR HAVE PERSONAL INTERVIEWS.—The Attorney General shall end, as of the 2d anniversary of the alien's lawful admission for permanent residence, the status of an alien entrepreneur as an alien lawfully admitted for permanent residence (and the status of the entrepreneur's spouse or child if acquired under section 4502(a) or 4522(a) of this title) if—

(1) a petition is not submitted as required by section 4523(1) of this title; or

(2) unless good cause is shown, the alien entrepreneur does not appear at the interview required by section 4523(2) of this title.

(d) REVIEW OF DECISIONS.—(1) An alien whose permanent residence status is ended under subsection (a) or (b) of this section may request a review of the decision in a proceeding to deport the alien. The burden of proof is on the Attorney General to establish by a preponderance of the evidence that—

(A) if ended under subsection (a) of this section, a ground described by subsection (a) is met; or

(B) if ended under subsection (b) of this section, the information required by section 4524(b) of this title about the qualifying commercial enterprise is not true.

(2) An alien whose permanent residence status is ended under subsection (c) of this section has the burden of proof in a deportation proceeding of establishing compliance with section 4523 of this title.

§ 4528. Treatment of conditional basis period for naturalization purposes

In carrying out subtitle V of this title, an alien who is in the United States as an alien lawfully admitted for permanent residence on a conditional basis under this subchapter is deemed to have been admitted and to be in the United States as an alien lawfully admitted for permanent residence.

PART C—REFUGEES

CHAPTER 51—ADMISSIONS

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5101. Definition.
5102. Annual worldwide numerical limitations.
5103. Additional emergency numerical limitations.
5104. Congressional consultation and hearings.
5105. Admissions.
5106. Asylum.
5107. Change of status.

§ 5101. Definition

(a) APPROPRIATE CONSULTATION.—In this chapter, ''appropriate consultation'' means discussions in person between Cabinet-level representatives of the President and members of the Committees on the Judiciary of the Senate and House of Representatives on refugee admissions and the allocation of refugee admissions that—

(1) review the worldwide refugee situation or an unforeseen emergency refugee situation and estimate possible United States participation in the situation;

(2) consider the reasons for believing that the proposed admissions are justified by humanitarian concerns or grave humanitarian concerns or otherwise are in the interest of the United States; and

(3) provide the members with—

(A) a description of the nature of the refugee situation;

(B) a description of the number and allocation of the refugees to be admitted and an analysis of conditions in the foreign countries from which they came;

(C) a description of the proposed plans and estimated cost of moving and resettling the refugees;

(D) an analysis of the anticipated social, economic, and demographic impact of the refugee admissions on the United States;

(E) a description of the extent to which other foreign countries will admit and assist in resettling the refugees;

(F) an analysis of the impact of United States participation in the resettlement of the refugees on the foreign policy interests of the United States; and

(G) additional information that may be appropriate or requested by the members.

(b) PROVIDING INFORMATION IN ADVANCE.—To the extent possible, information described by subsection (a)(3) of this section shall be provided at least 2 weeks before the discussions in person between the representatives of the President and the members.

§ 5102. Annual worldwide numerical limitations

Before the beginning of each fiscal year and after appropriate consultation, the President shall establish for the fiscal year the number of refugee admissions to the United States justified by humanitarian concerns or otherwise in the interest of the United States and state, of the number established for the prior fiscal year, the number of aliens granted asylum. After appropriate consultation, the President shall allocate admissions among refugees of special humanitarian concern to the United States.

§ 5103. Additional emergency numerical limitations

(a) ESTABLISHMENT OF NUMBER.—As provided by this section, the President may establish an additional number of refugee admissions to the United States for a succeeding period of not more than 12 months. The President may establish the additional number when the President decides, before the beginning of the period and after appropriate consultation, that—

(1) an unforeseen emergency refugee situation exists;

(2) the admission of certain refugees in response to the situation is justified by grave humanitarian concerns or otherwise is in the interest of the United States; and

(3) the admission of the refugees cannot be carried out under section 5102 of this title.

(b) ALLOCATION.—After appropriate consultation, the President shall allocate the admissions under subsection (a) of this section among refugees of special humanitarian concern to the United States.

§ 5104. Congressional consultation and hearings

(a) PRESIDENTIAL REPORTS AND DISCUSSIONS.—Before the beginning of each fiscal year, the President shall report to the Committees on the Judiciary of the Senate and House of Representatives on the foreseeable number of refugees who will need resettlement during the fiscal year and the anticipated allocation of refugee admissions during that year. The President shall provide for periodic discussions between representatives of the President and members of the Committees on—

(1) changes in the worldwide refugee situation;

(2) the progress of refugee admissions; and

(3) the possible need for changes in the allocation of admissions among refugees.

(b) PRINTING IN CONGRESSIONAL RECORD.—As soon as possible after representatives of the President initiate appropriate consultation on the number of refugee admissions under section 5102 or 5103 of this title, the Committees shall have the substance of the consultations printed in the Congressional Record.

(c) COMMITTEE HEARINGS.—After the President begins appropriate consultation before acting under section 5102 or 5103 of this title, each Committee shall hold a hearing to review the proposed action unless—

(1) public disclosure of the details of the action would jeopardize the lives or safety of individuals; and

(2) if an action under section 5103, the time and nature of the emergency refugee situation do not permit hearings.

§ 5105. Admissions

(a) AUTHORITY OF THE ATTORNEY GENERAL.—The Attorney General may admit a refugee under regulations the Attorney General prescribes and subject to the numerical limitations of sections 5102 and 5103 of this title. The Attorney General may admit the refugee when the refugee—

(1) is not resettled firmly in a foreign country;

(2) is admissible (except as otherwise provided under subsections (d) and (e) of this section) as an immigrant under this title; and

(3) is of special humanitarian concern to the United States.

(b) BURDEN OF PROOF.—An alien claiming refugee status has the burden of proving that the alien is entitled to that status.

(c) ADMISSION OF SPOUSES AND CHILDREN.—(1) The spouse or child (as defined by section 110(a)(1)–(5) of this title) of a refugee qualifying for admission under subsection (a) of this section is entitled to be admitted the same as the refugee if the spouse or child is—

(A) accompanying or following to join the refugee;

(B) not an individual referred to in section 135(2) of this title; and

(C) not admissible (except as otherwise provided under subsections (d) and (e) of this section) under subsection (a) of this section.

(2) The admission of the spouse or child shall be charged against the numerical limitation under which the refugee's admission is charged.

(d) NONAPPLICATION.—Sections 4104(c)(2), (d)(3), and (g)(1) and (2), 4311(a), 6304(a), and 6313 of this title do not apply to an alien applying for admission under this section.

(e) WAIVERS.—(1) The Attorney General may waive section 2121(a) and subchapter I of chapter 63 of this title (except sections 6307(a)(3), 6308(a)–(c), and 6309) for the alien—

(A) for humanitarian purposes;

(B) to ensure family unity; or

(C) when otherwise in the public interest.

(2) A waiver under paragraph (1) of this subsection shall be in writing and granted only after an investigation of the alien. The Attorney General shall report to Congress after the end of each fiscal year on the number of waivers granted in that fiscal year and a summary of the reasons for granting the waivers.

(f) CERTAIN CUBAN POLITICAL PRISONERS.—(1) In this subsection, ''process'' means accepting and reviewing an application and preparing necessary documents and making appropriate decisions related to the application.

(2) Consistent with the procedure applicable to similar cases in other foreign countries, and except as necessary to ensure the orderly process of available applicants, consular officers and the Attorney General shall process an application from a Cuban national imprisoned for any period of time after December 31, 1958, as an application for admission to the United States as a refugee.

(g) ENDING REFUGEE STATUS.—Under regulations the Attorney General prescribes, the Attorney General may end the refugee status of an alien and the spouse and child of the alien on finding that the alien was not a refugee at the time of the alien's admission.

§ 5106. Asylum

(a) APPLICATIONS FOR, AND GRANTING, ASYLUM.—The Attorney General shall prescribe a procedure for an alien physically present in the United States or at a land border or port of entry, regardless of the alien's status, to apply for asylum. If the Attorney General decides that the alien is a refugee (as defined by section 135(1)(A) of this title), the Attorney General may grant asylum to the alien. However, an alien convicted of an aggravated felony may not apply for, or be granted, asylum.

(b) ENDING ASYLUM.—Under regulations the Attorney General prescribes, the Attorney General may end asylum granted under subsection (a) of this section if the Attorney General decides that the alien is no longer a refugee (as defined by section 135(1)(A) of this title) because of a change in circumstances—

(1) in the alien's country of nationality; or

(2) if the alien has no nationality, in the country in which the alien last habitually resided.

(c) GRANTING ASYLUM TO SPOUSES AND CHILDREN.—The spouse or child (as defined by section 110(a)(1)–(5) of this title) of an alien granted

asylum under subsection (a) of this section may be granted asylum under subsection (a) if the spouse or child—

(1) is accompanying or following to join the alien; and

(2) may not be granted asylum otherwise under subsection (a) of this section.

§ 5107. Change of status

(a) INSPECTION AND EXAMINATION OF REFUGEES FOR ADMISSION AS IMMIGRANTS.—(1) An alien admitted as a refugee under section 5105 of this title and physically present in the United States for at least one year shall return or be returned to the custody of the Attorney General at the end of the year for inspection and examination for admission as an immigrant under sections 6103, 6331(a)–(d) and (f)–(h), and 6332 of this title if—

(A) the refugee's status as a refugee has not been ended by the Attorney General; and

(B) the refugee has not been lawfully admitted for permanent residence.

(2) A refugee found to be admissible (except as otherwise provided under subsections (d)(2) and (e) of this section) as an immigrant under this title at the time of the refugee's inspection and examination under paragraph (1) of this subsection shall be lawfully admitted for permanent residence as of the date of the refugee's arrival in the United States. Admission is without regard to the numerical limitations of this title.

(b) ALIENS GRANTED ASYLUM.—(1) Under regulations the Attorney General prescribes, not more than 10,000 of the refugee admissions authorized in a fiscal year under section 5102 of this title may be allocated to the Attorney General to change the status of aliens granted asylum under section 5106 of this title to that of aliens lawfully admitted for permanent residence. The status of an alien may be changed when the alien—

(A) applies for the change;

(B) has been physically present in the United States for at least one year after being granted asylum;

(C) continues to be a refugee as required by section 5106 of this title or a spouse or child of the refugee;

(D) is not resettled firmly in a foreign country; and

(E) is admissible (except as otherwise provided under subsections (d)(2) and (e) of this section) as an immigrant under this title at the time of examination for the change.

(2) On approval of an application under paragraph (1) of this subsection, the Attorney General shall record the lawful admission for permanent residence of the alien as of the date one year before the date of approval.

(c) CERTAIN FORMER ASYLEES.—(1) Except as provided by paragraph (2) of this subsection and subsection (d)(1) of this section, subsection (b) of this section applies to an alien granted asylum before November 29, 1990 (even if asylum had been ended under section 5106(b) of this title) who—

(A) is no longer a refugee because of a change in circumstances in a foreign country; and

(B) was or would be qualified for a change of status under subsection (b) on November 29, 1990, except for subsection (b)(1)(B) and (C) and the numerical limitation under subsection (b).

(2) The number of aliens who are natives of a foreign country who may change their status under paragraph (1) of this subsection in a fiscal year may not be more than the difference between the foreign country limitation established under 4111(a) of this title and the number of aliens chargeable to the country in the fiscal year under section 4112 of this title.

(d) NONAPPLICATION.—(1) The numerical limitation of subsection (b) of this section does not apply to an alien described by subsection (c) of this section or to an alien who applied for a change of status under subsection (b) before June 2, 1990.

(2) Sections 4311(a), 6304(a), 6313, and 9106 of this title do not apply to an alien whose status is being changed under this section.

(e) WAIVER.—The Attorney General may waive section 2121(a) and subchapter I of chapter 63 of this title (except sections 6307(a)(3), 6308(a)–(c), and 6309) for an alien—

(1) for humanitarian purposes;

(2) to ensure family unity; or

(3) when otherwise in the public interest.

PART D—ENTRY, EXCLUSION, AND DEPORTATION

CHAPTER 61—ARRIVAL, INSPECTION, AND ADMISSION

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SUBCHAPTER I—GENERAL

§ 6101. Time and place of entry

An alien may enter the United States only at the time and place designated by an immigration officer.

§ 6102. Presentation of documentation

(a) IMMIGRANT ARRIVALS.—An alien arriving in the United States as an immigrant shall surrender the alien's immigrant visa to the immigration officer at the port of entry. The immigration officer shall endorse on the visa—

(1) the date and the port of arrival;

(2) the identity of the vessel, aircraft, or other means of transportation; and

(3) other information required by regulation.

(b) NONIMMIGRANT ARRIVALS.—(1) Except as provided by paragraph (2) of this subsection, an alien arriving in the United States as a nonimmigrant shall present or surrender to the immigration officer at the port of entry documentation required by regulation.

(2) An alien arriving in the United States as a nonimmigrant crewmember with a passport and no other documentation may be admitted until it is practicable to grant documentation to the alien if—

(A) the name of the crewmember is on the crew list of the vessel or aircraft on which the crewmember arrives;

(B) a consular officer visas the crew list (but the consular officer may exclude a crewmember from the crew list visa); and

(C) the alien is otherwise admissible.

(c) RECORDS OF ADMISSION.—The Attorney General shall file—

(1) as a record of an alien's admission, an immigrant visa surrendered by the alien under subsection (a) of this section; and

(2) a record of entry into the United States that the Attorney General considers necessary to enforce the immigration laws, on the admission of—

(A) a returning resident immigrant under section 4311(b) of this title; and

(B) a nonimmigrant.

§ 6103. Inspection of arriving individuals

(a) GENERAL AUTHORITY.—An immigration officer may inspect an individual arriving in the United States to decide whether the individual is admissible.

(b) STATEMENTS UNDER OATH.—An individual arriving in the United States may be required to state under oath—

(1) the individual's purpose in coming to the United States;

(2) the period the individual intends to remain in the United States;

(3) whether, if an alien, the individual intends to become a citizen of the United States; and

(4) additional information to assist the immigration officer in deciding whether the individual is a national of the United States or an alien, and if an alien, whether the individual is excludable.

(c) DETENTION AND INSPECTION OF ALIENS.—(1) To decide whether an alien arriving in the United States is admissible, an immigration officer shall detain the alien for a sufficient time—

(A) to inspect the alien; and

(B) to have the alien undergo a physical and mental examination under section 6104 of this title.

(2) Except as provided by paragraph (3) of this subsection, the alien shall be detained for further inquiry before a special inquiry officer under section 6331 of this title if—

(A) the immigration officer has any doubt about the alien's admissibility; or

(B) another immigration officer challenges the first immigration officer's decision to admit the alien.

(3) Paragraph (2) of this subsection does not apply to an alien who is—

(A) a crewmember;

(B) a stowaway; or

(C) excluded from admission under subsection (d) of this section.

(d) ALIENS DANGEROUS TO NATIONAL SECURITY.—(1) If an immigration officer or a special inquiry officer suspects that an alien may be excludable under section 6308(a)(1) or (3), (b), or (c) of this title, the officer shall exclude the alien temporarily from admission and report the exclusion to the Attorney General. No further inquiry may be conducted until ordered by the Attorney General. The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(2) The Attorney General may order the alien excluded and deported without further inquiry by a special inquiry officer if the Attorney General—

(A) is satisfied on the basis of confidential information that the alien is excludable under section 6308(a)(1) or (3), (b), or (c) of this title; and

(B) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security.

§ 6104. Physical and mental examinations of arriving aliens

(a) EXAMINATIONS BY MEDICAL OFFICERS.—Except as provided by subsection (c) of this section, a medical officer of the Public Health Service shall—

(1) conduct a physical and mental examination of an alien arriving in the United States; and

(2) certify any observation by the officer that—

(A) the alien has a condition described by section 6302(a) of this title; or

(B) an alien ordered excluded and deported is helpless because of sickness, disability, or infancy.

(b) OFFICERS TRAINED IN MENTAL EXAMINATIONS.—Medical officers of the Service, specially trained in diagnosing mental defects, shall be assigned to ports of entry designated by the Attorney General. The Attorney General shall provide those medical officers with interpreters and suitable facilities for detaining and examining arriving aliens suspected of being excludable under section 6302(a) of this title.

(c) USE OF PRIVATE AND MILITARY PHYSICIANS.—If a medical officer of the Service is not available to conduct an examination under subsection (a) of this section, the Attorney General may obtain, on terms the Attorney General prescribes, the services of—

(1) a private physician with at least 4 years of professional experience; or

(2) if the alien to be examined is a special immigrant as defined by section 137(a)(13) of this title, a physician of the armed forces of the United States with at least 4 years of professional experience.

(d) EXAMINATIONS CONDUCTED UNDER REGULATIONS.—Examinations under this section shall be conducted under administrative regulations prescribed by the Attorney General and medical regulations prescribed by the Secretary of Health and Human Services.

(e) APPEAL OF CERTIFICATION.—An alien certified under this section as having a condition described by section 6302(a) of this title may appeal the certification to a board of medical officers of the Service convened by the Secretary. The alien may present before the board, at the alien's expense, one expert medical witness.

§ 6105. Custody pending decisions on excluding aliens convicted of aggravated felonies

(a) CUSTODY.—Pending a decision on excludability, the Attorney General shall take into custody an alien convicted of an aggravated felony when the alien is released (whether the alien is released on parole, supervised release, or probation or may be arrested or imprisoned again for the same offense).

(b) RELEASE FROM CUSTODY.—The Attorney General may release an alien taken into custody under subsection (a) of this section only if—

(1) the Attorney General decides that the alien may not be deported because the condition described by section 4313(f) of this title exists; and

(2)(A) a procedure has been established for reviewing each request for release under this subsection;

(B) the procedure includes consideration of the severity of the felony committed; and

(C) the review concludes that the alien will not pose a danger to the safety of other individuals or to property.

§ 6106. Presidential authority to suspend entry of aliens

When the President finds that the entry of aliens or a class of aliens into the United States would be detrimental to the interests of the United States, the President, by proclamation, may suspend the entry of all aliens or a class of aliens or impose restrictions on their entry, for any period the President considers necessary.

§ 6107. Denial of admission of United Nations representatives because of espionage

The President shall use the authority of the President, including the authority contained in section 6 of the Joint Resolution of August 4, 1947 (ch. 482, 61 Stat. 767) (known as the United Nations Headquarters Agreement Act), to deny admission of an individual to the United States as a representative to the United Nations if the President decides that the individual has been found to have been engaged in espionage activities directed against the United States or its allies and may pose a threat to the security interests of the United States. The President may waive this section if the President decides, and notifies Congress, that the waiver is in the security interests of the United States.

SUBCHAPTER II—ADMISSION OF CERTAIN ALIENS

§ 6121. Lawfully admitted aliens returning after temporary absence

(a) GENERAL.—The Attorney General may admit an alien who is lawfully admitted for permanent residence and returning after a temporary absence, without regard to section 4311(a) or subchapter I of chapter 63 of this title (except sections 6308, 6309, and 6312), if the alien—

(1) left the United States voluntarily and not under an order of deportation; and

(2) is returning to a lawful unrelinquished domicile of 7 consecutive years.

(b) OTHER AUTHORITY NOT LIMITED.—Subsection (a) of this section does not limit the authority of the Attorney General under section 4311(b) of this title.

(c) NONAPPLICATION TO CERTAIN FELONS.—Subsection (a) of this section does not apply to an alien who has been convicted of, and has served a total term of imprisonment of at least 5 years for, one or more aggravated felonies.

§ 6122. Temporary admission of excludable nonimmigrants

(a) GRANTING NONIMMIGRANT VISAS.—An alien applying for a nonimmigrant visa who a consular officer believes is ineligible for the visa under section 2121(a) of this title or excludable under subchapter I of chapter 63 of this title (except sections 6308(a)(1)(A), (2), and (3), and (c), and 6309) may be granted a nonimmigrant visa and admitted temporarily as a nonimmigrant if the Attorney General approves a recommendation by the officer or the Secretary of State that the alien be admitted temporarily despite the alien's inadmissibility.

(b) ADMISSIONS.—An alien inadmissible under section 2121(a) of this title or excludable under subchapter I of chapter 63 of this title (except sections 6308(a)(1)(A), (2), and (3), and (c), and 6309) may be admitted temporarily as a nonimmigrant if the alien—

(1) has the appropriate documentation; or

(2) is granted a waiver of the documentation requirements.

(c) CONDITIONS TO CONTROL ADMISSION AND RETURN.—The Attorney General shall prescribe conditions, including filing a bond as necessary, to control the admission and return of aliens applying for admission under this section.

§ 6123. Temporary parole

(a) GENERAL.—Except as provided by section 2305(c) of this title, the Attorney General, for an emergency or other reasons strictly in the public interest, may parole temporarily into the United States an alien applying for admission. However, if the alien is a refugee, the Attorney General may parole the alien only if the Attorney General finds compelling reasons in the public interest requiring the alien to be paroled instead of admitted as a refugee. Parole of an alien under this section—

(1) is subject to conditions the Attorney General may prescribe; and

(2) is not an admission to the United States.

(b) END OF PAROLE.—When the Attorney General is of the opinion that the purposes of the parole have been served, the alien immediately shall return or be returned to the custody from which the alien was paroled. Thereafter, the alien's application for admission shall continue to be considered in the same way as the application of any other alien for admission.

§ 6124. Accredited officials of foreign governments

On a reciprocal basis, an accredited official of a government of a foreign country, and the official's immediate family, attendants, servants, and per-

sonal employees, may be admitted for immediate and continuous travel through the United States without regard to subchapter I of chapter 63 of this title (except section 6308(a)–(c)).

CHAPTER 63—EXCLUSION

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SUBCHAPTER I—GROUNDS FOR EXCLUSION

§ 6301. Fraud and misrepresentation

(a) GENERAL.—An alien shall be excluded from admission to the United States if the alien—

(1) by fraud or willful misrepresentation of a material fact obtained, or attempted or attempts to obtain, a visa, other documentation, entry into the United States, or another benefit under this title (except subchapter I of chapter 5, subchapters III and IV of chapter 131, and chapters 133–137); or

(2) is the subject of a final order for violation of section 10125(b) of this title.

(b) WAIVERS.—The Attorney General may waive subsection (a)(1) of this section for an immigrant if—

(1) the immigrant is the spouse, parent, son, or daughter of a citizen of the United States or of an immigrant lawfully admitted for permanent residence; or

(2) the fraud or misrepresentation occurred at least 10 years before the date of the immigrant's application for a visa, entry, or change of status and the Attorney General is satisfied that the immigrant's admission would not be contrary to the welfare, safety, or security of the United States.

§ 6302. Health

(a) GENERAL.—An alien shall be excluded from admission to the United States if the alien is found—

(1) under regulations prescribed by the Secretary of Health and Human Services, to have a communicable disease of public health significance (including infection with the etiologic agent for acquired immune deficiency syndrome);

(2) under regulations prescribed by the Secretary in consultation with the Attorney General—

(A) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(B) to have had a physical or mental disorder and a history of behavior associated with the disorder that has posed a threat to the property, safety, or welfare of the alien or others and is likely to recur or to lead to other harmful behavior; or

(3) under regulations prescribed by the Secretary, to be a drug abuser or addict.

(b) WAIVERS.—(1) The Attorney General may waive—

(A) subsection (a)(1) of this section for an alien who—

(i) is the spouse, unmarried son, unmarried daughter, or adopted child of a citizen of the United States, of an alien lawfully admitted for permanent residence, or of an alien who has been granted an immigrant visa; or

(ii) has a son or daughter who is a citizen of the United States, an alien lawfully admitted for permanent residence, or an alien who has been granted an immigrant visa; or

(B) subsection (a)(2) of this section for any alien.

(2) A waiver under this subsection is subject to any conditions, including filing a bond, that the Attorney General may prescribe by regulation after consultation with the Secretary.

§ 6303. Protection and guardianship of aliens excluded for health or infancy

An alien shall be excluded from admission to the United States if—

(1) the alien is accompanying another alien ordered excluded and deported and certified to be helpless because of sickness, disability, or infancy under section 6104(a)(2)(B) of this title; and

(2) the alien's protection or guardianship is required by the alien ordered excluded and deported.

§ 6304. Public charges

(a) GENERAL.—An alien shall be excluded from admission to the United States if the consular officer believes, at the time of the application for a visa, or the Attorney General believes, at the time of the application for admission or change of status, that the alien is likely at any time to become a public charge.

(b) ADMISSION ON BOND.—(1) The Attorney General may admit an alien excludable under subsection (a) of this section if the alien is otherwise admissible and files a bond approved by the Attorney General. The bond shall—

(A) be in an amount and contain conditions the Attorney General prescribes; and

(B) be for the benefit of the United States, States, territories and possessions of the United States, political subdivisions of States, and districts of States, territories, possessions, and political subdivisions of States, holding them harmless against the alien's becoming a public charge.

(2) When the alien permanently leaves the United States, is naturalized, or dies, the bond ends and the security held to secure performance, except to the extent forfeited for a violation of the bond, shall be returned to the person providing it or to the person's legal representative.

(3) The Attorney General may bring a civil action on the bond in the name of the United States for the benefit of the United States or of a State, territory, possession, political subdivision, or district in which the alien is a public charge, regardless of whether a demand for payment of public expenses has been made.

§ 6305. Stowing Away

An alien shall be excluded from admission to the United States if the alien is a stowaway.

§ 6306. Encouraging others to enter illegally

(a) GENERAL.—An alien shall be excluded from admission to the United States if the alien at any time knowingly encouraged, induced, or assisted another alien to enter or attempt to enter the United States in violation of law.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to an alien who—

(1) is an eligible immigrant (as defined by section 301(b) of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5029));

(2) was physically present in the United States on May 5, 1988;

(3) is seeking—

(A) admission as an immediate relative;

(B) admission under section 4103(c) of this title (including under section 112 of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 4987)); or

(C) benefits under section 301(a) of that Act (104 Stat. 5029); and

(4) before May 5, 1988, encouraged, induced, or assisted only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(c) WAIVERS.—The Attorney General may waive subsection (a) of this section for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest, for an alien who—

(1)(A) is lawfully admitted for permanent residence, temporarily left the United States voluntarily and not under an order of deportation, and is otherwise admissible as a returning resident under section 4311(b) of this title; or

(B) is seeking admission or change of status as an immediate relative or immigrant under section 4103(b), (c), or (d) of this title; and

(2) has encouraged, induced, or assisted only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

§ 6307. Criminal and immoral acts

(a) GENERAL.—Each of the following aliens shall be excluded from admission to the United States:

(1) an alien who has been convicted of, admits having committed, or admits having committed acts that are the essential elements of, an offense involving moral turpitude (except a purely political offense), but this clause does not apply to an alien who has committed only one offense if—

(A) the alien committed the offense when less than 18 years of age, and committed the offense and was released from any confinement imposed for the offense more than 5 years before applying for a visa or other documentation and for admission; or

(B) the maximum imprisonment for the offense was not more than one year and the alien was not sentenced to more than 6 months, regardless of the extent to which the sentence was finally executed.

(2) an alien who has been convicted of, admits having committed, or admits having committed acts that are the essential elements of, a violation of, or a conspiracy to violate, a law or regulation of a State, the United States, or a foreign country related to a controlled substance

(as defined by section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)).

(3) an alien who a consular officer or an immigration officer knows or reasonably believes is or has been—

(A) unlawfully trafficking in a controlled substance (as defined by section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)); or

(B) knowingly assisting, abetting, conspiring, or colluding with others in unlawfully trafficking in such a controlled substance.

(4) an alien who has been convicted of at least 2 offenses (except purely political offenses) for which the sentences to confinement actually imposed total at least 5 years, regardless of whether—

(A) the convictions were in a single trial;

(B) the offenses arose from a single scheme of misconduct; or

(C) the offenses involved moral turpitude.

(5) an alien who—

(A) is coming to the United States only, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of applying for a visa, admission, or change of status;

(B)(i) procures or attempts to procure individuals for prostitution;

(ii) within that 10-year period, procured or attempted to procure or to import individuals for prostitution; or

(iii) receives or, within that 10-year period, received any part of the proceeds of prostitution; or

(C) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution.

(6) an alien who is coming to the United States to practice polygamy.

(7) an alien—

(A) who has committed in the United States at any time—

(i) a felony;

(ii) a crime of violence (as defined by section 16 of title 18); or

(iii) an offense of reckless driving or driving when intoxicated or under the influence of alcohol or a prohibited substance if the offense involved personal injury to another;

(B) for whom immunity from criminal jurisdiction was exercised for that offense;

(C) who as a consequence of the offense and exercise of immunity has left the United States; and

(D) who subsequently has not submitted completely to the jurisdiction of the court in the United States having jurisdiction of that offense.

(b) WAIVERS.—The Attorney General may waive subsection (a)(1), (4), (5), or (7) of this section, or subsection (a)(2) of this section for a single offense of simple possession of not more than 30 grams of marijuana, for an immigrant if—

(1)(A) the Attorney General is satisfied that—

(i) the immigrant is excludable only under subsection (a)(5)(A) or (B) of this section or the activities for which the immigrant is excludable occurred more than 15 years before the date of the immigrant's application for a visa, admission, or change of status;

(ii) the immigrant's admission would not be contrary to the welfare, safety, or security of the United States; and

(iii) the immigrant has been rehabilitated; or

(B) the immigrant is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted for permanent residence and the Attorney General is satisfied that the immigrant's exclusion would result in extreme hardship to the citizen or to the alien lawfully admitted for permanent residence;

(2) the Attorney General consents (subject to conditions and procedures the Attorney General may prescribe by regulation) to the immigrant's applying or reapplying for a visa, admission, or change of status; and

(3) the immigrant has not been convicted of, or admitted committing acts that constitute, murder or a criminal act involving torture.

§ 6308. National security

(a) GENERAL.—An alien shall be excluded from admission to the United States if a consular officer or the Attorney General knows or reasonably believes that the alien seeks to enter the United States to engage only, principally, or incidentally in—

(1) an activity to violate—

(A) a law of the United States related to espionage or sabotage; or

(B) a law prohibiting the export from the United States of goods, technology, or sensitive information;

(2) any other unlawful activity; or

(3) an activity a purpose of which is to oppose, control, or overthrow the United States Government by force, violence, or other unlawful means.

(b) TERRORIST ACTIVITIES.—(1) In this subsection—

(A) ''terrorist activity'' means an activity that is unlawful under the laws of the place where the activity is committed or that, if committed in the United States, would be unlawful under the laws of the United States or any State, and that involves—

(i) highjacking or sabotaging a vessel, aircraft, vehicle, or other conveyance;

(ii) seizing or detaining, and threatening to kill, injure, or continue to detain, another individual to compel a third person (including a governmental entity) to do or abstain from doing an act as an explicit or implicit condition for the release of the individual seized or detained;

(iii) a violent attack on an internationally protected person (as defined by section 1116(b)(4) of title 18) or on the liberty of such a person;

(iv) an assassination;

(v) the use, with intent to endanger the safety of an individual or to cause substantial damage to property, of a biological agent, chemical agent, or nuclear weapon or device, or an explosive or firearm (except only for personal monetary gain); or

(vi) a threat, attempt, or conspiracy to do an activity described by subclauses (i)–(v) of this clause.

(B) ''engage in terrorist activity'' means to commit, in an individual capacity or as a member of an organization, a terrorist activity or an act that the actor knows or reasonably should know gives material support to an individual, organization, or government in conducting a terrorist activity at any time, including—

(i) preparing or planning a terrorist activity;

(ii) gathering information on potential targets for terrorist activity;

(iii) providing any type of material support, including a safe house, transportation, communication, money, false identification, weapon, explosive, or training, to an individual the actor knows or reasonably should know has committed or plans to commit a terrorist activity;

(iv) soliciting money or another thing of value for a terrorist activity or a terrorist organization; and

(v) soliciting an individual for membership in a terrorist organization or terrorist government or to engage in a terrorist activity.

(C) an alien who is an officer, official, representative, or spokesperson of the Palestine Liberation Organization is deemed under subparagraph (B) of this paragraph to be engaged in a terrorist activity.

(2) An alien shall be excluded from admission to the United States if—

(A) the alien has engaged in a terrorist activity; or

(B) a consular officer or the Attorney General knows or reasonably believes that the alien is likely to engage in a terrorist activity after entry.

(c) FOREIGN POLICY.—(1) An alien shall be excluded from admission to the United States if the Secretary of State reasonably believes that the alien's entry or proposed activities in the United States would have potentially serious adverse foreign policy consequences for the United States.

(2) An alien who is an official of a government of a foreign country or a purported government, or who is a candidate for election to a government office of a foreign country during the period immediately before the election for that office, may not be excluded or subject to restrictions or conditions on entry under paragraph (1) of this subsection only because of the alien's past, current, or expected beliefs, statements, or associations, if the beliefs, statements, or associations would be lawful in the United States.

(3) An alien not described by paragraph (2) of this subsection may not be excluded or subject to restrictions or conditions on entry under paragraph (1) of this subsection because of the alien's past, current, or expected beliefs, statements, or associations, if the beliefs, statements, or associations would be lawful in the United States, unless the Secretary of State personally decides that the alien's admission would compromise a compelling foreign policy interest of the United States.

(4) If the Secretary decides under paragraph (3) of this subsection that an alien's admission would compromise a compelling foreign policy interest of the United States, the Secretary shall give timely notice of the alien's identity and the reasons for the decision to the chairmen of the Committees on the Judiciary and Foreign Affairs of the House of Representatives and the Committees on the Judiciary and Foreign Relations of the Senate.

(d) MEMBERSHIP IN TOTALITARIAN PARTY.—(1) An immigrant shall be excluded from admission to the United States if the immigrant is or has been a member of or affiliated with the Communist or any other domestic or foreign totalitarian party, including a subdivision or affiliate of that party.

(2) Paragraph (1) of this subsection does not apply to an immigrant because of membership or affiliation if the immigrant satisfies the consular

officer when applying for a visa, or the Attorney General when applying for admission, that the membership or affiliation is or was—

(A) involuntary;

(B) only before the alien's 16th birthday;

(C) only by operation of law; or

(D) only to obtain employment, food rations, or other essentials of living and the membership or affiliation is or was necessary to obtain the employment, rations, or essentials.

(3) Paragraph (1) of this subsection does not apply to an immigrant because of membership or affiliation if the immigrant satisfies the consular officer when applying for a visa, or the Attorney General when applying for admission, that—

(A) the membership or affiliation ended at least—

(i) 2 years before the date of applying; or

(ii) 5 years before the date of applying, if the membership or affiliation was with the party controlling the government of a foreign country that is a totalitarian dictatorship as of that date; and

(B) the immigrant is not a threat to the security of the United States.

(4) The Attorney General may waive paragraph (1) of this subsection for an immigrant for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest, if the immigrant—

(A) is the parent, spouse, son, daughter, brother, or sister of a citizen of the United States or the spouse, son, or daughter of an alien lawfully admitted for permanent residence; and

(B) is not a threat to the security of the United States.

§ 6309. Participation in Nazi persecution or genocide

An alien shall be excluded from admission to the United States if the alien—

(1) at any time during the period from March 23, 1933, through May 8, 1945, ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion, under the direction of, or in association with—

(A) the Nazi government of Germany;

(B) any government in an area occupied by the military forces of the Nazi government of Germany;

(C) any government established with the assistance or cooperation of the Nazi government of Germany; or

(D) any government that was an ally of the Nazi government of Germany; or

(2) engaged in conduct that is defined as genocide under the International Convention on the Prevention and Punishment of Genocide.

§ 6310. Prior deportation or removal

(a) PRIOR EXCLUSION AND DEPORTATION.—An alien shall be excluded from admission to the United States if the alien has been excluded and deported and is seeking admission within one year after the date of deportation.

(b) OTHER PRIOR DEPORTATION OR REMOVAL.—Each of the following aliens shall be excluded from admission to the United States if the alien is seeking admission within 5 years (or, if convicted of an aggravated felony, within 20 years) after the date of the deportation or removal:

(1) an alien who has been arrested and deported.

(2) an alien who has fallen into distress and been removed under this title or a prior law.

(3) an alien who has been removed as an alien enemy.

(4) an alien who has been removed at the expense of the United States Government under section 6539(e)(1) of this title instead of being deported.

(c) NONAPPLICATION.—Subsections (a) and (b) of this section do not apply to an alien if the Attorney General consents, before the alien begins to travel to the United States from a place outside the United States or attempts to be admitted from foreign contiguous territory, to the alien's applying or reapplying for admission.

§ 6311. Ineligibility for citizenship and evasion of military service

An alien shall be excluded from admission to the United States if the alien—

(1) is permanently ineligible for citizenship; or

(2) left or remained outside the United States to avoid or evade training or service in the armed forces of the United States during war or a period declared by the President to be a national emergency, unless the alien was a nonimmigrant at the time of leaving the United States and is seeking to reenter the United States as a nonimmigrant.

§ 6312. International child abduction

(a) GENERAL.—If, after a court in the United States has granted to an individual the custody of a child who is a citizen of the United States, an alien detains or withholds custody of the child outside the United States from the individual granted custody by the court, the alien shall be excluded from admission to the United States until the child is surrendered to the individual granted custody by the court.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply as long as the child is located in a foreign country whose government is a party to the Hague Convention on the Civil Aspects of International Child Abduction.

§ 6313. Noncompliance with documentation requirements

(a) GENERAL DOCUMENTATION REQUIREMENTS.—An alien shall be excluded from admission to the United States if the alien is seeking admission as—

(1) a nonimmigrant and does not satisfy the documentation requirements of section 2121 of this title; or

(2) an immigrant and does not satisfy the documentation requirements of section 4311 of this title or the alien's immigrant visa was issued without being in compliance with sections 4103–4106 of this title.

(b) REQUIREMENTS OF GRADUATES OF NON-ACCREDITED MEDICAL SCHOOLS.—An alien shall be excluded from admission to the United States if the alien—

(1) is seeking admission as an immigrant principally to perform services as a member of the medical profession;

(2) is a graduate of a medical school not accredited by an entity approved by the Secretary of Education; and

(3) has not satisfied the requirements of section 4104(g)(1) of this title.

(c) LABOR CERTIFICATIONS.—An alien shall be excluded from admission to the United States if the alien is seeking admission as an immigrant to perform skilled or unskilled labor and the Secretary of Labor has not made the certification required by section 4104(g)(2) of this title.

§ 6314. Application of exclusions to aliens leaving Guam, Puerto Rico, or the Virgin Islands

An alien who leaves Guam, Puerto Rico, or the Virgin Islands and tries to enter the continental United States or another place under the jurisdiction of the United States is subject to this subchapter and section 4104(g) of this title. Such an alien who is excluded from admission to the United States shall be deported immediately in the way provided by section 6335 of this title.

SUBCHAPTER II—PROCEDURE

§ 6331. Exclusion proceedings

(a) PROCEEDING REQUIREMENTS.—(1) When an arriving alien is detained under section 6103(c)(2) of this title for further inquiry about the alien's admissibility, a special inquiry officer shall conduct a proceeding

under this section to decide whether the alien is to be admitted or excluded and deported.

(2) Sections 303 (a) and (b) and 6103(d) of this title apply to a proceeding under this section.

(3) The Attorney General may prescribe regulations for conducting proceedings under this section.

(4) The procedure provided by this section and regulations prescribed under this section is the only procedure for deciding on the admissibility of an alien under this section.

(b) OFFICER NOT TO HAVE PARTICIPATED IN INVESTIGATION OR PROSECUTION.—A proceeding under this section shall be conducted by a special inquiry officer who did not participate in investigating or (except as provided by this section) prosecuting the case against the alien.

(c) CLOSED PROCEEDINGS.—A proceeding under this section shall be closed to the public. However, the alien is entitled—

(1) to have one friend or relative present under conditions prescribed by the Attorney General; and

(2) to be represented by counsel as provided by section 6333 of this title.

(d) PRESENTATION OF EVIDENCE.—The special inquiry officer shall administer oaths, present and receive evidence, and interrogate, examine, and cross-examine the alien and witnesses.

(e) BURDEN OF PROOF.—An individual seeking to enter the United States has the burden of proving that the individual is not subject to exclusion.

(f) RECORD OF PROCEEDING.—A complete record of the proceeding, including the testimony and evidence produced at the proceeding, shall be kept.

(g) DECISIONS.—(1) The decision of a special inquiry officer in a proceeding under this section shall be based only on the evidence produced at the proceeding. If a medical officer, private physician, or board of medical officers has certified under section 6104 of this title that the alien has a condition described by section 6302(a) of this title, the decision of the special inquiry officer shall be based only on the certification.

(2) A decision of a special inquiry officer on whether to exclude an alien is final unless reversed on appeal to the Attorney General under section 6332 of this title. An alien who has a right to appeal under section 6332 shall be informed of that right.

§ 6332. Administrative appeals

(a) APPEALS BY ALIENS.—An alien may appeal to the Attorney General an order of a special inquiry officer excluding the alien, except when the alien is—

(1) a stowaway;

(2) excluded temporarily under section 6103(d) of this title; or

(3) excluded based on a certification under section 6104 of this title.

(b) APPEALS BY IMMIGRATION OFFICERS.—The immigration officer in charge of the port at which a proceeding under section 6331 of this title is conducted may appeal to the Attorney General an order of a special inquiry officer admitting an alien.

(c) TIME FOR APPEALING AND STAYING ACTIONS.—An appeal under this section must be timely. The appeal stays final action in the proceeding until the Attorney General makes a final decision.

(d) DECISIONS.—Except as provided by section 6103(d) of this title, the Attorney General shall decide the appeal based only on the evidence in the proceeding before the special inquiry officer.

§ 6333. Right to counsel

In an exclusion proceeding before a special inquiry officer and in an appeal before the Attorney General from an exclusion proceeding, an alien is entitled to be represented, at no cost to the United States Government, by the alien's choice of counsel authorized to practice in the proceeding or appeal.

§ 6334. Judicial review

(a) JUDICIAL REVIEW.—An alien may obtain judicial review of a final order of exclusion only by a habeas corpus proceeding and only if—

(1) the alien has exhausted all administrative remedies available to the alien as of right under the immigration laws and regulations;

(2) the alien has remained in the United States after the order was issued; and

(3) the validity of the order has not been decided in a prior judicial proceeding, unless the reviewing court finds that the petition for habeas corpus presents grounds that could not have been presented in the prior proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

(b) CONTENTS OF PETITIONS.—A petition for habeas corpus shall state whether the validity of the order of exclusion has been upheld in a prior judicial proceeding, and, if so, shall state the name of the court, the date of the court's ruling, and the nature of the proceeding.

§ 6335. Deportation of excluded aliens

(a) IMMEDIATE DEPORTATION.—Except as provided by subsection (d) of this section, an alien (except an alien crewmember) arriving in the United States who is excluded under this title shall be immediately deported.

(b) PLACE OF DEPORTATION.—(1) Except as provided by paragraphs (2) and (3) of this subsection, deportation under this section shall be to the country in which the alien boarded the vessel or aircraft on which the alien arrived in the United States.

(2) If the alien boarded the vessel or aircraft on which the alien arrived in the United States in a foreign territory contiguous to the United States, an island adjacent to the United States, or an island adjacent to a foreign territory contiguous to the United States, and the alien is not a native, citizen, subject, or national of, or does not reside in, the territory or island, deportation shall be to the country in which the alien boarded the vessel or aircraft that transported the alien to the territory or island.

(3) If the government of the country designated in paragraph (1) or (2) of this subsection is unwilling to accept the alien into that country's territory, deportation shall be to any of the following countries, as directed by the Attorney General:

(A) the country of which the alien is a citizen, subject, or national.

(B) the country in which the alien was born.

(C) the country in which the alien has a residence.

(D) a country with a government that will accept the alien into the country's territory if deportation to a country described by clauses (A)–(C) of this paragraph is impracticable, inadvisable, or impossible.

(c) DEPORTATION VESSELS, AIRCRAFT, AND ACCOMMODATIONS.—(1) Deportation under this section shall be on a vessel or aircraft owned by the owner of the vessel or aircraft on which the alien arrived in the United States, unless it is impracticable to deport the alien on one of those vessels or aircraft within a reasonable time.

(2) The alien shall be deported in accommodations of the same class in which the alien arrived.

(d) STAY OF DEPORTATION.—(1) The Attorney General may stay the deportation of an alien under this section if the Attorney General decides that—

(A) immediate deportation is not practicable or proper; or

(B) the alien is needed to testify for the United States Government in the prosecution of a person for a violation of a law of the United States.

(2) During the period an alien is detained because of a stay of deportation under paragraph (1)(B) of this subsection, the Attorney General may

pay from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''—

(A) the cost of maintenance of the alien; and

(B) a witness fee of $1 a day.

(3) The Attorney General may release an alien, whose deportation is stayed under paragraph (1)(B) of this subsection, on—

(A) the alien's filing a bond of at least $500 with security approved by the Attorney General;

(B) condition that the alien appear when required as a witness and for deportation; and

(C) other conditions the Attorney General may prescribe.

§ 6336. Costs of deporting excluded aliens

When an alien is ordered excluded and deported, the owner of the vessel or aircraft on which the alien arrived in the United States shall pay the transportation cost of deporting the alien. If deportation is on a vessel or aircraft not owned by the owner of the vessel or aircraft on which the alien arrived in the United States, the Attorney General may—

(1) pay the cost from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses''; and

(2) recover the amount of the cost in a civil action from the owner, agent, or consignee of the vessel or aircraft on which the alien arrived in the United States.

CHAPTER 65—DEPORTATION OF ALIENS IN THE UNITED STATES

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SUBCHAPTER I—GROUNDS FOR DEPORTATION

§ 6501. Excludable at time of entry or change of status or in the United States illegally

(a) GENERAL.—An alien shall be deported if the alien—

(1) was excludable at the time of entry or change of status under a law in effect at that time;

(2) entered the United States—

(A) without being inspected; or

(B) at a time or place not designated by an immigration officer; or

(3) is in the United States in violation of a law of the United States.

(b) WAIVERS FOR CERTAIN MISREPRESENTATIONS.—(1) The Attorney General may waive subsection (a)(1) of this section for an alien (except an alien deportable under section 6509 of this title) who was excludable under section 6301(a)(1) of this title at the time of entry if the alien—

(A) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted for permanent residence;

(B) had an immigrant visa or equivalent documentation at the time of entry; and

(C) was otherwise admissible at the time of entry, except under section 4104(g)(2) or 4311(a)(1) of this title as a direct result of the fraud or misrepresentation.

(2) A waiver of deportation under paragraph (1) of this subsection for fraud or misrepresentation is also a waiver of deportation based on other grounds of inadmissibility at the time of entry directly resulting from the fraud or misrepresentation.

§ 6502. Marriage fraud and failure to marry timely

(a) MARRIAGE FRAUD.—(1) An alien shall be deported if—

(A) the alien obtained entry into the United States with an immigrant visa or other documentation obtained because of a marriage entered into less than 2 years before the alien's entry that was judicially annulled or terminated within 2 years after the alien's entry; or

(B) the Attorney General is satisfied that the alien failed to fulfill the alien's marital agreement that, in the opinion of the Attorney General, was made to obtain entry into the United States as an immigrant.

(2) Paragraph (1)(A) of this subsection does not apply to an alien who satisfies the Attorney General that the marriage was not made to evade the immigration laws.

(b) FAILURE TO MARRY WITHIN 90 DAYS.—An alien who enters the United States as a nonimmigrant under section 2309(a) of this title, and a minor child of the alien accompanying or following to join the alien, shall

leave the United States if, with 90 days after entry, the alien does not marry the citizen who filed the petition for the alien under section 2309(b) of this title. If they do not leave, they shall be deported.

§ 6503. Public charges

An alien shall be deported if the alien, within 5 years after entry, has become a public charge from causes not affirmatively shown to have arisen since entry.

§ 6504. Failure to maintain classification or status or satisfy entry conditions

(a) NONIMMIGRANT CLASSIFICATION NOT MAINTAINED.—(1) Subject to paragraph (2) of this subsection, an alien admitted to the United States as a nonimmigrant shall be deported if the alien does not—

(A) maintain the nonimmigrant classification under which the alien was admitted or to which the classification was changed under section 9108 of this title; or

(B) comply with a condition of the nonimmigrant classification.

(2) An alien admitted as a nonimmigrant under section 2301(1) or 2302(1) of this title and not maintaining the nonimmigrant classification under which the alien was admitted may be deported only if—

(A) the Secretary of State approves; or

(B) the alien is deportable under section 6508 or 6509 of this title.

(b) NONCOMPLIANCE WITH HEALTH WAIVER CONDITIONS.—An alien admitted to the United States as a result of a waiver under section 6302(b) of this title shall be deported if the Secretary of Health and Human Services certifies that the alien has not complied with a condition of the waiver.

(c) SPECIAL AGRICULTURAL WORKERS.—An alien lawfully admitted for temporary residence under section 210A of the Immigration and Nationality Act shall be deported if the alien does not meet the requirement of section 210A(d)(5)(A) of that Act by the end of the applicable period.

(d) TERMINATION OF CONDITIONAL PERMANENT RESIDENT STATUS.—An alien lawfully admitted for permanent residence on a conditional basis under chapter 45 of this title shall be deported if the status is terminated. However, this subsection does not apply if a waiver is granted under section 4506(b) of this title.

§ 6505. Encouraging others to enter illegally

(a) GENERAL.—An alien shall be deported if the alien, before or within 5 years after entry, knowingly has encouraged, induced, or assisted another alien to enter or attempt to enter the United States in violation of law.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to an alien who—

(1) is an eligible immigrant (as defined by section 301(b) of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 5029));

(2) was physically present in the United States on May 5, 1988;

(3) is seeking—

(A) admission as an immediate relative;

(B) admission under section 4103(c) of this title (including under section 112 of the Immigration Act of 1990 (Public Law 101–649, 104 Stat. 4987)); or

(C) benefits under section 301(a) of that Act (104 Stat. 5029); and

(4) before May 5, 1988, encouraged, induced, or assisted only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(c) WAIVERS.—The Attorney General may waive subsection (a) of this section for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest, for an alien who—

(1) is lawfully admitted for permanent residence; and

(2) has encouraged, induced, or assisted only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

§ 6506. Criminal offenses

(a) MORAL TURPITUDE AND AGGRAVATED FELONIES.—(1) An alien shall be deported if the alien is convicted—

(A) of an offense involving moral turpitude committed within 5 years after entry and is sentenced to confinement or is confined for the offense in a prison or correctional institution for at least one year;

(B) after entry, of at least 2 offenses involving moral turpitude not arising out of a single scheme of misconduct, regardless of whether the convictions were in a single trial or the alien was confined for the offenses; or

(C) after entry, of an aggravated felony.

(2) Paragraph (1) of this subsection does not apply to a conviction of an alien if the President or the chief executive officer of a State has granted the alien a full and unconditional pardon.

(b) CONTROLLED SUBSTANCES.—An alien shall be deported if the alien—

(1) is convicted, after entry, of violating, or conspiring or attempting to violate, a law or regulation of a State, the United States, or a foreign country related to a controlled substance (as defined by section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)), except a single offense of possession for one's own use of not more than 30 grams of marijuana; or

(2) is, or at any time after entry has been, a drug abuser or addict.

(c) FIREARMS.—An alien shall be deported if the alien, after entry, is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying in violation of law any weapon, part, or accessory that is a firearm or destructive device (as defined by section 921(a) of title 18).

(d) MISCELLANEOUS.—An alien shall be deported if the alien has been convicted at any time (and the judgment has become final) of violating or conspiring or attempting to violate—

(1) section 501 or 10151 of this title;

(2) chapter 37, 105, or 115 of title 18 if a term of imprisonment of at least 5 years may be imposed;

(3) section 871 or 960 of title 18;

(4) the Trading with the Enemy Act (50 App. U.S.C. 1 et seq.); or

(5) the Military Selective Service Act (50 App. U.S.C. 451 et seq.);

§ 6507. Failure to register and falsification of documents

(a) ADDRESS NOTIFICATION.—An alien shall be deported if the alien has not complied with section 8104 of this title, unless the Attorney General is satisfied that the noncompliance was reasonably excusable or not willful.

(b) FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.—An alien shall be deported if the alien has been convicted at any time of—

(1) violating section 10145 of this title;

(2) violating section 36(c) of the Alien Registration Act, 1940;

(3) violating or conspiring to violate the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.);

(4) violating the Act of August 1, 1956 (50 U.S.C. 851 et seq.) or a regulation under that Act; or

(5) violating or conspiring to violate section 1546 of title 18.

(c) DOCUMENT FRAUD.—An alien shall be deported if the alien is the subject of a final order for violating section 10125 of this title.

§ 6508. National security

(a) GENERAL.—An alien shall be deported if the alien has engaged or engages in—

(1) an activity to violate—

(A) a law of the United States related to espionage or sabotage; or

(B) a law prohibiting the export from the United States of goods, technology, or sensitive information;

(2) any other criminal activity that endangers public safety or the security of the United States; or

(3) an activity a purpose of which is to oppose, control, or overthrow the United States Government by force, violence, or other unlawful means.

(b) TERRORIST ACTIVITIES.—An alien shall be deported if the alien has engaged or engages in a terrorist activity as defined by section 6308(b) of this title.

(c) FOREIGN POLICY.—(1) An alien shall be deported if the Secretary of State has reason to believe that the alien's presence or activities in the United States would have potentially serious adverse foreign policy consequences for the United States.

(2) The exceptions described by section 6308(c)(2) and (3) of this title apply to deportability under this subsection in the same way that they apply to excludability under section 6308(c)(1).

§ 6509. Participation in Nazi persecution or genocide

An alien described by section 6309 of this title shall be deported.

§ 6510. Nonapplication of certain grounds to special immigrants dependent on juvenile court

The following sections do not apply to a special immigrant as defined by section 137(a)(12) of this title, based on circumstances that existed before the date the alien acquired the special immigrant status:

(1) sections 6501(a) and 6504(a), (b), and (d) of this title, except to the extent related to a ground of exclusion described by sections 6307(a)(1)–(5) or (7), 6308, or 6309 of this title.

(2) section 6507(a) of this title.

SUBCHAPTER II—DEPORTATION PROCEDURE

§ 6531. Arrest and detention pending decision on deportation

(a) ARREST, DETENTION, AND RELEASE.—On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on deportation. Except as provided by subsection (c) of this section, the Attorney General, pending a decision on deportation, may—

(1) continue to detain the arrested alien; or

(2) release the alien on—

(A) a bond of at least $500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole.

(b) REVOCATION OF BOND OR PAROLE.—The Attorney General may revoke at any time a bond or parole authorized under subsection (a) of this section, rearrest the alien under the original warrant, and detain the alien pending a decision on deportation.

(c) ALIENS CONVICTED OF AGGRAVATED FELONIES.—(1) The Attorney General shall take into custody an alien convicted after November 17, 1988, of an aggravated felony when the alien is released, whether the alien is released on parole, supervised release, or probation or may be arrested or imprisoned again for the same offense.

(2) To the maximum extent practicable, the Attorney General shall detain at one facility aliens convicted after November 17, 1988, of aggravated felonies and taken into custody under paragraph (1) of this subsection. In selecting the facility, the Attorney General shall make a reasonable effort to ensure that an alien's right to counsel under section 6534 of this title is not impaired.

(3) The Attorney General may release the alien only if the alien—

(A) was lawfully admitted to the United States; and

(B) satisfies the Attorney General that the alien is not a threat to the community and is likely to appear for any scheduled proceeding.

(4) The Attorney General shall carry out a system—

(A) to make the investigative resources of the Immigration and Naturalization Service available, daily and on a 24-hour basis, to officers and employees of the United States Government, States, and localities to decide whether an individual arrested by any of those officers or employees for an aggravated felony is an alien;

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

(C) to maintain a current record, using computer resources, of aliens who have been convicted after November 17, 1988, of aggravated felonies and deported.

(5) The record referred to in paragraph (4)(C) of this subsection shall be made available to inspectors at ports of entry and to border patrol agents at sector headquarters to help identify aliens who have been convicted after November 17, 1988, of aggravated felonies and deported and who are attempting to reenter the United States.

(d) HABEAS CORPUS.—In a habeas corpus proceeding, a court of competent jurisdiction may review or revise a decision of the Attorney General about an alien's detention or release on bond or parole pending a decision on deportation, if the alien shows conclusively that the Attorney General is not proceeding with reasonable dispatch under the particular circumstances to decide whether the alien is to be deported.

§ 6532. Deportation proceedings

(a) DEFINITION.—In this section, ''exceptional circumstances'' means exceptional circumstances beyond the control of the alien, such as serious illness of the alien or death of an immediate relative but not including less compelling circumstances.

(b) PROCEEDING REQUIREMENT.—A special inquiry officer shall conduct a proceeding under this section to decide whether an alien is to be deported.

(c) OFFICER NOT TO HAVE PARTICIPATED IN INVESTIGATION OR PROSECUTION.—A proceeding under this section shall be conducted by a special inquiry officer who did not participate in investigating or (except as provided by this section) prosecuting the case against the alien.

(d) ORDERS TO SHOW CAUSE AND PROCEEDING NOTICES.—(1) In a deportation proceeding under this section, an order to show cause shall be served—

(A) by personal delivery on the alien; or

(B) if personal delivery is not practicable, by certified mail, return receipt requested, to the alien or any counsel of record of the alien.

(2) The order shall include notice of—

(A) the nature of the proceeding against the alien;

(B) the legal authority under which the proceeding is conducted;

(C) each act or conduct alleged to be in violation of law;

(D) each charge against the alien and the law alleged to have been violated;

(E) the alien's right to be represented (at no expense to the United States Government) by counsel authorized to practice in a deportation proceeding and to be provided a list of counsel prepared under subsection (e)(2) of this section;

(F) the requirements that the alien immediately must provide the Attorney General a written record of—

(i) an address and telephone number (if any) at which the alien may be contacted about the proceeding unless the alien has already provided this information to the Attorney General; and

(ii) any change of address or telephone number; and

(G) the consequences under subsection (j)(2) of this section of failing to provide the address and telephone information.

(3) In the order to show cause or in a separate written notice served in the same way as specified by paragraph (1) of this subsection, the alien shall be notified of—

(A) the time and place of the proceeding;

(B) the consequences under subsection (j) of this section of failing (except under exceptional circumstances) to attend the proceeding; and

(C) the right to be represented by counsel at the proceeding and to be provided a period of time, as specified by subsection (e)(1) of this section, to retain counsel and to be provided a current list of counsel prepared under subsection (e)(2) of this section.

(4) If the time or place of the proceeding is changed, a new written notice shall be served in the same way as specified by paragraph (1) of this subsection. The notice shall include the new time or place of the proceeding and the matters specified by paragraph (3)(B) and (C) of this subsection.

(5) Notice under paragraphs (3) and (4) of this subsection is not required for an alien not in detention if the alien has not provided an address as required by paragraph (2)(F) of this subsection.

(6) Each order to show cause and written notice under this subsection shall be in English and Spanish.

(7) The Attorney General shall maintain a system to record and preserve on a timely basis notices of addresses and telephone numbers and changes provided by aliens under paragraph (2)(F) of this subsection.

(e) DATE OF FIRST HEARING AND ASSISTANCE OF COUNSEL.—(1) To give an alien an opportunity to retain counsel, the first date that a proceeding for the alien under this section may be scheduled shall be at least 14 days after service of the order to show cause, unless the alien requests in writing an earlier date.

(2) The Attorney General shall provide lists (updated at least quarterly) of individuals who have indicated their availability to represent aliens without charge in proceedings under this section. The lists shall be provided as required by subsection (d)(2)(E) of this section and also shall be made generally available.

(f) ATTENDANCE OF ALIEN.—(1) An alien shall have a reasonable opportunity to attend the proceeding for the alien under this section. If it is impracticable for the alien to attend because of mental incompetence, the proceeding may be conducted without the alien. The Attorney General shall prescribe safeguards for the rights and privileges of an alien who does not attend because of mental incompetence.

(2) If an alien has been given a reasonable opportunity to attend, and without reasonable cause does not attend or remain in attendance, the special inquiry officer may conduct the proceeding and decide on the alien's deportation as if the alien had attended.

(g) CONDUCTING PROCEEDINGS.—(1) The special inquiry officer conducting a proceeding shall administer oaths, present and receive evidence, and interrogate, examine, and cross-examine the alien and witnesses. If the Attorney General believes it will aid in making a decision, the Attorney General may require, specifically or by regulation, in a case or class of cases,

that an additional immigration officer be assigned to present the evidence for the Government. The additional immigration officer may present evidence and interrogate, examine, and cross-examine the alien and witnesses. The assignment of an additional immigration officer does not affect the authority of the special inquiry officer conducting the proceeding.

(2) The alien shall have a reasonable opportunity to examine the evidence against the alien, present evidence, and cross-examine witnesses presented by the Government.

(h) BURDEN OF PROOF.—The alien has the burden of proof of establishing the alien's time, place, and manner of entry into the United States. In presenting the proof, the alien is entitled to the production of the alien's visa or other entry document and, unless considered confidential by the Attorney General, any other relevant record in the custody of the Attorney General. An alien who fails to sustain the burden of proof is presumed to be in the United States in violation of law.

(i) DECISIONS AND ORDERS.—If authorized by the Attorney General, the special inquiry officer shall make decisions on the deportability of aliens and issue orders of deportation. A decision that an alien is deportable may be made only on a record made in a proceeding before a special inquiry officer, and is valid only if based on reasonable, substantial, and probative evidence. If an alien is ordered deported under any law or treaty, the decision of the Attorney General is final.

(j) DEPORTATION ORDERED IN ABSENTIA.—(1) An alien who does not attend the alien's proceeding under this section shall be ordered deported in absentia, if the Attorney General establishes by clear, unequivocal, and convincing evidence that—

(A) the notice required by subsection (d)(3) and (4) of this section was provided; and

(B) the alien is deportable.

(2) The notice referred to in paragraph (1)(A) of this subsection is sufficient if provided at the most recent address provided under subsection (d)(2)(F) of this section. No notice is required if the alien has not provided the address required by subsection (d)(2)(F).

(3)(A) A deportation order issued under this subsection may be rescinded only on a motion to reopen—

(i) filed not later than 180 days after the date of the order if the alien demonstrates that the failure to attend was because of exceptional circumstances; or

(ii) filed at any time if the alien demonstrates that the alien did not receive the notice required by subsection (d)(3) and (4) of this section

or that the alien was in the custody of a State or the Government and did not attend through no fault of the alien.

(B) A motion filed under this paragraph stays the deportation of the alien pending disposition of the motion.

(4) Notwithstanding section 6535 of this title, a petition for review under section 6535 of a deportation order issued in absentia under this subsection—

(A) must be filed not later than 60 days (or 30 days if the alien has been convicted of an aggravated felony) after the date of the final order of deportation; and

(B) except as provided by section 6535(b)(5) of this title, shall be limited to the issues of—

(i) the validity of the notice provided to the alien;

(ii) the reasons for the alien's failure to attend; and

(iii) whether clear, unequivocal, and convincing evidence of deportability has been established.

(k) FINGERPRINTS AND PHOTOGRAPHS.—The Attorney General shall prescribe regulations providing for the fingerprinting and photographing of each alien at least 14 years of age against whom a deportation proceeding is begun. The fingerprints and photographs shall be made available, on request, to law enforcement agencies of the Government, States, and localities.

(l) ADDITIONAL REGULATIONS AND EXCLUSIVITY OF PROCEDURE.—(1) A proceeding under this section shall be conducted under regulations the Attorney General shall prescribe that are consistent with this section.

(2) The procedure provided by this section and regulations prescribed under this section is the only procedure for deciding on the deportability of an alien under this section.

(m) REGULATIONS ON MOTIONS TO REOPEN AND TO RECONSIDER AND ON ADMINISTRATIVE APPEALS.—Not later than May 29, 1991, the Attorney General shall prescribe regulations on—

(1) the number of motions to reopen and to reconsider that may be filed in a deportation proceeding and the time during which they may be filed;

(2) the number of administrative appeals that may be filed in a deportation proceeding, the items to be included in notices of appeal, and the time during which the appeals and the appellate and reply briefs may be filed; and

(3) the consolidation of motions to reopen and to reconsider with the appeal of the order of deportation.

§ 6533. Expeditious proceedings for convicted aliens

(a) GENERAL.—If an alien is convicted of an offense that makes the alien deportable, the Attorney General shall begin a deportation proceeding against the alien as expeditiously as possible after the date of the conviction.

(b) ALIENS CONVICTED OF AGGRAVATED FELONIES.—The Attorney General shall provide for the availability of special deportation proceedings at certain correctional facilities of the United States Government, States, and localities for aliens convicted after November 17, 1988, of aggravated felonies. Each proceeding shall be conducted—

(1) under section 6532 of this title, except as otherwise provided by this section;

(2) in a way that eliminates the need for additional detention at a processing center of the Immigration and Naturalization Service; and

(3) in a way that ensures expeditious deportation, if warranted, after the alien is released from imprisonment for the felony.

(c) PRESUMPTION OF DEPORTABILITY.—An alien convicted after November 17, 1988, of an aggravated felony is conclusively presumed to be deportable from the United States.

(d) COMPLETING PROCEEDINGS BEFORE RELEASE FROM IMPRISONMENT.—The Attorney General shall provide for beginning and, to the extent possible, completing a deportation proceeding against an alien convicted after November 17, 1988, of an aggravated felony, and any administrative appeals from that proceeding, before the alien is released from imprisonment for the felony.

(e) DEPORTATION DURING IMPRISONMENT.—This section does not require the Attorney General to deport an alien sentenced to imprisonment before the alien is released from imprisonment.

§ 6534. Right to counsel

In a deportation proceeding before a special inquiry officer and in an appeal before the Attorney General from a deportation proceeding, an alien is entitled to be represented, at no cost to the United States Government, by the alien's choice of counsel authorized to practice in the proceeding or appeal.

§ 6535. Judicial review

(a) APPLICABLE PROVISIONS.—Judicial review of a final order of deportation is governed only by chapter 158 of title 28, except as provided by this section.

(b) REQUIREMENTS.—(1) A petition for review must be filed—

(A) if the alien has been convicted after November 17, 1988, of an aggravated felony, not later than 30 days after the date of the final order of deportation; and

(B) for any other alien, not later than 90 days after the date of the final order of deportation.

(2) A petition for review shall be filed with the court of appeals of the United States for the circuit in which the petitioner resides or for the circuit in which any part of the proceeding before a special inquiry officer was held, but not more than one circuit.

(3) The respondent is the Attorney General. The petition shall be served on the Attorney General and on the officer or employee of the Immigration and Naturalization Service in charge of the Service district in which the office of the clerk of the court is located. Service of the petition on the officer or employee stays the deportation of the alien pending the court's decision on the petition, unless the court orders otherwise. However, if the alien has been convicted of an aggravated felony, service of the petition does not stay the deportation unless the court orders otherwise.

(4) Except as provided by paragraph (5)(B) of this subsection—

(A) the court of appeals shall decide the petition only on the administrative record on which the deportation order is based; and

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

(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.

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

(6) When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

(7)(A) If the validity of a deportation order has not been judicially decided, a defendant in a criminal proceeding charged with violating section 6536(d) or 10153(a) of this title may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

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

(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 by this section.

(8) This subsection—

(A) does not prevent the Attorney General, after a final order of deportation has been issued, from detaining the alien under section 6536(b) of this title;

(B) does not relieve the alien from complying with sections 6536(d) and 10153(a) of this title; and

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

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

(10) An alien held in custody under an order of deportation may obtain judicial review of the order by a habeas corpus proceeding.

(c) REVIEW OF FINAL ORDERS.—A court may review a final order of deportation only if—

(1) the alien has exhausted all administrative remedies available to the alien as of right;

(2) the alien has remained in the United States after the order was issued; and

(3) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the

remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

(d) REQUIREMENTS FOR PETITION.—A petition for review or for habeas corpus of an order of 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.

§ 6536. Detention, release, and deportation of aliens ordered deported

(a) DEPORTATION PERIOD.—Except as otherwise provided by this section, when an alien is ordered deported, the Attorney General has 6 months to deport the alien from the United States. The 6-month period begins on the latest of the following:

(1) the date the deportation order becomes administratively final.

(2) if the deportation order is judicially reviewed, the date of the court's final order.

(3) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(b) DETENTION AND RELEASE BY THE ATTORNEY GENERAL.—During the 6-month period, the Attorney General may—

(1) detain the alien;

(2) release the alien on a bond containing conditions the Attorney General may prescribe; or

(3) release the alien on other conditions the Attorney General may prescribe.

(c) HABEAS CORPUS.—In a habeas corpus proceeding, a court of competent jurisdiction may review or revise a decision of the Attorney General under subsection (b) of this section if the alien shows conclusively that the Attorney General is not proceeding with reasonable dispatch under the particular circumstances to deport the alien within the 6-month period.

(d) SUPERVISION AFTER 6-MONTH PERIOD.—If the alien does not leave or is not deported within the 6-month period, the alien, pending deportation, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

(1) to appear before an immigration officer periodically for identification;

(2) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(3) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(4) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

(e) ALIENS IMPRISONED, ARRESTED, OR ON PAROLE, SUPERVISED RELEASE, OR PROBATION.—Except as provided by section 343(a) of the Public Health Service Act (42 U.S.C. 259(a)), the Attorney General may not deport an alien who is sentenced to imprisonment until the alien is released from imprisonment. Parole, supervised release, probation, or possibility of rearrest or further imprisonment is not a reason to defer deportation.

(f) REINSTATEMENT OF DEPORTATION ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Attorney General finds that an alien has reentered the United States illegally after having been deported or having departed voluntarily, under an order of deportation on any ground described by sections 6506–6509 of this title, the prior order of deportation is reinstated from its original date and the alien shall be deported under the prior order at any time after the reentry.

§ 6537. Countries to which aliens may be deported

(a) DESIGNATION BY ALIEN.—(1) An alien in the United States who has been ordered deported may designate one country to which the alien wants to be deported. However, the alien may designate a foreign territory contiguous to the United States, an adjacent island, or an island adjacent to a foreign territory contiguous to the United States as the place to which the alien is to be deported only if the alien is a native, citizen, subject, or national of, or has resided in, that designated territory or island. Except as otherwise provided by this section, the Attorney General shall deport the alien to the country the alien designates.

(2) The Attorney General may disregard a designation under paragraph (1) of this subsection if—

(A) the alien fails to designate a country promptly;

(B) the government of the country does not inform the Attorney General finally, within 3 months after the Attorney General first inquires, whether the government will accept the alien into the country;

(C) the government of the country is not willing to accept the alien into the country; or

(D) the Attorney General decides that deporting the alien to the country is prejudicial to the United States.

(b) ALTERNATIVE DEPORTATION COUNTRY.—If an alien is not deported to a country under subsection (a) of this section, the Attorney General shall deport the alien to a country of which the alien is a subject, national, or citizen unless the government of the country—

(1) does not inform the Attorney General or the alien finally, within 3 months after the Attorney General first inquires or within another

period of time the Attorney General decides is reasonable, whether the government will accept the alien into the country; or

(2) is not willing to accept the alien into the country.

(c) ADDITIONAL DEPORTATION COUNTRIES.—If an alien is not deported to a country under subsection (a) or (b) of this section, the Attorney General shall deport the alien to any of the following countries:

(1) the country from which the alien last entered the United States.

(2) the country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.

(3) a country in which the alien resided before the alien entered the country from which the alien entered the United States.

(4) the country in which the alien was born.

(5) the country that had sovereignty over the alien's birthplace when the alien was born.

(6) the country in which the alien's birthplace is located when the alien is ordered deported.

(7) if impracticable, inadvisable, or impossible to deport the alien to a country described by clauses (1)–(6) of this subsection, another country whose government will accept the alien into that country.

(d) DEPORTATION COUNTRY WHEN UNITED STATES IS AT WAR.—When the United States is at war and the Attorney General decides that it is impracticable, inadvisable, inconvenient, or impossible to deport an alien under subsections (a)–(c) of this section because of the war, the Attorney General may deport the alien—

(1) to the country that is host to a government in exile of the country of which the alien is a citizen or subject if the government of the host country will permit the alien's entry; or

(2) if the recognized government of the country of which the alien is a citizen or subject is not in exile, to a country, or a political or territorial subdivision of a country, that is very near the country of which the alien is a citizen or subject, or, with the consent of the government of the country of which the alien is a citizen or subject, to another country.

(e) RESTRICTION WHEN ALIEN'S LIFE OR FREEDOM WOULD BE THREATENED.—(1) Notwithstanding subsections (a)–(d) of this section, the Attorney General may not deport or return an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a social group, or political opinion.

(2) Paragraph (1) of this subsection does not apply to an alien deportable under section 6509 of this title or if the Attorney General decides—

(A) that the alien ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a social group, or political opinion;

(B) after the alien's conviction of a particularly serious crime (including any aggravated felony) has become final, that the alien is a danger to the community of the United States;

(C) that there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States; or

(D) that there are reasonable grounds to believe that the alien is a danger to the security of the United States.

§ 6538. Suspension of deportation

(a) GROUNDS FOR SUSPENSION.—On application of an alien to the Attorney General, the Attorney General may suspend the deportation of the alien and change the status of the alien under section 9103 of this title to that of an alien lawfully admitted for permanent residence if—

(1)(A) the alien is deportable under a law of the United States, except sections 6506–6508 of this title;

(B) for at least 7 continuous years immediately before applying, the alien has been—

(i) physically present in the United States; and

(ii) of good moral character;

(C) the alien is of good moral character; and

(D) the Attorney General believes that deporting the alien would cause extreme hardship to the alien or to the alien's spouse, parent, or child if the spouse, parent, or child is a citizen of the United States or an alien lawfully admitted for permanent residence; or

(2)(A) the alien is deportable under any of sections 6506–6508 of this title;

(B) for at least 10 continuous years immediately after the alien committed an act or acquired a status that is a ground for deportation, the alien has been—

(i) physically present in the United States; and

(ii) of good moral character;

(C) the alien is of good moral character; and

(D) the Attorney General believes that deporting the alien would cause exceptional and extremely unusual hardship to the alien or to the alien's spouse, parent, or child if the spouse, parent, or child is a citi-

zen of the United States or an alien lawfully admitted for permanent residence.

(b) BRIEF INTERRUPTION OF PHYSICAL PRESENCE.—An alien temporarily absent from the United States is deemed to have maintained continuous physical presence under subsection (a)(1)(B)(i) and (2)(B)(i) of this section if the absence was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence. This subsection does not apply to an alien removed from the United States before November 6, 1986.

(c) INTERRUPTION OF PHYSICAL PRESENCE BECAUSE OF SERVICE IN THE ARMED FORCES.—The requirements of subsection (a)(1)(B)(i) and (2)(B)(i) of this section do not apply to an alien who—

(1) enlisted or was inducted into the armed forces of the United States when the alien was in the United States;

(2) served on active duty in the armed forces for at least 24 months; and

(3) if separated from the armed forces, was separated under honorable conditions.

(d) NONAPPLICATION.—This section does not apply to an alien who—

(1) enters the United States as a crewmember after June 30, 1964;

(2) is admitted to the United States as a nonimmigrant under section 2312 of this title or acquires the status of a nonimmigrant under section 2312 after admission—

(A) to receive graduate medical education or training, regardless of whether the alien is subject to the 2-year foreign residence requirement of section 8303 of this title; or

(B) not to receive graduate medical education or training, but who is subject to the 2-year foreign residence requirement of section 8303 of this title and does not fulfill or receive a waiver of that requirement; or

(3) is deportable under section 6509 of this title.

§ 6539. Voluntary departure and removal

(a) DEPARTURE BEFORE DEPORTATION PROCEEDINGS.—(1) Before a deportation proceeding is begun against an alien, the Attorney General may allow the alien to depart voluntarily from the United States if the alien—

(A) admits to being deportable under subchapter I of this chapter; and

(B) departs voluntarily at the alien's expense or is removed at the United States Government's expense under subsection (e) of this section.

(2) Paragraph (1) of this subsection does not apply to an alien if the Attorney General has reason to believe the alien is deportable under any of sections 6506–6509 of this title.

(b) DEPARTURE DURING DEPORTATION PROCEEDINGS.—(1) During a deportation proceeding against an alien, the Attorney General may allow the alien to depart voluntarily from the United States at the alien's expense if the alien satisfies the Attorney General that the alien is, and for at least 5 years immediately before applying for voluntary departure under this subsection has been, of good moral character.

(2) Paragraph (1) of this subsection does not apply to an alien—

(A) deportable under any of sections 6506–6509 of this title, except such an alien whose deportation may be suspended under section 6538(a)(2) of this title; or

(B) deportable because of a conviction, after November 17, 1988, of an aggravated felony.

(c) DEPARTURE AFTER ORDER OF DEPORTATION.—After an alien is ordered deported, the Attorney General may allow the alien to depart voluntarily. An alien departing voluntarily after being ordered deported is deemed to have been deported.

(d) REMOVAL OF ALIEN IN DISTRESS OR IN NEED OF ASSISTANCE.—(1) If an alien falls into distress or needs public assistance from a cause that arises after the alien enters the United States, and the alien wants to be removed from the United States, the Attorney General may remove the alien to—

(A) the alien's native country;

(B) the country from which the alien came to the United States;

(C) the country of which the alien is a subject or citizen; or

(D) another country the alien designates if the government of that country is willing to accept the alien in that country.

(2) An alien removed under paragraph (1) of this subsection may not apply for or be granted a visa or other entry documentation or admission to the United States without the Attorney General's prior approval.

(e) COSTS PAYABLE BY GOVERNMENT.—The Attorney General may pay from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses'' the costs of removing an alien from the United States under—

(1) subsection (a) of this section if—

(A) the alien is unable to pay; and

(B) the Attorney General believes the alien's removal is in the best interest of the United States;

(2) subsection (c) of this section if—

(A) the alien is unable to pay; and

(B) payment is not otherwise provided for under this title; and

(3) subsection (d) of this section.

§ 6540. Ineligibility for discretionary relief for failure to appear

(a) DEFINITION.—In this section, ''exceptional circumstances'' has the same meaning given that term by section 6532(a) of this title.

(b) RELIEF COVERED.—An alien is ineligible for the following relief to the extent provided by subsections (c)–(f) of this section:

(1) suspension of deportation under section 6538 of this title.

(2) voluntary departure under section 6539(a) or (b) of this title.

(3) change of status under section 9101, 9104, or 9108 of this title.

(c) FAILURE TO APPEAR AT DEPORTATION PROCEEDING.—An alien against whom a final order of deportation is entered in absentia under section 6532 of this title is ineligible for the relief specified by subsection (b) of this section for 5 years after entry of the final order if, at the time the notice was required to be given under section 6532(d)(3) and (4), the alien was given oral notice, in the alien's native language or another language the alien understands, of the time and place of the proceeding and the consequences of failing (except for exceptional circumstances) to attend.

(d) FAILURE TO APPEAR FOR VOLUNTARY DEPARTURE.—(1) Subject to paragraph (2) of this subsection, an alien is ineligible for the relief specified by subsection (b) of this section for 5 years after the scheduled date of departure or the date of unlawful reentry if the alien—

(A) is allowed to depart voluntarily under section 6539(a) or (b) of this title; and

(B) remains in the United States after the scheduled date of departure (except for exceptional circumstances).

(2) Paragraph (1) of this subsection applies to an alien allowed to depart voluntarily only if, before the departure, the Attorney General has provided written notice to the alien in English and Spanish, and oral notice, in the alien's native language or another language the alien understands, of the consequences under paragraph (1) of remaining in the United States after the scheduled date of departure (except for exceptional circumstances).

(e) FAILURE TO APPEAR FOR DEPORTATION.—(1) Subject to paragraph (2) of this subsection, an alien against whom a final order of deportation is entered under section 6532 of this title who fails (except for exceptional circumstances) to appear for deportation at the time and place ordered is ineligible for the relief specified by subsection (b) of this section for 5 years after the scheduled date of deportation.

(2) Paragraph (1) of this subsection applies only if the Attorney General has provided notice in the final order of deportation, and orally in the alien's native language or another language the alien understands, of the consequences under paragraph (1) of failing (except for exceptional circumstances) to appear for deportation at the time and place ordered.

(f) FAILURE TO APPEAR FOR ASYLUM HEARING.—(1) Subject to paragraph (2) of this subsection, an alien whose period of any authorized stay has expired, who has filed an application for asylum, and who fails (except for exceptional circumstances) to appear at the time and place scheduled for the asylum hearing, is ineligible for the relief specified by subsection (b) of this section for 5 years after the date of the asylum hearing.

(2) Paragraph (1) of this subsection applies only if the alien was given written notice in English and Spanish, and oral notice in the alien's native language or another language the alien understands, of—

(A) the time and place of the asylum hearing and any change in the time or place; and

(B) the consequences under paragraph (1) of this subsection of failing (except for exceptional circumstances) to appear.

§ 6541. Duties of private parties and costs of deportation

(a) DUTY TO CARRY OUT DEPORTATION ORDERS.—When ordered by the Attorney General, the owner, agent, master, commanding officer, charterer, or consignee of a vessel, aircraft, or vehicle bringing an alien to the United States shall—

(1) take on board, guard safely, and transport to the destination specified by the Attorney General, the alien if ordered deported; and

(2) pay the costs of deporting the alien as provided by subsection (b) of this section.

(b) COSTS PAYABLE BY PRIVATE PARTIES.—(1) Except as provided by paragraph (2) of this subsection, when an alien in the United States is ordered deported, the owner, agent, master, commanding officer, charterer, or consignee of the vessel, aircraft, or vehicle on which the alien arrived in the United States shall pay the costs of deporting the alien from the port of deportation if—

(A) the alien is being deported on a ground that existed before or at the time of entry and deportation proceedings are begun not later than 5 years after entry; or

(B) the alien is a crewmember and deportation proceedings are begun not later than 5 years after the last conditional permit is granted to the alien to land temporarily under section 2703 of this title.

(2) Paragraph (1) of this subsection does not apply if—

(A) the Attorney General decides it is not practicable to require payment; or

(B) the alien had an immigrant visa on arrival in the United States and was inspected and admitted for permanent residence.

(c) COSTS PAYABLE BY GOVERNMENT.—When an alien in the United States is ordered deported, the Attorney General shall pay from the appropriation ''Immigration and Naturalization Service—Salaries and Expenses'' the costs of—

(1) transporting the alien to the port of deportation in the United States; and

(2) deporting the alien if—

(A) deportation proceedings are begun more than 5 years after the alien's entry, or, if the alien is a crewmember, more than 5 years after the last conditional permit is granted to the alien to land temporarily; or

(B) the owner of the vessel, aircraft, or vehicle is not required to pay the costs because of subsection (b)(2) of this section.

(d) ALIENS REQUIRING PERSONAL CARE DURING DEPORTATION.—If the Attorney General believes that an alien being deported requires personal care because of the alien's mental or physical condition, the Attorney General shall employ a suitable individual to accompany and care for the alien until the alien arrives at the final destination. The person required under this section to pay the costs of deporting the alien shall pay the costs of this service.

(e) COSTS PAYABLE BY EMPLOYERS OF CERTAIN NONIMMIGRANTS.—(1) If the employer of an alien classified as a nonimmigrant under section 2313(a)(1) or (2) or 2315(a)(1) of this title dismisses the alien from employment before the end of the period of authorized admission, the employer is liable for the reasonable costs of return transportation of the alien.

(2) If the employment of an alien who entered the United States as a nonimmigrant under section 2318 or 2319 of this title ends for reasons other than voluntary resignation, the employer whose offer of employment provided the basis of the nonimmigrant status of the alien and the petitioner are jointly and severally liable for the reasonable costs of return transportation of the alien. The petitioner shall provide satisfactory assurance to the Attorney General that the reasonable costs of that transportation will be provided.

CHAPTER 67—TEMPORARY PROTECTED STATUS

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§ 6701. General

The Attorney General may grant an alien temporary protected status in the United States as provided by this chapter. During the period that the status is in effect for the alien—

(1) the Attorney General may not detain the alien on the basis of the alien's immigration status in the United States;

(2) the Attorney General may not deport the alien;

(3) the Attorney General shall authorize the alien to work in the United States;

(4) the alien is not residing permanently in the United States under color of law;

(5) a State or political subdivision of a State that provides public assistance may find the alien ineligible for the assistance;

(6) the alien may travel outside the United States with the prior consent of the Attorney General; and

(7) the alien is deemed to be maintaining lawful status as a nonimmigrant for purposes of sections 9101(e)(3) and 9108 of this title.

§ 6702. Granting the status

(a) GENERAL REQUIREMENTS FOR GRANTING.—The Attorney General may grant temporary protected status in the United States to an alien who—

(1) is a national of, or has no nationality but last habitually resided in, a foreign country designated, or designated in part, under section 6703 of this title;

(2) has been physically present in the United States continuously since the effective date of the most recent designation of that country or part of that country under section 6703 of this title;

(3) has resided in the United States continuously since a date the Attorney General may specify;

(4) is admissible as an immigrant, except that for purposes of this clause—

(A) sections 4104(c)(2), (d)(3), and (g)(1) and (2), 4311(a), and 6313 of this title do not apply;

(B) the Attorney General may waive subchapter I of chapter 63 of this title (except as provided by subclause (C) of this clause)

for an individual alien for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest; and

(C) the Attorney General may not waive section 6307(a)(1)–(4), 6308(a)–(c), or 6309 of this title, except as section 6307(a)(3) is related to a single offense of simple possession of not more than 30 grams of marijuana; and

(5) registers for the temporary protected status during a registration period of at least 180 days, to the extent and in the way the Attorney General establishes.

(b) PROHIBITIONS ON GRANTING.—Notwithstanding subsection (a) of this section, the Attorney General may not grant temporary protected status to an alien if the Attorney General finds that the alien—

(1) has been convicted of a felony or more than one misdemeanor committed in the United States; or

(2) is described by section 6537(e)(2) of this title.

(c) BRIEF, CASUAL, AND INNOCENT ABSENCES.—(1) An alien does not fail to maintain continuous physical presence in the United States under subsection (a)(2) of this section because of a brief, casual, and innocent absence from the United States, whether or not authorized by the Attorney General.

(2) An alien does not fail to maintain continuous residence in the United States under subsection (a)(3) of this section because of a brief, casual, and innocent absence from the United States, whether or not authorized by the Attorney General, or because of a brief temporary trip outside the United States required by emergency or extenuating circumstances beyond the control of the alien.

(d) STATUS PENDING REGISTRATION OR FINAL DECISION.—(1) If an alien can establish a prima facie case of eligibility for temporary protected status under this chapter except that the period of registration under subsection (a)(5) of this section has not begun, the Attorney General shall provide the alien with the benefits of the status until the alien has had a reasonable opportunity to register during the first 30 days of the registration period.

(2) If an alien establishes a prima facie case of eligibility for temporary protected status under this chapter, the Attorney General shall provide the alien with the benefits of the status until a final decision is made on the alien's eligibility.

(e) CONFIDENTIALITY.—The Attorney General shall establish procedures to protect the confidentiality of information provided by an alien under this chapter.

(f) NO AUTHORIZATION TO APPLY FOR ADMISSION OR TO BE ADMITTED.—This chapter does not authorize an alien to apply for admission, or to be admitted, to the United States to apply for temporary protected status under this chapter.

§ 6703. Designation of foreign countries

(a) GENERAL.—After consultation with appropriate agencies, the Attorney General may designate a foreign country or part of a foreign country under this section if the Attorney General finds that—

(1) there is an armed conflict in the country that would pose a serious threat to the personal safety of nationals of that country if they were required to return to that country or part of that country;

(2)(A) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the country resulting in a substantial, but temporary, disruption of living conditions in the area affected by the disaster;

(B) the country temporarily is unable to handle returning nationals adequately; and

(C) the government of the country officially has requested designation under this clause (2); or

(3) extraordinary and temporary conditions exist in the country that prevent nationals from returning to that country in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the interest of the United States.

(b) PUBLICATION OF DESIGNATIONS.—A designation under subsection (a) of this section is effective only if notice of the designation (including a statement of the findings under subsection (a) and the effective date of the designation) is published in the Federal Register. The Attorney General shall include in the notice an estimate of the number of nationals of the designated country who are, or within the effective period of the designation are likely to become, eligible for temporary protected status under this chapter and their immigration status in the United States.

(c) EFFECTIVE PERIOD OF DESIGNATIONS.—A designation under this section—

(1) takes effect on the date the notice is published under subsection (b) of this section or a later date the Attorney General specifies in the notice; and

(2) remains in effect until terminated under subsection (d) of this section.

(d) PERIODIC REVIEWS, EXTENSIONS, AND TERMINATIONS.—(1) The first period of designation of a foreign country or part of a foreign country

is the period specified by the Attorney General. The period shall be at least 6 months but not more than 18 months.

(2) At least 60 days before the end of the first period of designation and each extended period of designation, the Attorney General, after consultation with appropriate agencies, shall review the conditions in the designated country or part of the country and decide whether the conditions for the designation continue to be met.

(3)(A) If the Attorney General does not decide that the designated country or part of the country no longer meets the conditions for designation, the designation is extended for 6 months or, in the discretion of the Attorney General, for 12 or 18 months.

(B) If the Attorney General decides that the designated country or part of the country no longer meets the conditions for designation, the Attorney General shall terminate the designation. A termination is effective 60 days after notice of the termination is published in the Federal Register or when the most recent extension expires, whichever is later.

(4) The Attorney General shall publish in the Federal Register, on a timely basis, notice of each decision under this subsection, including the basis for the decision, and the period of any extension.

(e) INFORMATION ON PROTECTED STATUS AT TIME OF DESIGNATION.—When the Attorney General designates a foreign country or part of a foreign country under subsection (a) of this section, the Attorney General shall make available to nationals of that country information on the temporary protected status available under this chapter.

(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—(1) The Attorney General shall establish an administrative procedure to review a denial of benefits to an alien under this section. The procedure may not prevent an alien from asserting protection under this chapter in a deportation proceeding if the alien demonstrates that the alien is a national of a foreign country designated, or designated in part, under this section.

(2) A designation, extension, or termination under this section is not subject to judicial review.

§ 6704. Information and notices about status

(a) INFORMATION ABOUT STATUS.—On granting temporary protected status to an alien under this chapter, the Attorney General shall provide the alien with information about the status.

(b) NOTICES OF AVAILABILITY AT DEPORTATION PROCEEDINGS.—The Attorney General promptly shall notify an alien of the temporary protected status that may be available under this chapter—

(1) if, when a deportation proceeding is begun against the alien, the foreign country of which the alien is a national has been designated, or designated in part, under section 6703 of this title; or

(2) if, during a deportation proceeding pending against the alien, the country of which the alien is a national is designated, or designated in part, under section 6703 of this title.

(c) FORM AND LANGUAGE.—Information and notices under this section shall be in a form and language the alien can understand.

§ 6705. Temporary documentation and work authorization

(a) GENERAL.—On granting temporary protected status to an alien under this chapter, the Attorney General shall provide for the issuance of temporary documentation and work authorization necessary to carry out this chapter. The work authorization shall be an ''employment authorized'' endorsement or other appropriate work permit.

(b) PERIOD OF VALIDITY.—Subject to subsection (c) of this section, the documentation and authorization are valid for the first period of designation of the foreign country or part of the foreign country involved and any extension of that period. The Attorney General may stagger the periods of validity of the documentation and authorization to provide for an orderly renewal of the documentation and authorization and for an orderly transition under subsection (c) when a designation is terminated.

(c) EFFECTIVE DATE OF TERMINATIONS.—A termination of a designation under section 6703(d)(3)(B) of this title applies only to documentation and authorization issued or renewed after—

(1) the effective date of the termination; or

(2) a later date the Attorney General decides is appropriate to provide for an orderly transition.

§ 6706. Registration fees

(a) ALLOWABLE FEES.—The Attorney General may require payment of a reasonable fee of not more than $50 as a condition for registering an alien under section 6702(a)(5) of this title, including providing a work authorization. If the alien is registered because of a designation made after July 17, 1991, the Attorney General may require payment of an additional fee for providing the work authorization.

(b) CREDITING APPROPRIATION.—All fees collected under this section shall be credited to the appropriation to be used to carry out this chapter.

§ 6707. Withdrawal of status

The Attorney General shall withdraw temporary protected status granted to an alien under this chapter if—

(1) the Attorney General finds that the alien was not eligible for the status;

(2) except as provided by sections 6701(6) and 6702(c) of this title, the alien has not remained continuously physically present in the United States from the date the alien first was granted the status; or

(3) the alien, without good cause, does not register with the Attorney General annually, at the end of each 12-month period after the status is granted, in the form and way the Attorney General prescribes.

§ 6708. Relationship to deportation

Under section 6538(a) of this title, the period during which temporary protected status is in effect for an alien—

(1) is not counted as a period of physical presence in the United States unless the Attorney General decides that extreme hardship exists; and

(2) does not cause a break in the continuity of residence before and after the period during which the alien has that status.

§ 6709. Relationship to immigration status

(a) GENERAL.—This chapter does not authorize the Attorney General to deny temporary protected status to an alien based on the alien's immigration status or to require an alien, as a condition of being granted temporary protected status, to relinquish another status the alien may have or to waive any right under this title (except subchapter I of chapter 5, subchapters III and IV of chapter 131, and chapters 133–137).

(b) TEMPORARY PROTECTED STATUS NOT INCONSISTENT WITH NONIMMIGRANT STATUS.—Granting temporary protected status under this chapter is not inconsistent with granting nonimmigrant status under this title.

§ 6710. Immigration status and continuous physical presence not affected by temporary travel outside the United States

An alien granted temporary protected status under this chapter whom the Attorney General authorizes to travel outside the United States temporarily and who returns to the United States according to the authorization—

(1) shall be inspected and admitted in the same immigration status the alien had at the time of departure if the alien is found not to be excludable on a ground referred to in section 6702(a)(4)(C) of this title; and

(2) has not failed to maintain continuous physical presence in the United States under section 6538(a) of this title because of the departure if the absence meets the requirements of section 6538(b) of this title.

§ 6711. Exclusive remedy

Except as otherwise specifically provided, this chapter is the exclusive authority of the Attorney General under law to allow an alien who is or may become otherwise deportable or who has been paroled into the United States to remain in the United States temporarily because of the alien's nationality or region of foreign country of nationality.

§ 6712. Limitation on Senate consideration of legislation adjusting status

(a) GENERAL.—Except as provided by subsection (b) of this section, it is not in order in the Senate to consider a bill, resolution, or amendment that—

(1) provides for the adjustment to lawful temporary or permanent resident alien status for an alien receiving temporary protected status under this chapter; or

(2) has the effect of amending or limiting the application of this section.

(b) SUPERMAJORITY REQUIREMENT.—An affirmative vote of three-fifths of the members of the Senate chosen and sworn is required—

(1) to waive or suspend subsection (a) of this section; or

(2) to sustain an appeal of the ruling of the Chair on a point of order raised under subsection (a) of this section.

(c) SENATE RULEMAKING POWER.—This section—

(1) is enacted as an exercise of the rulemaking power of the Senate;

(2) is deemed to be a part of the rules of the Senate on matters described by subsection (a) of this section;

(3) supersedes other rules of the Senate only to the extent inconsistent with this section; and

(4) is enacted with complete recognition of the constitutional right of the Senate to change those rules at any time in the same way as any other rule of the Senate.

§ 6713. Annual reports

(a) ATTORNEY GENERAL.—Not later than March 1 of each year, the Attorney General, after consultation with appropriate agencies, shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the operation of this chapter during the prior year. The report shall include—

(1) a listing of foreign countries and parts of foreign countries designated under section 6703 of this title;

(2) the number of nationals of each country granted temporary protected status under this chapter and their immigration status before being granted temporary protected status; and

(3) an explanation of why each foreign country or part of a foreign country was designated under section 6703 of this title and why a designation was extended or terminated.

(b) COMMITTEE REPORTS.—Not later than 180 days after receiving a report under subsection (a) of this section, the Committees on the Judiciary of the House of Representatives and the Senate shall report to the House and Senate, respectively, on oversight findings and legislation the applicable Committee finds appropriate.

CHAPTER 69—REGULATION OF PERSONS PROVIDING TRANSPORTATION

Sec.
6901. Ports of entry for aircraft and civil air navigation regulation.
6902. Lists of passengers.
6903. Payment contingent on landing prohibited.
6904. Duty to prevent unauthorized landing.
6905. Carriers transporting aliens from foreign contiguous territory or adjacent islands.
6906. Prohibitions on bringing certain aliens to the United States.
6907. Requirements to detain, deliver, receive, and deport aliens.
6908. Costs of detention.
6909. Fees for inspecting passengers.

§ 6901. Ports of entry for aircraft and civil air navigation regulation

The Attorney General by regulation may—

(1) designate as ports of entry for aliens arriving by aircraft in the United States any of the ports of entry designated for civil aircraft under section 1109(b) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1509(b));

(2) require aircraft in civil air navigation to give notice of landing or intention to land as necessary to carry out this title; and

(3) apply this title to civil air navigation to the extent the Attorney General considers necessary.

§ 6902. Lists of passengers

(a) ARRIVING PASSENGERS.—An owner, agent, master, commanding officer, or consignee of a vessel or aircraft arriving in the United States from a place outside the United States shall give an immigration officer at the port of arrival a list of the passengers on the vessel or aircraft. The list shall be prepared at the time, be in the form, and contain the information the Attorney General prescribes by regulation as necessary to identify the passengers and enforce the immigration laws.

(b) DEPARTING PASSENGERS.—(1) A master, commanding officer, or agent of a vessel or aircraft taking on passengers in the United States who are destined to a place outside the United States shall give an immigration officer at the port a list of those passengers before departing. The list shall be in the form, contain the information, and be accompanied by other documentation the Attorney General prescribes by regulation as necessary to

identify the passengers and enforce the immigration laws. The master, commanding officer, or agent shall state under oath that the list and accompanying documentation contain all of the required information.

(2) The vessel or aircraft may be cleared only after the master, commanding officer, or agent complies with paragraph (1) of this subsection. However, if the Attorney General decides that the vessel or aircraft is making regular trips to ports of the United States, the Attorney General, when it is expedient, may allow the master, commanding officer, or agent to give the list and documentation at a later date.

(c) EXCEPTIONS.—Subsections (a) and (b) of this section do not require that a list include—

(1) an alien crewmember; or

(2) except as required by regulations prescribed under section 6901 of this title, a passenger—

(A) arriving by air on a trip originating in foreign territory contiguous to the United States; or

(B) leaving by air on a trip originating in the United States for foreign territory contiguous to the United States.

(d) WAIVER.—The Attorney General may prescribe conditions under which the requirements of this section may be waived.

§ 6903. Payment contingent on landing prohibited

An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft may not take any consideration to be kept or returned contingent on whether an alien is landed in or excluded from the United States.

§ 6904. Duty to prevent unauthorized landing

(a) DUTY TO PREVENT UNAUTHORIZED LANDING.—(1) A person bringing an alien to, or providing a means for an alien to travel to, the United States (including an alien crewmember not covered by section 2704(a) of this title) shall prevent the alien from landing in the United States at—

(A) a port of entry not designated by the Attorney General; or

(B) a time or place not designated by an immigration officer.

(2) Proof that an alien did not appear at the time and place designated by the immigration officer is prima facie evidence that the alien landed in the United States at a time or place not designated by the immigration officer.

(3) This subsection does not apply to a carrier that has made a contract as provided by section 6905(b) of this title.

(b) DILIGENCE DEFENSE.—(1) An owner or operator of a rail carrier, international bridge, or toll road that satisfies the Attorney General that the owner or operator has acted diligently and reasonably to comply with sub-

section (a)(1) of this section is not liable for a penalty under section 10122 of this title for not complying with subsection (a)(1).

(2) On request of an owner or operator referred to in paragraph (1) of this subsection, the Attorney General shall inspect a facility established, or method used, by the owner or operator at a place of entry into the United States to comply with subsection (a)(1) of this section. The Attorney General shall approve, for as long as the Attorney General prescribes, a facility or method the Attorney General decides is satisfactory to achieve compliance.

(3) Proof that an owner or operator referred to in paragraph (1) of this subsection diligently has maintained a facility, or used a method, approved by the Attorney General under paragraph (2) of this subsection is prima facie evidence that the owner or operator acted diligently and reasonably to comply with subsection (a)(1) of this section.

§ 6905. Carriers transporting aliens from foreign contiguous territory or adjacent islands

(a) DEFINITION.—In this section, ''carrier'' includes the owner, agent, charterer, or consignee operating a vessel or aircraft bringing an alien to the United States, to a foreign territory contiguous to the United States, or to an adjacent island.

(b) CARRIER CONTRACTS.—(1) The Attorney General may make a contract with a carrier for—

(A) the entry and inspection of aliens coming to the United States from a foreign territory contiguous to the United States or from an adjacent island; and

(B) a guarantee of passage through the United States in immediate and continuous travel of aliens destined for a foreign country.

(2) A carrier may allow an alien from a foreign territory contiguous to the United States or from an adjacent island to land in the United States only if the carrier has made a contract required by the Attorney General under paragraph (1)(A) of this subsection.

(c) LANDING STATIONS.—A carrier transporting an alien passenger for compensation from a foreign territory contiguous to the United States or from an adjacent island to the United States—

(1) shall provide and maintain at its expense a suitable landing station conveniently located at the place of entry in the United States; and

(2) may land any such alien passenger in the United States only if the Attorney General approves the landing station and the maintenance of the station.

§ 6906. Prohibitions on bringing certain aliens to the United States

(a) ALIENS NOT HAVING PASSPORTS AND VISAS.—A person may not bring to the United States (except from a foreign territory contiguous to the United States) an alien who does not have a passport and a visa, if a visa is required by this title or regulations prescribed under this title.

(b) ALIENS EXCLUDABLE BECAUSE OF HEALTH.—(1) An owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft may not bring to the United States an alien who is excludable under section 6302 of this title.

(2) Paragraph (1) of this subsection does not apply if—

(A) the alien is a crewmember;

(B) the alien is allowed to land in the United States;

(C) the alien has an immigrant visa;

(D) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States and applies for admission not later than 120 days after the date the visa or documentation was granted;

(E) the alien has a reentry permit and applies for admission not later than 120 days after the date of the alien's last inspection and admission;

(F)(i) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States or a reentry permit;

(ii) the alien applies for admission more than 120 days after the date the visa or documentation was granted or after the date of the last inspection and admission under the reentry permit; and

(iii) the owner, agent, master, commanding officer, charterer, or consignee of the vessel or aircraft satisfies the Attorney General that the existence of the excluding condition could not have been discovered by exercising reasonable care before the alien boarded the vessel or aircraft; or

(G) the alien is entitled by law to exemption from the grounds of exclusion in subchapter I of chapter 63 of this title.

(c) ALIENS EXCLUDED OR DEPORTED.—(1) An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft may not knowingly bring to the United States an alien who has been—

(A) excluded from admission; or

(B) arrested and deported under law.

(2) Paragraph (1) of this subsection does not apply if the alien is a crewmember or is entitled to reapply for admission to the United States.

§ 6907. Requirements to detain, deliver, receive, and deport aliens

(a) GENERAL REQUIREMENTS.—An owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States shall—

(1) detain the alien on the vessel or at the airport of arrival as required by this title or as ordered by an immigration officer;

(2) deliver the alien to an immigration officer for inspection or to a medical officer for examination when ordered by an immigration officer;

(3) receive the alien back on the vessel or aircraft or another vessel or aircraft owned or operated by the same interests if the alien is ordered deported under section 6335 of this title; and

(4) take the alien to the foreign country to which the alien is ordered deported.

(b) ALIEN STOWAWAYS.—An owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft arriving in the United States with an alien stowaway shall—

(1) not permit the stowaway to land in the United States, except—

(A) temporarily for medical treatment; or

(B) under regulations prescribed by the Attorney General for the departure, removal, or deportation of alien stowaways from the United States;

(2) detain the stowaway on the vessel or aircraft or at another place designated by an immigration officer until the stowaway is inspected by an immigration officer and, if ordered by an immigration officer, after the inspection; and

(3) if ordered by an immigration officer, deport the stowaway on the vessel or aircraft or on another vessel or aircraft.

§ 6908. Costs of detention

(a) GENERAL.—Except as provided by subsection (b) of this section and section 6335(d)(2) of this title, an owner of a vessel or aircraft bringing an alien to the United States shall pay the costs of detaining and maintaining the alien while the alien is detained under section 6907(a)(1) of this title.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply if—

(1) the alien is a crewmember;

(2) the alien has an immigrant visa;

(3) the alien has a nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States and applies for admission not later than 120 days after the date the visa or documentation was granted;

(4) the alien has a reentry permit and applies for admission not later than 120 days after the date of the alien's last inspection and admission;

(5)(A) the alien has an nonimmigrant visa or other documentation authorizing the alien to apply for temporary admission to the United States or a reentry permit;

(B) the alien applies for admission more than 120 days after the date the visa or documentation was granted or after the date of the last inspection and admission under the reentry permit; and

(C) the owner of the vessel or aircraft satisfies the Attorney General that the existence of the excluding condition could not have been discovered by exercising reasonable care before the alien boarded the vessel or aircraft; or

(6) the individual claims to be a national of the United States and has a United States passport.

§ 6909. Fees for inspecting passengers

(a) FEES.—In addition to any other fee authorized by law, the Attorney General shall charge and collect $6 for the immigration inspection of each passenger arriving at a port of entry in the United States, or for the preinspection of each passenger in a place outside the United States before arrival, on a commercial vessel or aircraft. However, that fee may not be charged and collected for—

(1) a passenger on a commercial vessel if the passenger's journey originated in Canada, Mexico, a territory or possession of the United States, or an adjacent island; or

(2) a passenger traveling to a destination outside the United States and for whom immigration inspection services are not provided.

(b) COLLECTION.—(1) A person issuing a document or ticket to an individual for transportation on a commercial vessel or aircraft to the United States shall—

(A) collect from the individual the fee charged under subsection (a) of this section when the document or ticket is issued; and

(B) identify on that document or ticket the fee charged under subsection (a) of this section as a United States Government inspection fee.

(2) If a document or ticket for transportation of a passenger to the United States is issued in a foreign country and the fee charged under sub-

section (a) of this section is not collected when the document or ticket is issued, the person providing the transportation shall collect the fee when the passenger departs from the United States and give the passenger a receipt for payment of the fee.

(3) The person collecting a fee under this section shall pay the fee to the Attorney General before the 31st day after the end of the calendar quarter in which the fee is collected, except that—

(A) the 4th quarter payment for fees collected from passengers on commercial aircraft shall be paid on the 10th day before the end of the fiscal year; and

(B) the first quarter payment shall include any collections made in the prior quarter that were not paid with the prior payment.

(4) Fees collected under this section shall be deposited in the Treasury in the Immigration User Fee Account established under section 317 of this title.

(c) REGULATIONS.—Regulations prescribed by the Attorney General for the collection of fees and payment of those fees under this section shall be consistent with regulations prescribed by the Secretary of the Treasury for the collection and remittance of taxes imposed by subchapter C of chapter 33 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 33, subch. C), but only to the extent the latter regulations are not inconsistent with this section.

PART E—ADDITIONAL REQUIREMENTS AND LIMITATIONS

CHAPTER 81—REGISTRATION AND FINGERPRINTING

Sec.
8101. Registration and fingerprinting requirements.
8102. Forms and oath.
8103. Certificates of alien registration and alien registration receipt cards.
8104. Address notification.
8105. Confidentiality of records.
8106. Cancellation of registration.

§ 8101. Registration and fingerprinting requirements

(a) GENERAL REQUIREMENTS.—Except as provided by subsection (c) of this section—

(1) an alien applying for a visa shall be registered as provided by this chapter and shall provide signed copies of a photograph of the alien to be used as prescribed by regulation;

(2) an alien at least 14 years of age who remains in the United States for at least 30 days and has not been registered and fingerprinted under clause (1) of this subsection or section 30 or 31 of the Alien Registration Act, 1940, shall apply for registration and fingerprinting within those 30 days;

(3) if an alien less than 14 years of age remains in the United States for at least 30 days and has not been registered under clause (1) of this subsection, the parent or legal guardian of the alien shall apply for registration of the alien within those 30 days; and

(4) an alien who becomes 14 years of age in the United States shall apply for registration and fingerprinting within 30 days after becoming 14 years of age.

(b) SPECIAL REQUIREMENTS FOR CERTAIN ALIENS.—The Attorney General may prescribe special regulations and forms for registering and fingerprinting—

(1) alien crewmembers;

(2) holders of border crossing identification cards;

(3) aliens confined in institutions in the United States;

(4) aliens under order of deportation; and

(5) aliens not lawfully admitted for permanent residence.

(c) WAIVERS AND NONAPPLICATION.—(1) On a reciprocal basis, the Attorney General may waive the fingerprinting requirement of subsection (a) of this section for a nonimmigrant.

(2) The Secretary of State may waive subsection (a)(1) of this section for a nonimmigrant described by section 2301 or 2302 of this title or an alien granted a diplomatic visa on a diplomatic passport or on equivalent documentation.

(3) Subsections (a)(2)–(4) and (b) of this section do not apply to a nonimmigrant described by section 2301 or 2302 of this title.

§ 8102. Forms and oath

(a) FORMS.—The Attorney General and Secretary of State jointly shall prepare forms for registering aliens under section 8101(a)(1) of this title. The Attorney General shall prepare forms for registering and fingerprinting aliens under section 8101(a)(2)–(4) of this title. The forms shall request information on—

(1) the date and place of entry of the alien into the United States;

(2) activities and intended activities of the alien;

(3) the period of time the alien expects to remain in the United States;

(4) any police and criminal records of the alien; and

(5) additional information as prescribed.

(b) OATH.—Information required for registration under this chapter shall be given under oath. An individual authorized by regulations prescribed by the Attorney General to register aliens under this chapter may administer the oath.

§ 8103. Certificates of alien registration and alien registration receipt cards

(a) ISSUANCE.—An alien registered and fingerprinted under this chapter or the Alien Registration Act, 1940, shall be issued a certificate of alien registration or an alien registration receipt card in the form and way, and at the time, the Attorney General prescribes by regulation.

(b) CARD TO BE CARRIED.—An alien at least 18 years of age shall carry at all times the certificate of alien registration or alien registration receipt card issued to the alien under this section.

§ 8104. Address notification

(a) NOTICE OF CHANGE OF ADDRESS.—Each alien in the United States who is required to register under this chapter shall—

(1) notify the Attorney General in writing of each new address of the alien within 10 days after the date of a change of address; and

(2) provide with the notice additional information the Attorney General may require by regulation.

(b) NOTICE OF NATIVES' CURRENT ADDRESSES.—The Attorney General may require, on 10 days' notice, the natives of a foreign country or a class or group of natives of a foreign country who are in the United States and required to register under this chapter to notify the Attorney General of their current addresses and to provide the Attorney General additional information the Attorney General may require.

(c) NOTICE FOR ALIENS LESS THAN 14 YEARS OF AGE.—A parent or legal guardian of an alien less than 14 years of age who is required to register shall be given the notice required by this section.

§ 8105. Confidentiality of records

A registration or fingerprinting record made under this chapter is confidential and may be made available only to—

(1) law enforcement agencies of the United States Government, States, and localities; and

(2) persons and agencies the Attorney General designates.

§ 8106. Cancellation of registration

The Secretary of State shall cancel the registration of an alien who does not apply for an immigrant visa within one year after being notified that a visa is available. However, the Secretary shall reinstate the registration if the alien establishes within 2 years after notification that the failure to apply was due to circumstances beyond the control of the alien.

CHAPTER 83—MISCELLANEOUS

Sec.
8301. Notice of denial of visa, admission, or change of status.
8302. Restriction on immigration of officers and employees of foreign governments and international organizations.
8303. Ineligibility of section 2312 nonimmigrants for certain benefits.

8304. Sanctions for frivolous legal actions.

§ 8301. Notice of denial of visa, admission, or change of status

If a consular officer or an immigration officer denies an alien's application for a visa, admission to the United States, or change of status because the officer finds the alien to be ineligible under section 2121(a), 4104 (c)(2), (d)(3), or (g)(1) or (2), 4311(a), or 9106 of this title or excludable under subchapter I of chapter 63 of this title, the officer shall provide the alien with a timely written notice of the denial. The notice shall state the decision and list the specific provisions of law on which the denial is based.

§ 8302. Restriction on immigration of officers and employees of foreign governments and international organizations

An officer or employee of a government of a foreign country or an international organization, and an attendant, servant, employee, or member of the immediate family of the officer or employee, may apply for and be granted an immigrant visa and be admitted to the United States as an immigrant only after executing the same waiver as provided by section 9105(c) of this title.

§ 8303. Ineligibility of section 2312 nonimmigrants for certain benefits

(a) INELIGIBILITY.—An alien admitted to the United States as a nonimmigrant under section 2312 of this title, or classified as a nonimmigrant under section 2312 after admission, is ineligible to apply for an immigrant visa, permanent residence, or a nonimmigrant visa under section 2313–2317 or 2325 of this title until the alien has resided and been physically present in the foreign country of the alien's nationality or last residence for a total of at least 2 years after leaving the United States, if—

(1) the alien's participation in the program for which the alien came to the United States was financed in any part by the United States Government or by the government of the foreign country of the alien's nationality or last residence;

(2) the alien, at the time of admission or classification as a nonimmigrant under section 2312 of this title, was a national or resident of a foreign country that the Director of the United States Information Agency (under regulations the Director prescribed) designated as clearly requiring the services of individuals engaged in the alien's field of specialized knowledge or skill; or

(3) the alien came to the United States or was classified as a nonimmigrant under section 2312 of this title to receive graduate medical education or training.

(b) WAIVERS.—The Attorney General may waive the 2-year residence requirement of subsection (a) of this section if the Attorney General finds that admitting the alien would be in the public interest, after receiving a favorable recommendation from—

(1) the Director—

(A) because of a request from an interested agency; or

(B) if the foreign country of the alien's nationality or last residence provides the Director with a written statement that it does not object to the waiver, except that this subclause does not apply to an alien described by subsection (a)(3) of this section; or

(2) the Commissioner of Immigration and Naturalization if the Commissioner finds that—

(A) departure from the United States would impose exceptional hardship on the alien's spouse or child when the spouse or child is a citizen of the United States or lawfully admitted for permanent residence; or

(B) the alien would be subject to persecution because of race, religion, or political opinion if the alien returned to the foreign country of the alien's nationality or last residence.

§ 8304. Sanctions for frivolous legal actions

(a) REGULATIONS.—The Attorney General by regulation shall—

(1) define frivolous behavior for which attorneys may be sanctioned in a proceeding before a special inquiry officer or an appellate administrative body under this subtitle;

(2) specify the circumstances under which an administrative appeal of a decision or ruling will be considered frivolous and summarily dismissed; and

(3) impose appropriate sanctions (that may include suspension and disbarment) for frivolous behavior.

(b) NONLIMITATION OF AUTHORITY.—This section does not limit the authority of the Attorney General to take action for inappropriate behavior.

PART F—CHANGE OF STATUS AND CLASSIFICATION

CHAPTER 91—CHANGE OF STATUS AND CLASSIFICATION

Sec.
9101. Aliens inspected and admitted or paroled into the United States.
9102. Aliens admitted as foreign government officials and their families.
9103. Aliens whose deportation is suspended.
9104. Aliens entering the United States before January 1, 1972.
9105. Aliens lawfully admitted for permanent residence.
9106. Additional requirements for aliens changing to certain employment-based immigrant status.
9107. Rescission of change of status to alien lawfully admitted for permanent residence.
9108. Change of nonimmigrant classification.

§ 9101. Aliens inspected and admitted or paroled into the United States

(a) REQUIREMENTS.—Except as provided by subsections (e) and (f) of this section, the Attorney General may change the status of an alien inspected and admitted or paroled into the United States to that of an alien lawfully admitted for permanent residence if—

(1) the alien applies for the change, is eligible to receive an immigrant visa, and is admissible to the United States for permanent residence; and

(2) an immigrant visa is immediately available to the alien when the alien applies for the change.

(b) RECORDATION OF CHANGE.—On approving an application for a change of status under subsection (a) of this section, the Attorney General shall record the lawful admission of the alien for permanent residence as of the date the Attorney General changes the alien's status.

(c) REDUCTION IN NUMBER OF AUTHORIZED IMMIGRANT VISAS.—For each alien lawfully admitted for permanent residence under this section, the Secretary of State shall reduce by one the number of immigrant visas that may be granted under sections 4103–4106 and 4111 of this title within the class to which the alien is chargeable for the current fiscal year.

(d) APPLICATION TO CERTAIN SPECIAL IMMIGRANTS.—(1) In applying this section to a special immigrant as defined by section 137(a)(12) of this title—

(A) the alien is deemed to have been paroled into the United States;

(B) when the Attorney General is deciding on the alien's admissibility as an immigrant—

(i) sections 4104 (c)(2), (d)(3), and (g)(2), 4311(a), 6304(a), 6313 (a)(2) and (c), and 9106 of this title do not apply;

(ii) the Attorney General may waive section 4104(g)(1) and subchapter I of chapter 63 of this title (except as provided by subclause (iii) of this clause) for an alien for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest; and

(iii) the Attorney General may not waive section 6307(a)(1)–(4), 6308(a)–(c), or 6309 of this title, except as section 6307(a)(3) is related to a single offense of simple possession of not more than 30 grams of marijuana;

(C) the relationship between an alien and the alien's natural parents or prior adoptive parents is not a factor in making a waiver under clause (B)(ii) of this paragraph; and

(D) this paragraph and section 137(a)(12) of this title do not authorize an alien to apply for admission or be admitted to the United States to obtain the special immigrant status as defined by section 137(a)(12).

(2) In applying this section to a special immigrant as defined by section 137(a)(13) of this title, the alien is deemed to have been paroled into the United States.

(e) NONAPPLICATION.—Subsection (a) of this section does not apply to—

(1) an alien crewmember;

(2) an alien admitted in immediate and continuous travel without a visa under section 2121(b)(3) of this title;

(3) an alien (except an immediate relative and a special immigrant as defined by section 137(a)(8)–(13) of this title) who—

(A) after January 1, 1977, and before applying for a change of status, engages in or accepts unauthorized employment;

(B) has an unlawful immigration status on the date of filing the application for a change of status; or

(C) except through no fault of the alien or for technical reasons, has not maintained continuously a lawful status since entering the United States; or

(4) an alien (except an immediate relative) admitted as a nonimmigrant visitor without a visa under section 2121(c) or 2127 of this title.

(f) ALIENS WHOSE STATUS MAY NOT BE CHANGED.—(1) The Attorney General may not change, under subsection (a) of this section, the status of—

(A) an alien lawfully admitted for permanent residence on a conditional basis under subchapter I of chapter 45 of this title;

(B) a nonimmigrant classified under section 2309(a) of this title, except to that of an alien lawfully admitted for permanent residence on a conditional basis under subchapter I of chapter 45 of this title, because of the marriage of the nonimmigrant (or, if a child, the parent) to the citizen who filed the petition under section 2309(b) of this title; or

(C) an alien seeking an immigrant visa because of a marriage entered into during the period an administrative or judicial proceeding on the alien's right to enter or remain in the United States is pending.

(2)(A) Paragraph (1)(C) of this subsection does not apply to a marriage if the alien establishes by clear and convincing evidence satisfactory to the Attorney General that—

(i) the marriage was entered into in good faith and under the laws of the place where the marriage took place;

(ii) the marriage was not entered into to procure the alien's entry as an immigrant; and

(iii) no consideration was given, except to an attorney for assistance in preparing a petition, for filing a petition under section 2309(b) or 4301 (a) or (b) of this title for an alien spouse or alien son or daughter.

(B) Under regulations of the Attorney General, the Attorney General shall allow only one level of administrative appellate review for each alien under this paragraph.

§ 9102. Aliens admitted as foreign government officials and their families

(a) REQUIREMENTS.—An alien admitted to the United States as a nonimmigrant classified under section 2301 (1) or (2) or 2302(1)–(3) of this title, who does not remain a member of any of those nonimmigrant classes, may apply to the Attorney General to change the status of the alien to that of an alien lawfully admitted for permanent residence. After consulting with the Secretary of State, the Attorney General may change the status of the alien if the Attorney General is satisfied that—

(1) the alien has demonstrated compelling reasons why the alien cannot return to the country represented by the government that accredited the alien or a member of the alien's immediate family and that changing the status of the alien is in the interest of the United States;

(2) the alien is of good moral character;

(3) the alien is admissible for permanent residence under this title; and

(4) changing the alien's status under this subsection would not be contrary to the welfare, safety, or security of the United States.

(b) RECORDATION OF CHANGE AND REPORT TO CONGRESS.—If the Attorney General changes the status of an alien under subsection (a) of this section, the Attorney General—

(1) may record the lawful admission of the alien for permanent residence as of the date of the change; and

(2) shall submit to Congress, on the first day of the next month in which Congress is in session—

(A) a complete and detailed report of the facts and law in the alien's case; and

(B) the Attorney General's reasons for the change.

(c) CONGRESSIONAL DISAPPROVAL OF CHANGE.—If before the end of the session of Congress after the session in which the report is submitted, either

House of Congress passes a resolution disapproving the change of the alien's status, the Attorney General shall require the alien to leave the United States as provided by law.

(d) REDUCTION IN NUMBER OF IMMIGRANT VISAS.—(1) For each alien lawfully admitted for permanent residence under this section, the Secretary of State shall reduce by one the number of immigrant visas for the foreign country to which the alien is chargeable under section 4112 of this title for the current fiscal year or the next fiscal year in which a visa is available if—

(A) neither House of Congress passes a resolution under subsection (c) of this section disapproving the change of the alien's status; and

(B) the alien was classifiable as an immigrant subject to the numerical limitations of sections 4102–4106 and 4111 of this title when the alien entered the United States.

(2) The Secretary may not reduce the numerical limitations for the foreign country under this section by more than 50 percent in a fiscal year.

(e) NUMERICAL LIMITATION.—The Attorney General may admit as aliens lawfully admitted for permanent residence under this section not more than 50 aliens in a fiscal year.

§ 9103. Aliens whose deportation is suspended

The Attorney General shall—

(1) change the status of an alien whose deportation the Attorney General suspends under section 6538(a) of this title to that of an alien lawfully admitted for permanent residence; and

(2) record the lawful admission of the alien for permanent residence as of the date the Attorney General suspends the deportation.

§ 9104. Aliens entering the United States before January 1, 1972

(a) REQUIREMENTS.—On approval of an application of an alien, the Attorney General may change the status of the alien to that of an alien lawfully admitted for permanent residence if—

(1) a record of the lawful admission of the alien for permanent residence is not available; and

(2) the alien satisfies the Attorney General that the alien—

(A) entered the United States before January 1, 1972, and has resided in the United States continuously since the alien's entry;

(B) is of good moral character;

(C) is eligible to be naturalized as a citizen of the United States; and

(D) is not excludable under—

(i) section 6309 of this title; or

(ii) a provision of subchapter I of chapter 63 of this title related to criminals, immoral individuals, violators of narcotic laws, smugglers of aliens, or aliens associated with undemocratic ideals.

(b) RECORDATION OF CHANGE.—If the Attorney General changes the status of an alien under subsection (a) of this section, the Attorney General shall record the lawful admission of the alien for permanent residence as of the date—

(1) the alien entered the United States if the alien entered before July 1, 1924; or

(2) the Attorney General approves the alien's application for a change of status under this section.

(c) PHOTOGRAPHS.—An alien applying for a change of status under this section must provide the Attorney General with 3 identical photographs of the alien.

(d) NONAPPLICATION OF NUMERICAL LIMITATIONS.—The numerical limitations of sections 4102 and 4111 of this title do not apply to an alien whose status is changed under this section.

§ 9105. Aliens lawfully admitted for permanent residence

(a) CHANGE TO NONIMMIGRANT STATUS.—Except as provided by subsection (c) of this section, the Attorney General shall change the status of an alien lawfully admitted for permanent residence to that of a nonimmigrant classified under section 2301, 2302, or 2306(b)(1) of this title if at the time of entry or after the alien enters the United States the alien engages in an occupation that would qualify the alien to be classified as a nonimmigrant under section 2301, 2302, or 2306(b)(1) if the alien were seeking to be admitted to the United States.

(b) RECORD OF ADMISSION FOR PERMANENT RESIDENCE CANCELED.—The Attorney General shall cancel the record of the admission of the alien for lawful permanent residence as of the date the Attorney General changes the alien's status.

(c) NONAPPLICATION.—This section does not apply to an alien who—

(1) requests the Attorney General not to change the alien's status under this section; and

(2) files with the Attorney General a written waiver of the rights, privileges, exemptions, and immunities that the alien otherwise would be entitled to under a law or executive order because the alien is engaging in an occupation that qualifies the alien to be classified as a nonimmigrant under section 2301, 2302, or 2306(b)(1) of this title.

§ 9106. Additional requirements for aliens changing to certain employment-based immigrant status

Section 4104(g) of this title applies to aliens applying for a change of status to that of an immigrant under section 4104 (c) or (d) of this title.

§ 9107. Rescission of change of status to alien lawfully admitted for permanent residence

(a) GENERAL.—(1) If, within 5 years after the Attorney General changes the status of an alien under any provision of law (except under section 9103 of this title) to that of an alien lawfully admitted for permanent residence, the Attorney General is satisfied that the alien was not eligible for the change, the Attorney General shall rescind—

(A) the change of the alien's status; and

(B) the suspension of the alien's deportation if the Attorney General suspended the deportation.

(2) When the Attorney General rescinds a change under paragraph (1) of this subsection, the alien becomes subject to this title as if the Attorney General had not changed the alien's status.

(b) ALIEN WHOSE DEPORTATION IS SUSPENDED.—(1) If, within 5 years after the Attorney General changes the status of an alien under section 9103 of this title to that of an alien lawfully admitted for permanent residence, the Attorney General is satisfied that the alien was not eligible for the change, the Attorney General shall submit to Congress, on the first or 15th day of the next month in which Congress is in session, a complete and detailed report of the facts and law in the alien's case.

(2) If, before the end of the session of Congress after the session in which the report is submitted, Congress passes a concurrent resolution withdrawing the suspension of the alien's deportation, the alien becomes subject to this title as if the Attorney General had not changed the alien's status.

§ 9108. Change of nonimmigrant classification

(a) PREREQUISITES.—Except as provided by subsection (b) of this section, the Attorney General may change the classification of an alien from one nonimmigrant classification to another nonimmigrant classification under conditions prescribed by the Attorney General if the alien—

(1) is lawfully admitted to the United States as a nonimmigrant; and

(2) continues to qualify as a nonimmigrant.

(b) NONAPPLICATION.—The Attorney General may not change the classification of an alien under subsection (a) of this section if the alien—

(1) is admitted to the United States for passage through the United States in immediate and continuous travel to a foreign country;

(2) is classified as a nonimmigrant described by section 2304, 2305, or 2309 of this title;

(3) is classified as a nonimmigrant described by section 2312(a) of this title and came to the United States or acquired the classification to receive graduate medical education or training;

(4) except an alien referred to in clause (3) of this subsection, is classified as a nonimmigrant described by section 2312(a) of this title and is subject to, and has not received a waiver of, the 2-year foreign residence requirement of section 8303(a) of this title, unless the alien applies to have the alien's classification changed from a classification as a nonimmigrant described by section 2312(a) to a classification as a nonimmigrant described by section 2301 or 2302 of this title; or

(5) is admitted as a nonimmigrant visitor without a visa under section 2121(c) or 2127 of this title.

CHAPTER 93—CHANGE OF STATUS FOR CERTAIN ALIENS WHO ENTERED THE UNITED STATES BEFORE 1982

Sec.
9301. Numerical limitations and admissions.
9302. Change of status to alien lawfully admitted for temporary residence.
9303. Applications for change of status to alien lawfully admitted for temporary residence.
9304. Change of status from temporary residence to permanent residence.
9305. Medical examination.
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§ 9301. Numerical limitations and admissions

(a) NUMERICAL LIMITATIONS.—The numerical limitations of sections 4102 and 4111 of this title do not apply to a change of status of an alien to that of an alien lawfully admitted for permanent residence under this chapter.

(b) ADMISSIONS.—This chapter does not authorize an alien to apply for admission to, or be admitted to, the United States so that the alien may apply for a change of status under section 9302 of this title.

§ 9302. Change of status to alien lawfully admitted for temporary residence

(a) REQUIREMENTS.—The Attorney General shall change the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) The alien applied for the change as provided by section 9303 of this title after May 4, 1987, and before May 5, 1988.

(2) The alien entered the United States before January 1, 1982.

(3) The alien resided continuously in the United States in an unlawful status from January 1, 1982, through the date the application for the change was filed under this section.

(4) If the alien—

(A) entered the United States as a nonimmigrant before January 1, 1982, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1982, or the United States Government by January 1, 1982, knew of the unlawful status of the alien; or

(B) was a nonimmigrant exchange alien described by section 2312(a) of this title, the alien was not subject to the 2-year foreign residence requirement of section 8303(a) of this title, fulfilled the requirement, or received a waiver.

(5) The alien has been physically present continuously in the United States, except for any brief, casual, and innocent absence, since November 6, 1986.

(6) The alien is admissible to the United States as an immigrant, except as provided by sections 9305 and 9306 of this title.

(7) The alien has not been convicted of a felony or of not more than 2 misdemeanors committed in the United States.

(8) The alien has not assisted in the persecution of a person because of race, religion, nationality, membership in a social group, or political opinion.

(9) The alien is registered or registering under the Military Selective Service Act (50 App. U.S.C. 451 et seq.) if the Act requires the alien to register.

(b) AUTHORIZED TRAVEL.—During the time an alien is an alien lawfully admitted for temporary residence under subsection (a) of this section, the Attorney General shall allow the alien to return to the United States after—

(1) any brief and casual trip outside the United States that reflects the alien's intent to have the alien's status changed under section 9304 of this title to that of an alien lawfully admitted for permanent residence; and

(2) any brief temporary trip outside the United States because of a family obligation involving the illness or death of a close relative or another family need.

(c) AUTHORIZED EMPLOYMENT.—During the time an alien is an alien lawfully admitted for temporary residence under subsection (a) of this section, the Attorney General shall grant the alien authorization to work in the United States and provide to the alien an ''employment authorized'' endorsement or other appropriate work permit.

(d) CUBAN OR HAITIAN ENTRANT.—In applying this section, a Cuban or Haitian entrant described by section 13151(1) or (2)(A) of this title is deemed to have entered the United States and to be in an unlawful status in the United States.

§ 9303. Applications for change of status to alien lawfully admitted for temporary residence

(a) CONTENTS.—An application for a change of status under section 9302(a) of this title shall contain information the Attorney General requires, including information on each living relative of the applicant with respect to whom the applicant may file a petition at a later date under section 4301 (a) or (b) of this title.

(b) WHO MAY RECEIVE APPLICATIONS.—The Attorney General shall provide that an application for a change of status under section 9302(a) of this title may be filed with the Attorney General or with an entity designated under subsection (c) of this section if the applicant consents to having the application forwarded to the Attorney General.

(c) DESIGNATING ENTITIES TO RECEIVE APPLICATIONS.—To assist in the legalization program under this chapter, the Attorney General—

(1) shall designate qualified voluntary organizations and other qualified State, local, and community organizations; and

(2) may designate other persons the Attorney General decides are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in preparing and submitting applications for a change of status under section 5107 or 9101 of this title, the Act of November 2, 1966 (Public Law 89–732, 80 Stat. 1161), or the Act of October 28, 1977 (Public Law 95–145, 91 Stat. 1223).

(d) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—An entity designated under subsection (c) of this section must agree to forward to the Attorney General only those applications filed with it under subsection (b) of this section that the applicants consent to being forwarded. An entity may not make a decision under this chapter required to be made by the Attorney General.

§ 9304. Change of status from temporary residence to permanent residence

(a) REQUIREMENTS.—The Attorney General shall change the status of an alien lawfully admitted for temporary residence under section 9302 of this title to that of an alien lawfully admitted for permanent residence if the alien—

(1) applies for the change during the 2-year period beginning with the 19th month that begins after the alien acquired the status of an alien lawfully admitted for temporary residence;

(2) has resided continuously in the United States since the alien acquired the status of an alien lawfully admitted for temporary residence;

(3) is admissible as an immigrant, except as provided by sections 9305 and 9306 of this title;

(4) has not been convicted of a felony or of not more than 2 misdemeanors committed in the United States; and

(5)(A) meets the requirements of section 20301(a) (7) and (8) of this title; or

(B) is pursuing satisfactorily a course of study, recognized by the Attorney General, to meet the requirements of section 20301(a) (7) and (8) of this title.

(b) EXCEPTIONS.—(1) An alien does not violate the continuous residence requirement of subsection (a)(2) of this section because of an absence from the United States allowed under section 9302(b) of this title.

(2) The Attorney General may waive any part of the requirements of subsection (a)(5) of this section for an alien who is at least 65 years of age or developmentally disabled.

(c) RELATION TO NATURALIZATION EXAMINATION.—An alien demonstrating under subsection (a)(5)(A) of this section that the alien meets the requirements of section 20301(a) (7) and (8) of this title may be deemed to have satisfied those requirements for becoming naturalized as a citizen of the United States under subtitle V of this title.

§ 9305. Medical examination

An alien must undergo, at the alien's expense, an appropriate medical examination (including establishing the alien's immunization status) that complies with generally accepted professional standards of medical practice before a decision on the alien's admissibility under sections 9302(a)(6), 9304(a)(3), and 9311(2) of this title may be made.

§ 9306. Nonapplication and waiver of certain provisions of law

(a) GROUNDS OF EXCLUSION THAT DO NOT APPLY OR THAT MAY BE WAIVED.—When the Attorney General is deciding on an alien's admissibility under sections 9302(a)(6), 9304(a)(3), and 9311(2) of this title—

(1) sections 4104(c)(2), (d)(3), and (g) (1) and (2), 4311(a), 6313, and 9106 of this title do not apply; and

(2) except as provided by subsection (b) of this section, the Attorney General may waive section 2121(a) and subchapter I of chapter 63 of this title for an individual alien—

(A) for humanitarian purposes;

(B) to ensure family unity; or

(C) when otherwise in the public interest.

(b) GROUNDS THAT MAY NOT BE WAIVED.—Notwithstanding subsection (a)(2) of this section, the Attorney General may not waive—

(1) section 6304(a) of this title to the extent it is related to an application for a change of status to an alien lawfully admitted for permanent residence, except that section 6304(a) may be waived for an alien who is or was an aged, blind, or disabled individual (as defined by section 1614(a)(1) of the Social Security Act (42 U.S.C. 1382c(a)(1)));

(2) section 6307(a)(1)–(4) of this title, except as section 6307(a)(3) is related to a single offense of simple possession of not more than 30 grams of marijuana; or

(3) section 6308 or 6309 of this title.

(c) SPECIAL RULE FOR DECIDING WHETHER ALIENS ARE PUBLIC CHARGES.—An alien is not ineligible for a change of status under this chapter because of inadmissibility under section 6304(a) of this title if the alien demonstrates a history of employment in the United States showing self-support without reliance on public cash assistance.

§ 9307. Fees

(a) FEE SCHEDULE.—The Attorney General shall establish a schedule of fees for applying for a change of status under section 9302 or 9304 of this title. The Attorney General shall provide for an additional fee for applying for a change of status under section 9304 of this title after the end of the first year of the 2-year period described by section 9304(a)(1) of this title.

(b) USE OF FEES.—The Attorney General shall deposit amounts received under subsection (a) of this section in a separate account. The amounts may be used, without fiscal year limitation, for expenses related to reviewing applications filed under section 9302 or 9304 of this title. Capital assets acquired with amounts in the account are available for the general use of the Immigration and Naturalization Service when the assets are not needed for activities related to reviewing those applications.

§ 9308. Confidentiality of information

(a) LIMITATION ON ACCESS.—A record of an entity designated under section 9303(c) of this title, related to an alien seeking assistance or information about filing an application under this chapter, is confidential. The Attorney General may have access to the record only with the consent of the alien.

(b) LIMITATIONS ON USE.—The Attorney General or an officer or employee of the Department of Justice—

(1) may use information provided by making an application under this chapter only—

(A) to make a decision on the application; or

(B) to enforce section 10155 of this title;

(2) may disclose information provided under this chapter in the same way that census information may be disclosed under section 8 of title 13;

(3) may not make a publication that allows the information provided by a particular individual to be identified; and

(4) may allow only a sworn officer or employee of the Department or of an entity designated under section 9303(c) of this title (for an application filed with the entity) to examine an application.

§ 9309. Temporary stay of deportation

(a) If an alien was apprehended before May 5, 1987, and could have established a prima facie case of eligibility for a change of status under section 9302 of this title, except that the alien could not apply for the adjustment before May 5, 1987, the Attorney General shall provide that, unless the alien had an opportunity after May 4, 1987, and before June 4, 1987, to complete the filing of an application for a change of status, the alien—

(1) may not be deported;

(2) may work in the United States; and

(3) shall be provided an ''employment authorized'' endorsement or other appropriate work permit.

(b) If an alien presented a prima facie application for a change of status under section 9302 of this title after May 4, 1987, and before May 5, 1988, the Attorney General shall provide that, until a final decision has been made on the application, the alien—

(1) may not be deported;

(2) may work in the United States; and

(3) shall be provided an ''employment authorized'' endorsement or other appropriate work permit.

§ 9310. Temporary ineligibility to receive certain assistance

(a) PERIOD OF INELIGIBILITY.—(1) Except as provided by paragraphs (3) and (4) of this subsection and subsection (b) of this section, an alien who acquires the status of an alien lawfully admitted for temporary residence under section 9302 of this title is not eligible for the following, during the 5–year period beginning on the date the alien was granted the status:

(A) financial assistance under the program of aid to families with dependent children under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(B) any other program of financial assistance—

(i) provided under a law of the United States on a financial-need basis; and

(ii) identified by the Attorney General in consultation with the heads of other agencies.

(C) medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(D) assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(2) To the extent consistent with this subsection and subsection (b) of this section, a State or political subdivision of a State may provide that the alien is not eligible for financial assistance referred to in paragraph (1) (A) and (B) of this subsection or for medical assistance referred to in paragraph (1)(C) of this subsection provided under a law of the State or political subdivision.

(3) Paragraph (1) of this subsection does not apply to—

(A) a Cuban or Haitian entrant (as defined by section 501(e)(1) or (2)(A) of the Refugee Education Assistance Act of 1980 (Public Law 96–422, 94 Stat. 1810) as in effect on April 1, 1983); or

(B) assistance (except aid to families with dependent children) provided an alien who is an aged, blind, or disabled individual (as defined by section 1614(a)(1) of the Social Security Act (42 U.S.C. 1382c(a)(1)).

(4) Assistance provided under the following laws is not financial assistance referred to in paragraph (1)(B) of this subsection:

(A) title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. and 42 U.S.C. 2751 et seq.).

(B) the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.).

(C) the Job Training Partnership Act (29 U.S.C. 1501 et seq.).

(D) the Public Health Service Act (42 U.S.C. 201 et seq.).

(E) titles I, X, XIV, and XVI of the Social Security Act (42 U.S.C. 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.) as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972 (Public Law 92–603, 86 Stat. 1465).

(F) parts B, D, and E of title IV and titles V, XVI, and XX of the Social Security Act (42 U.S.C. 620 et seq., 651 et seq., 670 et seq., 701 et seq., 1381 et seq., 1397 et seq.).

(G) the National School Lunch Act (42 U.S.C. 1751 et seq.).

(H) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

(b) RESTRICTED MEDICAL ASSISTANCE.—(1) In this subsection—

(A) ''medical assistance'' means medical assistance under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.); and

(B) an alien lawfully admitted for temporary residence under section 9302 of this title is deemed to be residing permanently in the United States under color of law as long as the alien's temporary residence status is not changed.

(2) Except as provided by paragraph (3) of this subsection and notwithstanding title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), an alien lawfully admitted for temporary residence under section 9302 of this title is eligible for only the following medical assistance during the 5-year period beginning on the date the alien is granted temporary residence status:

(A) emergency services as provided under section 1916(a)(2)(D) of the Social Security Act (42 U.S.C. 1396*o*(a)(2)(D)).

(B) services for pregnant women as described by section 1916(a)(2)(B) of the Social Security Act (42 U.S.C. 1396*o*(a)(2)(B)).

(3) An alien lawfully admitted for temporary residence under section 9302 of this title is eligible for any medical assistance during the 5-year period beginning on the date the alien is granted temporary residence status if the alien is—

(A) an alien described by subsection (a)(3) of this section; or

(B) less than 18 years of age.

(c) CHANGE IN STATUS NOT AFFECTING CERTAIN BENEFITS.—Assistance under subchapter IV of chapter 131 of this title shall be continued without regard to a change of the alien's status under this chapter.

(d) ALIEN NOT RESIDING PERMANENTLY IN THE UNITED STATES.—Unless otherwise specifically provided, an alien lawfully admitted for temporary residence under section 9302 of this title is not residing permanently in the United States under color of law for purposes of a law of a State or political subdivision of a State providing for a program of financial assistance.

§ 9311. Unfavorable ending of temporary residence status

The Attorney General shall end the temporary residence status granted an alien under section 9302 of this title—

(1) if the Attorney General believes the alien was not eligible for that status;

(2) if the alien—

(A) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided by sections 9305 and 9306 of this title; or

(B) is convicted of a felony or of at least 3 misdemeanors committed in the United States; or

(3) at the end of the 43d month after the alien is granted the status, unless the alien has applied under section 9304 of this title for a change of status to that of an alien lawfully admitted for permanent residence and the application has not been denied.

§ 9312. Administrative and judicial review

(a) EXCLUSIVENESS OF REVIEW.—The only administrative and judicial reviews of a decision made under this chapter about an application for a change of status of an alien shall be the reviews provided by this section.

(b) ADMINISTRATIVE REVIEW.—Except as provided by subsection (d) of this section, the Attorney General shall maintain an appellate authority to provide for a single level of administrative appellate review of a decision described by subsection (a) of this section. The review shall be based only on the administrative record established at the time of the decision and on additional or newly discovered evidence not available at the time the decision was made.

(c) JUDICIAL REVIEW.—Except as provided by subsection (d) of this section, a decision made under this chapter denying a change of status of an alien may be reviewed judicially only by judicial review of an order of deportation under section 6535 of this title. The review shall be based only on the administrative record established at the time of the review by the appellate authority. The findings of fact and decisions contained in the record of the authority are conclusive unless the applicant establishes abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(d) NO REVIEW FOR LATE FILING.—A denial of a change of status under this chapter because an application for the change was filed late may not be reviewed in an administrative proceeding of the United States Government or by a court of the United States or a State.

§ 9313. Administrative

(a) REGULATIONS.—After consulting with the Committees on the Judiciary of the House of Representatives and the Senate, the Attorney General shall prescribe—

(1) regulations establishing a definition of ''resided continuously'' for this chapter and evidence needed to establish that an alien has resided continuously in the United States under this chapter; and

(2) other regulations necessary to carry out this chapter.

(b) CONSIDERATIONS.—In prescribing regulations under subsection (a)(1) of this section, the Attorney General—

(1) shall specify individual and total periods of absence from the United States that will break a period of continuous residence in the United States and shall consider any absence that is only a brief and casual trip outside the United States;

(2) shall provide that—

(A) an alien has not resided continuously in the United States if the alien was outside the United States, during a period for which continuous residence is required, because of a deportation order; and

(B) time during which an alien is outside the United States under the advance parole procedures of the Attorney General is not part of the time during which an alien is outside the United States under this chapter;

(3) may provide for a waiver of the periods specified in clause (1) of this subsection if the absence is a brief temporary trip outside the United States required by an emergency or extenuating circumstance outside the control of the alien; and

(4) shall require that continuous residence and physical presence in the United States be established by documents (employment-related if available) and independent corroboration of the information the documents contain.

PART G—PENALTIES

CHAPTER 101—PENALTIES

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SUBCHAPTER I—GENERAL

§ 10101. Settlement, compromise, and discontinuance of certain proceedings

A judicial proceeding for violating this title (except subchapter I of chapter 5, subchapters I, III, and IV of chapter 131, chapters 133–137, and section 13902) may be settled, compromised, or discontinued only with the consent of the court. A settlement, compromise, or discontinuance, and the reasons for it, shall be entered on the record.

SUBCHAPTER II—CIVIL PENALTIES

§ 10111. Violating regulations related to ports of entry for aliens arriving by aircraft

(a) CIVIL PENALTY AND COMPROMISE.—A person violating a regulation prescribed under section 6901 of this title is liable to the United States Government for a civil penalty of $2,000. The Attorney General may compromise the amount of the penalty. A decision on a penalty or compromise under this section is final.

(b) LIEN ON AIRCRAFT.—When the owner or individual in command of an aircraft violates a regulation referred to in subsection (a) of this section, the aircraft is subject to a lien for the civil penalty. The aircraft may be seized summarily by, and placed in the custody of, a person authorized under regulations prescribed by the Attorney General.

(c) RELEASE OF AIRCRAFT.—An aircraft seized under this section may be released from custody—

(1) on deposit of—

(A) an amount (but not more than $2,000) prescribed by the Attorney General; or

(B) a bond in an amount and with an insurer prescribed by the Attorney General; and

(2) conditioned on payment of the penalty decided on by the Attorney General.

(d) COLLECTION OF PENALTY.—A civil action in rem may be brought against the aircraft to collect the civil penalty. The action shall conform as nearly as practicable to civil actions in admiralty.

§ 10112. Failure to deliver lists of passengers

(a) CIVIL PENALTY.—If the Attorney General is satisfied that a person has not delivered an accurate list of passengers as required under section 6902 of this title, the person is liable to the United States Government for a civil penalty of $300 for each passenger for whom the list is not sworn and delivered as required.

(b) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10113. Failure to provide lists and reports about alien crewmembers

(a) CIVIL PENALTY.—A person not delivering a list or report required by section 2701 or 2702 of this title is liable to the United States Government for a civil penalty of $200 for each alien crewmember not listed or reported as required.

(b) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10114. Failure to control alien crewmembers

(a) CIVIL PENALTY.—A person not detaining or deporting an alien crewmember as required by section 2704 of this title is liable to the United States Government for a civil penalty of $3,000 for each alien crewmember not detained or deported.

(b) COMPROMISE.—The Attorney General may compromise the amount of a civil penalty under this section to not less than $200 for each alien crewmember involved.

§ 10115. Improper discharge of alien crewmembers

(a) CIVIL PENALTY.—If the Attorney General is satisfied that a person has violated section 2706 of this title, the person is liable to the United States Government for a civil penalty of $3,000 for each violation.

(b) COMPROMISE.—The Attorney General may compromise the amount of a civil penalty under this section to not less than $1,500 for each violation.

§ 10116. Employing alien crewmembers having disabilities and diseases

(a) CIVIL PENALTY.—The owner, agent, master, commanding officer, or consignee of a vessel or aircraft is liable to the United States Government for a civil penalty of $1,000 for each alien crewmember employed in violation of section 2705(a) of this title if the Attorney General is satisfied, from an examination certified by a medical officer of the Public Health Service, that—

(1) the crewmember was afflicted with a disability or disease referred to in section 2705(a) of this title when the crewmember was taken on board the vessel or aircraft; and

(2) the disability or disease could have been detected by a competent medical examination.

(b) COMPROMISE.—The Attorney General may compromise the amount of a civil penalty under this section.

§ 10117. Employing alien crewmembers for certain longshore work

(a) CIVIL PENALTY.—An owner, agent, master, commanding officer, or consignee of a vessel that hires an alien crewmember classified as a nonimmigrant under section 2305 of this title to perform longshore work not included in the normal operation and service on a vessel under section 2723, 2724, or 2725 of this title is liable to the United States Government for a civil penalty of $5,000.

(b) LIEN ON VESSEL.—A vessel referred to in subsection (a) of this section is subject to a lien for the amount of the civil penalty.

(c) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10118. Violations involving certifications for longshore work by alien crewmembers

If the Secretary of Labor finds under section 2723(f) of this title that an employer has failed to meet a condition, or misrepresented a material fact, in its attestation under section 2723(a) of this title, the Secretary may impose a civil penalty of not more than $5,000 for each alien crewmember the employer employs to perform unauthorized longshore work.

§ 10119. Bringing in aliens excludable because of health

(a) CIVIL PENALTY.—A person is liable to the United States Government for a civil penalty of $3,000 for each alien the person brings to the United States in violation of section 6906(b) of this title.

(b) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10120. Bringing in aliens not having passports and visas

(a) CIVIL PENALTY.—If the Attorney General is satisfied that a person has brought an alien to the United States in violation of section 6906(a) of this title, the person is liable to the United States Government for a civil penalty of—

(1) $3,000 for each such alien; plus

(2) except for an alien admitted or allowed to land temporarily, an amount equal to the amount the alien paid to be transported from the initial port of departure, as shown on the alien's ticket, to the port of arrival.

(b) RETURN OF AMOUNT TO ALIEN.—The amount paid under subsection (a)(2) of this section shall be paid to the alien brought in violation of section 6906(a) of this title.

(c) COMPROMISE.—The Attorney General may compromise the amount of a civil penalty under this section only if the Attorney General is satisfied that the person, before the vessel or aircraft carrying the alien left the last port outside the United States, did not know and could not have learned by reasonable diligence that the individual transported was an alien required to have a passport and visa.

(d) NONAPPLICATION.—This section does not apply to a carrier or an owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft relying on a visa or other documentation that has been revoked unless reasonable notice of the revocation is received before the alien leaves.

§ 10121. Assisting unlawful entry as alien crewmembers

(a) CIVIL PENALTY.—A person, including the owner, agent, master, commanding officer, or consignee of a vessel or aircraft arriving in the United States, is liable to the United States Government for a civil penalty of not more than $10,000 for each alien whom the person—

(1) knowingly signs on the articles of the vessel, or brings to the United States as a crewmember of the vessel or aircraft, with intent to allow or assist the alien to enter or land in the United States unlawfully; or

(2) knowingly and falsely represents to a consular officer when the alien applies for a visa, or to an immigration officer at the port of arrival in the United States, that the alien is a crewmember.

(b) LIEN ON VESSEL OR AIRCRAFT.—A vessel or aircraft referred to in subsection (a) of this section is subject to a lien for the civil penalty and may be seized. A civil action in rem may be brought against the vessel or aircraft to collect the penalty.

§ 10122. Failure to prevent unauthorized landings

(a) CIVIL PENALTY.—A person violating section 6904(a) of this title is liable to the United States Government for a civil penalty of $3,000 for each violation, to be imposed by the Attorney General.

(b) LIEN ON VESSEL OR AIRCRAFT.—The vessel or aircraft used in transporting an alien landed in violation of this section is subject to a lien for the civil penalty. A civil action in rem may be brought against the vessel or aircraft to collect the penalty.

(c) COMPROMISE.—The Attorney General may compromise the amount of a civil penalty under this section.

§ 10123. Failure to detain and deport alien stowaways

A person not detaining or deporting an alien stowaway as required by section 6907(b) (2) or (3) of this title is liable to the United States Government for a civil penalty of $3,000 for each alien stowaway not detained or deported.

§ 10124. Failure to carry out orders related to detained aliens and bringing in deported aliens

(a) CIVIL PENALTY.—If the Attorney General is satisfied that a person has violated section 6903, 6906(c), 6907(a), or 6908 of this title or an order of the Attorney General under one of those sections, the person is liable to the United States Government for a civil penalty of $2,000 for each violation.

(b) PROHIBITION ON COMPROMISE.—The Attorney General may not compromise the amount of a civil penalty under this section.

§ 10125. Document fraud

(a) DEFINITION.—In this section, ''person'', in addition to its meaning under section 1 of title 1, includes a governmental authority.

(b) VIOLATIONS.—(1) A person may not knowingly—

(A) forge, counterfeit, alter, or falsely make a document to satisfy a requirement of this title;

(B) use, attempt to use, possess, obtain, accept, receive, or provide a forged, counterfeit, altered, or falsely made document to satisfy a requirement of this title;

(C) use, provide, or attempt to use or provide, a document lawfully issued to a person other than the possessor (including a deceased individual), to satisfy a requirement of this title; or

(D) accept, receive, or provide a document lawfully issued to a person other than the possessor (including a deceased individual), to comply with section 11103 of this title.

(2) This subsection does not apply to subchapter I of chapter 5, subchapters I, III, and IV of chapter 131, chapters 133–137, and section 13902 of this title.

(c) AUTHORITY IN CONDUCTING INVESTIGATIONS AND HEARINGS.—(1) In conducting an investigation or hearing under this section—

(A) an immigration officer or administrative law judge shall have reasonable access to examine evidence of a person being investigated; and

(B) an administrative law judge may subpena, if necessary, the attendance of witnesses and the production of evidence at any designated place.

(2) If a person disobeys a subpena issued under this subsection, an appropriate district court of the United States, on application by the Attorney General, may issue an order to comply with the subpena. The court may punish a failure to comply with the order of the court as a contempt of court.

(d) HEARINGS.—(1) The Attorney General may issue an order referred to in subsection (e) of this section against a person for violating subsection (b) of this section only after notice and an opportunity for a hearing. A hearing must be requested within a reasonable time (established by the Attorney General, but at least 30 days) after the date of the notice.

(2) If a timely request for a hearing is not made, the Attorney General may issue an order referred to in subsection (e) of this section without a hearing.

(3) If a timely request for a hearing is made, the hearing shall be conducted by an administrative law judge as provided by section 554 of title 5 at the nearest practicable place to the place where the person resides or the alleged violation occurred. If the judge finds by a preponderance of the evidence that the person has violated subsection (b) of this section, the judge shall—

(A) state findings of fact; and

(B) issue and have served on the person an order referred to in subsection (e) of this section.

(e) CEASE AND DESIST ORDERS.—(1) For a violation of subsection (b) of this section, an order issued under this section shall require the person to cease and desist from the violation and to pay a civil penalty of—

(A) at least $250, but not more than $2,000, for each document used, accepted, or created and each time a document is used, accepted, or created; or

(B) at least $2,000, but not more than $5,000, for each document used, accepted, or created and each time a document is used, accepted, or created, if the person previously was subject to an order under this subsection.

(2) In applying this subsection, if an entity is composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under control of or common control with, another subdivision, each subdivision is deemed a separate entity.

(f) FINALITY OF DECISIONS AND ORDERS.—The decision and order of an administrative law judge under this section becomes the final decision and order of the Attorney General unless the Attorney General changes or va-

cates the decision and order within 30 days after the date of the decision and order.

(g) JUDICIAL REVIEW.—(1) Except as provided by paragraph (2) of this subsection, a person adversely affected by a final order under this section may file a petition for review of the order in the court of appeals for the appropriate circuit within 45 days after the date the final order is issued.

(2) An order of the Attorney General issued without a hearing as provided by subsection (d)(2) of this section is not appealable.

(h) ENFORCEMENT OF ORDER.—If a person does not comply with a final order issued under this section, the Attorney General shall bring a civil action in an appropriate district court of the United States to seek compliance with the order. The validity and appropriateness of the order may not be reviewed in the action.

(i) INVESTIGATIVE, PROTECTIVE, AND INTELLIGENCE ACTIVITIES NOT PROHIBITED.—This section does not prohibit—

(1) any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State or of an intelligence agency of the United States; or

(2) any activity authorized under chapter 224 of title 18.

(j) CONSTRUCTION.—This section does not affect a penalty that may be imposed for an activity prohibited under both this section and title 18.

§ 10126. Clearing vessels and aircraft

(a) CLEARANCE BEFORE DECISION ON LIABILITY.—A vessel or aircraft may be granted clearance before a decision on liability is made under section 10112–10117, 10119, 10120, 10123, or 10124 of this title only if a bond approved by the Attorney General or an amount sufficient to pay the civil penalty is deposited.

(b) PROHIBITION ON CLEARANCE WHEN PENALTY UNPAID.—A vessel or aircraft may not be granted clearance if a civil penalty imposed under section 10112–10117, 10119, 10120, 10123, or 10124 of this title is not paid.

SUBCHAPTER III—CRIMINAL PENALTIES

§ 10141. Violating period of conditional landing permit

An alien crewmember willfully remaining in the United States after the period allowed by a conditional permit granted under section 2703(b) of this title shall be fined under title 18, imprisoned for not more than 6 months, or both.

§ 10142. Failure to register and be fingerprinted

An alien required to apply for registration and to be fingerprinted in the United States and willfully failing to apply or to be fingerprinted, and a parent or legal guardian required to apply for the registration of an alien

and willfully failing to apply, shall be fined under title 18, imprisoned for not more than 6 months, or both.

§ 10143. Failure to carry a certificate of alien registration or alien registration receipt card

An alien violating section 8103(b) of this title shall be fined under title 18, imprisoned for not more than 30 days, or both.

§ 10144. Failure to provide addresses

An individual violating section 8104 of this title shall be fined under title 18, imprisoned for not more than 30 days, or both.

§ 10145. False and fraudulent registration

An alien, or a parent or legal guardian of an alien, who files an application for registration knowing that the application contains a false statement, or who registers or attempts to register himself, herself, or another individual through fraud, shall be fined under title 18, imprisoned for not more than 6 months, or both.

§ 10146. Counterfeiting alien registration documents

A person that with unlawful intent makes an engraving, photograph, print, impression, or imitation of a certificate of alien registration or an alien registration receipt card, except when authorized under regulations prescribed by the Attorney General, shall be fined under title 18, imprisoned for not more than 5 years, or both.

§ 10147. Bringing in and harboring aliens

(a) CRIMINAL PENALTIES.—(1)(A) A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

(i) knowing an individual is an alien, brings or attempts to bring the individual to the United States at a place not designated as a port of entry or not designated by the Attorney General, even if the alien has received prior authorization to come to, enter, or reside in the United States, and regardless of any future official action that may be taken with respect to the alien;

(ii) knowing, or in reckless disregard of whether, an alien has come to, has entered, or remains in the United States in violation of law, transports or moves, or attempts to transport or move, the alien within the United States in furtherance of that violation;

(iii) knowing, or in reckless disregard of whether, an alien has come to, has entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, the alien; or

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing, or in reckless disregard of whether, the coming, entering, or residing is unlawful.

(B) A separate violation occurs under paragraph (1) of this subsection for each alien involved in a violation.

(2) A person that, knowing, or in reckless disregard of whether, an alien has not received prior authorization to come to, enter, or reside in the United States (regardless of any future official action that may be taken with respect to the alien), brings or attempts to bring the alien to the United States shall be fined under title 18, imprisoned for not more than one year, or both, for each transaction violating this paragraph without regard to the number of aliens involved. However, the person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the violation is—

(A) a subsequent violation;

(B) done for commercial advantage or private financial gain; or

(C) one in which the alien is not brought and presented to an immigration officer at a designated port of entry immediately on arrival.

(b) SEIZURE AND FORFEITURE OF CONVEYANCE.—(1) A conveyance used in violating subsection (a) of this section shall be seized and may be forfeited. However, a conveyance—

(A) used by a person as a common carrier in carrying out common carrier business may be forfeited only if the owner or person in charge of the conveyance consented to, or was privy to, the violation; and

(B) may not be forfeited if the owner establishes that another person committed the violation when the conveyance was in the possession of another person in violation of the criminal laws of the United States or of a State.

(2) A conveyance may be seized under this section without a warrant if there is probable cause to believe it has been or is being used in violating subsection (a) of this section and circumstances exist in which a warrant is not required constitutionally.

(c) DISPOSITION OF FORFEITED CONVEYANCE.—When a conveyance is forfeited under this section, the Attorney General may—

(1) keep the conveyance for official use;

(2) sell the conveyance and shall use the proceeds to pay the expenses of the proceedings for forfeiture and sale, including seizure, maintenance of custody, advertising, and court costs;

(3) require the Administrator of General Services, or the Administrator of the Maritime Administration if appropriate under section 203(i) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(i)), to take custody of the conveyance and dispose of it under law; or

(4) dispose of the conveyance under a compromise made by the Attorney General.

(d) PROOF IN FORFEITURE ACTION.—In a civil action brought to forfeit a conveyance seized under this section, a person claiming the conveyance has the burden of proof. However, the Attorney General first must show probable cause in bringing the action. In deciding whether probable cause exists, each of the following is prima facie evidence that an alien involved in an alleged violation had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States unlawfully:

(1) a record of a judicial or administrative proceeding in which the alien's status was an issue and in which it was decided that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States unlawfully.

(2) official records of the Immigration and Naturalization Service or the Department of State showing that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States unlawfully.

(3) testimony by an immigration officer, having personal knowledge about the alien's status, that the alien had not received prior authorization to come to, enter, or reside in the United States or had come to, entered, or remained in the United States unlawfully.

(e) APPLICATION OF LAWS RELATED TO SEIZURES AND FORFEITURES FOR VIOLATING CUSTOMS LAWS.—Laws related to the seizure, forfeiture, and condemnation of property for violating the customs laws, disposition of the property or the proceeds of sale of the property, compromise of the forfeiture or a related claim, and award of compensation to an informer because of the forfeiture apply to a seizure or forfeiture under this section if not inconsistent with this section. However, duties and powers of persons in seizing and forfeiting property under the customs laws shall be carried out by persons the Attorney General authorizes to conduct a seizure or forfeiture under this section.

(f) INDIVIDUALS AUTHORIZED TO MAKE ARRESTS.—Only officers and employees of the Service designated by the Attorney General, individually or by class, and other officers and employees who enforce criminal laws, may make arrests for a violation of this section.

§ 10148. Improper entry of aliens

(a) CRIMINAL OFFENSES.—An alien shall be punished as provided by subsection (b) of this section if the alien—

(1) enters or attempts to enter the United States—

(A) at a time or place not designated by an immigration officer; or

(B) by a willfully false or misleading representation or the willful concealment of a material fact; or

(2) eludes inspection or examination by an immigration officer.

(b) CRIMINAL PENALTIES.—An alien violating subsection (a) of this section shall be—

(1) fined under title 18, imprisoned for not more than 6 months, or both, for a first violation; and

(2) fined under title 18, imprisoned for not more than 2 years, or both, for a subsequent violation.

(c) VENUE.—A proceeding under this section may be brought in any judicial district in which the violation occurs or in which the alien is apprehended.

§ 10149. Reentry of deported aliens

(a) CRIMINAL PENALTY.—(1) Except as otherwise provided by this section, an alien who has been arrested and deported or excluded and deported and then enters, attempts to enter, or is found in the United States shall be fined under title 18, imprisoned for not more than 2 years, or both.

(2) If the alien's deportation followed conviction of a felony (except an aggravated felony) and the alien enters, attempts to enter, or is found in the United States after November 17, 1988, the alien shall be fined under title 18, imprisoned for not more than 5 years, or both.

(3) If the alien's deportation followed conviction of an aggravated felony and the alien enters, attempts to enter, or is found in the United States after November 17, 1988, the alien shall be fined under title 18, imprisoned for not more than 15 years, or both.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to an alien—

(1) when the Attorney General specifically consents to the alien's reapplying for admission before the alien—

(A) reboards at a place outside the United States; or

(B) applies for admission from a foreign territory contiguous to the United States; or

(2) previously excluded and deported who establishes that prior consent by the Attorney General is not required under this title or other prior law.

(c) VENUE.—A proceeding under this section may be brought in any judicial district in which the violation occurs or in which the alien is apprehended.

§ 10150. Assisting certain excludable aliens to enter the United States

A person knowingly assisting or conspiring to assist an alien to enter the United States shall be fined under title 18, imprisoned for not more than 10 years, or both, if—

(1)(A) the alien is excludable under section 6307(a)(1)–(5) and (7) of this title because of an aggravated felony; and

(B) the assistance occurred after November 17, 1988; or

(2) the alien is excludable under section 6308 of this title.

§ 10151. Importing aliens for immoral purposes

(a) CRIMINAL PENALTY.—A person shall be fined under title 18, imprisoned for not more than 10 years, or both, if the person—

(1) imports or attempts to import an alien into the United States for prostitution or another immoral purpose; or

(2) holds, attempts to hold, maintains, controls, supports, employs, or harbors an alien in furthering an importation violating clause (1) of this subsection.

(b) VENUE.—A proceeding under this section may be brought in any judicial district into which the alien is brought in violation of this section or in which a violation of this section occurs.

(c) TESTIMONY OF SPOUSE.—Testimony of a spouse is admissible and is competent evidence in a proceeding under this section.

§ 10152. Violation of supervision pending deportation

An alien willfully violating a requirement imposed under section 6536(d) of this title, including giving false information in response to such a requirement, shall be fined under title 18, imprisoned for not more than one year, or both.

§ 10153. Willful failure to leave the United States

(a) CRIMINAL PENALTY.—An alien against whom the Attorney General has issued a final order of deportation because of any ground described by sections 6506–6509 of this title shall be fined under title 18, imprisoned for not more than 10 years, or both, if the alien—

(1) willfully does not—

(A) leave the United States within the 6-month period that begins on the latest of—

(i) the date of the Attorney General's final order;

(ii) if judicial review occurs, the date of the court's final order; or

(iii) if section 6536(f) of this title applies, the date on which the Attorney General decides that the alien has reentered the United States unlawfully;

(B) apply timely in good faith for a document the alien needs to leave the United States; or

(C) appear for deportation at the time and place the Attorney General requires under the order of deportation; or

(2) takes an action to prevent or hamper, or conspire to prevent or hamper, the alien from leaving the United States under the deportation order.

(b) ATTEMPTED RELIEF NOT PROHIBITED.—Subsection (a) of this section does not prohibit an alien from trying to obtain—

(1) a cancellation of the deportation order;

(2) an exemption from the deportation order; or

(3) a release from incarceration or custody.

(c) SUSPENSION OF SENTENCE AND RELEASE.—(1) For good cause, the court sentencing an alien convicted of violating subsection (a) of this section may suspend the sentence and order the alien released on conditions the court prescribes.

(2) In deciding whether good cause exists for releasing an alien under paragraph (1) of this subsection, the court shall consider factors such as—

(A) the age, health, and period of detention of the alien;

(B) the effect of the alien's release on the security of the United States and public peace or safety;

(C) the likelihood that the alien will resume or follow a course of conduct that made or would make the alien deportable;

(D) efforts the alien or a representative of a country to which the alien is ordered deported makes to expedite the alien's leaving the United States;

(E) the reason why the United States Government cannot obtain a passport or other travel document or deportation facilities from a country to which the alien is ordered deported; and

(F) the eligibility of the alien for discretionary release under the immigration laws.

§ 10154. Marriage to evade immigration laws

(a) CRIMINAL PENALTY.—An individual who knowingly marries to evade the immigration laws shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) VENUE.—A proceeding under this section may be brought in any judicial district in which the violation occurs or in which the individual is apprehended.

§ 10155. Misrepresentations in applications for change of status

An individual knowingly and willfully making a material misrepresentation in an application or supporting document filed under section 9303 of this title, or making or using a false document in connection with the application, shall be fined under title 18, imprisoned for not more than 5 years, or both.

§ 10156. Disclosing confidential information in applications

An individual violating section 9308(b) of this title shall be fined under title 18, imprisoned for not more than 5 years, or both.

§ 10157. Establishing a commercial enterprise to evade immigration laws

(a) CRIMINAL PENALTY.—An individual who knowingly establishes a commercial enterprise to evade the immigration laws shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) VENUE.—A proceeding under this section may be brought in any judicial district in which the violation occurs or in which the individual is apprehended.

SUBTITLE III—UNLAWFUL EMPLOYMENT PRACTICES

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CHAPTER 111—UNLAWFUL EMPLOYMENT OF ALIENS

Sec.
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§ 11101. Definitions

In this chapter—

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

(2) ''unauthorized alien'' means, with respect to employment at a particular time, an alien who is not at that time—

(A) lawfully admitted for permanent residence; or

(B) authorized to be employed in that employment by this title or by the Attorney General.

§ 11102. Employment of unauthorized aliens

(a) PROHIBITIONS.—(1) A person—

(A) may not hire, or recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien;

(B) may not hire for employment in the United States an individual without complying with section 11103 of this title; or

(C) if the person is an agricultural association, agricultural employer, or farm labor contractor (as defined by section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802)), may not recruit or refer for a fee for employment in the United States an individual without complying with section 11103 of this title.

(2) A person may not continue to employ in the United States an alien knowing the alien is an unauthorized alien.

(b) USE OF LABOR THROUGH CONTRACT.—A person violates subsection (a)(1)(A) of this section if the person uses a contract or exchange that is made, renegotiated, or extended after November 6, 1986, to obtain the labor of an alien in the United States, knowing the alien is an unauthorized alien.

(c) DEFENSE.—Good faith compliance with section 11103 of this title is an affirmative defense under subsection (a)(1)(A) of this section.

(d) STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of subsections (a)(1)(B) and (C) and (c) of this section, a person hiring an individual referred by a State employment agency (as defined by the Attorney General) is deemed to have complied with section 11103 of this title if the person has and retains (for the period and in the way described by section 11103(c)) appropriate documentation of the referral certifying that the agency complied with section 11103 for that individual.

(e) NONAPPLICATION.—(1) Subsection (a)(1) of this section does not apply to hiring, recruiting, or referring that occurred before November 6, 1986.

(2) Subsection (a)(2) of this section does not apply to continuing employment of an alien hired before November 6, 1986.

(f) TEMPORARY PROVISIONS.—(1) The Attorney General may not conduct a proceeding or issue an order under this chapter for a violation alleged to have occurred during the period from December 1, 1986, through May 31, 1987.

(2) If the Attorney General has reason to believe that a person has committed a first violation of this section during the period from June 1, 1987, through May 31, 1988, the Attorney General—

(A) shall issue a citation to the person; and

(B) may not conduct a proceeding or issue an order for the violation.

(3) In applying paragraphs (1) and (2) of this subsection when an alien is deemed to be employed in the United States under this chapter as provided by section 8704 of title 46—

(A) in paragraph (1), substitute ''August 1, 1988, through January 31, 1989'' for ''December 1, 1986, through May 31, 1987''; and

(B) in paragraph (2), substitute ''February 1, 1989, through January 31, 1990'' for ''June 1, 1987, through May 31, 1988''.

§ 11103. Employment verification system

(a) ATTESTATION AFTER EXAMINING DOCUMENTS.—(1) A person hiring, or recruiting or referring for a fee, an individual for employment in the United States must attest, under penalty of perjury and on a form prescribed by the Attorney General, that the person has verified that the individual is not an unauthorized alien by examining—

(A) a document specified in paragraph (3) of this subsection; or

(B)(i) a document specified in paragraph (4) of this subsection; and

(ii) a document specified in paragraph (5) of this subsection.

(2) A person has examined a document as required by paragraph (1) of this subsection if the person has found that the document reasonably appears on its face to be genuine. The person is not required to request, and the individual is not required to provide, another document if the individual has provided a document or combination of documents complying with paragraph (1) that reasonably appear on their face to be genuine.

(3) A document required under paragraph (1)(A) of this subsection is an individual's—

(A) United States passport;

(B) certificate of United States citizenship;

(C) certificate of naturalization;

(D) 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

(E) resident alien card or other alien registration card, if the card—

(i) contains the individual's photograph or other identifying information the Attorney General prescribes by regulation as acceptable; and

(ii) is evidence of authorization of employment in the United States.

(4) A document required under paragraph (1)(B)(i) of this subsection is an individual's—

(A) social security account number card (unless it states on its face that issuance of the card does not authorize employment in the United States);

(B) certificate of birth in the United States or establishing United States nationality at birth, if the certificate is acceptable under regulations prescribed by the Attorney General; or

(C) other documentation providing authorization of employment in the United States that the Attorney General prescribes by regulation as acceptable.

(5) A document required under paragraph (1)(B)(ii) of this subsection is an individual's—

(A) driver's license or similar document issued for identification by a State, if it contains the individual's photograph or other identifying information the Attorney General prescribes by regulation as acceptable; or

(B) for an individual less than 16 years of age or in a State that does not issue an identification document other than a driver's license, documentation of personal identity that the Attorney General prescribes by regulation as providing a reliable means of identification.

(b) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury and on the form prescribed under subsection (a) of this section, that the individual is—

(1) a national of the United States;

(2) an alien lawfully admitted for permanent residence; or

(3) an alien authorized by this title or by the Attorney General to be hired, recruited, or referred for the employment.

(c) RETENTION OF VERIFICATION FORM.—After the form is completed as provided by subsections (a) and (b) of this section, the person must retain the form and make it available for inspection by officers and employees of the Immigration and Naturalization Service, the Special Counsel for Immigration-Related Unfair Employment Practices, and the Secretary of Labor during a period beginning on the date of the hiring, recruiting, or referral and ending—

(1) if the individual is recruited or referred for a fee but not hired, 3 years after the date of the recruiting or referral; or

(2) if the individual is hired, 3 years after the date of hire or one year after the date the employment ends, whichever is later.

(d) COPYING DOCUMENTATION.—A person may copy a document presented by an individual under this section and retain the copy, but only (except as otherwise permitted by law) to comply with this section.

(e) LIMITATION ON USE OF FORMS.—A form completed under this section, and information contained in or appended to the form, may be used only to enforce this title and sections 1001, 1028, 1546, and 1621 of title 18.

(f) NATIONAL IDENTIFICATION CARD NOT AUTHORIZED.—This chapter does not authorize the establishment, issuance, or use of a national identification card.

§ 11104. Evaluating and changing employment verification system

(a) DEFINITION.—In this section, ''major change'' means a change that would—

(1) require an individual to present a new card or other document (designed specifically to verify employment eligibility) at the time of hiring, recruitment, or referral;

(2) provide for a telephone verification system under which—

(A) an employer, recruiter, or referrer must give an officer or employee of the United States Government information about the immigration status of a prospective employee; and

(B) the officer or employee of the Government gives the employer, recruiter, or referrer a verification code that the employer, recruiter, or referrer must record; or

(3) require a change in a card used for accounting under the Social Security Act (42 U.S.C. 301 et seq.), including a change requiring that the only social security account number card that may be presented to comply with section 11103(a)(4)(A) of this title is a card in a counterfeit-resistant form consistent with section 205(c)(2)(F)(last sentence) of the Social Security Act (42 U.S.C. 405(c)(2)(F)(last sentence)).

(b) PRESIDENTIAL MONITORING AND IMPROVEMENTS.—(1) The President shall—

(A) provide for monitoring and evaluating the degree to which the employment verification system under section 11103 of this title provides a secure system to verify employment eligibility in the United States; and

(B) examine the suitability of using existing Government and State identification systems to verify employment eligibility in the United States.

(2) To the extent the President finds the system is not a secure system to verify employment eligibility in the United States, the President shall make changes in and additions to the system necessary to establish a secure system to verify employment eligibility in the United States—

(A) subject to subsections (c)–(f) of this section; and

(B) after considering the results of any demonstration project conducted under subsection (g) of this section.

(c) CHANGE REQUIREMENTS.—A change proposed by the President under subsection (b) of this section must be designed so that the system, as changed, will meet the following requirements:

(1) The system must be able to verify reliably whether—

(A) an individual with the identity claimed by an employee or prospective employee is eligible to work; and

(B) the employee or prospective employee is claiming the identity of another individual.

(2) If the system requires that a document be presented to or examined by an employer, the document must be in a form resistant to counterfeiting and tampering.

(3) Personal information used by the system may be made available only to the extent necessary to verify that an individual is not an unauthorized alien.

(4) The system must protect the privacy and security of personal information and identifiers used in the system.

(5) A verification that an individual is eligible to be employed in the United States may be withheld or revoked only if the individual is an unauthorized alien.

(6) The system may not be used for law enforcement, except to enforce this title and sections 1001, 1028, 1546, and 1621 of title 18.

(7) If the system requires an individual to present a new card or other document (designed specifically to verify employment eligibility) at the time of hiring, recruitment, or referral, the document may not be required to be presented for another purpose (except under this title or for enforcement of sections 1001, 1028, 1546, and 1621 of title 18) or to be carried on the individual.

(d) NOTICES TO CONGRESS BEFORE MAKING CHANGES.—(1) Before carrying out a change, the President must submit a written report of the proposed change to the Committees on the Judiciary of the Senate and the House of Representatives. If the President proposes a change affecting social security account number cards, the President also shall submit the report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. A report under this paragraph shall include recommendations for civil and criminal penalties for unauthorized use or disclosure of the information or identifiers used in the system. The report shall be submitted at least—

(A) 60 days before the date the change is to be carried out if the change is not a major change;

(B) one year before the date the change is to be carried out if the change is a major change as defined by subsection (a)(3) of this section; or

(C) 2 years before the date the change is to be carried out if the change is a major change as defined by subsection (a)(1) or (2) of this section.

(2) The President shall publish promptly in the Federal Register the substance of a major change reported to Congress under this subsection.

(e) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—(1) The Committees on the Judiciary of the Senate and the House of Representatives shall—

(A) publish in the Congressional Record the substance of a major change submitted by the President under subsection (d) of this section;

(B) hold hearings on the feasibility and desirability of the change; and

(C) within the 2-year period before the change is to be carried out, report to their respective Houses findings on whether the change should be made.

(2) A major change may be carried out only if an amount is appropriated by law specifically to carry out the change.

(f) PAYMENT OF COSTS.—Costs incurred under this section in developing and carrying out a change described by subsection (a)(3) of this section may not be paid out of a trust fund established under the Social Security Act (42 U.S.C. 301 et seq.).

(g) DEMONSTRATION PROJECTS.—The President may undertake demonstration projects consistent with subsection (c) of this section of different changes in the system. A project may not be for more than 3 years. The President shall report to Congress on the results of each project conducted under this subsection.

§ 11105. Compliance

(a) COMPLAINTS AND INVESTIGATIONS.—The Attorney General shall establish procedures for—

(1) a person to file a written, signed complaint of a violation of section 11102 or 11107(a) of this title;

(2) investigating a complaint that, on its face, has a substantial probability of validity;

(3) investigating other violations of section 11102 or 11107(a) of this title that the Attorney General considers appropriate; and

(4) designating a unit in the Immigration and Naturalization Service that has, as its primary duty, the prosecution under this section of violations of section 11102 or 11107(a) of this title.

(b) AUTHORITY IN CONDUCTING INVESTIGATIONS AND HEARINGS.—(1) In conducting an investigation or hearing under this section—

(A) the immigration officer or administrative law judge conducting the investigation or hearing shall have reasonable access to examine evidence of a person being investigated; and

(B) the administrative law judge may subpena, if necessary, the attendance of witnesses and the production of evidence at any designated place.

(2) If a person disobeys a subpena issued under this subsection, an appropriate district court of the United States, on application by the Attorney General, may issue an order to comply with the subpena. The court may punish a failure to comply with the order of the court as a contempt of court.

(c) HEARINGS.—(1) The Attorney General may issue an order referred to in subsections (d)–(f) of this section against a person for violating section 11102 or 11107(a) of this title only after notice and an opportunity for a hearing. A hearing must be requested within a reasonable time (established by the Attorney General, but at least 30 days) after the date of the notice.

(2) If a timely request for a hearing is not made, the Attorney General may issue an order referred to in subsections (d)–(f) of this section without a hearing.

(3) If a timely request for a hearing is made, the hearing shall be conducted by an administrative law judge as provided by section 554 of title 5 at the nearest practicable place to the place where the person resides or the alleged violation occurred. If the judge finds by a preponderance of the evidence that the person has violated section 11102 or 11107(a) of this title, the judge shall—

(A) state findings of fact; and

(B) issue and have served on the person an order referred to in subsections (d)–(f) of this section.

(d) ORDERS INVOLVING HIRING, RECRUITING, AND REFERRAL VIOLATIONS.—(1) For a violation of section 11102(a)(1)(A) or (2) of this title, an order issued under this section—

(A) shall require the person to cease and desist from the violation and to pay a civil penalty of—

(i) at least $250, but not more than $2,000, for each unauthorized alien involved in the violation;

(ii) at least $2,000, but not more than $5,000, for each unauthorized alien involved in the violation if the person previously was subject to one order under this subsection; or

(iii) at least $3,000, but not more than $10,000, for each unauthorized alien involved in the violation if the person previously was subject to more than one order under this subsection; and

(B) may require the person—

(i) to comply for not more than 3 years with section 11103 of this title or, if applicable, with section 11104 of this title, for individuals hired or recruited or referred for a fee; and

(ii) to take other appropriate remedial action.

(2) In applying this subsection, if an entity is composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under control of or common control with, another subdivision, each subdivision is deemed a separate entity.

(e) ORDERS INVOLVING PAPERWORK VIOLATIONS.—For a violation of section 11102(a)(1)(B) or (C) of this title, an order issued under this section shall require the person to pay a civil penalty of at least $100, but not more than $1,000, for each individual about whom the violation occurred. In deciding on the amount of the penalty, consideration shall be given to—

(1) the size of the business of the person;

(2) the good faith of the person;

(3) the seriousness of the violation;

(4) whether the individual was an unauthorized alien; and

(5) any history of prior violations.

(f) ORDERS INVOLVING INDEMNITY VIOLATIONS.—For a violation of section 11107(a) of this title, an order issued under this section may provide for the penalty described by section 11107(b) of this title.

(g) FINALITY OF DECISIONS AND ORDERS.—The decision and order of an administrative law judge under this section become the final decision and order of the Attorney General unless the Attorney General changes or vacates the decision and order within 30 days after the date of the decision and order. The Attorney General may not delegate the Attorney General's authority under this subsection to a person having review authority over immigration-related matters.

(h) JUDICIAL REVIEW.—(1) Except as provided by paragraph (2) of this subsection, a person adversely affected by a final order imposing a civil penalty under this section may file a petition for review of the order in the court of appeals for the appropriate circuit within 45 days after the date the final order is issued.

(2) An order of the Attorney General issued without a hearing as provided by subsection (c)(2) of this section is not appealable.

(i) ENFORCEMENT OF ORDERS.—If a person does not comply with a final order issued under this section, the Attorney General shall bring a civil action in an appropriate district court of the United States to seek compliance with the order. The validity and appropriateness of the order may not be reviewed in the action.

§ 11106. Criminal penalties and civil actions for pattern or practice violations

(a) CRIMINAL PENALTY.—A person engaging in a pattern or practice of violations of section 11102(a)(1)(A) or (2) of this title shall be fined not more than $3,000 for each unauthorized alien involved in a violation (notwithstanding the provisions of title 18 on the amount of fines), imprisoned for not more than 6 months for the entire pattern or practice, or both.

(b) CIVIL ACTIONS.—If the Attorney General has reason to believe that a person is engaged in a pattern or practice of employment, recruitment, or referral in violation of section 11102(a)(1)(A) or (2) of this title, the Attorney General may bring a civil action in the appropriate district court of the United States for relief the Attorney General considers necessary.

§ 11107. Indemnity prohibition

(a) GENERAL.—A person hiring, recruiting, or referring an individual for employment may not require the individual to post a bond or security, to pay or agree to pay an amount, or to give another financial guarantee or indemnity, against potential liability arising under this chapter related to the hiring, recruiting, or referral.

(b) CIVIL PENALTY.—After notice and an opportunity for a hearing under section 11105 of this title, a person found to have violated subsection (a) of this section—

(1) is liable to the United States Government for a civil penalty of $1,000; and

(2) may be ordered administratively to return any amount received in violation of subsection (a) of this section to the individual or, if the individual cannot be located, to pay that amount to the general fund of the Treasury.

§ 11108. Conspicuous statement requirement

In providing for the documentation or endorsement of authorization for employment in the United States for an alien (except an alien lawfully admitted for permanent residence), the Attorney General shall provide that a limitation on the period or type of employment or employer be stated conspicuously on the documentation or endorsement.

§ 11109. Preemption of State and local law

This chapter preempts State and local law imposing a civil or criminal penalty (except through licensing and similar laws) on a person employing, or recruiting or referring for a fee for employment, an unauthorized alien.

CHAPTER 113—IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES

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§ 11301. Definitions

In this chapter—

(1) ''protected individual''—

(A) means an individual who is—

(i) a national of the United States; or

(ii) an alien lawfully admitted for permanent residence, lawfully admitted for temporary residence under section 9302 of this title or section 210(a) or 210A(a) of the Immigration and Nationality Act (66 Stat. 163), admitted as a refugee under section 5105 of this title, or granted asylum under section 5106 of this title; but

(B) does not include an alien who—

(i) did not apply for naturalization within 6 months after first becoming eligible (because of a period of lawful permanent residence) to apply, or, if later, before May 7, 1987; or

(ii) timely applied but was not naturalized within 2 years after applying (excluding time taken by the Immigration and Naturalization Service in processing the application), unless the alien establishes that the alien is actively pursuing naturalization.

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

§ 11302. Immigration-related unfair employment practices

(a) IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES.—It is an immigration-related unfair employment practice for a person—

(1) to discriminate against an individual (except an unauthorized alien as defined by section 11101(2) of this title) in hiring, or recruiting or referring for employment for a fee, the individual or discharging the individual from employment because of the individual's national origin or, if the individual is a protected individual, because of the individual's citizenship status; or

(2) after November 28, 1990, to intimidate, threaten, coerce, or retaliate against an individual—

(A) for the purpose of interfering with a right or privilege under this chapter; or

(B) because the individual intends to file or has filed a charge or complaint or assisted or participated in an investigation or proceeding under this chapter.

(b) CERTAIN DOCUMENT PRACTICES AS BEING UNFAIR.—After November 28, 1990, it is deemed to be an immigration-related unfair employment practice under subsection (a)(1) of this section related to the hiring of an individual, for a person to request, to satisfy the requirements of section 11103 of this title, more or different documents than are required under section 11103 or to refuse to honor a document that on its face reasonably appears to be genuine.

(c) NONAPPLICATION.—Subsection (a)(1) of this section does not apply to—

(1) a person employing fewer than 4 employees;

(2) discrimination by a person because of an individual's national origin if the discrimination by that person against that individual is covered by section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2); or

(3) discrimination because of citizenship status that is—

(A) required to comply with a law, a regulation, or an executive order;

(B) required by a contract of the United States Government or a State or local government; or

(C) found by the Attorney General to be essential for an employer to do business with an agency of the Government or a State or local government.

(d) PREFERENCE FOR EQUALLY QUALIFIED NATIONALS.—It is not an immigration-related unfair employment practice for a person to hire, recruit, or refer an individual who is a national of the United States instead of an individual who is an alien if both individuals are equally qualified.

§ 11303. Special Counsel for Immigration-Related Unfair Employment Practices

(a) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices. The Special Counsel serves in the Department of Justice for a term of 4 years. When the position is vacant, the President may designate an officer or employee of the United States Government to act as Special Counsel during the vacancy.

(b) DUTIES AND POWERS.—The Special Counsel shall carry out the duties and powers given the Special Counsel under this chapter.

(c) DISSEMINATION OF INFORMATION.—(1) In cooperation with the Chairman of the Equal Employment Opportunity Commission, the Secretary

of Labor, and the Administrator of the Small Business Administration, the Special Counsel shall conduct a campaign—

(A) to disseminate information on the rights and remedies prescribed under this chapter and title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) related to immigration-related unfair employment practices; and

(B) to increase the knowledge of employers, employees, and the public about employer and employee rights, responsibilities, and remedies under this chapter and title VII.

(2) To carry out this subsection, the Special Counsel—

(A) to the extent considered appropriate and subject to the availability of appropriations, may make contracts with public and private organizations for outreach activities under the campaign; and

(B) shall consult with the Chairman, the Secretary, and the heads of other appropriate departments, agencies, and instrumentalities of the United States Government.

(3) Not more than $10,000,000 may be appropriated for each fiscal year to carry out this subsection.

(d) COMPENSATION.—The Special Counsel is entitled to a rate of pay that is not more than the rate for GS–17.

(e) REGIONAL OFFICES.—Under regulations prescribed by the Attorney General, the Special Counsel shall establish regional offices necessary to carry out the duties and powers of the Special Counsel.

§ 11304. Filing charges of unfair practices

(a) FILING CHARGES.—(1) Except as provided by subsection (c) of this section, a charge of an immigration-related unfair employment practice may be filed with the Special Counsel for Immigration-Related Unfair Employment Practices by—

(A) a person alleging to be adversely affected directly by the practice, or by another person for that person; or

(B) an officer of the Immigration and Naturalization Service alleging that the practice has occurred or is occurring.

(2) A charge filed under this subsection must be in writing and under oath and contain information the Attorney General requires.

(b) SERVICE OF NOTICE OF CHARGES.—The Special Counsel shall serve a notice of a charge filed under subsection (a) of this section (including the date, place, and circumstances of the alleged practice) on the person alleged to have committed the practice. The notice shall be served by certified mail not later than 10 days after the charge is filed.

(c) LIMITATIONS ON FILING CHARGES.—A charge of an immigration-related unfair employment practice involving discrimination because of na-

tional origin may not be filed under this section if a charge of that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), unless the charge is dismissed as being outside the scope of title VII. A charge about an employment practice may not be filed with the Equal Employment Opportunity Commission under title VII if a charge about that practice based on the same set of facts has been filed under this section, unless the charge is dismissed as being outside the scope of this chapter.

§ 11305. Investigating charges and filing complaints

(a) SPECIAL COUNSEL.—(1) The Special Counsel for Immigration-Related Unfair Employment Practices shall investigate each charge filed under section 11304 of this title. Not later than 120 days after the charge has been filed, the Special Counsel shall decide whether there is reasonable cause to believe the charge is true and whether to file a complaint about the charge with an administrative law judge.

(2) On the Special Counsel's own initiative, the Special Counsel may investigate an immigration-related unfair employment practice and, subject to subsection (c) of this section, file a complaint about the practice with an administrative law judge.

(3) Failure to file a complaint within the 120-day period does not prevent the Special Counsel from investigating the charge or filing a complaint with an administrative law judge during the 90-day period referred to in subsection (b) of this section.

(b) PRIVATE ACTIONS.—Subject to subsection (c) of this section, if a charge alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, and the Special Counsel does not file a complaint with an administrative law judge within 120 days after the charge is filed with the Special Counsel under subsection (a)(1) of this section, the Special Counsel shall notify the person that filed the charge during the 120-day period of the decision not to file a complaint. The person may file a complaint directly with an administrative law judge not later than 90 days after receiving the notice.

(c) TIME LIMITATION.—A complaint about an immigration-related unfair employment practice may not be filed with an administrative law judge if the practice occurred more than 180 days before the charge about that practice was filed with the Special Counsel. This subsection does not prevent subsequently amending a charge or complaint under section 11306(c)(1) of this title.

(d) DISCRIMINATION DEEMED TO HAVE OCCURRED.—An individual intimidated, threatened, coerced, or retaliated against in violation of section

11302(a)(2) of this title is deemed to have been discriminated against under this section.

§ 11306. Hearings on complaints

(a) DESIGNATING ADMINISTRATIVE LAW JUDGES.—A hearing on a complaint alleging an immigration-related unfair employment practice shall be conducted by an administrative law judge who—

(1) is specially designated by the Attorney General as having special training in employment discrimination; and

(2) to the extent possible, conducts hearings only on complaints involving immigration-related unfair employment practices under this chapter.

(b) NOTICE OF HEARINGS.—When a complaint alleging an immigration-related unfair employment practice is filed with an administrative law judge, the judge shall issue and have served on the person named in the complaint a copy of the complaint and a notice of the hearing. The date of the hearing shall be at least 5 days after the complaint is served.

(c) PLEADINGS, APPEARANCES, AND PARTIES.—(1) On motion of the party that filed the complaint, the judge may amend the complaint at any time before issuing an order based on the complaint.

(2) The person named in the complaint may file an answer to the original or amended complaint, appear in person or otherwise, and present testimony.

(3) The person that filed the charge with the Special Counsel for Immigration-Related Unfair Employment Practices is a party to the proceeding before the judge and in any appeal from that proceeding.

(4) The judge conducting the hearing may allow any other person to intervene and to present testimony.

(d) TRANSCRIPT AND ADDITIONAL TESTIMONY OR ARGUMENT.—A transcript shall be prepared of the testimony in the hearing. After the transcript is prepared, the judge, by notice, may provide for further testimony or hear argument.

§ 11307. Authority in conducting investigations and hearings

(a) GENERAL.—In conducting an investigation or hearing under this chapter—

(1) the Special Counsel for Immigration-Related Unfair Employment Practices and the administrative law judge conducting the investigation or hearing, under regulations prescribed by the Attorney General, shall have reasonable access to examine evidence of a person being investigated; and

(2) the administrative law judge may subpena the attendance of witnesses and the production of evidence at any designated place.

(b) JUDICIAL ENFORCEMENT OF SUBPENAS.—If a person disobeys a subpena issued under subsection (a)(2) of this section, an appropriate district court of the United States, on application by the administrative law judge, may issue an order to comply with the subpena. The court may punish a failure to comply with the order of the court as a contempt of court.

§ 11308. Orders of administrative law judges

(a) GENERAL.—In a proceeding by an administrative law judge under this chapter, the judge shall issue an order and have the order served on the parties to the proceeding. The order is final unless a petition for review is filed under section 11309 of this title.

(b) ORDERS FINDING UNFAIR PRACTICES.—(1) If the administrative law judge finds by a preponderance of the evidence that the person named in the complaint has engaged, or is engaging, in an immigration-related unfair employment practice, the judge shall state findings of fact about the practice and issue and have served on the person an order requiring the person to cease and desist from the practice.

(2) The order also may require the person—

(A) to comply with section 11103 of this title for not more than 3 years;

(B) to retain for not more than 3 years, and only for use as provided under section 11103(e) of this title, the name and address of each individual applying (whether in person or in writing) for an existing position, or for recruitment or referral for a fee, for employment in the United States;

(C) to hire an individual directly and adversely affected, with or without back pay;

(D) to pay to the United States Government a civil penalty of—

(i) at least $250, but not more than $2,000, for each individual discriminated against;

(ii) at least $2,000, but not more than $5,000, for each individual discriminated against if the person previously was subject to an order under this subsection;

(iii) at least $3,000, but not more than $10,000, for each individual discriminated against if the person previously was subject to more than one order under this subsection; or

(iv) at least $100, but not more than $1,000, for each individual discriminated against, for an immigration-related unfair employment practice described by section 11302(b) of this title;

(E) to post notices to employees about their rights under this chapter and the obligations of employers under chapter 111 of this title;

(F) to educate all personnel involved in hiring or complying with this chapter and chapter 111 of this title about the requirements of this chapter and chapter 111;

(G) to remove, as appropriate, a false performance review or false warning from an employee's personnel file; and

(H) to lift, as appropriate, a restriction on an employee's assignments, work shifts, or movements.

(3) An order of back pay under paragraph (2)(C) of this subsection may not require back pay for more than the 2-year period occurring before the charge was filed with the Special Counsel for Immigration-Related Unfair Employment Practices. Back pay otherwise allowable shall be reduced by amounts earned, or earnable with reasonable diligence, during the period covered by the back pay order. An order may require hiring an individual or paying back pay to an individual only if the individual was refused employment for discrimination because of national origin or citizenship status.

(4) In applying this section, if an entity is composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under control of or common control with, another subdivision, each subdivision is deemed a separate entity.

(c) DISCRIMINATION DEEMED TO HAVE OCCURRED.—An individual intimidated, threatened, coerced, or retaliated against in violation of section 11302(a)(2) of this title is deemed to have been discriminated against under this section.

(d) ORDERS FINDING NO UNFAIR PRACTICES.—If the administrative law judge finds by a preponderance of the evidence that the person named in the complaint has not engaged, and is not engaging, in an immigration-related unfair employment practice, the judge shall state findings of fact about such a practice not existing and issue an order dismissing the complaint.

§ 11309. Judicial review of final orders

(a) GENERAL.—A person adversely affected by a final order issued by an administrative law judge under section 11308 of this title may file a petition for review of the order in the court of appeals of the United States for the circuit in which the alleged unfair practice occurred or in which the employer resides or does business. The petition must be filed within 60 days after the date the final order is issued.

(b) EXCLUSIVE JURISDICTION.—When the record of the proceedings is filed with the court, the court has exclusive jurisdiction to review the order.

§ 11310. Judicial enforcement of administrative orders

(a) CIVIL ACTIONS FOR ENFORCEMENT.—If a petition for review of an order of an administrative law judge under section 11308 of this title is not filed under section 11309 of this title, the Special Counsel for Immigration-Related Unfair Employment Practices or, if the Special Counsel does not act, the person that filed the charge with the Special Counsel, may bring a civil action to enforce the order. The action must be brought in the district court of the United States for the judicial district in which a violation of the order is alleged to have occurred or in which the person against whom the order is directed resides or does business. The order of the administrative law judge may not be reviewed in the action.

(b) ENFORCEMENT BY COURT OF APPEALS IN ORIGINAL REVIEW.—If the court of appeals does not reverse an order of an administrative law judge reviewed under section 11309 of this title, the court may issue an order enforcing the order of the judge.

§ 11311. Attorney fees

In a proceeding before an administrative law judge under this chapter, or in a judicial proceeding for review or enforcement of an order of an administrative law judge under section 11308 of this chapter, the prevailing party (except the United States Government) may be awarded reasonable attorney fees if the losing party's argument is without reasonable foundation in law and fact.

§ 11312. Certain agency authority not affected

Except as specifically provided by this chapter, this chapter does not affect the authority of the Equal Employment Opportunity Commission to investigate allegations of unlawful employment practices.

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CHAPTER 131—REFUGEE COORDINATION AND ASSISTANCE

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SUBCHAPTER I—POLICY COORDINATION

§ 13101. United States Coordinator for Refugee Affairs

The President shall appoint, by and with the advice and consent of the Senate, a United States Coordinator for Refugee Affairs. The Coordinator has the rank of ambassador at large.

§ 13102. Duties of the United States Coordinator for Refugee Affairs

(a) GENERAL AUTHORITY.—The United States Coordinator for Refugee Affairs is responsible—

(1) to the President in carrying out this section;

(2) for developing overall United States refugee admission and resettlement policy;

(3) for coordinating all United States domestic and international refugee admission and resettlement programs in a way that ensures that policy objectives are met timely;

(4) for designing an overall budget strategy to provide individual agencies with policy guidance on refugee matters in preparing their budget requests, and to provide the Director of the Office of Management and Budget with an overview of all refugee-related budget requests;

(5) for presenting to Congress the President's overall refugee policy and the relationship of individual agency refugee budgets to the overall policy;

(6) for advising the President, the Secretary of State, the Attorney General, and the Secretary of Health and Human Services on the rela-

tionship of overall United States refugee policy to the admission and resettlement of refugees in the United States;

(7) for representing the United States Government, under the direction of the Secretary of State, in discussions and negotiations with governments of foreign countries and international organizations on refugee matters and, when appropriate, submitting refugee issues for inclusion in other international negotiations;

(8) for developing an effective and responsive liaison between the Government and voluntary organizations, Governors, mayors, and others involved in refugee relief and resettlement work to reflect overall Government policy;

(9) for recommending to the President and to Congress policies, objectives, and priorities on Government duties and powers related to refugee admission and resettlement in the United States; and

(10) for reviewing regulations, guidelines, requirements, criteria, and procedures of agencies on carrying out duties and powers related to refugee admission and resettlement in the United States.

(b) CONSULTATION.—In carrying out subsection (a) of this section, the Coordinator shall consult regularly with State governments, political subdivisions, and private nonprofit voluntary organizations on the sponsorship process and the intended distribution of refugees.

(c) REPORTS BY SECRETARIES.—The Secretaries of Labor and Education shall provide the Coordinator with regular reports describing the efforts of their respective departments in increasing refugee access to programs within their jurisdictions. The Coordinator shall include information on these programs in reports submitted under section 13120 of this title.

SUBCHAPTER II—RESETTLEMENT ASSISTANCE

§ 13111. Congressional intent

It is the intent of Congress that in providing refugee assistance under this subchapter—

(1) employable refugees should be placed in jobs as soon as possible after the refugees arrive in the United States;

(2) social service expenditures should be focused on employment-related services, instruction in English-as-a-second-language (in non-work hours when possible), and case-management services; and

(3) local voluntary organization activities should be carried out in close cooperation and advance consultation with State and local governments.

§ 13112. Definition

In this subchapter, ''refugee'' includes a spouse or child described by section 5105(c) of this title.

§ 13113. Office of Refugee Resettlement

(a) OFFICE OF REFUGEE RESETTLEMENT.—The Office of Refugee Resettlement is an office in the Department of Health and Human Services.

(b) DIRECTOR.—The head of the Office is a Director appointed by the Secretary of Health and Human Services.

(c) AUTHORITY OF THE DIRECTOR.—In consultation with, and under the general policy guidance of, the United States Coordinator for Refugee Affairs, the Director shall carry out this subchapter (directly or through arrangements with other agencies) except—

(1) that the Secretaries of Education, Health and Human Services, and State and the Attorney General may prescribe regulations that each Secretary or the Attorney General considers appropriate to carry out this subchapter; and

(2) as otherwise provided by this subchapter.

§ 13114. Initial resettlement assistance programs

(a) EDUCATION AND TRAINING PROGRAMS.—The Director of the Office of Refugee Resettlement may develop programs of orientation, instruction in English, job training, and other education and training of refugees that will assist in their resettlement in the United States. The programs may be carried out by—

(1) the Director consistent with this subchapter, for refugees in the United States; and

(2) the Secretary of State, for refugees waiting to enter the United States.

(b) TEMPORARY CARE PROGRAMS.—In consultation with the United States Coordinator for Refugee Affairs, the Secretary of Health and Human Services may make arrangements (including cooperative arrangements with other agencies) for the temporary care of refugees in the United States in emergency circumstances, including establishing necessary processing centers. In carrying out this subsection, the Secretary may waive provisions of law (except section 13121(b) of this title) on making, carrying out, and changing contracts and on United States Government expenditures.

(c) MEDICAL PROGRAMS.—(1) In consultation with the Coordinator, the Secretary of Health and Human Services shall—

(A) ensure that an adequate number of trained personnel are available at a location at which refugees enter the United States so that all necessary medical records are available and in order;

(B) provide for identifying refugees with medical conditions affecting the public health and requiring treatment;

(C) ensure that State and local health officials at a resettlement destination in the United States are notified promptly of the arrival of each refugee and are provided with all applicable medical records; and

(D) provide for monitoring refugees referred to in clause (B) of this paragraph to ensure that the refugees receive appropriate and timely treatment.

(2) The Secretary of Health and Human Services shall develop and carry out ways to monitor and assess the quality of medical screening and related health services provided to refugees waiting to be resettled in the United States.

§ 13115. Initial resettlement assistance grants and contracts

(a) GENERAL AUTHORITY.—(1) The Director of the Office of Refugee Resettlement (or other officer if the President decides the Director should not administer this subsection) may make grants to, and contracts with, public agencies and private nonprofit voluntary organizations for the initial resettlement (including the initial reception and placement with sponsors) of refugees in the United States. A grant to, or contract with, a private nonprofit voluntary organization shall be consistent with this subchapter, considering the different resettlement approaches and practices of that organization. Assistance under this subsection shall be provided in coordination with other assistance provided under this subchapter. The administering agency shall use the criteria described by subsection (c) of this section in awarding or renewing a grant or contract under this section.

(2) An amount provided to an agency or organization under a grant or contract may be obligated or expended only during the fiscal year in which the amount is provided, or a subsequent fiscal period approved by the administering agency or officer making the contract, to carry out this section.

(b) REQUIREMENTS.—(1) Each grant and contract to an agency or organization under subsection (a) of this section shall require that the agency or organization—

(A) provide quarterly performance and financial status reports to the administering agency;

(B) provide notice—

(i) to the appropriate local welfare office or its local affiliate when the agency or organization receiving the grant or contract becomes aware that a refugee is offered employment; and

(ii) to the refugee that notice to the local welfare office or affiliate has been given;

(C) when requested by a local welfare office to which a refugee has applied for cash assistance, provide documentation to that office about cash or other resources provided directly by the agency or organization

receiving the grant or contract to the refugee under this section and section 13114 of this title;

(D) ensure that a refugee, that the agency or organization receiving the grant or contract knows has been identified under section 13114(c)(1)(B) of this title as having a medical condition affecting the public health and requiring treatment, reports to the appropriate health agency when the refugee resettles in an area;

(E) fulfill its responsibility to provide for the basic needs (including food, clothing, shelter, and transportation for job interviews and training) of each refugee resettled, to develop and carry out a resettlement plan (including the early employment of each refugee resettled), and to monitor how the plan is being carried out; and

(F) submit to the administering agency an annual report on—

(i) the number of refugees placed (by county of placement) and the expenditures made during the year covered by the report under the grant or contract, including the proportion of the expenditures used for administrative purposes and for providing services;

(ii) the proportion of refugees that the agency or organization receiving the grant or contract has placed in the prior year who are receiving cash or medical assistance described by section 13118 of this title;

(iii) the efforts made by the agency or organization receiving the grant or contract to monitor placement of refugees and the activities of local affiliates of the agency or organization;

(iv) the extent to which the agency or organization receiving the grant or contract has coordinated its activities with local social service providers in a way that avoids duplication of activities, has provided notice to the local welfare offices, and has reported medical conditions of certain aliens to local health departments as required under clause (D) of this paragraph; and

(v) other information the administering agency considers is appropriate in monitoring the effectiveness of the agency or organization receiving the grant or contract in carrying out its functions under the grant or contract.

(2) The administering agency shall submit promptly to the Committees on the Judiciary of the House of Representatives and the Senate a copy of each report submitted under paragraph (1)(F) of this subsection.

(3) Paragraph (1)(A), (C), and (F) of this subsection applies to a grant or contract made or renewed after December 5, 1986. Paragraph (1)(E) of

this subsection applies to a grant or contract made or renewed after May 5, 1987.

(c) PERFORMANCE CRITERIA.—The administering agency shall prescribe criteria for the performance of each agency or organization receiving a grant or contract under subsection (a) of this section. The prescribed criteria shall include criteria related to that agency's or organization's—

(1) efforts to reduce welfare dependency among refugees resettled by the agency or organization;

(2) collection of travel loans made to refugees resettled by the agency or organization for travel to the United States;

(3) arrangements for effective local sponsorship and other nonpublic assistance for refugees resettled by the agency or organization;

(4) cooperation with refugee mutual assistance associations, local social service providers, health agencies, and welfare offices;

(5) compliance with guidelines established by the Director of the Office of Refugee Resettlement for placing and resettling refugees in the United States; and

(6) compliance with other requirements contained in the grant or contract, including requirements under subsection (b) of this section.

(d) MEDICAL SCREENING AND TREATMENT.—The Director may make a grant to, or contract with, a State or local health agency for payments to meet the agency's costs of providing medical screening and initial medical treatment to refugees.

§ 13116. Project grants and contracts for services

(a) SERVICE PROJECTS.—(1) The Director of the Office of Refugee Resettlement may make grants to, and contracts with, public agencies and private nonprofit voluntary organizations for projects specifically designed—

(A) to assist refugees in obtaining skills necessary for economic self-sufficiency, including projects for job training, employment services, day care, and professional refresher training and other recertification services;

(B) to provide instruction in English when necessary even when refugees are employed or are receiving assistance; and

(C) to provide health (including mental health) services, social services, and educational and other services when specific needs have been shown and recognized by the Director.

(2) Amounts available in a fiscal year for grants and contracts under this subsection shall be allocated among the States based on the total number of refugees who—

(A) arrived in the United States within the 36 months before the beginning of the fiscal year; and

(B) actually are residing in each State (taking into account secondary migration) at the beginning of the fiscal year.

(3) A limitation that the Director establishes on that part of amounts allocated to a State under this subsection that the State may use for services (except those services described by section 13111(2) of this title) does not apply if the Director—

(A) receives a plan that has been established by or with the consultation of political subdivisions; and

(B) decides that the plan provides for the maximum appropriate employment services for, and the maximum placement of, employable refugees consistent with the performance standards established under section 106 of the Job Training Partnership Act (29 U.S.C. 1516).

(b) TARGETED ASSISTANCE PROJECT GRANTS.—(1) The Director may make a grant to a State for assistance to a political subdivision in the State that has a demonstrated specific need for additional available resources for providing services to refugees because of factors such as—

(A) an unusually large refugee population (including secondary migration);

(B) high refugee concentrations; and

(C) high use of public assistance by refugees.

(2) The Director shall make a grant under this subsection—

(A) primarily to facilitate refugee employment and self-sufficiency; and

(B) in a way that does not supplant amounts available under other refugee programs and ensures that at least 95 percent of the amount of the grant is made available to the political subdivision.

(c) MAINTAINING LEVEL OF SERVICE PROJECTS.—To the extent of available appropriations, the Director may not—

(1) reduce the maximum average contribution level of the United States Government for each refugee in the voluntary agency program, known as the matching grant program and financed under subsection (a) of this section, below the level in effect under the program for grants in the fiscal year that ended September 30, 1985; or

(2) increase the percentage grantee matching requirement under the program above the percentage in effect under the program for grants in the fiscal year that ended September 30, 1985.

§ 13117. Assistance for refugee children

(a) SPECIAL EDUCATIONAL SERVICES.—Where a need is shown, the Secretary of Education may make grants and contracts for projects to provide special educational services (including instruction in English) to refugee children in elementary and secondary schools.

(b) CHILD WELFARE SERVICES.—The Director of the Office of Refugee Resettlement may provide assistance, reimburse States, and make grants to, and contracts with, public agencies and private voluntary nonprofit organizations to provide child welfare services (including foster care maintenance payments and services and health care) to a refugee child during the 36-month period that begins with the first month the child is in the United States. If a refugee child is unaccompanied by a parent or other close adult relative (as defined by the Director), those services may be provided until the month after the child becomes 18 years of age (or a later age prescribed in the State's child welfare services plan under part B of title IV of the Social Security Act (42 U.S.C. 620 et seq.) for the availability of those services to another child in the State).

(c) PLACING UNACCOMPANIED CHILDREN.—(1) The Director shall try to arrange, under the laws of the States, to place an unaccompanied refugee child referred to in subsection (b) of this section who has been accepted for admission to the United States. The Director shall make the arrangements before or as soon as possible after the child arrives in the United States. If necessary, the Director shall assume legal and financial responsibility for the child during the period before the child is placed when the child is in the United States or is traveling to the United States. The Director may make necessary decisions to provide for the child's immediate care.

(2) In carrying out this subsection, the Director may make contracts with appropriate public agencies and private nonprofit voluntary organizations under conditions the Director considers appropriate.

(3) The Director shall maintain a list of—

(A) all unaccompanied refugee children who have entered the United States after April 1, 1975;

(B) the name and last known residence of each living parent of each of those children at the child's time of arrival; and

(C) the locations, status, and progress of the children.

§ 13118. Cash and medical assistance

(a) GENERAL AUTHORITY.—The Director of the Office of Refugee Resettlement may provide assistance, reimburse States, and make grants to, and contracts with, public agencies and private nonprofit voluntary organizations for 100 percent of the cash and medical assistance provided to a refugee during the 36-month period that begins with the first month the refugee enters the United States. The Director also may pay for the identifiable and reasonable administrative costs of providing the assistance.

(b) CONDITIONS AND LIMITATION.—(1) Except for good cause shown, cash assistance may be provided to an employable refugee under this section only if the refugee—

(A) registers with an appropriate public agency or private nonprofit voluntary organization providing employment services described by section 13116(a)(1)(A) of this title, or, if such an agency or organization is not available, with an appropriate State or local employment service;

(B) participates in an available and appropriate service or targeted assistance project grant financed under section 13116 of this title providing job or language training in the area in which the refugee resides; and

(C) accepts an appropriate offer of employment.

(2)(A) Cash assistance provided under this section shall be suspended for any alien entering the United States as a refugee after March 31, 1987, who refuses—

(i) an offer of employment that the public agency or private nonprofit voluntary organization providing initial resettlement assistance under section 13115(a) of this title or the appropriate State or local employment service decides is appropriate;

(ii) to go to a job interview that has been arranged through the agency, organization, or employment service; or

(iii) to participate in a service or targeted assistance project grant referred to in paragraph (1)(B) of this subsection that the agency, organization, or employment service decides is available and appropriate.

(B) The assistance shall be suspended for 3 months for the first refusal and for 6 months for any subsequent refusal. The refugee shall be given an opportunity for a proceeding before cash assistance is suspended.

(3) A refugee who is a full-time student in an institution of higher education, as defined by the Director after consultation with the Secretary of Education, may not receive cash assistance.

(c) INSTRUCTION AND TRAINING FOR REFUGEES RECEIVING ASSISTANCE.—The Director shall develop plans to provide instruction in English and other appropriate services and training to a refugee receiving cash assistance.

(d) LIMITATION ON USE OF AMOUNTS.—If a refugee is eligible for aid or assistance under a State plan approved under part A of title IV or under title XIX of the Social Security Act (42 U.S.C. 601 et seq., 1396 et seq.) or for supplemental security income benefits (including State supplementary payments) under the program established under title XVI of that Act (42 U.S.C. 1381 et seq.), amounts to carry out this section may be used only to pay the part of the aid or assistance not paid by the United States Government under part A of title IV or under title XIX for cash and medical assistance provided the refugee, and for State supplementary payments.

(e) MEDICAL ASSISTANCE FOR REFUGEES OTHERWISE INELIGIBLE.—During the one-year period after a refugee enters the United States, the Director may authorize medical assistance of the kind provided under subsection (a) of this section to a refugee if—

(1) the refugee does not qualify for assistance under a State plan approved under title XIX of that Act (42 U.S.C. 1396 et seq.) because of financial resources or income requirements of the plan; and

(2) the Director decides that—

(A) providing the medical services will encourage economic self-sufficiency or avoid a significant burden on State and local governments; and

(B) the refugee meets alternative financial resources and income requirements the Director establishes.

(f) ALTERNATIVE ASSISTANCE PROJECTS.—(1) The Secretary of Health and Human Services shall develop and carry out alternative projects for refugees who have been in the United States less than 36 months. The projects shall provide refugees with interim support, medical services, support services, and case-management services, as needed, in a way that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among public agencies, private nonprofit voluntary organizations providing resettlement assistance, and service providers. The Secretary may provide an alternative project to cover a specific group of refugees who have been in the United States at least 36 months if the Secretary decides that—

(A) refugees in the group have been significantly and disproportionately dependent on welfare;

(B) those refugees need the services provided under the project to become self-sufficient; and

(C) including those refugees under the project would be cost-effective.

(2) A refugee in an alternative project may not receive cash or medical assistance under another subsection of this section or under part A of title IV or under title XIX of that Act (42 U.S.C. 601 et seq., 1396 et seq.).

(3) Amounts appropriated to carry out this subchapter, section 13901 of this title, or part A of title IV or title XIX of that Act (42 U.S.C. 601 et seq., 1396 et seq.) may be used to carry out and evaluate alternative projects under this subsection, to the extent the use of those amounts is consistent with the purposes of this subchapter, section 13901, part A of title IV, and title XIX.

(g) NOTIFICATION OF APPLICATION BY REFUGEE FOR ASSISTANCE.—As a condition for receiving assistance, reimbursement, or a contract under this section, a State, public agency, or private nonprofit voluntary organization

must ensure that when a refugee applies for cash or medical assistance for which assistance or reimbursement is provided under this section, the State, agency, or organization will notify promptly the agency or organization (or local affiliate of the organization) that provided for the initial resettlement of the refugee under section 13115(a) of this title that the refugee has applied for the assistance.

§ 13119. Administrative

(a) AUTHORITY OF THE DIRECTOR.—In providing assistance under this subchapter, the Director of the Office of Refugee Resettlement, to the extent of available appropriations—

(1) shall make available sufficient resources for employment training and placement to permit refugees to achieve economic self-sufficiency as soon as possible;

(2) shall provide refugees with the opportunity to acquire sufficient instruction in English to enable them to become resettled effectively as quickly as possible;

(3) shall ensure that cash assistance is made available to refugees as provided under section 13118(b) of this title in a way that will not discourage economic self-sufficiency;

(4) shall ensure that women have the same opportunities as men to participate in training and instruction;

(5) shall make a periodic assessment, based on refugee population and other relevant factors, of the relative needs of refugees for assistance and services under this subchapter and the resources available to meet those needs;

(6) in allocating resources, shall avoid duplicating services and provide for maximum coordination among agencies and organizations providing related services; and

(7) shall compile and maintain information on—

(A) the secondary migration of refugees in the United States; and

(B) the proportion of refugees, by State of residence and nationality, receiving cash or medical assistance described by section 13118 of this title.

(b) LIMITATION ON DELEGATION.—The Director may not delegate to a State government or political subdivision authority to review or approve a grant or contract under this subchapter or the terms under which a grant or contract is made.

(c) NONDISCRIMINATION.—Assistance and services under this subchapter shall be provided to refugees without regard to race, religion, nationality, sex, or political opinion.

(d) CONSULTATION WITH STATE AND LOCAL GOVERNMENTS AND ORGANIZATIONS.—(1) The Director and the administering agency under section 13115(a) of this title, together with the United States Coordinator for Refugee Affairs, shall consult at least quarterly with State governments, political subdivisions, and private nonprofit voluntary organizations on the sponsorship process and the intended distribution of refugees among the States and political subdivisions before placing refugees in each of the States and political subdivisions.

(2) In consultation with representatives of private nonprofit voluntary organizations, State governments, and political subdivisions, the Director shall develop and carry out policies and strategies for placing and resettling refugees in the United States. To the extent practicable and except under unusual circumstances the Director may recognize, the policies and strategies shall—

(A) ensure that a refugee is not placed or resettled initially in an area highly impacted (as decided under regulations prescribed by the Director after consultation with private nonprofit voluntary organizations, State governments, and political subdivisions) by the presence of refugees or comparable populations unless the refugee has a spouse, parent, sibling, or child residing in that area;

(B) provide for a mechanism for representatives of local affiliates of private nonprofit voluntary organizations to meet at least quarterly with representatives of State governments and political subdivisions to plan and coordinate, in advance of the arrival of the refugees, the appropriate placement of the refugees among the States and political subdivisions; and

(C) consider—

(i) the proportion of refugees and comparable entrants in the population in the area;

(ii) the availability of employment opportunities, affordable housing, and public and private resources for refugees in the area, including educational, health care, and mental health services;

(iii) the likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance; and

(iv) the secondary migration of refugees to and from the area that is likely to occur.

(3) To the maximum extent possible and consistent with the policies and strategies developed under paragraph (2) of this subsection, the administering agency under section 13115(a) of this title shall consider the rec-

ommendations of the State in deciding where to place refugees in that State.

(4) In providing assistance to refugees, a State government or political subdivision shall consider the recommendations of, and assistance provided by, a public agency or private nonprofit voluntary organization receiving a grant or contract under section 13115(a) of this title.

(e) REQUIREMENTS FOR GRANTS AND CONTRACTS.—A grant or contract may be made under this subchapter only when an appropriate proposal and application (that includes a description of the ability of a public agency or private nonprofit voluntary organization to provide the services specified in the proposal) are submitted to and approved by the appropriate administering official. A grant shall be made to, or a contract shall be made with, a public agency or private nonprofit voluntary organization that the administering official decides can best provide the services. Payment under the grant or contract may be made in advance or by reimbursement.

(f) GRANT AND CONTRACT PROPOSALS AND APPLICATIONS.—To receive assistance under this subchapter, a State—

(1) must submit to the Director a plan that—

(A) describes how the State plans to encourage effective refugee resettlement and to promote economic self-sufficiency as quickly as possible;

(B) describes how the State will ensure that instruction in English and employment services are made available to refugees receiving cash assistance;

(C) provides for the designation of a State officer or employee to be responsible for ensuring coordination of public and private resources in refugee resettlement;

(D) provides for the care and supervision of, and legal responsibility for, unaccompanied refugee children in the State; and

(E) provides for identifying refugees who at the time of resettlement in the State have medical conditions requiring, or medical histories indicating a need for, treatment or observation and provides necessary monitoring of the treatment or observation;

(2) must meet standards, goals, and priorities developed by the Director that—

(A) ensure effective resettlement of refugees;

(B) promote economic self-sufficiency of refugees as quickly as possible; and

(C) provide that services are provided efficiently; and

(3) within a reasonable time after the end of each fiscal year, must submit to the Director a report on the uses of amounts provided under this subchapter for which the State is responsible for administering.

(g) AUTHORITY TO MAKE LOANS AND ACCEPT GIFTS.—In carrying out this subchapter, each appropriate administering official may—

(1) make loans; and

(2) accept and use money, property, and services made available by gift, devise, bequest, grant, or otherwise to carry out this subchapter.

(h) SYSTEM TO MONITOR ASSISTANCE.—The Secretary of Health and Human Services, and the Secretary of State in carrying out sections 13114 and 13115 of this title, shall maintain a system of monitoring assistance provided under this subchapter. The system shall include—

(1) evaluations of the effectiveness of the programs and projects carried out under this subchapter and the performance of States, grantees, and contractors;

(2) financial audits and other appropriate monitoring to detect fraud, abuse, and mismanagement in operating the programs and projects; and

(3) information collection on services provided and results achieved.

(i) INFORMATION PROVIDED BY REFUGEES.—The Attorney General shall provide the Director with information provided by refugees with their applications for a change in status. The Director shall compile, summarize, and evaluate the information.

§ 13120. Annual reports

In consultation with the United States Coordinator for Refugee Affairs, the Secretary of Health and Human Services shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate not later than each January 31 on activities under this subchapter for the prior fiscal year. Each report shall include—

(1) a current profile of the employment and labor force statistics for refugees who entered the United States under this title—

(A) during the 5 fiscal years immediately before the fiscal year in which the report is submitted; and

(B) before that 5-year period and who have been significantly and disproportionately dependent on welfare;

(2) a description of the extent to which refugees received each kind of assistance and service under this subchapter during the 5 fiscal years immediately before the fiscal year in which the report is submitted;

(3) a description of the geographic locations of refugees;

(4) a summary of the results of the monitoring conducted under section 13119(h) of this title for the fiscal year;

(5) a description of—

(A) the activities, expenditures, and policies of the Office of Refugee Resettlement under this subchapter;

(B) the activities of States, voluntary organizations, and sponsors of refugees under this subchapter; and

(C) plans of the Director of the Office of Refugee Resettlement for improving refugee resettlement;

(6) evaluations of the extent to which—

(A) services provided under this subchapter are assisting refugees in achieving economic self-sufficiency, ability in English, and employment commensurate with their skills and abilities; and

(B) fraud, abuse, and mismanagement have been reported in providing assistance or services;

(7) a description of the assistance provided under section 13118(e) of this title;

(8) a summary of the locations and status of unaccompanied refugee children admitted to the United States; and

(9) a summary of the information compiled and evaluated under section 13119(i) of this title.

§ 13121. Limitations

(a) CONSOLIDATED GRANTS PROHIBITED.—Amounts made available to a State or political subdivision to carry out this subchapter (except section 13115(a) of this title) may not be in the form of a block grant, per capita grant, or similar consolidated grant. Amounts shall be made available under separate grants or contracts for—

(1) medical screening and initial medical treatment for refugees under section 13115(d) of this title;

(2) social services to refugees under section 13116(a) of this title;

(3) targeted assistance project grants under section 13116(b) of this title; and

(4) assistance for refugee children under section 13117(b) and (c) of this title.

(b) CONTRACTS.—A contract made under this subchapter is effective only to the extent and in the amount provided in advance by an appropriation law.

§ 13122. Authorization of appropriations

Amounts necessary to carry out this subchapter and section 13901 of this title may be appropriated for the fiscal year ending September 30, 1994.

SUBCHAPTER III—EDUCATION ASSISTANCE

§ 13131. Definitions

In this subchapter—

(1) ''elementary school'', ''local educational agency'', ''secondary school'', ''State'', and ''State educational agency'' have the same meanings given those terms in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891).

(2) ''elementary or secondary nonpublic school'' means a school—

(A) complying with the compulsory education laws of the State in which it is located; and

(B) exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

(3) ''eligible participant'' means an alien—

(A) during the 36-month period that begins with the first month the alien entered the United States, who—

(i) has been admitted to the United States as a refugee under section 5105 of this title;

(ii) has been paroled into the United States as a refugee under section 6123 of this title; or

(iii) has fled from the alien's country of origin and, under an executive order, has been allowed to enter and remain in the United States indefinitely for humanitarian reasons;

(B) during the 36-month period that begins with the month the alien began applying for asylum, who is applying for, or has been granted, asylum in the United States; or

(C) during the 36-month period that begins with the first month the alien entered the United States as a Cuban-Haitian entrant or otherwise became a Cuban-Haitian entrant, who entered the United States after October 31, 1979, and is in the United States classified as a Cuban-Haitian entrant.

§ 13132. Basic educational services grants

(a) GRANTS.—The Secretary of Education shall make a grant to each State educational agency for each fiscal year to assist local educational agencies of the State in providing basic educational services for eligible participants enrolled in the elementary and secondary public schools under the jurisdiction of the local educational agencies of the State. The State educational agency may use the grant only as provided in its application approved under section 13135(b) of this title.

(b) APPLICATIONS.—To receive a grant under this section, the State educational agency must submit an application to the Secretary. In the application, the State educational agency must—

(1) agree that payments under the grant will be used as provided by subsection (a) of this section;

(2) agree to ensure that those payments will be allocated among the local educational agencies in the State using the same formula and reductions for the local educational agencies as the Secretary is required to use in making allocations to State educational agencies under subsection (d) of this section;

(3) specify the amounts referred to in subsection (d) of this section that are made available under other laws of the United States for expenditure in the State for the same purpose for which an amount is made available under this section and the local educational agencies to which those amounts are available; and

(4) comply with section 13135(a) of this title.

(c) PRESCRIBING GRANT FORMULA.—As soon as possible, the Secretary shall prescribe a formula to be used in determining the amount of the grant to which each State educational agency (except the agencies for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands) is entitled under this section for a fiscal year. The formula shall be based on the full amount authorized under section 13139(b) of this title. In prescribing the formula, the Secretary—

(1) shall consider—

(A) the number of years each eligible participant assisted under this section has resided in the United States; and

(B) the relative costs, by grade level, of educating elementary and secondary school children; and

(2) shall provide that amounts be allocated without regard to differences in educational costs among different geographical areas.

(d) ALLOCATIONS.—The Secretary shall allocate the amount appropriated to carry out this section for a fiscal year among the State educational agencies (except the agencies for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands). Except as provided by section 13136 of this title, the amount of the grant to which an agency is entitled under this section for a fiscal year is equal to the amount allocated to it under the formula, reduced by the amounts available for that fiscal year under other laws of the United States for expenditure in the State for the same purpose for which an amount is made available under this section. However, the reduction shall be made only to the extent the amounts are available under the other laws—

(1) for that purpose specifically because the individuals served by the amounts have refugee, parolee, or asylum status; and

(2) to assist individuals eligible for services under this section.

(e) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The amounts of the grants to which the State educational agencies of American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands are entitled under this section are the amounts the Secretary determines they need based on criteria the Secretary prescribes. The total amount of those grants for a period may not be more than one percent of the amount authorized to be appropriated to carry out this section during the period. If the total of the amounts the Secretary determines those agencies need is more than one percent, the amount of the grant to each of those agencies is reduced proportionately so that the total is not more than one percent.

§ 13133. Supplementary educational services grants

(a) DEFINITIONS.—In this section—

(1) ''enrolled eligible participant in the State'' means an eligible participant enrolled in an elementary or secondary public school under the jurisdiction of a qualified local educational agency in the State or in an elementary or secondary nonpublic school in the district served by a qualified local educational agency in the State.

(2) ''qualified local educational agency'' means a local educational agency that—

(A) during the fiscal year for which a grant is to be made under this section, has enrolled in the elementary and secondary public schools under its jurisdiction and in the elementary and secondary nonpublic schools in the district it serves a number of eligible participants receiving supplementary educational services during the fiscal year at least equal to the lesser of—

(i) 500; or

(ii) 5 percent of the total number of students enrolled in those public or nonpublic schools during that fiscal year; or

(B) is eligible to receive assistance because of section 3(b)(last sentence) and (c)(2)(B) of the Act of September 30, 1950 (20 U.S.C. 238(b)(last sentence) and (c)(2)(B)).

(b) GENERAL AUTHORITY.—(1) The Secretary of Education shall make a grant, as provided by this subchapter, to each State educational agency for each fiscal year to provide supplementary educational services for enrolled eligible participants in the State. Those services include—

(A) services necessary to enable eligible participants to perform satisfactorily, including—

(i) instruction in English;

(ii) other bilingual educational services; and

(iii) special materials and supplies;

(B) additional basic instructional services directly attributable to the presence of eligible participants in the school districts, including—

(i) additional classroom supplies;

(ii) overhead;

(iii) construction;

(iv) acquiring or renting space; and

(v) transportation; and

(C) special inservice training of personnel who will provide the instructional services described by clauses (A) and (B) of this paragraph.

(2) The State educational agency may use the grant only as provided in its application as approved under section 13135(b) of this title.

(c) APPLICATIONS.—To receive a grant under this section, a State educational agency must submit an application to the Secretary. In the application, the State educational agency must—

(1) agree to administer, or supervise the administration of, the educational programs, services, and activities paid for under this section;

(2) agree to ensure that payments under the grant will be used as provided by subsection (b) of this section;

(3) agree to ensure that those payments will be allocated among the local educational agencies in the State using the same formula and reductions for the local educational agencies as the Secretary is required to use in making allocations to State educational agencies under subsection (d) of this section;

(4) specify the amounts referred to in subsection (d)(2) of this section that are made available under other laws of the United States to agencies or other entities for educational or education-related services or activities in the State because of a significant concentration of eligible participants and the local educational agencies that have jurisdiction over elementary and secondary public schools, or that serve elementary and secondary nonpublic schools, in which are enrolled eligible participants who receive services paid for by those amounts;

(5) agree to ensure the Secretary that—

(A) to the extent consistent with the number of eligible participants enrolled in elementary and secondary nonpublic schools in the district served by a local educational agency, the local educational agency, after consulting with the appropriate officials of the schools, will provide secular, neutral, and nonideological materials, equipment, and services necessary to educate those eligible participants;

(B) a public agency will—

(i) administer the amounts provided under this section for the materials, equipment, and services referred to in subclause (A) of this clause; and

(ii) own and administer property that is repaired, remodeled, or constructed with those amounts;

(C) those amounts will not be commingled with State or local money; and

(D) a public agency will provide to each of those elementary or secondary nonpublic schools the services referred to in subclause (A) of this clause through—

(i) officers and employees under the control of the agency; or

(ii) a contract with a person or agency that is under the control of the public agency and, when providing the services, is independent of the school and of any religious organization; and

(6) comply with section 13135(a) of this title.

(d) ALLOCATIONS.—(1) The Secretary shall allocate the amount appropriated to carry out this section for a fiscal year among the State educational agencies (except the agencies for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands). Except as provided by this section and section 13136 of this title, the amount of the grant to which an agency is entitled under this section for a fiscal year is equal to the sum of—

(A) the product of—

(i) the number of aliens who are enrolled eligible participants in the State, during the period for which the determination of that number is made, and who have been eligible participants less than one year; multiplied by

(ii) $700;

(B) the product of—

(i) the number of aliens who are enrolled eligible participants in the State, during the period for which the determination is made, and who have been eligible participants at least one year but not more than 2 years; multiplied by

(ii) $500; and

(C) the product of—

(i) the number of aliens who are enrolled eligible participants in the State, during the period for which the determination is made, and who have been eligible participants more than 2 years but not more than 3 years; multiplied by

(ii) $300.

(2) If amounts are available for a fiscal year under other laws of the United States to agencies or other entities for educational or education-related services or activities in the State because of a significant concentration of eligible participants, the amount of the grant under paragraph (1) of this subsection for that fiscal year is reduced by those amounts.

(e) REALLOCATION OF UNUSED AMOUNTS.—When the Secretary determines that a part of a payment made to a State educational agency under this section for a fiscal year will not be used by the agency to carry out the purpose for which the payment was made, the Secretary shall make that part available to another State educational agency to the extent the Secretary decides the other agency can use the additional amount to carry out the purpose. An amount made available under this subsection to a State educational agency from an appropriation for a fiscal year is deemed in this section to be a part of the grant (as determined under subsection (d) of this section) to that agency for that fiscal year, and remains available until the end of the next fiscal year.

(f) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The amounts of the grants to which the State educational agencies of American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands are entitled under this section are the amounts the Secretary determines they need based on criteria the Secretary prescribes. The total amount of those grants for a period may not be more than one percent of the amount authorized to be appropriated to carry out this section during the period. If the total of the amounts the Secretary determines those agencies need is more than one percent, the amount of the grant to each of those agencies is reduced proportionately so that the total is not more than one percent.

(g) PROVIDING ASSISTANCE TO NONPUBLIC SCHOOLS WHEN STATE DOES NOT.—If a State is prohibited by law from providing materials, equipment, and services for children enrolled in elementary and secondary nonpublic schools as required by subsection (c)(5) of this section, or if the Secretary decides that a local educational agency has failed substantially to or will not provide for the participation on an equitable basis of eligible participants enrolled in those schools, the Secretary—

(1) may waive the requirements of subsection (c)(5) of this section; and

(2) subject to the other requirements of this subchapter, shall arrange that materials, equipment, and services be provided for those eligible participants.

§ 13134. Adult education program grants

(a) GENERAL AUTHORITY.—(1) The Secretary of Education shall make a grant, as provided by this subchapter, to each State educational agency for each fiscal year to be used to provide adult education programs to eligible participants at least 16 years of age in need of the services and not enrolled in an elementary or secondary public school under the jurisdiction of a local educational agency. The grant may be used for—

(A) programs of instruction—

(i) to teach the eligible participants basic reading and mathematics;

(ii) to develop and enhance skills needed by the eligible participants; and

(iii) to promote literacy among the eligible participants;

(B) administrative costs of planning and operating the programs referred to in clause (A) of this paragraph;

(C) educational support services needed by the eligible participants, including services to guide and counsel the eligible participants about educational, career, and employment opportunities; and

(D) special projects designed to operate with existing programs and activities that develop occupational and related skills, particularly programs authorized under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) or the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 et seq.).

(2) The State educational agency may use the grant only as provided in its application as approved under section 13135(b) of this title.

(b) APPLICATIONS.—To receive a grant under this section, the State educational agency must submit an application to the Secretary. In the application, the State educational agency must—

(1) agree that payments under the grant will be used as provided by subsection (a) of this section;

(2) agree to make periodic reports to the Secretary evaluating the effectiveness of those payments;

(3) specify the amounts referred to in subsection (c)(2) of this section that are made available under other laws of the United States for expenditure in the State for the same purpose for which an amount is made available under this section; and

(4) comply with section 13135(a) of this title.

(c) ALLOCATIONS.—(1) The Secretary shall allocate the amount appropriated to carry out this section for a fiscal year among the State educational agencies (except the agencies for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and

the Virgin Islands). Except as provided by paragraph (2) of this subsection and section 13136 of this title, the amount of the grant to which an agency is entitled under this section for a fiscal year is equal to the product of—

(A) the number of eligible participants at least 16 years of age who, during the period for which the determination of that number is made, are enrolled in programs of instruction described by subsection (a)(1)(A) of this section and offered in the State, but who are not enrolled in elementary and secondary public schools under the jurisdiction of local educational agencies; multiplied by

(B) $300.

(2) If amounts are available for a fiscal year under other laws of the United States for expenditure in the State for the same purpose for which an amount is made available under this section, the amount of the grant under paragraph (1) of this subsection for that fiscal year is reduced by those amounts. However, the reduction is made only to the extent the amounts are available under the other laws—

(A) for that purpose specifically because the individuals served by the amounts have refugee, parolee, or asylum status; and

(B) to assist individuals eligible for services under this section.

(d) METHODS OF PROVIDING PROGRAMS.—(1) A State educational agency may provide adult education programs directly or may make grants to, or contracts with, local educational agencies, public agencies, and private nonprofit voluntary organizations to provide the programs. The State educational agency shall review an application for a grant or contract under this subsection in a way that is consistent with the purposes of section 306(b)(12) and (13) of the Adult Education Act.

(2) The State educational agency shall use the grant it receives under this section in a way that enables the maximum number of eligible participants at least 16 years of age residing in the State to receive education under the programs of instruction described by subsection (a)(1)(A) of this section.

(e) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The amounts of the grants to which the State educational agencies of American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands are entitled under this section are the amounts the Secretary determines they need based on criteria the Secretary prescribes. The total amount of those grants for a period may not be more than one percent of the amount authorized to be appropriated to carry out this section during the period. If the total of the amounts the Secretary determines those agencies need is more than one percent, the amount

of the grant to each of those agencies is reduced proportionately so that the total is not more than one percent.

§ 13135. Applications

(a) REQUIREMENTS.—(1) In its application for a grant under this subchapter, a State educational agency must agree—

(A) to ensure that it will not disapprove finally any part of a local educational agency's application for an amount of a grant to the State educational agency under section 13132, 13133, or 13134 of this title without giving the local educational agency reasonable notice and opportunity for a proceeding; and

(B) to make reports the Secretary of Education reasonably requires to carry out this subchapter.

(2) The State educational agency must submit an application at the time, in the way, and containing or accompanied by information, the Secretary requires.

(b) APPROVAL.—The Secretary shall approve an application meeting the requirements of this section and section 13132, 13133, or 13134 of this title, as the case may be. The Secretary may not disapprove finally an application without giving the applicant reasonable notice and opportunity for a hearing on the record.

§ 13136. Use of estimated information and consultation with other agencies

(a) USE OF ESTIMATES.—When actual satisfactory information is not available, the Secretary of Education shall use estimates to determine for any period the number of eligible participants and the amount of a reduction required under section 13132(d), 13133(d)(2), or 13134(c)(2) of this title. A determination based on an overestimate or underestimate may not deprive a State educational agency of any part of the amount the agency would be entitled to receive under this subchapter if the determination were based on accurate information.

(b) CONSULTATION WITH OTHER AGENCIES.—To the extent it will make it easier to determine the amount of a reduction required under section 13132(d), 13133(d)(2), or 13134(c)(2) of this title, the Secretary shall consult with the heads of other agencies providing assistance to eligible participants—

(1) to obtain information about the amounts those agencies disburse for educational purposes under programs the agency heads administer; and

(2) when feasible, to coordinate the programs those agency heads administer and the programs under this subchapter.

§ 13137. State administrative costs

The Secretary of Education may pay each State educational agency an amount equal to the amount the agency expends in carrying out its duties and powers properly and efficiently under this subchapter. However, the total payments for a period may not be more than 2 percent of the amount the agency receives for the period under this subchapter.

§ 13138. Withholding payments

(a) AUTHORITY TO WITHHOLD.—When the Secretary of Education decides that a State educational agency receiving payments under section 13132, 13133, or 13134 of this title, or a local educational agency or other entity receiving payments from the State educational agency under section 13134, is not complying with a requirement of this subchapter that applies to the section, the Secretary, until satisfied that there is no longer a failure to comply, shall—

(1) stop making payments to the State educational agency under section 13132, 13133, or 13134 of this title; or

(2) prohibit the State educational agency from making payments under section 13134 to the local educational agency or other entity that is causing, or involved in, the failure.

(b) NOTICE AND OPPORTUNITY FOR PROCEEDING.—The Secretary—

(1) may act under subsection (a) of this section only after giving the State educational agency reasonable notice and opportunity for a proceeding; and

(2) shall notify the State educational agency of the action the Secretary is taking under subsection (a) of this section.

§ 13139. Authorization of appropriations and allocation of total amount appropriated

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary to make grants to each State educational agency under this subchapter and to pay for administrative costs under section 13137 of this title may be appropriated for the fiscal year ending September 30, 19__. The amounts shall be appropriated in a lump sum for all programs under this subchapter.

(b) AUTHORIZATION OF APPROPRIATIONS FOR BASIC PUBLIC EDUCATIONAL SERVICES GRANTS.—To make grants to State educational agencies in the way provided under this section, an amount may be appropriated under subsection (a) of this section for each fiscal year equal to the product of—

(1) the number of eligible participants enrolled in elementary or secondary public schools under the jurisdiction of local educational agencies in all States (except American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin

Islands) during the fiscal year for which the determination of that number is made; multiplied by

(2) $400.

(c) ALLOCATIONS OF APPROPRIATIONS.—(1) If the amounts appropriated for a fiscal year to make grants under this subchapter are not enough to pay the total amount of the grants to which State educational agencies are entitled under sections 13132–13134 of this title for the fiscal year, the allocation to each agency under each of those sections shall be ratably reduced so that the total of the allocations is not more than the amounts appropriated.

(2) Allocations reduced under paragraph (1) of this subsection shall be increased on the same basis that they were reduced if amounts later become available to make grants under this subchapter for the period.

SUBCHAPTER IV—CUBAN AND HAITIAN ENTRANTS

§ 13151. Definition

In this subchapter, ''Cuban or Haitian entrant'' means—

(1) an alien granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted another special status later established under law for nationals of Cuba or Haiti, without regard to the status of the alien when assistance is provided under this subchapter; and

(2) any other national of Cuba or Haiti—

(A)(i) paroled into the United States who has not acquired another status under this title;

(ii) who is the subject of exclusion or deportation proceedings under this title; or

(iii) having an application for asylum pending before the Attorney General; and

(B) about whom a final, nonappealable, and legally enforceable exclusion or deportation order has not been entered.

§ 13152. Presidential authority

The President has the same duties and powers related to a Cuban or Haitian entrant as the duties and powers vested under subchapter II of this chapter. Those duties and powers apply to assistance and services provided to a Cuban or Haitian entrant at any time after the entrant's arrival in the United States, including periods before October 10, 1980. The President may provide by regulation that benefits granted under a law of the United States (except this title) to an individual admitted to the United States under section 4305 of this title shall be provided in the same way and to the same extent to a Cuban or Haitian entrant.

§ 13153. General assistance

(a) TYPES OF ASSISTANCE.—Under the direction of the President, any agency may provide assistance (including materials, supplies, equipment, work, services, or facilities) for the processing, care, security, transportation, and initial reception and placement in the United States of a Cuban or Haitian entrant on terms the President prescribes. The President may direct the head of one agency to detail personnel (on a reimbursable or nonreimbursable basis) for temporary duty with another agency that the President has directed to supervise or manage assistance under this section.

(b) REIMBURSEMENT.—Amounts to carry out this section—

(1) shall be used to reimburse State governments and political subdivisions for expenses incurred in providing assistance under subsection (a) of this section; and

(2) may be used to reimburse an agency providing assistance under subsection (a) of this section.

(c) APPLICATION OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—The carrying out of a duty or power under this section is not a major action of the United States Government significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(d) AVAILABILITY OF APPROPRIATIONS.—Amounts—

(1) appropriated under section 13122 of this title are available to carry out this subchapter; and

(2) available to carry out this subchapter remain available until expended.

CHAPTER 133—INTERNATIONAL PARTICIPATION AND EMERGENCY ASSISTANCE

Sec.
13301. Participation in International Organization for Migration.
13302. Contributions to international organizations.
13303. Assistance to further foreign policy interests.
13304. Assistance for unexpected urgent needs.
13305. Allocation, transfer, availability, and accounting of amounts.
13306. Audits.
13307. Administrative.

§ 13301. Participation in International Organization for Migration

The President may continue United States membership in the International Organization for Migration. To assist in the movement of refugees and migrants and to enhance the economic progress of the developing countries by providing for a coordinated supply of a selected labor force, amounts necessary to pay for the United States Government's contribution to the Organization and necessary pay and expenses incident to the Government's participation in the Organization may be appropriated.

§ 13302. Contributions to international organizations

The President may make contributions to—

(1) the activities of the United Nations High Commissioner for Refugees for assistance to or for refugees and other persons assisted by the Commissioner;

(2) the International Organization for Migration;

(3) the International Committee of the Red Cross for assistance to or for refugees; and

(4) other international organizations for assistance to or for refugees.

§ 13303. Assistance to further foreign policy interests

The President may provide assistance to or for refugees outside the United States designated by the President when the President decides that the assistance will contribute to the foreign policy interests of the United States. The President shall designate the refugees by class, group, countries of origin, or areas of residence.

§ 13304. Assistance for unexpected urgent needs

(a) GENERAL AUTHORITY.—The President may provide assistance to meet unexpected urgent refugee and migration needs on terms the President prescribes when the President decides the assistance is important to the interests of the United States.

(b) UNITED STATES EMERGENCY REFUGEE AND MIGRATION ASSISTANCE FUND.—There is a United States Emergency Refugee and Migration Assistance Fund to carry out this section. Amounts necessary for the Fund may be appropriated to the President. However, an amount may not be appropriated that, when added to amounts previously appropriated and not obligated, would cause the total amount in the Fund to be more than $50,000,000. Amounts appropriated remain available until expended.

(c) JUSTIFICATION OF APPROPRIATIONS.—When the President requests an appropriation under this section, the President shall justify the request to the Committee on Foreign Relations of the Senate, the Speaker of the House of Representatives, and the Committees on Appropriations of the Senate and House of Representatives.

§ 13305. Allocation, transfer, availability, and accounting of amounts

(a) ALLOCATION AND TRANSFER.—The President may allocate or transfer to an agency an amount available to carry out this chapter. The amount is available for obligation and expenditure for the purpose for which the amount originally was made available under this chapter or under authority governing the activities of the agency to which the amount was allocated

or transferred. An amount allocated or transferred may be carried in a separate appropriation account of the Treasury.

(b) PURPOSES FOR WHICH AMOUNTS ARE AVAILABLE.—(1) An amount made available under this chapter may be used for—

(A) pay, allowances, and travel of personnel, including members of the Foreign Service whose services are used primarily in carrying out this chapter, without regard to another law, that may be necessary to carry out this chapter;

(B) printing and binding, expenditure outside the United States for supplies and services, and administrative and operating purposes except pay, without regard to a law or regulation governing the obligation and expenditure of amounts of the United States Government, that may be necessary to carry out this chapter;

(C) employment and assignment of members of the Foreign Service serving under limited appointments when carrying out this chapter;

(D) the exchange of amounts without regard to loss by exchanges;

(E) making contracts for personal services outside the United States;

(F) expenses authorized by the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.) not otherwise provided for;

(G) expenses authorized by the State Department Basic Authorities Act of 1956 (22 U.S.C. 2662, 2669 et seq.); and

(H) other expenses the President decides are necessary to carry out this chapter.

(2) An individual employed by contract with amounts made available under paragraph (1)(E) of this subsection is not an employee of the Government under any law carried out by the Director of the Office of Personnel Management. However, the Secretary of State may apply to that individual—

(A) section 2(f) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(f)); and

(B) any other law carried out by the Secretary as that law is related to employment of individuals by contract to perform personal services outside the United States.

§ 13306. Audits

(a) PROGRAM AUDITS.—Amounts may be made available under this chapter or another law to the United Nations High Commissioner for Refugees only if—

(1) an annual program audit will be conducted to determine the use of those amounts, including the use by implementing partners; and

(2) the audit will be made available through the Secretary of State for inspection by the Comptroller General.

(b) INSPECTIONS AND REPORTS BY COMPTROLLER GENERAL.—The Comptroller General shall inspect each audit and submit to Congress a report on the inspection.

§ 13307. Administrative

(a) AUTHORITY OF THE PRESIDENT.—To carry out this chapter, the President may—

(1) make loans, advances, and grants to, and agreements with, a person, government or government agency in or outside the United States, and international and intergovernmental organizations;

(2) accept and use money, property, and services made available to carry out this chapter; and

(3) provide assistance and make contributions, notwithstanding another provision of law that restricts assistance to foreign countries.

(b) WAIVER.—If the President decides that it carries out this chapter, the President may waive a provision of law on making, carrying out, and changing contracts and on United States Government expenditures.

(c) DELEGATION OF DUTIES AND POWERS.—If the President delegates to an officer under section 301 of title 3 a duty or power of the President under this chapter, the President also may authorize the officer to redelegate the duty or power to a subordinate officer or employee of the officer. However, the President may not authorize the redelegation of the waiver authority under subsection (b) of this section.

(d) INFORMING CONGRESSIONAL COMMITTEES.—The President shall keep appropriate committees of Congress currently informed on the use of expenditures and the exercise of duties and powers under this chapter.

CHAPTER 135—IMMIGRANT EDUCATION ASSISTANCE

Sec.
13501. Definitions and application.
13502. Supplementary educational service.
13503. Applications.
13504. State entitlements.
13505. Providing assistance to nonpublic schools when local agency does not.
13506. State administrative costs.
13507. Withholding payments.
13508. Reports.
13509. Authorization and allocation of appropriations.

§ 13501. Definitions and application

(a) DEFINITIONS.—In this chapter—

(1) the definitions in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891) apply, except ''local educational agency'' and ''Secretary''.

(2) ''elementary or secondary nonpublic school'' means a school—

(A) complying with the compulsory attendance laws of the State in which it is located; and

(B) exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

(3) ''immigrant children'' means children born outside any State who have been attending school in at least one State for less than 3 complete academic years.

(4) ''local educational agency'' has the same meaning given that term in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891), except that it includes only an agency for which the number of immigrant children enrolled in elementary and secondary public schools under its jurisdiction and in elementary and secondary nonpublic schools in the district it serves, during the fiscal year for which a grant is to be made under this chapter, is at least equal to the lesser of—

(A) 500; or

(B) 3 percent of the total number of students enrolled in those public or nonpublic schools during that fiscal year.

(b) APPLICATION.—Sections 8002–8005 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3382–3384, 3386) apply to this chapter.

§ 13502. Supplementary educational service

(a) GENERAL AUTHORITY.—The Secretary of Education shall make a grant, as provided by this chapter, to each State educational agency for the fiscal year ending September 30, 19__, for supplementary educational services for immigrant children enrolled in—

(1) elementary and secondary public schools under the jurisdiction of the local educational agencies of the State; and

(2) elementary and secondary nonpublic schools in the districts served by those agencies.

(b) SERVICES INCLUDED.—The supplementary services referred to in subsection (a) of this section include—

(1) services necessary to enable the immigrant children to perform satisfactorily, including—

(A) instruction in English;

(B) other bilingual educational services; and

(C) special materials and supplies;

(2) additional basic instructional services directly attributable to the presence of immigrant children in the school districts, including—

(A) additional classroom supplies;

(B) overhead;

(C) construction;

(D) acquiring or renting space; and

(E) transportation; and

(3) essential inservice training of personnel who will provide the instructional services described by clauses (1) and (2) of this subsection.

(c) GRANT USE.—The State educational agency may use the grant only as provided in its application as approved under section 13503(b) of this title.

§ 13503. Applications

(a) REQUIREMENTS.—To receive a grant under this chapter, a State educational agency must submit an application to the Secretary of Education at the time, in the way, and containing or accompanied by information the Secretary requires. In the application, the State educational agency must agree—

(1) to administer, or supervise the administration of, the educational programs, services, and activities paid for under this chapter;

(2) to ensure that payments under the grant will be used as provided by section 13502 of this title;

(3) to ensure that those payments will be allocated among the local educational agencies in the State so that each agency receives an amount—

(A) based on the number of immigrant children counted for that agency under section 13504(a)(1) of this title; and

(B) reduced by an amount under section 13504(a)(2) of this title attributable to that agency;

(4) to ensure that it will not disapprove finally any part of a local educational agency's application for an amount under this chapter without giving the local educational agency reasonable notice and opportunity for a proceeding;

(5) to make reports the Secretary requires to carry out this chapter; and

(6) to ensure that—

(A) to the extent consistent with the number of immigrant children enrolled in elementary and secondary nonpublic schools in the district served by a local educational agency, the local educational agency, after consulting with the appropriate officials of the schools, will provide secular, neutral, and nonideological materials, equipment, and services necessary to educate those children;

(B) a public agency will—

(i) administer the amounts provided under this section for the materials, equipment, and services referred to in subclause (A) of this clause; and

(ii) own and administer property that is repaired, remodeled, or constructed with those amounts;

(C) those amounts will not be commingled with State or local money; and

(D) a public agency will provide to each of those elementary or secondary nonpublic schools the services referred to in subclause (A) of this clause through—

(i) officers and employees under the control of the agency; or

(ii) a contract with a person or agency that is under the control of the public agency and, when providing the services, is independent of the school and of any religious organization.

(b) APPROVAL.—The Secretary shall approve an application meeting the requirements of subsection (a) of this section. The Secretary may not disapprove finally an application without giving the applicant reasonable notice and opportunity for a hearing on the record.

§ 13504. State entitlements

(a) ALLOCATIONS.—(1) The Secretary of Education shall allocate the amount appropriated to carry out this chapter for a fiscal year among the State educational agencies. Except as provided by this section, the amount of the grant to which an agency is entitled under this chapter for a fiscal year is equal to the product of—

(A) the number of immigrant children enrolled during the fiscal year in elementary and secondary public schools under the jurisdiction of the local educational agencies of the State and in elementary and secondary nonpublic schools in the districts served by the local educational agencies of the State; multiplied by

(B) $500.

(2)(A) If amounts are available for a fiscal year under other laws of the United States for expenditure in a State for the same purpose for which an amount is made available under this chapter, the amount of the grant under paragraph (1) of this subsection for that fiscal year is reduced by those amounts. However, the reduction shall be made only to the extent the amounts are available under the other laws—

(i) for that purpose specifically because the individuals served by the amounts have refugee, parolee, immigrant, or asylum status; and

(ii) to assist individuals eligible for services under this chapter.

(B) Subparagraph (A) of this paragraph does not apply to the extent a reduction is made under a comparable provision of another law of the United States in the amount available under that law for a fiscal year for ex-

penditure in the State based on the amount assumed to be available under this chapter.

(b) DETERMINING NUMBER OF IMMIGRANT CHILDREN.—(1) The Secretary shall determine the number of immigrant children for a State educational agency under this section based on information or estimates provided by the agency under criteria prescribed by the Secretary. However, after notice and opportunity for a proceeding, the Secretary may disregard information or estimates that the Secretary decides are clearly erroneous.

(2) A determination under this subsection based on an overestimate or underestimate may not deprive a State educational agency of any part of the amount the agency would be entitled to receive under this chapter if the determination were based on accurate information.

(c) REALLOCATION OF UNUSED AMOUNTS.—When the Secretary determines that a part of a payment made to a State educational agency under this chapter for a fiscal year will not be used by the agency to carry out the purpose for which the payment was made, the Secretary shall make that part available to another State educational agency to the extent the Secretary decides the other agency can use the additional amount to carry out the purpose. An amount made available under this subsection to a State educational agency from an appropriation for a fiscal year is deemed in this chapter to be a part of the grant (as determined under subsection (a) of this section) to that agency for that fiscal year, and remains available until the end of the next fiscal year.

§ 13505. Providing assistance to nonpublic schools when local agency does not

(a) GENERAL AUTHORITY.—If a local educational agency is prohibited by law from providing materials, equipment, and services for children enrolled in elementary and secondary nonpublic schools as required by section 13503(a)(6) of this title, or if the Secretary of Education decides that a local educational agency has failed substantially or will not provide for the participation on an equitable basis of children enrolled in those schools, the Secretary—

(1) may waive the requirements of section 13503(a)(6) of this title; and

(2) subject to the other requirements of this chapter, shall arrange for materials, equipment, and services to be provided for those children.

(b) WAIVER REQUIREMENTS.—A waiver under this section is subject to consultation, withholding, notice, and judicial review requirements as provided by chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.).

§ 13506. State administrative costs

The Secretary of Education may pay each State educational agency an amount equal to the amount the agency expends in carrying out its duties and powers properly and efficiently under this chapter. However, the total payments for a period may not be more than 1.5 percent of the amount the agency is entitled to receive for the period under this chapter.

§ 13507. Withholding payments

(a) AUTHORITY TO WITHHOLD.—When the Secretary of Education decides that a State educational agency receiving payments under this chapter, or a local educational agency receiving payments from the State educational agency, is not complying with a requirement of this chapter, the Secretary, until satisfied that there is no longer a failure to comply, shall—

(1) stop making payments to the State educational agency under this chapter; or

(2) prohibit the State educational agency from making payments under this chapter to the local educational agency that is causing, or involved in, the failure.

(b) NOTICE AND OPPORTUNITY FOR PROCEEDING.—The Secretary—

(1) may act under subsection (a) of this section only after giving the State educational agency reasonable notice and opportunity for a proceeding; and

(2) shall notify the State educational agency of the action the Secretary is taking under subsection (a) of this section.

§ 13508. Reports

(a) REPORTS BY STATE EDUCATIONAL AGENCIES.—Each State educational agency receiving amounts under this chapter shall submit a report each year to the Secretary of Education on the expenditure of amounts by local educational agencies of the States under this chapter. Each local educational agency of a State receiving amounts under this chapter shall submit to the State educational agency information necessary for the report.

(b) REPORTS BY THE SECRETARY.—The Secretary shall submit a report twice a year to the appropriate committees of Congress about programs under this chapter.

§ 13509. Authorization and allocation of appropriations

(a) AUTHORIZATION OF APPROPRIATIONS.—Necessary amounts may be appropriated for the fiscal year ending September 30, 19__, to make grants under this chapter and to pay for administrative costs under section 13506 of this title.

(b) ALLOCATIONS OF APPROPRIATIONS.—(1) If the amounts appropriated for a fiscal year to make grants under this chapter are not enough to pay the total amount of the grants to which State educational agencies are enti-

tled under this chapter for the fiscal year, the allocation to each agency shall be ratably reduced so that the total of the allocations is not more than the amounts appropriated.

(2) Allocations reduced under paragraph (1) of this subsection shall be increased on the same basis that they were reduced if amounts later become available to make grants under this chapter for the period.

CHAPTER 137—STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS

Sec.
13701. Definitions.
13702. Allotments and allotment uses.
13703. Applications and statements about allotments.
13704. Determining and paying allotments.
13705. Nondiscrimination.
13706. Consultation with State and local officials.
13707. Reports and audits.
13708. Criminal penalties.
13709. Appropriations.

§ 13701. Definitions

In this chapter—

(1) ''eligible legalized alien'' means an alien having the status of an alien lawfully admitted for temporary residence under chapter 93 of this title, but only until the end of the 5-year period beginning on the date the alien first acquired the status.

(2) ''program of public assistance'' means a program in a State or political subdivision of a State that—

(A) provides for cash, medical, or other assistance (as defined by the Secretary of Health and Human Services) designed to meet the basic subsistence or health needs of individuals;

(B) is available generally to needy individuals residing in the State or political subdivision; and

(C) receives financing from the State government or political subdivision.

(3) ''program of public health assistance'' means a program in a State or political subdivision that—

(A) provides public health services, including immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services;

(B) is available generally to needy individuals residing in the State or political subdivision; and

(C) receives financing from the State government or political subdivision.

§ 13702. Allotments and allotment uses

(a) GENERAL AUTHORITY.—A State may be paid an allotment as provided under this chapter. The State may use amounts allotted to the State only—

(1) to reimburse the costs of programs of public assistance provided for eligible legalized aliens not disqualified under section 9310 of this title when the assistance is provided;

(2) to reimburse the costs of programs of public health assistance provided to any alien who is, or who applied before May 5, 1988, to become, an eligible legalized alien;

(3) to pay a State educational agency for assisting a local educational agency in providing educational services for eligible legalized aliens;

(4) to pay for public education and outreach (including providing information to individual applicants, but not including client counseling or another service that would assume responsibility for an alien's application for change of status) to inform aliens lawfully admitted for temporary residence about—

(A) the requirements of chapter 93 of this title related to a change of status;

(B) sources of assistance for aliens obtaining a change of status, including educational, informational, and referral services, and information about the rights and responsibilities of those aliens and aliens lawfully admitted for permanent residence;

(C) the identification of health, employment, and social services; and

(D) the importance of identifying oneself to service providers as an alien lawfully admitted for temporary residence; and

(5) to pay for education and outreach efforts by State agencies about unfair discrimination in employment practices because of national origin or citizenship status, except that State agencies may initiate these efforts only after consulting with the Special Counsel for Immigration-Related Unfair Employment Practices to ensure, to the maximum extent possible, a uniform program.

(b) DISCRETION TO DISTRIBUTE AMONG USES.—Except as provided by subsection (c) of this section, a State may decide on the distribution of amounts among the uses described by subsection (a) of this section.

(c) REQUIRED USE PERCENTAGES.—(1) Except as provided by paragraphs (2) and (3) of this subsection, of the amounts allotted to a State under this chapter in a fiscal year—

(A) 10 percent shall be used by the State for reimbursement under subsection (a)(1) of this section;

(B) 10 percent shall be used by the State for reimbursement under subsection (a)(2) of this section; and

(C) 10 percent shall be used by the State for payments under subsection (a)(3) of this section.

(2) Subject to paragraph (3) of this subsection, a State not requiring all of the 10 percent of an allotted amount for a use described by subsection (a)(1), (2), or (3) of this section for a fiscal year shall distribute the unused amount equally between the other 2 uses described by subsection (a)(1)–(3).

(3) Amounts provided under this chapter may not be used to provide reimbursement for more than 100 percent of the costs described by subsection (a)(1) or (2) of this section.

(4) Of the amounts allotted to a State under this chapter in a fiscal year, the State may not use more than the greater of—

(A) one percent or $100,000, for payments under subsection (a)(4) of this section; and

(B) one percent or $100,000, for payments under subsection (a)(5) of this section.

(d) LIMITATION ON PAYMENTS.—A payment under this chapter—

(1) may be made to a State only for costs for assistance of a program of public assistance or public health assistance to the extent the assistance otherwise generally is available under the program to citizens residing in the State; and

(2) may not be made for costs to the extent the costs otherwise are reimbursed or paid for under another United States Government program.

(e) APPLICATION OF CHAPTER 135.—Chapter 135 of this title applies to a payment under subsection (a)(3) of this section except that—

(1) a reference in chapter 135 to ''immigrant children'' is deemed to be a reference to ''eligible legalized aliens'' (including aliens over 16 years of age) during the 5-year period beginning with the first month in which such an alien acquires the status of an alien lawfully admitted for temporary residence under this title;

(2) in determining a payment for an eligible legalized alien over 16 years of age, the exception in section 13501(4) of this title does not apply;

(3) the State educational agency may provide educational services to adult eligible legalized aliens through local educational agencies and other public agencies and private nonprofit organizations, including community-based organizations of demonstrated effectiveness; and

(4) the services may include instruction in English and other programs designed to enable aliens to acquire the citizenship skills described by section 20301(a)(7) and (8) of this title.

§ 13703. Applications and statements about allotments

(a) GENERAL REQUIREMENTS.—A State is eligible for payment of an amount allotted under section 13704 of this title only if the State—

(1) has filed with the Secretary of Health and Human Services an application containing information, and criteria for and administrative methods of distributing amounts received under this chapter, the Secretary decides is necessary to carry out this chapter;

(2) has its application approved by the Secretary; and

(3) submits to the Secretary a statement certifying that—

(A) amounts allotted to the State under this chapter will be used only as provided under section 13702(a) of this title;

(B) the State will decide on, and provide a fair method for, allocating amounts among State and local authorities consistent with subsection (b) of this section and section 13702(c) of this title; and

(C) fiscal control and accounting procedures will be established that are adequate to meet the requirements of subsection (b) of this section and sections 13702(d) and 13707 of this title.

(b) APPLICATION INFORMATION REQUIREMENTS.—The application of each State under this section for each fiscal year must include detailed information on—

(1) the number of eligible legalized aliens residing in the State; and

(2) the costs (excluding costs otherwise paid by the United States Government) that the State and each political subdivision is likely to incur for the purposes described by section 13702(a) of this title.

§ 13704. Determining and paying allotments

(a) PRESCRIBING ALLOTMENT FORMULA.—From amounts appropriated under section 13709(a) of this title for a fiscal year (less the amount reserved for United States Government administrative costs), the Secretary of Health and Human Services shall allot to each State with an application approved under section 13703(a) of this title an amount determined by a formula, prescribed by the Secretary by regulation, that considers—

(1) the number of eligible legalized aliens residing in the State in that fiscal year;

(2) the ratio of eligible legalized aliens in the State to—

(A) the total number of residents of the State; and

(B) the total number of eligible legalized aliens in all States in that fiscal year;

(3) the expenditures the State is likely to incur in that fiscal year in providing assistance for eligible legalized aliens for which reimbursement or payment may be made under this chapter;

(4) the ratio of expenditures in the State to expenditures in all States;

(5) changes for the difference in prior years between the State's actual expenditures incurred in providing assistance for eligible legalized aliens for which reimbursement or payment may be made under this chapter and the allotment provided the State under this chapter for those years; and

(6) other factors the Secretary considers appropriate to provide for an equitable distribution of the amounts.

(b) ESTIMATING THE NUMBER OF ELIGIBLE LEGALIZED ALIENS.—In determining the number of eligible legalized aliens under subsection (a) of this section, the Secretary may estimate the number of those aliens on the basis of information the Secretary considers appropriate.

(c) ADDITIONAL ALLOTMENTS OF UNALLOTTED AMOUNTS.—If all States have not qualified for allotments under this chapter for the fiscal year, or if at least one State has indicated in its description of activities that it does not intend to use, in that fiscal year or in any subsequent fiscal year beginning before October 1, 1994, the complete allotment, amounts appropriated under this chapter for a fiscal year and not allotted to those States shall be allotted among the remaining States in proportion to the amount otherwise allotted to the remaining States for the fiscal year.

(d) MAKING PAYMENTS.—For each fiscal year, the Secretary shall make payments, as provided by section 6503 of title 31, to each State from its allotment under this section. An amount paid to a State for a fiscal year and remaining unobligated at the end of the year remains available to the State in subsequent fiscal years for the purposes for which it was made. However, the amount is not available after September 30, 1994.

(e) REALLOTMENT OF UNEXPENDED AMOUNTS.—The Secretary shall reallot amounts not expended by the States before December 31, 1994, to States that expended their complete allotment. Reallotment shall be based on each State's proportionate share of the total unreimbursed legalized alien costs in all States. Reallotted amounts are not available after June 30, 1995.

§ 13705. Nondiscrimination

(a) PROHIBITIONS.—(1) A program or activity receiving financial assistance made available under this chapter is a program or activity receiving financial assistance from the United States Government in applying—

(A) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

(B) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(C) title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.); or

(D) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(2) A person may not be excluded, because of sex or religion, from participating in, denied a benefit of, or discriminated against under, a program or activity receiving financial assistance made available under this chapter.

(b) VIOLATION NOTICES AND COMPLIANCE REQUESTS.—When the Secretary of Health and Human Services finds that a State or political subdivision receiving a payment from an allotment under this chapter is not complying with a law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including a regulation prescribed to carry out subsection (a)(2)), the Secretary shall notify the chief executive officer of the State and shall request the chief executive officer to secure compliance by the State or political subdivision.

(c) ADMINISTRATIVE ACTIONS.—If within a reasonable time (but not more than 60 days after providing notice under subsection (b) of this section) the chief executive officer does not secure compliance, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that a civil action be brought;

(2) act under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as the case may be; or

(3) take other action provided by law.

(d) CIVIL ACTIONS.—The Attorney General may bring a civil action in an appropriate district court of the United States for appropriate relief when—

(1) a matter is referred to the Attorney General under subsection (c)(1) of this section; or

(2) the Attorney General believes the program or activity receiving financial assistance made available under this chapter is engaged in a pattern or practice in violation of—

(A) a law referred to in subsection (a)(1) of this section; or

(B) subsection (a)(2) of this section.

§ 13706. Consultation with State and local officials

In establishing regulations and guidelines to carry out this chapter, the Secretary of Health and Human Services shall consult with representatives of State governments and political subdivisions.

§ 13707. Reports and audits

(a) STATE ANNUAL REPORTS.—Each State shall submit to the Secretary of Health and Human Services an annual report on its activities under this chapter. To evaluate properly and compare the performance of different States provided assistance under this chapter and to ensure the proper expenditure of amounts under this chapter, the report shall be in the form and contain information the Secretary decides (after consulting with the States and the Comptroller General) is necessary—

(1) to provide an accurate description of the activities;

(2) to provide a complete record of the purposes for which amounts were expended and of the recipients of the amounts; and

(3) to establish the extent to which amounts were expended consistent with this chapter.

(b) ANNUAL REPORTS BY SECRETARY.—The Secretary—

(1) shall report annually to Congress on activities for which amounts are provided under this chapter; and

(2) shall submit a copy of the report to each State.

(c) AUDITS.—(1) Audits shall be conducted as provided under chapter 75 of title 31.

(2) Amounts allotted to a State but not expended consistent with this chapter—

(A) shall be repaid by the State to the United States Government; or

(B) may be offset by the Secretary against any other amount to which the State is or may become entitled under this chapter.

(3) After notice and an opportunity for a proceeding, the Secretary may withhold payment of amounts to a State not using its allotment as provided under this chapter. The Secretary may withhold the amounts until the Secretary finds that the reason for withholding no longer exists and there is reasonable assurance that it will not recur.

(d) RECORDS.—(1) To evaluate and review assistance provided under this chapter, a record related to the assistance that is in the possession, custody, or control of a State, a political subdivision of a State, or a grantee of a State or political subdivision shall be made available to the Secretary and the Comptroller General.

(2) A State, political subdivision, or grantee is not required to create or prepare new records to comply with paragraph (1) of this subsection.

(e) AVAILABILITY OF REPORTS AND AUDITS.—(1) A State shall make copies of each report and audit required under this section available for public inspection within the State.

(2) On request, a copy of the annual report required by subsection (a) of this section shall be provided to any interested public agency. Each agency may submit its views on the report to Congress.

§ 13708. Criminal penalties

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

(1) knowingly and willfully makes or causes to be made a false statement or misrepresentation of a material fact related to providing assistance or services for which payment may be made by a State from amounts allotted to the State under this chapter; or

(2) knowing of the occurrence of an event affecting the initial or continued right to a payment, conceals or does not disclose the event with an intent to receive payment fraudulently—

(A) in a greater amount than is due; or

(B) when no payment is authorized.

§ 13709. Appropriations

(a) ANNUAL APPROPRIATION.—For the fiscal year ending September 30, 1994, there is appropriated $812,000,000 to carry out this chapter for costs incurred after September 30, 1989, including United States Government, State government, and political subdivision administrative costs.

(b) CHANGES IN APPROPRIATED AMOUNTS.—(1) Except as provided by paragraphs (2) and (3) of this subsection, the amount appropriated for a fiscal year is decreased by the amount estimated to be expended by the Government in that year (as contained in the annual budget submitted by the President to Congress for that year) for programs of financial assistance, medical assistance, and assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) for aliens eligible for assistance under section 9310(a)(1) of this title only because of section 9310(a)(3) and (b) of this title.

(2) The amount estimated under paragraph (1) of this section shall exclude an amount attributable to supplemental security benefits paid under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) or medical assistance provided under a State plan approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for—

(A) an alien who the Secretary of Health and Human Services decides, based on an application filed before May 5, 1988, for benefits under section 212 of the Act of July 9, 1973 (42 U.S.C. 1382 (note)) or title XVI, is—

(i) residing permanently in the United States under color of law as provided by section 1614(a)(1)(B)(ii) of the Social Security Act (42 U.S.C. 1382c(a)(1)(B)(ii)); and

(ii) eligible to receive the benefits under section 212 or title XVI for April, 1988; and

(B) as long as the alien continues without interruption to be eligible to receive the benefits under section 212 or title XVI.

(3) If expenditures by the Government (as described by paragraph (1) of this subsection) for a fiscal year are more than, or less than, the amount estimated to be expended for that year under paragraph (1) (considering any change under this paragraph), the amount described by this section for the next fiscal year shall be decreased or increased, respectively, by the amount of the excess or deficit for the prior fiscal year.

CHAPTER 139—REIMBURSEMENT FOR COSTS OF IMPRISONING CUBAN NATIONALS AND ILLEGAL ALIENS

Sec.
13901. Payment of costs of imprisoning certain Cuban nationals.
13902. Reimbursement of costs of imprisoning certain Cuban nationals and illegal aliens.
13903. Limitation.

§13901. Payment of costs of imprisoning certain Cuban nationals

(a) PAYMENTS TO STATES AND COUNTIES.—The Attorney General shall pay a State or county for costs incurred by the State or county in imprisoning, during the fiscal year for which payment is made, a Cuban national who—

(1) was paroled into the United States in 1980 by the Attorney General;

(2) after being paroled, violated a State or county law for which a term of imprisonment was imposed; and

(3) at the time of the parole and violation, was not lawfully admitted for permanent residence or not admitted under an immigrant or nonimmigrant visa issued under this title.

(b) APPLICATIONS FOR PAYMENTS.—For a State or county to be paid under this section, the chief executive officer of the State or county shall submit an application to the Attorney General, under regulations prescribed by the Attorney General. The application shall contain—

(1) the number and names of Cuban nationals for whose imprisonment the State or county is entitled to be paid; and

(2) other information the Attorney General requires.

(c) REDUCTION IF APPROPRIATIONS INSUFFICIENT.—For each fiscal year, the Attorney General shall make payment under this section to States and counties the Attorney General decides are eligible under this section. However, if amounts appropriated for the fiscal year to carry out this section are not sufficient to make all payments, each payment shall be ratably reduced so that the total of the payments equals the amount appropriated.

(d) POLICY ON RETURN OF CUBAN NATIONALS.—It is the policy of the United States Government that the President, in consultation with the Attorney General, other appropriate officials of the United States Government, and appropriate State and county chief executive officers referred to in subsection (b) of this section, shall place top priority on seeking the expeditious removal from the United States and return by any responsible means to Cuba of Cuban nationals described by subsection (a) of this section.

§ 13902. Reimbursement of costs of imprisoning certain Cuban nationals and illegal aliens

The Attorney General shall reimburse a State for costs incurred by the State in imprisoning any of the following Cuban nationals and illegal aliens convicted by the State of a felony:

(1) a Cuban national who—

(A) was paroled into the United States in 1980 by the Attorney General;

(B) after being paroled, violated a State or local law for which a term of imprisonment was imposed; and

(C) at the time of parole and violation, was not lawfully admitted for permanent or temporary residence or not admitted under an immigrant or nonimmigrant visa issued under this title.

(2) an illegal alien who is in the United States unlawfully and—

(A) whose most recent entry into the United States was without inspection; or

(B) who was admitted to the United States as a nonimmigrant and whose—

(i) period of authorized stay as a nonimmigrant expired before the date of committing the crime for which the illegal alien was convicted; or

(ii) unlawful status was known to the United States Government before the date of committing the crime for which the alien was convicted.

§ 13903. Limitation

The Attorney General may expend amounts under this chapter in a fiscal year only to the extent and in the amount provided in advance by an appropriation law.

SUBTITLE V—CITIZENSHIP AND NATIONALITY

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CHAPTER 201—CITIZENSHIP AND NATIONALITY AT BIRTH AND COLLECTIVE NATURALIZATION

Sec.
20101. Individuals born in the United States.
20102. Individuals born in American Samoa.
20103. Individuals found in the United States or American Samoa.
20104. Individuals born outside the United States and American Samoa.
20105. Individuals born out of wedlock.
20106. Individuals born in the Republic of Panama or the Canal Zone.
20107. Noncitizen Indians born in Alaska after March 29, 1867, and before June 2, 1924.
20108. Citizens of the Republic of Hawaii and individuals born in Hawaii after August 11, 1898, and before April 30, 1900.
20109. Individuals residing in or born in Guam after April 10, 1899, and before August 1, 1950.
20110. Individuals born in Puerto Rico after April 10, 1899, and before January 13, 1941.
20111. Individuals born in or residing in the Virgin Islands after January 17, 1917, and before June 28, 1932.

§ 20101. Individuals born in the United States

(a) CITIZEN AT BIRTH.—The following individuals are citizens of the United States at birth:

(1) an individual born in, and subject to the jurisdiction of, the United States.

(2) an individual born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe.

(b) PROPERTY RIGHTS NOT AFFECTED.—Subsection (a)(2) of this section does not affect property rights.

§ 20102. Individuals born in American Samoa

(a) CITIZEN AT BIRTH.—An individual born in American Samoa is a citizen of the United States at birth if one of the individual's parents is a citizen of the United States who was physically present in the United States or American Samoa for at least one continuous year before the individual's birth.

(b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—An individual born in American Samoa who is not a citizen of the United States at birth under subsection (a) of this section is a national, but not a citizen, of the United States at birth.

§ 20103. Individuals found in the United States or American Samoa

(a) CITIZEN AT BIRTH.—An individual of unknown parents found in the United States before becoming 5 years of age is a citizen of the United States at birth unless shown, before the individual becomes 21 years of age, that the individual was not born in the United States.

(b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—An individual of unknown parents found in American Samoa before becoming 5 years of age is a national, but not a citizen, of the United States at birth unless shown, before the individual becomes 21 years of age, that the individual was not born in American Samoa.

§ 20104. Individuals born outside the United States and American Samoa

(a) CITIZEN AT BIRTH.—An individual born outside the United States and American Samoa is a citizen of the United States at birth if—

(1) both parents are citizens of the United States and at least one parent had a residence in the United States or American Samoa before the individual's birth;

(2) one parent is a national, but not a citizen, of the United States and the other parent is a citizen of the United States who was physically present in the United States or American Samoa for at least one continuous year before the individual's birth; or

(3) one parent is an alien and the other parent is a citizen of the United States who, before the individual's birth, was physically present in the United States or American Samoa for at least 5 years, at least 2 of which were after the citizen parent became 14 years of age.

(b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—(1) An individual born outside the United States and American Samoa is a national, but not a citizen, of the United States at birth if—

(A) both parents are nationals, but not citizens, of the United States who had a residence in the United States or American Samoa before the individual's birth; or

(B) one parent is an alien and the other parent is a national, but not a citizen, of the United States who, before the individual's birth, was physically present in the United States or American Samoa for at least 7 years in any continuous 10–year period—

(i) during which the national parent was not outside the United States and American Samoa for more than one continuous year; and

(ii) at least 5 years of which were after the national parent became 14 years of age.

(2) An individual born before August 27, 1986, is a national, but not a citizen, of the United States under paragraph (1)(B) of this subsection only as of the date the individual satisfies the Secretary of State that the individual meets the requirements of paragraph (1)(B).

(c) TIME OUTSIDE THE UNITED STATES INCLUDED IN PERIOD OF PRESENCE.—In subsections (a)(3) and (b)(1)(B) of this section, the period of physical presence includes, for an individual born after December 23, 1952, any period the citizen parent or national parent spent outside the United States and American Samoa—

(1) honorably serving in the armed forces of the United States or employed by the United States Government or an international organization; or

(2) as a dependent unmarried son or daughter and member of the household of an individual honorably serving in the armed forces or employed by the Government or an international organization.

(d) INDIVIDUAL BORN BETWEEN 1941 AND 1952.—Subsection (a)(3) of this section also applies to an individual if—

(1) the individual was born outside the United States and American Samoa after January 12, 1941, and before December 24, 1952;

(2) one of the individual's parents is a citizen of the United States who served in the armed forces of the United States after December 31, 1946, and before December 24, 1952; and

(3) the individual did not become a citizen under section 201(g) or (i) of the Nationality Act of 1940.

§ 20105. Individuals born out of wedlock

(a) NATIONALITY AT BIRTH THROUGH MOTHER.—An individual born out of wedlock outside the United States after December 23, 1952, is—

(1) a citizen of the United States at birth if the mother is a citizen of the United States who was physically present in the United States or American Samoa for at least one continuous year before the individual's birth; or

(2) a national, but not a citizen, of the United States at birth if the mother is a national, but not a citizen, of the United States who was physically present in the United States or American Samoa for at least one continuous year before the individual's birth.

(b) NATIONALITY AT BIRTH THROUGH FATHER.—(1) Sections 20102(a) and 20104(a) and (b)(1)(A) of this title apply to an individual born out of wedlock after December 23, 1952, if—

(A) a blood relationship between the individual and the father is established by clear and convincing evidence;

(B) the father—

(i) is a citizen of the United States or a national, but not a citizen, of the United States when the individual is born; and

(ii) if alive when the individual is born, agrees in writing to provide financial support for the individual until the individual is 18 years of age; and

(C) before the individual becomes 18 years of age—

(i) the individual is legitimated under the law of the individual's residence or domicile;

(ii) the father acknowledges paternity in writing under oath; or

(iii) a court of competent jurisdiction establishes paternity.

(2) Section 20104(a)(3) of this title applies to an individual born out of wedlock after January 12, 1941, and before December 24, 1952, if paternity is established and the individual is legitimated before becoming 21 years of age.

§ 20106. Individuals born in the Republic of Panama or the Canal Zone

(a) INDIVIDUAL BORN IN REPUBLIC OF PANAMA.—An individual born in the Republic of Panama—

(1) after February 25, 1904, and before August 4, 1937, is a citizen of the United States as of August 4, 1937, if one parent was a citizen of the United States employed by the United States Government or the Panama Canal Commission when the individual was born; or

(2) after August 3, 1937, is a citizen of the United States at birth if one parent is a citizen of the United States employed by the Government or the Panama Canal Commission or its successor when the individual is born.

(b) INDIVIDUAL BORN IN CANAL ZONE.—An individual born in the Canal Zone—

(1) after February 25, 1904, and before August 4, 1937, is a citizen of the United States as of August 4, 1937, if one parent was a citizen of the United States when the individual was born; or

(2) after August 3, 1937, and before October 1, 1979, is a citizen of the United States at birth if one parent was a citizen of the United States when the individual was born.

§ 20107. Noncitizen Indians born in Alaska after March 29, 1867, and before June 2, 1924

A noncitizen Indian born in Alaska after March 29, 1867, and before June 2, 1924, is a citizen of the United States as of June 2, 1924.

§ 20108. Citizens of the Republic of Hawaii and individuals born in Hawaii after August 11, 1898, and before April 30, 1900

The following individuals are citizens of the United States as of April 30, 1900:

(1) a citizen of the Republic of Hawaii on August 12, 1898.

(2) an individual born in Hawaii after August 11, 1898, and before April 30, 1900.

§ 20109. Individuals residing in or born in Guam after April 10, 1899, and before August 1, 1950

(a) CITIZENSHIP.—Except as provided by this section, the following individuals are citizens of the United States as of August 1, 1950:

(1) a Spanish subject or an individual born in Guam who resided in Guam on April 11, 1899, and continued to reside in the United States or a territory or possession of the United States through August 1, 1950.

(2) an individual born after April 11, 1899, and before August 1, 1950, of parents who are citizens under clause (1) of this subsection.

(3) an individual born in Guam after April 10, 1899, and before August 1, 1950, and subject to the jurisdiction of the United States.

(b) INDIVIDUAL WHO TOOK AFFIRMATIVE STEP TO PRESERVE OR ACQUIRE NATIONALITY OF A FOREIGN COUNTRY.—Subsection (a) of this section does not apply to an individual who took an affirmative step to preserve or acquire the nationality of a foreign country before August 1, 1950.

(c) INDIVIDUAL WHO DECLARED DESIRE TO REMAIN A NATIONAL OF A FOREIGN COUNTRY.—An individual under this section who was a national of a foreign country before August 1, 1950, and who declared under oath before August 1, 1952, in a way prescribed by the Attorney General, a desire to remain a national of the foreign country is not a national of the United States as of the date the declaration is made.

§ 20110. Individuals born in Puerto Rico after April 10, 1899, and before January 13, 1941

An individual is a citizen of the United States as of January 13, 1941, if the individual was—

(1) born in Puerto Rico after April 10, 1899, and before January 13, 1941;

(2) subject to the jurisdiction of the United States; and

(3) residing in the United States or a territory or possession of the United States on January 13, 1941.

§ 20111. Individuals born in or residing in the Virgin Islands after January 17, 1917, and before June 28, 1932

The following individuals are citizens of the United States as of February 25, 1927:

(1) an individual born in the Virgin Islands who—

(A) resided in the Virgin Islands on January 17, 1917, resided in the United States on February 25, 1927, and was not a citizen or subject of a foreign country on February 25, 1927;

(B) resided in the United States on January 17, 1917, resided in the Virgin Islands on February 25, 1927, and was not a citizen or subject of a foreign country on February 25, 1927;

(C) resided in the continental United States or a territory or possession of the United States on June 28, 1932, and was not a citizen or subject of a foreign country on June 28, 1932; or

(D) after January 16, 1917, and before February 25, 1927, was subject to the jurisdiction of the United States.

(2) a citizen of Denmark who—

(A) resided in the Virgin Islands on January 17, 1917;

(B) resided in the United States on February 25, 1927; and

(C) did not make the declaration to preserve Danish citizenship under article 6 of the treaty of August 4, 1916, between the United States and Denmark, or made the declaration and renounced it, or renounces it by a declaration before a court of record.

(3) an individual born after January 17, 1917, and before February 25, 1927, of parents who are citizens of the United States under clause (1) or (2) of this section.

CHAPTER 203—NATURALIZATION ELIGIBILITY

SUBCHAPTER I—ELIGIBILITY

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SUBCHAPTER II—INELIGIBILITY

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SUBCHAPTER I—ELIGIBILITY

§ 20301. General requirements

(a) NATURALIZATION REQUIREMENTS.—Except as otherwise provided, an individual may be naturalized as a citizen of the United States only if the individual satisfies the following requirements:

(1) The individual must be at least 18 years of age when filing an application for naturalization.

(2) The individual must be lawfully admitted for permanent residence.

(3) The individual must have resided in the United States, after being lawfully admitted for permanent residence, continuously for at least 5 years immediately before filing the application.

(4) The individual must have been physically present in the United States for at least half of the 5 years immediately before filing the application.

(5) The individual must have resided in the State or district of the Immigation and Naturalization Service in the United States in which the application is filed for at least 3 months immediately before filing the application.

(6) The individual must reside in the United States continuously from the date of filing the application through the time the individual is naturalized.

(7) The individual must be able to demonstrate an understanding of the English language, including the ability to speak words in ordinary usage and the ability to read and write simple words and phrases in ordinary usage, without extraordinary or unreasonable conditions being required. This paragraph does not apply to an individual who—

(A) is physically unable to satisfy this paragraph; or

(B) on the date the application is filed—

(i) is at least 50 years of age and has lived in the United States for at least 20 years after being lawfully admitted for permanent residence; or

(ii) is at least 55 years of age and has lived in the United States for at least 15 years after being lawfully admitted for permanent residence.

(8) The individual must be able to demonstrate knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.

(9) The individual must have been of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States for at least 5 years immediately before filing the application, and remain so from the date of filing the application through the time the individual is naturalized.

(b) CONDUCT MORE THAN 5 YEARS BEFORE APPLICATION FILED.—Conduct more than 5 years before an application is filed may be considered in deciding whether an individual satisfies the requirements of subsection (a)(9) of this section.

(c) TEMPORARY ABSENCES.—(1) An absence from the United States of not more than 6 months does not break the continuity of residence required under subsection (a) of this section.

(2) An absence of more than 6 months but less than one year breaks the continuity of residence, unless the individual satisfies the Attorney General that the individual did not abandon residence in the United States during the absence.

(3) Except as otherwise provided, an absence of one year breaks the continuity of residence.

(d) PROHIBITION ON DISCRIMINATION.—The right of an individual to be naturalized as a citizen of the United States may not be denied or abridged because of race or sex or because the individual is married.

§ 20302. Temporary absences for certain employment

(a) RESIDENCE.—An individual temporarily absent from the United States (even though for a year or more) is deemed to be residing in the United States under section 20301(a)(3) and (6) of this title during the absence if—

(1) the individual has resided and been physically present in the United States, after being lawfully admitted for permanent residence, continuously for at least one year;

(2) after the one-year period described by clause (1) of this subsection—

(A) the individual is employed by or under a contract with the United States Government;

(B) the individual is employed by or under a contract with, and carrying out scientific research for, a United States research institution recognized by the Attorney General;

(C)(i) the individual is employed by a United States firm or corporation developing foreign trade and commerce of the United States, or by a subsidiary of the firm or corporation more than 50 percent of the stock of which is owned by the firm or corporation; and

(ii) the individual is developing foreign trade and commerce of the United States or the individual's residence outside the United States is necessary to protect the property rights of the firm or corporation in a foreign country; or

(D) the individual—

(i) is employed by a public international organization of which the United States is a member by treaty or law; and

(ii) was not employed by the organization until after being lawfully admitted for permanent residence;

(3) before beginning the employment and before the end of one year of continuous absence from the United States, the individual satisfies

the Attorney General that the absence will be for a purpose described by clause (2) of this subsection; and

(4) the individual satisfies the Attorney General that the absence was for the purpose for which the absence was approved.

(b) PHYSICAL PRESENCE.—(1) Except as provided by paragraph (2) of this subsection, an individual satisfying subsection (a) of this section still must satisfy the physical presence requirement of section 20301(a)(4) of this title.

(2) An individual employed by or under a contract with the Government and satisfying subsection (a) of this section does not have to satisfy the physical presence requirement of section 20301(a)(4) of this title.

(3) An individual employed by or under a contract with the Central Intelligence Agency may satisfy the physical presence requirement of subsection (a)(1) of this section by physical presence at any time before filing the application for naturalization.

(c) SPOUSES, UNMARRIED SONS, AND UNMARRIED DAUGHTERS.—A spouse, unmarried son, or unmarried daughter of an individual satisfying subsection (a) of this section is entitled to the same benefits under subsection (a) as the individual during the period the spouse, son, or daughter resided outside the United States as a dependent member of the household of the individual.

§ 20303. Temporary absences to perform religious functions

An individual temporarily absent from the United States is deemed to be residing and physically present in the United States under section 20301(a)(3), (4), and (6) of this title during the absence if the individual—

(1) has resided and been physically present in the United States, after being lawfully admitted for permanent residence, continuously for at least one year before filing the application for naturalization;

(2)(A) is authorized to perform the ministerial or priestly functions of a religious denomination having an organization in the United States; or

(B) is serving only as a missionary, brother, nun, or sister of a religious denomination or an interdenominational mission organization having an organization in the United States; and

(3) satisfies the Attorney General that the absence was only to perform the functions or service described by clause (2) of this section.

§ 20304. Individuals married to citizens of the United States

(a) GENERAL.—An individual married to a citizen of the United States may be naturalized without regard to section 20301(a)(3) or (4) of this title if the individual—

(1) resided in the United States, after being lawfully admitted for permanent residence, continuously for at least 3 years immediately before filing the application for naturalization;

(2) lived in marriage with the citizen spouse for the 3-year period, with the spouse being a citizen during all of that period; and

(3) was physically present in the United States for at least half of the 3-year period.

(b) CITIZEN SPOUSES EMPLOYED OUTSIDE UNITED STATES.—An individual married to a citizen of the United States may be naturalized without regard to section 20301(a)(3)–(6) of this title if—

(1) the citizen spouse is—

(A) employed by the United States Government;

(B) employed by a United States research institution recognized by the Attorney General;

(C) employed by a United States firm or corporation developing foreign trade and commerce of the United States or by a subsidiary of the firm or corporation;

(D) employed by a public international organization of which the United States is a member by treaty or law;

(E) authorized to perform the ministerial or priestly functions of a religious denomination having an organization in the United States; or

(F) serving only as a missionary of a religious denomination or an interdenominational mission organization having an organization in the United States;

(2) the citizen spouse is regularly stationed outside the United States in the employment or activity described by clause (1) of this subsection;

(3) the individual declares in good faith to the Attorney General an intention to reside in the United States immediately after the employment or activity of the citizen spouse outside the United States ends; and

(4) the individual is in the United States at the time of naturalization.

(c) SURVIVING SPOUSES OF CITIZENS IN ARMED FORCES.—(1) An individual may be naturalized without regard to section 20301(a)(3)–(6) of this title if—

(A) the individual is the surviving spouse of a citizen of the United States who died when serving honorably on active duty in the armed forces of the United States; and

(B) the individual and the citizen spouse were living in marriage at the time of the death.

(2) This subsection does not apply to an individual who is the surviving spouse of a citizen granted citizenship posthumously under section 20314 of this title.

§ 20305. Children born of an alien parent and a citizen parent

(a) GENERAL.—A child born outside the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents at the time of the child's birth was a citizen of the United States and remains a citizen, is naturalized as a citizen of the United States when the following events occur, if they occur before the child becomes 18 years of age:

(1) the alien parent is naturalized.

(2) the child begins residing in the United States after being lawfully admitted for permanent residence.

(b) ADOPTED CHILD.—Subsection (a) of this section applies to an adopted child only if the child, at the time of the naturalization of the alien parent, is—

(1) in the custody of the adoptive parents; and

(2) residing in the United States after being lawfully admitted for permanent residence.

§ 20306. Children born of alien parents or a parent who lost citizenship

(a) GENERAL.—A child born outside the United States of alien parents, or of one alien parent and one parent who was a citizen of the United States at the time of the child's birth but later lost citizenship, is naturalized as a citizen of the United States when the following events occur, if they before the child becomes 18 years of age:

(1)(A) both parents are naturalized;

(B) the surviving parent is naturalized if one parent is deceased;

(C) the parent with legal custody is naturalized if the parents are legally separated; or

(D) the mother is naturalized if the child was born out of wedlock and paternity is not established by legitimation.

(2) the child begins residing in the United States after being lawfully admitted for permanent residence.

(b) ADOPTED CHILD.—Subsection (a) of this section applies to an adopted child only if the child, at the time of the naturalization of the alien parent or parents, is—

(1) in the custody of the adoptive parents; and

(2) residing in the United States after being lawfully admitted for permanent residence.

§ 20307. Children having a citizen parent at time of application

(a) GENERAL.—A child born outside the United States, one or both of whose parents is a citizen of the United States at the time the citizen parent files an application for naturalization of the child, may be naturalized without regard to section 20301(a)(3), (4), or (6)–(8) of this title if the child is—

(1) less than 18 years of age; and

(2) residing in the United States with that citizen parent after being lawfully admitted for permanent residence.

(b) CHILD OF TENDER YEARS.—A child of tender years for whom an application is filed under subsection (a) of this section is deemed to satisfy section 20301(a)(9) of this title.

(c) ADOPTED CHILD.—(1) This section applies to an adopted child only if the child is also in the custody of the adoptive parent or parents.

(2) An adopted child whose parent applies for naturalization of the child under this section may be naturalized without regard to section 20301(a)(5) of this title if—

(A) the adoptive citizen parent—

(i) is regularly stationed outside the United States in an employment or activity described by section 20304(b)(1) of this title; and

(ii) declares in good faith to the Attorney General an intention to reside in the United States immediately after the employment or activity ends; and

(B) the child is in the United States at the time of naturalization.

§ 20308. Children adopted before becoming 16 years of age by a citizen parent

A child born outside the United States and adopted by a citizen of the United States may be naturalized without regard to section 20301(a) of this title, on application by the adoptive citizen parent, if the Attorney General is satisfied that—

(1) the applicant is a citizen of the United States, and if the applicant is married, the applicant's spouse is a citizen of the United States;

(2) the child was adopted before becoming 16 years of age by a citizen parent;

(3) the child is less than 18 years of age;

(4) the child is in the custody of the applicant;

(5) the child is residing in the United States after being lawfully admitted for permanent residence; and

(6) the child is in the United States at the time of naturalization.

§ 20309. Individuals employed by United States nonprofit organizations disseminating information

An individual may be naturalized without regard to section 20301(a)(3)–(6) of this title if the individual—

(1) is employed by a nonprofit organization incorporated in the United States that is principally engaged outside the United States in disseminating, through communication media, information significantly promoting United States interests outside the United States and that is recognized by the Attorney General;

(2) has been employed by the organization continuously for at least 5 years after being lawfully admitted for permanent residence;

(3) files the application for naturalization when employed by the organization or within 6 months after ending the employment;

(4) is in the United States at the time of naturalization; and

(5) declares in good faith to the Attorney General an intention to reside in the United States immediately after the employment ends.

§ 20310. Individuals making extraordinary contributions to the security of the United States

(a) RESIDENCE AND PHYSICAL PRESENCE.—(1) An individual may be naturalized without regard to section 20301(a)(3)–(6) of this title if—

(A) the Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration and Naturalization decide that the individual has made an extraordinary contribution to the security of the United States or to the conduct of United States intelligence activities; and

(B) the individual resides in the United States continuously for at least one year before being naturalized.

(2) This section does not apply to an individual described by section 6537(e)(2) of this title.

(b) NONAPPLICATION OF CERTAIN GROUNDS OF INELIGIBILITY.—Section 20331 of this title does not apply to an individual described by subsection (a) of this section.

(c) PROCEDURE.—A proceeding under this section shall be conducted in a way consistent with the protection of intelligence sources, methods, and activities.

(d) NUMERICAL LIMIT.—Not more than 5 individuals may be naturalized in a fiscal year under this section.

(e) NOTICE TO CONGRESSIONAL COMMITTEES.—The Director shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and

the Committee on the Judiciary of the House of Representatives within a reasonable time before an application is filed under this section.

§ 20311. Individuals with service on American vessels

(a) DEFINITION.—In this section, ''American vessel'' means a vessel that—

(1) is owned and operated by the United States Government; or

(2)(A) has its home port in the United States; and

(B)(i) is documented under chapter 121 of title 46; or

(ii) is owned by a citizen of the United States or a corporation organized under the laws of a State.

(b) RESIDENCE AND PHYSICAL PRESENCE.—An individual serving honorably or with good conduct in any capacity (except as a member of the armed forces of the United States) on an American vessel is deemed to be residing and physically present in the United States under section 20301(a)(3), (4), and (6) of this title during the period of service if the service is—

(1) after the individual has been lawfully admitted for permanent residence; and

(2) within 5 years immediately before the date the individual files an application for naturalization.

(c) PROOF OF SERVICE ON VESSEL.—Service on a vessel described by subsection (a)(1) of this section shall be proved by a certificate from the executive agency having custody of the records of the service. Service on a vessel described by subsection (a)(2) of this section may be proved by a certificate from the master of the vessel.

§ 20312. Individuals with 3 years of service in the armed forces

(a) RESIDENCE AND PHYSICAL PRESENCE.—(1) Except as provided by paragraph (2) of this subsection, an individual may be naturalized without regard to section 20301(a)(3)–(5) of this title if the individual—

(A) has served honorably in the armed forces of the United States for periods totaling at least 3 years;

(B) has never been discharged from the service except honorably; and

(C) files an application for naturalization when still in the service or within 6 months after being discharged from the service.

(2) If the service was not continuous, the individual must establish the individual's residence in the United States and the State or district of the Immigration and Naturalization Service in the United States in which the application is filed for—

(A) any period between periods of service during the 5 years immediately before filing the application; and

(B) any period between the end of the individual's service and the filing of the application.

(b) PROOF OF HONORABLE SERVICE.—(1) Before a hearing on the individual's application, the individual shall provide the Attorney General with a certificate from the appropriate executive agency showing that—

(A) the individual served honorably during all periods on which the individual relies for naturalization under this section; and

(B) the individual has never been discharged from the service except honorably.

(2) A certificate under paragraph (1) of this subsection is conclusive evidence of the service and discharge.

(c) PROOF OF GOOD MORAL CHARACTER, ATTACHMENT TO PRINCIPLES, AND FAVORABLE DISPOSITION.—Proof of honorable service under this section is proof that the individual was of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States during the period of the service.

(d) EFFECT OF FINDING OF DEPORTABILITY.—Notwithstanding section 20504(b) of this title, an individual may be naturalized immediately under this section if the individual is in the armed forces when being naturalized and was examined by a representative of the Immigration and Naturalization Service before filing an application for naturalization.

(e) APPLICATIONS FILED MORE THAN 6 MONTHS AFTER DISCHARGE.—An individual who satisfies subsection (a)(1) (A) and (B) of this section, but files an application for naturalization more than 6 months after being discharged, is deemed to be residing and physically present in the United States during any periods of service within 5 years immediately before filing the application.

§ 20313. Individuals with service in the armed forces during war or military hostilities

(a) GENERAL.—Notwithstanding sections 20316 and 20504(b) of this title, an individual may be naturalized without regard to section 20301(a)(1)–(6) of this title if—

(1) the individual served honorably on active duty in the armed forces of the United States as an alien or as a national, but not a citizen, of the United States at any time during a period—

(A) from April 6, 1917, through November 11, 1918;

(B) from September 1, 1939, through December 31, 1946;

(C) from June 25, 1950, through July 1, 1955;

(D) from February 28, 1961, through October 15, 1978; or

(E) the President designates by executive order as a period in which the armed forces are engaged in military operations involving armed conflict with a hostile foreign force;

(2) the individual was—

(A) in the United States or American Samoa at the time of enlistment or induction into the armed forces;

(B) in the Canal Zone at the time of enlistment or induction if the enlistment or induction was before October 1, 1979; or

(C) lawfully admitted for permanent residence after the enlistment or induction; and

(3) the individual, if discharged from the armed forces, was discharged honorably.

(b) SERVICE IN REGULAR ARMY UNDER THE ACT OF JUNE 30, 1950.—(1) Notwithstanding sections 20316 and 20504(b) of this title, an individual may be naturalized without regard to section 20301(a)(1) or (3)–(6) of this title if the individual—

(A) enlisted or re-enlisted as an alien in the Regular Army under the Act of June 30, 1950 (ch. 443, 64 Stat. 316);

(B) served at least 5 years in the Regular Army; and

(C) was discharged honorably from the Regular Army.

(2) An individual described by paragraph (1) of this subsection is deemed to have been lawfully admitted for permanent residence if the individual—

(A) entered the United States, American Samoa, or the Canal Zone under military orders after enlistment; and

(B) is otherwise eligible to be naturalized.

(c) PERIOD OF SERVICE AVAILABLE ONLY ONCE.—A period of service in the armed forces may not be used as the basis for naturalization under this section if the individual has been naturalized previously because of the same period of service.

(d) PROOF OF HONORABLE SERVICE AND DISCHARGE.—Service required by this section shall be proved by a certificate from the executive agency under which the individual served. The head of the executive agency shall decide, and the certificate shall state, whether the individual served honorably on active duty during a period specified in this section and was discharged honorably. An individual's service and discharge are not honorable under this section if the individual was discharged from the armed forces because of alienage or was a conscientious objector who performed no active duty or refused to wear the uniform.

§ 20314. Posthumous naturalization of individuals who die during service in the armed forces during war or military hostilities

(a) GRANTING CITIZENSHIP.—The Attorney General shall grant posthumous citizenship, as of the time of death, to an eligible individual under subsection (b) of this section if the Attorney General approves a request for posthumous citizenship for the individual under subsection (c) of this section.

(b) ELIGIBILITY.—(1) An individual is eligible for posthumous citizenship under this section if the individual—

(A) served honorably on active duty in the armed forces of the United States as an alien or as a national, but not a citizen, of the United States during any period described by section 20313(a)(1) of this title;

(B) died as a result of injury or disease incurred in or aggravated by that service; and

(C) satisfied the requirements of section 20313(a)(2) of this title.

(2) The head of the executive agency under which the individual served shall decide whether the individual satisfied the requirements of paragraph (1) (A) and (B) of this subsection.

(c) REQUESTS.—A request to grant posthumous citizenship to an individual under this section may be filed only by an individual who is, as defined by the Attorney General, the next of kin or another representative. The Attorney General shall approve the request if—

(1) the request is filed not later than 2 years after the date of the individual's death;

(2) the request includes a certificate from the executive agency under which the individual served stating that the individual satisfied the requirements of subsection (b) (1) (A) and (B) of this section; and

(3) the Attorney General finds that the individual satisfied the requirements of subsection (b)(1)(C) of this section.

(d) DOCUMENTATION.—If the Attorney General approves a request under this section, the Attorney General shall provide the individual who filed the request with a document stating that the United States Government considers the individual for whom the request was filed to have been a citizen of the United States at the time of the individual's death.

(e) NO BENEFITS TO SURVIVORS.—The granting of posthumous citizenship to an individual under this section does not provide any benefits under this title for any relative of the individual.

§ 20315. Individuals who lost citizenship by entering the armed forces of a foreign country

(a) GENERAL.—An individual may be naturalized without regard to section 20301(a)(3)–(6) or (9) of this title if—

(1) the individual, when a citizen of the United States, served in the armed forces of a foreign country at any time during the period from September 1, 1939, through September 2, 1945;

(2) that foreign country was at war with a foreign country with which the United States was at war after December 7, 1941, and before September 2, 1945;

(3) the individual lost citizenship of the United States by entering, serving in, or taking an oath or obligation to enter or serve in, those armed forces;

(4) the individual intends to reside permanently in the United States; and

(5) the individual has been of good moral character, attached to the principles of the Constitution, and well disposed to the good order and happiness of the United States for at least 5 years immediately before taking the oath required for naturalization.

(b) PREVIOUS STATUS REACQUIRED.—An individual naturalized under this section or section 323 of the Nationality Act of 1940 has, from the date of naturalization, the same status as a citizen at birth or a naturalized citizen that the individual had before losing citizenship. Naturalization of the individual does not confer citizenship retroactively on the individual for the period that the individual was not a citizen of the United States.

(c) NONAPPLICATION TO CERTAIN INDIVIDUALS.—This section does not apply to an individual who served in the armed forces of a foreign country at any time during the period from September 1, 1939, through September 2, 1945, when that country was at war with the United States.

§ 20316. Alien enemies

(a) WHEN INDIVIDUAL IS ALIEN ENEMY.—In this section, an alien enemy is an individual who is a native, citizen, subject, or denizen of a country or sovereignty at war with the United States. That individual ceases to be an alien enemy when the hostilities between the United States and the individual's country or sovereignty are declared ended by proclamation of the President or concurrent resolution of Congress.

(b) SPECIFIC CONDITIONS FOR NATURALIZATION.—An alien enemy may be naturalized as a citizen of the United States only if—

(1) the alien enemy's application for naturalization was filed before the war began, except that the Attorney General may waive this requirement;

(2) the alien enemy's loyalty is established on investigation by the Attorney General; and

(3) the alien enemy is otherwise eligible to be naturalized.

(c) NOTICE AND CONTINUANCE.—An examination or hearing on an alien enemy's application for naturalization may be held only after 90 days' notice to the Attorney General. If the Attorney General objects to consideration of the application, the application shall be continued for as long as the Attorney General requires.

(d) LAWFUL APPREHENSION AND REMOVAL ALLOWED.—This section does not prevent the lawful apprehension and removal of an alien enemy.

§ 20317. Women who lost citizenship through marriage

(a) GENERAL.—(1) A woman may be naturalized without regard to section 20301(a)(3)–(6) of this title if she—

(A) lost citizenship of the United States—

(i) by marrying an alien before September 22, 1922;

(ii) by marrying after September 21, 1922, an alien who was ineligible to become a citizen of the United States; or

(iii) through her husband's loss of citizenship of the United States before September 22, 1922; and

(B) has taken no affirmative action to acquire the nationality of another country except by marriage.

(2) A woman described by subsection (a) of this section may be naturalized without regard to section 20301(a)(2) of this title if she has resided in the United States continuously since the date of her marriage.

(b) NATURALIZATION ON TAKING OATH FOR CERTAIN WOMEN.—(1) A woman may be naturalized without filing an application for naturalization or complying with any other requirement for naturalization, by taking the oath required for naturalization, if—

(A) she was a citizen of the United States at birth;

(B) she lost that citizenship by marrying—

(i) an alien before September 22, 1922; or

(ii) after September 21, 1922, an alien who was ineligible to become a citizen of the United States;

(C) her marriage to that alien ended after January 12, 1941;

(D) she has taken no affirmative action to acquire the nationality of another country except by marriage; and

(E) she is not ineligible to be naturalized under section 20331 of this title.

(2) A woman satisfying paragraph (1) of this subsection may take the oath—

(A) in the United States before the Attorney General or a judge or a clerk of a court described by section 20511 of this title; or

(B) outside the United States before a diplomatic or consular officer.

(3) The Attorney General, court, embassy, legation, or consulate, as appropriate, shall—

(A) enter the oath in the records of the Attorney General, court, embassy, legation, or consulate; and

(B) deliver to the woman, on her request, a certified copy of the proceedings and oath, under seal of Department of Justice, court, embassy, legation, or consulate, at a cost of not more than $5.

(4) A certified copy of the proceedings and the oath delivered under paragraph (3) of this subsection is evidence of the facts stated in the copy in any court of record, judicial tribunal, or agency.

(c) PREVIOUS STATUS REACQUIRED.—A woman naturalized under this section or section 317(a) or (b) of the Nationality Act of 1940 has, from the date of naturalization, the same status as a citizen at birth or a naturalized citizen that she had before losing citizenship. Naturalization of the woman does not confer citizenship on the woman retroactively for any period that she was not a citizen of the United States.

§ 20318. Nationals residing in American Samoa

Residence and physical presence in American Samoa are deemed to be residence and physical presence in the United States under section 20301(a)(3), (4), and (6) of this title for an individual who—

(1) is a national, but not a citizen, of the United States; and

(2) becomes a resident of a State.

§ 20319. Philippine citizens who entered before May 1, 1934

An individual who was a citizen of the Commonwealth of the Philippines on July 2, 1946, entered the United States before May 1, 1934, and has resided in the United States continuously since entry, is deemed to have been lawfully admitted for permanent residence.

SUBCHAPTER II—INELIGIBILITY

§ 20331. Individuals dangerous to the welfare, safety, and security of the United States

(a) GROUNDS FOR DISALLOWING NATURALIZATION.—An individual may not be naturalized as a citizen of the United States if, at any time during the 10 years before filing the application for naturalization or from the filing of the application through the time the individual is naturalized, the individual—

(1) advocates establishing—

(A) a totalitarian communist dictatorship in a country through an internationally coordinated communist movement; or

(B) a totalitarian dictatorship in the United States;

(2) advocates or teaches—

(A) opposition to all organized government;

(B) the overthrow by unconstitutional means of the United States Government or of all forms of law;

(C) the duty, necessity, or propriety of unlawfully assaulting or killing a particular officer or officers generally of an organized government because of the official position of the officer or officers;

(D) unlawfully damaging or destroying property; or

(E) sabotage;

(3) writes, publishes, causes to be written or published, knowingly distributes, prints, displays, or causes to be distributed, printed, published, or displayed, or knowingly possesses to publish, distribute, or display, written material—

(A) advocating or teaching opposition to all organized government; or

(B) advocating—

(i) the overthrow by unconstitutional means of the United States Government or of all forms of law;

(ii) the duty, necessity, or propriety of unlawfully assaulting or killing of a particular officer or officers generally of an organized government because of the official position of the officer or officers;

(iii) unlawfully damaging or destroying property;

(iv) sabotage;

(v) establishing a totalitarian communist dictatorship in a country through an internationally coordinated communist movement; or

(vi) establishing a totalitarian dictatorship in the United States; or

(4) is a member of or affiliated with—

(A) the Communist Party of the United States;

(B) another totalitarian party of the United States;

(C) the Communist Political Association;

(D) the Communist or another totalitarian party of a State, a foreign country, or a political or geographical subdivision of a foreign country;

(E) a section, subsidiary, branch, affiliate, or subdivision of an organization described by subclauses (A)–(D) of this clause (4);

(F) the direct predecessor or successor of an organization described by subclauses (A)–(D) of this clause (4), regardless of the name the organization uses or used;

(G) an organization advocating establishing a totalitarian communist dictatorship in a country through an internationally coordinated communist movement, or establishing a totalitarian dictatorship in the United States, through—

(i) the organization's statements; or

(ii) written material issued or published under the authority of or with the consent of the organization, or paid for by money provided by the organization;

(H) an organization advocating or teaching—

(i) opposition to all organized government;

(ii) the overthrow by unconstitutional means of the United States Government or of all forms of law;

(iii) the duty, necessity, or propriety of unlawfully assaulting or killing a particular officer or officers generally of an organized government because of the official position of the officer or officers;

(iv) unlawfully damaging or destroying property; or

(v) sabotage; or

(I) an organization writing, distributing, printing, publishing, displaying, causing to be written, distributed, printed, published, or displayed, or possessing to distribute, publish, issue, or display, written material described by clause (3) of this subsection.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to an individual who satisfies the Attorney General that the individual's membership or affiliation with an organization described by subsection (a)—

(1) is or was involuntary;

(2) ended before the individual's 16th birthday;

(3) is or was by operation of law; or

(4) was for the purpose of, and necessary for, obtaining employment, food rations, or other essentials of living.

§ 20332. Deserters and draft evaders

An individual convicted of desertion under section 885 of title 10 or of draft evasion under section 12(h) of the Military Selective Service Act (50 App. U.S.C. 462(h)) is ineligible to become a citizen of the United States.

§ 20333. Aliens exempted or discharged from the armed forces or the National Security Training Corps

(a) GENERAL.—Except as provided by subsection (b) of this section, an alien who applies for and is granted an exemption or discharge from serving

or training in the armed forces of the United States or the National Security Training Corps because of alienage is ineligible to become a citizen of the United States. Records of the Selective Service System and the Department of Defense are conclusive about whether the alien was granted an exemption or discharge because of alienage.

(b) EXEMPTION PROVIDED UNDER TREATY.—An alien exercising a right under a treaty to be exempted from serving or training in the armed forces of the United States is not ineligible under this section or any other law to become a citizen of the United States if, before exercising the right, the alien served in the armed forces of a foreign country of which the alien was a national.

CHAPTER 205—NATURALIZATION PROCEDURE

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§ 20501. Authority to naturalize

(a) AUTHORITY OF ATTORNEY GENERAL.—Only the Attorney General has authority to naturalize an individual as a citizen of the United States.

(b) ONLY PROCEDURE.—An individual may be naturalized as a citizen of the United States only as provided by this subtitle.

§ 20502. Declarations of intention

(a) GENERAL.—An individual at least 18 years of age who is residing in the United States as an alien lawfully admitted for permanent residence may make a declaration of intention to be naturalized as a citizen of the United States. However, a declaration is not required for naturalization, does not confer nationality or the right to nationality on an alien, and is not evidence of lawful admission for permanent residence.

(b) PROCEDURE.—(1) The alien must file with the Attorney General a declaration in duplicate, accompanied by an application for a declaration. The application must be approved by the Attorney General.

(2) The application must include 3 identical photographs of the alien. One photograph shall be attached to the declaration issued by the Attorney General and the others to the copies of the declaration retained by the Attorney General.

(c) REPLACEMENT DECLARATION.—The Attorney General shall issue a new declaration to an alien applying to replace a declaration that the Attorney General finds is lost, destroyed, or mutilated, and if mutilated, is surrendered to the Attorney General. A person coming into possession of a declaration that was lost shall surrender the declaration to the Attorney General.

§ 20503. Applications for naturalization

(a) GENERAL.—An application for naturalization must be filed—

(1) with the Attorney General, in the office of the Immigration and Naturalization Service for the district in which the individual resides; and

(2) in person, except when the Attorney General decides the individual has an illness or other disability sufficiently incapacitating to prevent the individual from filing in person.

(b) FORM AND CONTENTS.—The application for naturalization must—

(1) include a statement that the individual has been lawfully admitted for permanent residence;

(2) include a statement of facts the Attorney General believes may be material to the individual's naturalization and required to be proved under this subtitle;

(3) include 3 identical photographs of the individual signed by the individual;

(4) be sworn to by the individual; and

(5) be signed by the individual if physically able to write.

(c) EARLY FILING FOR INDIVIDUALS SUBJECT TO CONTINUOUS RESIDENCE REQUIREMENT.—An individual subject to a continuous residence requirement under chapter 203 of this title may file an application for naturalization not more than 3 months before the date the individual would first satisfy that requirement.

(d) TRANSFER TO ANOTHER DISTRICT.—If an individual applying for naturalization moves from the district of the Service in the United States in which the application is pending, the individual may request the Attorney General to transfer the application to another district. If the Attorney General transfers the application, the proceedings on the application shall continue as though the application had been filed originally in the district to which it is transferred.

(e) WITHDRAWAL AND LACK OF PROSECUTION.—An application for naturalization may be withdrawn only with the consent of the Attorney General. If the Attorney General does not consent to the withdrawal, the application shall be decided on its merits. If the applicant does not prosecute the application, the Attorney General may dismiss it for lack of prosecution.

If the Attorney General does not dismiss the application for lack of prosecution, it shall be decided on its merits.

§ 20504. Proof of lawful entry and effect of deportation proceedings

(a) PROOF OF LAWFUL ENTRY.—An applicant for naturalization has the burden of proving that the applicant entered the United States lawfully. To prove a lawful entry, the applicant is entitled to the production of—

(1) the applicant's immigrant visa or other entry document; and

(2) any other record in the custody of the Attorney General related to the applicant's entry that the Attorney General does not consider confidential.

(b) EFFECT OF DEPORTATION PROCEEDINGS.—(1) Except as provided by sections 20312 and 20313 of this title—

(A) an application for naturalization may not be considered if a deportation proceeding is pending under an arrest warrant; and

(B) an individual may not be naturalized as a citizen of the United States if a final finding of deportability is outstanding under an arrest warrant.

(2) The Attorney General's findings in ending deportation proceedings or suspending deportation are not binding in deciding whether an individual satisfies the eligibility requirements for naturalization.

§ 20505. Investigations

The Attorney General shall conduct a personal investigation of an applicant for naturalization in each vicinity in which the applicant has lived or worked during at least the 5-year period immediately before the application was filed. However, the Attorney General may waive the investigation in a particular case or class of cases.

§ 20506. Examinations

(a) GENERAL.—The Attorney General shall designate officers and employees of the Immigration and Naturalization Service to conduct examinations of applicants for naturalization. Examinations shall be uniform throughout the United States and be limited to inquiring about whether the applicant meets the eligibility requirements for naturalization. At the time of the examination, the officer or employee conducting the examination shall inform the applicant of the remedies available to the applicant under sections 20507(a) and (b) and 20508(a) of this title.

(b) DECISIONS.—The officer or employee conducting the examination shall decide whether the application for naturalization should be granted or denied and give the reasons.

(c) DECISIONS AND RECORDS TO ATTORNEY GENERAL.—The officer or employee conducting the examination shall submit the decision about the

application to the Attorney General and, if the Attorney General requests, the record of the examination.

§ 20507. Hearings before immigration officers

(a) GENERAL.—An individual whose application for naturalization is denied after an examination under section 20506 of this title may request a hearing before an immigration officer. Hearings under this subsection shall be held at regular intervals specified by the Attorney General.

(b) SUBPENAS.—(1) On the applicant's request at the time of requesting a hearing, the immigration officer shall subpena witnesses named by the applicant to appear at the hearing. If a witness cannot be produced at the hearing, other witnesses may be subpenaed after notice to the Attorney General, in the way and at the time prescribed by the Attorney General by regulation.

(2) A subpena issued under this subsection may be enforced as provided by section 303(b) of this title.

(3) A witness willfully disobeying a subpena to appear and testify at a hearing under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

(c) APPEARANCE OF ATTORNEY GENERAL.—At a hearing under this section, the Attorney General may call, examine, and cross-examine witnesses, including the applicant, produce other evidence, and argue for or against granting the application for naturalization.

(d) ADMISSIBILITY OF RECORDS OF EXAMINATION.—The record of the examination conducted under section 20506 of this title is admissible as evidence in a hearing conducted under this section.

§ 20508. Judicial review

(a) FAILURE TO MAKE TIMELY DECISIONS AFTER EXAMINATIONS.—If the officer or employee conducting an examination under section 20506 of this title does not make a decision on an application for naturalization within 120 days after the date of the examination, the applicant may request the district court of the United States for the district in which the applicant resides to hold a hearing on the matter. The court may—

(1) order the application granted or denied; or

(2) remand the matter, with appropriate instructions, to the officer or employee conducting the examination.

(b) DENIALS AFTER HEARINGS.—An individual whose application for naturalization is denied after a hearing under section 20507 of this title may obtain review of the denial in the United States district court for the district in which the individual resides. At the individual's request, the court shall hold a new hearing. Regardless of whether the court holds a new hearing, the court shall make its own findings of fact and conclusions of law.

§ 20509. Oath requirement

(a) OATH OF ALLEGIANCE.—To be naturalized as a citizen of the United States, an individual must take an oath, in substance—

(1) to support the Constitution;

(2) to support and defend the Constitution and laws of the United States against all enemies foreign and domestic;

(3) to bear true faith and allegiance to the Constitution and laws of the United States;

(4) to renounce all allegiance to any foreign prince, potentate, country, or sovereignty of which the individual was a citizen or subject; and

(5) to comply with a requirement of law—

(A) to bear arms for the United States;

(B) to perform noncombatant service in the armed forces of the United States when wearing the uniform of a branch of the armed forces and subject to military discipline and court martial; or

(C) to perform work of national importance under civilian direction.

(b) OMISSIONS FROM OATH BECAUSE OF RELIGIOUS BELIEF.—(1) In this subsection, ''religious belief'' means belief in a relation to a Supreme Being involving duties superior to those arising from a human relation, but does not include essentially political, sociological, or philosophical views or a personal moral code.

(2) If an individual satisfies the Attorney General by clear and convincing evidence that, because of religious belief, the individual opposes—

(A) bearing arms in the armed forces of the United States, the individual may omit from the oath the substance of subsection (a)(5)(A) of this section; or

(B) any kind of service in the armed forces of the United States, the individual may omit from the oath the substance of subsection (a)(5)(A) and (B) of this section.

(c) WAIVER FOR YOUNG CHILD.—If the Attorney General believes that a child is unable to understand the meaning of the oath, the Attorney General may waive the requirement that the child take the oath.

(d) OATH RENOUNCING HEREDITARY TITLES AND ORDERS.—In addition to taking the oath under subsection (a) of this section, an individual who has a hereditary title or belongs to an order of nobility must take an oath expressly renouncing the title or order. The oath under this subsection must be taken in the same public ceremony as the oath under subsection (a) and shall be recorded as a part of the proceeding.

§ 20510. Methods of oath administration

(a) PUBLIC CEREMONY.—To be naturalized as a citizen of the United States, an individual must take the oath required for naturalization in a public ceremony. However, the Attorney General may waive the public ceremony requirement if the Attorney General decides the individual has an illness or other disability sufficiently incapacitating to prevent the individual's personal appearance.

(b) RIGHT TO CHOOSE.—(1) The individual may choose to take the oath before the Attorney General or a court authorized by section 20511 of this title, except when—

(A) a court has exclusive authority under section 20511(c) of this title; or

(B) a court has referred the applicant to the Attorney General for an expedited oath administration under subsection (c)(3) of this section.

(2) The individual shall notify the Attorney General of the choice to take the oath before a court.

(c) EXPEDITED OATH ADMINISTRATION.—(1) On demonstrating sufficient cause, an individual may be granted an expedited oath administration by the Attorney General or a court.

(2) When a court is deciding whether to grant an expedited oath administration, the court shall consider—

(A) special circumstances such as serious illness of the applicant or a member of the applicant's immediate family, permanent disability sufficiently incapacitating to prevent the applicant's personal appearance at the scheduled ceremony, developmental disability, or advanced age; and

(B) exigent circumstances related to travel or employment.

(3) If an expedited oath administration by a court is impracticable, the court shall refer the individual to the Attorney General. The Attorney General then may provide for immediate administration of the oath.

(d) PUBLIC CEREMONIES CONDUCTED BY ATTORNEY GENERAL.—The Attorney General shall prescribe regulations to ensure that oath administration ceremonies conducted by the Attorney General are public, dignified, and conducted frequently and at regular intervals.

§ 20511. Court authority to administer oaths

(a) DEFINITION.—In this section, ''eligible court'' means—

(1) a district court of the United States in any State; and

(2) any other court of record in a State if the court has a seal, a clerk, and jurisdiction in actions at law, equity, or both, in which the amount in controversy is unlimited.

(b) GENERAL AUTHORITY.—(1) An eligible court may administer the oath required for naturalization to individuals residing within the jurisdiction of the court.

(2) Any district court of the United States may administer the oath to an individual described by section 20310 of this title without regard to the residence of the individual.

(c) EXCLUSIVE AUTHORITY.—(1) Subject to paragraphs (2) and (4) of this subsection, an eligible court that wishes to have exclusive authority to administer the oath to individuals residing within the jurisdiction of the court has that authority on notifying the Attorney General.

(2) The exclusive authority of a court to administer the oath applies to an individual—

(A) only during the 45-day period beginning on the date the Attorney General certifies to the court that the individual is eligible to be naturalized; and

(B) only if, before the date of that certification, the court has notified the Attorney General of the dates during that 45-day period when oath administration ceremonies by the court are scheduled.

(3) Subject to paragraph (4) of this subsection, the Attorney General may not administer the oath to an individual during the period of a court's exclusive authority under paragraph (2) of this subsection.

(4) A court may waive the exclusive authority to administer the oath to an individual if the Attorney General has not provided the court the certificate of eligibility for that individual within a reasonable time before the day scheduled by the court for the oath administration ceremony. When notified of a court's waiver, the Attorney General promptly shall notify the applicant.

(d) NAME CHANGES.—On petition of an individual applying for naturalization, the court may order a change in the name of the individual as part of the administration of the oath by the court. The certificate of naturalization shall be issued with the new name.

§ 20512. Duties of Attorney General when court is to administer oath

(a) GENERAL.—When a court is to administer the oath to an individual applying for naturalization, the Attorney General shall—

(1) provide the court with information necessary to administer the oath to the individual, and if the court has exclusive authority under section 20511(c) of this title, provide the information not later than 10 days after approving the application for naturalization; and

(2) promptly provide the court a certificate of naturalization prepared by the Attorney General for the individual.

(b) NOTICE TO APPLICANTS OF COURT'S EXCLUSIVE AUTHORITY.—(1) If a court has exclusive authority to administer the oath, the Attorney General shall inform the applicant, at the time of approval of the application for naturalization, of—

(A) the court's exclusive authority to administer the oath during the period specified in section 20511(c)(2)(A) of this title; and

(B) the dates when oath administration ceremonies by the court are scheduled.

(2) If more than one court in an area has exclusive authority to administer the oath, the Attorney General shall allow the applicant, at the time of approval, to choose the court to administer the oath.

§ 20513. Forms and records

(a) FORMS.—The Attorney General shall prescribe and provide forms to carry out this chapter and sections 20901 and 20902 of this title. Only those forms are lawful. Certificates of naturalization and certificates of citizenship shall be printed on safety paper and numbered consecutively in separate series.

(b) RECORDS OF THE ATTORNEY GENERAL.—The Attorney General shall maintain as a permanent record all declarations of intention and applications for naturalization, in chronological order, consecutively numbered, and indexed.

(c) DUTIES OF CLERKS OF COURTS.—The clerk of a court administering oaths to applicants for naturalization shall—

(1) take responsibility for all blank certificates of naturalization received from the Attorney General;

(2) return to the Attorney General any certificate of naturalization that is unusable because damaged;

(3) account to the Attorney General for blank certificates of naturalization when required by the Attorney General;

(4) give a certificate of naturalization prepared by the Attorney General under section 20512 of this title to each individual administered the oath by the court;

(5) provide the Attorney General with a list of individuals taking the oath at each scheduled ceremony not later than 30 days after the end of the month in which the oath was administered; and

(6) provide the Attorney General with a certified copy of other proceedings in, and orders by, the court related to the naturalization of individuals, when required by the Attorney General.

(d) COPIES OF OATHS OF INDIVIDUALS WHO LOST CITIZENSHIP BY ENTERING ARMED FORCES OF FOREIGN COUNTRIES.—When an individual de-

scribed by section 20315 of this title is naturalized, a certified copy of the oath taken by the individual shall be provided by—

(1) the Attorney General to the Secretary of State if the oath was administered by the Attorney General; and

(2) the clerk of the court to the Attorney General and the Secretary of State if the oath was administered by a court.

§ 20514. Fees

(a) GENERAL.—The Attorney General shall charge, collect, and account for fees prescribed by the Attorney General under section 9701 of title 31 for—

(1) filing a declaration of intention and issuing a duplicate declaration; and

(2) filing an application for naturalization, holding a hearing on the application, and issuing a certificate of naturalization.

(b) SUBPENA AND WITNESS FEES.—When filing an application for naturalization, an individual requesting the issuance of a subpena under section 20507(b) of this title shall deposit with the Attorney General an amount sufficient to cover the cost of subpenaing each witness and paying the witness the usual witness fee. On final discharge of the witness and demand for payment, the Attorney General shall pay the witness the usual witness fee from the amount deposited. The Attorney General shall return any remaining amount to the individual.

(c) EXEMPTION FOR INDIVIDUALS SERVING IN ARMED FORCES DURING WAR OR MILITARY OPERATIONS.—(1) Except as provided by paragraph (2) of this subsection, an individual serving in the armed forces of the United States may not be charged a fee for filing an application for naturalization or for issuance of a certificate of naturalization when the United States is at war or engaged in military operations involving armed conflict with a hostile foreign force as designated by the President by executive order.

(2) If a State law requires a fee to be charged, the clerk of a State court may charge that part of the fee required to be paid to the State.

(3) The clerk of a court shall report all transactions made under this subsection to the Attorney General not later than 30 days after the end of the month in which the transaction was made.

(d) EXEMPTION FROM REPLACEMENT FEES FOR INDIVIDUALS WHO SERVED IN ARMED FORCES.—An individual may not be charged a fee for filing an application to replace a declaration of intention or a certificate of naturalization that is lost, destroyed, or mutilated if the individual served in the armed forces of the United States after September 16, 1940, and was not—

(1) discharged other than honorably;

(2) discharged because of alienage; or

(3) a conscientious objector who performed no military duty or refused to wear the uniform.

(e) DISPOSITION OF FEES.—(1) Except as otherwise provided by this subsection, the Attorney General shall deposit all fees collected by the Attorney General under this subtitle in the ''Immigration Examinations Fee Account'' established under section 317 of this title.

(2) Fees collected by the Attorney General under this subtitle from residents of the Virgin Islands or Guam shall be paid to the treasury of the Virgin Islands or Guam, respectively.

(3) A percentage of the fees described by subsection (a)(1) of this section collected by the Attorney General shall be paid to courts administering oaths under this chapter. In consultation with the courts, the Attorney General shall determine the percentage each year based on—

(A) the costs incurred by the courts for essential services directly related to the naturalization process; divided by

(B) the total of those costs incurred by the courts and the Immigration and Naturalization Service.

(f) REPORTS AND CONSULTATIONS.—The Attorney General shall—

(1) provide an annual report to the Committees on the Judiciary of the Senate and House of Representatives on the use of the fees described by subsection (e)(3) of this section; and

(2) consult with those committees before increasing those fees.

CHAPTER 207—LOSS OF NATIONALITY

SUBCHAPTER I—BY VOLUNTARY ACTS

Sec.
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SUBCHAPTER I—BY VOLUNTARY ACTS

§ 20701. Acts resulting in loss of nationality

Except as provided by section 20702 of this title, a national of the United States loses nationality of the United States under this subchapter only by voluntarily performing any of the following acts with the intention of relinquishing nationality of the United States:

(1) becoming a national of a foreign country, after becoming 18 years of age—

(A) on application of the national; or

(B) on application for the national filed by an agent of the national.

(2) taking an oath or making a declaration of allegiance to a foreign country or a political subdivision of a foreign country after becoming 18 years of age.

(3) entering or serving in the armed forces of a foreign country if—

(A) the armed forces are engaged in hostilities against the United States; or

(B) the individual serves as a commissioned or noncommissioned officer.

(4) accepting, serving in, or carrying out the duties and powers of an office, a post, or employment under the government of a foreign country or a political subdivision of a foreign country, after becoming 18 years of age, if—

(A) the individual is or becomes a national of the foreign country; or

(B) the office, post, or employment requires an oath or declaration of allegiance.

(5) making a formal renunciation of nationality in a foreign country before a diplomatic or consular officer in the way the Secretary of State prescribes.

(6) making a formal written renunciation of nationality in the United States in the way the Attorney General prescribes before an officer or employee the Attorney General designates when the United States is in a state of war and the Attorney General approves the renunciation as not against the defense interests of the United States.

(7) committing any of the following offenses for which the individual is convicted by a court or court martial:

(A) treason against the United States Government.

(B) attempting by force to overthrow the Government.

(C) bearing arms against the Government.

(D) violating or conspiring to violate section 2383 of title 18.

(E) violating section 2384 of title 18 by conspiring to overthrow, put down, or destroy by force the Government or to carry on war against the Government.

(F) willfully violating section 2385 of title 18.

§ 20702. Acts not resulting in loss of nationality

(a) WHEN NATIONAL IN THE UNITED STATES OR AMERICAN SAMOA.—A national of the United States does not lose nationality under section 20701(1)–(4) of this title when the national is in the United States or American Samoa. However, an act specified in section 20701(1)–(4) and carried out in the United States or American Samoa results in the loss of nationality when the national establishes a residence outside the United States and American Samoa.

(b) WHEN ENTERING OR SERVING IN ARMED FORCES OF A FOREIGN COUNTRY OR RENOUNCING NATIONALITY AS A MINOR.—A national of the United States does not lose nationality under section 20701(3) or (5) of this title when less than 18 years of age if the national claims the nationality within 6 months after becoming 18 years of age. The claim shall be made in the way the Secretary of State prescribes by regulation.

(c) WHEN MARRYING A MALE ALIEN.—Notwithstanding a treaty ratified by the Senate before December 25, 1952, a woman who was—

(1) a national of the United States did not lose nationality only because of marriage after—

(A) September 21, 1922, to an alien; or

(B) March 2, 1931, to an alien who was ineligible to become a citizen of the United States because of race; or

(2) a citizen of the United States at birth did not lose nationality because of residence outside the United States after a marriage referred to in clause (1) of this subsection.

§ 20703. Presumption that act is done voluntarily

An individual carrying out an act resulting in the loss of nationality under this subchapter or another law is presumed to have carried out the act voluntarily. The presumption may be rebutted on a showing by a preponderance of the evidence that the act was not carried out voluntarily.

SUBCHAPTER II—REVOCATION OF NATURALIZATION

§ 20711. Application

This subchapter applies to any naturalization and certificate of naturalization issued under this title or another law.

§ 20712. Grounds

(a) GENERAL.—A court in which a civil action is brought under section 20713 of this title shall revoke the order of naturalization of an individual as a citizen of the United States and cancel the individual's certificate of naturalization if the court decides—

(1) the order and certificate were obtained unlawfully, by concealment of a material fact, or by willful misrepresentation; or

(2) for an individual naturalized under section 20313 of this title, the individual was discharged from the armed forces of the United States other than honorably.

(b) REFUSAL TO TESTIFY BEFORE CONGRESSIONAL COMMITTEE.—The refusal of an individual within 10 years after naturalization of the individual to testify as a witness before a congressional committee about subversive activities of the individual is concealment of a material fact or willful misrepresentation under subsection (a)(1) of this section if the individual is convicted of contempt for the refusal.

(c) MEMBERSHIP IN, OR AFFILIATION WITH, CERTAIN ORGANIZATIONS.—If an individual naturalized after December 24, 1952, became a member of or affiliated with an organization within 5 years after naturalization and the membership or affiliation at the time of naturalization would have prevented the individual from being naturalized under section 20331 of this title, the membership or affiliation is prima facie evidence that the individual was not attached to the principles of the Constitution and was not well disposed to the good order and happiness of the United States at the time of naturalization. If there is no contrary evidence, a court may act under subsection (a)(1) of this section because the naturalization was obtained by concealment of a material fact or by willful misrepresentation.

(d) PERMANENT RESIDENCE IN FOREIGN COUNTRY.—If an individual is naturalized and then establishes permanent residence in a foreign country within one year after naturalization, the permanent residence is prima facie evidence that the individual did not intend to reside permanently in the United States at the time the individual filed the application for naturalization. If there is no contrary evidence, a court may act under subsection (a)(1) of this section because the naturalization was obtained by concealment of a material fact or by willful misrepresentation.

(e) CHANGE OF STATUS.—An individual is deemed to have obtained naturalization by concealment of a material fact or by willful misrepresentation if—

(1) the individual was naturalized as a citizen of the United States based on a record of lawful admission for permanent residence made as a result of a change of the individual's status;

(2) the individual was not eligible for the change of status; and

(3) the Attorney General rescinds the change of status under section 9107(a) of this title.

(f) PROOF OF CERTAIN GROUNDS FOR REVOCATION.—(1) Discharge from the armed forces of the United States other than honorably shall be proved by a certification from the head of the executive agency under which the individual served.

(2) A diplomatic or consular officer in a foreign country shall give the Attorney General, through the Secretary of State, a list of individuals within the jurisdiction of the officer who establish permanent residence in a foreign country within one year after being naturalized as a citizen. A certified list is admissible in a civil action brought under section 20713 of this title.

(g) COURTS TO REVOKE NATURALIZATION ORDERS WHEN NATURALIZATION CONVICTIONS INVOLVED.—A court having jurisdiction to try a violation of section 1425 of title 18 has jurisdiction to revoke orders of naturalization and cancel certificates of naturalization. A court in which an individual is convicted of knowingly obtaining naturalization in violation of section 1425 shall revoke the order of naturalization of the individual as a citizen and cancel the certificate of naturalization of the individual.

§ 20713. Procedure

(a) BRINGING CIVIL ACTIONS TO REVOKE.—If grounds exist under section 20712 of this title, the Attorney General shall bring a civil action to revoke the order of naturalization of an individual as a citizen of the United States and to cancel the certificate of naturalization. When bringing the action, the Attorney General shall file an affidavit showing good cause.

(b) VENUE.—An action under this section shall be brought in a district court of the United States for the judicial district in which the individual resides. If the individual does not reside in a judicial district in the United States, the action may be brought in the United States District Court for the District of Columbia or the district in which the individual last resided.

(c) NOTICE AND ANSWER.—The individual shall be given personal notice and, unless waived, 60 days to answer in an action brought under this section. If the individual is absent from the United States or the judicial district in which the individual last resided, notice shall be given by personal service or by publication in the way provided for service by publication or on absentees by the law of the State or place in which the action is brought.

(d) EFFECTIVE DATE OF REVOCATION AND CANCELLATION.—Revocation and cancellation under this subchapter are effective from the date of the naturalization order and certificate of naturalization.

§ 20714. Effect on automatic naturalization

An individual claiming citizenship of the United States through the naturalization of a parent or spouse loses that citizenship when the order of naturalization of the parent or spouse as a citizen is revoked and the certificate of naturalization is canceled under—

(1) section 20712(a)(1) of this title because the order and certificate were obtained by concealment of a material fact or by willful misrepresentation;

(2) section 20712(a)(2) of this title on a ground other than that the order and certificate were obtained by concealment of a material fact or by willful misrepresentation, if the individual does not reside in the United States when the order is revoked and the certificate is canceled; or

(3) section 20712(c) or (d) of this title, if the individual does not reside in the United States when the order is revoked and the certificate is canceled.

§ 20715. Cancellation of certificate of naturalization

(a) DUTIES OF COURT.—A court revoking an order of naturalization as a citizen of the United States or canceling a certificate of naturalization, or both, under this subchapter shall prepare an order canceling the certificate and send a certified copy to the Attorney General.

(b) SURRENDER OF CANCELED CERTIFICATE.—On notice by the court canceling a certificate of naturalization or by the Attorney General, an individual holding a canceled certificate of naturalization shall surrender it to the Attorney General.

§ 20716. Authority not affected

This subchapter does not affect the authority of the Attorney General to reopen, change, or vacate an order of naturalization of an individual as a citizen of the United States.

SUBCHAPTER III—MISCELLANEOUS

§ 20731. Burden of proof

A person claiming that an individual has lost nationality of the United States under this chapter or another law has the burden of proving, by a preponderance of the evidence, that the loss occurred.

CHAPTER 209—NATIONALITY DOCUMENTS

Sec.
20901. Certificates of naturalization.
20902. Certificates of citizenship.
20903. Certificates of nationality.
20904. Other documents to prove citizenship.
20905. Cancellation of nationality records.
20906. Certificates of loss of nationality.
20907. Certifications of records.

§ 20901. Certificates of naturalization

(a) ISSUANCE AND CONTENT.—The Attorney General shall issue a certificate of naturalization to an individual when the individual is naturalized as a citizen of the United States. The certificate shall contain—

(1) the number of the individual's application for naturalization;

(2) the number of the certificate;

(3) the individual's name (as changed if a change of name is granted by a court as part of the administration of the oath required for naturalization);

(4) the individual's signature;

(5) the individual's place of residence;

(6) a signed photograph of the individual;

(7) a personal description of the individual, including age, sex, and marital status;

(8) the individual's prior nationality;

(9) a statement that the Attorney General, having decided that the individual has satisfied the applicable provisions of this title, ordered the individual naturalized as a citizen;

(10) the date of the naturalization; and

(11) the location of the district office of the Immigration and Naturalization Service in which the application was filed;

(12) the title, authority, and location of the official or court administering the oath required for naturalization; and

(13) the attestation of an immigration officer and the seal of the Department of Justice.

(b) REPLACEMENT CERTIFICATES.—(1) On application to the Attorney General, the Attorney General shall issue to a naturalized citizen—

(A) a new certificate of naturalization to replace a certificate that the Attorney General finds is lost, destroyed, or mutilated, and if mutilated, is surrendered to the Attorney General; or

(B) a new certificate of naturalization with the citizen's new name when the Attorney General finds that the citizen's name has been changed by marriage or order of a court of competent jurisdiction after naturalization.

(2) The Attorney General shall notify the court that naturalized the citizen of the issuance of a new certificate under paragraph (1)(B) of this subsection.

(c) SPECIAL CERTIFICATES TO OBTAIN RECOGNITION BY FOREIGN COUNTRIES.—On application by a naturalized citizen to the Attorney General, the Attorney General shall issue for the citizen a special certificate of naturalization to be used only to obtain recognition as a citizen of the United States by the government of a foreign country. The certificate shall be submitted to the Secretary of State for submission to the proper authority of the government of the foreign country.

(d) PHOTOGRAPHS.—An application to the Attorney General for a certificate of naturalization or a special certificate of naturalization shall include 3 identical photographs of the individual applying. One photograph shall be attached to the certificate and the others to the copies of the certificate retained by the Attorney General.

(e) SURRENDER OF FOUND CERTIFICATES.—A person coming into possession of a certificate of naturalization that was lost shall surrender the certificate to the Attorney General.

§ 20902. Certificates of citizenship

(a) APPLICATIONS.—An individual may apply to the Attorney General for a certificate of citizenship if the individual claims to be a citizen of the United States because of—

(1) the naturalization of a parent of the individual;

(2) the naturalization or citizenship of the individual's husband;

(3) section 1993 of the Revised Statutes;

(4) the Act of May 7, 1934 (ch. 221, 48 Stat. 667);

(5) the Act of August 4, 1937 (ch. 563, 50 Stat. 558);

(6) section 201(c)–(e), (g), or (i), 203, or 205 of the Nationality Act of 1940; or

(7) section 20102(a), 20104(a), or 20106 of this title.

(b) PHOTOGRAPHS.—An application under subsection (a) of this section shall include 3 identical photographs of the individual applying. One photograph shall be attached to the certificate and the others to the copies of the certificate retained by the Attorney General.

(c) ISSUANCE.—The Attorney General shall issue a certificate of citizenship to an individual if—

(1) the Attorney General is satisfied that the individual is a citizen as claimed under subsection (a) of this section;

(2) the individual takes, and signs, in front of an immigration officer the oath required for naturalization; and

(3) the individual is in the United States when the oath is taken and the certificate is issued.

(d) REPLACEMENT CERTIFICATES.—The Attorney General shall issue a new certificate of citizenship to a citizen applying to replace a certificate that the Attorney General finds is lost, destroyed, or mutilated, and if mutilated, is surrendered to the Attorney General. A person coming into possession of a certificate that was lost shall surrender the certificate to the Attorney General.

§ 20903. Certificates of nationality

(a) CERTIFICATES FOR USE IN FOREIGN COUNTRY PROCEEDINGS.—Under regulations the Secretary of State prescribes, the Secretary may issue a certificate of nationality for an individual if the Secretary is satisfied that the individual is a national of the United States at birth and that the certificate is needed for an administrative or judicial proceeding of a foreign country. The certificate is only for use in the proceeding for which it is is-

sued. The Secretary shall submit the certificate to the appropriate foreign administrative or judicial officer.

(b) CERTIFICATES ISSUED TO INDIVIDUALS.—An individual claiming to be a national, but not a citizen, of the United States may apply to the Secretary of State for a certificate of non-citizen national status. The Secretary shall issue the certificate if—

(1) the Secretary is satisfied that the individual is a national, but not a citizen, of the United States;

(2) for an individual born outside the United States or American Samoa, the individual takes, and signs, in front of an immigration officer in the United States or American Samoa, the oath required for naturalization; and

(3) the individual is in the United States or American Samoa when the certificate is issued.

§ 20904. Other documents to prove citizenship

The following documents have the same effect that a certificate of naturalization or a certificate of citizenship has to prove that an individual is a citizen of the United States:

(1) a passport granted by the Secretary of State to a citizen of the United States during its period of validity if the period is the maximum allowed by law.

(2) a ''Report of Birth Abroad of a Citizen of the United States'' issued by a consular officer to document a citizen born outside the United States.

§ 20905. Cancellation of nationality records

(a) AUTHORITY TO CANCEL.—The Attorney General may cancel a nationality record the Attorney General has issued if satisfied that the record was obtained fraudulently or unlawfully.

(b) NOTICE OF INTENTION TO CANCEL.—The Attorney General shall send written notice of an intention to cancel a record and the reason for the cancellation to the individual named in the record at the individual's last known address. The Attorney General shall give the individual at least 60 days to show cause why the record should not be canceled.

(c) EFFECT OF CANCELLATION.—Cancellation of a record showing the citizenship status of an individual under this section affects only the record and not the citizenship status of the individual.

§ 20906. Certificates of loss of nationality

When a diplomatic or consular officer believes that an individual in a foreign country has lost the nationality of the United States under section 20701 of this title or chapter IV of the Nationality Act of 1940, the officer shall certify in writing to the Secretary of State, under regulations the Sec-

retary prescribes, the facts on which the officer's belief is based. If the Secretary approves the certificate, the Secretary shall provide a copy to the Attorney General and direct the officer to provide a copy to the individual.

§ 20907. Certifications of records

The Attorney General may make a certification of any part of a naturalization record of a court, a certificate of naturalization, or a certificate of citizenship, for use in complying with a law or in a judicial proceeding. The clerk of a court may make such a certification only on order of the court.

CHAPTER 211—MISCELLANEOUS

Sec.
21101. Procedure if denied a right or privilege as a national.
21102. Information about citizenship.

§ 21101. Procedure if denied a right or privilege as a national

(a) INDIVIDUALS IN THE UNITED STATES.—(1) Except as provided by paragraph (4) of this subsection, an individual in the United States may bring a civil action under section 2201 of title 28 against the head of an agency for a judgment declaring that the individual is a national of the United States if—

(A) the individual claims a right or privilege as a national of the United States; and

(B) the head of the agency denies the claim because the individual is not a national of the United States.

(2) The action must be brought—

(A) in the district court of the United States for the judicial district in which the individual resides or claims to reside; and

(B) within 5 years after the final administrative denial of the right or privilege.

(3) A court referred to in paragraph (2) of this subsection has jurisdiction over the head of the agency in that action.

(4) An individual may not bring an action under this subsection if the issue of the individual's nationality arose because of a deportation or exclusion proceeding.

(b) INDIVIDUALS NOT IN THE UNITED STATES.—(1) An individual not in the United States may apply to a consular officer or diplomatic officer of the United States in the country in which the individual resides for a certificate of identity to travel to the United States and apply for admission if—

(A) the individual claims a right or privilege as a national of the United States;

(B) the head of an agency denies the claim because the individual is not a national of the United States; and

(C) the individual had been in the United States before applying for the certificate, or the individual is less than 16 years of age and was born outside the United States to a parent who is a citizen of the United States.

(2) The diplomatic or consular officer shall grant the certificate if satisfied that the application is made in good faith and has a substantial basis. If the officer denies the application, the individual may appeal to the Secretary of State. If the Secretary approves the denial, the Secretary shall state the reasons in writing.

(3) The individual may use the certificate to travel to a port of entry and apply for admission to the United States. The individual is subject to the provisions of this title applicable to proceedings for aliens seeking admission to the United States.

(4) The Secretary shall prescribe regulations for granting certificates under this subsection.

(c) APPLICATION OF LAWS ON ADMISSION OF ALIENS.—An individual described by this section who is finally excluded from admission to the United States is subject to all the provisions of this title applicable to aliens seeking admission to the United States.

§ 21102. Information about citizenship

(a) PROMOTING UNITED STATES CITIZENSHIP.—To promote the opportunities and responsibilities of citizenship of the United States, the Attorney General shall distribute broadly information about the benefits individuals may receive under this subtitle and the requirements to obtain those benefits. In carrying out this subsection, the Attorney General shall seek the assistance of appropriate community groups, private voluntary agencies, and other relevant organizations.

(b) INSTRUCTION IN CITIZENSHIP RESPONSIBILITIES.—The Attorney General may promote instruction and training in citizenship responsibilities of applicants for naturalization, including—

(1) giving names of applicants for naturalization to public schools;

(2) preparing citizenship textbooks and distributing the textbooks without charge to applicants receiving instruction in citizenship responsibilities under the supervision of public schools;

(3) preparing and distributing a monthly immigration and naturalization bulletin; and

(4) seeking the cooperation of official State and national organizations, including organizations concerned with vocational education.

(c) REIMBURSEMENT.—Based on a statement by the Attorney General that the citizenship textbooks have been prepared and distributed as provided by subsection (b)(2) of this section, naturalization fees deposited in the Treasury by the Attorney General may be used to reimburse the appropriation of the Department of Justice for the cost of preparing and distributing the textbooks.

SEC. 2. CONFORMING PROVISIONS.

(a) TITLE 10.—Section 885 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(d) Any person found guilty of desertion in time of war may not—

''(1) hold an office of trust or profit under the United States; or

''(2) exercise the rights of a citizen of the United States.''.

(b) MILITARY SELECTIVE SERVICE ACT.—Section 12 of the Military Selective Service Act (50 App. U.S.C. 462) is amended by adding at the end the following new subsection:

''(h) On conviction by a court of competent jurisdiction, a person registered under this Act who leaves the district in which registered, or a person (whether or not registered under this Act) who leaves the United States, with the intent to evade a lawfully ordered draft while the United States is at war, may not—

''(1) hold an office of trust or profit under the United States; or

''(2) exercise the rights of a citizen of the United States.''.

(c) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—In the table of contents of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.), strike the analysis for part D of title IV.

(d) ACT OF AUGUST 1, 1956.—Section 6(a) of the Act of August 1, 1956 (50 U.S.C. 855(a)), is amended by—

(1) striking the subsection designation ''(a)''; and

(2) striking ''make'' and substituting ''makes''.

SEC. 3. CONFORMING CROSS-REFERENCES.

(a) TITLE 5.—Section 5549(2) of title 5, United States Code, is amended by striking ''sections 1353a and 1353b'' and substituting ''section 308''.

(b) TITLE 10.—Title 10, United States Code, is amended as follows:

(1) In section 374(b)(4)(A)(ii), strike ''Any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328)'' and substitute ''Sections 10147–10151 of title 8''.

(2) In sections 510(b)(1) and 591(b)(1), strike ''the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)'' and substitute ''title 8''.

(3) In section 2864(a), strike ''section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))'' and substitute ''section 2314 or 2315 of title 8''.

(4) In sections 3253 and 8253, strike ''the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)'' and substitute ''title 8''.

(c) TITLE 18.—Title 18, United States Code, is amended as follows:

(1) In sections 831(c)(2) and 1091(d)(2), strike ''section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)'' and substitute ''section 129 of title 8''.

(2) In section 1203(c), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 129 of title 8''.

(3) In section 1546(b), strike ''section 274A(b) of the Immigration and Nationality Act'' and substitute ''section 11103 of title 8''.

(4) In section 2331(2), strike ''section 101(a)(22) of the Immigration and Nationality Act'' and substitute ''section 129 of title 8''.

(5) In section 3077(2)—

(A) in clause (A), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 129 of title 8''; and

(B) in clause (B), strike ''section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))'' and substitute ''section 126 of title 8''.

(6) In section 3142(d)(1)(B), strike ''section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))'' and substitute ''section 126 of title 8''.

(7) In section 4113—

(A) in subsection (a), strike ''section 1252(b) or section 1254(e) of title 8, United States Code,'' and substitute ''section 6539(a) or (b) of title 8'';

(B) in subsection (b), strike ''section 1252 of title 8, United States Code,'' and substitute ''subchapter II of chapter 65 of title 8 and''; and

(C) in subsection (c), strike ''section 1226 of title 8, United States Code,'' and substitute ''subchapter II of chapter 63 of title 8 and''.

(d) INTERNAL REVENUE CODE OF 1986.—The Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) is amended as follows:

(1) In section 871(c), strike ''subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), or (M))'' and substitute ''section 2310, 2311, or 2312 of title 8, United States Code''.

(2) In sections 872(b)(3), strike ''subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended'' and substitute ''section 2310 or 2312 of title 8, United States Code''.

(3) In sections 877(d), 2107(d), and 2501(a)(3)(A), strike '', as amended (8 U.S.C. 1401(b), 1482, or 1487)'' and substitute ''as those sections were in effect on October 9, 1978''.

(4) In section 1441(b), strike ''subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act'' and substitute ''section 2310, 2311, or 2312 of title 8, United States Code,''.

(5) In section 3121(b)—

(A) in clause (18), strike ''section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))'' and substitute ''section 2314 or 2315 of title 8, United States Code''; and

(B) in clause (19), strike ''subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act, as amended'' and ''in subparagraph (F), (J), or (M)'' and substitute ''section 2310, 2311, or 2312 of title 8, United States Code'' and ''in section 2310, 2311, or 2312'', respectively.

(6) In section 3231(e)(1), strike ''subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act, as amended'' and ''in subparagraph (F), (J), or (M)'' and substitute ''section 2310, 2311, or 2312 of title 8, United States Code'' and ''in section 2310, 2311, or 2312'', respectively.

(7) In section 3304(a)(14)(A), strike ''section 212(d)(5) of the Immigration and Nationality Act'' and substitute ''section 6123 of title 8, United States Code''.

(8) In section 3306(c)—

(A) in clause (1)(B), strike ''sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act'' and substitute ''section 2314 of title 8, United States Code''; and

(B) in clause (19), strike ''subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C 1101(a)(15)(F), (J), or (M))'' and ''in subparagraph (F), (J), or (M)'' and substitute ''section 2310, 2311, or 2312 of title 8, United States Code'' and ''in section 2310, 2311, or 2312'', respectively.

(9) In section 6103(m)(4)(A)(ii)(II), strike ''section 3(a)(1) of the Migration and Refugee Assistance Act of 1962'' and substitute ''section 13307(a)(1) of title 8, United States Code,''.

(10) In section 7701(b)(5)—

(A) in paragraph (C)(i), strike ''subparagraph (J) of section 101(15) of the Immigration and Nationality Act'' and substitute ''section 2312 of title 8, United States Code'';

(B) in paragraph (D)(i)(I), strike ''subparagraph (F) or (M) of section 101(a)(15) of the Immigration and Nationality Act'' and substitute ''section 2310 or 2311 of title 8, United States Code''; and

(C) in paragraph (D)(i)(II), strike ''subparagraph (J) of such section 101(15)'' and substitute ''section 2312 of title 8, United States Code''.

(e) TITLE 28.—Title 28, United States Code, is amended as follows:

(1) In section 751(e), strike ''naturalization fees listed in section 742 of Title 8 and''.

(2) In section 1821(e), strike ''section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5))'' and ''section 242(b) of such Act (8 U.S.C. 1252(b))'' and substitute ''section 6123 of title 8'' and ''section 6532 of title 8'', respectively.

(f) TITLE 46.—Title 46, United States Code, is amended as follows:

(1) In section 2101(3a), strike ''section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))'' and substitute ''section 129 of title 8''.

(2) In section 8103(i)(1)(C), strike ''the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)'' and substitute ''title 8''.

(3) In section 8704, strike ''section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a)'' and substitute ''chapter 111 of title 8''.

SEC. 4. LEGISLATIVE PURPOSE AND CONSTRUCTION.

(a) NO SUBSTANTIVE CHANGE.—Sections 1 and 2 of this Act restate, without substantive change, laws enacted before February 1, 1994, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after January 31, 1994, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

(b) REFERENCES.—A reference to a law replaced by section 1 or 2 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) CONTINUING EFFECT.—An order, rule, or regulation in effect under a law replaced by section 1 or 2 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) ACTIONS AND OFFENSES UNDER PRIOR LAW.—An action taken or an offense committed under a law replaced by section 1 or 2 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) INFERENCES.—An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of a caption or catch line of the provision.

(f) SEVERABILITY.—If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

SEC. 5. REPEALS.

(a) INFERENCES OF REPEAL.—The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

(b) REPEALER SCHEDULE.—The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
1875 Feb. 18	80	1(14th par. on p. 318)	18	318	8	359
1879 Mar. 3	182	2	20	402	8	63
1887 Feb. 8	119	6(2d sentence less provisos)	24	390	.....	.....
Mar. 3	340	1(related to the District of Columbia), 2(related to the District of Columbia), 4(related to the District of Columbia).	24	476	8	79–81
1888 Feb. 1	4	1(last par. under heading ''Pay Department'').	25	9	8	63
1891 Mar. 3	551	.....	26	1084	8	1552
1893 Mar. 3	206	.....	27	569	.....	.....
1894 Aug. 18	301	1(last par. on p. 390)	28	390	8	174
1895 Mar. 2	177	1(last par. beginning on p. 780)	28	780	8	103, 1552, 1554
1898 July 1	546	1(2d par. under heading ''Back Pay and Bounty'').	30	640	.....	.....
1900 Apr. 30	339	4	31	141	8	4

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1901						
Mar. 3	853	1(next-to-last par. before heading ''Quarantine Service'').	31	1155	8	112
	868		31	1447		
1902						
June 14	1088		32	386	22	211, 212
July 1	1351	(3d complete par. on p. 556)	32	556	8	64
1903						
Feb. 14	552	4(related to immigration), 7(related to immigration).	32	826, 828	8	131, 261, 1551
1904						
Apr. 28	1762	1(par. under heading ''Enforcement of the Chinese-Exclusion Act'').	33	478	8	298
	P.R. 33		33	591	8	1552
1906						
May 8	2348	''Sec. 6(2d sentence less provisos)''	34	182		
June 29	3592		34	596		
	3624		34	630	8	407
1910						
May 27	258	9	36	448	8	385
June 25	395	6(1st par.)	36	826	8	1557
	401		36	829	8	402
1913						
Mar. 4	141	3(related to Commissioner of Naturalization and ''known as the Commissioner General of Immigration, the Commissioners of Immigration, the Bureau of Immigration and Naturalization, the Division of Information, the Division of Naturalization, and the Immigration Service at Large'' in 1st–3d sentences).	37	737	8	1551, 1552
1915						
Mar. 4	147	1(par. under heading ''Immigration Service'').	38	1151	8	112
1917						
Mar. 2	145	5, 5a(provisos)	39	953	8	5, 5a
Mar. 3	163	1(pars. under headings ''Bureau of Immigration'' and ''Bureau of Naturalization'').	39	1118	8	1552
June 12	27	1(1st proviso on p. 171)	40	171	8	402
June 15	30	1 of title IX	40	227	22	213
1918						
May 9	69		40	542	8	359, 406, 416
1919						
Aug. 15	50		41	280	8	114
1920						
June 4	223	1–5	41	750	22	214, 215, 216
June 5	235	1(2d complete par. on p. 936)	41	936	8	107
	243		41	981	8	136
	251		41	1008	8	137
1921						
Mar. 3	120	3(1st sentence 1st–29th words)	41	1250		
Mar. 4	161	1(2d par. under heading ''Immigration Service'').	41	1424	8	1353c
1922						
Mar. 28	117	(pars. under headings ''Bureau of Immigration'', ''Immigration Stations'', and ''Bureau of Naturalization'').	42	486	8	1552
Sept. 22	411		42	1021	8	10
1923						
Jan. 5	24	(pars. under headings ''Bureau of Immigration'', ''Immigration Stations'', and ''Bureau of Naturalization'').	42	1127	8	1552
1924						
June 2	233		43	253	8	3, 173, 224
June 7	379		43	669	8	228

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1926						
May 25	388		44	652	8	374
July 3	738		44	812	8	204
	772		44	887	22	211, 211a, 214a, 217, 217a
1927						
Feb. 25	192	1–3	44	1234	8	5b, 5c, 377a
Mar. 4	503	2 ''Sec. 5a(provisos)''	44	1418	8	5a
	514		44	1455	8	211
1928						
Mar. 31	306		45	400	8	211
May 29	864		45	954	8	109
	914		45	1009	8	204, 206
1929						
Mar. 2	536		45	1512	8	361, 402a
Mar. 4	683		45	1545	8	392a
June 24	40		46	41	8	180
1930						
Apr. 18	184	1(last par. 2d proviso under heading ''Bureau of Immigration'').	46	216	8	118
June 13	476		46	581	8	213
June 19	544		46	787	8	3a
July 1	782		46	839	22	217a
July 3	826		46	849	8	137a
	835		46	854	8	9, 204
1931						
Feb. 21	270		46	1205	8	109
Mar. 2	368		46	1467	8	1353a, 1353b
Mar. 3	442		46	1511	8	370
1932						
May 2	156		47	145	8	109
May 16	187		47	157	22	217a
May 25	203		47	165	8	392b–392d, 399c
June 28	283		47	336	8	5b, 204a–204d
July 1	363		47	524	8	215
July 6	434		47	607	8	203
July 11	471		47	656	8	204, 206
1934						
Mar. 15	70	1(1st proviso on p. 435 words after semicolon).	48	435	8	176
May 7	221		48	667	8	3b, 3c
May 24	344		48	797	8	137a, 371, 375
June 8	429		48	926	8	106a
1935						
June 15	255		49	376	8	376
1937						
May 14	181		50	164	8	102
	182		50	164	8	209, 213
Aug. 23	735		50	743	8	392b–392d
1939						
June 21	234		53	851	8	392b–392d
Aug. 7	517		53	1243	8	106a
1940						
June 28	439	20–23, 40, 41	54	671, 676	8	137, 137–1, 155, 156a
July 1	495		54	707	8	368b
	502		54	711	8	203, 215
July 2	509		54	715	8	9a
Aug. 22	688		54	858	8	1353d
1941						
June 21	210		55	252	22	223, 225–226b
Oct. 13	432		55	736	8	457
Oct. 16	446		55	743	8	809
1942						
Mar. 27	199	1001	56	182	8	1001–1005
Apr. 2	208		56	198	8	723
June 20	426		56	372	8	109
Oct. 9	585		56	779	8	809

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Dec. 7	690		56	1041	8	723a
Dec. 8	696		56	1043	8	806
	697		56	1044	8	155
Dec. 24	819		56	1085	8	806
1943						
July 12	221	1(1st proviso on p. 507 words before semicolon).	57	507	8	117
July 13	230		57	553	8	156
Dec. 17	344		57	600	8	703
1944						
Jan. 20	2	1, 3	58	4	8	739, 742, 801
June 28	302	201(1st proviso on p. 558)	58	558	8	117
July 1	368		58	677	8	801, 803
	373	713(12th par. on p. 716)	58	716	8	152
Sept. 27	415		58	745	8	742
	418		58	746	8	136, 801
	419		58	747	8	809
Sept. 28	446		58	755	8	742
Dec. 19	608		58	816	8	151, 154, 167, 216
Dec. 22	662		58	886	8	1001, 1002
1945						
Oct. 11	410		59	544	8	809
Oct. 29	437		59	551	8	224
	438		59	551	8	102
Nov. 21	490		59	585	8	742
Dec. 28	590	1(c)	59	658	8	1001, 1006
	591	1, 2, 4–6	59	659	8	232–237
Dec. 29	652	7(c), (d)	59	672	8	203, 215
1946						
July 2	534		60	416	8	703, 721a, 724
July 31	708		60	721	8	601
Aug. 7	768		60	865	8	110
Aug. 9	945		60	975	8	212a, 213
Aug. 13	958	5(related to § 611)	60	1049	8	152
1947						
May 16	72		61	97	8	727
May 31	87		61	121	8	731, 732, 734, 735
July 1	194		61	240	8	742
July 9	211	1(2d proviso beginning on p. 292 words before semicolon).	61	292	8	103a
July 22	289		61	401	8	237
July 23	304		61	414	8	3b, 739
July 30	384		61	630	8	148
1948						
Feb. 28	83	9(b)(related to § 711)	62	47	8	152
May 19	311		62	241	8	204, 206
May 25	338		62	268	8	137
June 1	360		62	281	8	724a
June 3	403		62	335	8	210
June 25	656		62	1026	8	732
July 1	783		62	1206	8	155
1949						
June 29	274		63	282	8	724a
Oct. 15	695	5(a)(related to Commissioner of Immigration and Naturalization).	63	880	8	102
1950						
June 30	423		64	306	8	1184(note)
	443		64	316	8	1440(note)
July 28	503	6	64	380	8	1555
Aug. 1	512	4	64	384	8	703
					48	1421*l*
Aug. 19	759		64	464	8	239
Sept. 23	1024	22–30	64	1006	8	137–137–8, 156, 456, 457, 704, 705, 725, 729, 733–735
1951						
Mar. 19	9		65	5	8	239
June 19	144	21	65	89	.....	.....
Aug. 16	321		65	191	8	723, 1435(note)
1952						
Feb. 29	49	3	66	10	8	398a, 727a

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Mar. 20	108		66	26	8	110, 144
Apr. 9	171		66	50	8	1184(note)
June 18	442		66	138	8	156
June 27	477	(less 402(a)–(d))	66	163	8	1101, 1101(note), 1102–1105, 1151–1182, 1183, 1184, 1185, 1186, 1186a, 1187, 1201, 1202–1222, 1224–1255, 1255a, 1256–1259, 1281–1324a, 1324b, 1325–1353, 1354–1401, 1402–1408, 1409–1435, 1435(note), 1436–1440, 1440(note), 1440–1, 1441–1455, 1457–1481, 1483, 1488–1522, 1523, 1524, 1552
					22	1446
					48	1421*l*
					49 App.	177
					50 App.	1952–1955, 1961
1953						
June 30	162		67	108	8	1440a–1440d
1954						
June 18	323		68	264	8	1184a
July 20	553		68	495	8	1435(note)
Sept. 3	1254		68	1145	8	1154(note)
	1256		68	1146	8	1481, 1481(note)
	1263	6, 17, 18	68	1227, 1232	8	1252, 1353c, 1451
1956						
Feb. 10	31		70	11	22	214
Mar. 16	85		70	50	8	1401a
June 20	414	201(1st proviso on p. 307)	70	307	8	1553
July 18	629	301	70	575	8	1182, 1251
Aug. 1	841	33	70	890	22	2705
	849	6(b)	70	900	50	855
1957						
Sept. 11	85–316		71	639	8	1101, 1151(note), 1153, 1153(note), 1201a(note), 1255b, 1434
1958						
July 7	85–508	21–26	72	351	8	1101, 1182, 1404(note), 1421, 1455
July 18	85–531		72	375	8	1184(note)
July 25	85–559		72	419	8	1182(note)
Aug. 8	85–616		72	546	8	1259
Aug. 20	85–697		72	687	8	1430, 1434
Aug. 21	85–700		72	699	8	1153(note), 1255
Sept. 2	85–892		72	1712	.....	.....
1959						
Mar. 18	86–3	20	73	13	8	1101, 1182, 1405(note), 1421
Aug. 4	86–129		73	274	8	1485, 1486
Sept. 9	86–253		73	490	8	1182c, 1205
Sept. 14	86–267		73	552	22	217a

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Sept. 22	86–363		73	644	8	1153, 1153(note), 1155
1960						
July 14	86–648		74	504	8	1182, 1182(note), 1205, 1251, 1255
1961						
Sept. 21	87–256	109	75	534	8	1101, 1182, 1258
Sept. 26	87–301		75	650	8	1101, 1105a, 1105a(note), 1152, 1153(note), 1155, 1182–1182c, 1201, 1202, 1205, 1251, 1251a, 1255a(note), 1421, 1440, 1451, 1481, 1486
1962						
June 28	87–510		76	121	8	1104, 1182(note)
					22	1925, 1951, 2601, 2601(note), 2602–2605
Oct. 24	87–885		76	1247	8	1153(note), 1154, 1254
1964						
Aug. 14	88–426	305(43)	78	428	8	1104
Oct. 7	88–634	201(proviso under heading ''assistance to refugees in the United States'').	78	1021	22	2601
1965						
Apr. 11	89–10	4401–4410			20	3121–3130
Oct. 3	89–236		79	911	8	1101, 1151, 1151(note), 1152–1156, 1181, 1182, 1182(note), 1201, 1202, 1204, 1251, 1253–1255, 1255(note), 1259, 1322, 1351
1966						
Nov. 2	89–710		80	1104	8	1101
	89–732	3	80	1161	8	1255(note)
Nov. 6	89–770		80	1322	8	1401
1967						
Dec. 18	90–215		81	661	8	1430
1968						
June 29	90–369		82	279	8	1430
July 26	90–428		82	446	22	213, 214, 217a, 217a(note)
Oct. 21	90–609		82	1199	8	1351, 1455
Oct. 24	90–633		82	1343	8	1429, 1439, 1440, 1440e
1969						
Dec. 5	91–136		83	283	8	1447
1970						
Apr. 7	91–225		84	116	8	1101, 1182, 1184
July 10	91–313		84	413	8	1183, 1363
Oct. 26	91–510	421, 422	84	1189	8	1106, 1106(note)
1971						
May 14	92–14		85	38	22	214, 214(note)

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1972						
Oct. 27	92–584		86	1289	8	1401, 1401b
1974						
Sept. 17	93–417		88	1151	22	214
Oct. 20	93–461		88	1387	8	331–339
1975						
Nov. 29	94–141	501(a)	89	771	22	2601
Dec. 16	94–155		89	824	8	1101
1976						
Apr. 21	94–274	118	90	389	8	1151(note), 1151a(note)
Sept. 14	94–412	501(a)	90	1258	8	1481
Oct. 12	94–484	601, 602, 906	90	2300, 2325	8	1101, 1101(note), 1182, 1182(note)
Oct. 18	94–550	7	90	2535	8	1357
Oct. 20	94–571	1–7, 9, 10	90	2703, 2707	8	1101, 1101(note), 1151–1153, 1153(note), 1154, 1181, 1182, 1251, 1254, 1255
1977						
Aug. 1	95–83	307(q)	91	394	8	1101, 1101(note), 1182, 1182(note)
Aug. 17	95–105	109(b)	91	847	8	1101, 1104, 1104(note), 1105
Oct. 28	95–145		91	1223	8 22	1255(note) 2601(note)
1978						
Sept. 17	95–370	401	92	627	8	1182(note)
Oct. 5	95–412		92	907	8	1151, 1151(note), 1152, 1153, 1182(note)
	95–417		92	917	8	1153, 1154, 1431–1434
Oct. 7	95–426	124, 126, 707	92	971, 992	8 22	1185 211a, 2691(note)
Oct. 10	95–431	605	92	1045	8	1182(note)
	95–432		92	1046	8	1401, 1401(note), 1481, 1482, 1484–1487
Oct. 30	95–549		92	2065	8 22	1182, 1251, 1253, 1254 2601(note)
Nov. 2	95–579	3	92	2474	8	1423
	95–582	2	92	2479	8	1324
1979						
Sept. 27	96–70	3201	93	496	8	1101, 1101(note), 1182, 1182(note)
Nov. 30	96–132	23	93	1050	8	1151(note)

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1980						
Mar. 17	96–212	(less §§ 101, 203(i)(related to the first section of Pub. L. 89–732), 313(c)(2), 401).	94	102	8	1101, 1101(note), 1151–1153, 1153(note), 1157, 1157(note), 1158, 1158(note), 1159, 1181, 1182, 1182(note), 1253, 1254, 1255(note), 1521, 1521(note), 1522, 1522(note), 1523–1525
					22	2601, 2601(note)
Oct. 10	96–422		94	1799	8	1522(note)
	96–424		94	1820	8	1522(note)
Oct. 17	96–465	2206(a)(10)	94	2162	22	2605
Oct. 19	96–470	207	94	2245	8	1154
Dec. 17	96–538	404	94	3192	8	1182
1981						
Aug. 13	97–35	525, 526, 541–547, 1502	95	450, 458, 459, 750.	8	1522(note), 1524(note)
					20	239a
Dec. 29	97–113	714	95	1548	8	1152(note)
	97–116		95	1611	8	1101, 1101(note), 1105a, 1151, 1151(note), 1152, 1154, 1182, 1182(note), 1201, 1203, 1221, 1227, 1251–1255, 1255b, 1258, 1305, 1324, 1356, 1361, 1401a, 1409, 1427, 1431–1433, 1439, 1440, 1445–1448, 1452, 1455, 1481, 1483
					18	1429
1982						
Aug. 24	97–241	116, 117 ''Sec. 33''	96	279	22	214, 217a, 217a(note), 2705
Sept. 30	97–271		96	1157	8	1255(note)
Oct. 22	97–359		96	1716	8	1154
Oct. 25	97–363		96	1734	8	1101(note), 1522, 1522(note), 1523, 1524
1983						
Nov. 22	98–164	1011(a)(1), (b)	97	1061	8	1522
					22	2691(note)
1984						
Oct. 5	98–454	602	98	1737	8	1182, 1184
Oct. 12	98–473	101(d)(last par.), 220	98	1877, 2027	8	1182, 1252, 1522, 1522(note)
Oct. 30	Priv. L. 98–47.	3	98	3435	8	1101
	Priv. L. 98–53.		98	3437	8	1101(note)
1985						
Aug. 16	99–93	111–113, 132	99	410, 420	8	1182(note)
					22	2601, 2605, 2605(note), 2606
Dec. 4	99–169	601	99	1007	8	1427

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(c) ACT OF FEBRUARY 14, 1917.—The Act of February 14, 1917 (ch. 64, 39 Stat. 919), is repealed. An action taken or offense committed under that Act is deemed to have been taken or committed under section 871 of title 18, United States Code.

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