

104TH CONGRESS
1ST SESSION

H. R. 1292

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

MARCH 22, 1995

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

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”.

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

3 **SECTION 1. TITLE 8, UNITED STATES CODE.**

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

7 **TITLE 8—ALIENS AND NATIONALITY**

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CHAPTER 1—DEFINITIONS

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3 **§ 101. Adjacent islands**

4 In this title, “adjacent islands” includes the Bahamas, Barbados, Ber-
5 muda, Cuba, the Dominican Republic, Haiti, Jamaica, Martinique,
6 Miquelon, Saint Pierre, Trinidad, the Windward and Leeward Islands, and
7 other British, French, and Dutch territories and possessions in or bordering
8 on the Caribbean Sea.

1 **§ 102. Advocates**

2 In this title, “advocates” includes advises, recommends, furthers by overt
3 act, and admits belief in.

4 **§ 103. Agency**

5 In this title (except subchapter II of chapter 131 and chapters 133–137),
6 “agency” means a department, agency, or instrumentality of the United
7 States Government.

8 **§ 104. Aggravated felony**

9 (a) COMMISSION AND CONVICTION AT ANY TIME.—(1) In this title, “ag-
10 gravated felony” means any of the following, or an attempt or conspiracy
11 to commit any of the following, committed in the United States:

12 (A) murder.

13 (B) illicit trafficking in a controlled substance (as defined in section
14 102 of the Controlled Substances Act (21 U.S.C. 802)), including a
15 drug trafficking crime (as defined in section 924(c)(2) of title 18).

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

18 (2) Paragraph (1) of this subsection applies to an offense under a law
19 of a State or the United States.

20 (b) ADDITIONAL OFFENSES COMMITTED AFTER NOVEMBER 28, 1990.—
21 (1) In this title, “aggravated felony”, in addition to its meaning under sub-
22 section (a) of this section, means—

23 (A) any of the offenses specified in subsection (a)(1) of this section,
24 or an attempt or conspiracy to commit any of those offenses, commit-
25 ted outside the United States after November 28, 1990; and

26 (B) any of the following, or an attempt or conspiracy to commit any
27 of the following, committed in or outside the United States after No-
28 vember 28, 1990:

29 (i) a crime of violence (as defined in section 16 of title 18, ex-
30 cept a purely political offense) for which the term of imprisonment
31 imposed (regardless of any suspension of imprisonment) is at least
32 5 years.

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

35 (2) Paragraph (1) of this subsection applies to an offense under a law
36 of—

37 (A) a State or the United States; or

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

40 (c) ADDITIONAL OFFENSES FOR WHICH CONVICTION IS ENTERED
41 AFTER OCTOBER 24, 1994.—(1) In this title, “aggravated felony”, in addi-

1 tion to its meaning under subsections (a) and (b) of this section, means any
2 of the following, or an attempt or conspiracy to commit any of the following,
3 for which a conviction is entered after October 24, 1994:

4 (A) illicit trafficking in an explosive material (as defined in section
5 841(c) of title 18).

6 (B) a theft offense (including receipt of stolen property) or burglary
7 offense for which the term of imprisonment imposed (regardless of any
8 suspension of imprisonment) is at least 5 years.

9 (C) an offense that relates to owning, controlling, managing, or su-
10 pervising a prostitution business or that is described in section 1581,
11 1582, 1583, 1584, 1585, or 1588 of title 18.

12 (D) an offense that—

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

15 (ii) is described in section 7201 of the Internal Revenue Code
16 of 1986 (26 U.S.C. 7201) in which the loss to the United States
17 Government is more than \$200,000.

18 (E) an offense related to a failure to appear by a defendant for serv-
19 ice of sentence if the underlying offense is punishable by a term of im-
20 prisonment of at least 15 years.

21 (F) an offense described in section 10147(a)(1) of this title for com-
22 mercial advantage.

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

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

30 (I) an offense described in section 875, 876, 877, or 1202 of title
31 18.

32 (J) an offense described in section 1546(a) of title 18 which con-
33 stitutes trafficking in the document described in section 1546(a) and
34 for which the term of imprisonment imposed (regardless of any suspen-
35 sion of imprisonment) is at least 5 years.

36 (K) an offense described in section 1957 of title 18 if the amount
37 is more than \$100,000.

38 (L) an offense described in section 1962 of title 18 for which a sen-
39 tence of at least 5 years may be imposed.

40 (M) an offense described in section 2251, 2251A, or 2252 of title
41 18.

1 (N) an offense described in section 1956 of title 18 if the amount
2 is more than \$100,000.

3 (2) Paragraph (1) of this subsection applies to an offense under a law
4 of—

5 (A) a State or the United States; or

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

8 **§ 105. Alien**

9 In this title, “alien” means an individual who is not a national of the
10 United States.

11 **§ 106. Application for admission**

12 In this title, “application for admission” means an application for admis-
13 sion to the United States and not an application for a visa.

14 **§ 107. Border crossing identification card**

15 In this title, “border crossing identification card” means a document of
16 identity—

17 (1) having the designation “border crossing identification card”;

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

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

23 **§ 108. Child**

24 (a) SUBTITLES I-III.—In subtitles I-III of this title (except subchapter
25 I of chapter 5 and chapter 47), “child” means an unmarried individual
26 under 21 years of age who—

27 (1) is a legitimate child;

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

31 (3) was legitimated under the law of the child’s or father’s residence
32 or domicile if the legitimation occurred when the child was under 18
33 years of age and in the legal custody of the legitimating parent or par-
34 ents;

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

37 (A) natural mother; or

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

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

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

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

12 (i) the child is illegitimate as described in clause (4) of this sub-
13 section and has not been legitimated as described in clause (3) of
14 this subsection; and

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

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

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

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

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

30 (1) is a legitimate child;

31 (2) was legitimated under the law of the child’s or father’s residence
32 or domicile (even if outside the United States) if the legitimation oc-
33 curred when the child was under 16 years of age and in the legal cus-
34 tody of the legitimating parent or parents; or

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

39 **§ 109. Consular officer**

40 In this title, “consular officer” means an officer or employee of the
41 United States Government designated under regulations to issue visas.

1 **§ 110. Crewmember**

2 In this title, “crewmember” means an individual serving in any capacity
3 on a vessel or aircraft.

4 **§ 111. Entry**

5 In this title, “entry” means a coming of an alien into the United States
6 from a foreign port or place or from American Samoa, whether voluntarily
7 or not. However, an alien having a lawful permanent residence in the
8 United States is deemed not to be making an entry under the immigration
9 laws if the alien—

10 (1) satisfies the Attorney General that the alien did not intend or
11 reasonably expect to depart to a foreign port or place or to American
12 Samoa or that the alien’s presence in a foreign port or place or in
13 American Samoa was involuntary; and

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

16 **§ 112. Executive agency**

17 In this title, “executive agency” means a department, agency, or instru-
18 mentality in the executive branch of the United States Government.

19 **§ 113. Executive capacity**

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

22 (1) directs the management of the organization or a major compo-
23 nent or function of the organization;

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

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

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

29 (b) STAFFING LEVELS AS FACTOR.—If staffing levels are used as a fac-
30 tor in deciding whether an individual is acting in an executive capacity, the
31 Attorney General shall consider the reasonable needs of the organization,
32 component, or function in light of the overall purpose and stage of develop-
33 ment of the organization, component, or function. An individual is not act-
34 ing in an executive capacity only because of the number of employees the
35 individual supervises, directs, or has supervised or directed.

36 **§ 114. Foreign country**

37 In this title, “foreign country” includes the territories and possessions of
38 a foreign country, but a self-governing dominion or a territory under trust-
39 eeship is deemed to be a separate foreign country.

1 **§ 115. Good moral character**

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

4 (1) an individual who, during the period for which good moral char-
5 acter is required—

6 (A) was a habitual drunkard;

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

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

10 (ii) section 6307(a)(1)–(4) of this title (except as section
11 6307(a)(3) relates to a single offense of simple possession of
12 not more than 30 grams of marijuana), if the individual ad-
13 mits committing or was convicted of committing the offense
14 and committed the offense during the period for which good
15 moral character is required;

16 (C) derived income principally from unlawful gambling activi-
17 ties;

18 (D) committed at least 2 gambling offenses for which the indi-
19 vidual has been convicted;

20 (E) gave false testimony to obtain a benefit under this title (ex-
21 cept subchapter I of chapter 5, subchapters II and III of chapter
22 131, and chapters 133–137); or

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

27 (2) an individual convicted of murder or, after November 28, 1990,
28 of another aggravated felony, regardless of whether the offense or con-
29 viction was during the period for which good moral character is re-
30 quired.

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

33 **§ 116. Graduate of a medical school**

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

38 **§ 117. Immediate relative**

39 In this title, “immediate relative” means—

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

1 (2) a spouse of a citizen of the United States, except that if the citi-
 2 zen has died, the spouse and each child of the spouse remains an im-
 3 mediate relative after the death only if the spouse—

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

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

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

10 (D) has not remarried; and

11 (3) a parent of a citizen of the United States if the citizen is at least
 12 21 years of age.

13 **§ 118. Immigrant**

14 In this title, “immigrant” means any alien except a nonimmigrant.

15 **§ 119. Immigration judge**

16 In this title, “immigration judge” means an officer or employee of the
 17 United States Government designated by the Attorney General, individually
 18 or by regulation, to carry out the duties and powers of an immigration
 19 judge.

20 **§ 120. Immigration laws**

21 In this title, “immigration laws” includes this title and all laws, conven-
 22 tions, and treaties of the United States related to the immigration, exclu-
 23 sion, or deportation of aliens.

24 **§ 121. Immigration officer**

25 In this title, “immigration officer” means an officer or employee of the
 26 United States Government designated by the Attorney General, individually
 27 or by regulation, to carry out the duties and powers of an immigration offi-
 28 cer.

29 **§ 122. Ineligible for citizenship**

30 In this title, “ineligible for citizenship”, notwithstanding any treaty relat-
 31 ed to military service, means permanently debarred at any time under this
 32 title or any other law from becoming a citizen of the United States.

33 **§ 123. International organization**

34 In this title, “international organization” means an international organi-
 35 zation as defined in section 1 of the International Organizations Immunities
 36 Act (22 U.S.C. 288).

37 **§ 124. Lawfully admitted for permanent residence**

38 In this title, “lawfully admitted for permanent residence” means the sta-
 39 tus of lawfully having been given the privilege of residing permanently in
 40 the United States as an immigrant under the immigration laws, that status
 41 not having changed.

1 **§ 125. Managerial capacity**

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

4 (1) manages the organization or a department, subdivision, compo-
5 nent, or function of the organization;

6 (2) supervises and controls the work of other supervisory, profes-
7 sional, or managerial employees, or manages an essential function in
8 the organization or a department or subdivision of the organization;

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

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

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

16 (b) FIRST-LINE SUPERVISOR.—A first-line supervisor does not act in a
17 managerial capacity only because of the supervisor’s supervisory duties un-
18 less the employees supervised are professional.

19 (c) STAFFING LEVELS AS FACTOR.—If staffing levels are used as a factor
20 in deciding whether an individual is acting in a managerial capacity, the At-
21 torney General shall consider the reasonable needs of the organization, com-
22 ponent, or function in light of the overall purpose and stage of development
23 of the organization, component, or function. An individual is not acting in
24 a managerial capacity only because of the number of employees the individ-
25 ual supervises, directs, or has supervised or directed.

26 **§ 126. National**

27 In this title, “national” means an individual owing permanent allegiance
28 to a country.

29 **§ 127. National of the United States**

30 In this title, “national of the United States” means—

31 (1) a citizen of the United States; or

32 (2) an individual, not a citizen of the United States, owing perma-
33 nent allegiance to the United States.

34 **§ 128. Naturalization**

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

37 **§ 129. Nonimmigrant**

38 In this title, “nonimmigrant” means an alien having the status of a non-
39 immigrant classified under subchapter I of chapter 23 of this title.

1 **§ 130. Parent, father, and mother**

2 (a) SUBTITLES I–III.—In subtitles I–III of this title (except subchapter
3 I of chapter 5), “parent”, “father”, and “mother” mean a parent, father,
4 and mother of a child as defined in section 108(a) of this title.

5 (b) SUBTITLE V.—In subtitle V of this title, “parent”, “father”, and
6 “mother” include a deceased parent, father, and mother of a posthumous
7 child.

8 (c) EXCEPTIONS.—In this title (except subchapter I of chapter 5), “par-
9 ent”, “father”, and “mother” do not include—

10 (1) the natural parent of a child as defined in section 108(a)(5) of
11 this title;

12 (2) the natural parent or prior adoptive parent of a child as defined
13 in section 108(a)(6) of this title; or

14 (3) the natural parent or prior adoptive parent of a special immi-
15 grant as defined in section 134(a)(12) of this title.

16 **§ 131. Passport**

17 In this title, “passport” means a travel document—

18 (1) granted by competent authority;

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

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

21 **§ 132. Refugee**

22 In this title (except chapter 133), “refugee”—

23 (1) means an individual who—

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

27 (ii) is unable or unwilling to return to, and make use of the pro-
28 tection of, that country because of persecution or a well-founded
29 fear of persecution on account of race, religion, nationality, mem-
30 bership in a particular social group, or political opinion; or

31 (B) in circumstances the President after appropriate consulta-
32 tion (as defined in section 5101(a) of this title) specifies—

33 (i) is in a country of the individual’s nationality or, if the
34 individual has no nationality, is in a country in which the in-
35 dividual is habitually residing; and

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

39 (2) does not include an individual who ordered, incited, assisted, or
40 otherwise participated in the persecution of an individual on account

1 of race, religion, nationality, membership in a particular social group,
2 or political opinion.

3 **§ 133. Residence**

4 In this title, “residence” means the principal, actual dwelling place of an
5 individual without regard to the individual’s intent.

6 **§ 134. Special immigrant**

7 (a) GENERAL.—In this title, “special immigrant” means each of the fol-
8 lowing immigrants:

9 (1) an immigrant lawfully admitted for permanent residence return-
10 ing from a temporary visit outside the United States (including a pe-
11 riod of employment by the American University of Beirut).

12 (2) an immigrant who was a citizen of the United States and may
13 be naturalized under section 20315 or 20318(a) of this title.

14 (3)(A) an immigrant who—

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

18 (ii) is coming to the United States—

19 (I) only to serve as a minister of that religious denomina-
20 tion;

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

24 (III) before October 1, 1997, to work for the organization
25 or for a bona fide organization affiliated with the religious de-
26 nomination and exempt from taxation as an organization de-
27 scribed in section 501(c)(3) of the Internal Revenue Code of
28 1986 (26 U.S.C. 501(c)(3)), at the request of the organiza-
29 tion, in a religious vocation or occupation; and

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

33 (B) the immigrant’s spouse and children if accompanying or follow-
34 ing to join the immigrant.

35 (4)(A) an immigrant who is an employee or an honorably retired
36 former employee of the United States Government outside the United
37 States, or of the American Institute in Taiwan, who has performed
38 faithful service for at least 15 years, if the principal officer of a For-
39 eign Service establishment of the United States, or the director of the
40 American Institute in Taiwan, respectively, recommends that the immi-
41 grant be granted special immigrant status because of exceptional cir-

1 cumstances and the Secretary of State approves the recommendation
2 after finding that it is in the interest of the United States to grant
3 the status; and

4 (B) the immigrant's spouse and children if accompanying the immi-
5 grant.

6 (5)(A) an immigrant who—

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

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

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

12 (B) the immigrant's spouse and children if accompanying the immi-
13 grant.

14 (6)(A) an immigrant who—

15 (i) is a national of Panama;

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

19 (iii) honorably retired from that employment at any time or con-
20 tinues to be employed by the United States Government in an area
21 of the former Canal Zone; and

22 (B) the immigrant's spouse and children if accompanying the immi-
23 grant.

24 (7)(A) an immigrant—

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

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

29 (iii) whose personal safety, or whose spouse's or child's personal
30 safety, is placed in reasonable danger directly because of the Pan-
31 ama Canal Treaty of 1977 and the special nature of the immi-
32 grant's employment; and

33 (B) the immigrant's spouse and children if accompanying the immi-
34 grant.

35 (8)(A) an immigrant who—

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

38 (ii) was completely and permanently licensed to practice medi-
39 cine in a State on January 9, 1978, and was practicing medicine
40 in a State on that date;

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

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

6 (B) the immigrant’s spouse and children if accompanying the immi-
7 grant.

8 (9) an immigrant who—

9 (A) is the unmarried son or daughter of a present or former of-
10 ficer or employee of an international organization;

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

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

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

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

22 (10) an immigrant who—

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

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

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

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

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

36 (11)(A) an immigrant who—

37 (i) is a retired officer or employee of an international organiza-
38 tion;

39 (ii) while maintaining the status of a nonimmigrant classified
40 under section 2302(5) of this title, has resided and been physically
41 present in the United States for periods totaling at least half of

1 the 7 years before the date of application for a visa or for adjust-
 2 ment of status to special immigrant status under this clause (11),
 3 and for periods totaling at least 15 years before the date of the
 4 officer's or employee's retirement from the international organiza-
 5 tion; and

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

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

11 (12) an immigrant—

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

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

21 (13)(A) an immigrant who—

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

26 (I) 12 years and, if separated from the service, was sepa-
 27 rated only under honorable conditions; or

28 (II) 6 years if the immigrant is on active duty when seek-
 29 ing special immigrant status under this clause (13) and has
 30 reenlisted to incur a total active duty obligation of at least
 31 12 years; and

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

35 (B) the immigrant's spouse and children if accompanying or follow-
 36 ing to join the immigrant.

37 (b) TEMPORARY ABSENCES UNDER SUBSECTION (a)(9)–(11).—An alien
 38 who is a present or former officer or employee of an international organiza-
 39 tion, or is the surviving spouse, unmarried son, or unmarried daughter of
 40 a present or former officer or employee, is deemed under subsection (a)(9)–
 41 (11) of this section to be residing and physically present in the United

1 States during a period in which the alien is residing in, but absent from,
2 the United States if—

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

6 (2) during the absence—

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

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

11 **§ 135. Spouse, wife, and husband**

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

15 **§ 136. State**

16 In this title (except subchapter I of chapter 5, subchapters II and III of
17 chapter 131, and chapters 133 and 135), “State” means a State of the
18 United States, the District of Columbia, Puerto Rico, Guam, and the Virgin
19 Islands.

20 **§ 137. Totalitarian dictatorship**

21 In this title, “totalitarian dictatorship” means a system of government
22 that is not representative and is characterized by—

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

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

27 **§ 138. Totalitarian party**

28 In this title, “totalitarian party” means an organization advocating the
29 establishment of a totalitarian dictatorship in the United States.

30 **§ 139. United States**

31 In this title (except subchapter I of chapter 5, subchapters II and III of
32 chapter 131, chapters 133–137, and section 13902), “United States” means
33 the States of the United States, the District of Columbia, Puerto Rico,
34 Guam, and the Virgin Islands.

35 **§ 140. Unmarried**

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

39 **§ 141. Visa**

40 In this title, “visa” means an unexpired visa issued under section 2123
41 or 4313 of this title.

1 **CHAPTER 3—ORGANIZATION AND ADMINISTRATION**

SUBCHAPTER I—DEPARTMENT OF JUSTICE

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- 301. General authority of the Attorney General.
- 302. Immigration and Naturalization Service.
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- 304. Enforcement authority.
- 305. Local jurisdiction over immigrant stations.
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SUBCHAPTER II—DEPARTMENT OF STATE

- 341. General authority of the Secretary of State.
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- 351. Liaison with internal security officers.
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- 353. Disposition of receipts.
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2 SUBCHAPTER I—DEPARTMENT OF JUSTICE

3 **§ 301. General authority of the Attorney General**

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

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

9 (b) CONTROL OF BORDERS.—The Attorney General shall control the bor-
10 ders of the United States against the unlawful entry of aliens.

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

1 power of an officer or employee of the Immigration and Naturalization Service.
2

3 (d) ESTABLISHMENT OF OFFICES IN FOREIGN COUNTRIES.—The Attorney General—
4

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

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

10 (e) PLACES OF DETENTION.—The Attorney General shall arrange for ap-
11 propriate places of detention for aliens detained pending deportation or a
12 decision on deportation. When United States Government facilities are un-
13 available or facilities adapted or suitably located for detention are unavail-
14 able for rental, the Attorney General may expend from the appropriation
15 “Immigration and Naturalization Service—Salaries and Expenses”, without
16 regard to section 3709 of the Revised Statutes (41 U.S.C. 5), amounts nec-
17 essary to acquire land and to acquire, build, remodel, repair, and operate
18 facilities (including living quarters for immigration officers if not otherwise
19 available) necessary for detention.

20 **§ 302. Immigration and Naturalization Service**

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

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

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

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

32 (2) maintain direct and continuous liaison with the Administrator
33 designated under section 342 of this title to carry out the immigration
34 and nationality laws in a coordinated, uniform, and efficient way.

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

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

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

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

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

7 (4) at a rate specified by the applicable appropriation law, allowances
8 to aliens for work performed when held in custody under the immigra-
9 tion laws.

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

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

17 **§ 303. Oaths and testimony**

18 (a) GENERAL.—In carrying out this title, the Attorney General, immigra-
19 tion officers, other officers and employees of the Immigration and Natu-
20 ralization Service designated by the Attorney General, and immigration
21 judges may—

22 (1) administer oaths;

23 (2) take evidence; and

24 (3) subpoena witnesses to testify and produce records.

25 (b) ENFORCEMENT OF SUBPENAS.—If a witness disobeys a subpoena is-
26 sued under subsection (a) of this section, the Attorney General, immigration
27 officer, designated officer or employee of the Service, or immigration judge
28 may bring a civil action to enforce the subpoena in the district court of the
29 United States for the judicial district in which the proceeding is being con-
30 ducted, or, if the subpoena is related to an application for naturalization, in
31 any district court of the United States. The court may issue an order to
32 obey the subpoena and punish a refusal to obey as a contempt of court.

33 (c) DEPOSITIONS.—An officer or employee of the Service designated by
34 the Attorney General may take a deposition without charge on a matter re-
35 lated to carrying out a naturalization or citizenship law. In a case involving
36 a likelihood of hardship or unusual delay, the Attorney General may author-
37 ize the deposition to be taken before a postmaster without charge or before
38 an individual authorized to administer oaths for general purposes.

1 **§ 304. Enforcement authority**

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

5 (1) carry a firearm; and

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

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

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

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

17 (3) board a vehicle, aircraft, or other conveyance within a reasonable
18 distance from a United States border, or board a vessel within the ter-
19 ritorial waters of the United States, to search for aliens;

20 (4) within 25 miles from a United States border, have access to pri-
21 vate land (but not a dwelling) to patrol the border to prevent the un-
22 lawful entry of aliens;

23 (5) arrest an alien who, in the presence or view of the officer or em-
24 ployee, is trying to enter the United States unlawfully, or arrest an
25 alien in the United States who the officer or employee has reason to
26 believe is in the United States unlawfully and is likely to escape before
27 a warrant for the alien's arrest can be obtained, but the alien arrested
28 shall be taken without unnecessary delay for examination before an im-
29 migration officer having authority to examine aliens as to their right
30 to enter or remain in the United States;

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

32 (A) the officer or employee is performing duties related to en-
33 forcement of the immigration laws at the time of the arrest;

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

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

38 (7) arrest a person for a felony against the United States under a
39 law of the United States regulating the admission, exclusion, or depor-
40 tation of aliens if—

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

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

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

7 (A) the officer or employee is performing duties related to en-
8 forcement of the immigration laws at the time of the arrest;

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

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

13 (D) the officer or employee has received certification of comple-
14 tion of a training program as required under subsection (d) of this
15 section.

16 (c) RESTRICTION ON WARRANTLESS ENTRY OF OUTDOOR AGRICUL-
17 TURAL OPERATIONS.—Except as provided in subsection (b)(4) of this sec-
18 tion, an officer or employee of the Service may not enter the premises of
19 a farm or other outdoor agricultural operation, without a warrant or the
20 consent of the owner or owner's agent, to interrogate an individual believed
21 to be an alien about the individual's right to be or remain in the United
22 States.

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

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

29 (2) standards for enforcement activities of the Service;

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

35 (4) an expedited, internal review process for violations of the stand-
36 ards, consistent with standard agency procedure regarding confidential-
37 ity of matters related to internal investigations.

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

1 (A) arrests an alien for violating a law related to controlled sub-
2 stances;

3 (B) has reason to believe that the alien is in the United States un-
4 lawfully;

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

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

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

11 **§ 305. Local jurisdiction over immigrant stations**

12 A law enforcement official responsible for enforcing the law of a State,
13 territory, or possession of the United States in which an immigrant station
14 is located has jurisdiction over the station and may enter the station to pre-
15 serve the peace and make arrests for offenses under the laws of the State,
16 territory, or possession. A court of the State, territory, or possession has
17 jurisdiction over the immigrant station on a matter related to the enforce-
18 ment of the law of the State, territory, or possession.

19 **§ 306. Records on aliens**

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

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

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

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

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

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

34 (2) the Commissioner of Social Security shall notify the Attorney
35 General when an alien is issued a social security account number.

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

38 To prevent the transportation in foreign commerce of alien females for
39 prostitution and debauchery, and to carry out the arrangement adopted July
40 25, 1902, for the suppression of white-slave traffic, the Attorney General
41 shall—

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

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

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

8 **§ 308. Working hours and premium pay for officers and em-**
9 **ployees of the Immigration and Naturalization**
10 **Service**

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

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

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

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

26 (c) METHOD OF PAYMENT.—(1) Except as provided in section 80503 of
27 title 49, when an officer or employee of the Service performs work referred
28 to in subsection (b) of this section, the master, owner, agent, or consignee
29 of the vessel, aircraft, or vehicle shall pay to the Attorney General an
30 amount equal to the pay to which the officer or employee is entitled under
31 subsection (b). The amount shall be paid if the officer or employee was or-
32 dered to report for work and did report, even if an inspection did not take
33 place. However, this paragraph does not apply to an inspection, at a des-
34 ignated port of entry, of passengers arriving by an international ferry,
35 bridge, or tunnel, or by a vessel on the Great Lakes and connecting water-
36 ways, an aircraft, or a vehicle, when the vessel, aircraft, or vehicle is operat-
37 ing on a regular schedule.

38 (2) The Attorney General shall deposit in the Treasury an amount paid
39 under this subsection. The amount shall be credited to the appropriation
40 "Immigration and Naturalization Service—Salaries and Expenses". The

1 amount credited to the appropriation is available for payment of the over-
2 time, Sunday, and holiday pay.

3 **§ 309. Providing immigration services for scheduled flights**

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

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

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

13 **§ 310. Reimbursement for immigration inspection services**

14 (a) INSPECTIONS IN FOREIGN CONTIGUOUS TERRITORIES.—Section 209
15 of title 18 does not prohibit reimbursement for the services of an immigra-
16 tion officer related to inspecting aliens in a foreign contiguous territory. The
17 reimbursement shall be credited to the appropriation “Immigration and
18 Naturalization Service—Salaries and Expenses”.

19 (b) REQUESTED INSPECTION SERVICES.—The Attorney General may re-
20 ceive reimbursement from the owner, operator, or agent of a private or com-
21 mercial vessel or aircraft, or from a seaport or airport authority, for ex-
22 penses incurred by the Attorney General in providing immigration inspec-
23 tion services requested by the owner, operator, agent, or authority, including
24 the salaries and expenses of individuals employed by the Attorney General
25 to provide the services. The Attorney General’s authority to receive reim-
26 bursement under this section ends as soon as an amount is appropriated
27 to provide the services.

28 **§ 311. Travel expenses and expenses of interment**

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

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

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

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

37 (b) EXPENSES OF TRANSPORTING SPOUSE, CHILDREN, AND PROP-
38 erty.—The Attorney General may reimburse an officer or employee de-
39 scribed in subsection (a) of this section for expenses incurred in transport-
40 ing the officer’s or employee’s spouse, dependent children, and personal
41 property, including (as provided under subchapter II of chapter 57 of title

1 5) the expenses for packing, crating, freight, unpacking, temporary storage,
2 and drayage.

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

7 **§ 312. Providing services and articles at immigrant stations**

8 (a) AWARDING CONTRACTS.—Subject to section 3709 of the Revised
9 Statutes (41 U.S.C. 5), the Attorney General may award an exclusive con-
10 tract to provide money exchange services, to transport passengers or bag-
11 gage, to provide food and eating facilities, or to provide similar services at
12 an immigrant station only to the lowest responsible and capable bidder (ex-
13 cept an alien). The Attorney General may charge a reasonable rental for
14 the use of United States Government property in providing the services.
15 However, the Attorney General may provide a necessary service at an immi-
16 grant station if the Attorney General finds that it would be more economical
17 and efficient.

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

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

25 (d) DEPOSIT OF AMOUNTS RECEIVED.—The Attorney General shall de-
26 posit amounts received under this section in the Treasury to the credit of
27 the appropriation “Immigration and Naturalization Service—Salaries and
28 Expenses”.

29 **§ 313. Operation of photographic studios by welfare organi-**
30 **zations**

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

38 **§ 314. Crediting appropriations**

39 (a) LANDING STATIONS.—Amounts deposited in the Treasury to reim-
40 burse the Immigration and Naturalization Service for expenses paid by the
41 Service from the appropriation “Immigration and Naturalization Service—

1 Salaries and Expenses” for a landing station referred to in section 6905(c)
 2 of this title and for detained aliens shall be credited to that appropriation
 3 for the fiscal year in which the expenses were incurred.

4 (b) AMOUNTS RECOVERED AFTER BUYING EVIDENCE.—Amounts ex-
 5 pended from the appropriation “Immigration and Naturalization Service—
 6 Salaries and Expenses” to buy evidence and later recovered shall be credited
 7 to that appropriation for the fiscal year in which the recovery is made.

8 (c) INCREASED PENALTIES RESULTING FROM CERTAIN AMENDMENTS.—
 9 Notwithstanding section 3302 of title 31, the amounts collected from the
 10 increase in penalties resulting from the amendments made by sections
 11 203(b), 543(a), and 544 of the Immigration Act of 1990 (Public Law 101-
 12 649, 104 Stat. 5018, 5057, 5059) shall be credited to the appropriation—

13 (1) “Immigration and Naturalization Service—Salaries and Ex-
 14 penses” for activities that enhance enforcement of subtitles I–III of
 15 this title (except subchapter I of chapter 5), including—

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

17 (B) implementing the system described in section 324(a) of this
 18 title; and

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

23 (2) for the Executive Office for Immigration Review in the Depart-
 24 ment of Justice to remove the backlogs in preparing transcripts of de-
 25 portation proceedings conducted under section 6532 of this title.

26 **§ 315. Interest on immigration bonds**

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

39 (b) DISPOSITION OF INTEREST.—Interest earned under this section shall
 40 be disposed of in the same way as the principal, except that interest earned
 41 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 each fiscal year shall be refunded in accordance with estimates made in the budget request of the Attorney General for that fiscal year. However, any proposed change in the amount designated in the budget request may be made only after notification to the Committees on Appropriations of the House of Representatives and the Senate under section 606 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Public Law 102–395, 106 Stat. 1873).

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

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

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

§ 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;

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

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

4 (ii) attempting to enter illegally by avoiding immigration inspec-
5 tion at an air or sea port of entry; and

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

8 (i) arriving on a commercial vessel or aircraft, including provid-
9 ing exclusion proceedings resulting from presentation of fraudulent
10 documentation or failure to present documentation; or

11 (ii) attempting to enter illegally by avoiding immigration inspec-
12 tion at an air or sea port of entry.

13 (2) Amounts required to be refunded under paragraph (1) of this sub-
14 section shall be refunded at least quarterly on the basis of estimates, made
15 by the Attorney General, of the expenses referred to in paragraph (1). Prop-
16 er adjustments shall be made in the amounts subsequently refunded under
17 paragraph (1) to the extent prior estimates were more or less than the
18 amount required to be refunded.

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

20 (1) fees collected under section 6909 of this title, deposited as offset-
21 ting receipts.

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

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

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

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

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

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

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

39 (A) the financial condition of the Account, including the beginning
40 balance, revenues, withdrawals and their purpose, the ending balance,
41 projections for the next fiscal year, and a complete workload analysis

1 showing on a port-by-port basis the current and projected need for in-
2 spectors; and

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

11 **§ 318. Immigration Examinations Fee Account**

12 (a) ESTABLISHMENT.—There is a separate account in the Treasury
13 known as the “Immigration Examinations Fee Account”.

14 (b) USE OF AMOUNTS.—Amounts in the Account are available to the At-
15 torney General to reimburse any appropriation by the amount paid from
16 that appropriation for expenses in—

17 (1) providing immigration adjudication and naturalization services;
18 and

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

21 (c) DEPOSITS.—Immigration adjudication fees designated by the Attorney
22 General by regulation shall be deposited as offsetting receipts in the Ac-
23 count, whether collected directly by the Attorney General or through clerks
24 of courts. However, fees the Attorney General receives from applicants re-
25 siding in the Virgin Islands or Guam shall be paid to the treasury of the
26 Virgin Islands or the treasury of Guam, respectively.

27 (d) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Account re-
28 main available to the Attorney General until expended.

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

33 **§ 319. Land border inspection fees**

34 (a) FEE AUTHORITY.—The Attorney General may establish, by regula-
35 tion, a project under which a fee may be charged and collected for inspec-
36 tion services at land border places of entry in California and on the north-
37 ern border of the United States. The project may include commuter lanes
38 to be made available to qualified citizens of the United States and aliens,
39 as the Attorney General decides. Fees collected under this subsection shall
40 be deposited as offsetting receipts in the Account established under sub-
41 section (b)(1) of this section.

1 (b) LAND BORDER INSPECTION FEE ACCOUNT.—(1) There is a separate
2 account in the Treasury known as the “Land Border Inspection Fee Ac-
3 count”.

4 (2) At least quarterly, the Secretary of the Treasury shall refund out of
5 the Account to any appropriation amounts for expenses incurred in provid-
6 ing inspection services at land border places of entry in California and on
7 the northern border of the United States, including expenses of—

8 (A) providing overtime inspection services;

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

11 (C) employing additional permanent and temporary inspectors;

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

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

17 (F) administering the Account.

18 (3) Amounts required to be refunded from the Account for each fiscal
19 year shall be refunded in accordance with estimates made in the budget re-
20 quest of the Attorney General for that fiscal year. However, any proposed
21 change in the amount designated in the budget request may be made only
22 after notification to the Committees on Appropriations of the House of Rep-
23 resentatives and the Senate under section 606 of the Departments of Com-
24 merce, Justice, and State, the Judiciary, and Related Agencies Appropria-
25 tions Act, 1990 (Public Law 101–162, 103 Stat. 1031).

26 (c) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Account re-
27 main available until expended.

28 (d) REPORTS.—(1) The Attorney General shall submit annually to Con-
29 gress a statement on the financial condition of the Account, including the
30 beginning balance, revenues, withdrawals, the ending balance, and projec-
31 tions for the next fiscal year.

32 (2) The Attorney General shall submit quarterly to Congress a status re-
33 port on the project.

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

35 **§ 320. Advisory committee on inspection services**

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

1 (b) MEETINGS AND ADVICE.—The advisory committee shall meet on a
2 periodic basis and advise the Attorney General on issues related to the per-
3 formance of the inspection services of the Immigration and Naturalization
4 Service. This advice shall include such issues as the time periods during
5 which the services should be performed, the proper number and deployment
6 of inspection officers, the level of fees, and the appropriateness of any pro-
7 posed fee. The Attorney General shall give substantial consideration to the
8 views of the committee.

9 **§ 321. Immigration emergency fund**

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

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

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

15 (B) to reimburse State and local governments for providing assist-
16 ance requested by the Attorney General in meeting an immigration
17 emergency, but only if the President has decided that an emergency ex-
18 ists and has certified the existence of the emergency to the Committees
19 on the Judiciary of the House of Representatives and the Senate; and

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

24 (i) when a district director of the Service certifies to the Com-
25 missioner of Immigration and Naturalization that the number of
26 asylum applications filed in the director’s district during a cal-
27 endar quarter is at least 1,000 more than the number of asylum
28 applications filed in that district during the prior calendar quarter;

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

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

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

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

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

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

3 (1) scenarios that constitute an immigration emergency;

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

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

8 (4) a definition of “assistance required by the Attorney General” in
9 subsection (b)(1)(C) of this subsection;

10 (5) the process by which State and local governments are reim-
11 bursed; and

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

14 (d) AUTHORIZATION OF APPROPRIATIONS.—An amount may be appro-
15 priated to the fund each fiscal year so that the balance in the fund is
16 \$35,000,000.

17 **§ 322. Reports**

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

23 (1) the number of petitions filed.

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

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

28 (4) the number of petitions withdrawn.

29 (5) the number of petitions pending final action.

30 (b) REPORTS ON NATURALIZATION STATISTICS.—(1) The Attorney Gen-
31 eral shall prepare annually, from the records of the Immigration and Natu-
32 ralization Service, a report in statistical form with analytical comment. The
33 report shall show by nationality—

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

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

39 (C) the economic, vocational, and other classifications of aliens seek-
40 ing citizenship of the United States.

1 (2) Payment for the equipment used in preparing the report under this
 2 subsection shall be made from the appropriation “Immigration and Natu-
 3 ralization Service—Salaries and Expenses”.

4 **§ 323. Information system on impact of immigration laws**

5 (a) ESTABLISHMENT.—In consultation with interested academicians, gov-
 6 ernmental authorities, and other parties, the Attorney General shall provide
 7 for a system to collect and disseminate information not in individually iden-
 8 tifiable form that is useful in evaluating the social, economic, environmental,
 9 and demographic impact of the immigration laws.

10 (b) TYPE OF INFORMATION TO BE COLLECTED AND DISSEMINATED.—
 11 Information collected under subsection (a) of this section shall include infor-
 12 mation on—

13 (1) the alien population in the United States;

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

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

16 (4) nonimmigrants in the United States (by occupation, basis for ad-
 17 mission, and length of stay);

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

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

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

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

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

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

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

32 (3) information on the number, and rate of denial administratively,
 33 of applications for naturalization, for each district office of the Immi-
 34 gration and Naturalization Service and by national origin group.

35 **§ 324. Information about criminal aliens**

36 (a) ALIENS ARRESTED FOR OR CONVICTED OF AGGRAVATED FELO-
 37 NIES.—(1) The Attorney General shall devise and carry out a system—

38 (A) to make the investigative resources of the Immigration and Natu-
 39 ralization Service available, daily and on a 24-hour basis, to officers
 40 and employees of the United States Government, States, and localities

1 to decide whether an individual arrested by any of those officers or em-
2 ployees for an aggravated felony is an alien;

3 (B) to designate and train officers and employees of the Service in
4 each district to serve as liaison to law enforcement and correctional
5 agencies and courts of the Government, States, and localities in mat-
6 ters involving the arrest, conviction, and release of aliens charged with
7 aggravated felonies; and

8 (C) to maintain a current record, using computer resources, of aliens
9 who have been convicted after November 17, 1988, of aggravated felo-
10 nies and deported.

11 (2) The record referred to in paragraph (1)(C) of this subsection shall
12 be made available to inspectors at ports of entry and to border patrol agents
13 at sector headquarters to help immediately identify aliens who have been
14 convicted after November 17, 1988, of aggravated felonies and deported and
15 who are attempting to reenter the United States.

16 (b) CRIMINAL ALIEN TRACKING CENTER.—(1) The Attorney General
17 shall operate a criminal alien tracking center under subsection (a) of this
18 section.

19 (2) The following amounts may be appropriated to carry out this sub-
20 section:

21 (A) \$3,400,000 for the fiscal year ending September 30, 1996.

22 (B) \$3,600,000 for the fiscal year ending September 30, 1997.

23 (C) \$3,700,000 for the fiscal year ending September 30, 1998.

24 (D) \$3,800,000 for the fiscal year ending September 30, 1999.

25 (E) \$3,900,000 for the fiscal year ending September 30, 2000.

26 **§ 325. Acceptance of State assistance for transporting de-**
27 **portable criminal aliens**

28 (a) AUTHORITY.—Subject to subsection (b) of this section and notwith-
29 standing any other provision of law, the Attorney General may accept, hold,
30 administer, and use gifts of property and services (but not cash) from State
31 and local governments to assist the Immigration and Naturalization Service
32 in the transportation of deportable aliens who are arrested for misdemean-
33 ors or felonies under State or Federal law and who are unlawfully in the
34 United States or willing to submit to voluntary departure under safeguards.
35 Property acquired under this section shall be acquired in the name of the
36 United States Government.

37 (b) LIMITATION.—If the Attorney General decides that the exercise of the
38 authority under subsection (a) of this section has resulted in discrimination
39 by law enforcement officials on the basis of race, color, or national origin,
40 the Attorney General shall terminate the exercise of that authority.

SUBCHAPTER II—DEPARTMENT OF STATE

§ 341. General authority of the Secretary of State

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

(1) duties and powers of the Administrator designated under section 342 of this title;

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

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

(b) DELEGATION 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.

§ 342. Administrator

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

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

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

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

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

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

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

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

(c) GENERAL COUNSEL OF VISA OFFICE.—The Visa Office has a General Counsel appointed by the Secretary. The General Counsel serves under the general direction of the Legal Adviser of the Department. The General Counsel may maintain liaison with the appropriate officers of the Immigra-

1 tion and Naturalization Service to achieve a uniform interpretation of this
2 title.

3 **§ 344. Sharing information about foreign traffickers in con-**
4 **trolled substances**

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

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

14 (2) the National Drug Enforcement Policy Board shall agree on uni-
15 form guidelines that would permit the sharing of information of foreign
16 traffickers in controlled substances.

17 **§ 345. Automated Visa Lookout System**

18 (a) INCLUSION OF NAMES.—(1) Except as provided in paragraph (2) of
19 this subsection, the Secretary of State may not include in the Automated
20 Visa Lookout System, or in any other system or list that maintains informa-
21 tion about the excludability of aliens under this title, the name of an alien
22 who is not excludable under this title.

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

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

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

36 (b) REQUIRED CHECK BEFORE ISSUING VISAS.—(1) Beginning May 1,
37 1996, when a consular officer issues a visa, the officer shall certify, in writ-
38 ing, that a check of the Automated Visa Lookout System, or any other sys-
39 tem or list that maintains information about the excludability of aliens
40 under this title, has been made and that there is no basis under the system
41 for excluding the alien.

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

7 (3) If an alien to whom a visa was issued as a result of a failure de-
8 scribed in paragraph (2) of this subsection is admitted to the United States
9 and there subsequently is probable cause to believe that the alien was a par-
10 ticipant in a terrorist act causing serious injury, loss of life, or significant
11 destruction of property in the United States, the Secretary shall convene an
12 Accountability Review Board under title III of the Omnibus Diplomatic Se-
13 curity and Antiterrorism Act of 1986 (Public Law 99-399, 100 Stat. 859).

14 (c) UPGRADE TO SYSTEM.—Not later than October 30, 1995, the Sec-
15 retary of State shall upgrade all overseas visa lookout operations to comput-
16 erized systems with automated multiple-name search capabilities.

17 **§ 346. Surcharge for processing machine readable visas**

18 (a) GENERAL AUTHORITY.—Notwithstanding any other law, the Sec-
19 retary of State may charge a fee or surcharge for processing machine read-
20 able nonimmigrant visas and machine readable combined border crossing
21 identification cards and nonimmigrant visas.

22 (b) DEPOSIT OF AMOUNTS COLLECTED.—Fees and surcharges collected
23 under subsection (a) of this section shall be deposited as an offsetting collec-
24 tion to any Department of State appropriation, to recover the costs of pro-
25 viding consular services. The amounts collected remain available for obliga-
26 tion until expended.

27 (c) LIMITATION.—For the fiscal years ending September 30, 1994, and
28 1995, fees and surcharges deposited under subsection (b) of this section
29 may not exceed a total of \$107,500,000. For subsequent fiscal years, fees
30 and surcharges may be collected under subsection (a) of this section only
31 in amounts provided in subsequent authorization laws.

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

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

SUBCHAPTER III—MISCELLANEOUS

§ 351. Liaison with internal security officers

To exchange information for use in enforcing this title in the interest of the internal security of the United States, the Commissioner of Immigration and Naturalization and the Administrator designated under section 342 of this title may maintain direct and continuous liaison with the Directors of the Federal Bureau of Investigation and Central Intelligence and with other internal security officers of the United States Government.

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

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

§ 353. Disposition of receipts

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

§ 354. 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

1 became or will become deportable during those periods under chapter
2 65 of this title; and

3 (3) a description of the impact of—

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

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

12 (c) HISTORY AND PROJECTIONS.—In each report, the information re-
13 ferred to in subsection (b) of this section shall be—

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

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

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

21 **§ 355. Setting immigration adjudication and naturalization**
22 **fees**

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

25 (1) the costs of providing those services;

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

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

30 **CHAPTER 5—PASSPORTS AND TRAVEL REQUIREMENTS**

SUBCHAPTER I—PASSPORTS

Sec.

- 501. Individuals eligible for passports.
- 502. Issuing 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 issued only to, or verified only for, a national of the United States.

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

§ 502. Issuing and verifying passports

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

(1) issue and verify passports; and

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

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

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

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

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

(2) the information contained in the passport.

§ 503. Validity and use

(a) PERIOD OF VALIDITY.—A passport is valid for 10 years from the date it is issued. 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 in paragraph (2) of this subsection or any other law, a passport may not be designated as restricted for travel to, or use in, any country.

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

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

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

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

§ 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 pass-

1 port fee and, when executing the application before an officer or employee
2 of the United States Government, from paying the execution fee:

3 (1) an officer or employee of the Government going outside the Unit-
4 ed States on official business, and a member of the immediate family
5 of the officer or employee.

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

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

11 (b) COLLECTION AND RETENTION OF APPLICATION FEES.—The Sec-
12 retary by regulation may—

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

15 (2) transfer to the United States Postal Service the fee for each ap-
16 plication executed before the Service.

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

20 (2) Notwithstanding any other law and to the extent provided in an ap-
21 propriation law, not more than \$5,000,000 in passport fees collected by the
22 Secretary may be credited each fiscal year to a Department of State ac-
23 count. Amounts credited to the account are available only for costs associ-
24 ated with acquiring and producing machine-readable United States pass-
25 ports and visas and compatible reading equipment. Amounts credited under
26 this paragraph remain available until expended.

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

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

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

33 (B) paid to an officer or employee of the Government by an individ-
34 ual issued a passport who is refused a visa in the United States by
35 the appropriate officer of a government of a foreign country if the indi-
36 vidual within 6 months from the date the passport is issued makes a
37 written request and returns the unused passport.

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

40 **§ 505. Limitation on acquiring paper for passports**

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

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

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

6 SUBCHAPTER II—TRAVEL REQUIREMENTS

7 **§ 511. Travel document requirements**

8 (a) DEFINITIONS.—In this section—

9 (1) “permit” means a passport, visa, reentry permit, or other docu-
10 ment used to enter or leave the United States.

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

13 (3) “United States” includes all territory and waters subject to the
14 jurisdiction of the United States.

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

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

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

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

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

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

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

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

34 (6) knowingly use, attempt to use, or give to another for use, a per-
35 mit that is forged, changed, mutilated, or invalid.

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

39 (e) REVOCATION OF REGULATION OR ORDER.—Revocation of a regula-
40 tion prescribed or order issued under this section does not prevent prosecu-

1 tion, or imposition of penalties, for violation of the regulation or order be-
2 fore it was revoked.

3 **§ 512. Certain rights to enter or leave unaffected**

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

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

8 (2) an alien member of the armed forces of the United States enter-
9 ing or leaving the United States under orders or with permission when
10 the member is in uniform or carrying identification as a member of the
11 armed forces.

12 **§ 513. Records about residents permanently leaving the**
13 **United States**

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

18 (1) name.

19 (2) race, age, and sex.

20 (3) country of birth.

21 (4) marital status.

22 (5) occupation.

23 (6) whether the resident can read or write.

24 (7) nationality.

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

26 (9) last permanent residence in the United States.

27 (10) intended future permanent residence.

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

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

31 **§ 514. Travel restrictions on citizens of foreign countries**

32 (a) GENERAL POLICY.—(1) To carry out the general principles of the
33 Final Act of the Conference on Security and Cooperation in Europe empha-
34 sizing the lowering of international barriers to the free movement of people
35 and ideas and in accordance with the Vienna Convention on Diplomatic Re-
36 lations establishing the legal principles of nondiscrimination and reciprocity,
37 it is the general policy of the United States to impose restrictions on travel
38 within the United States by citizens of a foreign country only when the gov-
39 ernment of that foreign country imposes restrictions on travel by citizens
40 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. Rules of construction related to organizations.

703. Construction of expedited deportation requirements.

§ 701. Certain treaties unaffected

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

§ 702. Rules of construction related to organizations

(a) ACTS CONSTITUTING AFFILIATION.—In this title, the giving, lending, or promising of support, money, or any other thing of value for any purpose to an organization is presumed to constitute affiliation with the organization.

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

§ 703. Construction of expedited deportation requirements

Section 6533(a) of this title and the amendments made by the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416, 108 Stat. 4305) do not create any substantive or procedural right or benefit that is legally enforceable by any party against the United States Government or an agency or officer of the Government or any other person.

SUBTITLE II—ALIENS

PART A—NONIMMIGRANTS

CHAPTER	Sec.
21. ADMISSION AND DOCUMENTATION	2101
23. CLASSIFICATIONS	2301
25. TEMPORARY AGRICULTURAL WORKERS	2501
27. ALIEN CREWMEMBERS	2701
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PART B—IMMIGRANTS

41. NUMERICAL LIMITATIONS	4101
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1 **§ 2102. Presumption**

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

7 **§ 2103. Application of certain provisions to diplomats**

8 Except as otherwise provided in this title, the provisions of this title relat-
9 ed to ineligibility for a visa and exclusion or deportation of an alien do not
10 apply to a nonimmigrant described in—

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

13 (A) to the provisions requiring a passport and visa for identi-
14 fication and proof of qualification for the nonimmigrant classifica-
15 tion under that section; and

16 (B) under regulations prescribed by the President, to section
17 6308(a)–(c) of this title; or

18 (2) section 2301(2) or 2302(1)–(5) of this title, except that the non-
19 immigrant is subject to—

20 (A) the provisions requiring a passport and visa for identifica-
21 tion and proof of qualification for the nonimmigrant classification
22 under one of those sections; and

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

24 SUBCHAPTER II—DOCUMENTATION

25 **§ 2121. Documentation requirements**

26 (a) GENERAL.—Except as provided in this section and section 2127 of
27 this title, an alien classified as a nonimmigrant under subchapter I of chap-
28 ter 23 of this title may be admitted to the United States only if, when ap-
29 plying for admission, the nonimmigrant has—

30 (1) a passport that—

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

34 (B) authorizes the alien during those 6 months to return to the
35 foreign country from which the alien came or to enter another for-
36 eign country; and

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

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

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

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

4 (3) for an alien proceeding in immediate and continuous transit
5 through the United States on a carrier operating under a contract au-
6 thorized by section 6905(b)(1)(B) of this title.

7 (c) WAIVERS FOR VISITORS TO GUAM.—(1) The Attorney General, the
8 Secretary of State, and the Secretary of the Interior jointly may waive sub-
9 section (a) of this section for an alien applying for admission as a non-
10 immigrant visitor classified under section 2303 of this title, but only for
11 entry into and stay on Guam for not more than 15 days, if they jointly de-
12 cide, after consulting with the Governor of Guam, that—

13 (A) an adequate arrival and departure control system has been devel-
14 oped on Guam; and

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

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

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

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

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

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

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

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

33 **§ 2122. Applications for nonimmigrant visas and registra-**
34 **tion**

35 (a) APPLICATION REQUIREMENTS.—An alien applying for a non-
36 immigrant visa must apply in the way prescribed by regulation. The applica-
37 tion must contain the following information about the alien:

38 (1) the complete true name of the alien.

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

41 (3) the date and place of birth.

- 1 (4) nationality.
- 2 (5) marital status.
- 3 (6) the purpose in going to the United States.
- 4 (7) the period of intended stay in the United States.
- 5 (8) additional information prescribed by regulation that is necessary
- 6 to identify the alien and enforce the immigration and nationality laws.

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

- 9 (1) register if required by chapter 81 of this title when applying for
- 10 the visa;
- 11 (2) take a physical or mental examination, or both, if required by
- 12 the consular officer to decide whether the alien may receive a visa; and
- 13 (3) provide the consular officer, with the application, a certified copy
- 14 of any documentation about the alien that may be required by regula-
- 15 tion.

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

21 (d) SIGNATURE AND OATH.—Except as otherwise prescribed by regula-

- 22 tion, an alien must—
- 23 (1) sign an application for a nonimmigrant visa in the presence of
 - 24 a consular officer; and
 - 25 (2) take an oath administered by the consular officer verifying the
 - 26 application.

27 (e) DISPOSITION OF APPLICATIONS.—An application for a nonimmigrant
28 visa or other documentation as a nonimmigrant shall be disposed of as pre-

29 scribed by regulation.

30 **§2123. Issuing nonimmigrant visas and other documenta-**
31 **tion**

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

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

37 (A) the alien's application does not comply with this title or regula-

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

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

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

4 (i) the alien otherwise may receive the visa or other documenta-
5 tion; and

6 (ii) the consular officer receives notice from the Attorney Gen-
7 eral that a bond approved by the Attorney General has been filed
8 under section 6304(b) of this title; or

9 (B) an alien applying as a nonimmigrant classified under section
10 2303 or 2310 of this title if the alien otherwise may receive the visa
11 or other documentation, and the consular officer receives notice from
12 the Attorney General of the filing of a bond, in the amount and con-
13 taining conditions the consular officer prescribes, to ensure that the
14 alien will leave the United States when—

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

16 (ii) the alien does not maintain the nonimmigrant status under
17 which the alien was admitted or which the alien acquired under
18 section 9109 of this title.

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

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

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

25 (3) additional information that may be required.

26 **§2124. Period of validity and revocation**

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

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

36 **§2125. Fees**

37 The Secretary of State shall prescribe fees for providing and verifying a
38 nonimmigrant visa application for, and issuing a nonimmigrant visa to, a
39 nonimmigrant of each foreign country. If practicable, the total amount of
40 the fees shall correspond to the total of all visa, entry, residence, or similar
41 fees the country imposes on nationals of the United States. A nonimmigrant

1 visa issued to an alien described in section 11 of the Agreement Between
2 the United Nations and the United States of America Regarding the Head-
3 quarters of the United Nations (61 Stat. 761) and in transit to or from
4 the headquarters district of the United Nations shall be issued without
5 charge.

6 **§ 2126. Burden of proof**

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

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

15 **§ 2127. Visa waiver pilot program**

16 (a) ESTABLISHMENT OF PROGRAM.—The Attorney General and the Sec-
17 retary of State jointly may maintain a pilot program for the fiscal years
18 ending September 30, 1989–1996, under which they jointly may waive sec-
19 tion 2121(a)(2) of this title for an alien eligible for a waiver under sub-
20 section (c) of this section.

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

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

29 (A) the average number of refusals of nonimmigrant visitor visas for
30 nationals of that country during the prior 2 fiscal years was less than
31 2 percent of the number of nonimmigrant visitor visas for nationals of
32 that country that were issued or refused during those years;

33 (B) the average number of refusals of nonimmigrant visitor visas for
34 nationals of that country during either of those 2 years was less than
35 2.5 percent of the number of nonimmigrant visitor visas for nationals
36 of that country that were issued or refused during that year;

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

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

4 (c) DESIGNATION OF PILOT PROGRAM COUNTRIES WITH PROBATIONARY
5 STATUS.—(1) The Attorney General and the Secretary jointly may des-
6 ignate any foreign country as a pilot program country with probationary
7 status if the government of that country extends (or agrees to extend) recip-
8 rocal privileges to nationals of the United States and meets the require-
9 ments of paragraph (2) of this subsection.

10 (2) A country may be designated as a pilot program country with proba-
11 tionary status only if—

12 (A) the average number of refusals of nonimmigrant visitor visas for
13 nationals of that country during the prior 2 fiscal years was less than
14 3.5 percent of the number of nonimmigrant visitor visas for nationals
15 of that country that were issued or refused during those years;

16 (B) the number of refusals of nonimmigrant visitor visas for nation-
17 als of that country during the prior fiscal year was less than 3 percent
18 of the number of nonimmigrant visitor visas for nationals of that coun-
19 try that were issued or refused during that year;

20 (C) the total number of nationals referred to in subclauses (i) and
21 (ii) of this clause is less than 1.5 percent of the number of nationals
22 of that country who applied for admission as nonimmigrant visitors
23 during that prior fiscal year:

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

27 (ii) the number of nationals of that country who were admitted
28 as nonimmigrant visitors during that prior fiscal year and who vio-
29 lated a condition of that admission; and

30 (D) the government of that country certifies that it has or is develop-
31 ing a program to issue machine-readable passports to citizens of that
32 country.

33 (3) The designation of a country as a pilot program country with proba-
34 tionary status ends if—

35 (A) the total number of nationals referred to in subclauses (i) and
36 (ii) of this clause is more than 2 percent of the number of nationals
37 of that country who applied for admission as nonimmigrant visitors
38 during that prior fiscal year:

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

1 (ii) the number of nationals of that country who were admitted
2 as nonimmigrant visitors during that prior fiscal year and who vio-
3 lated a condition of that admission; or

4 (B) the country is not designated as a pilot program country under
5 subsection (b) of this section, as provided in paragraph (4) of this sub-
6 section, within 3 fiscal years of the country's designation as a pilot pro-
7 gram country with probationary status under paragraph (2) of this
8 subsection.

9 (4) The Attorney General and the Secretary jointly may designate as a
10 pilot program country under subsection (b) of this section a country that
11 in the prior fiscal year was a pilot program country with probationary sta-
12 tus if the total number of nationals referred to in clauses (A) and (B) of
13 this paragraph is less than 2 percent of the number of nationals of that
14 country who applied for admission as nonimmigrant visitors during that
15 prior fiscal year:

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

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

22 (d) CONTINUATION OF PILOT PROGRAM COUNTRY STATUS.—A country
23 that was a pilot program country in the prior fiscal year may be designated
24 as a pilot program country in a subsequent fiscal year of the program only
25 if the total number of nationals referred to in clauses (1) and (2) of this
26 subsection is less than 2 percent of the number of nationals of that country
27 who applied for admission as nonimmigrant visitors during that prior fiscal
28 year:

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

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

35 (e) ELIGIBLE ALIENS.—An alien is eligible for a waiver under the pro-
36 gram if the alien—

37 (1) is applying to be admitted not later than September 30, 1996,
38 as a nonimmigrant visitor under section 2303 of this title for not more
39 than 90 days;

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

1 this section or a pilot program country with probationary status under
2 subsection (c) of this section;

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

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

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

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

12 (5) when arriving by air or sea, arrives at the port of entry into the
13 United States on a carrier that has an agreement with the Attorney
14 General to guarantee transportation of the alien out of the United
15 States if the alien is found inadmissible or deportable by an immigra-
16 tion officer;

17 (6) has a round-trip transportation ticket unless the Attorney Gen-
18 eral by regulation waives this requirement;

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

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

23 (f) ADMISSION UNDER VISA WAIVER PILOT PROGRAM.—An alien admit-
24 ted to the United States under this section without a visa may not stay in
25 the United States as a nonimmigrant visitor for more than 90 days after
26 the date of admission to the United States.

27 (g) CARRIER AGREEMENTS.—(1) A carrier and the Attorney General may
28 make an agreement referred to in subsection (e)(5) of this section under
29 which the carrier agrees, in consideration of the waiver of the visa require-
30 ment for a nonimmigrant visitor under the program—

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

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

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

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

4 (h) DENIAL OF WAIVERS.—Notwithstanding subsections (a)–(e) and (g)
 5 of this section, the Attorney General and the Secretary jointly may—

6 (1) for any reason refuse to designate a foreign country that other-
 7 wise may qualify for designation under this section; or

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

10

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 transit.
- 2305. Crewmembers.
- 2306. Aliens entitled to enter for trade or investment.
- 2307. Aliens entitled to enter for business activities at a professional level under certain trade agreements.
- 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.
- 2322. Participants in cooperative research, development, and coproduction projects.
- 2323. Participants in special education programs.
- 2324. Relatives of special immigrants.
- 2325. Registered nurses.
- 2326. Aliens with information concerning criminal or terrorist organizations.

SUBCHAPTER II—SPECIAL REQUIREMENTS

- 2351. Employer applications for aliens employed temporarily in specialty occupations or as fashion models.
- 2352. Advisory opinions for aliens with extraordinary ability or with distinction in the arts, motion pictures, or television.
- 2353. Advisory opinions for athletes and entertainers.

11

SUBCHAPTER I—GENERAL

12

§ 2301. Officials of governments of foreign countries

13

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

15

(1)(A) an ambassador, public minister, or career diplomatic or con-
 16 sular officer accredited by a government of a foreign country recog-

1 nized de jure by the United States Government who is accepted by the
2 President or the Secretary of State; or

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

5 (2) on a reciprocal basis—

6 (A) another official or employee accredited by a government of
7 a foreign country recognized de jure by the United States Govern-
8 ment who is accepted by the Secretary; or

9 (B) a member of the immediate family of the official or em-
10 ployee; or

11 (3) on a reciprocal basis—

12 (A) an attendant, servant, or personal employee of an alien de-
13 scribed in clause (1)(A) or (2)(A) of this section; or

14 (B) a member of the immediate family of the attendant, serv-
15 ant, or personal employee.

16 **§ 2302. Representatives to international organizations**

17 An alien is classifiable as a nonimmigrant under this section if the alien
18 is—

19 (1)(A) a designated principal resident representative of a government
20 of a foreign country to an international organization if the government
21 is recognized de jure by the United States Government and is a mem-
22 ber of the international organization; or

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

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

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

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

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

33 (4)(A) an alien described in clause (1)(A), (2)(A), or (3)(A) of this
34 section, except that the government of the foreign country is not recog-
35 nized de jure by the United States Government or is not a member of
36 an international organization; or

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

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

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

40 or

1 (6)(A) an attendant, servant, or personal employee of an alien de-
2 scribed in clause (1)(A), (2)(A), (3)(A), (4)(A), or (5)(A) of this sec-
3 tion; or

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

6 **§ 2303. Visitors for business and pleasure**

7 An alien is classifiable as a nonimmigrant under this section if the
8 alien—

9 (1) has a residence in a foreign country that the alien has no inten-
10 tion of abandoning; and

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

14 **§ 2304. Aliens in immediate and continuous transit**

15 An alien is classifiable as a nonimmigrant under this section if the alien
16 is—

17 (1) in immediate and continuous transit through the United States;
18 or

19 (2) entitled to pass in transit between a foreign country and the
20 headquarters district of the United Nations under section 11(3), (4),
21 or (5) of the Agreement Between the United Nations and the United
22 States of America Regarding the Headquarters of the United Nations
23 (61 Stat. 761).

24 **§ 2305. Crewmembers**

25 (a) GENERAL.—(1) Except as provided in subsection (c) of this section,
26 an alien is classifiable as a nonimmigrant under this section if the alien—

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

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

33 (2) Serving in a capacity required for normal operation and service on
34 a vessel under paragraph (1)(A) of this subsection includes performing
35 longshore work (as defined in section 2721(a) of this title) only to the ex-
36 tent provided in section 2723, 2724, or 2725 of this title.

37 (b) CREWMEMBERS OF FISHING VESSELS LANDING IN GUAM.—(1) Ex-
38 cept as provided in subsection (c) of this section, an alien is classifiable as
39 a nonimmigrant under this section if the alien—

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

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

6 (2) An alien is deemed to have departed from Guam under paragraph
 7 (1)(B) of this subsection after leaving the territorial waters of Guam with-
 8 out regard to whether the alien arrives in a foreign country before returning
 9 to Guam.

10 (c) CREWMEMBERS EMPLOYED IN LABOR DISPUTES.—(1) An alien who
 11 intends to land to perform service on a vessel of the United States (as de-
 12 fined in section 2101 of title 46) or on an aircraft of an air carrier (as de-
 13 fined in section 40102(a) of title 49) during a labor dispute in which there
 14 is a strike or lockout of the bargaining unit of the employer in which the
 15 alien intends to perform that service—

16 (A) is not entitled to the status of a nonimmigrant classified under
 17 this section;

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

21 (C) is not a crewmember for purposes of section 2703(d) of this title.

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

25 (A) has been employed by that employer for at least a one-year pe-
 26 riod before the date that the strike or legal lockout began;

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

30 (C) will continue to perform the same services that the alien provided
 31 during the alien's employment described in clause (B) of this para-
 32 graph.

33 **§ 2306. Aliens entitled to enter for trade or investment**

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

37 (b) ELIGIBILITY UNDER TREATY.—An alien is classifiable as a non-
 38 immigrant under this section if the alien—

39 (1) is entitled to enter the United States under a treaty of commerce
 40 and navigation between the United States Government and the govern-
 41 ment of the foreign country of which the alien is a national only—

1 (A) to carry on an amount of trade (including trade in services
2 or technology) principally between the United States and the coun-
3 try of which the alien is a national that is substantial, as estab-
4 lished by the Secretary of State after consulting with the heads
5 of appropriate agencies; or

6 (B) to develop and direct the operations of an enterprise in
7 which the alien has invested or is actively in the process of invest-
8 ing an amount of capital that is substantial, as established by the
9 Secretary of State after consulting with appropriate agencies; or

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

12 (c) ELIGIBILITY UNDER LEGISLATION.—An alien shall be classified as a
13 nonimmigrant under this section if the alien—

14 (1) is a national of the Philippines who is coming to the United
15 States, on a reciprocal basis under an agreement implemented under
16 the Act of June 18, 1954 (ch. 323, 68 Stat. 264), only to engage in
17 activities described in subsection (b)(1)(A) or (B) of this section;

18 (2) a national of Australia or Sweden who is coming to the United
19 States on a reciprocal basis only to engage in activities described in
20 subsection (b)(1)(A) or (B) of this section;

21 (3)(A) is a citizen of Canada; and

22 (B) is coming to the United States on a reciprocal basis under the
23 United States-Canada Free-Trade Agreement only for a purpose speci-
24 fied by Annex 1502.1 (United States of America), Part B—Traders
25 and Investors, of the United States-Canada Free-Trade Agreement, but
26 only if the purpose was specified by that Annex on January 1, 1989;

27 (4) subject to subsection (d) of this section—

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

29 (B) is coming to the United States on a reciprocal basis under
30 the North American Free Trade Agreement only for a purpose
31 specified by section B of Annex 1603 of the Agreement, but only
32 if the purpose was specified by Annex 1603 on January 1, 1994;
33 or

34 (5) is the spouse or child of an alien described in clause (1), (2),
35 (3), or (4) of this subsection if accompanying or following to join the
36 alien.

37 (d) LABOR DISPUTES.—An alien described in subsection (c)(4) of this
38 section is not entitled to be classified as a nonimmigrant under that section
39 if there is a strike or lockout in progress during a labor dispute in the occu-
40 pational classification at the alien's place or intended place of employment,
41 unless the alien establishes under regulations prescribed by the Attorney

1 General that the alien's entry will not adversely affect the settlement of the
2 strike or lockout or the employment of any individual who is involved in the
3 strike or lockout. Notice of a decision by the Attorney General under this
4 subsection shall be given in the way required by paragraph 3 of Article 1603
5 of the Agreement.

6 **§2307. Aliens entitled to enter for business activities at a**
7 **professional level under certain trade agreements**

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

11 (b) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
12 tion if the alien—

13 (1)(A) is a citizen of Canada;

14 (B) is coming to the United States under Annex 1502.1 (United
15 States of America), Part C—Professionals, of the United States-Can-
16 ada Free-Trade Agreement to engage in business activities at a profes-
17 sional level as provided in that Annex; and

18 (C) may be admitted to engage in those activities under regulations
19 prescribed by the Attorney General after consulting with the Secretar-
20 ies of State and Labor; or

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

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

23 (ii) is coming to the United States under section D of Annex
24 1603 of the North American Free Trade Agreement to engage in
25 business activities at a professional level as provided in Annex
26 1603; and

27 (iii) may be admitted to engage in those activities under regula-
28 tions prescribed by the Attorney General after consulting with the
29 Secretaries of State and Labor; or

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

32 (c) NUMERICAL LIMITATIONS ON CITIZENS OF MEXICO.—(1) The Attor-
33 ney General shall establish an annual numerical limitation on the admission
34 of citizens of Mexico classified under subsection (b)(2) of this section, as
35 provided in Appendix 1603.D.4 of Annex 1603 of the North American Free
36 Trade Agreement. Subject to paragraph (2) of this subsection, the limita-
37 tion—

38 (A) may be increased after December 31, 1994, under paragraph
39 5(a) of section D of Annex 1603 of the Agreement; and

40 (B) shall cease to apply as provided in paragraph 3 of Appendix
41 1603.D.4.

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

4 (A) the President has obtained advice about the proposed action
5 from the appropriate advisory committees established under section
6 135 of the Trade Act of 1974 (19 U.S.C. 2155);

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

11 (C) at least 60 days have passed after the President meets the re-
12 quirements of clauses (A) and (B) of this paragraph; and

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

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

19 (1) for a registered nurse, with the attestation requirements of sec-
20 tion 2902 of this title, to the extent and in the way provided by regula-
21 tions prescribed by the Secretary of Labor;

22 (2) for all other professions set out in Appendix 1603.D.1 of Annex
23 1603, with the application requirements of section 2351 of this title,
24 to the extent and in the way provided by regulations prescribed by the
25 Secretary of Labor; and

26 (3) with the employer petition requirements of this chapter, to the
27 extent and in the way provided by regulations prescribed by the Attor-
28 ney General.

29 (e) LABOR DISPUTES.—An alien who is a citizen of Canada or a citizen
30 of Mexico and who is coming to the United States under section C or D
31 of Annex 1603 of the North American Free Trade Agreement is not entitled
32 to be classified as a nonimmigrant under those sections if there is a strike
33 or lockout in progress during a labor dispute in the occupational classifica-
34 tion at the alien's place or intended place of employment, unless the alien
35 establishes under regulations prescribed by the Attorney General that the
36 alien's entry will not adversely affect the settlement of the strike or lockout
37 or the employment of any individual who is involved in the strike or lockout.
38 Notice of a decision by the Attorney General under this subsection shall be
39 given in the way required by paragraph 3 of Article 1603 of the Agreement.

1 **§ 2308. Media representatives**

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

4 (1) a representative of foreign information media who is coming to
5 the United States only to work as a representative of foreign informa-
6 tion media; or

7 (2) the spouse or child of an alien described in clause (1) of this sec-
8 tion if accompanying or following to join the alien.

9 **§ 2309. Aliens engaged to marry citizens**

10 (a) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
11 tion if the alien is—

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

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

17 (b) FIANCEE OR FIANCE PETITIONS.—(1) The citizen fiancée or fiancé
18 of an alien described in subsection (a)(1) of this section must file a petition
19 in the United States with the Attorney General. The petition must be in
20 the form and contain the information the Attorney General prescribes by
21 regulation. The Attorney General may approve the petition only if satisfied
22 that the parties—

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

26 (B) intend to marry; and

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

29 (2) The consular officer must receive the petition approved by the Attor-
30 ney General before a visa may be issued to the alien.

31 **§ 2310. Students in academic institutions and language**
32 **training programs**

33 (a) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
34 tion if the alien—

35 (1)(A) has a residence in a foreign country that the alien has no in-
36 tention of abandoning;

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

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

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

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

6 (A) the Attorney General has consulted with the Secretary of Edu-
7 cation; and

8 (B) the institution or the place of study for the program has agreed
9 to report promptly to the Attorney General the termination of attend-
10 ance of each nonimmigrant student.

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

13 (c) WORK AUTHORIZATIONS.—(1) During the 5-year period that began
14 on October 1, 1991, the Attorney General may grant a work authorization
15 for an alien admitted as a nonimmigrant classified under subsection (a)(1)
16 of this section to be employed off-campus if—

17 (A) the alien has completed one academic year as such a non-
18 immigrant and is maintaining good academic standing at the edu-
19 cational institution;

20 (B) the employer provides the educational institution and the Sec-
21 retary of Labor with an attestation that the employer—

22 (i) has recruited for at least 60 days for the position; and

23 (ii) will pay the alien and other similarly situated workers not
24 less than the actual wage level for the occupation at the place of
25 employment, or the prevailing wage level for the occupation in the
26 area of employment, whichever is greater; and

27 (C) the alien will be employed no more than 20 hours each week dur-
28 ing the academic term.

29 (2) An alien described in this subsection may be employed on a full-time
30 basis during vacation periods and between academic terms.

31 (3) If the Secretary of Labor determines that an employer has provided
32 an attestation under this subsection that is materially false or has failed to
33 pay wages in accordance with the attestation, the employer shall be
34 disqualified from employing an alien under this subsection after the Sec-
35 retary provides notice to the employer and an opportunity for a hearing.

36 (4) Not later than April 1, 1996, the Attorney General and the Secretary
37 of Labor shall submit to Congress a report on—

38 (A) whether the program of work authorization under this subsection
39 should be extended; and

40 (B) the impact of the program on the prevailing wages of workers.

1 **§ 2311. Students in nonacademic institutions**

2 (a) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
3 tion if the alien—

4 (1)(A) has a residence in a foreign country that the alien has no in-
5 tention of abandoning; and

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

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

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

14 (A) the Attorney General has consulted with the Secretary of Edu-
15 cation; and

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

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

20 **§ 2312. Participants in programs designated by the Director**
21 **of the United States Information Agency**

22 (a) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
23 tion if the alien—

24 (1)(A) has a residence in a foreign country that the alien has no in-
25 tention of abandoning;

26 (B) is a student, scholar, trainee, teacher, researcher, leader, or simi-
27 lar individual in a field of specialized knowledge or skill; and

28 (C) is coming to the United States temporarily to teach, lecture,
29 study, observe, conduct research, consult, receive training, or dem-
30 onstrate special skills in a program designated by the Director of the
31 United States Information Agency, and, if coming to participate in a
32 program in which the alien will receive graduate medical education or
33 training, satisfies the requirements of subsections (b) and (c) of this
34 section; or

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

37 (b) ADDITIONAL REQUIREMENTS FOR ALIENS IN MEDICAL PROGRAMS.—
38 The following additional requirements apply to an alien coming to the Unit-
39 ed States as a nonimmigrant classified under subsection (a)(1) of this sec-
40 tion to participate in a program in which the alien will receive graduate
41 medical education or training:

1 (1) A school of medicine or of another health profession accredited
2 by a body approved by the Secretary of Education must agree in writ-
3 ing to provide the graduate medical education or training under the
4 program for which the alien is coming to the United States or to ar-
5 range for an appropriate public or nonprofit private agency or institu-
6 tion to provide the education or training. Before making the agree-
7 ment, the school must be satisfied that the alien satisfies paragraph
8 (2) of this subsection. If the agreement is by a school of medicine, any
9 of its affiliated hospitals that will participate in providing the education
10 or training must be a party to the agreement.

11 (2) The alien must—

12 (A) have graduated from a school of medicine accredited by a
13 body approved by the Secretary of Education (regardless of wheth-
14 er the school is in the United States); or

15 (B)(i) have passed parts I and II of the National Board of Med-
16 ical Examiners Examination or an examination the Secretary of
17 Health and Human Services decides is equivalent;

18 (ii) be competent in oral and written English;

19 (iii) be able to adapt to the educational and cultural environ-
20 ment in which the alien will be receiving the education or training;
21 and

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

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

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

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

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

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

36 (6) The alien's participation in the program is limited to the period
37 typically required to complete the program, as determined by the Direc-
38 tor at the time the alien enters the United States. The Director shall
39 base the determination on criteria, established in coordination with the
40 Secretary of Health and Human Services, that consider the published

1 requirements of the medical specialty board administering the program.

2 However—

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

7 (B) the alien may change programs once within the first 2 years
8 after entering the United States as a nonimmigrant classified
9 under subsection (a)(1) of this section or acquiring the status of
10 a nonimmigrant classified under subsection (a)(1) if the Director
11 approves the change and a written assurance and an agreement
12 are given for the new program as provided in paragraphs (3) and
13 (4) of this subsection.

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

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

19 (2) was practicing medicine in a State.

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

25 **§ 2313. Aliens employed temporarily in specialty occupa-**
26 **tions or as fashion models**

27 (a) GENERAL.—Except as provided in subsection (e) of this section, an
28 alien is classifiable as a nonimmigrant under this section if—

29 (1)(A) the alien is coming to the United States temporarily to be em-
30 ployed in a specialty occupation (except as a registered nurse during
31 the period specified by section 2325(c) of this title or to perform serv-
32 ices described in section 2314, 2318, or 2319 of this title) that requires
33 theoretical and practical application of a body of highly specialized
34 knowledge and a bachelor's, or higher, degree in the specific specialty,
35 or its equivalent, as a minimum for entry into the occupation in the
36 United States;

37 (B) the alien—

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

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

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

5 (C) the Secretary of Labor has certified to the Attorney General that
6 the employer intending to employ the alien has filed with the Secretary
7 an application under section 2351 of this title;

8 (2)(A) the alien is coming to the United States temporarily to be em-
9 ployed as a fashion model and demonstrates distinguished merit and
10 ability; and

11 (B) the Secretary of Labor has certified to the Attorney General that
12 the employer intending to employ the alien has filed with the Secretary
13 an application under section 2351 of this title; or

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

17 (b) NUMERICAL AND TIME LIMITATIONS.—(1) The total number of aliens
18 who may be issued visas or provided status as nonimmigrants classified
19 under subsection (a)(1) and (2) of this section during a fiscal year is
20 65,000. Those aliens shall be classified as nonimmigrants under that sub-
21 section in the order in which petitions are filed for that classification.

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

25 (c) EMPLOYER PETITIONS.—(1) An employer intending to bring to the
26 United States an alien described in subsection (a)(1) or (2) of this section
27 must file a petition with the Attorney General. The petition must be in the
28 form and contain the information the Attorney General prescribes. Before
29 approving a petition, the Attorney General shall consult with the heads of
30 appropriate agencies. The Attorney General must approve the petition be-
31 fore a visa may be issued to the alien. Approval of the petition does not
32 establish by itself that the alien is a nonimmigrant.

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

36 (d) LIMITATIONS ON ADMISSION OF MEDICAL SCHOOL GRADUATES.—An
37 alien who is a graduate of a medical school and is coming to the United
38 States to perform services as a member of the medical profession may be
39 admitted as a nonimmigrant classified under subsection (a)(1) of this sec-
40 tion only if the alien—

1 (1) is coming to the United States at the invitation of a public or
2 nonprofit private educational or research institution or agency in the
3 United States to teach or conduct research, or both, at or for the insti-
4 tution or agency; or

5 (2)(A) has passed the licensing examination administered by the
6 Federation of State Medical Boards of the United States or an exam-
7 ination the Secretary of Health and Human Services decides is equiva-
8 lent; and

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

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

13 (e) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—For
14 purposes of obtaining a visa or acquiring or maintaining the status of a
15 nonimmigrant classified under subsection (a)(1) or (2) of this section, the
16 fact that an alien is the beneficiary of an application for a preference status
17 filed under subchapter I of chapter 43 of this title or otherwise has sought
18 permanent residence in the United States is not evidence of an intention
19 to abandon a residence in a foreign country if the alien has acquired a
20 change of status under section 9109 of this title to a classification as such
21 a nonimmigrant before the alien's most recent departure from the United
22 States.

23 **§ 2314. Temporary and seasonal agricultural employees**

24 (a) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
25 tion if the alien—

26 (1)(A) has a residence in a foreign country that the alien has no in-
27 tention of abandoning; and

28 (B) is coming to the United States temporarily to perform temporary
29 or seasonal agricultural labor or services as defined by the Secretary
30 of Labor by regulation, including agricultural labor as defined in sec-
31 tion 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C.
32 3121(g)) and agriculture as defined in section 3 of the Fair Labor
33 Standards Act of 1938 (29 U.S.C. 203); or

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

36 (b) EMPLOYER PETITIONS.—(1) An employer intending to bring to the
37 United States an alien described in subsection (a)(1) of this section must
38 file a petition with the Attorney General. The petition must be in the form
39 and contain the information the Attorney General prescribes. Before approv-
40 ing a petition, the Attorney General shall consult with the heads of appro-
41 priate agencies, including the Secretaries of Labor and Agriculture. The At-

1 torney General may approve the petition only after the petitioner has ap-
 2 plied to the Secretary of Labor for a certification under section 2502 of this
 3 title. The Attorney General must approve the petition before a visa may be
 4 issued to the alien. Approval of the petition does not establish by itself that
 5 the alien is a nonimmigrant.

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

9 **§2315. Aliens performing labor or services for which United**
 10 **States workers are unavailable**

11 (a) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
 12 tion if the alien—

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

15 (B) has a residence in a foreign country that the alien has no inten-
 16 tion of abandoning; and

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

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

23 (b) NUMERICAL LIMITATIONS.—The total number of aliens who may be
 24 issued visas or provided status as nonimmigrants classified under subsection
 25 (a)(1) of this section during a fiscal year is 66,000. Those aliens shall be
 26 classified as nonimmigrants under that subsection in the order in which pe-
 27 titions are filed for that classification.

28 (c) EMPLOYER PETITIONS.—(1) An employer intending to bring to the
 29 United States an alien described in subsection (a)(1) of this section must
 30 file a petition with the Attorney General. The petition must be in the form
 31 and contain the information the Attorney General prescribes. Before approv-
 32 ing a petition, the Attorney General shall consult with the heads of appro-
 33 priate agencies. The Attorney General must approve the petition before a
 34 visa may be issued to the alien. Approval of the petition does not establish
 35 by itself that the alien is a nonimmigrant.

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

39 (d) EMPLOYMENT IN THE VIRGIN ISLANDS.—The Attorney General may
 40 approve a petition filed for an alien described in subsection (a)(1) of this
 41 section for employment in the Virgin Islands only—

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

2 (2) for not more than 45 days.

3 **§2316. Aliens receiving training**

4 (a) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
5 tion if the alien—

6 (1)(A) has a residence in a foreign country that the alien has no in-
7 tention of abandoning; and

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

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

13 (b) EMPLOYER PETITIONS.—(1) An employer intending to bring to the
14 United States an alien described in subsection (a)(1) of this section must
15 file a petition with the Attorney General. The petition must be in the form
16 and contain the information the Attorney General prescribes. Before approv-
17 ing a petition, the Attorney General shall consult with the heads of appro-
18 priate agencies. The Attorney General must approve the petition before a
19 visa may be issued to the alien. Approval of the petition does not establish
20 by itself that the alien is a nonimmigrant.

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

24 **§2317. Intra-company transferees**

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

27 (A) within 3 years before applying for admission, has been employed
28 continuously for at least one year by a corporation or other legal entity
29 or an affiliate or subsidiary of the entity and is coming to the United
30 States temporarily to continue employment with the same employer or
31 an affiliate or subsidiary of the entity—

32 (i) in an executive or managerial capacity; or

33 (ii) that involves a specialized knowledge of the product of the
34 entity, affiliate, or subsidiary and its application in international
35 markets or an advanced level of knowledge of processes and proce-
36 dures of the entity, affiliate, or subsidiary and the alien has that
37 knowledge; or

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

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

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

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

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

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

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

16 (b) EMPLOYER PETITIONS.—(1) An employer intending to bring to the
17 United States an alien described in subsection (a)(1)(A) of this section must
18 file a petition with the Attorney General. The petition must be in the form
19 and contain the information the Attorney General prescribes. Before approv-
20 ing a petition, the Attorney General shall consult with the heads of appro-
21 priate agencies. The Attorney General must approve the petition before a
22 visa may be issued to the alien. Approval of the petition does not establish
23 by itself that the alien is a nonimmigrant.

24 (2) The Attorney General shall establish a procedure under which an em-
25 ployer that meets the requirements the Attorney General prescribes may file
26 a petition for more than one alien described in subsection (a)(1)(A) of this
27 section instead of filing individual petitions under paragraph (1) of this sub-
28 section for those aliens. The procedure shall allow the expedited processing
29 of visas for the entry of aliens under such a petition.

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

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

36 (c) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—For
37 purposes of obtaining a visa or acquiring or maintaining the status of a
38 nonimmigrant classified under subsection (a)(1)(A) of this section, the fact
39 that an alien is the beneficiary of an application for a preference status filed
40 under subchapter I of chapter 43 of this title or otherwise has sought per-
41 manent residence in the United States is not evidence of an intention to

1 abandon a residence in a foreign country if the alien has acquired a change
 2 of status under section 9109 of this title to a classification as such a non-
 3 immigrant before the alien's most recent departure from the United States.

4 **§ 2318. Aliens with extraordinary ability or with distinction**
 5 **in the arts, motion pictures, or television**

6 (a) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
 7 tion if the alien—

8 (1)(A)(i) has extraordinary ability in the sciences, education, busi-
 9 ness, or athletics as demonstrated by sustained national or inter-
 10 national acclaim;

11 (ii) is distinguished in the arts as demonstrated by sustained na-
 12 tional or international acclaim; or

13 (iii) with regard to motion picture and television productions has
 14 demonstrated a record of extraordinary achievement and whose achieve-
 15 ments have been recognized in the field through extensive documenta-
 16 tion; and

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

19 (2) has a residence in a foreign country that the alien has no inten-
 20 tion of abandoning and—

21 (A) is coming to the United States temporarily and only to ac-
 22 company and assist in the artistic or athletic performance for any
 23 specific event by an alien described in clause (1) of this subsection;

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

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

28 (ii) for a motion picture or television production, has skills and
 29 experience with the alien described in clause (1) of this subsection
 30 that are not general in nature and are critical because of a long-
 31 standing working relationship or, for a specific production, because
 32 significant production (including pre-production and post-produc-
 33 tion work) will take place both inside and outside the United
 34 States and the continuing participation of the alien described in
 35 this clause is essential to the successful completion of the produc-
 36 tion; or

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

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

1 (c) EMPLOYER PETITIONS.—(1) An employer intending to bring to the
2 United States an alien described in subsection (a)(1) or (2) of this section
3 must file a petition with the Attorney General. The petition must be in the
4 form and contain the information the Attorney General prescribes. Before
5 approving a petition, the Attorney General shall consult with the heads of
6 appropriate agencies. The Attorney General must approve the petition be-
7 fore a visa may be issued to the alien. Approval of the petition does not
8 establish by itself that the alien is a nonimmigrant.

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

12 (d) CONSULTATION REQUIREMENTS.—The Attorney General may approve
13 a petition under subsection (c) of this section only after the petitioner satis-
14 fies the consultation requirements of section 2352 of this title.

15 **§2319. Athletes and entertainers**

16 (a) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
17 tion if the alien—

18 (1) has a residence in a foreign country that the alien has no inten-
19 tion of abandoning who—

20 (A)(i) performs as an athlete, individually or as a member of
21 a group or team, at an internationally recognized level of perform-
22 ance; and

23 (ii) is coming to the United States temporarily and only to per-
24 form as an athlete for a specific athletic competition;

25 (B)(i) performs with, or is an integral and essential part of the
26 performance of, an entertainment group that, except as provided
27 in section 2353(b)(1)(A) of this title, has been recognized inter-
28 nationally as being outstanding in the discipline for a sustained
29 and substantial period of time;

30 (ii) if a performer or entertainer, except as provided in section
31 2353(b)(1)(B) and (2) of this title, has had a sustained and sub-
32 stantial relationship with that group (ordinarily for at least one
33 year) and performs functions integral to the performance of the
34 group; and

35 (iii) is coming to the United States temporarily and only to per-
36 form as such a performer or entertainer or as an integral and es-
37 sential part of a performance;

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

1 (ii) is coming to the United States temporarily and only to per-
2 form as such an artist or entertainer or with that group under a
3 reciprocal exchange program between an organization in the
4 United States and an organization in a foreign country that pro-
5 vides for the temporary exchange of artists and entertainers; or

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

9 (ii) is coming to the United States temporarily and only to per-
10 form, teach, or coach as such an artist or entertainer or with that
11 group under a commercial or non-commercial program that is cul-
12 turally unique; or

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

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

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

25 (c) PETITIONS.—(1) Any person may file a petition with the Attorney
26 General for an alien described in subsection (a) of this section.

27 (2) An employer intending to bring to the United States an alien de-
28 scribed in subsection (a)(1)(A) or (B) of this section must file a petition
29 with the Attorney General. The petition filed under this paragraph must be
30 in the form and contain the information the Attorney General prescribes.
31 Before approving a petition, the Attorney General shall consult with the
32 heads of appropriate agencies. The Attorney General must approve the peti-
33 tion before a visa may be issued to the alien. Approval of the petition does
34 not establish by itself that the alien is a nonimmigrant.

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

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

1 **§ 2320. Participants in international exchange programs**

2 An alien is classifiable as a nonimmigrant under this section if the
3 alien—

4 (1) has a residence in a foreign country that the alien has no inten-
5 tion of abandoning;

6 (2) is coming to the United States for a period of not more than
7 15 months to participate in an international cultural exchange program
8 approved by the Attorney General that provides practical training, em-
9 ployment, and the sharing of history, culture, and traditions of the for-
10 eign country of the alien's nationality; and

11 (3) will be employed for the same wages and under the same working
12 conditions as United States workers.

13 **§ 2321. Aliens in religious occupations**

14 An alien is classifiable as a nonimmigrant under this section if the
15 alien—

16 (1)(A) for the 2 years immediately before the alien's application for
17 admission, has been a member of a religious denomination that has a
18 bona fide nonprofit religious organization in the United States; and

19 (B) is coming to the United States for a period of not more than
20 5 years to perform work described in section 134(a)(3)(A)(ii)(I), (II),
21 or (III) of this title; or

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

24 **§ 2322. Participants in cooperative research, development,
25 and coproduction projects**

26 (a) GENERAL.—On a reciprocal basis, an alien is classifiable as a non-
27 immigrant under this section if the alien—

28 (1)(A) has a residence in a foreign country that the alien has no in-
29 tentation of abandoning; and

30 (B) is coming to the United States for not more than 10 years to
31 provide services of an exceptional nature requiring merit and ability re-
32 lated to a cooperative research and development project or a
33 coproduction project provided under a government-to-government
34 agreement carried out by the Secretary of Defense; or

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

37 (b) NUMERICAL LIMITATION.—Not more than 100 aliens classified as
38 nonimmigrants under this section may be admitted as, or given the status
39 of, a nonimmigrant classified under this section at any time.

§ 2323. Participants in special education programs

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

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

(B) is coming to the United States for not more than 18 months to participate in a special education training program that provides practical training and experience in educating children with physical, mental, or emotional disabilities; or

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

(b) NUMERICAL LIMITATION.—Not more than 50 aliens classified as nonimmigrants under this section may be admitted as, or given the status of, a nonimmigrant classified under this section in a fiscal year.

§ 2324. Relatives of special immigrants

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

(1) the parent of an alien who is a special immigrant as defined in section 134(a)(9) of this title, but only when the alien is a child; or

(2) a child of—

(A) a parent described in clause (1) of this section; or

(B) an alien who is a special immigrant as defined in section 134(a)(10) or (11) of this title.

§ 2325. Registered nurses

(a) DEFINITION.—In this section, “facility” includes an employer that employs registered nurses in a home setting.

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

(1)(A) is coming to the United States temporarily to perform services as a registered nurse;

(B) has obtained a full and unrestricted license to practice professional nursing in the foreign country in which the alien obtained nursing education or has received nursing education in the United States or Canada;

(C) has passed an appropriate examination (recognized in regulations prescribed in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment;

(D) is fully qualified and eligible under the laws (including temporary licensing requirements authorizing the nurse to be employed) governing the place of intended employment to engage in the practice

1 of professional nursing as a registered nurse immediately on admission
2 to the United States and is authorized under those laws to be employed by
3 the facility; and

4 (E) is one for whom the Secretary of Labor has certified to the At-
5 torney General that each facility (including the petitioner under sub-
6 section (c)(1) of this section and each worksite, except a private house-
7 hold worksite, that is not the alien's employer or controlled by the em-
8 ployer) at which the alien will perform the services has an attestation
9 on file and in effect under section 2902 of this title; or

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

12 (c) EMPLOYER PETITIONS.—(1) An employer intending to bring to the
13 United States an alien described in subsection (b)(1) of this section must
14 file a petition with the Attorney General. The Attorney General may ap-
15 prove a petition filed under this section only if the petition is filed during
16 the period from September 1, 1990, through August 31, 1995. The petition
17 must be in the form and contain the information the Attorney General pre-
18 scribes. Before approving a petition, the Attorney General shall consult with
19 the heads of appropriate agencies. The Attorney General must approve the
20 petition before a visa may be issued to the alien. Approval of a petition does
21 not establish by itself that the alien is a nonimmigrant.

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

25 (d) PERIOD OF ADMISSION.—An alien classified as a nonimmigrant under
26 this section may be admitted for an initial period of not more than 3 years.
27 The initial period may be extended for one or more periods, but the total
28 period of admission may not be more than 5 years (or 6 years if the Attor-
29 ney General decides there are extraordinary circumstances).

30 (e) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—For
31 purposes of obtaining a visa or acquiring or maintaining the status of a
32 nonimmigrant classified under this section, the fact that an alien is the ben-
33 efitary of an application for a preference status filed under subchapter I
34 of chapter 43 of this title or otherwise has sought permanent residence in
35 the United States is not evidence of an intention to abandon a residence
36 in a foreign country if the alien has acquired a change of status under sec-
37 tion 9109 of this title to a classification as such a nonimmigrant before the
38 alien's most recent departure from the United States.

1 **§ 2326. Aliens with information concerning criminal or ter-**
2 **rorist organizations**

3 (a) GENERAL.—An alien is classifiable as a nonimmigrant under this sec-
4 tion if—

5 (1) the Attorney General decides that—

6 (A) the alien is in possession of critical reliable information con-
7 cerning a criminal organization or enterprise;

8 (B) the alien is willing to supply or has supplied that informa-
9 tion to United States Government or State law enforcement au-
10 thorities or a Federal or State court; and

11 (C) the presence of the alien in the United States is essential
12 to the success of an authorized criminal investigation or the suc-
13 cessful prosecution of an individual involved in the criminal orga-
14 nization or enterprise;

15 (2) the Secretary of State and the Attorney General jointly decide
16 that the alien—

17 (A) is in possession of critical reliable information concerning a
18 terrorist organization, enterprise, or operation;

19 (B) is willing to supply or has supplied that information to Gov-
20 ernment law enforcement authorities or a Federal court;

21 (C) will be or has been placed in danger as a result of providing
22 that information; and

23 (D) is eligible to receive a reward under section 36(a) of the
24 State Department Basic Authorities Act of 1956 (22 U.S.C.
25 2708(a)); or

26 (3)(A) the alien is the spouse, son or daughter, or parent of an alien
27 described in clause (1) or (2) of this subsection accompanying or fol-
28 lowing to join that alien; and

29 (B) the Attorney General (with respect to an alien described in
30 clause (1) of this subsection) or the Secretary and the Attorney Gen-
31 eral jointly (with respect to an alien described in clause (2) of this sub-
32 section) consider the nonimmigrant classification of the spouse, son or
33 daughter, or parent appropriate.

34 (b) NUMERICAL AND TIME LIMITATIONS.—(1) Not more than—

35 (A) 100 aliens may be provided a visa as a nonimmigrant classified
36 under subsection (a)(1) of this section in a fiscal year; and

37 (B) 25 aliens may be provided a visa as a nonimmigrant classified
38 under subsection (a)(2) of this section in a fiscal year.

39 (2) An alien classified as a nonimmigrant under subsection (a) (1) or (2)
40 of this section may be admitted to the United States for not more than 3
41 years. The Attorney General may not extend the period of admission.

1 (3) An alien classified as a nonimmigrant under subsection (a)(1) or (2)
2 of this section may not be admitted to the United States after September
3 13, 1999.

4 (c) ALIEN REQUIREMENTS.—As a condition of admission and continued
5 stay in lawful status, an alien classified as a nonimmigrant under subsection
6 (a)(1) or (2) of this section—

7 (1) shall report at least quarterly to the Attorney General informa-
8 tion concerning the alien's whereabouts and activities the Attorney
9 General requires;

10 (2) may not be convicted, after the alien is admitted to the United
11 States, of a criminal offense punishable by a term of imprisonment of
12 at least one year;

13 (3) must have executed a form waiving the alien's right to contest,
14 other than on the basis of an application for withholding of deporta-
15 tion, any action for deportation of the alien begun before the alien ob-
16 tains lawful permanent resident status; and

17 (4) shall comply with any other condition, limitation, or restriction
18 the Attorney General imposes.

19 (d) REPORT BY ATTORNEY GENERAL.—The Attorney General shall sub-
20 mit a report annually to the Committees on the Judiciary of the House of
21 Representatives and the Senate on—

22 (1) the number of aliens classified as nonimmigrants under sub-
23 section (a)(1) or (2) of this section and admitted to the United States;

24 (2) the number of successful criminal prosecutions or investigations
25 resulting from the cooperation of those aliens;

26 (3) the number of terrorist acts prevented or frustrated resulting
27 from the cooperation of those aliens;

28 (4) the number of aliens classified as nonimmigrants under sub-
29 section (a)(1) or (2) of this section and admitted to the United States
30 whose admission or cooperation has not resulted in successful criminal
31 prosecution or investigation or the prevention or frustration of a terror-
32 ist act; and

33 (5) the number of aliens who have failed to report as required under
34 subsection (c)(1) of this section or who have been convicted of crimes
35 in the United States after the date of their admission as
36 nonimmigrants classified under subsection (a)(1) or (2) of this section.

SUBCHAPTER II—SPECIAL REQUIREMENTS

§2351. Employer applications for aliens employed temporarily in specialty occupations or as fashion models

(a) GENERAL.—An alien may be admitted as, or provided the status of, a nonimmigrant classified under section 2313(a)(1) or (2) of this title only after the employer intending to employ the alien files an application with the Secretary of Labor stating the following:

(1) The employer—

(A) during the period of authorized employment, is offering and will offer the nonimmigrant wages that, based on the best information available at the time the application is filed, are at least the greater of—

(i) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

(ii) the prevailing wage level of the occupational classification in the area of employment; and

(B) will provide working conditions for the nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

(2) There is no strike or lockout during a labor dispute in the occupational classification at the place of employment.

(3) At the time the application was filed, the employer—

(A) provided notice of the filing of an application under this subsection to the bargaining representative of the employer's employees in the occupational classification and area for which aliens are sought; or

(B) if there is no bargaining representative, posted notice of the filing in conspicuous locations at the place of employment.

(4) There is a specification of the number of workers sought, the occupational classification in which the workers will be employed, and wage rate and conditions under which they will be employed.

(b) PUBLIC AVAILABILITY OF APPLICATIONS AND APPLICATION LISTS.—

(1) Not later than one working day after the date on which an application under this subsection is filed, the employer shall make available for public examination at the employer's principal place of business or worksite a copy of each application filed under subsection (a) of this section and necessary accompanying documentation.

(2) On a current basis and by employer and occupational classification, the Secretary shall compile a list of the applications filed. That list shall

1 include the wage rate, number of aliens sought, period of intended employ-
2 ment, and the date of need. The Secretary shall make that list available for
3 public examination in the District of Columbia.

4 (c) SECRETARIAL REVIEW OF APPLICATIONS.—The Secretary shall re-
5 view an application only for completeness and obvious inaccuracies. Unless
6 the Secretary finds that the application is incomplete or obviously inac-
7 curate, the Secretary shall make the certification described in section
8 2313(a)(1)(C) or (2)(B) of this title not later than 7 days after the date the
9 application is filed.

10 (d) FAILURE TO MEET APPLICATION CONDITIONS AND MISREPRESENTA-
11 TIONS.—(1) The Secretary shall establish a procedure for receiving, inves-
12 tigating, and disposing of complaints about a petitioner's failure to meet a
13 condition specified by an application submitted under subsection (a) of this
14 section or a petitioner's misrepresentation of a material fact in that applica-
15 tion. An aggrieved person (including a bargaining representative) may file
16 a complaint under this subsection but the complaint must be filed not later
17 than 12 months after the date of the failure or misrepresentation. The Sec-
18 retary shall conduct an investigation as provided in this subsection if there
19 is reasonable cause to believe that a failure or misrepresentation has oc-
20 curred.

21 (2) Not later than 30 days after the date a complaint is filed, the Sec-
22 retary shall decide whether a reasonable basis exists to make a finding
23 under paragraph (3) or (4) of this subsection. If the Secretary decides that
24 a reasonable basis exists, the Secretary shall provide interested parties no-
25 tice and an opportunity for a hearing under section 556 of title 5 about
26 the complaint not later than 60 days after deciding that a reasonable basis
27 exists. If a hearing is requested, the Secretary shall make a finding about
28 the complaint not later than 60 days after the date of the hearing. The Sec-
29 retary may consolidate hearings on similar complaints about the same appli-
30 cant.

31 (3) If the Secretary finds, after notice and an opportunity for a hearing
32 under paragraph (2) of this subsection, that there has been a failure to
33 meet a condition of subsection (a)(2) of this section, a substantial failure
34 to meet a condition described in subsection (a)(3) or (4) of this section, a
35 willful failure to meet a condition of subsection (a)(1) of this section, or
36 misrepresentation of a material fact in an application—

37 (A) the Secretary shall notify the Attorney General of that finding
38 and may impose administrative remedies the Secretary decides are ap-
39 propriate, including a civil penalty of not more than \$1,000 for each
40 violation; and

1 (B) the Attorney General may not approve a petition filed by the em-
 2 ployer under any of sections 2313–2319 or 2325 of this title or sub-
 3 chapter I of chapter 43 for at least one year.

4 (4) If the Secretary finds after notice and an opportunity for a hearing
 5 under paragraph (2) of this subsection that an employer has not paid wages
 6 at the wage level specified under the application and required under sub-
 7 section (a)(1) of this section, the Secretary shall order the employer to pro-
 8 vide back pay required to comply with subsection (a)(1) whether or not a
 9 penalty has been imposed under paragraph (3) of this subsection.

10 **§ 2352. Advisory opinions for aliens with extraordinary abil-**
 11 **ity or with distinction in the arts, motion pictures,**
 12 **or television**

13 (a) GENERAL REQUIREMENTS.—(1) The Attorney General may approve
 14 a petition—

15 (A) for an alien described in section 2318(a)(1)(A)(i) or (ii) of this
 16 title, only after the petitioner consults with a peer group or other per-
 17 son (including a labor organization) the petitioner chooses with exper-
 18 tise in the specific field involved by submitting with the petition an ad-
 19 visory opinion from that group or person;

20 (B) for an alien described in section 2318(a)(2)(A)–(C)(i) of this
 21 title, only after the petitioner consults with a labor organization with
 22 expertise in the area of the skills and experience involved by submitting
 23 with the petition an advisory opinion from that labor organization; or

24 (C) for an alien described in section 2318(a)(1)(A)(iii) or (2)(C)(ii)
 25 of this title, after consulting with the appropriate labor organization
 26 representing the alien’s occupational peers and a management organi-
 27 zation in the area of the alien’s ability.

28 (2) An opinion by a labor organization or management organization about
 29 an alien referred to in paragraph (1)(C) of this subsection trying to enter
 30 the United States for a motion picture or television production is advisory
 31 only. An opinion recommending denial of an application for that alien must
 32 be in writing. In making a decision on the petition, the Attorney General
 33 shall consider the exigencies and scheduling of the production. The Attorney
 34 General shall attach any advisory opinion to that decision.

35 (3)(A) If a petitioner does not submit an advisory opinion from an appro-
 36 priate labor organization as required by paragraph (1)(A) or (B) of this
 37 subsection, the Attorney General shall forward a copy of the petition and
 38 supporting documents to the national office of an appropriate labor organi-
 39 zation not later than 5 days after receiving the petition. If the employer’s
 40 employees in the occupational classification for which the alien is being

1 sought have a collective bargaining representative, that representative is the
2 appropriate labor organization.

3 (B) A person or labor organization receiving a copy of a petition as pro-
4 vided in subparagraph (A) of this paragraph has not more than 15 days
5 after receiving the petition to submit a written advisory opinion or provide
6 a letter stating that the person or organization has no objection. At the end
7 of the 15-day period, the Attorney General shall give the petitioner an op-
8 portunity, when appropriate, to provide rebuttal evidence. The Attorney
9 General shall act on the petition not later than 14 days after the end of
10 the 15-day period, or if rebuttal evidence is provided, not later than 14 days
11 after receiving that evidence. The Attorney General may shorten a time pe-
12 riod under this paragraph for emergency reasons unless the shorter period
13 is an unreasonable burden on a participant in the process.

14 (4) If a petitioner referred to in paragraph (1)(A) or (B) of this sub-
15 section establishes that an appropriate peer group (including a labor organi-
16 zation) does not exist, the Attorney General shall act on the petition without
17 requiring an advisory opinion.

18 (5) The Attorney General shall prescribe regulations to establish expe-
19 dited consultation procedures for nonimmigrant—

20 (A) artists and entertainers described in section 2318 of this title to
21 accommodate the exigencies and scheduling of a given production or
22 event; and

23 (B) athletes described in section 2318(a)(1) of this title in the case
24 of emergency circumstances, including trades during a season.

25 (6) Consultation with a nongovernmental entity does not authorize the
26 Attorney General to delegate authority under this subsection to a non-
27 governmental entity. The Attorney General shall give advisory opinions
28 under this subsection the weight the Attorney General decides, in the Attor-
29 ney General's sole discretion, is appropriate.

30 (b) WAIVERS.—The Attorney General shall prescribe regulations to pro-
31 vide for the waiver of the consultation requirement under subsection
32 (a)(1)(A) of this section for an alien admitted as a nonimmigrant classified
33 under section 2318(a)(1)(A)(ii) of this title because of distinction in the arts
34 and who is trying to be readmitted to perform similar services within 2
35 years after the date of a consultation under subsection (a)(1)(A) of this sec-
36 tion. Not later than 5 days after a waiver is provided, the Attorney General
37 shall forward a copy of the petition and supporting documents to the na-
38 tional office of the appropriate labor organization.

39 **§ 2353. Advisory opinions for athletes and entertainers**

40 (a) GENERAL REQUIREMENTS.—(1) The Attorney General may approve
41 a petition for an alien described in—

1 (A) section 2319(a)(1) (A), (B), or (D) of this title, only after the
2 petitioner consults with a labor organization with expertise in the spe-
3 cific field of athletics or entertainment involved by submitting with the
4 petition an advisory opinion from that labor organization; or

5 (B) section 2319(a)(1)(C) of this title, only after consultation with
6 labor organizations representing artists and entertainers in the United
7 States.

8 (2) If a petitioner does not submit an advisory opinion from an appro-
9 priate labor organization required by paragraph (1)(A) of this subsection,
10 the Attorney General shall forward a copy of the petition and supporting
11 documents to the national office of an appropriate labor organization not
12 later than 5 days after receiving the petition. If the employer's employees
13 in the occupational classification for which the alien is being sought have
14 a collective bargaining representative, that representative is the appropriate
15 labor organization.

16 (3) A person or labor organization receiving a copy of a petition as pro-
17 vided in paragraph (2) of this subsection has not more than 15 days after
18 receiving the petition to submit a written advisory opinion or provide a let-
19 ter stating that the person or organization has no objection. At the end of
20 the 15-day period, the Attorney General shall give the petitioner an oppor-
21 tunity, when appropriate, to provide rebuttal evidence. The Attorney Gen-
22 eral shall act on the petition not later than 14 days after the end of the
23 15-day period, or if rebuttal evidence is provided, not later than 14 days
24 after receiving that evidence. The Attorney General may shorten a time pe-
25 riod under this paragraph for emergency reasons unless the shorter period
26 is an unreasonable burden on a participant in the process.

27 (4) If a petitioner referred to in paragraph (1)(A) of this subsection es-
28 tablishes that an appropriate peer group (including a labor organization)
29 does not exist, the Attorney General shall act on the petition without requir-
30 ing an advisory opinion.

31 (5) The Attorney General shall prescribe regulations to establish expe-
32 dited consultation procedures for nonimmigrant—

33 (A) artists and entertainers under section 2319 of this title to ac-
34 commodate the exigencies and scheduling of a given production or
35 event; and

36 (B) athletes described in section 2319(a)(1)(A) of this title in the
37 case of emergency circumstances, including trades during a season.

38 (6) Consultation with a nongovernmental entity does not authorize the
39 Attorney General to delegate authority under this subsection to a non-
40 governmental entity. The Attorney General shall give advisory opinions

1 under this subsection the weight the Attorney General decides, in the Attor-
 2 ney General's sole discretion, is appropriate.

3 (b) WAIVERS AND NONAPPLICATION.—(1) The Attorney General may
 4 waive—

5 (A) in consideration of special circumstances, the international rec-
 6 ognition requirement of section 2319(a)(1)(B)(i) of this title for an en-
 7 tertainment group that is recognized nationally as being outstanding in
 8 its discipline for a sustained and substantial period of time; and

9 (B) the one-year relationship requirement of section
 10 2319(a)(1)(B)(ii) of this title for an alien who—

11 (i) replaces an essential member of the group, because of illness
 12 or unanticipated or exigent circumstances; or

13 (ii) augments the group by performing a critical role.

14 (2) The one-year relationship requirement of section 2319(a)(1)(B)(ii) of
 15 this title does not apply to 25 percent of the performers in a group.

16 (3) The requirements of section 2319(a)(1)(B)(i) and (ii) of this title do
 17 not apply to an alien who performs as part of a circus or circus group or
 18 who is an integral and essential part of the performance of that circus or
 19 group, but only if the alien is coming to the United States to join a circus
 20 that has been recognized nationally as outstanding for a sustained and sub-
 21 stantial period of time or as part of such a circus.

22 **CHAPTER 25—TEMPORARY AGRICULTURAL WORKERS**

Sec.

- 2501. Definitions.
- 2502. Certification requirements.
- 2503. Applications for certification.
- 2504. Conditions for issuing certifications.
- 2505. Associations of agricultural producers.
- 2506. Housing.
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- 2509. Enforcement authority of the Secretary of Labor.
- 2510. Endorsement of entry and exit documentation.
- 2511. Preemption of State and local law.
- 2512. Biennial reports.
- 2513. Approval of regulations.
- 2514. Authorization of appropriations.

23 **§ 2501. Definitions**

24 In this chapter—

25 (1) “temporary agricultural worker” means a nonimmigrant classi-
 26 fied under section 2314 of this title.

27 (2) “United States worker” means an individual who is not an unau-
 28 thorized alien (as defined in section 11101 of this title) with respect
 29 to particular employment.

§ 2502. Certification requirements

(a) REQUIREMENTS.—Before the Attorney General approves a petition filed under section 2314 of this title by a prospective employer of an alien to be employed as a temporary agricultural worker, the employer must apply to the Secretary of Labor for a certification that—

(1) there are not sufficient United States workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services described in the petition; and

(2) employment of the alien to provide the labor or services will not affect adversely the wages and working conditions of United States workers similarly employed.

(b) REGULATIONS.—The Secretary shall maintain regulations based on the findings the Secretary was required to make under section 218(c)(3)(B)(iii) of the Immigration and Nationality Act (ch. 477, 66 Stat. 163) after considering the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 (Public Law 99–603, 100 Stat. 3441) as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date temporary agricultural workers depart for work with the employer.

§ 2503. Applications for certification

(a) DEADLINE FOR FILING.—The Secretary of Labor may not require that an application for a certification under section 2502 of this title be filed more than 60 days before the first date the employer requires the labor or services of a temporary agricultural worker.

(b) NOTICE OF DEFICIENCIES.—If an application does not meet the conditions for issuing a certification (except the conditions specified by section 2502(a)(1) of this title), the Secretary shall—

(1) notify the employer in writing not later than 7 days after the application is filed, giving the reasons the application does not meet the conditions; and

(2) allow the employer to submit promptly an amended application.

(c) FEE.—The Secretary may prescribe by regulation a fee to cover the reasonable costs of processing an application for certification.

§ 2504. Conditions for issuing certifications

Not later than 20 days before the labor or services of a temporary agricultural worker are first required, the Secretary of Labor shall issue a certification under section 2502 of this title if the following conditions are met:

(1) The conditions specified by section 2502(a) of this title are met.

1 (2) The employer has complied with the requirements for certifi-
2 cation, including requirements the Secretary prescribes for recruiting
3 United States workers.

4 (3) The Secretary concludes that the employer has made positive re-
5 cruitment efforts within a multi-State region of traditional or expected
6 labor supply in which the Secretary finds there are a significant num-
7 ber of qualified United States workers who, if recruited, would be will-
8 ing to work at the time and place needed. Positive recruitment under
9 this paragraph is in addition to, and shall be conducted within the
10 same time period as, the circulation of the employer's job offer through
11 the interstate employment service system. The requirement to engage
12 in positive recruitment ends on the date the temporary agricultural
13 workers depart for the employer's place of employment.

14 (4) The employer does not have, or has not been provided with refer-
15 als of, qualified United States workers who have indicated their avail-
16 ability to perform the labor or services on the terms of a job offer
17 meeting the Secretary's requirements. In considering whether a specific
18 qualification in a job offer is appropriate, the Secretary shall apply the
19 normal and accepted qualifications required by employers not employ-
20 ing temporary agricultural workers in the same or comparable occupa-
21 tions and crops.

22 (5) The employer has provided the Secretary with satisfactory assur-
23 ances that if the employment for which the certification is sought is
24 not covered by a State workers' compensation law, the employer will
25 provide, at no cost to the worker, insurance covering injury and disease
26 arising out of and during the worker's employment that will provide
27 benefits at least equal to those provided under the State workers' com-
28 pensation law for comparable employment.

29 (6) There is no strike or lockout during a labor dispute that, under
30 regulations prescribed by the Secretary, precludes the certification.

31 (7) The employer employed temporary agricultural workers during
32 the prior 2 years, and the Secretary, after notice and an opportunity
33 for a hearing, has not found that the employer during that period sub-
34 stantially violated a material condition of the certification related to the
35 employment of nonimmigrant or United States workers. The Secretary
36 may decide not to approve a certification for not more than 3 years
37 for an employer who commits a violation described in this paragraph.

38 **§ 2505. Associations of agricultural producers**

39 (a) PERMITTED FILINGS.—An association of agricultural producers using
40 agricultural services may file—

1 (1) a petition under section 2314(b) of this title for an alien to be
2 employed as a temporary agricultural worker; and

3 (2) an application for a certification under section 2502 of this title.

4 (b) ASSOCIATIONS ACTING AS EMPLOYERS.—If an association referred to
5 in subsection (a) of this section is the joint or sole employer of a temporary
6 agricultural worker, a certification issued under section 2502 of this title
7 to the association may be used for the certified job opportunities of any of
8 the members of the association. The worker may be transferred among the
9 members to perform agricultural services of a temporary or seasonal nature
10 for which the certification was issued.

11 (c) EFFECT OF VIOLATIONS.—(1) If a member of an association that is
12 a joint employer of a temporary agricultural worker is found to have com-
13 mitted a violation that results in the Secretary of Labor deciding not to ap-
14 prove a certification of the member because the condition under section
15 2504(7) of this title has not been met, the decision applies only to that
16 member unless the Secretary decides that the association or another mem-
17 ber participated in, or knew or had reason to know of, the violation.

18 (2) If an association that is a joint employer is found to have committed
19 a violation that results in the Secretary deciding not to approve a certifi-
20 cation of the association because the condition under section 2504(7) of this
21 title has not been met, the decision applies only to the association unless
22 the Secretary decides that a member participated in, or knew or had reason
23 to know of, the violation.

24 (3) If an association, certified as the sole employer of a temporary agri-
25 cultural worker, is found to have committed a violation that results in the
26 Secretary deciding not to approve a certification of the association because
27 the condition under section 2504(7) of this title has not been met, a mem-
28 ber of the association, during the period the decision is in effect, may not
29 be the beneficiary of the services of temporary agricultural workers in the
30 commodity and occupation in which the worker was employed by the asso-
31 ciation whose certification was not approved, unless the member employs the
32 workers in the commodity and occupation directly or through an association
33 that is a joint employer of the workers with the member.

34 **§ 2506. Housing**

35 (a) REQUIREMENT.—An employer shall provide housing for temporary
36 agricultural workers as provided by regulations prescribed by the Secretary
37 of Labor.

38 (b) REGULATIONS.—(1) Regulations prescribed under this section shall
39 allow the employer, at the employer's option, to provide housing meeting ap-
40 plicable standards of the United States Government for temporary labor
41 camps or to secure housing that meets applicable local standards for rental

1 or public accommodations or other substantially similar class of habitation.
 2 In the absence of applicable local standards, State standards for those ac-
 3 commodated or that class of habitation shall apply. In the absence of ap-
 4 plicable local and State standards, standards of the Government for tem-
 5 porary labor camps shall apply.

6 (2) The regulations shall include specific requirements about housing for
 7 employees principally engaged in the range production of livestock.

8 (3) When the prevailing practice in the area and occupation of intended
 9 employment is to provide family housing, the employer shall provide family
 10 housing to workers with families requesting it.

11 (c) EXCEPTION.—This section does not require an employer to provide
 12 housing for workers not entitled to it under the temporary labor certifi-
 13 cation regulations in effect on June 1, 1986.

14 **§ 2507. Expedited administrative review**

15 (a) PROCEDURE FOR EXPEDITED REVIEW.—Regulations prescribed by
 16 the Secretary of Labor under this chapter shall provide for an expedited
 17 procedure for a review of a decision of the Secretary not to approve or to
 18 revoke a certification or, at the applicant's request, a new hearing on the
 19 decision.

20 (b) DECISIONS ON AVAILABILITY OF UNITED STATES WORKERS.—(1)
 21 The Secretary shall make a new decision about an application for certifi-
 22 cation under section 2502 of this title expeditiously, but not later than 72
 23 hours after the time the new decision is requested, if the certification origi-
 24 nally was not approved in any part because of the availability of able, will-
 25 ing, and qualified United States workers and they are not available at the
 26 time the labor or services are needed.

27 (2) An employer asserting that a United States worker referred to the
 28 employer is not able, willing, or qualified has the burden of proving that
 29 the worker is not able, willing, or qualified because of employment-related
 30 reasons.

31 **§ 2508. Disqualification of aliens for violating conditions of**
 32 **prior admission**

33 An alien may not be admitted to the United States as a temporary agri-
 34 cultural worker if, during the prior 5 years, the alien was admitted as a
 35 temporary agricultural worker and violated a term of that admission.

36 **§ 2509. Enforcement authority of the Secretary of Labor**

37 The Secretary of Labor may take actions necessary to ensure that em-
 38 ployers comply with the terms of employment under this chapter, includ-
 39 ing—

40 (1) imposing appropriate penalties; and

1 (2) seeking appropriate equitable relief, including specific perform-
2 ance of contractual obligations.

3 **§ 2510. Endorsement of entry and exit documentation**

4 The Attorney General shall provide for the endorsement of entry and exit
5 documentation of temporary agricultural workers necessary to carry out this
6 chapter and to provide notice under chapter 111 of this title.

7 **§ 2511. Preemption of State and local law**

8 This chapter and sections 2101 and 2314 of this title preempt State and
9 local law regulating the admissibility of nonimmigrant workers.

10 **§ 2512. Biennial reports**

11 (a) REPORTING REQUIREMENT.—Not later than November 6 of each
12 even-numbered year, the President shall submit a report on the temporary
13 agricultural worker program under this chapter to the Committees on the
14 Judiciary of the Senate and the House of Representatives. The report shall
15 include—

16 (1) the number of temporary agricultural workers permitted to be
17 employed under the program in each year;

18 (2) the compliance of employers and temporary agricultural workers
19 with the terms of the program;

20 (3) the impact of the program on the labor needs of United States
21 agricultural employers and on the wages and working conditions of
22 United States agricultural workers; and

23 (4) recommendations for changing the program, including—

24 (A) improving the timeliness of decisions about the admission
25 of temporary agricultural workers under the program;

26 (B) removing any economic disincentive to hiring United States
27 workers for jobs for which temporary agricultural workers have
28 been requested;

29 (C) improving cooperation among government agencies, employ-
30 ers, employer associations, workers, unions, and other worker as-
31 sociations to end the dependence of any industry on a constant
32 supply of temporary agricultural workers; and

33 (D) the relative benefits to United States workers and burdens
34 on employers of the policy of requiring employers, as a condition
35 for certification under the program, to continue to accept qualified
36 United States workers for employment after the date the tem-
37 porary agricultural workers depart for work with the employer.

38 (b) RECOMMENDATIONS CONSISTENT WITH POLICY.—The recommenda-
39 tions under subsection (a)(4)(D) of this section shall be made in furtherance
40 of the policy that aliens be admitted as temporary agricultural workers only
41 if the conditions specified by section 2502(a) of this title are satisfied.

1 **§ 2513. Approval of regulations**

2 In consultation with the Secretaries of Labor and Agriculture, the Attor-
3 ney General shall approve all regulations prescribed under this chapter and
4 section 2314 of this title.

5 **§ 2514. Authorization of appropriations**

6 (a) GENERAL AUTHORIZATIONS.—Necessary amounts may be appro-
7 priated each fiscal year to—

8 (1) the Secretary of Labor to make findings and issue certifications
9 under this chapter and section 4104(g)(2) of this title; and

10 (2) the Secretary of Agriculture to carry out the Secretary's duties
11 and powers under section 2314 of this title related to this chapter.

12 (b) SPECIFIC AUTHORIZATIONS.—Not more than \$10,000,000 may be ap-
13 propriated each fiscal year—

14 (1) to recruit United States workers for temporary labor and services
15 that otherwise might be performed by temporary agricultural workers;
16 and

17 (2) to monitor the terms under which temporary agricultural workers
18 and United States workers employed by the same employer are em-
19 ployed in the United States.

20 **CHAPTER 27—ALIEN CREWMEMBERS**

SUBCHAPTER I—GENERAL

Sec.

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2702. Reports on unlawful landings.

2703. Conditional permits to land temporarily.

2704. Control of alien crewmembers.

2705. Alien crewmembers afflicted with certain disabilities and diseases.

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21 SUBCHAPTER I—GENERAL

22 **§ 2701. Providing lists**

23 (a) ON ARRIVAL.—Except as provided in subsection (c) of this section,
24 when a vessel or aircraft arrives in the United States from a place outside
25 the United States, the owner, agent, master, commanding officer, or con-
26 signee of the vessel or aircraft shall give an immigration officer at the port
27 of arrival a list containing—

28 (1)(A) the name and position of each alien crewmember on the vessel
29 or aircraft;

30 (B) information on when and where each alien crewmember was
31 shipped or employed; and

1 (C) the name of each alien crewmember who is to be paid off or dis-
2 charged in the port of arrival; or

3 (2) information the Attorney General prescribes by regulation.

4 (b) ON DEPARTURE.—Except as provided in subsection (c) of this sec-
5 tion, before a vessel or aircraft departs from a port in the United States,
6 the owner, agent, master, commanding officer, or consignee of the vessel or
7 aircraft shall give an immigration officer at the port a list containing—

8 (1) the name of each alien crewmember—

9 (A) not employed on the vessel or aircraft when it arrived but
10 who is leaving on the vessel or aircraft;

11 (B) paid off or discharged at the port; or

12 (C) who deserted or landed at the port; or

13 (2) information the Attorney General prescribes by regulation.

14 (c) EXCEPTION.—The Attorney General shall prescribe when a list under
15 this section shall be given for a vessel operating only on the Great Lakes,
16 the Saint Lawrence River, and a connecting waterway.

17 (d) REGULATIONS ON ARRIVAL AND DEPARTURE.—The Attorney General
18 may prescribe by regulation when a vessel or aircraft is deemed under this
19 chapter to be arriving in, or departing from, the United States or a port
20 of the United States.

21 **§ 2702. Reports on unlawful landings**

22 As soon as it is discovered that an alien crewmember has landed unlaw-
23 fully in the United States from a vessel or aircraft, the owner, agent, mas-
24 ter, commanding officer, or consignee of the vessel or aircraft shall—

25 (1) report the unlawful landing in writing to an immigration officer;
26 and

27 (2) give the immigration officer a description of the crewmember and
28 information likely to lead to taking the crewmember into custody.

29 **§ 2703. Conditional permits to land temporarily**

30 (a) GENERAL REQUIREMENT.—An alien crewmember may land tempo-
31 rarily in the United States only as provided under this section or section
32 2705(b), 6122, or 6123 of this title.

33 (b) AUTHORITY TO ISSUE PERMITS.—Under regulations the Attorney
34 General prescribes, an immigration officer may issue an alien crewmember
35 a conditional permit to land temporarily in the United States if the officer
36 finds, after inspection, that the crewmember—

37 (1) is a nonimmigrant classified under section 2305 of this title;

38 (2) otherwise is admissible; and

39 (3) has agreed to accept the permit.

40 (c) PERIOD OF VALIDITY.—A permit issued under subsection (b) of this
41 section is valid for not more than—

1 (1) the period (but not more than 29 days) that the vessel or aircraft
2 on which the alien crewmember arrived remains in port if the immigra-
3 tion officer is satisfied the crewmember intends to leave on that vessel
4 or aircraft; or

5 (2) 29 days if the immigration officer is satisfied the crewmember
6 intends to leave on another vessel or aircraft within the period for
7 which the crewmember is allowed to land.

8 (d) REVOCATION.—(1) If an alien is issued a permit for a period under
9 subsection (c)(1) of this section, and an immigration officer then decides the
10 alien is not a crewmember or does not intend to leave on the vessel or air-
11 craft on which the alien arrived, the immigration officer, under regulations
12 prescribed by the Attorney General, may—

13 (A) revoke the permit;

14 (B) take the alien into custody; and

15 (C) if practicable, require the master or commanding officer of the
16 vessel or aircraft on which the alien arrived to detain the alien on the
17 vessel or aircraft.

18 (2) The owner of the vessel or aircraft on which an alien, detained under
19 paragraph (1)(C) of this subsection, arrived in the United States shall pay
20 the costs of detaining and deporting the alien.

21 (3) An alien detained under paragraph (1)(C) of this subsection is not
22 entitled to a deportation proceeding under section 6532 of this title.

23 **§ 2704. Control of alien crewmembers**

24 (a) DETENTION AND DEPORTATION.—The owner, agent, master, com-
25 manding officer, charterer, or consignee of a vessel or aircraft arriving in
26 the United States from a place outside the United States shall—

27 (1) detain an alien crewmember on the vessel, or, at the expense of
28 the aircraft owner, detain an alien crewmember of an aircraft at a
29 place an immigration officer designates, until—

30 (A) an immigration officer inspects, and a medical officer exam-
31 ines, the alien crewmember; and

32 (B) the alien crewmember is—

33 (i) issued a conditional permit to land temporarily under
34 section 2703(b) of this title; or

35 (ii) allowed to land temporarily under section 2705(b) or
36 6123 of this title for medical or hospital treatment; and

37 (2) deport an alien crewmember if required by an immigration offi-
38 cer, whether before or after the crewmember is allowed to land tempo-
39 rarily under section 2703(b), 2705(b), or 6123 of this title.

40 (b) PROOF OF FAILURE TO DETAIN OR DEPORT.—Except as the Attor-
41 ney General prescribes by regulation, proof that the name of an alien crew-

1 member is not on the outgoing manifest of the vessel or aircraft on which
2 the crewmember arrived in the United States from a place outside the
3 United States, or that the master or commanding officer of the vessel or
4 aircraft reported the crewmember as a deserter, is prima facie evidence of
5 the failure to detain or deport the crewmember.

6 (c) DEPORTATION ON ANOTHER VESSEL OR AIRCRAFT.—(1) If the Attor-
7 ney General finds that deporting an alien crewmember under this section
8 on the vessel or aircraft on which the crewmember arrived is impracticable
9 or will cause unreasonable hardship to the crewmember, the Attorney Gen-
10 eral may require the crewmember to be deported from any port on another
11 vessel or aircraft of the same owner unless the Attorney General finds de-
12 portation on such a vessel or aircraft to be impracticable. The owner of the
13 vessel or aircraft on which the crewmember arrived shall pay the costs of
14 deporting the crewmember as required by this subsection, including the
15 costs of transferring the crewmember within the United States under condi-
16 tions the Attorney General prescribes. The vessel or aircraft may be cleared
17 only after the costs are paid or the Attorney General is satisfied that pay-
18 ment is guaranteed.

19 (2) A transfer under this subsection is not a landing under this title.

20 **§ 2705. Alien crewmembers afflicted with certain disabilities**
21 **and diseases**

22 (a) EMPLOYMENT PROHIBITIONS.—An alien crewmember afflicted with
23 feeble-mindedness, insanity, epilepsy, tuberculosis, leprosy, or a dangerous
24 contagious disease may not be employed on a vessel or aircraft carrying pas-
25 sengers when the vessel or aircraft arrives in the United States from a place
26 outside the United States.

27 (b) HOSPITALIZATION AND OBSERVATION.—An alien crewmember found
28 on arrival at a port in the United States to be afflicted with feeble-minded-
29 ness, insanity, epilepsy, tuberculosis, leprosy, or a dangerous contagious dis-
30 ease shall be treated in a hospital designated by the immigration officer in
31 charge of the port. An alien crewmember suspected of being afflicted may
32 be removed from the vessel or aircraft on which the alien crewmember ar-
33 rived to an appropriate place for observation to enable an examining medical
34 officer to decide whether the crewmember is afflicted.

35 (c) PAYMENT OF COSTS.—The owner, agent, master, commanding officer,
36 or consignee of the vessel or aircraft on which the alien crewmember arrived
37 shall pay all costs incurred under subsection (b) of this section, including
38 burial if the crewmember dies. The costs may not be deducted from the
39 wages of the crewmember. The vessel or aircraft may be cleared only after
40 the costs are paid or payment is guaranteed and the Secretary of the Treas-
41 ury 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 and application

(a) DEFINITION.—In this subchapter, “longshore work”—

(1) means an activity in the United States or the coastal waters of the United States related to—

(A) loading or unloading cargo of a vessel, whether or not integral to the vessel;

(B) operating cargo-related equipment; and

(C) handling mooring lines on the dock when the vessel is made fast or let go; but

(2) does not include loading or unloading cargo for which the Secretary of Transportation has prescribed regulations under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), chapter 37 of title 46, section 5103(b), 5104, 5106, 5107, or 5110 of title 49, or section 4106 of the Oil Pollution Act of 1990 (Public Law 101–380, 104 Stat. 513) on—

(A) handling or stowing that cargo;

(B) manning, and the duties, qualifications, and training of the officers and crewmembers of, vessels transporting that cargo; and

(C) reducing or eliminating discharge during ballasting, tank cleaning, or handling of that cargo.

(b) APPLICATION.—This subchapter and section 10118 of this title do not affect—

(1) the meaning or scope of longshore work under another provision of law, a collective bargaining agreement, or an international agreement; or

(2) the performance of longshore work by nationals of the United States.

1 **§ 2722. General**

2 An alien crewmember may perform longshore work only as provided in
3 section 2723, 2724, or 2725 of this title.

4 **§ 2723. Prevailing practice**

5 (a) GENERAL.—(1) An alien crewmember performing a particular activity
6 of longshore work in or around a port is serving in a capacity required for
7 normal operation and service on a vessel under section 2305(a) of this title
8 if—

9 (A) each collective bargaining agreement for that port covering at
10 least 30 percent of the employees performing longshore work allows
11 that activity to be performed by alien crewmembers; or

12 (B)(i) there is no collective bargaining agreement for the port cover-
13 ing at least 30 percent of the employees performing longshore work;
14 and

15 (ii) except as provided in paragraph (2) of this subsection, an em-
16 ployer of the alien crewmember or the employer's designated represent-
17 ative files an attestation described in subsection (b)(1) of this section
18 with the Secretary of Labor at least 14 days before the date the activ-
19 ity will be performed or, if necessary because of an unanticipated emer-
20 gency, not later than the date the activity will be performed.

21 (2) An employer must file an attestation under paragraph (1)(B)(ii) of
22 this subsection for a particular activity of longshore work involving the use
23 of an automated self-loading conveyor belt or vacuum-actuated system on
24 a vessel only if the Secretary finds under subsection (f)(2) of this section
25 that the activity is not an activity described in subsection (b)(1)(A) of this
26 section.

27 (b) ATTESTATION REQUIREMENTS.—(1) The attestation filed with the
28 Secretary under subsection (a) of this section shall provide evidence that—

29 (A) the performance of the particular activity of longshore work by
30 an alien crewmember is allowed under the prevailing practice at the
31 port at the time of the filing and that the alien crewmember is not
32 being employed for that activity—

33 (i) during a strike or lockout in a labor dispute; or

34 (ii) to influence an election of a bargaining representative for
35 employees in the port; and

36 (B) the owner, agent, master, commanding officer, or consignee has
37 given notice of the attestation—

38 (i) to the bargaining representative of longshore workers at the
39 port; or

40 (ii) if there is no bargaining representative, to the longshore
41 workers employed at the port.

1 (2) An attestation—

2 (A) expires at the end of the one-year period beginning on the date
3 it is filed under subsection (a) of this section; and

4 (B) applies to alien crewmembers arriving in the United States dur-
5 ing that period if the owner, agent, master, commanding officer, or
6 consignee states in each list provided under section 2701 of this title
7 that the employer continues to comply with the conditions in the attes-
8 tation.

9 (3) An owner, agent, master, commanding officer, or consignee may pro-
10 vide a single list under section 2701 of this title to meet the requirements
11 of paragraph (2)(B) of this subsection for more than one alien crewmember.

12 (c) PUBLIC INFORMATION.— The Secretary shall compile and make avail-
13 able for public examination in a timely way in the District of Columbia—

14 (1) information identifying each owner, agent, master, commanding
15 officer, and consignee that has filed a list under section 2701 of this
16 title for an alien crewmember classified as a nonimmigrant under sec-
17 tion 2305(a) of this title for whom an attestation under subsection (a)
18 of this section or section 2725(b) of this title is filed; and

19 (2) for each employer a copy of—

20 (A) the attestation and accompanying documentation; and

21 (B) each list filed for the employer under section 2701 of this
22 title and described in clause (1) of this subsection.

23 (d) COMPLAINTS.—(1) Any aggrieved person, including a bargaining rep-
24 resentative, association the Secretary decides is appropriate, or other ag-
25 grievated person as provided under regulations of the Secretary, may file a
26 complaint—

27 (A) about an employer's failure to meet conditions stated in an attes-
28 tation filed under subsection (a) of this section;

29 (B) about an employer's misrepresentation of a material fact in the
30 attestation; or

31 (C) for longshore work described in subsection (a)(2) of this section,
32 that the particular activity of longshore work is not an activity de-
33 scribed in subsection (b)(1)(A) of this section.

34 (2) The Secretary shall establish a procedure for receiving, investigating,
35 and disposing of complaints filed under this subsection. The Secretary shall
36 conduct an investigation under this subsection promptly if there is reason-
37 able cause to believe the allegations of the complaint.

38 (3)(A) If the Secretary decides that reasonable cause exists to conduct
39 an investigation about a complaint filed under paragraph (1)(A) or (B) of
40 this subsection, the person making the complaint may request that the em-
41 ployer stop, during the hearing procedure under subsection (e) of this sec-

1 tion, the particular activity of longshore work attested to by the employer.
2 The employer shall be notified of the request and shall respond not later
3 than 14 days after receiving the notice.

4 (B) If the Secretary makes an initial decision that the complaint is sup-
5 ported by a preponderance of the evidence submitted, the Secretary imme-
6 diately shall require that the employer stop that activity until after the hear-
7 ing procedure under subsection (e) of this section.

8 (4)(A) If the Secretary decides that reasonable cause exists to conduct
9 an investigation about a complaint under paragraph (1)(C) of this sub-
10 section, the person making the complaint may request that the employer
11 stop, during the hearing procedure under subsection (e) of this section, the
12 particular activity of longshore work involved in the complaint unless the
13 employer files an attestation with the Secretary under subsection (a) of this
14 section. The employer shall be notified of the request and shall respond not
15 later than 14 days after receiving the notice.

16 (B) If the Secretary makes an initial decision that the complaint is sup-
17 ported by a preponderance of the evidence submitted, the Secretary imme-
18 diately shall require that the employer stop that activity until after the hear-
19 ing procedure under subsection (e) of this section, unless the employer files
20 an attestation under subsection (a) of this section.

21 (e) PROCEEDINGS.—Not later than 180 days after a complaint is filed
22 under subsection (d) of this section, or later for good cause shown, the Sec-
23 retary shall decide whether a basis exists to make a finding described in
24 subsection (f) of this section. The Secretary shall give interested persons no-
25 tice of that decision and an opportunity for a hearing on the complaint not
26 later than 60 days after making the decision.

27 (f) FINDINGS.—(1)(A) If, after notice and an opportunity for a hearing
28 under subsection (e) of this section, the Secretary finds that an employer
29 has failed to meet a condition, or has misrepresented a material fact, in an
30 attestation filed under subsection (a) of this section, the Secretary—

31 (i) shall notify the Attorney General of the finding; and

32 (ii) may impose other administrative remedies, including a civil pen-
33 alty under section 10118 of this title, the Secretary decides are appro-
34 priate.

35 (B) When the Attorney General receives notice under this paragraph, the
36 Attorney General shall deny any vessel owned or chartered by the employer
37 entry to a port of the United States for not more than one year.

38 (2) For longshore work described in subsection (a)(2) of this section, if
39 the Secretary finds, after notice and an opportunity for a hearing under
40 subsection (e) of this section and based on a preponderance of the evidence

1 submitted by any interested person, that the particular activity of longshore
2 work is not an activity described in subsection (b)(1)(A) of this section—

3 (A) the Secretary shall notify the Attorney General of the finding;

4 and

5 (B) the employer shall file an attestation under subsection (a) of this
6 section for that activity.

7 (3) When the Secretary finds that an alien crewmember is not allowed
8 to perform a particular activity of longshore work under the prevailing prac-
9 tice at a port, another attestation under subsection (a) of this section about
10 that activity in that port may not be filed for one year.

11 (g) LONGSHORE WORK IN ALASKA.—Except as provided in section
12 2725(c) of this title, this section does not apply to longshore work per-
13 formed in Alaska.

14 **§ 2724. Reciprocity**

15 (a) DEFINITION.—In this section, “practice” means an activity normally
16 performed in a foreign country during the one-year period before a vessel
17 arrives in the United States or the coastal waters of the United States.

18 (b) GENERAL.—(1) An alien crewmember performing a particular activity
19 of longshore work in or about a port is serving in a capacity required for
20 normal operation and service on a vessel under section 2305(a) of this title,
21 and the Attorney General shall allow an alien crewmember on a vessel to per-
22 form a particular activity of longshore work, if—

23 (A) that vessel is registered in a foreign country that by law, regula-
24 tion, or practice does not prohibit that activity by crewmembers on
25 United States vessels; and

26 (B) nationals of a foreign country that, by law, regulation, or prac-
27 tice does not prohibit that activity by crewmembers on United States
28 vessels, hold a majority ownership interest in that vessel.

29 (2) The Secretary of State shall compile and annually maintain, under
30 section 553 of title 5, a list, by particular activity of longshore work, of for-
31 eign countries in which crewmembers on United States vessels are prohib-
32 ited by law, regulation, or practice from performing a particular activity of
33 longshore work.

34 **§ 2725. Longshore work in Alaska**

35 (a) DEFINITIONS.—In this section—

36 (1) “contract stevedoring companies” means those stevedoring com-
37 panies licensed to do business in Alaska that meet the requirements of
38 section 32 of the Longshore and Harbor Workers’ Compensation Act
39 (33 U.S.C. 932).

40 (2) “employer” includes any agent or representative designated by
41 the employer.

1 (b) GENERAL.—(1) An alien crewmember performing a particular activity
2 of longshore work at a particular location in Alaska is serving in a capacity
3 required for normal operation and service on a vessel under section 2305(a)
4 of this title if an employer of the alien crewmember files an attestation with
5 the Secretary of Labor at least 30 days before the date the activity will be
6 performed or at least 24 hours before the activity will be performed if the
7 employer shows that the employer reasonably could not have anticipated the
8 need to file an attestation for that location at that time.

9 (2) The attestation filed under paragraph (1) of this subsection shall pro-
10 vide evidence that—

11 (A) the employer will request from the parties to whom notice has
12 been given under clause (D)(ii) and (iii) of this paragraph United
13 States longshore workers who, under industry standards in Alaska, in-
14 cluding safety considerations, are qualified and available in sufficient
15 numbers to perform the activity at the particular time and location, ex-
16 cept that—

17 (i) when 2 or more contract stevedoring companies have signed
18 a joint collective bargaining agreement with a single labor organi-
19 zation described in clause (D)(i) of this paragraph, the employer
20 may request longshore workers from only one of those companies;
21 and

22 (ii) a request to a private dock operator for longshore workers
23 may be made only for longshore work to be performed at that dock
24 and only if the operator meets the requirements of section 32 of
25 the Longshore and Harbor Workers' Compensation Act (33 U.S.C.
26 932);

27 (B) the employer will employ all those United States longshore work-
28 ers made available under clause (A) of this paragraph who, under in-
29 dustry standards in Alaska, including safety considerations, are quali-
30 fied and available in sufficient numbers and who are needed to perform
31 the longshore activity at the particular time and location;

32 (C) using alien crewmembers for that activity is not intended or de-
33 signed to influence an election of a bargaining representative for work-
34 ers in Alaska; and

35 (D) the employer has given notice of the attestation—

36 (i) to labor organizations recognized as exclusive bargaining rep-
37 resentatives of United States longshore workers within the mean-
38 ing of the National Labor Relations Act (29 U.S.C. 151 et seq.)
39 and that make, or intend to make, workers available at the par-
40 ticular location where the longshore work is to be performed;

1 (ii) to contract stevedoring companies that employ or intend to
2 employ United States longshore workers at the location; and

3 (iii) to operators of private docks at which the employer will use
4 longshore workers.

5 (3)(A) During the period that an attestation an employer files under
6 paragraph (1) of this subsection is valid, the employer must request and
7 employ United States longshore workers as provided under paragraph (2)
8 before using alien crewmembers to perform the activity specified in the at-
9 testation. However, an employer is not required to request United States
10 longshore workers from a person who has given the employer written notice
11 that the person does not intend to make United States longshore workers
12 available at the particular location where the longshore work is to be per-
13 formed.

14 (B) If a person that provided notice under subparagraph (A) of this para-
15 graph later gives the employer written notice that the person is prepared
16 to make available United States longshore workers who, under industry
17 standards in Alaska, including safety considerations, are qualified and avail-
18 able in sufficient numbers to perform the longshore activity at the particular
19 location where the longshore work is to be performed, the obligation of the
20 employer to that person under paragraph (2)(A) and (B) of this subsection
21 begins 60 days after the date the notice was given under this clause.

22 (4)(A) An employer filing an attestation under paragraph (1) of this sub-
23 section is not required—

24 (i) to hire less than a full work unit of United States longshore
25 workers needed to perform the longshore activity;

26 (ii) to provide overnight accommodations for the longshore workers
27 while employed; or

28 (iii) to provide transportation to the particular location where the
29 longshore activity will be performed, except where—

30 (I) surface transportation is available;

31 (II) that transportation may be accomplished safely;

32 (III) travel time to the vessel is not more than one-half hour
33 each way; and

34 (IV) travel distance to the vessel from the point of embarkation
35 is not more than 5 miles.

36 (B) In the case of Wide Bay, Alaska, and Klawock/Craig, Alaska, the
37 travel time and distance described in clause (A)(iii) of this paragraph are
38 extended to 45 minutes and 7.5 miles, respectively, unless the person re-
39 sponding to the request for longshore workers agrees to the lesser time and
40 distance limitations described in clause (A)(iii).

1 (5) Except as provided in section 2723(c)–(e) of this title, an attestation
2 filed under paragraph (1) of this subsection—

3 (A) expires at the end of the one-year period beginning on the date
4 specified in the attestation that the employer anticipates the longshore
5 work will begin; and

6 (B) applies to alien crewmembers arriving in the United States dur-
7 ing that period if the owner, agent, master, commanding officer, or
8 consignee states in each list provided under section 2701 of this title
9 that the employer continues to comply with the conditions in the attes-
10 tation.

11 (c) APPLICATION OF SECTION 2723.—(1) Except as provided in para-
12 graph (2) of this subsection, section 2723(b)(3)–(f)(2) of this title applies
13 to an attestation filed under subsection (b)(1) of this section.

14 (2) Section 2723 of this title applies to the use of alien crewmembers to
15 perform longshore work in Alaska involving the use of an automated self-
16 loading conveyor belt or vacuum-actuated system on a vessel.

17 (d) REGULATIONS.—The Secretary shall prescribe regulations necessary
18 to carry out this section.

19 **CHAPTER 29—FACILITIES EMPLOYING REGISTERED**
20 **NURSES**

2901. Definition.
2902. Attestation requirements.
2903. State plans.
2904. Public availability of information.
2905. Complaints, investigations, and penalties.

21 **§ 2901. Definition**

22 In this chapter, “facility” includes an employer that employs registered
23 nurses in a home setting.

24 **§ 2902. Attestation requirements**

25 (a) GENERAL.—Except as provided in subsection (b) of this section, a fa-
26 cility seeking to employ a nonimmigrant registered nurse under section
27 2325 of this title must file with the Secretary of Labor an attestation stat-
28 ing the following:

29 (1) A substantial disruption in the delivery of health care services
30 of the facility would occur through no fault of the facility without the
31 services of a nonimmigrant registered nurse.

32 (2) Employment of a nonimmigrant registered nurse will not ad-
33 versely affect the wages and working conditions of other registered
34 nurses similarly employed.

35 (3) A nonimmigrant registered nurse employed by the facility will be
36 paid at the wage rate paid for other registered nurses similarly em-
37 ployed by the facility.

1 (4) The facility—

2 (A) has taken and is taking timely and significant steps to re-
3 recruit and retain sufficient registered nurses who are citizens of the
4 United States or immigrants authorized to perform nursing serv-
5 ices, to remove as quickly as reasonably possible the dependence
6 of the facility on nonimmigrant registered nurses; or

7 (B) is subject to a State plan for the recruitment and retention
8 of nurses approved under section 2903 of this title.

9 (5) There is no strike or lockout in the course of a labor dispute,
10 and the employment of nonimmigrant registered nurses is not intended
11 or designed to influence an election for a bargaining representative for
12 registered nurses of the facility.

13 (6) At the time of filing the petition under section 2325(c) of this
14 title, the facility has given notice of the filing to the bargaining rep-
15 resentative of the registered nurses employed by the facility or, if there
16 is no bargaining representative, to the registered nurses employed by
17 the facility by posting the notice in conspicuous locations.

18 (b) WAIVERS.—For a nonimmigrant registered nurse performing services
19 at a worksite (except at the employer’s worksite or at a worksite controlled
20 by the employer) and for whom the employer has filed an attestation under
21 subsection (a) of this section, the Secretary may waive the requirement to
22 file an attestation for the worksite as may be appropriate—

23 (1) to avoid duplicative attestations;

24 (2) in temporary, emergency situations;

25 (3) for information the attestor does not know; or

26 (4) for other good cause.

27 (c) FAULT IF FACILITY HAS LAID OFF NURSES.—A facility does not
28 meet subsection (a)(1) of this section if the facility has laid off registered
29 nurses within the prior year. However, a facility that lays off a registered
30 nurse (except a staff nurse) meets subsection (a)(1) if the facility has at-
31 tested that it will not replace the nurse with a nonimmigrant registered
32 nurse described in section 2325(b) of this section (either through promotion
33 or otherwise) for one year after the date of the layoff.

34 (d) SIGNIFICANT STEPS TO RECRUIT AND RETAIN NURSES.—(1) Each
35 of the following is a significant step reasonably designed to recruit and re-
36 tain registered nurses meeting the requirement of subsection (a)(4)(A) of
37 this section:

38 (A) operating a training program for registered nurses at the facility
39 or financing (or providing participation in) a training program for reg-
40 istered nurses elsewhere.

1 (B) providing career development programs and other methods of fa-
2 cilitating health care workers to become registered nurses.

3 (C) paying registered nurses at a rate higher than that currently
4 being paid to registered nurses similarly employed in the geographic
5 area.

6 (D) providing adequate support services to free registered nurses
7 from administrative and other non-nursing duties.

8 (E) providing reasonable opportunities for meaningful salary ad-
9 vancement by registered nurses.

10 (2) Paragraph (1) of this subsection is not an exclusive list of the steps
11 that may be taken to meet the requirement of subsection (a)(4)(A) of this
12 section. A facility is not required to take more than one step if the facility
13 can demonstrate that taking an additional step is not reasonable.

14 (e) EFFECTIVENESS OF ATTESTATION.—(1) Subject to section 2905 of
15 this title, an attestation under subsection (a) of this section—

16 (A) expires at the end of the one-year period beginning on the date
17 the attestation is filed with the Secretary; and

18 (B) applies to petitions filed during that one-year period if the facil-
19 ity states in each petition filed under section 2325(c) of this title that
20 it continues to comply with the conditions in the attestation.

21 (2) A facility may file a single petition to meet the requirements of this
22 section for more than one registered nurse.

23 **§ 2903. State plans**

24 The Secretary of Labor shall provide for a procedure under which a State
25 may submit to the Secretary of Labor a plan for the recruitment and reten-
26 tion of citizens of the United States and immigrants authorized to perform
27 nursing services as registered nurses in facilities in the State. A plan may
28 include counseling and educating health workers and other individuals about
29 employment opportunities available to registered nurses. Annually in con-
30 sultation with the Secretary of Health and Human Services, the Secretary
31 of Labor shall provide for approving or disapproving the State plan as pro-
32 vided in section 2902(a)(4)(B) of this title. A plan may be approved in re-
33 gard to a facility only if the plan provides for taking significant steps de-
34 scribed in section 2902(a)(4)(A) of this title to recruit and retain registered
35 nurses at that facility.

36 **§ 2904. Public availability of information**

37 The Secretary of Labor shall compile and make available for public exam-
38 ination in a timely manner in the District of Columbia—

39 (1) a list of facilities that have filed petitions to employ non-
40 immigrant registered nurses described in section 2325 of this title; and

1 (2) for each facility, a copy of the petitions, attestations, and accom-
 2 panying documentation filed by each facility.

3 **§ 2905. Complaints, investigations, and penalties**

4 (a) COMPLAINTS AND INVESTIGATIONS.—(1) The Secretary of Labor
 5 shall establish a procedure for receiving, investigating, and disposing of
 6 complaints filed about a facility's failure to satisfy a condition attested to,
 7 or a facility's misrepresentation of a material fact, in an attestation.

8 (2) Any person aggrieved by a facility's failure to satisfy a condition at-
 9 tested to, or a facility's misrepresentation of a material fact, in an attesta-
 10 tion under section 2902(a) of this title, including a bargaining representa-
 11 tive, association the Secretary decides is appropriate, or other person the
 12 Secretary decides by regulation is aggrieved, may file a complaint with the
 13 Secretary. The Secretary shall conduct an investigation if there is reason-
 14 able cause to believe that the facility does not meet a condition attested to.

15 (3) Not later than 180 days after a complaint is filed, the Secretary shall
 16 decide whether a basis exists to make a finding described in subsection (b)
 17 of this section. If the Secretary decides that a basis exists, the Secretary
 18 shall give notice of that decision to the interested parties and an opportunity
 19 for a hearing on the complaint not later than 60 days after making the deci-
 20 sion.

21 (b) FINDINGS AND PENALTIES.—(1) If the Secretary finds, after notice
 22 and an opportunity for a hearing, that a facility has failed to satisfy a con-
 23 dition attested to or has misrepresented a material fact in an attestation,
 24 the Secretary—

25 (A) shall notify the Attorney General of the finding;

26 (B) may impose other administrative remedies, including a civil pen-
 27 alty of not more than \$1,000 for each violation; and

28 (C) if the facility has not paid the prevailing wage as attested to
 29 under section 2902(a)(3) of this title, shall order the facility to pay an
 30 amount of back pay necessary to comply with section 2902(a)(3).

31 (2) For at least one year after receiving notice under paragraph (1)(A)
 32 of this subsection, the Attorney General may not approve a petition filed
 33 under subsection 2325(c) of this title by that facility for the employment
 34 of a nonimmigrant registered nurse.

35 **PART B—IMMIGRANTS**

36 **CHAPTER 41—NUMERICAL LIMITATIONS**

Sec.

4101. General requirements.

4102. Annual worldwide numerical limitations.

4103. Visa allocation for family-sponsored immigrants.

4104. Visa allocation for employment-based immigrants.

4105. Visa allocation for diversity immigrants.

4106. Availability of visas for special immigrants having honorable military service.

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 4110. Numerical limitations on individual foreign countries.
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 4112. Burden of proof.

1 **§ 4101. General requirements**

2 Except for aliens described in section 4102(d) of this title, an alien may
 3 be issued an immigrant visa or otherwise become an alien lawfully admitted
 4 for permanent residence only if—

5 (1)(A) the alien is a family-sponsored immigrant described in section
 6 4103(b)–(e) of this title or admitted under section 4311(a)(1) of this
 7 title because a visa previously was issued to the accompanying parent
 8 under section 4103(b)–(e); and

9 (B) the numerical limitations of section 4102(a)(1) of this title are
 10 not exceeded;

11 (2)(A) the alien is an employment-based immigrant described in sec-
 12 tion 4104(b)–(f) of this title or admitted under section 4311(a)(1) of
 13 this title because a visa previously was issued to the accompanying par-
 14 ent under section 4104(b)–(f); and

15 (B) the numerical limitations of section 4102(b)(1) of this title are
 16 not exceeded; or

17 (3)(A) the alien is a diversity immigrant described in section 4105(c)
 18 and (h) of this title or admitted under section 4311(a)(1) of this title
 19 because a visa previously was issued to the accompanying parent under
 20 section 4105(c) and (h); and

21 (B) the numerical limitations of section 4102(c)(1) of this title are
 22 not exceeded.

23 **§ 4102. Annual worldwide numerical limitations**

24 (a) FAMILY-SPONSORED IMMIGRANTS.—(1) The worldwide numerical lim-
 25 itation for family-sponsored immigrants for a fiscal year is the greater of—

26 (A)(i) 480,000; minus

27 (ii) the number of aliens described in subsection (d)(6)–(8) of this
 28 section issued immigrant visas or who otherwise became aliens lawfully
 29 admitted for permanent residence in the prior fiscal year; plus

30 (iii) any difference between the maximum number of employment-
 31 based immigrant visas that could have been issued and the number
 32 that were issued during the prior fiscal year; or

33 (B) 226,000.

34 (2) In each of the first 3 quarters of a fiscal year, the number of aliens
 35 issued visas and otherwise becoming aliens lawfully admitted for permanent
 36 residence as family-sponsored immigrants may not be more than 27 percent

1 of the numerical limitation computed under paragraph (1) of this subsection
2 for that fiscal year.

3 (b) EMPLOYMENT-BASED IMMIGRANTS.—(1) The worldwide numerical
4 limitation for employment-based immigrants for a fiscal year is—

5 (A) not more than 140,000; plus

6 (B) any difference between the maximum number of family-spon-
7 sored immigrant visas that could have been issued and the number that
8 were issued during the prior fiscal year.

9 (2) In each of the first 3 quarters of a fiscal year, the number of aliens
10 issued visas and otherwise becoming aliens lawfully admitted for permanent
11 residence as employment-based immigrants may not be more than 27 per-
12 cent of the numerical limitation computed under paragraph (1) of this sub-
13 section for that fiscal year.

14 (c) DIVERSITY IMMIGRANTS.—(1) The worldwide numerical limitation for
15 diversity immigrants for a fiscal year is 55,000.

16 (2) In each of the first 3 quarters of a fiscal year, the number of aliens
17 issued visas and otherwise becoming aliens lawfully admitted for permanent
18 residence as diversity immigrants may not be more than 27 percent of the
19 numerical limitation computed under paragraph (1) of this subsection for
20 that fiscal year.

21 (d) NONAPPLICATION.—The numerical limitations of this section do not
22 apply to—

23 (1) a special immigrant as defined in section 134(a)(1) or (2) of this
24 title;

25 (2) an alien admitted under section 5105 of this title or whose status
26 is adjusted under section 5107 of this title;

27 (3) an alien who becomes lawfully admitted for permanent residence
28 under chapter 93 of this title or section 210 or 210A of the Immigra-
29 tion and Nationality Act (ch. 477, 66 Stat. 163);

30 (4) an alien whose deportation is suspended under section 6539(a)
31 of this title;

32 (5) an alien whose status is adjusted to that of an alien lawfully ad-
33 mitted for permanent residence under section 9105(a) of this title;

34 (6) an immediate relative;

35 (7) an alien admitted under section 4311(a)(1) of this title because
36 the accompanying parent is an immediate relative previously issued a
37 visa; and

38 (8) an alien born to an alien lawfully admitted for permanent resi-
39 dence during a temporary visit outside the United States.

1 **§ 4103. Visa allocation for family-sponsored immigrants**

2 (a) GENERAL.—Aliens subject to the worldwide numerical limitation of
3 section 4102(a)(1) of this title for qualified family-sponsored immigrants
4 shall be allocated visas each fiscal year as provided in this section.

5 (b) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Not more than
6 23,400 visas, plus visas not required under subsection (e) of this section,
7 shall be made available to unmarried sons and unmarried daughters of citi-
8 zens of the United States.

9 (c) FAMILIES OF ALIENS LAWFULLY ADMITTED.—(1) Not more than
10 114,200 visas, plus the number by which the worldwide numerical limitation
11 is more than 226,000, plus visas not required under subsection (b) of this
12 section, shall be made available to—

13 (A) spouses and children of aliens lawfully admitted for permanent
14 residence; and

15 (B) unmarried sons and unmarried daughters (who are no longer
16 children) of aliens lawfully admitted for permanent residence.

17 (2) At least 77 percent of visas made available under this subsection shall
18 be made available to those spouses and children.

19 (d) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Not more than
20 23,400 visas, plus visas not required under subsections (b) and (c) of this
21 section, shall be made available to married sons and married daughters of
22 citizens of the United States.

23 (e) BROTHERS AND SISTERS OF CITIZENS.—Not more than 65,000 visas,
24 plus visas not required under subsections (b)–(d) of this section, shall be
25 made available to brothers and sisters of citizens of the United States if
26 the citizens are at least 21 years of age.

27 **§ 4104. Visa allocation for employment-based immigrants**

28 (a) GENERAL.—Aliens subject to the worldwide numerical limitation of
29 section 4102(b)(1) of this title for qualified employment-based immigrants
30 shall be allocated visas each fiscal year as provided in this section.

31 (b) PRIORITY WORKERS.—(1) A number of visas equal to not more than
32 28.6 percent of the worldwide numerical limitation of section 4102(b)(1) of
33 this title, plus visas not required under subsections (e) and (f) of this sec-
34 tion, shall be made available to the following aliens:

35 (A) a qualified immigrant—

36 (i) having extraordinary ability in the sciences, arts, education,
37 business, or athletics that has been demonstrated by sustained na-
38 tional or international acclaim;

39 (ii) whose achievements have been recognized in the field
40 through extensive documentation;

1 (iii) who is seeking to enter the United States to continue work
2 in the area of extraordinary ability; and

3 (iv) whose entry will benefit the United States substantially in
4 the future.

5 (B) a qualified immigrant—

6 (i) recognized internationally as outstanding in a specific aca-
7 demic area;

8 (ii) with at least 3 years of teaching or research experience in
9 the academic area; and

10 (iii) who is seeking to enter the United States for a tenured (or
11 tenure-track) position in a university or institution of higher edu-
12 cation to teach in the academic area, for a comparable position
13 with a university or institute of higher education to conduct re-
14 search in the area, or for a comparable position to conduct re-
15 search in the area with a department, division, or institute of a
16 private employer that employs at least 3 individuals full-time in
17 research activities and has achieved documented accomplishments
18 in an academic field.

19 (C) a qualified immigrant—

20 (i) who, in the 3 years prior to the application for classification
21 and admission to the United States under this paragraph, has
22 been employed for at least one year by a firm, corporation, or
23 other legal entity or an affiliate or subsidiary of the firm, corpora-
24 tion, or entity; and

25 (ii) who is seeking to enter the United States to continue to pro-
26 vide services to the same employer, or an affiliate or subsidiary of
27 the employer, in a managerial or executive capacity.

28 (2) In applying paragraph (1)(C) of this subsection, a partnership or
29 similar organization organized outside the United States to provide account-
30 ing services is deemed to be an affiliate of a partnership organized in the
31 United States to provide accounting services if—

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

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

40 (c) MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR
41 ALIENS OF EXCEPTIONAL ABILITY.—(1) A number of visas equal to not

1 more than 28.6 percent of the worldwide numerical limitation of section
2 4102(b)(1) of this title, plus visas not required under subsection (b) of this
3 section, shall be made available to qualified immigrants—

4 (A) who are members of the professions holding advanced degrees or
5 their equivalent or who because of their exceptional ability in the
6 sciences, arts, or business will benefit substantially the economy, cul-
7 tural or educational interests, or welfare of the United States in the
8 future; and

9 (B) whose services in the sciences, arts, professions, or business are
10 sought by an employer in the United States.

11 (2) When the Attorney General considers it to be in the interest of the
12 United States, the Attorney General may waive the requirement of para-
13 graph (1) of this subsection that an alien's services in the sciences, arts,
14 professions, or business be sought by an employer in the United States.

15 (3) Possession of a degree, diploma, certificate, or similar award from an
16 institution of learning, a license to practice, or certification for a profession
17 or occupation is not sufficient evidence by itself under paragraph (1) of this
18 subsection that an immigrant has exceptional ability.

19 (d) SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—(1)
20 Except as provided in paragraph (2) of this subsection, a number of visas
21 equal to not more than 28.6 percent of the worldwide numerical limitation
22 of section 4102(b)(1) of this title, plus visas not required under subsections
23 (b) and (c) of this section, shall be made available to the following aliens
24 not described in subsection (c)(1) of this section:

25 (A) a qualified immigrant who is capable, at the time a petition is
26 filed for classification under this subsection, of performing skilled labor
27 requiring at least 2 years training or experience, that is not temporary
28 or seasonal, and for which qualified workers are not available in the
29 United States.

30 (B) a qualified immigrant who holds a baccalaureate degree and is
31 a member of a profession.

32 (C) a qualified immigrant capable, when petitioning for classification
33 under this subsection, of performing unskilled labor that is not tem-
34 porary or seasonal and for which qualified workers are not available in
35 the United States.

36 (2) Not more than 10,000 of the visas made available under this sub-
37 section in a fiscal year are available for immigrants described in paragraph
38 (1)(C) of this subsection.

39 (3) An alien may be issued an immigrant visa under this subsection only
40 if the consular officer has received the decision and certification of the Sec-
41 retary of Labor under subsection (g)(2) of this section.

1 (e) CERTAIN SPECIAL IMMIGRANTS.—A number of visas equal to not
2 more than 7.1 percent of the worldwide numerical limitation of section
3 4102(b)(1) of this title shall be made available to qualified special immi-
4 grants as defined in section 134(a)(3)–(13) of this title, except that not
5 more than 5,000 of those visas may be allocated in a fiscal year to special
6 immigrants as defined in section 134(a)(3)(A)(ii)(II) and (III) of this title.

7 (f) EMPLOYMENT CREATION.—(1) In this subsection—

8 (A) “targeted employment area” means, at the time of investment,
9 a rural area or an area that has experienced unemployment that is at
10 least 150 percent of the national average.

11 (B) “rural area” means an area not in a metropolitan statistical
12 area or not in the outer boundary of a city or town having a popu-
13 lation, based on the latest United States decennial census, of at least
14 20,000.

15 (2) A number of visas equal to not more than 7.1 percent of the world-
16 wide numerical limitation of section 4102(b)(1) of this title shall be made
17 available to qualified immigrants seeking to enter the United States to en-
18 gage in a new commercial enterprise—

19 (A) that the alien has established;

20 (B) in which the alien has invested after November 29, 1990, or is
21 actively in the process of investing, at least \$1,000,000; and

22 (C) that will benefit the United States economy and create full-time
23 employment for at least 10 United States citizens, aliens lawfully ad-
24 mitted for permanent residence, or other immigrants lawfully author-
25 ized to be employed in the United States, except the qualified immi-
26 grant and the qualified immigrant’s spouse, sons, and daughters.

27 (3) At least 3,000 of the visas allocated under paragraph (2) of this sub-
28 section in each fiscal year shall be reserved for qualified immigrants who
29 establish a new commercial enterprise described in paragraph (2) that will
30 create employment in a targeted employment area.

31 (4)(A) In consultation with the Secretaries of Labor and State, the Attor-
32 ney General may prescribe regulations increasing the amount specified by
33 paragraph (2)(B) of this subsection.

34 (B) For an investment made in a targeted employment area, the Attorney
35 General may specify that the amount of capital required under paragraph
36 (2)(B) of this subsection be less than, but at least 50 percent of, the
37 amount specified by paragraph (2)(B).

38 (C) For an investment made in a metropolitan statistical area that at the
39 time of investment is not a targeted employment area and has an unemploy-
40 ment rate significantly below the national average, the Attorney General
41 may specify that the amount of capital required under paragraph (2)(B) of

1 this subsection be more than, but not more than 3 times, the amount speci-
2 fied in paragraph (2)(B).

3 (g) ADDITIONAL REQUIREMENTS FOR EMPLOYMENT-BASED IMMI-
4 GRANTS.—(1) An alien applying for a visa under subsection (c) or (d) of
5 this section who is a graduate of a medical school not accredited by an en-
6 tity approved by the Secretary of Education and who is coming to the Unit-
7 ed States principally to perform services as a member of the medical profes-
8 sion may be issued the visa only if the alien—

9 (A) has passed parts I and II of the National Board of Medical Ex-
10 aminers Examination or an examination the Secretary of Health and
11 Human Services decides is equivalent, or on January 9, 1978, was fully
12 and permanently licensed to practice medicine in a State and was prac-
13 ticing medicine in a State on that date; and

14 (B) is competent in oral and written English.

15 (2) An alien applying for a visa under subsection (c) or (d) of this section
16 to perform skilled or unskilled labor may be issued the visa only if the Sec-
17 retary of Labor decides and certifies to the Secretary of State and the At-
18 torney General that—

19 (A) there are not enough workers who are able, willing, qualified (or
20 equally qualified if the alien is a member of the teaching profession or
21 has exceptional ability in the sciences or arts), and available when the
22 alien applies for the visa and admission and at the place where the
23 alien is to perform that labor; and

24 (B) employment of the alien will not affect adversely the wages and
25 working conditions of similarly employed workers in the United States.

26 (3) Before making a decision and certification under paragraph (2) of
27 this subsection, the Secretary of Labor shall provide that—

28 (A) a certification may be made only if the employer, when filing the
29 application, has provided notice of the filing to the bargaining rep-
30 resentative of the employer's employees in the occupational classifica-
31 tion and area for which aliens are sought or, if there is no bargaining
32 representative, to employees employed at the facility through posting at
33 conspicuous locations; and

34 (B) any person may submit documentary evidence related to the ap-
35 plication, including information on available workers, wages and work-
36 ing conditions, and the employer's failure to meet conditions of employ-
37 ing alien workers and co-workers.

38 **§ 4105. Visa allocation for diversity immigrants**

39 (a) DEFINITIONS.—In this section—

1 (1) “high-admission foreign country” means a foreign country for
2 which the number determined under subsection (c) of this section is
3 more than 50,000.

4 (2) “high-admission region” means a region for which the total of
5 the numbers determined under subsection (c) of this section for foreign
6 countries in the region is more than one-sixth of the total of the num-
7 bers for all foreign countries.

8 (3) “low-admission foreign country” means a foreign country that is
9 not a high-admission foreign country.

10 (4) “low-admission region” means a region that is not a high-admis-
11 sion region.

12 (5) Northern Ireland is deemed to be a separate foreign country.

13 (6) an overseas dependent area of a foreign country is deemed to be
14 part of the foreign country.

15 (7) the area in each of the following is a separate region:

16 (A) Africa.

17 (B) Asia.

18 (C) Europe.

19 (D) North America, except Mexico.

20 (E) Oceania.

21 (F) South America, Mexico, Central America, and the Carib-
22 bean.

23 (b) GENERAL.—Aliens subject to the worldwide numerical limitations of
24 section 4102(c)(1) of this title for qualified diversity immigrants shall be al-
25 located visas for each fiscal year as provided in this section.

26 (c) DETERMINATION OF NUMBERS OF CERTAIN ALIENS.—For the most
27 recent prior 5-year period for which information is available, the Attorney
28 General shall determine the total number of aliens who are natives of each
29 foreign country and who—

30 (1) were admitted or otherwise acquired the status of an alien law-
31 fully admitted for permanent residence (except under this section); and

32 (2) were subject to the numerical limitations for family-sponsored
33 and employment-based immigrants under sections 4103 and 4104 of
34 this title or were admitted or otherwise acquired the status of an alien
35 lawfully admitted for permanent residence as an alien described in sec-
36 tion 4102(d)(6)–(8) of this title.

37 (d) IDENTIFICATION.—The Attorney General shall identify each high-ad-
38 mission foreign country and region and each low-admission foreign country
39 and region.

40 (e) PERCENTAGE AND RATIO DETERMINATIONS.—The Attorney General
41 shall determine—

1 (1) the percentage of the total of the number determined under sub-
2 section (c) of this section that applies to foreign countries in high-ad-
3 mission regions;

4 (2) based on available estimates for each region, the total population
5 of each region, excluding the population of any high-admission foreign
6 country;

7 (3) for each low-admission region, the ratio of the population of the
8 region determined under clause (2) of this subsection to the total popu-
9 lation determined under clause (2) for all low-admission regions; and

10 (4) for each high-admission region, the ratio of the population of the
11 region determined under clause (2) of this subsection to the total popu-
12 lation determined under clause (2) for all high-admission regions.

13 (f) AVAILABILITY OF VISAS.—(1) The percentage of visas made available
14 under this section to natives of a high-admission foreign country is 0.

15 (2) Except as provided in subsection (g) of this section, the percentage
16 of visas made available under this section to natives (except natives of a
17 high-admission foreign country) in a low-admission region is the product
18 of—

19 (A) the percentage determined under subsection (e)(1) of this sec-
20 tion; multiplied by

21 (B) the population ratio for the region determined under subsection
22 (e)(3) of this section.

23 (3) Except as provided in subsection (g) of this section, the percentage
24 of visas made available under this section to natives (except natives of a
25 high-admission foreign country) in a high-admission region is the product
26 of—

27 (A) 100 percent minus the percentage determined under subsection
28 (e)(1) of this section; multiplied by

29 (B) the population ratio for the region determined under subsection
30 (e)(4) of this section.

31 (g) REDISTRIBUTION OF VISAS AND LIMITATION.—(1) Except as pro-
32 vided in paragraph (2) of this subsection, if the Secretary of State estimates
33 that the number of immigrant visas to be issued for a fiscal year to natives
34 in a region under this section will be less than the number of immigrant
35 visas made available for the fiscal year to those natives under this section,
36 the excess visa numbers shall be made available to natives (except natives
37 of a high-admission foreign country) of the other regions in proportion to
38 the percentages specified in subsection (f)(2) and (3) of this section.

39 (2) The percentage of visas made available under this section for a fiscal
40 year to natives of a single foreign country may not be more than 7 percent

1 of the total number of visas made available under this section for the fiscal
2 year.

3 (h) REQUIREMENT OF EDUCATION OR WORK EXPERIENCE.—An alien is
4 eligible for a visa under this section only if the alien—

5 (1) has at least a high school education or its equivalent; or

6 (2) within the 5-year period preceding the date of applying for a visa
7 has at least 2 years of work experience in an occupation requiring at
8 least 2 years of training or experience.

9 (i) MAINTAINING INFORMATION.—The Secretary of State shall maintain
10 information on the age, occupation, education level, and other relevant char-
11 acteristics of immigrants issued visas under this section.

12 **§ 4106. Availability of visas for special immigrants having**
13 **honorable military service**

14 (a) NONAPPLICATION OF NUMERICAL LIMITATIONS.— Except as pro-
15 vided in subsection (b) of this section, the numerical limitations of sections
16 4104 and 4110(a) and (b) of this title do not apply to immigrant visas
17 made available to special immigrants as defined in section 134(a)(13) of
18 this title.

19 (b) NUMBER OF AVAILABLE VISAS.—The number of visas made available
20 in a fiscal year—

21 (1) under subsections (b), (c), and (d) of section 4104 of this title
22 shall each be reduced by one-third of the number of visas allocated in
23 the prior fiscal year to special immigrants as defined in section
24 134(a)(13) of this title;

25 (2) to natives of a foreign country under section 4110(a) and (b) of
26 this title shall be reduced by the number of visas allocated in the prior
27 fiscal year to special immigrants as defined in section 134(a)(13) who
28 are natives of the foreign country; and

29 (3) under subsections (b), (c), and (d) of section 4104 for a foreign
30 country subject to section 4110(c) of this title in that fiscal year and
31 the prior fiscal year shall be reduced by one-third of the number of
32 visas allocated in the prior fiscal year to special immigrants as defined
33 in section 134(a)(13) who are natives of the foreign country.

34 **§ 4107. Status of spouses and children**

35 The spouse or child (as defined in section 108(a)(1)–(5) of this title) ac-
36 companying or following to join an alien who is in a class described in sec-
37 tion 4103, 4104, or 4105 of this title is entitled to the same classification
38 and to have the same priority date as the alien if the spouse or child other-
39 wise is not entitled to immigrant status and the immediate issuance of a
40 visa under section 4103, 4104, or 4105.

1 **§ 4108. Estimating number of visas to be issued**

2 In carrying out sections 4103–4107 and 4313(a) and (b) of this title, the
3 Secretary of State may make estimates of the anticipated number of immi-
4 grant visas to be issued during any quarter of a fiscal year under each class
5 of sections 4103–4105 of this title. The Secretary may rely on those esti-
6 mates in authorizing the issuance of those visas.

7 **§ 4109. Pilot program**

8 (a) ESTABLISHMENT OF PROGRAM AND ALLOCATION OF VISAS.—In each
9 of the years beginning October 1, 1995–1997, the Secretary of State, with
10 the Attorney General, shall set aside 300 visas from the visas otherwise
11 available under section 4104(f) of this title for a pilot program to carry out
12 section 4104(f). The program shall include a regional center in the United
13 States for promoting economic growth, including increased export sales, im-
14 proved regional productivity, job creation, and increased domestic capital in-
15 vestment. The visas are for aliens eligible for admission under section
16 4104(f) and spouses and children eligible under this title to accompany or
17 follow to join the alien.

18 (b) DETERMINATION OF NUMBER OF JOBS CREATED.—In establishing
19 compliance with section 4104(f)(2)(C) of this title and notwithstanding the
20 requirements of section 204.6 of title 8, Code of Federal Regulations, the
21 Attorney General shall allow aliens admitted under the program to establish
22 reasonable methodologies for determining the number of jobs created by the
23 program, including jobs estimated to have been created indirectly through
24 revenue produced from increased exports resulting from the program.

25 **§ 4110. Numerical limitations on individual foreign coun-**
26 **tries**

27 (a) TOTAL NUMBER OF VISAS AVAILABLE IN A FISCAL YEAR.—(1) Ex-
28 cept as provided in this section, not more than 7 percent of the total num-
29 ber of immigrant visas made available under sections 4103 and 4104 of this
30 title in a fiscal year are made available to natives of any single foreign coun-
31 try, and not more than 2 percent of the total number are made available
32 to natives of any single dependent area.

33 (2) If, because of the application of paragraph (1) of this subsection to
34 at least one foreign country or dependent area, the total number of visas
35 made available under sections 4103 and 4104 of this title for a calendar
36 quarter is more than the number of qualified immigrants who otherwise may
37 be issued a visa, paragraph (1) does not apply to visas made available to
38 any such foreign country or dependent area during the remainder of the cal-
39 endar quarter.

40 (3) Except for the United States and American Samoa, an independent
41 country, self-governing dominion, or territory under the international trust-

1 eeship system of the United Nations is a foreign country under this sub-
2 section when approved by the Secretary of State.

3 (4) Approval is deemed to have been given under paragraph (3) of this
4 subsection to—

5 (A) Taiwan (China); and

6 (B) Hong Kong.

7 (5) The Secretary shall specify the foreign country to which any other
8 inhabited land is to be attributed. The Secretary shall issue appropriate in-
9 structions to diplomatic and consular offices when the territorial limits of
10 a foreign country change and the Secretary recognizes the change.

11 (b) SPECIAL RULES FOR SPOUSES AND CHILDREN OF ALIENS LAW-
12 FULLY ADMITTED FOR PERMANENT RESIDENCE.—(1) Of the visa numbers
13 available under section 4103(c) of this title in a fiscal year to immigrants
14 described in section 4103(c)(1)(A) of this title—

15 (A) 75 percent of the 77 percent of the total number of visas avail-
16 able under section 4103(c) to those immigrants shall be issued without
17 regard to the numerical limitation established under subsection (a)(1)
18 of this section; and

19 (B) if a foreign country or dependent area is subject to subsection
20 (c) of this section, the remaining 25 percent of the 77 percent shall
21 be made available to natives of that country or area only to the extent
22 that the total number of visas issued under subparagraph (A) of this
23 paragraph to those immigrants is less than 77 percent of the maximum
24 number of visas available under subsection (c)(1)(B) of this section to
25 immigrants described in section 4103(c) of this title who are natives
26 of that country or area.

27 (2) For a foreign country or dependent area to which subsection (c) of
28 this section applies—

29 (A) the number of immigrant visas that may be made available
30 under section 4103(c) of this title to natives of the country or area who
31 are described in section 4103(c)(1)(B) of this title may not be more
32 than the greater of—

33 (i) 23 percent of the maximum number of visas available con-
34 sistent with subsection (c) of this section to immigrants described
35 in section 4103(c) of this title who are natives of the country or
36 area; or

37 (ii) the number, if any, by which the maximum number of visas
38 available under subsection (c)(1)(B) of this section to immigrants
39 described in section 4103(c) of this title who are natives of the
40 country or area is more than the number of visas issued to immi-
41 grants described in section 4103(c)(1)(A) of this title; and

1 (B) if the total number of visas issued under section 4103(c) of this
2 title is more than the maximum number of visas available consistent
3 with subsection (c) of this section to immigrants described in section
4 4103(c) who are natives of the country or area, all visas are deemed
5 to have been required for the preferences specified in section 4103(b)
6 and (c) of this title when applying section 4103(d) and (e) of this title
7 under subsection (c)(1)(B) of this section.

8 (c) ALLOCATION WHEN NUMBER OF VISAS MADE AVAILABLE TO A
9 COUNTRY EXCEEDS NUMERICAL LIMITATION.—(1) If it appears that the
10 total number of immigrant visas made available under sections 4103 and
11 4104 of this title to natives of a foreign country or dependent area will be
12 more than the applicable numerical limitation established under subsection
13 (a)(1) of this section in a fiscal year, visa numbers for natives of that coun-
14 try or area shall be allocated under sections 4103 and 4104 (to the extent
15 practicable and otherwise consistent with this section and sections 4103 and
16 4104) so that—

17 (A) the ratio of the visa numbers made available under section 4103
18 of this title to the visa numbers made available under section 4104 of
19 this title equals the ratio of the worldwide numerical limitations of sec-
20 tion 4102(a)(1) of this title to the worldwide numerical limitation
21 under section 4102(b)(1) of this title;

22 (B) except as provided in paragraphs (3) and (4) of this subsection,
23 the proportion of the visa numbers allocated under each of subsections
24 (b), (c), (d), and (e) of section 4103 of this title equals the ratio of
25 the total number of visas available under each of those subsections to
26 the total number of visas available under section 4103; and

27 (C) the proportion of the visa numbers allocated under each of sub-
28 sections (b), (c), (d), (e), and (f) of section 4104 of this title equals
29 the ratio of the total number of visas available under each of those sub-
30 sections to the total number of visas available under section 4104.

31 (2) Paragraph (1) of this subsection does not limit the number of visas
32 that may be issued—

33 (A) to natives of a foreign country or dependent area under section
34 4103 of this title if there is insufficient demand for visas for those na-
35 tives under section 4104 of this title;

36 (B) to natives of a foreign country or dependent area under section
37 4104 of this title if there is insufficient demand for visas for those na-
38 tives under section 4103 of this title; or

39 (C) under subsection (b)(1)(A) of this section.

1 **§4111. Charging immigrants to foreign countries**

2 An immigrant is chargeable to the foreign country in which the immi-
3 grant was born except in the following circumstances:

4 (1) When an alien child is accompanied by or following to join an
5 alien parent of the child, the child may be charged to the foreign coun-
6 try of either parent if—

7 (A) the parent has received or qualifies for an immigrant visa;

8 (B) necessary to prevent the separation of the child from the
9 parent; and

10 (C) immigration charged to the foreign country to which the
11 parent has been or would be chargeable has not reached the nu-
12 merical limitation established by section 4110(a)(1) of this title.

13 (2) When an alien is chargeable to a foreign country different from
14 that of the spouse of the alien, the alien may be charged to the foreign
15 country of the spouse the alien is accompanying or following to join
16 if—

17 (A) the spouse has received or qualifies for an immigrant visa;

18 (B) necessary to prevent the separation of the alien and spouse;
19 and

20 (C) immigration charged to the foreign country to which the
21 spouse has been or would be chargeable has not reached the nu-
22 merical limitation established by section 4110(a)(1) of this title.

23 (3) An alien born in the United States is deemed to have been born
24 in the foreign country of which the alien is a citizen or subject. If the
25 alien is not a citizen or subject of a foreign country, the alien is
26 deemed to have been born in the last foreign country in which the con-
27 sular officer decides that the alien resided.

28 (4) An alien born in a foreign country in which neither parent of
29 the alien was born and in which neither parent resided at the time of
30 the birth of the alien may be charged to the foreign country of either
31 parent.

32 (5) An alien born in a dependent area of a foreign country, except
33 an alien described in section 4102(d) of this title, is chargeable to that
34 country.

35 **§4112. Burden of proof**

36 An alien claiming to be an immigrant, a special immigrant, or an imme-
37 diate relative has the burden of proving that the alien is entitled to immi-
38 grant, special immigrant, or immediate relative status.

39 **CHAPTER 43—PETITIONS AND DOCUMENTATION**

SUBCHAPTER I—PETITIONS

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- 4302. Approving petitions for children.
- 4303. Petitions for married aliens.
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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 an alien is entitled to immediate relative status or to be classified under section 4103(b), (d), or (e) of this title.

(2) an alien spouse described in section 117(2) of this title and desiring to acquire, or to have a child of the alien spouse acquire, immediate relative status.

(3) an alien eligible for immediate relative status (and a child of the alien if the child is not classified under clause (4) of this subsection) because the alien—

(A) is the spouse of a citizen of the United States;

(B) is an individual of good moral character;

(C) has resided in the United States with the spouse; and

(D) demonstrates to the Attorney General that—

(i) the alien is residing in the United States;

(ii) the marriage between the alien and the spouse was entered into in good faith by the alien;

(iii) during the marriage the alien or a child of the alien has been battered by, or has been the subject of extreme cruelty perpetrated by, the spouse; and

(iv) the alien's deportation would result in extreme hardship to the alien or child.

(4) a child eligible for immediate relative status because the child—

(A) is the child of a citizen of the United States;

(B) is an individual of good moral character;

(C) has resided in the United States with the citizen parent;

and

(D) demonstrates to the Attorney General that—

(i) the child is residing in the United States;

1 (ii) during the period of residence with the citizen parent
2 the child has been battered by, or has been the subject of ex-
3 treme cruelty perpetrated by, that parent; and

4 (iii) the child's deportation would result in extreme hard-
5 ship to the child.

6 (5) an alien lawfully admitted for permanent residence claiming clas-
7 sification for an alien entitled to be classified under section 4103(c) of
8 this title.

9 (6) an alien eligible to be classified under section 4103(c) of this title
10 (and a child of the alien if the child is not classified under clause (7)
11 of this subsection) because the alien—

12 (A) is the spouse of an alien lawfully admitted for permanent
13 residence;

14 (B) is an individual of good moral character;

15 (C) has resided in the United States with the spouse;

16 (D) demonstrates to the Attorney General that—

17 (i) the alien is residing in the United States;

18 (ii) the marriage between the alien and the spouse was en-
19 tered into in good faith by the alien;

20 (iii) during the marriage the alien or a child of the alien
21 has been battered by, or has been the subject of extreme cru-
22 elty perpetrated by, the spouse; and

23 (iv) the alien's deportation would result in extreme hard-
24 ship to the alien or child.

25 (7) a child eligible to be classified under section 4103(c) of this title
26 because the child—

27 (A) is the child of an alien lawfully admitted for permanent resi-
28 dence;

29 (B) is an individual of good moral character;

30 (C) has resided in the United States with the permanent resi-
31 dent alien parent; and

32 (D) demonstrates to the Attorney General that—

33 (i) the child is residing in the United States;

34 (ii) during the period of residence with the permanent resi-
35 dent alien parent the child has been battered by, or has been
36 the subject of extreme cruelty perpetrated by, that parent;
37 and

38 (iii) the child's deportation would result in extreme hard-
39 ship to the child.

40 (8) an alien desiring to be classified under section 4104(b)(1)(A) of
41 this title, or a person for the alien.

1 (9) an individual intending to employ in the United States an alien
2 entitled to be classified under section 4104(b)(1)(B) or (C), (c), or (d)
3 of this title.

4 (10) an alien (except a special immigrant as defined in section
5 134(a)(4) of this title) desiring to be classified under section 4104(e)
6 of this title, or a person for the alien.

7 (11) an alien desiring to be classified under section 4104(f) of this
8 title.

9 (b) PETITIONS TO THE SECRETARY OF STATE.—(1) An alien claiming
10 status as a special immigrant as defined in section 134(a)(4) of this title
11 may petition the Secretary of State to be classified under section 4104(e)
12 of this title. The alien may file the petition only after being notified by the
13 Secretary that special immigrant status under section 134(a)(4) has been
14 recommended and approved as provided in section 134(a)(4).

15 (2)(A) An alien desiring to be classified under section 4105 of this title
16 may petition the Secretary of State to be classified under section 4105.

17 (B) The alien shall file the petition at the place and time the Secretary
18 of State decides by regulation. Only one petition may be filed during a peti-
19 tioning period established by the Secretary. If more than one petition is filed
20 during a period, all petitions filed by the alien during that period are void.

21 (C)(i) The Secretary of State shall designate a period during which a pe-
22 tition for a visa that may be issued under section 4105 of this title for the
23 fiscal year beginning after the end of the period may be filed.

24 (ii) An alien who qualifies, through random selection, for a visa under
25 section 4105 of this title remains eligible to receive the visa through the end
26 of the fiscal year for which the alien was selected.

27 (iii) The Secretary of State shall prescribe regulations necessary to carry
28 out this subparagraph.

29 (D) A petition under this paragraph shall—

30 (i) be in a form the Secretary of State prescribes by regulation; and

31 (ii) contain information and documentary evidence the Secretary re-
32 quires.

33 (c) APPROVING PETITIONS.—(1) After investigating the facts about a pe-
34 tition, and after consulting with the Secretary of Labor about a petition to
35 classify an alien under section 4104(c) or (d) of this title, the Attorney Gen-
36 eral shall approve the petition if the Attorney General decides the facts stat-
37 ed in the petition are true and the alien is an immediate relative or entitled
38 to be classified as requested under section 4103 or 4104 of this title.

39 (2) When acting on a petition under subsection (a)(3), (4), (6), or (7)
40 of this section, the Attorney General shall consider any credible evidence rel-

1 evant to the petition. Only the Attorney General may decide what evidence
2 is credible and the weight to be given that evidence.

3 (3) After approving the petition, the Attorney General shall submit one
4 copy to the Secretary of State. The Secretary then shall authorize the ap-
5 propriate consular officer to classify the alien as approved.

6 (d) NONDISCRIMINATION.—Except as provided in sections 134,
7 4102(d)(6), 4103–4107, and 4110(a)(1) of this title, an alien may not re-
8 ceive a preference or priority or be discriminated against in issuing an im-
9 migrant visa under section 4313 of this title because of the alien’s race, sex,
10 nationality, place of birth, or place of residence.

11 (e) NO ENTITLEMENT TO ENTER THE UNITED STATES.—This sub-
12 chapter does not entitle an immigrant for whom a petition is approved
13 under this subchapter to enter the United States if found not to be entitled
14 to the classification on arrival in the United States.

15 **§ 4302. Approving petitions for children**

16 (a) FAVORABLE HOME STUDY REQUIREMENT.—Notwithstanding section
17 4301 of this section, a petition for a child as defined in section 108(a)(6)
18 of this title may be approved only if a valid home study has been rec-
19 ommended favorably—

20 (1) by an agency of the State of the proposed residence of the child;

21 (2) by an agency that the State of the proposed residence of the
22 child authorizes to conduct the study; or

23 (3) for a child adopted outside the United States, by an appropriate
24 adoption agency licensed in the United States.

25 (b) PETITIONS FOR CERTAIN CHILDREN FATHERED BY CITIZENS OF
26 THE UNITED STATES.—(1) An alien claiming to be an alien described in
27 paragraph (2)(A) of this subsection, or a person for the alien, may petition
28 the Attorney General to be classified as an immediate relative or under sec-
29 tion 4103(b) or (d) of this title, as appropriate.

30 (2) After investigating the facts about a petition, the Attorney General
31 shall approve the petition if—

32 (A) the Attorney General has reason to believe that the alien was
33 born in Kampuchea, Korea, Laos, Thailand, or Vietnam after Decem-
34 ber 31, 1950, and before October 22, 1982, and was fathered by a citi-
35 zen of the United States;

36 (B) the Attorney General has received an acceptable guarantee of
37 legal custody and financial responsibility described in paragraph (5) of
38 this subsection; and

39 (C) for an alien less than 18 years of age—

40 (i) an appropriate child welfare agency licensed in the United
41 States and actively involved in the intercountry placement of chil-

1 dren arranged the placement of the alien with a sponsor in the
2 United States; and

3 (ii) the mother or guardian of the alien, in writing, irrevocably
4 released the alien for emigration.

5 (3) In considering a petition filed under this subsection, the Attorney
6 General shall—

7 (A) consult with appropriate government officials and officials of pri-
8 vate voluntary organizations in the foreign country in which the alien
9 was born in making the findings described in paragraphs (2)(A) and
10 (C)(i) of this subsection; and

11 (B) consider the physical appearance of the alien and evidence pro-
12 vided by the petitioner, including—

13 (i) birth and baptismal certificates;

14 (ii) local civil records;

15 (iii) photographs of, and letters or proof of financial support
16 from, a putative father who is a citizen of the United States; and

17 (iv) relevant or probative testimony of witnesses.

18 (4) After approving the petition, the Attorney General shall submit one
19 copy to the Secretary of State.

20 (5) A guarantee of legal custody and financial responsibility for an alien
21 required by paragraph (2) of this subsection must—

22 (A) be signed in the presence of a consular officer or an immigration
23 officer by a sponsor who is—

24 (i) at least 21 years of age;

25 (ii) of good moral character; and

26 (iii) a citizen of the United States or an alien lawfully admitted
27 for permanent residence; and

28 (B) provide that the sponsor agrees—

29 (i) for an alien less than 18 years of age, to assume legal cus-
30 tody for the alien when the alien departs for the United States
31 and until the alien becomes 18 years of age, as provided under the
32 laws of the State in which the alien and the sponsor will reside;
33 and

34 (ii) to provide, during the longer of the 5-year period beginning
35 on the date the alien acquires the status of an alien lawfully ad-
36 mitted for permanent residence or the period beginning on that
37 date and ending on the date the alien becomes 21 years of age,
38 financial support necessary to maintain the family in the United
39 States of which the alien is a member at a level equal to at least
40 125 percent of the current official poverty line (established by the
41 Director of the Office of Management and Budget under section

1 673(2) of the Community Services Block Grant Act (42 U.S.C.
2 9902(2) and revised by the Secretary of Health and Human Serv-
3 ices under section 673(2)) for a family the same size as that of
4 the family of the alien.

5 (6) The Attorney General may bring a civil action against the sponsor
6 in the district court of the United States for the judicial district in which
7 the sponsor resides to enforce a guarantee of legal custody and financial re-
8 sponsibility made under paragraph (5) of this subsection. However, a spon-
9 sor or the estate of the sponsor is not liable under the guarantee if the
10 sponsor dies or is adjudicated a bankrupt under title 11.

11 **§ 4303. Petitions for married aliens**

12 (a) LIMITATIONS ON APPROVING PETITIONS FOR CERTAIN SPOUSES.—

13 (1) The Attorney General may approve a spousal petition under section
14 4103(c) of this title for the classification of the spouse of an alien if the
15 alien, because of a prior marriage, had become an alien lawfully admitted
16 for permanent residence as the spouse of a citizen of the United States or
17 an alien lawfully admitted for permanent residence only if—

18 (A) 5 years have passed since the alien had become an alien lawfully
19 admitted for permanent residence; or

20 (B) the alien, by clear and convincing evidence, satisfies the Attorney
21 General that the prior marriage was not entered into to evade the im-
22 migration laws.

23 (2) Paragraph (1) of this subsection does not apply to a petition for the
24 classification of the spouse of an alien if the prior marriage of the alien was
25 ended by the death of the alien's spouse.

26 (b) PROHIBITION ON APPROVING PETITIONS BECAUSE OF MARRIAGES
27 TO EVADE IMMIGRATION LAWS.—Notwithstanding section 4301(c) of this
28 title, a petition may not be approved if—

29 (1) an alien previously acquired, or sought to acquire, immediate rel-
30 ative status or previously was classified, or sought to be classified,
31 under section 4103(c) of this title as a spouse of an alien lawfully ad-
32 mitted for permanent residence, because of a marriage the Attorney
33 General decides was entered into to evade the immigration laws; or

34 (2) the Attorney General decides the alien has attempted or con-
35 spired to enter into a marriage to evade the immigration laws.

36 (c) REQUIRED RESIDENCE OUTSIDE THE UNITED STATES FOR CERTAIN
37 ALIENS INVOLVED IN PROCEEDINGS.—(1) Notwithstanding section 4301(a)
38 and (b) of this title, a petition to grant immediate relative status or to clas-
39 sify an alien under section 4103, 4104, or 4105 of this title because of a
40 marriage entered into after November 9, 1986, and during the period de-

1 scribed in section 9101(g)(1)(C) of this title, may not be approved until the
2 alien resides outside the United States for 2 years after the marriage.

3 (2) Paragraph (1) of this subsection does not apply to a marriage if the
4 alien establishes by clear and convincing evidence satisfactory to the Attor-
5 ney General that—

6 (A) the marriage was entered into in good faith and under the laws
7 of the place where the marriage took place;

8 (B) the marriage was not entered into to procure the alien's entry
9 as an immigrant; and

10 (C) no consideration was given, except to an attorney for assistance
11 in preparing a petition, for filing a petition under section 2309(b) or
12 4301(a) or (b) of this title for an alien spouse or alien son or daughter.

13 (3) Under regulations of the Attorney General, the Attorney General shall
14 allow only one level of administrative appellate review for each alien under
15 paragraph (2) of this subsection.

16 **§ 4304. Revoking approved petitions**

17 (a) GENERAL.—The Attorney General may revoke at any time a petition
18 approved by the Attorney General under section 4301(c) of this title if the
19 Attorney General considers that there is good cause to revoke. Revocation
20 is effective as of the date of approval of the petition if notice of the revoca-
21 tion is mailed to the last known address of the petitioner and the Secretary
22 of State notifies the alien for whom the petition was filed of the revocation
23 before the alien begins traveling to the United States. If notice is not given
24 as required by this section and the alien applies for admission to the United
25 States, the admissibility of the alien shall be decided as provided in sections
26 6103, 6331, and 6332 of this title.

27 (b) EXCEPTION.—Legal termination of a marriage may not be the only
28 basis for revoking a petition of an alien filed under section 4301(a)(3) or
29 (6) of this title because of conditions described in section 4301(a)(3)(D)(i)–
30 (iii) and (6)(D)(i)–(iii).

31 SUBCHAPTER II—DOCUMENTATION

32 **§ 4311. Documentation requirements**

33 (a) DOCUMENTS REQUIRED.—(1) An immigrant may be admitted to the
34 United States only if, when applying for admission, the immigrant—

35 (A)(i) has an unexpired entry document required by this title; or

36 (ii) was born after an entry document was issued to the accompany-
37 ing parent;

38 (B) has an unexpired travel document or document of identity and
39 nationality when required by regulations the Attorney General pre-
40 scribes; and

1 (C) except as otherwise provided in this title, has a visa issued as
2 provided under sections 4103–4105, 4107, and 4313(b) of this title.

3 (2) This section does not apply to an alien admitted under section 5105
4 of this title.

5 (b) WAIVER FOR CERTAIN SPECIAL IMMIGRANTS.—Under conditions that
6 may be prescribed by the Attorney General, the Attorney General may read-
7 mit a special immigrant as defined in section 134(a)(1) of this title who is
8 returning to the United States, without the alien’s having to obtain a pass-
9 port, immigrant visa, reentry permit, or other documentation, if the alien
10 otherwise is admissible.

11 **§ 4312. Applications for immigrant visas and registration**

12 (a) APPLICATION REQUIREMENTS.—An alien applying for an immigrant
13 visa must apply in the way and at the place prescribed by regulation. The
14 application must contain—

- 15 (1) the complete true name of the alien and each alias ever used;
16 (2) the age and sex of the alien;
17 (3) the date and place of birth of the alien; and
18 (4) additional information prescribed by regulation that is necessary
19 to identify the alien and enforce the immigration and nationality laws.

20 (b) ADDITIONAL REQUIREMENTS.—(1) An alien applying for an immi-
21 grant visa must—

- 22 (A) register if required by chapter 81 of this title when applying for
23 the visa;
24 (B) take a physical and mental examination prescribed by regulation;
25 (C) if required under regulations the Secretary of State prescribes,
26 present a passport or other suitable travel document or a document of
27 identity and nationality; and
28 (D) provide the consular officer, with the application, with—
29 (i) a copy of a certification by the appropriate police authorities
30 stating what their records show about the alien;
31 (ii) a certified copy of any existing prison record, military
32 record, and record of birth of the alien; and
33 (iii) a certified copy of any other record or documentation about
34 the alien that the consular officer may require.

35 (2) Each copy provided under paragraph (1)(D) of this subsection shall
36 be attached to the application and become a part of the application. If the
37 alien satisfies the consular officer that it is not possible to obtain the copy,
38 the consular officer may allow the alien to submit other satisfactory evidence
39 of the fact to which the copy relates.

40 (c) SIGNATURE AND OATH.—Except as otherwise prescribed by regula-
41 tion, an alien must—

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

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

5 (d) PROCESSING IMMIGRANT VISA APPLICATIONS OF CUBAN NATIONALS
6 IN 3D COUNTRIES.—(1) In this subsection, “process” means accepting and
7 reviewing an application and preparing necessary documents and making
8 appropriate decisions related to the application.

9 (2) Notwithstanding sections 4313(f) and 6106(a) of this title, a consular
10 officer shall process an application for an immigrant visa by a Cuban na-
11 tional located in a 3d country on the same basis as an application for an
12 immigrant visa by a national of another country.

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

18 (f) CANCELLATION OF REGISTRATION.—The Secretary shall cancel the
19 registration of an alien who does not apply for an immigrant visa within
20 one year after being notified that a visa is available. However, the Secretary
21 shall reinstate the registration if the alien establishes within 2 years after
22 notification that the failure to apply was due to circumstances beyond the
23 control of the alien.

24 **§ 4313. Issuing immigrant visas and other documentation**

25 (a) REGISTRATION ON WAITING LISTS.—Waiting lists of aliens entitled
26 to an immigrant classification that is subject to the numerical limitations
27 specified in chapter 41 of this title shall be maintained under regulations
28 the Secretary of State prescribes.

29 (b) ORDER OF ISSUING VISAS.—(1) Immigrant visas made available
30 under section 4103 or 4104 of this title shall be issued to qualified immi-
31 grants in the order in which a petition for each immigrant is filed with the
32 Attorney General (or with the Secretary of State for special immigrants as
33 defined in section 134(a)(4) of this title) under section 4301(a) or (b) of
34 this title.

35 (2) Immigrant visas made available under section 4105 of this title shall
36 be issued to qualified immigrants as the Secretary prescribes for the fiscal
37 year involved.

38 (c) ISSUING VISAS.—(1) A consular officer issues an immigrant visa at
39 the office of the consular officer outside the United States. A consular offi-
40 cer may issue an immigrant visa to an eligible immigrant who has made
41 a proper application for the visa.

1 (2) A consular officer may issue a special immigrant or an immediate relative
2 an immigrant visa as a special immigrant or an immediate relative on
3 receiving satisfactory proof, under regulations prescribed under this title,
4 that the applicant is entitled to special immigrant or immediate relative
5 status.

6 (d) PROHIBITIONS.—(1) A consular officer may not issue an immigrant
7 visa or other documentation to an alien if—

8 (A) the alien's application does not comply with this title or regula-
9 tions prescribed under this title; or

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

13 (2) Notwithstanding paragraph (1)(B) of this subsection, a consular offi-
14 cer may issue an immigrant visa or other documentation to an alien to
15 whom section 6304(a) of this title applies if—

16 (A) the alien otherwise may receive the visa or other documentation;
17 and

18 (B) the consular officer receives notice from the Attorney General
19 that a bond approved by the Attorney General has been filed under sec-
20 tion 6304(b) of this title.

21 (e) CONTENTS OF VISAS.—An immigrant visa consists of the application
22 for the visa, when visaed by the consular officer. The visa shall specify—

23 (1) the foreign country to which the immigrant is charged;

24 (2) the immigrant's particular status under that country;

25 (3) the preference classification or immediate relative or special im-
26 migrant status to which the immigrant is charged;

27 (4) the expiration date of the visa; and

28 (5) additional required information.

29 (f) DISCONTINUING ISSUANCE OF VISAS WHEN COUNTRY DENIES OR
30 DELAYS ACCEPTING ALIEN.—On being notified by the Attorney General
31 that the government of a foreign country, after being requested to accept
32 the return of an alien who is a citizen, subject, national, or resident of that
33 country, denies or unreasonably delays accepting the alien, the Secretary of
34 State shall order consular officers in that foreign country to discontinue is-
35 suing immigrant visas to citizens, subjects, nationals, and residents of that
36 country until the Attorney General notifies the Secretary that the country
37 has accepted the alien.

38 **§ 4314. Period of validity and revocation**

39 (a) VALIDITY.—An immigrant visa is valid for the period prescribed by
40 regulation, but for not more than 4 months. However, an immigrant visa
41 issued to a child legally adopted by a citizen of the United States and the

1 spouse of the citizen when the citizen is serving outside the United States
2 in the armed forces of the United States, is employed outside the United
3 States by the United States Government, or is temporarily outside the
4 United States on business, is valid until the regular return of the citizen
5 to the United States from the service, employment, or business, but for not
6 more than 3 years.

7 (b) REVOCATION.—A consular officer or the Secretary of State may re-
8 voke at any time an immigrant visa or other documentation issued to an
9 immigrant. A revocation invalidates the visa or documentation from the date
10 the visa or documentation is issued. The Attorney General shall be notified
11 of each revocation.

12 **§ 4315. Unused immigrant visas**

13 (a) REPLACING UNUSED VISAS.—A consular officer may replace an im-
14 migrant visa under its original number during the fiscal year it was issued
15 if—

16 (1) the immigrant establishes to the satisfaction of the consular offi-
17 cer that the immigrant was unable to use the visa when it was valid
18 for reasons that the immigrant did not cause and that were beyond the
19 immigrant's control;

20 (2) the consular officer finds the immigrant is eligible for an immi-
21 grant visa; and

22 (3) the immigrant pays again the statutory fees for an application
23 and immigrant visa.

24 (b) ISSUING UNUSED VISAS.—An eligible immigrant may be issued an
25 unused immigrant visa that the immigrant qualifies for if the visa originally
26 was issued to another immigrant—

27 (1) deported after being excluded from admission;

28 (2) not applying for admission before the visa expires; or

29 (3) as a preference immigrant and the immigrant is found not to be
30 a preference immigrant.

31 **§ 4316. Reentry permits**

32 (a) APPLICATIONS.—An alien lawfully admitted for permanent residence
33 who intends to leave the United States temporarily may apply to the Attor-
34 ney General for a reentry permit to reenter the United States. The applica-
35 tion must—

36 (1) state the length of, and reason for, the departure;

37 (2) be accompanied by photographs of the applicant, and state other
38 information, that the Attorney General prescribes by regulation; and

39 (3) be made under oath.

40 (b) ISSUING REENTRY PERMITS.—The Attorney General may issue the
41 reentry permit if the Attorney General finds—

1 (1) the application is made in good faith; and

2 (2) the alien's departure is not contrary to the interests of the
3 United States.

4 (c) PERIOD OF VALIDITY.—A reentry permit may be issued for not more
5 than 2 years from the date it is issued and may not be renewed. The alien
6 may use the permit for any number of reentries into the United States. The
7 alien shall surrender the permit to the Attorney General when the permit
8 expires.

9 (d) PRESENTATION OF REENTRY PERMIT ON RETURNING TO THE
10 UNITED STATES.—An alien issued a reentry permit shall present the permit
11 to the immigration officer at the port of entry on returning to the United
12 States. The immigration officer shall accept the permit as a substitute for
13 any visa otherwise required under this title. The permit has no effect under
14 the immigration laws except to establish that the alien is returning from a
15 temporary departure. However, this section does not require a reentry per-
16 mit as the only way that an alien may establish a return from a temporary
17 departure.

18 (e) FORM OF APPLICATIONS AND PERMITS.—The Attorney General shall
19 prescribe by regulation the form of the application and reentry permit, ex-
20 cept that the permit shall be in a form to identify the alien completely and
21 shall be printed on distinctive safety paper.

22 **§ 4317. Burden of proof**

23 An individual applying for an immigrant visa or other documentation re-
24 quired for entering the United States as an immigrant has the burden of
25 proving that the individual is eligible to be issued the visa or documentation.
26 A consular officer may issue the visa or documentation only if satisfied that
27 the individual is eligible to receive the visa or documentation.

28 **§ 4318. Documentation waivers**

29 The Attorney General may waive sections 4311(a)(1) and 6313(a)(2) and
30 (c) of this title for an immigrant who has an immigrant visa and otherwise
31 is admissible if the Attorney General is satisfied that the immigrant did not
32 know, and by reasonable diligence could not have known, of the immigrant's
33 excludability—

34 (1) before the vessel or aircraft on which the alien came to the
35 United States left the last port outside the United States and outside
36 foreign contiguous territory; or

37 (2) for an immigrant coming from foreign contiguous territory, be-
38 fore the immigrant applied for admission.

1 alien lawfully admitted for permanent residence because of the mar-
2 riage.

3 **§ 4502. Conditional basis of status**

4 (a) GENERAL.—An alien spouse or an alien son or daughter, when ac-
5 quiring the status of an alien lawfully admitted for permanent residence, ac-
6 quires that status on a conditional basis as provided in this subchapter.

7 (b) NOTICE REQUIREMENTS.—When an alien spouse or alien son or
8 daughter acquires the status of an alien lawfully admitted for permanent
9 residence on a conditional basis under subsection (a) of this section, the At-
10 torney General shall notify the spouse, son, or daughter about this sub-
11 chapter and the requirements of section 4503 of this title to have the condi-
12 tional basis of the status removed. However, the failure of the Attorney
13 General to provide notice does not affect the enforcement of this subchapter
14 against the spouse, son, or daughter.

15 **§ 4503. General requirements to remove conditional basis**

16 To remove the conditional basis established under section 4502(a) of this
17 title, the alien spouse and the petitioning spouse (if living)—

18 (1) jointly must submit to the Attorney General a petition requesting
19 the removal of the conditional basis and containing, under penalty of
20 perjury, the information required by section 4504(b) of this title; and

21 (2) must appear before the Attorney General for a personal interview
22 about the information required by section 4504(b).

23 **§ 4504. Petitions**

24 (a) TIME FOR SUBMISSION.—(1) Except as provided in paragraph (2) of
25 this subsection, the petition required by section 4503(1) of this title must
26 be submitted during the 90-day period immediately before the 2d anniver-
27 sary that the alien acquired the status of an alien lawfully admitted for per-
28 manent residence.

29 (2) A petition submitted after the 90-day period may be considered only
30 if the alien satisfies the Attorney General that good cause and extenuating
31 circumstances existed for not submitting the petition during that period.

32 (3) The Attorney General may stay a deportation proceeding against an
33 alien who did not submit a petition within the 90-day period required under
34 paragraph (1) of this subsection pending the submission of the petition
35 under paragraph (2) of this subsection.

36 (4) At or about the beginning of the 90-day period, the Attorney General
37 shall try to notify the alien spouse or alien son or daughter of the require-
38 ments of section 4503 of this title. However, the failure of the Attorney
39 General to provide notice does not affect the enforcement of this subchapter
40 against the spouse, son, or daughter.

41 (b) CONTENTS.—Each petition shall contain the following information:

1 (1) that the qualifying marriage—

2 (A) complied with the laws of the place where the marriage took
3 place;

4 (B) has not been annulled judicially or ended, except through
5 the death of a spouse; and

6 (C) was not entered into to procure the entry of an alien as an
7 immigrant.

8 (2) that no consideration was given, except to an attorney for assist-
9 ance in preparing the petition, for filing under section 2309(b) or
10 4301(a) or (b) of this title a petition for an alien spouse or an alien
11 son or daughter.

12 (3) the actual residence of each party to the qualifying marriage
13 since the date the alien spouse acquired the status of an alien lawfully
14 admitted for permanent residence on a conditional basis under section
15 4502(a) of this title.

16 (4) each employer and place of employment of each party since that
17 date.

18 **§ 4505. Personal interviews**

19 (a) TIME AND LOCATION REQUIREMENTS.—(1) The personal interview
20 required by section 4503(2) of this title shall be conducted—

21 (A) within 90 days after the date a petition is submitted as required
22 by section 4503(1) of this title; and

23 (B) at a local office of the Immigration and Naturalization Service
24 the Attorney General designates that is convenient to the parties in-
25 volved.

26 (2) The Attorney General may waive the interview or the deadline for the
27 interview when appropriate.

28 (b) DECISIONS ON TRUTHFULNESS OF STATEMENTS.—Within 90 days
29 after an interview is conducted as required by section 4503(2) of this title,
30 the Attorney General shall decide whether the information in the petition
31 and required by section 4504(b) of this title about the qualifying marriage
32 is true.

33 **§ 4506. Favorable decisions on removing the conditional**
34 **basis**

35 (a) FAVORABLE DECISIONS.—If the Attorney General decides the infor-
36 mation required by section 4504(b) of this title is true, the Attorney Gen-
37 eral shall notify the parties involved and shall remove the conditional basis
38 of the status of the parties effective on the 2d anniversary that the alien
39 acquired the status of an alien lawfully admitted for permanent residence.

40 (b) HARDSHIP WAIVERS.—(1) The Attorney General may remove the
41 conditional basis of an alien spouse or alien son or daughter when the alien

1 spouse does not comply with section 4503 of this title if the alien spouse
2 or alien son or daughter shows that—

3 (A) extreme hardship would result if the alien spouse or alien son
4 or daughter is deported;

5 (B) the qualifying marriage was entered into in good faith by the
6 alien spouse, but the marriage has been ended (except through the
7 death of the spouse), and the alien spouse was not at fault in not com-
8 plying with section 4503 of this title; or

9 (C) the qualifying marriage was entered into in good faith by the
10 alien spouse and during the marriage the alien spouse or alien son or
11 daughter was battered by, or was the subject of extreme cruelty com-
12 mitted by, the spouse of the alien spouse or the citizen or permanent
13 resident parent of the alien son or daughter, and the alien spouse was
14 not at fault in not complying with section 4503 of this title.

15 (2) When deciding whether extreme hardship would result, the Attorney
16 General shall consider circumstances occurring only during the period the
17 alien was lawfully admitted for permanent residence on a conditional basis.

18 (3) When acting on a petition under this subsection, the Attorney General
19 shall consider any credible evidence relevant to the petition. Only the Attor-
20 ney General may decide what evidence is credible and the weight to be given
21 that evidence.

22 (4) The Attorney General shall establish by regulation ways to protect the
23 confidentiality of information about an abused alien spouse or alien son or
24 daughter, including information on the location of the spouse, son, or
25 daughter.

26 **§ 4507. Unfavorable decisions on removing the conditional**
27 **basis**

28 (a) IMPROPER QUALIFYING MARRIAGES.—The Attorney General shall
29 end, as of the date the Attorney General makes a decision under this sub-
30 section, the status of an alien spouse or alien son or daughter as an alien
31 lawfully admitted for permanent residence and shall so notify the parties in-
32 volved if, before the 2d anniversary of the date the alien acquired the status,
33 the Attorney General decides that—

34 (1) the qualifying marriage—

35 (A) was entered into to procure an alien's entry as an immi-
36 grant; or

37 (B) has been annulled judicially or ended, except through the
38 death of a spouse; or

39 (2) consideration was given, except to an attorney for assistance in
40 preparing the petition, for filing a petition for the alien under section
41 2309(b) or 4301 (a) or (b) of this title.

1 (b) UNTRUE PETITION INFORMATION.—If the Attorney General decides
2 any information required by section 4504(b) of this title is not true, the At-
3 torney General shall end, as of the date of the decision, the status of an
4 alien spouse or alien son or daughter as an alien lawfully admitted for per-
5 manent residence and notify the parties involved.

6 (c) FAILURE TO FILE PETITIONS OR HAVE PERSONAL INTERVIEWS.—
7 The Attorney General shall end, as of the 2d anniversary of the alien’s law-
8 ful admission for permanent residence, the status of an alien spouse or alien
9 son or daughter as an alien lawfully admitted for permanent residence if—

10 (1) a petition is not submitted as required by section 4503(1) of this
11 title; or

12 (2) unless good cause is shown, the alien spouse and petitioning
13 spouse do not appear at the interview required by section 4503(2) of
14 this title.

15 (d) REVIEW OF DECISIONS.—(1) An alien whose permanent resident sta-
16 tus is ended under subsection (a) or (b) of this section may request a review
17 of the decision in a deportation proceeding. The burden of proof is on the
18 Attorney General to establish by a preponderance of the evidence that—

19 (A) if ended under subsection (a) of this section, a ground described
20 in subsection (a) is met; or

21 (B) if ended under subsection (b) of this section, any information re-
22 quired by section 4504(b) of this title about the qualifying marriage
23 is not true.

24 (2) An alien whose permanent resident status is ended under subsection
25 (c) of this section has the burden of proof in a deportation proceeding of
26 establishing compliance with section 4503 of this title.

27 **§ 4508. Treatment of conditional basis period for naturaliza-**
28 **tion purposes**

29 In carrying out subtitle V of this title, an alien who is in the United
30 States as an alien lawfully admitted for permanent residence on a condi-
31 tional basis under this subchapter is deemed to have been admitted and to
32 be in the United States as an alien lawfully admitted for permanent resi-
33 dence.

34 **§ 4509. Ending waivers**

35 A waiver under section 6301(b) or 6307(b) of this title obtained by an
36 alien to acquire the status of an alien lawfully admitted for permanent resi-
37 dence on a conditional basis under this subchapter ends when the status
38 ends under this subchapter.

1 SUBCHAPTER II—CERTAIN ALIEN ENTREPRENEURS, SPOUSES,
2 AND CHILDREN

3 **§ 4521. Definitions**

4 In this subchapter—

5 (1) “alien child” means an alien who acquires the status of an alien
6 lawfully admitted for permanent residence because the alien is the child
7 of an alien entrepreneur.

8 (2) “alien entrepreneur” means an alien who acquires the status of
9 an alien lawfully admitted for permanent residence under section
10 4104(f) of this title.

11 (3) “alien spouse” means an alien who acquires the status of an
12 alien lawfully admitted for permanent residence because the alien is the
13 spouse of an alien entrepreneur.

14 **§ 4522. Conditional basis of status**

15 (a) GENERAL.—An alien entrepreneur, alien spouse, or alien child, when
16 acquiring the status of an alien lawfully admitted for permanent residence,
17 acquires that status on a conditional basis as provided in this subchapter.

18 (b) NOTICE REQUIREMENTS.—When an alien entrepreneur, alien spouse,
19 or alien child acquires the status of an alien lawfully admitted for perma-
20 nent residence on a conditional basis under subsection (a) of this section,
21 the Attorney General shall notify the entrepreneur, spouse, or child about
22 this subchapter and the requirements of section 4523 of this title to have
23 the conditional basis of the status removed. However, the failure of the At-
24 torney General to provide notice does not affect the enforcement of this sub-
25 chapter against the entrepreneur, spouse, or child.

26 **§ 4523. General requirements to remove conditional basis**

27 To remove the conditional basis established under section 4522(a) of this
28 title, the alien entrepreneur must—

29 (1) submit to the Attorney General a petition requesting the removal
30 of the conditional basis and containing, under penalty of perjury, the
31 information described in section 4524(b) of this section; and

32 (2) appear before the Attorney General for a personal interview
33 about the information required by section 4524(b).

34 **§ 4524. Petitions**

35 (a) TIME FOR SUBMISSION.—(1) Except as provided in paragraph (2) of
36 this subsection, the petition required by section 4523(1) of this title must
37 be submitted during the 90-day period immediately before the 2d annivers-
38 sary that the alien acquired the status of an alien lawfully admitted for per-
39 manent residence.

1 (2) A petition submitted after the 90-day period may be considered only
2 if the alien satisfies the Attorney General that good cause and extenuating
3 circumstances exist for not submitting the petition during that period.

4 (3) The Attorney General may stay a deportation proceeding against an
5 alien who did not submit a petition within the 90-day period required under
6 paragraph (1) of this subsection pending the submission of the petition
7 under paragraph (2) of this subsection.

8 (4) At or about the beginning of the 90-day period, the Attorney General
9 shall try to notify the alien entrepreneur, alien spouse, or alien child of the
10 requirements of section 4523 of this title. However, the failure of the Attor-
11 ney General to provide notice does not affect the enforcement of this chap-
12 ter against the entrepreneur, spouse, or child.

13 (b) CONTENTS.—Each petition shall contain information demonstrating
14 that the alien—

15 (1) established a commercial enterprise;

16 (2) invested or was actively in the process of investing the required
17 capital; and

18 (3) conducted the actions described in clauses (1) and (2) of this
19 subsection during the entire period of the alien's residence in the
20 United States.

21 **§ 4525. Personal interviews**

22 (a) TIME AND LOCATION REQUIREMENTS.—(1) The personal interview
23 required by section 4523(2) of this title shall be conducted—

24 (A) within 90 days after the date a petition is submitted as required
25 by section 4523(1) of this title; and

26 (B) at a local office of the Immigration and Naturalization Service
27 the Attorney General designates that is convenient to the parties in-
28 volved.

29 (2) The Attorney General may waive the interview or the deadline for the
30 interview when appropriate.

31 (b) DECISIONS ON TRUTHFULNESS OF STATEMENTS.—Within 90 days
32 after an interview is conducted under section 4523(2) of this title, the At-
33 torney General shall decide whether the information in the petition and re-
34 quired by section 4524(b) of this title about the qualifying commercial en-
35 terprise is true.

36 **§ 4526. Favorable decisions on removing the conditional** 37 **basis**

38 If the Attorney General decides the information required by section
39 4524(b) of this title is true, the Attorney General shall notify the alien in-
40 volved and shall remove the conditional basis of the status of the alien effec-

1 tive on the 2d anniversary that the alien acquired the status of an alien
2 lawfully admitted for permanent residence.

3 **§4527. Unfavorable decisions on removing the conditional**
4 **basis**

5 (a) IMPROPER QUALIFYING ENTREPRENEURSHIPS.—The Attorney Gen-
6 eral shall end, as of the date the Attorney General makes a decision under
7 this subsection, the status of an alien entrepreneur, alien spouse, and alien
8 child as aliens lawfully admitted for permanent residence and shall so notify
9 the alien entrepreneur if, before the 2d anniversary of the date the alien
10 entrepreneur acquired the status, the Attorney General decides the alien en-
11 trepreneur—

12 (1) established the commercial enterprise only to evade the immigra-
13 tion laws of the United States;

14 (2)(A) did not establish a commercial enterprise;

15 (B) did not invest or was not actively in the process of investing the
16 required capital; or

17 (C) was not conducting the actions described in subclauses (A) and
18 (B) of this clause during the entire period of the alien's residence in
19 the United States; or

20 (3) otherwise was not complying with the requirements of section
21 4104(f) of this title.

22 (b) UNTRUE PETITION INFORMATION.—If the Attorney General decides
23 any information required by section 4524(b) of this title is not true, the At-
24 torney General shall end, as of the date of the decision, the status of an
25 alien entrepreneur, alien spouse, or alien child as an alien lawfully admitted
26 for permanent residence and notify the alien involved.

27 (c) FAILURE TO FILE PETITIONS OR HAVE PERSONAL INTERVIEWS.—
28 The Attorney General shall end, as of the 2d anniversary of the alien's law-
29 ful admission for permanent residence, the status of an alien entrepreneur
30 as an alien lawfully admitted for permanent residence (and the status of the
31 entrepreneur's spouse or child if acquired under section 4502(a) or 4522(a)
32 of this title) if—

33 (1) a petition is not submitted as required by section 4523(1) of this
34 title; or

35 (2) unless good cause is shown, the alien entrepreneur does not ap-
36 pear at the interview required by section 4523(2) of this title.

37 (d) REVIEW OF DECISIONS.—(1) An alien whose permanent residence
38 status is ended under subsection (a) or (b) of this section may request a
39 review of the decision in a deportation proceeding. The burden of proof is
40 on the Attorney General to establish by a preponderance of the evidence
41 that—

1 (A) if ended under subsection (a) of this section, a ground described
2 in subsection (a) is met; or

3 (B) if ended under subsection (b) of this section, the information re-
4 quired by section 4524(b) of this title about the qualifying commercial
5 enterprise is not true.

6 (2) An alien whose permanent residence status is ended under subsection
7 (c) of this section has the burden of proof in a deportation proceeding of
8 establishing compliance with section 4523 of this title.

9 **§ 4528. Treatment of conditional basis period for naturaliza-**
10 **tion purposes**

11 In carrying out subtitle V of this title, an alien who is in the United
12 States as an alien lawfully admitted for permanent residence on a condi-
13 tional basis under this subchapter is deemed to have been admitted and to
14 be in the United States as an alien lawfully admitted for permanent resi-
15 dence.

16 **CHAPTER 47—ALIENS BORN IN VIETNAM AND**
17 **FATHERED BY CITIZENS OF THE UNITED STATES**

Sec.

4701. Definitions and application.

4702. Validity and denial of visas.

4703. Admission.

4704. Rights, privileges, status, and benefits.

4705. Nonexclusive procedure for acquiring status.

18 **§ 4701. Definitions and application**

19 (a) DEFINITIONS.—In this chapter—

20 (1) “child” has the same meaning given that term in section
21 108(a)(1)–(5) of this title.

22 (2) “principal alien” means an alien born in Vietnam after January
23 1, 1962, and before January 1, 1976, and fathered by a citizen of the
24 United States.

25 (b) APPLICATION.—This chapter applies to an alien who resided in Viet-
26 nam on December 22, 1987, and who satisfies a consular officer or an offi-
27 cer of the Immigration and Naturalization Service after a face-to-face inter-
28 view that the alien is—

29 (1) a principal alien;

30 (2) the spouse or child of a principal alien and is accompanying or
31 following to join the principal alien; or

32 (3) accompanying or following to join a principal alien and—

33 (A) is the natural mother of the principal alien or the spouse
34 or child of the mother; or

1 (B) has acted in effect as the principal alien's mother, father,
2 or next-of-kin or is the spouse or child of the alien who has acted
3 in that capacity.

4 **§ 4702. Validity and denial of visas**

5 (a) VALIDITY.—An immigrant visa issued under this chapter is valid for
6 one year.

7 (b) DENIAL OF VISA.—An immigrant visa may not be issued to an alien
8 described in section 4701(b)(3) of this title unless the consular officer re-
9 ferred to in section 4701(b) of this title decides that the alien's relationship
10 with the principal alien is similar to that which exists between close family
11 members and the admission of the alien is necessary for humanitarian pur-
12 poses or to ensure family unity.

13 **§ 4703. Admission**

14 (a) GENERAL.—Notwithstanding any numerical limitations specified in
15 chapter 41 of this title, the Attorney General may admit an alien described
16 in section 4701(b) of this title to the United States as an immigrant if the
17 alien—

18 (1) is admissible as an immigrant; and

19 (2) is issued an immigrant visa and leaves Vietnam after March 21,
20 1988.

21 (b) NONAPPLICATION AND WAIVER.—When deciding on an alien's admis-
22 sibility as an immigrant under this chapter—

23 (1) sections 6304(a) and 6313(a)(2), (b), and (c) of this title do not
24 apply; and

25 (2) the Attorney General, on the recommendation of a consular offi-
26 cer after an investigation by the consular officer, on an individual basis
27 may waive any other provision of subchapter I of chapter 63 of this
28 title (except sections 6307(a)(3), 6308(a)–(c), and 6309) in writing for
29 the alien for humanitarian purposes, to ensure family unity, or when
30 it is otherwise in the public interest.

31 **§ 4704. Rights, privileges, status, and benefits**

32 (a) RIGHTS, PRIVILEGES, AND STATUS.—The natural mother of the prin-
33 cipal alien may not acquire any right, privilege, or status under this title
34 because of that parentage after an alien described in section 4701(b)(3)(B)
35 of this title is admitted to the United States.

36 (b) ELIGIBILITY FOR BENEFITS.—(1) An alien admitted (or awaiting ad-
37 mission) to the United States under this chapter is eligible for benefits
38 under subchapter I of chapter 131 of this title to the same extent as an
39 individual admitted (or awaiting admisison) under section 5105 of this title.

40 (2) Paragraph (1) of this subsection applies to an individual who leaves
41 Vietnam after October 1, 1988, and—

1 (A) is described in section 4701(b) of this section but is issued an
2 immigrant visa—

3 (i) under section 4103 of this title; or

4 (ii) because the individual is an alien described in section
5 4102(d) of this title rather than an alien referred to in section
6 4102(a), (b), or (c) of this title; or

7 (B) would be described in section 4701(b) of this title if section
8 4701(b) also applied to principal aliens who were citizens of the United
9 States.

10 **§ 4705. Nonexclusive procedure for acquiring status**

11 An alien eligible under this chapter to acquire the status of an alien law-
12 fully admitted for permanent residence is not barred from seeking that sta-
13 tus under any other provision of law under which the alien is eligible.

14 **CHAPTER 49—MISCELLANEOUS**

Sec.

4901. Eligibility for visa after departing the United States.

4902. Deposit of immigrant visa fees.

15 **4901. Eligibility for visa after departing the United States**

16 (a) GENERAL.—An alien who has been physically present in the United
17 States is eligible to receive an immigrant visa within 90 days after departing
18 the United States if the alien—

19 (1) was a lawful nonimmigrant at the time of the departure; or

20 (2)(A) is the spouse or unmarried child of an individual who at any
21 time became lawfully admitted for temporary or permanent residence
22 under chapter 93 of this title, section 210 of the Immigration and Na-
23 tionality Act (ch. 477, 66 Stat. 163), or section 202 of the Immigration
24 Reform and Control Act of 1986 (Public Law 99-603, 100 Stat.
25 3404);

26 (B) was the spouse or unmarried child of that individual on May 5,
27 1988;

28 (C) entered the United States before May 5, 1988, resided in the
29 United States on May 5, 1988, and is not a lawful permanent resident;
30 and

31 (D) applied for benefits under section 301(a) of the Immigration Act
32 of 1990 (Public Law 101-649, 104 Stat. 5029).

33 (b) ENDING DATE.—This section ends on October 1, 1997.

34 **§ 4902. Deposit of immigrant visa fees**

35 Receipts received from an increase in the fee for an immigrant visa in
36 effect on September 30, 1994, caused by processing an applicant's finger-
37 prints shall be deposited in the Administration of Foreign Affairs Account
38 as offsetting receipts and are available until expended.

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PART C—REFUGEES
CHAPTER 51—ADMISSIONS

- Sec.
5101. Definition.
5102. Annual worldwide numerical limitations.
5103. Additional emergency numerical limitations.
5104. Congressional consultation and hearings.
5105. Admissions.
5106. Asylum.
5107. Adjustment of status.

3 **§ 5101. Definition**

4 (a) APPROPRIATE CONSULTATION.—In this chapter, “appropriate con-
5 sultation” means discussions in person between Cabinet-level representatives
6 of the President and members of the Committees on the Judiciary of the
7 Senate and House of Representatives on refugee admissions and the alloca-
8 tion of refugee admissions that—

9 (1) review the worldwide refugee situation or an unforeseen emer-
10 gency refugee situation and estimate possible United States participa-
11 tion in the situation;

12 (2) consider the reasons for believing that the proposed admissions
13 are justified by humanitarian concerns or grave humanitarian concerns
14 or otherwise are in the interest of the United States; and

15 (3) provide the members with—

16 (A) a description of the nature of the refugee situation;

17 (B) a description of the number and allocation of the refugees
18 to be admitted and an analysis of conditions in the foreign coun-
19 tries from which they came;

20 (C) a description of the proposed plans and estimated cost of
21 moving and resettling the refugees;

22 (D) an analysis of the anticipated social, economic, and demo-
23 graphic impact of the refugee admissions on the United States;

24 (E) a description of the extent to which other foreign countries
25 will admit and assist in resettling the refugees;

26 (F) an analysis of the impact of United States participation in
27 the resettlement of the refugees on the foreign policy interests of
28 the United States; and

29 (G) additional information that may be appropriate or requested
30 by the members.

31 (b) PROVIDING INFORMATION IN ADVANCE.—To the extent possible, in-
32 formation described in subsection (a)(3) of this section shall be provided at
33 least 2 weeks before the discussions in person between the representatives
34 of the President and the members.

1 **§ 5102. Annual worldwide numerical limitations**

2 Before the beginning of each fiscal year and after appropriate consulta-
3 tion, the President shall establish for the fiscal year the number of refugee
4 admissions to the United States justified by humanitarian concerns or oth-
5 erwise in the interest of the United States. In stating that number, the
6 President also shall state the number of aliens granted asylum during the
7 prior fiscal year. After appropriate consultation, the President shall allocate
8 admissions among refugees of special humanitarian concern to the United
9 States.

10 **§ 5103. Additional emergency numerical limitations**

11 (a) ESTABLISHMENT OF NUMBER.— As provided in this section, the
12 President may establish an additional number of refugee admissions to the
13 United States for a succeeding period of not more than 12 months. The
14 President may establish the additional number when the President decides,
15 before the beginning of the period and after appropriate consultation,
16 that—

17 (1) an unforeseen emergency refugee situation exists;

18 (2) the admission of certain refugees in response to the situation is
19 justified by grave humanitarian concerns or otherwise is in the interest
20 of the United States; and

21 (3) the admission of the refugees cannot be carried out under section
22 5102 of this title.

23 (b) ALLOCATION.—After appropriate consultation, the President shall al-
24 locate the admissions under subsection (a) of this section among refugees
25 of special humanitarian concern to the United States.

26 **§ 5104. Congressional consultation and hearings**

27 (a) PRESIDENTIAL REPORTS AND DISCUSSIONS.—Before the beginning of
28 each fiscal year, the President shall report to the Committees on the Judici-
29 ary of the Senate and House of Representatives on the foreseeable number
30 of refugees who will need resettlement during the fiscal year and the antici-
31 pated allocation of refugee admissions during that year. The President shall
32 provide for periodic discussions between representatives of the President and
33 members of the Committees on—

34 (1) changes in the worldwide refugee situation;

35 (2) the progress of refugee admissions; and

36 (3) the possible need for changes in the allocation of admissions
37 among refugees.

38 (b) PRINTING IN CONGRESSIONAL RECORD.—As soon as possible after
39 representatives of the President initiate appropriate consultation on the
40 number of refugee admissions under section 5102 or 5103 of this title, the

1 Committees shall have the substance of the consultations printed in the
2 Congressional Record.

3 (c) COMMITTEE HEARINGS.—After the President begins appropriate con-
4 sultation before acting under section 5102 or 5103 of this title, each Com-
5 mittee shall hold a hearing to review the proposed action unless—

6 (1) public disclosure of the details of the action would jeopardize the
7 lives or safety of individuals; and

8 (2) if an action under section 5103, the time and nature of the emer-
9 gency refugee situation do not permit hearings.

10 **§ 5105. Admissions**

11 (a) AUTHORITY OF THE ATTORNEY GENERAL.—The Attorney General
12 may admit a refugee under regulations the Attorney General prescribes and
13 subject to the numerical limitations of sections 5102 and 5103 of this title.
14 The Attorney General may admit the refugee when the refugee is—

15 (1) not resettled firmly in a foreign country;

16 (2) admissible (except as otherwise provided under subsections (d)
17 and (e) of this section) as an immigrant under this title; and

18 (3) of special humanitarian concern to the United States.

19 (b) BURDEN OF PROOF.—An alien claiming refugee status has the bur-
20 den of proving that the alien is entitled to that status.

21 (c) ADMISSION OF SPOUSES AND CHILDREN.—(1) The spouse or child
22 (as defined in section 108(a)(1)–(5) of this title) of a refugee qualifying for
23 admission under subsection (a) of this section is entitled to be admitted the
24 same as the refugee if the spouse or child is—

25 (A) accompanying or following to join the refugee;

26 (B) not an individual referred to in section 132(2) of this title;

27 (C) not admissible under subsection (a) of this section; and

28 (D) admissible (except as otherwise provided under subsections (d)
29 and (e) of this section) as an immigrant under this title.

30 (2) The admission of the spouse or child shall be charged against the nu-
31 merical limitation under which the refugee's admission is charged.

32 (d) NONAPPLICATION.—Sections 6304(a) and 6313(a)(2), (b), and (c) of
33 this title do not apply to an alien applying for admission under this section.

34 (e) WAIVERS.—(1) The Attorney General may waive subchapter I of
35 chapter 63 of this title (except sections 6307(a)(3), 6308(a)–(c), and 6309)
36 for the alien—

37 (A) for humanitarian purposes;

38 (B) to ensure family unity; or

39 (C) when otherwise in the public interest.

40 (2) A waiver under paragraph (1) of this subsection shall be in writing
41 and granted only after an investigation of the alien. The Attorney General

1 shall report to Congress after the end of each fiscal year on the number
2 of waivers granted in that fiscal year and a summary of the reasons for
3 granting the waivers.

4 (f) CERTAIN CUBAN POLITICAL PRISONERS.—(1) In this subsection,
5 “process” means accepting and reviewing an application and preparing nec-
6 essary documents and making appropriate decisions related to the applica-
7 tion.

8 (2) Consistent with the procedure applicable to similar cases in other for-
9 eign countries, and except as necessary to ensure the orderly process of
10 available applicants, consular officers and the Attorney General shall proc-
11 ess an application for admission to the United States as a refugee from a
12 Cuban national imprisoned for political reasons by the Cuban Government
13 for any period of time after December 31, 1958.

14 (g) ENDING REFUGEE STATUS.—Under regulations the Attorney General
15 prescribes, the Attorney General may end the refugee status of an alien and
16 the spouse and child of the alien on finding that the alien was not a refugee
17 at the time of the alien’s admission.

18 **§ 5106. Asylum**

19 (a) APPLICATIONS FOR, AND GRANTING, ASYLUM.—The Attorney Gen-
20 eral shall prescribe a procedure for an alien physically present in the United
21 States or at a land border or port of entry, regardless of the alien’s status,
22 to apply for asylum. If the Attorney General decides that the alien is a refu-
23 gee as defined in section 132(1)(A) of this title, the Attorney General may
24 grant asylum to the alien. However, an alien convicted of an aggravated fel-
25 ony may not apply for, or be granted, asylum.

26 (b) ENDING ASYLUM.—Under regulations the Attorney General pre-
27 scribes, the Attorney General may end asylum granted under subsection (a)
28 of this section if the Attorney General decides that the alien is no longer
29 a refugee as defined in section 132(1)(A) of this title because of a change
30 in circumstances—

31 (1) in the alien’s country of nationality; or

32 (2) if the alien has no nationality, in the country in which the alien
33 last habitually resided.

34 (c) GRANTING ASYLUM TO SPOUSES AND CHILDREN.—The spouse or
35 child (as defined in section 108(a)(1)–(5) of this title) of an alien granted
36 asylum under subsection (a) of this section may be granted asylum under
37 subsection (a) if the spouse or child—

38 (1) is accompanying or following to join the alien; and

39 (2) may not be granted asylum otherwise under subsection (a) of this
40 section.

1 (d) EMPLOYMENT AUTHORIZATION.—An applicant for asylum is entitled
2 to employment authorization only as the Attorney General may provide by
3 regulation.

4 (e) EXPEDITED DEPORTATION FOR DENIED ASYLUM APPLICATIONS.—
5 (1) The Attorney General may provide for the expeditious adjudication of
6 asylum claims and, unless an applicant for asylum remains in an otherwise
7 valid nonimmigrant status, the expeditious deportation of asylum applicants
8 whose applications have been denied finally.

9 (2) Not more than the following amounts may be appropriated to the At-
10 torney General to carry out this subsection:

11 (A) \$64,000,000 for the fiscal year ending September 30, 1995.

12 (B) \$90,000,000 for the fiscal year ending September 30, 1996.

13 (C) \$93,000,000 for the fiscal year ending September 30, 1997.

14 (D) \$91,000,000 for the fiscal year ending September 30, 1998.

15 **§ 5107. Adjustment of status**

16 (a) INSPECTION AND EXAMINATION OF REFUGEES FOR ADMISSION AS
17 IMMIGRANTS.—(1) An alien admitted as a refugee under section 5105 of
18 this title and physically present in the United States for at least one year
19 shall return or be returned to the custody of the Attorney General at the
20 end of the year for inspection and examination for admission as an immi-
21 grant under sections 6103, 6331, and 6332 of this title if—

22 (A) the refugee's status as a refugee has not been ended by the
23 Attorney General; and

24 (B) the refugee has not been lawfully admitted for permanent resi-
25 dence.

26 (2) A refugee found to be admissible (except as otherwise provided under
27 subsections (d)(2) and (e) of this section) as an immigrant under this title
28 at the time of the refugee's inspection and examination under paragraph (1)
29 of this subsection shall be lawfully admitted for permanent residence as of
30 the date of the refugee's arrival in the United States. Admission is without
31 regard to the numerical limitations of this title.

32 (b) ALIENS GRANTED ASYLUM.—(1) Under regulations the Attorney
33 General prescribes, not more than 10,000 of the refugee admissions author-
34 ized in a fiscal year under section 5102 of this title may be made available
35 by the Attorney General to adjust the status of aliens granted asylum under
36 section 5106 of this title to that of aliens lawfully admitted for permanent
37 residence. The status of an alien may be adjusted when the alien—

38 (A) applies for the adjustment;

39 (B) has been physically present in the United States for at least one
40 year after being granted asylum;

1 (C) continues to be a refugee as required by section 5106 of this title
2 or a spouse or child of the refugee;

3 (D) is not resettled firmly in a foreign country; and

4 (E) is admissible (except as otherwise provided under subsections
5 (d)(2) and (e) of this section) as an immigrant under this title at the
6 time of examination for the adjustment.

7 (2) On approval of an application under paragraph (1) of this subsection,
8 the Attorney General shall record the lawful admission for permanent resi-
9 dence of the alien as of the date one year before the date of approval.

10 (c) CERTAIN FORMER ASYLEES.—(1) Except as provided in paragraph
11 (2) of this subsection and subsection (d)(1) of this section, subsection (b)
12 of this section applies to an alien granted asylum before November 29, 1990
13 (even if asylum had been ended under section 5106(b) of this title) who—

14 (A) is no longer a refugee because of a change in circumstances in
15 a foreign country; and

16 (B) was or would be qualified for adjustment of status under sub-
17 section (b) on November 29, 1990, except for subsection (b)(1)(B) and
18 (C) and the numerical limitation under subsection (b).

19 (2) The number of aliens who are natives of a foreign country who may
20 adjust their status under paragraph (1) of this subsection in a fiscal year
21 may not be more than the difference between the foreign country limitation
22 established under section 4110(a) of this title and the number of aliens
23 chargeable to the country in the fiscal year under section 4111 of this title.

24 (d) NONAPPLICATION.—(1) The numerical limitation of subsection (b) of
25 this section does not apply to an alien described in subsection (c) of this
26 section or to an alien who applied for adjustment of status under subsection
27 (b) before June 2, 1990.

28 (2) Sections 6304(a) and 6313(a)(2), (b), and (c) of this title do not
29 apply to an alien seeking adjustment of status under this section.

30 (e) WAIVER.—The Attorney General may waive subchapter I of chapter
31 63 of this title (except sections 6307(a)(3), 6308(a)–(c), and 6309) for an
32 alien—

33 (1) for humanitarian purposes;

34 (2) to ensure family unity; or

35 (3) when otherwise in the public interest.

36 **PART D—ENTRY, EXCLUSION, AND DEPORTATION**

37 **CHAPTER 61—ARRIVAL, INSPECTION, AND ADMISSION**

SUBCHAPTER I—GENERAL

Sec.

6101. Time and place of entry.

6102. Presentation of documentation.

6103. Inspection of arriving individuals.

- 6104. Physical and mental examinations of arriving aliens.
- 6105. Custody pending decisions on excluding aliens convicted of aggravated felonies.
- 6106. Presidential authority to limit entry of aliens.
- 6107. Denial of admission of United Nations representatives because of espionage.

SUBCHAPTER II—ADMISSION OF CERTAIN ALIENS

- 6121. Lawfully admitted aliens returning after temporary absence.
- 6122. Temporary admission of excludable nonimmigrants.
- 6123. Temporary parole.
- 6124. Accredited officials of foreign governments.
- 6125. Alien witnesses.

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 in paragraph (2) of this subsection, an alien arriving in the United States as a nonimmigrant shall present or surrender to the immigration officer at the port of entry 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 issue documentation to the alien if—

(A) the name of the crewmember is on the crew list of the vessel or aircraft on which the crewmember arrives;

(B) a consular officer 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.

1 **§ 6103. Inspection of arriving individuals**

2 (a) GENERAL AUTHORITY.—An immigration officer may inspect an indi-
3 vidual arriving in the United States to decide whether the individual is ad-
4 missible.

5 (b) STATEMENTS UNDER OATH.—An individual arriving in the United
6 States may be required to state under oath—

7 (1) the individual's purpose in coming to the United States;

8 (2) the period the individual intends to remain in the United States;

9 (3) whether, if an alien, the individual intends to become a citizen
10 of the United States; and

11 (4) additional information to assist the immigration officer in decid-
12 ing whether the individual is a national of the United States or an
13 alien, and if an alien, whether the individual is excludable.

14 (c) ALIENS SUSPECTED OF BEING EXCLUDABLE BECAUSE OF
15 HEALTH.—If an alien arriving in the United States is suspected of being
16 excludable under section 6302(a) of this title, an immigration officer shall
17 detain the alien for a sufficient time to have the alien undergo a physical
18 and mental examination under section 6104 of this title.

19 (d) DETENTION FOR PROCEEDING BEFORE IMMIGRATION JUDGE.—(1)
20 Except as provided in paragraph (2) of this subsection, an alien shall be
21 detained for a proceeding before an immigration judge under section 6331
22 of this title if—

23 (A) the immigration officer has any doubt about the alien's admissi-
24 bility; or

25 (B) another immigration officer challenges the first immigration offi-
26 cer's decision to admit the alien.

27 (2) Paragraph (1) of this subsection does not apply to an alien who is—

28 (A) a crewmember;

29 (B) a stowaway; or

30 (C) excluded from admission under subsection (e) of this section.

31 (e) ALIENS DANGEROUS TO NATIONAL SECURITY.—(1) If an immigra-
32 tion officer or an immigration judge suspects that an alien may be exclud-
33 able under section 6308(a)(1)–(3), (b), or (c) of this title, the officer or
34 judge shall exclude the alien temporarily from admission and report the ex-
35 clusion to the Attorney General. No further inquiry may be conducted until
36 ordered by the Attorney General. The alien or the alien's representative may
37 submit a written statement and additional information for consideration by
38 the Attorney General.

39 (2) The Attorney General may order the alien excluded and deported
40 without further inquiry by an immigration judge if the Attorney General—

1 (A) is satisfied on the basis of confidential information that the alien
2 is excludable under section 6308(a)(1)–(3), (b), or (c) of this title; and
3 (B) after consulting with appropriate security agencies of the United
4 States Government, concludes that disclosure of the information would
5 be prejudicial to the public interest, safety, or security.

6 **§6104. Physical and mental examinations of arriving aliens**

7 (a) EXAMINATIONS BY MEDICAL OFFICERS.—Except as provided in sub-
8 section (c) of this section, a physical and medical examination required
9 under section 6103(c) of this title shall be conducted by a medical officer
10 of the Public Health Service. The medical officer shall certify, for the infor-
11 mation of immigration officers and immigration judges, any observation by
12 the medical officer that an alien—

13 (1) has a condition described in section 6302(a) of this title; or

14 (2) is helpless because of sickness, physical or mental disability, or
15 infancy.

16 (b) OFFICERS TRAINED IN MENTAL EXAMINATIONS.—Medical officers of
17 the Public Health Service, specially trained in diagnosing mental disorders,
18 shall be assigned to ports of entry designated by the Attorney General. The
19 Attorney General shall provide those medical officers with interpreters and
20 suitable facilities for the detention and examination of arriving aliens sus-
21 pected of being excludable under section 6302(a) of this title.

22 (c) USE OF PRIVATE AND MILITARY PHYSICIANS.—If a medical officer
23 of the Public Health Service is not available to conduct an examination
24 under subsection (a) of this section, the Attorney General may obtain, on
25 terms the Attorney General prescribes, the services of—

26 (1) a private physician with at least 4 years of professional experi-
27 ence; or

28 (2) if the alien to be examined is a special immigrant as defined in
29 section 134(a)(13) of this title, a physician of the armed forces of the
30 United States with at least 4 years of professional experience.

31 (d) EXAMINATIONS CONDUCTED UNDER REGULATIONS.—Examinations
32 under this section shall be conducted under administrative regulations pre-
33 scribed by the Attorney General and medical regulations prescribed by the
34 Secretary of Health and Human Services.

35 (e) APPEAL OF CERTIFICATION.—An alien certified under this section as
36 having a condition described in section 6302(a) of this title may appeal the
37 certification to a board of medical officers of the Public Health Service con-
38 vened by the Secretary. The alien may present before the board, at the
39 alien's expense, one expert medical witness.

1 **§6105. Custody pending decisions on excluding aliens con-**
2 **victed of aggravated felonies**

3 (a) CUSTODY.—Pending a decision on excludability, the Attorney General
4 shall take into custody an alien convicted of an aggravated felony when the
5 alien is released (whether the alien is released on parole, supervised release,
6 or probation or may be arrested or imprisoned again for the same offense).

7 (b) RELEASE FROM CUSTODY.—The Attorney General may release an
8 alien taken into custody under subsection (a) of this section only if—

9 (1) the Attorney General decides that the alien may not be deported
10 because the condition described in section 4313(f) of this title exists;
11 and

12 (2)(A) a procedure has been established for reviewing each request
13 for release under this subsection;

14 (B) the procedure includes consideration of the severity of the felony
15 committed; and

16 (C) the review concludes that the alien will not pose a danger to the
17 safety of other individuals or to property.

18 **§6106. Presidential authority to limit entry of aliens**

19 (a) SUSPENDING OR RESTRICTING ENTRY OF CERTAIN ALIENS OR
20 CLASSES OF ALIENS.—When the President finds that the entry of aliens
21 or a class of aliens into the United States would be detrimental to the inter-
22 ests of the United States, the President, by proclamation, may suspend the
23 entry of all aliens or a class of aliens or impose restrictions on their entry,
24 for any period the President considers necessary.

25 (b) BARRING ENTRY OF IMMEDIATE RELATIVES AND BUSINESS PART-
26 NERS OF DRUG TRAFFICKERS.—The President shall take all reasonable
27 steps provided by law to ensure that the immediate relatives of an individual
28 described in section 487(a) of the Foreign Assistance Act of 1961 (22
29 U.S.C. 2291f(a)), and the business partners of an individual or entity de-
30 scribed in section 487(a), are not permitted entry into the United States.

31 **§6107. Denial of admission of United Nations representa-**
32 **tives because of espionage**

33 The President shall use the authority of the President, including the au-
34 thority contained in section 6 of the Joint Resolution of August 4, 1947
35 (ch. 482, 61 Stat. 767) (known as the United Nations Headquarters Agree-
36 ment Act), to deny admission of an individual to the United States as a
37 representative to the United Nations if the President decides that the indi-
38 vidual has been found to have been engaged in espionage activities directed
39 against the United States or its allies and may pose a threat to the security
40 interests of the United States. The President may waive this section if the

1 President decides, and notifies Congress, that the waiver is in the security
2 interests of the United States.

3 SUBCHAPTER II—ADMISSION OF CERTAIN ALIENS

4 **§ 6121. Lawfully admitted aliens returning after temporary**
5 **absence**

6 (a) GENERAL.—The Attorney General may admit an alien who is lawfully
7 admitted for permanent residence and returning after a temporary absence,
8 without regard to section 4311(a) or subchapter I of chapter 63 of this title
9 (except sections 6308, 6309, and 6312), if the alien—

10 (1) left the United States voluntarily and not under an order of de-
11 portation; and

12 (2) is returning to a lawful unrelinquished domicile of 7 consecutive
13 years.

14 (b) OTHER AUTHORITY NOT LIMITED.—Subsection (a) of this section
15 does not limit the authority of the Attorney General under section 4311(b)
16 of this title.

17 (c) NONAPPLICATION TO CERTAIN FELONS.—Subsection (a) of this sec-
18 tion does not apply to an alien who has been convicted of, and has served
19 a total term of imprisonment of at least 5 years for, one or more aggravated
20 felonies.

21 **§ 6122. Temporary admission of excludable nonimmigrants**

22 (a) ISSUING NONIMMIGRANT VISAS.—An alien applying for a non-
23 immigrant visa who a consular officer believes is ineligible for a visa under
24 subchapter I of chapter 63 of this title (except sections 6308(a)(1), (3), and
25 (4) and (c), 6309, and 6313(a)(1)) may be issued a nonimmigrant visa and
26 admitted temporarily as a nonimmigrant if the Attorney General approves
27 a recommendation by the officer or the Secretary of State that the alien
28 be admitted temporarily despite the alien's excludability.

29 (b) ADMISSIONS.—An alien excludable under subchapter I of chapter 63
30 of this title (except sections 6308(a)(1), (3), and (4) and (c), 6309, and
31 6313(a)(1)) may be admitted temporarily as a nonimmigrant if the alien—

32 (1) has the appropriate documentation; or

33 (2) is granted a waiver of the documentation requirements.

34 (c) CONDITIONS TO CONTROL ADMISSION AND RETURN.—The Attorney
35 General shall prescribe conditions, including filing a bond as necessary, to
36 control the admission and return of aliens applying for admission under this
37 section.

38 **§ 6123. Temporary parole**

39 (a) GENERAL.—Except as provided in section 2305(c) of this title, the
40 Attorney General, for an emergency or other reasons strictly in the public
41 interest, may parole temporarily into the United States an alien applying

1 for admission. However, if the alien is a refugee, the Attorney General may
 2 parole the alien only if the Attorney General finds compelling reasons in the
 3 public interest requiring the alien to be paroled instead of admitted as a
 4 refugee. Parole of an alien under this section—

5 (1) is subject to conditions the Attorney General may prescribe; and

6 (2) is not an admission to the United States.

7 (b) END OF PAROLE.—When the Attorney General is of the opinion that
 8 the purposes of the parole have been served, the alien immediately shall re-
 9 turn or be returned to the custody from which the alien was paroled. There-
 10 after, the alien’s application for admission shall continue to be considered
 11 in the same way as the application of any other alien for admission.

12 **§6124. Accredited officials of foreign governments**

13 On a reciprocal basis, an accredited official of a government of a foreign
 14 country, and the official’s immediate family, attendants, servants, and per-
 15 sonal employees, may be admitted for immediate and continuous transit
 16 through the United States without regard to subchapter I of chapter 63 of
 17 this title (except sections 6308(a)–(c) and 6313(a)(1)).

18 **§6125. Alien witnesses**

19 (a) WAIVERS.—The Attorney General may waive the requirements of sec-
 20 tion 2121(a) of this title and the grounds of exclusion in subchapter I of
 21 chapter 63 of this title (except section 6309) for an alien applying as a non-
 22 immigrant classified under section 2326 of this title if the Attorney General
 23 considers it in the national interest to do so.

24 (b) DEPORTATION FOR NONDISCLOSURE OR SUBSEQUENT CONDUCT.—
 25 This section does not prevent deportation of an alien admitted as a non-
 26 immigrant classified under section 2326 of this title for—

27 (1) conduct or a condition that was not disclosed to the Attorney
 28 General before the alien’s admission as a nonimmigrant classified
 29 under that section; or

30 (2) conduct committed after the alien’s admission into the United
 31 States.

32 **CHAPTER 63—VISA INELIGIBILITY AND EXCLUSION**

SUBCHAPTER I—GROUNDS

Sec.

- 6301. Fraud and misrepresentation.
- 6302. Health.
- 6303. Protection and guardianship of aliens excluded for health or infancy.
- 6304. Public charges.
- 6305. Stowaways.
- 6306. Encouraging others to enter illegally.
- 6307. Criminal and immoral acts.
- 6308. National security.
- 6309. Participation in Nazi persecution or genocide.
- 6310. Prior deportation or removal.
- 6311. Ineligibility for citizenship and evasion of military service.

6312. International child abduction.
 6313. Noncompliance with documentation requirements.
 6314. Application of exclusions to aliens leaving Guam, Puerto Rico, or the Virgin Islands.

SUBCHAPTER II—PROCEDURE

6331. Exclusion proceedings.
 6332. Administrative appeals.
 6333. Right to counsel.
 6334. Judicial review.
 6335. Deportation of excluded aliens.
 6336. Costs of deporting excluded aliens.

SUBCHAPTER I—GROUNDS

§ 6301. Fraud and misrepresentation

(a) GENERAL.—An alien is ineligible for a visa and 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 II and III 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 adjustment 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 is ineligible for a visa and 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 or to be infected 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

1 (B) to have had a physical or mental disorder and a history of
 2 behavior associated with the disorder that has posed a threat to
 3 the property, safety, or welfare of the alien or others and is likely
 4 to recur or to lead to other harmful behavior; or

5 (3) under regulations prescribed by the Secretary, to be a drug
 6 abuser or addict.

7 (b) WAIVERS.—(1) The Attorney General may waive—

8 (A) subsection (a)(1) of this section for an alien who—

9 (i) is the spouse, unmarried son, unmarried daughter, or adopt-
 10 ed child of a citizen of the United States, of an alien lawfully ad-
 11 mitted for permanent residence, or of an alien who has been issued
 12 an immigrant visa; or

13 (ii) has a son or daughter who is a citizen of the United States,
 14 an alien lawfully admitted for permanent residence, or an alien
 15 who has been issued an immigrant visa; or

16 (B) subsection (a)(2) of this section for any alien.

17 (2) A waiver under this subsection is subject to any conditions, including
 18 filing a bond, that the Attorney General may prescribe by regulation after
 19 consultation with the Secretary.

20 **§ 6303. Protection and guardianship of aliens excluded for**
 21 **health or infancy**

22 An alien is ineligible for a visa and shall be excluded from admission to
 23 the United States if—

24 (1) the alien is accompanying another alien ordered excluded and de-
 25 ported and certified to be helpless because of sickness, physical or men-
 26 tal disability, or infancy under section 6104(a) of this title; and

27 (2) the alien's protection or guardianship is required by the alien or-
 28 dered excluded and deported.

29 **§ 6304. Public charges**

30 (a) GENERAL.—An alien is ineligible for a visa and shall be excluded
 31 from admission to the United States if the consular officer believes, at the
 32 time of the application for a visa, or the Attorney General believes, at the
 33 time of the application for admission or adjustment of status, that the alien
 34 is likely at any time to become a public charge.

35 (b) ADMISSION ON BOND.—(1) The Attorney General may admit an alien
 36 excludable under subsection (a) of this section if the alien is otherwise ad-
 37 missible and files a bond approved by the Attorney General. The bond
 38 shall—

39 (A) be in an amount and contain conditions the Attorney General
 40 prescribes; and

1 (B) be for the benefit of the United States, States, territories and
2 possessions of the United States, and political subdivisions, holding
3 them harmless against the alien's becoming a public charge.

4 (2) When the alien permanently leaves the United States, is naturalized,
5 or dies, the bond ends and the security held to secure performance, except
6 to the extent forfeited for a violation of the bond, shall be returned to the
7 person providing it or to the person's legal representative.

8 (3) The Attorney General may bring a civil action on the bond in the
9 name of the United States for the benefit of the United States or of a State,
10 territory, possession, or political subdivision in which the alien is a public
11 charge, regardless of whether a demand for payment of public expenses has
12 been made.

13 **§ 6305. Stowaways**

14 An alien is ineligible for a visa and shall be excluded from admission to
15 the United States if the alien is a stowaway.

16 **§ 6306. Encouraging others to enter illegally**

17 (a) GENERAL.—An alien is ineligible for a visa and shall be excluded
18 from admission to the United States if the alien at any time knowingly en-
19 couraged, induced, or assisted another alien to enter or attempt to enter the
20 United States in violation of law.

21 (b) NONAPPLICATION.—Subsection (a) of this section does not apply to
22 an alien who—

23 (1) is an eligible immigrant (as defined in section 301(b) of the Im-
24 migration Act of 1990 (Public Law 101-649, 104 Stat. 5029));

25 (2) was physically present in the United States on May 5, 1988;

26 (3) is seeking—

27 (A) admission as an immediate relative;

28 (B) admission under section 4103(c) of this title (including
29 under section 112 of the Immigration Act of 1990 (Public Law
30 101-649, 104 Stat. 4987)); or

31 (C) benefits under section 301(a) of that Act (104 Stat. 5029);

32 and

33 (4) before May 5, 1988, encouraged, induced, or assisted only the
34 alien's spouse, parent, son, or daughter (and no other individual) to
35 enter the United States in violation of law.

36 (c) WAIVERS.—The Attorney General may waive subsection (a) of this
37 section for humanitarian purposes, to ensure family unity, or when it is oth-
38 erwise in the public interest, for an alien who—

39 (1)(A) is lawfully admitted for permanent residence, temporarily left
40 the United States voluntarily and not under an order of deportation,

1 and is otherwise admissible as a returning resident under section
2 4311(b) of this title; or

3 (B) is seeking admission or adjustment of status as an immediate
4 relative or immigrant under section 4103(b), (c), or (d) of this title;
5 and

6 (2) has encouraged, induced, or assisted only the alien's spouse, par-
7 ent, son, or daughter (and no other individual) to enter the United
8 States in violation of law.

9 **§6307. Criminal and immoral acts**

10 (a) GENERAL.—Each of the following aliens is ineligible for a visa and
11 shall be excluded from admission to the United States:

12 (1) an alien who has been convicted of, admits having committed, or
13 admits having committed acts that are the essential elements of, an of-
14 fense involving moral turpitude (except a purely political offense) or an
15 attempt or conspiracy to commit such an offense, but this clause does
16 not apply to an alien who has committed only one offense if—

17 (A) the alien committed the offense when less than 18 years of
18 age, and committed the offense and was released from any con-
19 finement to a correctional institution imposed for the offense more
20 than 5 years before applying for a visa or other documentation
21 and for admission; or

22 (B) the maximum imprisonment for the offense was not more
23 than one year and the alien was not sentenced to more than 6
24 months, regardless of the extent to which the sentence was finally
25 executed.

26 (2) an alien who has been convicted of, admits having committed, or
27 admits having committed acts that are the essential elements of, a vio-
28 lation of, or an attempt or conspiracy to violate, a law or regulation
29 of a State, the United States, or a foreign country related to a con-
30 trolled substance (as defined in section 102 of the Controlled Sub-
31 stances Act (21 U.S.C. 802)).

32 (3) an alien who a consular officer or an immigration officer knows
33 or reasonably believes is or has been—

34 (A) unlawfully trafficking in a controlled substance (as defined
35 in section 102 of the Controlled Substances Act (21 U.S.C. 802));
36 or

37 (B) knowingly assisting, abetting, conspiring, or colluding with
38 others in unlawfully trafficking in such a controlled substance.

39 (4) an alien who has been convicted of at least 2 offenses (except
40 purely political offenses) for which the total sentences to confinement
41 actually imposed were at least 5 years, regardless of whether—

- 1 (A) the convictions were in a single trial;
2 (B) the offenses arose from a single scheme of misconduct; or
3 (C) the offenses involved moral turpitude.

4 (5) an alien who—

5 (A) is coming to the United States only, principally, or inciden-
6 tally to engage in prostitution, or has engaged in prostitution
7 within 10 years of the date of applying for a visa, admission, or
8 adjustment of status;

9 (B)(i) procures or attempts to procure individuals for prostitu-
10 tion;

11 (ii) within that 10-year period, procured or attempted to pro-
12 cure or to import individuals for prostitution; or

13 (iii) receives or, within that 10-year period, received any part of
14 the proceeds of prostitution; or

15 (C) is coming to the United States to engage in any other un-
16 lawful commercialized vice, whether or not related to prostitution.

17 (6) an alien who is coming to the United States to practice polyg-
18 amy.

19 (7) an alien—

20 (A) who has committed in the United States at any time—

21 (i) a felony;

22 (ii) a crime of violence (as defined in section 16 of title 18);

23 or

24 (iii) an offense of reckless driving or driving when intoxi-
25 cated or under the influence of alcohol or a prohibited sub-
26 stance if the offense involved personal injury to another;

27 (B) for whom immunity from criminal jurisdiction was exercised
28 for that offense;

29 (C) who as a consequence of the offense and exercise of immu-
30 nity has left the United States; and

31 (D) who subsequently has not submitted completely to the juris-
32 diction of the court in the United States having jurisdiction of
33 that offense.

34 (b) WAIVERS.—The Attorney General may waive subsection (a)(1), (4),
35 (5), or (7) of this section, or subsection (a)(2) of this section for a single
36 offense of simple possession of not more than 30 grams of marijuana, for
37 an immigrant if—

38 (1)(A) the Attorney General is satisfied that—

39 (i) the immigrant is excludable only under subsection (a)(5) (A)

40 or (B) of this section or the activities for which the immigrant is

41 excludable occurred more than 15 years before the date of the im-

1 migrant's application for a visa, admission, or adjustment of sta-
2 tus;

3 (ii) the immigrant's admission would not be contrary to the wel-
4 fare, safety, or security of the United States; and

5 (iii) the immigrant has been rehabilitated; or

6 (B) the immigrant is the spouse, parent, son, or daughter of a citi-
7 zen of the United States or of an alien lawfully admitted for permanent
8 residence and the Attorney General is satisfied that the immigrant's ex-
9 clusion would result in extreme hardship to the citizen or to the alien
10 lawfully admitted for permanent residence;

11 (2) the Attorney General consents (subject to conditions and proce-
12 dures the Attorney General may prescribe by regulation) to the immi-
13 grant's applying or reapplying for a visa, admission, or adjustment of
14 status; and

15 (3) the immigrant has not been convicted of, or admitted committing
16 acts that constitute, murder or a criminal act involving torture or an
17 attempt or conspiracy to commit murder or a criminal act involving
18 torture.

19 **§ 6308. National security**

20 (a) GENERAL.—An alien is ineligible for a visa and shall be excluded
21 from admission to the United States if a consular officer or the Attorney
22 General knows or reasonably believes that the alien seeks to enter the
23 United States to engage only, principally, or incidentally in—

24 (1) an activity to violate a law of the United States related to espio-
25 nage or sabotage;

26 (2) an activity to violate or evade a law prohibiting the export from
27 the United States of goods, technology, or sensitive information;

28 (3) an activity a purpose of which is to oppose, control, or overthrow
29 the United States Government by force, violence, or other unlawful
30 means; or

31 (4) any other unlawful activity.

32 (b) TERRORIST ACTIVITIES.—(1) In this subsection—

33 (A) "terrorist activity" means an activity that is unlawful under the
34 laws of the place where the activity is committed or that, if committed
35 in the United States, would be unlawful under the laws of the United
36 States or any State, and that involves—

37 (i) hijacking or sabotaging a vessel, aircraft, vehicle, or other
38 conveyance;

39 (ii) seizing or detaining, and threatening to kill, injure, or con-
40 tinue to detain, another individual to compel a third person (in-
41 cluding a governmental entity) to do or abstain from doing an act

1 as an explicit or implicit condition for the release of the individual
2 seized or detained;

3 (iii) a violent attack on an internationally protected person (as
4 defined in section 1116(b)(4) of title 18) or on the liberty of such
5 a person;

6 (iv) an assassination;

7 (v) the use, with intent to endanger the safety of an individual
8 or to cause substantial damage to property, of a biological agent,
9 chemical agent, nuclear weapon or device, or, except only for per-
10 sonal monetary gain, an explosive or firearm; or

11 (vi) a threat, attempt, or conspiracy to do an activity described
12 in subclauses (i)–(v) of this clause.

13 (B) “engage in terrorist activity” means to commit, in an individual ca-
14 pacity or as a member of an organization, a terrorist activity or an act that
15 the actor knows or reasonably should know gives material support to an in-
16 dividual, organization, or government in conducting a terrorist activity at
17 any time, including—

18 (i) preparing or planning a terrorist activity;

19 (ii) gathering information on potential targets for terrorist activity;

20 (iii) providing any type of material support, including a safe house,
21 transportation, communication, money, false identification, weapon, ex-
22 plosive, or training, to an individual the actor knows or reasonably
23 should know has committed or plans to commit a terrorist activity;

24 (iv) soliciting money or another thing of value for a terrorist activity
25 or a terrorist organization; or

26 (v) soliciting an individual for membership in a terrorist organization
27 or terrorist government or to engage in a terrorist activity.

28 (C) an alien who is an officer, official, representative, or spokesperson of
29 the Palestine Liberation Organization is deemed under subparagraph (B) of
30 this paragraph to be engaged in a terrorist activity.

31 (2) An alien is ineligible for a visa and shall be excluded from admission
32 to the United States if—

33 (A) the alien has engaged in a terrorist activity; or

34 (B) a consular officer or the Attorney General knows or reasonably
35 believes that the alien is likely to engage in a terrorist activity after
36 entry.

37 (c) FOREIGN POLICY.—(1) An alien is ineligible for a visa and shall be
38 excluded from admission to the United States if the Secretary of State rea-
39 sonably believes that the alien’s entry or proposed activities in the United
40 States would have potentially serious adverse foreign policy consequences for
41 the United States.

1 (2) An alien who is an official of a government of a foreign country or
2 a purported government, or who is a candidate for election to a government
3 office of a foreign country during the period immediately before the election
4 for that office, may not be excluded or subject to restrictions or conditions
5 on entry under paragraph (1) of this subsection only because of the alien's
6 past, current, or expected beliefs, statements, or associations, if the beliefs,
7 statements, or associations would be lawful in the United States.

8 (3) An alien not described in paragraph (2) of this subsection may not
9 be excluded or subject to restrictions or conditions on entry under para-
10 graph (1) of this subsection because of the alien's past, current, or expected
11 beliefs, statements, or associations, if the beliefs, statements, or associations
12 would be lawful in the United States, unless the Secretary of State person-
13 ally decides that the alien's admission would compromise a compelling fore-
14 eign policy interest of the United States.

15 (4) If the Secretary decides under paragraph (3) of this subsection that
16 an alien's admission would compromise a compelling foreign policy interest
17 of the United States, the Secretary shall give timely notice of the alien's
18 identity and the reasons for the decision to the chairmen of the Committees
19 on the Judiciary and Foreign Affairs of the House of Representatives and
20 the Committees on the Judiciary and Foreign Relations of the Senate.

21 (d) MEMBERSHIP IN TOTALITARIAN PARTY.—(1) An immigrant is ineli-
22 gible for a visa and shall be excluded from admission to the United States
23 if the immigrant is or has been a member of or affiliated with the Com-
24 munist or any other domestic or foreign totalitarian party, including a sub-
25 division or affiliate of that party.

26 (2) Paragraph (1) of this subsection does not apply to an immigrant be-
27 cause of membership or affiliation if the immigrant satisfies the consular
28 officer when applying for a visa, or the Attorney General when applying for
29 admission, that the membership or affiliation is or was—

30 (A) involuntary;

31 (B) only before the alien's 16th birthday;

32 (C) only by operation of law; or

33 (D) only to obtain employment, food rations, or other essentials of
34 living and the membership or affiliation is or was necessary to obtain
35 the employment, rations, or essentials.

36 (3) Paragraph (1) of this subsection does not apply to an immigrant be-
37 cause of membership or affiliation if the immigrant satisfies the consular
38 officer when applying for a visa, or the Attorney General when applying for
39 admission, that—

40 (A) the membership or affiliation ended at least—

41 (i) 2 years before the date of applying; or

1 (ii) 5 years before the date of applying, if the membership or
2 affiliation was with the party controlling the government of a for-
3 eign country that is a totalitarian dictatorship as of that date; and

4 (B) the immigrant is not a threat to the security of the United
5 States.

6 (4) The Attorney General may waive paragraph (1) of this subsection for
7 an immigrant for humanitarian purposes, to ensure family unity, or when
8 it is otherwise in the public interest, if the immigrant—

9 (A) is the parent, spouse, son, daughter, brother, or sister of a citi-
10 zen of the United States or the spouse, son, or daughter of an alien
11 lawfully admitted for permanent residence; and

12 (B) is not a threat to the security of the United States.

13 **§ 6309. Participation in Nazi persecution or genocide**

14 An alien is ineligible for a visa and shall be excluded from admission to
15 the United States if the alien—

16 (1) at any time during the period from March 23, 1933, through
17 May 8, 1945, ordered, incited, assisted, or otherwise participated in the
18 persecution of an individual on account of race, religion, national ori-
19 gin, or political opinion, under the direction of, or in association with—

20 (A) the Nazi government of Germany;

21 (B) any government in an area occupied by the military forces
22 of the Nazi government of Germany;

23 (C) any government established with the assistance or coopera-
24 tion of the Nazi government of Germany; or

25 (D) any government that was an ally of the Nazi government
26 of Germany; or

27 (2) engaged in conduct that is defined as genocide under the Inter-
28 national Convention on the Prevention and Punishment of Genocide.

29 **§ 6310. Prior deportation or removal**

30 (a) PRIOR EXCLUSION AND DEPORTATION.—An alien is ineligible for a
31 visa and shall be excluded from admission to the United States if the alien
32 has been excluded and deported and is seeking admission within one year
33 after the date of deportation.

34 (b) OTHER PRIOR DEPORTATION OR REMOVAL.—Each of the following
35 aliens is ineligible for a visa and shall be excluded from admission to the
36 United States if the alien is seeking admission within 5 years (or, if con-
37 victed of an aggravated felony, within 20 years) after the date of the depor-
38 tation or removal:

39 (1) an alien who has been arrested and deported.

40 (2) an alien who has fallen into distress and been removed under this
41 title or a prior law.

1 (3) an alien who has been removed as an alien enemy.

2 (4) an alien who has been removed at the expense of the United
3 States Government under section 6540(e)(1) of this title instead of
4 being deported.

5 (c) NONAPPLICATION.—Subsections (a) and (b) of this section do not
6 apply to an alien if the Attorney General consents, before the alien begins
7 to travel to the United States from a place outside the United States or
8 attempts to be admitted from foreign contiguous territory, to the alien's ap-
9 plying or reapplying for admission.

10 **§ 6311. Ineligibility for citizenship and evasion of military**
11 **service**

12 (a) INELIGIBILITY FOR CITIZENSHIP.—An immigrant is ineligible for a
13 visa and shall be excluded from admission to the United States if the immi-
14 grant is permanently ineligible for citizenship.

15 (b) EVASION OF MILITARY SERVICE.—An alien is ineligible for a visa and
16 shall be excluded from admission to the United States if the alien left or
17 remained outside the United States to avoid or evade training or service in
18 the armed forces of the United States during war or a period declared by
19 the President to be a national emergency, unless the alien was a non-
20 immigrant at the time of leaving the United States and is seeking to reenter
21 the United States as a nonimmigrant.

22 **§ 6312. International child abduction**

23 (a) GENERAL.—If, after a court in the United States has granted to an
24 individual the custody of a child who is a citizen of the United States, an
25 alien detains or withholds custody of the child outside the United States
26 from the individual granted custody by the court, the alien is ineligible for
27 a visa and shall be excluded from admission to the United States until the
28 child is surrendered to the individual granted custody by the court.

29 (b) NONAPPLICATION.—Subsection (a) of this section does not apply as
30 long as the child is located in a foreign country whose government is a party
31 to the Hague Convention on the Civil Aspects of International Child Abduc-
32 tion.

33 **§ 6313. Noncompliance with documentation requirements**

34 (a) GENERAL DOCUMENTATION REQUIREMENTS.—An alien is ineligible
35 for a visa and shall be excluded from admission to the United States if the
36 alien is seeking admission as—

37 (1) a nonimmigrant and does not satisfy the documentation require-
38 ments of section 2121 of this title; or

39 (2) an immigrant and does not satisfy the documentation require-
40 ments of section 4311 of this title.

1 (b) REQUIREMENTS OF GRADUATES OF NON-ACCREDITED MEDICAL
2 SCHOOLS.—An alien is ineligible for a visa and shall be excluded from ad-
3 mission to the United States if the alien—

4 (1) is seeking admission as an immigrant principally to perform serv-
5 ices as a member of the medical profession;

6 (2) is a graduate of a medical school not accredited by an entity ap-
7 proved by the Secretary of Education; and

8 (3) has not satisfied the requirements of section 4104(g)(1) of this
9 title.

10 (c) LABOR CERTIFICATIONS.—An alien is ineligible for a visa and shall
11 be excluded from admission to the United States if the alien is seeking ad-
12 mission as an immigrant to perform skilled or unskilled labor and the Sec-
13 retary of Labor has not made the certification required by section
14 4104(g)(2) of this title.

15 **§6314. Application of exclusions to aliens leaving Guam,**
16 **Puerto Rico, or the Virgin Islands**

17 An alien who leaves Guam, Puerto Rico, or the Virgin Islands and tries
18 to enter the continental United States or another place under the jurisdic-
19 tion of the United States is subject to this subchapter (except section
20 6313(a)). Such an alien who is excluded from admission to the United
21 States shall be deported immediately in the way provided in section 6335
22 of this title.

23 SUBCHAPTER II—PROCEDURE

24 **§6331. Exclusion proceedings**

25 (a) PROCEEDING REQUIREMENTS.—(1) When an arriving alien is de-
26 tained under section 6103(d) of this title for further inquiry about the
27 alien's admissibility, an immigration judge shall conduct a proceeding under
28 this section to decide whether the alien is to be admitted or excluded and
29 deported.

30 (2) Sections 303(a) and (b) and 6103(e) of this title apply to a proceed-
31 ing under this section.

32 (3) The Attorney General may prescribe regulations for conducting pro-
33 ceedings under this section.

34 (4) The procedure provided in this section and by regulations prescribed
35 under this section is the only procedure for deciding on the admissibility of
36 an alien under this section.

37 (b) CLOSED PROCEEDINGS.—A proceeding under this section shall be
38 closed to the public. However, the alien is entitled—

39 (1) to have one friend or relative present under conditions prescribed
40 by the Attorney General; and

1 (2) to be represented by counsel as provided in section 6333 of this
2 title.

3 (c) PRESENTATION OF EVIDENCE.—The immigration judge shall admin-
4 ister oaths, present and receive evidence, and interrogate, examine, and
5 cross-examine the alien and witnesses.

6 (d) BURDEN OF PROOF.—An individual seeking to enter the United
7 States has the burden of proving that the individual is not subject to exclu-
8 sion.

9 (e) RECORD OF PROCEEDING.—A complete record of the proceeding, in-
10 cluding the testimony and evidence produced at the proceeding, shall be
11 kept.

12 (f) DECISIONS.—(1) The decision of an immigration judge in a proceed-
13 ing under this section shall be based only on the evidence produced at the
14 proceeding. If a medical officer, private physician, or board of medical offi-
15 cers has certified under section 6104 of this title that the alien has a condi-
16 tion described in section 6302(a) of this title, the decision of the immigra-
17 tion judge shall be based only on the certification.

18 (2) A decision of an immigration judge on whether to exclude an alien
19 is final unless reversed on appeal to the Attorney General under section
20 6332 of this title. An alien who has a right to appeal under section 6332
21 shall be informed of that right.

22 **§ 6332. Administrative appeals**

23 (a) APPEALS BY ALIENS.—An alien may appeal to the Attorney General
24 an order of an immigration judge excluding the alien, except when the alien
25 is—

- 26 (1) a stowaway;
27 (2) excluded temporarily under section 6103(e) of this title; or
28 (3) excluded based on a certification under section 6104 of this title.

29 (b) APPEALS BY IMMIGRATION OFFICERS.—The immigration officer in
30 charge of the port at which a proceeding under section 6331 of this title
31 is conducted may appeal to the Attorney General an order of an immigra-
32 tion judge admitting an alien.

33 (c) TIME FOR APPEAL AND STAY OF ACTIONS.—An appeal under this
34 section must be timely. The appeal stays final action in the proceeding until
35 the Attorney General makes a final decision.

36 (d) DECISIONS.—Except as provided in section 6103(e) of this title, the
37 Attorney General shall decide the appeal based only on the evidence in the
38 proceeding before the immigration judge.

39 **§ 6333. Right to counsel**

40 In an exclusion proceeding before an immigration judge and in an appeal
41 before the Attorney General from an exclusion proceeding, an alien is enti-

1 tled to be represented, at no cost to the United States Government, by the
2 alien's choice of counsel authorized to practice in the proceeding or appeal.

3 **§ 6334. Judicial review**

4 (a) JUDICIAL REVIEW.—An alien may obtain judicial review of a final
5 order of exclusion only by a habeas corpus proceeding and only if—

6 (1) the alien has exhausted all administrative remedies available to
7 the alien as of right under the immigration laws and regulations;

8 (2) the alien has remained in the United States after the order was
9 issued; and

10 (3) the validity of the order has not been decided in a prior judicial
11 proceeding, unless the reviewing court finds that the petition for habeas
12 corpus presents grounds that could not have been presented in the
13 prior proceeding or that the remedy provided by the prior proceeding
14 was inadequate or ineffective to test the validity of the order.

15 (b) CONTENTS OF PETITIONS.—A petition for habeas corpus shall state
16 whether the validity of the order of exclusion has been upheld in a prior
17 judicial proceeding, and, if so, shall state the name of the court, the date
18 of the court's ruling, and the nature of the proceeding.

19 **§ 6335. Deportation of excluded aliens**

20 (a) IMMEDIATE DEPORTATION.—Except as provided in subsection (d) of
21 this section, an alien (except an alien crewmember) arriving in the United
22 States who is excluded under this title shall be immediately deported.

23 (b) PLACE OF DEPORTATION.—(1) Except as provided in paragraphs (2)
24 and (3) of this subsection, deportation under this section shall be to the
25 country in which the alien boarded the vessel or aircraft on which the alien
26 arrived in the United States.

27 (2) If the alien boarded the vessel or aircraft on which the alien arrived
28 in the United States in a foreign territory contiguous to the United States,
29 an island adjacent to the United States, or an island adjacent to a foreign
30 territory contiguous to the United States, and the alien is not a native, citi-
31 zen, subject, or national of, or does not reside in, the territory or island,
32 deportation shall be to the country in which the alien boarded the vessel
33 or aircraft that transported the alien to the territory or island.

34 (3) If the government of the country designated in paragraph (1) or (2)
35 of this subsection is unwilling to accept the alien into that country's terri-
36 tory, deportation shall be to any of the following countries, as directed by
37 the Attorney General:

38 (A) the country of which the alien is a citizen, subject, or national.

39 (B) the country in which the alien was born.

40 (C) the country in which the alien has a residence.

1 (D) a country with a government that will accept the alien into the
 2 country's territory if deportation to a country described in clauses (A)–
 3 (C) of this paragraph is impracticable, inadvisable, or impossible.

4 (c) DEPORTATION VESSELS, AIRCRAFT, AND ACCOMMODATIONS.—(1)
 5 Deportation under this section shall be on a vessel or aircraft owned by the
 6 owner of the vessel or aircraft on which the alien arrived in the United
 7 States, unless it is impracticable to deport the alien on one of those vessels
 8 or aircraft within a reasonable time.

9 (2) The alien shall be deported in accommodations of the same class in
 10 which the alien arrived.

11 (d) STAY OF DEPORTATION.—(1) The Attorney General may stay the de-
 12 portation of an alien under this section if the Attorney General decides
 13 that—

14 (A) immediate deportation is not practicable or proper; or

15 (B) the alien is needed to testify for the United States Government
 16 in the prosecution of a person for a violation of a law of the United
 17 States.

18 (2) During the period an alien is detained because of a stay of deporta-
 19 tion under paragraph (1)(B) of this subsection, the Attorney General may
 20 pay from the appropriation “Immigration and Naturalization Service—Sala-
 21 ries and Expenses”—

22 (A) the cost of maintenance of the alien; and

23 (B) a witness fee of \$1 a day.

24 (3) The Attorney General may release an alien, whose deportation is
 25 stayed under paragraph (1)(B) of this subsection, on—

26 (A) the alien's filing a bond of at least \$500 with security approved
 27 by the Attorney General;

28 (B) condition that the alien appear when required as a witness and
 29 for deportation; and

30 (C) other conditions the Attorney General may prescribe.

31 **§ 6336. Costs of deporting excluded aliens**

32 When an alien is ordered excluded and deported, the owner of the vessel
 33 or aircraft on which the alien arrived in the United States shall pay the
 34 transportation cost of deporting the alien. If deportation is on a vessel or
 35 aircraft not owned by the owner of the vessel or aircraft on which the alien
 36 arrived in the United States, the Attorney General may—

37 (1) pay the cost from the appropriation “Immigration and Natu-
 38 ralization Service—Salaries and Expenses”; and

39 (2) recover the amount of the cost in a civil action from the owner,
 40 agent, or consignee of the vessel or aircraft on which the alien arrived
 41 in the United States.

1 **CHAPTER 65—DEPORTATION OF ALIENS IN THE UNITED**
 2 **STATES**

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3 SUBCHAPTER I—GROUNDS

4 **§ 6501. Excludable at time of entry or adjustment of status**
 5 **or in the United States illegally**

6 (a) GENERAL.—An alien shall be deported if the alien—

7 (1) was excludable at the time of entry or adjustment of status
 8 under a law in effect at that time;

9 (2) entered the United States—

10 (A) without inspection; or

11 (B) at a time or place not designated by an immigration officer;

12 or

13 (3) is in the United States in violation of a law of the United States.

14 (b) WAIVERS FOR CERTAIN MISREPRESENTATIONS.—(1) The Attorney
 15 General may waive subsection (a)(1) of this section for an alien (except an
 16 alien deportable under section 6509 of this title) who was excludable under
 17 section 6301(a)(1) of this title at the time of entry if the alien—

18 (A) is the spouse, parent, son, or daughter of a citizen of the United
 19 States or of an alien lawfully admitted for permanent residence;

20 (B) had an immigrant visa or equivalent documentation at the time
 21 of entry; and

22 (C) was otherwise admissible at the time of entry, except under sec-
 23 tion 4311(a)(1) or 6313(a)(2) or (c) of this title as a direct result of
 24 the fraud or misrepresentation.

1 (2) A waiver of deportation under paragraph (1) of this subsection for
2 fraud or misrepresentation is also a waiver of deportation based on other
3 grounds of inadmissibility at the time of entry directly resulting from the
4 fraud or misrepresentation.

5 **§ 6502. Marriage fraud and failure to marry timely**

6 (a) MARRIAGE FRAUD.—(1) An alien shall be deported if—

7 (A) the alien obtained entry into the United States with an immi-
8 grant visa or other documentation obtained because of a marriage that
9 was entered into less than 2 years before the alien's entry and that was
10 judicially annulled or terminated within 2 years after the alien's entry;
11 or

12 (B) the Attorney General is satisfied that the alien failed or refused
13 to fulfill the alien's marital agreement that, in the opinion of the Attor-
14 ney General, was made to obtain entry into the United States as an
15 immigrant.

16 (2) Paragraph (1)(A) of this subsection does not apply to an alien who
17 satisfies the Attorney General that the marriage was not made to evade the
18 immigration laws.

19 (b) FAILURE TO MARRY WITHIN 90 DAYS.—An alien who enters the
20 United States as a nonimmigrant classified under section 2309(a) of this
21 title, and a minor child of the alien accompanying or following to join the
22 alien, shall depart from the United States if, within 90 days after entry,
23 the alien does not marry the citizen who filed the petition for the alien
24 under section 2309(b) of this title. If they do not depart, they shall be de-
25 ported.

26 **§ 6503. Public charges**

27 An alien shall be deported if the alien, within 5 years after entry, has
28 become a public charge from causes not affirmatively shown to have arisen
29 since entry.

30 **§ 6504. Failure to maintain status or satisfy entry conditions**

31 (a) NONIMMIGRANT STATUS NOT MAINTAINED.—(1) Subject to para-
32 graph (2) of this subsection, an alien admitted to the United States as a
33 nonimmigrant shall be deported if the alien does not—

34 (A) maintain the nonimmigrant status under which the alien was ad-
35 mitted or which the alien acquired under section 9109 of this title; or

36 (B) comply with a condition of the nonimmigrant status.

37 (2) An alien admitted as a nonimmigrant classified under section 2301(1)
38 or 2302(1) of this title and not maintaining the nonimmigrant status under
39 which the alien was admitted may be deported only if—

40 (A) the Secretary of State approves; or

41 (B) the alien is deportable under section 6508 or 6509 of this title.

1 (b) NONCOMPLIANCE WITH HEALTH WAIVER CONDITIONS.—An alien
2 admitted to the United States as a result of a waiver under section 6302(b)
3 of this title shall be deported if the Secretary of Health and Human Serv-
4 ices certifies that the alien has not complied with a condition of the waiver.

5 (c) SPECIAL AGRICULTURAL WORKERS.—An alien lawfully admitted for
6 temporary residence under section 210A of the Immigration and Nationality
7 Act (ch. 477, 66 Stat. 163) shall be deported if the alien does not meet
8 the requirement of section 210A(d)(5)(A) of that Act by the end of the ap-
9 plicable period.

10 (d) TERMINATION OF CONDITIONAL PERMANENT RESIDENT STATUS.—
11 An alien lawfully admitted for permanent residence on a conditional basis
12 under chapter 45 of this title shall be deported if the status is terminated.
13 However, this subsection does not apply if a waiver is granted under section
14 4506(b) of this title.

15 **§ 6505. Encouraging others to enter illegally**

16 (a) GENERAL.—An alien shall be deported if the alien, before or within
17 5 years after entry, knowingly has encouraged, induced, or assisted another
18 alien to enter or attempt to enter the United States in violation of law.

19 (b) NONAPPLICATION.—Subsection (a) of this section does not apply to
20 an alien who—

21 (1) is an eligible immigrant (as defined in section 301(b) of the Im-
22 migration Act of 1990 (Public Law 101-649, 104 Stat. 5029));

23 (2) was physically present in the United States on May 5, 1988;

24 (3) is seeking—

25 (A) admission as an immediate relative;

26 (B) admission under section 4103(c) of this title (including
27 under section 112 of the Immigration Act of 1990 (Public Law
28 101-649, 104 Stat. 4987)); or

29 (C) benefits under section 301(a) of that Act (104 Stat. 5029);

30 and

31 (4) before May 5, 1988, encouraged, induced, or assisted only the
32 alien's spouse, parent, son, or daughter (and no other individual) to
33 enter the United States in violation of law.

34 (c) WAIVERS.—The Attorney General may waive subsection (a) of this
35 section for humanitarian purposes, to ensure family unity, or when it is oth-
36 erwise in the public interest, for an alien who—

37 (1) is lawfully admitted for permanent residence; and

38 (2) has encouraged, induced, or assisted only the alien's spouse, par-
39 ent, son, or daughter (and no other individual) to enter the United
40 States in violation of law.

1 **§ 6506. Criminal offenses**

2 (a) MORAL TURPITUDE AND AGGRAVATED FELONIES.—(1) An alien shall
3 be deported if the alien is—

4 (A)(i) convicted of an offense involving moral turpitude committed
5 within 5 years after entry or, if the alien is granted the status of an
6 alien lawfully admitted for permanent residence under section 9101(e)
7 of this title, within 10 years after entry; and

8 (ii) sentenced to confinement or confined for the offense in a prison
9 or correctional institution for at least one year;

10 (B) convicted, after entry, of at least 2 offenses involving moral tur-
11 pitude not arising out of a single scheme of misconduct, regardless of
12 whether the convictions were in a single trial or the alien was confined
13 for the offenses; or

14 (C) convicted, after entry, of an aggravated felony.

15 (2) Paragraph (1) of this subsection does not apply to a conviction of an
16 alien if the President or the chief executive officer of a State has granted
17 the alien a full and unconditional pardon.

18 (b) CONTROLLED SUBSTANCES.—An alien shall be deported if the alien—

19 (1) is convicted, after entry, of violating, or conspiring or attempting
20 to violate, a law or regulation of a State, the United States, or a for-
21 eign country related to a controlled substance (as defined in section
22 102 of the Controlled Substances Act (21 U.S.C. 802)), except a single
23 offense of possession for one's own use of not more than 30 grams of
24 marijuana; or

25 (2) is, or at any time after entry has been, a drug abuser or addict.

26 (c) FIREARMS.—An alien shall be deported if the alien, after entry, is
27 convicted under any law of purchasing, selling, offering for sale, exchanging,
28 using, owning, possessing, or carrying, or attempting or conspiring to pur-
29 chase, sell, offer for sale, exchange, use, own, possess, or carry, in violation
30 of law any weapon, part, or accessory that is a firearm or destructive device
31 (as defined in section 921(a) of title 18).

32 (d) MISCELLANEOUS.—An alien shall be deported if the alien has been
33 convicted at any time (and the judgment on the conviction has become final)
34 of violating or conspiring or attempting to violate—

35 (1) section 511 or 10151(a) of this title;

36 (2) chapter 37, 105, or 115 of title 18 if a term of imprisonment
37 of at least 5 years may be imposed;

38 (3) section 871 or 960 of title 18;

39 (4) the Trading with the Enemy Act (50 App. U.S.C. 1 et seq.); or

40 (5) the Military Selective Service Act (50 App. U.S.C. 451 et seq.);

1 **§ 6507. Failure to register and falsification of documents**

2 (a) ADDRESS NOTIFICATION.—An alien shall be deported if the alien has
3 not complied with section 8104 of this title, unless the Attorney General is
4 satisfied that the noncompliance was reasonably excusable or not willful.

5 (b) FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.—An
6 alien shall be deported if the alien has been convicted at any time of—

7 (1) violating section 10145 of this title;

8 (2) violating section 36(c) of the Alien Registration Act, 1940;

9 (3) violating, or attempting or conspiring to violate, the Foreign
10 Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.);

11 (4) violating the Act of August 1, 1956 (50 U.S.C. 851 et seq.) or
12 a regulation under that Act; or

13 (5) violating, or attempting or conspiring to violate, section 1546 of
14 title 18.

15 (c) DOCUMENT FRAUD.—An alien shall be deported if the alien is the
16 subject of a final order for violating section 10125(b) of this title.

17 **§ 6508. National security**

18 (a) GENERAL.—An alien shall be deported if the alien has engaged or en-
19 gages in—

20 (1) an activity to violate—

21 (A) a law of the United States related to espionage or sabotage;

22 or

23 (B) a law prohibiting the export from the United States of
24 goods, technology, or sensitive information;

25 (2) any other criminal activity that endangers public safety or the
26 security of the United States; or

27 (3) an activity a purpose of which is to oppose, control, or overthrow
28 the United States Government by force, violence, or other unlawful
29 means.

30 (b) TERRORIST ACTIVITIES.—An alien shall be deported if the alien has
31 engaged or engages in a terrorist activity as defined in section 6308(b) of
32 this title.

33 (c) FOREIGN POLICY.—(1) An alien shall be deported if the Secretary of
34 State has reason to believe that the alien's presence or activities in the
35 United States would have potentially serious adverse foreign policy con-
36 sequences for the United States.

37 (2) The exceptions described in section 6308(c)(2) and (3) of this title
38 apply to deportability under this subsection in the same way that they apply
39 to excludability under section 6308(c)(1).

40 **§ 6509. Participation in Nazi persecution or genocide**

41 An alien described in section 6309 of this title shall be deported.

1 **§ 6510. Nonapplication of certain grounds to special immi-**
2 **grants dependent on juvenile court**

3 The following sections do not apply to a special immigrant as defined in
4 section 134(a)(12) of this title, based on circumstances that existed before
5 the date the alien acquired the special immigrant status:

- 6 (1) sections 6501(a) and 6504(a), (b), and (d) of this title, except
7 to the extent related to a ground of exclusion described in sections
8 6307(a)(1)–(5) or (7), 6308, or 6309 of this title.
9 (2) section 6507(a) of this title.

10 SUBCHAPTER II—PROCEDURE

11 **§ 6531. Arrest and detention pending decision on deporta-**
12 **tion**

13 (a) ARREST, DETENTION, AND RELEASE.—On a warrant issued by the
14 Attorney General, an alien may be arrested and detained pending a decision
15 on deportability. Except as provided in subsection (c) of this section, the
16 Attorney General, pending a decision on deportability, may—

- 17 (1) continue to detain the arrested alien; or
18 (2) release the alien on—

- 19 (A) a bond of at least \$500 with security approved by, and con-
20 taining conditions prescribed by, the Attorney General; or
21 (B) conditional parole.

22 (b) REVOCATION OF BOND OR PAROLE.—The Attorney General may re-
23 voke at any time a bond or parole authorized under subsection (a) of this
24 section, rearrest the alien under the original warrant, and detain the alien
25 pending a decision on deportability.

26 (c) ALIENS CONVICTED OF AGGRAVATED FELONIES.—(1) The Attorney
27 General shall take into custody an alien convicted after November 17, 1988,
28 of an aggravated felony when the alien is released, whether the alien is re-
29 leased on parole, supervised release, or probation or may be arrested or im-
30 prisoned again for the same offense.

31 (2) To the maximum extent practicable, the Attorney General shall detain
32 at one facility aliens convicted after November 17, 1988, of aggravated felo-
33 nies and taken into custody under paragraph (1) of this subsection. In se-
34 lecting the facility, the Attorney General shall make a reasonable effort to
35 ensure that an alien’s right to counsel under section 6535 of this title is
36 not impaired.

37 (3) The Attorney General may release the alien only if the alien—

38 (A) was lawfully admitted to the United States; and

39 (B) satisfies the Attorney General that the alien is not a threat to
40 the community and is likely to appear for any scheduled proceeding.

1 (d) HABEAS CORPUS.—In a habeas corpus proceeding, a court of com-
2 petent jurisdiction may review or revise a decision of the Attorney General
3 about an alien’s detention or release on bond or parole pending a decision
4 on deportability, if the alien shows conclusively that the Attorney General
5 is not proceeding with reasonable dispatch under the particular cir-
6 cumstances to decide whether the alien is deportable.

7 **§ 6532. Deportation proceedings**

8 (a) DEFINITION.—In this section, “exceptional circumstances” means ex-
9 ceptional circumstances beyond the control of the alien, such as serious ill-
10 ness of the alien or death of an immediate relative but not including less
11 compelling circumstances.

12 (b) PROCEEDING REQUIREMENT.—An immigration judge shall conduct a
13 proceeding under this section to decide whether an alien is to be deported.

14 (c) ORDERS TO SHOW CAUSE AND PROCEEDING NOTICES.—(1) In a de-
15 portation proceeding under this section, an order to show cause shall be
16 served—

17 (A) by personal delivery on the alien; or

18 (B) if personal delivery is not practicable, by certified mail, return
19 receipt requested, to the alien or any counsel of record of the alien.

20 (2) The order shall include notice of—

21 (A) the nature of the proceeding against the alien;

22 (B) the legal authority under which the proceeding is conducted;

23 (C) each act or conduct alleged to be in violation of law;

24 (D) each charge against the alien and the law alleged to have been
25 violated;

26 (E) the alien’s right to be represented (at no expense to the United
27 States Government) by counsel authorized to practice in a deportation
28 proceeding and to be provided a list of counsel prepared under sub-
29 section (d)(2) of this section;

30 (F) the requirement that the alien immediately must provide the At-
31 torney General a written record of—

32 (i) an address and telephone number (if any) at which the alien
33 may be contacted about the proceeding unless the alien has al-
34 ready provided this information to the Attorney General; and

35 (ii) any change of address or telephone number; and

36 (G) the consequences under subsection (i)(2) of this section of failing
37 to provide the address and telephone information.

38 (3) In the order to show cause or in a separate written notice served in
39 the same way as specified by paragraph (1) of this subsection, the alien
40 shall be notified of—

41 (A) the time and place of the proceeding;

1 (B) the consequences under subsection (i) of this section of failing
2 (except under exceptional circumstances) to attend the proceeding; and
3 (C) the right to be represented by counsel at the proceeding and to
4 be provided a period of time, as specified by subsection (d)(1) of this
5 section, to retain counsel and to be provided a current list of counsel
6 prepared under subsection (d)(2) of this section.

7 (4) If the time or place of the proceeding is changed, a new written notice
8 shall be served in the same way as specified by paragraph (1) of this sub-
9 section. The notice shall include the new time or place of the proceeding
10 and the matters specified by paragraph (3)(B) and (C) of this subsection.

11 (5) Notice under paragraphs (3) and (4) of this subsection is not required
12 for an alien not in detention if the alien has not provided an address as
13 required by paragraph (2)(F) of this subsection.

14 (6) Each order to show cause and written notice under this subsection
15 shall be in English and Spanish.

16 (7) The Attorney General shall maintain a system to record and preserve
17 on a timely basis notices of addresses and telephone numbers and changes
18 provided by aliens under paragraph (2)(F) of this subsection.

19 (d) DATE OF FIRST PROCEEDING AND ASSISTANCE OF COUNSEL.—(1)
20 To give an alien an opportunity to retain counsel, the first date that a pro-
21 ceeding under this section may be scheduled for the alien shall be at least
22 14 days after service of the order to show cause, unless the alien requests
23 in writing an earlier date.

24 (2) The Attorney General shall provide lists (updated at least quarterly)
25 of individuals who have indicated their availability to represent aliens with-
26 out charge in proceedings under this section. The lists shall be provided as
27 required by subsection (c)(2)(E) of this section and also shall be made gen-
28 erally available.

29 (e) ATTENDANCE OF ALIEN.—(1) An alien shall have a reasonable oppor-
30 tunity to attend the proceeding for the alien under this section. If it is im-
31 practicable for the alien to attend because of mental incompetence, the pro-
32 ceeding may be conducted without the alien. The Attorney General shall
33 prescribe safeguards for the rights and privileges of an alien who does not
34 attend because of mental incompetence.

35 (2) If an alien has been given a reasonable opportunity to attend, and
36 without reasonable cause does not attend or remain in attendance, the im-
37 migration judge may conduct the proceeding and decide on the alien's de-
38 portation as if the alien had attended.

39 (f) CONDUCTING PROCEEDINGS.—(1) The immigration judge conducting
40 a proceeding shall administer oaths, present and receive evidence, and inter-
41rogate, examine, and cross-examine the alien and witnesses. If the Attorney

1 General believes it will aid in making a decision, the Attorney General may
2 require, specifically or by regulation, in a case or class of cases, that an ad-
3 ditional immigration officer be assigned to present the evidence for the Gov-
4 ernment. The additional immigration officer may present evidence and inter-
5 rogate, examine, and cross-examine the alien and witnesses. The assignment
6 of an additional immigration officer does not affect the authority of the im-
7 migration judge conducting the proceeding.

8 (2) The alien shall have a reasonable opportunity to examine the evidence
9 against the alien, present evidence, and cross-examine witnesses presented
10 by the Government.

11 (g) BURDEN OF PROOF.—The alien has the burden of proof of establish-
12 ing the alien’s time, place, and manner of entry into the United States. In
13 presenting the proof, the alien is entitled to the production of the alien’s
14 visa or other entry document and, unless considered confidential by the At-
15 torney General, any other relevant record in the custody of the Attorney
16 General. An alien who fails to sustain the burden of proof is presumed to
17 be in the United States in violation of law.

18 (h) DECISIONS AND ORDERS.—If authorized by the Attorney General, the
19 immigration judge shall make decisions on the deportability of aliens and
20 issue orders of deportation. A decision that an alien is deportable may be
21 made only on a record made in a proceeding before an immigration judge,
22 and is valid only if based on reasonable, substantial, and probative evidence.
23 If an alien is ordered deported under any law or treaty, the decision of the
24 Attorney General is final.

25 (i) DEPORTATION ORDERED IN ABSENTIA.—(1) An alien who does not
26 attend the alien’s proceeding under this section shall be ordered deported
27 in absentia, if the Attorney General establishes by clear, unequivocal, and
28 convincing evidence that—

29 (A) the notice required by subsection (c)(3) and (4) of this section
30 was provided; and

31 (B) the alien is deportable.

32 (2) The notice referred to in paragraph (1)(A) of this subsection is suffi-
33 cient if provided at the most recent address provided under subsection
34 (c)(2)(F) of this section. No notice is required if the alien has not provided
35 the address required by subsection (c)(2)(F).

36 (3)(A) A deportation order issued under this subsection may be rescinded
37 only on a motion to reopen—

38 (i) filed not later than 180 days after the date of the order if the
39 alien demonstrates that the failure to attend was because of exceptional
40 circumstances; or

1 (ii) filed at any time if the alien demonstrates that the alien did not
2 receive the notice required by subsection (c)(3) and (4) of this section
3 or that the alien was in the custody of a State or the Government and
4 did not attend through no fault of the alien.

5 (B) A motion filed under this paragraph stays the deportation of the alien
6 pending disposition of the motion.

7 (4) Notwithstanding section 6536 of this title, a petition for review under
8 section 6536 of a deportation order issued in absentia under this sub-
9 section—

10 (A) must be filed not later than 60 days (or 30 days if the alien
11 has been convicted of an aggravated felony) after the date of the final
12 order of deportation; and

13 (B) except as provided in section 6536(b)(5) of this title, shall be
14 limited to the issues of—

15 (i) the validity of the notice provided to the alien;

16 (ii) the reasons for the alien's failure to attend; and

17 (iii) whether clear, unequivocal, and convincing evidence of de-
18 portability has been established.

19 (j) FINGERPRINTS AND PHOTOGRAPHS.—The Attorney General shall pre-
20 scribe regulations providing for the fingerprinting and photographing of
21 each alien at least 14 years of age against whom a deportation proceeding
22 is begun. The fingerprints and photographs shall be made available, on re-
23 quest, to law enforcement agencies of the Government, States, and localities.

24 (k) ADDITIONAL REGULATIONS AND EXCLUSIVITY OF PROCEDURE.—(1)
25 A proceeding under this section shall be conducted under regulations the At-
26 torney General shall prescribe that are consistent with this section.

27 (2) The procedure provided in this section and by regulations prescribed
28 under this section is the only procedure for deciding on the deportability of
29 an alien under this section.

30 (l) REGULATIONS ON MOTIONS TO REOPEN AND TO RECONSIDER AND
31 ON ADMINISTRATIVE APPEALS.—Not later than May 29, 1991, the Attor-
32 ney General shall prescribe regulations on—

33 (1) the number of motions to reopen and to reconsider that may be
34 filed in a deportation proceeding and the time during which they may
35 be filed;

36 (2) the number of administrative appeals that may be filed in a de-
37 portation proceeding, the items to be included in notices of appeal, and
38 the time during which the appeals and the appellate and reply briefs
39 may be filed; and

40 (3) the consolidation of motions to reopen and to reconsider with the
41 appeal of the order of deportation.

1 **§ 6533. Expeditious proceedings for convicted aliens**

2 (a) GENERAL.—If an alien is convicted of an offense that makes the alien
3 deportable, the Attorney General shall begin a deportation proceeding
4 against the alien as expeditiously as possible after the date of the conviction.

5 (b) ALIENS CONVICTED OF AGGRAVATED FELONIES.—(1) The Attorney
6 General shall provide for the availability of special deportation proceedings
7 at certain correctional facilities of the United States Government, States,
8 and localities for aliens convicted after November 17, 1988, of aggravated
9 felonies. Each proceeding shall be conducted—

10 (A) under section 6532 of this title, except as otherwise provided in
11 this section;

12 (B) in a way that eliminates the need for additional detention at a
13 processing center of the Immigration and Naturalization Service; and

14 (C) in a way that ensures expeditious deportation, if warranted, after
15 the alien is released from imprisonment for the felony.

16 (2) The Attorney General shall provide for beginning and, to the extent
17 possible, completing a deportation proceeding against an alien convicted
18 after November 17, 1988, of an aggravated felony, and any administrative
19 appeals from that proceeding, before the alien is released from imprison-
20 ment for the felony. This section does not require the Attorney General to
21 deport an alien sentenced to imprisonment before the alien is released from
22 imprisonment.

23 (c) NON-PERMANENT RESIDENTS CONVICTED OF AGGRAVATED FELO-
24 NIES.—(1) The Attorney General may conduct a deportation proceeding and
25 issue an order of deportation under this subsection or section 6532 of this
26 title if an alien—

27 (A) is convicted after entry of an aggravated felony;

28 (B) is not lawfully admitted for permanent residence when the pro-
29 ceeding under this subsection is begun; and

30 (C) is not eligible for relief from deportation.

31 (2) The Attorney General shall prescribe regulations for the conduct of
32 a proceeding under this section. The regulations shall provide that—

33 (A) the alien is entitled to reasonable notice of the charges and of
34 the opportunity described in clause (C) of this paragraph;

35 (B) the alien is entitled to be represented by counsel as provided in
36 section 6535 of this title;

37 (C) the alien is entitled to a reasonable opportunity to inspect the
38 evidence and rebut the charges;

39 (D) a record shall be maintained for judicial review; and

40 (E) a final order of deportation may not be adjudicated by the same
41 individual who issues the charges.

1 (3) To allow an alien an opportunity to apply for judicial review under
2 section 6536 of this title, the Attorney General may not execute an order
3 of deportation issued under this subsection until 30 days have passed from
4 the date the order was issued, unless waived by the alien.

5 (d) REVIEW AND EVALUATION.—The Attorney General and the Comp-
6 troller General shall review and evaluate deportation proceedings conducted
7 under this section.

8 **§ 6534. Judicial deportation of convicted aliens**

9 (a) JURISDICTION.—A district court of the United States has jurisdiction
10 to enter a judicial order of deportation at the time of sentencing against
11 an alien whose criminal conviction makes the alien deportable under section
12 6506(a) of this title, if—

13 (1) the United States Attorney, with the concurrence of the Commis-
14 sioner of Immigration and Naturalization, requests the order; and

15 (2) the court chooses to exercise that jurisdiction.

16 (b) PROCEDURE.—(1) Before the beginning of trial or entry of a guilty
17 plea, the United States Attorney shall file with the court, and serve on the
18 defendant and the Commissioner, a notice of intent to request judicial de-
19 portation.

20 (2) At least 30 days before the date set for sentencing, the United States
21 Attorney, with the concurrence of the Commissioner, shall file a charge con-
22 taining factual allegations related to the defendant's alienage and identify-
23 ing each offense that makes the defendant deportable under section 6506(a)
24 of this title.

25 (3) If the court finds that the defendant has presented substantial evi-
26 dence to establish prima facie eligibility for relief from deportation under
27 this title, the Commissioner shall provide the court with a recommendation
28 and report on the alien's eligibility for relief. The court shall grant or deny
29 the relief sought.

30 (4) The alien shall have a reasonable opportunity to examine the evidence
31 against the alien, present evidence, and cross-examine witnesses presented
32 by the United States Government.

33 (5) In deciding whether to enter an order described in subsection (a) of
34 this section, the court may consider only evidence that would be admissible
35 in a proceeding under section 6532 of this title. This subsection does not
36 limit the information the court may receive or consider for purposes of im-
37 posing an appropriate sentence.

38 (6) The court may order the alien deported if the Attorney General dem-
39 onstrates that the alien is deportable on a ground referred to in subsection
40 (a) of this section.

1 (c) NOTICE OF ORDER.—As soon as practicable after entry of a judicial
2 order of deportation, the Commissioner shall provide the defendant with
3 written notice of the order. The notice shall designate the defendant's coun-
4 try of choice for deportation and any alternate country as provided in sec-
5 tion 6538 of this title.

6 (d) APPEAL.—The granting or denial on the merits of a judicial order
7 of deportation may be appealed to the court of appeals for the circuit in
8 which the district court is located. Except as provided in subsection (e) of
9 this section, consideration of the appeal shall be consistent with section
10 6536 of this title.

11 (e) EXECUTION OF ORDER.—(1) A judicial order of deportation becomes
12 final when—

13 (A) the defendant executes a waiver of the right to appeal the convic-
14 tion on which the order of deportation is based;

15 (B) the period provided in section 6536(b)(1) of this title expires;
16 or

17 (C) there is a final dismissal of an appeal from the conviction.

18 (2) The final order of deportation shall be executed, as provided in the
19 order, at the end of the term of imprisonment.

20 (3) An order entered under this section is void if the conviction on which
21 the order is based is reversed on direct appeal.

22 (f) FAILURE TO EXERCISE JURISDICTION.—Denial without a decision on
23 the merits of a request for a judicial order of deportation does not preclude
24 the Attorney General from initiating deportation proceedings under section
25 6532 of this title on the same or any other ground of deportability.

26 **§ 6535. Right to counsel**

27 In a deportation proceeding before an immigration judge and in an appeal
28 before the Attorney General from a deportation proceeding, an alien is enti-
29 tled to be represented, at no cost to the United States Government, by the
30 alien's choice of counsel authorized to practice in the proceeding or appeal.

31 **§ 6536. Judicial review**

32 (a) APPLICABLE PROVISIONS.—Judicial review of a final order of depor-
33 tation is governed only by chapter 158 of title 28, except as provided in this
34 section.

35 (b) REQUIREMENTS.—(1) A petition for review must be filed—

36 (A) if the alien has been convicted after November 17, 1988, of an
37 aggravated felony, not later than 30 days after the date of the final
38 order of deportation; and

39 (B) for any other alien, not later than 90 days after the date of the
40 final order of deportation.

1 (2) A petition for review shall be filed with the court of appeals of the
2 United States for the circuit in which the petitioner resides or for the circuit
3 in which any part of the proceeding before an immigration judge was held,
4 but not more than one circuit.

5 (3) The respondent is the Attorney General. The petition shall be served
6 on the Attorney General and on the officer or employee of the Immigration
7 and Naturalization Service in charge of the Service district in which the of-
8 fice of the clerk of the court is located. Service of the petition on the officer
9 or employee stays the deportation of the alien pending the court's decision
10 on the petition, unless the court orders otherwise. However, if the alien has
11 been convicted of an aggravated felony, service of the petition does not stay
12 the deportation unless the court orders otherwise.

13 (4) Except as provided in paragraph (5)(B) of this subsection—

14 (A) the court of appeals shall decide the petition only on the admin-
15 istrative record on which the deportation order is based; and

16 (B) the administrative findings of fact are conclusive if supported by
17 reasonable, substantial, and probative evidence on the record considered
18 as a whole.

19 (5)(A) If the petitioner claims to be a national of the United States and
20 the court of appeals finds from the pleadings and affidavits that no genuine
21 issue of material fact about the petitioner's nationality is presented, the
22 court shall decide the nationality claim.

23 (B) If the petitioner claims to be a national of the United States and the
24 court of appeals finds that a genuine issue of material fact about the peti-
25 tioner's nationality is presented, the court shall transfer the proceeding to
26 the district court of the United States for the judicial district in which the
27 petitioner resides for a new hearing on the nationality claim and a decision
28 on that claim as if an action had been brought in the district court under
29 section 2201 of title 28.

30 (C) The petitioner may have the nationality claim decided only as pro-
31 vided in this section.

32 (6) When a petitioner seeks review of an order under this section, any
33 review sought of a motion to reopen or reconsider the order shall be consoli-
34 dated with the review of the order.

35 (7)(A) If the validity of a deportation order has not been judicially de-
36 cided, a defendant in a criminal proceeding charged with a violation under
37 section 6537(d), 10152, or 10153 of this title may challenge the validity of
38 the order in the criminal proceeding only by filing a separate motion before
39 trial. The district court, without a jury, shall decide the motion before trial.

40 (B) If the defendant claims in the motion to be a national of the United
41 States and the district court finds that no genuine issue of material fact

1 about the defendant's nationality is presented, the court shall decide the
2 motion only on the administrative record on which the deportation order is
3 based. The administrative findings of fact are conclusive if supported by
4 reasonable, substantial, and probative evidence on the record considered as
5 a whole.

6 (C) If the defendant claims in the motion to be a national of the United
7 States and the district court finds that a genuine issue of material fact
8 about the defendant's nationality is presented, the court shall hold a new
9 hearing on the nationality claim and decide that claim as if an action had
10 been brought under section 2201 of title 28.

11 (D) If the district court rules that the deportation order is invalid, the
12 court shall dismiss the indictment. The United States Government may ap-
13 peal the dismissal to the court of appeals for the appropriate circuit within
14 30 days. The defendant may not file a petition for review under this section
15 during the criminal proceeding. The defendant may have the nationality
16 claim decided only as provided in this section.

17 (8) This subsection—

18 (A) does not prevent the Attorney General, after a final order of de-
19 portation has been issued, from detaining the alien under section
20 6537(b) of this title;

21 (B) does not relieve the alien from complying with a requirement im-
22 posed under section 6537(d), 10152, or 10153 of this title; and

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

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

28 (10) An alien held in custody under an order of deportation may obtain
29 judicial review of the order by a habeas corpus proceeding.

30 (c) REQUIREMENTS FOR PETITION.—A petition for review or for habeas
31 corpus of an order of deportation shall state whether a court has upheld
32 the validity of the order, and, if so, shall state the name of the court, the
33 date of the court's ruling, and the kind of proceeding.

34 (d) REVIEW OF FINAL ORDERS.—A court may review a final order of de-
35 portation only if—

36 (1) the alien has exhausted all administrative remedies available to
37 the alien as of right;

38 (2) the alien has remained in the United States after the order was
39 issued; and

40 (3) another court has not decided the validity of the order, unless
41 the reviewing court finds that the petition presents grounds that could

1 not have been presented in the prior judicial proceeding or that the
2 remedy provided by the prior proceeding was inadequate or ineffective
3 to test the validity of the order.

4 (e) LIMITED REVIEW FOR NON-PERMANENT RESIDENTS CONVICTED OF
5 AGGRAVATED FELONIES.—(1) A petition for review or for habeas corpus
6 filed by an alien against whom a final order of deportation has been issued
7 under section 6533(c) of this title may challenge only whether—

8 (A) the alien is the alien described in the order;

9 (B) the alien is an alien described in section 6533(c)(1); and

10 (C) the alien was given the procedures described in section
11 6533(c)(2).

12 (2) A court reviewing the petition has jurisdiction only to review the is-
13 sues described in paragraph (1).

14 **§ 6537. Detention, release, and deportation of aliens ordered**
15 **deported**

16 (a) DEPORTATION PERIOD.—Except as otherwise provided in this section,
17 when an alien is ordered deported, the Attorney General has 6 months to
18 deport the alien from the United States. The 6-month period begins on the
19 latest of the following:

20 (1) the date the deportation order becomes administratively final.

21 (2) if the deportation order is judicially reviewed, the date of the
22 court's final order.

23 (3) if the alien is detained or confined (except under an immigration
24 process), the date the alien is released from detention or confinement.

25 (b) DETENTION AND RELEASE BY THE ATTORNEY GENERAL.—During
26 the 6-month period, the Attorney General may—

27 (1) detain the alien;

28 (2) release the alien on a bond containing conditions the Attorney
29 General may prescribe; or

30 (3) release the alien on other conditions the Attorney General may
31 prescribe.

32 (c) HABEAS CORPUS.—In a habeas corpus proceeding, a court of com-
33 petent jurisdiction may review or revise a decision of the Attorney General
34 under subsection (b) of this section if the alien shows conclusively that the
35 Attorney General is not proceeding with reasonable dispatch under the par-
36 ticular circumstances to deport the alien within the 6-month period.

37 (d) SUPERVISION AFTER 6-MONTH PERIOD.—If the alien does not leave
38 or is not deported within the 6-month period, the alien, pending deportation,
39 shall be subject to supervision under regulations prescribed by the Attorney
40 General. The regulations shall include provisions requiring the alien—

1 (1) to appear before an immigration officer periodically for identi-
2 fication;

3 (2) to submit, if necessary, to a medical and psychiatric examination
4 at the expense of the United States Government;

5 (3) to give information under oath about the alien's nationality, cir-
6 cumstances, habits, associations, and activities, and other information
7 the Attorney General considers appropriate; and

8 (4) to obey reasonable written restrictions on the alien's conduct or
9 activities that the Attorney General prescribes for the alien.

10 (e) ALIENS IMPRISONED, ARRESTED, OR ON PAROLE, SUPERVISED RE-
11 LEASE, OR PROBATION.—Except as provided in section 343(a) of the Public
12 Health Service Act (42 U.S.C. 259(a)), the Attorney General may not de-
13 port an alien who is sentenced to imprisonment until the alien is released
14 from imprisonment. Parole, supervised release, probation, or possibility of
15 rearrest or further imprisonment is not a reason to defer deportation.

16 (f) REINSTATEMENT OF DEPORTATION ORDERS AGAINST ALIENS ILLE-
17 GALLY REENTERING.—If the Attorney General finds that an alien has reen-
18 tered the United States illegally after having been deported or having de-
19 parted voluntarily, under an order of deportation on any ground described
20 in subchapter I of chapter 65 of this title, the prior order of deportation
21 is reinstated from its original date and the alien shall be deported under
22 the prior order at any time after the reentry.

23 **§ 6538. Countries to which aliens may be deported**

24 (a) DESIGNATION BY ALIEN.—(1) An alien in the United States who has
25 been ordered deported may designate one country to which the alien wants
26 to be deported. However, the alien may designate a foreign territory contig-
27 uous to the United States, an adjacent island, or an island adjacent to a
28 foreign territory contiguous to the United States as the place to which the
29 alien is to be deported only if the alien is a native, citizen, subject, or na-
30 tional of, or had a residence in, that designated territory or island. Except
31 as otherwise provided in this section, the Attorney General shall deport the
32 alien to the country the alien designates.

33 (2) The Attorney General may disregard a designation under paragraph
34 (1) of this subsection if—

35 (A) the alien fails to designate a country promptly;

36 (B) the government of the country does not inform the Attorney
37 General finally, within 3 months after the Attorney General first in-
38 quires, whether the government will accept the alien into the country;

39 (C) the government of the country is not willing to accept the alien
40 into the country; or

1 (D) the Attorney General decides that deporting the alien to the
2 country is prejudicial to the United States.

3 (b) ALTERNATIVE DEPORTATION COUNTRY.—If an alien is not deported
4 to a country under subsection (a) of this section, the Attorney General shall
5 deport the alien to a country of which the alien is a subject, national, or
6 citizen unless the government of the country—

7 (1) does not inform the Attorney General or the alien finally, within
8 3 months after the Attorney General first inquires or within another
9 period of time the Attorney General decides is reasonable, whether the
10 government will accept the alien into the country; or

11 (2) is not willing to accept the alien into the country.

12 (c) ADDITIONAL DEPORTATION COUNTRIES.—If an alien is not deported
13 to a country under subsection (a) or (b) of this section, the Attorney Gen-
14 eral shall deport the alien to any of the following countries:

15 (1) the country from which the alien last entered the United States.

16 (2) the country in which is located the foreign port from which the
17 alien left for the United States or for a foreign territory contiguous to
18 the United States.

19 (3) a country in which the alien resided before the alien entered the
20 country from which the alien entered the United States.

21 (4) the country in which the alien was born.

22 (5) the country that had sovereignty over the alien's birthplace when
23 the alien was born.

24 (6) the country in which the alien's birthplace is located when the
25 alien is ordered deported.

26 (7) if impracticable, inadvisable, or impossible to deport the alien to
27 a country described in clauses (1)–(6) of this subsection, another coun-
28 try whose government will accept the alien into that country.

29 (d) DEPORTATION COUNTRY WHEN UNITED STATES IS AT WAR.—When
30 the United States is at war and the Attorney General decides that it is im-
31 practicable, inadvisable, inconvenient, or impossible to deport an alien under
32 subsections (a)–(c) of this section because of the war, the Attorney General
33 may deport the alien—

34 (1) to the country that is host to a government in exile of the coun-
35 try of which the alien is a citizen or subject if the government of the
36 host country will permit the alien's entry; or

37 (2) if the recognized government of the country of which the alien
38 is a citizen or subject is not in exile, to a country, or a political or
39 territorial subdivision of a country, that is very near the country of
40 which the alien is a citizen or subject, or, with the consent of the gov-

1 ernment of the country of which the alien is a citizen or subject, to
2 another country.

3 (e) RESTRICTION WHEN ALIEN'S LIFE OR FREEDOM WOULD BE
4 THREATENED.—(1) Notwithstanding subsections (a)–(d) of this section, the
5 Attorney General may not deport or return an alien to a country if the At-
6 torney General decides that the alien's life or freedom would be threatened
7 in that country because of the alien's race, religion, nationality, membership
8 in a particular social group, or political opinion.

9 (2) Paragraph (1) of this subsection does not apply to an alien deportable
10 under section 6509 of this title or if the Attorney General decides that—

11 (A) the alien ordered, incited, assisted, or otherwise participated in
12 the persecution of an individual on account of the individual's race, re-
13 ligious, nationality, membership in a particular social group, or political
14 opinion;

15 (B) the alien, having been convicted by a final judgment of a par-
16 ticularly serious crime (including any aggravated felony), is a danger
17 to the community of the United States;

18 (C) there are serious reasons to believe that the alien committed a
19 serious nonpolitical crime outside the United States before the alien ar-
20 rived in the United States; or

21 (D) there are reasonable grounds to believe that the alien is a danger
22 to the security of the United States.

23 **§ 6539. Suspension of deportation**

24 (a) GROUNDS FOR SUSPENSION.—On application of an alien to the Attor-
25 ney General, the Attorney General may suspend the deportation of the alien
26 and adjust the status of the alien under section 9104 of this title to that
27 of an alien lawfully admitted for permanent residence if—

28 (1)(A) the alien is deportable under a law of the United States, ex-
29 cept sections 6506–6508 of this title;

30 (B) for at least 7 continuous years immediately before applying, the
31 alien has been—

32 (i) physically present in the United States; and

33 (ii) of good moral character;

34 (C) the alien is of good moral character; and

35 (D) the Attorney General believes that deporting the alien would
36 cause extreme hardship to the alien or to the alien's spouse, parent,
37 or child if the spouse, parent, or child is a citizen of the United States
38 or an alien lawfully admitted for permanent residence;

39 (2)(A) the alien is deportable under any of sections 6506–6508 of
40 this title;

1 (B) for at least 10 continuous years immediately after the alien com-
2 mitted an act or acquired a status that is a ground for deportation,
3 the alien has been—

4 (i) physically present in the United States; and

5 (ii) of good moral character;

6 (C) the alien is of good moral character; and

7 (D) the Attorney General believes that deporting the alien would
8 cause exceptional and extremely unusual hardship to the alien or to the
9 alien's spouse, parent, or child if the spouse, parent, or child is a citi-
10 zen of the United States or an alien lawfully admitted for permanent
11 residence; or

12 (3)(A) the alien is deportable under a law of the United States, ex-
13 cept sections 6502(a) and 6506–6508 of this title;

14 (B) for at least 3 continuous years immediately before applying, the
15 alien has been—

16 (i) physically present in the United States; and

17 (ii) of good moral character;

18 (C) the alien is of good moral character;

19 (D) the alien—

20 (i) has been battered or subjected to extreme cruelty in the
21 United States by a spouse or parent who is a citizen of the United
22 States or who is an alien lawfully admitted for permanent resi-
23 dence; or

24 (ii) is the parent of a child whose other parent is a citizen of
25 the United States or an alien lawfully admitted for permanent resi-
26 dence and the child has been battered or subjected to extreme
27 cruelty in the United States by that other parent; and

28 (E) the Attorney General believes that deporting the alien would
29 cause extreme hardship to the alien or to the alien's parent or child.

30 (b) INTERRUPTION OF PHYSICAL PRESENCE.—(1) An alien temporarily
31 absent from the United States is deemed to have maintained continuous
32 physical presence under subsection (a)(1)(B)(i) and (2)(B)(i) of this section
33 if the absence was brief, casual, and innocent and did not meaningfully in-
34 terrupt the continuous physical presence. This subsection does not apply to
35 an alien removed from the United States before November 6, 1986.

36 (2) The requirements of subsection (a)(1)(B)(i) and (2)(B)(i) of this sec-
37 tion do not apply to an alien who—

38 (A) enlisted or was inducted into the armed forces of the United
39 States when the alien was in the United States;

40 (B) served on active duty in the armed forces for at least 24 months;
41 and

1 (C) if separated from the armed forces, was separated under honor-
2 able conditions.

3 (c) EVIDENCE OF BATTERING AND CRUELTY.—In acting on an applica-
4 tion under subsection (a)(3) of this section, the Attorney General shall con-
5 sider any credible evidence relevant to the application. The decision of what
6 evidence is credible and what weight to be given the evidence is within the
7 sole discretion of the Attorney General.

8 (d) NONAPPLICATION.—This section does not apply to an alien who—

9 (1) enters the United States as a crewmember after June 30, 1964;

10 (2) is admitted to the United States as a nonimmigrant classified
11 under section 2312 of this title or acquires the status of a non-
12 immigrant classified under section 2312 after admission—

13 (A) to receive graduate medical education or training, regardless
14 of whether the alien is subject to the 2-year foreign residence re-
15 quirement of section 8303(a) of this title; or

16 (B) not to receive graduate medical education or training, but
17 who is subject to the 2-year foreign residence requirement of sec-
18 tion 8303(a) of this title and does not fulfill or receive a waiver
19 of that requirement; or

20 (3) is deportable under section 6509 of this title.

21 **§ 6540. Voluntary departure and removal**

22 (a) DEPARTURE BEFORE DEPORTATION PROCEEDINGS.—(1) Before a
23 deportation proceeding is begun against an alien, the Attorney General may
24 allow the alien to depart voluntarily from the United States if the alien—

25 (A) admits to being deportable under subchapter I of this chapter;
26 and

27 (B) departs voluntarily at the alien's expense or is removed at the
28 United States Government's expense under subsection (e) of this sec-
29 tion.

30 (2) Paragraph (1) of this subsection does not apply to an alien if the At-
31 torney General has reason to believe the alien is deportable under any of
32 sections 6506–6509 of this title.

33 (b) DEPARTURE DURING DEPORTATION PROCEEDINGS.—(1) During a
34 deportation proceeding against an alien, the Attorney General may allow the
35 alien to depart voluntarily from the United States at the alien's expense if
36 the alien satisfies the Attorney General that the alien is, and for at least
37 5 years immediately before applying for voluntary departure under this sub-
38 section has been, of good moral character.

39 (2) Paragraph (1) of this subsection does not apply to an alien—

1 (A) deportable under any of sections 6506–6509 of this title, except
2 such an alien whose deportation may be suspended under section
3 6539(a)(2) of this title; or

4 (B) deportable because of a conviction, after November 17, 1988, of
5 an aggravated felony.

6 (c) DEPARTURE AFTER ORDER OF DEPORTATION.—After an alien is or-
7 dered deported, the Attorney General may allow the alien to depart volun-
8 tarily. An alien departing voluntarily after being ordered deported is deemed
9 to have been deported.

10 (d) REMOVAL OF ALIEN IN DISTRESS OR IN NEED OF ASSISTANCE.—
11 (1) If an alien falls into distress or needs public assistance from a cause
12 that arises after the alien enters the United States, and the alien wants to
13 be removed from the United States, the Attorney General may remove the
14 alien to—

15 (A) the alien’s native country;

16 (B) the country from which the alien came to the United States;

17 (C) the country of which the alien is a subject or citizen; or

18 (D) another country the alien designates if the government of that
19 country is willing to accept the alien in that country.

20 (2) An alien removed under paragraph (1) of this subsection may not
21 apply for or be issued a visa or other entry documentation or admission to
22 the United States without the Attorney General’s prior approval.

23 (e) COSTS PAYABLE BY GOVERNMENT.—The Attorney General may pay
24 from the appropriation “Immigration and Naturalization Service—Salaries
25 and Expenses” the costs of removing an alien from the United States
26 under—

27 (1) subsection (a) of this section if—

28 (A) the alien is unable to pay; and

29 (B) the Attorney General believes the alien’s removal is in the
30 best interest of the United States;

31 (2) subsection (c) of this section if—

32 (A) the alien is unable to pay; and

33 (B) payment is not otherwise provided for under this title; and

34 (3) subsection (d) of this section.

35 **§ 6541. Ineligibility for discretionary relief for failure to ap-**
36 **pear**

37 (a) DEFINITION.—In this section, “exceptional circumstances” has the
38 same meaning given that term by section 6532(a) of this title.

39 (b) RELIEF COVERED.—An alien is ineligible for the following relief to
40 the extent provided in subsections (c)–(f) of this section:

41 (1) suspension of deportation under section 6539 of this title.

1 (2) voluntary departure under section 6540(a) or (b) of this title.

2 (3) adjustment of status under section 9101 or 9105 of this title.

3 (4) change of status under section 9109 of this title.

4 (c) FAILURE TO APPEAR AT DEPORTATION PROCEEDING.—An alien
5 against whom a final order of deportation is entered in absentia under sec-
6 tion 6532 of this title is ineligible for the relief specified by subsection (b)
7 of this section for 5 years after entry of the final order if, at the time the
8 notice was required to be given under section 6532(c)(3) and (4), the alien
9 was given oral notice, in the alien’s native language or another language the
10 alien understands, of the time and place of the proceeding and the con-
11 sequences of failing (except for exceptional circumstances) to attend.

12 (d) FAILURE TO APPEAR FOR VOLUNTARY DEPARTURE.—(1) Subject to
13 paragraph (2) of this subsection, an alien is ineligible for the relief specified
14 by subsection (b) of this section for 5 years after the scheduled date of de-
15 parture or the date of unlawful reentry if the alien—

16 (A) is allowed to depart voluntarily under section 6540(a) or (b) of
17 this title; and

18 (B) remains in the United States after the scheduled date of depar-
19 ture (except for exceptional circumstances).

20 (2) Paragraph (1) of this subsection applies to an alien allowed to depart
21 voluntarily only if, before the departure, the Attorney General has provided
22 written notice to the alien in English and Spanish, and oral notice, in the
23 alien’s native language or another language the alien understands, of the
24 consequences under paragraph (1) of remaining in the United States after
25 the scheduled date of departure (except for exceptional circumstances).

26 (e) FAILURE TO APPEAR FOR DEPORTATION.—(1) Subject to paragraph
27 (2) of this subsection, an alien against whom a final order of deportation
28 is entered under section 6532 of this title who fails (except for exceptional
29 circumstances) to appear for deportation at the time and place ordered is
30 ineligible for the relief specified by subsection (b) of this section for 5 years
31 after the scheduled date of deportation.

32 (2) Paragraph (1) of this subsection applies only if the Attorney General
33 has provided notice in the final order of deportation, and orally in the
34 alien’s native language or another language the alien understands, of the
35 consequences under paragraph (1) of failing (except for exceptional cir-
36 cumstances) to appear for deportation at the time and place ordered.

37 (f) FAILURE TO APPEAR FOR ASYLUM HEARING.—(1) Subject to para-
38 graph (2) of this subsection, an alien whose period of any authorized stay
39 has expired, who has filed an application for asylum, and who fails (except
40 for exceptional circumstances) to appear at the time and place scheduled for

1 the asylum hearing, is ineligible for the relief specified by subsection (b) of
2 this section for 5 years after the date of the asylum hearing.

3 (2) Paragraph (1) of this subsection applies only if the alien was given
4 written notice in English and Spanish, and oral notice in the alien's native
5 language or another language the alien understands, of—

6 (A) the time and place of the asylum hearing and any change in the
7 time or place; and

8 (B) the consequences under paragraph (1) of this subsection of fail-
9 ing (except for exceptional circumstances) to appear.

10 **§ 6542. Duties of private parties and costs of deportation**

11 (a) DUTY TO CARRY OUT DEPORTATION ORDERS.—When ordered by the
12 Attorney General, the owner, agent, master, commanding officer, charterer,
13 or consignee of a vessel, aircraft, or vehicle bringing an alien to the United
14 States shall—

15 (1) take on board, guard safely, and transport to the destination
16 specified by the Attorney General, the alien if ordered deported; and

17 (2) pay the costs of deporting the alien as provided in subsection (b)
18 of this section.

19 (b) COSTS PAYABLE BY PRIVATE PARTIES.—(1) Except as provided in
20 paragraph (2) of this subsection, when an alien in the United States is or-
21 dered deported, the owner, agent, master, commanding officer, charterer, or
22 consignee of the vessel, aircraft, or vehicle on which the alien arrived in the
23 United States shall pay the costs of deporting the alien from the port of
24 deportation if—

25 (A) the alien is being deported on a ground that existed before or
26 at the time of entry and deportation proceedings are begun not later
27 than 5 years after entry; or

28 (B) the alien is a crewmember and deportation proceedings are
29 begun not later than 5 years after the last conditional permit is issued
30 to the alien to land temporarily under section 2703 of this title.

31 (2) Paragraph (1) of this subsection does not apply if—

32 (A) the Attorney General decides it is not practicable to require pay-
33 ment; or

34 (B) the alien had an immigrant visa on arrival in the United States
35 and was inspected and admitted for permanent residence.

36 (c) COSTS PAYABLE BY GOVERNMENT.—When an alien in the United
37 States is ordered deported, the Attorney General shall pay from the appro-
38 priation “Immigration and Naturalization Service—Salaries and Expenses”
39 the costs of—

40 (1) transporting the alien to the port of deportation in the United
41 States; and

1 (2) deporting the alien if—

2 (A) deportation proceedings are begun more than 5 years after
3 the alien's entry, or, if the alien is a crewmember, more than 5
4 years after the last conditional permit is issued to the alien to land
5 temporarily; or

6 (B) the owner of the vessel, aircraft, or vehicle is not required
7 to pay the costs because of subsection (b)(2) of this section.

8 (d) ALIENS REQUIRING PERSONAL CARE DURING DEPORTATION.—If the
9 Attorney General believes that an alien being deported requires personal
10 care because of the alien's mental or physical condition, the Attorney Gen-
11 eral shall employ a suitable individual to accompany and care for the alien
12 until the alien arrives at the final destination. The person required under
13 this section to pay the costs of deporting the alien shall pay the costs of
14 this service.

15 (e) COSTS PAYABLE BY EMPLOYERS OF CERTAIN NONIMMIGRANTS.—(1)
16 If the employer of an alien having the status of a nonimmigrant classified
17 under section 2313(a)(1) or (2) or 2315(a)(1) of this title dismisses the
18 alien from employment before the end of the period of authorized admission,
19 the employer is liable for the reasonable costs of return transportation of
20 the alien.

21 (2) If the employment of an alien who entered the United States as a
22 nonimmigrant classified under section 2318 or 2319 of this title ends for
23 reasons other than voluntary resignation, the employer whose offer of em-
24 ployment provided the basis of the nonimmigrant status of the alien and
25 the petitioner are jointly and severally liable for the reasonable costs of re-
26 turn transportation of the alien. The petitioner shall provide satisfactory as-
27 surance to the Attorney General that the reasonable costs of that transpor-
28 tation will be provided.

29 **CHAPTER 67—TEMPORARY PROTECTED STATUS**

Sec.

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1 **§6701. General**

2 The Attorney General may grant an alien temporary protected status in
3 the United States as provided in this chapter. During the period that the
4 status is in effect for the alien—

5 (1) the Attorney General may not detain the alien on the basis of
6 the alien's immigration status in the United States;

7 (2) the Attorney General may not deport the alien;

8 (3) the Attorney General shall authorize the alien to work in the
9 United States;

10 (4) the alien is not residing permanently in the United States under
11 color of law;

12 (5) a State or political subdivision of a State that provides public
13 assistance may find the alien ineligible for the assistance;

14 (6) the alien may travel outside the United States with the prior con-
15 sent of the Attorney General; and

16 (7) the alien is deemed to be maintaining lawful status as a non-
17 immigrant for purposes of sections 9101(f)(3) and 9109 of this title.

18 **§6702. Granting the status**

19 (a) GENERAL REQUIREMENTS FOR GRANTING.—The Attorney General
20 may grant temporary protected status in the United States to an alien
21 who—

22 (1) is a national of, or has no nationality but last habitually resided
23 in, a foreign country designated, or designated in part, under section
24 6703 of this title;

25 (2) has been physically present in the United States continuously
26 since the effective date of the most recent designation of that country
27 or part of that country under section 6703 of this title;

28 (3) has resided in the United States continuously since a date the
29 Attorney General may specify;

30 (4) is admissible as an immigrant, except that for purposes of this
31 clause—

32 (A) sections 4311(a) and 6313 of this title do not apply;

33 (B) the Attorney General may waive subchapter I of chapter 63
34 of this title (except as provided in subclause (C) of this clause)
35 for an individual alien for humanitarian purposes, to ensure family
36 unity, or when it is otherwise in the public interest; and

37 (C) the Attorney General may not waive section 6307(a)(1)–(4),
38 6308(a)–(c), or 6309 of this title, except as section 6307(a)(3) re-
39 lates to a single offense of simple possession of not more than 30
40 grams of marijuana; and

1 (5) registers for the temporary protected status during a registration
2 period of at least 180 days, to the extent and in the way the Attorney
3 General establishes.

4 (b) PROHIBITIONS ON GRANTING.—Notwithstanding subsection (a) of
5 this section, the Attorney General may not grant temporary protected status
6 to an alien if the Attorney General finds that the alien—

7 (1) has been convicted of a felony or more than one misdemeanor
8 committed in the United States; or

9 (2) is described in section 6538(e)(2) of this title.

10 (c) BRIEF, CASUAL, AND INNOCENT ABSENCES.—(1) An alien does not
11 fail to maintain continuous physical presence in the United States under
12 subsection (a)(2) of this section or section 6707(2) of this title because of
13 a brief, casual, and innocent absence from the United States, whether or
14 not authorized by the Attorney General.

15 (2) An alien does not fail to maintain continuous residence in the United
16 States under subsection (a)(3) of this section because of a brief, casual, and
17 innocent absence from the United States, whether or not authorized by the
18 Attorney General, or because of a brief temporary trip outside the United
19 States required by emergency or extenuating circumstances beyond the con-
20 trol of the alien.

21 (d) STATUS PENDING REGISTRATION OR FINAL DECISION.—(1) If an
22 alien can establish a prima facie case of eligibility for temporary protected
23 status under this chapter except that the period of registration under sub-
24 section (a)(5) of this section has not begun, the Attorney General shall pro-
25 vide the alien with the benefits of the status until the alien has had a rea-
26 sonable opportunity to register during the first 30 days of the registration
27 period.

28 (2) If an alien establishes a prima facie case of eligibility for temporary
29 protected status under this chapter, the Attorney General shall provide the
30 alien with the benefits of the status until a final decision is made on the
31 alien's eligibility.

32 (e) CONFIDENTIALITY.—The Attorney General shall establish procedures
33 to protect the confidentiality of information provided by an alien under this
34 chapter.

35 (f) NO AUTHORIZATION TO APPLY FOR ADMISSION OR TO BE ADMIT-
36 TED.—This chapter does not authorize an alien to apply for admission, or
37 to be admitted, to the United States to apply for temporary protected status
38 under this chapter.

1 **§ 6703. Designation of foreign countries**

2 (a) GENERAL.—After consultation with appropriate agencies, the Attor-
3 ney General may designate a foreign country or part of a foreign country
4 under this section if the Attorney General finds that—

5 (1) there is an armed conflict in the country that would pose a seri-
6 ous threat to the personal safety of nationals of that country if they
7 were required to return to that country or part of that country;

8 (2)(A) there has been an earthquake, flood, drought, epidemic, or
9 other environmental disaster in the country resulting in a substantial,
10 but temporary, disruption of living conditions in the area affected by
11 the disaster;

12 (B) the country temporarily is unable to handle returning nationals
13 adequately; and

14 (C) the government of the country officially has requested designa-
15 tion under this clause (2); or

16 (3) extraordinary and temporary conditions exist in the country that
17 prevent nationals from returning to that country in safety, unless the
18 Attorney General finds that permitting the aliens to remain temporarily
19 in the United States is contrary to the interest of the United States.

20 (b) PUBLICATION OF DESIGNATIONS.—A designation under subsection
21 (a) of this section is effective only if notice of the designation (including a
22 statement of the findings under subsection (a) and the effective date of the
23 designation) is published in the Federal Register. The Attorney General
24 shall include in the notice an estimate of the number of nationals of the
25 designated country who are, or within the effective period of the designation
26 are likely to become, eligible for temporary protected status under this chap-
27 ter and their immigration status in the United States.

28 (c) EFFECTIVE PERIOD OF DESIGNATIONS.—A designation under this
29 section—

30 (1) takes effect on the date the notice is published under subsection
31 (b) of this section or a later date the Attorney General specifies in the
32 notice; and

33 (2) remains in effect until terminated under subsection (d) of this
34 section.

35 (d) PERIODIC REVIEWS, EXTENSIONS, AND TERMINATIONS.—(1) The
36 first period of designation of a foreign country or part of a foreign country
37 is the period specified by the Attorney General. The period shall be at least
38 6 months but not more than 18 months.

39 (2) At least 60 days before the end of the first period of designation and
40 each extended period of designation, the Attorney General, after consulta-
41 tion with appropriate agencies, shall review the conditions in the designated

1 country or part of the country and decide whether the conditions for the
2 designation continue to be met.

3 (3)(A) If the Attorney General does not decide that the designated coun-
4 try or part of the country no longer meets the conditions for designation,
5 the designation is extended for 6 months or, in the discretion of the Attor-
6 ney General, for 12 or 18 months.

7 (B) If the Attorney General decides that the designated country or part
8 of the country no longer meets the conditions for designation, the Attorney
9 General shall terminate the designation. A termination is effective 60 days
10 after notice of the termination is published in the Federal Register or when
11 the most recent extension expires, whichever is later.

12 (4) The Attorney General shall publish in the Federal Register, on a
13 timely basis, notice of each decision under this subsection, including the
14 basis for the decision, and the period of any extension.

15 (e) INFORMATION ON PROTECTED STATUS AT TIME OF DESIGNATION.—
16 When the Attorney General designates a foreign country or part of a foreign
17 country under subsection (a) of this section, the Attorney General shall
18 make available to nationals of that country information on the temporary
19 protected status available under this chapter.

20 (f) ADMINISTRATIVE AND JUDICIAL REVIEW.—(1) The Attorney General
21 shall establish an administrative procedure to review a denial of benefits to
22 an alien under this section. The procedure may not prevent an alien from
23 asserting protection under this chapter in a deportation proceeding if the
24 alien demonstrates that the alien is a national of a foreign country des-
25 ignated, or designated in part, under this section.

26 (2) A designation, extension, or termination under this section is not sub-
27 ject to judicial review.

28 **§ 6704. Information and notices about status**

29 (a) INFORMATION ABOUT STATUS.—On granting temporary protected
30 status to an alien under this chapter, the Attorney General shall provide
31 the alien with information about the status.

32 (b) NOTICES OF AVAILABILITY AT DEPORTATION PROCEEDINGS.—The
33 Attorney General promptly shall notify an alien of the temporary protected
34 status that may be available under this chapter—

35 (1) if, when a deportation proceeding is begun against the alien, the
36 foreign country of which the alien is a national has been designated,
37 or designated in part, under section 6703 of this title; or

38 (2) if, during a deportation proceeding pending against the alien, the
39 country of which the alien is a national is designated, or designated
40 in part, under section 6703 of this title.

1 (c) FORM AND LANGUAGE.—Information and notices under this section
2 shall be in a form and language the alien can understand.

3 **§ 6705. Temporary documentation and work authorization**

4 (a) GENERAL.—On granting temporary protected status to an alien under
5 this chapter, the Attorney General shall provide for the issuance of tem-
6 porary documentation and work authorization necessary to carry out this
7 chapter. The work authorization shall be an “employment authorized” en-
8 dorsement or other appropriate work permit.

9 (b) PERIOD OF VALIDITY.—(1) Work authorization issued under sub-
10 section (a) of this section is valid during the period the alien is in temporary
11 protected status under this chapter.

12 (2) Subject to subsection (c) of this section, the documentation and work
13 authorization are valid for the first period of designation of the foreign
14 country or part of the foreign country involved and any extension of that
15 period. The Attorney General may stagger the periods of validity of the docu-
16 mentation and authorization to provide for an orderly renewal of the docu-
17 mentation and authorization and for an orderly transition under subsection
18 (c) when a designation is terminated.

19 (c) EFFECTIVE DATE OF TERMINATIONS.—A termination of a designa-
20 tion under section 6703(d)(3)(B) of this title applies only to documentation
21 and work authorization issued or renewed after—

22 (1) the effective date of the termination; or

23 (2) a later date the Attorney General decides is appropriate to pro-
24 vide for an orderly transition.

25 **§ 6706. Registration fees**

26 (a) ALLOWABLE FEES.—The Attorney General may require payment of
27 a reasonable fee of not more than \$50 as a condition for registering an alien
28 under section 6702(a)(5) of this title and an additional fee for providing
29 a work authorization.

30 (b) CREDITING APPROPRIATION.—All fees collected under this section
31 shall be credited to the appropriation to be used to carry out this chapter.

32 **§ 6707. Withdrawal of status**

33 The Attorney General shall withdraw temporary protected status granted
34 to an alien under this chapter if—

35 (1) the Attorney General finds that the alien was not eligible for the
36 status;

37 (2) except as provided in sections 6701(6) and 6702(c) of this title,
38 the alien has not remained continuously physically present in the
39 United States from the date the alien first was granted the status; or

1 (3) the alien, without good cause, does not register with the Attorney
2 General annually, at the end of each 12-month period after the status
3 is granted, in the form and way the Attorney General prescribes.

4 **§ 6708. Relationship to suspension of deportation**

5 Under section 6539(a) of this title, the period during which temporary
6 protected status is in effect for an alien—

7 (1) is not counted as a period of physical presence in the United
8 States unless the Attorney General decides that extreme hardship ex-
9 ists; and

10 (2) does not cause a break in the continuity of residence before and
11 after the period during which the alien has that status.

12 **§ 6709. Relationship to immigration status**

13 (a) GENERAL.—This chapter does not authorize the Attorney General to
14 deny temporary protected status to an alien based on the alien's immigra-
15 tion status or to require an alien, as a condition of being granted temporary
16 protected status, to relinquish another status the alien may have or to waive
17 any right under this title (except subchapter I of chapter 5, subchapters II
18 and III of chapter 131, and chapters 133–137).

19 (b) TEMPORARY PROTECTED STATUS NOT INCONSISTENT WITH NON-
20 IMMIGRANT STATUS.—Granting temporary protected status under this
21 chapter is not inconsistent with granting nonimmigrant status under this
22 title.

23 **§ 6710. Immigration status and continuous physical pres-
24 ence not affected by temporary travel outside the
25 United States**

26 An alien granted temporary protected status under this chapter whom the
27 Attorney General authorizes to travel outside the United States temporarily
28 and who returns to the United States according to the authorization—

29 (1) shall be inspected and admitted in the same immigration status
30 the alien had at the time of departure if the alien is found not to be
31 excludable on a ground referred to in section 6702(a)(4)(C) of this
32 title; and

33 (2) has not failed to maintain continuous physical presence in the
34 United States under section 6539(a) of this title because of the depar-
35 ture if the absence meets the requirements of section 6539(b)(1) of this
36 title.

37 **§ 6711. Exclusive remedy**

38 Except as otherwise specifically provided, this chapter is the exclusive au-
39 thority of the Attorney General under law to allow an alien who is or may
40 become otherwise deportable or who has been paroled into the United States

1 to remain in the United States temporarily because of the alien's nationality
2 or region of foreign country of nationality.

3 **§6712. Limitation on Senate consideration of legislation ad-**
4 **justing status**

5 (a) GENERAL.—Except as provided in subsection (b) of this section, it
6 is not in order in the Senate to consider a bill, resolution, or amendment
7 that—

8 (1) provides for the adjustment to lawful temporary or permanent
9 resident alien status for an alien receiving temporary protected status
10 under this chapter; or

11 (2) has the effect of amending or limiting the application of this sec-
12 tion.

13 (b) SUPERMAJORITY REQUIREMENT.—An affirmative vote of three-fifths
14 of the members of the Senate chosen and sworn is required—

15 (1) to waive or suspend subsection (a) of this section; or

16 (2) to sustain an appeal of the ruling of the Chair on a point of
17 order raised under subsection (a) of this section.

18 (c) SENATE RULEMAKING POWER.—This section—

19 (1) is enacted as an exercise of the rulemaking power of the Senate;

20 (2) is deemed to be a part of the rules of the Senate on matters de-
21 scribed in subsection (a) of this section;

22 (3) supersedes other rules of the Senate only to the extent inconsis-
23 tent with this section; and

24 (4) is enacted with complete recognition of the constitutional right
25 of the Senate to change those rules at any time in the same way as
26 any other rule of the Senate.

27 **§6713. Annual reports**

28 (a) ATTORNEY GENERAL.—Not later than March 1 of each year, the At-
29 torney General, after consultation with appropriate agencies, shall submit to
30 the Committees on the Judiciary of the House of Representatives and the
31 Senate a report on the operation of this chapter during the prior year. The
32 report shall include—

33 (1) a listing of foreign countries and parts of foreign countries des-
34 ignated under section 6703 of this title;

35 (2) the number of nationals of each country granted temporary pro-
36 tected status under this chapter and their immigration status before
37 being granted temporary protected status; and

38 (3) an explanation of why each foreign country or part of a foreign
39 country was designated under section 6703 of this title and why a des-
40 ignation was extended or terminated.

1 (b) COMMITTEE REPORTS.—Not later than 180 days after receiving a re-
 2 port under subsection (a) of this section, the Committees on the Judiciary
 3 of the House of Representatives and the Senate shall report to the House
 4 and Senate, respectively, on oversight findings and legislation the applicable
 5 Committee finds appropriate.

6 **CHAPTER 69—REGULATION OF PERSONS PROVIDING**
 7 **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.

8 **§ 6901. Ports of entry for aircraft and civil air navigation**
 9 **regulation**

10 The Attorney General by regulation may—

- 11 (1) designate as ports of entry for aliens arriving by aircraft in the
 12 United States any of the ports of entry designated for civil aircraft
 13 under section 2(b)(1)(A) of the Act of July 5, 1994 (19 U.S.C.
 14 1644a(b)(1)(A));
- 15 (2) require aircraft in civil air navigation to give notice of landing
 16 or intention to land as necessary to carry out this title; and
- 17 (3) apply this title to civil air navigation to the extent the Attorney
 18 General considers necessary.

19 **§ 6902. Lists of passengers**

20 (a) ARRIVING PASSENGERS.—An owner, agent, master, commanding offi-
 21 cer, or consignee of a vessel or aircraft arriving in the United States from
 22 a place outside the United States shall give an immigration officer at the
 23 port of arrival a list of the passengers on the vessel or aircraft. The list
 24 shall be prepared at the time, be in the form, and contain the information
 25 the Attorney General prescribes by regulation as necessary to identify the
 26 passengers and enforce the immigration laws.

27 (b) DEPARTING PASSENGERS.—(1) A master, commanding officer, or
 28 agent of a vessel or aircraft taking on passengers in the United States who
 29 are destined to a place outside the United States shall give an immigration
 30 officer at the port a list of those passengers before departing. The list shall
 31 be in the form, contain the information, and be accompanied by other docu-
 32 mentation the Attorney General prescribes by regulation as necessary to
 33 identify the passengers and enforce the immigration laws. The master, com-

1 manding officer, or agent shall state under oath that the list and accom-
2 panying documentation contain all of the required information.

3 (2) The vessel or aircraft may be cleared only after the master, command-
4 ing officer, or agent complies with paragraph (1) of this subsection. How-
5 ever, if the Attorney General decides that the vessel or aircraft is making
6 regular trips to ports of the United States, the Attorney General, when it
7 is expedient, may allow the master, commanding officer, or agent to give
8 the list and documentation at a later date.

9 (c) EXCEPTIONS.—Subsections (a) and (b) of this section do not require
10 that a list include—

11 (1) an alien crewmember; or

12 (2) except as required by regulations prescribed under section 6901
13 of this title, a passenger—

14 (A) arriving by air on a trip originating in foreign territory con-
15 tiguous to the United States; or

16 (B) leaving by air on a trip originating in the United States for
17 foreign territory contiguous to the United States.

18 (d) WAIVER.—The Attorney General may prescribe conditions under
19 which the requirements of this section may be waived.

20 **§ 6903. Payment contingent on landing prohibited**

21 An owner, agent, master, commanding officer, person in charge, purser,
22 or consignee of a vessel or aircraft may not take any consideration to be
23 kept or returned contingent on whether an alien is landed in or excluded
24 from the United States.

25 **§ 6904. Duty to prevent unauthorized landing**

26 (a) DUTY TO PREVENT UNAUTHORIZED LANDING.—(1) A person bring-
27 ing an alien to, or providing a means for an alien to travel to, the United
28 States (including an alien crewmember not covered by section 2704(a) of
29 this title) shall prevent the alien from landing in the United States at—

30 (A) a port of entry not designated by the Attorney General; or

31 (B) a time or place not designated by an immigration officer.

32 (2) Proof that an alien did not appear at the time and place designated
33 by the immigration officer is prima facie evidence that the alien landed in
34 the United States at a time or place not designated by the immigration offi-
35 cer.

36 (3) This subsection does not apply to a carrier that has made a contract
37 as provided in section 6905(b) of this title.

38 (b) DILIGENCE DEFENSE.—(1) An owner or operator of a rail carrier,
39 international bridge, or toll road that satisfies the Attorney General that the
40 owner or operator has acted diligently and reasonably to comply with sub-

1 section (a)(1) of this section is not liable for a penalty under section 10122
2 of this title for not complying with subsection (a)(1).

3 (2) On request of an owner or operator referred to in paragraph (1) of
4 this subsection, the Attorney General shall inspect a facility established, or
5 method used, by the owner or operator at a place of entry into the United
6 States to comply with subsection (a)(1) of this section. The Attorney Gen-
7 eral shall approve, for as long as the Attorney General prescribes, a facility
8 or method the Attorney General decides is satisfactory to achieve compli-
9 ance.

10 (3) Proof that an owner or operator referred to in paragraph (1) of this
11 subsection diligently has maintained a facility, or used a method, approved
12 by the Attorney General under paragraph (2) of this subsection is prima
13 facie evidence that the owner or operator acted diligently and reasonably to
14 comply with subsection (a)(1) of this section.

15 **§ 6905. Carriers transporting aliens from foreign contiguous**
16 **territory or adjacent islands**

17 (a) DEFINITION.—In this section, “carrier” includes the owner, agent,
18 charterer, or consignee operating a vessel or aircraft bringing an alien to
19 the United States, to a foreign territory contiguous to the United States,
20 or to an adjacent island.

21 (b) CARRIER CONTRACTS.—(1) The Attorney General may make a con-
22 tract with a carrier for—

23 (A) the entry and inspection of aliens coming to the United States
24 from a foreign territory contiguous to the United States or from an
25 adjacent island; and

26 (B) a guarantee of passage through the United States in immediate
27 and continuous transit of aliens destined for a foreign country.

28 (2) A carrier may allow an alien from a foreign territory contiguous to
29 the United States or from an adjacent island to land in the United States
30 only if the carrier has made a contract required by the Attorney General
31 under paragraph (1)(A) of this subsection.

32 (c) LANDING STATIONS.—A carrier transporting an alien passenger for
33 compensation from a foreign territory contiguous to the United States or
34 from an adjacent island to the United States—

35 (1) shall provide and maintain at its expense a suitable landing sta-
36 tion conveniently located at the place of entry in the United States; and

37 (2) may land any such alien passenger in the United States only if
38 the Attorney General approves the landing station and the maintenance
39 of the station.

1 **§ 6906. Prohibitions on bringing certain aliens to the United**
2 **States**

3 (a) ALIENS NOT HAVING PASSPORTS AND VISAS.—A person may not
4 bring to the United States (except from a foreign territory contiguous to
5 the United States) an alien who does not have a passport and a visa, if a
6 visa is required by this title or regulations prescribed under this title.

7 (b) ALIENS EXCLUDABLE BECAUSE OF HEALTH.—(1) An owner, agent,
8 master, commanding officer, charterer, or consignee of a vessel or aircraft
9 may not bring to the United States an alien who is excludable under section
10 6302(a) of this title.

11 (2) Paragraph (1) of this subsection does not apply if—

12 (A) the alien is a crewmember;

13 (B) the alien is allowed to land in the United States;

14 (C) the alien has an immigrant visa;

15 (D) the alien has a nonimmigrant visa or other documentation au-
16 thORIZING the alien to apply for temporary admission to the United
17 States and applies for admission not later than 120 days after the date
18 the visa or documentation was issued;

19 (E) the alien has a reentry permit and applies for admission not
20 later than 120 days after the date of the alien's last inspection and
21 admission;

22 (F)(i) the alien has a nonimmigrant visa or other documentation au-
23 thORIZING the alien to apply for temporary admission to the United
24 States or a reentry permit;

25 (ii) the alien applies for admission more than 120 days after the date
26 the visa or documentation was issued or after the date of the last in-
27 spection and admission under the reentry permit; and

28 (iii) the owner, agent, master, commanding officer, charterer, or con-
29 signee of the vessel or aircraft satisfies the Attorney General that the
30 existence of the excluding condition could not have been discovered by
31 exercising reasonable care before the alien boarded the vessel or air-
32 craft; or

33 (G) the alien is entitled by law to exemption from the grounds of
34 exclusion in subchapter I of chapter 63 of this title.

35 (c) ALIENS EXCLUDED OR DEPORTED.—(1) An owner, agent, master,
36 commanding officer, person in charge, purser, or consignee of a vessel or
37 aircraft may not knowingly bring to the United States an alien who has
38 been—

39 (A) excluded from admission; or

40 (B) arrested and deported under law.

1 (2) Paragraph (1) of this subsection does not apply if the alien is a crew-
2 member or is entitled to reapply for admission to the United States.

3 **§ 6907. Requirements to detain, deliver, receive, and deport**
4 **aliens**

5 (a) GENERAL REQUIREMENTS.—An owner, agent, master, commanding
6 officer, person in charge, purser, or consignee of a vessel or aircraft bring-
7 ing an alien (except an alien crewmember) to the United States shall—

8 (1) detain the alien on the vessel or at the airport of arrival as re-
9 quired by this title or as ordered by an immigration officer;

10 (2) deliver the alien to an immigration officer for inspection or to
11 a medical officer for examination when ordered by an immigration offi-
12 cer;

13 (3) receive the alien back on the vessel or aircraft or another vessel
14 or aircraft owned or operated by the same interests if the alien is or-
15 dered deported under section 6335 of this title; and

16 (4) take the alien to the foreign country to which the alien is ordered
17 deported.

18 (b) ALIEN STOWAWAYS.—An owner, agent, master, commanding officer,
19 charterer, or consignee of a vessel or aircraft arriving in the United States
20 with an alien stowaway—

21 (1) may not permit the stowaway to land in the United States, ex-
22 cept—

23 (A) temporarily for medical treatment; or

24 (B) under regulations prescribed by the Attorney General for
25 the departure, removal, or deportation of alien stowaways from the
26 United States; and

27 (2) if ordered by an immigration officer, shall deport the stowaway
28 on the vessel or aircraft or on another vessel or aircraft.

29 **§ 6908. Costs of detention**

30 (a) GENERAL.—Except as provided in subsection (b) of this section and
31 section 6335(d)(2) of this title, an owner of a vessel or aircraft bringing
32 an alien to the United States shall pay the costs of detaining and maintain-
33 ing the alien while the alien is detained under section 6907(a)(1) of this
34 title.

35 (b) NONAPPLICATION.—Subsection (a) of this section does not apply if—

36 (1) the alien is a crewmember;

37 (2) the alien has an immigrant visa;

38 (3) the alien has a nonimmigrant visa or other documentation au-
39 thorizing the alien to apply for temporary admission to the United
40 States and applies for admission not later than 120 days after the date
41 the visa or documentation was issued;

1 (4) the alien has a reentry permit and applies for admission not later
2 than 120 days after the date of the alien's last inspection and admis-
3 sion;

4 (5)(A) the alien has an nonimmigrant visa or other documentation
5 authorizing the alien to apply for temporary admission to the United
6 States or a reentry permit;

7 (B) the alien applies for admission more than 120 days after the
8 date the visa or documentation was issued or after the date of the last
9 inspection and admission under the reentry permit; and

10 (C) the owner of the vessel or aircraft satisfies the Attorney General
11 that the existence of the excluding condition could not have been dis-
12 covered by exercising reasonable care before the alien boarded the ves-
13 sel or aircraft; or

14 (6) the individual claims to be a national of the United States and
15 has a United States passport.

16 **§ 6909. Fees for inspecting passengers**

17 (a) FEES.—In addition to any other fee authorized by law, the Attorney
18 General shall charge and collect \$6 for the immigration inspection of each
19 passenger arriving at a port of entry in the United States, or for the
20 preinspection of each passenger in a place outside the United States before
21 arrival, on a commercial vessel or commercial aircraft. However, that fee
22 may not be charged and collected for—

23 (1) a passenger on a commercial vessel if the passenger's journey
24 originated in Canada, Mexico, a territory or possession of the United
25 States, or an adjacent island; or

26 (2) a passenger in transit to a destination outside the United States
27 and for whom immigration inspection services are not provided.

28 (b) COLLECTION.—(1) A person issuing a document or ticket to an indi-
29 vidual for transportation on a commercial vessel or commercial aircraft to
30 the United States shall—

31 (A) collect from the individual the fee charged under subsection (a)
32 of this section when the document or ticket is issued; and

33 (B) identify on that document or ticket the fee charged under sub-
34 section (a) of this section as a United States Government inspection
35 fee.

36 (2) If a document or ticket for transportation of a passenger to the
37 United States is issued in a foreign country and the fee charged under sub-
38 section (a) of this section is not collected when the document or ticket is
39 issued, the person providing the transportation shall collect the fee when the
40 passenger departs from the United States and give the passenger a receipt
41 for payment of the fee.

1 (3) The person collecting a fee under this section shall pay the fee to the
 2 Attorney General before the 31st day after the end of the calendar quarter
 3 in which the fee is collected, except that—

4 (A) the 4th quarter payment for fees collected from passengers on
 5 commercial aircraft shall be paid on the 10th day before the end of
 6 the fiscal year; and

7 (B) the first quarter payment shall include any collections made in
 8 the prior quarter that were not paid with the prior payment.

9 (4) Fees collected under this section shall be deposited as offsetting re-
 10 cepts in the Treasury in the Immigration User Fee Account established
 11 under section 317(a) of this title.

12 (c) REGULATIONS.—Regulations prescribed by the Attorney General for
 13 the collection of fees and payment of those fees under this section shall be
 14 consistent with regulations prescribed by the Secretary of the Treasury for
 15 the collection and remittance of taxes imposed by subchapter C of chapter
 16 33 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 33, subch. C), but
 17 only to the extent the latter regulations are not inconsistent with this sec-
 18 tion.

19 PART E—ADDITIONAL REQUIREMENTS AND
 20 LIMITATIONS

21 **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.

22 **§ 8101. Registration and fingerprinting requirements**

23 (a) GENERAL REQUIREMENTS.—Except as provided in subsection (c) of
 24 this section—

25 (1) an alien applying for a visa shall be registered and shall provide
 26 signed copies of a photograph of the alien to be used as prescribed by
 27 regulation;

28 (2) an alien at least 14 years of age who remains in the United
 29 States for at least 30 days and has not been registered and
 30 fingerprinted under clause (1) of this subsection or section 30 or 31
 31 of the Alien Registration Act, 1940, shall apply for registration and
 32 fingerprinting within those 30 days;

33 (3) if an alien less than 14 years of age remains in the United States
 34 for at least 30 days and has not been registered under clause (1) of
 35 this subsection, the parent or legal guardian of the alien shall apply
 36 for registration of the alien within those 30 days; and

1 (4) an alien who becomes 14 years of age in the United States shall
2 apply for registration and fingerprinting within 30 days after becoming
3 14 years of age.

4 (b) SPECIAL REQUIREMENTS FOR CERTAIN ALIENS.—The Attorney Gen-
5 eral may prescribe special regulations and forms for registering and
6 fingerprinting—

- 7 (1) alien crewmembers;
- 8 (2) holders of border crossing identification cards;
- 9 (3) aliens confined in institutions in the United States;
- 10 (4) aliens under order of deportation; and
- 11 (5) aliens not lawfully admitted for permanent residence.

12 (c) WAIVERS AND NONAPPLICATION.—(1) The Secretary of State may
13 waive subsection (a)(1) of this section for an alien described in section 2301
14 or 2302 of this title or an alien issued a diplomatic visa on a diplomatic
15 passport or on equivalent documentation.

16 (2) On a reciprocal basis, the Attorney General may waive the
17 fingerprinting requirement of subsection (a) (2)–(4) of this section for a
18 nonimmigrant.

19 (3) Subsections (a) (2)–(4) and (b) of this section do not apply to an
20 alien with the status of a nonimmigrant classified under section 2301 or
21 2302 of this title.

22 **§ 8102. Forms and oath**

23 (a) FORMS.—The Attorney General and Secretary of State jointly shall
24 prepare forms for registering aliens under section 8101(a)(1) of this title.
25 The Attorney General shall prepare forms for registering and fingerprinting
26 aliens under section 8101 (a)(2)–(4) of this title. The forms shall request
27 information on—

- 28 (1) the date and place of entry of the alien into the United States;
- 29 (2) activities and intended activities of the alien;
- 30 (3) the period of time the alien expects to remain in the United
31 States;
- 32 (4) any police and criminal records of the alien; and
- 33 (5) additional information as prescribed.

34 (b) OATH.—Information required for registration under this chapter shall
35 be given under oath. An individual authorized by regulations prescribed by
36 the Attorney General to register aliens under this chapter may administer
37 the oath.

38 **§ 8103. Certificates of alien registration and alien registra-** 39 **tion receipt cards**

40 (a) ISSUANCE.—An alien in the United States who has been registered
41 and fingerprinted under this chapter or the Alien Registration Act, 1940,

1 shall be issued a certificate of alien registration or an alien registration re-
 2 ceipt card in the form and way, and at the time, the Attorney General pre-
 3 scribes by regulation.

4 (b) CARD TO BE CARRIED.—An alien at least 18 years of age shall carry
 5 at all times the certificate of alien registration or alien registration receipt
 6 card issued to the alien under this section.

7 **§ 8104. Address notification**

8 (a) NOTICE OF CHANGE OF ADDRESS.—Each alien in the United States
 9 who is required to register under this chapter shall—

10 (1) notify the Attorney General in writing of each new address of
 11 the alien within 10 days after the date of a change of address; and

12 (2) provide with the notice additional information the Attorney Gen-
 13 eral may require by regulation.

14 (b) NOTICE OF NATIVES' CURRENT ADDRESSES.—The Attorney General
 15 may require, on 10 days' notice, the natives of a foreign country or a class
 16 or group of natives of a foreign country who are in the United States and
 17 required to register under this chapter to notify the Attorney General of
 18 their current addresses and to provide the Attorney General additional in-
 19 formation the Attorney General may require.

20 (c) NOTICE FOR ALIENS LESS THAN 14 YEARS OF AGE.—A parent or
 21 legal guardian of an alien less than 14 years of age who is required to reg-
 22 ister shall be given the notice required by this section.

23 **§ 8105. Confidentiality of records**

24 A registration or fingerprinting record made under this chapter is con-
 25 fidential and may be made available only to—

26 (1) law enforcement agencies of the United States Government,
 27 States, and localities; and

28 (2) persons and agencies the Attorney General designates.

29 **CHAPTER 83—MISCELLANEOUS**

Sec.

8301. Notice of denial of visa, admission, or adjustment of status.

8302. Restriction on immigration of officers and employees of foreign governments and inter-
 national organizations.

8303. Ineligibility of section 2312 nonimmigrants for certain benefits.

8304. Sanctions for frivolous legal actions.

8305. United States Government assistance in incarcerating undocumented criminal aliens.

30 **§ 8301. Notice of denial of visa, admission, or adjustment of**
 31 **status**

32 If a consular officer or an immigration officer denies an alien's applica-
 33 tion for a visa, admission to the United States, or adjustment of status be-
 34 cause the officer finds the alien to be ineligible under section 2121(a),
 35 4104(c)(2), (d)(3), or (g)(1) or (2), 4311(a), or 9107 of this title or exclud-
 36 able under subchapter I of chapter 63 of this title, the officer shall provide

1 the alien with a timely written notice of the denial. The notice shall state
2 the decision and list the specific provisions of law on which the denial is
3 based.

4 **§ 8302. Restriction on immigration of officers and employees**
5 **of foreign governments and international organi-**
6 **zations**

7 An officer or employee of a government of a foreign country or an inter-
8 national organization, and an attendant, servant, employee, or member of
9 the immediate family of the officer or employee, may apply for and be is-
10 sued an immigrant visa and be admitted to the United States as an immi-
11 grant only after executing the same waiver as provided in section 9106(c)(2)
12 of this title.

13 **§ 8303. Ineligibility of section 2312 nonimmigrants for cer-**
14 **tain benefits**

15 (a) INELIGIBILITY.—An alien admitted to the United States as a non-
16 immigrant classified under section 2312 of this title, or provided status as
17 a nonimmigrant classified under section 2312 after admission, is ineligible
18 to apply for an immigrant visa, permanent residence, or a nonimmigrant
19 visa under sections 2313–2317 and 2325 of this title until it is established
20 that the alien has resided and been physically present in the foreign country
21 of the alien’s nationality or last residence for a total of at least 2 years after
22 leaving the United States, if—

23 (1) the alien’s participation in the program for which the alien came
24 to the United States was financed, directly or indirectly, in any part
25 by the United States Government or by the government of the foreign
26 country of the alien’s nationality or last residence;

27 (2) the alien, at the time the alien was admitted or provided status
28 as a nonimmigrant classified under section 2312 of this title, was a na-
29 tional or resident of a foreign country that the Director of the United
30 States Information Agency (under regulations the Director prescribed)
31 designated as clearly requiring the services of individuals engaged in
32 the alien’s field of specialized knowledge or skill; or

33 (3) the alien came to the United States or acquired status as a non-
34 immigrant classified under section 2312 of this title to receive graduate
35 medical education or training.

36 (b) WAIVERS.—Except as provided in subsection (c) of this section, the
37 Attorney General may waive the 2-year residence requirement of subsection
38 (a) of this section if the Attorney General finds that admitting the alien
39 would be in the public interest, after receiving a favorable recommendation
40 from—

41 (1) the Director—

1 (A) because of a request from an interested agency or, in the
2 case of an alien described in subsection (a)(3) of this section, a
3 request from a State Department of Public Health or its equiva-
4 lent; or

5 (B) if the foreign country of the alien's nationality or last resi-
6 dence provides the Director with a written statement that it does
7 not object to the waiver, except that this subclause does not apply
8 to an alien described in subsection (a)(3) of this section; or

9 (2) the Commissioner of Immigration and Naturalization if the Com-
10 missioner finds that—

11 (A) departure from the United States would impose exceptional
12 hardship on the alien's spouse or child when the spouse or child
13 is a citizen of the United States or lawfully admitted for perma-
14 nent residence; or

15 (B) the alien would be subject to persecution on account of race,
16 religion, or political opinion if the alien returned to the foreign
17 country of the alien's nationality or last residence.

18 (c) RESTRICTION ON WAIVER REQUESTED BY STATE.—(1) The Attorney
19 General may grant a waiver requested by a State Department of Public
20 Health, or its equivalent, under subsection (b) of this section for an alien
21 described in subsection (a)(3) of this section only if—

22 (A) in the case of an alien contractually obligated to return to a for-
23 eign country, the government of the country provides the Director with
24 a written statement that the country does not object to the waiver;

25 (B) the alien demonstrates an offer of full-time employment at a
26 health care facility and agrees—

27 (i) to begin employment at the facility not later than 90 days
28 after receiving the waiver; and

29 (ii) to continue to work as provided in paragraph (2) of this
30 subsection at that facility for at least 3 years, or a shorter period
31 of time, if the Attorney General decides that extenuating cir-
32 cumstances such as the closure of the facility or hardship to the
33 alien justifies the shorter period;

34 (C) the alien agrees to practice medicine as provided in paragraph
35 (2) of this subsection for at least 3 years only in geographic areas the
36 Secretary of Health and Human Services designates as having a short-
37 age of health care professionals; and

38 (D) the grant of the waiver would not cause the number of waivers
39 allotted for that State for that fiscal year to exceed 20.

40 (2)(A) Notwithstanding section 9109(b)(3) of this title, the Attorney Gen-
41 eral may change the status of an alien who qualifies under this subsection

1 and subsection (a) of this section to that of an alien classified under section
2 2313 of this title.

3 (B) An alien who has acquired a change of status under subparagraph
4 (A) of this paragraph and who has not fulfilled the terms of a contract with
5 a health care facility is ineligible to apply for an immigrant visa, for perma-
6 nent residence, or for any other change of nonimmigrant status until it is
7 established that the alien has resided and been physically present in the for-
8 eign country of the alien's nationality or last residence for a total of at least
9 2 years after leaving the United States.

10 (C) If an alien described in paragraph (1)(C) of this subsection (except
11 a special immigrant under section 134(a)(8) of this title) practices medicine
12 during the 3-year period described in paragraph (1)(C) in an area not des-
13 igned by the Secretary as having a shortage of health care professionals—

14 (i) the waiver granted that alien under subsection (b) of this section
15 is revoked; and

16 (ii) the 2-year foreign residence requirement under subsection (a) of
17 this section applies to that alien.

18 **§ 8304. Sanctions for frivolous legal actions**

19 (a) REGULATIONS.—The Attorney General by regulation shall—

20 (1) define frivolous behavior for which attorneys may be sanctioned
21 in a proceeding before an immigration judge or an appellate adminis-
22 trative body under this subtitle;

23 (2) specify the circumstances under which an administrative appeal
24 of a decision or ruling will be considered frivolous and summarily dis-
25 missed; and

26 (3) impose appropriate sanctions (that may include suspension and
27 disbarment) for frivolous behavior.

28 (b) NONLIMITATION OF AUTHORITY.—This section does not limit the au-
29 thority of the Attorney General to take action for inappropriate behavior.

30 **§ 8305. United States Government assistance in incarcerat-**
31 **ing undocumented criminal aliens**

32 (a) DEFINITION.—In this section, “undocumented criminal alien” means
33 an alien who—

34 (1) has been convicted of a felony and sentenced to a term of impris-
35 onment; and

36 (2)(A) entered the United States without inspection or at a time or
37 place not designated by the Attorney General;

38 (B) was the subject of an exclusion or deportation proceeding when
39 taken into custody by a State or political subdivision of a State; or

40 (C) was admitted as a nonimmigrant and, when taken into custody
41 by a State or political subdivision of a State—

1 (i) had not maintained the nonimmigrant status under which
 2 the alien was admitted or which the the alien acquired under sec-
 3 tion 9109 of this title; or

4 (ii) had not complied with a condition of the nonimmigrant sta-
 5 tus.

6 (b) UNITED STATES GOVERNMENT RESPONSIBILITIES.—(1) If the chief
 7 executive officer of a State (or, if appropriate, a political subdivision of a
 8 State) exercising authority for the incarceration of an undocumented crimi-
 9 nal alien submits a written request to the Attorney General, the Attorney
 10 General, as the Attorney General decides, shall—

11 (A) make a contract providing for compensation to the State or po-
 12 litical subdivision of the State, as appropriate, for incarceration of the
 13 alien; or

14 (B) take the alien into the custody of the United States Government
 15 and incarcerate the alien.

16 (2) Compensation under paragraph (1)(A) of this subsection shall be the
 17 average cost of incarceration of a prisoner in the relevant State as deter-
 18 mined by the Attorney General.

19 (3)(A) In carrying out paragraph (1) of this subsection, the Attorney
 20 General shall give priority to the Government's incarceration of undocu-
 21 mented criminal aliens who have committed an aggravated felony.

22 (B) The Attorney General shall ensure that undocumented criminal aliens
 23 incarcerated in Government facilities under this section are held in facilities
 24 that provide a level of security appropriate to the offenses of which they
 25 were convicted.

26 (c) AUTHORIZATION OF APPROPRIATIONS.—(1) Amounts necessary to
 27 carry out this section may be appropriated. Of those amounts, the following
 28 amounts may be appropriated from the Violent Crime Reduction Trust
 29 Fund:

30 (A) \$130,000,000 for the fiscal year ending September 30, 1995.

31 (B) \$300,000,000 for the fiscal year ending September 30, 1996.

32 (C) \$330,000,000 for the fiscal year ending September 30, 1997.

33 (D) \$350,000,000 for the fiscal year ending September 30, 1998.

34 (E) \$350,000,000 for the fiscal year ending September 30, 1999.

35 (F) \$340,000,000 for the fiscal year ending September 30, 2000.

36 (2) Beginning October 1, 2004, the requirements of this section are not
 37 subject to the availability of appropriations.

38 PART F—ADJUSTMENT AND CHANGE OF STATUS

39 **CHAPTER 91—ADJUSTMENT AND CHANGE OF STATUS**

Sec.

9101. Aliens inspected and admitted or paroled into the United States.

9102. Aliens who entered the United States without inspection and certain other aliens.
 9103. Aliens admitted as foreign government officials and their families.
 9104. Aliens whose deportation is suspended.
 9105. Aliens entering the United States before January 1, 1972.
 9106. Aliens lawfully admitted for permanent residence.
 9107. Additional requirements for aliens adjusting to certain employment-based immigrant status.
 9108. Rescission of adjustment of status to alien lawfully admitted for permanent residence.
 9109. Change of status.

1 **§9101. Aliens inspected and admitted or paroled into the**
 2 **United States**

3 (a) REQUIREMENTS.—Except as provided in subsections (e)–(g) of this
 4 section, the Attorney General may adjust the status of an alien inspected
 5 and admitted or paroled into the United States to that of an alien lawfully
 6 admitted for permanent residence if—

7 (1) the alien applies for the adjustment, is eligible to receive an im-
 8 migrant visa, and is admissible to the United States for permanent res-
 9 idence; and

10 (2) an immigrant visa is immediately available to the alien when the
 11 application for adjustment is filed.

12 (b) RECORDATION OF ADJUSTMENT.—On approving an application for
 13 adjustment of status under subsection (a) of this section, the Attorney Gen-
 14 eral shall record the lawful admission of the alien for permanent residence
 15 as of the date of approval.

16 (c) REDUCTION IN NUMBER OF AUTHORIZED IMMIGRANT VISAS.—For
 17 each alien lawfully admitted for permanent residence under this section, the
 18 Secretary of State shall reduce by one the number of immigrant visas that
 19 may be issued under sections 4103–4105 and 4110 of this title within the
 20 class to which the alien is chargeable for the current fiscal year.

21 (d) APPLICATION TO CERTAIN SPECIAL IMMIGRANTS.—(1) In applying
 22 this section to a special immigrant as defined in section 134(a)(12) of this
 23 title—

24 (A) the alien is deemed to have been paroled into the United States;

25 (B) when the Attorney General is deciding on the alien’s admissibil-
 26 ity as an immigrant—

27 (i) sections 4311(a), 6304(a), 6313(a)(2) and (c), and 9107 of
 28 this title do not apply;

29 (ii) the Attorney General may waive subchapter I of chapter 63
 30 of this title (except as provided in subclause (iii) of this clause)
 31 for an alien for humanitarian purposes, to ensure family unity, or
 32 when it is otherwise in the public interest; and

33 (iii) the Attorney General may not waive section 6307(a)(1)–(4),
 34 6308(a)–(c), or 6309 of this title, except as section 6307(a)(3) re-

1 lates to a single offense of simple possession of not more than 30
2 grams of marijuana;

3 (C) the relationship between an alien and the alien's natural parents
4 or prior adoptive parents is not a factor in making a waiver under
5 clause (B)(ii) of this paragraph; and

6 (D) this paragraph and section 134(a)(12) of this title do not au-
7 thorize an alien to apply for admission or be admitted to the United
8 States to obtain the special immigrant status as defined in section
9 134(a)(12).

10 (2) In applying this section to a special immigrant as defined in section
11 134(a)(13) of this title, the alien is deemed to have been paroled into the
12 United States.

13 (e) APPLICATION TO NONIMMIGRANTS CLASSIFIED UNDER SECTION
14 2326.—(1) The Attorney General may adjust the status of an alien admit-
15 ted to the United States as a nonimmigrant classified under section
16 2326(a)(1) of this title (and the spouse, married and unmarried sons and
17 daughters, and parents of the alien if admitted under section 2326(a)(1))
18 to that of an alien lawfully admitted for permanent residence if—

19 (A) the alien is not described in section 6309 of this title; and

20 (B) the Attorney General finds the nonimmigrant has supplied infor-
21 mation described in section 2326(a)(1)(A) of this title and providing
22 that information has contributed substantially to the success of an au-
23 thorized criminal investigation or the prosecution of an individual de-
24 scribed in section 2326(a)(1)(C) of this title.

25 (2) The Attorney General may adjust the status of an alien admitted to
26 the United States as a nonimmigrant classified under section 2326(a)(2) of
27 this title (and the spouse, married and unmarried sons and daughters, and
28 parents of the alien if admitted under section 2326(a)(2)) to that of an
29 alien lawfully admitted for permanent residence if—

30 (A) the alien is not described in section 6309 of this title;

31 (B) the Attorney General finds the nonimmigrant has supplied infor-
32 mation described in section 2326(a)(2)(A) and providing that informa-
33 tion has contributed substantially to—

34 (i) the prevention or frustration of an act of terrorism against
35 a person or property of the United States; or

36 (ii) the success of an authorized criminal investigation of, or the
37 prosecution of, an individual involved in the act of terrorism; and

38 (C) the nonimmigrant has received a reward under section 36(a) of
39 the State Department Basic Authorities Act of 1956 (22 U.S.C.
40 2708(a)).

1 (3) Only the Attorney General may make a finding under paragraph (2)
2 of this subsection.

3 (4) On approving an adjustment of status under this subsection, the At-
4 torney General shall record the alien's lawful admission for permanent resi-
5 dence as of the date of approval and the Secretary of State shall reduce
6 by one the number of visas authorized to be issued under sections
7 4102(b)(1) and 4104(e) of this title for the current fiscal year.

8 (f) NONAPPLICATION.—Subsection (a) of this section does not apply to—

9 (1) an alien crewmember;

10 (2) an alien admitted in immediate and continuous transit without
11 a visa under section 2121(b)(3) of this title;

12 (3) an alien (except an immediate relative and a special immigrant
13 as defined in section 134(a)(8)–(13) of this title) who—

14 (A) after January 1, 1977, and before applying for an adjust-
15 ment of status, engages in or accepts unauthorized employment;

16 (B) has an unlawful immigration status on the date of filing the
17 application for an adjustment of status; or

18 (C) except through no fault of the alien or for technical reasons,
19 has not maintained continuously a lawful status since entering the
20 United States;

21 (4) an alien (except an immediate relative) admitted as a non-
22 immigrant visitor without a visa under section 2121(c) or 2127 of this
23 title; or

24 (5) an alien who was admitted as a nonimmigrant classified under
25 section 2326 of this title.

26 (g) ALIENS WHOSE STATUS MAY NOT BE ADJUSTED.—(1) The Attorney
27 General may not adjust, under subsection (a) of this section, the status of—

28 (A) an alien lawfully admitted for permanent residence on a condi-
29 tional basis under subchapter I of chapter 45 of this title;

30 (B) a nonimmigrant classified under section 2309(a) of this title, ex-
31 cept to that of an alien lawfully admitted for permanent residence on
32 a conditional basis under subchapter I of chapter 45 of this title, be-
33 cause of the marriage of the nonimmigrant (or, if a child, the parent)
34 to the citizen who filed the petition under section 2309(b) of this title;
35 or

36 (C) an alien seeking an immigrant visa because of a marriage en-
37 tered into during the period an administrative or judicial proceeding on
38 the alien's right to enter or remain in the United States is pending.

39 (2)(A) Paragraph (1)(C) of this subsection does not apply to a marriage
40 if the alien establishes by clear and convincing evidence satisfactory to the
41 Attorney General that—

1 (i) the marriage was entered into in good faith and under the laws
2 of the place where the marriage took place;

3 (ii) the marriage was not entered into to procure the alien's entry
4 as an immigrant; and

5 (iii) no consideration was given, except to an attorney for assistance
6 in preparing a petition, for filing a petition under section 2309(b) or
7 4301(a) or (b) of this title for an alien spouse or alien son or daughter.

8 (B) Under regulations of the Attorney General, the Attorney General
9 shall allow only one level of administrative appellate review for each alien
10 under this paragraph.

11 **§9102. Aliens who entered the United States without in-**
12 **spection and certain other aliens**

13 (a) WHO MAY APPLY.—An alien physically present in the United States
14 who entered the United States without inspection or who is described in sec-
15 tion 9101(f) of this title may apply to the Attorney General to adjust the
16 status of the alien to that of an alien lawfully admitted for permanent resi-
17 dence.

18 (b) ACCEPTANCE OF APPLICATION.—(1) The Attorney General may ac-
19 cept the application only if the alien remits with the application an amount
20 equal to 5 times the fee required for processing an application under section
21 9101 of this title as of the date of receipt of the application. The amount
22 required under this subsection is in addition to the fee normally required
23 for processing an application under section 9101.

24 (2) This subsection does not apply to—

25 (A) a child who is less than 17 years of age; or

26 (B) an alien who—

27 (i) is the spouse or unmarried child of an individual who at any
28 time became lawfully admitted for temporary or permanent resi-
29 dence under chapter 93 of this title, section 210 of the Immigra-
30 tion and Nationality Act (ch. 477, 66 Stat. 163), or section 202
31 of the Immigration Reform and Control Act of 1986 (Public Law
32 99-603, 100 Stat. 3404);

33 (ii) was the spouse or unmarried child of that individual on May
34 5, 1988;

35 (iii) entered the United States before May 5, 1988, resided in
36 the United States on May 5, 1988, and is not a lawful permanent
37 resident; and

38 (iv) applied for benefits under section 301(a) of the Immigra-
39 tion Act of 1990 (Public Law 101-649, 104 Stat. 5029).

1 (c) ADJUSTMENT MADE.—On receiving the application and the required
2 amount, the Attorney General may adjust the status of the alien to that
3 of an alien lawfully admitted for permanent residence if—

4 (1) the alien is eligible to receive an immigrant visa and is admissible
5 to the United States for permanent residence; and

6 (2) an immigrant visa is available to the alien immediately when the
7 application is filed.

8 (d) DISPOSAL OF AMOUNTS.—The Attorney General shall dispose of
9 amounts remitted under this section as provided in section 318 of this title.

10 (e) FINGERPRINT IDENTIFICATION CHECKS.—The Attorney General shall
11 conduct complete fingerprint identification checks through the Federal Bu-
12 reau of Investigation for all individuals over 16 years of age who are adjust-
13 ing their immigration status under this section.

14 (f) ENDING DATE.—This section ends on October 1, 1997.

15 **§9103. Aliens admitted as foreign government officials and**
16 **their families**

17 (a) REQUIREMENTS.—An alien admitted to the United States as a non-
18 immigrant classified under section 2301(1) or (2) or 2302(1)–(3) of this
19 title, who does not maintain nonimmigrant status under any of those provi-
20 sions, may apply to the Attorney General to adjust the status of the alien
21 to that of an alien lawfully admitted for permanent residence. After consult-
22 ing with the Secretary of State, the Attorney General may adjust the status
23 of the alien if the Attorney General is satisfied that—

24 (1) the alien has demonstrated compelling reasons why the alien can-
25 not return to the country represented by the government that accred-
26 ited the alien or a member of the alien's immediate family and that
27 adjusting the status of the alien is in the interest of the United States;

28 (2) the alien is of good moral character;

29 (3) the alien is admissible for permanent residence under this title;
30 and

31 (4) adjusting the alien's status under this subsection would not be
32 contrary to the welfare, safety, or security of the United States.

33 (b) RECORDATION OF ADJUSTMENT AND REPORT TO CONGRESS.—If the
34 Attorney General adjusts the status of an alien under subsection (a) of this
35 section, the Attorney General—

36 (1) may record the lawful admission of the alien for permanent resi-
37 dence as of the date of the adjustment; and

38 (2) shall submit to Congress, on the first day of the next month in
39 which Congress is in session—

40 (A) a complete and detailed report of the facts and law in the
41 alien's case; and

1 (B) the Attorney General's reasons for the adjustment.

2 (c) REDUCTION IN NUMBER OF IMMIGRANT VISAS.—(1) For each alien
3 lawfully admitted for permanent residence under this section, the Secretary
4 of State shall reduce by one the number of immigrant visas for the foreign
5 country to which the alien is chargeable under section 4111 of this title for
6 the current fiscal year or the next fiscal year in which a visa is available
7 if the alien was classifiable as an immigrant subject to the numerical limita-
8 tions of sections 4102–4105 and 4110 of this title when the alien entered
9 the United States.

10 (2) The Secretary may not reduce the numerical limitations for the for-
11 eign country under this section by more than 50 percent in a fiscal year.

12 (d) NUMERICAL LIMITATION.—The Attorney General may admit as aliens
13 lawfully admitted for permanent residence under this section not more than
14 50 aliens in a fiscal year.

15 **§9104. Aliens whose deportation is suspended**

16 The Attorney General shall—

17 (1) adjust the status of an alien whose deportation the Attorney
18 General suspends under section 6539(a) of this title to that of an alien
19 lawfully admitted for permanent residence; and

20 (2) record the lawful admission of the alien for permanent residence
21 as of the date the Attorney General suspends the deportation.

22 **§9105. Aliens entering the United States before January 1,**
23 **1972**

24 (a) REQUIREMENTS.—On approval of an application of an alien, the At-
25 torney General may adjust the status of the alien to that of an alien law-
26 fully admitted for permanent residence if—

27 (1) a record of the lawful admission of the alien for permanent resi-
28 dence is not available; and

29 (2) the alien satisfies the Attorney General that the alien—

30 (A) entered the United States before January 1, 1972, and has
31 resided in the United States continuously since the alien's entry;

32 (B) is of good moral character;

33 (C) is not ineligible for citizenship; and

34 (D) is not excludable under—

35 (i) section 6309 of this title; or

36 (ii) a provision of subchapter I of chapter 63 of this title
37 related to criminals, immoral individuals, violators of narcotic
38 laws, smugglers of aliens, or national security.

39 (b) RECORDATION OF ADJUSTMENT.—If the Attorney General adjusts
40 the status of an alien under subsection (a) of this section, the Attorney Gen-

1 eral shall record the lawful admission of the alien for permanent residence
2 as of the date—

3 (1) the alien entered the United States if the alien entered before
4 July 1, 1924; or

5 (2) the Attorney General approves the alien's application for an ad-
6 justment of status under this section.

7 (c) PHOTOGRAPHS.—An alien applying for an adjustment of status under
8 this section must provide the Attorney General with 3 identical photographs
9 of the alien.

10 (d) NONAPPLICATION OF NUMERICAL LIMITATIONS.—The numerical lim-
11 itations of sections 4102 and 4110 of this title do not apply to an alien
12 whose status is adjusted under this section.

13 **§ 9106. Aliens lawfully admitted for permanent residence**

14 (a) ADJUSTMENT TO NONIMMIGRANT STATUS.—Except as provided in
15 subsection (c) of this section, the Attorney General shall adjust the status
16 of an alien lawfully admitted for permanent residence to that of a non-
17 immigrant classified under section 2301, 2302, or 2306 of this title if at
18 the time of entry or after the alien enters the United States the alien is
19 engaged in an occupation that would entitle the alien to the status of a non-
20 immigrant classified under section 2301, 2302, or 2306 if the alien were
21 seeking to be admitted to the United States.

22 (b) RECORD OF ADMISSION FOR PERMANENT RESIDENCE CANCELED.—
23 The Attorney General shall cancel the record of the admission of the alien
24 for lawful permanent residence as of the date the Attorney General adjusts
25 the alien's status under this section.

26 (c) NONAPPLICATION.—This section does not apply to an alien who—

27 (1) requests the Attorney General not to adjust the alien's status
28 under this section; and

29 (2) files with the Attorney General a written waiver of the rights,
30 privileges, exemptions, and immunities that the alien otherwise would
31 be entitled to under a law or executive order because the alien is en-
32 gaged in an occupation that entitles the alien to the status of a non-
33 immigrant classified under section 2301, 2302, or 2306 of this title.

34 **§ 9107. Additional requirements for aliens adjusting to cer-
35 tain employment-based immigrant status**

36 Section 4104(g) of this title applies to aliens applying for an adjustment
37 of status to that of an immigrant under section 4104(c) or (d) of this title.

38 **§ 9108. Rescission of adjustment of status to alien lawfully
39 admitted for permanent residence**

40 (a) RESCISSION OF ADJUSTMENT OF STATUS.—If, within 5 years after
41 the Attorney General adjusts the status of an alien under any provision of

1 law to that of an alien lawfully admitted for permanent residence, the Attor-
 2 ney General is satisfied that the alien was not eligible for the adjustment,
 3 the Attorney General shall rescind—

4 (1) the adjustment of the alien's status; and

5 (2) the cancellation of the alien's deportation if the Attorney General
 6 canceled the deportation.

7 (b) EFFECT OF RESCISSION.—When the Attorney General rescinds an
 8 adjustment under subsection (a) of this section, the alien becomes subject
 9 to this title as if the Attorney General had not changed the alien's status.

10 **§ 9109. Change of status**

11 (a) PREREQUISITES.—Except as provided in subsection (b) of this sec-
 12 tion, the Attorney General may change the status of an alien by changing
 13 the alien's nonimmigrant classification to another nonimmigrant classifica-
 14 tion under conditions prescribed by the Attorney General if the alien—

15 (1) is lawfully admitted to the United States as a nonimmigrant; and

16 (2) continues to maintain that status.

17 (b) NONAPPLICATION.—The Attorney General may not make a change
 18 under subsection (a) of this section if the alien—

19 (1) is admitted to the United States for passage through the United
 20 States in immediate and continuous transit to a foreign country;

21 (2) is classified as a nonimmigrant under section 2304, 2305, 2309,
 22 or 2326 of this title;

23 (3) is classified as a nonimmigrant under section 2312 of this title
 24 and came to the United States or acquired the classification to receive
 25 graduate medical education or training;

26 (4) except an alien referred to in clause (3) of this subsection, is
 27 classified as a nonimmigrant under section 2312 of this title and is
 28 subject to, and has not received a waiver of, the 2-year foreign resi-
 29 dence requirement of section 8303(a) of this title, unless the alien ap-
 30 plies to have the alien's classification changed from a classification as
 31 a nonimmigrant under section 2312 to a classification as a non-
 32 immigrant under section 2301 or 2302 of this title; or

33 (5) is admitted as a nonimmigrant visitor without a visa under sec-
 34 tion 2121(c) or 2127 of this title.

35 **CHAPTER 93—ADJUSTMENT OF STATUS FOR CERTAIN**
 36 **ALIENS WHO ENTERED THE UNITED STATES BEFORE**
 37 **1982**

Sec.

9301. Numerical limitations and admissions.

9302. Adjustment of status to alien lawfully admitted for temporary residence.

9303. Applications for adjustment of status to alien lawfully admitted for temporary resi-
 dence.

- 9304. Adjustment of status from temporary residence to permanent residence.
- 9305. Medical examination.
- 9306. Nonapplication and waiver of certain provisions of law.
- 9307. Fees.
- 9308. Confidentiality of information.
- 9309. Temporary stay of deportation.
- 9310. Temporary ineligibility to receive certain assistance.
- 9311. Unfavorable ending of temporary residence status.
- 9312. Administrative and judicial review.
- 9313. Administrative.

1 **§ 9301. Numerical limitations and admissions**

2 (a) NUMERICAL LIMITATIONS.—The numerical limitations of sections
3 4102 and 4110 of this title do not apply to an adjustment of status of an
4 alien to that of an alien lawfully admitted for permanent residence under
5 this chapter.

6 (b) ADMISSIONS.—This chapter does not authorize an alien to apply for
7 admission to, or be admitted to, the United States so that the alien may
8 apply for an adjustment of status under section 9302 of this title.

9 **§ 9302. Adjustment of status to alien lawfully admitted for**
10 **temporary residence**

11 (a) REQUIREMENTS.—The Attorney General shall adjust the status of an
12 alien to that of an alien lawfully admitted for temporary residence if the
13 alien meets the following requirements:

14 (1) The alien applied for the adjustment as provided in section 9303
15 of this title after May 4, 1987, and before May 5, 1988.

16 (2) The alien entered the United States before January 1, 1982.

17 (3) The alien resided continuously in the United States in an unlaw-
18 ful status from January 1, 1982, through the date the application for
19 the adjustment was filed under this section.

20 (4) If the alien—

21 (A) entered the United States as a nonimmigrant before Janu-
22 ary 1, 1982, the alien's period of authorized stay as a non-
23 immigrant expired before January 1, 1982, or the United States
24 Government by January 1, 1982, knew of the unlawful status of
25 the alien; or

26 (B) was a nonimmigrant exchange alien classified under section
27 2312 of this title, the alien was not subject to the 2-year foreign
28 residence requirement of section 8303(a) of this title, fulfilled the require-
29 ment, or received a waiver.

30 (5) The alien has been physically present continuously in the United
31 States, except for any brief, casual, and innocent absence, since No-
32 vember 6, 1986.

33 (6) The alien is admissible to the United States as an immigrant,
34 except as provided in sections 9305 and 9306 of this title.

1 (7) The alien has not been convicted of a felony or of more than 2
2 misdemeanors committed in the United States.

3 (8) The alien has not assisted in the persecution of a person on ac-
4 count of race, religion, nationality, membership in a particular social
5 group, or political opinion.

6 (9) The alien is registered or registering under the Military Selective
7 Service Act (50 App. U.S.C. 451 et seq.) if the Act requires the alien
8 to register.

9 (b) AUTHORIZED TRAVEL.—During the time an alien is an alien lawfully
10 admitted for temporary residence under subsection (a) of this section, the
11 Attorney General shall allow the alien to return to the United States after—

12 (1) any brief and casual trip outside the United States that reflects
13 the alien's intent to have the alien's status adjusted under section 9304
14 of this title to that of an alien lawfully admitted for permanent resi-
15 dence; and

16 (2) any brief temporary trip outside the United States because of a
17 family obligation involving the illness or death of a close relative or an-
18 other family need.

19 (c) AUTHORIZED EMPLOYMENT.—During the time an alien is an alien
20 lawfully admitted for temporary residence under subsection (a) of this sec-
21 tion, the Attorney General shall grant the alien authorization to be em-
22 ployed in the United States and provide to the alien an “employment au-
23 thorized” endorsement or other appropriate work permit.

24 (d) CUBAN OR HAITIAN ENTRANT.—In applying this section, a Cuban or
25 Haitian entrant described in section 13151(1) or (2)(A) of this title is
26 deemed to have entered the United States and to be in an unlawful status
27 in the United States.

28 **§ 9303. Applications for adjustment of status to alien law-**
29 **fully admitted for temporary residence**

30 (a) CONTENTS.—An application for an adjustment of status under section
31 9302(a) of this title shall contain information the Attorney General re-
32 quires, including information on each living relative of the applicant with
33 respect to whom the applicant may file a petition at a later date under sec-
34 tion 4301(a) or (b) of this title.

35 (b) WHO MAY RECEIVE APPLICATIONS.—The Attorney General shall pro-
36 vide that an application for an adjustment of status under section 9302(a)
37 of this title may be filed with the Attorney General or with an entity des-
38 ignated under subsection (c) of this section if the applicant consents to hav-
39 ing the application forwarded to the Attorney General.

40 (c) DESIGNATING ENTITIES TO RECEIVE APPLICATIONS.—To assist in
41 the legalization program under this chapter, the Attorney General—

1 (1) shall designate qualified voluntary organizations and other quali-
2 fied State, local, and community organizations; and

3 (2) may designate other persons the Attorney General decides are
4 qualified and have substantial experience, demonstrated competence,
5 and traditional long-term involvement in preparing and submitting ap-
6 plications for adjustment of status under section 5107, 9101, or 9102
7 of this title, the Act of November 2, 1966 (Public Law 89-732, 80
8 Stat. 1161), or the Act of October 28, 1977 (Public Law 95-145, 91
9 Stat. 1223).

10 (d) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—An en-
11 tity designated under subsection (c) of this section must agree to forward
12 to the Attorney General only those applications filed with it under sub-
13 section (b) of this section that the applicants consent to being forwarded.
14 An entity may not make a decision under this chapter required to be made
15 by the Attorney General.

16 **§ 9304. Adjustment of status from temporary residence to**
17 **permanent residence**

18 (a) REQUIREMENTS.—The Attorney General shall adjust the status of an
19 alien lawfully admitted for temporary residence under section 9302 of this
20 title to that of an alien lawfully admitted for permanent residence if the
21 alien—

22 (1) applies for the adjustment during the 2-year period beginning
23 with the 19th month that begins after the alien acquired the status of
24 an alien lawfully admitted for temporary residence;

25 (2) has resided continuously in the United States since the alien ac-
26 quired the status of an alien lawfully admitted for temporary residence;

27 (3) is admissible as an immigrant, except as provided in sections
28 9305 and 9306 of this title;

29 (4) has not been convicted of a felony or of more than 2 misdemean-
30 ors committed in the United States; and

31 (5)(A) meets the requirements of section 20301(a)(7) and (8) of this
32 title; or

33 (B) is pursuing satisfactorily a course of study, recognized by the At-
34 torney General, to meet the requirements of section 20301(a)(7) and
35 (8) of this title.

36 (b) EXCEPTIONS.—(1) An alien does not violate the continuous residence
37 requirement of subsection (a)(2) of this section because of an absence from
38 the United States allowed under section 9302(b) of this title.

39 (2) The Attorney General may waive any part of the requirements of sub-
40 section (a)(5) of this section for an alien who is at least 65 years of age
41 or developmentally disabled.

1 (c) RELATION TO NATURALIZATION EXAMINATION.—An alien dem-
2 onstrating under subsection (a)(5)(A) of this section that the alien meets
3 the requirements of section 20301(a)(7) and (8) of this title may be deemed
4 to have satisfied those requirements for becoming naturalized as a citizen
5 of the United States under subtitle V of this title.

6 **§ 9305. Medical examination**

7 An alien must undergo, at the alien's expense, an appropriate medical ex-
8 amination (including establishing the alien's immunization status) that com-
9 plies with generally accepted professional standards of medical practice be-
10 fore a decision on the alien's admissibility under sections 9302(a)(6),
11 9304(a)(3), and 9311(2) of this title may be made.

12 **§ 9306. Nonapplication and waiver of certain provisions of**
13 **law**

14 (a) GROUNDS OF EXCLUSION THAT DO NOT APPLY OR THAT MAY BE
15 WAIVED.—When the Attorney General is deciding on an alien's admissibility
16 under sections 9302(a)(6), 9304(a)(3), and 9311(2) of this title—

17 (1) sections 4311(a), 6313, and 9107 of this title do not apply; and

18 (2) except as provided in subsection (b) of this section, the Attorney
19 General may waive section 2121(a) and subchapter I of chapter 63 of
20 this title for an individual alien—

21 (A) for humanitarian purposes;

22 (B) to ensure family unity; or

23 (C) when otherwise in the public interest.

24 (b) GROUNDS THAT MAY NOT BE WAIVED.—Notwithstanding subsection
25 (a)(2) of this section, the Attorney General may not waive—

26 (1) section 6304(a) of this title to the extent it relates to an applica-
27 tion for adjustment of status to an alien lawfully admitted for perma-
28 nent residence, except that section 6304(a) may be waived for an alien
29 who is or was an aged, blind, or disabled individual (as defined in sec-
30 tion 1614(a)(1) of the Social Security Act (42 U.S.C. 1382c(a)(1)));

31 (2) section 6307(a)(1)–(4) of this title, except as section 6307(a)(3)
32 relates to a single offense of simple possession of not more than 30
33 grams of marijuana; or

34 (3) section 6308 or 6309 of this title.

35 (c) SPECIAL RULE FOR DECIDING WHETHER ALIENS ARE PUBLIC
36 CHARGES.—An alien is not ineligible for an adjustment of status under this
37 chapter because of inadmissibility under section 6304(a) of this title if the
38 alien demonstrates a history of employment in the United States showing
39 self-support without receiving public cash assistance.

§ 9307. Fees

(a) FEE SCHEDULE.—The Attorney General shall establish a schedule of fees for applying for an adjustment of status under section 9302 or 9304 of this title. The Attorney General shall provide for an additional fee for applying for an adjustment of status under section 9304 of this title after the end of the first year of the 2-year period described in section 9304(a)(1) of this title.

(b) USE OF FEES.—The Attorney General shall deposit amounts received under subsection (a) of this section in a separate account. The amounts may be used, without fiscal year limitation, for expenses related to reviewing applications filed under section 9302 or 9304 of this title. Capital assets 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—

(1) may use information provided in 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 of Justice or of an entity designated under section 9303(c) of this title (for an application filed with the entity) to examine an application.

§ 9309. Temporary stay of deportation

(a) APPLICATION COULD NOT BE MADE.—If an alien was apprehended before May 5, 1987, and could have established a prima facie case of eligibility for an adjustment of status under section 9302 of this title, except that the alien could not apply for the adjustment before May 5, 1987, the Attorney General shall provide that, unless the alien had an opportunity after May 4, 1987, and before June 4, 1987, to complete the filing of an application for an adjustment of status, the alien—

- 1 (1) may not be deported;
- 2 (2) may be employed in the United States; and
- 3 (3) shall be provided an “employment authorized” endorsement or
- 4 other appropriate work permit.

5 (b) APPLICATION PRESENTED.—If an alien presented a prima facie appli-
6 cation for adjustment of status under section 9302 of this title after May
7 4, 1987, and before May 5, 1988, the Attorney General shall provide that,
8 until a final decision has been made on the application, the alien—

- 9 (1) may not be deported;
- 10 (2) may be employed in the United States; and
- 11 (3) shall be provided an “employment authorized” endorsement or
- 12 other appropriate work permit.

13 **§9310. Temporary ineligibility to receive certain assistance**

14 (a) PERIOD OF INELIGIBILITY.—(1) Except as provided in paragraphs
15 (3) and (4) of this subsection and subsection (b) of this section, an alien
16 who acquires the status of an alien lawfully admitted for temporary resi-
17 dence under section 9302 of this title is not eligible for the following, during
18 the 5-year period beginning on the date the alien was granted the status:

19 (A) financial assistance under the program of aid to families with
20 dependent children under part A of title IV of the Social Security Act
21 (42 U.S.C. 601 et seq.).

22 (B) any other program of financial assistance—

23 (i) provided under a law of the United States on a financial-
24 need basis; and

25 (ii) identified by the Attorney General in consultation with the
26 heads of appropriate agencies.

27 (C) medical assistance under a State plan approved under title XIX
28 of the Social Security Act (42 U.S.C. 1396 et seq.).

29 (D) assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011
30 et seq.).

31 (2) To the extent consistent with this subsection and subsection (b) of
32 this section, a State or political subdivision of a State may provide that the
33 alien is not eligible for financial assistance referred to in paragraph (1)(A)
34 and (B) of this subsection or for medical assistance referred to in paragraph
35 (1)(C) of this subsection provided under a law of the State or political sub-
36 division.

37 (3) Paragraph (1) of this subsection does not apply to—

38 (A) a Cuban or Haitian entrant (as defined in section 501(e)(1) or
39 (2)(A) of the Refugee Education Assistance Act of 1980 (Public Law
40 96-422, 94 Stat. 1810) as in effect on April 1, 1983); or

1 (B) assistance (except aid to families with dependent children) pro-
2 vided an alien who is an aged, blind, or disabled individual (as defined
3 in section 1614(a)(1) of the Social Security Act (42 U.S.C.
4 1382c(a)(1)).

5 (4) Assistance provided under the following laws is not financial assist-
6 ance referred to in paragraph (1)(B) of this subsection:

7 (A) title IV of the Higher Education Act of 1965 (20 U.S.C. 1070
8 et seq. and 42 U.S.C. 2751 et seq.).

9 (B) the Carl D. Perkins Vocational and Applied Technology Edu-
10 cation Act (20 U.S.C. 2301 et seq.).

11 (C) title I of the Elementary and Secondary Education Act of 1965
12 (20 U.S.C. 6301 et seq.).

13 (D) the Job Training Partnership Act (29 U.S.C. 1501 et seq.).

14 (E) the Public Health Service Act (42 U.S.C. 201 et seq.).

15 (F) titles I, X, XIV, and XVI of the Social Security Act (42 U.S.C.
16 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.) as in effect with-
17 out regard to the amendment made by section 301 of the Social Secu-
18 rity Amendments of 1972 (Public Law 92-603, 86 Stat. 1465).

19 (G) parts B, D, and E of title IV and titles V, XVI, and XX of the
20 Social Security Act (42 U.S.C. 620 et seq., 651 et seq., 670 et seq.,
21 701 et seq., 1381 et seq., 1397 et seq.).

22 (H) the National School Lunch Act (42 U.S.C. 1751 et seq.).

23 (I) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

24 (J) the Head Start Act (42 U.S.C. 9831 et seq.).

25 (K) the Follow Through Act (42 U.S.C. 9861 et seq.).

26 (b) RESTRICTED MEDICAL ASSISTANCE.—(1) In this subsection—

27 (A) “medical assistance” means medical assistance under a State
28 plan approved under title XIX of the Social Security Act (42 U.S.C.
29 1396 et seq.); and

30 (B) an alien lawfully admitted for temporary residence under section
31 9302 of this title is deemed to be residing permanently in the United
32 States under color of law as long as the alien’s temporary residence
33 status is not adjusted.

34 (2) Except as provided in paragraph (3) of this subsection and notwith-
35 standing title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), an
36 alien lawfully admitted for temporary residence under section 9302 of this
37 title is eligible for only the following medical assistance during the 5-year
38 period beginning on the date the alien is granted temporary residence sta-
39 tus:

40 (A) emergency services as provided under section 1916(a)(2)(D) of
41 the Social Security Act (42 U.S.C. 1396o(a)(2)(D)).

1 (B) services for pregnant women as described in section
2 1916(a)(2)(B) of the Social Security Act (42 U.S.C. 1396o(a)(2)(B)).

3 (3) An alien lawfully admitted for temporary residence under section
4 9302 of this title is eligible for any medical assistance during the 5-year
5 period beginning on the date the alien is granted temporary residence status
6 if the alien is—

7 (A) an alien described in subsection (a)(3) of this section; or

8 (B) less than 18 years of age.

9 (c) ADJUSTMENT OF STATUS NOT AFFECTING CERTAIN BENEFITS.—As-
10 sistance under subchapter III of chapter 131 of this title shall be continued
11 without regard to an adjustment of the alien's status under this chapter.

12 (d) ALIEN NOT RESIDING PERMANENTLY IN THE UNITED STATES.—Un-
13 less otherwise specifically provided, an alien lawfully admitted for temporary
14 residence under section 9302 of this title is not residing permanently in the
15 United States under color of law for purposes of a law of a State or political
16 subdivision of a State providing for a program of financial assistance.

17 **§ 9311. Unfavorable ending of temporary residence status**

18 The Attorney General shall end the temporary residence status granted
19 an alien under section 9302 of this title—

20 (1) if the Attorney General believes the alien was not eligible for that
21 status;

22 (2) if the alien—

23 (A) commits an act that makes the alien inadmissible to the
24 United States as an immigrant, except as provided in sections
25 9305 and 9306 of this title; or

26 (B) is convicted of a felony or of at least 3 misdemeanors com-
27 mitted in the United States; or

28 (3) at the end of the 43d month beginning after the date the alien
29 is granted the status, unless the alien has applied under section 9304
30 of this title for an adjustment of status to that of an alien lawfully ad-
31 mitted for permanent residence and the application has not been de-
32 nied.

33 **§ 9312. Administrative and judicial review**

34 (a) EXCLUSIVENESS OF REVIEW.—The only administrative and judicial
35 reviews of a decision made under this chapter about an application for an
36 adjustment of status of an alien shall be the reviews provided in this sec-
37 tion.

38 (b) ADMINISTRATIVE REVIEW.—Except as provided in subsection (d) of
39 this section, the Attorney General shall maintain an appellate authority to
40 provide for a single level of administrative appellate review of a decision de-
41 scribed in subsection (a) of this section. The review shall be based only on

1 the administrative record established at the time of the decision and on ad-
2 ditional or newly discovered evidence not available at the time the decision
3 was made.

4 (c) JUDICIAL REVIEW.—Except as provided in subsection (d) of this sec-
5 tion, a decision made under this chapter denying an adjustment of status
6 of an alien may be reviewed judicially only by judicial review of an order
7 of deportation under section 6536 of this title. The review shall be based
8 only on the administrative record established at the time of the review by
9 the appellate authority. The findings of fact and decisions contained in the
10 record of the authority are conclusive unless the applicant establishes abuse
11 of discretion or that the findings are directly contrary to clear and convinc-
12 ing facts contained in the record considered as a whole.

13 (d) NO REVIEW FOR LATE FILING.—A denial of an adjustment of status
14 under this chapter because an application for the adjustment was filed late
15 may not be reviewed in an administrative proceeding of the United States
16 Government or by a court of the United States or a State.

17 **§9313. Administrative**

18 (a) REGULATIONS.—After consulting with the Committees on the Judici-
19 ary of the House of Representatives and the Senate, the Attorney General
20 shall prescribe—

21 (1) regulations establishing a definition of “resided continuously” for
22 this chapter and evidence needed to establish that an alien has resided
23 continuously in the United States under this chapter; and

24 (2) other regulations necessary to carry out this chapter.

25 (b) CONSIDERATIONS.—In prescribing regulations under subsection (a)(1)
26 of this section, the Attorney General—

27 (1) shall specify individual and total periods of absence from the
28 United States that will break a period of continuous residence in the
29 United States and shall consider any absence that is only a brief and
30 casual trip outside the United States;

31 (2) shall provide that—

32 (A) an alien has not resided continuously in the United States
33 if the alien was outside the United States, during a period for
34 which continuous residence is required, because of a deportation
35 order; and

36 (B) time during which an alien is outside the United States
37 under the advance parole procedures of the Attorney General is
38 not part of the time during which an alien is outside the United
39 States under this chapter;

40 (3) may provide for a waiver of the periods specified in clause (1)
41 of this subsection if the absence is a brief temporary trip outside the

1 United States required by an emergency or extenuating circumstance
2 outside the control of the alien; and

3 (4) shall require that continuous residence and physical presence in
4 the United States be established by documents (employment-related if
5 available to the alien) and independent corroboration of the information
6 the documents contain.

7 **PART G—PENALTIES**

8 **CHAPTER 101—PENALTIES**

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Sec.

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9 SUBCHAPTER I—GENERAL

10 **§ 10101. Settlement, compromise, and discontinuance of cer-**
11 **tain proceedings**

12 A judicial proceeding for violating this title (except subchapter I of chap-
13 ter 5, subchapters II and III of chapter 131, chapters 133–137, and section
14 13902) may be settled, compromised, or discontinued only with the consent
15 of the court. A settlement, compromise, or discontinuance, and the reasons
16 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 \$500 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.

1 **§ 10114. Failure to control alien crewmembers**

2 (a) CIVIL PENALTY.—A person not detaining or deporting an alien crew-
3 member as required by section 2704 of this title is liable to the United
4 States Government for a civil penalty of \$3,000 for each alien crewmember
5 not detained or deported.

6 (b) COMPROMISE.—The Attorney General may compromise the amount of
7 a civil penalty under this section to not less than \$500 for each alien crew-
8 member involved.

9 **§ 10115. Improper discharge of alien crewmembers**

10 (a) CIVIL PENALTY.—If the Attorney General is satisfied that a person
11 has violated section 2706 of this title, the person is liable to the United
12 States Government for a civil penalty of \$3,000 for each violation.

13 (b) COMPROMISE.—The Attorney General may compromise the amount of
14 a civil penalty under this section to not less than \$1,500 for each violation.

15 **§ 10116. Employing alien crewmembers having disabilities
16 and diseases**

17 (a) CIVIL PENALTY.—The owner, agent, master, commanding officer, or
18 consignee of a vessel or aircraft is liable to the United States Government
19 for a civil penalty of \$1,000 for each alien crewmember employed in viola-
20 tion of section 2705(a) of this title if the Attorney General is satisfied, from
21 an examination certified by a medical officer of the Public Health Service,
22 that—

23 (1) the crewmember was afflicted with a disability or disease referred
24 to in section 2705(a) of this title when the crewmember was taken on
25 board the vessel or aircraft; and

26 (2) the disability or disease could have been detected by a competent
27 medical examination.

28 (b) COMPROMISE.—The Attorney General may compromise the amount of
29 a civil penalty under this section.

30 **§ 10117. Employing alien crewmembers for certain longshore
31 work**

32 (a) CIVIL PENALTY.—An owner, agent, master, commanding officer, or
33 consignee of a vessel that hires an alien crewmember classified as a non-
34 immigrant under section 2305(a)(1) of this title to perform longshore work
35 not included in the normal operation and service on a vessel under section
36 2723, 2724, or 2725 of this title is liable to the United States Government
37 for a civil penalty of \$5,000.

38 (b) LIEN ON VESSEL.—A vessel referred to in subsection (a) of this sec-
39 tion is subject to a lien for the amount of the civil penalty.

40 (c) PROHIBITION ON COMPROMISE.— The Attorney General may not
41 compromise the amount of a civil penalty under this section.

1 **§ 10118. Violations involving certifications for longshore**
2 **work by alien crewmembers**

3 If the Secretary of Labor finds under section 2723(f) of this title that
4 an employer has failed to meet a condition, or misrepresented a material
5 fact, in its attestation under section 2723(a) of this title, the Secretary may
6 impose a civil penalty of not more than \$5,000 for each alien crewmember
7 the employer employs to perform unauthorized longshore work.

8 **§ 10119. Bringing in aliens excludable because of health**

9 (a) CIVIL PENALTY.—A person is liable to the United States Government
10 for a civil penalty of \$3,000 for each alien the person brings to the United
11 States in violation of section 6906(b) of this title.

12 (b) PROHIBITION ON COMPROMISE.—The Attorney General may not com-
13 promise the amount of a civil penalty under this section.

14 **§ 10120. Bringing in aliens not having passports and visas**

15 (a) CIVIL PENALTY.—If the Attorney General is satisfied that a person
16 has brought an alien to the United States in violation of section 6906(a)
17 of this title, the person is liable to the United States Government for a civil
18 penalty of—

19 (1) \$3,000 for each such alien; plus

20 (2) except for an alien admitted or allowed to land temporarily, an
21 amount equal to the amount the alien paid to be transported from the
22 initial port of departure, as shown on the alien's ticket, to the port of
23 arrival.

24 (b) RETURN OF AMOUNT TO ALIEN.—The amount paid under subsection
25 (a)(2) of this section shall be paid to the alien brought in violation of sec-
26 tion 6906(a) of this title.

27 (c) COMPROMISE AND WAIVER.—(1) The Attorney General may com-
28 promise the amount of a civil penalty under this section only if the Attorney
29 General is satisfied that the person, before the vessel or aircraft carrying
30 the alien left the last port outside the United States, did not know and
31 could not have learned by reasonable diligence that the individual trans-
32 ported was an alien required to have a passport and visa.

33 (2) Under regulations the Attorney General prescribes, the Attorney Gen-
34 eral may compromise or waive a civil penalty under this section if—

35 (A) the carrier demonstrates that it screened all passengers on the
36 vessel or aircraft under procedures the Attorney General prescribed; or

37 (B) the Attorney General decides that circumstances exist that jus-
38 tify the compromise or waiver.

39 (d) NONAPPLICATION.—This section does not apply to a carrier or an
40 owner, agent, master, commanding officer, charterer, or consignee of a ves-
41 sel or aircraft relying on a visa or other documentation that has been re-

1 voked unless reasonable notice of the revocation is received before the alien
2 leaves.

3 **§ 10121. Assisting unlawful entry as alien crewmembers**

4 (a) CIVIL PENALTY.—A person, including the owner, agent, master, com-
5 manding officer, or consignee of a vessel or aircraft arriving in the United
6 States, is liable to the United States Government for a civil penalty of not
7 more than \$10,000 for each alien whom the person—

8 (1) knowingly signs on the articles of the vessel, or brings to the
9 United States as a crewmember of the vessel or aircraft, with intent
10 to allow or assist the alien to enter or land in the United States unlaw-
11 fully; or

12 (2) knowingly and falsely represents to a consular officer when the
13 alien applies for a visa, or to an immigration officer at the port of ar-
14 rival in the United States, that the alien is a crewmember.

15 (b) LIEN ON VESSEL OR AIRCRAFT.—A vessel or aircraft referred to in
16 subsection (a) of this section is subject to a lien for the civil penalty and
17 may be seized. A civil action in rem may be brought against the vessel or
18 aircraft to collect the penalty.

19 **§ 10122. Failure to prevent unauthorized landings**

20 (a) CIVIL PENALTY.—A person violating section 6904(a) of this title is
21 liable to the United States Government for a civil penalty of \$3,000 for each
22 violation, to be imposed by the Attorney General.

23 (b) LIEN ON VESSEL OR AIRCRAFT.—The vessel or aircraft used in
24 transporting an alien landed in violation of this section is subject to a lien
25 for the civil penalty. A civil action in rem may be brought against the vessel
26 or aircraft to collect the penalty.

27 (c) COMPROMISE.—The Attorney General may compromise the amount of
28 a civil penalty under this section.

29 **§ 10123. Failure to deport alien stowaways**

30 A person not deporting an alien stowaway as required by section
31 6907(b)(2) of this title is liable to the United States Government for a civil
32 penalty of \$3,000 for each alien stowaway not deported.

33 **§ 10124. Failure to carry out orders related to detained
34 aliens and bringing in deported aliens**

35 (a) CIVIL PENALTY.—If the Attorney General is satisfied that a person
36 has violated section 6903, 6906(c), 6907(a), or 6908 of this title or an
37 order of the Attorney General under one of those sections, the person is lia-
38 ble to the United States Government for a civil penalty of \$2,000 for each
39 violation.

40 (b) PROHIBITION ON COMPROMISE.—The Attorney General may not com-
41 promise the amount of a civil penalty under this section.

1 **§ 10125. Document fraud**

2 (a) DEFINITION.—In this section, “person”, in addition to its meaning
3 under section 1 of title 1, includes any other entity.

4 (b) VIOLATIONS.—(1) A person may not knowingly—

5 (A) forge, counterfeit, alter, or falsely make a document to satisfy
6 a requirement of this title;

7 (B) use, attempt to use, possess, obtain, accept, receive, or provide
8 a forged, counterfeit, altered, or falsely made document to satisfy a re-
9 quirement of this title;

10 (C) use, provide, or attempt to use or provide, a document lawfully
11 issued to a person other than the possessor (including a deceased indi-
12 vidual), to satisfy a requirement of this title; or

13 (D) accept, receive, or provide a document lawfully issued to a per-
14 son other than the possessor (including a deceased individual), to com-
15 ply with section 11103 of this title.

16 (2) This subsection does not apply to subchapter I of chapter 5, sub-
17 chapters II and III of chapter 131, chapters 133–137, and section 13902
18 of this title.

19 (c) AUTHORITY IN CONDUCTING INVESTIGATIONS AND HEARINGS.—(1)
20 In conducting an investigation or hearing under this section—

21 (A) an immigration officer or administrative law judge shall have
22 reasonable access to examine evidence of a person being investigated;
23 and

24 (B) an administrative law judge may subpoena, if necessary, the at-
25 tendance of witnesses and the production of evidence at any designated
26 place.

27 (2) If a person disobeys a subpoena issued under this subsection, an ap-
28 propriate district court of the United States, on application by the Attorney
29 General, may issue an order to comply with the subpoena. The court may
30 punish a failure to comply with the order of the court as a contempt of
31 court.

32 (d) HEARINGS.—(1) The Attorney General may issue an order referred
33 to in subsection (e) of this section against a person for violating subsection
34 (b) of this section only after providing notice and an opportunity for a hear-
35 ing. A hearing must be requested within a reasonable time (established by
36 the Attorney General, but at least 30 days) after the date of the notice.

37 (2) If a timely request for a hearing is not made, the Attorney General
38 may issue an order referred to in subsection (e) of this section without a
39 hearing.

40 (3) If a timely request for a hearing is made, the hearing shall be con-
41 ducted by an administrative law judge as provided in section 554 of title

1 5 at the nearest practicable place to the place where the person resides or
2 the alleged violation occurred. If the judge finds by a preponderance of the
3 evidence that the person has violated subsection (b) of this section, the
4 judge shall—

5 (A) state findings of fact; and

6 (B) issue and have served on the person an order referred to in sub-
7 section (e) of this section.

8 (e) CEASE AND DESIST ORDERS.—(1) For a violation of subsection (b)
9 of this section, an order issued under this section shall require the person
10 to cease and desist from the violation and to pay a civil penalty of—

11 (A) at least \$250, but not more than \$2,000, for each document
12 used, accepted, or created and each time a document is used, accepted,
13 or created; or

14 (B) at least \$2,000, but not more than \$5,000, for each document
15 used, accepted, or created and each time a document is used, accepted,
16 or created, if the person previously was subject to an order under this
17 subsection.

18 (2) Under paragraph (1) of this subsection, if the person is an entity
19 composed of distinct, physically separate subdivisions each of which provides
20 separately for the hiring, recruiting, or referring for employment, without
21 reference to the practices of, and not under control of or common control
22 with, another subdivision, each subdivision is deemed a separate person.

23 (f) FINALITY OF DECISIONS AND ORDERS.—The decision and order of an
24 administrative law judge under this section becomes the final decision and
25 order of the Attorney General unless the Attorney General changes or va-
26 cates the decision and order within 30 days after the date of the decision
27 and order.

28 (g) JUDICIAL REVIEW.—(1) Except as provided in paragraph (2) of this
29 subsection, a person adversely affected by a final order under this section
30 may file a petition for review of the order in the court of appeals for the
31 appropriate circuit within 45 days after the date the final order is issued.

32 (2) An order of the Attorney General issued without a hearing as pro-
33 vided in subsection (d)(2) of this section is not appealable.

34 (h) ENFORCEMENT OF ORDER.—If a person does not comply with a final
35 order issued under this section, the Attorney General shall bring a civil ac-
36 tion in an appropriate district court of the United States to seek compliance
37 with the order. The validity and appropriateness of the order may not be
38 reviewed in the action.

39 (i) INVESTIGATIVE, PROTECTIVE, AND INTELLIGENCE ACTIVITIES NOT
40 PROHIBITED.—This section does not prohibit—

1 (1) any lawfully authorized investigative, protective, or intelligence
2 activity of a law enforcement agency of the United States, a State, or
3 a subdivision of a State or of an intelligence agency of the United
4 States; or

5 (2) any activity authorized under chapter 224 of title 18.

6 (j) CONSTRUCTION.—This section does not affect a penalty that may be
7 imposed for an activity prohibited under both this section and title 18.

8 **§ 10126. Clearing vessels and aircraft**

9 (a) CLEARANCE BEFORE DECISION ON LIABILITY.—A vessel or aircraft
10 may be granted clearance before a decision on liability is made under sec-
11 tion 10112–10117, 10119, 10120, 10123, or 10124 of this title only if a
12 bond approved by the Attorney General or an amount sufficient to pay the
13 civil penalty is deposited.

14 (b) PROHIBITION ON CLEARANCE WHEN PENALTY UNPAID.—A vessel or
15 aircraft may not be granted clearance if a civil penalty imposed under sec-
16 tion 10112–10117, 10119, 10120, 10123, or 10124 of this title is not paid.

17 SUBCHAPTER III—CRIMINAL PENALTIES

18 **§ 10141. Violating period of conditional landing permit**

19 An alien crewmember willfully remaining in the United States after the
20 period allowed by a conditional permit issued under section 2703(b) of this
21 title shall be fined under title 18, imprisoned for not more than 6 months,
22 or both.

23 **§ 10142. Failure to register and be fingerprinted**

24 An alien required to apply for registration and to be fingerprinted in the
25 United States and willfully failing to apply or to be fingerprinted, and a
26 parent or legal guardian required to apply for the registration of an alien
27 and willfully failing to apply, shall be fined under title 18, imprisoned for
28 not more than 6 months, or both.

29 **§ 10143. Failure to carry a certificate of alien registration or 30 alien registration receipt card**

31 An alien violating section 8103(b) of this title shall be fined under title
32 18, imprisoned for not more than 30 days, or both.

33 **§ 10144. Failure to provide addresses**

34 An individual violating section 8104 of this title shall be fined under title
35 18, imprisoned for not more than 30 days, or both.

36 **§ 10145. False and fraudulent registration**

37 An alien, or a parent or legal guardian of an alien, who files an applica-
38 tion for registration knowing that the application contains a false statement,
39 or who registers or attempts to register himself, herself, or another individ-
40 ual through fraud, shall be fined under title 18, imprisoned for not more
41 than 6 months, or both.

1 **§ 10146. Counterfeiting alien registration documents**

2 A person that with unlawful intent makes an engraving, photograph,
3 print, impression, or imitation of a certificate of alien registration or an
4 alien registration receipt card, except when authorized under regulations
5 prescribed by the Attorney General, shall be fined under title 18, imprisoned
6 for not more than 5 years, or both.

7 **§ 10147. Bringing in and harboring aliens**

8 (a) CRIMINAL PENALTIES.—(1)(A) A person shall be punished as pro-
9 vided in subparagraph (B) of this paragraph if the person—

10 (i) knowing an individual is an alien, brings or attempts to bring the
11 individual to the United States at a place not designated as a port of
12 entry or not designated by the Attorney General, even if the alien has
13 received prior authorization to come to, enter, or reside in the United
14 States, and regardless of any future official action that may be taken
15 with respect to the alien;

16 (ii) knowing, or in reckless disregard of whether, an alien has come
17 to, has entered, or remains in the United States in violation of law,
18 transports or moves, or attempts to transport or move, the alien within
19 the United States in furtherance of that violation;

20 (iii) knowing, or in reckless disregard of whether, an alien has come
21 to, has entered, or remains in the United States in violation of law,
22 conceals, harbors, or shields from detection, or attempts to conceal,
23 harbor, or shield from detection, the alien; or

24 (iv) encourages or induces an alien to come to, enter, or reside in
25 the United States, knowing, or in reckless disregard of whether, the
26 coming, entering, or residing is unlawful.

27 (B) For each alien with respect to whom a violation of subparagraph (A)
28 of this paragraph occurs, the person committing the violation—

29 (i) for a violation of subparagraph (A)(i), shall be fined under title
30 18, imprisoned for not more than 10 years, or both;

31 (ii) for a violation of subparagraph (A)(ii), (iii), or (iv), shall be fined
32 under title 18, imprisoned for not more than 5 years, or both;

33 (iii) for a violation of subparagraph (A)(i), (ii), (iii), or (iv) during
34 and in relation to which the person causes serious bodily injury (as de-
35 fined in section 1365 of title 18) to, or places in jeopardy the life of,
36 any person, shall be fined under title 18, imprisoned for not more than
37 20 years, or both; and

38 (iv) for a violation of subparagraph (A)(i), (ii), (iii), or (iv) resulting
39 in death, shall be fined under title 18, imprisoned for any term of years
40 or for life or punished by death, or both.

1 (2)(A) A person shall be punished as provided in subparagraph (B) of
2 this paragraph if the person, knowing or in reckless disregard of whether
3 an alien has not received prior authorization to come to, enter, or reside
4 in the United States, brings or attempts to bring the alien to the United
5 States, regardless of any future official action that may be taken with re-
6 spect to the alien.

7 (B) For each transaction constituting a violation of subparagraph (A) of
8 this paragraph, regardless of the number of aliens involved, the person com-
9 mitting the violation shall be fined under title 18, imprisoned for not more
10 than one year, or both, except that if the violation is—

11 (i) a 2d or subsequent violation or one in which the alien is not
12 brought and presented to an immigration officer at a designated port
13 of entry immediately on arrival, the person shall be fined under title
14 18, imprisoned for not more than 5 years, or both; or

15 (ii) done for commercial advantage or private financial gain, the per-
16 son shall be fined under title 18, imprisoned for not more than 10
17 years, or both.

18 (b) SEIZURE AND FORFEITURE OF CONVEYANCE.—(1) A conveyance
19 used in violating subsection (a) of this section shall be seized and may be
20 forfeited. However, a conveyance—

21 (A) used by a person as a common carrier in carrying out common
22 carrier business may be forfeited only if the owner or person in charge
23 of the conveyance consented to, or was privy to, the violation; and

24 (B) may not be forfeited if the owner establishes that another person
25 committed the violation when the conveyance was in the possession of
26 another person in violation of the criminal laws of the United States
27 or of a State.

28 (2) A conveyance may be seized under this section without a warrant if
29 there is probable cause to believe it has been or is being used in violating
30 subsection (a) of this section and circumstances exist in which a warrant
31 is not required constitutionally.

32 (c) DISPOSITION OF FORFEITED CONVEYANCE.—When a conveyance is
33 forfeited under this section, the Attorney General may—

34 (1) keep the conveyance for official use;

35 (2) sell the conveyance and shall use the proceeds to pay the ex-
36 penses of the proceedings for forfeiture and sale, including seizure,
37 maintenance of custody, advertising, and court costs;

38 (3) require the Administrator of General Services, or the Adminis-
39 trator of the Maritime Administration if appropriate under section
40 203(i) of the Federal Property and Administrative Services Act of

1 1949 (40 U.S.C. 484(i)), to take custody of the conveyance and dispose
2 of it under law; or

3 (4) dispose of the conveyance under a compromise made by the At-
4 torney General.

5 (d) PROOF IN FORFEITURE ACTION.—In a civil action brought to forfeit
6 a conveyance seized under this section, a person claiming the conveyance
7 has the burden of proof. However, the Attorney General first must show
8 probable cause in bringing the action. In deciding whether probable cause
9 exists, each of the following is prima facie evidence that an alien involved
10 in an alleged violation had not received prior authorization to come to,
11 enter, or reside in the United States or had come to, entered, or remained
12 in the United States unlawfully:

13 (1) a record of a judicial or administrative proceeding in which the
14 alien's status was an issue and in which it was decided that the alien
15 had not received prior authorization to come to, enter, or reside in the
16 United States or had come to, entered, or remained in the United
17 States unlawfully.

18 (2) official records of the Immigration and Naturalization Service or
19 the Department of State showing that the alien had not received prior
20 authorization to come to, enter, or reside in the United States or had
21 come to, entered, or remained in the United States unlawfully.

22 (3) testimony by an immigration officer, having personal knowledge
23 about the alien's status, that the alien had not received prior authoriza-
24 tion to come to, enter, or reside in the United States or had come to,
25 entered, or remained in the United States unlawfully.

26 (e) APPLICATION OF LAWS RELATED TO SEIZURES AND FORFEITURES
27 FOR VIOLATING CUSTOMS LAWS.—Laws related to the seizure, forfeiture,
28 and condemnation of property for violating the customs laws, disposition of
29 the property or the proceeds of sale of the property, compromise of the for-
30 feiture or a related claim, and award of compensation to an informer be-
31 cause of the forfeiture apply to a seizure or forfeiture under this section
32 if not inconsistent with this section. However, duties and powers of persons
33 in seizing and forfeiting property under the customs laws shall be carried
34 out by persons the Attorney General authorizes to conduct a seizure or for-
35 feiture under this section.

36 (f) INDIVIDUALS AUTHORIZED TO MAKE ARRESTS.—Only officers and
37 employees of the Service designated by the Attorney General, individually
38 or by class, and all other officers and employees who enforce criminal laws,
39 may make arrests for a violation of this section.

1 **§ 10148. Improper entry of aliens**

2 (a) CRIMINAL OFFENSES.—An alien shall be punished as provided in sub-
3 section (b) of this section if the alien—

4 (1) enters or attempts to enter the United States—

5 (A) at a time or place not designated by an immigration officer;

6 or

7 (B) by a willfully false or misleading representation or the will-
8 ful concealment of a material fact; or

9 (2) eludes inspection or examination by an immigration officer.

10 (b) CRIMINAL PENALTIES.—An alien violating subsection (a) of this sec-
11 tion shall be—

12 (1) fined under title 18, imprisoned for not more than 6 months, or
13 both, for a first violation; and

14 (2) fined under title 18, imprisoned for not more than 2 years, or
15 both, for a subsequent violation.

16 (c) VENUE.—A proceeding under this section may be brought in any judi-
17 cial district in which the violation occurs or in which the alien is appre-
18 hended.

19 **§ 10149. Reentry of deported aliens**

20 (a) CRIMINAL PENALTY.—(1) Except as otherwise provided in this sec-
21 tion, an alien who has been arrested and deported or excluded and deported
22 and then enters, attempts to enter, or is found in the United States shall
23 be fined under title 18, imprisoned for not more than 2 years, or both.

24 (2)(A) In subparagraphs (B) and (C) of this paragraph, “deportation”
25 includes an agreement to be deported to which an alien stipulates during
26 a criminal trial.

27 (B) If the alien’s deportation followed conviction of at least 3 misdemean-
28 ors involving drugs, crimes against the person, or both, or a felony (except
29 an aggravated felony) and the alien enters, attempts to enter, or is found
30 in the United States after November 17, 1988, the alien shall be fined
31 under title 18, imprisoned for not more than 10 years, or both.

32 (C) If the alien’s deportation followed conviction of an aggravated felony
33 and the alien enters, attempts to enter, or is found in the United States
34 after November 17, 1988, the alien shall be fined under title 18, imprisoned
35 for not more than 20 years, or both.

36 (b) NONAPPLICATION.—Subsection (a) of this section does not apply to
37 an alien—

38 (1) when the Attorney General specifically consents to the alien’s
39 reapplying for admission before the alien—

40 (A) reboards at a place outside the United States; or

1 (B) applies for admission from a foreign territory contiguous to
2 the United States; or

3 (2) previously excluded and deported who establishes that prior con-
4 sent by the Attorney General is not required under this title or other
5 prior law.

6 (c) VENUE.—A proceeding under this section may be brought in any judi-
7 cial district in which the violation occurs or in which the alien is appre-
8 hended.

9 **§ 10150. Assisting certain excludable aliens to enter the**
10 **United States**

11 A person knowingly assisting or conspiring to assist an alien to enter the
12 United States shall be fined under title 18, imprisoned for not more than
13 10 years, or both, if—

14 (1) the alien is excludable under section 6307(a) of this title because
15 of a conviction for an aggravated felony and the assistance occurred
16 after November 17, 1988; or

17 (2) the alien is excludable under section 6308 of this title.

18 **§ 10151. Importing aliens for immoral purposes**

19 (a) CRIMINAL PENALTY.—A person shall be fined under title 18, impris-
20 oned for not more than 10 years, or both, if the person—

21 (1) imports or attempts to import an alien into the United States
22 for prostitution or another immoral purpose; or

23 (2) holds, attempts to hold, maintains, controls, supports, employs,
24 or harbors an alien in furthering an importation violating clause (1)
25 of this subsection.

26 (b) VENUE.—A proceeding under this section may be brought in any judi-
27 cial district into which the alien is brought in violation of this section or
28 in which a violation of this section occurs.

29 (c) TESTIMONY OF SPOUSE.—Testimony of a spouse is admissible and is
30 competent evidence in a proceeding under this section.

31 **§ 10152. Violation of supervision pending deportation**

32 An alien willfully violating a requirement imposed under section 6537(d)
33 of this title, including giving false information in response to such a require-
34 ment, shall be fined under title 18, imprisoned for not more than one year,
35 or both.

36 **§ 10153. Willful failure to leave the United States**

37 (a) CRIMINAL OFFENSES.—An alien against whom the Attorney General
38 has issued a final order of deportation because of any ground described in
39 subchapter I of chapter 65 of this title shall be punished as provided in sub-
40 section (c) of this section if the alien—

41 (1) willfully does not—

- 1 (A) leave the United States within the 6-month period that be-
2 gins on the latest of—
- 3 (i) the date of the Attorney General's final order;
- 4 (ii) if judicial review occurs, the date of the court's final
5 order; or
- 6 (iii) if section 6537(f) of this title applies, the date on
7 which the Attorney General decides that the alien has reen-
8 tered the United States unlawfully;
- 9 (B) apply timely in good faith for a document the alien needs
10 to leave the United States; or
- 11 (C) appear for deportation at the time and place the Attorney
12 General requires under the order of deportation; or
- 13 (2) takes an action to prevent or hamper, or conspire to prevent or
14 hamper, the alien from leaving the United States under the deportation
15 order.
- 16 (b) ATTEMPTED RELIEF NOT PROHIBITED.—Subsection (a) of this sec-
17 tion does not prohibit an alien from trying to obtain—
- 18 (1) a cancellation of the deportation order;
- 19 (2) an exemption from the deportation order; or
- 20 (3) a release from incarceration or custody.
- 21 (c) CRIMINAL PENALTIES.—An alien violating subsection (a) of this sec-
22 tion shall be fined under title 18, imprisoned for not more than 4 years,
23 or both. However, if the alien is deportable because of a ground described
24 in sections 6505–6509 of this title, the alien shall be fined under title 18,
25 imprisoned for not more than 10 years, or both.
- 26 (d) SUSPENSION OF SENTENCE AND RELEASE.—(1) For good cause, the
27 court sentencing an alien convicted of violating subsection (a) of this section
28 may suspend the sentence and order the alien released on conditions the
29 court prescribes.
- 30 (2) In deciding whether good cause exists for releasing an alien under
31 paragraph (1) of this subsection, the court shall consider factors such as—
- 32 (A) the age, health, and period of detention of the alien;
- 33 (B) the effect of the alien's release on the security of the United
34 States and public peace or safety;
- 35 (C) the likelihood that the alien will resume or follow a course of
36 conduct that made or would make the alien deportable;
- 37 (D) efforts the alien or a representative of a country to which the
38 alien is ordered deported makes to expedite the alien's leaving the
39 United States;

1 (E) the reason why the United States Government cannot obtain a
 2 passport or other travel document or deportation facilities from a coun-
 3 try to which the alien is ordered deported; and

4 (F) the eligibility of the alien for discretionary release under the im-
 5 migration laws.

6 **§ 10154. Marriage to evade immigration laws**

7 (a) CRIMINAL PENALTY.—An individual who knowingly marries to evade
 8 the immigration laws shall be fined under title 18, imprisoned for not more
 9 than 5 years, or both.

10 (b) VENUE.—A proceeding under this section may be brought in any judi-
 11 cial district in which the violation occurs or in which the individual is appre-
 12 hended.

13 **§ 10155. Misrepresentations in applications for adjustment**
 14 **of status**

15 An individual knowingly and willfully making a material misrepresenta-
 16 tion in an application or supporting document filed under section 9303 or
 17 9304(a)(1) of this title, or making or using a false document in connection
 18 with the application, shall be fined under title 18, imprisoned for not more
 19 than 5 years, or both.

20 **§ 10156. Disclosing confidential information in applications**

21 An individual violating section 9308(b) of this title shall be fined under
 22 title 18, imprisoned for not more than 5 years, or both.

23 **§ 10157. Establishing a commercial enterprise to evade im-**
 24 **migration laws**

25 (a) CRIMINAL PENALTY.—An individual who knowingly establishes a
 26 commercial enterprise to evade the immigration laws shall be fined under
 27 title 18, imprisoned for not more than 5 years, or both.

28 (b) VENUE.—A proceeding under this section may be brought in any judi-
 29 cial district in which the violation occurs or in which the individual is appre-
 30 hended.

31 **SUBTITLE III—UNLAWFUL EMPLOYMENT**
 32 **PRACTICES**

CHAPTER	Sec.
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33 **CHAPTER 111—UNLAWFUL EMPLOYMENT OF ALIENS**

Sec.
11101. Definitions.
11102. Employment of unauthorized aliens.
11103. Employment verification system.
11104. Evaluating and changing employment verification system.
11105. Compliance.
11106. Criminal penalties and civil actions for pattern or practice violations.
11107. Indemnity prohibition.

11108. Conspicuous statement requirement.

11109. Preemption of State and local law.

1 **§ 11101. Definitions**

2 In this chapter—

3 (1) “person”, in addition to its meaning under section 1 of title 1,
4 includes any other entity.

5 (2) “unauthorized alien” means, with respect to employment at a
6 particular time, an alien who is not at that time—

7 (A) lawfully admitted for permanent residence; or

8 (B) authorized to be employed in that employment by this title
9 or by the Attorney General.

10 **§ 11102. Employment of unauthorized aliens**

11 (a) PROHIBITIONS.—(1) A person—

12 (A) may not hire, or recruit or refer for a fee, for employment in
13 the United States an alien knowing the alien is an unauthorized alien;

14 (B) may not hire for employment in the United States an individual
15 without complying with section 11103 of this title; or

16 (C) if the person is an agricultural association, agricultural em-
17 ployer, or farm labor contractor (as defined in section 3 of the Migrant
18 and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802)),
19 may not recruit or refer for a fee for employment in the United States
20 an individual without complying with section 11103 of this title.

21 (2) A person may not continue to employ in the United States an alien
22 knowing the alien is an unauthorized alien.

23 (b) USE OF LABOR THROUGH CONTRACT.—A person violates subsection
24 (a)(1)(A) of this section if the person uses a contract, subcontract, or ex-
25 change that is made, renegotiated, or extended after November 6, 1986, to
26 obtain the labor of an alien in the United States, knowing the alien is an
27 unauthorized alien.

28 (c) DEFENSE.—Good faith compliance with section 11103 of this title is
29 an affirmative defense under subsection (a)(1)(A) of this section.

30 (d) STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of
31 subsections (a)(1)(B) and (C) and (c) of this section, a person hiring an
32 individual referred by a State employment agency (as defined by the Attor-
33 ney General) is deemed to have complied with section 11103 of this title
34 if the person has and retains (for the period and in the way described in
35 section 11103(c)) appropriate documentation of the referral certifying that
36 the agency complied with section 11103 for that individual.

37 (e) NONAPPLICATION.—(1) Subsection (a)(1) of this section does not
38 apply to hiring, recruiting, or referring that occurred before November 6,
39 1986.

1 (2) Subsection (a)(2) of this section does not apply to continuing employ-
2 ment of an alien hired before November 6, 1986.

3 (f) TEMPORARY PROVISIONS.—(1) The Attorney General may not con-
4 duct a proceeding or issue an order under this chapter for a violation al-
5 leged to have occurred during the period from December 1, 1986, through
6 May 31, 1987.

7 (2) If the Attorney General has reason to believe that a person has com-
8 mitted a first violation of this section during the period from June 1, 1987,
9 through May 31, 1988, the Attorney General—

10 (A) shall issue a citation to the person; and

11 (B) may not conduct a proceeding or issue an order for the violation.

12 (3) In applying paragraphs (1) and (2) of this subsection when an alien
13 is deemed to be employed in the United States under this chapter as pro-
14 vided in section 8704 of title 46—

15 (A) in paragraph (1), substitute “August 1, 1988, through January
16 31, 1989” for “December 1, 1986, through May 31, 1987”; and

17 (B) in paragraph (2), substitute “February 1, 1989, through Janu-
18 ary 31, 1990” for “June 1, 1987, through May 31, 1988”.

19 **§ 11103. Employment verification system**

20 (a) ATTESTATION AFTER EXAMINING DOCUMENTS.—(1) A person hiring,
21 or recruiting or referring for a fee, an individual for employment in the
22 United States must attest, under penalty of perjury and on a form the At-
23 torney General prescribes by regulation, that the person has verified that
24 the individual is not an unauthorized alien by examining—

25 (A) a document specified in paragraph (3) of this subsection; or

26 (B)(i) a document specified in paragraph (4) of this subsection; and

27 (ii) a document specified in paragraph (5) of this subsection.

28 (2) A person has examined a document as required by paragraph (1) of
29 this subsection if the person has found that the document reasonably ap-
30 pears on its face to be genuine. The person is not required to request, and
31 the individual is not required to provide, another document if the individual
32 has provided a document or combination of documents complying with para-
33 graph (1) that reasonably appear on their face to be genuine.

34 (3) A document required under paragraph (1)(A) of this subsection is an
35 individual’s—

36 (A) United States passport;

37 (B) certificate of United States citizenship;

38 (C) certificate of naturalization;

39 (D) unexpired foreign passport, if the passport has an appropriate,
40 unexpired endorsement of the Attorney General authorizing the individ-
41 ual’s employment in the United States; or

1 (E) resident alien card or other alien registration card, if the card—
2 (i) contains the individual's photograph or other identifying in-
3 formation the Attorney General prescribes by regulation as accept-
4 able; and

5 (ii) is evidence of authorization of employment in the United
6 States.

7 (4) A document required under paragraph (1)(B)(i) of this subsection is
8 an individual's—

9 (A) social security account number card (unless it states on its face
10 that issuance of the card does not authorize employment in the United
11 States);

12 (B) certificate of birth in the United States or establishing United
13 States nationality at birth, if the certificate is acceptable under regula-
14 tions prescribed by the Attorney General; or

15 (C) other documentation providing authorization of employment in
16 the United States that the Attorney General prescribes by regulation
17 as acceptable.

18 (5) A document required under paragraph (1)(B)(ii) of this subsection is
19 an individual's—

20 (A) driver's license or similar document issued for identification by
21 a State, if it contains the individual's photograph or other identifying
22 information the Attorney General prescribes by regulation as accept-
23 able; or

24 (B) for an individual less than 16 years of age or in a State that
25 does not issue an identification document other than a driver's license,
26 documentation of personal identity that the Attorney General pre-
27 scribes by regulation as providing a reliable means of identification.

28 (b) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The
29 individual must attest, under penalty of perjury and on the form prescribed
30 under subsection (a) of this section, that the individual is—

31 (1) a national of the United States;

32 (2) an alien lawfully admitted for permanent residence; or

33 (3) an alien authorized by this title or by the Attorney General to
34 be hired, recruited, or referred for the employment.

35 (c) RETENTION OF VERIFICATION FORM.—After the form is completed
36 as provided in subsections (a) and (b) of this section, the person must retain
37 the form and make it available for inspection by officers and employees of
38 the Immigration and Naturalization Service, the Special Counsel for Immi-
39 gration-Related Unfair Employment Practices, or the Secretary of Labor
40 during a period beginning on the date of the hiring, recruiting, or referral
41 and ending—

1 (1) if the individual is recruited or referred for a fee but not hired,
2 3 years after the date of the recruiting or referral; or

3 (2) if the individual is hired, 3 years after the date of hire or one
4 year after the date the employment ends, whichever is later.

5 (d) COPYING DOCUMENTATION.—A person may copy a document pre-
6 sented by an individual under this section and retain the copy, but only (ex-
7 cept as otherwise permitted by law) to comply with this section.

8 (e) LIMITATION ON USE OF FORMS.—A form completed under this sec-
9 tion, and information contained in or appended to the form, may be used
10 only to enforce this title and sections 1001, 1028, 1546, and 1621 of title
11 18.

12 (f) NATIONAL IDENTIFICATION CARD NOT AUTHORIZED.—This chapter
13 does not authorize the establishment, issuance, or use of a national identi-
14 fication card.

15 **§ 11104. Evaluating and changing employment verification**
16 **system**

17 (a) DEFINITION.—In this section, “major change” means a change that
18 would—

19 (1) require an individual to present a new card or other document
20 (designed specifically to verify identity, employment eligibility, or both)
21 at the time of hiring, recruitment, or referral;

22 (2) provide for a telephone verification system under which—

23 (A) an employer, recruiter, or referrer must give an officer or
24 employee of the United States Government information about the
25 immigration status of a prospective employee; and

26 (B) the officer or employee of the Government gives the em-
27 ployer, recruiter, or referrer a verification code that the employer,
28 recruiter, or referrer must record; or

29 (3) require a change in a card used for accounting under the Social
30 Security Act (42 U.S.C 301 et seq.), including a change requiring that
31 the only social security account number card that may be presented to
32 comply with section 11103(a)(4)(A) of this title is a card in a counter-
33 feit-resistant form consistent with section 205(c)(2)(F) (last sentence)
34 of the Social Security Act (42 U.S.C. 405(c)(2)(F) (last sentence)).

35 (b) PRESIDENTIAL MONITORING AND IMPROVEMENTS.—(1) The Presi-
36 dent shall—

37 (A) provide for monitoring and evaluating the degree to which the
38 employment verification system under section 11103 of this title pro-
39 vides a secure system to verify employment eligibility in the United
40 States; and

1 (B) examine the suitability of using existing United States Govern-
2 ment and State identification systems to verify employment eligibility
3 in the United States.

4 (2) To the extent the President finds the system is not a secure system
5 to verify employment eligibility in the United States, the President shall
6 make changes in and additions to the system necessary to establish a secure
7 system to verify employment eligibility in the United States—

8 (A) subject to subsections (c)–(f) of this section; and

9 (B) after considering the results of any demonstration project con-
10 ducted under subsection (g) of this section.

11 (c) CHANGE REQUIREMENTS.—A change proposed by the President
12 under subsection (b) of this section must be designed so that the system,
13 as changed, will meet the following requirements:

14 (1) The system must be able to verify reliably whether—

15 (A) an individual with the identity claimed by an employee or
16 prospective employee is eligible to work; and

17 (B) the employee or prospective employee is claiming the iden-
18 tity of another individual.

19 (2) If the system requires that a document be presented to or exam-
20 ined by an employer, the document must be in a form resistant to
21 counterfeiting and tampering.

22 (3) Personal information used by the system may be made available
23 only to the extent necessary to verify that an individual is not an unau-
24 thorized alien.

25 (4) The system must protect the privacy and security of personal in-
26 formation and identifiers used in the system.

27 (5) A verification that an individual is eligible to be employed in the
28 United States may be withheld or revoked only if the individual is an
29 unauthorized alien.

30 (6) The system may not be used for law enforcement, except to en-
31 force this title and sections 1001, 1028, 1546, and 1621 of title 18.

32 (7) If the system requires an individual to present a new card or
33 other document (designed specifically to verify employment eligibility)
34 at the time of hiring, recruitment, or referral, the document may not
35 be required to be presented for another purpose (except under this title
36 or for enforcement of sections 1001, 1028, 1546, and 1621 of title 18)
37 or to be carried on the individual.

38 (d) NOTICES TO CONGRESS BEFORE MAKING CHANGES.—(1) Before car-
39 rying out a change, the President must submit a written report of the pro-
40 posed change to the Committees on the Judiciary of the Senate and the
41 House of Representatives. If the President proposes a change affecting so-

1 cial security account number cards, the President also shall submit the re-
2 port to the Committee on Finance of the Senate and the Committee on
3 Ways and Means of the House of Representatives. A report under this para-
4 graph shall include recommendations for civil and criminal penalties for un-
5 authorized use or disclosure of the information or identifiers used in the sys-
6 tem. The report shall be submitted at least—

7 (A) 60 days before the date the change is to be carried out if the
8 change is not a major change;

9 (B) one year before the date the change is to be carried out if the
10 change is a major change as defined in subsection (a)(3) of this sec-
11 tion; or

12 (C) 2 years before the date the change is to be carried out if the
13 change is a major change as defined in subsection (a)(1) or (2) of this
14 section.

15 (2) The President shall publish promptly in the Federal Register the sub-
16 stance of a major change reported to Congress under this subsection.

17 (e) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—(1) The Committees
18 on the Judiciary of the Senate and the House of Representatives shall—

19 (A) publish in the Congressional Record the substance of a major
20 change submitted by the President under subsection (d) of this section;

21 (B) hold hearings on the feasibility and desirability of the change;
22 and

23 (C) within the 2-year period before the change is to be carried out,
24 report to their respective Houses findings on whether the change
25 should be made.

26 (2) A major change may be carried out only if an amount is appropriated
27 by law specifically to carry out the change.

28 (f) PAYMENT OF COSTS.—Costs incurred under this section in developing
29 and carrying out a change described in subsection (a)(3) of this section may
30 not be paid out of a trust fund established under the Social Security Act
31 (42 U.S.C. 301 et seq.).

32 (g) DEMONSTRATION PROJECTS.—The President may undertake dem-
33 onstration projects consistent with subsection (c) of this section of different
34 changes in the system. A project may not be for more than 5 years. The
35 President shall report to Congress on the results of each project conducted
36 under this subsection.

37 **§ 11105. Compliance**

38 (a) COMPLAINTS AND INVESTIGATIONS.—The Attorney General shall es-
39 tablish procedures for—

40 (1) a person to file a written, signed complaint of a violation of sec-
41 tion 11102(a) or 11107(a) of this title;

1 (2) investigating a complaint that, on its face, has a substantial
2 probability of validity;

3 (3) investigating other violations of section 11102(a) or 11107(a) of
4 this title that the Attorney General considers appropriate; and

5 (4) designating a unit in the Immigration and Naturalization Service
6 that has, as its primary duty, the prosecution under this section of vio-
7 lations of section 11102(a) or 11107(a) of this title.

8 (b) AUTHORITY IN CONDUCTING INVESTIGATIONS AND HEARINGS.—(1)
9 In conducting an investigation or hearing under this section—

10 (A) the immigration officer or administrative law judge conducting
11 the investigation or hearing shall have reasonable access to examine
12 evidence of a person being investigated; and

13 (B) the administrative law judge may subpoena, if necessary, the at-
14 tendance of witnesses and the production of evidence at any designated
15 place.

16 (2) If a person disobeys a subpoena issued under this subsection, an ap-
17 propriate district court of the United States, on application by the Attorney
18 General, may issue an order to comply with the subpoena. The court may
19 punish a failure to comply with the order of the court as a contempt of
20 court.

21 (c) HEARINGS.—(1) The Attorney General may issue an order referred
22 to in subsections (d)–(f) of this section against a person for violating section
23 11102(a) or 11107(a) of this title only after providing notice and an oppor-
24 tunity for a hearing. A hearing must be requested within a reasonable time
25 (established by the Attorney General, but at least 30 days) after the date
26 of the notice.

27 (2) If a timely request for a hearing is not made, the Attorney General
28 may issue an order referred to in subsections (d)–(f) of this section without
29 a hearing.

30 (3) If a timely request for a hearing is made, the hearing shall be con-
31 ducted by an administrative law judge as provided in section 554 of title
32 5 at the nearest practicable place to the place where the person resides or
33 the alleged violation occurred. If the judge finds by a preponderance of the
34 evidence that the person has violated section 11102(a) or 11107(a) of this
35 title, the judge shall—

36 (A) state findings of fact; and

37 (B) issue and have served on the person an order referred to in sub-
38 sections (d)–(f) of this section.

39 (d) ORDERS INVOLVING HIRING, RECRUITING, AND REFERRAL VIOLA-
40 TIONS.—(1) For a violation of section 11102(a)(1)(A) or (2) of this title,
41 an order issued under this section—

1 (A) shall require the person to cease and desist from the violation
2 and to pay a civil penalty of—

3 (i) at least \$250, but not more than \$2,000, for each unauthor-
4 ized alien involved in the violation;

5 (ii) at least \$2,000, but not more than \$5,000, for each unau-
6 uthorized alien involved in the violation if the person previously was
7 subject to one order under this subsection; or

8 (iii) at least \$3,000, but not more than \$10,000, for each unau-
9 uthorized alien involved in the violation if the person previously was
10 subject to more than one order under this subsection; and

11 (B) may require the person—

12 (i) to comply for not more than 3 years with section 11103 of
13 this title or, if applicable, with section 11104 of this title, for indi-
14 viduals hired or recruited or referred for a fee; and

15 (ii) to take other appropriate remedial action.

16 (2) Under paragraph (1) of this subsection, if the person is an entity
17 composed of distinct, physically separate subdivisions each of which provides
18 separately for the hiring, recruiting, or referring for employment, without
19 reference to the practices of, and not under control of or common control
20 with, another subdivision, each subdivision is deemed a separate entity.

21 (e) ORDERS INVOLVING PAPERWORK VIOLATIONS.—For a violation of
22 section 11102(a)(1)(B) or (C) of this title, an order issued under this sec-
23 tion shall require the person to pay a civil penalty of at least \$100, but not
24 more than \$1,000, for each individual about whom the violation occurred.

25 In deciding on the amount of the penalty, consideration shall be given to—

26 (1) the size of the business of the person;

27 (2) the good faith of the person;

28 (3) the seriousness of the violation;

29 (4) whether the individual was an unauthorized alien; and

30 (5) any history of prior violations.

31 (f) ORDERS INVOLVING INDEMNITY VIOLATIONS.—For a violation of sec-
32 tion 11107(a) of this title, an order issued under this section may provide
33 for the penalty described in section 11107(b) of this title.

34 (g) FINALITY OF DECISIONS AND ORDERS.—The decision and order of
35 an administrative law judge under this section become the final decision and
36 order of the Attorney General unless the Attorney General changes or va-
37 cates the decision and order within 30 days after the date of the decision
38 and order. The Attorney General may not delegate the Attorney General's
39 authority under this subsection to a person having review authority over im-
40 migration-related matters.

1 (h) JUDICIAL REVIEW.—(1) Except as provided in paragraph (2) of this
2 subsection, a person adversely affected by a final order imposing a civil pen-
3 alty under this section may file a petition for review of the order in the
4 court of appeals for the appropriate circuit within 45 days after the date
5 the final order is issued.

6 (2) An order of the Attorney General issued without a hearing as pro-
7 vided in subsection (c)(2) of this section is not appealable.

8 (i) ENFORCEMENT OF ORDERS.—If a person does not comply with a final
9 order issued under this section, the Attorney General shall bring a civil ac-
10 tion in an appropriate district court of the United States to seek compliance
11 with the order. The validity and appropriateness of the order may not be
12 reviewed in the action.

13 **§ 11106. Criminal penalties and civil actions for pattern or**
14 **practice violations**

15 (a) CRIMINAL PENALTY.—A person engaging in a pattern or practice of
16 violations of section 11102(a)(1)(A) or (2) of this title shall be fined not
17 more than \$3,000 for each unauthorized alien involved in a violation (not-
18 withstanding the provisions of title 18 on the amount of fines), imprisoned
19 for not more than 6 months for the entire pattern or practice, or both.

20 (b) CIVIL ACTIONS.—If the Attorney General has reason to believe that
21 a person is engaged in a pattern or practice of employment, recruitment,
22 or referral in violation of section 11102(a)(1)(A) or (2) of this title, the At-
23 torney General may bring a civil action in the appropriate district court of
24 the United States for relief the Attorney General considers necessary.

25 **§ 11107. Indemnity prohibition**

26 (a) GENERAL.—A person hiring, recruiting, or referring an individual for
27 employment may not require the individual to post a bond or security, to
28 pay or agree to pay an amount, or to give another financial guarantee or
29 indemnity, against potential liability arising under this chapter related to
30 the hiring, recruiting, or referral.

31 (b) CIVIL PENALTY.—After notice and an opportunity for a hearing
32 under section 11105 of this title, a person found to have violated subsection
33 (a) of this section—

34 (1) is liable to the United States Government for a civil penalty of
35 \$1,000; and

36 (2) may be ordered administratively to return any amount received
37 in violation of subsection (a) of this section to the individual or, if the
38 individual cannot be located, to pay that amount to the general fund
39 of the Treasury.

1 **§ 11108. Conspicuous statement requirement**

2 In providing for the documentation or endorsement of authorization for
3 employment in the United States for an alien (except an alien lawfully ad-
4 mitted for permanent residence), the Attorney General shall provide that a
5 limitation on the period or type of employment or employer be stated con-
6 spicuously on the documentation or endorsement.

7 **§ 11109. Preemption of State and local law**

8 This chapter preempts State and local law imposing a civil or criminal
9 penalty (except through licensing and similar laws) on a person employing,
10 or recruiting or referring for a fee for employment, an unauthorized alien.

11 **CHAPTER 113—IMMIGRATION-RELATED UNFAIR**
12 **EMPLOYMENT PRACTICES**

Sec.

- 11301. Definitions.
- 11302. Immigration-related unfair employment practices.
- 11303. Special Counsel for Immigration-Related Unfair Employment Practices.
- 11304. Filing charges of unfair practices.
- 11305. Investigating charges and filing complaints.
- 11306. Hearings on complaints.
- 11307. Authority in conducting investigations and hearings.
- 11308. Orders of administrative law judges.
- 11309. Judicial review of final orders.
- 11310. Judicial enforcement of administrative orders.
- 11311. Attorney fees.
- 11312. Certain agency authority not affected.

13 **§ 11301. Definitions**

14 In this chapter—

15 (1) “protected individual”—

16 (A) means an individual who is—

17 (i) a national of the United States; or

18 (ii) an alien lawfully admitted for permanent residence,
19 lawfully admitted for temporary residence under section 9302
20 of this title or section 210(a) or 210A(a) of the Immigration
21 and Nationality Act (ch. 477, 66 Stat. 163), admitted as a
22 refugee under section 5105 of this title, or granted asylum
23 under section 5106 of this title; but

24 (B) does not include an alien who—

25 (i) did not apply for naturalization within 6 months after
26 first becoming eligible (because of a period of lawful perma-
27 nent residence) to apply, or, if later, before May 7, 1987; or

28 (ii) timely applied but was not naturalized within 2 years
29 after applying (excluding time taken by the Immigration and
30 Naturalization Service in processing the application), unless
31 the alien establishes that the alien is actively pursuing natu-
32 ralization.

1 (2) “person”, in addition to its meaning under section 1 of title 1,
2 includes a governmental authority.

3 **§ 11302. Immigration-related unfair employment practices**

4 (a) IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES.—It is an
5 immigration-related unfair employment practice for a person—

6 (1) to discriminate against an individual (except an unauthorized
7 alien as defined in section 11101 of this title) in hiring, or recruiting
8 or referring for employment for a fee, the individual or discharging the
9 individual from employment because of the individual’s national origin
10 or, if the individual is a protected individual, because of the individual’s
11 citizenship status; or

12 (2) after November 28, 1990, to intimidate, threaten, coerce, or re-
13 taliate against an individual—

14 (A) for the purpose of interfering with a right or privilege under
15 this chapter; or

16 (B) because the individual intends to file or has filed a charge
17 or complaint or assisted or participated in an investigation, hear-
18 ing, or proceeding under this chapter.

19 (b) CERTAIN DOCUMENT PRACTICES AS BEING UNFAIR.—After Novem-
20 ber 28, 1990, it is deemed to be an immigration-related unfair employment
21 practice under subsection (a)(1) of this section related to the hiring of an
22 individual, for a person to request, to satisfy the requirements of section
23 11103 of this title, more or different documents than are required under
24 section 11103 or to refuse to honor a document that on its face reasonably
25 appears to be genuine.

26 (c) NONAPPLICATION.—Subsection (a)(1) of this section does not apply
27 to—

28 (1) a person employing fewer than 4 employees;

29 (2) discrimination by a person because of an individual’s national or-
30 igin if the discrimination by that person against that individual is cov-
31 ered by section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-
32 2); or

33 (3) discrimination because of citizenship status that is—

34 (A) required to comply with a law, a regulation, or an executive
35 order;

36 (B) required by a contract of the United States Government or
37 a State or local government; or

38 (C) found by the Attorney General to be essential for an em-
39 ployer to do business with an agency or a State or local govern-
40 mental authority.

1 (d) PREFERENCE FOR EQUALLY QUALIFIED NATIONALS.—It is not an
2 immigration-related unfair employment practice for a person to hire, recruit,
3 or refer an individual who is a national of the United States instead of an
4 individual who is an alien if both individuals are equally qualified.

5 **§ 11303. Special Counsel for Immigration-Related Unfair**
6 **Employment Practices**

7 (a) APPOINTMENT.—The President shall appoint, by and with the advice
8 and consent of the Senate, a Special Counsel for Immigration-Related Un-
9 fair Employment Practices. The Special Counsel serves in the Department
10 of Justice for a term of 4 years. When the position is vacant, the President
11 may designate an officer or employee of the United States Government to
12 act as Special Counsel during the vacancy.

13 (b) DUTIES AND POWERS.—The Special Counsel shall carry out the du-
14 ties and powers given the Special Counsel under this chapter.

15 (c) DISSEMINATION OF INFORMATION.—(1) In cooperation with the
16 Chairman of the Equal Employment Opportunity Commission, the Secretary
17 of Labor, and the Administrator of the Small Business Administration, the
18 Special Counsel shall conduct a campaign—

19 (A) to disseminate information on the rights and remedies prescribed
20 under this chapter and title VII of the Civil Rights Act of 1964 (42
21 U.S.C. 2000e et seq.) related to immigration-related unfair employment
22 practices; and

23 (B) to increase the knowledge of employers, employees, and the pub-
24 lic about employer and employee rights, responsibilities, and remedies
25 under this chapter and title VII.

26 (2) To carry out this subsection, the Special Counsel—

27 (A) to the extent considered appropriate and subject to the availabil-
28 ity of appropriations, may make contracts with public and private orga-
29 nizations for outreach activities under the campaign; and

30 (B) shall consult with the Chairman, the Secretary, and the heads
31 of other appropriate agencies.

32 (3) Not more than \$10,000,000 may be appropriated for each fiscal year
33 to carry out this subsection.

34 (d) OUTREACH PROGRAMS.—Not more than \$3,000,000 of the unobli-
35 gated balances remaining in the account described in section 9307(b) of this
36 title is available in each fiscal year for grants, contracts, and cooperative
37 agreements to community-based organizations for outreach programs and
38 shall be administered by the Special Counsel for Immigration-Related Un-
39 fair Employment Practices. Amounts under this subsection are in addition
40 to amounts appropriated to the Special Counsel for those purposes.

1 Amounts available under this subsection may not be used by the Special
2 Counsel to establish regional offices.

3 (e) PAY.—The Special Counsel is entitled to a rate of pay that is not
4 more than the maximum annual rate of basic pay payable under section
5 5376 of title 5.

6 (f) REGIONAL OFFICES.—Under regulations prescribed by the Attorney
7 General, the Special Counsel shall establish regional offices necessary to
8 carry out the duties and powers of the Special Counsel.

9 **§ 11304. Filing charges of unfair practices**

10 (a) FILING CHARGES.—(1) Except as provided in subsection (c) of this
11 section, a charge of an immigration-related unfair employment practice may
12 be filed with the Special Counsel for Immigration-Related Unfair Employ-
13 ment Practices by—

14 (A) a person alleging to be adversely affected directly by the practice,
15 or by another person for that person; or

16 (B) an officer of the Immigration and Naturalization Service alleging
17 that the practice has occurred or is occurring.

18 (2) A charge filed under this subsection must be in writing and under
19 oath and contain information the Attorney General requires.

20 (b) SERVICE OF NOTICE OF CHARGES.—The Special Counsel shall serve
21 a notice of a charge filed under subsection (a) of this section (including the
22 date, place, and circumstances of the alleged practice) on the person alleged
23 to have committed the practice. The notice shall be served by certified mail
24 not later than 10 days after the charge is filed.

25 (c) LIMITATIONS ON FILING CHARGES.—A charge of an immigration-re-
26 lated unfair employment practice involving discrimination because of na-
27 tional origin may not be filed under this section if a charge of that practice
28 based on the same set of facts has been filed with the Equal Employment
29 Opportunity Commission under title VII of the Civil Rights Act of 1964 (42
30 U.S.C. 2000e et seq.), unless the charge is dismissed as being outside the
31 scope of title VII. A charge about an employment practice may not be filed
32 with the Equal Employment Opportunity Commission under title VII if a
33 charge about that practice based on the same set of facts has been filed
34 under this section, unless the charge is dismissed as being outside the scope
35 of this chapter.

36 **§ 11305. Investigating charges and filing complaints**

37 (a) SPECIAL COUNSEL.—(1) The Special Counsel for Immigration-Relat-
38 ed Unfair Employment Practices shall investigate each charge filed under
39 section 11304 of this title. Not later than 120 days after the charge has
40 been filed, the Special Counsel shall decide whether there is reasonable

1 cause to believe the charge is true and whether to file a complaint about
2 the charge with an administrative law judge.

3 (2) On the Special Counsel's own initiative, the Special Counsel may in-
4 vestigate an immigration-related unfair employment practice and, subject to
5 subsection (c) of this section, file a complaint about the practice with an
6 administrative law judge.

7 (3) Failure to file a complaint within the 120-day period does not prevent
8 the Special Counsel from investigating the charge or filing a complaint with
9 an administrative law judge during the 90-day period referred to in sub-
10 section (b) of this section.

11 (b) PRIVATE ACTIONS.—Subject to subsection (c) of this section, if a
12 charge alleges knowing and intentional discriminatory activity or a pattern
13 or practice of discriminatory activity, and the Special Counsel does not file
14 a complaint with an administrative law judge within 120 days after the
15 charge is filed with the Special Counsel under subsection (a)(1) of this sec-
16 tion, the Special Counsel shall notify the person that filed the charge during
17 the 120-day period of the decision not to file a complaint. The person may
18 file a complaint directly with an administrative law judge not later than 90
19 days after receiving the notice.

20 (c) TIME LIMITATION.—A complaint about an immigration-related unfair
21 employment practice may not be filed with an administrative law judge if
22 the practice occurred more than 180 days before the charge about that
23 practice was filed with the Special Counsel. This subsection does not prevent
24 subsequently amending a charge or complaint under section 11306(c)(1) of
25 this title.

26 (d) DISCRIMINATION DEEMED TO HAVE OCCURRED.—An individual in-
27 timidated, threatened, coerced, or retaliated against in violation of section
28 11302(a)(2) of this title is deemed to have been discriminated against under
29 this section.

30 **§ 11306. Hearings on complaints**

31 (a) DESIGNATING ADMINISTRATIVE LAW JUDGES.—A hearing on a com-
32 plaint alleging an immigration-related unfair employment practice shall be
33 conducted by an administrative law judge who—

34 (1) is specially designated by the Attorney General as having special
35 training in employment discrimination; and

36 (2) to the extent possible, conducts hearings only on complaints in-
37 volving immigration-related unfair employment practices under this
38 chapter.

39 (b) NOTICE OF HEARINGS.—When a complaint alleging an immigration-
40 related unfair employment practice is filed with an administrative law judge,
41 the judge shall issue and have served on the person named in the complaint

1 a copy of the complaint and a notice of the hearing. The date of the hearing
2 shall be at least 5 days after the complaint is served.

3 (c) PLEADINGS, APPEARANCES, AND PARTIES.—(1) On motion of the
4 party that filed the complaint, the judge may amend the complaint at any
5 time before issuing an order based on the complaint.

6 (2) The person named in the complaint may file an answer to the original
7 or amended complaint, appear in person or otherwise, and present testi-
8 mony.

9 (3) The person that filed the charge with the Special Counsel for Immi-
10 gration-Related Unfair Employment Practices is a party to the proceeding
11 before the judge and in any appeal from that proceeding.

12 (4) The judge conducting the hearing may allow any other person to in-
13 tervene and to present testimony.

14 (d) TRANSCRIPT AND ADDITIONAL TESTIMONY OR ARGUMENT.—A tran-
15 script shall be prepared of the testimony in the hearing. After the transcript
16 is prepared, the judge, by notice, may provide for further testimony or hear-
17 argument.

18 **§ 11307. Authority in conducting investigations and hear-**
19 **ings**

20 (a) GENERAL.—In conducting an investigation or hearing under this
21 chapter—

22 (1) the Special Counsel for Immigration-Related Unfair Employment
23 Practices and the administrative law judge conducting the investigation
24 or hearing, under regulations prescribed by the Attorney General, shall
25 have reasonable access to examine evidence of a person being inves-
26 tigated; and

27 (2) the administrative law judge may subpoena the attendance of wit-
28 nesses and the production of evidence at any designated place.

29 (b) JUDICIAL ENFORCEMENT OF SUBPENAS.—If a person disobeys a sub-
30 pena issued under subsection (a)(2) of this section, an appropriate district
31 court of the United States, on application by the administrative law judge,
32 may issue an order to comply with the subpoena. The court may punish a
33 failure to comply with the order of the court as a contempt of court.

34 **§ 11308. Orders of administrative law judges**

35 (a) GENERAL.—In a proceeding by an administrative law judge under
36 this chapter, the judge shall issue an order and have the order served on
37 the parties to the proceeding. The order is final unless a petition for review
38 is filed under section 11309 of this title.

39 (b) ORDERS FINDING UNFAIR PRACTICES.—(1) If the administrative law
40 judge finds by a preponderance of the evidence that the person named in
41 the complaint has engaged, or is engaging, in an immigration-related unfair

1 employment practice, the judge shall state findings of fact about the prac-
2 tice and issue and have served on the person an order requiring the person
3 to cease and desist from the practice.

4 (2) The order also may require the person—

5 (A) to comply with section 11103 of this title for not more than 3
6 years;

7 (B) to retain for not more than 3 years, and only for use as provided
8 under section 11103(e) of this title, the name and address of each indi-
9 vidual applying (whether in person or in writing) for an existing posi-
10 tion, or for recruitment or referral for a fee, for employment in the
11 United States;

12 (C) to hire an individual directly and adversely affected, with or
13 without back pay;

14 (D) to pay to the United States Government a civil penalty of—

15 (i) at least \$250, but not more than \$2,000, for each individual
16 discriminated against;

17 (ii) at least \$2,000, but not more than \$5,000, for each individ-
18 ual discriminated against if the person previously was subject to
19 an order under this subsection;

20 (iii) at least \$3,000, but not more than \$10,000, for each indi-
21 vidual discriminated against if the person previously was subject
22 to more than one order under this subsection; or

23 (iv) at least \$100, but not more than \$1,000, for each individ-
24 ual discriminated against, for an immigration-related unfair em-
25 ployment practice described in section 11302(b) of this title;

26 (E) to post notices to employees about their rights under this chap-
27 ter and the obligations of employers under chapter 111 of this title;

28 (F) to educate all personnel involved in hiring or complying with this
29 chapter and chapter 111 of this title about the requirements of this
30 chapter and chapter 111;

31 (G) to remove, as appropriate, a false performance review or false
32 warning from an employee's personnel file; and

33 (H) to lift, as appropriate, a restriction on an employee's assign-
34 ments, work shifts, or movements.

35 (3) An order of back pay under paragraph (2)(C) of this subsection may
36 not require back pay for more than the 2-year period occurring before the
37 charge was filed with the Special Counsel for Immigration-Related Unfair
38 Employment Practices. Back pay otherwise allowable shall be reduced by
39 amounts earned, or earnable with reasonable diligence, during the period
40 covered by the back pay order. An order may require hiring an individual

1 or paying back pay to an individual only if the individual was refused em-
2 ployment for discrimination because of national origin or citizenship status.

3 (4) Under this section, if the person is an entity composed of distinct,
4 physically separate subdivisions each of which provides separately for the
5 hiring, recruiting, or referring for employment, without reference to the
6 practices of, and not under control of or common control with, another sub-
7 division, each subdivision is deemed a separate entity.

8 (c) DISCRIMINATION DEEMED TO HAVE OCCURRED.—An individual in-
9 timidated, threatened, coerced, or retaliated against in violation of section
10 11302(a)(2) of this title is deemed to have been discriminated against under
11 this section.

12 (d) ORDERS FINDING NO UNFAIR PRACTICES.—If the administrative law
13 judge finds by a preponderance of the evidence that the person named in
14 the complaint has not engaged, and is not engaging, in an immigration-re-
15 lated unfair employment practice, the judge shall state findings of fact
16 about such a practice not existing and issue an order dismissing the com-
17 plaint.

18 **§ 11309. Judicial review of final orders**

19 (a) GENERAL.—A person aggrieved by a final order issued by an adminis-
20 trative law judge under section 11308 of this title may file a petition for
21 review of the order in the court of appeals of the United States for the cir-
22 cuit in which the alleged unfair practice occurred or in which the employer
23 resides or does business. The petition must be filed within 60 days after
24 the date the final order is issued.

25 (b) EXCLUSIVE JURISDICTION.—When the record of the proceedings is
26 filed with the court, the court has exclusive jurisdiction to review the order.

27 **§ 11310. Judicial enforcement of administrative orders**

28 (a) CIVIL ACTIONS FOR ENFORCEMENT.—If a petition for review of an
29 order of an administrative law judge under section 11308 of this title is not
30 filed under section 11309 of this title, the Special Counsel for Immigration-
31 Related Unfair Employment Practices or, if the Special Counsel does not
32 act, the person that filed the charge with the Special Counsel, may bring
33 a civil action to enforce the order. The action must be brought in the dis-
34 trict court of the United States for the judicial district in which a violation
35 of the order is alleged to have occurred or in which the person against whom
36 the order is directed resides or does business. The order of the administra-
37 tive law judge may not be reviewed in the action.

38 (b) ENFORCEMENT BY COURT OF APPEALS IN ORIGINAL REVIEW.—If
39 the court of appeals does not reverse an order of an administrative law
40 judge reviewed under section 11309 of this title, the court may issue an
41 order enforcing the order of the judge.

1 **§ 11311. Attorney fees**

2 In a proceeding before an administrative law judge under this chapter,
3 or in a judicial proceeding for review or enforcement of an order of an ad-
4 ministrative law judge under section 11308 of this chapter, the prevailing
5 party (except the United States Government) may be awarded reasonable
6 attorney fees if the losing party's argument is without reasonable foundation
7 in law and fact.

8 **§ 11312. Certain agency authority not affected**

9 Except as specifically provided in this chapter, this chapter does not af-
10 fect the authority of the Equal Employment Opportunity Commission to in-
11 vestigate allegations of unlawful employment practices.

12 **SUBTITLE IV—REFUGEE AND IMMIGRANT**
13 **PROGRAMS**

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14 **CHAPTER 131—REFUGEE ASSISTANCE**

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SUBCHAPTER I—RESETTLEMENT ASSISTANCE

§ 13101. Congressional intent

It is the intent of Congress that in providing refugee assistance under this subchapter—

(1) employable refugees should be placed in jobs as soon as possible after the refugees arrive in the United States;

(2) social service expenditures should be focused on employment-related services, instruction in English-as-a-second-language (in non-work hours when possible), and case-management services; and

(3) local voluntary organization activities should be carried out in close cooperation and advance consultation with State and local governments.

§ 13102. Definition

In this subchapter, “refugee” includes a spouse or child described in section 5105(c) of this title.

§ 13103. Office of Refugee Resettlement

(a) OFFICE OF REFUGEE RESETTLEMENT.—The Office of Refugee Resettlement is an office in the Department of Health and Human Services.

(b) DIRECTOR.—The head of the Office is a Director appointed by the Secretary of Health and Human Services.

(c) AUTHORITY OF THE DIRECTOR.—In consultation with the Secretary of State, the Director shall carry out this subchapter (directly or through arrangements with other 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 in this subchapter.

§ 13104. Initial resettlement assistance

(a) EDUCATION AND TRAINING.—The Director of the Office of Refugee Resettlement may develop programs of orientation, instruction in English, job training, and other education and training of refugees that will assist in their resettlement in the United States. The programs may be carried out by—

(1) the Director consistent with this subchapter, for refugees in the United States; and

(2) the Secretary of State, for refugees waiting to enter the United States.

(b) TEMPORARY CARE.—The Secretary of Health and Human Services may make arrangements (including cooperative arrangements with other agencies) for the temporary care of refugees in the United States in emer-

1 agency circumstances, including establishing necessary processing centers.
2 The Secretary may carry out this subsection without regard to provisions
3 of law (except section 13111(b) of this title) on making, carrying out, and
4 modifying contracts and on United States Government expenditures.

5 (c) HEALTH ACTIVITIES.—(1) The Secretary of Health and Human Serv-
6 ices shall—

7 (A) ensure that an adequate number of trained personnel are avail-
8 able at a location at which refugees enter the United States so that
9 all necessary medical records are available and in order;

10 (B) provide for identifying refugees with medical conditions affecting
11 the public health and requiring treatment;

12 (C) ensure that State and local health officials at a resettlement des-
13 tination in the United States are notified promptly of the arrival of
14 each refugee and are provided with all applicable medical records; and

15 (D) provide for monitoring refugees referred to in clause (B) of this
16 paragraph to ensure that the refugees receive appropriate and timely
17 treatment.

18 (2) The Secretary of Health and Human Services shall monitor and as-
19 sess the quality of medical screening and related health services provided
20 to refugees waiting to be resettled in the United States.

21 **§ 13105. Initial resettlement assistance grants and contracts**

22 (a) GENERAL AUTHORITY.—(1) The Director of the Office of Refugee
23 Resettlement (or other officer if the President decides the Director should
24 not administer this subsection) may make grants to, and contracts with,
25 public agencies and private nonprofit organizations for the initial resettle-
26 ment (including the initial reception and placement with sponsors) of refu-
27 gees in the United States. A grant to, or contract with, a private nonprofit
28 voluntary organization shall be consistent with the objectives of this sub-
29 chapter, considering the different resettlement approaches and practices of
30 that organization. Assistance under this subsection shall be provided in co-
31 ordination with other assistance provided under this subchapter. The Fed-
32 eral administering agency shall use the criteria described in subsection (c)
33 of this section in awarding or renewing a grant or contract under this sec-
34 tion.

35 (2) An amount provided to an agency or organization under a grant or
36 contract may be obligated or expended only during the fiscal year in which
37 the amount is provided, or a subsequent fiscal period approved by the ad-
38 ministering agency or officer making the contract, to carry out this section.

39 (b) REQUIREMENTS.—(1) Each grant to, and contract with, an agency
40 or organization under subsection (a) of this section shall require that the
41 agency or organization—

1 (A) provide quarterly performance and financial status reports to the
2 administering agency;

3 (B) provide notice either directly or through its local affiliate—

4 (i) to the appropriate local welfare office when the agency or or-
5 ganization receiving the grant or contract becomes aware that a
6 refugee is offered employment; and

7 (ii) to the refugee that notice to the local welfare office has been
8 given;

9 (C) when requested by a local welfare office to which a refugee has
10 applied for cash assistance, provide documentation to that office about
11 cash or other resources provided directly by the agency or organization
12 receiving the grant or contact to the refugee under this section and sec-
13 tion 13104 of this title;

14 (D) ensure that, in the case of a refugee that the agency or organi-
15 zation receiving the grant or contract knows has been identified under
16 section 13104(c)(1)(B) of this title as having a medical condition af-
17 fecting the public health and requiring treatment, the refugee reports
18 to the appropriate health agency when the refugee resettles in an area;

19 (E) fulfill its responsibility to provide for the basic needs (including
20 food, clothing, shelter, and transportation for job interviews and train-
21 ing) of each refugee resettled, to develop and carry out a resettlement
22 plan (including the early employment of each refugee resettled), and to
23 monitor how the plan is being carried out; and

24 (F) submit to the administering agency an annual report on—

25 (i) the number of refugees placed (by county of placement) and
26 the expenditures made during the year covered by the report
27 under the grant or contract, including the proportion of the ex-
28 penditures used for administrative purposes and for providing
29 services;

30 (ii) the proportion of refugees that the agency or organization
31 receiving the grant or contract has placed in the prior year who
32 are receiving cash or medical assistance described in section 13108
33 of this title;

34 (iii) the efforts made by the agency or organization receiving the
35 grant or contract to monitor placement of refugees and the activi-
36 ties of local affiliates of the agency or organization;

37 (iv) the extent to which the agency or organization receiving the
38 grant or contract has coordinated its activities with local social
39 service providers in a way that avoids duplication of activities, has
40 provided notice to the local welfare offices, and has reported medi-

1 cal conditions of certain aliens to local health departments as re-
2 quired under clause (D) of this paragraph; and

3 (v) other information the administering agency considers is ap-
4 propriate in monitoring the effectiveness of the agency or organi-
5 zation receiving the grant or contract in carrying out its functions
6 under the grant or contract.

7 (2) The administering agency shall submit promptly to the Committees
8 on the Judiciary of the House of Representatives and the Senate a copy
9 of each report submitted under paragraph (1)(F) of this subsection.

10 (3) Paragraph (1)(A), (C), and (F) of this subsection applies to a grant
11 or contract made or renewed after December 5, 1986. Paragraph (1)(E) of
12 this subsection applies to a grant or contract made or renewed after May
13 5, 1987.

14 (c) PERFORMANCE CRITERIA.—The administering agency shall prescribe
15 criteria for the performance of each agency or organization in connection
16 with a grant or contract under subsection (a) of this section. The prescribed
17 criteria shall include criteria related to that agency's or organization's—

18 (1) efforts to reduce welfare dependency among refugees resettled by
19 the agency or organization;

20 (2) collection of travel loans made to refugees resettled by the agency
21 or organization for travel to the United States;

22 (3) arrangements for effective local sponsorship and other nonpublic
23 assistance for refugees resettled by the agency or organization;

24 (4) cooperation with refugee mutual assistance associations, local so-
25 cial service providers, health agencies, and welfare offices;

26 (5) compliance with guidelines established by the Director of the Of-
27 fice of Refugee Resettlement for placing and resettling refugees in the
28 United States; and

29 (6) compliance with other requirements contained in the grant or
30 contract, including requirements under subsection (b) of this section.

31 (d) MEDICAL SCREENING AND INITIAL MEDICAL TREATMENT.—The Di-
32 rector may make a grant to, or contract with, a State or local health agency
33 for payments to meet the agency's costs of providing medical screening and
34 initial medical treatment to refugees.

35 **§ 13106. Project grants and contracts for services**

36 (a) SERVICE PROJECTS.—(1) The Director of the Office of Refugee Re-
37 settlement may make grants to, and contracts with, public agencies and pri-
38 vate nonprofit organizations for projects specifically designed—

39 (A) to assist refugees in obtaining skills necessary for economic self-
40 sufficiency, including projects for job training, employment services,

1 day care, and professional refresher training and other recertification
2 services;

3 (B) to provide instruction in English when necessary even when refu-
4 gees are employed or are receiving assistance; and

5 (C) to provide health (including mental health) services, social serv-
6 ices, and educational and other services when specific needs have been
7 shown and recognized by the Director.

8 (2) Amounts available in a fiscal year for grants and contracts under this
9 subsection shall be allocated among the States based on the total number
10 of refugees who—

11 (A) arrived in the United States within the 36 months before the be-
12 ginning of the fiscal year; and

13 (B) actually are residing in each State (taking into account second-
14 ary migration) at the beginning of the fiscal year.

15 (3) A limitation that the Director establishes on that part of amounts al-
16 located to a State under this subsection that the State may use for services
17 (except those services described in section 13101(2) of this title) does not
18 apply if the Director—

19 (A) receives a plan that has been established by or with the consulta-
20 tion of political subdivisions; and

21 (B) decides that the plan provides for the maximum appropriate em-
22 ployment services for, and the maximum placement of, employable refu-
23 gees consistent with the performance standards established under sec-
24 tion 106 of the Job Training Partnership Act (29 U.S.C. 1516).

25 (b) TARGETED ASSISTANCE PROJECT GRANTS.—(1) The Director may
26 make a grant to a State for assistance to a political subdivision in the State
27 that has a demonstrated specific need for additional available resources for
28 providing services to refugees because of factors such as—

29 (A) an unusually large refugee population (including secondary mi-
30 gration);

31 (B) high refugee concentrations; and

32 (C) high use of public assistance by refugees.

33 (2) The Director shall make a grant under this subsection—

34 (A) primarily to facilitate refugee employment and self-sufficiency;
35 and

36 (B) in a way that does not supplant amounts available under other
37 refugee programs and ensures that at least 95 percent of the amount
38 of the grant is made available to the political subdivision.

39 (c) MAINTAINING LEVEL OF MATCHING GRANT PROGRAM.—To the ex-
40 tent of available appropriations, the Director may not—

1 (1) reduce the maximum average contribution level of the United
2 States Government for each refugee in the voluntary agency program,
3 known as the matching grant program and financed under subsection
4 (a) of this section, below the level in effect under the program for
5 grants in the fiscal year that ended September 30, 1985; or

6 (2) increase the percentage grantee matching requirement under the
7 program above the percentage in effect under the program for grants
8 in the fiscal year that ended September 30, 1985.

9 **§ 13107. Assistance for refugee children**

10 (a) SPECIAL EDUCATIONAL SERVICES.—Where a need is shown, the Sec-
11 retary of Education may make grants and contracts for projects to provide
12 special educational services (including instruction in English) to refugee
13 children in elementary and secondary schools.

14 (b) CHILD WELFARE SERVICES.—The Director of the Office of Refugee
15 Resettlement may provide assistance, reimburse States, and make grants to,
16 and contracts with, public agencies and private nonprofit organizations to
17 provide child welfare services (including foster care maintenance payments
18 and services and health care) to a refugee child during the 36-month period
19 that begins with the first month the child is in the United States. If a refu-
20 gee child is unaccompanied by a parent or other close adult relative (as de-
21 fined by the Director), those services may be provided until the month after
22 the child becomes 18 years of age (or a later age prescribed in the State's
23 child welfare services plan under part B of title IV of the Social Security
24 Act (42 U.S.C. 620 et seq.) for the availability of those services to another
25 child in the State).

26 (c) PLACING UNACCOMPANIED CHILDREN.—(1) The Director shall try to
27 arrange, under the laws of the States, to place an unaccompanied refugee
28 child referred to in subsection (b) of this section who has been accepted for
29 admission to the United States. The Director shall make the arrangements
30 before or as soon as possible after the child arrives in the United States.
31 If necessary, the Director shall assume legal and financial responsibility for
32 the child during the period before the child is placed when the child is in
33 the United States or is in transit to the United States. The Director may
34 make necessary decisions to provide for the child's immediate care.

35 (2) In carrying out this subsection, the Director may make contracts with
36 appropriate public agencies and private nonprofit organizations under condi-
37 tions the Director considers appropriate.

38 (3) The Director shall maintain a list of—

39 (A) all unaccompanied refugee children who have entered the United
40 States after April 1, 1975;

1 (B) the name and last known residence of each living parent of each
2 of those children at the child's time of arrival; and

3 (C) the locations, status, and progress of the children.

4 **§ 13108. Cash and medical assistance**

5 (a) GENERAL AUTHORITY.—The Director of the Office of Refugee Reset-
6 tlement may provide assistance, reimburse States, and make grants to, and
7 contracts with, public agencies and private nonprofit organizations for 100
8 percent of the cash and medical assistance provided to a refugee during the
9 36-month period that begins with the first month the refugee enters the
10 United States. The Director also may pay for the identifiable and reason-
11 able administrative costs of providing the assistance.

12 (b) CONDITIONS AND LIMITATION.—(1) Except for good cause shown,
13 cash assistance may be provided to an employable refugee under this section
14 only if the refugee—

15 (A) registers with an appropriate entity providing employment serv-
16 ices described in section 13106(a)(1)(A) of this title, or, if such an en-
17 tity is not available, with an appropriate State or local employment
18 service;

19 (B) participates in an available and appropriate service or targeted
20 assistance project grant financed under section 13106 of this title pro-
21 viding job or language training in the area in which the refugee resides;
22 and

23 (C) accepts an appropriate offer of employment.

24 (2)(A) Cash assistance provided under this section shall be suspended for
25 any alien entering the United States as a refugee after March 31, 1987,
26 who refuses—

27 (i) an offer of employment that the public agency or private non-
28 profit organization providing initial resettlement assistance under sec-
29 tion 13105(a) of this title or the appropriate State or local employment
30 service decides is appropriate;

31 (ii) to go to a job interview that has been arranged through the
32 agency, organization, or employment service; or

33 (iii) to participate in a service or targeted assistance project grant
34 referred to in paragraph (1)(B) of this subsection that the agency, or-
35 ganization, or employment service decides is available and appropriate.

36 (B) The assistance shall be suspended for 3 months for the first refusal
37 and for 6 months for any subsequent refusal. The refugee shall be given
38 an opportunity for a hearing before cash assistance is suspended.

39 (3) A refugee who is a full-time student in an institution of higher edu-
40 cation, as defined by the Director after consultation with the Secretary of
41 Education, may not receive cash assistance.

1 (c) INSTRUCTION AND TRAINING FOR REFUGEES RECEIVING ASSIST-
2 ANCE.—The Director shall develop plans to provide instruction in English
3 and other appropriate services and training to a refugee receiving cash as-
4 sistance.

5 (d) LIMITATION ON USE OF AMOUNTS.—If a refugee is eligible for aid
6 or assistance under a State plan approved under part A of title IV or under
7 title XIX of the Social Security Act (42 U.S.C. 601 et seq., 1396 et seq.)
8 or for supplemental security income benefits (including State supplementary
9 payments) under the program established under title XVI of that Act (42
10 U.S.C. 1381 et seq.), amounts to carry out this section may be used only
11 to pay the part of the aid or assistance not paid by the United States Gov-
12 ernment under part A of title IV or under title XIX for cash and medical
13 assistance provided the refugee, and for State supplementary payments.

14 (e) MEDICAL ASSISTANCE FOR REFUGEES OTHERWISE INELIGIBLE.—
15 During the one-year period after a refugee enters the United States, the Di-
16 rector may authorize medical assistance of the kind provided under sub-
17 section (a) of this section to a refugee if—

18 (1) the refugee does not qualify for assistance under a State plan
19 approved under title XIX of the Social Security Act (42 U.S.C. 1396
20 et seq.) because of financial resources or income requirements of the
21 plan; and

22 (2) the Director decides that—

23 (A) providing the medical services will encourage economic self-
24 sufficiency or avoid a significant burden on State and local govern-
25 ments; and

26 (B) the refugee meets alternative financial resources and income
27 requirements the Director establishes.

28 (f) ALTERNATIVE ASSISTANCE PROJECTS.—(1) The Secretary of Health
29 and Human Services shall develop and carry out alternative projects for re-
30 fugees who have been in the United States less than 36 months. The projects
31 shall provide refugees with interim support, medical services, support serv-
32 ices, and case-management services, as needed, in a way that encourages
33 self-sufficiency, reduces welfare dependency, and fosters greater coordina-
34 tion among public agencies and private nonprofit organizations providing re-
35 settlement assistance and service providers. The Secretary may provide an
36 alternative project to cover a specific group of refugees who have been in
37 the United States at least 36 months if the Secretary decides that—

38 (A) refugees in the group have been significantly and disproportion-
39 ately dependent on welfare;

40 (B) those refugees need the services provided under the project to
41 become self-sufficient; and

1 (C) including those refugees under the project would be cost-effec-
2 tive.

3 (2) A refugee in an alternative project may not receive cash or medical
4 assistance under another subsection of this section or under part A of title
5 IV or under title XIX of the Social Security Act (42 U.S.C. 601 et seq.,
6 1396 et seq.).

7 (3) Amounts authorized to be appropriated under section 13112 of this
8 title or part A of title IV or title XIX of the Social Security Act (42 U.S.C.
9 601 et seq., 1396 et seq.) may be used to carry out and evaluate alternative
10 projects under this subsection, to the extent the use of those amounts is
11 consistent with the purposes for which amounts are authorized to be appro-
12 priated.

13 (g) NOTIFICATION OF APPLICATION BY REFUGEE FOR ASSISTANCE.—As
14 a condition for an entity receiving assistance, reimbursement, or a contract
15 under this section, the entity must ensure that when a refugee applies for
16 cash or medical assistance for which assistance or reimbursement is pro-
17 vided under this section, the entity will notify promptly the public agency
18 or private nonprofit organization (or local affiliate of the organization) that
19 provided for the initial resettlement of the refugee under section 13105(a)
20 of this title that the refugee has applied for the assistance.

21 **§ 13109. Administrative**

22 (a) AUTHORITY OF THE DIRECTOR.—In providing assistance under this
23 subchapter, the Director of the Office of Refugee Resettlement, to the ex-
24 tent of available appropriations—

25 (1) shall make available sufficient resources for employment training
26 and placement to permit refugees to achieve economic self-sufficiency
27 as soon as possible;

28 (2) shall provide refugees with the opportunity to acquire sufficient
29 instruction in English to enable them to become resettled effectively as
30 quickly as possible;

31 (3) shall ensure that cash assistance is made available to refugees
32 as provided under section 13108(b) of this title in a way that will not
33 discourage economic self-sufficiency;

34 (4) shall ensure that women have the same opportunities as men to
35 participate in training and instruction;

36 (5) shall make a periodic assessment, based on refugee population
37 and other relevant factors, of the relative needs of refugees for assist-
38 ance and services under this subchapter and the resources available to
39 meet those needs;

1 (6) in allocating resources, shall avoid duplicating services and pro-
2 vide for maximum coordination among public agencies and private non-
3 profit organizations providing related services; and

4 (7) shall compile and maintain information on—

5 (A) the secondary migration of refugees in the United States;

6 and

7 (B) the proportion of refugees, by State of residence and nation-
8 ality, receiving cash or medical assistance described in section
9 13108 of this title.

10 (b) LIMITATION ON DELEGATION.—The Director may not delegate to a
11 State government or political subdivision authority to review or approve a
12 grant or contract under this subchapter or the terms under which a grant
13 or contract is made.

14 (c) NONDISCRIMINATION.—Assistance and services under this subchapter
15 shall be provided to refugees without regard to race, religion, nationality,
16 sex, or political opinion.

17 (d) CONSULTATION WITH STATE AND LOCAL GOVERNMENTS AND ORGA-
18 NIZATIONS.—(1) The Director and the Federal administering agency under
19 section 13105(a) of this title shall consult at least quarterly with State gov-
20 ernments, political subdivisions, and private nonprofit voluntary organiza-
21 tions on the sponsorship process and the intended distribution of refugees
22 among the States and political subdivisions before placing refugees in each
23 of the States and political subdivisions.

24 (2) In consultation with representatives of private nonprofit voluntary or-
25 ganizations, State governments, and political subdivisions, the Director shall
26 develop and carry out policies and strategies for placing and resettling refu-
27 gees in the United States. To the extent practicable and except under un-
28 usual circumstances the Director may recognize, the policies and strategies
29 shall—

30 (A) ensure that a refugee is not placed or resettled initially in an
31 area highly impacted (as decided under regulations prescribed by the
32 Director after consultation with private nonprofit voluntary organiza-
33 tions, State governments, and political subdivisions) by the presence of
34 refugees or comparable populations unless the refugee has a spouse,
35 parent, sibling, or child residing in that area;

36 (B) provide for a mechanism for representatives of local affiliates of
37 private nonprofit voluntary organizations to meet at least quarterly
38 with representatives of State governments and political subdivisions to
39 plan and coordinate, in advance of the arrival of the refugees, the ap-
40 propriate placement of the refugees among the States and political sub-
41 divisions; and

1 (C) consider—

2 (i) the proportion of refugees and comparable entrants in the
3 population in the area;

4 (ii) the availability of employment opportunities, affordable
5 housing, and public and private resources for refugees in the area,
6 including educational, health care, and mental health services;

7 (iii) the likelihood of refugees placed in the area becoming self-
8 sufficient and free from long-term dependence on public assist-
9 ance; and

10 (iv) the secondary migration of refugees to and from the area
11 that is likely to occur.

12 (3) To the maximum extent possible and consistent with the policies and
13 strategies developed under paragraph (2) of this subsection, the Federal ad-
14 ministering agency under section 13105(a) of this title shall consider the
15 recommendations of the State in deciding where to place refugees in that
16 State.

17 (4) In providing assistance to refugees, a State government or political
18 subdivision shall consider the recommendations of, and assistance provided
19 by, a public agency or private nonprofit organization receiving a grant or
20 contract under section 13105(a) of this title.

21 (e) REQUIREMENTS FOR GRANTS AND CONTRACTS.—A grant or contract
22 may be made under this subchapter only when an appropriate proposal and
23 application (that includes a description of the ability of a public agency or
24 private nonprofit organization to provide the services specified in the pro-
25 posal) are submitted to and approved by the appropriate administering offi-
26 cial. A grant shall be made to, or a contract shall be made with, a public
27 agency or private nonprofit organization that the administering official de-
28 cides can best provide the services. Payment under the grant or contract
29 may be made in advance or by reimbursement.

30 (f) STATE REQUIREMENTS.—To receive assistance under this subchapter,
31 a State—

32 (1) must submit to the Director a plan that—

33 (A) describes how the State plans to encourage effective refugee
34 resettlement and to promote economic self-sufficiency as quickly as
35 possible;

36 (B) describes how the State will ensure that instruction in Eng-
37 lish and employment services are made available to refugees re-
38 ceiving cash assistance;

39 (C) provides for the designation of a State officer or employee
40 to be responsible for ensuring coordination of public and private
41 resources in refugee resettlement;

1 (D) provides for the care and supervision of, and legal respon-
2 sibility for, unaccompanied refugee children in the State; and

3 (E) provides for identifying refugees who at the time of resettle-
4 ment in the State have medical conditions requiring, or medical
5 histories indicating a need for, treatment or observation and pro-
6 vides necessary monitoring of the treatment or observation;

7 (2) must meet standards, goals, and priorities developed by the Di-
8 rector that—

9 (A) ensure effective resettlement of refugees;

10 (B) promote economic self-sufficiency of refugees as quickly as
11 possible; and

12 (C) provide that services are provided efficiently; and

13 (3) within a reasonable time after the end of each fiscal year, must
14 submit to the Director a report on the uses of amounts provided under
15 this subchapter for which the State is responsible for administering.

16 (g) AUTHORITY TO MAKE LOANS AND ACCEPT GIFTS.—In carrying out
17 this subchapter, each appropriate administering official may—

18 (1) make loans; and

19 (2) accept and use money, property, and services made available by
20 gift, devise, bequest, grant, or otherwise to carry out this subchapter.

21 (h) SYSTEM TO MONITOR ASSISTANCE.—The Secretary of Health and
22 Human Services, together with the Secretary of State in carrying out sec-
23 tions 13104 and 13105 of this title, shall maintain a system of monitoring
24 assistance provided under this subchapter. The system shall include—

25 (1) evaluations of the effectiveness of the programs and projects car-
26 ried out under this subchapter and the performance of States, grantees,
27 and contractors;

28 (2) financial audits and other appropriate monitoring to detect
29 fraud, abuse, and mismanagement in operating the programs and
30 projects; and

31 (3) information collection on services provided and results achieved.

32 (i) INFORMATION PROVIDED BY REFUGEES.—The Attorney General shall
33 provide the Director with information provided by refugees with their appli-
34 cations for adjustment of status. The Director shall compile, summarize,
35 and evaluate the information.

36 **§ 13110. Annual reports**

37 The Secretary of Health and Human Services shall submit a report to
38 the Committees on the Judiciary of the House of Representatives and the
39 Senate not later than each January 31 on activities under this subchapter
40 for the prior fiscal year. Each report shall include—

1 (1) a current profile of the employment and labor force statistics for
2 refugees who entered the United States under this title—

3 (A) during the 5 fiscal years immediately before the fiscal year
4 in which the report is submitted; and

5 (B) before that 5-year period and who have been significantly
6 and disproportionately dependent on welfare;

7 (2) a description of the extent to which refugees received each kind
8 of assistance and service under this subchapter during the 5 fiscal
9 years immediately before the fiscal year in which the report is submit-
10 ted;

11 (3) a description of the geographic locations of refugees;

12 (4) a summary of the results of the monitoring conducted under sec-
13 tion 13109(h) of this title for the fiscal year;

14 (5) a description of—

15 (A) the activities, expenditures, and policies of the Office of Ref-
16 ugee Resettlement under this subchapter;

17 (B) the activities of States, voluntary organizations, and spon-
18 sors of refugees under this subchapter; and

19 (C) plans of the Director of the Office of Refugee Resettlement
20 for improving refugee resettlement;

21 (6) evaluations of the extent to which—

22 (A) services provided under this subchapter are assisting refu-
23 gees in achieving economic self-sufficiency, ability in English, and
24 employment commensurate with their skills and abilities; and

25 (B) fraud, abuse, and mismanagement have been reported in
26 providing assistance or services;

27 (7) a description of the assistance provided under section 13108(e)
28 of this title;

29 (8) a summary of the locations and status of unaccompanied refugee
30 children admitted to the United States; and

31 (9) a summary of the information compiled and evaluated under sec-
32 tion 13109(i) of this title.

33 **§ 13111. Limitations**

34 (a) CONSOLIDATED GRANTS PROHIBITED.—Amounts made available to a
35 State or political subdivision to carry out this subchapter (except section
36 13105(a) of this title) may not be in the form of a block grant, per capita
37 grant, or similar consolidated grant. Amounts shall be made available under
38 separate grants or contracts for—

39 (1) medical screening and initial medical treatment for refugees
40 under section 13105(d) of this title;

41 (2) service projects for refugees under section 13106(a) of this title;

1 (3) targeted assistance project grants under section 13106(b) of this
2 title; and

3 (4) assistance for refugee children under section 13107(b) and (c)
4 of this title.

5 (b) CONTRACTS.—A contract made under this subchapter is effective only
6 to the extent and in the amount provided in advance by an appropriation
7 law.

8 **§ 13112. Authorization of appropriations**

9 Amounts necessary to carry out this subchapter and section 13901 of this
10 title may be appropriated for each of the fiscal years ending September 30,
11 1995, September 30, 1996, and September 30, 1997.

12 SUBCHAPTER II—EDUCATION ASSISTANCE

13 **§ 13131. Definitions**

14 In this subchapter—

15 (1) “elementary school”, “local educational agency”, “secondary
16 school”, “State”, and “State educational agency” have the same mean-
17 ings given those terms in section 14101 of the Elementary and Second-
18 ary Education Act of 1965 (20 U.S.C. 8801).

19 (2) “elementary or secondary nonpublic school” means a school—

20 (A) complying with the compulsory education laws of the State
21 in which it is located; and

22 (B) exempt from taxation under section 501(c)(3) of the Inter-
23 nal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

24 (3) “eligible participant” means an alien—

25 (A) during the 36-month period that begins with the first month
26 the alien entered the United States, who—

27 (i) has been admitted to the United States as a refugee
28 under section 5105 of this title;

29 (ii) has been paroled into the United States as a refugee
30 under section 6123 of this title; or

31 (iii) has fled from the alien’s country of origin and, under
32 an executive order, has been allowed to enter and remain in
33 the United States indefinitely for humanitarian reasons;

34 (B) during the 36-month period that begins with the month the
35 alien began applying for asylum, who is applying for, or has been
36 granted, asylum in the United States; or

37 (C) during the 36-month period that begins with the first month
38 the alien entered the United States as a Cuban-Haitian entrant
39 or otherwise became a Cuban-Haitian entrant, who entered the
40 United States after October 31, 1979, and is in the United States
41 classified as a Cuban-Haitian entrant.

1 **§ 13132. Basic educational services grants**

2 (a) GRANTS.—The Secretary of Education shall make a grant to each
3 State educational agency for each fiscal year to assist local educational
4 agencies of the State in providing basic educational services for eligible par-
5 ticipants enrolled in the elementary and secondary public schools under the
6 jurisdiction of the local educational agencies of the State. The State edu-
7 cational agency may use the grant only as provided in its application ap-
8 proved under section 13135(b) of this title.

9 (b) APPLICATIONS.—To receive a grant under this section, the State edu-
10 cational agency must submit an application to the Secretary. In the applica-
11 tion, the State educational agency must—

12 (1) agree that payments under the grant will be used as provided
13 in subsection (a) of this section;

14 (2) agree to ensure that those payments will be allocated among the
15 local educational agencies in the State using the same formula and re-
16 ductions for the local educational agencies as the Secretary is required
17 to use in making allocations to State educational agencies under sub-
18 section (d) of this section;

19 (3) specify the amounts referred to in subsection (d) of this section
20 that are made available under other laws of the United States for ex-
21 penditure in the State for the same purpose for which an amount is
22 made available under this section and the local educational agencies to which
23 those amounts are available; and

24 (4) comply with section 13135(a) of this title.

25 (c) PRESCRIBING GRANT FORMULA.—As soon as possible, the Secretary
26 shall prescribe a formula to be used in determining the amount of the grant
27 to which each State educational agency (except the agencies for American
28 Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the
29 Republic of the Marshall Islands, the Federated States of Micronesia, and
30 the Virgin Islands) is entitled under this section for a fiscal year. The for-
31 mula shall be based on the full amount authorized under section 13139(b)
32 of this title. In prescribing the formula, the Secretary—

33 (1) shall consider—

34 (A) the number of years each eligible participant assisted under
35 this section has resided in the United States; and

36 (B) the relative costs, by grade level, of educating elementary
37 and secondary school children; and

38 (2) shall provide that amounts be allocated without regard to dif-
39 ferences in educational costs among different geographical areas.

40 (d) ALLOCATIONS.—The Secretary shall allocate the amount appropriated
41 to carry out this section for a fiscal year among the State educational agen-

1 cies (except the agencies for American Samoa, Guam, the Northern Mariana
 2 Islands, the Republic of Palau, the Republic of the Marshall Islands, the
 3 Federated States of Micronesia, and the Virgin Islands). Except as provided
 4 in section 13136 of this title, the amount of the grant to which an agency
 5 is entitled under this section for a fiscal year is equal to the amount allo-
 6 cated to it under the formula, reduced by the amounts available for that
 7 fiscal year under other laws of the United States for expenditure in the
 8 State for the same purpose for which an amount is made available under
 9 this section. However, the reduction shall be made only to the extent the
 10 amounts are available under the other laws—

11 (1) for that purpose specifically because the individuals served by the
 12 amounts have refugee, parolee, or asylum status; and

13 (2) to assist individuals eligible for services under this section.

14 (e) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The
 15 amounts of the grants to which the State educational agencies of American
 16 Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the
 17 Republic of the Marshall Islands, the Federated States of Micronesia, and
 18 the Virgin Islands are entitled under this section are the amounts the Sec-
 19 retary determines they need based on criteria the Secretary prescribes. The
 20 total amount of those grants for a period may not be more than one percent
 21 of the amount authorized to be appropriated to carry out this section during
 22 the period. If the total of the amounts the Secretary determines those agen-
 23 cies need is more than one percent, the amount of the grant to each of those
 24 agencies is reduced proportionately so that the total is not more than one
 25 percent.

26 **§ 13133. Supplementary educational services grants**

27 (a) DEFINITIONS.—In this section—

28 (1) “enrolled eligible participant in the State” means an eligible par-
 29 ticipant enrolled in an elementary or secondary public school under the
 30 jurisdiction of a qualified local educational agency in the State or in
 31 an elementary or secondary nonpublic school in the district served by
 32 a qualified local educational agency in the State.

33 (2) “qualified local educational agency” means a local educational
 34 agency that during the fiscal year for which a grant is to be made
 35 under this section, has enrolled in the elementary and secondary public
 36 schools under its jurisdiction and in the elementary and secondary
 37 nonpublic schools in the district it serves a number of eligible partici-
 38 pants receiving supplementary educational services during the fiscal
 39 year at least equal to the lesser of—

40 (A) 500; or

1 (B) 5 percent of the total number of students enrolled in those
2 public or nonpublic schools during that fiscal year.

3 (b) GENERAL AUTHORITY.—(1) The Secretary of Education shall make
4 a grant, as provided in this subchapter, to each State educational agency
5 for each fiscal year to provide supplementary educational services for en-
6 rolled eligible participants in the State. Those services include—

7 (A) services necessary to enable eligible participants to perform satis-
8 factorily, including—

- 9 (i) instruction in English;
10 (ii) other bilingual educational services; and
11 (iii) special materials and supplies;

12 (B) additional basic instructional services directly attributable to the
13 presence of eligible participants in the school districts, including—

- 14 (i) additional classroom supplies;
15 (ii) overhead;
16 (iii) construction;
17 (iv) acquiring or renting space; and
18 (v) transportation; and

19 (C) special inservice training of personnel who will provide the in-
20 structional services described in clauses (A) and (B) of this paragraph.

21 (2) The State educational agency may use the grant only as provided in
22 its application as approved under section 13135(b) of this title.

23 (c) APPLICATIONS.—To receive a grant under this section, a State edu-
24 cational agency must submit an application to the Secretary. In the applica-
25 tion, the State educational agency must—

26 (1) agree to administer, or supervise the administration of, the edu-
27 cational programs, services, and activities paid for under this section;

28 (2) agree to ensure that payments under the grant will be used as
29 provided in subsection (b) of this section;

30 (3) agree to ensure that those payments will be allocated among the
31 local educational agencies in the State using the same formula and re-
32 ductions for the local educational agencies as the Secretary is required
33 to use in making allocations to State educational agencies under sub-
34 section (d) of this section;

35 (4) specify the amounts referred to in subsection (d)(2) of this sec-
36 tion that are made available under other laws of the United States to
37 agencies or other entities for educational or education-related services
38 or activities in the State because of a significant concentration of eligi-
39 ble participants and the local educational agencies that have jurisdic-
40 tion over elementary and secondary public schools, or that serve ele-

1 elementary and secondary nonpublic schools, in which are enrolled eligible
2 participants who receive services paid for by those amounts;

3 (5) agree to ensure the Secretary that—

4 (A) to the extent consistent with the number of eligible partici-
5 pants enrolled in elementary and secondary nonpublic schools in
6 the district served by a local educational agency, the local edu-
7 cational agency, after consulting with the appropriate officials of
8 the schools, will provide secular, neutral, and nonideological mate-
9 rials, equipment, and services necessary to educate those eligible
10 participants;

11 (B) a public agency will—

12 (i) administer the amounts provided under this section for
13 the materials, equipment, and services referred to in
14 subclause (A) of this clause; and

15 (ii) own and administer property that is repaired, remod-
16 eled, or constructed with those amounts;

17 (C) those amounts will not be commingled with State or local
18 money; and

19 (D) a public agency will provide to each of those elementary or
20 secondary nonpublic schools the services referred to in subclause
21 (A) of this clause through—

22 (i) officers and employees under the control of the agency;

23 or

24 (ii) a contract with a person or agency that is under the
25 control of the public agency and, when providing the services,
26 is independent of the school and of any religious organization;
27 and

28 (6) comply with section 13135(a) of this title.

29 (d) ALLOCATIONS.—(1) The Secretary shall allocate the amount appro-
30 priated to carry out this section for a fiscal year among the State edu-
31 cational agencies (except the agencies for American Samoa, Guam, the
32 Northern Mariana Islands, the Republic of Palau, the Republic of the Mar-
33 shall Islands, the Federated States of Micronesia, and the Virgin Islands).
34 Except as provided in this section and section 13136 of this title, the
35 amount of the grant to which an agency is entitled under this section for
36 a fiscal year is equal to the sum of—

37 (A) the product of—

38 (i) the number of aliens who are enrolled eligible participants
39 in the State, during the period for which the determination of that
40 number is made, and who have been eligible participants less than
41 one year; multiplied by

- 1 (ii) \$700;
- 2 (B) the product of—
- 3 (i) the number of aliens who are enrolled eligible participants
- 4 in the State, during the period for which the determination is
- 5 made, and who have been eligible participants at least one year
- 6 but not more than 2 years; multiplied by
- 7 (ii) \$500; and
- 8 (C) the product of—
- 9 (i) the number of aliens who are enrolled eligible participants
- 10 in the State, during the period for which the determination is
- 11 made, and who have been eligible participants more than 2 years
- 12 but not more than 3 years; multiplied by
- 13 (ii) \$300.

14 (2) If amounts are available for a fiscal year under other laws of the

15 United States to agencies or other entities for educational or education-re-

16 lated services or activities in the State because of a significant concentration

17 of eligible participants, the amount of the grant under paragraph (1) of this

18 subsection for that fiscal year is reduced by those amounts.

19 (e) REALLOCATION OF UNUSED AMOUNTS.—When the Secretary deter-

20 mines that a part of a payment made to a State educational agency under

21 this section for a fiscal year will not be used by the agency to carry out

22 the purpose for which the payment was made, the Secretary shall make that

23 part available to another State educational agency to the extent the Sec-

24 retary decides the other agency can use the additional amount to carry out

25 the purpose. An amount made available under this subsection to a State edu-

26 cational agency from an appropriation for a fiscal year is deemed in this sec-

27 tion to be a part of the grant (as determined under subsection (d) of this

28 section) to that agency for that fiscal year, and remains available until the

29 end of the next fiscal year.

30 (f) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The

31 amounts of the grants to which the State educational agencies of American

32 Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the

33 Republic of the Marshall Islands, the Federated States of Micronesia, and

34 the Virgin Islands are entitled under this section are the amounts the Sec-

35 retary determines they need based on criteria the Secretary prescribes. The

36 total amount of those grants for a period may not be more than one percent

37 of the amount authorized to be appropriated to carry out this section during

38 the period. If the total of the amounts the Secretary determines those agen-

39 cies need is more than one percent, the amount of the grant to each of those

40 agencies is reduced proportionately so that the total is not more than one

41 percent.

1 (g) PROVIDING ASSISTANCE TO NONPUBLIC SCHOOLS WHEN STATE
 2 DOES NOT.—If a State is prohibited by law from providing materials,
 3 equipment, and services for children enrolled in elementary and secondary
 4 nonpublic schools as required by subsection (c)(5) of this section, or if the
 5 Secretary decides that a local educational agency has failed substantially to
 6 or will not provide for the participation on an equitable basis of eligible par-
 7 ticipants enrolled in those schools, the Secretary—

8 (1) may waive the requirements of subsection (c)(5) of this section;
 9 and

10 (2) subject to the other requirements of this subchapter, shall ar-
 11 range that materials, equipment, and services be provided for those eli-
 12 gible participants.

13 **§ 13134. Adult education program grants**

14 (a) GENERAL AUTHORITY.—(1) The Secretary of Education shall make
 15 a grant, as provided in this subchapter, to each State educational agency
 16 for each fiscal year to be used to provide adult education programs to eligi-
 17 ble participants at least 16 years of age in need of the services and not en-
 18 rolled in an elementary or secondary public school under the jurisdiction of
 19 a local educational agency. The grant may be used for—

20 (A) programs of instruction—

21 (i) to teach the eligible participants basic reading and mathe-
 22 matics;

23 (ii) to develop and enhance skills needed by the eligible partici-
 24 pants; and

25 (iii) to promote literacy among the eligible participants;

26 (B) administrative costs of planning and operating the programs re-
 27 ferred to in clause (A) of this paragraph;

28 (C) educational support services needed by the eligible participants,
 29 including services to guide and counsel the eligible participants about
 30 educational, career, and employment opportunities; and

31 (D) special projects designed to operate with existing programs and
 32 activities that develop occupational and related skills, particularly pro-
 33 grams authorized under the Job Training Partnership Act (29 U.S.C.
 34 1501 et seq.) or the Carl D. Perkins Vocational and Applied Tech-
 35 nology Education Act (20 U.S.C. 2301 et seq.).

36 (2) The State educational agency may use the grant only as provided in
 37 its application as approved under section 13135(b) of this title.

38 (b) APPLICATIONS.—To receive a grant under this section, the State edu-
 39 cational agency must submit an application to the Secretary. In the applica-
 40 tion, the State educational agency must—

1 (1) agree that payments under the grant will be used as provided
2 in subsection (a) of this section;

3 (2) agree to make periodic reports to the Secretary evaluating the
4 effectiveness of those payments;

5 (3) specify the amounts referred to in subsection (c)(2) of this sec-
6 tion that are made available under other laws of the United States for
7 expenditure in the State for the same purpose for which an amount is
8 made available under this section; and

9 (4) comply with section 13135(a) of this title.

10 (c) ALLOCATIONS.—(1) The Secretary shall allocate the amount appro-
11 priated to carry out this section for a fiscal year among the State edu-
12 cational agencies (except the agencies for American Samoa, Guam, the
13 Northern Mariana Islands, the Republic of Palau, the Republic of the Mar-
14 shall Islands, the Federated States of Micronesia, and the Virgin Islands).
15 Except as provided in paragraph (2) of this subsection and section 13136
16 of this title, the amount of the grant to which an agency is entitled under
17 this section for a fiscal year is equal to the product of—

18 (A) the number of eligible participants at least 16 years of age who,
19 during the period for which the determination of that number is made,
20 are enrolled in programs of instruction described in subsection
21 (a)(1)(A) of this section and offered in the State, but who are not en-
22 rolled in elementary and secondary public schools under the jurisdiction
23 of local educational agencies; multiplied by

24 (B) \$300.

25 (2) If amounts are available for a fiscal year under other laws of the
26 United States for expenditure in the State for the same purpose for which
27 an amount is made available under this section, the amount of the grant
28 under paragraph (1) of this subsection for that fiscal year is reduced by
29 those amounts. However, the reduction is made only to the extent the
30 amounts are available under the other laws—

31 (A) for that purpose specifically because the individuals served by the
32 amounts have refugee, parolee, or asylum status; and

33 (B) to assist individuals eligible for services under this section.

34 (d) METHODS OF PROVIDING PROGRAMS.—(1) A State educational agen-
35 cy may provide adult education programs directly or may make grants to,
36 or contracts with, local educational agencies, public agencies, and private
37 nonprofit organizations to provide the programs. The State educational
38 agency shall review an application for a grant or contract under this sub-
39 section in a way that is consistent with the purposes of section 381 of the
40 Adult Education Act (20 U.S.C. 1213).

1 (2) The State educational agency shall use the grant it receives under
2 this section in a way that enables the maximum number of eligible partici-
3 pants at least 16 years of age residing in the State to receive education
4 under the programs of instruction described in subsection (a)(1)(A) of this
5 section.

6 (e) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The
7 amounts of the grants to which the State educational agencies of American
8 Samoa, Guam, the Northern Mariana Islands, the Republic of Palau, the
9 Republic of the Marshall Islands, the Federated States of Micronesia, and
10 the Virgin Islands are entitled under this section are the amounts the Sec-
11 retary determines they need based on criteria the Secretary prescribes. The
12 total amount of those grants for a period may not be more than one percent
13 of the amount authorized to be appropriated to carry out this section during
14 the period. If the total of the amounts the Secretary determines those agen-
15 cies need is more than one percent, the amount of the grant to each of those
16 agencies is reduced proportionately so that the total is not more than one
17 percent.

18 **§ 13135. Applications**

19 (a) REQUIREMENTS.—(1) In its application for a grant under this sub-
20 chapter, a State educational agency must agree—

21 (A) to ensure that it will not disapprove finally any part of a local
22 educational agency's application for an amount of a grant to the State
23 educational agency under section 13132, 13133, or 13134 of this title
24 without giving the local educational agency reasonable notice and op-
25 portunity for a hearing; and

26 (B) to make reports the Secretary of Education reasonably requires
27 to carry out this subchapter.

28 (2) The State educational agency must submit an application at the time,
29 in the way, and containing or accompanied by information, the Secretary
30 requires.

31 (b) APPROVAL.—The Secretary shall approve an application meeting the
32 requirements of this section and section 13132, 13133, or 13134 of this
33 title, as the case may be. The Secretary may not disapprove finally an appli-
34 cation without giving the applicant reasonable notice and opportunity for a
35 hearing on the record.

36 **§ 13136. Use of estimated information and consultation with** 37 **other agencies**

38 (a) USE OF ESTIMATES.—When actual satisfactory information is not
39 available, the Secretary of Education shall use estimates to determine for
40 any period the number of eligible participants and the amount of a reduc-
41 tion required under section 13132(d), 13133(d)(2), or 13134(c)(2) of this

1 title. A determination based on an overestimate or underestimate may not
2 deprive a State educational agency of any part of the amount the agency
3 would be entitled to receive under this subchapter if the determination were
4 based on accurate information.

5 (b) CONSULTATION WITH OTHER AGENCIES.—To the extent it will make
6 it easier to determine the amount of a reduction required under section
7 13132(d), 13133(d)(2), or 13134(c)(2) of this title, the Secretary shall con-
8 sult with the heads of other agencies providing assistance to eligible partici-
9 pants—

10 (1) to obtain information about the amounts those agencies disburse
11 for educational purposes under programs the agency heads administer;
12 and

13 (2) when feasible, to coordinate the programs those agency heads ad-
14 minister and the programs under this subchapter.

15 **§ 13137. State administrative costs**

16 The Secretary of Education may pay each State educational agency an
17 amount equal to the amount the agency expends in carrying out its duties
18 and powers properly and efficiently under this subchapter. However, the
19 total payments for a period may not be more than 2 percent of the amount
20 the agency receives for the period under this subchapter.

21 **§ 13138. Withholding payments**

22 (a) AUTHORITY TO WITHHOLD.—When the Secretary of Education de-
23 cides that a State educational agency receiving payments under section
24 13132, 13133, or 13134 of this title, or a local educational agency or other
25 entity receiving payments from the State educational agency under section
26 13134, is not complying with a requirement of this subchapter that applies
27 to the section, the Secretary, until satisfied that there is no longer a failure
28 to comply, shall—

29 (1) stop making payments to the State educational agency under sec-
30 tion 13132, 13133, or 13134 of this title; or

31 (2) prohibit the State educational agency from making payments
32 under section 13134 to the local educational agency or other entity that
33 is causing, or involved in, the failure.

34 (b) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary—

35 (1) may act under subsection (a) of this section only after giving the
36 State educational agency reasonable notice and opportunity for a hear-
37 ing; and

38 (2) shall notify the State educational agency of the action the Sec-
39 retary is taking under subsection (a) of this section.

1 **§ 13139. Authorization of appropriations and allocation of**
 2 **total amount appropriated**

3 (a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary
 4 to make grants to each State educational agency under this subchapter and
 5 to pay for administrative costs under section 13137 of this title may be ap-
 6 propriated for the fiscal year ending September 30, 19____. The amounts
 7 shall be appropriated in a lump sum for all programs under this subchapter.

8 (b) AUTHORIZATION OF APPROPRIATIONS FOR BASIC PUBLIC EDU-
 9 CATIONAL SERVICES GRANTS.—To make grants to State educational agen-
 10 cies in the way provided under this section, an amount may be appropriated
 11 under subsection (a) of this section for each fiscal year equal to the product
 12 of—

13 (1) the number of eligible participants enrolled in elementary or sec-
 14 ondary public schools under the jurisdiction of local educational agen-
 15 cies in all States (except American Samoa, Guam, the Northern Mari-
 16 ana Islands, the Republic of Palau, the Republic of the Marshall Is-
 17 lands, the Federated States of Micronesia, and the Virgin Islands) dur-
 18 ing the fiscal year for which the determination of that number is made;
 19 multiplied by

20 (2) \$400.

21 (c) ALLOCATIONS OF APPROPRIATIONS.—(1) If the amounts appropriated
 22 for a fiscal year to make grants under this subchapter are not enough to
 23 pay the total amount of the grants to which State educational agencies are
 24 entitled under sections 13132–13134 of this title for the fiscal year, the al-
 25 location to each agency under each of those sections shall be ratably reduced
 26 so that the total of the allocations is not more than the amounts appro-
 27 priated.

28 (2) Allocations reduced under paragraph (1) of this subsection shall be
 29 increased on the same basis that they were reduced if amounts later become
 30 available to make grants under this subchapter for the period.

31 SUBCHAPTER III—CUBAN AND HAITIAN ENTRANTS

32 **§ 13151. Definition**

33 In this subchapter, “Cuban or Haitian entrant” means—

34 (1) an alien granted parole status as a Cuban/Haitian Entrant (Sta-
 35 tus Pending) or granted another special status later established under
 36 law for nationals of Cuba or Haiti, without regard to the status of the
 37 alien when assistance is provided under this subchapter; and

38 (2) any other national of Cuba or Haiti—

39 (A)(i) paroled into the United States who has not acquired an-
 40 other status under this title;

1 (ii) who is the subject of exclusion or deportation proceedings
2 under this title; or

3 (iii) having an application for asylum pending before the Attor-
4 ney General; and

5 (B) about whom a final, nonappealable, and legally enforceable
6 exclusion or deportation order has not been entered.

7 **§ 13152. Presidential authority**

8 The President has the same duties and powers related to a Cuban or Hai-
9 tian entrant as the duties and powers vested under subchapter I of this
10 chapter. Those duties and powers apply to assistance and services provided
11 to a Cuban or Haitian entrant at any time after the entrant's arrival in
12 the United States, including periods before October 10, 1980. The President
13 may provide by regulation that benefits granted under a law of the United
14 States (except this title) to an individual admitted to the United States
15 under section 5105 of this title shall be provided in the same way and to
16 the same extent to a Cuban or Haitian entrant.

17 **§ 13153. General assistance**

18 (a) TYPES OF ASSISTANCE.—Under the direction of the President, any
19 agency may provide assistance (including materials, supplies, equipment,
20 work, services, or facilities) for the processing, care, security, transportation,
21 and initial reception and placement in the United States of a Cuban or Hai-
22 tian entrant on terms the President prescribes. The President may direct
23 the head of one agency to detail personnel (on a reimbursable or
24 nonreimbursable basis) for temporary duty with another agency that the
25 President has directed to supervise or manage assistance under this section.

26 (b) REIMBURSEMENT.—Amounts to carry out this section—

27 (1) shall be used to reimburse State governments and political sub-
28 divisions for expenses incurred in providing assistance under subsection

29 (a) of this section; and

30 (2) may be used to reimburse an agency providing assistance under
31 subsection (a) of this section.

32 (c) APPLICATION OF NATIONAL ENVIRONMENTAL POLICY ACT OF
33 1969.—The carrying out of a duty or power under this section is not a
34 major action of the United States Government significantly affecting the
35 quality of the human environment under the National Environmental Policy
36 Act of 1969 (42 U.S.C. 4321 et seq.).

37 (d) AVAILABILITY OF APPROPRIATIONS.—Amounts—

38 (1) appropriated under section 13112 of this title are available to
39 carry out this subchapter; and

40 (2) available to carry out this subchapter remain available until ex-
41 pended.

1 **CHAPTER 133—INTERNATIONAL PARTICIPATION AND**
 2 **EMERGENCY ASSISTANCE**

Sec.

13301. Participation in International Organization for Migration.
 13302. Contributions to international organizations.
 13303. Assistance to further foreign policy interests.
 13304. Assistance to refugee women and children.
 13305. Assistance for unexpected urgent needs.
 13306. Allocation, transfer, availability, and accounting of amounts.
 13307. Audits.
 13308. Administrative.

3 **§ 13301. Participation in International Organization for Mi-**
 4 **gration**

5 The President may continue United States membership in the Inter-
 6 national Organization for Migration. To assist in the movement of refugees
 7 and migrants and to enhance the economic progress of the developing coun-
 8 tries by providing for a coordinated supply of a selected labor force,
 9 amounts necessary to pay for the United States Government's contribution
 10 to the Organization and necessary salaries and expenses incident to the
 11 Government's participation in the Organization may be appropriated.

12 **§ 13302. Contributions to international organizations**

13 The President may make contributions to—

- 14 (1) the activities of the United Nations High Commissioner for Refu-
 15 gees for assistance to or for refugees and other persons assisted by the
 16 Commissioner;
 17 (2) the International Organization for Migration;
 18 (3) the International Committee of the Red Cross for assistance to
 19 or for refugees; and
 20 (4) other international organizations for assistance to or for refu-
 21 gees.

22 **§ 13303. Assistance to further foreign policy interests**

23 The President may provide assistance to or for refugees outside the Unit-
 24 ed States designated by the President when the President decides that the
 25 assistance will contribute to the foreign policy interests of the United
 26 States. The President shall designate the refugees by class, group, countries
 27 of origin, or areas of residence.

28 **§ 13304. Assistance to refugee women and children**

29 (a) STANDARDS.—(1) In providing for overseas assistance and protection
 30 of refugees and displaced persons, the United States Government shall seek
 31 to address the protection and provision of basic needs of women and chil-
 32 dren who represent 80 percent of the world's refugee population.

33 (2) In accordance with the 1991 United Nations High Commissioner for
 34 Refugees Guidelines on the Protection of Refugee Women, the Secretary of

1 State, working directly, through international organizations, or through non-
2 governmental voluntary organizations, shall seek to ensure that—

3 (A) the United Nations and relief organizations pay specific atten-
4 tion to recruiting and hiring female protection officers;

5 (B) gender awareness training is carried out for security personnel
6 and other field staff;

7 (C) refugee women and children are protected from violence and
8 abuse by governments or insurgent groups;

9 (D) women refugees are fully involved in planning and carrying
10 out—

11 (i) the delivery of services and assistance; and

12 (ii) the repatriation process;

13 (E) education on and access to services in reproductive health, birth
14 spacing, and other maternal and child health needs are incorporated
15 into refugee health services and education;

16 (F) victims of rape, domestic violence, and other violence and abuse
17 have available to them—

18 (i) protective services;

19 (ii) grievance processes; and

20 (iii) counseling and other services;

21 (G) educational programs are provided to refugee women, with spe-
22 cial emphasis on female heads of households, in—

23 (i) literacy and numeracy;

24 (ii) vocational and income generating skills; and

25 (iii) other training to promote self-sufficiency;

26 (H) all refugee children receive education, ensuring equal access for
27 girls, and that family tracing and other special services are provided
28 for unaccompanied refugee minors;

29 (I) information clearly enumerating age and gender be collected so
30 that appropriate health, education, and assistance programs can be
31 planned;

32 (J) more women program professionals are recruited, hired, and
33 trained in the international humanitarian field; and

34 (K) training is provided to program staff of the Commissioner and
35 nongovernmental voluntary organizations on gender-awareness and car-
36 rying out the Guidelines.

37 (b) PROCEDURES.—The Secretary of State should adopt specific proce-
38 dures to ensure that all recipients of Government amounts for refugee and
39 migration assistance carry out the standards outlined in subsection (a) of
40 this section.

1 (c) REQUIREMENTS FOR REFUGEE AND MIGRATION ASSISTANCE.—In
2 providing refugee and migration assistance, the Secretary should support
3 the protection efforts of this section by raising at the highest levels of gov-
4 ernment the issue of abuses against refugee women and children by govern-
5 ments or insurgent groups that engage in, allow, or condone—

6 (1) a pattern of gross violations of internationally recognized human
7 rights, such as torture or cruel, inhumane, or degrading treatment or
8 punishment, prolonged detention without charges, or other flagrant de-
9 nial to life, liberty, and bodily security;

10 (2) the blockage of humanitarian relief assistance;

11 (3) gender-specific persecution such as systematic individual or mass
12 rape, forced pregnancy, forced abortion, enforced prostitution, or any
13 form of indecent assault or act of violence against refugee women, girls,
14 and children; or

15 (4) continuing violations of bodily integrity against refugee women
16 and children by armed insurgents, local security forces, or camp
17 guards.

18 (d) INVESTIGATION OF REPORTS.—On receipt of credible reports of
19 abuses under subsection (c) of this section, the Secretary should—

20 (1) investigate the reports immediately through emergency fact-find-
21 ing missions or other means; and

22 (2) help identify appropriate remedial measures.

23 (e) MULTINATIONAL IMPLEMENTATION OF THE GUIDELINES.—The Sec-
24 retary should work to—

25 (1) ensure that multilateral organizations completely incorporate the
26 needs of refugee women and children into all elements of refugee assist-
27 ance programs; and

28 (2) encourage other governments providing refugee assistance to
29 adopt policies designed to encourage that the Guidelines be carried out
30 completely.

31 **§ 13305. Assistance for unexpected urgent needs**

32 (a) GENERAL AUTHORITY.—The President may provide assistance to
33 meet unexpected urgent refugee and migration needs on terms the President
34 prescribes when the President decides the assistance is important to the in-
35 terests of the United States.

36 (b) UNITED STATES EMERGENCY REFUGEE AND MIGRATION ASSIST-
37 ANCE FUND.—There is a United States Emergency Refugee and Migration
38 Assistance Fund to carry out this section. Amounts necessary for the Fund
39 may be appropriated to the President. However, an amount may not be ap-
40 propriated that, when added to amounts previously appropriated and not ob-

1 ligated, would cause the total amount in the Fund to be more than
2 \$100,000,000. Amounts appropriated remain available until expended.

3 (c) JUSTIFICATION OF APPROPRIATIONS.—When the President requests
4 an appropriation under this section, the President shall justify the request
5 to the Committee on Foreign Relations of the Senate, the Speaker of the
6 House of Representatives, and the Committees on Appropriations of the
7 Senate and House of Representatives.

8 **§ 13306. Allocation, transfer, availability, and accounting of**
9 **amounts**

10 (a) ALLOCATION AND TRANSFER.—The President may allocate or trans-
11 fer to a department, agency, or instrumentality of the United States Gov-
12 ernment an amount available to carry out this chapter. The amount is avail-
13 able for obligation and expenditure for the purpose for which the amount
14 originally was made available under this chapter or under authority govern-
15 ing the activities of the department, agency, or instrumentality to which the
16 amount was allocated or transferred. An amount allocated or transferred
17 may be carried in a separate appropriation account of the Treasury.

18 (b) PURPOSES FOR WHICH AMOUNTS ARE AVAILABLE.—(1) An amount
19 made available under this chapter may be used for—

20 (A) pay, allowances, and travel of personnel, including members of
21 the Foreign Service whose services are used primarily in carrying out
22 this chapter, without regard to any other law, that may be necessary
23 to carry out this chapter;

24 (B) printing and binding, expenditure outside the United States for
25 supplies and services, and administrative and operating purposes except
26 pay, without regard to a law or regulation governing the obligation and
27 expenditure of amounts of the United States Government, that may be
28 necessary to carry out this chapter;

29 (C) employment and assignment of members of the Foreign Service
30 serving under limited appointments when carrying out this chapter;

31 (D) the exchange of amounts without regard to loss by exchanges;

32 (E) making contracts for personal services outside the United States;

33 (F) expenses authorized by the Foreign Service Act of 1980 (22
34 U.S.C. 3901 et seq.) not otherwise provided for;

35 (G) expenses authorized by the State Department Basic Authorities
36 Act of 1956 (22 U.S.C. 2651a, 2669 et seq.); and

37 (H) other expenses the President decides are necessary to carry out
38 this chapter.

39 (2) An individual employed by contract with amounts made available
40 under paragraph (1)(E) of this subsection is not an employee of the Govern-
41 ment under any law carried out by the Director of the Office of Personnel

1 Management. However, the Secretary of State may apply to that individ-
2 ual—

3 (A) section 2(f) of the State Department Basic Authorities Act of
4 1956 (22 U.S.C. 2669(f)); and

5 (B) any other law carried out by the Secretary as that law is related
6 to employment of individuals by contract to perform personal services
7 outside the United States.

8 (3) An individual receiving amounts under this section may provide ad-
9 ministrative assistance to personnel assigned to a bureau charged with car-
10 rying out this chapter.

11 **§ 13307. Audits**

12 (a) PROGRAM AUDITS.—Amounts may be made available under this chap-
13 ter or any other law to the United Nations High Commissioner for Refugees
14 only if—

15 (1) an annual program audit will be conducted to determine the use
16 of those amounts, including the use by implementing partners; and

17 (2) the audit will be made available through the Secretary of State
18 for inspection by the Comptroller General.

19 (b) INSPECTIONS AND REPORTS BY COMPTROLLER GENERAL.—The
20 Comptroller General shall inspect each audit and submit to Congress a re-
21 port on the inspection.

22 **§ 13308. Administrative**

23 (a) AUTHORITY OF THE PRESIDENT.—To carry out this chapter, the
24 President may—

25 (1) make loans, advances, and grants to, and agreements with, a
26 person, government or government agency in or outside the United
27 States, and international and intergovernmental organizations;

28 (2) accept and use money, property, and services made available to
29 carry out this chapter; and

30 (3) provide assistance and make contributions, notwithstanding an-
31 other provision of law that restricts assistance to foreign countries.

32 (b) WAIVER.—If the President decides that it carries out this chapter, the
33 President may waive a provision of law on making, carrying out, and modi-
34 fying contracts and on United States Government expenditures.

35 (c) DELEGATION OF DUTIES AND POWERS.—If the President delegates
36 to an officer under section 301 of title 3 a duty or power of the President
37 under this chapter, the President also may authorize the officer to
38 redelegate the duty or power to a subordinate officer or employee of the offi-
39 cer. However, the President may not authorize the redelegation of the waiv-
40 er authority under subsection (b) of this section.

(d) INFORMING CONGRESSIONAL COMMITTEES.—The President shall keep appropriate committees of Congress currently informed on the use of expenditures and the exercise of duties and powers under this chapter.

CHAPTER 135—IMMIGRANT EDUCATION ASSISTANCE

Sec.

13501. Findings and purpose.

13502. Definitions and application.

13503. Enhanced instructional opportunities.

13504. Applications.

13505. State allocations.

13506. Grants to local educational agencies.

13507. Providing assistance to nonpublic schools when local educational agency does not.

13508. State administrative costs.

13509. Withholding payments.

13510. Reports.

13511. Authorization of appropriations.

§ 13501. Findings and purpose

(a) FINDINGS.—Congress finds that—

(1) the education of the children and youth of the United States is one of the most sacred government responsibilities;

(2) local educational agencies have struggled to finance education services adequately;

(3) in *Plyler v. Doe*, the Supreme Court held that States have a responsibility under the Equal Protection Clause of the Constitution to educate all children, regardless of immigration status; and

(4) only the United States Government is responsible for immigration policy.

(b) PURPOSE.—The purpose of this chapter is to assist eligible local educational agencies that experience unexpectedly large increases in their student population due to immigration to—

(1) provide high-quality instruction to immigrant children and youth; and

(2) help immigrant children and youth—

(A) with their transition into American society; and

(B) meet the same challenging State performance standards expected of all children and youth.

§ 13502. Definitions and application

(a) DEFINITIONS.—In this chapter—

(1) the definitions in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801) apply, except “local educational agency” and “Secretary”.

(2) “immigrant children and youth” has the same meaning given that term in section 7501 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7601).

1 (3) “local educational agency” has the same meaning given that
2 term in section 14101 of the Elementary and Secondary Education Act
3 of 1965 (20 U.S.C. 8801), except that it includes only an agency for
4 which the number of immigrant children and youth enrolled in public
5 elementary and secondary schools under its jurisdiction and in
6 nonpublic elementary and secondary schools in the district it serves,
7 during the fiscal year for which a grant is to be made under this chap-
8 ter, is at least equal to the lesser of—

9 (A) 500; or

10 (B) 3 percent of the total number of students enrolled in those
11 public or nonpublic schools during that fiscal year.

12 (b) APPLICATION.—Sections 7404 and 7502(a) and parts B–H of title
13 XIV of the Elementary and Secondary Education Act of 1965 (20 U.S.C.
14 7574, 7602(a), 8821 et seq.) apply to this chapter.

15 **§ 13503. Enhanced instructional opportunities**

16 (a) PAYMENTS TO PROVIDE ENHANCED INSTRUCTIONAL OPPORTUNI-
17 TIES.—The Secretary of Education shall make payments, as provided in this
18 chapter, to State educational agencies for each of the fiscal years ending
19 September 30, 1995–1999, for the purpose stated in section 13501(b) of
20 this title by paying for enhanced instructional opportunities for immigrant
21 children and youth.

22 (b) OPPORTUNITIES INCLUDED.—The enhanced instructional opportuni-
23 ties referred to in subsection (a) of this section include—

24 (1) family literacy, parent outreach, and training activities designed
25 to assist parents to become active participants in the education of their
26 children;

27 (2) salaries of personnel, including teacher aides who have been
28 trained specifically, or are being trained, to provide services to immi-
29 grant children and youth;

30 (3) tutorials, mentoring, and academic or career counseling for immi-
31 grant children and youth;

32 (4) identifying and acquiring curricular materials, educational soft-
33 ware, and technologies to be used in the program;

34 (5) basic instructional services directly attributable to the presence
35 in the school district of immigrant children and youth, including the
36 cost of providing additional classroom supplies, overhead costs, costs of
37 construction, acquisition, or rental of space, transportation costs, or
38 other costs directly attributable to these additional basic instructional
39 services; and

40 (6) other activities related to the purpose of this chapter that the
41 Secretary may authorize.

1 **§ 13504. Applications**

2 (a) REQUIREMENTS.—To receive a payment under this chapter for a fis-
3 cal year, a State educational agency must submit an application to the Sec-
4 retary of Education at the time, in the way, and containing or accompanied
5 by information the Secretary requires. In the application, the State edu-
6 cational agency must agree—

7 (1) to administer, or supervise the administration of, the educational
8 programs, services, and activities paid for under this chapter;

9 (2) to ensure that payments under this chapter will be used for the
10 purposes described in sections 13501(b) and 13503 of this title, includ-
11 ing a description of how local educational agencies receiving amounts
12 under this chapter will—

13 (A) use the amounts to meet those purposes; and

14 (B) coordinate with other programs assisted under the Goals
15 2000: Educate America Act (20 U.S.C. 5801 et seq.), the Element-
16 ary and Secondary Education Act of 1965 (20 U.S.C. 6301 et
17 seq.), and other appropriate acts;

18 (3) to ensure that local educational agencies receiving amounts under
19 this chapter will coordinate the use of those amounts with programs
20 assisted under title I or part A of title VII of the Elementary and Sec-
21 ondary Education Act of 1965 (20 U.S.C. 6301 et seq., 7401 et seq.);

22 (4) to ensure that those payments (except payments received under
23 section 13506(a) of this title) will be allocated among the local edu-
24 cational agencies in the State so that each agency receives an amount
25 based on the number of immigrant children and youth counted for that
26 agency under section 13505(a)(1) of this title;

27 (5) to ensure that it will not disapprove finally any part of a local
28 educational agency's application for an amount under this chapter
29 without giving the local educational agency reasonable notice and op-
30 portunity for a hearing;

31 (6) to make reports the Secretary requires to carry out this chapter;

32 (7) to ensure that—

33 (A) to the extent consistent with the number of immigrant chil-
34 dren and youth enrolled in nonpublic elementary and secondary
35 schools in the district served by a local educational agency, the
36 local educational agency, after consulting with the appropriate offi-
37 cials of the schools, will provide for the benefit of those children
38 and youth secular, neutral, and nonideological services, materials,
39 and equipment necessary to educate those children and youth;

40 (B) a public agency will—

1 (i) control and administer amounts provided under this
2 chapter; and

3 (ii) own and administer materials, equipment, and property
4 that is repaired, remodeled, or constructed with those
5 amounts;

6 (C) amounts under this clause (7) will not be commingled with
7 State or local amounts; and

8 (D) a public agency will provide immigrant children and youth
9 in nonpublic elementary or secondary schools the services referred
10 to in subclause (A) of this clause through—

11 (i) employees under the control and supervision of the
12 agency; or

13 (ii) a contract with a person or agency that is under the
14 control and supervision of the public agency and, when pro-
15 viding the services, is independent of the school and of any
16 religious organization;

17 (8) to award amounts reserved under section 13506(a) of this title
18 on a competitive basis based on merit and need as provided in section
19 13506(a); and

20 (9) to ensure that State and local educational agencies receiving
21 amounts under this chapter will comply with the requirements of sec-
22 tion 1120(b) of the Elementary and Secondary Education Act of 1965
23 (20 U.S.C. 6321(b)).

24 (b) APPROVAL.—The Secretary shall review all applications submitted
25 under subsection (a) of this section and shall approve any application that
26 meets the requirements of subsection (a). The Secretary shall disapprove
27 any application not meeting those requirements but may not disapprove fi-
28 nally an application without giving the applicant reasonable notice, technical
29 assistance, and an opportunity for a hearing.

30 (c) NOTIFICATION OF AMOUNT APPROVED.—Not later than June 1 of
31 each year, the Secretary shall notify each State educational agency that has
32 an application approved of the amount of the agency's allocation under sec-
33 tion 13505(a) of this title for the next fiscal year.

34 **§ 13505. State allocations**

35 (a) ALLOCATIONS.—The Secretary of Education shall allocate the amount
36 appropriated to carry out this chapter for a fiscal year among the State
37 educational agencies. Except as provided in this section, of the amount ap-
38 propriated for each fiscal year for this chapter, each state participating in
39 the program assisted under this chapter shall receive an allocation equal to
40 the proportion of—

1 (1) the number of immigrant children and youth enrolled in public
2 elementary and secondary schools under the jurisdiction of the local
3 educational agencies of the State and in nonpublic elementary and sec-
4 ondary schools in the districts served by the local educational agencies
5 of the State; relative to

6 (2) the total number of immigrant children and youth similarly en-
7 rolled in all the States participating in the program assisted under this
8 chapter.

9 (b) DETERMINING NUMBER OF IMMIGRANT CHILDREN AND YOUTH.—(1)
10 The Secretary shall determine the number of immigrant children and youth
11 for a State educational agency under this section based on information or
12 estimates provided by the agency under criteria prescribed by the Secretary.
13 However, after notice and opportunity for a hearing, the Secretary may dis-
14 regard information or estimates that the Secretary decides are clearly erro-
15 neous.

16 (2) A determination under this subsection based on an overestimate or
17 underestimate may not deprive a State educational agency of the allocation
18 the State otherwise would have received under this chapter if the determina-
19 tion were based on accurate information.

20 (c) REALLOCATION OF UNUSED AMOUNTS.—When the Secretary deter-
21 mines that a part of a payment made to a State educational agency under
22 this chapter for a fiscal year will not be used by the agency to carry out
23 the purpose for which the payment was made, the Secretary shall make that
24 part available to one or more State educational agencies to the extent the
25 Secretary decides the other agencies can use the additional amount to carry
26 out the purpose. An amount made available under this subsection to a State
27 educational agency from an appropriation for a fiscal year is deemed in this
28 chapter to be a part of the payment (as determined under subsection (a)
29 of this section) to that agency for that fiscal year, and remains available
30 until the end of the next fiscal year.

31 **§ 13506. Grants to local educational agencies**

32 (a) DISTRIBUTION BY STATE EDUCATIONAL AGENCIES.—(1) If the
33 amount appropriated to carry out this chapter is more than \$50,000,000
34 for a fiscal year, a State educational agency may reserve not more than 20
35 percent of the agency's payment under this chapter for that year to award
36 grants to local educational agencies in the State. The grants shall be award-
37 ed on a competitive basis.

38 (2)(A) At least one-half of the grants shall be made available to local edu-
39 cational agencies that have the highest numbers and percentages of immi-
40 grant children and youth.

1 (B) Amounts reserved under this subsection and not made available
2 under paragraph (2)(A) of this subsection may be distributed to local edu-
3 cational agencies in the State that are experiencing a sudden influx of immi-
4 grant children and youth but otherwise are not eligible for assistance under
5 this chapter.

6 (b) USE OF GRANT.—A local educational agency receiving a grant under
7 subsection (a) of this section shall use the grant to carry out the activities
8 described in section 13503(b) of this title.

9 (c) CONSORTIA.—A local educational agency receiving a grant under this
10 chapter may collaborate or form a consortium with one or more local edu-
11 cational agencies, institutions of higher education, and nonprofit organiza-
12 tions to carry out the program described in an application approved under
13 this chapter.

14 (d) SUBGRANTS.—With the approval of the Secretary of Education, a
15 local educational agency receiving a grant under this chapter may make a
16 subgrant to, or a contract with, an institution of higher education, a non-
17 profit organization, or a consortium of institutions of higher education or
18 nonprofit organizations to carry out a program described in an application
19 approved under this chapter, including a program to serve out-of-school
20 youth.

21 (e) DISTRIBUTION OF INFORMATION.—Local educational agencies receiv-
22 ing amounts under subsection (a) of this section that have the highest num-
23 ber of immigrant children and youth may make information on serving im-
24 migrant children and youth available to local educational agencies in the
25 State with sparse numbers of immigrant children and youth.

26 (f) SIMULTANEOUS SERVICE OF IMMIGRANT CHILDREN AND YOUTH.—
27 This chapter does not prohibit a local educational agency from serving, in
28 the same educational setting where appropriate, immigrant children and
29 youth simultaneously with students with similar educational needs.

30 **§13507. Providing assistance to nonpublic schools when**
31 **local educational agency does not**

32 (a) GENERAL AUTHORITY.—If a local educational agency is prohibited by
33 law from providing educational services for children and youth enrolled in
34 nonpublic elementary and secondary schools as required by section
35 13504(a)(7) of this title, or if the Secretary of Education decides that a
36 local educational agency has failed substantially to, or will not, provide for
37 the participation on an equitable basis of children and youth enrolled in
38 those schools, the Secretary—

39 (1) may waive the requirements of section 13504(a)(7) of this title;

40 and

1 (2) subject to the other requirements of this chapter, shall arrange
2 for educational services to be provided for those children and youth.

3 (b) WAIVER REQUIREMENTS.—A waiver under this section is subject to
4 consultation, withholding, notice, and judicial review requirements as pro-
5 vided in title I of the Elementary and Secondary Education Act of 1965
6 (20 U.S.C. 6301 et seq.).

7 **§ 13508. State administrative costs**

8 For any fiscal year, a State educational agency may reserve not more
9 than 1.5 percent of the amount allocated to the agency under section
10 13505(a) of this title to pay the costs of its administrative duties and pow-
11 ers under this chapter.

12 **§ 13509. Withholding payments**

13 (a) AUTHORITY TO WITHHOLD.—When the Secretary of Education de-
14 cides that a State educational agency receiving payments under this chapter,
15 or a local educational agency receiving payments from the State educational
16 agency, is not complying with a requirement of this chapter, the Secretary,
17 until satisfied that there is no longer a failure to comply, shall—

18 (1) stop making payments to the State educational agency under this
19 chapter; or

20 (2) prohibit the State educational agency from making payments
21 under this chapter to the local educational agency that is causing, or
22 involved in, the failure.

23 (b) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary—

24 (1) may act under subsection (a) of this section only after giving the
25 State educational agency reasonable notice and opportunity for a hear-
26 ing; and

27 (2) shall notify the State educational agency of the action the Sec-
28 retary is taking under subsection (a) of this section.

29 **§ 13510. Reports**

30 (a) REPORTS BY STATE EDUCATIONAL AGENCIES.—Each State edu-
31 cational agency receiving amounts under this chapter shall submit a report
32 once every 2 years to the Secretary of Education on the expenditure of
33 amounts by local educational agencies under this chapter. Each local edu-
34 cational agency receiving amounts under this chapter shall submit to the
35 State educational agency information necessary for the report.

36 (b) REPORTS BY THE SECRETARY.—The Secretary shall submit a report
37 once every 2 years to the appropriate committees of Congress about pro-
38 grams assisted under this chapter as provided in section 14701 of the Ele-
39 mentary and Secondary Education Act of 1965 (20 U.S.C. 8941).

1 **§ 13511. Authorization of appropriations**

2 The following amounts may be appropriated to the Secretary of Edu-
3 cation to carry out this chapter:

4 (1) \$100,000,000 for the fiscal year ending September 30, 1995.

5 (2) necessary amounts for each of the fiscal years ending September
6 30, 1996–1999.

7 **CHAPTER 137—STATE LEGALIZATION IMPACT-**
8 **ASSISTANCE GRANTS**

Sec.

13701. Definitions and nonapplication.

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.

9 **§ 13701. Definitions and nonapplication**

10 (a) DEFINITIONS.—In this chapter—

11 (1) “eligible legalized alien” means an alien having the status of an
12 alien lawfully admitted for temporary residence under chapter 93 of
13 this title, but only until the end of the 5-year period beginning on the
14 date the alien first acquired the status.

15 (2) “program of public assistance” means a program in a State or
16 political subdivision of a State that—

17 (A) provides for cash, medical, or other assistance (as defined
18 by the Secretary of Health and Human Services) designed to meet
19 the basic subsistence or health needs of individuals;

20 (B) is available generally to needy individuals residing in the
21 State or political subdivision; and

22 (C) receives financing from the State government or political
23 subdivision.

24 (3) “program of public health assistance” means a program in a
25 State or political subdivision that—

26 (A) provides public health services, including immunizations for
27 immunizable diseases, testing and treatment for tuberculosis and
28 sexually-transmitted diseases, and family planning services;

29 (B) is available generally to needy individuals residing in the
30 State or political subdivision; and

31 (C) receives financing from the State government or political
32 subdivision.

33 (b) NONAPPLICATION.—The 5-year limitation referred to in subsection

34 (a)(1) of this section does not apply to making payments from amounts ap-

1 appropriated under the Departments of Labor, Health and Human Services,
2 and Education, and Related Agencies Appropriations Act, 1995 (Public Law
3 103–333, 108 Stat. 2558) for—

4 (1) providing public information and outreach activities about natu-
5 ralization and citizenship; and

6 (2) English language and civics instruction to any adult eligible le-
7 galized alien who has not met the requirements of section 20301(7)
8 and (8) of this title.

9 **§ 13702. Allotments and allotment uses**

10 (a) GENERAL AUTHORITY.—A State may be paid an allotment as pro-
11 vided under this chapter. The State may use amounts allotted to the State
12 only—

13 (1) to reimburse the costs of programs of public assistance provided
14 for eligible legalized aliens not disqualified under section 9310 of this
15 title when the assistance is provided;

16 (2) to reimburse the costs of programs of public health assistance
17 provided to any alien who is, or who applied before May 5, 1988, to
18 become, an eligible legalized alien;

19 (3) to pay a State educational agency for assisting a local edu-
20 cational agency in providing educational services for eligible legalized
21 aliens;

22 (4) to pay for public education and outreach (including providing in-
23 formation to individual applicants, but not including client counseling
24 or another service that would assume responsibility for an alien’s appli-
25 cation for adjustment of status) to inform aliens lawfully admitted for
26 temporary residence about—

27 (A) the requirements of chapter 93 of this title related to ad-
28 justment of status;

29 (B) sources of assistance for aliens obtaining adjustment of sta-
30 tus, including educational, informational, and referral services, and
31 information about the rights and responsibilities of those aliens
32 and aliens lawfully admitted for permanent residence;

33 (C) the identification of health, employment, and social services;
34 and

35 (D) the importance of identifying oneself to service providers as
36 an alien lawfully admitted for temporary residence; and

37 (5) to pay for education and outreach efforts by State agencies about
38 unfair discrimination in employment practices because of national ori-
39 gin or citizenship status, except that State agencies may initiate these
40 efforts only after consulting with the Special Counsel for Immigration-

1 Related Unfair Employment Practices to ensure, to the maximum ex-
2 tent possible, a uniform program.

3 (b) DISCRETION TO DISTRIBUTE AMONG USES.—Except as provided in
4 subsection (c) of this section, a State may decide on the distribution of
5 amounts among the uses described in subsection (a) of this section.

6 (c) REQUIRED USE PERCENTAGES.—(1) Except as provided in para-
7 graphs (2) and (3) of this subsection, of the amounts allotted to a State
8 under this chapter in a fiscal year—

9 (A) 10 percent shall be used by the State for reimbursement under
10 subsection (a)(1) of this section;

11 (B) 10 percent shall be used by the State for reimbursement under
12 subsection (a)(2) of this section; and

13 (C) 10 percent shall be used by the State for payments under sub-
14 section (a)(3) of this section.

15 (2) Subject to paragraph (3) of this subsection, a State not requiring all
16 of the 10 percent of an allotted amount for a use described in subsection
17 (a)(1), (2), or (3) of this section for a fiscal year shall distribute the unused
18 amount equally between the other 2 uses described in subsection (a)(1)–(3).

19 (3) Amounts provided under this chapter may not be used to provide re-
20 imbursement for more than 100 percent of the costs described in subsection
21 (a)(1) or (2) of this section.

22 (4) Of the amounts allotted to a State under this chapter in a fiscal year,
23 the State may not use more than the greater of—

24 (A) one percent or \$100,000, for payments under subsection (a)(4)
25 of this section; and

26 (B) one percent or \$100,000, for payments under subsection (a)(5)
27 of this section.

28 (d) LIMITATION ON PAYMENTS.—A payment under this chapter—

29 (1) may be made to a State only for costs for assistance of a pro-
30 gram of public assistance or public health assistance to the extent the
31 assistance otherwise generally is available under the program to citizens
32 residing in the State; and

33 (2) may not be made for costs to the extent the costs otherwise are
34 reimbursed or paid for under another United States Government pro-
35 gram.

36 (e) APPLICATION OF CHAPTER 135.—Chapter 135 of this title applies to
37 a payment under subsection (a)(3) of this section except that—

38 (1) a reference in chapter 135 to “immigrant children” is deemed
39 to be a reference to “eligible legalized aliens” (including aliens over 16
40 years of age) during the 5-year period beginning with the first month

1 in which such an alien acquires the status of an alien lawfully admitted
2 for temporary residence under this title;

3 (2) in determining a payment for an eligible legalized alien over 16
4 years of age, the exception in section 13502(a)(3) of this title does not
5 apply;

6 (3) the State educational agency may provide educational services to
7 adult eligible legalized aliens through local educational agencies and
8 other public agencies and private nonprofit organizations, including
9 community-based organizations of demonstrated effectiveness; and

10 (4) the services may include instruction in English and other pro-
11 grams designed to enable such aliens to acquire the citizenship skills
12 described in section 20301(a)(7) and (8) of this title.

13 **§ 13703. Applications and statements about allotments**

14 (a) GENERAL REQUIREMENTS.—A State is eligible for payment of an
15 amount allotted under section 13704 of this title only if the State—

16 (1) has filed with the Secretary of Health and Human Services an
17 application containing the information described in subsection (b) of
18 this section, criteria for and administrative methods of distributing
19 amounts received under this chapter, and other information the Sec-
20 retary decides is necessary to carry out this chapter;

21 (2) has its application approved by the Secretary; and

22 (3) submits to the Secretary a statement certifying that—

23 (A) amounts allotted to the State under this chapter will be
24 used only as provided under section 13702(a) of this title;

25 (B) the State will decide on, and provide a fair method for, allo-
26 cating amounts among State and local authorities consistent with
27 subsection (b) of this section and section 13702(c) of this title;
28 and

29 (C) fiscal control and accounting procedures will be established
30 that are adequate to meet the requirements of subsection (b) of
31 this section and sections 13702(d) and 13707 of this title.

32 (b) APPLICATION INFORMATION REQUIREMENTS.—The application of
33 each State under this section for each fiscal year must include detailed in-
34 formation on—

35 (1) the number of eligible legalized aliens residing in the State; and

36 (2) the costs (excluding costs otherwise paid by the United States
37 Government) that the State and each political subdivision is likely to
38 incur for the purposes described in section 13702(a) of this title.

39 **§ 13704. Determining and paying allotments**

40 (a) PRESCRIBING ALLOTMENT FORMULA.—From amounts appropriated
41 under section 13709(a) of this title for a fiscal year (less the amount re-

1 served for United States Government administrative costs), the Secretary of
2 Health and Human Services shall allot to each State with an application
3 approved under section 13703(a) of this title an amount determined by a
4 formula, prescribed by the Secretary by regulation, that considers—

5 (1) the number of eligible legalized aliens residing in the State in
6 that fiscal year;

7 (2) the ratio of the number of eligible legalized aliens in the State
8 to—

9 (A) the total number of residents of the State; and

10 (B) the total number of eligible legalized aliens in all States in
11 that fiscal year;

12 (3) the expenditures the State is likely to incur in that fiscal year
13 in providing assistance for eligible legalized aliens for which reimburse-
14 ment or payment may be made under this chapter;

15 (4) the ratio of expenditures in the State to expenditures in all
16 States;

17 (5) changes for the difference in prior years between the State's ac-
18 tual expenditures incurred in providing assistance for eligible legalized
19 aliens for which reimbursement or payment may be made under this
20 chapter and the allotment provided the State under this chapter for
21 those years; and

22 (6) other factors the Secretary considers appropriate to provide for
23 an equitable distribution of the amounts.

24 (b) ESTIMATING THE NUMBER OF ELIGIBLE LEGALIZED ALIENS.—In
25 determining the number of eligible legalized aliens under subsection (a) of
26 this section, the Secretary may estimate the number of those aliens on the
27 basis of information the Secretary considers appropriate.

28 (c) ADDITIONAL ALLOTMENTS OF UNALLOTTED AMOUNTS.—If all States
29 have not qualified for allotments under this chapter for the fiscal year, or
30 if at least one State has indicated in its description of activities that it does
31 not intend to use, in that fiscal year or in any subsequent fiscal year begin-
32 ning before October 1, 1994, the complete allotment, amounts appropriated
33 under this chapter for a fiscal year and not allotted to those States shall
34 be allotted among the remaining States in proportion to the amount other-
35 wise allotted to the remaining States for the fiscal year.

36 (d) MAKING PAYMENTS.—For each fiscal year, the Secretary shall make
37 payments, as provided in section 6503 of title 31, to each State from its
38 allotment under this section. An amount paid to a State for a fiscal year
39 and remaining unobligated at the end of the year remains available to the
40 State in subsequent fiscal years for the purposes for which it was made.
41 However, the amount is not available after September 30, 1994.

1 (e) REALLOTMENT OF UNEXPENDED AMOUNTS.—The Secretary shall
2 reallocate amounts not expended by the States before December 31, 1994, to
3 States that expended their complete allotment. Reallocation shall be based
4 on each State's proportionate share of the total unreimbursed legalized alien
5 costs in all States. Not later than 90 days after receiving a reallocation, but
6 before August 1, 1995, a State shall use the reallocated amount to reimburse
7 all allowable costs.

8 **§ 13705. Nondiscrimination**

9 (a) PROHIBITIONS.—(1) A program or activity receiving financial assist-
10 ance made available under this chapter is a program or activity receiving
11 financial assistance from the United States Government in applying—

12 (A) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

13 (B) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

14 (C) title IX of the Education Amendments of 1972 (20 U.S.C. 1681
15 et seq.); or

16 (D) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et
17 seq.).

18 (2) A person may not be excluded, because of sex or religion, from par-
19 ticipating in, denied a benefit of, or discriminated against under, a program
20 or activity receiving financial assistance made available under this chapter.

21 (b) VIOLATION NOTICES AND COMPLIANCE REQUESTS.—When the Sec-
22 retary of Health and Human Services finds that a State or political subdivi-
23 sion receiving a payment from an allotment under this chapter is not com-
24 plying with a law referred to in subsection (a)(1) of this section, with sub-
25 section (a)(2) of this section, or with an applicable regulation (including a
26 regulation prescribed to carry out subsection (a)(2)), the Secretary shall no-
27 tify the chief executive officer of the State and shall request the chief execu-
28 tive officer to secure compliance by the State or political subdivision.

29 (c) ADMINISTRATIVE ACTIONS.—If within a reasonable time (but not
30 more than 60 days after providing notice under subsection (b) of this sec-
31 tion) the chief executive officer does not secure compliance, the Secretary
32 may—

33 (1) refer the matter to the Attorney General with a recommendation
34 that a civil action be brought;

35 (2) act under the Age Discrimination Act of 1975 (42 U.S.C. 6101
36 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794),
37 or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.),
38 as the case may be; or

39 (3) take other action provided by law.

1 (d) CIVIL ACTIONS.—The Attorney General may bring a civil action in
 2 an appropriate district court of the United States for appropriate relief, in-
 3 cluding injunctive relief, when—

4 (1) a matter is referred to the Attorney General under subsection
 5 (c)(1) of this section; or

6 (2) the Attorney General believes the program or activity receiving
 7 financial assistance made available under this chapter is engaged in a
 8 pattern or practice in violation of—

9 (A) a law referred to in subsection (a)(1) of this section; or

10 (B) subsection (a)(2) of this section.

11 **§ 13706. Consultation with State and local officials**

12 In establishing regulations and guidelines to carry out this chapter, the
 13 Secretary of Health and Human Services shall consult with representatives
 14 of State governments and political subdivisions.

15 **§ 13707. Reports and audits**

16 (a) STATE ANNUAL REPORTS.—Each State shall submit to the Secretary
 17 of Health and Human Services an annual report on its activities under this
 18 chapter. To evaluate properly and compare the performance of different
 19 States provided assistance under this chapter and to ensure the proper ex-
 20 penditure of amounts under this chapter, the report shall be in the form
 21 and contain information the Secretary decides (after consulting with the
 22 States and the Comptroller General) is necessary—

23 (1) to provide an accurate description of the activities;

24 (2) to provide a complete record of the purposes for which amounts
 25 were expended and of the recipients of the amounts; and

26 (3) to establish the extent to which amounts were expended consist-
 27 ent with this chapter.

28 (b) ANNUAL REPORTS BY SECRETARY.—The Secretary—

29 (1) shall report annually to Congress on activities for which amounts
 30 are provided under this chapter; and

31 (2) shall submit a copy of the report to each State.

32 (c) AUDITS.—(1) Audits shall be conducted as provided under chapter 75
 33 of title 31.

34 (2) Amounts allotted to a State but not expended consistent with this
 35 chapter—

36 (A) shall be repaid by the State to the United States Government;

37 or

38 (B) may be offset by the Secretary against any other amount to
 39 which the State is or may become entitled under this chapter.

40 (3) After notice and an opportunity for a hearing, the Secretary may
 41 withhold payment of amounts to a State not using its allotment as provided

1 under this chapter. The Secretary may withhold the amounts until the Sec-
 2 retary finds that the reason for withholding no longer exists and there is
 3 reasonable assurance that it will not recur.

4 (d) RECORDS.—(1) To evaluate and review assistance provided under this
 5 chapter, the Secretary and the Comptroller General shall have access to a
 6 record related to the assistance that is in the possession, custody, or control
 7 of a State, a political subdivision of a State, or a grantee of a State or polit-
 8 ical subdivision.

9 (2) A State, political subdivision, or grantee is not required to create or
 10 prepare new records to comply with paragraph (1) of this subsection.

11 (e) AVAILABILITY OF REPORTS AND AUDITS.—(1) A State shall make
 12 copies of each report and audit required under this section available for
 13 public inspection within the State.

14 (2) On request, a copy of the annual report required by subsection (a)
 15 of this section shall be provided to any interested public agency. Each such
 16 agency may submit its views on the report to Congress.

17 **§ 13708. Criminal penalties**

18 A person shall be fined under title 18, imprisoned for not more than 5
 19 years, or both, if the person—

20 (1) knowingly and willfully makes or causes to be made a false state-
 21 ment or misrepresentation of a material fact related to providing assist-
 22 ance or services for which payment may be made by a State from
 23 amounts allotted to the State under this chapter; or

24 (2) knowing of the occurrence of an event affecting the initial or con-
 25 tinued right to a payment, conceals or does not disclose the event with
 26 an intent to receive payment fraudulently—

27 (A) in a greater amount than is due; or

28 (B) when no payment is authorized.

29 **§ 13709. Appropriations**

30 (a) ANNUAL APPROPRIATION.—For the fiscal year ending September 30,
 31 1994, there is appropriated \$812,000,000 to carry out this chapter for costs
 32 incurred after September 30, 1989, including United States Government,
 33 State government, and political subdivision administrative costs.

34 (b) CHANGES IN APPROPRIATED AMOUNTS.—(1) Except as provided in
 35 paragraphs (2) and (3) of this subsection, the amount appropriated for a
 36 fiscal year is decreased by the amount estimated to be expended by the Gov-
 37 ernment in that year (as contained in the annual budget submitted by the
 38 President to Congress for that year) for programs of financial assistance,
 39 medical assistance, and assistance under the Food Stamp Act of 1977 (7
 40 U.S.C. 2011 et seq.) for aliens eligible for assistance under section

1 9310(a)(1) of this title only because of section 9310(a)(3) and (b) of this
2 title.

3 (2) The amount estimated under paragraph (1) of this section shall ex-
4 clude an amount attributable to supplemental security benefits paid under
5 title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) or medical
6 assistance provided under a State plan approved under title XIX of the So-
7 cial Security Act (42 U.S.C. 1396 et seq.) for—

8 (A) an alien who the Secretary of Health and Human Services de-
9 cides, based on an application filed before May 5, 1988, for benefits
10 under section 212 of the Act of July 9, 1973 (42 U.S.C. 1382 (note))
11 or title XVI, is—

12 (i) residing permanently in the United States under color of law
13 as provided in section 1614(a)(1)(B)(ii) of the Social Security Act
14 (42 U.S.C. 1382c(a)(1)(B)(ii)); and

15 (ii) eligible to receive the benefits under section 212 or title XVI
16 for April, 1988; and

17 (B) as long as the alien continues without interruption to be eligible
18 to receive the benefits under section 212 or title XVI.

19 (3) If expenditures by the Government (as described in paragraph (1) of
20 this subsection) for a fiscal year are more than, or less than, the amount
21 estimated to be expended for that year under paragraph (1) (considering
22 any change under this paragraph), the amount described in this section for
23 the next fiscal year shall be decreased or increased, respectively, by the
24 amount of the excess or deficit for the prior fiscal year.

25 **CHAPTER 139—REIMBURSEMENT FOR COSTS OF**
26 **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.

27 **§ 13901. Payment of costs of imprisoning certain Cuban na-**
28 **tionals**

29 (a) PAYMENTS TO STATES AND COUNTIES.—The Attorney General shall
30 pay a State or county for costs incurred by the State or county in imprison-
31 ing, during the fiscal year for which payment is made, a Cuban national
32 who—

33 (1) was paroled into the United States in 1980 by the Attorney Gen-
34 eral;

35 (2) after being paroled, violated a State or county law for which a
36 term of imprisonment was imposed; and

1 (3) at the time of the parole and violation, was not lawfully admitted
2 for permanent residence or not admitted under an immigrant or non-
3 immigrant visa issued under this title.

4 (b) APPLICATIONS FOR PAYMENTS.—For a State or county to be paid
5 under this section, the chief executive officer of the State or county shall
6 submit an application to the Attorney General, under regulations prescribed
7 by the Attorney General. The application shall contain—

8 (1) the number and names of Cuban nationals for whose imprison-
9 ment the State or county is entitled to be paid; and

10 (2) other information the Attorney General requires.

11 (c) REDUCTION IF APPROPRIATIONS INSUFFICIENT.—For each fiscal
12 year, the Attorney General shall make payment under this section to States
13 and counties the Attorney General decides are eligible under this section.
14 However, if amounts appropriated for the fiscal year to carry out this sec-
15 tion are not sufficient to make all payments, each payment shall be ratably
16 reduced so that the total of the payments equals the amount appropriated.

17 (d) POLICY ON RETURN OF CUBAN NATIONALS.—It is the policy of the
18 United States Government that the President, in consultation with the At-
19 torney General, other appropriate officials of the United States Government,
20 and appropriate State and county chief executive officers referred to in sub-
21 section (b) of this section, shall place top priority on seeking the expeditious
22 removal from the United States and return by any responsible means to
23 Cuba of Cuban nationals described in subsection (a) of this section.

24 **§13902. Reimbursement of costs of imprisoning certain**
25 **Cuban nationals and illegal aliens**

26 (a) GENERAL.—The Attorney General shall reimburse a State for costs
27 incurred by the State in imprisoning any of the following Cuban nationals
28 and illegal aliens convicted by the State of a felony:

29 (1) a Cuban national who—

30 (A) was paroled into the United States in 1980 by the Attorney
31 General;

32 (B) after being paroled, violated a State or local law for which
33 a term of imprisonment was imposed; and

34 (C) at the time of parole and violation, was not lawfully admit-
35 ted for permanent or temporary residence or not admitted under
36 an immigrant or nonimmigrant visa issued under this title.

37 (2) an illegal alien who is in the United States unlawfully and—

38 (A) whose most recent entry into the United States was without
39 inspection; or

40 (B) who was admitted to the United States as a nonimmigrant
41 and whose—

1 (i) period of authorized stay as a nonimmigrant expired be-
 2 fore the date of committing the crime for which the illegal
 3 alien was convicted; or

4 (ii) unlawful status was known to the United States Gov-
 5 ernment before the date of committing the crime for which
 6 the alien was convicted.

7 (b) REGULATIONS.—The Attorney General shall prescribe regulations—

8 (1) providing eligibility requirements for States seeking reimburse-
 9 ment under subsection (a) of this section;

10 (2) requiring that States seeking reimbursement under subsection
 11 (a) of this section verify the eligible incarcerated population data with
 12 the Attorney General;

13 (3) providing a formula for distributing assistance under subsection
 14 (a) of this section to eligible States; and

15 (4) awarding assistance to eligible States.

16 **§ 13903. Limitation**

17 The Attorney General may expend amounts under this chapter in a fiscal
 18 year only to the extent and in the amount provided in advance by an appro-
 19 priation law.

20 **SUBTITLE V—CITIZENSHIP AND NATIONALITY**

CHAPTER	Sec.
201. CITIZENSHIP AND NATIONALITY AT BIRTH AND COLLECTIVE NATURALIZATION.	20101
203. NATURALIZATION ELIGIBILITY	20301
205. NATURALIZATION PROCEDURE	20501
207. LOSS OF NATIONALITY	20701
209. NATIONALITY DOCUMENTS	20901
211. MISCELLANEOUS	21101

21 **CHAPTER 201—CITIZENSHIP AND NATIONALITY AT**
 22 **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 be- fore June 28, 1932.

23 **§ 20101. Individuals born in the United States**

24 (a) CITIZEN AT BIRTH.—The following individuals are citizens of the
 25 United States at birth:

1 (1) an individual born in, and subject to the jurisdiction of, the
2 United States.

3 (2) an individual born in the United States to a member of an In-
4 dian, Eskimo, Aleutian, or other aboriginal tribe.

5 (b) PROPERTY RIGHTS NOT AFFECTED.—Subsection (a)(2) of this sec-
6 tion does not affect property rights.

7 **§ 20102. Individuals born in American Samoa**

8 (a) CITIZEN AT BIRTH.—An individual born in American Samoa is a citi-
9 zen of the United States at birth if one of the individual's parents is a citi-
10 zen of the United States who was physically present in the United States
11 or American Samoa for at least one continuous year before the individual's
12 birth.

13 (b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—An individual born in
14 American Samoa who is not a citizen of the United States at birth under
15 subsection (a) of this section is a national, but not a citizen, of the United
16 States at birth.

17 **§ 20103. Individuals found in the United States or American**
18 **Samoa**

19 (a) CITIZEN AT BIRTH.—An individual of unknown parents found in the
20 United States before becoming 5 years of age is a citizen of the United
21 States at birth unless shown, before the individual becomes 21 years of age,
22 that the individual was not born in the United States.

23 (b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—An individual of unknown
24 parents found in American Samoa before becoming 5 years of age is a na-
25 tional, but not a citizen, of the United States at birth unless shown, before
26 the individual becomes 21 years of age, that the individual was not born
27 in American Samoa.

28 **§ 20104. Individuals born outside the United States and**
29 **American Samoa**

30 (a) CITIZEN AT BIRTH.—An individual born outside the United States
31 and American Samoa is a citizen of the United States at birth if—

32 (1) both parents are citizens of the United States and at least one
33 parent had a residence in the United States or American Samoa before
34 the individual's birth;

35 (2) one parent is a national, but not a citizen, of the United States
36 and the other parent is a citizen of the United States who was phys-
37 ically present in the United States or American Samoa for at least one
38 continuous year before the individual's birth; or

39 (3) one parent is an alien and the other parent is a citizen of the
40 United States who, before the individual's birth, was physically present

1 in the United States or American Samoa for at least 5 years, at least
2 2 of which were after the citizen parent became 14 years of age.

3 (b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—(1) An individual born
4 outside the United States and American Samoa is a national, but not a citi-
5 zen, of the United States at birth if—

6 (A) both parents are nationals, but not citizens, of the United States
7 who had a residence in the United States or American Samoa before
8 the individual's birth; or

9 (B) one parent is an alien and the other parent is a national, but
10 not a citizen, of the United States who, before the individual's birth,
11 was physically present in the United States or American Samoa for at
12 least 7 years in any continuous 10-year period—

13 (i) during which the national parent was not outside the United
14 States and American Samoa for more than one continuous year;
15 and

16 (ii) at least 5 years of which were after the national parent be-
17 came 14 years of age.

18 (2) An individual born before August 27, 1986, is a national, but not a
19 citizen, of the United States under paragraph (1)(B) of this subsection only
20 as of the date the individual satisfies the Secretary of State that the individ-
21 ual meets the requirements of paragraph (1)(B).

22 (c) TIME OUTSIDE THE UNITED STATES INCLUDED IN PERIOD OF PRES-
23 ENCE.—In subsections (a)(3) and (b)(1)(B) of this section, the period of
24 physical presence includes, for an individual born after December 23, 1952,
25 any period the citizen parent or national parent spent outside the United
26 States and American Samoa—

27 (1) honorably serving in the armed forces of the United States or
28 employed by the United States Government or an international organi-
29 zation; or

30 (2) as a dependent unmarried son or daughter and member of the
31 household of an individual honorably serving in the armed forces or em-
32 ployed by the Government or an international organization.

33 (d) INDIVIDUAL BORN BETWEEN 1941 AND 1952.—Subsection (a)(3) of
34 this section also applies to an individual if—

35 (1) the individual was born outside the United States and American
36 Samoa after January 12, 1941, and before December 24, 1952;

37 (2) one of the individual's parents is a citizen of the United States
38 who served in the armed forces of the United States after December
39 31, 1946, and before December 24, 1952; and

40 (3) the individual did not become a citizen under section 201(g) or
41 (i) of the Nationality Act of 1940 (ch. 876, 54 Stat. 1139).

1 (e) INDIVIDUAL BORN BEFORE MAY 24, 1934, WHOSE MOTHER WAS
2 CITIZEN.—(1) An individual is a citizen of the United States at birth if—

3 (A) the individual was born before noon (Eastern Standard Time)
4 May 24, 1934, outside the limits and jurisdiction of the United States;

5 (B) the individual's father was an alien; and

6 (C) the individual's mother was a citizen of the United States at the
7 time of the individual's birth and had resided in the United States be-
8 fore the individual's birth.

9 (2) When an individual is claiming citizenship of the United States based
10 on descent from an individual described in paragraph (1) of this subsection,
11 any law that provided for loss of citizenship or nationality for failure to
12 come to, reside in, or be physically present in the United States does not
13 apply, including—

14 (A) the provisos of section 201(g) of the Nationality Act of 1940 (ch.
15 876, 54 Stat. 1139); and

16 (B) section 301(b) of the Immigration and Nationality Act (ch. 477,
17 66 Stat. 236) (as in effect before October 10, 1978).

18 (3)(A) Except as provided in subparagraphs (B) and (C) of this para-
19 graph, the immigration laws of the United States shall be applied to an in-
20 dividual as though paragraphs (1) and (2) of this subsection had been in
21 effect on the date of the individual's birth.

22 (B) Retroactive application of paragraphs (1) and (2) of this subsection
23 does not affect the citizenship of an individual who obtained citizenship
24 under section 1993 of the Revised Statutes (as in effect before May 24,
25 1934).

26 (C) Retroactive application of paragraphs (1) and (2) of this subsection
27 does not confer citizenship on, or affect the validity of any denaturalization,
28 exclusion, or deportation action against, an individual who—

29 (i) is or was excludable from the United States under section 6309
30 of this title; or

31 (ii) was excluded from, or would not have been eligible for admission
32 to, the United States under the Displaced Persons Act of 1948 (ch.
33 647, 62 Stat. 1009) or section 14 of the Refugee Relief Act of 1953
34 (ch. 336, 67 Stat. 406).

35 (4) This subsection does not affect any residency or other retention re-
36 quirement, as in effect before October 10, 1978, related to granting of citi-
37 zenship.

38 **§ 20105. Individuals born out of wedlock**

39 (a) NATIONALITY AT BIRTH THROUGH MOTHER.—An individual born out
40 of wedlock outside the United States after December 23, 1952, is—

1 (1) a citizen of the United States at birth if the mother is a citizen
2 of the United States who was physically present in the United States
3 or American Samoa for at least one continuous year before the individ-
4 ual's birth; or

5 (2) a national, but not a citizen, of the United States at birth if the
6 mother is a national, but not a citizen, of the United States who was
7 physically present in the United States or American Samoa for at least
8 one continuous year before the individual's birth.

9 (b) NATIONALITY AT BIRTH THROUGH FATHER.—(1) Sections 20102(a)
10 and 20104(a) and (b)(1)(A) of this title apply to an individual born out of
11 wedlock after December 23, 1952, if—

12 (A) a blood relationship between the individual and the father is es-
13 tablished by clear and convincing evidence;

14 (B) the father—

15 (i) is a citizen of the United States or a national, but not a citi-
16 zen, of the United States when the individual is born; and

17 (ii) if alive when the individual is born, agrees in writing to pro-
18 vide financial support for the individual until the individual is 18
19 years of age; and

20 (C) before the individual becomes 18 years of age—

21 (i) the individual is legitimated under the law of the individual's
22 residence or domicile;

23 (ii) the father acknowledges paternity in writing under oath; or

24 (iii) a court of competent jurisdiction establishes paternity.

25 (2) Section 20104(a)(3) of this title applies to an individual born out of
26 wedlock after January 12, 1941, and before December 24, 1952, if pater-
27 nity is established and the individual is legitimated before becoming 21
28 years of age.

29 **§20106. Individuals born in the Republic of Panama or the**
30 **Canal Zone**

31 (a) INDIVIDUAL BORN IN REPUBLIC OF PANAMA.—An individual born in
32 the Republic of Panama after February 25, 1904, is a citizen of the United
33 States at birth if one parent is a citizen of the United States employed by
34 the Government or the Panama Canal Commission or its successor when the
35 individual is born.

36 (b) INDIVIDUAL BORN IN CANAL ZONE.—An individual born in the Canal
37 Zone after February 25, 1904, and before October 1, 1979, is a citizen of
38 the United States at birth if one parent was a citizen of the United States
39 when the individual was born.

1 **§20107. Noncitizen Indians born in Alaska after March 29,**
 2 **1867, and before June 2, 1924**

3 A noncitizen Indian born in Alaska after March 29, 1867, and before
 4 June 2, 1924, is a citizen of the United States as of June 2, 1924.

5 **§20108. Citizens of the Republic of Hawaii and individuals**
 6 **born in Hawaii after August 11, 1898, and before**
 7 **April 30, 1900**

8 The following individuals are citizens of the United States as of April 30,
 9 1900:

10 (1) a citizen of the Republic of Hawaii on August 12, 1898.

11 (2) an individual born in Hawaii after August 11, 1898, and before
 12 April 30, 1900.

13 **§20109. Individuals residing in or born in Guam after April**
 14 **10, 1899, and before August 1, 1950**

15 (a) CITIZENSHIP.—Except as provided in this section, the following indi-
 16 viduals are citizens of the United States as of August 1, 1950:

17 (1) a Spanish subject or an individual born in Guam who resided in
 18 Guam on April 11, 1899, and continued to reside in the United States
 19 or a territory or possession of the United States through August 1,
 20 1950.

21 (2) an individual born after April 11, 1899, and before August 1,
 22 1950, whose parents are citizens under clause (1) of this subsection.

23 (3) an individual born in Guam after April 10, 1899, and before Au-
 24 gust 1, 1950, and subject to the jurisdiction of the United States.

25 (b) INDIVIDUAL WHO TOOK AFFIRMATIVE STEP TO PRESERVE OR AC-
 26 QUIRE NATIONALITY OF A FOREIGN COUNTRY.—Subsection (a) of this sec-
 27 tion does not apply to an individual who took an affirmative step to preserve
 28 or acquire the nationality of a foreign country before August 1, 1950.

29 (c) INDIVIDUAL WHO DECLARED DESIRE TO REMAIN A NATIONAL OF
 30 A FOREIGN COUNTRY.—An individual under this section who was a national
 31 of a foreign country before August 1, 1950, and who declared under oath
 32 before August 1, 1952, in a way prescribed by the Attorney General, a de-
 33 sire to remain a national of the foreign country is not a national of the
 34 United States as of the date the declaration is made.

35 **§20110. Individuals born in Puerto Rico after April 10, 1899,**
 36 **and before January 13, 1941**

37 An individual is a citizen of the United States as of January 13, 1941,
 38 if the individual was—

39 (1) born in Puerto Rico after April 10, 1899, and before January
 40 13, 1941;

41 (2) subject to the jurisdiction of the United States; and

(3) residing in the United States or a territory or possession of the United States on January 13, 1941.

§20111. Individuals born in or residing in the Virgin Islands after January 17, 1917, and before June 28, 1932

The following individuals are citizens of the United States as of February 25, 1927:

(1) an individual born in the Virgin Islands who—

(A) resided in the Virgin Islands on January 17, 1917, resided in the United States on February 25, 1927, and was not a citizen or subject of a foreign country on February 25, 1927;

(B) resided in the United States on January 17, 1917, resided in the Virgin Islands on February 25, 1927, and was not a citizen or subject of a foreign country on February 25, 1927;

(C) resided in the continental United States or a territory or possession of the United States on June 28, 1932, and was not a citizen or subject of a foreign country on June 28, 1932; or

(D) after January 16, 1917, and before February 25, 1927, was subject to the jurisdiction of the United States.

(2) a citizen of Denmark who—

(A) resided in the Virgin Islands on January 17, 1917;

(B) resided in the United States on February 25, 1927; and

(C) did not make the declaration to preserve Danish citizenship under article 6 of the treaty of August 4, 1916, between the United States and Denmark, or made the declaration and renounced it, or renounces it by a declaration before a court of record.

(3) an individual born after January 17, 1917, and before February 25, 1927, whose parents are citizens of the United States under clause

(1) or (2) of this section.

CHAPTER 203—NATURALIZATION ELIGIBILITY

SUBCHAPTER I—ELIGIBILITY

Sec.

20301. General requirements.

20302. Temporary absences for certain employment.

20303. Temporary absences to perform religious functions.

20304. Individuals married to citizens of the United States.

20305. Children born of an alien parent and a citizen parent.

20306. Children born of alien parents or a parent who lost citizenship.

20307. Children having a citizen parent at time of application.

20308. Disabled and elderly individuals.

20309. Individuals employed by United States nonprofit organizations disseminating information.

20310. Individuals making extraordinary contributions to the security of the United States.

20311. Individuals with service on American vessels.

20312. Individuals with 3 years of service in the armed forces.

20313. Individuals with service in the armed forces during war or military hostilities.

20314. Posthumous naturalization of individuals who die during service in the armed forces during war or military hostilities.
20315. Individuals who lost citizenship by entering the armed forces of a foreign country.
20316. Alien enemies.
20317. Individuals born outside the United States who lost citizenship by not coming to the United States.
20318. Women who lost citizenship through marriage.
20319. Nationals residing in American Samoa.
20320. Philippine citizens who entered before May 1, 1934.

SUBCHAPTER II—INELIGIBILITY

20331. Individuals dangerous to the welfare, safety, and security of the United States.
20332. Deserters and draft evaders.
20333. Aliens exempted or discharged from the armed forces or the National Security Training Corps.

SUBCHAPTER I—ELIGIBILITY

§ 20301. General requirements

(a) NATURALIZATION REQUIREMENTS.—Except as otherwise provided, an individual may be naturalized as a citizen of the United States only if the individual satisfies the following requirements:

(1) The individual must be at least 18 years of age when the application for naturalization is filed.

(2) The individual must be lawfully admitted for permanent residence.

(3) The individual must have resided in the United States, after being lawfully admitted for permanent residence, continuously for at least 5 years immediately before filing the application.

(4) The individual must have been physically present in the United States for at least half of the 5 years immediately before filing the application.

(5) The individual must have resided in the State or district of the Immigration and Naturalization Service in the United States in which the application is filed for at least 3 months immediately before filing the application.

(6) The individual must reside in the United States continuously from the date of filing the application through the time the individual is naturalized.

(7) The individual must be able to demonstrate an understanding of the English language, including the ability to speak words in ordinary usage and the ability to read and write simple words and phrases in ordinary usage, without extraordinary or unreasonable conditions being required.

(8) The individual must be able to demonstrate knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.

1 (9) The individual must have been of good moral character, attached
2 to the principles of the Constitution, and well disposed to the good
3 order and happiness of the United States for at least 5 years imme-
4 diately before filing the application, and remain so from the date of fil-
5 ing the application through the time the individual is naturalized.

6 (b) CONDUCT MORE THAN 5 YEARS BEFORE APPLICATION FILED.—
7 Conduct more than 5 years before an application is filed may be considered
8 in deciding whether an individual satisfies the requirements of subsection
9 (a)(9) of this section.

10 (c) TEMPORARY ABSENCES.—(1) An absence from the United States of
11 not more than 6 months does not break the continuity of residence required
12 under subsection (a) of this section.

13 (2) An absence of more than 6 months but less than one year breaks the
14 continuity of residence, unless the individual satisfies the Attorney General
15 that the individual did not abandon residence in the United States during
16 the absence.

17 (3) Except as otherwise provided, an absence of one year breaks the con-
18 tinuity of residence.

19 (d) PROHIBITION ON DISCRIMINATION.—The right of an individual to be
20 naturalized as a citizen of the United States may not be denied or abridged
21 because of race or sex or because the individual is married.

22 **§ 20302. Temporary absences for certain employment**

23 (a) RESIDENCE.—An individual temporarily absent from the United
24 States (even though for a year or more) is deemed to be residing in the
25 United States under section 20301(a)(3) and (6) of this title during the ab-
26 sence if—

27 (1) the individual has resided and been physically present in the
28 United States, after being lawfully admitted for permanent residence,
29 continuously for at least one year;

30 (2) after the one-year period described in clause (1) of this sub-
31 section—

32 (A) the individual is employed by or under a contract with the
33 United States Government;

34 (B) the individual is employed by or under a contract with, and
35 carrying out scientific research for, a United States research insti-
36 tution recognized by the Attorney General;

37 (C)(i) the individual is employed by a United States firm or cor-
38 poration developing foreign trade and commerce of the United
39 States, or by a subsidiary of the firm or corporation more than
40 50 percent of the stock of which is owned by the firm or corpora-
41 tion; and

1 (ii) the individual is developing foreign trade and commerce of
2 the United States or the individual's residence outside the United
3 States is necessary to protect the property rights of the firm or
4 corporation in a foreign country; or

5 (D) the individual—

6 (i) is employed by a public international organization of
7 which the United States is a member by treaty or law; and

8 (ii) was not employed by the organization until after being
9 lawfully admitted for permanent residence;

10 (3) before beginning the employment and before the end of one year
11 of continuous absence from the United States, the individual satisfies
12 the Attorney General that the absence will be for a purpose described
13 in clause (2) of this subsection; and

14 (4) the individual satisfies the Attorney General that the absence
15 was for the purpose for which the absence was approved.

16 (b) PHYSICAL PRESENCE.—(1) Except as provided in paragraph (2) of
17 this subsection, an individual satisfying subsection (a) of this section still
18 must satisfy the physical presence requirement of section 20301(a)(4) of
19 this title.

20 (2) An individual employed by or under a contract with the Government
21 and satisfying subsection (a) of this section does not have to satisfy the
22 physical presence requirement of section 20301(a)(4) of this title.

23 (3) An individual employed by or under a contract with the Central Intel-
24 ligence Agency may satisfy the physical presence requirement of subsection
25 (a)(1) of this section by physical presence at any time before filing the ap-
26 plication for naturalization.

27 (c) SPOUSES, UNMARRIED SONS, AND UNMARRIED DAUGHTERS.—A
28 spouse, unmarried son, or unmarried daughter of an individual satisfying
29 subsection (a) of this section is entitled to the same benefits under sub-
30 section (a) as the individual during the period the spouse, son, or daughter
31 resided outside the United States as a dependent member of the household
32 of the individual.

33 **§ 20303. Temporary absences to perform religious functions**

34 An individual temporarily absent from the United States is deemed to be
35 residing and physically present in the United States under section
36 20301(a)(3), (4), and (6) of this title during the absence if the individual—

37 (1) has resided and been physically present in the United States,
38 after being lawfully admitted for permanent residence, continuously for
39 at least one year before filing the application for naturalization;

1 (2)(A) is authorized to perform the ministerial or priestly functions
2 of a religious denomination having a bona fide organization in the
3 United States; or

4 (B) is serving only as a missionary, brother, nun, or sister of a reli-
5 gious denomination or an interdenominational mission organization
6 having an organization in the United States; and

7 (3) satisfies the Attorney General that the absence was only to per-
8 form the functions or service described in clause (2) of this section.

9 **§ 20304. Individuals married to citizens of the United States**

10 (a) GENERAL.—An individual married to a citizen of the United States
11 may be naturalized without regard to section 20301(a)(3) or (4) of this title
12 if the individual—

13 (1) resided in the United States, after being lawfully admitted for
14 permanent residence, continuously for at least 3 years immediately be-
15 fore filing the application for naturalization;

16 (2) lived in marriage with the citizen spouse for the 3-year period,
17 with the spouse being a citizen during all of that period; and

18 (3) was physically present in the United States for at least half of
19 the 3-year period.

20 (b) CITIZEN SPOUSES EMPLOYED OUTSIDE UNITED STATES.—An indi-
21 vidual married to a citizen of the United States may be naturalized without
22 regard to section 20301(a)(3)–(6) of this title if—

23 (1) the citizen spouse is—

24 (A) employed by the United States Government;

25 (B) employed by a United States research institution recognized
26 by the Attorney General;

27 (C) employed by a United States firm or corporation developing
28 foreign trade and commerce of the United States or by a subsidi-
29 ary of the firm or corporation;

30 (D) employed by a public international organization of which
31 the United States is a member by treaty or law;

32 (E) authorized to perform the ministerial or priestly functions
33 of a religious denomination having a bona fide organization in the
34 United States; or

35 (F) serving only as a missionary of a religious denomination or
36 an interdenominational mission organization having a bona fide
37 organization in the United States;

38 (2) the citizen spouse is regularly stationed outside the United States
39 in the employment or activity described in clause (1) of this subsection;

40 (3) the individual declares in good faith to the Attorney General an
41 intention to reside in the United States immediately after the employ-

1 ment or activity of the citizen spouse outside the United States ends;
2 and

3 (4) the individual is in the United States at the time of naturaliza-
4 tion.

5 (c) SURVIVING SPOUSES OF CITIZENS IN ARMED FORCES.—(1) An indi-
6 vidual may be naturalized without regard to section 20301(a)(3)–(6) of this
7 title if—

8 (A) the individual is the surviving spouse of a citizen of the United
9 States who died when serving honorably on active duty in the armed
10 forces of the United States; and

11 (B) the individual and the citizen spouse were living in marriage at
12 the time of the death.

13 (2) This subsection does not apply to an individual who is the surviving
14 spouse of a citizen granted citizenship posthumously under section 20314
15 of this title.

16 **§ 20305. Children born of an alien parent and a citizen par-**
17 **ent**

18 (a) GENERAL.—A child born outside the United States, one of whose par-
19 ents at the time of the child's birth was an alien and the other of whose
20 parents at the time of the child's birth was a citizen of the United States
21 and remains a citizen, is naturalized as a citizen of the United States when
22 the following events occur, if they occur before the child becomes 18 years
23 of age:

24 (1) the alien parent is naturalized.

25 (2) the child begins residing in the United States after being lawfully
26 admitted for permanent residence.

27 (b) ADOPTED CHILD.—Subsection (a) of this section applies to an adopt-
28 ed child only if the child, at the time of the naturalization of the alien par-
29 ent, is—

30 (1) in the custody of the adoptive parents; and

31 (2) residing in the United States after being lawfully admitted for
32 permanent residence.

33 **§ 20306. Children born of alien parents or a parent who lost**
34 **citizenship**

35 (a) GENERAL.—A child born outside the United States of alien parents,
36 or of one alien parent and one parent who was a citizen of the United
37 States at the time of the child's birth but later lost citizenship, is natural-
38 ized as a citizen of the United States when the following events occur, if
39 they before the child becomes 18 years of age:

40 (1)(A) both parents are naturalized;

41 (B) the surviving parent is naturalized if one parent is deceased;

1 (C) the parent with legal custody is naturalized if the parents are
2 legally separated; or

3 (D) the mother is naturalized if the child was born out of wedlock
4 and paternity is not established by legitimation.

5 (2) the child begins residing in the United States after being lawfully
6 admitted for permanent residence.

7 (b) ADOPTED CHILD.—Subsection (a) of this section applies to an adopt-
8 ed child only if the child, at the time of the naturalization of the alien par-
9 ent or parents, is—

10 (1) in the custody of the adoptive parents; and

11 (2) residing in the United States after being lawfully admitted for
12 permanent residence.

13 **§ 20307. Children having a citizen parent at time of applica-**
14 **tion**

15 (a) FILING OF APPLICATION.—A parent who is a citizen of the United
16 States may file an application with the Attorney General for a certificate
17 of citizenship for a child born outside the United States. The application
18 may be filed outside the United States.

19 (b) REQUIREMENTS.—The Attorney General shall approve the application
20 if satisfied that—

21 (1) the parent is a citizen of the United States;

22 (2) the child is—

23 (A) less than 18 years of age;

24 (B) lawfully admitted to, and physically present in, the United
25 States; and

26 (C) in the legal custody of the citizen parent;

27 (3) if the child is adopted, the child—

28 (A) was adopted under 16 years of age by the citizen parent;

29 and

30 (B) meets the requirements of section 108(a)(5) or (6) of this
31 title; and

32 (4) if the citizen parent has not been physically present in the
33 United States or American Samoa for at least 5 years, at least 2 of
34 which were after becoming 14 years of age—

35 (A) the child is residing permanently in the United States with
36 the citizen parent after being lawfully admitted for permanent res-
37 idence; or

38 (B) a citizen parent of the citizen parent has been physically
39 present in the United States or American Samoa for at least 5
40 years, at least 2 of which were after becoming 14 years of age.

1 (c) OATH.—The child must take, and sign, in front of an immigration
2 officer in the United States the oath required by section 20509 of this title,
3 unless waived under section 20509(c).

4 (d) CERTIFICATE OF CITIZENSHIP.—When the requirements of this sec-
5 tion are met, the child becomes a citizen of the United States and shall be
6 issued a certificate of citizenship by the Attorney General.

7 **§ 20308. Disabled and elderly individuals**

8 (a) DISABLED INDIVIDUALS.—An individual may be naturalized without
9 regard to section 20301(a)(7) or (8) of this title if the individual is unable
10 to satisfy those requirements because of physical or developmental disability
11 or mental impairment.

12 (b) ELDERLY INDIVIDUALS.—(1) An individual may be naturalized with-
13 out regard to section 20301(a)(7) of this title if, on the date the application
14 for naturalization is filed, the individual is—

15 (A) at least 50 years of age and has lived in the United States for
16 at least 20 years after being lawfully admitted for permanent residence;
17 or

18 (B) at least 55 years of age and has lived in the United States for
19 at least 15 years after being lawfully admitted for permanent residence.

20 (2) The Attorney General shall prescribe regulations providing for special
21 consideration (as decided by the Attorney General) in satisfying section
22 20301(a)(8) of this title for an individual who, on the date the application
23 for naturalization is filed, is at least 65 years of age and has lived in the
24 United States for at least 20 years after being lawfully admitted for perma-
25 nent residence.

26 **§ 20309. Individuals employed by United States nonprofit or-**
27 **ganizations disseminating information**

28 An individual may be naturalized without regard to section 20301(a)(3)–
29 (6) of this title if the individual—

30 (1) is employed by a nonprofit organization incorporated in the Unit-
31 ed States that is principally engaged outside the United States in dis-
32 seminating, through communication media, information significantly
33 promoting United States interests outside the United States and that
34 is recognized by the Attorney General;

35 (2) has been employed by the organization continuously for at least
36 5 years after being lawfully admitted for permanent residence;

37 (3) files the application for naturalization when employed by the or-
38 ganization or within 6 months after ending the employment;

39 (4) is in the United States at the time of naturalization; and

40 (5) declares in good faith to the Attorney General an intention to
41 reside in the United States immediately after the employment ends.

1 **§ 20310. Individuals making extraordinary contributions to**
2 **the security of the United States**

3 (a) RESIDENCE AND PHYSICAL PRESENCE.—(1) An individual may be
4 naturalized without regard to section 20301(a)(3)–(6) of this title if—

5 (A) the Director of Central Intelligence, the Attorney General, and
6 the Commissioner of Immigration and Naturalization decide that the
7 individual has made an extraordinary contribution to the security of the
8 United States or to the conduct of United States intelligence activities;
9 and

10 (B) the individual resides in the United States continuously for at
11 least one year before being naturalized.

12 (2) This section does not apply to an individual described in section
13 6538(e)(2) of this title.

14 (b) NONAPPLICATION OF CERTAIN GROUNDS OF INELIGIBILITY.—Section
15 20331 of this title does not apply to an individual described in subsection
16 (a) of this section.

17 (c) PROCEDURE.—A proceeding under this section shall be conducted in
18 a way consistent with the protection of intelligence sources, methods, and
19 activities.

20 (d) NUMERICAL LIMIT.—Not more than 5 individuals may be naturalized
21 in a fiscal year under this section.

22 (e) NOTICE TO CONGRESSIONAL COMMITTEES.—The Director shall in-
23 form the Select Committee on Intelligence and the Committee on the Judici-
24 ary of the Senate and the Permanent Select Committee on Intelligence and
25 the Committee on the Judiciary of the House of Representatives within a
26 reasonable time before an application is filed under this section.

27 **§ 20311. Individuals with service on American vessels**

28 (a) DEFINITION.—In this section, “American vessel” means a vessel—

29 (1)(A) operated by the United States Government; and

30 (B) the full legal and equitable title to which is held by the Govern-
31 ment; or

32 (2)(A) whose home port is in the United States; and

33 (B)(i) documented under chapter 121 of title 46; or

34 (ii) the full legal and equitable title to which is held by a citizen of
35 the United States or a corporation organized under the laws of a State.

36 (b) RESIDENCE AND PHYSICAL PRESENCE.—An individual serving honor-
37 ably or with good conduct in any capacity (except as a member of the armed
38 forces of the United States) on an American vessel is deemed to be residing
39 and physically present in the United States under section 20301(a)(3), (4),
40 and (6) of this title during the period of service if the service is—

1 (1) after the individual has been lawfully admitted for permanent
2 residence; and

3 (2) within 5 years immediately before the date the individual files
4 an application for naturalization.

5 (c) PROOF OF SERVICE ON VESSEL.—Service on a vessel described in
6 subsection (a)(1) of this section shall be proved by a certificate from the
7 executive agency having custody of the records of the service. Service on a
8 vessel described in subsection (a)(2) of this section may be proved by a cer-
9 tificate from the master of the vessel.

10 **§ 20312. Individuals with 3 years of service in the armed**
11 **forces**

12 (a) RESIDENCE AND PHYSICAL PRESENCE.—(1) Except as provided in
13 paragraph (2) of this subsection, an individual may be naturalized without
14 regard to section 20301(a)(3)–(5) of this title if the individual—

15 (A) has served honorably in the armed forces of the United States
16 for periods totaling at least 3 years;

17 (B) has never been discharged from the service except honorably;
18 and

19 (C) files an application for naturalization when still in the service or
20 within 6 months after being discharged from the service.

21 (2) If the service was not continuous, the individual must establish the
22 individual's residence in the United States and the State or district of the
23 Immigration and Naturalization Service in the United States in which the
24 application is filed for—

25 (A) any period between periods of service during the 5 years imme-
26 diately before filing the application; and

27 (B) any period between the end of the individual's service and the
28 filing of the application.

29 (b) PROOF OF HONORABLE SERVICE.—(1) Before a hearing on the indi-
30 vidual's application, the individual shall provide the Attorney General with
31 a certificate from the appropriate executive agency showing that—

32 (A) the individual served honorably during all periods on which the
33 individual relies for naturalization under this section; and

34 (B) the individual has never been discharged from the service except
35 honorably.

36 (2) A certificate under paragraph (1) of this subsection is conclusive evi-
37 dence of the service and discharge.

38 (c) PROOF OF GOOD MORAL CHARACTER, ATTACHMENT TO PRINCIPLES,
39 AND FAVORABLE DISPOSITION.—Proof of honorable service under this sec-
40 tion is proof that the individual was of good moral character, attached to
41 the principles of the Constitution of the United States, and well disposed

1 to the good order and happiness of the United States during the period of
2 the service.

3 (d) EFFECT OF FINDING OF DEPORTABILITY.—Notwithstanding section
4 20504(b) of this title, an individual may be naturalized immediately under
5 this section if the individual is in the armed forces when being naturalized
6 and was examined by a representative of the Immigration and Naturaliza-
7 tion Service before filing an application for naturalization.

8 (e) APPLICATIONS FILED MORE THAN 6 MONTHS AFTER DISCHARGE.—
9 An individual who satisfies subsection (a)(1)(A) and (B) of this section, but
10 files an application for naturalization more than 6 months after being dis-
11 charged, is deemed to be residing and physically present in the United
12 States during any periods of service within 5 years immediately before filing
13 the application.

14 **§ 20313. Individuals with service in the armed forces during**
15 **war or military hostilities**

16 (a) GENERAL.—Notwithstanding sections 20316 and 20504(b) of this
17 title, an individual may be naturalized without regard to section
18 20301(a)(1)–(6) of this title if—

19 (1) the individual served honorably on active duty in the armed
20 forces of the United States as an alien or as a national, but not a citi-
21 zen, of the United States at any time during a period—

22 (A) from April 6, 1917, through November 11, 1918;

23 (B) from September 1, 1939, through December 31, 1946;

24 (C) from June 25, 1950, through July 1, 1955;

25 (D) from February 28, 1961, through October 15, 1978; or

26 (E) the President designates by executive order as a period in
27 which the armed forces are engaged in military operations involv-
28 ing armed conflict with a hostile foreign force;

29 (2) the individual was—

30 (A) in the United States or American Samoa at the time of en-
31 listment or induction into the armed forces;

32 (B) in the Canal Zone at the time of enlistment or induction
33 if the enlistment or induction was before October 1, 1979; or

34 (C) lawfully admitted for permanent residence after the enlist-
35 ment or induction; and

36 (3) the individual, if discharged from the armed forces, was dis-
37 charged honorably.

38 (b) SERVICE IN REGULAR ARMY UNDER THE ACT OF JUNE 30, 1950.—

39 (1) Notwithstanding sections 20316 and 20504(b) of this title, an individual
40 may be naturalized without regard to section 20301(a)(1) or (3)–(6) of this
41 title if the individual—

1 (A) enlisted or re-enlisted as an alien in the Regular Army under
2 the Act of June 30, 1950 (ch. 443, 64 Stat. 316);

3 (B) served at least 5 years in the Regular Army; and

4 (C) was discharged honorably from the Regular Army.

5 (2) An individual described in paragraph (1) of this subsection is deemed
6 to have been lawfully admitted for permanent residence if the individual—

7 (A) entered the United States, American Samoa, or the Canal Zone
8 under military orders after enlistment; and

9 (B) is otherwise eligible to be naturalized.

10 (c) PERIOD OF SERVICE AVAILABLE ONLY ONCE.—A period of service
11 in the armed forces may not be used as the basis for naturalization under
12 this section if the individual has been naturalized previously because of the
13 same period of service.

14 (d) PROOF OF HONORABLE SERVICE AND DISCHARGE.—Service required
15 by this section shall be proved by a certificate from the executive agency
16 under which the individual served. The head of the executive agency shall
17 decide, and the certificate shall state, whether the individual served honor-
18 ably on active duty during a period specified in this section and was dis-
19 charged honorably. An individual's service and discharge are not honorable
20 under this section if the individual was discharged from the armed forces
21 because of alienage or was a conscientious objector who performed no active
22 duty or refused to wear the uniform.

23 **§ 20314. Posthumous naturalization of individuals who die**
24 **during service in the armed forces during war or**
25 **military hostilities**

26 (a) GRANTING CITIZENSHIP.—The Attorney General shall grant post-
27 humous citizenship, as of the time of death, to an individual eligible under
28 subsection (b) of this section if the Attorney General approves a request for
29 posthumous citizenship for the individual under subsection (c) of this sec-
30 tion.

31 (b) ELIGIBILITY.—(1) An individual is eligible for posthumous citizenship
32 under this section if the individual—

33 (A) served honorably on active duty in the armed forces of the
34 United States as an alien or as a national, but not a citizen, of the
35 United States during any period described in section 20313(a)(1) of
36 this title;

37 (B) died as a result of injury or disease incurred in or aggravated
38 by that service; and

39 (C) satisfied the requirements of section 20313(a)(2) of this title.

1 (2) The head of the executive agency under which the individual served
2 shall decide whether the individual satisfied the requirements of paragraph
3 (1)(A) and (B) of this subsection.

4 (c) REQUESTS.—A request to grant posthumous citizenship to an individ-
5 ual under this section may be filed only by an individual who is, as defined
6 by the Attorney General, the next of kin or another representative. The At-
7 torney General shall approve the request if—

8 (1) the request is filed not later than 2 years after the date of the
9 individual's death;

10 (2) the request includes a certificate from the executive agency under
11 which the individual served stating that the individual satisfied the re-
12 quirements of subsection (b)(1)(A) and (B) of this section; and

13 (3) the Attorney General finds that the individual satisfied the re-
14 quirements of subsection (b)(1)(C) of this section.

15 (d) DOCUMENTATION.—If the Attorney General approves a request under
16 this section, the Attorney General shall provide the individual who filed the
17 request with a document stating that the United States Government consid-
18 ers the individual for whom the request was filed to have been a citizen of
19 the United States at the time of the individual's death.

20 (e) NO BENEFITS TO SURVIVORS.—The granting of posthumous citizen-
21 ship to an individual under this section does not provide any benefits under
22 this title for any relative of the individual.

23 **§ 20315. Individuals who lost citizenship by entering the**
24 **armed forces of a foreign country**

25 (a) GENERAL.—An individual may be naturalized without regard to sec-
26 tion 20301(a)(3)–(6) or (9) of this title if—

27 (1) the individual, when a citizen of the United States, served in the
28 armed forces of a foreign country at any time during the period from
29 September 1, 1939, through September 2, 1945;

30 (2) that foreign country was at war with a foreign country with
31 which the United States was at war after December 7, 1941, and be-
32 fore September 2, 1945;

33 (3) the individual lost citizenship of the United States by entering,
34 serving in, or taking an oath or obligation to enter or serve in, those
35 armed forces;

36 (4) the individual intends to reside permanently in the United
37 States; and

38 (5) the individual has been of good moral character, attached to the
39 principles of the Constitution, and well disposed to the good order and
40 happiness of the United States for at least 5 years immediately before
41 taking the oath required for naturalization.

1 (b) PREVIOUS STATUS REACQUIRED.—An individual naturalized under
2 this section or section 323 of the Nationality Act of 1940 (ch. 876, 54 Stat.
3 1149) has, from the date of naturalization, the same status as a citizen at
4 birth or a naturalized citizen that the individual had before losing citizen-
5 ship. Naturalization of the individual does not confer citizenship retro-
6 actively on the individual for the period that the individual was not a citizen
7 of the United States.

8 (c) NONAPPLICATION TO CERTAIN INDIVIDUALS.—This section does not
9 apply to an individual who served in the armed forces of a foreign country
10 at any time during the period from September 1, 1939, through September
11 2, 1945, when that country was at war with the United States.

12 **§ 20316. Alien enemies**

13 (a) WHEN INDIVIDUAL IS ALIEN ENEMY.—In this section, an alien
14 enemy is an individual who is a native, citizen, subject, or denizen of a
15 country or sovereignty at war with the United States. That individual ceases
16 to be an alien enemy when the hostilities between the United States and
17 the individual's country or sovereignty are declared ended by proclamation
18 of the President or concurrent resolution of Congress.

19 (b) SPECIFIC CONDITIONS FOR NATURALIZATION.—An alien enemy may
20 be naturalized as a citizen of the United States only if—

21 (1) the alien enemy's application for naturalization was filed before
22 the war began, except that the Attorney General may waive this re-
23 quirement;

24 (2) the alien enemy's loyalty is established on investigation by the
25 Attorney General; and

26 (3) the alien enemy is otherwise eligible to be naturalized.

27 (c) NOTICE AND CONTINUANCE.—An examination or hearing on an alien
28 enemy's application for naturalization may be held only after 90 days' notice
29 to the Attorney General. If the Attorney General objects to consideration
30 of the application, the application shall be continued for as long as the At-
31 torney General requires.

32 (d) LAWFUL APPREHENSION AND REMOVAL ALLOWED.—This section
33 does not prevent the lawful apprehension and removal of an alien enemy.

34 **§ 20317. Individuals born outside the United States who lost**
35 **citizenship by not coming to the United States**

36 (a) GENERAL.—An individual may be naturalized by taking the oath re-
37 quired for naturalization, without filing an application for naturalization or
38 complying with any other requirement for naturalization, if the individual—

39 (1) was a citizen of the United States at birth;

1 (2) lost that citizenship by failing to comply with the physical pres-
2 ence requirement of section 301(b) of the Immigration and Nationality
3 Act (ch. 477, 66 Stat. 236) (as in effect before October 10, 1978); and

4 (3) is not ineligible to be naturalized under section 20331 of this
5 title.

6 (b) OATH PROCEDURE.—(1) An individual satisfying subsection (a) of
7 this section may take the oath—

8 (A) in the United States before the Attorney General or a judge or
9 a clerk of a court described in section 20511 of this title; or

10 (B) outside the United States before a diplomatic or consular officer.

11 (2) The Attorney General, court, embassy, legation, or consulate, as ap-
12 propriate, shall—

13 (A) enter the oath in the records of the Attorney General, court, em-
14 bassy, legation, or consulate; and

15 (B) deliver to the individual, on the individual's request, a certified
16 copy of the proceedings and oath, under seal of the Department of Jus-
17 tice, court, embassy, legation, or consulate, at a cost of not more than
18 \$5.

19 (3) A certified copy of the proceedings and oath delivered under para-
20 graph (2) of this subsection is evidence of the facts stated in the copy in
21 any court of record, judicial tribunal, or agency.

22 (c) PREVIOUS STATUS REACQUIRED.—An individual naturalized under
23 this section has, from the date of naturalization, the status of a citizen of
24 the United States at birth. Naturalization of the individual does not confer
25 citizenship on the individual retroactively for any period that the individual
26 was not a citizen of the United States.

27 **§ 20318. Women who lost citizenship through marriage**

28 (a) GENERAL.—(1) A woman may be naturalized without regard to sec-
29 tion 20301(a)(3)–(6) of this title if she—

30 (A) lost citizenship of the United States—

31 (i) by marrying an alien before September 22, 1922;

32 (ii) by marrying after September 21, 1922, an alien who was
33 ineligible to become a citizen of the United States; or

34 (iii) through her husband's loss of citizenship of the United
35 States before September 22, 1922; and

36 (B) has taken no affirmative action to acquire the nationality of an-
37 other country except by marriage.

38 (2) A woman described in paragraph (1) of this subsection may be natu-
39 ralized without regard to section 20301(a)(2) of this title if she has resided
40 in the United States continuously since the date of her marriage.

1 (b) NATURALIZATION ON TAKING OATH FOR CERTAIN WOMEN.—(1) A
2 woman may be naturalized by taking the oath required for naturalization,
3 without filing an application for naturalization or complying with any other
4 requirement for naturalization, if—

5 (A) she was a citizen of the United States at birth;

6 (B) she lost that citizenship by marrying—

7 (i) an alien before September 22, 1922; or

8 (ii) after September 21, 1922, an alien who was ineligible to be-
9 come a citizen of the United States;

10 (C) her marriage to that alien ended after January 12, 1941;

11 (D) she has taken no affirmative action to acquire the nationality
12 of another country except by marriage; and

13 (E) she is not ineligible to be naturalized under section 20331 of this
14 title.

15 (2) A woman satisfying paragraph (1) of this subsection may take the
16 oath—

17 (A) in the United States before the Attorney General or a judge or
18 a clerk of a court described in section 20511 of this title; or

19 (B) outside the United States before a diplomatic or consular officer.

20 (3) The Attorney General, court, embassy, legation, or consulate, as ap-
21 propriate, shall—

22 (A) enter the oath in the records of the Attorney General, court, em-
23 bassy, legation, or consulate; and

24 (B) deliver to the woman, on her request, a certified copy of the pro-
25 ceedings and oath, under seal of the Department of Justice, court, em-
26 bassy, legation, or consulate, at a cost of not more than \$5.

27 (4) A certified copy of the proceedings and the oath delivered under para-
28 graph (3) of this subsection is evidence of the facts stated in the copy in
29 any court of record, judicial tribunal, or agency.

30 (c) PREVIOUS STATUS REACQUIRED.—A woman naturalized under this
31 section or section 317(a) or (b) of the Nationality Act of 1940 (ch. 876,
32 54 Stat. 1146) has, from the date of naturalization, the same status as a
33 citizen at birth or a naturalized citizen that she had before losing citizen-
34 ship. Naturalization of the woman does not confer citizenship on the woman
35 retroactively for any period that she was not a citizen of the United States.

36 **§ 20319. Nationals residing in American Samoa**

37 Residence and physical presence in American Samoa are deemed to be
38 residence and physical presence in the United States under section
39 20301(a)(3), (4), and (6) of this title for an individual who—

40 (1) is a national, but not a citizen, of the United States; and

41 (2) becomes a resident of a State.

1 **§ 20320. Philippine citizens who entered before May 1, 1934**

2 An individual who was a citizen of the Commonwealth of the Philippines
3 on July 2, 1946, entered the United States before May 1, 1934, and has
4 resided in the United States continuously since entry, is deemed to have
5 been lawfully admitted for permanent residence.

6 SUBCHAPTER II—INELIGIBILITY

7 **§ 20331. Individuals dangerous to the welfare, safety, and se-**
8 **curity of the United States**

9 (a) GROUNDS FOR DISALLOWING NATURALIZATION.—An individual may
10 not be naturalized as a citizen of the United States if, at any time during
11 the 10 years before filing the application for naturalization or from the fil-
12 ing of the application through the time the individual is naturalized, the in-
13 dividual—

14 (1) advocates establishing—

15 (A) a totalitarian communist dictatorship in a country through
16 an internationally coordinated communist movement; or

17 (B) a totalitarian dictatorship in the United States;

18 (2) advocates or teaches—

19 (A) opposition to all organized government;

20 (B) the overthrow by unconstitutional means of the United
21 States Government or of all forms of law;

22 (C) the duty, necessity, or propriety of unlawfully assaulting or
23 killing a particular officer or officers generally of an organized
24 government because of the official position of the officer or offi-
25 cers;

26 (D) unlawfully damaging or destroying property; or

27 (E) sabotage;

28 (3) writes, publishes, causes to be written or published, knowingly
29 distributes, prints, displays, or causes to be distributed, printed, pub-
30 lished, or displayed, or knowingly possesses to publish, distribute, or
31 display, written material—

32 (A) advocating or teaching opposition to all organized govern-
33 ment; or

34 (B) advocating—

35 (i) the overthrow by unconstitutional means of the United
36 States Government or of all forms of law;

37 (ii) the duty, necessity, or propriety of unlawfully assault-
38 ing or killing of a particular officer or officers generally of an
39 organized government because of the official position of the
40 officer or officers;

41 (iii) unlawfully damaging or destroying property;

- 1 (iv) sabotage;
- 2 (v) establishing a totalitarian communist dictatorship in a
- 3 country through an internationally coordinated communist
- 4 movement; or
- 5 (vi) establishing a totalitarian dictatorship in the United
- 6 States; or

7 (4) is a member of or affiliated with—

- 8 (A) the Communist Party of the United States;
- 9 (B) another totalitarian party of the United States;
- 10 (C) the Communist Political Association;
- 11 (D) the Communist or another totalitarian party of a State, a
- 12 foreign country, or a political or geographical subdivision of a for-
- 13 eign country;
- 14 (E) a section, subsidiary, branch, affiliate, or subdivision of an
- 15 organization described in subclauses (A)–(D) of this clause (4);
- 16 (F) the direct predecessor or successor of an organization de-
- 17 scribed in subclauses (A)–(D) of this clause (4), regardless of the
- 18 name the organization uses or used;
- 19 (G) an organization advocating establishing a totalitarian com-
- 20 munist dictatorship in a country through an internationally coordi-
- 21 nated communist movement, or establishing a totalitarian dictat-
22 orship in the United States, through—
 - 23 (i) the organization’s statements; or
 - 24 (ii) written material issued or published under the author-
 - 25 ity of or with the consent of the organization, or paid for by
 - 26 money provided by the organization;
 - 27 (H) an organization advocating or teaching—
 - 28 (i) opposition to all organized government;
 - 29 (ii) the overthrow by unconstitutional means of the United
 - 30 States Government or of all forms of law;
 - 31 (iii) the duty, necessity, or propriety of unlawfully assault-
 - 32 ing or killing a particular officer or officers generally of an
 - 33 organized government because of the official position of the
 - 34 officer or officers;
 - 35 (iv) unlawfully damaging or destroying property; or
 - 36 (v) sabotage; or
 - 37 (I) an organization writing, distributing, printing, publishing,
 - 38 displaying, causing to be written, distributed, printed, published,
 - 39 or displayed, or possessing to distribute, publish, issue, or display,
 - 40 written material described in clause (3) of this subsection.

1 (b) NONAPPLICATION.—Subsection (a) of this section does not apply to
 2 an individual who satisfies the Attorney General that the individual’s mem-
 3 bership or affiliation with an organization described in subsection (a)—

4 (1) is or was involuntary;

5 (2) ended before the individual’s 16th birthday;

6 (3) is or was by operation of law; or

7 (4) was for the purpose of, and necessary for, obtaining employment,
 8 food rations, or other essentials of living.

9 **§ 20332. Deserters and draft evaders**

10 An individual convicted of desertion under section 885 of title 10 or of
 11 draft evasion under section 12(h) of the Military Selective Service Act (50
 12 App. U.S.C. 462(h)) is ineligible to become a citizen of the United States.

13 **§ 20333. Aliens exempted or discharged from the armed
 14 forces or the National Security Training Corps**

15 (a) GENERAL.—Except as provided in subsection (b) of this section, an
 16 alien who applies for and is granted an exemption or discharge from serving
 17 or training in the armed forces of the United States or the National Secu-
 18 rity Training Corps because of alienage is ineligible to become a citizen of
 19 the United States. Records of the Selective Service System and the Depart-
 20 ment of Defense are conclusive about whether the alien was granted an ex-
 21 emption or discharge because of alienage.

22 (b) EXEMPTION PROVIDED UNDER TREATY.—An alien exercising a right
 23 under a treaty to be exempted from serving or training in the armed forces
 24 of the United States is not ineligible under this section or any other law
 25 to become a citizen of the United States if, before exercising the right, the
 26 alien served in the armed forces of a foreign country of which the alien was
 27 a national.

28 **CHAPTER 205—NATURALIZATION PROCEDURE**

Sec.

20501. Authority to naturalize.

20502. Declarations of intention.

20503. Applications for naturalization.

20504. Proof of lawful entry and effect of deportation proceedings.

20505. Investigations.

20506. Examinations.

20507. Hearings before immigration officers.

20508. Judicial review.

20509. Oath requirement.

20510. Methods of oath administration.

20511. Court authority to administer oaths.

20512. Duties of Attorney General when court is to administer oath.

20513. Forms and records.

20514. Fees.

29 **§ 20501. Authority to naturalize**

30 (a) AUTHORITY OF ATTORNEY GENERAL.—Only the Attorney General
 31 has authority to naturalize an individual as a citizen of the United States.

1 (b) ONLY PROCEDURE.—An individual may be naturalized as a citizen of
2 the United States only as provided in this subtitle.

3 **§ 20502. Declarations of intention**

4 (a) GENERAL.—An individual at least 18 years of age who is residing in
5 the United States as an alien lawfully admitted for permanent residence
6 may make a declaration of intention to be naturalized as a citizen of the
7 United States. However, a declaration is not required for naturalization,
8 does not confer nationality or the right to nationality on an alien, and is
9 not evidence of lawful admission for permanent residence.

10 (b) PROCEDURE.—(1) A declaration under this section must be filed with
11 the Attorney General in duplicate, accompanied by an application for the
12 declaration. The application must be approved by the Attorney General.

13 (2) The application must include 3 identical photographs of the alien.
14 One photograph shall be attached to the declaration issued by the Attorney
15 General and the others to the copies of the declaration retained by the At-
16 torney General.

17 (c) REPLACEMENT DECLARATION.—The Attorney General shall issue a
18 new declaration to an alien applying to replace a declaration that the Attor-
19 ney General finds is lost, destroyed, or mutilated, and if mutilated, is sur-
20 rendered to the Attorney General. A person coming into possession of a dec-
21 laration that was lost shall surrender the declaration to the Attorney Gen-
22 eral.

23 **§ 20503. Applications for naturalization**

24 (a) GENERAL.—An application for naturalization must be filed—

25 (1) with the Attorney General, in the office of the Immigration and
26 Naturalization Service for the district in which the individual resides;
27 and

28 (2) in person, except when the Attorney General decides the individ-
29 ual has an illness or other disability sufficiently incapacitating to pre-
30 vent the individual from filing in person.

31 (b) FORM AND CONTENTS.—The application for naturalization must—

32 (1) include a statement that the individual has been lawfully admit-
33 ted for permanent residence;

34 (2) include a statement of facts the Attorney General believes may
35 be material to the individual's naturalization and required to be proved
36 under this subtitle;

37 (3) include 3 identical photographs of the individual signed by the
38 individual;

39 (4) be sworn to by the individual; and

40 (5) be signed by the individual if physically able to write.

1 (c) EARLY FILING FOR INDIVIDUALS SUBJECT TO CONTINUOUS RESI-
2 DENCE REQUIREMENT.—An individual subject to a continuous residence re-
3 quirement under chapter 203 of this title may file an application for natu-
4 ralization not more than 3 months before the date the individual would first
5 satisfy that requirement.

6 (d) TRANSFER TO ANOTHER DISTRICT.—If an individual applying for
7 naturalization moves from the district of the Service in the United States
8 in which the application is pending, the individual may request the Attorney
9 General to transfer the application to another district. If the Attorney Gen-
10 eral transfers the application, the proceedings on the application shall con-
11 tinue as though the application had been filed originally in the district to
12 which it is transferred.

13 (e) WITHDRAWAL AND LACK OF PROSECUTION.—An application for natu-
14 ralization may be withdrawn only with the consent of the Attorney Gen-
15 eral. If the Attorney General does not consent to the withdrawal, the appli-
16 cation shall be decided on its merits. If the applicant does not prosecute
17 the application, the Attorney General may dismiss it for lack of prosecution.
18 If the Attorney General does not dismiss the application for lack of prosecu-
19 tion, it shall be decided on its merits.

20 **§ 20504. Proof of lawful entry and effect of deportation pro-**
21 **ceedings**

22 (a) PROOF OF LAWFUL ENTRY.—An applicant for naturalization has the
23 burden of proving that the applicant entered the United States lawfully. To
24 prove a lawful entry, the applicant is entitled to the production of—

25 (1) the applicant's immigrant visa or other entry document; and

26 (2) any other record in the custody of the Attorney General related
27 to the applicant's entry that the Attorney General does not consider
28 confidential.

29 (b) EFFECT OF DEPORTATION PROCEEDINGS.—(1) Except as provided in
30 sections 20312(d) and 20313 of this title—

31 (A) an application for naturalization may not be considered if a de-
32 portation proceeding is pending under an arrest warrant; and

33 (B) an individual may not be naturalized as a citizen of the United
34 States if a final finding of deportability is outstanding under an arrest
35 warrant.

36 (2) The Attorney General's findings in ending deportation proceedings or
37 suspending deportation are not binding in deciding whether an individual
38 satisfies the eligibility requirements for naturalization.

39 **§ 20505. Investigations**

40 The Attorney General shall conduct a personal investigation of an appli-
41 cant for naturalization in each vicinity in which the applicant has lived or

1 been employed during at least the 5-year period immediately before the ap-
2 plication was filed. However, the Attorney General may waive the investiga-
3 tion in a particular case or class of cases.

4 **§ 20506. Examinations**

5 (a) GENERAL.—The Attorney General shall designate officers and em-
6 ployees of the Immigration and Naturalization Service to conduct examina-
7 tions of applicants for naturalization. Examinations shall be uniform
8 throughout the United States and be limited to inquiring about whether the
9 applicant meets the eligibility requirements for naturalization. At the time
10 of the examination, the officer or employee conducting the examination shall
11 inform the applicant of the remedies available to the applicant under sec-
12 tions 20507(a) and (b) and 20508(a) of this title.

13 (b) DECISIONS.—The officer or employee conducting the examination
14 shall decide whether the application for naturalization should be granted or
15 denied and give the reasons.

16 **§ 20507. Hearings before immigration officers**

17 (a) GENERAL.—An individual whose application for naturalization is de-
18 nied after an examination under section 20506 of this title may request a
19 hearing before an immigration officer. Hearings under this subsection shall
20 be held at regular intervals specified by the Attorney General.

21 (b) SUBPENAS.—(1) On the applicant's request at the time of requesting
22 a hearing, the immigration officer shall subpoena witnesses named by the ap-
23 plicant to appear at the hearing. If a witness cannot be produced at the
24 hearing, other witnesses may be subpoenaed after notice to the Attorney
25 General, in the way and at the time prescribed by the Attorney General by
26 regulation.

27 (2) A subpoena issued under this subsection may be enforced as provided
28 in section 303(b) of this title.

29 (3) A witness willfully disobeying a subpoena to appear and testify at a
30 final hearing under this section shall be fined under title 18, imprisoned for
31 not more than 5 years, or both.

32 (c) APPEARANCE OF ATTORNEY GENERAL.—At a hearing under this sec-
33 tion, the Attorney General may call, examine, and cross-examine witnesses,
34 including the applicant, produce other evidence, and argue for or against
35 granting the application for naturalization.

36 (d) ADMISSIBILITY OF RECORDS OF EXAMINATION.—The record of the
37 examination conducted under section 20506 of this title is admissible as evi-
38 dence in a hearing conducted under this section.

39 **§ 20508. Judicial review**

40 (a) FAILURE TO MAKE TIMELY DECISIONS AFTER EXAMINATIONS.—If
41 the officer or employee conducting an examination under section 20506 of

1 this title does not make a decision on an application for naturalization with-
2 in 120 days after the date of the examination, the applicant may request
3 the district court of the United States for the district in which the applicant
4 resides to hold a hearing on the matter. The court may—

5 (1) order the application granted or denied; or

6 (2) remand the matter, with appropriate instructions, to the officer
7 or employee conducting the examination.

8 (b) DENIALS AFTER HEARINGS.—An individual whose application for
9 naturalization is denied after a hearing under section 20507 of this title
10 may obtain review of the denial in the United States district court for the
11 district in which the individual resides. At the individual's request, the court
12 shall hold a new hearing. Regardless of whether the court holds a new hear-
13 ing, the court shall make its own findings of fact and conclusions of law.

14 **§ 20509. Oath requirement**

15 (a) OATH OF ALLEGIANCE.—To be naturalized as a citizen of the United
16 States, an individual must take an oath, in substance—

17 (1) to support the Constitution;

18 (2) to support and defend the Constitution and laws of the United
19 States against all enemies foreign and domestic;

20 (3) to bear true faith and allegiance to the Constitution and laws of
21 the United States;

22 (4) to renounce all allegiance to any foreign prince, potentate, coun-
23 try, or sovereignty of which the individual was a citizen or subject; and

24 (5) to comply with a requirement of law—

25 (A) to bear arms for the United States;

26 (B) to perform noncombatant service in the armed forces of the
27 United States when wearing the uniform of a branch of the armed
28 forces and subject to military discipline and court martial; or

29 (C) to perform work of national importance under civilian direc-
30 tion.

31 (b) OMISSIONS FROM OATH BECAUSE OF RELIGIOUS BELIEF.—(1) In
32 this subsection, “religious belief” means belief in a relation to a Supreme
33 Being involving duties superior to those arising from a human relation, but
34 does not include essentially political, sociological, or philosophical views or
35 a personal moral code.

36 (2) If an individual satisfies the Attorney General by clear and convincing
37 evidence that, because of religious belief, the individual opposes—

38 (A) bearing arms in the armed forces of the United States, the indi-
39 vidual may omit from the oath the substance of subsection (a)(5)(A)
40 of this section; or

1 (B) any kind of service in the armed forces of the United States,
2 the individual may omit from the oath the substance of subsection
3 (a)(5) (A) and (B) of this section.

4 (c) WAIVER FOR YOUNG CHILD.—If the Attorney General believes that
5 a child is unable to understand the meaning of the oath, the Attorney Gen-
6 eral may waive the requirement that the child take the oath.

7 (d) OATH RENOUNCING HEREDITARY TITLES AND ORDERS.—In addition
8 to taking the oath under subsection (a) of this section, an individual who
9 has a hereditary title or belongs to an order of nobility must take an oath
10 expressly renouncing the title or order. The oath under this subsection must
11 be taken in the same public ceremony as the oath under subsection (a) and
12 shall be recorded as a part of the proceeding.

13 **§ 20510. Methods of oath administration**

14 (a) PUBLIC CEREMONY.—To be naturalized as a citizen of the United
15 States, an individual must take the oath required for naturalization in a
16 public ceremony. However, the Attorney General may waive the public cere-
17 mony requirement if the Attorney General decides the individual has an ill-
18 ness or other disability sufficiently incapacitating to prevent the individual's
19 personal appearance.

20 (b) RIGHT TO CHOOSE.—(1) The individual may choose to take the oath
21 before the Attorney General or a court authorized by section 20511 of this
22 title, except when—

23 (A) a court has exclusive authority under section 20511(c) of this
24 title; or

25 (B) a court has referred the applicant to the Attorney General for
26 an expedited oath administration under subsection (c)(3) of this sec-
27 tion.

28 (2) The individual shall notify the Attorney General of the choice to take
29 the oath before a court.

30 (c) EXPEDITED OATH ADMINISTRATION.—(1) On demonstrating suffi-
31 cient cause, an individual may be granted an expedited oath administration
32 by the Attorney General or a court.

33 (2) When a court is deciding whether to grant an expedited oath adminis-
34 tration, the court shall consider—

35 (A) special circumstances such as serious illness of the applicant or
36 a member of the applicant's immediate family, permanent disability
37 sufficiently incapacitating to prevent the applicant's personal appear-
38 ance at the scheduled ceremony, developmental disability, or advanced
39 age; and

40 (B) exigent circumstances related to travel or employment.

1 (3) If an expedited oath administration by a court is impracticable, the
2 court shall refer the individual to the Attorney General. The Attorney Gen-
3 eral then may provide for immediate administration of the oath.

4 (d) PUBLIC CEREMONIES CONDUCTED BY ATTORNEY GENERAL.—The
5 Attorney General shall prescribe regulations to ensure that oath administra-
6 tion ceremonies conducted by the Attorney General are public, dignified, and
7 conducted frequently and at regular intervals.

8 **§ 20511. Court authority to administer oaths**

9 (a) DEFINITION.—In this section, “eligible court” means—

10 (1) a district court of the United States in any State; and

11 (2) any other court of record in a State if the court has a seal, a
12 clerk, and jurisdiction in actions at law, equity, or both, in which the
13 amount in controversy is unlimited.

14 (b) GENERAL AUTHORITY.—(1) An eligible court may administer the
15 oath required for naturalization to individuals residing within the jurisdic-
16 tion of the court.

17 (2) Any district court of the United States may administer the oath to
18 an individual described in section 20310 of this title without regard to the
19 residence of the individual.

20 (c) EXCLUSIVE AUTHORITY.—(1) Subject to paragraphs (2) and (4) of
21 this subsection, an eligible court that wishes to have exclusive authority to
22 administer the oath to individuals residing within the jurisdiction of the
23 court has that authority on notifying the Attorney General.

24 (2) The exclusive authority of a court to administer the oath applies to
25 an individual—

26 (A) only during the 45-day period beginning on the date the Attor-
27 ney General certifies to the court that the individual is eligible to be
28 naturalized; and

29 (B) only if, before the date of that certification, the court has noti-
30 fied the Attorney General of the dates during that 45-day period when
31 oath administration ceremonies by the court are scheduled.

32 (3) Subject to paragraph (4) of this subsection, the Attorney General may
33 not administer the oath to an individual during the period of a court’s ex-
34 clusive authority under paragraph (2) of this subsection.

35 (4) A court may waive the exclusive authority to administer the oath to
36 an individual if the Attorney General has not provided the court the certi-
37 ficate of eligibility for that individual within a reasonable time before the day
38 scheduled by the court for the oath administration ceremony. When notified
39 of a court’s waiver, the Attorney General promptly shall notify the appli-
40 cant.

1 (d) NAME CHANGES.—On petition of an individual applying for natu-
2 ralization, the court may order a change in the name of the individual as
3 part of the administration of the oath by the court. The certificate of natu-
4 ralization shall be issued with the new name.

5 **§ 20512. Duties of Attorney General when court is to admin-**
6 **ister oath**

7 (a) GENERAL.—When a court is to administer the oath to an individual
8 applying for naturalization, the Attorney General shall—

9 (1) provide the court with information necessary to administer the
10 oath to the individual, and if the court has exclusive authority under
11 section 20511(c) of this title, provide the information not later than 10
12 days after approving the application for naturalization; and

13 (2) promptly provide the court a certificate of naturalization pre-
14 pared by the Attorney General for the individual.

15 (b) NOTICE TO APPLICANTS OF COURT'S EXCLUSIVE AUTHORITY.—(1)
16 If a court has exclusive authority to administer the oath, the Attorney Gen-
17 eral shall inform the applicant, at the time of approval of the application
18 for naturalization, of—

19 (A) the court's exclusive authority to administer the oath during the
20 period specified in section 20511(c)(2)(A) of this title; and

21 (B) the dates when oath administration ceremonies by the court are
22 scheduled.

23 (2) If more than one court in an area has exclusive authority to admin-
24 ister the oath, the Attorney General shall allow the applicant, at the time
25 of approval, to choose the court to administer the oath.

26 **§ 20513. Forms and records**

27 (a) FORMS.—The Attorney General shall prescribe and provide forms to
28 carry out this chapter and sections 20901 and 20902 of this title. Only
29 those forms are lawful. Certificates of naturalization and certificates of citi-
30 zenship shall be printed on safety paper and numbered consecutively in sep-
31 arate series.

32 (b) DECLARATIONS OF INTENTION AND APPLICATIONS FOR NATURALIZA-
33 TION.—Each district office of the Immigration and Naturalization Service
34 in the United States shall maintain, in chronological order, consecutively
35 numbered, and indexed, as a permanent record, all declarations of intention
36 and applications for naturalization filed in that office.

37 (c) DUTIES OF CLERKS OF COURTS.—The clerk of a court administering
38 oaths to applicants for naturalization shall—

39 (1) take responsibility for all blank certificates of naturalization re-
40 ceived from the Attorney General;

1 (2) return to the Attorney General any certificate of naturalization
2 that is unusable because damaged;

3 (3) account to the Attorney General for blank certificates of natu-
4 ralization when required by the Attorney General;

5 (4) give a certificate of naturalization prepared by the Attorney Gen-
6 eral under section 20512 of this title to each individual administered
7 the oath by the court;

8 (5) provide the Attorney General with a list of individuals taking the
9 oath at each scheduled ceremony, and information about each of those
10 individuals, not later than 30 days after the end of the month in which
11 the oath was administered; and

12 (6) provide the Attorney General with a certified copy of other pro-
13 ceedings in, and orders by, the court related to the naturalization of
14 individuals, when required by the Attorney General.

15 (d) COPIES OF OATHS OF INDIVIDUALS WHO LOST CITIZENSHIP BY EN-
16 TERING ARMED FORCES OF FOREIGN COUNTRIES.—When an individual de-
17 scribed in section 20315 of this title is naturalized, a certified copy of the
18 oath taken by the individual shall be provided by—

19 (1) the Attorney General to the Secretary of State if the oath was
20 administered by the Attorney General; and

21 (2) the clerk of the court to the Attorney General and the Secretary
22 of State if the oath was administered by a court.

23 **§20514. Fees**

24 (a) GENERAL.—The Attorney General shall charge, collect, and account
25 for fees prescribed by the Attorney General under section 9701 of title 31
26 for—

27 (1) filing a declaration of intention and issuing a duplicate declara-
28 tion; and

29 (2) filing an application for naturalization, holding a hearing on the
30 application, and issuing a certificate of naturalization.

31 (b) SUBPENA AND WITNESS FEES.—When filing an application for natu-
32 ralization, an individual requesting the issuance of a subpoena under section
33 20507(b) of this title shall deposit with the Attorney General an amount
34 sufficient to cover the cost of subpoenaing each witness and paying the wit-
35 ness the usual witness fee. On final discharge of the witness and demand
36 for payment, the Attorney General shall pay the witness the usual witness
37 fee from the amount deposited. The Attorney General shall return any re-
38 maining amount to the individual.

39 (c) EXEMPTION FOR INDIVIDUALS SERVING IN ARMED FORCES DURING
40 WAR OR MILITARY OPERATIONS.—(1) Except as provided in paragraph (2)
41 of this subsection, an individual serving in the armed forces of the United

1 States may not be charged a fee for filing an application for naturalization
2 or for issuance of a certificate of naturalization when the United States is
3 at war or engaged in military operations involving armed conflict with a
4 hostile foreign force as designated by the President by executive order.

5 (2) If a State law requires a fee to be charged, the clerk of a State court
6 may charge that part of the fee required to be paid to the State.

7 (3) The clerk of a court shall report all transactions made under this sub-
8 section to the Attorney General not later than 30 days after the end of the
9 month in which the transaction was made.

10 (d) EXEMPTION FROM REPLACEMENT FEES FOR INDIVIDUALS WHO
11 SERVED IN ARMED FORCES.—An individual may not be charged a fee for
12 filing an application to replace a declaration of intention or a certificate of
13 naturalization that is lost, destroyed, or mutilated if the individual served
14 in the armed forces of the United States after September 16, 1940, and
15 was not—

16 (1) discharged other than honorably;

17 (2) discharged because of alienage; or

18 (3) a conscientious objector who performed no military duty or re-
19 fused to wear the uniform.

20 (e) DISPOSITION OF FEES.—(1) Except as otherwise provided in this sub-
21 section, the Attorney General shall deposit all fees collected by the Attorney
22 General under this subtitle in the “Immigration Examinations Fee Ac-
23 count” established under section 318(a) of this title.

24 (2) Fees collected by the Attorney General under this subtitle from resi-
25 dents of the Virgin Islands or Guam shall be paid to the treasury of the
26 Virgin Islands or Guam, respectively.

27 (3) A percentage of the fees described in subsection (a)(1) of this section
28 collected by the Attorney General shall be paid to courts administering
29 oaths under this chapter. In consultation with the courts, the Attorney Gen-
30 eral shall determine the percentage each year based on—

31 (A) the costs incurred by the courts for essential services directly re-
32 lated to the naturalization process; divided by

33 (B) the total of those costs incurred by the courts and the Immigra-
34 tion and Naturalization Service.

35 (f) REPORTS AND CONSULTATIONS.—The Attorney General shall—

36 (1) provide an annual report to the Committees on the Judiciary of
37 the Senate and House of Representatives on the use of the fees de-
38 scribed in subsection (e)(3) of this section; and

39 (2) consult with those committees before increasing those fees.

1

CHAPTER 207—LOSS OF NATIONALITY

SUBCHAPTER I—BY VOLUNTARY ACTS

Sec.

20701. Acts resulting in loss of nationality.
 20702. Acts not resulting in loss of nationality.
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SUBCHAPTER II—REVOCATION OF NATURALIZATION

20711. Application.
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SUBCHAPTER III—MISCELLANEOUS

20731. Burden of proof.

2

SUBCHAPTER I—BY VOLUNTARY ACTS

3

§ 20701. Acts resulting in loss of nationality

4

Except as provided in section 20702 of this title, a national of the United States loses nationality of the United States under this subchapter only by voluntarily performing any of the following acts with the intention of relinquishing nationality of the United States:

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(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.

1 (6) making a formal written renunciation of nationality in the Unit-
 2 ed States in the way the Attorney General prescribes before an officer
 3 or employee the Attorney General designates when the United States
 4 is in a state of war and the Attorney General approves the renunciation
 5 as not against the defense interests of the United States.

6 (7) committing any of the following offenses for which the individual
 7 is convicted by a court or court martial:

8 (A) treason against the United States Government.

9 (B) attempting by force to overthrow the Government.

10 (C) bearing arms against the Government.

11 (D) violating or conspiring to violate section 2383 of title 18.

12 (E) violating section 2384 of title 18 by conspiring to over-
 13 throw, put down, or destroy by force the Government or to carry
 14 on war against the Government.

15 (F) willfully violating section 2385 of title 18.

16 **§ 20702. Acts not resulting in loss of nationality**

17 (a) WHEN NATIONAL IN THE UNITED STATES OR AMERICAN SAMOA.—
 18 A national of the United States does not lose nationality under section
 19 20701(1)–(4) of this title when the national is in the United States or
 20 American Samoa. However, an act specified in section 20701(1)–(4) and
 21 carried out in the United States or American Samoa results in the loss of
 22 nationality when the national establishes a residence outside the United
 23 States and American Samoa.

24 (b) WHEN ENTERING OR SERVING IN ARMED FORCES OF A FOREIGN
 25 COUNTRY OR RENOUNCING NATIONALITY AS A MINOR.—A national of the
 26 United States does not lose nationality under section 20701(3) or (5) of this
 27 title when less than 18 years of age if the national claims the nationality
 28 within 6 months after becoming 18 years of age. The claim shall be made
 29 in the way the Secretary of State prescribes by regulation.

30 (c) WHEN MARRYING A MALE ALIEN.—Notwithstanding a treaty ratified
 31 by the Senate before December 25, 1952, a woman who was—

32 (1) a national of the United States did not lose nationality only be-
 33 cause of marriage after—

34 (A) September 21, 1922, to an alien; or

35 (B) March 2, 1931, to an alien who was ineligible to become
 36 a citizen of the United States because of race; or

37 (2) a citizen of the United States at birth did not lose nationality
 38 because of residence outside the United States after a marriage re-
 39ferred to in clause (1) of this subsection.

1 **§ 20703. Presumption that act is done voluntarily**

2 An individual carrying out an act resulting in the loss of nationality
3 under this subchapter or any other law is presumed to have carried out the
4 act voluntarily. The presumption may be rebutted on a showing by a pre-
5 ponderance of the evidence that the act was not carried out voluntarily.

6 SUBCHAPTER II—REVOCATION OF NATURALIZATION

7 **§ 20711. Application**

8 This subchapter applies to any naturalization and certificate of natu-
9 ralization issued under this title or any other law.

10 **§ 20712. Grounds**

11 (a) GENERAL.—A court in which a civil action is brought under section
12 20713 of this title shall revoke the order of naturalization of an individual
13 as a citizen of the United States and cancel the individual's certificate of
14 naturalization if the court decides—

15 (1) the order and certificate were obtained unlawfully, by conceal-
16 ment of a material fact, or by willful misrepresentation; or

17 (2) for an individual naturalized under section 20313 of this title,
18 the individual was discharged from the armed forces of the United
19 States other than honorably.

20 (b) REFUSAL TO TESTIFY BEFORE CONGRESSIONAL COMMITTEE.—The
21 refusal of an individual within 10 years after naturalization of the individual
22 to testify as a witness before a congressional committee about subversive ac-
23 tivities of the individual is concealment of a material fact or willful mis-
24 representation under subsection (a)(1) of this section if the individual is
25 convicted of contempt for the refusal.

26 (c) MEMBERSHIP IN, OR AFFILIATION WITH, CERTAIN ORGANIZA-
27 TIONS.—If an individual naturalized after December 24, 1952, became a
28 member of or affiliated with an organization within 5 years after naturaliza-
29 tion and the membership or affiliation at the time of naturalization would
30 have prevented the individual from being naturalized under section 20331
31 of this title, the membership or affiliation is prima facie evidence that the
32 individual was not attached to the principles of the Constitution and was
33 not well disposed to the good order and happiness of the United States at
34 the time of naturalization. If there is no contrary evidence, a court may act
35 under subsection (a)(1) of this section on the ground that the naturalization
36 was obtained by concealment of a material fact or by willful misrepresenta-
37 tion.

38 (d) ADJUSTMENT OF STATUS.—An individual is deemed to have obtained
39 naturalization by concealment of a material fact or by willful misrepresenta-
40 tion if—

1 (1) the individual was naturalized as a citizen of the United States
2 based on a record of lawful admission for permanent residence made
3 as a result of an adjustment of the individual's status;

4 (2) the individual was not eligible for the adjustment of status; and

5 (3) the Attorney General rescinds the adjustment of status under
6 section 9108(a) of this title.

7 (e) PROOF OF DISCHARGE FROM ARMED FORCES.—Discharge from the
8 armed forces of the United States other than honorably shall be proved by
9 a certification from the head of the executive agency under which the indi-
10 vidual served.

11 (f) COURTS TO REVOKE NATURALIZATION ORDERS WHEN NATURALIZA-
12 TION CONVICTIONS INVOLVED.—A court having jurisdiction to try a viola-
13 tion of section 1425 of title 18 has jurisdiction to revoke orders of natu-
14 ralization and cancel certificates of naturalization. A court in which an indi-
15 vidual is convicted of knowingly obtaining naturalization in violation of sec-
16 tion 1425 shall revoke the order of naturalization of the individual as a citi-
17 zen and cancel the certificate of naturalization of the individual.

18 **§20713. Procedure**

19 (a) BRINGING CIVIL ACTIONS TO REVOKE.—If grounds exist under sec-
20 tion 20712 of this title, the Attorney General shall bring a civil action to
21 revoke the order of naturalization of an individual as a citizen of the United
22 States and to cancel the certificate of naturalization. When bringing the ac-
23 tion, the Attorney General shall file an affidavit showing good cause.

24 (b) VENUE.—An action under this section shall be brought in a district
25 court of the United States for the judicial district in which the individual
26 resides. If the individual does not reside in a judicial district in the United
27 States, the action may be brought in the United States District Court for
28 the District of Columbia or the district in which the individual last resided.

29 (c) NOTICE AND ANSWER.—The individual shall be given personal notice
30 and, unless waived, 60 days to answer in an action brought under this sec-
31 tion. If the individual is absent from the United States or the judicial dis-
32 trict in which the individual last resided, notice shall be given by personal
33 service or by publication in the way provided for service by publication or
34 on absentees by the law of the State or place in which the action is brought.

35 (d) EFFECTIVE DATE OF REVOCATION AND CANCELLATION.—Revocation
36 and cancellation under this subchapter are effective from the date of the
37 naturalization order and certificate of naturalization.

38 **§20714. Effect on automatic naturalization**

39 An individual claiming citizenship of the United States through the natu-
40 ralization of a parent or spouse loses that citizenship when the order of nat-

1 uralization of the parent or spouse as a citizen is revoked and the certificate
2 of naturalization is canceled under—

3 (1) section 20712(a)(1) of this title because the order and certificate
4 were obtained by concealment of a material fact or by willful misrepre-
5 sentation;

6 (2) section 20712(a)(2) of this title on a ground other than that the
7 order and certificate were obtained by concealment of a material fact
8 or by willful misrepresentation, if the individual does not reside in the
9 United States when the order is revoked and the certificate is canceled;
10 or

11 (3) section 20712(c) of this title, if the individual does not reside in
12 the United States when the order is revoked and the certificate is can-
13 celed.

14 **§ 20715. Cancellation of certificate of naturalization**

15 (a) DUTIES OF COURT.—A court revoking an order of naturalization as
16 a citizen of the United States or canceling a certificate of naturalization,
17 or both, under this subchapter shall prepare an order canceling the certifi-
18 cate and send a certified copy to the Attorney General.

19 (b) SURRENDER OF CANCELED CERTIFICATE.—On notice by the court
20 canceling a certificate of naturalization or by the Attorney General, an indi-
21 vidual holding a canceled certificate of naturalization shall surrender it to
22 the Attorney General.

23 **§ 20716. Authority not affected**

24 This subchapter does not affect the authority of the Attorney General to
25 reopen, change, or vacate an order of naturalization of an individual as a
26 citizen of the United States.

27 SUBCHAPTER III—MISCELLANEOUS

28 **§ 20731. Burden of proof**

29 A person claiming that an individual has lost nationality of the United
30 States under this chapter or any other law has the burden of proving, by
31 a preponderance of the evidence, that the loss occurred.

32 **CHAPTER 209—NATIONALITY DOCUMENTS**

Sec.

- 20901. Certificates of naturalization.
- 20902. Certificates of citizenship.
- 20903. Certificates of nationality.
- 20904. Other documents to prove citizenship.
- 20905. Cancellation of documents and records.
- 20906. Certificates of loss of nationality.
- 20907. Certifications of records.

1 **§ 20901. Certificates of naturalization**

2 (a) ISSUANCE AND CONTENT.—The Attorney General shall issue a certifi-
3 cate of naturalization to an individual when the individual is naturalized as
4 a citizen of the United States. The certificate shall contain—

5 (1) the number of the individual's application for naturalization;

6 (2) the number of the certificate;

7 (3) the individual's name (as changed if a change of name is granted
8 by a court as part of the administration of the oath required for natu-
9 ralization);

10 (4) the individual's signature;

11 (5) the individual's place of residence;

12 (6) a signed photograph of the individual;

13 (7) a personal description of the individual, including age, sex, and
14 marital status;

15 (8) the individual's prior nationality;

16 (9) a statement that the Attorney General, having decided that the
17 individual has satisfied the applicable provisions of this title, ordered
18 the individual naturalized as a citizen;

19 (10) the date of the naturalization;

20 (11) the location of the district office of the Immigration and Natu-
21 ralization Service in which the application was filed;

22 (12) the title, authority, and location of the official or court admin-
23 istering the oath required for naturalization; and

24 (13) the attestation of an immigration officer and the seal of the De-
25 partment of Justice.

26 (b) REPLACEMENT CERTIFICATES.—(1) On application to the Attorney
27 General, the Attorney General shall issue to a naturalized citizen—

28 (A) a new certificate of naturalization to replace a certificate that
29 the Attorney General finds is lost, destroyed, or mutilated, and if muti-
30 lated, is surrendered to the Attorney General; or

31 (B) a new certificate of naturalization with the citizen's new name
32 when the Attorney General finds that the citizen's name has been
33 changed by marriage or order of a court of competent jurisdiction after
34 naturalization.

35 (2) The Attorney General shall notify the court that naturalized the citi-
36 zen of the issuance of a new certificate under paragraph (1)(B) of this sub-
37 section.

38 (c) SPECIAL CERTIFICATES TO OBTAIN RECOGNITION BY FOREIGN
39 COUNTRIES.—On application by a naturalized citizen to the Attorney Gen-
40 eral, the Attorney General shall issue for the citizen a special certificate of
41 naturalization to be used only to obtain recognition as a citizen of the Unit-

1 ed States by the government of a foreign country. The certificate shall be
2 submitted to the Secretary of State for submission to the proper authority
3 of the government of the foreign country.

4 (d) PHOTOGRAPHS.—An application to the Attorney General for a certifi-
5 cate of naturalization or a special certificate of naturalization shall include
6 3 identical photographs of the individual applying. One photograph shall be
7 attached to the certificate and the others to the copies of the certificate re-
8 tained by the Attorney General.

9 (e) SURRENDER OF FOUND CERTIFICATES.—A person coming into pos-
10 session of a certificate of naturalization that was lost shall surrender the
11 certificate to the Attorney General.

12 **§ 20902. Certificates of citizenship**

13 (a) APPLICATIONS.—An individual may apply to the Attorney General for
14 a certificate of citizenship if the individual claims to be a citizen of the
15 United States because of—

16 (1) the naturalization of a parent of the individual;

17 (2) the naturalization or citizenship of the individual's husband;

18 (3) section 1993 of the Revised Statutes;

19 (4) the Act of May 7, 1934 (ch. 221, 48 Stat. 667);

20 (5) the Act of August 4, 1937 (ch. 563, 50 Stat. 558);

21 (6) section 201(c)–(e), (g), or (i), 203, or 205 of the Nationality Act
22 of 1940 (ch. 876, 54 Stat. 1138, 1139); or

23 (7) section 20102(a), 20104(a), or 20106 of this title.

24 (b) PHOTOGRAPHS.—An application under subsection (a) of this section
25 shall include 3 identical photographs of the individual applying. One photo-
26 graph shall be attached to the certificate and the others to the copies of
27 the certificate retained by the Attorney General.

28 (c) ISSUANCE.—The Attorney General shall issue a certificate of citizen-
29 ship to an individual if—

30 (1) the Attorney General is satisfied that the individual is a citizen
31 as claimed under subsection (a) of this section;

32 (2) the individual takes, and signs, in front of an immigration officer
33 the oath required for naturalization, unless waived under section
34 20509(c) of this title; and

35 (3) the individual is in the United States when the oath is taken and
36 the certificate is issued.

37 (d) REPLACEMENT CERTIFICATES.—The Attorney General shall issue a
38 new certificate of citizenship to a citizen applying to replace a certificate
39 that the Attorney General finds is lost, destroyed, or mutilated, and if muti-
40 lated, is surrendered to the Attorney General. A person coming into posses-

1 sion of a certificate that was lost shall surrender the certificate to the Attor-
2 ney General.

3 **§ 20903. Certificates of nationality**

4 (a) CERTIFICATES FOR USE IN FOREIGN COUNTRY PROCEEDINGS.—
5 Under regulations the Secretary of State prescribes, the Secretary may issue
6 a certificate of nationality for an individual if the Secretary is satisfied that
7 the individual is a national of the United States at birth and that the cer-
8 tificate is needed for an administrative or judicial proceeding of a foreign
9 country. The certificate is only for use in the proceeding for which it is is-
10 sued. The Secretary shall submit the certificate to the appropriate foreign
11 administrative or judicial officer.

12 (b) CERTIFICATES ISSUED TO INDIVIDUALS.—An individual claiming to
13 be a national, but not a citizen, of the United States may apply to the Sec-
14 retary of State for a certificate of non-citizen national status. The Secretary
15 shall issue the certificate if—

16 (1) the Secretary is satisfied that the individual is a national, but
17 not a citizen, of the United States;

18 (2) for an individual born outside the United States or American
19 Samoa, the individual takes, and signs, in front of an immigration offi-
20 cer in the United States or American Samoa, the oath required for nat-
21 uralization; and

22 (3) the individual is in the United States or American Samoa when
23 the certificate is issued.

24 **§ 20904. Other documents to prove citizenship**

25 The following documents have the same effect that a certificate of natu-
26 ralization or a certificate of citizenship has to prove that an individual is
27 a citizen of the United States:

28 (1) a passport issued by the Secretary of State to a citizen of the
29 United States during its period of validity if the period is the maximum
30 allowed by law.

31 (2) a “Report of Birth Abroad of a Citizen of the United States”
32 issued by a consular officer to document a citizen born outside the
33 United States.

34 **§ 20905. Cancellation of documents and records**

35 (a) ATTORNEY GENERAL.—(1) The Attorney General may cancel a citi-
36 zenship or nationality document or record issued by the Attorney General
37 if satisfied that it was obtained fraudulently or unlawfully.

38 (2) The Attorney General shall send written notice of an intention to can-
39 cel the document or record, and the reason for the cancellation, to the indi-
40 vidual to whom the document or record was issued, at the individual’s last

1 known address. The Attorney General shall give the individual at least 60
2 days to show cause why the document or record should not be canceled.

3 (b) SECRETARY OF STATE.—(1) The Secretary of State may cancel a
4 United States passport or a “Report of Birth Abroad of a Citizen of the
5 United States” issued by a consular officer to document a citizen born out-
6 side the United States, or a certified copy, if it appears to have been ob-
7 tained fraudulently, unlawfully, or erroneously.

8 (2) The Secretary shall send written notice of the cancellation to the indi-
9 vidual to whom the document was issued, at the individual’s last known ad-
10 dress. The notice shall include notice of the procedure to seek a prompt
11 post-cancellation hearing.

12 (c) EFFECT OF CANCELLATION.—Cancellation of a document or record
13 showing the citizenship status of an individual under this section affects
14 only the record and not the citizenship status of the individual.

15 **§ 20906. Certificates of loss of nationality**

16 (a) CERTIFICATE BY DIPLOMATIC OR CONSULAR OFFICER.—When a dip-
17 lomatic or consular officer believes that an individual in a foreign country
18 has lost the nationality of the United States under section 20701 of this
19 title or chapter IV of the Nationality Act of 1940 (ch. 876, 54 Stat. 1168),
20 the officer shall certify in writing to the Secretary of State, under regula-
21 tions the Secretary prescribes, the facts on which the officer’s belief is
22 based.

23 (b) APPROVAL BY SECRETARY OF STATE.—(1) If the Secretary approves
24 the certificate, the Secretary shall provide a copy to the Attorney General
25 and direct the officer to provide a copy to the individual.

26 (2) The Secretary’s approval of the certificate is—

27 (A) a final administrative decision of loss of nationality, subject to
28 procedures for administrative appeal the Secretary may prescribe by
29 regulation; and

30 (B) a denial of a right or privilege under section 21101 of this title.

31 **§ 20907. Certifications of records**

32 The Attorney General may make a certification of any part of a natu-
33 ralization record of a court, a certificate of naturalization, or a certificate
34 of citizenship, for use in complying with a law or in a judicial proceeding.
35 The clerk of a court may make such a certification only on order of the
36 court.

37 **CHAPTER 211—MISCELLANEOUS**

Sec.

21101. Procedure if denied a right or privilege as a national.

21102. Information about citizenship.

1 **§21101. Procedure if denied a right or privilege as a na-**
2 **tional**

3 (a) INDIVIDUALS IN THE UNITED STATES.—(1) Except as provided in
4 paragraph (4) of this subsection, an individual in the United States may
5 bring a civil action under section 2201 of title 28 against the head of an
6 agency for a judgment declaring that the individual is a national of the
7 United States if—

8 (A) the individual claims a right or privilege as a national of the
9 United States; and

10 (B) the head of the agency denies the claim because the individual
11 is not a national of the United States.

12 (2) The action must be brought—

13 (A) in the district court of the United States for the judicial district
14 in which the individual resides or claims to reside; and

15 (B) within 5 years after the final administrative denial of the right
16 or privilege.

17 (3) A court referred to in paragraph (2) of this subsection has jurisdic-
18 tion over the head of the agency in that action.

19 (4) An individual may not bring an action under this subsection if the
20 issue of the individual's nationality arose because of a deportation or exclu-
21 sion proceeding.

22 (b) INDIVIDUALS NOT IN THE UNITED STATES.—(1) An individual not
23 in the United States may apply to a consular officer or diplomatic officer
24 of the United States in the country in which the individual resides for a
25 certificate of identity to travel to the United States and apply for admission
26 if—

27 (A) the individual claims a right or privilege as a national of the
28 United States;

29 (B) the head of an agency denies the claim because the individual
30 is not a national of the United States; and

31 (C) the individual had been in the United States before applying for
32 the certificate, or the individual is less than 16 years of age and was
33 born outside the United States to a parent who is a citizen of the Unit-
34 ed States.

35 (2) The diplomatic or consular officer shall grant the certificate if satis-
36 fied that the application is made in good faith and has a substantial basis.
37 If the officer denies the application, the individual may appeal to the Sec-
38 retary of State. If the Secretary approves the denial, the Secretary shall
39 state the reasons in writing.

40 (3) The individual may use the certificate to travel to a port of entry and
41 apply for admission to the United States. The individual is subject to the

1 provisions of this title applicable to proceedings for aliens seeking admission
2 to the United States.

3 (4) The Secretary shall prescribe regulations for granting certificates
4 under this subsection.

5 (c) APPLICATION OF LAWS ON ADMISSION OF ALIENS.—An individual de-
6 scribed in this section who is finally excluded from admission to the United
7 States is subject to all the provisions of this title applicable to aliens seeking
8 admission to the United States.

9 **§ 21102. Information about citizenship**

10 (a) PROMOTING UNITED STATES CITIZENSHIP.—To promote the oppor-
11 tunities and responsibilities of citizenship of the United States, the Attorney
12 General shall distribute broadly information about the benefits individuals
13 may receive under this subtitle and the requirements to obtain those bene-
14 fits. In carrying out this subsection, the Attorney General shall seek the as-
15 sistance of appropriate community groups, private voluntary agencies, and
16 other relevant organizations.

17 (b) INSTRUCTION IN CITIZENSHIP RESPONSIBILITIES.—The Attorney
18 General may promote instruction and training in citizenship responsibilities
19 of applicants for naturalization, including—

20 (1) giving names of applicants for naturalization to public schools;

21 (2) preparing citizenship textbooks and distributing the textbooks
22 without charge to applicants receiving instruction in citizenship respon-
23 sibilities under the supervision of public schools;

24 (3) preparing and distributing a monthly immigration and natu-
25 ralization bulletin; and

26 (4) seeking the cooperation of official State and national organiza-
27 tions, including organizations concerned with vocational education.

28 (c) REIMBURSEMENT.—Based on a statement by the Attorney General
29 that the citizenship textbooks have been prepared and distributed as pro-
30 vided in subsection (b)(2) of this section, naturalization fees deposited in
31 the Treasury by the Attorney General may be used to reimburse the appro-
32 priation of the Department of Justice for the cost of preparing and distrib-
33 uting the textbooks.

34 **SEC. 2. CONFORMING PROVISIONS.**

35 (a) TITLE 8.—Effective June 1, 1996, section 8303 of title 8, United
36 States Code, is amended as follows:

37 (1) Subsection (b) is amended to read as follows:

38 “(b) WAIVERS.—The Attorney General may waive the 2-year residence
39 requirement of subsection (a) of this section if the Attorney General finds
40 that admitting the alien would be in the public interest, after receiving a
41 favorable recommendation from—

1 “(1) the Director—

2 “(A) because of a request from an interested agency; or

3 “(B) if the foreign country of the alien’s nationality or last resi-
4 dence provides the Director with a written statement that it does
5 not object to the waiver, except that this subclause does not apply
6 to an alien described in subsection (a)(3) of this section; or

7 “(2) the Commissioner of Immigration and Naturalization if the
8 Commissioner finds that—

9 “(A) departure from the United States would impose excep-
10 tional hardship on the alien’s spouse or child when the spouse or
11 child is a citizen of the United States or lawfully admitted for per-
12 manent residence; or

13 “(B) the alien would be subject to persecution on account of
14 race, religion, or political opinion if the alien returned to the for-
15 eign country of the alien’s nationality or last residence.”.

16 (2) Strike subsection (c).

17 (b) TITLE 10.—Section 885 of title 10, United States Code, is amended
18 by adding at the end the following new subsection:

19 “(d) Any person found guilty of desertion in time of war may not—

20 “(1) hold an office of trust or profit under the United States; or

21 “(2) exercise the rights of a citizen of the United States.”.

22 (c) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—In the
23 table of contents of the Elementary and Secondary Education Act of 1965
24 (20 U.S.C. 6301 et seq.), strike the analysis for part C of title VII.

25 (d) ACT OF AUGUST 1, 1956.—Section 6(a) of the Act of August 1, 1956
26 (50 U.S.C. 855(a)), is amended by—

27 (1) striking the subsection designation “(a)”; and

28 (2) striking “make” and substituting “makes”.

29 (e) MILITARY SELECTIVE SERVICE ACT.—Section 12 of the Military Se-
30 lective Service Act (50 App. U.S.C. 462) is amended by adding at the end
31 the following new subsection:

32 “(h) On conviction by a court of competent jurisdiction, a person reg-
33 istered under this Act who leaves the district in which registered, or a per-
34 son (whether or not registered under this Act) who leaves the United States,
35 with the intent to evade a lawfully ordered draft while the United States
36 is at war, may not—

37 “(1) hold an office of trust or profit under the United States; or

38 “(2) exercise the rights of a citizen of the United States.”.

39 **SEC. 3. CONFORMING CROSS-REFERENCES.**

40 (a) TITLE 5.—Section 5549(2) of title 5, United States Code, is amended
41 by striking “sections 1353a and 1353b” and substituting “section 308”.

1 (b) TITLE 10.—Title 10, United States Code, is amended as follows:

2 (1) In section 374(b)(4)(A)(ii), strike “Any of sections 274 through
3 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328)”
4 and substitute “Sections 10147–10151 of title 8”.

5 (2) In section 1060a(f)(2)(B), strike “(as)” and all that follows
6 through the period and substitute “as determined under title 8”.

7 (3) In section 2864(a), strike “section 101(a)(15)(H)(ii) of the Im-
8 migration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))” and sub-
9 stitute “section 2314 or 2315 of title 8”.

10 (4) In sections 3253 and 8253, strike “the Immigration and Nation-
11 ality Act (8 U.S.C. 1101 et seq.)” and substitute “title 8”.

12 (5) In sections 12102(b)(1) and 12201(b)(1), strike “the Immigra-
13 tion and Nationality Act (8 U.S.C. 1101 et seq.)” and substitute “title
14 8”.

15 (c) TITLE 18.—Title 18, United States Code, is amended as follows:

16 (1) In sections 831(c)(2) and 1091(d)(2), strike “section 101 of the
17 Immigration and Nationality Act (8 U.S.C. 1101)” and substitute
18 “section 127 of title 8”.

19 (2) In section 1203(c), strike “section 101(a)(22) of the Immigration
20 and Nationality Act (8 U.S.C. 1101(a)(22))” and substitute “section
21 127 of title 8”.

22 (3) In section 1546(b), strike “section 274A(b) of the Immigration
23 and Nationality Act” and substitute “section 11103 of title 8”.

24 (4) In section 2331(2), strike “section 101(a)(22) of the Immigra-
25 tion and Nationality Act” and substitute “section 127 of title 8”.

26 (5) In section 3077(2)—

27 (A) in clause (A), strike “section 101(a)(22) of the Immigration
28 and Nationality Act (8 U.S.C. 1101(a)(22))” and substitute “sec-
29 tion 127 of title 8”; and

30 (B) in clause (B), strike “section 101(a)(20) of the Immigration
31 and Nationality Act (8 U.S.C. 1101(a)(20))” and substitute “sec-
32 tion 124 of title 8”.

33 (6) In section 3142(d)(1)(B), strike “section 101(a)(20) of the Im-
34 migration and Nationality Act (8 U.S.C. 1101(a)(20))” and substitute
35 “section 124 of title 8”.

36 (7) In section 4113—

37 (A) in subsection (a), strike “section 1252(b) or section 1254(e)
38 of title 8, United States Code,” and substitute “section 6540(a)
39 or (b) of title 8”;

1 (B) in subsection (b), strike “section 1252 of title 8, United
2 States Code,” and substitute “subchapter II of chapter 65 of title
3 8 and”; and

4 (C) in subsection (c), strike “section 1226 of title 8, United
5 States Code,” and substitute “subchapter II of chapter 63 of title
6 8 and”.

7 (d) INTERNAL REVENUE CODE OF 1986.—The Internal Revenue Code of
8 1986 (26 U.S.C. 1 et seq.) is amended as follows:

9 (1) In section 871(c), strike “subparagraph (F), (J), (M), or (Q) of
10 section 101(a)(15) of the Immigration and Nationality Act, as amended
11 (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q))” and substitute “section
12 2310, 2311, 2312, or 2320 of title 8, United States Code”.

13 (2) In sections 872(b)(3), strike “subparagraph (F), (J), or (Q) of
14 section 101(a)(15) of the Immigration and Nationality Act, as amend-
15 ed” and substitute “section 2310, 2312, or 2320 of title 8, United
16 States Code”.

17 (3) In sections 877(d), 2107(d), and 2501(a)(3)(A), strike “, as
18 amended (8 U.S.C. 1401(b), 1482, or 1487)” and substitute “as those
19 sections were in effect on October 9, 1978”.

20 (4) In section 1441(b), strike “subparagraph (F), (J), (M), or (Q)
21 of section 101(a)(15) of the Immigration and Nationality Act” and
22 substitute “section 2310, 2311, 2312, or 2320 of title 8, United States
23 Code,”.

24 (5) In section 3121(b)—

25 (A) in clause (18), strike “section 101(a)(15)(H)(ii) of the Im-
26 migration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))” and
27 substitute “section 2314 or 2315 of title 8, United States Code”;
28 and

29 (B) in clause (19), strike “subparagraph (F), (J), (M), or (Q)
30 of section 101(a)(15) of the Immigration and Nationality Act, as
31 amended” and “in subparagraph (F), (J), (M), or (Q)” and sub-
32 stitute “section 2310, 2311, 2312, or 2320 of title 8, United
33 States Code” and “in section 2310, 2311, 2312, or 2320”, respec-
34 tively.

35 (6) In section 3231(e)(1), strike “subparagraph (F), (J), (M), or (Q)
36 of section 101(a)(15) of the Immigration and Nationality Act, as
37 amended” and “in subparagraph (F), (J), (M), or (Q)” and substitute
38 “section 2310, 2311, 2312, or 2320 of title 8, United States Code”
39 and “in section 2310, 2311, 2312, or 2320”, respectively.

1 (7) In section 3304(a)(14)(A), strike “section 212(d)(5) of the Im-
2 migration and Nationality Act” and substitute “section 6123 of title
3 8, United States Code”.

4 (8) In section 3306(c)—

5 (A) in clause (1)(B), strike “sections 214(c) and 101(a)(15)(H)
6 of the Immigration and Nationality Act” and substitute “section
7 2314 of title 8, United States Code”; and

8 (B) in clause (19), strike “subparagraph (F), (J), (M), or (Q)
9 of section 101(a)(15) of the Immigration and Nationality Act, as
10 amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q))” and “in
11 subparagraph (F), (J), (M), or (Q)” and substitute “section 2310,
12 2311, 2312, or 2320 of title 8, United States Code” and “in sec-
13 tion 2310, 2311, 2312, or 2320”, respectively.

14 (9) In section 6103(m)(4)(A)(ii)(II), strike “section 3(a)(1) of the
15 Migration and Refugee Assistance Act of 1962” and substitute “section
16 13308(a)(1) of title 8, United States Code.”.

17 (10) In section 7701(b)(5)—

18 (A) in paragraph (C)(i), strike “subparagraph (J) or (Q) of sec-
19 tion 101(15) of the Immigration and Nationality Act” and sub-
20 stitute “section 2312 or 2320 of title 8, United States Code”;

21 (B) in paragraph (D)(i)(I), strike “subparagraph (F) or (M) of
22 section 101(a)(15) of the Immigration and Nationality Act” and
23 substitute “section 2310 or 2311 of title 8, United States Code”;
24 and

25 (C) in paragraph (D)(i)(II), strike “subparagraph (J) or (Q) of
26 such section 101(15)” and substitute “section 2312 or 2320 of
27 title 8, United States Code”.

28 (e) TITLE 28.—Title 28, United States Code, is amended as follows:

29 (1) In section 751(e), strike “naturalization fees listed in section 742
30 of Title 8 and”.

31 (2) In section 1821(e), strike “section 212(d)(5) of the Immigration
32 and Nationality Act (8 U.S.C. 1182(d)(5))” and “section 242(b) of
33 such Act (8 U.S.C. 1252(b))” and substitute “section 6123 of title 8”
34 and “section 6532 of title 8”, respectively.

35 (f) TITLE 46.—Title 46, United States Code, is amended as follows:

36 (1) In section 2101(3a), strike “section 101(a)(22) of the Immigra-
37 tion and Nationality Act (8 U.S.C. 1101(a)(22))” and substitute “sec-
38 tion 127 of title 8”.

39 (2) In section 8103(i)(1)(C), strike “the Immigration and National-
40 ity Act (8 U.S.C. 1101 et seq.)” and substitute “title 8”.

1 (3) In section 8704, strike “section 274A of the Immigration and
2 Nationality Act (8 U.S.C. 1324a)” and substitute “chapter 111 of title
3 8”.

4 **SEC. 4. LEGISLATIVE PURPOSE AND CONSTRUCTION.**

5 (a) NO SUBSTANTIVE CHANGE.—Sections 1 and 2 of this Act restate,
6 without substantive change, laws enacted before March 1, 1995, that were
7 replaced by those sections. Those sections may not be construed as making
8 a substantive change in the laws replaced. Laws enacted after February 28,
9 1995, that are inconsistent with this Act supersede this Act to the extent
10 of the inconsistency.

11 (b) REFERENCES.—A reference to a law replaced by section 1 or 2 of
12 this Act, including a reference in a regulation, order, or other law, is
13 deemed to refer to the corresponding provision enacted by this Act.

14 (c) CONTINUING EFFECT.—An order, rule, or regulation in effect under
15 a law replaced by section 1 or 2 of this Act continues in effect under the
16 corresponding provision enacted by this Act until repealed, amended, or su-
17 perseded.

18 (d) ACTIONS AND OFFENSES UNDER PRIOR LAW.—An action taken or
19 an offense committed under a law replaced by section 1 or 2 of this Act
20 is deemed to have been taken or committed under the corresponding provi-
21 sion enacted by this Act.

22 (e) INFERENCES.—An inference of a legislative construction is not to be
23 drawn by reason of the location in the United States Code of a provision
24 enacted by this Act or by reason of a caption or catch line of the provision.

25 (f) SEVERABILITY.—If a provision enacted by this Act is held invalid, all
26 valid provisions that are severable from the invalid provision remain in ef-
27 fect. If a provision enacted by this Act is held invalid in any of its applica-
28 tions, the provision remains valid for all valid applications that are severable
29 from any of the invalid applications.

30 **SEC. 5. REPEALS.**

31 (a) INFERENCES OF REPEAL.—The repeal of a law by this Act may not
32 be construed as a legislative inference that the provision was or was not in
33 effect before its repeal.

34 (b) REPEALER SCHEDULE.—The laws specified in the following schedule
35 are repealed, except for rights and duties that matured, penalties that were
36 incurred, and proceedings that were begun before the date of enactment of
37 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	8 25	3 349
1888 Feb. 1	4	1(last par. under heading "Pay Department").	25	9	8	63
1891 Mar. 3	551	1, 4, 6-13	26	1084, 1085 ..	8	1552
1893 Mar. 3	206	1-7, 9, 10	27	569, 571 .....	.....	.....
1894 Mar. 17	Art. III .....	.....	28	1211	8	298
Aug. 18	301	1(last par. on p. 390)	28	390	8	174
1895 Mar. 2	177	1(last par. beginning on p. 780)	28	780	8	103, 1552, 1554
1898 July 1	546	1(2d par. under heading "Back Pay and Bounty").	30	640	8	63
1900 Apr. 30	339	4	31	141	48	494
1901 Mar. 3	853	1(next-to-last par. before heading "Quarantine Service").	31	1155 .....	.....	.....
	868 .....	.....	31	1447	8 25	3 349
1902 June 14	1088	2	32	386	22	212
July 1	1351	(3d complete par. on p. 556)	32	556	8	64
1903 Feb. 14	552	4(related to immigration), 7(related to immigration).	32	826, 828	8	131, 261, 1551
1904 Apr. 28	1762	1(par. under heading "Enforcement of the Chinese-Exclusion Act").	33	478	8	298
	Pub. R. 33 ..	.....	33	591	8	140, 1552
1906 May 8	2348	"Sec. 6(2d sentence less provisos)"	34	182	8 25	3 349
June 29	3592	26	34	603 .....	.....	.....
	3624 .....	.....	34	630	8	407
1910 June 25	395	6(1st par.)	36	826	8	1557
	401	2	36	830 .....	.....	.....
1913 Mar. 4	141	3(related to Commissioner of Naturalization and "known as the Commissioner General of Immigration, the Commissioners of Immigration, the Bureau of Immigration and Naturalization, the Division of Information, the Division of Naturalization, and the Immigration Service at Large" in 1st-3d sentences).	37	737	8	1551, 1552
1915 Mar. 4	147	1(par. under heading "Immigration Service").	38	1151	8	112
1917 Mar. 2	145	5, 5a(provisos)	39	953	8	5, 5a
Mar. 3	163	1(pars. under headings "Bureau of Immigration" and "Bureau of Naturalization").	39	1118	8	1552

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June 12	27	1(1st provisos on pp. 170, 171)	40	170, 171	8	118, 402
June 15	30	1	40	227	22	213
1918						
May 9	69	2(less last proviso), 3(1st par.)	40	546, 548	8	359, 395, 406, 416
1919						
Aug. 15	50 .....	.....	41	280	8	114
1920						
June 4	223	1, 2, 4, 5	41	750, 751	22	214, 215, 216
1921						
Mar. 3	120	3(1st sentence 1st–29th words)	41	1250	8	3
Mar. 4	161	1(2d par. under heading "Immigration Service").	41	1424	8	1353c
1922						
Mar. 28	117	(pars. under headings "Bureau of Immigration", "Immigration Stations", and "Bureau of Naturalization").	42	486	8	118, 1552
Sept. 22	411	6, 7	42	1022	8	10
1923						
Jan. 3	22	(1st proviso on p. 1101)	42	1101	8	117
Jan. 5	24	(pars. under headings "Bureau of Immigration", "Immigration Stations", and "Bureau of Naturalization").	42	1127	8	118, 1552
1924						
May 28	204	(2d proviso on p. 240)	43	240	8	118
June 2	233 .....	.....	43	253	8	173, 224
June 7	379 .....	.....	43	669	8	228
1925						
Feb. 27	364	(2d proviso on p. 1049)	43	1049	8	118
1926						
Apr. 29	195	(2d proviso on p. 371)	44	371	8	118
May 25	388 .....	.....	44	652	8	374
July 3	738	2	44	812 .....	.....	.....
	772 .....	.....	44	887	22	211, 211a, 214a, 217, 217a
1927						
Jan. 26	58	(1st proviso on p. 1038)	44	1038	8	117
Feb. 24	189	(2d proviso on p. 1223)	44	1223	8	118
Feb. 25	192	1–3	44	1234	8	5b, 5c, 377a
Mar. 4	503	2 "Sec. 5a(provisos)"	44	1418	8	5a
1928						
Feb. 15	57	(1st proviso on p. 107)	45	107	8	118
1929						
Jan. 25	102	(2d proviso on p. 1137)	45	1137	8	118
Mar. 2	536	6(e), 7(b)	45	1514, 1515 ..	8	361, 402a
Mar. 4	683	2, 3	45	1545	8	392a
1930						
Apr. 18	184	(last par. 2d proviso under heading "Bureau of Immigration").	46	216	8	118
June 19	544 .....	.....	46	787	8	3a
July 1	782 .....	.....	46	839	22	217a
July 3	826 .....	.....	46	849	8	137a
1931						
Feb. 23	277	(last proviso on p. 1228)	46	1228	8	117
Mar. 2	368 .....	.....	46	1467	8	1353a, 1353b
Mar. 3	442	4(b)	46	1512	8	370
1932						
May 16	187 .....	.....	47	157	22	217a
May 25	203	1	47	165	8	392b–392d
June 28	283 .....	.....	47	336	8	5b, 204a–204d
July 5	430	(1st proviso on p. 591)	47	591	8	117
1933						
Mar. 3	212	(1st proviso on p. 1500)	47	1500	8	117
1934						
Mar. 15	70	(1st proviso on p. 435)	48	435	8	117, 176

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May 7	221	48	667	8	3b, 3c
May 24	344	5	48	798	8	137a, 371, 375
1935						
June 15	255	49	376	8	376
1937						
Aug. 23	735 .....	.....	50	743	8	392b–392d
1939						
May 6	115	(1st proviso on p. 668)	53	668	8	117
June 21	234 .....	.....	53	851	8	392b–392d
1940						
June 28	439	22, 40, 41	54	673, 676	8	137, 137–1
Aug. 22	688 .....	.....	54	858	8	1353d
1941						
June 28	258	(2d proviso on p. 292)	55	292	8	103a
1942						
July 2	472	(1st proviso on p. 483)	56	483	8	103a
1943						
July 1	182	(1st proviso on p. 288)	57	288	8	103a
July 12	221	(1st proviso on p. 507 words before semicolon).	57	507	8	117
Dec. 17	344	1	57	600 .....	.....	.....
1944						
June 28	294	(1st proviso on p. 412)	58	412	8	103a
	302	(1st proviso on p. 558)	58	558	8	117
1945						
May 21	129	(1st proviso on p. 185)	59	185	8	103a
Dec. 28	591	1, 2, 4–6	59	659	8	232–237
1946						
July 5	541	(proviso on p. 462)	60	462	8	103a
1947						
July 9	211	(2d proviso on p. 292 words before semicolon).	61	292	8	103a
July 22	289 .....	.....	61	401	8	237
July 23	304	1	61	414	8	3b
1948						
June 1	360	2	62	283 .....	.....	.....
1949						
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. 19	759 .....	.....	64	464	8	239
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
Apr. 9	171	66	50	8	1184(note)

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June 27	477	1, 101(a)(1)-(23), (25)-(46), (b)(1)-(5), (c), (e)-(h), 102-104(e), 105, 106, 201-211, 212(a)-(d)(1), (3)-(5), (7), (8), (11), (e)-(o), 213-218, 221-224, 231, 232, 234-258, 261-266, 271-293, 301-322, 324-329(c), 329A-344, 346, 347, 349, 351, 356-361, 402(e), (h)-(j), 403-407, 411-414.	66	163, 169, 171, 172, 175, 177, 188, 198, 246, 251, 266, 269, 272, 276, 277.	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
					48	1421/
					50	1952-1955,
					App.	1961
1953						
June 30	162 .....	.....	67	108	8	1440a-1440d
Aug. 7	336 .....	.....	67	400	50	1971-1971q
					App.	
1954						
June 18	323 .....	.....	68	264	8	1184a
July 20	553 .....	.....	68	495	8	1435(note)
Aug. 31	1169 .....	.....	68	1044	50	1971b-1971e
					App.	
Sept. 3	1254	1-3	68	1145	8	1154(note)
	1256 .....	.....	68	1146	8	1481,
						1481(note)
	1263	6, 17, 18	68	1227, 1232 ...	8	1252, 1353c, 1451
1955						
July 7	279	(2d proviso on p. 272)	69	272	8	1553
1956						
Feb. 10	31 .....	.....	70	11	22	214
Mar. 16	85 .....	.....	70	50	8	1401a
June 20	414	201(1st proviso on p. 307)	70	307	8	1553
July 18	629	301	70	575	8	1182, 1251
Aug. 1	841	33 .....	.....	.....	22	2705
	849	6(b)	70	900	50	855
1957						
Sept. 11	85-316	1-3, 10, 12A-14	71	639, 642	8	1101, 1151(note), 1153, 1153(note), 1201a(note), 1255b
1958						
July 7	85-508	21-25	72	351	8	1101, 1182, 1404(note), 1421
July 18	85-531 .....	.....	72	375	8	1184(note)
July 25	85-559 .....	.....	72	419	8	1182(note)
Aug. 8	85-616 .....	.....	72	546	8	1259
Aug. 20	85-697	2	72	687	8	1430
Aug. 21	85-700 .....	.....	72	699	8	1153(note), 1255
Sept. 2	85-892 .....	.....	72	1712 .....	.....	.....
1959						
Mar. 18	86-3	20	73	13	8	1101, 1182, 1405(note), 1421
Sept. 14	86-267	73	552	22	217a

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Sept. 22	86-363	1-3, 5	73	644	8	1153, 1153(note), 1155
1960 July 14	86-648	3-6, 8-10	74	505	8	1182, 1182(note), 1251, 1255
1961 Sept. 21	87-256	109	75	534	8	1101, 1182, 1258
Sept. 26	87-301	2-6, 8-15, 18, 19, 21-24, 25(b)	75	650, 654, 656, 657.	8	1101, 1105a, 1105a(note), 1152, 1153(note), 1155, 1182- 1182c, 1201, 1202, 1205, 1251a, 1255a(note), 1440, 1451, 1481
1962 June 28	87-510 .....	.....	76	121	8 22	1104, 1182(note) 1925, 1951, 2601, 2601(note), 2602-2605 1153(note), 1154, 1254
Oct. 24	87-885	3, 4	76	1247	8	1104 2601
1964 Aug. 14	88-426	305(43)	78	428	8	1104
Oct. 7	88-634	201(proviso under heading "assistance to refugees in the United States").	78	1021	22	2601
1965 Apr. 11	89-10	7301-7309 .....	.....	.....	20	7541-7549
Oct. 3	89-236	1-20, 21(a)-(d), (f), 22-24	79	911, 921	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
Nov. 6	89-732	3	80	1161	8	1255(note)
	89-770 .....	.....	80	1322	8	1401
1967 Dec. 18	90-215 .....	.....	81	661	8	1430
1968 June 29	90-369 .....	.....	82	279	8	1430
July 26	90-428 .....	.....	82	446	22	213, 214, 217a, 217a(note)
Oct. 21	90-609 .....	.....	82	1199	8	1351, 1455
Oct. 24	90-633 .....	.....	82	1343	8	1429, 1439, 1440, 1440e
1970 Apr. 7	91-225	1-3(b) "Sec. 214(d)(4th sentence)"	84	116	8	1101, 1182, 1184
July 10	91-313 .....	.....	84	413	8	1183, 1363
Oct. 26	91-510	421, 422	84	1189	8	1106, 1106(note)
1971 May 14	92-14	85	38	22	214, 214(note)
1972 Oct. 27	92-584	2	86	1289	8	1401b

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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(c), (d), 906	90	2300, 2325 ..	8	1101, 1101(note), 1182, 1182(note)
Oct. 18	94-550	7	90	2535	8	1357
Oct. 20	94-571	1-6, 7(a), (c)-(g), 9, 10	90	2703, 2706, 2707.	8	1101, 1101(note), 1151-1153, 1153(note), 1181, 1182, 1251, 1254, 1255
1977						
Aug. 1	95-83	307(q)(1), (2), (3) "Sec. 602(c), (d)" ..	91	394, 395	8	1101, 1101(note), 1182
Aug. 17	95-105	109(b)	91	847	8	1101, 1104, 1104(note), 1105
Oct. 28	95-145	101-107	91	1223	8	1255(note)
1978						
Sept. 17	95-370	401	92	627	8	1182(note)
Oct. 5	95-412 .....	.....	92	907	8	1151, 1151(note), 1152, 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	101-105, 202	92	2065, 2066 ..	8	1182, 1251, 1253, 1254
Nov. 2	95-579	3	92	2474	8	1423
	95-582	2	92	2479	8	1324
1979						
Sept. 27	96-70	3201(b)-(d)	93	497	8	1101, 1101(note), 1182(note)
Nov. 30	96-132	10, 22, 23	93	1047, 1050 ..	8	1151(note), 1551(note)
1980						
Mar. 17	96-212	1, 201, 202, 203(a)-(h), (i)(related to § 101(a)(3) of Pub. L. 95-145), 204, 311, 312, 313(a)-(c)(1), (d).	94	102, 108, 110, 117.	8	1101, 1101(note), 1151-1153, 1153(note), 1157, 1157(note), 1158, 1158(note), 1159, 1181, 1182, 1182(note), 1253, 1254, 1255(note), 1521, 1521(note), 1522, 1522(note), 1523-1525, 2601, 2601(note)

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Oct. 10	96-422	1, 101-106, 201-203, 301-304, 401-403, 501(a)-(c)(1), (d), (e).	94	1799, 1810 ...	8	1522(note)
	96-424	94	1820	8	1522(note)
Oct. 17	96-465	2206(a)(10)	94	2162	22	2605
Dec. 16	96-533	716	94	3162	8	1552(note)
Dec. 17	96-538	404	94	3192	8	1182
1981						
Aug. 13	97-35	525, 526, 541-547, 1502	95	450, 458, 750	8	1522(note), 1524(note)
					20	239a
Dec. 29	97-113	714	95	1548	8	1152(note)
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Aug. 27	99-396	14(a), 15, 16	100	842	8	1182, 1408, 1408(note), 1452, 1452(note)
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Dec. 22	100-202	101(a) [§§ 211, 702, 901, 902], (e) [§ 584], (m) [§ 622(b)].	101	1329-18, 1329-39, 1329-43, 1329-183, 1329-428.	8	1101(note), 1160, 1201(note), 1255a(note)
	100-204	806(c), 902, 903	101	1399, 1400 ...	22 8	211a(note), 1182, 1201(note), 1255a(note)
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	101-167	(4th, 8th, 9th provisos on p. 1211)	103	1211	8	1101(note)
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 2 64, 39 Stat. 919), is repealed. An action taken or offense committed under
 3 that Act is deemed to have been taken or committed under section 871 of
 4 title 18, United States Code.



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