

107TH CONGRESS
1ST SESSION

H. R. 3231

To replace the Immigration and Naturalization Service with the Agency
for Immigration Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 6, 2001

Mr. SENSENBRENNER (for himself and Mr. GEKAS) introduced the following
bill; which was referred to the Committee on the Judiciary

A BILL

To replace the Immigration and Naturalization Service with
the Agency for Immigration Affairs, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Immigration Reform
5 and Accountability Act of 2001”.

1 **SEC. 2. ABOLISHMENT OF IMMIGRATION AND NATURALIZA-**
2 **TION SERVICE; ESTABLISHMENT OF AGENCY**
3 **FOR IMMIGRATION AFFAIRS.**

4 (a) ABOLISHMENT OF INS.—The Immigration and
5 Naturalization Service of the Department of Justice is
6 abolished.

7 (b) ESTABLISHMENT OF AGENCY FOR IMMIGRATION
8 AFFAIRS.—

9 (1) IN GENERAL.—There is established in the
10 Department of Justice an agency to be known as the
11 “Agency for Immigration Affairs”.

12 (2) ASSOCIATE ATTORNEY GENERAL.—The
13 head of the Agency for Immigration Affairs shall be
14 the Associate Attorney General for Immigration Af-
15 fairs. The Associate Attorney General for Immigra-
16 tion Affairs—

17 (A) shall be appointed by the President, by
18 and with the consent of the Senate;

19 (B) shall report directly to the Attorney
20 General; and

21 (C) shall have a minimum of 10 years ex-
22 perience in managing a large and complex orga-
23 nization.

24 (c) FUNCTIONS.—The Associate Attorney General for
25 Immigration Affairs—

1 (1) shall oversee the work of, and supervise, the
2 Director of the Bureau of Immigration Services and
3 Adjudications and the Director of the Bureau of Im-
4 migration Enforcement;

5 (2) shall oversee the work of, and supervise, the
6 Director of the Executive Office for Immigration Re-
7 view;

8 (3) shall review on referral such decisions of the
9 Board of Immigration Appeals as—

10 (A) he or she directs the Board to refer to
11 him or her;

12 (B) the Chairman or a majority of the
13 Board of Immigration Appeals refers to him or
14 her;

15 (C) requested by the Director of the Bu-
16 reau of Immigration Services and Adjudica-
17 tions; or

18 (D) requested by the Director of the Bu-
19 reau of Immigration Enforcement;

20 (4) shall coordinate the administration of na-
21 tional immigration policy, including coordinating the
22 operations of the Executive Office for Immigration
23 Review, the Bureau of Immigration Services and Ad-
24 judications, and the Bureau of Immigration Enforce-

1 ment, and reconcile conflicting policies of such office
2 and bureaus; and

3 (5) shall allocate and coordinate resources in-
4 volved in supporting shared support functions for
5 the Bureau of Immigration Services and Adjudica-
6 tions, the Bureau of Immigration Enforcement, and
7 offices within the Department of Justice, through
8 the Office of Shared Services established by section
9 3.

10 **SEC. 3. OFFICERS OF AGENCY FOR IMMIGRATION AFFAIRS.**

11 (a) **POLICY ADVISOR.**—There shall be a position of
12 Policy Advisor for the Agency for Immigration Affairs.
13 The Policy Advisor shall be charged with providing advice
14 to the Associate Attorney General for Immigration Affairs
15 on all matters relating to immigration and naturalization
16 policy. The Policy Advisor shall coordinate and reconcile
17 the resolution of policy issues by the Bureau of Immigra-
18 tion Services and Adjudications, the Bureau of Immigra-
19 tion Enforcement, and the Executive Office for Immigra-
20 tion Review.

21 (b) **LEGAL ADVISOR.**—There shall be a position of
22 Legal Advisor for the Agency for Immigration Affairs. The
23 Legal Advisor shall be charged with providing legal advice
24 to the Associate Attorney General for Immigration Affairs
25 on all matters relating to immigration and naturalization.

1 The Legal Advisor shall coordinate and reconcile the reso-
2 lution of legal issues by the Bureau of Immigration Serv-
3 ices and Adjudications, the Bureau of Immigration En-
4 forcement, and the Executive Office for Immigration Re-
5 view. The Legal Advisor may issue legal opinions on gen-
6 eral issues of law, which shall be binding on all officers
7 and employees of the Agency for Immigration Affairs and
8 which shall be published in an appropriate form.

9 (c) CHIEF FINANCIAL OFFICER.—

10 (1) IN GENERAL.—There shall be a position of
11 Chief Financial Officer for the Agency for Immigra-
12 tion Affairs.

13 (2) FUNCTIONS.—The Chief Financial Officer
14 shall be responsible for—

15 (A) the financial management of the Agen-
16 cy for Immigration Affairs and shall have the
17 authorities and functions described in section
18 902 of title 31, United States Code, in relation
19 to financial activities of the agency;

20 (B) collection of all payments, fines, and
21 other debts for the Bureau of Immigration
22 Services and Adjudications, the Bureau of Im-
23 migration Enforcement, and the Executive Of-
24 fice for Immigration Review; and

1 (C) coordinating all budget and other fi-
2 nancial management issues with the Bureau of
3 Immigration Services and Adjudications, the
4 Bureau of Immigration Enforcement, and the
5 Executive Office for Immigration Review.

6 (d) DIRECTOR OF SHARED SERVICES.—There shall
7 be a position of Director of the Office of Shared Services
8 for the Agency for Immigration Affairs. The Director of
9 the Office of Shared Services shall be responsible for the
10 appropriate allocation and coordination of resources in-
11 volved in supporting shared support functions for the Bu-
12 reau of Immigration Services and Adjudications, the Bu-
13 reau of Immigration Enforcement, the Executive Office
14 for Immigration Review, and other offices within the De-
15 partment of Justice, including—

- 16 (1) facilities management;
17 (2) information resources management, includ-
18 ing computer databases and information technology;
19 (3) records and file management; and
20 (4) forms management.

21 (e) OFFICE OF THE OMBUDSMAN.—

22 (1) ESTABLISHMENT.—

23 (A) IN GENERAL.—There is established in
24 the Agency for Immigration Affairs an office to
25 be known as the “Office of the Ombudsman”.

1 (B) OMBUDSMAN.—

2 (i) IN GENERAL.—The Office of the
3 Ombudsman shall be under the supervision
4 and direction of an official to be known as
5 the “Ombudsman”. The Ombudsman shall
6 report directly to the Associate Attorney
7 General for Immigration Affairs.

8 (ii) QUALIFICATIONS.—The Ombuds-
9 man shall have a background in customer
10 service as well as immigration law.

11 (2) FUNCTIONS OF OFFICE.—The Ombudsman
12 shall perform the functions described in section 5.

13 (f) OFFICE OF PROFESSIONAL RESPONSIBILITY AND
14 QUALITY REVIEW.—

15 (1) IN GENERAL.—There is established in the
16 Agency for Immigration Affairs an office to be
17 known as the “Office of Professional Responsibility
18 and Quality Review”. The head of the Office of Pro-
19 fessional Responsibility and Quality Review shall be
20 the Chief of the Office of Professional Responsibility
21 and Quality Review. The Chief of the Office of Pro-
22 fessional Responsibility and Quality Review shall be
23 responsible for—

24 (A) conducting investigations of non-
25 criminal allegations of misconduct, corruption,

1 and fraud involving any employee of the Agency
2 for Immigration Affairs that are not subject to
3 investigation by the Department of Justice Of-
4 fice of the Inspector General;

5 (B) inspecting the operations of the Agen-
6 cy for Immigration Affairs and providing as-
7 sessments of the quality of the operations of the
8 agency as a whole and each of its components;
9 and

10 (C) providing an analysis of the manage-
11 ment of the Agency for Immigration Affairs.

12 (2) SPECIAL CONSIDERATIONS.—In providing
13 assessments in accordance with paragraph (1)(B)
14 with respect to decisions of the Agency for Immigra-
15 tion Affairs or any of its components, consideration
16 shall be given to—

17 (A) the accuracy of the finding of fact and
18 conclusions of law used in rendering the deci-
19 sion;

20 (B) any fraud or misrepresentation associ-
21 ated with the decision; and

22 (C) the efficiency with which the decision
23 was rendered.

24 (g) EMPLOYEE DISCIPLINE FOR WILLFUL DE-
25 CEIT.—The Associate Attorney General for Immigration

1 Affairs may, notwithstanding any other provision of law,
2 impose disciplinary action, including termination of em-
3 ployment, pursuant to policies and procedures applicable
4 to employees of the Federal Bureau of Investigation, for
5 any employee of the Agency for Immigration Affairs who
6 willfully deceives the Congress or agency leadership on any
7 matter.

8 (h) DEFINITION.—For purposes of this section, the
9 term “employee of the Agency for Immigration Affairs”
10 includes all employees of the Agency for Immigration Af-
11 fairs, the Bureau of Immigration Services and Adjudica-
12 tions, the Bureau of Immigration Enforcement, and the
13 Executive Office of Immigration Review (including immi-
14 gration judges, administrative law judges, and members
15 of the Board of Immigration Appeals).

16 **SEC. 4. ESTABLISHMENT OF BUREAU OF IMMIGRATION**
17 **SERVICES AND ADJUDICATIONS.**

18 (a) ESTABLISHMENT OF BUREAU.—

19 (1) IN GENERAL.—There is established in the
20 Agency for Immigration Affairs a bureau to be
21 known as the “Bureau of Immigration Services and
22 Adjudications”.

23 (2) DIRECTOR.—The head of the Bureau of Im-
24 migration Services and Adjudications shall be the

1 Director of the Bureau of Immigration Services and
2 Adjudications, who—

3 (A) shall report directly to the Associate
4 Attorney General for Immigration Affairs; and

5 (B) shall have a minimum of 10 years pro-
6 fessional experience in the rendering of adju-
7 dications on the provision of government bene-
8 fits or services, at least 5 of which shall have
9 been years of service in a managerial capacity
10 or in a position affording comparable manage-
11 ment experience.

12 (3) FUNCTIONS.—The Director of the Bureau
13 of Immigration Services and Adjudications—

14 (A) shall establish the policies for per-
15 forming such functions as are transferred to the
16 Director by this section or this Act or otherwise
17 vested in the Director by law;

18 (B) shall oversee the administration of
19 such policies;

20 (C) shall advise the Associate Attorney
21 General for Immigration Affairs with respect to
22 any policy or operation of the Bureau of Immi-
23 gration Services and Adjudications that may af-
24 fect the Bureau of Immigration Enforcement,
25 the Executive Office for Immigration Review, or

1 both, including potentially conflicting policies or
2 operations;

3 (D) shall meet regularly with the Ombuds-
4 man to correct serious service problems identi-
5 fied by the Ombudsman; and

6 (E) shall establish procedures requiring a
7 formal response to any recommendations sub-
8 mitted in the Ombudsman's annual report to
9 the Congress within 3 months after its submis-
10 sion to the Congress.

11 (b) TRANSFER OF FUNCTIONS.—

12 (1) FROM COMMISSIONER.—There are trans-
13 ferred from the Commissioner of the Immigration
14 and Naturalization Service to the Director of the
15 Bureau of Immigration Services and Adjudications
16 all functions performed under the following pro-
17 grams, and all personnel, infrastructure, and fund-
18 ing provided to the Commissioner in support of such
19 programs immediately before the effective date of
20 this section:

21 (A) Adjudications of nonimmigrant and
22 immigrant visa petitions.

23 (B) Adjudications of naturalization peti-
24 tions.

1 (C) Adjudications of asylum and refugee
2 applications.

3 (D) Adjudications performed at Service
4 centers.

5 (E) All other adjudications under the Im-
6 migration and Nationality Act performed by the
7 Immigration and Naturalization Service as of
8 the date of the enactment of this Act.

9 (2) FROM ASSISTANT ATTORNEY GENERAL,
10 CIVIL RIGHTS DIVISION.—There are transferred
11 from the Assistant Attorney General, Civil Rights
12 Division, to the Director of the Bureau of Immigra-
13 tion Services and Adjudications all functions per-
14 formed by the Office of Special Counsel for Immi-
15 gration Related Unfair Employment Practices, and
16 all personnel, infrastructure, and funding provided
17 to the Assistant Attorney General, United States
18 Civil Rights Division, in support of the Office of
19 Special Counsel for Immigration Related Unfair
20 Employment Practices immediately before the effec-
21 tive date of this section.

22 (3) FROM ASSISTANT ATTORNEY GENERAL,
23 CIVIL DIVISION.—There are transferred from the As-
24 sistant Attorney General, Civil Division, to the Di-
25 rector of the Bureau of Immigration Services and

1 Adjudications all functions performed by the Office
2 of Immigration Litigation relating to the litigation
3 of naturalization suits and litigation involving immi-
4 grant and nonimmigrant visas and all personnel, in-
5 frastructure, and funding provided to the Assistant
6 Attorney General, Civil Division, in support of those
7 functions immediately before the effective date of
8 this section.

9 (c) OFFICE OF POLICY AND STRATEGY.—There is es-
10 tablished in the Bureau of Immigration Services and Ad-
11 judications an office to be known as the “Office of Policy
12 and Strategy”. The head of the Office of Policy and Strat-
13 egy shall be the Chief of the Office of Policy and Strategy.
14 In consultation with Bureau of Immigration Services and
15 Adjudications personnel in field offices, the Chief of the
16 Office of Policy and Strategy shall be responsible for—

17 (1) establishing national immigration services
18 policies and priorities;

19 (2) performing policy research and analysis on
20 immigration services issues (excluding statistical in-
21 formation); and

22 (3) coordinating immigration policy issues with
23 the Office of Policy and Strategy for the Bureau of
24 Immigration Enforcement and the Associate Attor-
25 ney General for Immigration Affairs through the

1 Policy Advisor for the Agency for Immigration Af-
2 fairs, as appropriate.

3 (d) GENERAL COUNSEL FOR BUREAU OF IMMIGRA-
4 TION SERVICES AND ADJUDICATIONS.—There shall be a
5 position of General Counsel for the Bureau of Immigration
6 Services and Adjudications. The General Counsel and his
7 or her delegates—

8 (1) shall provide specialized legal advice and
9 other assistance to the Director of the Bureau of
10 Immigration Services and Adjudications, the Direc-
11 tor’s delegates, and all employees of the components
12 transferred under this section;

13 (2) shall represent the Bureau of Immigration
14 Services and Adjudications in visa petition appeal
15 proceedings and unfair immigration-related employ-
16 ment practice proceedings before the Executive Of-
17 fice for Immigration Review and in other legal, judi-
18 cial, or administrative proceedings involving immi-
19 gration services issues (excluding exclusion, deporta-
20 tion, or removal proceedings and applications for re-
21 lief therefrom); and

22 (3) shall coordinate legal issues with the Gen-
23 eral Counsel for the Bureau of Immigration En-
24 forcement, including the issuance of joint legal opin-
25 ions where more than the Bureau of Immigration

1 Services and Adjudications is affected, the General
2 Counsel for the Executive Office for Immigration
3 Review, and the Associate Attorney General for Im-
4 migration Affairs through the Legal Advisor for the
5 Agency for Immigration Affairs, as appropriate.

6 (e) CHIEF BUDGET OFFICER FOR BUREAU OF IMMI-
7 GRATION SERVICES AND ADJUDICATIONS.—There shall be
8 a position of Chief Budget Officer for the Bureau of Immi-
9 gration Services and Adjudications. The Chief Budget Of-
10 ficer shall be responsible for formulating and executing the
11 budget of the Bureau of Immigration Services and Adju-
12 dications. The Chief Budget Officer shall report to the Di-
13 rector of the Bureau of Immigration Services and Adju-
14 dications and shall provide information to, and coordinate
15 resolution of relevant issues with, the Chief Financial Offi-
16 cer for the Agency for Immigration Affairs.

17 (f) OFFICE OF OPERATIONS STATISTICS.—There is
18 established in the Bureau of Immigration Services and
19 Adjudications an office to be known as the “Office of Op-
20 erations Statistics”. The head of the Office of Operations
21 Statistics shall be the Chief of the Office of Operations
22 Statistics. The Chief shall have had experience in statis-
23 tical programs. The Chief of the Office of Operations Sta-
24 tistics shall be responsible for compiling and disseminating

1 the daily operational statistics of the Bureau of Immigra-
2 tion Services and Adjudications.

3 (g) OFFICE OF CONGRESSIONAL, INTERGOVERN-
4 MENTAL, AND PUBLIC AFFAIRS.—There is established in
5 the Bureau of Immigration Services and Adjudications an
6 office to be known as the “Office of Congressional, Inter-
7 governmental, and Public Affairs”. The head of such of-
8 fice shall be the Chief of the Office of Congressional,
9 Intergovernmental, and Public Affairs. The Chief shall be
10 responsible for—

11 (1) providing information relating to immigra-
12 tion services to the Congress, including information
13 on specific cases relating to immigration services;

14 (2) serving as a liaison with other Federal
15 agencies on immigration services issues; and

16 (3) responding to inquiries from the media and
17 general public on immigration services issues.

18 (h) SECTORS.—Headed by sector directors, and lo-
19 cated in appropriate geographic locations, sectors of the
20 Bureau of Immigration Services and Adjudications shall
21 be responsible for directing all aspects of the Bureau of
22 Immigration Services and Adjudication operations within
23 their assigned geographic areas of activity. Sector direc-
24 tors shall provide general guidance and supervision to the

1 field offices of the Bureau of Immigration Services and
2 Adjudications within their sectors.

3 (i) **FIELD OFFICES.**—Headed by field directors, who
4 may be assisted by deputy field directors, these offices
5 shall be responsible for assisting the Director of the Bu-
6 reau of Immigration Services and Adjudications in car-
7 rying out the Director’s functions. Field directors shall be
8 subject to the general supervision and direction of their
9 respective sector director, except that field directors out-
10 side of the United States shall be subject to the general
11 supervision and direction of the Director of the Bureau
12 of Immigration Services and Adjudications. All field direc-
13 tors shall remain accountable to, and receive their author-
14 ity from, the Director of the Bureau of Immigration Serv-
15 ices and Adjudications, in order to ensure consistent appli-
16 cation and implementation of policies nationwide.

17 (j) **SERVICE CENTERS.**—Headed by service center di-
18 rectors, field offices shall be responsible for assisting the
19 Director of the Bureau of Immigration Services and Adju-
20 dications in carrying out the Director’s functions that can
21 be effectively carried out at remote locations. Service cen-
22 ter directors are subject to the general supervision and
23 direction of their respective sector director, except that all
24 service center directors shall remain accountable to, and
25 receive their authority from, the Director of the Bureau

1 of Immigration Services and Adjudications, in order to en-
2 sure consistent application and implementation of policies
3 nationwide.

4 (k) TRANSFER AND REMOVAL.—Notwithstanding
5 any other provision of law, the Director of the Bureau of
6 Immigration Services and Adjudications may, in the Di-
7 rector’s discretion, transfer or remove any field director,
8 sector director, or service center director.

9 (l) REFERENCES.—With respect to any function
10 transferred by this section or Act to, and exercised on or
11 after the effective date of this section by, the Director of
12 the Bureau of Immigration Services and Adjudications,
13 any reference in any other Federal law, Executive order,
14 rule, regulation, or delegation of authority, or any docu-
15 ment of or pertaining to a component of government from
16 which such function is transferred—

17 (1) to the head of such component is deemed to
18 refer to the Director of the Bureau of Immigration
19 Services and Adjudications; or

20 (2) to such component is deemed to refer to the
21 Bureau of Immigration Services and Adjudications.

22 **SEC. 5. OFFICE OF THE OMBUDSMAN.**

23 (a) FUNCTIONS.—It shall be the function of the Of-
24 fice of the Ombudsman established under section 3—

1 (1) to assist individuals and employers in re-
2 solving problems with the Bureau of Immigration
3 Services and Adjudications;

4 (2) to identify areas in which individuals and
5 employers have problems in dealing with the Bureau
6 of Immigration Services and Adjudications;

7 (3) to the extent possible, to propose changes in
8 the administrative practices of the Bureau of Immi-
9 gration Services and Adjudications to mitigate prob-
10 lems identified under paragraph (2); and

11 (4) to identify potential legislative changes
12 which may be appropriate to mitigate such problems.

13 (b) ANNUAL REPORTS.—

14 (1) OBJECTIVES.—Not later than June 30 of
15 each calendar year, the Ombudsman shall report to
16 the Committee on the Judiciary of the House of
17 Representatives and the Senate on the objectives of
18 the Office of the Ombudsman for the fiscal year be-
19 ginning in such calendar year. Any such report shall
20 contain full and substantive analysis, in addition to
21 statistical information, and—

22 (A) shall identify the initiatives the Office
23 of the Ombudsman has taken on improving
24 services and responsiveness of the Bureau of
25 Immigration Services and Adjudications;

1 (B) shall contain a summary of the most
2 pervasive and serious problems encountered by
3 individuals and employers, including a descrip-
4 tion of the nature of such problems;

5 (C) shall contain an inventory of the items
6 described in subparagraphs (A) and (B) for
7 which action has been taken and the result of
8 such action;

9 (D) shall contain an inventory of the items
10 described in subparagraphs (A) and (B) for
11 which action remains to be completed and the
12 period during which each item has remained on
13 such inventory;

14 (E) shall contain an inventory of the items
15 described in subparagraphs (A) and (B) for
16 which no action has been taken, the period dur-
17 ing which each item has remained on such in-
18 ventory, the reasons for the inaction, and iden-
19 tify any Bureau of Immigration Services and
20 Adjudications official who is responsible for
21 such inaction;

22 (F) shall contain recommendations for
23 such administrative and legislative action as
24 may be appropriate to resolve problems encoun-
25 tered by individuals and employers; and

1 (G) shall include such other information as
2 the Ombudsman may deem advisable.

3 (2) REPORT TO BE SUBMITTED DIRECTLY.—

4 Each report required under this subsection shall be
5 provided directly to the committees described in
6 paragraph (1) without any prior review or comment
7 from the Assistant Attorney General for Immigra-
8 tion Affairs, any other officer or employee of the De-
9 partment of Justice, or the Office of Management
10 and Budget.

11 (c) OTHER RESPONSIBILITIES.—The Ombudsman—

12 (1) shall monitor the coverage and geographic
13 allocation of local offices of the Ombudsman;

14 (2) shall develop guidance to be distributed to
15 all Bureau of Immigration Services and Adjudica-
16 tions officers and employees outlining the criteria for
17 referral of inquiries to local offices of the Ombuds-
18 man;

19 (3) shall ensure that the local telephone number
20 for each local office of the Ombudsman is published
21 and available to individuals and employers served by
22 the office; and

23 (4) shall meet regularly with the Director of the
24 Bureau of Immigration Services and Adjudications
25 to identify serious service problems and to present

1 recommendations for administrative action as may
2 be appropriate to resolve problems encountered by
3 individuals and employers.

4 (d) PERSONNEL ACTIONS.—

5 (1) IN GENERAL.—The Ombudsman shall have
6 the responsibility and authority—

7 (A) to appoint local ombudsmen and make
8 available at least 1 such ombudsman for each
9 State; and

10 (B) to evaluate and take personnel actions
11 (including dismissal) with respect to any em-
12 ployee of any local office of the Ombudsman de-
13 scribed in subparagraph (A).

14 (2) CONSULTATION.—The Ombudsman may
15 consult with the appropriate supervisory personnel of
16 the Bureau of Immigration Services and Adjudica-
17 tions in carrying out the Ombudsman’s responsibil-
18 ities under this subsection.

19 (e) RESPONSIBILITIES OF BUREAU OF IMMIGRATION
20 SERVICES AND ADJUDICATIONS.—The Director of the Bu-
21 reau of Immigration Services and Adjudications shall es-
22 tablish procedures requiring a formal response to all rec-
23 ommendations submitted to such director by the Ombuds-
24 man within 3 months after submission to such director.

25 (f) OPERATION OF LOCAL OFFICES.—

1 (1) IN GENERAL.—Each local ombudsman —

2 (A) shall report to the Ombudsman or del-
3 egate thereof;

4 (B) may consult with the appropriate su-
5 pervisory personnel of the Bureau of Immigra-
6 tion Services and Adjudications regarding the
7 daily operation of the local office of such om-
8 budsman;

9 (C) shall, at the initial meeting with any
10 individual or employer seeking the assistance of
11 such local office, notify such individual or em-
12 ployer that the local offices of the Ombudsman
13 operate independently of any other component
14 in the Agency for Immigration Affairs and re-
15 port directly to the Congress through the Om-
16 budsman; and

17 (D) at the local ombudsman's discretion,
18 may determine not to disclose to the Bureau of
19 Immigration Services and Adjudications contact
20 with, or information provided by, such indi-
21 vidual or employer.

22 (2) MAINTENANCE OF INDEPENDENT COMMU-
23 NICATIONS.—Each local office of the Ombudsman
24 shall maintain a phone, facsimile, and other means
25 of electronic communication access, and a post office

1 address, that is separate from those maintained by
2 the Bureau of Immigration Services and Adjudica-
3 tions, or any component of the Bureau of Immigra-
4 tion Services and Adjudications.

5 **SEC. 6. ESTABLISHMENT OF BUREAU OF IMMIGRATION EN-**
6 **FORCEMENT.**

7 (a) ESTABLISHMENT OF BUREAU.—

8 (1) IN GENERAL.—There is established in the
9 Agency for Immigration Affairs a bureau to be
10 known as the “Bureau of Immigration Enforce-
11 ment”.

12 (2) DIRECTOR.—The head of the Bureau of Im-
13 migration Enforcement shall be the Director of the
14 Bureau of Immigration Enforcement, who—

15 (A) shall report directly to the Associate
16 Attorney General for Immigration Affairs; and

17 (B) shall have a minimum of 10 years pro-
18 fessional experience in law enforcement, at least
19 5 of which shall have been years of service in
20 a managerial capacity.

21 (3) FUNCTIONS.—The Director of the Bureau
22 of Immigration Enforcement—

23 (A) shall establish the policies for per-
24 forming such functions as are transferred to the

1 Director by this section or this Act or otherwise
2 vested in the Director by law;

3 (B) shall oversee the administration of
4 such policies; and

5 (C) shall advise the Associate Attorney
6 General for Immigration Affairs with respect to
7 any policy or operation of the Bureau of Immi-
8 gration Enforcement that may affect the Bu-
9 reau of Immigration Services and Adjudica-
10 tions, or the Executive Office for Immigration
11 Review, including potentially conflicting policies
12 or operations.

13 (b) TRANSFER OF FUNCTIONS.—

14 (1) FROM COMMISSIONER.—There are trans-
15 ferred from the Commissioner of the Immigration
16 and Naturalization Service to the Director of the
17 Bureau of Immigration Enforcement all functions
18 performed under the following programs, and all
19 personnel, infrastructure, and funding provided to
20 the Commissioner in support of such programs im-
21 mediately before the effective date of this section:

22 (A) The Border Patrol program.

23 (B) The detention and removal program.

24 (C) The intelligence program.

25 (D) The investigations program.

1 (E) The inspections program.

2 (2) FROM ASSISTANT ATTORNEY GENERAL,
3 CRIMINAL DIVISION.—There are transferred from
4 the Assistant Attorney General, Criminal Division,
5 to the Director of the Bureau of Immigration En-
6 forcement all functions performed by the Office of
7 Special Investigations and all personnel, infrastruc-
8 ture, and funding provided to the Assistant Attorney
9 General, Criminal Division, in support of the Office
10 of Special Investigations immediately before the ef-
11 fective date of this section.

12 (3) FROM ASSISTANT ATTORNEY GENERAL,
13 CIVIL DIVISION.—There are transferred from the As-
14 sistant Attorney General, Civil Division, to the Di-
15 rector of the Bureau of Immigration Enforcement
16 all functions performed by the Office of Immigration
17 Litigation relating to the litigation of the following:

18 (A) Challenges to orders of exclusion, de-
19 portation, and removal;

20 (B) Denials of relief from exclusion, depor-
21 tation, and removal;

22 (C) Petitions seeking review of employer
23 sanctions;

1 (D) Habeas corpus actions filed by aliens
2 seeking release from detention or to block de-
3 portation or removal;

4 (E) Appeals from district court immigra-
5 tion decisions;

6 (F) Suits challenging immigration policy
7 and enforcement actions by the Attorney Gen-
8 eral; and

9 (G) all personnel, infrastructure, and fund-
10 ing provided to the Assistant Attorney General,
11 Civil Division, in support of those functions im-
12 mediately before the effective date of this sec-
13 tion.

14 (c) OFFICE OF POLICY AND STRATEGY.—There is es-
15 tablished in the Bureau of Immigration Enforcement an
16 office to be known as the “Office of Policy and Strategy”.
17 The head of the Office of Policy and Strategy shall be
18 the Chief of the Office of Policy and Strategy. In consulta-
19 tion with Bureau of Immigration Enforcement personnel
20 in field offices, the Chief of the Office of Policy and Strat-
21 egy shall be responsible for—

22 (1) establishing national immigration enforce-
23 ment policies and priorities;

1 (2) performing policy research and analysis on
2 immigration enforcement issues (excluding statistical
3 information); and

4 (3) coordinating immigration policy issues with
5 the Office of Policy and Strategy for the Bureau of
6 Immigration Services and Adjudications and the As-
7 sociate Attorney General for Immigration Affairs
8 through the Policy Advisor for the Office of the As-
9 sociate Attorney General for Immigration Affairs, as
10 appropriate.

11 (d) GENERAL COUNSEL FOR THE BUREAU OF IMMI-
12 GRATION ENFORCEMENT.—There shall be a position of
13 General Counsel for the Bureau of Immigration Enforce-
14 ment. The General Counsel and his or her delegates—

15 (1) shall provide specialized legal advice and
16 other assistance to the Director of the Bureau, the
17 Director’s delegates, and all employees of the compo-
18 nents transferred under this section;

19 (2) shall represent the Bureau in all exclusion,
20 deportation, and removal proceedings before the Ex-
21 ecutive Office for Immigration Review, including in
22 proceedings to adjudicate relief from exclusion, de-
23 portation and removal, and in other legal, judicial,
24 or administrative proceedings involving immigration
25 enforcement issues; and

1 (3) shall coordinate legal issues with the Gen-
2 eral Counsel for the Bureau of Immigration Services
3 and Adjudications, including the issuance of joint
4 legal opinions where more than the Bureau of Immi-
5 gration Enforcement is affected, the General Coun-
6 sel for the Executive Office for Immigration Review,
7 and the Associate Attorney General for Immigration
8 Affairs through the Legal Advisor for the Agency for
9 Immigration Affairs, as appropriate.

10 (e) CHIEF BUDGET OFFICER FOR THE BUREAU OF
11 IMMIGRATION ENFORCEMENT.—There shall be a position
12 of Chief Budget Officer for the Bureau of Immigration
13 Enforcement. The Chief Budget Officer shall be respon-
14 sible for formulating and executing the budget of the Bu-
15 reau of Immigration Enforcement. The Chief Budget Offi-
16 cer shall report to the Director of the Bureau of Immigra-
17 tion Enforcement and shall provide information to, and
18 coordinate resolution of relevant issues with, the Chief Fi-
19 nancial Officer for the Agency for Immigration Affairs.

20 (f) OFFICE OF OPERATIONS STATISTICS.—There is
21 established in the Bureau of Immigration Enforcement an
22 office to be known as the “Office of Operations Statistics”.
23 The head of the Office of Operations Statistics shall be
24 the Chief of the Office of Operations Statistics. The Chief
25 shall have had experience in statistical programs. The

1 Chief of the Office of Operations Statistics shall be re-
2 sponsible for compiling and disseminating the daily oper-
3 ational statistics of the Bureau of Immigration Enforce-
4 ment.

5 (g) OFFICE OF CONGRESSIONAL, INTERGOVERN-
6 MENTAL, AND PUBLIC AFFAIRS.—There is established in
7 the Bureau of Immigration Enforcement an office to be
8 known as the “Office of Congressional, Intergovernmental,
9 and Public Affairs”. The head of such office shall be the
10 Chief of the Office of Congressional, Intergovernmental,
11 and Public Affairs. The Chief shall be responsible for—

12 (1) providing information relating to immigra-
13 tion enforcement to the Congress, including informa-
14 tion on specific cases relating to immigration en-
15 forcement;

16 (2) serving as a liaison with other Federal
17 agencies on immigration enforcement issues; and

18 (3) responding to inquiries from the media and
19 the general public on immigration enforcement
20 issues.

21 (h) SECTORS.—Headed by sector directors, and lo-
22 cated in appropriate geographic locations, sectors of the
23 Bureau of Immigration Enforcement shall be responsible
24 for directing all aspects of the Bureau of Immigration En-
25 forcement’s operations within their assigned geographic

1 areas of activity. Sector directors shall provide general
2 guidance and supervision to the field offices of the Bureau
3 of Immigration Enforcement within their sectors.

4 (i) FIELD OFFICES.—Headed by field directors, who
5 may be assisted by deputy field directors, field offices shall
6 be responsible for assisting the Director of the Bureau of
7 Immigration Enforcement in carrying out the Director’s
8 functions. Field directors shall be subject to the general
9 supervision and direction of their respective sector direc-
10 tor, except that field directors outside of the United States
11 shall be subject to the general supervision and direction
12 of the Director of the Bureau of Immigration Enforce-
13 ment. All field directors shall remain accountable to, and
14 receive their authority from, the Director of the Bureau
15 of Immigration Enforcement, in order to ensure consistent
16 application and implementation of policies nationwide.
17 There shall be a field office situated in at least every loca-
18 tion where there is situated a field office of the Bureau
19 of Immigration Services and Adjudications.

20 (j) BORDER PATROL SECTORS.—Headed by chief pa-
21 trol agents, who may be assisted by deputy chief patrol
22 agents, these offices shall be responsible for the enforce-
23 ment of the Immigration and Nationality Act and all other
24 laws relating to immigration and naturalization within
25 their assigned geographic areas of activity, unless any

1 such power and authority is required to be exercised by
2 higher authority or has been exclusively delegated to an-
3 other immigration official or class of immigration officer.
4 Chief patrol agents are subject to the general supervision
5 and direction of their respective sector director, except
6 that they shall remain accountable to, and receive their
7 authority from, the Director of the Bureau of Immigration
8 Enforcement, in order to ensure consistent application and
9 implementation of policies nationwide.

10 (k) TRANSFER AND REMOVAL.—Notwithstanding
11 any other provision of law, the Director of the Bureau of
12 Immigration Enforcement may, in the Director’s discre-
13 tion, transfer or remove any field director, sector director,
14 or chief patrol officer.

15 (l) REFERENCES.—With respect to any function
16 transferred by this section or Act to, and exercised on or
17 after the effective date of this section by, the Director of
18 the Bureau of Immigration Enforcement, any reference in
19 any other Federal law, Executive order, rule, regulation,
20 or delegation of authority, or any document of or per-
21 taining to a component of government from which such
22 function is transferred—

23 (1) to the head of such component is deemed to
24 refer to the Director of the Bureau of Immigration
25 Enforcement; or

1 (2) to such component is deemed to refer to the
2 Bureau of Immigration Enforcement.

3 **SEC. 7. EXERCISE OF AUTHORITIES.**

4 Except as otherwise provided by law, a Federal offi-
5 cial to whom a function is transferred by this Act may,
6 for purposes of performing the function, exercise all au-
7 thorities under any other provision of law that were avail-
8 able with respect to the performance of that function to
9 the official responsible for the performance of the function
10 immediately before the effective date of the transfer of the
11 function under this Act.

12 **SEC. 8. SAVINGS PROVISIONS.**

13 (a) **LEGAL DOCUMENTS.**—All orders, determinations,
14 rules, regulations, permits, grants, loans, contracts, agree-
15 ments, recognition of labor organizations, certificates, li-
16 censes, and privileges—

17 (1) that have been issued, made, granted, or al-
18 lowed to become effective by the President, the At-
19 torney General, the Commissioner of the Immigra-
20 tion and Naturalization Service, their delegates, or
21 any other Government official, or by a court of com-
22 petent jurisdiction, in the performance of any func-
23 tion that is transferred by this Act; and

24 (2) that are in effect on the effective date of
25 such transfer (or become effective after such date

1 pursuant to their terms as in effect on such effective
2 date),
3 shall continue in effect according to their terms until
4 modified, terminated, superseded, set aside, or revoked in
5 accordance with law by the President, any other author-
6 ized official, a court of competent jurisdiction, or operation
7 of law.

8 (b) PROCEEDINGS.—Sections 4 and 6 and this sec-
9 tion shall not affect any proceedings or any application
10 for any benefit, service, license, permit, certificate, or fi-
11 nancial assistance pending on the effective date specified
12 in section 17(a) before an office whose functions are trans-
13 ferred by this Act, but such proceedings and applications
14 shall be continued. Orders shall be issued in such pro-
15 ceedings, appeals shall be taken therefrom, and payments
16 shall be made pursuant to such orders, as if this Act had
17 not been enacted, and orders issued in any such pro-
18 ceeding shall continue in effect until modified, terminated,
19 superseded, or revoked by a duly authorized official, by
20 a court of competent jurisdiction, or by operation of law.
21 Nothing in this section shall be considered to prohibit the
22 discontinuance or modification of any such proceeding
23 under the same terms and conditions and to the same ex-
24 tent that such proceeding could have been discontinued
25 or modified if this section had not been enacted.

1 (c) SUITS.—This Act shall not affect suits com-
2 menced before the effective date specified in section 17(a),
3 and in all such suits, proceedings shall be had, appeals
4 taken, and judgments rendered in the same manner and
5 with the same effect as if this Act had not been enacted.

6 (d) NONABATEMENT OF ACTIONS.—No suit, action,
7 or other proceeding commenced by or against the Depart-
8 ment of Justice or the Immigration and Naturalization
9 Service, or by or against any individual in the official ca-
10 pacity of such individual as an officer or employee in con-
11 nection with a function transferred by this section, shall
12 abate by reason of the enactment of this Act.

13 (e) CONTINUANCE OF SUITS.—If any Government of-
14 ficer in the official capacity of such officer is party to a
15 suit with respect to a function of the officer and under
16 this Act such function is transferred to any other officer
17 or office, then such suit shall be continued with the other
18 officer or the head of such other office, as applicable, sub-
19 stituted or added as a party.

20 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-
21 VIEW.—Except as otherwise provided by this Act, any
22 statutory requirements relating to notice, hearings, action
23 upon the record, or administrative or judicial review that
24 apply to any function transferred by this Act shall apply
25 to the exercise of such function by the head of the office,

1 and other officers of the office, to which such function is
2 transferred by such section.

3 **SEC. 9. TRANSFER AND ALLOCATION OF APPROPRIATIONS**
4 **AND PERSONNEL.**

5 (a) IN GENERAL.—The personnel of the Department
6 of Justice employed in connection with the functions
7 transferred by this Act (and functions that the Attorney
8 General determines are properly related to the functions
9 of the Bureau of Immigration Services and Adjudications
10 or the Bureau of Immigration Enforcement and would, if
11 transferred, further the purposes of the bureau to which
12 the function is transferred), and the assets, liabilities, con-
13 tracts, property, records, and unexpended balance of ap-
14 propriations, authorizations, allocations, and other funds
15 employed, held, used, arising from, available to, or to be
16 made available to the Immigration and Naturalization
17 Service, the Executive Office for Immigration Review, the
18 Office of Immigration Litigation of the Civil Division, the
19 Office of Special Counsel for Immigration Related Unfair
20 Employment Practices of the Civil Rights Division, or the
21 Office of Special Investigations of the Criminal Division
22 in connection with the functions transferred by this Act,
23 subject to section 202 of the Budget and Accounting Pro-
24 cedures Act of 1950, shall be transferred to the Agency
25 for Immigration Affairs for appropriate allocation by the

1 Associate Attorney General for Immigration Affairs or the
2 appropriate head of component of the agency. Unexpended
3 funds transferred pursuant to this subsection shall be used
4 only for the purposes for which the funds were originally
5 authorized and appropriated. The Attorney General shall
6 have the right to adjust or realign transfers of funds and
7 personnel effected pursuant to this Act for a period of 2
8 years after the date of the establishment of the Agency
9 for Immigration Affairs.

10 (b) DELEGATION AND ASSIGNMENT.—Except as oth-
11 erwise expressly prohibited by law or otherwise provided
12 in this Act, of the Associate Attorney General for Immi-
13 gration Affairs, the Director of the Bureau of Immigration
14 Services and Adjudications, and the Director of the Bu-
15 reau of Immigration Enforcement, the person to whom
16 functions are transferred under this Act may delegate any
17 of the functions so transferred to such officers and em-
18 ployees of the Agency for Immigration Affairs, the Bureau
19 of Immigration Services and Adjudications or the Bureau
20 of Immigration Enforcement, respectively, as the person
21 may designate, and may authorize successive redelegations
22 of such functions as may be necessary or appropriate. No
23 delegation of functions under this subsection or under any
24 other provision of this Act shall relieve the official to whom

1 a function is transferred under this Act of responsibility
2 for the administration of the function.

3 (c) AUTHORITIES OF ATTORNEY GENERAL.—The At-
4 torney General (or a delegate of the Attorney General),
5 at such time or times as the Attorney General (or the dele-
6 gate) shall provide, may make such determinations as may
7 be necessary with regard to the functions transferred by
8 this Act, and may make such additional incidental disposi-
9 tions of personnel, assets, liabilities, grants, contracts,
10 property, records, and unexpended balances of appropria-
11 tions, authorizations, allocations, and other funds held,
12 used, arising from, available to, or to be made available
13 in connection with such functions, as may be necessary
14 to carry out the provisions of this Act. The Attorney Gen-
15 eral shall provide for such further measures and disposi-
16 tions as may be necessary to effectuate the purposes of
17 this Act.

18 (d) DATABASES.—The Associate Attorney General
19 for Immigration Affairs shall ensure that the Agency for
20 Immigration Affairs' databases and those of the Bureau
21 of Immigration Services and Adjudications and the Bu-
22 reau of Immigration Enforcement are integrated with the
23 databases of the Executive Office for Immigration Review
24 in such a way as to permit—

1 (1) the electronic docketing of each case by date
2 of service upon an alien of the notice to appear in
3 the case of a removal proceeding (or an order to
4 show cause in the case of a deportation proceeding,
5 or a notice to alien in the case of an exclusion pro-
6 ceeding); and

7 (2) the tracking of the status of any alien
8 throughout the alien's contact with United States
9 immigration authorities without regard to whether
10 the entity with jurisdiction over the alien is the
11 Agency for Immigration Affairs, the Bureau of Im-
12 migration Services and Adjudications, the Bureau of
13 Immigration Enforcement, or the Executive Office
14 for Immigration Review.

15 **SEC. 10. STATUTORY CONSTRUCTION.**

16 Nothing in this Act may be construed to preclude or
17 limit in any way the powers, authorities, or duties of the
18 Secretary of State and special agents of the Department
19 of State and the Foreign Service under the State Depart-
20 ment Basic Authorities Act of 1956, the Immigration and
21 Nationality Act, or any other Act, to investigate illegal
22 passport or visa issuance or use.

23 **SEC. 11. PERSONNEL FLEXIBILITIES.**

24 (a) GENERAL IMPROVEMENTS IN PERSONNEL
25 FLEXIBILITIES.—Subpart I of part III of title 5, United

1 States Code, is amended by adding at the end the fol-
2 lowing chapter:

3 **“CHAPTER 96—PERSONNEL FLEXIBILI-**
4 **TIES RELATING TO THE AGENCY FOR**
5 **IMMIGRATION AFFAIRS**

“Sec.

“9601. Agency for Immigration Affairs personnel flexibilities.

“9602. Pay authority for critical positions.

“9603. Streamlined critical pay authority.

“9604. Recruitment, retention, relocation incentives, and relocation expenses.

6 **“§ 9601. Agency for Immigration Affairs personnel**
7 **flexibilities**

8 “(a) Any flexibilities provided by sections 9602
9 through 9604 shall be exercised in a manner consistent
10 with—

11 “(1) chapter 23 (relating to merit system prin-
12 ciples and prohibited personnel practices);

13 “(2) provisions relating to preference eligibles;

14 “(3) except as otherwise specifically provided,
15 section 5307 (relating to the aggregate limitation on
16 pay);

17 “(4) except as otherwise specifically provided,
18 chapter 71 (relating to labor-management relations);
19 and

20 “(5) subject to subsections (b) and (c) of sec-
21 tion 1104, as though such authorities were delegated
22 to the Attorney General under section 1104(a)(2).

1 “(b) The Attorney General shall provide the Office
2 of Personnel Management with any information that Of-
3 fice requires in carrying out its responsibilities under this
4 section.

5 “(c) Employees within a unit to which a labor organi-
6 zation is accorded exclusive recognition under chapter 71
7 shall not be subject to any flexibility provided by sections
8 9602 through 9604.

9 **“§ 9602. Pay authority for critical positions**

10 “(a) When the Attorney General seeks a grant of au-
11 thority under section 5377 for critical pay for 1 or more
12 positions at the Agency for Immigration Affairs, the Office
13 of Management and Budget may fix the rate of basic pay,
14 notwithstanding sections 5377(d)(2) and 5307, at any
15 rate up to the salary set in accordance with section 104
16 of title 3.

17 “(b) No allowance, differential, bonus, award, or
18 similar cash payment may be paid to any employee receiv-
19 ing critical pay at a rate fixed under subsection (a), in
20 any calendar year if, or to the extent that, the employee’s
21 total annual compensation will exceed the maximum
22 amount of total annual compensation payable at the salary
23 set in accordance with section 104 of title 3.

1 **“§ 9603. Streamlined critical pay authority**

2 “(a) Notwithstanding section 9602, and without re-
3 gard to the provisions of this title governing appointments
4 in the competitive service or the Senior Executive Service
5 and chapters 51 and 53 (relating to classification and pay
6 rates), the Attorney General may, for a period of 10 years
7 after the date of the enactment of this section, establish,
8 fix the compensation of, and appoint individuals to, des-
9 ignated critical administrative, technical, and professional
10 positions needed to carry out the functions of the Agency
11 for Immigration Affairs, if—

12 “(1) the positions—

13 “(A) require expertise of an extremely high
14 level in an administrative, technical, or profes-
15 sional field; and

16 “(B) are critical to the Agency for Immi-
17 gration Affairs’ successful accomplishment of
18 an important mission;

19 “(2) exercise of the authority is necessary to re-
20 cruit or retain an individual exceptionally well quali-
21 fied for the position;

22 “(3) the number of such positions does not ex-
23 ceed 20 at any one time;

24 “(4) designation of such positions is approved
25 by the Attorney General;

1 “(5) the terms of such appointments are limited
2 to no more than 4 years;

3 “(6) appointees to such positions were not em-
4 ployees of the Immigration and Naturalization Serv-
5 ice, the Executive Office for Immigration Review,
6 the Office of Immigration Litigation of the Civil Di-
7 vision, the Office of Special Counsel for Immigration
8 Related Unfair Employment Practices of the Civil
9 Rights Division, or the Office of Special Investiga-
10 tions of the Criminal Division prior to the date of
11 the enactment of this Act;

12 “(7) total annual compensation for any ap-
13 pointee to such positions does not exceed the highest
14 total annual compensation payable at the rate deter-
15 mined under section 104 of title 3; and

16 “(8) all such positions are excluded from the
17 collective bargaining unit.

18 “(b) Individuals appointed under this section shall
19 not be considered to be employees for purposes of sub-
20 chapter II of chapter 75.

21 **“§ 9604. Recruitment, retention, relocation incen-**
22 **tives, and relocation expenses**

23 “(a) For a period of 10 years after the date of the
24 enactment of this section and subject to approval by the
25 Office of Personnel Management, the Attorney General

1 may provide for variations from sections 5753 and 5754
 2 governing payment of recruitment, relocation, and reten-
 3 tion incentives.

4 “(b) For a period of 10 years after the date of the
 5 enactment of this section, the Attorney General may pay
 6 from appropriations made to the Agency for Immigration
 7 Affairs allowable relocation expenses under section 5724a
 8 for employees transferred or reemployed and allowable
 9 travel and transportation expenses under section 5723 for
 10 new appointees, for any new appointee appointed to a posi-
 11 tion for which pay is fixed under section 9602 or 9603
 12 after the date of the enactment of this Act.”.

13 (b) CLERICAL AMENDMENT.—The table of chapters
 14 for part III of title 5, United States Code, is amended
 15 by adding after the item relating to chapter 95 the fol-
 16 lowing:

“96. Personnel flexibilities relating to the Agency for Immigration
 Affairs 9601”.

17 (c) VOLUNTARY SEPARATION INCENTIVE PAY-
 18 MENTS.—

19 (1) DEFINITION.—In this subsection, the term
 20 “employee” means an employee (as defined by sec-
 21 tion 2105 of title 5, United States Code) who is em-
 22 ployed by the Agency for Immigration Affairs serv-
 23 ing under an appointment without time limitation,

1 and has been currently employed for a continuous
2 period of at least 3 years, but does not include—

3 (A) a reemployed annuitant under sub-
4 chapter III of chapter 83 or chapter 84 of title
5 5, United States Code, or another retirement
6 system;

7 (B) an employee having a disability on the
8 basis of which such employee is or would be eli-
9 gible for disability retirement under the applica-
10 ble retirement system referred to in subpara-
11 graph (A);

12 (C) an employee who is in receipt of a spe-
13 cific notice of involuntary separation for mis-
14 conduct or unacceptable performance;

15 (D) an employee who, upon completing an
16 additional period of service as referred to in
17 section 3(b)(2)(B)(ii) of the Federal Workforce
18 Restructuring Act of 1994 (5 U.S.C. 5597
19 note), would qualify for a voluntary separation
20 incentive payment under section 3 of such Act;

21 (E) an employee who has previously re-
22 ceived any voluntary separation incentive pay-
23 ment by the Federal Government under this
24 section or any other authority and has not re-
25 paid such payment;

1 (F) an employee covered by statutory re-
2 employment rights who is on transfer to an-
3 other organization;

4 (G) any employee who, during the 24-
5 month period preceding the date of separation,
6 has received a recruitment or relocation bonus
7 under section 5753 of title 5, United States
8 Code, or who, within the 12-month period pre-
9 ceeding the date of separation, received a reten-
10 tion allowance under section 5754 of title 5,
11 United States Code; or

12 (H) any employee within a unit to which a
13 labor organization is accorded exclusive recogni-
14 tion under chapter 71.

15 (2) AUTHORITY TO PROVIDE VOLUNTARY SEPA-
16 RATION INCENTIVE PAYMENTS.—

17 (A) IN GENERAL.—The Associate Attorney
18 General for Immigration Affairs may pay vol-
19 untary separation incentive payments under
20 this section to any employee to the extent nec-
21 essary to carry out the plan to restructure the
22 immigration functions of the Department of
23 Justice into the Agency for Immigration Affairs
24 under this Act.

1 (B) AMOUNT AND TREATMENT OF PAY-
2 MENTS.—A voluntary separation incentive
3 payment—

4 (i) shall be paid in a lump sum after
5 the employee's separation;

6 (ii) shall be paid from appropriations
7 or funds available for the payment of the
8 basic pay of the employee;

9 (iii) shall be equal to the lesser of—

10 (I) an amount equal to the
11 amount the employee would be enti-
12 tled to receive under section 5595(c)
13 of title 5, United States Code; or

14 (II) an amount determined by
15 the Associate Attorney General for
16 Immigration Affairs not to exceed
17 \$25,000;

18 (iv) may not be made except in the
19 case of any qualifying employee who volun-
20 tarily separates (whether by retirement or
21 resignation) before January 1, 2005;

22 (v) shall not be a basis for payment,
23 and shall not be included in the computa-
24 tion, of any other type of Government ben-
25 efit; and

1 (vi) shall not be taken into account in
2 determining the amount of any severance
3 pay to which the employee may be entitled
4 under section 5595 of title 5, United
5 States Code, based on any other separa-
6 tion.

7 (3) ADDITIONAL AGENCY FOR IMMIGRATION AF-
8 FAIRS CONTRIBUTIONS TO THE RETIREMENT
9 FUND.—

10 (A) IN GENERAL.—In addition to any
11 other payments which it is required to make
12 under subchapter III of chapter 83 of title 5,
13 United States Code, the Agency for Immigra-
14 tion Affairs shall remit to the Office of Per-
15 sonnel Management for deposit in the Treasury
16 of the United States to the credit of the Civil
17 Service Retirement and Disability Fund an
18 amount equal to 15 percent of the final basic
19 pay of each employee who is covered under sub-
20 chapter III of chapter 83 or chapter 84 of title
21 5, United States Code, to whom a voluntary
22 separation incentive has been paid under this
23 subsection.

24 (B) DEFINITION.—In subparagraph (A),
25 the term “final basic pay”, with respect to an

1 employee, means the total amount of basic pay
2 which would be payable for a year of service by
3 such employee, computed using the employee's
4 final rate of basic pay, and, if last serving on
5 other than a full-time basis, with appropriate
6 adjustment therefor.

7 (4) EFFECT OF SUBSEQUENT EMPLOYMENT
8 WITH THE GOVERNMENT.—An individual who has
9 received a voluntary separation incentive payment
10 under this subsection and accepts any employment
11 for compensation with the Government of the United
12 States, or who works for any agency of the United
13 States Government through a personal services con-
14 tract, within 5 years after the date of the separation
15 on which the payment is based, shall be required to
16 pay, prior to the individual's first day of employ-
17 ment, the entire amount of the incentive payment to
18 the Agency for Immigration Affairs.

19 (5) EFFECT ON EMPLOYMENT LEVELS.—

20 (A) INTENDED EFFECT.—Voluntary sepa-
21 rations under this subsection are not intended
22 to necessarily reduce the total number of full-
23 time equivalent positions in the Agency for Im-
24 migration Affairs.

1 (B) USE OF VOLUNTARY SEPARATIONS.—

2 The Agency for Immigration Affairs may rede-
3 ploy or use the full-time equivalent positions va-
4 cated by voluntary separations under this sub-
5 section to make other positions available to
6 more critical locations or more critical occupa-
7 tions.

8 **SEC. 12. MISCELLANEOUS PROVISIONS.**

9 Notwithstanding the Federal Property and Adminis-
10 trative Services Act of 1949 (40 U.S.C. 471 et seq.), the
11 Attorney General is authorized to expend from the appro-
12 priation provided for the administration and enforcement
13 of the Immigration and Nationality Act, such amounts as
14 may be necessary for the leasing or acquisition of property
15 in the fulfillment of establishing the Agency for Immigra-
16 tion Affairs under this Act.

17 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS; PROHIBI-**

18 **TION ON TRANSFER OF FEES; SENSE OF CON-**

19 **GRESS.**

20 (a) AUTHORIZATION OF APPROPRIATIONS FOR TRAN-
21 SITION.—

22 (1) IN GENERAL.—There are authorized to be
23 appropriated such sums as may be necessary to ef-
24 fect the abolition of the Immigration and Natu-
25 ralization Service, the establishment of the Agency

1 for Immigration Affairs and its components, and the
2 transfers of functions required to be made under
3 this Act, and to carry out any other duty related
4 to the reorganization of the immigration and natu-
5 ralization functions that is made necessary by this
6 Act.

7 (2) AVAILABILITY OF FUNDS.—Amounts appro-
8 priated under paragraph (1) shall remain available
9 until expended.

10 (3) TRANSITION ACCOUNT.—

11 (A) ESTABLISHMENT.—There is estab-
12 lished in the general fund of the Treasury of
13 the United States a separate account, which
14 shall be known as the “Immigration Reorga-
15 nization Transition Account” (in this paragraph
16 referred to as the “Account”).

17 (B) USE OF ACCOUNT.—There shall be de-
18 posited into the Account all amounts appro-
19 priated under paragraph (1).

20 (C) ADVANCED AVAILABILITY OF
21 FUNDS.—To the extent provided in appropria-
22 tions Acts, funds in the Account shall be avail-
23 able for expenditure before the effective date in
24 section 17(a).

25 (b) SEPARATION OF FUNDING.—

1 (1) IN GENERAL.—There shall be established
2 separate accounts in the Treasury of the United
3 States for appropriated funds and other deposits
4 available for the Bureau of Immigration Services
5 and Adjudications, the Bureau of Immigration En-
6 forcement, and the Executive Office for Immigration
7 Review.

8 (2) SEPARATE BUDGETS.—To ensure that the
9 Bureau of Immigration Services and Adjudications,
10 the Bureau of Immigration Enforcement, and the
11 Executive Office for Immigration Review are funded
12 to the extent necessary to fully carry out their re-
13 spective functions, the Director of the Office of Man-
14 agement and Budget shall separate the budget re-
15 quests for each such entity.

16 (3) FEES.—Fees imposed for a particular serv-
17 ice, application, or benefit shall be deposited into the
18 account established under paragraph (1) that is for
19 the bureau with jurisdiction over the function to
20 which the fee relates.

21 (4) FEES NOT TRANSFERABLE.—No fee may be
22 transferred among the Bureau of Immigration Serv-
23 ices and Adjudications, the Bureau of Immigration
24 Enforcement, and the Executive Office for Immigra-

1 tion Review for purposes not authorized by section
2 286 of the Immigration and Nationality Act.

3 (5) ESTABLISHMENT OF FEES FOR ADJUDICA-
4 TION AND NATURALIZATION SERVICES.—Section
5 286(m) of the Immigration and Nationality Act (8
6 U.S.C. 1356(m)) is amended by striking “services,
7 including the costs of similar services provided with-
8 out charge to asylum applicants or other immi-
9 grants.” and inserting “services.”.

10 (c) SENSE OF CONGRESS.—It is the sense of the Con-
11 gress that—

12 (1) the missions of both the Bureau of Immi-
13 gration Services and Adjudications and the Bureau
14 of Immigration Enforcement are equally important
15 and, accordingly, both Bureaus should be adequately
16 funded; and

17 (2) neither the immigration adjudication and
18 service functions referred to in section 4 nor the im-
19 migration enforcement functions referred to in sec-
20 tion 6 should operate at levels below that in exist-
21 ence prior to the enactment of this Act.

22 (d) AUTHORIZATION OF APPROPRIATIONS FOR BACK-
23 LOG REDUCTION.—There are authorized to be appro-
24 priated such sums as may be necessary for fiscal years

1 2002 through 2004 to reduce any backlog in processing
2 and adjudicating pending—

3 (1) applications for naturalization under section
4 308 of the Immigration and Nationality Act;

5 (2) applications for adjustments of status under
6 sections 245 and 209 of such Act;

7 (3) petitions for nonimmigrant visas under sec-
8 tion 214 of such Act;

9 (4) applications for immigrant visas under sec-
10 tion 222 of such Act;

11 (5) applications for asylum under section 208 of
12 such Act; and

13 (6) petitions for temporary protected status
14 under section 244 of such Act.

15 **SEC. 14. REPORTS AND IMPLEMENTATION PLANS.**

16 (a) DIVISION OF FUNDS.—The Attorney General, not
17 later than 120 days after the date of the enactment of
18 this Act, shall submit to the Committees on Appropria-
19 tions and the Judiciary of the House of Representatives
20 and of the Senate a report on the proposed division and
21 transfer of funds, including unexpended funds, appropria-
22 tions, and fees, among the components of the Agency for
23 Immigration Affairs. Not later than 60 days after the date
24 of submittal of such report, each such component shall

1 submit to such Committees an operating plan of resources
2 allocated, by object class and decision unit structure.

3 (b) DIVISION OF PERSONNEL.—The Attorney Gen-
4 eral, not later than 120 days after the date of the enact-
5 ment of this Act, shall submit to the Committees on Ap-
6 propriations and the Judiciary of the House of Represent-
7 atives and of the Senate a report on the proposed division
8 of personnel among the components of the Agency for Im-
9 migration Affairs.

10 (c) IMPLEMENTATION PLAN.—

11 (1) IN GENERAL.—The Attorney General, not
12 later than 120 days after the date of the enactment
13 of this Act, shall submit to the Committees on Ap-
14 propriations and the Judiciary of the House of Rep-
15 resentatives and of the Senate an implementation
16 plan to carry out this Act.

17 (2) CONTENTS.—The implementation plan
18 should include details concerning the separation of
19 the components of the Agency for Immigration Af-
20 fairs, including but not limited to the following:

21 (A) Organizational structure, including the
22 field structure.

23 (B) Chain of command.

24 (C) Procedures for interaction between
25 such components.

1 (D) Procedures for the Director of Shared
2 Services to perform all shared support func-
3 tions, including authorizing the Directors of the
4 Bureau of Immigration Services and Adjudica-
5 tions, the Bureau of Immigration Enforcement,
6 and the Executive Office for Immigration Re-
7 view to approve training curricula and to ac-
8 quire such supplies and equipment as may be
9 necessary to perform the daily operations of
10 their component of the Agency for Immigration
11 Affairs.

12 (E) Procedures to establish separate ac-
13 counts and financial management systems for
14 the Bureau of Immigration Services and Adju-
15 dications, the Bureau of Immigration Enforce-
16 ment, and the Executive Office for Immigration
17 Review and to implement all provisions of sec-
18 tion 13(b).

19 (F) Fraud detection and investigation.

20 (G) The processing and handling of re-
21 moval proceedings, including expedited removal
22 and applications for relief from removal.

23 (H) Recommendations for conforming
24 amendments to the Immigration and Nation-
25 ality Act.

1 (I) Establishment of a transition team.

2 (J) Ways to phase in the costs of sepa-
3 rating the administrative support systems of
4 the Immigration and Naturalization Service in
5 order to provide for separate administrative
6 support systems for the Bureau of Immigration
7 Services and Adjudications, the Bureau of Im-
8 migration Enforcement, and the Executive Of-
9 fice for Immigration Review in instances where
10 separate systems are more efficient or effective.

11 (d) REPORT ON IMPROVING IMMIGRATION SERV-
12 ICES.—

13 (1) IN GENERAL.—The Attorney General, not
14 later than 1 year after the date of the enactment of
15 this Act, shall submit to the Committees on the Ju-
16 diciary and Appropriations of the House of Rep-
17 resentatives and of the Senate a report containing a
18 plan for how the Director of the Bureau of Immigra-
19 tion Services and Adjudications will complete effi-
20 ciently, fairly, and within a reasonable time, the ad-
21 judications described in subparagraphs (A) through
22 (E) of section 4(b)(1).

23 (2) CONTENTS.—For each type of adjudication
24 to be undertaken by the Director of the Bureau of

1 Immigration Services and Adjudications, the report
2 shall include the following:

3 (A) Any potential savings of resources that
4 may be implemented without affecting the qual-
5 ity of the adjudication.

6 (B) The goal for processing time with re-
7 spect to the application.

8 (C) Any statutory modifications with re-
9 spect to the adjudication that the Attorney
10 General considers advisable.

11 (3) CONSULTATION.—In carrying out para-
12 graph (1), the Attorney General shall consult with
13 the Secretary of State, the Secretary of Labor, the
14 Associate Attorney General for Immigration Affairs,
15 the Director of the Bureau of Immigration Enforce-
16 ment, and the Director of the Executive Office for
17 Immigration Review to determine how to streamline
18 and improve the process for applying for and mak-
19 ing adjudications described in section 4(b)(1) and
20 related processes.

21 (e) REPORT ON IMPROVING ENFORCEMENT FUNC-
22 TION.—

23 (1) IN GENERAL.—The Attorney General, not
24 later than 1 year after the date of the enactment of
25 this Act, shall submit to the Committees on Appro-

1 priations and the Judiciary of the House of Rep-
2 resentatives and of the Senate a report with a plan
3 detailing how the Bureau of Immigration Enforce-
4 ment, after the transfer of functions performed
5 under the programs described in subparagraphs (A)
6 through (E) of section 6(b)(1), will enforce com-
7 prehensively, effectively, and fairly all the enforce-
8 ment provisions of the Immigration and Nationality
9 Act relating to such programs.

10 (2) CONSULTATION.—In carrying out para-
11 graph (1), the Attorney General shall consult with
12 the Secretary of State, the Director of the Federal
13 Bureau of Investigation, the Secretary of the Treas-
14 ury, the Secretary of Labor, the Commissioner of
15 Social Security, the Associate Attorney General for
16 Immigration Affairs, the Director of the Bureau of
17 Immigration Services and Adjudications, the Direc-
18 tor of the Executive Office for Immigration Review,
19 and the heads of State and local law enforcement
20 agencies to determine how to most effectively con-
21 duct enforcement operations.

22 (f) REPORT ON SHARED SERVICES.—The Attorney
23 General, not later than 3 years after the effective date of
24 the transfer of functions under this Act, shall submit to
25 the Committees on the Judiciary and Appropriations of

1 the House of Representatives and of the Senate a report
2 on whether the Director of Shared Services is properly
3 serving the Bureau of Immigration Services and Adjudica-
4 tions, the Bureau of Immigration Enforcement, and the
5 Executive Office for Immigration Review. The report
6 should address whether it would be more efficient to trans-
7 fer the functions described in paragraphs (1) through (4)
8 of section 3(d) to the Director of the Bureau of Immigra-
9 tion Services and Adjudications, the Director of the Bu-
10 reau of Immigration Enforcement, and the Director of the
11 Executive Office for Immigration Review, and shall in-
12 clude an estimate of the cost of such transfers.

13 (g) COMPTROLLER GENERAL STUDIES AND RE-
14 PORTS.—

15 (1) STATUS REPORTS ON TRANSITION.—Not
16 later than 18 months after the effective date of the
17 transfer of functions under this Act, and every 6
18 months thereafter, until full implementation of this
19 Act has been completed, the Comptroller General of
20 the United States shall submit to the Committees on
21 Appropriations and on the Judiciary of the House of
22 Representatives and the Senate a report containing
23 the following:

24 (A) A determination of whether the trans-
25 fer of functions made by sections 4 and 6 of

1 this Act has been completed, and if the transfer
2 of functions has not taken place, identifying the
3 reasons why the transfer has not taken place.

4 (B) If the transfer of functions made by
5 sections 4 and 6 of this Act has been com-
6 pleted, an identification of any issues that have
7 arisen due to the completed transfer of func-
8 tions.

9 (C) An identification of any issues that
10 may arise due to the future transfer of func-
11 tions.

12 (2) REPORT ON MANAGEMENT.—Not later than
13 4 years after the effective date of the transfer of the
14 function under this Act, the Comptroller General of
15 the United States shall submit to the Committees on
16 Appropriations and on the Judiciary of the House of
17 Representatives and the Senate a report, following a
18 study, containing the following:

19 (A) Determinations of whether the transfer
20 of functions from the Immigration and Natu-
21 ralization Service, the Office of Immigration
22 Litigation of the Civil Division, and the Office
23 of Special Counsel for Immigration Related Un-
24 fair Employment Practices of the Civil Rights
25 Division to the Bureau of Immigration Services

1 and Adjudications, and the transfer of functions
2 from the Immigration and Naturalization Serv-
3 ice, the Office of Immigration Litigation of the
4 Civil Division, and the Office of Special Inves-
5 tigation of the Criminal Division to the Bureau
6 of Immigration Enforcement, under this Act
7 has improved, with respect to each function
8 transferred, the following:

9 (i) Operations.

10 (ii) Management, including account-
11 ability and communication.

12 (iii) Financial administration.

13 (iv) Recordkeeping, including informa-
14 tion management and technology.

15 (B) A statement of the reasons for the de-
16 terminations under subparagraph (A).

17 (C) Any recommendations for further im-
18 provements to the Agency for Immigration Af-
19 fairs.

20 **SEC. 15. APPLICATION OF INTERNET BASED TECH-**
21 **NOLOGIES.**

22 (a) ESTABLISHMENT OF TRACKING SYSTEM.—The
23 Attorney General, not later than 1 year after the date of
24 the enactment of this Act, in consultation with the Tech-
25 nology Advisory Committee established under subsection

1 (c), shall establish an Internet-based system, that will per-
2 mit a person, employer, immigrant, or nonimmigrant who
3 has filings with the Attorney General for any benefit under
4 the Immigration and Nationality Act, access to online in-
5 formation about the processing status of the filing in-
6 volved.

7 (b) FEASIBILITY STUDY FOR ON-LINE FILING AND
8 IMPROVED PROCESSING.—

9 (1) ON-LINE FILING.—The Attorney General,
10 in consultation with the Technology Advisory Com-
11 mittee established under subsection (c), shall con-
12 duct a feasibility study on the on-line filing of the
13 filings described in subsection (a). The study shall
14 include a review of computerization and technology
15 of the Immigration and Naturalization Service relat-
16 ing to the immigration services and processing of fil-
17 ings related to immigrant services. The study shall
18 also include an estimate of the timeframe and cost
19 and shall consider other factors in implementing
20 such a filing system, including the feasibility of fee
21 payment on-line.

22 (2) REPORT.—A report on the study under this
23 subsection shall be submitted to the Committees on
24 the Judiciary of the House of Representatives and

1 the Senate not later than 1 year after the date of
2 the enactment of this Act.

3 (c) TECHNOLOGY ADVISORY COMMITTEE.—

4 (1) ESTABLISHMENT.—The Attorney General
5 shall establish, not later than 60 days after the date
6 of the enactment of this Act an advisory committee
7 (in this section referred to as the “Technology Advi-
8 sory Committee”) to assist the Attorney General
9 in—

10 (A) establishing the tracking system under
11 subsection (a); and

12 (B) conducting the study under subsection
13 (b).

14 The Technology Advisory Committee shall be estab-
15 lished after consultation with the Committees on the
16 Judiciary of the House of Representatives and the
17 Senate.

18 (2) COMPOSITION.—The Technology Advisory
19 Committee shall be composed of representatives
20 from high technology companies capable of estab-
21 lishing and implementing the system in an expedi-
22 tious manner, and representatives of persons who
23 may use the tracking system described in subsection
24 (a) and the on-line filing system described in sub-
25 section (b)(1).

1 **SEC. 16. DEFINITIONS.**

2 For purposes of this Act:

3 (1) The term “function” includes any duty, ob-
4 ligation, power, authority, responsibility, right, privi-
5 lege, activity, or program.

6 (2) The term “office” includes any office, ad-
7 ministration, agency, bureau, institute, council, unit,
8 organizational entity, or component thereof.

9 **SEC. 17. EFFECTIVE DATE; TRANSITION.**

10 (a) IN GENERAL.—The abolishment of the Immigra-
11 tion and Naturalization Service, the establishment of the
12 Agency for Immigration Affairs, and the transfers of func-
13 tions specified under this Act shall take effect on the date
14 that is 1 year after the date of the enactment of this Act.
15 The Associate Attorney General for Immigration Affairs,
16 the Director of the Bureau of Immigration Services and
17 Adjudications, and the Director of the Bureau of Immi-
18 gration Enforcement shall be appointed not later than
19 such effective date. To the extent that functions to be
20 transferred to such persons under this Act continue to be
21 performed by the Immigration and Naturalization Service,
22 the Office of Immigration Litigation of the Civil Division,
23 the Office of Special Counsel for Immigration Related Un-
24 fair Employment Practices of the Civil Rights Division,
25 and the Office of Special Investigations of the Criminal
26 Division during fiscal year 2002, the Attorney General

1 shall provide for an appropriate accounting of funds and
2 an appropriate transfer of funds appropriated to such en-
3 tities to the appropriate component of the Agency for Im-
4 migration Affairs.

5 (b) TRANSITION PERIOD FOR CERTAIN BUREAU
6 FUNCTIONS.—Notwithstanding subsection (a), during the
7 18-month period after the transfer of functions under this
8 Act takes effect, the Associate Attorney General for Immi-
9 gration Affairs is authorized to perform the functions de-
10 scribed in subsections (c), (d), and (g) of each of sections
11 4 and 6 for both the Bureau of Immigration Services and
12 Adjudications and the Bureau of Immigration Enforce-
13 ment.

14 **SEC. 18. CONFORMING AMENDMENT.**

15 Section 5315 of title 5, United States Code, is
16 amended by striking the following:

17 “Commissioner of Immigration and Naturaliza-
18 tion, Department of Justice.”.

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