

**OMNIBUS CONSOLIDATED
APPROPRIATIONS ACT OF 1997
(INCLUDING IMMIGRATION REFORM)**

Volumes 1-3

H.R. 3610

**PUBLIC LAW 104-208
104TH CONGRESS**

**REPORTS, BILLS,
DEBATES, AND ACT**

SOCIAL SECURITY ADMINISTRATION

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(INCLUDING IMMIGRATION REFORM)**

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DEBATES, AND ACT**

Social Security Administration

**Office of the Deputy Commissioner for
Legislation and Congressional Affairs**

PREFACE

This 3-volume compilation contains historical documents pertaining to P.L. 104-208, the "Omnibus Consolidated Appropriations Act of 1997." The books contain congressional debates, a chronological compilation of documents pertinent to the legislative history of the public law and listings of relevant reference materials.

Pertinent documents include:

- o Differing versions of key bills
- o Committee reports
- o Excerpts from the Congressional Record
- o The Public Law

This history is prepared by the Office of the Deputy Commissioner for Legislation and Congressional Affairs and is designed to serve as a helpful resource tool for those charged with interpreting laws administered by the Social Security Administration.

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104TH CONGRESS
1ST SESSION

S. 269

To amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigator personnel; improving the verification system for employer sanctions; increasing penalties for alien smuggling and for document fraud; reforming asylum, exclusion, and deportation law and procedures; instituting a land border user fee; and to reduce use of welfare by aliens.

IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 10), 1995

Mr. DOLE (for Mr. SIMPSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigator personnel; improving the verification system for employer sanctions; increasing penalties for alien smuggling and for document fraud; reforming asylum, exclusion, and deportation law and procedures; instituting a land border user fee; and to reduce use of welfare by aliens.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Immigrant Control and
3 Financial Responsibility Act of 1995”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—IMMIGRANT CONTROL

Subtitle A—Law Enforcement

PART 1—ADDITIONAL ENFORCEMENT PERSONNEL

Sec. 101. Border Patrol agents.

Sec. 102. Investigators.

**PART 2—SYSTEM TO VERIFY ELIGIBILITY TO WORK AND TO RECEIVE
PUBLIC ASSISTANCE**

Sec. 111. Establishment of new verification system.

Sec. 112. Demonstration projects.

Sec. 113. Database for verifying employment and public assistance eligibility.

PART 3—ALIEN SMUGGLING

Sec. 121. Wiretap authority for investigations of alien smuggling.

Sec. 122. Adding offenses to RICO relating to alien smuggling or fraudulent documents.

Sec. 123. Increased criminal penalties for alien smuggling.

Sec. 124. Expanded forfeiture for smuggling or harboring aliens.

**PART 4—DOCUMENT FRAUD, MISREPRESENTATION, AND FAILURE TO
PRESENT DOCUMENTS**

Sec. 131. Increased criminal penalties for fraudulent use of government-issued documents.

Sec. 132. New civil penalties for document fraud.

Sec. 133. New civil penalty for failure to present documents.

Sec. 134. New criminal penalties for failure to disclose role as preparer of false application for asylum and for preparing certain post-conviction applications.

Sec. 135. Criminal penalty for false statement in a document required under the immigration laws or knowingly presenting document which fails to contain reasonable basis in law or fact.

Sec. 136. New exclusion for document fraud and for failure to present documents.

Sec. 137. Limitation on withholding of deportation and other benefits for aliens excludable for document fraud or failing to present documents.

Sec. 138. Definition of “falsely make any document.”

PART 5—EXCLUSION AND DEPORTATION

- Sec. 141. Special port-of-entry exclusion procedure for aliens using documents fraudulently or failing to present documents, or excludable aliens apprehended at sea.
- Sec. 142. Limited judicial review.
- Sec. 143. Reduction of incentive to delay deportation proceedings.
- Sec. 144. Civil penalty for failure to depart.
- Sec. 145. Authorization of special fund for costs of deportation.
- Sec. 146. Reform of deportation proceedings and judicial review.
- Sec. 147. Denial of nonimmigrant and immigrant visas for countries refusing to accept deported aliens.
- Sec. 148. Limitation on withholding of deportation for excludable aliens apprehended at sea.

PART 6—MISCELLANEOUS

- Sec. 151. Pilot program on interior repatriation of deportable or excludable aliens.
- Sec. 152. Pilot program on use of closed military bases for the detention of excludable or deportable aliens.
- Sec. 153. Use of legalization and special agricultural worker information.
- Sec. 154. Communication between Federal, State, and local government agencies, and the Immigration and Naturalization Service.

Subtitle B—Other Control Measures

PART 1—PAROLE AUTHORITY

- Sec. 161. Useable only on a case-by-case basis for humanitarian reasons or significant public benefit.
- Sec. 162. Inclusion in world-wide level of family-sponsored immigrants.

PART 2—ASYLUM AND REFUGEES

- Sec. 171. Limitations on asylum applications by aliens using documents fraudulently or by excludable aliens apprehended at sea; use of special exclusion procedures.
- Sec. 172. Limitation on work authorization for asylum applicants.
- Sec. 173. Increased resources for reducing asylum application backlogs.
- Sec. 174. Requirement of Congressional approval for admission of more than 50,000 refugees in a fiscal year.

PART 3—CUBAN ADJUSTMENT ACT

- Sec. 181. Repeal.

Subtitle C—Effective Dates

- Sec. 191. Effective dates.

TITLE II—FINANCIAL RESPONSIBILITY

PART 1—RECEIPT OF CERTAIN PUBLIC BENEFITS

- Sec. 201. Ineligibility of excludable, deportable, and nonimmigrant aliens.
- Sec. 202. Attribution of sponsor's income and resources to family-sponsored immigrants.
- Sec. 203. Definition of "public charge" for purposes of deportation.
- Sec. 204. Requirements for sponsor's affidavit of support.

PART 2—BORDER CROSSING FEE

Sec. 211. Imposition of fee; use of collected fees.

Sec. 212. Pilot program.

PART 3—EFFECTIVE DATES

Sec. 221. Effective dates.

1 TITLE I—IMMIGRANT CONTROL

3 **PART 2—SYSTEM TO VERIFY ELIGIBILITY TO**
4 **WORK AND TO RECEIVE PUBLIC ASSISTANCE**

5 **SEC. 111. ESTABLISHMENT OF NEW VERIFICATION SYSTEM.**

6 (a) **IN GENERAL.**—Within eight years of the enact-
7 ment of this Act, the Attorney General, together with the
8 Secretary of Health and Human Services, shall develop
9 and implement, subject to subsection (b), a system to ver-
10 ify eligibility for employment in the United States, and
11 eligibility for benefits under government-funded programs
12 of public assistance.

13 (b) **SYSTEM REQUIREMENTS.**—No verification sys-
14 tem may be implemented which does not meet the follow-
15 ing requirements:

16 (1) The system shall be capable of reliably de-
17 termining whether—

18 (A) the person with the identity claimed by
19 the individual whose eligibility is being verified
20 is in fact eligible, and

21 (B) the individual whose eligibility is being
22 verified is claiming the identity of another per-
23 son.

24 (2) If the system requires that document be
25 presented to or examined by either an employer or

1 a public assistance administrator, as the case may
2 be, then the document—

3 (A) shall be in a form that is resistant to
4 counterfeiting and to tampering; and

5 (B) shall not be required by any govern-
6 ment entity or agency as a national identifica-
7 tion card or to be carried or presented except—

8 (i) to verify eligibility for employment
9 in the United States or eligibility for bene-
10 fits under a Government-funded program
11 of public assistance,

12 (ii) to enforce sections 1001, 1028,
13 1546, or 1621 of title 18 of the United
14 States Code, or

15 (iii) if the document was designed for
16 another purpose (such as a license to drive
17 a motor vehicle, a certificate of birth, or a
18 social security account number card issued
19 by the Social Security Administration), as
20 required under law for such other purpose.

21 (3) The system shall not be used for law en-
22 forcement purposes other than to enforce the Immi-
23 gration and Nationality Act; sections 1001, 1028,
24 1542, 1546, or 1621 of title 18 of the United States
25 Code; Federal, State, or local laws pertaining to eli-

1 gibility Government-funded benefits described in sec-
2 tion 201 of this Act; or to enforce laws relating to
3 any document used by the system which was de-
4 signed for another purpose (such as a license to
5 drive a motor vehicle, a certificate of birth, or a so-
6 cial security account number card issued by the So-
7 cial Security Administration).

8 (4) The privacy and security of personal infor-
9 mation and identifiers obtained for and utilized in
10 the system must be protected in accordance with in-
11 dustry standards for privacy and security of con-
12 fidential information. No personal information ob-
13 tained from the system may be made available to
14 any person except to the extent necessary to the law-
15 ful operation of the system.

16 (5) A verification that a person is eligible for
17 employment in the United States, or for benefits
18 under a Government-funded program of public as-
19 sistance, may not be withheld or revoked under the
20 system for any reason other than the person is ineli-
21 gible under the applicable law or regulation.

22 (c) EMPLOYER SANCTIONS.—An employer shall not
23 be liable for any penalty under section 274A of the Immi-
24 gration and Nationality Act for employing an alien, if—

1 (1) the alien appeared throughout the term of
2 employment to be prima facie eligible for the em-
3 ployment (under the requirements of section
4 274A(b) of such Act);

5 (2) the employer followed all procedures re-
6 quired in the verification system established in sec-
7 tion 111 of this Act; and

8 (3) (i) the alien was verified under such system
9 as eligible for the employment; or

10 (ii) a secondary verification procedure (as de-
11 scribed in section 113(d) of this Act) was conducted
12 with respect to the alien and the employer dis-
13 charged the alien promptly after receiving notice
14 that the secondary verification procedure had failed
15 to verify that the alien was eligible for the employ-
16 ment.

17 (d) RESTRICTION ON USE OF DOCUMENTS.—If the
18 Attorney General finds, by regulation, that one (or more)
19 of the documents described in section 274A(b)(1) of the
20 Immigration and Nationality Act as establishing employ-
21 ment authorization or identity does not reliably establish
22 the same or is being used fraudulently to an unacceptable
23 degree, the Attorney General may prohibit or place condi-
24 tions on its (or their) use for purposes of the verification

1 system established in section 274A(b) of the Immigration
2 and Nationality Act or in this section.

3 **SEC. 112. DEMONSTRATION PROJECTS.**

4 (a) IN GENERAL.—(1) The President, acting through
5 the Attorney General, shall begin conducting projects in
6 five States demonstrating the feasibility of systems to ver-
7 ify eligibility for employment in the United States, and
8 for benefits under Government-funded programs of public
9 assistance. Each project shall be consistent with sub-
10 section (b) of section 111 of this Act and shall be con-
11 ducted for a period of three years in accordance with an
12 agreement entered into with the respective State. In deter-
13 mining which five States shall be designated for such
14 projects, the Attorney General shall take into account the
15 estimated number of excludable aliens and deportable
16 aliens in each State.

17 (2) Demonstration projects not using the
18 Database for Verifying Employment and Public As-
19 sistance Eligibility established in section 113 of this
20 Act must be started within six months of the date
21 of enactment of this Act.

22 (3) Demonstration projects using such
23 Database must be implemented within six months of
24 the establishment of such Database.

1 (b) ADDITIONAL PROJECTS.—(1) The President is
2 authorized to renew agreements for demonstration
3 projects, consistent with subsection (b) of section 111 of
4 this Act. Each project conducted under such renewal
5 agreement shall be completed within three years of the re-
6 port required in subsection (f)(1).

7 (2) After the report required in subsection (f)(1), the
8 President is authorized to enter into additional agree-
9 ments for demonstration projects, consistent with sub-
10 section (b) of section 111 of this Act. Each project con-
11 ducted under such agreement shall be completed within
12 three years of such report.

13 (c) NATIONWIDE PROJECT.—Effective sixty days
14 after submission of the report described in subsection
15 (f)(1), and notwithstanding section 274A(d)(3) of the Im-
16 migration and Nationality Act, the President is author-
17 ized, subject to subsection (b) of section 401 of this Act,
18 to implement one or more of the demonstration projects,
19 in whole or in part, singly or in combination, as a nation-
20 wide demonstration project, to be completed within 3 years
21 of the report required in subsection (f)(1).

22 (d) CONGRESSIONAL CONSULTATION.—The Attorney
23 General shall consult with the Committees on the Judici-
24 ary of the House of Representatives and the Senate not
25 less than every six months from the date of enactment

1 of this Act on the progress made in developing demonstra-
2 tion projects under this section.

3 (e) IMPLEMENTATION.—In carrying the projects de-
4 scribed in subsection (a), the President—

5 (1) shall support the efforts of Federal and
6 State government agencies in developing (A) tamper
7 and counterfeit-resistant documents that may be
8 used in the new verification system, including driv-
9 ers' licenses or similar documents issued by a State
10 for the purpose of identification, the Social Security
11 account number card issued by the Social Security
12 Administration, and certificates of birth in the Unit-
13 ed States or establishing United States nationality
14 at birth, and (B) recordkeeping systems that would
15 reduce the fraudulent obtaining of such documents,
16 including a nationwide system to match birth and
17 death records; and

18 (2) shall, for one or more of such projects, uti-
19 lize the Database for Verifying Employment and
20 Public Assistance Eligibility established in section
21 113 of this Act.

22 (f) REPORTS.—(1) Within thirty-eight months of the
23 commencement of the latest-to-begin of the demonstration
24 projects conducted pursuant to subsection (a) which uti-
25 lizes the Database for Verifying Employment and Public

1 Assistance Eligibility established in section 113 of this
2 Act, the President shall submit a report to Congress—

3 (A) describing the verification system the Presi-
4 dent recommends for permanent nationwide imple-
5 mentation; or

6 (B) recommending that certain of the dem-
7 onstration projects be renewed for up to three years,
8 or that additional projects be established in one or
9 more of the same or additional States for up to
10 three years.

11 (2) If any demonstration projects are completed after
12 the report required in subsection (f)(1), the President
13 shall submit a report to Congress within sixty days of the
14 completion of the last such project, describing the verifica-
15 tion system the President recommends for permanent na-
16 tionwide implementation.

17 (g) AUTHORIZATION OF APPROPRIATION.—There are
18 authorized to be appropriated such sums as may be nec-
19 essary to carry out this section.

20 **SEC. 113. DATABASE FOR VERIFYING EMPLOYMENT AND**

21 **PUBLIC ASSISTANCE ELIGIBILITY.**

22 (a) ESTABLISHMENT.—(1) Within twelve months of
23 the date of enactment of this Act, the Attorney General
24 shall establish the Database for Employment Authoriza-
25 tion Verification (referred to in this section as the

1 “Database”) containing information from the Immigra-
2 tion and Naturalization Service and the Social Security
3 Administration necessary to determine the work author-
4 ization of individuals residing in the United States.

5 (2) The Database may be used with demonstration
6 projects carried out under section 112 of this Act and with
7 any permanent system to verify eligibility for employment
8 in the United States or for benefits under any program
9 referred to in section 201 of this Act.

10 (b) LIMITATION ON DATA USE.—Any personal infor-
11 mation contained in the Database may not be made avail-
12 able to any Government agency, employer, or other person
13 except—

14 (1) to determine eligibility for employment in
15 the United States or for benefits under any Govern-
16 ment-funded program of public assistance; or

17 (2) to enforce the Immigration and Nationality
18 Act or section 1001, 1028, 1542, 1546, or 1621 of
19 title 18, United States Code.

20 (c) OFFICE OF EMPLOYMENT AND PUBLIC ASSIST-
21 ANCE ELIGIBILITY VERIFICATION.—(1) There is estab-
22 lished within the Department of Justice the Office of Em-
23 ployment and Public Assistance Eligibility Verification (in
24 this section referred to as the “Office”) which shall be re-
25 sponsible for collecting and integrating the information

1 necessary for the Database and for the administration of
2 the Database.

3 (2) For the purpose of establishing the Database, the
4 Office shall contract, to the extent practicable and subject
5 to the availability of appropriations, with computer serv-
6 ices specialists having demonstrated expertise in establish-
7 ment of confidential data systems and protection of pri-
8 vacy of individuals with respect to whom data is being col-
9 lected.

10 (d) **SECONDARY VERIFICATION.**—(1) The Adminis-
11 trator of Social Security and the Commissioner of Immi-
12 gration and Naturalization shall establish procedures for
13 prompt secondary verification of information in the
14 Database when necessary due to inability of the Database
15 to verify an individual's eligibility for employment in the
16 United States or for benefits under a Government-funded
17 program of public assistance.

18 (2) When an individual's assistance is required for
19 the completion of such secondary verification, the individ-
20 ual shall be promptly notified.

21 (e) **DATA RELIABILITY.**—(1) The Administrator of
22 the Office shall take all necessary steps to ensure that the
23 information in the Database is complete, accurate, verifi-
24 able, and revised within a period of ten business days after
25 acquisition of new or updated information provided by the

1 Immigration and Naturalization Service or the Social Se-
2 curity Administration.

3 (2) The Administrator of Social Security and the
4 Commissioner of Immigration and Naturalization Service
5 shall provide such new or updated information to the Of-
6 fice within ten business days after acquisition by those
7 agencies.

8 (f) PRIVACY AND CIVIL LIBERTIES PROTECTIONS.—

9 (1) The privacy and security of personal information and
10 identifiers obtained for and utilized in the Database must
11 be protected in accordance with industry standards for
12 privacy and security of confidential information.

13 (2) No personal information collected pursuant to
14 this section may be made available to any person except
15 to the extent necessary—

16 (i) to establish or operate the verification sys-
17 tem established in section 111 of this Act or section
18 274A(b) of the Immigration and Nationality Act,

19 (ii) to administer the Social Security Act, or

20 (iii) to enforce the Immigration and Nationality
21 Act or section 1001, 1028, 1542, 1546, or 1621 of
22 title 18 of the United States Code.

23 (g) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be
25 necessary to carry out this section.

1 (h) CERTIFICATION AND REPORTS.—(1) The Attor-
2 ney General shall certify to the Congress when the
3 Database is established and shall cause such certification
4 to be published in the Federal Register with a sixty-day
5 public comment period.

6 (2) Not later than three months after the date of the
7 certification under paragraph (1), the Comptroller General
8 of the United States shall submit a report to Congress
9 on the reliability of the Database.

10 (3) Not later than six months after the implementa-
11 tion of the Database the Attorney General and the Sec-
12 retary of Health and Human Services shall report to the
13 committees on the Judiciary of the House of Representa-
14 tives and the Senate on the feasibility and desirability of
15 utilizing the Database for the purposes set forth in section
16 121(a) of the Immigration Reform and Control Act of
17 1986.

5 **TITLE II—FINANCIAL RESPONSIBILITY**

6 **PART 1—RECEIPT OF CERTAIN PUBLIC BENEFITS**

7 **SEC. 201. INELIGIBILITY OF EXCLUDABLE, DEPORTABLE,**
8 **AND NONIMMIGRANT ALIENS.**

9 (a) **PUBLIC ASSISTANCE AND BENEFITS.—**(1) **IN**
10 **GENERAL.—**Notwithstanding any other provision of law,
11 an ineligible alien (as defined in subsection (d)(2)) shall
12 not be eligible to receive any benefits under any program
13 of assistance provided or funded, in whole or in part, by
14 the Federal Government or any State or local government
15 entity, for which eligibility for benefits is based on need,
16 or to receive any grant, contract, loan, professional license,
17 or commercial license provided or funded by any agency
18 of the United States or any State or local government en-
19 tity, except—

20 (A) emergency medical services under title XIX
21 of the Social Security Act,

22 (B) short-term emergency disaster relief,

23 (C) assistance or benefits under the National
24 School Lunch Act,

1 (D) assistance or benefits under the Child Nu-
2 trition Act of 1966, and

3 (E) public health assistance for immunizations
4 with respect to immunizable diseases and for testing
5 and treatment for communicable diseases.

6 (2) BENEFITS OF RESIDENCE.—Notwithstanding
7 any other provision of law, no State or local government
8 entity shall consider any ineligible alien as a resident when
9 to do so would place such alien in a more favorable posi-
10 tion, regarding access to, or the cost of, any benefit or
11 government service, than a United States citizen who is
12 not regarded as such a resident.

13 (3) NOTIFICATION OF ALIENS.—The agency admin-
14 istering a program referred to in paragraph (1) or (2)
15 shall, directly or, in the case of a Federal agency, through
16 the States, notify individually or by public notice, all ineli-
17 gible aliens who receive benefits under the program on the
18 date of the enactment of this Act and whose eligibility for
19 the program is terminated by reason of this subsection.

20 (b) UNEMPLOYMENT BENEFITS.—Notwithstanding
21 any other provision of law, only eligible aliens who have
22 been granted employment authorization pursuant to Fed-
23 eral law and United States citizens may receive any por-
24 tion of unemployment benefits payable out of Federal
25 funds, and such eligible aliens may receive only the portion

1 of such benefits which is attributable to the authorized
2 employment.

3 (c) HOUSING ASSISTANCE PROGRAMS.—Not later
4 than ninety days after the date of the enactment of this
5 Act, the Secretary of Housing and Urban Development
6 shall submit a report to the Committee on the Judiciary
7 of the Senate, the Committee on the Judiciary of the
8 House of Representatives, the Committee on Banking,
9 Housing, and Urban Affairs of the Senate, and the Com-
10 mittee on Banking and Financial Services of the House
11 of Representatives describing the manner in which the
12 Secretary is enforcing section 214 of the Housing and
13 Community Development Act of 1980 and containing sta-
14 tistics with respect to the number of individuals denied
15 financial assistance under such section.

16 (d) DEFINITIONS.—For the purposes of this sec-
17 tion—

18 (1) ELIGIBLE ALIEN.—The term “eligible
19 alien” means an individual who is—

20 (A) an alien lawfully admitted for perma-
21 nent residence,

22 (B) an alien granted asylum,

23 (C) a refugee,

1 (D) an alien whose deportation has been
2 withheld under section 243(h) of the Immigra-
3 tion and Nationality Act, or

4 (E) a parolee who has been paroled for a
5 period of 1 year or more.

6 (2) INELIGIBLE ALIEN.—The term “ineligible
7 alien” means an individual who is not—

8 (A) a United States citizen; or

9 (B) an eligible alien.

10 **SEC. 202. ATTRIBUTION OF SPONSOR'S INCOME AND RE-**
11 **SOURCES TO FAMILY-SPONSORED IMMI-**
12 **GRANTS.**

13 Notwithstanding any other provision of law, in deter-
14 mining the eligibility and the amount of benefits of an eli-
15 gible alien (as defined in section 201(d)(1) of this Act)
16 under any Federal program, the income and resources of
17 the alien shall be presumed to include—

18 (1) the income and resources of any person
19 who, as a sponsor of such alien's entry into the
20 United States, executed an affidavit of support or
21 similar agreement with respect to such alien, and

22 (2) the income and resources of such sponsor's
23 spouse.

24 The preceding sentence shall apply until such time as the
25 alien achieves United States citizenship through natu-

1 realization pursuant to chapter 2 of title III of the Immi-
2 gration and Nationality Act.

3 **SEC. 203. DEFINITION OF "PUBLIC CHARGE" FOR PUR-**
4 **POSES OF DEPORTATION.**

5 (a) IN GENERAL.—Section 241(a)(5) of the Immi-
6 gration and Nationality Act (8 U.S.C. 1251(a)(5)) is
7 amended to read as follows:

8 “(5) PUBLIC CHARGE.—

9 “(A) IN GENERAL.—Any alien who, within
10 five years after the date of entry, has become
11 a public charge from causes not affirmatively
12 shown to have arisen since entry is deportable.

13 “(B) DEFINITION.—For purposes of sub-
14 paragraph (A), the term ‘public charge’ shall
15 include any alien who receives benefits under
16 one or more of the programs described in sub-
17 paragraph (C) for more than an aggregate of
18 12 months.

19 “(C) PROGRAMS DESCRIBED.—The pro-
20 grams described in this subparagraph are the
21 following:

22 “(i) The aid to families with depend-
23 ent children program under title IV of the
24 Social Security Act.

1 “(ii) The medicaid program under
2 title XIX of the Social Security Act.

3 “(iii) The food stamp program under
4 the Food Stamp Act of 1977.

5 “(iv) The supplemental security in-
6 come program under title XVI of the So-
7 cial Security Act.

8 “(v) Any State general assistance pro-
9 gram.

10 “(vi) any other program of assistance
11 funded, in whole or in part, by the Federal
12 Government or any State or local govern-
13 ment entity, for which eligibility for bene-
14 fits is based on need, except the programs
15 listed as exceptions in section 201(a)(1) of
16 this Act.”

17 (b) CONSTRUCTION.—Nothing in section
18 241(a)(5)(B) of the Immigration and Nationality Act may
19 be construed to invalidate other factual bases for consider-
20 ation of an alien as a public charge which were in effect
21 on the day before the date of the enactment of this Act.

22 (c) REVIEW OF STATUS.—(1) In reviewing any appli-
23 cation by an alien for benefits under section 216, section
24 245, or chapter 2 of title III of the Immigration and Na-
25 tionality Act, the Attorney General shall determine wheth-

1 er or not the applicant is described in section 241(a)(5)(B)
2 of such Act.

3 (2) If the Attorney General determines that an alien
4 is described in section 241(a)(5)(B) of such Act, the At-
5 torney General shall deny such application and shall insti-
6 tute deportation proceedings with respect to such alien,
7 unless the Attorney General exercises discretion to with-
8 hold or suspend deportation pursuant to one of the other
9 sections of such Act.

10 **SEC. 204. REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF**
11 **SUPPORT.**

12 (a) **ENFORCEABILITY.**—No affidavit of support may
13 be relied upon by the Attorney General or by any consular
14 officer to establish that an alien is not excludable as a
15 public charge under section 212(a)(4) of the Immigration
16 and Nationality Act unless such affidavit is executed as
17 a contract—

18 (1) which is legally enforceable against the
19 sponsor by the Federal Government and by any
20 State, district, territory, or possession of the United
21 States (or any subdivision of such State, district,
22 territory, or possession of the United States) which
23 provides any benefit described in section
24 241(a)(5)(C), but not later than ten years after the
25 alien last receives any such benefit; and

1 (2) in which the sponsor agrees to submit to
2 the jurisdiction of any Federal or State court for the
3 purpose of actions brought under subsection (e)(2).

4 (b) FORMS.—Not later than ninety days after the
5 date of enactment of this Act, the Secretary of State, the
6 Attorney General, and the Secretary of Health and
7 Human Resources shall jointly formulate the affidavit of
8 support described in this section.

9 (c) STATUTORY CONSTRUCTION.—Nothing in this
10 section shall be construed to grant third party beneficiary
11 rights to any sponsored alien under an affidavit of sup-
12 port.

13 (d) NOTIFICATION OF CHANGE OF ADDRESS.—(1)
14 The sponsor shall notify the Federal Government and the
15 State, district, territory, or possession in which the spon-
16 sored alien is currently resident within thirty days of any
17 change of address of the sponsor during the period speci-
18 fied in subsection (a)(1).

19 (2) Any person subject to the requirement of para-
20 graph (1) who fails to satisfy such requirement shall be
21 subject to a civil penalty of—

22 (A) not less than \$250 or more than \$2,000, or

23 (B) if such failure occurs with knowledge that
24 the sponsored alien has received any benefit de-
25 scribed in section 241(a)(5)(C) of the Immigration

1 and Nationality Act, not less than \$2,000 or more
2 than \$5,000.

3 (e) REIMBURSEMENT OF GOVERNMENT EX-
4 PENSES.—(1)(A) Upon notification that a sponsored alien
5 has received any benefit described in section 241(a)(5)(C)
6 of the Immigration and Nationality Act, the appropriate
7 Federal, State, or local official shall request reimburse-
8 ment by the sponsor in the amount of such assistance.

9 (B) The Secretary of Health and Human Services
10 shall prescribe such regulations as may be necessary to
11 carry out subparagraph (A). Such regulations shall pro-
12 vide for notification to the sponsor by certified mail to the
13 sponsor's last known address.

14 (2) If within forty-five days after requesting reim-
15 bursement, the appropriate Federal, State, or local agency
16 has not received a response from the sponsor indicating
17 a willingness to commence payments, an action may be
18 brought against the sponsor pursuant to the affidavit of
19 support.

20 (3) If the sponsor fails to abide by the repayment
21 terms established by such agency, the agency may, within
22 sixty days of such failure, bring an action against the
23 sponsor pursuant to the affidavit of support.

24 (4) No cause of action may be brought under this
25 subsection later than ten years after the alien last received

1 any benefit described in section 241(a)(5)(C) of the Immi-
2 gration and Nationality Act.

3 (f) JURISDICTION.—For purposes of this section, no
4 State court shall decline for lack of jurisdiction to hear
5 any action brought against a sponsor for reimbursement
6 of the cost of any benefit described in section 241(a)(5)(C)
7 of the Immigration and Nationality Act if the sponsored
8 alien received public assistance while residing in the State.

9 (g) DEFINITIONS.—For the purposes of this sec-
10 tion—

11 (1) the term “sponsor” means an individual
12 who—

13 (A) is a United States citizen or an alien
14 who is lawfully admitted to the United States
15 for permanent residence;

16 (B) is 18 years of age or over;

17 (C) is domiciled in any of the several
18 States of the United States, the District of Co-
19 lumbia, or any territory or possession of the
20 United States; and

21 (D) demonstrates the means to maintain
22 an annual income equal to at least 125 percent
23 of the Federal poverty line for the individual
24 and for the sponsored alien; and

1 (2) the term "poverty line" means the income
2 official poverty line (as defined by the Office of Man-
3 agement and Budget, and revised annually in ac-
4 cordance with section 673(2) of the Omnibus Budget
5 Reconciliation Act of 1981) that is applicable to a
6 family of the size involved.

1 **PART 3—EFFECTIVE DATES**

2 **SEC. 221. EFFECTIVE DATES.**

3 (a) **PROVISIONS TAKING EFFECT UPON ENACT-**
4 **MENT.**—Except as otherwise provided in this title and
5 subject to subsection (b), this title and the amendments
6 made by this title shall take effect on the date of the en-
7 actment of this Act, and apply beginning in fiscal year
8 1995.

9 (b) **OTHER EFFECTIVE DATES.**—(1) The provisions
10 of section 201 and section 202 shall apply to benefits or
11 applications for benefits received on or after the date of
12 the enactment of this Act.

13 (2) The amendment made by section 211(a) shall
14 take effect six months after the date of enactment of this
15 Act.

○

By Mr. DOLE (for Mr. SIMPSON):

S. 269. A bill to amend the Immigration and Nationality Act to increase control over immigration to the United States by increasing border patrol and investigator personnel; improving the verification system for employer sanctions; increasing penalties for alien smuggling and for document fraud; reforming asylum, exclusion, and deportation law and procedures; instituting a land border user fee; and to reduce use of welfare by aliens; to the Committee on the Judiciary.

THE IMMIGRANT CONTROL AND FINANCIAL
RESPONSIBILITY ACT

• Mr. SIMPSON. Mr. President, I introduce legislation which will provide the Immigration Service with some badly needed tools to further the goal of achieving control over immigration. The bill will also reduce the abuse of the public welfare system by immigrants.

For years, as chairman or ranking member of the Immigration Subcommittee, I have advocated strong measures to control illegal immigration so that we can maintain a legal immigration program that will have the support of the American people. This legislation will continue that effort by authorizing additional Border Patrol officers and an increase in the personnel who investigate alien smuggling and the hiring of unlawful aliens. Most important, the bill will provide

for the establishment of a new verification system to enable the Immigration Service, and employers, to verify the work authority of new hires. The system will also verify the eligibility of applicants for public assistance.

Alien smuggling has become a serious and growing problem. This measure will provide new authority to the Justice Department to assist them in combating what the U.N. High Commissioner for Refugees has referred to as a "modern day slave trade."

The manufacture and use of fraudulent documents has reached such proportions that one can obtain high quality Social Security cards, driver's licenses, voter registration cards, or whatever, simply by placing a morning order on a Los Angeles street corner and picking up the documents later that day for less than \$100. My legislation will increase the penalty for such document fraud. It will also provide new penalties for false statements in documents required by the Immigration Service.

To combat the abuse of our immigration laws by persons who arrive at our ports-of-entry with no documents, or with fraudulent documents, the bill will provide for the expedited exclusion of such aliens. To more effectively remove persons found to be unlawfully in the United States, the bill will streamline our deportation proceedings.

In recent months we have seen the Attorney General's parole authority being used to admit groups of persons for permanent residence in the United States. This is an abuse of the spirit, if not the letter, of the law allowing the Attorney General to parole aliens into the United States in certain circumstances. This bill will limit the use of parole authority to individual cases for humanitarian reasons or significant public benefit, and will require that the number of parolees who remain more than a year must be offset by a reduction in regular immigration.

In recent years many unlawful aliens have discovered the key to extending their stay in the United States. By claiming fear of political persecution at home, they are able to delay their departure for years as they remain here and work while awaiting their hearing. There are over 400,000 persons in the backlog of such asylum claimants. This legislation will make clear that asylum claimants are not necessarily entitled to work authority, and it will provide increased resources for addressing the asylum application backlogs.

The Refugee Act, passed nearly 15 years ago, set the "normal flow" of refugees to be resettled in the United States at 50,000 per year. But the number of refugees resettled here in those 15 years has exceeded that number by hundreds of thousands. Every single year since the Refugee Act passed in 1980 refugee admissions have far exceeded the "normal flow." This legislation will require congressional approval for the admission of more than

50,000 refugees in a fiscal year—except in a refugee emergency.

Thirty years ago, in order to provide a legal status for the hundreds of thousands of Cubans who had fled Cuba after Castro's Communist intentions became clear, Congress passed the Cuban Adjustment Act. This allowed those Cubans who had fled the island in the 1960's to adjust to permanent resident status after 1 year in the United States. The persons for whom this extraordinary legislation was enacted have long since regularized their status in the United States. Yet, the Cuban Adjustment Act remains on the books as an anachronism that is both unfair and unnecessary. While nearly 4 million persons await their immigration visas in our vast immigration backlogs, some for as long as 20 years, any Cuban who gets to the United States, legally or illegally, can get a green card after 1 year. This special treatment is no longer justifiable and is not right. This bill will repeal the Cuban Adjustment Act.

It has been the tradition of the United States for more than 100 years that newcomers to this country should be self-sufficient. Our laws have long provided that those persons who are "likely at any time to become a public charge" are inadmissible, and that those immigrants who later do become "public charges" are deportable. These provisions have proven to be unenforced, or unenforceable. This legislation will make clear that an American resident or citizen who sponsors his or her relatives will be financially responsible for them until they become citizens. The bill also makes clear that those immigrants who do become "public charges" become deportable. My bill will not deny legal immigrants access to our public welfare system—the safety net will be there—but those immigrants who become dependent upon public assistance will run the risk of deportation. Under this legislation any immigrant who receives public assistance for more than 12 months will be deportable. Illegal immigrants will be denied all public assistance except certain emergency and child health and nutrition benefits.

Finally, this bill will impose a border crossing users fee to help offset the cost of maintaining our border controls. This fee will raise moneys that can be used to improve our border crossing facilities and deter the entry of unlawful aliens.

There will be other comprehensive legislation introduced in the Senate. And I understand the Clinton administration is working on their own legislative package on immigration reform. I intend the legislation I introduced today to be the basis for hearings at which we will consider all other responsible proposals.

The Commission on Immigration Reform has provided as with serious and thoughtful recommendations. Those that were not already in legislation I introduced in the last Congress, I have

included in this legislation, such as a new system to verify eligibility to work in the United States. This bill also follows the Commission's recommendation for an enforceable contract of support, signed by the person in this country who sponsors any immigrant relative for immigration to the United States. This will require such a sponsor to reimburse governments which provide the immigrant with welfare or other assistance.

The bill I introduce today focuses on illegal immigration control issues. Our legal immigration program is also in need of thoughtful reform and revision. I am presently drafting the legislation to accomplish these needed reforms. I understand the Commission on Immigration Reform will present us with their recommendations on legal immigration reform in the early spring. I look forward to those.

To be sustainable, immigration must always serve the national interest. We must be able to assure the American people that whatever other goals our immigration policy may further, its overriding goal is to serve the long-term interest of the majority of our citizens.

We have much to do on immigration reform. The election last November demonstrated clearly that the American people wish us to "get on with the job." This bill I introduce today is the first step and other serious steps will soon follow. •

require—no, demand—the implementation of such a system.

NEED FOR EMPLOYER SANCTIONS

Mr. President, it has been recognized for so many years—I would hunch for as long as there has been interest in the issue, and that is quite a time—that the primary magnet for most illegal immigrants is the availability of jobs that pay so much better than what is available in their home countries. It is also widely recognized that satisfactory prevention of illegal border entry is most unlikely to be achieved solely by patrolling the very long U.S. border. That border of the United States is over 7,000 miles on land and 12,000 miles along what is technically called “coastline.” Furthermore—and heed this or hear it—the real sea border consists of over 80,000 miles of what the experts at the Nautical Charting Division of the National Ocean Service call “shoreline,” including the shoreline of the outer coast, offshore islands, sounds, bays, and other major inlets. And patrol of the border is, of course, totally inadequate to deal with foreign nationals who enter the United States legally—for example, as tourists or students—and then choose openly, blatantly to violate the terms of their visa, by not leaving when their visa expires or by working at jobs for which they are not authorized.

Therefore, every authoritative study I have seen has recommended a provision such as that in the 1986 immigration reform law, making it unlawful to employ illegal aliens—those who entered the United States illegally and those violating the terms of their visa. These studies include that of the Select Commission on Immigration and Refugee Policy, on which I served over 10 years ago, and the Commission on Immigration Reform, now doing such fine and consistent work. They are doing beautiful work under the able chairman, former Congresswoman Barbara Jordan.

Such studies also recognize that an employer sanctions law cannot possibly be effective without a reliable and easy-to-use methods for employers to verify work authorization.

Accordingly, the 1986 law instituted an interim verification system. This system was designed to use documents which were then available, even though most of them were not resistant to tampering or counterfeiting. Not only that, but it is surprisingly easy and totally simple to obtain genuine documents, including a birth certificate. Thus, we believed then that the system would most likely need to be significantly improved. In fact, the law called for “studies” of telephone verification systems and counterfeit-resistant Social Security cards.

Unfortunately, the interim system is still in place today, over 8 years later. This is true even though—as many of us feared and which certainly came to pass—there is widespread fraud in its use.

THE IMMIGRANT CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1995

Mr. SIMPSON. Mr. President, I return here to a familiar refrain, a theme revisited, not, as has my good friend from Montana, with regard to the balanced budget amendment or base closing. Those are critical issues we will face in these next weeks. But there is one that we will face that is rather awesome in nature, too, and that is the issue of illegal immigration.

Mr. President, on January 24 I introduced S. 269, the Immigrant Control and Financial Responsibility Act of 1995. At that time I presented to my colleagues and to the American people a rather general overview of the bill.

Today I wish to describe in greater detail one particular part of this legislation—the requirement for a new system to verify eligibility to work in the United States and to receive benefits under certain government-funded programs of public assistance.

Let me speak first about the urgent need for effective enforcement of the current law against knowingly employing aliens in U.S. jobs for which they are not authorized, and about the simple fact that such law cannot ever effectively be enforced without a more reliable system to verify work authorization. After explaining clearly why a new system is needed, I will describe to you the provisions of S. 269 which will

As a result, the employer sanctions law has not been as effective in deterring illegal immigration as it could be—and should be. In the fiscal year that ended about a month before the 1986 law passed, apprehensions of illegal aliens had reached the highest level ever—1.8 million. After the law passed, there was a decline for 3 years to just over 900,000. But then the level began to rise again. The latest figure available is for the fiscal year that ended in September—1.3 million.

It is most assuredly disgraceful that, over 8 years after a law was enacted making it unlawful to knowingly employ illegal aliens, so many are still able to find work, thus still having that powerful incentive to violate America's immigration laws in doing so.

We must do better. An improved system to verify eligibility to work in this country must be implemented—in order that the enforcement tool with the greatest potential to deter illegal entry and visa abuse can produce the benefit that is required.

Mr. President, as I said in my introductory statement on the 24th, "We must be able to assure the American people that whatever other goals our immigration policy may pursue, its overriding goal is to serve the long-term interest of the majority of our citizens." It is our paramount duty as legislators to serve that singular interest, and that is precisely what the goal of our immigration laws should be.

Yet no matter how successful we might be in crafting a set of immigration laws that would—in theory, at least—lead to the most long-term benefit to a majority of U.S. citizens and their descendants, such benefit will not actually occur if those laws cannot be enforced.

Effective enforcement requires effective employer sanctions, and effective employer sanctions requires an effective verification system. It is just that simple. Nothing more. And S. 269 is intended above all else to lead to a verification system that has the needed degree of effectiveness.

S. 269 would require the President to implement a new verification system—the word is "implement"—not merely talk about it; not merely establish scores of studies to talk about it and read about it, to do it. And it imposes an 8-year deadline for the implementation.

The bill does not require that any particular form of verification be used, only that it satisfy certain criteria of effectiveness and protection for privacy and civil liberties.

It also authorizes separate 3-year demonstration projects in five or more States, so that the design of the final, nationwide system would be based not only on theory, but on what has actually been found to work in practice.

The system must reliably verify first, that the person who the applicant claims to be is authorized for the work,

and second, that the applicant actually is this person.

If the system requires that a card or other document be presented it must be in a form that is resistant to tampering and counterfeiting.

Most importantly, very importantly, the bill explicitly states that no such card or other document may be required by any Government entity as a "national ID card," and I have been through all that.

It is not to be required to be carried on a person. It is not to be presented except at the time to verify eligibility to work or to receive benefits under Government-funded programs of public assistance. There is a tremendous fraud in the receipt of Government-funded public assistance. We will hold hearings on the issue of SSI fraud, disability insurance fraud.

With regard to the Social Security system, people bring their relatives from another country and say they are disabled, they do not speak English, they need the help of our Government, and we, as Americans, generously respond. But that system needs careful attention. We found recently one of the applications for that particular benefit had been filed overseas, so they have figured that one out. They are beginning even to file for assistance from a foreign country, come here, take them to the agency, and say: Here is this person; they require assistance; they do not speak English; they are not well. And then they are placed in our social support system, our safety nets, the ones for our U.S. citizens. This is not what the safety net is about.

This was part of the reaction of proposition 187 in California. The document will be used only to enforce certain criminal statutes related to fraudulent statements or fraudulent manufacturer or use of documents.

Let me just share this most fascinating picture ID. I did this several weeks ago, but it is so dazzling that I thought I would do it again. Several months ago, a member of my staff was contacted by a person in California who said, "Look, just send me SIMPSON biostatistics, and we will go from there." So he just went down—this is a dazzling picture of one of the most certainly attractive Members—oh, no, excuse me. This gentleman here is a very astute, wise-looking fellow. This is my California identification card, which expires on my birthday, September 2, in the year 1998. ALAN KOOI SIMPSON. My address, I have never heard of. I have never been to Turlock, CA, but the mayor has contacted me and made me an honorary citizen. I appreciated that, and I enjoyed the lovely letter. There is an address here of 4850 Royal, Turlock, CA, and included are the correct vital statistics. This is not my signature.

All right, that was obtained on a street corner in Los Angeles, at night, with \$100 bill. It was illegal, of course, but someone else did it. My father always taught me, in the practice of law,

"If anyone goes to jail, be sure it is your client." Now, it is my Social Security card. I did block out two of the numbers, but here it actually is. This is not my number. This is a counterfeit-resistant so-called card. It has the same material in it, and so I am now in the Social Security system with somebody else's number. I do not know whose number this is. I am not sharing with you the entire number.

Now, that is just a \$100 buckner, an overnighter. This document would enable me to seek public assistance in California. I could go into any public assistance agency. There is a holographic card, and this is the correct one. But if you were not careful and you were not looking carefully, you would not notice the holograph in the true card.

So this little card which is reproduced here would enable me to get social support. It would likely even enable me to vote in certain jurisdictions of California. It would certainly get me a driver's license, and it would get me into the money stream. Now, that is what is happening in your country.

It is endemic. Within 500 yards of this building, we can pick up not only these—these are minor documents, they will get a person anything—but a person can pick up passports, pick up birth certificates. So we have a cottage industry of fake documents. The documents then lead into things like Social Security and workmen's compensation, and drain away the systems of the country.

So this is what we are up to. We are going to do something with documentation. We are going to do something to people who provide these documents. We are going to see that we might use the driver's license system, the holographic system in the State of California. But we are going to see that these documents are not easily forged, and those who do forge them and produce fraudulent documents will serve big time in the big place.

Now, these are the only uses to which any form of the system might be utilized, including one not even relying on the presentation of documents—for example, a telephone call-in system. We might look into that. That is part of the recommendation. The bill also provides that the privacy and security of any personal information obtained for or utilized by the system must be carefully protected. It must be treated as highly confidential information, and not made available to any person except as is necessary to the lawful operation of the system.

Furthermore, a verification of eligibility to any person may not be withheld or revoked for any reason other than that the person is ineligible under the applicable law or regulation. The bill explicitly provides all of those protections.

So, Mr. President, in concluding, I feel so very strongly that the greatest contribution this current Congress could make toward the enforcement of

our U.S. immigration laws would be to improve the effectiveness of the current law against the knowing employment of aliens not authorized to work or even to be present in this country. The passing of a bill such as S. 269 would be a monumental step toward making that contribution.

In the coming weeks, I will make additional statements to this body, describing other provisions of S. 269 and exactly why those provisions are important. Hearings will begin at the end of that period in the Senate Subcommittee on Immigration, which I chair. And a fine group of Members are on that subcommittee, Democrat and Republican alike. I look forward to working with my ranking member, Senator KENNEDY. He and I have worked together on immigration issues for 17 years.

Hearings will be held. We will consider all other immigration reform legislation from all of my colleagues, comprehensive, bipartisan, as well as specific proposals such as this one for the accuracy of a more fraud-resistant system for issuing these documents. We have to look into the one for issuing of birth certificates and matching records. Can Senators believe we do not even match birth and death records?

I sincerely look forward to hearing the ideas of my fine colleagues on these issues. Then we will be able to avoid things that are bringing down the system, things that give rise to the power of the force of proposition 187.

It reminded me of the story of the child who was at the graveyard in a jurisdiction noted for rather shabby election processes. Pick your own State, as you might imagine. The child was crying, and the person came up and said, "Son, why are you crying?" And he said, "I just learned that my dad came back to vote, and I never even saw him."

So we do want to try to avoid that in the future, because people use these cards to vote, to vote themselves largess from the Treasury, to then draw on our resources that we taxpayers—legal taxpayers—provide. That must stop. There is a way to stop it. We propose that. I would enjoy working and will enjoy, as I always have, working with all of my colleagues on this most serious issue. We are very dedicated to this process. I intend to spend a great deal of time and effort in these next months in doing responsible immigration reform—not only illegal immigration, but legal immigration.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. AKAKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I ask unanimous consent that I may use

time from that under Senator DASCHLE's control.

The PRESIDING OFFICER. Without objection, it is so ordered.



CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

June E. O'Neill
Director

April 12, 1996

Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed federal, intergovernmental, and private sector cost estimates for S. 269, the Immigration Control and Financial Responsibility Act of 1996. Because enactment of the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

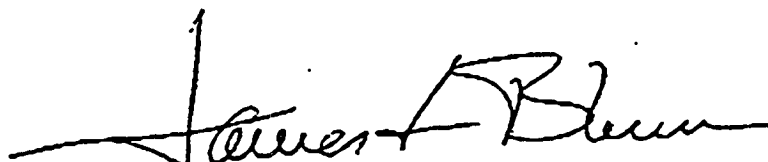
The bill would impose both intergovernmental and private sector mandates, as defined in Public Law 104-4. The cost of the mandates would exceed both the \$50 million threshold for intergovernmental mandates and the \$100 million threshold for private sector mandates specified in that law.

CBO's estimate does not include the potential costs of establishing a program to reimburse state and local governments for the full cost of providing emergency medical care to illegal aliens. As noted in the enclosed estimate, the drafting of this provision leaves many uncertainties about how the program would work and therefore precludes a firm estimate. The potential costs could, however, be significant.

Honorable Orrin G. Hatch
Page 2

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,



for
June E. O'Neill
Director

Enclosure

cc: Honorable Joseph R. Biden, Jr.
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

April 12, 1996

1. BILL NUMBER: S. 269
2. BILL TITLE: Immigration Control and Financial Responsibility Act of 1996

3. BILL STATUS:

As reported by the Senate Committee on the Judiciary on April 10, 1996.

4. BILL PURPOSE:

S. 269 would make many changes and additions to federal laws relating to immigration. Provisions having a potentially significant budgetary impact are highlighted below.

Title I would:

- direct the Attorney General to increase the number of Immigration and Naturalization (INS) border patrol agents by 700 in fiscal year 1996 and by 1,000 in each of the fiscal years 1997 through 2000; in addition, the number of full-time support positions for border patrol agents would be increased by 300 in each of the fiscal years 1996 through 2000;
- authorize appropriations of such sums as may be necessary to increase the number of INS investigator positions by 600 in fiscal year 1996 and by 300 in each of the fiscal years 1997 and 1998, and provide for the necessary support positions;
- direct the Attorney General and the Secretary of the Treasury to increase the number of land border inspectors in fiscal years 1996 and 1997 to assure full staffing during peak border-crossing hours;
- authorize the Department of Labor (DOL) to increase the number of investigators by 350—plus necessary support staff—in fiscal years 1996 and 1997;

- direct the Attorney General to increase the detention facilities of the INS to at least 9,000 beds by the end of fiscal year 1997;
- authorize a one-time appropriation of \$12 million for improvements in barriers along the U.S.-Mexico border;
- authorize the Attorney General to hire for fiscal years 1996 and 1997 such additional Assistant U.S. Attorneys as may be necessary for the prosecution of actions brought under certain provisions of the Immigration and Nationality Act;
- authorize appropriations of such sums as may be necessary to expand the INS fingerprint-based identification system (IDENT) nationwide;
- authorize a one-time appropriation of \$10 million for the INS to cover the costs to deport aliens under certain provisions of the Immigration and Nationality Act;
- authorize such sums as may be necessary to the Attorney General to conduct pilot programs related to increasing the efficiency of deportation and exclusion proceedings;
- establish several pilot projects and various studies related to immigration issues, including improving the verification system for aliens seeking employment or public assistance;
- provide for an increase in pay for immigration judges;
- establish new and increased penalties and criminal forfeiture provisions for a number of crimes related to immigration; and
- permit the Attorney General to reemploy up to 100 federal retirees for as long as two years to help reduce a backlog of asylum applications.

Title II would:

- curtail the eligibility of non-legal aliens, including those permanently residing under color of law (PRUCOL), in the narrow instances where they are now eligible for federal benefits;

- extend the period during which a sponsor's income is presumed or deemed to be available to the alien and require deeming in all federal means-tested programs, not just the ones that currently practice it;
- deny the earned income tax credit to individuals not authorized to be employed in the United States; and
- change federal coverage of emergency medical services for illegal aliens.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

Assuming appropriation of the entire amounts authorized, enacting S. 269 would increase discretionary spending over fiscal years 1996 through 2002 by a total of about \$3.2 billion. Several provisions of S. 269, mainly those in Title II affecting benefit programs, would result in changes to mandatory spending and federal revenues. CBO estimates that the changes in mandatory spending would reduce outlays by about \$7 billion over the 1996-2002 period, and that revenues would increase by about \$80 million over the same period. These figures do not include the potential costs of establishing a program to reimburse state and local governments for the full cost of providing emergency medical care to illegal aliens; these costs could amount to as much as \$1.5 billion to \$3 billion a year.

The estimated budgetary effects of the legislation are summarized in Table 1. Table 2 shows projected outlays for the affected direct spending programs under current law, the changes that would stem from the bill, and the projected outlays for each program if the bill were enacted. The projections reflect CBO's March 1996 baseline.

TABLE I. ESTIMATED BUDGETARY EFFECTS OF S. 269
(By fiscal year, in millions of dollars)

	1996	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATIONS ACTION							
<u>Authorizations</u>							
Estimated Authorization Level	0	709	472	580	596	615	633
Estimated Outlays	0	286	467	663	580	600	621
MANDATORY SPENDING AND RECEIPTS							
<u>Direct Spending</u>							
Estimated Budget Authority	0	-450	-927	-1,237	-1,427	-1,409	-1,549
Estimated Outlays	0	-450	-927	-1,237	-1,427	-1,409	-1,549
Estimated Revenues	0	14	13	12	13	13	13

Note: Estimates do not include potential costs of establishing a program to reimburse state and local governments for the full cost of providing emergency medical care to illegal aliens. These costs could amount to as much as \$1.5 billion to \$3 billion a year.

The costs of this bill fall within budget functions 550, 600, 750, and 950.

TABLE 2. ESTIMATED EFFECTS OF S. 269 ON DIRECT SPENDING PROGRAMS
(By fiscal year, in millions of dollars)

	1995	1996	1997	1998	1999	2000	2001	2002
PROJECTED SPENDING UNDER CURRENT LAW								
Supplemental Security Income	24,510	24,017	27,904	30,210	32,576	37,995	34,515	40,348
Food Stamps ^a	25,554	26,220	28,094	29,702	31,092	32,476	33,847	35,283
Family Support Payments ^b	18,086	18,371	18,800	19,302	19,930	20,552	21,240	21,932
Child Nutrition	7,465	8,011	8,483	9,033	9,597	10,165	10,751	11,352
Medicaid	89,070	95,737	104,781	115,438	126,366	138,154	151,512	166,444
Earned Income Tax Credit (outlay portion)	15,244	18,440	20,191	20,894	21,691	22,586	23,412	24,157
Receipts of Employer Contributions	<u>-27,961</u>	<u>-27,025</u>	<u>-27,426</u>	<u>-27,978</u>	<u>-28,258</u>	<u>-29,089</u>	<u>-29,949</u>	<u>-31,025</u>
Total	151,968	163,771	180,827	196,601	212,994	232,835	245,328	268,491
PROPOSED CHANGES								
Supplemental Security Income	--	0	-100	-340	-500	-570	-500	-560
Food Stamps ^a	--	0	-10	-30	-40	-45	-45	-70
Family Support Payments ^b	--	0	-10	-15	-15	-20	-20	-25
Child Nutrition	--	0	0	0	-5	-20	-20	-25
Medicaid ^c	--	0	-115	-330	-460	-550	-600	-640
Earned Income Tax Credit (outlay portion)	--	0	-216	-214	-218	-222	-224	-229
Receipts of Employer Contributions	<u>--</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	--	0	-450	-927	-1,237	-1,427	-1,409	-1,549
PROJECTED SPENDING UNDER S. 269								
Supplemental Security Income	24,510	24,017	27,804	29,870	32,076	37,425	34,015	39,788
Food Stamps ^a	25,554	26,220	28,084	29,672	31,052	32,431	33,802	35,213
Family Support Payments ^b	18,086	18,371	18,790	19,287	19,915	20,532	21,220	21,907
Child Nutrition	7,465	8,011	8,483	9,033	9,592	10,145	10,731	11,327
Medicaid ^c	89,070	95,737	104,666	115,108	125,906	137,604	150,912	165,804
Earned Income Tax Credit (outlay portion)	15,244	18,440	19,975	20,680	21,473	22,364	23,188	23,928
Receipts of Employer Contributions	<u>-27,961</u>	<u>-27,025</u>	<u>-27,425</u>	<u>-27,976</u>	<u>-28,257</u>	<u>-29,089</u>	<u>-29,949</u>	<u>-31,025</u>
Total	151,968	163,771	180,377	195,674	211,757	231,412	243,919	266,942
CHANGES TO REVENUES	--	0	14	13	12	13	13	13
NET DEFICIT EFFECT	--	0	-464	-940	-1,249	-1,440	-1,422	-1,562

Notes: Assumes enactment date of August 1, 1996. Estimates will change with later effective date.
Details may not add to totals because of rounding.

- a. Food Stamps includes Nutrition Assistance for Puerto Rico. Spending under current law includes the provisions of the recently-enacted farm bill.
- b. Family Support Payments includes spending on Aid to Families with Dependent Children (AFDC), AFDC-related child care, administrative costs for child support enforcement, net federal savings from child support collections, and the Job Opportunities and Basic Skills Training program (JOBS).
- c. Estimates do not include potential costs of establishing a program to reimburse state and local governments for the full cost of providing emergency medical care to illegal aliens. These costs could amount to as much as \$1.5 billion to \$3 billion a year.

6. **BASIS OF ESTIMATE:**

For purposes of this estimate, CBO assumes that S. 269 will be enacted by August 1, 1996.

Spending Subject to Appropriations

The following estimates assume that all specific amounts authorized by the bill would be appropriated for each fiscal year. For programs in the bill for which authorizations are not specified, or for programs whose specific authorizations do not provide sufficient funding, CBO estimated the cost based on information from the agencies involved. Estimated outlays, beginning in 1997, are based on historical rates for these or similar activities. (We assumed that none of the bill's programs would affect outlays in 1996.)

The provisions in this bill that affect discretionary spending would increase costs to the federal government by the amounts shown in Table 3, assuming appropriation of the necessary funds. In many cases, the bill authorizes funding for programs already authorized in the Violent Crime Control and Law Enforcement Act of 1994 (the 1994 crime bill) or already funded by fiscal year 1996 appropriations action. For example, the additional border patrol agents and support personnel in Title I already were authorized in the 1994 crime bill through fiscal year 1998. For such provisions, the amounts shown in Table 3 reflect only the cost above funding authorized in current law.

In the most recent continuing resolution enacted for fiscal year 1996, appropriations for the Department of Justice total about \$14 billion, of which about \$1.7 billion is for the INS.

TABLE 3. SPENDING SUBJECT TO APPROPRIATIONS ACTION
(By fiscal year, in millions of dollars)

	1997	1998	1999	2000	2001	2002
<u>Estimated Authorization Levels</u>						
Additional border patrol agents	—	—	97	97	100	103
Additional investigators	97	152	159	165	171	178
Additional inspectors	24	32	34	35	37	39
Additional DOL employees	27	29	30	31	33	34
Detention facilities	418	187	187	194	198	204
Barrier improvements	20	—	—	—	—	—
Additional U.S. Attorneys	23	46	48	49	51	52
IDENT expansion	87	22	22	22	22	22
Deportation costs	10	—	—	—	—	—
Pilot programs	2	3	2	2	2	—
Pay raise for immigration judges	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
Total	709	472	580	596	615	633
Estimated Outlays	286	467	663	580	600	621

Revenues and Direct Spending

S. 269 would have a variety of effects on direct spending and receipts. The most significant effects would stem from new restrictions on payment of federal benefits to aliens, in Title II of the bill. That title would curtail the eligibility of non-legal aliens, including those permanently residing under color of law (PRUCOL), in the narrow instances where they are now eligible for federal benefits. It would require that all federal means-tested programs weigh sponsors' income (a practice known as deeming) for a minimum of 5 years after entry when gauging an immigrant's eligibility for benefits, and would require an even longer deeming period—lasting 10 years or more after arrival—for future entrants. It would make sponsors' affidavits of support legally enforceable. These provisions would save money in federal benefit programs. Partly offsetting those savings, the bill proposes one major change that could add to federal costs—a provision that is apparently intended to require the federal government to pay the full cost of emergency Medicaid services for illegal aliens. However, ambiguities in the drafting of that provision prevent CBO from estimating its effect. Although the provisions affecting benefit programs dominate

the direct spending implications of S. 269, other provisions scattered throughout Titles I and II would have small effects on collections of fines and penalties and on the receipts of federal retirement funds.

Fines. The imposition of new and enhanced civil and criminal fines in S. 269 could cause governmental receipts to increase, but CBO estimates that any such increase would be less than \$500,000 annually. Civil fines would be deposited into the general fund of the Treasury. Criminal fines would be deposited in the Crime Victims Fund and would be spent in the following year. Thus, direct spending from the fund would match the increase in revenues with a one-year lag.

Forfeiture. New forfeiture provisions in S. 269 could lead to more assets seized and forfeited to the United States, but CBO estimates that any such increase would be less than \$500,000 annually in value. Proceeds from the sale of any such assets would be deposited as revenues into the Assets Forfeiture Fund of the Department of Justice and spent out of that fund in the same year. Thus, direct spending from the Assets Forfeiture Fund would match any increase in revenues.

Supplemental Security Income. The SSI program pays benefits to low-income people with few assets who are aged 65 or older or disabled. According to tabulations by the Congressional Research Service (CRS), the SSI program for the aged is the major benefit program with the sharpest contrast in participation between noncitizens and citizens. CRS reported that nearly one-quarter of aliens over the age of 65 receive SSI, versus about 4 percent of citizens. The Social Security Administration states that about 700,000 legal aliens collect SSI (although some unknown fraction of those "aliens" are really naturalized citizens, whose change in status is not reflected in program records). About three-quarters of alien SSI recipients are immigrants legally admitted for permanent residence, who must serve out a waiting period during which their sponsor's income is "deemed" to them before they can go on the program. That waiting period was lengthened to 5 years in 1994 but is slated to return to 3 years in October 1996. The other one-quarter of alien recipients of SSI are refugees, asylees, and PRUCOLs.

S. 269 would prevent the deeming period from returning to 3 years in October 1996. Instead, the deeming period would remain at 5 years (for aliens who entered the country before enactment) and would be lengthened to 10 years or more for aliens who enter after the date of enactment. Specifically, for a future entrant, deeming in all federal means-tested programs would last until the alien had worked for 40 quarters in Social Security-covered employment—a condition that elderly immigrants,

in particular, would be unlikely ever to meet. By requiring that all income of the sponsor and spouse be deemed "notwithstanding any other provision of law," S. 269 would also nullify the exemption in current law that waives deeming when the Social Security Administration (SSA) determines that the alien applicant became disabled after he or she entered the United States.

Data from SSA records show very clearly that many aged aliens apply for SSI as soon as their deeming period is over, though such a pattern is much less apparent among younger aliens seeking benefits on the basis of disability. CBO estimates that lengthening the deeming period from 3 years to 5 years (or longer), and striking the exemption from deeming for aliens who became disabled after arrival, would save about \$0.1 billion in 1996, and \$0.3 billion to \$0.4 billion a year in 1997 through 2002. Nearly two-thirds of the savings would come from the aged, and the rest from the disabled.

S. 269 would also eliminate eligibility for SSI benefits of aliens permanently residing under color of law (PRUCOLs). That label covers such disparate groups as parolees, aliens who are granted a stay of deportation, and others with various legal statuses. PRUCOLs currently make up about 5 percent of aliens on the SSI rolls. CBO assumes that some would successfully seek to have their classification changed to another category (such as refugee or asylee) that would protect their SSI benefits. The remainder, though, would be barred from the program, generating savings of about \$0.5 billion over 7 years.

Food Stamps. The estimated savings in the Food Stamp program—\$0.2 billion over 7 years—are considerably smaller than those in SSI but likewise stem from the deeming provisions of S. 269. The Food Stamp program imposes a 3-year deeming period. Therefore, lengthening the deeming period (to 5 years for aliens already here and longer for future entrants) would save money in food stamps. S. 269 contains a narrow exemption from deeming for aliens judged to be at immediate risk of homelessness or hunger. Because the Food Stamp program already denies benefits to most PRUCOLs, no savings are estimated from that source.

Family Support. The provisions that would generate savings in SSI and food stamps would also lead to small savings in the AFDC program. The AFDC program already deems income from sponsors to aliens for 3 years after the alien's arrival. S. 269 would lengthen that period to at least 5 years (longer for future entrants). The \$0.1 billion in total savings over the 1997-2002 period would stem overwhelmingly from

the lengthening of the deeming period. Savings from ending the eligibility of PRUCOLs are estimated to be just a few million dollars a year.

Child Nutrition. S. 269 would require that the child nutrition program begin to deem sponsors' income to alien schoolchildren when weighing their eligibility for free or reduced-price lunches. Child nutrition does not employ deeming now. It does, however, take parents' income into account when determining eligibility. CBO therefore assumed that savings in child nutrition would stem mainly from the minority of cases in which a relative other than a parent (say, a grandparent or an aunt) sponsored the child's entry into the United States. CBO assumed that it would take at least two years to craft regulations and implement deeming in school systems nationwide, therefore precluding savings until 1999. Savings of about \$20 million a year would result once the deeming provision took full effect.

S. 269 explicitly preserves eligibility for the child nutrition program for illegal alien schoolchildren. CBO assumed, however, that the stepped-up screening that would be required to enforce deeming for legally admitted children would lead some illegal alien children to stop participating in the program, because their parents would fear detection.

Medicaid. S. 269 would erect several barriers to Medicaid eligibility for recent immigrants and future entrants into this country. In most cases, AFDC or SSI eligibility carries Medicaid eligibility along with it. By restricting aliens' access to those two cash programs, S. 269 would thereby generate Medicaid savings. Medicaid now has no deeming requirement at all; that is, program administrators do not consider a sponsor's income when they gauge the alien's eligibility for benefits. Therefore, it is possible for a sponsored alien to qualify for Medicaid even before he or she has satisfied the SSI waiting period. S. 269 would change that by requiring that every means-tested program weigh the income of a sponsor for at least 5 years after entry. Under current law, PRUCOLs are specifically eligible for Medicaid; S. 269 would make them ineligible.

To estimate the savings in Medicaid, CBO first estimated the number of aliens who would be barred from the SSI and AFDC programs by other provisions of S. 269. CBO then added another group—dubbed "noncash beneficiaries" in Medicaid parlance because they participate in neither of the two cash programs. The noncash participants who would be affected by S. 269 essentially fall into two groups. One is the group of elderly (and, less importantly, disabled) aliens with financial sponsors who, under current law, seek Medicaid even before they satisfy the 3-year wait for

SSI; the second is poor children and pregnant women who could, under current law, qualify for Medicaid even if they do not get AFDC. CBO multiplied the estimated number of aliens affected times an average Medicaid cost appropriate for their group. That average cost is significantly higher for an aged or disabled person than for a younger mother or child. In selecting an average cost, CBO took into account the fact that relatively few aged or disabled aliens receive expensive long-term care in Medicaid-covered institutions, but that on the other hand, few are eligible for Medicare. The resulting estimate of Medicaid savings was then trimmed by 25 percent to reflect the fact that--if the aliens in question were barred from regular Medicaid--the federal government would likely end up paying more in reimbursements for emergency care and for uncompensated care. The resulting savings in Medicaid would climb from \$0.1 billion in 1997 to about \$0.6 billion a year in 2000 through 2002, totaling \$2.7 billion over the 1996-2002 period.

One of the few benefits for which illegal aliens now qualify is emergency Medicaid, under section 1903(v) of the Social Security Act. Section 212 of S. 269 is apparently intended to make the federal government responsible for the entire cost of emergency medical care for illegal aliens, instead of splitting the cost with states as under the current matching requirements of Medicaid. However, the drafting of the provision leaves several legal and practical issues dangling. S. 269 would not repeal the current provision in section 1903(v). It would apparently establish a separate program to pay for emergency medical care. Although it stipulates that funding must be set in advance in appropriation acts, it also provides that states and localities would be entitled to receive payments for the cost of services. States and localities would therefore have an open-ended right to reimbursement, notwithstanding the ceiling implied in an appropriation act.

S. 269 orders the Secretary of Health and Human Services (HHS), in consultation with the Attorney General, to develop rules for reimbursement. Emergency patients often show up with no insurance and little other identification; therefore, if HHS drafted stringent rules for verification, it is possible that very few providers could collect the reimbursement. On the other hand, if HHS required only minimal identification, providers would have an incentive to classify as many patients as possible in this category because that would maximize their federal reimbursement. S. 269 does not state whether reimbursement would be subject to the usual limits on allowable charges in Medicaid, or whether providers could bill the federal government for their full cost. Nor is it clear whether the program would use the same definition of emergency care as in Medicaid law.

Although the budgetary effects of Section 212 cannot be estimated, some idea of its potential costs can be gained by looking at analogous proposals for the Medicaid program. CBO estimates that modifying Medicaid to reimburse states and localities for the full cost of emergency care for illegal aliens would cost approximately \$1.5 billion to \$3 billion per year. That estimate assumes that Medicaid would continue to use its current definition of emergency care and its current schedule of charges. It also assumes that states would seek to classify more aliens and more services in this category, in order to collect the greatest reimbursement.

Similarly, section 201 of the bill is meant to qualify certain mothers who are illegal aliens for pre- and post-partum care under the Medicaid program. In general, poor women who are citizens or legal immigrants can now get such care through Medicaid, but illegal aliens cannot. Although the bill would authorize \$120 million a year for such care, the new benefit would in fact be open-ended because of the entitlement nature of the Medicaid program. CBO does not have enough information to estimate the provision's cost, which would depend critically on the type of documentation demanded by the Secretary of HHS to prove that the mothers met the requirement of 3 years of continuous residence.

Earned Income Tax Credit. S. 269 would deny eligibility for the Earned Income Tax Credit (EITC) to workers who are not authorized to be employed in the United States. In practice, that provision would work by requiring valid Social Security numbers to be filed for the primary and secondary taxpayers on returns that claim the EITC. A similar provision was contained in President Clinton's 1996 budget proposal and in last fall's reconciliation bill. The Joint Committee on Taxation estimates that the provision would reduce the deficit by approximately \$0.2 billion a year.

Other programs. Entitlement or direct spending programs other than those already listed are estimated to incur negligible costs or savings over the 1997-2002 period as a consequence of S. 269. The foster care program does not appear on any list of exemptions in S. 269; but since the program does not employ deeming now, and since it is unclear how deeming could be made to work in that program (for example, whether it would apply to foster care children or parents), CBO estimates no savings. CBO estimates that the bill would not lead to any significant savings in the student loan program. The Title XX social services program, an entitlement program for the states, is funded at a fixed dollar amount set by the Congress; the eligibility or ineligibility of aliens for services would not have any direct effect on those dollar amounts.

S. 269 would have a small effect on the net outlays of federal retirement programs. Section 196 of the bill would permit certain civilian and military retirees to collect their full pensions in addition to their salary if they are reemployed by the Department of Justice to help tackle a backlog of asylum applications. CBO estimates that about 100 annuitants would be affected; and that net outlays would increase by \$1 million to \$2 million a year in 1997 through 1999.

CBO judges that S. 269 would not lead to any savings in Social Security, unemployment insurance, or other federal benefits that are based on earnings. S. 269 would deny benefits if the alien was not legally authorized to work in the United States. Since 1972, however, the law has ordered the Social Security Administration to issue Social Security numbers (SSNs) only to citizens and to aliens legally authorized to work here. A narrow exception is "nonwork" SSNs, granted for purposes such as enabling aliens to file income taxes. Since all work performed by aliens who received SSNs after 1972 is presumed to be legal, and since verifying the work authorization of people who received SSNs before 1972 is an insuperable task, CBO estimates no savings in these earnings-related benefits.

7. PAY-AS-YOU-GO CONSIDERATIONS:

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Because several sections of this bill would affect receipts and direct spending, pay-as-you-go procedures would apply. These effects are summarized in the following table.

(By fiscal year, in millions of dollars)

	1996	1997	1998
Change in outlays	0	-450	-927
Change in receipts	0	14	13

Note: Estimates do not include potential costs of establishing a program to reimburse state and local governments for the full cost of providing emergency medical care to illegal aliens. These costs could amount to as much as \$1.5 billion to \$3 billion a year.

8. ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS:

See the enclosed intergovernmental mandates statement.

9. ESTIMATED IMPACT ON THE PRIVATE SECTOR:

See the enclosed private sector mandates statement.

10. PREVIOUS CBO ESTIMATE:

On March 4, 1996, CBO provided an estimate of H.R. 2202, an immigration reform bill reported by the House Committee on Judiciary. (The bill was subsequently passed by the House, with amendments.) That bill had many provisions in common with S. 269. However, the deeming restrictions proposed in H.R. 2202 applied exclusively to future entrants; aliens who entered before the enactment date would not have been affected. Therefore, S. 269--which would apply deeming to aliens who entered in the last 5 years as well as to future entrants--would result in larger savings in many benefit programs. Also, projected discretionary spending under S. 269 would be less than under H.R. 2202.

In 1995, CBO prepared many estimates of welfare reform proposals that would have curtailed the eligibility of legal aliens for public assistance. Examples include the budget reconciliation bill (H.R. 2491) and the welfare reform bill (H.R. 4), both of which were vetoed.

11. ESTIMATE PREPARED BY:

Mark Grabowicz (226-2860), Wayne Boyington (226-2820), Sheila Dacey (226-2820), Dorothy Rosenbaum (226-2820), Robin Rudowitz (226-9010), Kathy Ruffing (226-2820), and Stephanie Weiner (226-2720).

12. ESTIMATE APPROVED BY:



Paul N. Van de Water
Assistant Director
for Budget Analysis

CONGRESSIONAL BUDGET OFFICE

ESTIMATE OF COSTS OF PRIVATE SECTOR MANDATES

April 10, 1996

1. **BILL NUMBER:** S. 269

2. **BILL TITLE:** Immigration Control and Financial Responsibility Act of 1996

3. **BILL STATUS:**

As reported, by the Senate Committee on the Judiciary on April 10, 1996.

4. **BILL PURPOSE:**

S. 269 would make many changes and additions to federal laws relating to immigration.

5. **PRIVATE SECTOR MANDATES CONTAINED IN THE BILL:**

Several provisions of the bill would impose new requirements on the private sector. In general, the private sector mandates in S. 269 lie in three areas: (1) provisions that affect the transportation industry, (2) provisions that affect aliens within the borders of the United States, and (3) provisions that affect individuals who sponsor aliens and execute affidavits of support. The estimated impacts of these mandates do not include any costs imposed on individuals not within the borders of the United States.

6. **ESTIMATED DIRECT COST TO THE PRIVATE SECTOR:**

CBO estimates that the direct costs of private sector mandates identified in S. 269 would be less than \$100 million annually through 1999, but would rise to over \$100 million in 2000 and \$300 million in 2001. In 2002 and thereafter, the direct costs would exceed \$600 million annually. The large majority of those costs would be imposed on sponsors of aliens who execute affidavits of support; such costs are now borne by the federal government and state and local governments for the provision of benefits under public assistance programs. Assuming enactment of S. 269 this summer, CBO expects that the mandates in the bill would be effective beginning in fiscal year 1997.

BASIS OF ESTIMATE

Title I, Subtitle A -- Law Enforcement

Section 151 would impose new mandates on the transportation industry -- in particular, those carriers arriving in the U.S. from overseas. Agents that transport stowaways to the U.S., even unknowingly, would be responsible for detaining them and for the costs associated with their removal. This mandate is not expected to impose large costs on the transportation industry. Over the last two years a total of only about 2000 stowaways have been detained.

Section 154 would require aliens who seek to become permanent residents to show documented proof that they have been immunized against a list of diseases classified as "vaccine-preventable" by the Advisory Committee on Immunization Practices. That requirement would impose costs on aliens who were not immunized previously or were unable to document that they had been immunized. Some of the costs might be paid for by state and local governments through public clinics. The total cost of the mandate to aliens residing in the United States would be expected to be less than \$40 million a year.

Section 155 would impose two new requirements on aliens in the U.S. who seek to adjust their status to permanent resident for the purpose of working as nonphysician health care workers. First, those aliens would be required to present a certificate from the Commission on Graduates of Foreign Nursing Schools (or an equivalent body) that verifies that the alien's education, training, license, and experience meet standards comparable to those required for domestically trained health care workers employed in the same occupation. Second, those aliens would be required to attain a certain score on a standardized test of oral and written English language proficiency.

The aggregate direct costs of complying with the new requirements imposed on nonphysician health care workers would depend on several factors: the number of aliens that attempt to adjust their status to permanent resident for the purpose of becoming a nonphysician health care worker; the costs of obtaining proof of certification and of taking an English language test; and the cost of conforming to the higher standard for those not initially qualified who would attempt to do so. At this point CBO does not have quantitative information on these factors but we do not believe that the aggregate direct costs of these mandates would be substantial. Nevertheless, for certain individuals the cost of meeting these requirements would be large.

Title II--Financial Responsibility

Title II would impose new requirements on citizens and permanent residents who execute affidavits of support for legal immigrants. At present, immigrants who are expected to

become public charges must obtain a financial sponsor who signs an affidavit of support. A portion of the sponsor's income is then "deemed" to the immigrant for use in the means-test for several federal welfare programs. Affidavits of support, however, are not legally binding documents. S. 269 would make affidavits of support legally binding, expand the responsibilities of financial sponsors, and place an enforceable duty on sponsors to reimburse the federal government or states for benefits provided in certain circumstances.

Supporting aliens to prevent them from becoming public charges would impose considerable costs on sponsors, who are included in the private sector under the Unfunded Mandates Reform Act of 1995. CBO estimates that sponsors of immigrants would face over \$20 million in additional costs in 1997. Costs would grow quickly, however. Over the period from 1998 to 2001, assuming that affidavits of support would be enforced, the costs to sponsors of immigrants would exceed \$100 million annually and would total about \$500 million during the first five years that the mandate would be effective.

Other Provisions

Several other provisions in S. 269 would impose new mandates on citizens and aliens but would result in little or no monetary cost. For example, Title II contains a new mandate that would require sponsors to notify the federal and state governments of any change of address. CBO estimates that the direct cost of these provisions would be minimal.

Section 116 of Title I would change the acceptable employment-verification documents and authorize the Attorney General to require individuals to provide their Social Security number on employment forms attesting that the individual is not an unauthorized alien. CBO estimates that the direct costs of complying with that requirement would also be minimal.

Section 181 of Title I would add categories of aliens who would not be permitted to adjust from non-immigrant to immigrant status. Any alien not in a lawful immigrant status would not be allowed to become an employment-based immigrant. Also, aliens who were employed while an unauthorized alien, or who had otherwise violated the terms of a nonimmigrant visa, would not be allowed to become an immigrant. Although these provisions would have significant impacts on certain members of the private sector, there would be no direct costs as defined by P.L. 104-4.

7. **PREVIOUS CBO ESTIMATE:**

On March 13, 1996, CBO prepared a private sector mandate statement on H.R. 2202, the Immigration in the National Interest Act of 1995, which was ordered reported by the House Committee on the Judiciary on October 24, 1995.

8. **ESTIMATE PREPARED BY:** Daniel Mont (226-2672) and Matt Eyles (226-2616)

9. **ESTIMATE APPROVED BY:**



Joseph R. Antos
Assistant Director
for Health and Human Resources

CONGRESSIONAL BUDGET OFFICE

ESTIMATED COST OF INTERGOVERNMENTAL MANDATES

April 12, 1996

1. **BILL NUMBER:** S. 269

2. **BILL TITLE:** Immigration Control and Financial Responsibility Act of 1996

3. **BILL STATUS:**

As reported by the Senate Committee on the Judiciary on April 10, 1996.

4. **BILL PURPOSE:**

S. 269 would make many changes and additions to federal laws relating to immigration. The bill would also require changes to the administration of state and local transportation, public health, and public assistance programs. Demonstration projects for verifying immigration status and for determining benefit eligibility would be conducted in a number of states, pursuant to agreements between those states and the Attorney General. Section 118 would require state and local governments to adhere to certain standards in the production of birth certificates, driver's licenses, and identification documents. Sections 201 and 203 would limit the eligibility of many aliens for public assistance and other benefits. In addition, Title II would authorize state and local governments to implement measures to minimize or recoup costs associated with providing certain benefits to legal and non-legal aliens.

5. **INTERGOVERNMENTAL MANDATES CONTAINED IN BILL:**

- State and local governments that issue birth certificates would be required to use safety paper that is tamper- and counterfeit-resistant, comply with new regulations established by the Department of Health and Human Services (HHS), and prominently note on a copy of a birth certificate if the person is known to be deceased.
- State agencies issuing driver's licenses or identification documents would be required either to print Social Security numbers on these items or collect and verify the number before issuance. They would also be required to comply with new regulations to be established by the Department of Transportation (DOT).

- State employment security agencies would be required to verify employment eligibility and complete attestations to that effect prior to referring an individual to prospective employers.
- State and local agencies administering public assistance and regulatory programs would be required to:
 - deny eligibility in most state and local means-tested benefit programs to non-legal aliens, including those "permanently residing under color of law" (PRUCOL). (PRUCOLs are aliens whose status is usually transitional or involves an indefinite stay of deportation);
 - weigh sponsors' income (a practice known as deeming) for 5 years or longer after entry when gauging a legal alien's eligibility for benefits in some large federal means-tested entitlement programs;
 - request reimbursement from sponsors via certified mail and in compliance with Social Security Administration regulations if notified that a sponsored alien has received benefits from a means-tested program;
 - notify, either individually or publicly, all ineligible aliens who are receiving benefits or assistance that their eligibility is to be terminated; and
 - deny non-legal aliens and PRUCOLs the right to receive grants, enter into contracts or loan agreements, or receive or renew professional or commercial licenses.
- State and local governments would be prohibited from imposing any restrictions on the exchange of information between governmental entities or officials and the Immigration and Naturalization Service (INS) regarding the immigration status of individuals.

6. ESTIMATED DIRECT COSTS OF MANDATES ON STATE, LOCAL, AND TRIBAL GOVERNMENTS:

(a) Is the \$50 Million Threshold Exceeded? Yes.

(b) Total Direct Costs of Mandates:

CBO estimates that these mandates would impose direct costs on state, local, and tribal governments totaling between \$80 million and \$200 million in fiscal year 1998. In the four subsequent years, mandate costs would total less than \$2 million annually. State, local, and tribal governments could face additional costs associated with the deeming requirements in each of the 5 years following enactment of the bill; however, CBO cannot quantify such costs at this time.

S. 269 also includes a number of provisions that, while not mandates, would result in significant net savings to state, local, and tribal governments. CBO estimates these savings could total several billion dollars over the next five years.

(c) Estimate of Necessary Budget Authority: Not applicable.

7. BASIS OF ESTIMATE

Of the mandates listed above, the requirements governing birth certificates and driver's licenses would impose the most significant direct costs. The bill would require issuers of birth certificates to use a certain quality safety paper when providing copies to individuals if those copies are to be acceptable for use at any federal office or state agency that issues driver licenses or identification documents. While many state issuers use adequate quality safety paper, many local clerk and registrar offices do not. The bill also requires states either to collect Social Security numbers from driver's license applicants or to print the number on the driver's license card. While a significant number of states currently use Social Security numbers as the driver's license number, the most populous states neither print the number on the card nor collect it for reference purposes.

For the purposes of preparing this estimate, CBO contacted state and local governments, public interest groups representing these governments, and a number of officials from professional associations. Because of the variation in the way state and local governments issue birth certificates, we contacted clerks and registrars in eleven states in an effort to assess the impact of the birth certificate provisions. To estimate the cost of the driver's license requirements, we contacted over twenty state government transportation officials. Most state and local governments charge fees for issuing driver's licenses and copies of birth certificates. Those governments may choose to use revenues received from these fees to pay for the expenses associated with the mandates. Under Public Law 104-4, however, these revenues are considered

a means of financing and as such cannot be counted against the mandate costs of S. 269.

Mandates with Significant Costs

Birth Certificates. Based on information from state registrars of vital statistics, CBO estimates that 60 percent of the approximately 18 million certified copies of birth certificates issued each year in the United States are printed on plain bond paper or low quality safety paper. CBO assumed that state and local issuing agencies needing to upgrade the quality of the paper would spend, on average, about \$0.10 per certificate. In addition, CBO expects the bill would induce some individuals holding copies of birth certificates that do not conform to the required standards to request new birth certificates when they would not have otherwise done so. CBO estimated that issuing agencies across the country would experience a 20 percent increase in requests for copies of birth certificates for at least five years. On this basis, CBO estimates that the birth certificate provisions in the bill would impose direct printing and personnel costs on state and local governments totaling at least \$2 million per year in each of the five years following the effective date of the provision. In addition, some state and local governments would have to replace or modify equipment in order to respond to the new requirements. CBO estimates these one-time costs would not exceed \$5 million.

Driver's Licenses. Less than half of the states include Social Security numbers on all driver's licenses or perform some type of verification with the Social Security Administration. In fact, the states with the highest populations tend to be the states that do not have these requirements, and some state laws prohibit the collection of Social Security numbers for identification and driver's license purposes. CBO estimates that of the 185 million driver's licenses and identification cards in circulation, less than 40 percent would be in compliance with the requirements of S. 269. Any driver's license or identification card that does not comply with those requirements would be invalid for any evidentiary purpose.

Given the common use of these documents as legal identifiers, CBO assumed that at least half of those individuals who currently have driver's licenses or identification cards that do not meet the requirements of S. 269 would seek early renewals. CBO assumed that states would face additional printing costs of between \$0.75 and \$1.20 per document, increased administrative costs resulting from the influx of renewals, and, for some states, one time system conversion costs. We estimate that direct costs, assuming a limited number of additional renewal requests, would total \$80 million in the first year. If more people sought early renewals, total costs could easily approach \$200 million in the first year.

The driver's license provisions in the bill would be effective immediately upon enactment. Because of the significant processing and administrative changes that states would face under these requirements, CBO has assumed that states would establish procedures for compliance in the year following enactment. Consequently, the additional expenditures resulting from reissuing licenses and identification cards would occur in 1998.

Provision of Public Assistance to Aliens. It is possible that the administrative costs associated with applying deeming requirements to some federal means-tested entitlement programs would be considered mandate costs as defined in Public Law 104-4. In entitlement programs larger than \$500 million per year, an increase in the stringency of federal conditions is considered a mandate only if states or localities lack the authority to modify their programs to accommodate the new requirements and still provide required services. In some programs--such as Aid to Families with Dependent Children (AFDC) and Food Stamps--some states may lack such authority and any new requirements would thus constitute a mandate. Given the scope and complexity of the affected programs, however, CBO has not been able to estimate either the likelihood or magnitude of such costs at this time. These costs could be significant, depending on how strictly the deeming requirements are enforced by the federal government. Any additional costs, however, would be offset at least partially by reduced caseloads in some programs.

Mandates with No Significant Costs

Many of the mandates in S. 269 would not result in measurable budgetary impacts on state, local, or tribal governments. In some cases--eligibility restrictions based on non-legal status and death notations on birth certificates--the bill's requirements simply restate current law or practice for many of the jurisdictions with large populations and would thus result in little costs or savings. In others--sponsor reimbursement requests and preemption of laws restricting the flow of information to and from the INS--the provisions would result in minor administrative costs for some state and local governments, but even in aggregate, CBO estimates these amounts would be insignificant.

The provision requiring agencies to notify certain aliens that their eligibility for benefits has been terminated would impose direct costs on state and local governments. CBO estimates such costs would be offset by savings from caseload reduction resulting from the notifications. Another provision--state job service verification of employment eligibility--may result in significant administrative costs; however, those costs are funded through federal appropriations.

8. APPROPRIATION OR OTHER FEDERAL FINANCIAL ASSISTANCE PROVIDED IN BILL TO COVER MANDATE COSTS: None.

9. OTHER IMPACTS ON STATE, LOCAL, AND TRIBAL GOVERNMENTS:

S. 269 contains many additional provisions that, while not mandates or changes to existing mandates, could have significant impacts on the budgets of state and local governments. On balance, CBO expects that the provisions discussed in this section would result in an overall net savings to state and local governments.

Means-Tested Federal Programs

S. 269 would result in significant savings to state and local governments by reducing the number of legal aliens receiving means-tested benefits through federal programs, including Medicaid, AFDC, and Supplemental Security Income (SSI). These federal programs are administered by state or local governments and have matching requirements for participation. Thus, reductions in caseloads would reduce state and local, as well as federal, outlays in these programs. CBO estimates that the savings to state and local governments would exceed \$2 billion over the next five years. These are significant and real savings, but in general, the state and local impacts of these federal programs are not defined as mandates under Public Law 104-4.

S. 269 would reduce caseloads in means-tested federal programs primarily by placing stricter eligibility requirements on both recent and future legal entrants. The bill would lengthen the time sponsored aliens must wait before they can go on AFDC or SSI, and, most notably, apply such a waiting period to the Medicaid program. S. 269 would also deny many means-tested benefits to PRUCOLs. Illegal aliens are currently ineligible for most federal assistance programs and would remain so under the proposed law.

Means-Tested State and Local Programs

It is likely that some aliens displaced from federal assistance programs would turn to assistance programs funded by state and local governments, thereby increasing the costs of these programs. While several provisions in the bill could mitigate these costs—strengthening affidavits of support by sponsors, allowing the recovery of costs from sponsors, and authorizing agencies to deem in state and local means-tested programs—CBO expects that such tools would be used only in limited circumstances in the near future. At some point, state and, particularly, local governments become the providers of last resort, and as such, we anticipate that they would face added financial pressures on their public assistance programs that would at least partially

offset the savings they realize from the federal programs. Because these state and local programs are voluntary activities of those governments, increases in the costs of these programs are not mandate costs.

Medicaid

Emergency Medical Services. Section 212 of S. 269 is apparently intended to offer state and local governments full reimbursement for the costs of providing emergency medical services to non-legal aliens and PRUCOLs on the condition that they follow verification procedures to be established by the Secretary of Health and Human Services, after consultation with the Attorney General and state and local officials. Existing law requires that state and local governments provide these services and, under current matching requirements, pay approximately half of the costs. Ambiguities in the drafting of the provision prevent CBO from estimating its effect.

While no reliable totals are available of the amounts currently spent to provide the services, areas with large alien populations claim that this requirement results in a substantial drain on their budgets. For example, California, with almost half the country's illegal alien population, estimates it spends over \$350 million each year on these federally mandated services. Although CBO cannot estimate the effects of Section 212 on state and local governments, some idea of its potential effects can be gained by looking at analogous proposals for the Medicaid program. CBO estimates that modifying Medicaid to reimburse states and localities for the full cost of emergency care for illegal aliens would increase federal Medicaid payments to states by \$1.5 billion to \$3 billion per year.

Pre- and Post-Partum Care. The bill would allow certain mothers who are non-legal aliens to qualify for pre- and post-partum care under the Medicaid program. CBO does not have enough information to estimate the potential budget impacts to state and local governments of this provision. Such impacts would depend critically on the type of documentation demanded by the Secretary of HHS to prove that the mothers met the requirement of 3 years of continuous residence in the United States.

10. PREVIOUS CBO ESTIMATE:

On March 13, 1996, CBO prepared an intergovernmental mandates statement on H.R. 2202, an immigration reform bill reported by the House Committee on the Judiciary. (The bill was subsequently passed by the House, with amendments.) That bill had many provisions in common with S. 269. H.R. 2202 did not, however, include any of the requirements relating to driver's licenses, identification documents, or birth certificates that appear in S. 269. In addition, the deeming restrictions in

H.R. 2202 applied exclusively to future entrants; aliens who entered before the enactment date would not have been affected. Therefore, S. 269--which would apply deeming to aliens who entered in the last five years as well as to future entrants--would produce larger net savings in many benefit programs.

11. ESTIMATE PREPARED BY: Leo Lex and Karen McVey (225-3220).

12. ESTIMATE APPROVED BY:



Paul N. Van de Water
Assistant Director
for Budget Analysis

104TH CONGRESS
1ST SESSION

S. 580

To amend the Immigration and Nationality Act to control illegal immigration to the United States, reduce incentives for illegal immigration, reform asylum procedures, strengthen criminal penalties for the smuggling of aliens, and reform other procedures.

IN THE SENATE OF THE UNITED STATES

MARCH 21 (legislative day, MARCH 16), 1995

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to control illegal immigration to the United States, reduce incentives for illegal immigration, reform asylum procedures, strengthen criminal penalties for the smuggling of aliens, and reform other procedures.

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 "Illegal Immigration
5 Control and Enforcement Act of 1995".

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—ILLEGAL IMMIGRATION CONTROL AND ENFORCEMENT

PART A—INCREASED BORDER PATROL, SUPPORT, TRAINING, AND RESOURCES

- Sec. 111. Border Patrol expansion and deployment.
- Sec. 112. Hiring preference for bilingual Border Patrol agents.
- Sec. 113. Improved Border Patrol training.
- Sec. 114. Border equipment and infrastructure improvement authority.

PART B—EXPANDED BORDER INSPECTION PERSONNEL, SUPPORT, AND FACILITIES

- Sec. 121. Additional land border inspectors.

PART C—DETENTION AND DEPORTATION

- Sec. 131. Bar to collateral attacks on deportation orders in unlawful reentry prosecutions.
- Sec. 132. Form of deportation hearings.
- Sec. 133. Deportation as a condition of probation.

PART D—ENHANCED CRIMINAL ALIEN DEPORTATION AND TRANSFER

- Sec. 141. Expansion in definition of “aggravated felony”.
- Sec. 142. Restricting defenses to deportation for certain criminal aliens.
- Sec. 143. Denial of discretionary relief to aliens convicted of aggravated felonies.
- Sec. 144. Judicial deportation.
- Sec. 145. Negotiations for international agreements.
- Sec. 146. Annual report.
- Sec. 147. Admissibility of videotaped witness testimony.

TITLE II—ILLEGAL IMMIGRATION INCENTIVE REDUCTION

PART A—PUBLIC BENEFITS CONTROL

- Sec. 211. Authority to States and localities to limit assistance to aliens and to distinguish among classes of aliens in providing general public assistance.
- Sec. 212. Increased maximum criminal penalties for forging or counterfeiting seal of a Federal department or agency to facilitate benefit fraud by an unlawful alien.
- Sec. 213. Sponsorship enhancement.
- Sec. 214. State option under the medicaid program to place anti-fraud investigators in hospitals.
- Sec. 215. Ports-of-entry benefits task force demonstration projects.

PART B—EMPLOYER SANCTIONS SUPPORT

- Sec. 221. Additional Immigration and Naturalization Service investigators.
- Sec. 222. Enhanced penalties for unlawful employment of aliens.
- Sec. 223. Earned income tax credit denied to individuals not authorized to be employed in the United States.

- Sec. 224. Enhanced minimum criminal penalties for extortion of aliens engaged in unlawful or involuntary holding employment.
- Sec. 225. Work authorization verification.

PART C—ENHANCED WAGE AND HOUR LAWS

- Sec. 231. Increased personnel levels for the Labor Department.
- Sec. 232. Increased number of Assistant United States Attorneys.

TITLE III—ENHANCED SMUGGLING CONTROL AND PENALTIES

- Sec. 301. Minimum criminal penalties for alien smuggling.
- Sec. 302. Expanded forfeiture for smuggling or harboring illegal aliens.
- Sec. 303. Wiretap authority for alien smuggling investigations.
- Sec. 304. Limitation on section 212(c) authority.
- Sec. 305. Effective date.

TITLE IV—ADMISSIONS AND DOCUMENT FRAUD CONTROL

- Sec. 401. Minimum criminal penalties for document fraud.

TITLE V—BORDER CROSSING USER FEE

- Sec. 501. Immigration Law Enforcement Fund.

1 **TITLE II—ILLEGAL IMMIGRA-**
2 **TION INCENTIVE REDUCTION**

3 **PART A—PUBLIC BENEFITS CONTROL**

4 **SEC. 211. AUTHORITY TO STATES AND LOCALITIES TO**
5 **LIMIT ASSISTANCE TO ALIENS AND TO DIS-**
6 **TINGUISH AMONG CLASSES OF ALIENS IN**
7 **PROVIDING GENERAL PUBLIC ASSISTANCE.**

8 (a) **IN GENERAL.**—Subject to subsection (b) and not-
9 withstanding any other provision of law, a State or local
10 government may prohibit or otherwise limit or restrict the
11 eligibility of aliens or classes of aliens for programs of gen-
12 eral cash public assistance furnished under the law of the
13 State or a political subdivision of a State.

14 (b) **LIMITATION.**—The authority under subsection (a)
15 may be exercised only to the extent that any prohibitions,
16 limitations, or restrictions are not inconsistent with the
17 eligibility requirements for comparable Federal programs
18 or are less restrictive. For the purposes of this section,
19 attribution to an alien of a sponsor's income and resources
20 for purposes of determining the eligibility for and amount
21 of benefits of an alien shall be considered less restrictive
22 than a prohibition of eligibility.

1 **SEC. 212. INCREASED MAXIMUM CRIMINAL PENALTIES FOR**
2 **FORGING OR COUNTERFEITING SEAL OF A**
3 **FEDERAL DEPARTMENT OR AGENCY TO FA-**
4 **CILITATE BENEFIT FRAUD BY AN UNLAWFUL**
5 **ALIEN.**

6 Section 506 of title 18, United States Code, is
7 amended to read as follows:

8 **“§ 506. Seals of departments or agencies**

9 “(a) Whoever—

10 “(1) falsely makes, forges, counterfeits, muti-
11 lates, or alters the seal of any department or agency
12 of the United States, or any facsimile thereof;

13 “(2) knowingly uses, affixes, or impresses, any
14 such fraudulently made, forged, counterfeited, muti-
15 lated, or altered seal or facsimile thereof to or upon
16 any certificate, instrument, commission, document,
17 or paper of any description; or

18 “(3) with fraudulent intent, possesses, sells, of-
19 fers for sale, furnishes, offers to furnish, gives away,
20 offers to give away, transports, offers to transport,
21 imports, or offers to import any such seal or fac-
22 simile thereof, knowing the same to have been so
23 falsely made, forged, counterfeited, mutilated, or al-
24 tered,

25 shall be fined under this title, or imprisoned not more than
26 5 years, or both.

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

5 “(1) so forged, counterfeited, mutilated, or al-
6 tered;

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

10 “(3) with fraudulent intent, possessed, sold, of-
11 fered for sale, furnished, offered to furnish, given
12 away, offered to give away, transported, offered to
13 transport, imported, or offered to import,

14 with the intent or effect of facilitating an unlawful alien’s
15 application for, or receipt of, a Federal benefit, the pen-
16 alties which may be imposed for each offense under sub-
17 section (a) shall be two times the maximum fine, and 3
18 times the maximum term of imprisonment, or both, that
19 would otherwise be imposed for an offense under sub-
20 section (a).

21 “(c) For purposes of this section—

22 “(1) the term ‘Federal benefit’ has the meaning
23 given such term under section 293(c)(1);

24 “(2) the term ‘unlawful alien’ has the meaning
25 given such term under section 293(c)(2); and

1 “(3) each instance of forgery, counterfeiting,
2 mutilation, or alteration shall constitute a separate
3 offense under this section.”.

4 **SEC. 213. SPONSORSHIP ENHANCEMENT.**

5 (a) **IN GENERAL.**—An alien who—

6 (1) is excludable under section 212(a)(4) of the
7 Immigration and Nationality Act (8 U.S.C.
8 1182(a)(4));

9 (2) has not given a suitable bond (as described
10 in section 213 of the Immigration and Nationality
11 Act (8 U.S.C. 1183)); and

12 (3) is otherwise admissible into the United
13 States;

14 may only be admitted into the United States when spon-
15 sored by an individual (referred to in this section as the
16 alien’s “sponsor”) who enters into a legally binding con-
17 tract with the United States that guarantees financial re-
18 sponsibility for the alien until such alien becomes a United
19 States citizen.

20 (b) **CONTRACT ENHANCEMENT.**—

21 (1) **IN GENERAL.**—A contract described in sub-
22 section (a) shall provide—

23 (A) that the sponsor shall be liable for any
24 costs incurred by any Federal, State, or politi-

1 cal subdivision of a State for general public
2 cash assistance provided to such alien;

3 (B) that the sponsor shall—

4 (i) within 20 days of the alien's ad-
5 mission into the United States, purchase a
6 policy of private health insurance (which
7 meets the minimum guidelines established
8 under paragraph (2)) on behalf of such
9 alien and provide the Immigration and
10 Naturalization Service with proof of such
11 purchase; and

12 (ii) make any necessary premium pay-
13 ments for such policy on behalf of such
14 alien for the duration of the sponsor's re-
15 sponsibility under the contract; and

16 (C) that the sponsor's responsibility under
17 the contract will continue until the date on
18 which the alien becomes a citizen of the United
19 States.

20 (2) GUIDELINES FOR HEALTH INSURANCE
21 POLICIES.—Not later than 60 days after the date of
22 the enactment of this Act, the Secretary of Health
23 and Human Services, after notice and opportunity
24 for public comment, shall establish minimum guide-

1 lines with respect to private policies of health insur-
2 ance required under paragraph (1)(B)(i) that—

3 (A) specify the coverage and type of the in-
4 surance required; and

5 (B) provide that the Attorney General
6 shall be given notice if the policy lapses or the
7 scope of the coverage changes prior to the end
8 of the sponsor's responsibility under the con-
9 tract.

10 (c) ENFORCEMENT.—

11 (1) IN GENERAL.—If general public cash assist-
12 ance or medical assistance under a State plan for
13 medical assistance approved under section 1902 of
14 the Social Security Act (42 U.S.C. 1396a) is pro-
15 vided to a sponsored alien, the Attorney General, a
16 State, or a political subdivision of a State may bring
17 a civil suit against the sponsor in the United States
18 district court for the district in which the sponsor
19 resides for the recovery of any costs incurred by any
20 Federal, State, or political subdivision of a State in
21 providing such cash benefits or medical assistance
22 provided to such alien.

23 (2) DEPORTATION.—The failure of a sponsor to
24 comply with the terms of the contract described in
25 subsection (b)(1)(B) may, subject to the contract, be

1 grounds for deportation of the sponsored alien in ac-
2 cordance with the provisions of the Immigration and
3 Naturalization Act and the deportation procedures
4 applicable under such Act.

5 (d) EXCEPTIONS TO LIABILITY.—A sponsor or a
6 sponsor's estate shall not be liable under a contract de-
7 scribed in subsection (a) if the sponsor—

8 (1) dies;

9 (2) if the sponsor's family becomes impover-
10 ished as determined by the official poverty line (as
11 defined by the Office of Management and Budget
12 and revised annually in accordance with section
13 673(2) of the Omnibus Budget Reconciliation Act of
14 1981 applicable to the family of the size involved)
15 due to unforeseeable circumstances; or

16 (3) is a debtor under title 11, United States
17 Code, as such term is defined in section 101 of such
18 title.

19 (e) PUBLIC CHARGE TEST.—The Attorney General
20 shall record the use of sponsorship by immigrant appli-
21 cants to meet the public charge test for admission to the
22 United States set forth in section 212(a)(4) of the Immi-
23 gration and Naturalization Act (8 U.S.C. 1182(a)(4)).

24 (f) EFFECTIVE DATE.—This section shall apply with
25 respect to initial sponsorship-based applications for legal

1 admission into the United States received on or after the
2 date that is 90 days after the date of the enactment of
3 this Act.

4 **SEC. 214. STATE OPTION UNDER THE MEDICAID PROGRAM**
5 **TO PLACE ANTI-FRAUD INVESTIGATORS IN**
6 **HOSPITALS.**

7 (a) IN GENERAL.—Section 1902(a) of the Social Se-
8 curity Act (42 U.S.C. 1396a(a)) is amended—

9 (1) by striking “and” at the end of paragraph
10 (61);

11 (2) by striking the period at the end of para-
12 graph (62) and inserting “and”; and

13 (3) by adding after paragraph (62) the follow-
14 ing new paragraph:

15 “(63) in the case of a State that is certified by
16 the Attorney General as a high illegal immigration
17 State (as determined by the Attorney General), at
18 the option of the State, establish and operate a pro-
19 gram for the placement of anti-fraud investigators in
20 State, county, and private hospitals located in the
21 State to verify the immigration status and income
22 eligibility of applicants for medical assistance under
23 the State plan prior to the furnishing of medical as-
24 sistance.”.

1 (b) PAYMENT.—Section 1903 of such Act (42 U.S.C.
2 1396b) is amended—

3 (1) by striking “plus” at the end of paragraph
4 (6);

5 (2) by striking the period at the end of para-
6 graph (7) and inserting “plus”; and

7 (3) by adding at the end the following new
8 paragraph:

9 “(8) an amount equal to the Federal medical
10 assistance percentage (as defined in section 1905(b))
11 of the total amount expended during such quarter
12 which are attributable to operating a program under
13 section 1902(a)(63).”

14 (c) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall take effect on the first day of the first
16 calendar quarter beginning after the date of the enactment
17 of this Act.

18 **SEC. 215. PORTS-OF-ENTRY BENEFITS TASK FORCE DEM-**
19 **ONSTRATION PROJECTS.**

20 (a) IN GENERAL.—

21 (1) PROJECT DESCRIBED.—The Attorney Gen-
22 eral shall make grants to States to conduct dem-
23 onstration projects in accordance with subsection (b)
24 for the purpose of establishing and operating a task

1 force at one or more southwestern ports-of-entry lo-
2 cated in a State in order to—

3 (A) detect individuals attempting to enter
4 the United States to illegally obtain Federal or
5 State benefits; and

6 (B) identify individuals who have pre-
7 viously illegally obtained such benefits.

8 (2) SOUTHWESTERN PORT-OF-ENTRY.—For
9 purposes of this section, the term “southwestern
10 port-of-entry” means an official entry point along
11 the southwestern land border of the continental
12 United States.

13 (b) REQUIREMENTS OF PROJECT.—A project con-
14 ducted in accordance with this subsection shall provide
15 that a task force under the project shall—

16 (1) interview and investigate an individual en-
17 tering into the United States at a southwestern
18 port-of-entry if the individual is suspected of being
19 an individual described in subparagraphs (A) or (B)
20 of subsection (a)(1) (as determined by comparing
21 the entering individual with a profile (developed by
22 the task force) of individuals described in such sub-
23 paragraphs); and

24 (2) integrate the computer systems of the Im-
25 migration and Naturalization Service and the agency

1 administering the State plan for medical assistance
2 approved under section 1902 of the Social Security
3 Act (42 U.S.C. 1396a) in order to detect individuals
4 described in subparagraphs (A) and (B) of sub-
5 section (a)(1) prior to the individual's entry into the
6 United States at a southwestern port-of-entry.

7 (c) APPLICATIONS.—

8 (1) IN GENERAL.—Each State desiring to con-
9 duct a demonstration project under this section shall
10 prepare and submit to the Attorney General an ap-
11 plication at such time, in such manner, and contain-
12 ing such information as the Attorney General may
13 require.

14 (2) PRIORITY.—The Attorney General shall give
15 priority in awarding grants under this section to
16 States that desire to establish demonstration
17 projects at southwestern ports-of-entry that—

18 (A) have the highest numbers of legal
19 crossings attempted in fiscal year 1995;

20 (B) have the highest numbers of illegal
21 aliens determined by the Attorney General to be
22 resident in the State in which the southwestern
23 port-of-entry is located; and

24 (C) meet such other factors as the Attor-
25 ney General determines are reasonably related

1 to maximizing the degree to which Federal and
2 State benefits fraud may be reduced through
3 operation of the project.

4 (d) SCOPE AND LOCATION.—The Attorney General
5 shall authorize demonstration projects in not less than 6
6 southwestern ports-of-entry under this section.

7 (e) DURATION.—A demonstration project under this
8 section shall be conducted for a period not to exceed 2
9 years.

10 (f) REPORTS.—A State that conducts a demonstra-
11 tion project under this section shall prepare and submit
12 to the Attorney General annual and final reports in such
13 form and containing such information as the Attorney
14 General may require.

15 (g) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated such sums as may be
17 necessary in fiscal years 1996 and 1997 for the purpose
18 of conducting demonstration projects in accordance with
19 this section.

20 **PART B—EMPLOYER SANCTIONS SUPPORT**

21 **SEC. 221. ADDITIONAL IMMIGRATION AND NATURALIZA-**
22 **TION SERVICE INVESTIGATORS.**

23 (a) INVESTIGATORS.—The Attorney General is au-
24 thorized to hire for fiscal years 1996 and 1997 such addi-
25 tional investigators and staff as may be necessary to ag-

1 gressively enforce existing sanctions against employers
 2 who employ workers in the United States illegally or who
 3 are otherwise ineligible to work in this country.

4 **SEC. 222. ENHANCED PENALTIES FOR UNLAWFUL EMPLOY-**
 5 **MENT OF ALIENS.**

6 (a) **HIRING, RECRUITING, AND REFERRAL VIOLA-**
 7 **TIONS.**—Section 274A(e)(4) of the Immigration and Na-
 8 tionality Act (8 U.S.C. 1324a(e)(4)) is amended—

9 (1) in clause (i), by striking “\$250” and
 10 “\$2,000” and inserting “\$1,000” and “\$3,000”, re-
 11 spectively;

12 (2) in clause (ii), by striking “\$2,000” and
 13 “\$5,000” and inserting “\$3,000” and “\$7,000”, re-
 14 spectively; and

15 (3) in clause (iii), by striking “\$3,000” and
 16 “\$10,000” and inserting “\$7,000” and “\$20,000”,
 17 respectively.

18 (b) **PATTERN OR PRACTICE VIOLATIONS.**—Section
 19 274A(f) of such Act is amended by striking “\$3,000” and
 20 “six months” and inserting “\$9,000” and “two years”.

21 **SEC. 223. EARNED INCOME TAX CREDIT DENIED TO INDIVIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES.**

22
 23
 24 (a) **IN GENERAL.**—Section 32(c)(1) of the Internal
 25 Revenue Code of 1986 (relating to individuals eligible to

1 claim the earned income tax credit) is amended by adding
2 at the end the following new subparagraph:

3 “(F) IDENTIFICATION NUMBER REQUIRE-
4 MENT.—The term ‘eligible individual’ does not
5 include any individual who does not include on
6 the return of tax for the taxable year—

7 “(i) such individual’s taxpayer identi-
8 fication number, and

9 “(ii) if the individual is married (with-
10 in the meaning of section 7703), the tax-
11 payer identification number of such indi-
12 vidual’s spouse.”

13 (b) SPECIAL IDENTIFICATION NUMBER.—Section 32
14 of the Internal Revenue Code of 1986 is amended by add-
15 ing at the end the following new subsection:

16 “(k) IDENTIFICATION NUMBERS.—Solely for pur-
17 poses of subsections (c)(1)(F) and (c)(3)(D), a taxpayer
18 identification number means a social security number is-
19 sued to an individual by the Social Security Administra-
20 tion (other than a social security number issued pursuant
21 to clause (II) (or that portion of clause (III) that relates
22 to clause (II)) of section 205(c)(2)(B)(i) of the Social Se-
23 curity Act).”

24 (c) EXTENSION OF PROCEDURES APPLICABLE TO
25 MATHEMATICAL OR CLERICAL ERRORS.—Section

1 6213(g)(2) of the Internal Revenue Code of 1986 (relating
2 to the definition of mathematical or clerical errors) is
3 amended by striking “and” at the end of subparagraph
4 (D), by striking the period at the end of subparagraph
5 (E) and inserting “, and”, and by inserting after subpara-
6 graph (E) the following new subparagraph:

7 “(F) an omission of a correct taxpayer
8 identification number required under section 23
9 (relating to credit for families with younger
10 children) or section 32 (relating to the earned
11 income tax credit) to be included on a return.”

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 1995.

3 **SEC. 225. WORK AUTHORIZATION VERIFICATION.**

4 The Attorney General, together with the Secretary of
5 Health and Human Services, shall develop and implement
6 a counterfeit-resistant system to verify work eligibility and
7 federally-funded public assistance benefits eligibility for all
8 persons within the United States. If the system developed
9 includes a document (designed specifically for use for this
10 purpose), that document shall not be used as a national
11 identification card, and the document shall not be required
12 to be carried or presented by any person except at the
13 time of application for federally funded public assistance
14 benefits or to comply with employment eligibility verifica-
15 tion requirements.

STATEMENTS ON INTRODUCED
BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN:

S. 580. A bill to amend the Immigration and Nationality Act to control illegal immigration to the United States, reduce incentives for illegal immigration, reform asylum procedures, strengthen criminal penalties for the smuggling of aliens, and reform other procedures; to the Committee on the Judiciary.

THE ILLEGAL IMMIGRATION CONTROL AND
ENFORCEMENT ACT OF 1995

Mrs. FEINSTEIN. Mr. President, I rise today to introduce, and now send to the desk, the Illegal Immigration Control and Enforcement Act of 1995. This bill incorporates many of the concepts in the immigration package that I introduced in the last session of Congress. New proposals have been added, however, after consultation with many, including California's law enforcement officials and others interested in curbing illegal immigration.

Mr. President, I offer this legislation not to compete with Senator SIMPSON's S. 269, which he introduced on January 24, but rather to complement it. Little in this bill is duplicative of Senator SIMPSON's legislation. I am convinced that, combined, these two bills could offer a strong, straightforward program to stop illegal immigration.

There simply is no time to lose. The crisis of illegal immigration continues in California and throughout the Nation.

Too many people are still able to illegally cross our borders, and too few States, most notably California, carry the burden of having to support, educate, and often incarcerate the hundreds of thousands who enter this country illegally each year.

There is no doubt in my mind that our border enforcement has improved in the last 2 years and I want to thank this administration for an unprecedented commitment to that end. I am equally convinced, however, that steps already taken have been insufficient to fully address the problem.

Despite its major flaws and probable unconstitutionality, proposition 187 in California was overwhelmingly approved by voters last November. The message was clear: Stop illegal immigration. If Congress does not heed this warning, I fear an even more serious backlash nationwide against all immigrants, including those who want to come to our country legally.

IMPACT ON CALIFORNIA

One reason proposition 187 passed by such a large margin is that Californians know the impact of immigration on our State. According to 1993 INS statistics, 45 percent of the Nation's illegal immigrants are now in California. That means between 1.6 and 2.3 million illegal immigrants now reside in our State; 15 percent of California's State prison population—or almost 20,000 inmates—is comprised of incarcerated illegal immigrants; 45 percent of all persons with pending asylum cases reside in California; 35 percent of the refugees to this country claimed residency in California in 1993; and almost 30 percent of the legal immigrants in this have country chosen to live in California.

According to the Governor of our State, illegal immigration in fiscal year 1995-96 will cost California an estimated \$3.6 billion, including an \$2.66 billion for the federally mandated costs of education, health care, and incarceration. By anyone's estimation, that is a staggering sum, and a tremendous burden on just one State.

THE NEED FOR IMMIGRATION REFORM

I believe our Federal response to the problem of illegal immigration must address four key goals: First, control illegal immigration at the border; second, reduce the economic incentives to come to the United States illegally; third, deal swiftly and severely with document forgers and alien smugglers; and fourth, remove criminal aliens from our Nation's prisons and jails, while assuring that their sentences are served in their countries of origin.

BORDER CONTROL

This legislation requires that at least 700, and up to 1,000, new Border Patrol agents be hired in each of the next 3 fiscal years. It differs from the crime bill in one critical respect. The crime bill authorized the hiring of up to 1,000 new agents in each of Fiscal Years 1996, 1997 and 1998. This bill further requires that a minimum of 700 agents per year

be hired. It thus adds a floor to the crime bill which will assure that no fewer than 2,100 new agents, and up to 900 support personnel, will be on board by the end of Fiscal Year 1998 for a total of 7,082 Border Patrol agents.

It mandates the hiring of sufficient INS border inspectors to fully staff all legal crossing lanes at peak periods. The bill also provides for improved border infrastructure and Border Patrol training.

REDUCING INCENTIVES

Second, this legislation substantially expands existing employer sanctions and wage and hour law enforcement programs to reduce the biggest incentives for undocumented persons to come to this country, namely jobs.

Central to this effort is the creation of a counterfeit-proof work and benefits authorization verification system. Any employer—and any provider of federally funded benefits—ought to be 100 percent certain that a candidate is here legally. A counterfeit-proof verification system is the only way this can be achieved.

In addition, this bill dramatically increases the civil fines for anyone who knowingly hires, recruits, or refers illegal aliens for hiring. This is important because today the civil penalties for illegally hiring an illegal immigrant are very low. Fines range between just \$250 and \$2,000—per alien hired—for a first offense.

This bill would increase that range from \$1,000 to \$3,000 for the first offense.

Second offenses would carry per alien fines of between \$3,000 and \$7,000, and third or later offenses would cost \$7,000 to \$20,000 per alien—that is more than double the current \$3,000 to \$10,000 liability.

It dramatically increases the criminal penalties for a pattern or practice of hiring illegal immigrants. This bill doubles the maximum criminal fine, and triples the maximum jail sentence, for anyone who facilitates a fraudulent application for benefits by an unlawful alien by counterfeiting the seal or stamp of any Federal agency. If this bill is enacted, the new maximums will be \$500,000, or 15 years in jail, or both.

It provides for additional INS and Department of Labor inspectors to enforce existing laws and provides for the hiring of additional assistant U.S. attorneys to more aggressively prosecute these crimes.

SMUGGLING AND DOCUMENT FRAUD

Shutting down false document mills, counterfeiters, smugglers, and smuggling organizations is the third priority at the core of this legislation.

Smugglers and forgers will find this to be a very tough bill indeed. This legislation broadens current Federal asset seizure authority to include those who smuggle or harbor illegal aliens, and those who produce false work and benefits documents.

It imposes tough minimum and maximum sentences on smugglers, and it imposes those penalties for each alien

smuggled. At the moment, penalties are assessed per transaction, no matter how many illegal immigrants a smuggler takes across our borders.

This bill increases the penalty for smugglers in the event that an alien is injured, killed, or subject to blackmail threats by the smuggler.

It makes it easier to deport so-called weekend warriors—legal permanent residents, green card holders, who are in the United States, smuggle illegal immigrants for profit, and then try to use their immigration status to avoid being deported from the United States.

It dramatically increases penalties for document forgers or counterfeiters. First offenders will be sentenced to 2½ to 5 years, 5 to 10 years with any prior felony conviction, and 10 to 15 years with two or more prior felonies. Currently, document forgers can receive as little as 0 to 6 months for a first offense.

CRIMINAL ALIENS

This legislation is intended to once again signal that the President must have the authority, by treaty, to deport aliens convicted of crimes in this country for secure incarceration in such aliens' home countries.

Although we have prisoner transfer treaty agreements with many nations now, they are subject to the consent of the prisoner to be transferred. If the prisoner does not consent, he is not transferred.

This legislation eliminates that obstacle. It also would speed up the deportation process and make more criminal aliens deportable by broadening the definition of an aggravated felony for which aliens may already be deported to include document fraud crimes not now independent grounds for deportation; it classifies as aggravated felonies certain offenses punishable by 3 years, rather than for which an alien has actually been sentenced to 5 years or more. As a result, it would definitely increase the number of criminals who would qualify for deportation as having committed aggravated felony.

In addition, courts would have the authority to require that, in order to receive a sentence of probation rather than a prison term, an illegal alien convicted of a crime would be required to consent to being deported as a condition of probation. This would give prosecutors the option of ejecting from the country relatively low-level offenders after trial without going through an additional, and often lengthy, deportation hearing.

SPONSORS OF LEGAL IMMIGRANTS

Before concluding, let me note just one other feature of the bill which pertains to immigrants who have lawfully come to the United States on the basis of a citizen's—usually an immediate relative's—sponsorship. The legislation would require anyone who sponsors a legal immigrant for admission to the United States to make good on their promise of financial support should the

legal alien require assistance before becoming a citizen.

In addition, past proposals to strengthen sponsorship agreements typically exempted sponsors from liability for medical costs.

This legislation would make sponsors responsible for the costs of medical care, requiring them to obtain health insurance for the immigrant they have sponsored. The insurance would be of a type and amount to be specified by the Secretary of Health and Human Services, and would be required to be purchased within 20 days of an immigrant's arrival in this country. A safety valve is built into the bill, however, for sponsors who die, or who become impoverished or bankrupt.

BORDER CROSSING FEE

This bill also provides a funding mechanism for this package with a border crossing fee of \$1 per person, which could yield up to \$400 million per year. The border control, the infrastructure, the training, the additional narcotics abatement efforts provided in this bill all could be underwritten by such a fee.

CONCLUSION

In conclusion, Mr. President, immigration is too much at the core of what America means to each of us individually, and to our society collectively, to politicize and polarize the coming debate. If we are to map common ground together, it is the spirit of compromise that must prevail. We owe America—America the Nation and America the idea—no less.

I look forward to continuing to work closely with the chairman of my subcommittee, Senator SIMPSON, with Senators KENNEDY and SIMON, and with all of my Republican colleagues on the subcommittee to present the full Judiciary Committee and the Senate with the best possible comprehensive illegal immigration legislation as quickly as possible.

104TH CONGRESS
1ST SESSION

S. 754

To amend the Immigration and Nationality Act to more effectively prevent illegal immigration by improving control over the land borders of the United States, preventing illegal employment of aliens, reducing procedural delays in removing illegal aliens from the United States, providing wiretap and asset forfeiture authority to combat alien smuggling and related crimes, increasing penalties for bringing aliens unlawfully into the United States, and making certain miscellaneous and technical amendments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 3 (legislative day, MAY 1), 1995

Mr. KENNEDY (for himself, Mr. SIMON, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to more effectively prevent illegal immigration by improving control over the land borders of the United States, preventing illegal employment of aliens, reducing procedural delays in removing illegal aliens from the United States, providing wiretap and asset forfeiture authority to combat alien smuggling and related crimes, increasing penalties for bringing aliens unlawfully into the United States, and making certain miscellaneous and technical amendments, 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 Enforce-
 5 ment Improvements Act of 1995”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—BORDER ENFORCEMENT

- Sec. 101. Authorization for border control strategies.
- Sec. 102. Border Patrol expansion.
- Sec. 103. Land border inspection enhancements.
- Sec. 104. Increased penalties for failure to depart, illegal reentry, and passport and visa fraud.
- Sec. 105. Pilot program on interior repatriation of deportable or excludable aliens.
- Sec. 106. Special exclusion in extraordinary migration situations.
- Sec. 107. Immigration emergency provisions.
- Sec. 108. Commuter lane pilot programs.

TITLE II—CONTROL OF UNLAWFUL EMPLOYMENT AND VERIFICATION

- Sec. 201. Reducing the number of employment verification documents.
- Sec. 202. Employment verification pilot projects.
- Sec. 203. Confidentiality of data under employment eligibility verification pilot projects.
- Sec. 204. Collection of social security numbers.
- Sec. 205. Employer sanctions penalties.
- Sec. 206. Criminal penalties for document fraud.
- Sec. 207. Civil penalties for document fraud.
- Sec. 208. Subpoena authority.
- Sec. 209. Increased penalties for employer sanctions involving labor standards violations.
- Sec. 210. Increased civil penalties for unfair immigration-related employment practices.
- Sec. 211. Retention of employer sanctions fines for law enforcement purposes.
- Sec. 212. Telephone verification system fee.
- Sec. 213. Authorizations.

TITLE III—ILLEGAL ALIEN REMOVAL

- Sec. 301. Civil penalties for failure to depart.
- Sec. 302. Judicial deportation.
- Sec. 303. Conduct of proceedings by electronic means.

- Sec. 304. Subpoena authority.
- Sec. 305. Stipulated exclusion and deportation.
- Sec. 306. Streamlining appeals from orders of exclusion and deportation.
- Sec. 307. Sanctions against countries refusing to accept deportation of their nationals.
- Sec. 308. Custody of aliens convicted of aggravated felonies.
- Sec. 309. Limitations on relief from exclusion and deportation.
- Sec. 310. Rescission of lawful permanent resident status.
- Sec. 311. Increasing efficiency in removal of detained aliens.

TITLE IV—ALIEN SMUGGLING CONTROL

- Sec. 401. Wiretap authority for investigations of alien smuggling and document fraud.
- Sec. 402. Applying racketeering offenses to alien smuggling.
- Sec. 403. Expanded asset forfeiture for smuggling or harboring aliens.
- Sec. 404. Increased criminal penalties for alien smuggling.
- Sec. 405. Undercover investigation authority.
- Sec. 406. Amended definition of aggravated felony.

TITLE V—INSPECTIONS AND ADMISSIONS

- Sec. 501. Civil penalties for bringing inadmissible aliens from contiguous territories.
- Sec. 502. Definition of stowaway; excludability of stowaway; carrier liability for costs of detention.
- Sec. 503. List of alien and citizen passengers arriving or departing.
- Sec. 504. Elimination of limitations on immigration user fees for certain cruise ship passengers.
- Sec. 505. Transportation line responsibility for transmit without visa aliens.
- Sec. 506. Authority to determine visa processing procedures.
- Sec. 507. Border services user fee.

TITLE VI—MISCELLANEOUS AND TECHNICAL AMENDMENTS

- Sec. 601. Alien prostitution.
- Sec. 602. Grants to states for medical assistance to underdocumented immigrants.
- Sec. 603. Technical corrections to Violent Crime Control Act and Technical Corrections Act.
- Sec. 604. Expeditious deportation.
- Sec. 605. Authorization for use of volunteers.

17 **TITLE II—CONTROL OF UNLAWFUL**
18 **EMPLOYMENT AND VERIFICATION**

19 **SEC. 201. REDUCING THE NUMBER OF EMPLOYMENT VER-**
20 **IFICATION DOCUMENTS.**

21 (a) PROVISION OF SOCIAL SECURITY ACCOUNT NUM-
22 BERS.—Section 274A of the Immigration and Nationality
23 Act (8 U.S.C. 1324a) is amended by adding at the end
24 of subsection (b)(2) a new sentence to read as follows:
25 “The Attorney General is authorized to require an individ-

1 ual to provide on the form described in subsection
2 (b)(1)(A) that individual's Social Security account number
3 for purposes of complying with this section.”.

4 (b) CHANGES IN ACCEPTABLE DOCUMENTATION FOR
5 EMPLOYMENT AUTHORIZATION AND IDENTITY.—Section
6 274A(b)(1) of the Immigration and Nationality Act (8
7 U.S.C. 1324a(b)(1)) is amended—

8 (1) in subparagraph (B)—

9 (A) by striking clauses (ii), (iii), and (iv)
10 and redesignating clause (v) as clause (ii),

11 (B) in clause (i), by adding at the end
12 “or”, and

13 (C) in redesignated clause (ii), by revising
14 the introductory text to read as follows:

15 “(ii) resident alien card, alien reg-
16 istration card, or other document des-
17 igned by regulation by the Attorney Gen-
18 eral, if the document—”; and

19 (D) in redesignated clause (ii) by striking
20 the period after subclause (II) and by adding a
21 new subclause (III) to read as follows:

22 “(III) and contains appropriate
23 security features.” and

24 (2) in subparagraph (C)—

- 1 (A) by inserting “or” after the “;” at the
2 end of clause (i),
3 (B) by striking clause (ii), and
4 (C) by redesignating clause (iii) as clause
5 (ii).

6 (c) EFFECTIVE DATE.—The amendments made by
7 subsections (a) and (b) shall apply with respect to hiring
8 (or recruiting or referring) occurring on or after such date
9 (not later than 180 days after the date of the enactment
10 of this Act) as the Attorney General shall designate.

11 **SEC. 202. EMPLOYMENT VERIFICATION PILOT PROJECTS.**

12 (a) The Attorney General, together with the Commis-
13 sioner of Social Security, shall conduct pilot projects to
14 test methods to accomplish reliable verification of eligi-
15 bility for employment in the United States. The pilot
16 projects tested may include—

17 (1) an expansion of the telephone verification
18 system to include, by the end of fiscal year 1996,
19 participation by up to 1,000 employers;

20 (2) a process which allows employers to verify
21 the eligibility for employment of new employees
22 using Social Security Administration (SSA) records
23 and, if necessary, to conduct a cross-check using im-
24 migration and Naturalization Service (INS) records;

1 (3) a simulated linkage of the electronic records
2 of the INS and the SSA to test the technical fea-
3 sibility of establishing a linkage between the actual
4 electronic records of the INS and the SSA; or

5 (4) improvements and additions to the elec-
6 tronic records of the INS and the SSA for the pur-
7 pose of using such records for verification of employ-
8 ment eligibility.

9 (b) The pilot projects referred to in subsection (a)
10 shall be conducted in such locations and with such number
11 of employers as is consistent with their pilot status.

12 (c) The pilot projects referred to in subsection (a)
13 shall begin not later than 12 months after the enactment
14 of this Act and may continue for a period of 3 years. Dur-
15 ing the pilot projects, the Attorney General shall track
16 complaints of discrimination arising from the administra-
17 tion or enforcement of the pilot projects. Not later than
18 60 days prior to the conclusion of this 3-year period, the
19 Attorney General shall submit to the Congress a report
20 on the pilot projects. The report shall include evaluations
21 of each of the pilot projects according to the following cri-
22 teria: cost effectiveness, technical feasibility, resistance to
23 fraud, protection of confidentiality and privacy, and pro-
24 tection against discrimination, and which projects, if any,
25 should be adopted.

1 (d) Upon completion of the report required by sub-
2 section (c), the Attorney General is authorized to continue
3 implementation on a pilot basis for an additional period
4 of 1 year any or all of the pilot projects authorized in sub-
5 section (a). The Attorney General shall inform Congress
6 of a decision to exercise this authority not later than the
7 end of the 3-year period specified in subsection (c).

8 (e) Nothing in this section shall exempt the pilot
9 projects from any and all applicable civil rights laws, in-
10 cluding, but not limited to, section 102 of the Immigration
11 Reform and Control Act of 1986, as amended; title VII
12 of the Civil Rights Act of 1964, as amended; the Age Dis-
13 crimination in Employment Act of 1967, as amended; the
14 Equal Pay Act of 1963, as amended; and the Americans
15 with Disabilities Act of 1990, as amended.

16 (f) In conducting the pilot projects referred to in sub-
17 section (a), the Attorney General may require appropriate
18 notice to prospective employees concerning the employers'
19 participation in the pilot projects. Any notice should con-
20 tain information for filing complaints with the Attorney
21 General regarding operation of the pilot projects, includ-
22 ing discrimination in the hiring and firing of employees
23 and applicants on the basis of race, national origin, or citi-
24 zenship status.

1 **SEC. 203. CONFIDENTIALITY OF DATA UNDER EMPLOY-**
2 **MENT ELIGIBILITY VERIFICATION PILOT**
3 **PROJECTS.**

4 (a) Any personal information obtained in connection
5 with a pilot project under section 202 may not be made
6 available to government agencies, employers, or other per-
7 sons except to the extent necessary—

8 (1) to verify that an employee is not an unau-
9 thorized alien (as defined in section 274a(h)(3) of
10 the Immigration and Nationality Act (8 U.S.C.
11 1324a(h)(3));

12 (2) to take other action required to carry out
13 section 202; or

14 (3) to enforce the Immigration and Nationality
15 Act (8 U.S.C. 1101 et seq.) or sections 911, 1001,
16 1028, 1546, or 1621 of title 18, United States Code.

17 (b) No employer may participate in a pilot project
18 under section 202 unless the employer has in place such
19 procedures as the Attorney General shall require—

20 (1) to safeguard all personal information from
21 unauthorized disclosure and condition redisclosure of
22 such information to any person or entity upon its
23 agreement also to safeguard such information; and

24 (2) to provide notice to all individuals of the
25 right to request an agency to correct or amend the

1 individual's record and the steps to follow to make
2 such a request.

3 (c)(1) Any person who is a United States citizen,
4 United States national, lawful permanent resident, or
5 other employment authorized alien, and who is subject to
6 work authorization verification under section 202 shall be
7 considered an individual under section 552a(a)(2) of title
8 5, United States Code, but only with respect to records
9 covered by this section.

10 (2) For purposes of this section, a record shall mean
11 an item, collection, or grouping of information about an
12 individual that is created, maintained, or used by a Fed-
13 eral agency in the course of a pilot project under section
14 202 to make a final determination concerning an individ-
15 ual's authorization to work in the United States, and that
16 contains the individual's name or identifying number,
17 symbol, or other identifying particular assigned to the in-
18 dividual.

19 (d) Whenever an employer or other person willfully
20 and knowingly—

21 (1) discloses or uses information for a purpose
22 other than those permitted under subsection (a), or

23 (2) fails to comply with a requirement of the
24 Attorney General pursuant to subsection (b),

1 after notice and opportunity for an administrative hearing
2 conducted by the Attorney General or the Commissioner
3 of Social Security, as appropriate, or by a designee, the
4 employer or other person shall be subject to a civil money
5 penalty of not less than \$1,000 nor more than \$10,000
6 for each violation. In determining the amount of the pen-
7 alty, consideration shall be given to the intent of the per-
8 son committing the violation, the impact of the violation,
9 and any history of previous violations by the person.

10 (e) Nothing in this section shall limit the rights and
11 remedies otherwise available to United States citizens and
12 lawful permanent residents under section 552a of title 5,
13 United States Code.

14 (f) Nothing in this section or in section 202 shall be
15 construed to authorize, directly or indirectly, the issuance
16 or use of national identification cards or the establishment
17 of a national identification card.

18 **SEC. 204. COLLECTION OF SOCIAL SECURITY NUMBERS.**

19 Section 264 of the Immigration and Nationality Act
20 (8 U.S.C. 1304) is amended by adding at the end a new
21 subsection (f) to read as follows:

22 “(f) Notwithstanding any other provision of law, the
23 Attorney General is authorized to require any alien to pro-
24 vide the alien’s Social Security account number for pur-

1 poses of inclusion in any record of the alien maintained
2 by the Attorney General.”.

3 **SEC. 205. EMPLOYER SANCTIONS PENALTIES.**

4 (a) INCREASED CIVIL MONEY PENALTIES FOR HIR-
5 ING, RECRUITING, AND REFERRAL VIOLATIONS.—Section
6 274A(e)(4)(A) of the Immigration and Nationality Act (8
7 U.S.C. 1324(e)(4)(A)) is amended—

8 (1) in clause (i), by striking “\$250” and
9 “\$2,000” and inserting “\$1,000” and “\$3,000”, re-
10 spectively;

11 (2) in clause (ii) by striking “\$2,000” and
12 “\$5,000” and inserting “\$3,000” and “\$8,000”, re-
13 spectively; and

14 (3) in clause (iii), by striking “\$3,000” and
15 “\$10,000” and inserting “\$8,000” and “\$25,000”,
16 respectively.

17 (b) INCREASED CIVIL MONEY PENALTIES FOR PA-
18 PERWORK VIOLATIONS.—Section 274A(e)(5) of the Immi-
19 gration and Nationality Act (8 U.S.C. 1324a(e)(5)) is
20 amended by striking “\$100” and “\$1,000” and inserting
21 “\$200” and “\$5,000”, respectively.

22 (c) INCREASED CRIMINAL PENALTIES FOR PATTERN
23 OR PRACTICE VIOLATIONS.—Section 274A(f)(1) of the
24 Immigration and Nationality Act (8 U.S.C. 1324a(f)(1))
25 is amended by inserting the phrase “guilty of a felony and

1 shall be” immediately after the phrase “subsection
2 (a)(1)(A) or (a)(2).” Section 274A(f)(1) of such Act is
3 further amended by striking “\$3,000” and “six months”
4 and inserting “\$7,000” and “two years”, respectively.

5 **SEC. 206. CRIMINAL PENALTIES FOR DOCUMENT FRAUD.**

6 (a) FRAUD AND MISUSE OF GOVERNMENT-ISSUED
7 IDENTIFICATION DOCUMENTS.—Section 1028(b)(1) of
8 title 18, United States Code, is amended by striking “five
9 years” and inserting “10 years” and by adding at the end
10 the following new provision: “Notwithstanding any other
11 provision of this title, the maximum term of imprisonment
12 that may be imposed for an offense under this section—

13 “(1) if committed to facilitate a drug traffick-
14 ing crime (as defined in 929(a)) is 15 years; and

15 “(2) if committed to facilitate an act of inter-
16 national terrorism (as defined in section 2331) is 20
17 years.”.

18 (b) CHANGES TO THE SENTENCING LEVELS.—Pur-
19 suant to section 994 of title 28, United States Code, and
20 section 21 of the Sentencing Act of 1987, the United
21 States Sentencing Commission shall promptly promulgate
22 guidelines, or amend existing guidelines, to make appro-
23 priate increases in the base offense levels for offenses
24 under section 1028(a) of title 18, United States Code.

1 **SEC. 207. CIVIL PENALTIES FOR DOCUMENT FRAUD.**

2 (a) **ACTIVITIES PROHIBITED.**—Section 274C(a) of
3 the Immigration and Nationality Act (8 U.S.C. 1324c(a))
4 is amended—

5 (1) by striking “or” at the end of paragraph
6 (3);

7 (2) by striking the period and inserting ”; or”
8 at the end of paragraph (4); and

9 (3) by adding at the end the following:

10 “(5) to present before boarding a common car-
11 rier for the purpose of coming to the United States
12 a document that relates to the alien’s eligibility to
13 enter the United States and to fail to present such
14 document to an immigration officer upon arrival at
15 a United States port of entry, or

16 “(6) in reckless disregard of the fact that the
17 information is false or does not relate to the appli-
18 cant, to prepare, to file, or to assist another in pre-
19 paring or filing, documents which are falsely made
20 (including but not limited to documents which con-
21 tain false information, material misrepresentation,
22 or information which does not relate to the appli-
23 cant) for the purposes of satisfying a requirement of
24 this Act.

25 The Attorney General may waive the penalties of this sec-
26 tion with respect to an alien who knowingly violates para-

1 graph (5) if the alien is subsequently granted asylum
2 under section 208 or withholding of deportation under sec-
3 tion 243(h). For the purposes of this section, the phrase
4 ‘falsely made any document’ includes the preparation or
5 provision of any document required under this Act, with
6 knowledge or in reckless disregard of the fact that such
7 document contains a false, fictitious, or fraudulent state-
8 ment or material representation, or has no basis in law
9 or fact, or otherwise fails to state a material fact pertain-
10 ing to the document.”.

11 (b) CONFORMING AMENDMENTS FOR CIVIL PEN-
12 ALTIES.—Section 274C(d)(3) of the Immigration and Na-
13 tionality Act (8 U.S.C. 1324c(d)(3)) is amended by strik-
14 ing “each document used, accepted, or created and each
15 instance of use, acceptance, or creation” in each of the
16 two places it appears and inserting “each document that
17 is the subject of a violation under subsection (a)”.

18 **SEC. 208. SUBPOENA AUTHORITY.**

19 (a) IMMIGRATION OFFICER AUTHORITY.—

20 (1) Section 274A(e)(2) of the Immigration and
21 Nationality Act (8 U.S.C. 1324a(e)(2)) is amended
22 by—

23 (A) striking at the end of subparagraph

24 (A) “and”;

1 (B) striking at the end of subparagraph

2 (B) “.” and inserting “, and”; and

3 (C) adding a new subparagraph (C) to

4 read as follows:

5 “(C) immigration officers designated by
6 the Commissioner may compel by subpoena the
7 attendance of witnesses and the production of
8 evidence at any designated place prior to the fil-
9 ing of a complaint in a case under paragraph
10 (3).”.

11 (2) Section 274C(d)(1) of the Immigration and
12 Nationality Act (8 U.S.C. 1324a(e)(2)) is amended
13 by—

14 (A) striking at the end of subparagraph

15 (A) “and”;

16 (B) striking at the end of subparagraph

17 (B) “.” and inserting “, and”; and

18 (C) adding a new subparagraph (C) to

19 read as follows:

20 “(C) immigration officers designated by
21 the Commissioner may compel by subpoena the
22 attendance of witnesses and the production of
23 evidence at any designated place prior to the fil-
24 ing of a complaint in a case under paragraph
25 (2).”.

1 (b) SECRETARY OF LABOR SUBPOENA AUTHOR-
2 ITY.—The Immigration and Nationality Act is amended
3 by adding a new section 294 (8 U.S.C. 1364) to read as
4 follows:

5 **“§ 294. Secretary of Labor subpoena authority**

6 “The Secretary of Labor may issue subpoenas requir-
7 ing the attendance and testimony of witnesses or the pro-
8 duction of any records, books, papers, or documents in
9 connection with any investigation or hearing conducted in
10 the enforcement of any immigration program for which the
11 Secretary of Labor has been delegated enforcement au-
12 thority under the Act. In such hearing, the Secretary of
13 Labor may administer oaths, examine witnesses, and re-
14 ceive evidence. For the purpose of any such hearing or
15 investigation, the authority contained in sections 9 and 10
16 of the Federal Trade Commission Act (15 U.S.C. 49, 50),
17 relating to the attendance of witnesses and the production
18 of books, papers, and documents, shall be available to the
19 Secretary of Labor.”.

20 **SEC. 209. INCREASED PENALTIES FOR EMPLOYER SANC-**
21 **TIONS INVOLVING LABOR STANDARDS VIOLA-**
22 **TIONS.**

23 (a) Section 274A(e) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1324a(e)) is amended by adding a new
25 paragraph (10) to read as follows:

1 “(10)(A) The administrative law judge shall
2 have the authority to require payment of a civil
3 money penalty in an amount up to two times the
4 level of the penalty prescribed by this subsection in
5 any case where the employer has been found to have
6 committed willful or repeated violations of any of the
7 following statutes:

8 “(i) The Fair Labor Standards Act, sec-
9 tion 201 of title 29, United States Code et seq.,
10 pursuant to a final determination by the Sec-
11 retary of Labor or a court of competent juris-
12 diction.

13 “(ii) The Migrant and Seasonal Agricul-
14 tural Worker Protection Act, section 1801 of
15 title 29, United States Code et seq., pursuant
16 to a final determination by the Secretary of
17 Labor or a court of competent jurisdiction.

18 “(iii) The Family and Medical Leave Act,
19 section 2601 of title 29, United States Code et
20 seq., pursuant to a final determination by a
21 court of competent jurisdiction.

22 “(B) The Secretary of Labor and the Attorney
23 General shall consult regarding the administration of
24 the provisions of this paragraph.”

1 (b) Section 274B(g) of the Immigration and Nation-
2 ality Act (8 U.S.C. 1324b(g)) is amended by adding a new
3 paragraph (4) to read as follows:

4 “(4)(A) The administrative law judge shall have
5 the authority to require payment of a civil money
6 penalty in an amount up to two times the level of
7 the penalty prescribed by this subsection in any case
8 where the employer has been found to have commit-
9 ted willful or repeated violations of any of the follow-
10 ing statutes:

11 “(i) The Fair Labor Standards Act, sec-
12 tion 201 of title 29, United States Code et seq.,
13 pursuant to a final determination by the Sec-
14 retary of Labor or a court of competent juris-
15 diction.

16 “(ii) The Migrant and Seasonal Agricul-
17 tural Worker Protection Act, section 1801 of
18 title 29, United States Code et seq., pursuant
19 to a final determination by the Secretary of
20 Labor or a court of competent jurisdiction.

21 “(iii) The Family and Medical Leave Act,
22 section 2601 of title 29, United States Code et
23 seq., pursuant to a final determination by a
24 court of competent jurisdiction.

1 “(B) The Secretary of Labor and the Attorney
2 General shall consult regarding the administration of
3 the provisions of this paragraph.”.

4 (c) Section 274C(d) of the Immigration and Nation-
5 ality Act (8 U.S.C. 1324c(d)) is amended by adding a new
6 paragraph (7) to read as follows:

7 “(7)(A) The administrative law judge shall have
8 the authority to require payment of a civil money
9 penalty in an amount up to two times the level of
10 the penalty prescribed by this subsection in any case
11 where the employer has been found to have commit-
12 ted willful or repeated violations of any of the follow-
13 ing statutes:

14 “(i) The Fair Labor Standards Act, sec-
15 tion 201 of title 29, United States Code et seq.,
16 pursuant to a final determination by the Sec-
17 retary of Labor or a court of competent juris-
18 diction.

19 “(ii) The Migrant and Seasonal Agricul-
20 tural Worker Protection Act, section 1801 of
21 title 29, United States Code et seq., pursuant
22 to a final determination by the Secretary of
23 Labor or a court of competent jurisdiction.

24 “(iii) The Family and Medical Leave Act,
25 section 2601 of title 29, United States Code et

1 seq., pursuant to a final determination by a
2 court of competent jurisdiction.

3 “(B) The Secretary of Labor and the Attorney
4 General shall consult regarding the administration of
5 the provisions of this paragraph.”.

6 **SEC. 210. INCREASED CIVIL PENALTIES FOR UNFAIR IMMI-**
7 **GRATION-RELATED EMPLOYMENT PRAC-**
8 **TICES.**

9 (a) Section 274B(g)(2)(B) of the Immigration and
10 Nationality Act (8 U.S.C. 1324b(g)(2)(B)) is amended—

11 (1) in clause (iv)(I), by striking “\$250” and
12 “\$2,000” and inserting “\$1,000” and “\$3,000”, re-
13 spectively;

14 (2) in clause (iv)(II), by striking “\$2,000” and
15 “\$5,000” and inserting “\$3,000” and “\$8,000”, re-
16 spectively;

17 (3) in clause (iv)(III), by striking “\$3,000” and
18 “\$10,000” and inserting “\$8,000” and “\$25,000”,
19 respectively; and

20 (4) in clause (iv)(IV), by striking “\$100” and
21 “\$1,000” and inserting “\$200” and “\$5,000”, re-
22 spectively.

1 **SEC. 211. RETENTION OF EMPLOYER SANCTIONS FINES**
2 **FOR LAW ENFORCEMENT PURPOSES.**

3 Section 286(c) of the Immigration and Nationality
4 Act (8 U.S.C. 1356(c)) is amended by striking the period
5 at the end of the section and by adding the following: “;
6 *Provided further*, That all monies received during each fis-
7 cal year in payment of penalties under section 274A of
8 this Act in excess of \$5,000,000 shall be credited to the
9 Immigration and Naturalization Service Salaries and Ex-
10 penses appropriations account that funds activities and re-
11 lated expenses associated with enforcement of that section
12 and shall remain available until expended.”.

13 **SEC. 212. TELEPHONE VERIFICATION SYSTEM FEE.**

14 Section 274A(d) of the Immigration and Nationality
15 Act (8 U.S.C. 1324a(d)) is amended by adding at the end
16 a new paragraph (5) to read as follows:

17 “(5) TELEPHONE VERIFICATION SYSTEM
18 FEE.—

19 “(A) The Attorney General is authorized
20 to collect a fee from employers, recruiters, or
21 referrers who subscribe to participate in a tele-
22 phone verification system pilot under this sec-
23 tion.

24 “(B) Funds collected pursuant to this au-
25 thorization shall be deposited as offsetting col-
26 lections to the Immigration and Naturalization

1 Service Salaries and Expenses appropriations
2 account solely to fund the costs incurred to pro-
3 vide alien employment verification services
4 through such a system.”.

5 **SEC. 213. AUTHORIZATIONS.**

6 There are authorized to be appropriated such sums
7 as may be necessary to carry out this title. None of the
8 costs incurred in carrying out this title shall be paid for
9 out of any trust fund established under the Social Security
10 Act.

certain miscellaneous and technical amendments, and for other purposes: to the Committee on the Judiciary.

IMMIGRATION ENFORCEMENT IMPROVEMENTS
ACT

Mr. KENNEDY. Mr. President, it is a privilege to introduce the Immigration Enforcement Improvements Act of 1995 today on behalf of the Clinton administration.

This important bill builds upon the administration's already impressive record in addressing the pressing national problem of illegal immigration.

We must take strong steps to stop illegal immigration, while continuing to welcome those immigrants who enter lawfully within our immigration ceilings and contribute so much to the Nation.

This administration has done more to close the door on illegal immigration than any previous administration. With expected increases this year and next, we will have increased border control staffing by 51 percent since President Clinton took office—including border patrols and inspectors at border crossing points and airports. We have tripled the deportation of illegal immigrants and targeted the removal of criminal aliens. We have increased the budget of the Immigration Service by over 70 percent from \$1.5 billion in 1993 to \$2.6 billion requested for 1996.

The real credit for these impressive accomplishments goes to President Clinton, Attorney General Janet Reno, and Immigration Commissioner Doris Meissner for their effective leadership and commitment to meeting the challenge of illegal immigration.

The legislation introduced today recognizes that there is no single solution to illegal immigration. The bill will give the administration a variety of tools to control our borders more effectively, to deny jobs to illegal workers, and to remove illegal immigrants who are here in violation of our laws.

The bill authorizes increases in enforcement personnel of no less than 700 Border Patrol agents annually for the next 3 years, and authorizes the increases in INS inspectors needed to enable full staffing at airports and entry points.

The bill imposes new, stiff penalties for alien smuggling, document fraud and other serious immigration offenses.

The bill authorizes pilot programs to test effective ways to verify that job applicants are eligible to work in the United States. The goal is to find simple and effective ways of denying jobs to illegal immigrants, and thereby shutting down the magnet that draws so many illegal aliens to this country.

The bill promotes coordination on workplace enforcement between the Immigration Service and the Department of Labor, since employers who hire undocumented workers often also violate other labor standards as well.

Finally, the bill expedites the removal of criminal aliens by eliminating needless procedures and redtape.

By Mr. KENNEDY (for himself,
Mr. SIMON, and Mrs. BOXER):

S. 754. A bill to amend the Immigration and Nationality Act to more effectively prevent illegal immigration by improving control over the land borders of the United States, preventing illegal employment of aliens, reducing procedural wiretap and asset forfeiture authority to combat alien smuggling and related crimes, increasing penalties for bringing aliens unlawfully into the United States, and making

I commend the administration for their impressive initiative. Immigration should not be a partisan issue. In the weeks ahead, I look forward to working closely with Senator SIMPSON, the chairman of the Judiciary Subcommittee on Immigration, and with many other colleagues on both sides of the aisle to bring bipartisan legislation before the Senate capable of dealing with the serious challenges we face.

I ask unanimous consent that a more detailed summary of the bill may be printed in the RECORD, along with the text of the bill itself.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 754

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Immigration Enforcement Improvements Act of 1995"

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short Title.

Sec. 2. Table of Contents.

TITLE I—BORDER ENFORCEMENT

Sec. 101. Authorization for Border Control Strategies.

Sec. 102. Border Patrol Expansion.

Sec. 103. Land Border Inspection Enhancements.

Sec. 104. Increased Penalties for Failure to Depart, Illegal Reentry, and Passport and Visa Fraud.

Sec. 105. Pilot Program on Interior Repatriation of Deportable or Excludable Aliens.

Sec. 106. Special Exclusion in Extraordinary Migration Situations.

Sec. 107. Immigration Emergency Provisions

Sec. 108. Commuter Lane Pilot Programs.

TITLE II—CONTROL OF UNLAWFUL EMPLOYMENT AND VERIFICATION

Sec. 201. Reducing the Number of Employment Verification Documents.

Sec. 202. Employment Verification Pilot Projects.

Sec. 203. Confidentiality of Data Under Employment Eligibility Verification Pilot Projects.

Sec. 204. Collection of Social Security Numbers.

Sec. 205. Employer Sanctions Penalties.

Sec. 206. Criminal Penalties for Document Fraud.

Sec. 207. Civil Penalties for Document Fraud.

Sec. 208. Subpoena Authority.

Sec. 209. Increased Penalties for Employer Sanctions Involving Labor Standards Violations.

Sec. 210. Increased Civil Penalties for Unfair Immigration-Related Employment Practices.

Sec. 211. Retention of Employer Sanctions. Fines for Law Enforcement Purposes.

Sec. 212. Telephone Verification System Fee.

Sec. 213. Authorizations.

TITLE III—ILLEGAL ALIEN REMOVAL

Sec. 301. Civil Penalties for Failure to Depart.

Sec. 302. Judicial Deportation.

Sec. 303. Conduct of Proceedings by Electronic Means.

Sec. 304. Subpoena Authority.

Sec. 305. Stipulated Exclusion and Deportation.

Sec. 306. Streamlining Appeals from Orders of Exclusion and Deportation.

Sec. 307. Sanctions Against Countries Refusing to Accept Deportation of Their Nationals.

Sec. 308. Custody of Aliens Convicted of Aggravated Felonies.

Sec. 309. Limitations on Relief from Exclusion and Deportation.

Sec. 310. Rescission of Lawful Permanent Resident Status.

Sec. 311. Increasing Efficiency in Removal of Detained Aliens

TITLE IV—ALIEN SMUGGLING CONTROL

Sec. 401. Wiretap Authority for Investigations of Alien Smuggling and Document Fraud.

Sec. 402. Applying Racketeering Offenses to Alien Smuggling.

Sec. 403. Expanded Asset Forfeiture for Smuggling or Harboring Aliens.

Sec. 404. Increased Criminal Penalties for Alien Smuggling.

Sec. 405. Undercover Investigation Authority.

Sec. 406. Amended Definition of Aggravated Felony

TITLE V—INSPECTIONS AND ADMISSIONS

Sec. 501. Civil Penalties for Bringing Inadmissible Aliens from Contiguous Territories.

Sec. 502. Definition of Stowaway; Excludability of Stowaway; Carrier Liability for Costs of Detention.

Sec. 503. List of Alien and Citizen Passengers Arriving or Departing.

Sec. 504. Elimination of Limitations on Immigration User Fees for Certain Cruise Ship Passengers.

Sec. 505. Transportation Line Responsibility for Transit Without Visa Aliens.

Sec. 506. Authority to Determine Visa Processing Procedures.

Sec. 507. Border Services User Fee.

TITLE VI—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Sec. 601. Alien Prostitution.

Sec. 602. Grants to States for Medical Assistance to Undocumented Immigrants.

Sec. 603. Technical Corrections to Violent Crime Control Act and Technical Corrections Act.

Sec. 604. Expeditious Deportation.

Sec. 605. Authorization for Use of Volunteers.

part under an order of deportation, and section 276(b) for illegal reentry after deportation to reflect the enhanced penalties provided in section 130001 of the Violent Crime Control Act of 1994 (VCCA).

The VCCA made failure to depart after a final order of deportation punishable by imprisonment of not more than four years, or not more than 10 years if the alien is deportable for alien smuggling, has committed certain other criminal offenses, has failed to register, has falsified documents, or is engaged in security-related espionage or terrorism.

The VCCA also provided for punishment of 10 years imprisonment of any alien who reenters subsequent to deportation for conviction or commission of three or more misdemeanors involving drugs, crimes against the person, or both. Imprisonment for aliens who reenter after deportation for aggravated felony was raised from 15 to 20 years.

Section 104(b) directs the Sentencing Commission to make appropriate increases in the base offense level for sections 1541-46 of Title 18, U.S.C. (passport and visa fraud) to reflect the enhanced penalties provided in section 130009 of the VCCA.

The VCCA increases the penalties for passport and visa fraud to up to 10 years imprisonment in most cases; and changes prior law by eliminating the option for fines instead of imprisonment and increasing the maximum number of years in prison.

Sec. 105. Pilot program on interior repatriation of deportable or excludable aliens.

This section permits the Attorney General to establish a pilot program for deportation of persons to the interior, rather than the border area, of a contiguous country. It mandates a report to Congress not later than 3 years after initiation of any pilot program.

Sec. 106. Special exclusion in extraordinary migration situations.

This section will aid with border control by allowing aliens to be excluded from entering the United States during extraordinary migration situations or when the aliens are arriving on board smuggling vessels. Persons with a credible fear of persecution in their countries of nationality will be allowed to enter the United States to apply for asylum.

Section 106(a) amends section 235 of the Immigration and Nationality Act (INA) to clarify that an alien in exclusion proceedings who has arrived from a foreign contiguous country may be returned to that country while the proceedings are pending.

Section 106(b) amends section 235 of the INA, relating to inspection requirements, by adding two new subsections, 235(d) and 235(e). New subsection (d) allows the Attorney General to order an alien excluded and deported without a hearing before an immigration judge. This authority may be exercised when the Attorney General declares an extraordinary migration situation to exist (because of the number of aliens en route to or arriving in the United States, including by aircraft) or when aliens are brought to the United States or arrive in the United States on board a smuggling vessel. (This language is virtually identical to that passed by the full Senate Judiciary Committee in August 1994 as a substitute for the general expedited exclusion authority proposed in S. 1333.)

A person will not be subject to expedited exclusion if he or she claims asylum and establishes a credible fear of persecution in his or her country of nationality. However, a person may be returned to a third country in which he or she has no credible fear of persecution or of return to persecution.

There is no administrative review of an order of special exclusion except for persons previously admitted to the United States as lawful permanent residents. Asylum denials would be reviewable by an asylum officer.

SECTION-BY-SECTION ANALYSIS AS PREPARED
BY THE DEPARTMENT OF JUSTICE
TITLE I—BORDER ENFORCEMENT

Sec. 101. Authorization for border control strategies.

This section authorizes the appropriation to the Department of Justice of the funds necessary for expanded control at the land borders.

Sec. 102. Border patrol expansion.

This section mandates the Attorney General in fiscal years 1996, 1997, and 1998, to increase the number of border patrol agents to the maximum extent possible and consistent with standards of professionalism and training, by no fewer than 700 each year.

Sec. 103. Land border inspection enhancements.

This section mandates the Attorney General, subject to appropriations or the availability of funds in the Border Services User Fee Account, to increase the number of land border inspectors in fiscal years 1996 and 1997 to a level that will provide full staffing to end undue delay and facilitate inspections at the land border ports of entry.

Sec. 104. Increased penalties for failure to depart, illegal reentry, and passport and visa fraud.

Section 104(a) directs the U.S. Sentencing Commission to increase the base offense level under section 242(e) for failure to de-

but there is no judicial review of the asylum denial. (See section 308, below, for amendments to the judicial review provisions of the INA, which limit judicial review of a special exclusion order to certain issues through habeas proceedings.)

New subsection 235(e) provides that a person may not attack prior orders of deportation as a defense against penalties for illegal reentries.

Sec. 107. Immigration emergency provisions.

Section 107(a) amends section 404(b) of the INA to permit reimbursement of other Federal agencies, as well as the States, out of the immigration emergency fund. Reimbursements could be made to other countries for repatriation expenses without the requirements that the President declare an immigration emergency.

Section 107(b) amends 50 U.S.C. 191 (Magnuson Act) to permit the control and seizure of vessels when the Attorney General determines that urgent circumstances exist due to a mass migration of aliens.

Section 107(c) amends section 101(a) of the INA by authorizing the Attorney General to designate local enforcement officers to enforce the immigration laws when the Attorney General determines that an actual or imminent mass migration of aliens present urgent circumstances.

Sec. 108. Commuter land pilot programs.

To facilitate border management, this section amends section 286(q) of the INA and the 1994 Department of Justice Appropriations Act to permit expansion of commuter lane pilot programs at land borders.

It also amends the 1994 Justice Appropriations Act to allow the Immigration and Naturalization Service (INS) to establish these projects on the Northern, as well as the Southern, border.

TITLE II—CONTROL OF UNLAWFUL EMPLOYMENT AND VERIFICATION

Sec. 201. Reducing the number of employment verification documents.

The provisions of this section will strengthen enforcement of employer sanctions. These provisions will assist interior enforcement and decrease nonimmigrant overstays by making it more difficult for illegal aliens to gain unlawful employment.

Section 201(a) amends section 274A(b)(2) of the INA to permit the Attorney General to require any individual to provide his or her Social Security account number on any forms required as part of employment verification process.

Section 201(b) amends section 274A(b)(1)(B) of the INA to eliminate three types of documents that may be present to establish both an individual's employment authorization and identity.

Under current law, by statute and regulation, an individual may present 1 or more of up to 29 documents to establish employment authorization, identity, or both.

Documents that now establish both employment authorization and identity are a U.S. passport, certificate of U.S. citizenship, certificate of naturalization, unexpired foreign passport with work authorization, or a resident alien card or other alien registration card containing a photograph and work authorization. Under this amendment, only a U.S. passport, resident alien card, or alien registration card or other employment authorization document issued by the Attorney General would establish both employment authorization and identity.

Subsection (b) also amends 274A(b)(1)(C) of the INA to eliminate the use of a U.S. birth certificate as a document that can establish work authorization.

Subsections (a) and (b) would apply with respect to hirings occurring not later than

180 days after enactment, as designated by the Attorney General.

Sec. 202. Employment verification pilot projects.

This section provides for the Attorney General, working with the Commissioner of Social Security, to conduct pilot projects to test methods for reliable and nondiscriminatory verification of employment eligibility. Pilot programs may include the expansion of the telephone verification system up to 1000 employers; a simulated linkage of INS and Social Security Administration (SSA) databases; a process to allow employers to verify employment eligibility through SSA records using INS records as a crosscheck; and improvements and additions to the INS and SSA databases to make them more accessible for employment verification purposes. Pilots are to run for 3 years with an option for a 1-year extension and are to be limited to certain geographical locations. The Attorney General may require employers participating in the pilots to post notices informing employees of their participation and of procedures for filing complaints with the Attorney General regarding the operation of the pilots.

At the end of the 3-year period, the Attorney General must report to Congress regarding the cost effectiveness, technical feasibility, resistance to fraud, and impact upon privacy and anti-discrimination policies of the various pilot projects.

Sec. 203. Confidentiality of data under employment eligibility verification pilot projects.

Section 203(a) provides for the confidentiality of individual information collected in the operation of pilot projects under section 202. No individual information may be made available to any Government agencies, employers, or other persons other than as necessary to verify that the employee is not an authorized alien. In addition, the information may be used for enforcement of the INA and for criminal enforcement of the immigration-related fraud provisions of Title 18 (sections 911, 1001, 1028, 1546, and 1621).

Pursuant to section 203(b), participating employers must have in place procedures to safeguard the personal information and notify employees of their right to request correction or amendment of their records. These procedures will be detailed in a standard memorandum of understanding signed by INS and each employer.

Section 203(c) makes the provisions, rights and remedies of 5 U.S.C. 552(a)(2), applicable to all work-authorized persons who are subject to work authorization verification under section 202 with respect to records used in the course of a pilot project to make a final determination concerning an individual's work authorization.

Pursuant to section 203(d), employers and other persons are subject to civil penalties from \$1,000 to \$10,000 for the willful and knowing unlawful disclosure or use of information or failure to comply with subsection 203(b).

Section 203(e) states that nothing in this section shall limit the rights and remedies otherwise available to U.S. citizens and lawful permanent residents under 5 U.S.C. 552a.

Section 203(f) states that nothing in this section or section 202 shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

Sec. 204. Collection of Social Security numbers.

To facilitate the use of Social Security numbers in immigration-related activities, this section adds a new subsection 264(f) to the INA to clarify that the Attorney General may require any alien to provide his or her

Social Security number for inclusion in any record maintained by the Attorney General. (This is a companion to section 201(a), described above.)

Sec. 205. Employer sanctions penalties.

Section 205(a) amends section 274A(e)(4)(A) of the INA to increase the civil penalties for employer sanctions for first violations from the current range of \$250 to \$2,000 to a range of \$1,000 to \$3,000. The subsection also increases penalties for second violations from the current range of \$2,000 to \$5,000 to a range of \$3,000 to \$8,000. The penalties for subsequent violations are increased from a range of \$3,000 to \$10,000 to a range of \$8,000 to \$25,000.

Section 205(b) amends section 274A(e)(5) of the INA to increase the penalties for employer sanctions paperwork violations from the current range of \$100 to \$1,000 to a range of \$200 to \$5,000.

Section 205(c) amends section 274A(f)(1) of the INA to increase the criminal penalty for pattern and practice violations of employer sanctions to a felony offense, increasing the applicable fines from \$3,000 to \$7,000 and the criminal sentence which may be imposed from not more than six months to not more than two years.

Sec. 206. Criminal penalties for document fraud.

Section 206(a) amends 18 U.S.C. 1028(b)(1), on identification document fraud, to increase the maximum term of imprisonment from 5 to 10 years. The maximum term of imprisonment is up to 15 years if committed to facilitate a drug trafficking offense, and up to 20 years if committed to facilitate an act of international terrorism.

Section 206(b) directs the Sentencing Commission promptly to make appropriate increases in all of the base offense levels for immigration document fraud offenses under 18 U.S.C. 1028.

Sec. 207. Civil penalties for document fraud.

Section 207(a) amends section 274C(a) of the INA to apply civil penalties in cases where an alien has presented a travel document upon boarding a vessel for United States, but fails to present the document upon arrival ("document-destroyers"). A discretionary waiver of these penalties is provided if the alien is subsequently granted asylum.

Subsection (a) also applies civil penalties against a person who prepares, files, or assists another person in preparing or filing, certain false documents in reckless disregard of the fact that the information is false or does not relate to the applicant.

Section 207(b) conforms section 274(c)(d)(3) to refer to "each document that is the subject of a violation under subsection. (a)". This will clarify that an alien who does not present a document (because it was destroyed) is subject to penalties.

Sec. 208. Subpoena authority.

Section 208(a) amends section 274A(e)(2) of the INA to clarify that immigration officers may issue subpoenas for investigations of employer sanctions offenses under section 274A.

Section 208(b) adds a new section 294 to the INA to authorize the Secretary of Labor to issue subpoenas for investigations relating to the enforcement of any immigration program. It makes the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50) available to the Secretary of Labor. The Federal Trade Commission Act provisions allow access to documents and files of corporations, including the authority to call witnesses and require production of documents.

Sec. 209. Increased penalties for employer sanctions involving labor standards violations.

Section 209(a) adds a new paragraph 274A(e)(10) to the INA to authorize an administrative law judge to increase the civil penalties provided under employer sanctions to an amount up to two times the normal penalties, for willful or repeated violations of: (i) the Fair Labor Standards Act (29 U.S.C. 201 et seq.); (ii) the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.); and (iii) the Family and Medical Leave Act (29 U.S.C. 2601 et seq.).

Section 209(b) adds a new paragraph, section 274B(g)(4), to the INA to make the same provisions in (a) above applicable in section 274B, unfair immigration-related employment practices.

Sec. 210. Increased civil penalties for unfair immigration-related employment practices.

This section amends section 274B(g)(2)(B) of the INA to increase the civil penalties applicable for unfair immigration-related employment practices to make the penalties comparable to the increased proposed for employer sanctions violations.

The penalty for a first violation would be increased from the current range of \$250 to \$2,000 to a range of \$1,000 to \$3,000. The penalty for a second violation would be increased from the current range of \$2,000 to \$5,000 to a range of \$3,000 to \$8,000. The penalty for more than two violations would be increased from the current range of \$3,000 to \$10,000 to a range of \$8,000 to \$25,000.

The penalty for a documents violation, that is, requesting more or different documents than are required or refusing to honor documents tendered that on their face reasonably appear to be genuine, would be increased from a range of \$100 to \$1,000 to a range of \$200 to \$5,000.

Sec. 211. Retention of employer sanctions fines for law enforcement purposes.

This section amends section 286(c) of the INA to credit to INS appropriations any employer sanction penalties received in excess of \$5,000,000. These funds will be used to fund employer sanctions enforcement and related expenses. The funds credited to the account remain available until used.

Sec. 212. Telephone verification system fee. This section amends section 274A(d) of the INA to authorize INS to collect and retain the fees paid to use the telephone verification system pilot project. These fees are to be credited to the INS Salaries and Expenses appropriation as offsetting collections solely for employer verification services costs.

Sec. 213. Authorizations.

This section provides for blanket authorization for appropriation of funds needed to carry out this title.

TITLE III—ILLEGAL ALIEN REMOVAL

Sec. 301. Civil penalties for failure to depart.

This section adds a new section 274D to the INA, to subject aliens who willfully fail to depart after an order of exclusion or deportation to a \$500-per-day penalty (payable to the INS Commissioner as offsetting collections). This section would not diminish the criminal penalties at section 242(e) for failure to depart or any other section of the INA.

Sec. 302. Judicial deportation.

Section 302(a) amends section 242A(d)(1) of the INA to authorize a U.S. district court to enter a judicial order of deportation when the court imposes a sentence that causes the alien to be deportable or when the alien previously has been convicted of an aggravated felony. Current law limits judicial deportation to the time of sentencing for an aggravated felony conviction.

Section 302(b) amends section 242A(d)(3) to provide that a judicial order of deportation or denial of the Government's motion for such an order may be appealed by either

party, as part of the underlying criminal case.

Section 302(c) amends section 242A(d)(4) of the INA to strike the reference to "a decision on the merits." This change clarifies that the INS may place an alien in administrative deportation proceedings if a Federal district court judge has declined the Government's petition to issue a judicial deportation order.

Section 302(d) amends 18 U.S.C. 3583(d)(3) to provide that a court may set as a condition of supervised release that an alien defendant be ordered deported by the Attorney General and that the alien remain outside the United States. This amendment addresses an issue in litigation where district court judges have read this section to authorize them to order deportation.

Sec. 303. Conduct of proceedings by electronic means.

This section amends section 242(b) of the INA to permit deportation proceedings to be conducted by video conference or telephone, saving travel and hearing time and resources. The alien must consent to such a hearing by telephone if it is to be a full contested evidentiary hearing on the merits.

Sec. 304. Subpoena authority.

This section clarifies the authority of immigration judges to issue subpoenas in proceedings under sections 236 (exclusion) and 242 (deportation) of the INA.

Sec. 305. Stipulated exclusion and deportation.

This section amends sections 236 and 242 of the INA to permit the entry of orders of exclusion and deportation stipulated to by the alien and the INS, and to provide that stipulated orders are conclusive. Department of Justice regulations will provide that an alien who stipulates to an exclusion or deportation order waives all appeal rights.

Sec. 306. Streamlining appeals from orders of exclusion and deportation.

This section revises and amends section 106 of the INA. It provides for judicial review of final administrative orders of both deportation and exclusion through a petition for review, filed within 30 days after the final order in the judicial circuit in which the immigration judge completed the proceedings. Under current law, an order of exclusion is appealable to a district court and then appealable to the court of appeals.

The Attorney General's findings of fact shall be conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary.

As in current law, a court may review a final order only if the alien has exhausted all administrative remedies. This section adds a requirement that no other court may decide an issue, unless the petition presents grounds that could not have been presented previously or the remedy provided was inadequate or ineffective to test the validity of the order.

A new section 106(e) provides that a petition for review filed by an alien against whom a final order of deportation has been issued under section 242A (aggravated felonies) will be limited to whether the alien: is the alien described in the order; has been convicted after entry of an aggravated felony; and was afforded the appropriate deportation proceedings.

Under section 106(f) there is no judicial review of an individual order of special exclusion or of any other challenge relating to the special exclusion provisions. The only authorized review is through a habeas corpus proceeding, limited to determinations of alienage, whether the petitioner was ordered specially excluded, and whether the petitioner can prove by a preponderance of the evidence that he or she is an alien admitted for permanent residence and is entitled to

further inquiry. In such cases the court may order no relief other than a hearing under section 236 or a determination in accordance with sections 235(a) or 273(d). There shall be no review of whether the alien was actually excludable or entitled to relief.

Sec. 307. Sanctions against countries refusing to accept deportation of their nationals.

This section amends section 243(g) of the INA to permit the Secretary of State to refuse issuance of all visas to nationals of countries that refuse to accept deportation of their nationals from the United States. Under current law, the Secretary of State has the authority only to refuse to issue immigrant visas.

Sec. 308. Custody of aliens convicted of aggravated felonies.

Section 308(a) amends section 236(e) of the INA to permit the Attorney General to release an aggravated felon alien who is in exclusion proceedings from detention if the release is necessary to provide protection to a witness, a potential witness, or a person cooperating with a major criminal investigation, or to protect an immediate family member of such a person.

Section 308(b) amends section 242(a)(2) of the INA to permit the Attorney General to release an aggravated felon alien who is in deportation proceedings from detention if the release is necessary to provide protection to a witness, a potential witness, or a person cooperating with a major criminal investigation, or to protect an immediate family member of such a person.

Sec. 309. Limitations on relief from exclusion and deportation.

Section 309(a) amends section 212(c) of the INA to limit relief under section 212(c) of the INA to a person who has been lawfully admitted to the U.S. for at least 7 years; has been a lawful permanent resident for at least 5 years, and is returning to such residence after having temporarily proceeded abroad not under an order of deportation. The 5-year and 7-year periods would end upon initiation of exclusion proceedings. Also, relief under INA section 212(c) will be available only to persons in exclusion proceedings. Persons in deportation proceedings must now apply for cancellation of deportation (described below). Finally, an aggravated felon will be eligible for section 212(c) relief only if he or she has been sentenced to less than 5 years, in the aggregate, for the aggravated felony conviction or convictions. Time actually served will not be a factor in determining eligibility.

Section 309(b) amends section 244 of the INA to consolidate two existing forms of relief from deportation (suspension of deportation under section 244 and a waiver of deportability under section 212(c)) into one form of relief, "Cancellation of Deportation." A lawful permanent resident (LPR) would be eligible for cancellation if he or she has been an LPR for 5 years, has resided in the U.S. after lawful admission for 7 years, and has not been convicted of an aggravated felony or felonies for which he or she has been sentenced, in the aggregate, to a term or terms of 5 years or more. A non-LPR would be eligible for relief if he or she had been continuously physically present for 7 years, was of good moral character, and could establish extreme hardship to the alien or the alien's U.S. citizen spouse or child if deported. The 7-year and 5-year periods end with the issuance of an Order to Show Cause initiating deportation proceedings. This provision would clarify an area of the law regarding the cutoff periods for these benefits that have given rise to significant litigation and different rules being applied in different judicial circuits.

This section also amends the existing provisions for voluntary departure. Prehearing

voluntary departure may be granted to any alien other than an aggravated felon. The Attorney General may require a voluntary departure bond. At the conclusion of a deportation proceeding, voluntary departure may be granted only if the person has been of good moral character for 5 years prior to the order, is not deportable under certain criminal or national security grounds, and demonstrates by clear and convincing evidence that he or she has the means to depart the United States and intends to do so. The alien would be required to post a voluntary departure bond. An alien would be subject to civil penalties of \$500 per day for failure to depart within the time set for voluntary departure. Judicial review of voluntary departure orders would be limited.

An alien would be subject to civil penalties of \$500 per day for failure to depart within the time set for voluntary departure. Judicial review of a voluntary departure order would be prohibited if relief was granted for 30 days or more. Judicial review of a denial of voluntary departure could not stay deportation of an alien after 60 days had passed from issuance of an order of deportation.

Section 309(c) makes conforming amendments to sections 242(b) and 242B(e) of the INA.

Section 309(d) provides that the effective date of this section is the date of enactment, except that subsections (a) and (b), relating to the determination of when the period of residency or of continuous physical presence ends, are applicable only to orders to show cause filed on or after the date of enactment. The conforming amendments made by subsection (c) are effective on enactment.

Sec. 310. Rescission of lawful permanent resident status.

This section amends section 246(a) of the INA to clarify that the Attorney General is not required to rescind the lawful permanent resident status of a deportable alien separate and apart from the deportation proceeding under section 242 or 242A. This provision will allow INS to place a lawful permanent resident who has become deportable into deportation proceedings immediately.

Sec. 311. Increasing efficiency in removal of detained aliens.

This section authorizes appropriations for the Attorney General to conduct a pilot program or programs to study methods for increasing the efficiency of deportation and exclusion proceedings against detained aliens by increasing availability of pro bono counseling and representation. The Attorney General may use funds to award grants to not-for-profit organizations assisting aliens.

TITLE IV—ALIEN SMUGGLING CONTROL

Sec. 401. Wiretap authority for investigations of alien smuggling and document fraud.

This section amends 18 U.S.C. 2516(1) to give INS the authority to use wiretaps in investigations of alien smuggling and document fraud.

Sec. 402. Applying racketeering offenses to alien smuggling.

This section amends 18 U.S.C. 1961(1) to include the offenses relating to alien smuggling as predicate offenses for racketeering charges. The application of RICO to smuggling will be limited to those offenses committed for commercial advantage or private financial gain.

Sec. 403. Expanded asset forfeiture for smuggling or harboring aliens.

This section amends 274 of the INA to authorize seizure and forfeiture of real and personal property in cases of alien smuggling and harboring. Current forfeiture authority is limited to conveyances. INS must give notice to owners of an intent to forfeit.

Sec. 404. Increased criminal penalties for alien smuggling.

This section amends section 274(a)(1)(A) of the INA to add conspiracy and aiding and abetting to the smuggling offenses, with offenders being subject to a fine, and/or 10 years imprisonment for conspiracy and/or 5 years imprisonment for aiding and abetting. It makes it a criminal offense to hire an alien with the knowledge that the alien is not authorized to work and that the alien was smuggled into the U.S. The penalty for violating this section is a fine and/or up to 5 years imprisonment.

This section also amends section 274(a)(2) of the INA to increase the penalties for multiple smuggling offenses (and for a new offense for smuggling aliens who will be committing crimes) to not less than 3 years or more than 10 years of imprisonment.

Sec. 405. Undercover investigation authority.

This section authorizes INS to use appropriated funds to lease space, establish, acquire, or operate business entities for undercover operations, so-called "proprietary" to facilitate undercover immigration-related criminal investigations. INS may deposit funds generated by these operations or use them to offset operational expenses.

Sec. 406. Amended definition of aggravated felony.

Section 406(a) amends section 101(a)(43)(N) of the INA, to strike the reference to title 18, U.S.C. in defining alien smuggling as an aggravated felony. This amendment will result in the inclusion of the smuggling offenses in section 274 of the INA into the definition of aggravated felony. It also amends the definition of "aggravated felony" by adding a requirement that the offense of trafficking in document fraud to be "for the purpose of commercial advantage."

Section 406(b) amends section 101(a)(43) to provide that the term "aggravated felony" applies for all purposes to convictions entered before, on, or after the date of enactment of this Act. This amendment will end controversy on which convictions fall within the definition.

Section 406(c) amends section 243(h) of the INA to provide that for purposes of determining whether an alien is ineligible for withholding of deportation based on conviction for an aggravated felony, the alien must have been sentenced to five years or more. Currently any aggravated felon is ineligible for withholding of deportation.

TITLE V—INSPECTIONS AND ADMISSIONS

Sec. 501. Civil penalties for bringing inadmissible aliens from contiguous territories.

This section amends section 273(a) to establish the illegality of bringing inadmissible aliens from foreign contiguous territories. It amends section 273(b) of the INA to increase from \$3,000 to \$5,000 the fine for bringing in an alien unlawfully.

Sec. 502. Definition of stowaway; exclusibility of stowaway; carrier liability for costs of detention.

Section 502(a) adds a definition of stowaway to the INA (section 101(a)) to mean any alien who obtains transportation without consent or through concealment or evasion.

Section 502(b) amends section 237 of the INA to clarify that a stowaway is subject to immediate exclusion and deportation. However, it allows a stowaway to apply for asylum or withholding of deportation.

Section 502(c) amends section 273(d) of the INA to require the carrier to detain a stowaway until he or she has been inspected by an immigration officer and to pay for any detention costs incurred by the Attorney General should the alien be taken into custody. It amends section 273(d) by raising the fine for failure to remove a stowaway from \$3,000 to \$5,000 per stowaway, payable to the Commissioner as offsetting collections.

Sec. 503. List of alien and citizen passengers arriving or departing.

This section amends section 231(a) of the INA to clarify the content of and format for passenger lists and manifests to be prepared and submitted by carriers to INS, including name, date of birth, gender, citizenship, travel document number, and arriving flight number.

Sec. 504. Elimination of limitations on immigration user fees for certain cruise ship passengers.

This section amends section 286(e)(1) of the INA to remove the current exemption from payment of the \$6 immigration user fee for cruise ship passengers.

Sec. 505. Transportation line responsibility for transit without visa aliens.

This section amends section 238(c) of the INA to provide that a carrier which has entered into an agreement with the United States to transport aliens without visas through the U.S. must agree to indemnify the United States for any costs of detaining, or removing such an alien.

Sec. 506. Authority to determine visa processing procedures.

This section amends section 202(a)(1) of the INA, which provides that visas must be issued without discrimination because of race, sex, nationality, place of birth, or place of residence, to state that nothing in this subsection limits the authority of the Secretary of State to determine procedures for processing visas. This section would reverse a recent judicial decision which interpreted the existing language to require the Secretary of State to process visas in a specific location.

Sec. 507. Border services user fee.

This section adds a new subsection 286(s) to the INA, authorizing the Attorney General to charge and collect a border services user fee for every land border entry, including persons arriving at U.S. borders by ferry, at participating ports-of-entry. The fee is to be collected in U.S. Currency and is set at \$1.50 for each non-commercial conveyance, and \$.75 for each pedestrian. Commercial passenger conveyances will be charged the pedestrian fee for operator and each passenger, except that ferry crewmen are not subject to the fee.

The section provides for each State to determine at which, if any, ports the fee is to be collected. A State that exercises this local option may establish a Border Service Council for each port to develop priorities for use of the fees collected, for submission to the Attorney General. The Attorney General must consider these priorities in funding port services. Funds remaining after payment of the costs of port services are to be given to the Councils to spend on port-related enhancements. The Attorney General will allocate enhancement funds for ports that do not set up a Border Service Council.

The Council membership must include three state representatives appointed by the Governor including at least one business representative, three local representatives and three federal representatives.

A State may withdraw a port from participation after amortizing improvements and after one year's notice.

The Attorney General is authorized to provide special discounts for frequent border crossers, to adjust the fee to compensate for inflation and cover increased costs, and to contract with private and public sectors to collect the fee. The Attorney General may establish such penalties for non-payment of the fees as are necessary to ensure compliance. The Attorney General is authorized to advance to the Border Services User Fee Account the amount of the start up costs from the Department of Justice's Working Capital Fund. Receipts from the fee will be transferred back from the Border Services User

Fee Account and deposited as offsetting receipts to the Working Capital Fund to cover this advance.

The Attorney General will begin collecting the fee not later than 12 months from the date the State notifies the Attorney General that it has selected ports to participate in the fee program.

TITLE VI—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Sec. 601. Alien prostitution.

This section amends section 2424 of Title 18, U.S.C. (relating to filing statements with INS when bringing in aliens for immoral purposes) to add as a requirement for the offense that a person bringing in an alien for prostitution do so "knowing[ly] or in reckless disregard." It also deletes the statutory reference to signatories to the 1902 international convention and increases the maximum sentence for the offense from two to ten years.

Sec. 602. Grants to States for medical assistance to undocumented immigrants.

This section authorizes appropriations to assist States in providing treatment to certain aliens for emergency medical conditions.

Sec. 603. Technical corrections to Violent Crime Control Act and Technical Corrections Act.

Section 603(a) amends section 130003(c)(1) of the Violent Crime Control Act of 1994, Pub. L. 103-322. Section 130003(c)(1) created a new subsection 245(i) of the Act to provide for the adjustment of status for certain aliens in S nonimmigrant status. A technical correction is necessary because section 506(b) of the Commerce, Justice, and State appropriations statute, P.L. 103-317 (Aug. 26, 1994) had previously created a new subsection 245(i) to provide for the adjustment of status of certain aliens previously ineligible for such privilege. This proposed statutory amendment would redesignate the S-related adjustment provision as section 245(j) of the Act.

Section 603(b) amends section 130004(b)(3) of P.L. 103-322 by removing an incorrect reference to section 242A(b)(5) and replacing it with proper reference to paragraph (b)(4).

Sec. 604. Expeditious deportation.

This section amends Section 225 of the Immigration and Nationality Technical Corrections Act of 1994, P.L. 104-416, by adding a reference to section 242A of the INA (which requires the Attorney General to commence deportation proceedings promptly) to the existing reference to section 242(1) (also requiring expeditious deportation), so that section 225 now provides that neither of those provisions create any enforceable substantive or procedural right or benefit against the United States.

Sec. 605. Authorization for use of volunteers.

This section authorizes the Attorney General to accept and use unpaid personnel to assist INS administratively in naturalization, adjudications at ports of entry, and to remove criminal aliens.

104TH CONGRESS
1ST SESSION

H. R. 1915

To amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 1995

Mr. SMITH of Texas (for himself, Mr. BRYANT of Texas, Mr. GALLEGLY, Mr. MOORHEAD, Mr. MCCOLLUM, Mr. BRYANT of Tennessee, Mr. BONO, Mr. HEINEMAN, Mr. GEKAS, Mr. COBLE, Mr. CANADY of Florida, Mr. INGLIS of South Carolina, Mr. GOODLATTE, Mr. BARR, Mr. BAKER of California, Mr. BALLENGER, Mr. BEILENSON, Mr. BILBRAY, Mr. BONILLA, Mr. BREWSTER, Mr. CALVERT, Mr. CONDIT, Mr. CUNNINGHAM, Mr. DEAL of Georgia, Mr. DREIER, Mr. DUNCAN, Mr. FOLEY, Mr. HAYES, Mr. HERGER, Mr. HUNTER, Mr. SAM JOHNSON of Texas, Mrs. MEYERS of Kansas, Mr. PACKARD, Mr. ROHRABACHER, Mrs. ROUKEMA, Mr. SHAYS, Mr. STENHOLM, Mr. TAUZIN, and Mrs. VUCANOVICH) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on National Security, Economic and Educational Opportunities, Government Reform and Oversight, Ways and Means, Commerce, Agriculture, and Banking and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States

by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, 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; AMENDMENTS TO IMMIGRATION**
 4 **AND NATIONALITY ACT; TABLE OF TITLES**
 5 **AND SUBTITLES.**

6 (a) **SHORT TITLE.**—This Act may be cited as the
 7 “Immigration in the National Interest Act of 1995”.

8 (b) **AMENDMENTS TO IMMIGRATION AND NATIONAL-**
 9 **ITY ACT.**—Except as otherwise specifically provided—

10 (1) whenever in this Act an amendment or re-
 11 peal is expressed as the amendment or repeal of a
 12 section or other provision, the reference shall be con-
 13 sidered to be made to that section or provision in the
 14 Immigration and Nationality Act, and

15 (2) amendments to a section or other provision
 16 are to such section or other provision as in effect on
 17 the date of the enactment of this Act and before any
 18 amendment made to such section or other provision
 19 elsewhere in this Act.

1 (c) TABLE OF TITLES, SUBTITLES, AND PARTS IN
 2 ACT.—The following are the titles, subtitles, and parts
 3 contained in this Act:

**TITLE I—DETERRENCE OF ILLEGAL IMMIGRATION
 THROUGH IMPROVED BORDER ENFORCEMENT AND
 PILOT PROGRAMS**

Subtitle A—Improved Enforcement at Border

Subtitle B—Pilot Programs

**TITLE II—ENHANCED ENFORCEMENT AND PENALTIES
 AGAINST ALIEN SMUGGLING; DOCUMENT FRAUD**

**Subtitle A—Enhanced Enforcement and Penalties Against
 Alien Smuggling**

Subtitle B—Deterrence of Document Fraud

Subtitle C—Asset Forfeiture for Passport and Visa Offenses

**TITLE III—INSPECTION, APPREHENSION, DETENTION, AD-
 JUDICATION, AND REMOVAL OF INADMISSIBLE AND DE-
 PORTABLE ALIENS**

Subtitle A—Revision of Procedures for Removal of Aliens

Subtitle B—Removal of Alien Terrorists

PART 1—REMOVAL PROCEDURES FOR ALIEN TERRORISTS

PART 2—EXCLUSION AND DENIAL OF ASYLUM FOR ALIEN TERRORISTS

**Subtitle C—Deterring Transportation of Unlawful Aliens to
 the United States**

Subtitle D—Additional Provisions

**TITLE IV—ENFORCEMENT OF RESTRICTIONS AGAINST
 EMPLOYMENT**

TITLE V—REFORM OF LEGAL IMMIGRATION SYSTEM

Subtitle A—Worldwide Numerical Limits

**Subtitle B—Changes in Family-Sponsored and Employment-
 Based Preference System**

**Subtitle C—Refugees, Asylees, Parole, and Humanitarian
 Admissions**

Subtitle D—Effective Dates; Transition Provisions

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19 **SEC. 401. STRENGTHENED ENFORCEMENT OF THE EM-**
20 **PLOYER SANCTIONS PROVISIONS.**

21 (a) **IN GENERAL.**—The number of full-time equiva-
22 lent positions in the Investigations Division within the Im-
23 migration and Naturalization Service of the Department

1 of Justice beginning in fiscal year 1996 shall be increased
2 by 350 positions above the number of full-time equivalent
3 positions available to such Division as of September 30,
4 1994.

5 (b) ASSIGNMENT.—Individuals employed to fill the
6 additional positions described in subsection (a) shall be as-
7 signed to investigate violations of the employer sanctions
8 provisions contained in section 274A of the Immigration
9 and Nationality Act, including investigating reports of vio-
10 lations received from officers of the Employment Stand-
11 ards Administration of the Department of Labor.

12 **SEC. 402. STRENGTHENED ENFORCEMENT OF WAGE AND**
13 **HOUR LAWS.**

14 (a) IN GENERAL.—The number of full-time equiva-
15 lent positions in the Wage and Hour Division with the
16 Employment Standards Administration of the Department
17 of Labor beginning in fiscal year 1996 shall be increased
18 by 150 positions above the number of full-time equivalent
19 positions available to the Wage and Hour Division as of
20 September 30, 1994.

21 (b) ASSIGNMENT.—Individuals employed to fill the
22 additional positions described in subsection (a) shall be as-
23 signed to investigate violations of wage and hour laws in
24 areas where the Attorney General has notified the Sec-

1 retary of Labor that there are high concentrations of un-
2 documented aliens.

3 **SEC. 403. CHANGES IN THE EMPLOYER SANCTIONS PRO-**
4 **GRAM.**

5 (a) REDUCING THE NUMBER OF DOCUMENTS AC-
6 CEPTED FOR EMPLOYMENT VERIFICATION.—Section
7 274A(b) (8 U.S.C. 1324a(b)) is amended—

8 (1) in paragraph (1)(B)—

9 (A) by adding “or” at the end of clause (i),

10 (B) by striking clauses (ii) through (iv),

11 and

12 (C) in clause (v), by striking “or other
13 alien registration card, if the card” and insert-
14 ing “, alien registration card, or other docu-
15 ment designated by regulation by the Attorney
16 General, if the document” and redesignating
17 such clause as clause (ii);

18 (2) by amending subparagraph (C) of para-
19 graph (1) to read as follows:

20 “(C) SOCIAL SECURITY ACCOUNT NUMBER
21 CARD AS EVIDENCE OF EMPLOYMENT AUTHOR-
22 IZATION.—A document described in this sub-
23 paragraph is an individual’s social security ac-
24 count number card (other than such a card
25 which specifies on the face that the issuance of

1 the card does not authorize employment in the
2 United States).”; and

3 (3) by amending paragraph (2) to read as fol-
4 lows:

5 “(2) INDIVIDUAL ATTESTATION OF EMPLOY-
6 MENT AUTHORIZATION AND PROVISION OF SOCIAL
7 SECURITY ACCOUNT NUMBER.—The individual
8 must—

9 “(A) attest, under penalty of perjury on
10 the form designated or established for purposes
11 of paragraph (1), that the individual is a citizen
12 or national of the United States, an alien law-
13 fully admitted for permanent residence, or an
14 alien who is authorized under this Act or by the
15 Attorney General to be hired, recruited, or re-
16 ferred for such employment; and

17 “(B) provide on such form the individual’s
18 social security account number.”.

19 (b) EMPLOYMENT ELIGIBILITY CONFIRMATION
20 PROCESS.—Section 274A (8 U.S.C. 1324a) is amended—

21 (1) in subsection (a)(3), by inserting “(A)”
22 after “DEFENSE.—”, and by adding at the end the
23 following:

24 “(B) FAILURE TO SEEK AND OBTAIN CON-
25 FIRMATION.—In the case of a hiring of an individual

1 for employment in the United States, if such a per-
2 son or entity—

3 “(i) has not made an inquiry, under the
4 mechanism established under subsection (b)(6),
5 seeking confirmation of the identity, social secu-
6 rity number, and work eligibility of the individ-
7 ual, by not later than the end of 2 working days
8 (as specified by the Attorney General) after the
9 date of the hiring, the defense under subpara-
10 graph (A) shall not be considered to apply with
11 respect to any employment after such 2 working
12 days, and

13 “(ii) has made the inquiry described in
14 clause (i) but has not received an appropriate
15 confirmation of such identity, number, and
16 work eligibility under such mechanism within
17 the time period specified in subsection
18 (b)(6)(D)(iii) after the time the confirmation
19 inquiry was received, the defense under sub-
20 paragraph (A) shall not be considered to apply
21 with respect to any employment after the end of
22 such time period.”;

23 (2) by amending paragraph (3) of subsection
24 (b) to read as follows:

1 “(3) RETENTION OF VERIFICATION FORM AND
2 CONFIRMATION.—After completion of such form in
3 accordance with paragraphs (1) and (2), the person
4 or entity must—

5 “(A) retain the form and make it available
6 for inspection by officers of the Service, the
7 Special Counsel for Immigration-Related Unfair
8 Employment Practices, or the Department of
9 Labor during a period beginning on the date of
10 the hiring, recruiting, or referral of the individ-
11 ual and ending—

12 “(i) in the case of the recruiting or re-
13 ferral for a fee (without hiring) of an indi-
14 vidual, three years after the date of the re-
15 cruiting or referral, and

16 “(ii) in the case of the hiring of an in-
17 dividual—

18 “(I) three years after the date of
19 such hiring, or

20 “(II) one year after the date the
21 individual’s employment is terminated,
22 whichever is later; and

23 “(B) for individuals hired on or after Octo-
24 ber 1, 1998, seek (within 2 working days of the
25 date of hiring) and have (within the time period

1 specified in paragraph (6)(D)(iii)) the identity,
2 social security number, and work eligibility of
3 the individual confirmed in accordance with the
4 procedures established under paragraph (6).”;
5 and

6 (3) by adding at the end of subsection (b) the
7 following new paragraph:

8 “(6) EMPLOYMENT ELIGIBILITY CONFIRMATION
9 PROCESS.—

10 “(A) IN GENERAL.—The Attorney General
11 shall establish a confirmation mechanism
12 through which the Attorney General (or a des-
13 ignee of the Attorney General)—

14 “(i) responds to inquiries by employ-
15 ers, made through a toll-free telephone line
16 or other electronic media in the form of an
17 appropriate confirmation code or other-
18 wise, on whether an individual is author-
19 ized to be employed by that employer, and

20 “(ii) maintains a record that the such
21 an inquiry was made and the confirmation
22 provided (or not provided).

23 “(B) EXPEDITED PROCEDURE IN CASE OF
24 NO CONFIRMATION.—In connection with sub-
25 paragraph (A), the Attorney General shall es-

1 tablish, in consultation with the Commissioner
2 of Social Security and the Commissioner of the
3 Service, expedited procedures that shall be used
4 to confirm the validity of information used
5 under confirmation mechanism in cases in
6 which the confirmation is sought but is not pro-
7 vided through the confirmation mechanism.

8 “(C) DESIGN AND OPERATION OF MECHA-
9 NISM.—The confirmation mechanism shall be
10 designed and operated to maximize—

11 “(i) the reliability of the confirmation
12 process, and

13 “(ii) the ease of use by employers, re-
14 cruiters, and referrers,

15 consistent with insulating and protecting the
16 privacy and security of the underlying informa-
17 tion.

18 “(D) CONFIRMATION PROCESS.—(i) As
19 part of the confirmation mechanism, the Com-
20 missioner of Social Security shall establish a re-
21 liable, secure method, which within the time pe-
22 riod specified in clause (iii), compares the name
23 and social security account number provided
24 against such information maintained by the
25 Commissioner in order to confirm (or not con-

1 firm) the validity of the information provided
2 and whether the account number indicates that
3 the individual is authorized to be employed in
4 the United States. The Commissioner shall not
5 disclose or release social security information.

6 “(ii) As part of the confirmation mecha-
7 nism, the Commissioner of the Service shall es-
8 tablish a reliable, secure method, which, within
9 the time period specified in clause (iii), com-
10 pares the name and alien identification number
11 (if any) provided against such information
12 maintained by the Commissioner in order to
13 confirm (or not confirm) the validity of the in-
14 formation provided and whether the alien is au-
15 thORIZED to be employed in the United States.

16 “(iii) For purposes of this section, the At-
17 torney General shall specify, in consultation
18 with the Commissioner of Social Security and
19 the Commissioner of the Service, an expedited
20 time period within which confirmation is to be
21 provided through the confirmation mechanism.

22 “(iv) The Commissioners shall update their
23 information in a manner that promotes the
24 maximum accuracy and shall provide a process

1 for the prompt correction of erroneous informa-
2 tion.”.

3 (c) REDUCTION OF PAPERWORK FOR CERTAIN EM-
4 PLOYEES.—Section 274A(a) (8 U.S.C. 1324a(a)) is
5 amended by adding at the end the following new para-
6 graph:

7 “(6) TREATMENT OF DOCUMENTATION FOR
8 CERTAIN EMPLOYEES.—

9 “(A) IN GENERAL.—For purposes of para-
10 graphs (1)(B) and (3), if—

11 “(i) an individual is a member of a
12 collective-bargaining unit and is employed,
13 under a collective bargaining agreement
14 entered into between one or more employee
15 organizations and an association of two or
16 more employers, by an employer that is a
17 member of such association, and

18 “(ii) within the period specified in
19 subparagraph (B), another employer that
20 is a member of the association (or an
21 agent of such association on behalf of the
22 employer) has complied with the require-
23 ments of subsection (b) with respect to the
24 employment of the individual,

1 the subsequent employer shall be deemed to
2 have complied with the requirements of sub-
3 section (b) with respect to the hiring of the em-
4 ployee and shall not be liable for civil penalties
5 described in subsection (e)(5).

6 “(B) PERIOD.—The period described in
7 this subparagraph is—

8 “(i) up to 5 years in the case of an in-
9 dividual who has presented documentation
10 identifying the individual as a national of
11 the United States or as an alien lawfully
12 admitted for permanent residence; or

13 “(ii) up to 3 years (or, if less, the pe-
14 riod of time that the individual is author-
15 ized to be employed in the United States)
16 in the case of another individual.

17 “(C) LIABILITY.—

18 “(i) IN GENERAL.—If any employer
19 that is a member of an association hires
20 for employment in the United States an in-
21 dividual and relies upon the provisions of
22 subparagraph (A) to comply with the re-
23 quirements of subsection (b) and the indi-
24 vidual is an unauthorized alien, for the
25 purposes of paragraph (1)(A), subject to

1 clause (ii), the employer shall be consid-
2 ered to have known at the time of hiring
3 or afterward that the individual was an un-
4 authorized alien.

5 “(ii) REBUTTAL OF PRESUMPTION.—
6 The presumption established by clause (i)
7 may be rebutted by the employer through
8 the presentation of clear and convincing
9 evidence that the employer did not know
10 (and could not reasonably have known)
11 that the individual at the time of hiring or
12 afterward was an unauthorized alien.”.

13 (d) ELIMINATION OF DATED PROVISIONS.—Section
14 274A (8 U.S.C. 1324a) is amended by striking subsections
15 (i) through (n).

16 (e) EFFECTIVE DATES.—

17 (1) Except as provided in this subsection, the
18 amendments made by this section shall apply with
19 respect to hiring (or recruiting or referring) occur-
20 ring on or after such date (not later than 180 days
21 after the date of the enactment of this Act) as the
22 Attorney General shall designate.

23 (2)(A) The Attorney General shall establish the
24 employment eligibility confirmation mechanism (de-
25 scribed in section 274A(b)(6) of the Immigration

1 and Nationality Act, as added by subsection (b)) by
2 not later than October 1, 1999.

3 (B) Before establishing the mechanism, the At-
4 torney General shall undertake such pilot projects,
5 in at least 5 of the 7 States with the highest esti-
6 mated population of unauthorized aliens, as will test
7 and assure that the mechanism implemented is reli-
8 able and easy to use. Such projects shall be initiated
9 not later than 6 months after the date of the enact-
10 ment of this Act.

11 (C) The Attorney General shall submit to the
12 Congress, beginning in 1997, annual reports on the
13 development and implementation of the mechanism.

14 (3) The amendment made by subsection (c)
15 shall apply to individuals hired on or after 60 days
16 after the date of the enactment of this Act.

17 (4) The amendment made by subsection (d)
18 shall take effect on the date of the enactment of this
19 Act.

20 **SEC. 404. REPORTS ON EARNINGS OF ALIENS NOT AUTHOR-**
21 **IZED TO WORK.**

22 Subsection (c) of section 290 (8 U.S.C. 1360) is
23 amended to read as follows:

24 “(c)(1) Not later than 3 months after the end of each
25 fiscal year (beginning with fiscal year 1995), the Commis-

1 sioner of Social Security shall report to the Committees
2 on the Judiciary of the House of Representatives and the
3 Senate on the aggregate number of social security account
4 numbers issued to aliens not authorized to be employed
5 to which earnings were reported to the Social Security Ad-
6 ministration in such fiscal year.

7 “(2) If earnings are reported on or after January 1,
8 1996, to the Social Security Administration on a social
9 security account number issued to an alien not authorized
10 to work in the United States, the Commissioner of Social
11 Security shall provide the Attorney General with informa-
12 tion regarding the name and address of the individual to
13 whom the number was issued and with respect to whom
14 the earnings were reported and regarding the amount and
15 name and address of the person reporting the earnings.
16 The information shall be provided in an electronic form
17 agreed upon by the Commissioner and the Attorney Gen-
18 eral.”.

19 **SEC. ~~405~~ AUTHORIZING MAINTENANCE OF CERTAIN IN-**
20 **FORMATION ON ALIENS.**

21 Section 264 (8 U.S.C. 1304) is amended by adding
22 at the end the following new subsection:

23 “(f) Notwithstanding any other provision of law, the
24 Attorney General is authorized to require any alien to pro-
25 vide the alien’s social security account number for pur-

- 1 poses of inclusion in any record of the alien maintained
- 2 by the Attorney General or the Service.”.

1 **TITLE VI—RESTRICTIONS ON**
2 **BENEFITS FOR ILLEGAL ALIENS**

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Sec. 611. Earned income tax credit denied to individuals not authorized to be employed in the United States.

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Sec. 631. Attribution of sponsor's income and resources to family-sponsored immigrants.

Sec. 632. Requirements for sponsor's affidavit of support.

1 **SEC. 600. STATEMENTS OF NATIONAL POLICY CONCERNING**
2 **WELFARE AND IMMIGRATION.**

3 The Congress makes the following statements con-
4 cerning national policy with respect to welfare and immi-
5 gration:

6 (1) Self-sufficiency has been a basic principle of
7 United States immigration law since this country's
8 earliest immigration statutes.

9 (2) It continues to be the immigration policy of
10 the United States that—

11 (A) aliens within the nation's borders not
12 depend on public resources to meet their needs,
13 but rather rely on their own capabilities and the
14 resources of their families, their sponsors, and
15 private organizations, and

16 (B) the availability of public benefits not
17 constitute an incentive for immigration to the
18 United States.

19 (3) Despite the principle of self-sufficiency,
20 aliens have been applying for and receiving public
21 benefits from Federal, State, and local governments
22 at increasing rates.

23 (4) Current eligibility rules for public assistance
24 and unenforceable financial support agreements have
25 proved wholly incapable of assuring that individual
26 aliens not burden the public benefits system.

1 (5) It is a compelling government interest to
2 enact new rules for eligibility and sponsorship agree-
3 ments in order to assure that aliens be self-reliant
4 in accordance with national immigration policy.

5 (6) It is a compelling government interest to re-
6 move the incentive for illegal immigration provided
7 by the availability of public benefits.

8 (7) Where States are authorized to follow Fed-
9 eral eligibility rules for public assistance programs,
10 the Congress strongly encourages the States to
11 adopt the Federal eligibility rules.

12 **Subtitle A—Eligibility of Illegal** 13 **Aliens for Public Benefits**

14 **PART 1—PUBLIC BENEFITS GENERALLY**

15 **SEC. 601. MAKING ILLEGAL ALIENS INELIGIBLE FOR PUB-** 16 **LIC ASSISTANCE, CONTRACTS, AND LI-** 17 **CENSES.**

18 (a) **FEDERAL PROGRAMS.**—Notwithstanding any
19 other provision of law, except as provided in section 604,
20 any alien who is not lawfully present in the United States
21 shall not be eligible for any of the following:

22 (1) **FEDERAL ASSISTANCE PROGRAMS.**—To re-
23 ceive any benefits under any program of assistance
24 provided or funded, in whole or in part, by the Fed-

1 eral Government for which eligibility (or the amount
2 of assistance) is based on financial need.

3 (2) FEDERAL CONTRACTS OR LICENSES.—To
4 receive any grant, to enter into any contract or loan
5 agreement, or to be issued (or have renewed) any
6 professional or commercial license, if the grant, con-
7 tract, loan, or license is provided or funded by any
8 Federal agency.

9 (b) STATE PROGRAMS.—Notwithstanding any other
10 provision of law, except as provided in section 604, any
11 alien who is not lawfully present in the United States shall
12 not be eligible for any of the following:

13 (1) STATE ASSISTANCE PROGRAMS.—To receive
14 any benefits under any program of assistance (not
15 described in subsection (a)(1)) provided or funded,
16 in whole or in part, by a State or political subdivi-
17 sion of a State for which eligibility (or the amount
18 of assistance) is based on financial need.

19 (2) STATE CONTRACTS OR LICENSES.—To re-
20 ceive any grant, to enter into any contract or loan
21 agreement, or to be issued (or have renewed) any
22 professional or commercial license, if the grant, con-
23 tract, loan, or license is provided or funded by any
24 State agency.

1 (c) REQUIRING PROOF OF ELIGIBILITY FOR FED-
2 ERAL CONTRACTS, GRANTS, LOANS, LICENSES, AND PUB-
3 LIC ASSISTANCE.—

4 (1) IN GENERAL.—In considering an applica-
5 tion for a Federal contract, grant, loan, or license,
6 or for public assistance under a program described
7 in paragraph (2), a Federal agency shall require the
8 applicant to provide proof of eligibility under para-
9 graph (3) to be considered for such Federal con-
10 tract, grant, loan, license, or public assistance.

11 (2) PUBLIC ASSISTANCE PROGRAMS COV-
12 ERED.—The requirement of proof of eligibility under
13 paragraph (1) shall apply to the following Federal
14 public assistance programs:

15 (A) SSI.—The supplemental security in-
16 come program under title XVI of the Social Se-
17 curity Act, including State supplementary bene-
18 fits programs referred to in such title.

19 (B) AFDC.—The program of aid to fami-
20 lies with dependent children under part A or E
21 of title IV of the Social Security Act.

22 (C) SOCIAL SERVICES BLOCK GRANT.—The
23 program of block grants to States for social
24 services under title XX of the Social Security
25 Act.

1 (D) MEDICAID.—The program of medical
2 assistance under title XIX of the Social Secu-
3 rity Act.

4 (E) FOOD STAMPS.—The program under
5 the Food Stamp Act of 1977.

6 (F) HOUSING ASSISTANCE.—Financial as-
7 sistance as defined in section 214(b) of the
8 Housing and Community Development Act of
9 1980.

10 (3) DOCUMENTS THAT SHOW PROOF OF ELIGI-
11 BILITY.—Any one of the documents listed under this
12 paragraph may be used as proof of eligibility under
13 this subsection. Any such document shall be current
14 and valid. No other document or documents shall be
15 sufficient to prove eligibility.

16 (A) United States passport.

17 (B) Resident alien card.

18 (C) State driver's license.

19 (D) State identity card.

20 (d) AUTHORIZATION FOR STATES TO REQUIRE
21 PROOF OF ELIGIBILITY FOR STATE PROGRAMS.—In con-
22 sidering an application for contracts, grants, loans, li-
23 censes, or public assistance under any State program, a
24 State is authorized to require the applicant to provide

1 proof of eligibility to be considered for such State con-
2 tracts, grants, loans, licenses, or public assistance.

3 **SEC. 602. MAKING UNAUTHORIZED ALIENS INELIGIBLE**
4 **FOR UNEMPLOYMENT BENEFITS.**

5 (a) **IN GENERAL.**—Notwithstanding any other provi-
6 sion of law, no unemployment benefits shall be payable
7 (in whole or in part) out of Federal funds to the extent
8 the benefits are attributable to any employment of the
9 alien in the United States for which the alien had not been
10 granted employment authorization pursuant to Federal
11 law.

12 (b) **PROCEDURES.**—Entities responsible for providing
13 unemployment benefits subject to the restrictions of this
14 section shall make such inquiries as may be necessary to
15 assure that applicants for such benefits are eligible con-
16 sistent with this section.

17 **SEC. 603. GENERAL EXCEPTIONS.**

18 Sections 601 and 602 shall not apply to the following:

19 (1) **EMERGENCY MEDICAL SERVICES.**—The pro-
20 vision of emergency medical services (as defined by
21 the Attorney General in consultation with the Sec-
22 retary of Health and Human Services).

23 (2) **PUBLIC HEALTH IMMUNIZATIONS.**—Public
24 health assistance for immunizations with respect to

1 immunizable diseases and for testing and treatment
2 for communicable diseases.

3 (3) SHORT-TERM EMERGENCY DISASTER RE-
4 LIEF.—The provision of non-cash, in-kind, short-
5 term emergency disaster relief.

6 **SEC. 604. REPORT ON DISQUALIFICATION OF ILLEGAL**
7 **ALIENS FROM HOUSING ASSISTANCE PRO-**
8 **GRAMS.**

9 Not later than 90 days after the date of the enact-
10 ment of this Act, the Secretary of Housing and Urban
11 Development shall submit a report to the Committees on
12 the Judiciary of the House of Representatives and of the
13 Senate, the Committee on Banking of the House of Rep-
14 resentatives, and the Committee on Banking, Housing,
15 and Urban Affairs of the Senate, describing the manner
16 in which the Secretary is enforcing section 214 of the
17 Housing and Community Development Act of 1980. The
18 report shall contain statistics with respect to the number
19 of aliens denied financial assistance under such section.

20 **SEC. 605. DEFINITIONS.**

21 For purposes of this part:

22 (1) **LAWFUL PRESENCE.**—The determination of
23 whether an alien is lawfully present in the United
24 States shall be made in accordance with regulations
25 of the Attorney General. An alien shall not be con-

1 sidered to be lawfully present in the United States
2 for purposes of this title merely because the alien
3 may be considered to be permanently residing in the
4 United States under color of law for purposes of any
5 particular program.

6 (2) STATE.—The term “State” includes the
7 District of Columbia, Puerto Rico, the Virgin Is-
8 lands, Guam, the Northern Mariana Islands, and
9 American Samoa.

10 **SEC. 606. REGULATIONS AND EFFECTIVE DATES.**

11 (a) REGULATIONS.—The Attorney General shall first
12 issue regulations to carry out this part (other than section
13 604) by not later than 60 days after the date of the enact-
14 ment of this Act. Such regulations shall take effect on an
15 interim basis, pending changes based on public comment.

16 (b) EFFECTIVE DATE FOR RESTRICTIONS ON ELIGI-
17 BILITY FOR PUBLIC BENEFITS.—(1) Except as provided
18 in this subsection, section 601 shall apply to benefits pro-
19 vided, contracts or loan agreements entered into, and pro-
20 fessional and commercial licenses issued (or renewed) on
21 or after such date as the Attorney General specifies in reg-
22 ulations under subsection (a). Such date shall be at least
23 30 days, and not more than 60 days, after the date the
24 Attorney General first issues such regulations.

1 (2) The Attorney General, in carrying out section
2 601(a)(2), may permit such section to be waived in the
3 case of individuals for whom an application for the grant,
4 contract, loan, or license is pending (or approved) as of
5 a date (which is on or before the effective date specified
6 under paragraph (1)).

7 (c) EFFECTIVE DATE FOR RESTRICTIONS ON ELIGI-
8 BILITY FOR UNEMPLOYMENT BENEFITS.—(1) Except as
9 provided in this subsection, section 602 shall apply to un-
10 employment benefits provided on or after such date as the
11 Attorney General specifies in regulations under subsection
12 (a). Such date shall be at least 30 days, and not more
13 than 60 days, after the date the Attorney General first
14 issues such regulations.

15 (2) The Attorney General, in carrying out section
16 602, may permit such section to be waived in the case
17 of an individual during a continuous period of unemploy-
18 ment for whom an application for unemployment benefits
19 is pending as of a date (which is on or before the effective
20 date specified under paragraph (1)).

21 (d) BROAD DISSEMINATION OF INFORMATION.—Be-
22 fore the effective dates specified in subsections (b) and (c),
23 the Attorney General shall broadly disseminate informa-
24 tion regarding the restrictions on eligibility under this
25 part.

1 **PART 2—EARNED INCOME TAX CREDIT**

2 **SEC. 611. EARNED INCOME TAX CREDIT DENIED TO INDIVIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES.**

3 **VIDUALS NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES.**

4

5 (a) **IN GENERAL.**—Section 32(c)(1) of the Internal

6 Revenue Code of 1986 (relating to individuals eligible to

7 claim the earned income tax credit) is amended by adding

8 at the end the following new subparagraph:

9 “(F) **IDENTIFICATION NUMBER REQUIRE-**

10 **MENT.**—The term ‘eligible individual’ does not

11 include any individual who does not include on

12 the return of tax for the taxable year—

13 “(i) such individual’s taxpayer identi-

14 fication number, and

15 “(ii) if the individual is married (with-

16 in the meaning of section 7703), the tax-

17 payer identification number of such indi-

18 vidual’s spouse.”

19 (b) **SPECIAL IDENTIFICATION NUMBER.**—Section 32

20 of the Internal Revenue Code of 1986 (relating to earned

21 income) is amended by adding at the end the following

22 new subsection:

23 “(k) **IDENTIFICATION NUMBERS.**—Solely for pur-

24 poses of subsections (c)(1)(F) and (c)(3)(D), a taxpayer

25 identification number means a social security number is-

26 sued to an individual by the Social Security Administra-

1 tion (other than a social security number issued pursuant
2 to clause (II) (or that portion of clause (III) that relates
3 to clause (II)) of section 205(e)(2)(B)(i) of the Social Se-
4 curity Act).”

5 (c) EXTENSION OF PROCEDURES APPLICABLE TO
6 MATHEMATICAL OR CLERICAL ERRORS.—Section
7 6213(g)(2) of the Internal Revenue Code of 1986 (relating
8 to the definition of mathematical or clerical errors) is
9 amended by striking “and” at the end of subparagraph
10 (D), by striking the period at the end of subparagraph
11 (E) and inserting “, and”, and by inserting after subpara-
12 graph (E) the following new subparagraph:

13 “(F) an omission of a correct taxpayer
14 identification number required under section 23
15 (relating to credit for families with younger
16 children) or section 32 (relating to the earned
17 income tax credit) to be included on a return.”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 December 31, 1995.

1 **Subtitle B—Expansion of Disquali-**
2 **fication from Immigration Bene-**
3 **fits on the Basis of Public**
4 **Charge**

5 **SEC. 621. GROUND FOR INADMISSIBILITY.**

6 (a) IN GENERAL.—Paragraph (4) of section 212(a)
7 (8 U.S.C. 1182(a)) is amended to read as follows:

8 “(4) PUBLIC CHARGE.—

9 “(A) FAMILY-SPONSORED IMMIGRANTS.—

10 Any alien who seeks admission or adjustment of
11 status under a visa number issued under sec-
12 tion 203(a), who cannot demonstrate to the
13 consular officer at the time of application for a
14 visa, or to the Attorney General at the time of
15 application for admission or adjustment of sta-
16 tus, that the alien’s age, health, family status,
17 assets, resources, financial status, education,
18 skills, or a combination thereof, or an affidavit
19 of support described in section 213A, or both,
20 make it unlikely that the alien will become a
21 public charge (as determined under section
22 241(a)(5)(B)) is inadmissible.

23 “(B) NONIMMIGRANTS.—Any alien who
24 seeks admission under a visa number issued
25 under section 214, who cannot demonstrate to

1 the consular officer at the time of application
2 for the visa that the alien's age, health, family
3 status, assets, resources, financial status, edu-
4 cation, skills or a combination thereof, or an af-
5 fidavit of support described in section 213A, or
6 both, make it unlikely that the alien will become
7 a public charge (as determined under section
8 241(a)(B)(5)) is inadmissible.

9 “(C) EMPLOYMENT-BASED IMMIGRANTS.—

10 “(1) IN GENERAL.—Any alien who
11 seeks admission or adjustment of status
12 under a visa number issued under section
13 203(b), except for an alien who qualifies as
14 an alien of extraordinary ability under sec-
15 tion 203(b)(1)(A), who cannot demonstrate
16 to the consular officer at the time of appli-
17 cation for a visa, or to the Attorney Gen-
18 eral at the time of application for admis-
19 sion or adjustment of status, that the im-
20 migrant has a valid offer of employment is
21 inadmissible.

22 “(2) CERTAIN EMPLOYMENT-BASED
23 IMMIGRANTS.—Any alien who seeks admis-
24 sion or adjustment of status under a visa
25 number issued under section 203(b) by vir-

1 tue of a classification petition filed by a
2 relative of the alien (or by an entity in
3 which such relative has a significant own-
4 ership interest) is inadmissible unless such
5 relative has executed an affidavit of sup-
6 port described in section 213A with respect
7 to such alien.”.

8 (b) **EFFECTIVE DATE.**—The amendment made by
9 subsection (a) shall apply to applications submitted on or
10 after such date, not earlier than 30 days and not later
11 than 60 days after the date the Attorney General formu-
12 lates the new affidavit of support form under section
13 213A(b) of the Immigration and Nationality Act (as in-
14 serted by section 622(a)), as the Attorney General shall
15 specify.

16 **SEC. 622. GROUND FOR DEPORTABILITY.**

17 (a) **IN GENERAL.**—Paragraph (5) of section 241(a)
18 (8 U.S.C. 1251(a)) is amended to read as follows:

19 “(5) **PUBLIC CHARGE.**—

20 “(A) **IN GENERAL.**—Any alien who, within
21 7 years after the date of entry or admission, be-
22 comes a public charge is deportable.

23 “(B) **EXCEPTION.**—Subparagraph (A)
24 shall not apply if the alien establishes that the
25 alien has become a public charge from causes

1 that arose after entry or admission. A condition
2 that the alien knew (or had reason to know) ex-
3 isted at the time of entry or admission shall be
4 deemed to be a cause that arose before entry or
5 admission.

6 “(C) INDIVIDUALS TREATED AS PUBLIC
7 CHARGE.—For purposes of this title, an alien is
8 deemed to be a ‘public charge’ if the alien re-
9 ceives benefits (other than benefits described in
10 subparagraph (E)) under one or more of the
11 public assistance programs described in sub-
12 paragraph (D) for an aggregate period of at
13 least 12 months within 7 years after the date
14 of entry. The previous sentence shall not be
15 construed as excluding any other bases for con-
16 sidering an alien to be a public charge, includ-
17 ing bases in effect on the day before the date
18 of the enactment of the Immigration in the Na-
19 tional Interest Act of 1995. The Attorney Gen-
20 eral, in consultation with the Secretary of
21 Health and Human Services, shall establish
22 rules regarding the counting of health benefits
23 described in subparagraph (D)(iv) for purposes
24 of this subparagraph.

1 “(D) PUBLIC ASSISTANCE PROGRAMS.—

2 For purposes of subparagraph (B), the public
3 assistance programs described in this subpara-
4 graph are the following (and include any suc-
5 cessor to such a program as identified by the
6 Attorney General in consultation with other ap-
7 propriate officials):

8 “(i) SSI.—The supplemental security
9 income program under title XVI of the So-
10 cial Security Act, including State supple-
11 mentary benefits programs referred to in
12 such title.

13 “(ii) AFDC.—The program of aid to
14 families with dependent children under
15 part A or E of title IV of the Social Secu-
16 rity Act.

17 “(iii) SOCIAL SERVICES BLOCK
18 GRANT.—The program of block grants to
19 States for social services under title XX of
20 the Social Security Act.

21 “(iv) MEDICAID.—The program of
22 medical assistance under title XIX of the
23 Social Security Act.

24 “(v) FOOD STAMPS.—The program
25 under the Food Stamp Act of 1977.

1 “(vi) STATE GENERAL CASH ASSIST-
2 ANCE.—A program of general cash assist-
3 ance of any State or political subdivision of
4 a State.

5 “(vii) HOUSING ASSISTANCE.—Finan-
6 cial assistance as defined in section 214(b)
7 of the Housing and Community Develop-
8 ment Act of 1980.

9 “(E) CERTAIN ASSISTANCE EXCEPTED.—
10 For purposes of subparagraph (B), an alien
11 shall not be considered to be a public charge on
12 the basis of receipt of any of the following bene-
13 fits:

14 “(i) EMERGENCY MEDICAL SERV-
15 ICES.—The provision of emergency medical
16 services (as defined by the Attorney Gen-
17 eral in consultation with the Secretary of
18 Health and Human Services).

19 “(ii) PUBLIC HEALTH IMMUNIZA-
20 TIONS.—Public health assistance for im-
21 munizations with respect to immunizable
22 diseases and for testing and treatment for
23 communicable diseases.

24 “(iii) SHORT-TERM EMERGENCY DIS-
25 ASTER RELIEF.—The provision of non-

1 cash, in-kind, short-term emergency disas-
2 ter relief.”.

3 (b) EFFECTIVE DATE.—(1) The amendment made by
4 subsection (a) shall take effect as of the first day of the
5 first month beginning at least 30 days after the date of
6 the enactment of this Act.

7 (2) In applying section 241(a)(5)(C) of the Immigra-
8 tion and Nationality Act, as amended by subsection (a),
9 no receipt of benefits under a public assistance program
10 before the effective date described in paragraph (1) shall
11 be taken into account.

12 **Subtitle C—Attribution of Income**
13 **and Affidavits of Support**

14 **SEC. 631. ATTRIBUTION OF SPONSOR'S INCOME AND RE-**
15 **SOURCES TO FAMILY-SPONSORED IMMI-**
16 **GRANTS.**

17 (a) FEDERAL PROGRAMS.—Notwithstanding any
18 other provision of law, in determining the eligibility and
19 the amount of benefits of an alien for any Federal means-
20 tested public benefits program (as defined in subsection
21 (c)) the income and resources of the alien shall be deemed
22 to include—

23 (1) the income and resources of any person who
24 executed an affidavit of support pursuant to section

1 213A of the Immigration and Nationality Act (as
2 added by section 622) in behalf of such alien, and

3 (2) the income and resources of the spouse (if
4 any) of the person.

5 (b) PERIOD OF ATTRIBUTION.—

6 (1) PARENTS OF UNITED STATES CITIZENS.—

7 Subsection (a) shall apply with respect to an alien
8 who is admitted to the United States as the parent
9 of a United States citizen under section 512 until
10 the alien is naturalized as a citizen of the United
11 States.

12 (2) SPOUSES OF UNITED STATES CITIZENS AND

13 LAWFUL PERMANENT RESIDENTS.—Subsection (a)
14 shall apply with respect to an alien who is admitted
15 to the United States as the spouse of a United
16 States citizen or lawful permanent resident under
17 sections 511 and 512 until—

18 (A) 7 years after the date the alien is law-
19 fully admitted to the United States for perma-
20 nent residence, or

21 (B) the alien is naturalized as a citizen of
22 the United States,
23 whichever occurs first.

24 (3) MINOR CHILDREN OF UNITED STATES CITI-

25 ZENS AND LAWFUL PERMANENT RESIDENTS.—Sub-

1 section (a) shall apply with respect to an alien who
2 is admitted to the United States as the minor child
3 of a United States citizen or lawful permanent resi-
4 dent under sections 511 and 512 until the child at-
5 tains the age of 21 years.

6 (4) **ATTRIBUTION OF SPONSOR'S INCOME AND**
7 **RESOURCES ENDED IF SPONSORED ALIEN BECOMES**
8 **ELIGIBLE FOR OLD-AGE BENEFITS UNDER TITLE II**
9 **OF THE SOCIAL SECURITY ACT.—**

10 (A) Notwithstanding any other provision of
11 this section, subsection (a) shall not apply and
12 the period of attribution of a sponsor's income
13 and resources under this subsection shall termi-
14 nate if the alien is employed for a period suffi-
15 cient to qualify for old age benefits under title
16 II of the Social Security Act and the alien is
17 able to prove to the satisfaction of the Attorney
18 General that the alien qualifies.

19 (B) The Attorney General shall ensure
20 that appropriate information pursuant to sub-
21 paragraph (A) is provided to the System for
22 Alien Verification of Eligibility (SAVE).

23 (c) **OPTIONAL APPLICATION TO STATE PROGRAMS.—**

24 (1) **AUTHORITY.—**Notwithstanding any other
25 provision of law, in determining the eligibility and

1 the amount of benefits of an alien for any State
2 means-tested public benefits program, the State or
3 political subdivision that offers the program is au-
4 thorized to provide that the income and resources
5 of the alien shall be deemed to include—

6 (A) the income and resources of any per-
7 son who executed an affidavit of support pursu-
8 ant to section 213A of the Immigration and
9 Nationality Act (as added by section 622) in
10 behalf of such alien, and

11 (B) the income and resources of the spouse
12 (if any) of the person.

13 (2) PERIOD OF ATTRIBUTION.—The period of
14 attribution of a sponsor's income and resources in
15 determining the eligibility and amount of benefits
16 for an alien under any State means-tested public
17 benefits program pursuant to paragraph (1) may not
18 exceed the Federal period of attribution with respect
19 to the alien.

20 (e) MEANS-TESTED PROGRAM DEFINED.—In this
21 section:

22 (1) The term “means-tested public benefits pro-
23 gram” means a program of public benefits (includ-
24 ing cash, medical, housing, and food assistance and
25 social services) of the Federal Government or of a

1 State or political subdivision of a State in which the
2 eligibility of an individual, household, or family eligi-
3 bility unit for benefits under the program, or the
4 amount of such benefits, or both are determined on
5 the basis of income, resources, or financial need of
6 the individual, household, or unit.

7 (2) The term "Federal means-tested public ben-
8 efits program" means a means-tested public benefits
9 program of (or contributed to by) the Federal Gov-
10 ernment.

11 (3) The term "State means-tested public bene-
12 fits program" means a means-tested public benefits
13 program that is not a Federal means-tested pro-
14 gram.

15 **SEC. 632. REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF**
16 **SUPPORT.**

17 (a) IN GENERAL.—Title II is amended by inserting
18 after section 213 the following new section:

19 "REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT

20 "SEC. 213A. (a) ENFORCEABILITY.—(1) No affidavit
21 of support may be accepted by the Attorney General or
22 by any consular officer to establish that an alien is not
23 inadmissible as a public charge under section 212(a)(4)
24 unless such affidavit is executed as a contract—

25 "(A) which is legally enforceable against the
26 sponsor by the Federal Government and by any

1 State (or any political subdivision of such State)
2 which provides any means-tested public benefits pro-
3 gram, but not later than 10 years after the alien last
4 receives any such benefit; and

5 “(B) in which the sponsor agrees to submit to
6 the jurisdiction of any Federal or State court for the
7 purpose of actions brought under subsection (b)(2).

8 “(2)(A) An affidavit of support shall be enforceable
9 with respect to benefits provided under any means-tested
10 public benefits program for an alien who is admitted to
11 the United States as the parent of a United States citizen
12 under section 512 until the alien is naturalized as a citizen
13 of the United States.

14 “(B) An affidavit of support shall be enforceable with
15 respect to benefits provided under any means-tested public
16 benefits program for an alien who is admitted to the
17 United States as the spouse of a United States citizen or
18 lawful permanent resident under sections 511 and 512
19 until—

20 “(i) 7 years after the date the alien is lawfully
21 admitted to the United States for permanent resi-
22 dence, or

23 “(ii) such time as the alien is naturalized as a
24 citizen of the United States,
25 whichever occurs first.

1 “(C) An affidavit of support shall be enforceable with
2 respect to benefits provided under any means-tested public
3 benefits program for an alien who is admitted to the
4 United States as the minor child of a United States citizen
5 or lawful permanent resident under sections 511 and 512
6 until the child attains the age of 21 years.

7 “(D)(1) Notwithstanding any other provision of this
8 paragraph, a sponsor shall be relieved of any liability
9 under an affidavit of support if the sponsored alien is em-
10 ployed for a period sufficient to qualify for old age benefits
11 under title II of the Social Security Act and the sponsor
12 or alien is able to prove to the satisfaction of the Attorney
13 General that the alien qualifies.

14 “(2) The Attorney General shall ensure that appro-
15 priate information pursuant to paragraph (1) is provided
16 to the System for Alien Verification of Eligibility (SAVE).

17 “(b) REIMBURSEMENT OF GOVERNMENT EX-
18 PENSES.—(1)(A) Upon notification that a sponsored alien
19 has received any benefit under any means-tested public
20 benefits program, the appropriate Federal, State, or local
21 official shall request reimbursement by the sponsor in the
22 amount of such assistance.

23 “(B) The Attorney General, in consultation with the
24 Secretary of Health and Human Services, shall prescribe

1 such regulations as may be necessary to carry out sub-
2 paragraph (A).

3 “(2) If within 45 days after requesting reimburse-
4 ment, the appropriate Federal, State, or local agency has
5 not received a response from the sponsor indicating a will-
6 ingness to commence payments, an action may be brought
7 against the sponsor pursuant to the affidavit of support.

8 “(3) If the sponsor fails to abide by the repayment
9 terms established by such agency, the agency may, within
10 60 days of such failure, bring an action against the spon-
11 sor pursuant to the affidavit of support.

12 “(4) No cause of action may be brought under this
13 subsection later than 10 years after the alien last received
14 any benefit under any means-tested public benefits pro-
15 gram.

16 “(5) If, pursuant to the terms of this subsection, a
17 Federal, State, or local agency requests reimbursement
18 from the sponsor in the amount of assistance provided,
19 or brings an action against the sponsor pursuant to the
20 affidavit of support, the appropriate agency may appoint
21 or hire an individual or other person to act on behalf of
22 such agency acting under the authority of law for purposes
23 of collecting any moneys owed. Nothing in this subsection
24 shall preclude any appropriate Federal, State, or local
25 agency from directly requesting reimbursement from a

1 sponsor for the amount of assistance provided, or from
2 bringing an action against a sponsor pursuant to an affi-
3 davit of support.

4 “(c) REMEDIES.—Remedies available to enforce an
5 affidavit of support under this section include any or all
6 of the remedies described in section 3201, 3203, 3204,
7 or 3205 of title 28, United States Code, as well as an
8 order for specific performance and payment of legal fees
9 and other costs of collection, and include corresponding
10 remedies available under State law. A Federal agency may
11 seek to collect amounts owed under this section in accord-
12 ance with the provisions of subchapter II of chapter 37
13 of title 31, United States Code.

14 “(d) NOTIFICATION OF CHANGE OF ADDRESS.—(1)
15 The sponsor shall notify the Federal Government and the
16 State in which the sponsored alien is currently residing
17 within 30 days of any change of address of the sponsor
18 during the period specified in subsection (a)(1).

19 “(2) Any person subject to the requirement of para-
20 graph (1) who fails to satisfy such requirement shall be
21 subject to a civil penalty of—

22 “(A) not less than \$250 or more than \$2,000,
23 or

24 “(B) if such failure occurs with knowledge that
25 the sponsored alien has received any benefit under

1 any means-tested public benefits program, not less
2 than \$2,000 or more than \$5,000.

3 “(e) DEFINITIONS.—For the purposes of this sec-
4 tion—

5 “(1) SPONSOR.—The term ‘sponsor’ means an
6 individual who—

7 “(A) is a citizen or national of the United
8 States or an alien who is lawfully admitted to
9 the United States for permanent residence;

10 “(B) is 18 years of age or over;

11 “(C) is domiciled in any State;

12 “(D) demonstrates, through presentation
13 of a certified copy of a tax return or otherwise,
14 the means to maintain an annual income equal
15 to at least 200 percent of the poverty level for
16 the individual and the individual’s family (in-
17 cluding the sponsored alien or aliens); and

18 “(E) is the same individual who is petition-
19 ing for the admission of the sponsored alien
20 under section 204.

21 “(2) FEDERAL POVERTY LINE.—The term
22 ‘Federal poverty line’ means the income official pov-
23 erty line (as defined by the Office of Management
24 and Budget and revised annually in accordance with
25 section 673(2) of the Omnibus Budget Reconcili-

1 ation Act of 1981) that is applicable to a family of
2 the size involved.

3 “(3) MEANS-TESTED PUBLIC BENEFITS PRO-
4 GRAM.—The term ‘means-tested public benefits pro-
5 gram’ means a program of public benefits (including
6 cash, medical, housing, and food assistance and so-
7 cial services) of the Federal Government or of a
8 State or political subdivision of a State in which the
9 eligibility of an individual, household, or family eligi-
10 bility unit for benefits under the program, or the
11 amount of such benefits, or both are determined on
12 the basis of income, resources, or financial need of
13 the individual, household, or unit.”.

14 (b) REQUIREMENT OF AFFIDAVIT OF SUPPORT FROM
15 EMPLOYMENT SPONSORS.—For requirement for affidavit
16 of support from individuals who file classification petitions
17 for a relative as an employment-based immigrant, see the
18 amendment made by section 611.

19 (c) SETTLEMENT OF CLAIMS PRIOR TO NATURALIZA-
20 TION.—Section 316(a) (8 U.S.C. 1427(a)) is amended—

21 (1) by striking “and” before “(3)”, and

22 (2) by inserting before the period at the end the
23 following: “, and (4) in the case of an applicant that
24 has received assistance under a means-tested public
25 benefits program (as defined in subsection (f)(3) of

1 section 213A) administered by a Federal, State, or
2 local agency and with respect to which amounts may
3 be owing under an affidavit of support executed
4 under such section, provides satisfactory evidence
5 that there are no outstanding amounts that may be
6 owed to any such Federal, State, or local agency
7 pursuant to such affidavit by the sponsor who exe-
8 cuted such affidavit”.

9 (d) CLERICAL AMENDMENT.—The table of contents
10 of such Act is amended by inserting after the item relating
11 to section 213 the following:

“Sec. 213A. Requirements for sponsor’s affidavit of support.”.

12 (e) EFFECTIVE DATE.—Subsection (a) of section
13 213A of the Immigration and Nationality Act, as inserted
14 by subsection (a) of this section, shall apply to affidavits
15 of support executed on or after a date specified by the
16 Attorney General, which date shall be not earlier than 60
17 days (and not later than 90 days) after the date the Attor-
18 ney General formulates the form for such affidavits under
19 subsection (b) of such section.

20 (f) PROMULGATION OF FORM.—Not later than 90
21 days after the date of the enactment of this Act, the Attor-
22 ney General, in consultation with the Secretary of State
23 and the Secretary of Health and Human Services, shall
24 formulate an affidavit of support consistent with the provi-

1 sions of section 213A of the Immigration and Nationality

2 Act.

104TH CONGRESS
1ST SESSION

H. R. 1929

To amend the Immigration and Nationality Act to more effectively prevent illegal immigration by improving control over the land borders of the United States, preventing illegal employment of aliens, reducing procedural delays in removing illegal aliens from the United States, providing wiretap and asset forfeiture authority to combat alien smuggling and related crimes, increasing penalties for bringing aliens unlawfully into the United States, and making certain miscellaneous and technical amendments, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 1995

Mr. BERMAN (by request) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to more effectively prevent illegal immigration by improving control over the land borders of the United States, preventing illegal employment of aliens, reducing procedural delays in removing illegal aliens from the United States, providing wiretap and asset forfeiture authority to combat alien smuggling and related crimes, increasing penalties for bringing aliens unlawfully into the United States, and making certain miscellaneous and technical amendments, 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 Enforce-
 5 ment Improvements Act of 1995”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—BORDER ENFORCEMENT

- Sec. 101. Authorization for border control strategies.
- Sec. 102. Border Patrol expansion.
- Sec. 103. Land border inspection enhancements.
- Sec. 104. Increased penalties for failure to depart, illegal reentry, and passport and visa fraud.
- Sec. 105. Pilot program on interior repatriation of deportable or excludable aliens.
- Sec. 106. Special exclusion in extraordinary migration situations.
- Sec. 107. Immigration emergency provisions.
- Sec. 108. Commuter lane pilot programs.

TITLE II—CONTROL OF UNLAWFUL EMPLOYMENT AND VERIFICATION

- Sec. 201. Reducing the number of employment verification documents.
- Sec. 202. Employment verification pilot projects.
- Sec. 203. Confidentiality of data under employment eligibility verification pilot projects.
- Sec. 204. Collection of Social Security numbers.
- Sec. 205. Employer sanctions penalties.
- Sec. 206. Criminal penalties for document fraud.
- Sec. 207. Civil penalties for document fraud.
- Sec. 208. Subpoena authority.
- Sec. 209. Increased penalties for employer sanctions involving labor standards violations.
- Sec. 210. Increased civil penalties for unfair immigration-related employment practices.
- Sec. 211. Retention of employer sanctions fines for law enforcement purposes.
- Sec. 212. Telephone verification system fee.
- Sec. 213. Authorizations.

TITLE III—ILLEGAL ALIEN REMOVAL

- Sec. 301. Civil penalties for failure to depart.
- Sec. 302. Judicial deportation.
- Sec. 303. Conduct of proceedings by electronic means.
- Sec. 304. Subpoena authority.

- Sec. 305. Stipulated exclusion and deportation.
- Sec. 306. Streamlining appeals from orders of exclusion and deportation.
- Sec. 307. Sanctions against countries refusing to accept deportation of their nationals.
- Sec. 308. Custody of aliens convicted of aggravated felonies.
- Sec. 309. Limitations on relief from exclusion and deportation.
- Sec. 310. Rescission of lawful permanent resident status.
- Sec. 311. Increasing efficiency in removal of detailed aliens.

TITLE IV—ALIEN SMUGGLING CONTROL

- Sec. 401. Wiretap authority for investigations of alien smuggling and document fraud.
- Sec. 402. Applying racketeering offenses to alien smuggling.
- Sec. 403. Expanded asset forfeiture for smuggling or harboring aliens.
- Sec. 404. Increased criminal penalties for alien smuggling.
- Sec. 405. Undercover investigation authority.
- Sec. 406. Amended definition of aggravated felony.

TITLE V—INSPECTIONS AND ADMISSIONS

- Sec. 501. Civil penalties for bringing inadmissible aliens from contiguous territories.
- Sec. 502. Definition of stowaway; excludability of stowaway; carrier liability for costs of detention.
- Sec. 503. List of alien and citizen passengers arriving or departing.
- Sec. 504. Elimination of limitations on immigration user fees for certain cruise ship passengers.
- Sec. 505. Transportation line responsibility for transit without visa aliens.
- Sec. 506. Authority to determine visa processing procedures.
- Sec. 507. Border services user fee.

TITLE VI—MISCELLANEOUS AND TECHNICAL AMENDMENTS

- Sec. 601. Alien prostitution.
- Sec. 602. Grants to States for medical assistance to undocumented immigrants.
- Sec. 603. Technical corrections to Violent Crime Control Act and Technical Corrections Act.
- Sec. 604. Expeditious deportation.
- Sec. 605. Authorization for use of volunteers.
- Sec. 606. Waiver of exclusion and deportation ground for certain section 274C violators.

10 **TITLE II—CONTROL OF UNLAWFUL**
11 **EMPLOYMENT AND VERIFICATION**

12 **SEC. 201. REDUCING THE NUMBER OF EMPLOYMENT VER-**
13 **IFICATION DOCUMENTS.**

14 (a) **PROVISION OF SOCIAL SECURITY ACCOUNT NUM-**
15 **BERS.**—Section 274A of the Immigration and Nationality
16 Act (8 U.S.C. 1324a) is amended by adding at the end
17 of subsection (b)(2) a new sentence to read as follows:
18 “The Attorney General is authorized to require an individ-
19 ual to provide on the form described in subsection
20 (b)(1)(A) that individual’s Social Security account number
21 for purposes of complying with this section.”.

22 (b) **CHANGES IN ACCEPTABLE DOCUMENTATION FOR**
23 **EMPLOYMENT AUTHORIZATION AND IDENTITY.**—Section
24 274A(b)(1) of the Immigration and Nationality Act (8
25 U.S.C. 1324a(b)(1)) is amended—

1 (1) in subparagraph (B)—

2 (A) by striking clauses (ii), (iii), and (iv)
3 and redesignating clause (v) as clause (ii),

4 (B) in clause (i), by adding at the end
5 “or”, and

6 (C) in redesignated clause (ii), by revising
7 the introductory text to read as follows:

8 “(ii) resident alien card, alien reg-
9 istration card, or other document des-
10 igned by regulation by the Attorney Gen-
11 eral, if the document—”; and

12 (D) in redesignated clause (ii) by striking
13 the period after subclause (II) and by adding a
14 new subclause (III) to read as follows:

15 “(III) and contains appropriate
16 security features.” and

17 (2) in subparagraph (C)—

18 (A) by inserting “or” after the “;” at the
19 end of clause (i),

20 (B) by striking clause (ii), and

21 (C) by redesignating clause (iii) as clause
22 (ii).

23 (c) EFFECTIVE DATE.—The amendments made by
24 subsections (a) and (b) shall apply with respect to hiring
25 (or recruiting or referring) occurring on or after such date

1 (not later than 180 days after the date of the enactment
2 of this Act) as the Attorney General shall designate.

3 **SEC. 202. EMPLOYMENT VERIFICATION PILOT PROJECTS.**

4 (a) The Attorney General, together with the Commis-
5 sion of Social Security, shall conduct pilot projects to test
6 methods to accomplish reliable verification of eligibility for
7 employment in the United States. The pilot projects tested
8 may include—

9 (1) an expansion of the telephone verification
10 system to include, by the end of Fiscal Year 1996,
11 participation by up to 1,000 employers;

12 (2) a process which allows employers to verify
13 the eligibility for employment of new employees
14 using Social Security Administration (SSA) records
15 and, if necessary, to conduct a cross-check using Im-
16 migration and Naturalization Service (INS) records;

17 (3) a simulated linkage of the electronic records
18 of the INS and the SSA to test the technical fea-
19 sibility of establishing a linkage between the actual
20 electronic records of the INS and the SSA; or

21 (4) improvements and additions to the elec-
22 tronic records of the INS and the SSA for the pur-
23 pose of using such records for verification of employ-
24 ment eligibility.

1 (b) The pilot projects referred to in subsection (a)
2 shall be conducted in such locations and with such number
3 of employers as is consistent with their pilot status.

4 (c) The pilot projects referred to in subsection (a)
5 shall begin not later than 12 months after the enactment
6 of this Act and may continue for a period of 3 years. Dur-
7 ing the pilot project, the Attorney General shall track com-
8 plaints of discrimination arising from the administration
9 or enforcement of the pilot project. Not later than 60 days
10 prior to the conclusion of this 3-year period, the Attorney
11 General shall submit to the Congress a report on the pilot
12 projects. The report shall include evaluations of each of
13 the pilot projects according to the following criteria: cost
14 effectiveness, technical feasibility, resistance to fraud, pro-
15 tection of confidentiality and privacy, and protection
16 against discrimination, and which projects, if any, should
17 be adopted.

18 (d) Upon completion of the report required by sub-
19 section (c), the Attorney General is authorized to continue
20 implementation on a pilot basis for an additional period
21 of 1 year any or all of the pilot projects authorized in sub-
22 section (a). The Attorney General shall inform Congress
23 of a decision to exercise this authority not later than the
24 end of the 3-year period specified in subsection (c).

1 (e) Nothing in this section shall exempt the pilot
2 projects from any and all applicable civil rights laws, in-
3 cluding, but not limited to, Section 102 of the Immigra-
4 tion Reform and Control Act of 1986, as amended; title
5 VII of the Civil Rights Act of 1964, as amended; the Age
6 Discrimination in Employment Act of 1967, as amended;
7 the Equal Pay Act of 1963, as amended; and the Ameri-
8 cans with Disabilities Act of 1990, as amended.

9 (f) In conducting the pilot projects referred to in sub-
10 section (a), the Attorney General may require appropriate
11 notice to prospective employees concerning the employers'
12 participation in the pilot projects. Any notice should con-
13 tain information for filing complaints with the Attorney
14 General regarding operation of the pilot projects, includ-
15 ing discrimination in the hiring and firing of employees
16 and applicants on the basis of race, national origin, or citi-
17 zenship status.

18 **SEC. 203. CONFIDENTIALITY OF DATA UNDER EMPLOY-**
19 **MENT ELIGIBILITY VERIFICATION PILOT**
20 **PROJECTS.**

21 (a) Any personal information obtained in connection
22 with a pilot project under section 202 may not be made
23 available to Government agencies, employers, or other per-
24 sons except to the extent necessary—

1 (1) to verify that an employee is not an unau-
2 thorized alien (as defined in section 274A(h)(3) of
3 the Immigration and Nationality Act (8 U.S.C.
4 1324a(h)(3)));

5 (2) to take other action required to carry out
6 section 202; or

7 (3) to enforce the Immigration and Nationality
8 Act (8 U.S.C. 1101 et seq.) or sections 911, 1001,
9 1028, 1546, or 1621 of title 18, United States Code.

10 (b) No employer may participate in a pilot project
11 under section 202 unless the employer has in place such
12 procedures as the Attorney General shall require—

13 (1) to safeguard all personal information from
14 unauthorized disclosure and condition redisclosure of
15 such information to any person or entity upon its
16 agreement also to safeguard such information; and

17 (2) to provide notice to all individuals of the
18 right to request an agency to correct or amend the
19 individual's record and the steps to follow to make
20 such a request.

21 (c)(1) Any person who is a United States citizen,
22 United States national, lawful permanent resident, or
23 other employment authorized alien, and who is subject to
24 work authorization verification under section 202 shall be
25 considered an individual under section 552a(a)(2) of title

1 5, United States Code, but only with respect to records
2 covered by this section.

3 (2) For purposes of this section, a record shall mean
4 an item, collection, or grouping of information about an
5 individual that is created, maintained, or used by a Fed-
6 eral agency in the course of a pilot project under section
7 202 to make a final determination concerning an individ-
8 ual's authorization to work in the United States, and that
9 contains the individual's name or identifying number,
10 symbol, or other identifying particular assigned to the in-
11 dividual.

12 (d) Whenever an employer or other person willfully
13 and knowingly—

14 (1) discloses or uses information for a purpose
15 other than those permitted under subsection (a); or

16 (2) fails to comply with a requirement of the
17 Attorney General pursuant to subsection (b);

18 after notice and opportunity for an administrative hearing
19 conducted by the Attorney General or the Commissioner
20 of Social Security, as appropriate, or by a designee, the
21 employer or other person shall be subject to a civil money
22 penalty of not less than \$1,000 nor more than \$10,000
23 for each violation. In determining the amount of the pen-
24 alty, consideration shall be given to the intent of the per-

1 son committing the violation, the impact of the violation,
2 and any history of previous violations by the person.

3 (e) Nothing in this section shall limit the rights and
4 remedies otherwise available to United States citizens and
5 lawful permanent residents under section 552a of title 5,
6 United States Code.

7 (f) Nothing in this section shall be construed to
8 authorize, directly or indirectly, the issuance or use of na-
9 tional identification cards or the establishment of a na-
10 tional identification card.

11 **SEC. 204. COLLECTION OF SOCIAL SECURITY NUMBERS.**

12 Section 264 of the Immigration and Nationality Act
13 (8 U.S.C. 1304) is amended by adding at the end a new
14 subsection (f) to read as follows:

15 “(f) Notwithstanding any other provision of law, the
16 Attorney General is authorized to require any alien to pro-
17 vide the alien’s Social Security account number for pur-
18 poses of inclusion in any record of the alien maintained
19 by the Attorney General.”.

20 **SEC. 205. EMPLOYER SANCTIONS PENALTIES.**

21 (a) INCREASED CIVIL MONEY PENALTIES FOR HIR-
22 ING, RECRUITING, AND REFERRAL VIOLATIONS.—Section
23 274A(e)(4)(A) of the Immigration and Nationality Act (8
24 U.S.C. 1324(e)(4)(A)) is amended—

1 (1) in clause (i), by striking “\$250” and
2 “\$2,000” and inserting “\$1,000” and “\$3,000”, re-
3 spectively;

4 (2) in clause (ii), by striking “\$2,000” and
5 “\$5,000” and inserting “\$3,000” and “\$8,000”, re-
6 spectively; and

7 (3) in clause (iii), by striking “\$3,000” and
8 “\$10,000” and inserting “\$8,000” and “\$25,000”,
9 respectively.

10 (b) **INCREASED CIVIL MONEY PENALTIES FOR PA-**
11 **PERWORK VIOLATIONS.**—Section 274A(e)(5) of the Immi-
12 gration and Nationality Act (8 U.S.C. 1324a(e)(5)) is
13 amended by striking “\$100” and “\$1,000” and inserting
14 “\$200” and “\$5,000”, respectively.

15 (c) **INCREASED CRIMINAL PENALTIES FOR PATTERN**
16 **OR PRACTICE VIOLATIONS.**—Section 274A(f)(1) of the
17 Immigration and Nationality Act (8 U.S.C. 1324a(f)(1))
18 is amended by inserting the phrase “guilty of a felony and
19 shall be” immediately after the phrase “subsection
20 (a)(1)(A) or (a)(2).” Section 274A(f)(1) of such Act is
21 further amended by striking “\$3,000” and “six months”
22 and inserting “\$7,000” and “two years”, respectively.

23 **SEC. 206. CRIMINAL PENALTIES FOR DOCUMENT FRAUD.**

24 (a) **FRAUD AND MISUSE OF GOVERNMENT-ISSUED**
25 **IDENTIFICATION DOCUMENTS.**—Section 1028(b)(1) of

1 title 18, United States Code, is amended by striking “five
2 years” and inserting “10 years” and by adding at the end
3 the following new provision: “Notwithstanding any other
4 provision of this title, the maximum term of imprisonment
5 that may be imposed for an offense under this section—

6 “(1) if committed to facilitate a drug traffick-
7 ing crime (as defined in 929(a)) is 15 years; and

8 “(2) if committed to facilitate an act of inter-
9 national terrorism (as defined in section 2331) is 20
10 years.”.

11 (b) **CHANGES TO THE SENTENCING LEVELS.**—Pur-
12 suant to section 994 of title 28, United States Code, and
13 section 21 of the Sentencing Act of 1987, the United
14 States Sentencing Commission shall promptly promulgate
15 guidelines, or amend existing guidelines, to make appro-
16 priate increases in the base offense levels for offenses
17 under section 1028(a) of title 18, United States Code.

18 **SEC. 207. CIVIL PENALTIES FOR DOCUMENT FRAUD.**

19 (a) **ACTIVITIES PROHIBITED.**—Section 274C(a) of
20 the Immigration and Nationality Act (8 U.S.C. 1324c(a))
21 is amended—

22 (1) by striking “or” at the end of paragraph

23 (3);

24 (2) by striking the period and inserting “; or”

25 at the end of paragraph (4); and

1 (3) by adding at the end the following:

2 “(5) to present before boarding a common car-
3 rier for the purpose of coming to the United States
4 a document that relates to the alien’s eligibility to
5 enter the United States and to fail to present such
6 document to an immigration officer upon arrival at
7 a United States port of entry, or

8 “(6) in reckless disregard of the fact that the
9 information is false or does not relate to the appli-
10 cant, to prepare, to file, or to assist another in pre-
11 paring or filing, documents which are falsely made
12 (including but not limited to documents which con-
13 tain false information, material misrepresentation,
14 or information which does not relate to the appli-
15 cant) for the purposes of satisfying a requirement of
16 this Act.

17 The Attorney General may waive the penalties of this sec-
18 tion with respect to an alien who knowingly violates para-
19 graph (5) if the alien is subsequently granted asylum
20 under section 208 or withholding of deportation under sec-
21 tion 243(h). For the purposes of this section, the phrase
22 ‘falsely made any document’ includes the preparation or
23 provision of any document required under this Act, with
24 knowledge or in reckless disregard of the fact that such
25 document contains false, fictitious, or fraudulent state-

1 ment or material representation, or has no basis in law
2 or fact, or otherwise fails to state a material fact pertain-
3 ing to the document.”.

4 (b) CONFORMING AMENDMENTS FOR CIVIL PEN-
5 ALTIES.—Section 274C(d)(3) of the Immigration and Na-
6 tionality Act (8 U.S.C. 1324c(d)(3)) is amended by strik-
7 ing “each document used, accepted, or created and each
8 instance of use, acceptance, or creation” in each of the
9 two places it appears and inserting “each document that
10 is the subject of a violation under subsection (a)”.

11 **SEC. 208. SUBPOENA AUTHORITY.**

12 (a) IMMIGRATION OFFICER AUTHORITY.—

13 (1) Section 274A(e)(2) of the Immigration and
14 Nationality Act (8 U.S.C. 1324a(e)(2)) is amended
15 by—

16 (A) striking at the end of subparagraph

17 (A) “and”;

18 (B) striking at the end of subparagraph

19 (B) “.” and inserting “; and”; and

20 (C) adding a new subparagraph (C) to
21 read as follows:

22 “(C) immigration officers designated by
23 the Commissioner may compel by subpoena the
24 attendance of witnesses and the production of
25 evidence at any designated place prior to the fil-

1 ing of a complaint in a case under paragraph
2 (3).”.

3 (2) Section 274C(d)(1) of the Immigration and
4 Nationality Act (8 U.S.C. 1324(a)(3)(2)) is amend-
5 ed by—

6 (A) striking at the end of subparagraph
7 (A) “and”;

8 (B) striking at the end of subparagraph
9 (B) “.” and inserting “, and”; and

10 (C) adding a new subparagraph (C) to
11 read as follows:

12 “(C) immigration officers designated by
13 the Commissioner may compel by subpoena the
14 attendance of witnesses and the production of
15 evidence at any designated place prior to the fil-
16 ing of a complaint in a case under paragraph
17 (2).”.

18 (b) SECRETARY OF LABOR SUBPOENA AUTHOR-
19 ITY.—The Immigration and Nationality Act is amended
20 by adding a new section 294 (8 U.S.C. 1364) to read as
21 follows:

22 “SEC. 294. SECRETARY OF LABOR SUBPOENA AU-
23 THORITY.—The Secretary of Labor may issue subpoenas
24 requiring the attendance and testimony of witnesses or the
25 production of any records, books, papers, or documents

1 in connection with any investigation or hearing conducted
2 in the enforcement of any immigration program for which
3 the Secretary of Labor has been delegated enforcement
4 authority under the Act. In such hearing, the Secretary
5 of Labor may administer oaths, examine witnesses, and
6 receive evidence. For the purpose of any such hearing or
7 investigation, the authority contained in sections 9 and 10
8 of the Federal Trade Commission Act (15 U.S.C. 49, 50),
9 relating to the attendance of witnesses and the production
10 of books, papers, and documents, shall be available to the
11 Secretary of Labor.”.

12 **SEC. 209. INCREASED PENALTIES FOR EMPLOYER SANC-**
13 **TIONS INVOLVING LABOR STANDARDS VIOLA-**
14 **TIONS.**

15 (a) Section 274A(e) of the Immigration and Nation-
16 ality Act (8 U.S.C. 1324a(e)) is amended by adding a new
17 paragraph (10) to read as follows:

18 “(10)(A) The administrative law judge shall
19 have the authority to require payment of a civil
20 money penalty in an amount up to two times the
21 level of the penalty prescribed by this subsection in
22 any case where the employer has been found to have
23 committed willful or repeated violations of any of the
24 following statutes:

1 “(i) The Fair Labor Standards Act (29
2 U.S.C. 201 et seq.), pursuant to a final deter-
3 mination by the Secretary of Labor or a court
4 of competent jurisdiction.

5 “(ii) The Migrant and Seasonal Agricul-
6 tural Worker Protection Act (29 U.S.C. 1801 et
7 seq.), pursuant to a final determination by the
8 Secretary of Labor or a court of competent ju-
9 risdiction.

10 “(iii) The Family and Medical Leave Act
11 (29 U.S.C. et seq.), pursuant to a final deter-
12 mination by a court of competent jurisdiction.

13 “(B) The Secretary of Labor and the Attorney
14 General shall consult regarding the administration of
15 the provisions of this paragraph.”.

16 (b) Section 274B(g) of the Immigration and Nation-
17 ality Act (8 U.S.C. 1324b(g)) is amended by adding a new
18 paragraph (4) to read as follows:

19 “(4)(A) The administrative law judge shall have
20 the authority to require payment of a civil money
21 penalty in an amount up to two times the level of
22 the penalty prescribed by this subsection in any case
23 where the employer has been found to have commit-
24 ted willful or repeated violations of any of the follow-
25 ing statutes:

1 “(i) The Fair Labor Standards Act, (29
2 U.S.C. 201 et seq.), pursuant to a final deter-
3 mination by the Secretary of Labor or a court
4 of competent jurisdiction.

5 “(ii) The Migrant and Seasonal Agricul-
6 tural Worker Protection Act (29 U.S.C. 1801 et
7 seq.), pursuant to a final determination by the
8 Secretary of Labor or a court of competent ju-
9 risdiction.

10 “(iii) The Family and Medical Leave Act
11 (29 U.S.C. 2601 et seq.), pursuant to a final
12 determination by a court of competent jurisdic-
13 tion.

14 “(B) The Secretary of Labor and the Attorney
15 General shall consult regarding the administration of
16 the provisions of this paragraph.”.

17 (c) Section 274C(d) of the Immigration and Nation-
18 ality Act (8 U.S.C. 1324c(d)) is amended by adding a new
19 paragraph (7) to read as follows:

20 “(7)(A) The administrative law judge shall have
21 the authority to require payment of a civil money
22 penalty in an amount up to two times the level of
23 the penalty prescribed by this subsection in any case
24 where the employer has been found to have commit-

1 ted willful or repeated violations of any of the follow-
2 ing statutes:

3 “(i) The Fair Labor Standards Act, (29
4 U.S.C. 201 et seq.), pursuant to a final deter-
5 mination by the Secretary of Labor or a court
6 of competent jurisdiction.

7 “(ii) The Migrant and Seasonal Agricul-
8 tural Worker Protection Act, (29 U.S.C. 1801
9 et seq.), pursuant to a final determination by
10 the Secretary of Labor or a court of competent
11 jurisdiction.

12 “(iii) The Family and Medical Leave Act
13 (29 U.S.C. 2601 et seq.), pursuant to a final
14 determination by a court of competent jurisdic-
15 tion.

16 “(B) The Secretary of Labor and the Attorney
17 General shall consult regarding the administration of
18 the provisions of this paragraph.”.

19 **SEC. 210. INCREASED CIVIL PENALTIES FOR UNFAIR IMMI-**
20 **GRATION-RELATED EMPLOYMENT PRAC-**
21 **TICES.**

22 (a) Section 274B(g)(2)(B) of the Immigration and
23 Nationality Act (8 U.S.C. 1324b(g)(2)(B)) is amended—

1 (1) in clause (iv)(I), by striking "\$250" and
2 "\$2,000" and inserting "\$1,000" and "\$3,000", re-
3 spectively;

4 (2) in clause (iv)(II), by striking "\$2,000" and
5 "\$5,000" and inserting "\$3,000" and "\$8,000", re-
6 spectively;

7 (3) in clause (iv)(III), by striking "\$3,000" and
8 "\$10,000" and inserting "\$8,000" and "\$25,000",
9 respectively; and

10 (4) in clause (iv)(IV), by striking "\$100" and
11 "\$1,000" and inserting "\$200" and "\$5,000", re-
12 spectively.

13 **SEC. 211. RETENTION OF EMPLOYER SANCTIONS FINES**
14 **FOR LAW ENFORCEMENT PURPOSES.**

15 Section 286(c) of the Immigration and Nationality
16 Act, 8 U.S.C. 1356(c) is amended by striking the period
17 at the end of the section and by adding the following: "
18 *Provided further*, That all monies received during each fis-
19 cal year in payment of penalties under section 274A of
20 this Act in excess of \$5,000,000 shall be credited to the
21 Immigration and Naturalization Service Salaries and Ex-
22 penses appropriations account that funds activities and re-
23 lated expenses associated with enforcement of that section
24 and shall remain available until expended."

1 **SEC. 212. TELEPHONE VERIFICATION SYSTEM FEE.**

2 Section 274A(d) of the Immigration and Nationality
3 Act (8 U.S.C. 1324a(d)) is amended by adding at the end
4 a new paragraph (5) to read as follows:

5 “(5) TELEPHONE VERIFICATION SYSTEM
6 FEE.—

7 “(A) The Attorney General is authorized
8 to collect a fee from employers, recruiters, or
9 referrers who subscribe to participate in a tele-
10 phone verification system pilot under this sec-
11 tion.

12 “(B) Funds collected pursuant to this au-
13 thorization shall be deposited as offsetting col-
14 lections to the Immigration and Naturalization
15 Service Salaries and Expenses appropriations
16 account solely to fund the costs incurred to pro-
17 vide alien employment verification services
18 through such a system.”.

19 **SEC. 213. AUTHORIZATIONS.**

20 There are authorized to be appropriated such sums
21 as may be necessary to carry out this title. None of the
22 costs incurred in carrying out this title shall be paid for
23 out of any trust fund established under the Social Security
24 Act.

Finally, the bill expedites the removal of criminal aliens by eliminating some procedures and redtape.

I commend the administration for their initiative and I look forward to working with my colleagues to produce legislation that deals thoughtfully with the serious challenges we face.

INTRODUCTION OF THE IMMIGRATION ENFORCEMENT IMPROVEMENTS ACT OF 1995

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 27, 1995

Mr. BERMAN. Mr. Speaker, I rise today to introduce the Immigration Enforcement Improvements Act of 1995 on behalf of the Clinton administration. This bill builds upon the strong effort this administration has been making to control illegal immigration.

This administration has done more to close the door on illegal immigration than any previous administration. With expected increases this year and next, border control staffing will have increased by 51 percent since President Clinton took office—including border patrols and inspectors at border crossing points and airports. Deportation of illegal immigrants has tripled and the removal of criminal aliens has been targeted. The budget of the INS has increased by over 70 percent from \$1.5 billion in 1993 to \$2.6 billion requested for 1996.

The President, the Attorney General, and INS Commissioner Doris Meissner should be credited for their effective leadership and commitment to rising to the challenge of illegal immigration.

The legislation introduced today gives the administration a number of tools to control our borders more effectively, to combat illegal hiring and to remove those who are here in violation of our laws.

The bill would make realistic increases in border enforcement personnel without jeopardizing the quality and safety of Border Patrol officers and inspectors. Border control officers know best what resources they need to do their job effectively, and this bill responds directly to their needs.

The bill imposes stiff penalties for smuggling of immigrants, document fraud and other offenses.

The bill authorizes pilot programs to test ways to verify that job applicants are eligible to work in the United States. The goal is to find simple and effective ways of denying jobs to illegal immigrants to help eliminate the reason why immigrants enter this country illegally.

The bill promotes coordination on workplace enforcement between the INS and the Department of Labor, since employers who hire undocumented workers often also violate other labor standards.



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 7, 1995

Honorable Alan K. Simpson,
Chairman
Subcommittee on Immigration
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Simpson:

This letter presents the views of the Administration concerning the June 2, 1995 Committee Amendment to S. 269, the "Immigrant Control and Financial Responsibility Act of 1995" scheduled to be marked up by the Immigration Subcommittee on Thursday, June 8. We note that subsequent changes have been made to the Committee Amendment which the Administration is now reviewing. We reserve judgment on the new changes and will work with the Subcommittee on these and other issues.

The Attorney General and the Commissioner of the Immigration and Naturalization Service (INS) have appeared before your Committee to express support for the provisions of S. 269 which advance the Administration's four-part strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and providing the INS with the necessary resources to be effective. Many of the provisions of the Committee Amendment to S. 269 are similar to provisions in S. 754, the "Immigration Enforcement Improvements Act of 1995."

This Administration appreciates the continued opportunity to work with you and other members of the Subcommittee and is committed to working with you to ensure passage in this Congress of legislation to control illegal immigration. With limited exceptions, we support the provisions contained in the Committee Amendment to S. 269. Our positions on the individual provisions of the Committee Amendment to S. 269 are outlined in the following section-by-section discussion.

Section 101 mandates the Attorney General in Fiscal Years 1996 through 2000 to increase the number of Border Patrol agents by no fewer than 700 each year and authorizes the Attorney General to increase by not more than 300 the number of Border

Patrol support personnel each Fiscal Year from 1996 through 2000.

S. 754 would call for increases of at least 700 in each of Fiscal Years 1996, 1997, and 1998, to the maximum extent possible consistent with standards of professionalism and training. We note with approval the similarity between the Committee Amendment to S. 269 and S. 754, the Administration's proposal. We urge that S. 269 incorporate the Administration's language which would require that the hiring be to the maximum extent possible consistent with standards of professionalism and training and strike the limitation on the number of support personnel who can be hired.

Section 102 authorizes funding for 300 new positions for each of Fiscal Years 1996 through 1998 for investigators and support personnel to investigate alien smuggling and enforce employer sanctions. We support an increase for personnel to investigate alien smuggling and enforce employer sanctions. The President's Fiscal Year 1996 budget request provides 365 new INS investigations personnel and 202 new Department of Labor Wage and Hour and other personnel to enhance enforcement of employer sanctions and labor standards laws.

This section would also limit administrative expenditures for the payment of overtime to an employee for any amount over \$25,000. The restrictions on overtime expenditures currently apply because they are included in the Fiscal Year 1995 DOJ Appropriations Act. The President's Fiscal Year 1996 budget request also includes these restrictions.

Section 103 mandates the Attorney General and Secretary of the Treasury to increase the number of land border inspectors by approximately equal numbers in Fiscal Years 1996 and 1997 to a level that will provide full staffing to end undue delay and facilitate inspections.

S. 754 subjects the Attorney General's mandate to appropriations or the availability of funds in the Border Services User Fee Account and does not contain a mandate for the Secretary of the Treasury. We support this section and urge the Committee to add the limitations contained in S. 754.

Section 111(a) requires the Attorney General, together with the Commissioner of Social Security, to establish within eight years a system to verify eligibility for employment and eligibility for benefits under government-funded programs of public assistance.

While we agree that verification systems are critical to

immigration enforcement, we strongly oppose the requirement that permanent verification systems be established within eight years. Under the Administration bill, pilot programs will be tested and evaluated for three years so that the technical feasibility, cost effectiveness, resistance to fraud, and impact on employers and employees can be assessed and determined. S. 754 authorizes employment verification pilot projects that will improve the INS databases; expand the Social Security Administration (SSA) databases; simulate links of INS and SSA databases; expand the Telephone Verification System for non-citizens to 1,000 employers; and test a new two step process for citizens and non-citizens alike to verify employment authorization using INS and SSA data. The pilots will be built to guard against discrimination, violations of privacy, and document fraud. After three years, the pilots will be graded and evaluated on the bases of discrimination, privacy, technical feasibility, cost effectiveness, impact on employers, and susceptibility to fraud. We will request permanent authority from Congress only for pilot projects that work.

With regard to public assistance, our current system of verifying eligibility works well for both citizens and noncitizens. For this reason we have not included the benefit programs in our proposed pilot projects.

We also urge the Subcommittee to clarify that the phrase "eligibility for benefits under government-funded programs of public assistance" is limited to programs that provide benefits directly to individuals, and not programs such as Federal assistance provided to schools to assist disadvantaged children.

Under section 111(b), the system must be capable of reliably determining whether the person is eligible and whether the individual whose eligibility is being verified is claiming the identity of another person. It requires any document used by the system to be tamper-proof and prohibits its use as a national identification card except to verify eligibility for employment or benefits, to enforce the fraud provisions of Title 18, U.S.C., if the document was issued by the INS, or if the document was designed for another purpose (e.g., driver license, certificate of birth, Social Security card) as required under law for that other purpose.

We agree that efforts to test verification techniques should not be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

Section 111(b)(3) provides that the system may not be used other than to enforce the INA, the fraud provisions of Title 18, U.S.C., local laws relating to eligibility for certain Government-funded benefits, or laws relating to any document used

by the system which was designed for another purpose. We support this provision.

Section 111(b)(4) provides that the privacy and security of personal information and identifiers obtained for and utilized in the system must be protected in accordance with industry standards for privacy and security of confidential information. No personal information obtained from the system may be made available to any person except to the extent necessary to the lawful operation of the system.

This section's reliance upon industry standards is vague and thus not fully adequate to protect the important personal privacy and security interests of employment authorized individuals. The Administration proposal requires that an employer participating in a pilot program have in place such procedures as the Attorney General shall require to safeguard all personal information from unauthorized disclosure and condition redisclosure of such information to any person or entity upon its agreement also to safeguard such information. The Administration proposal also (1) requires notice to all individuals of the right to request an agency to correct or amend the individual's record and the steps to make such a request; (2) applies relevant remedies under the Privacy Act and civil fines for unauthorized disclosure; and (3) provides that no adverse employment action, i.e. firing, demotion, change of title or duties, occur while the employee is challenging the accuracy of the eligibility information during the second verification or thereafter, until the situation has been corrected or verified. We urge the inclusion of these privacy safeguards in the Committee Amendment to S. 269.

Section 111(b)(5) provides that a verification of eligibility may not be withheld or revoked for any reason other than the person's eligibility. We support this provision.

Section 111(c) relieves an employer from liability under section 274A of the INA if (1) the alien appeared throughout the term of employment to be prima facie eligible for employment, (2) the employer followed all procedures required in this new verification system, and (3) the alien was verified under such system as eligible for employment, or a secondary verification procedure was conducted with respect to the alien and the employer discharged the alien promptly after receiving notice that the secondary verification procedure failed to verify the eligibility of the employee.

This provision is unnecessary, potentially confusing, and we do not support it. An employer who complies with employee verification requirements is not liable for employer sanctions penalties under current law and regulations. We are concerned that this provision could have an unintended effect of increasing challenges to paperwork requirements.

Section 111(d) authorizes the Attorney General to require an individual to provide his or her Social Security account number for purposes of complying with this section. S. 754 has a similar provision, and we support this provision.

This section also limits the documents which establish both employment authorization and identity to the United States passport and resident alien card containing appropriate security features. It limits the documents which establish employment authorization to the Social Security card and Employment Authorization Document. The section also gives the Attorney General the authority to restrict the use of certain documents as establishing employment authorization, if she finds the document is being used fraudulently to an unacceptable degree. This section shall apply to hiring beginning no more than 180 days from the date of enactment of the Act.

S. 754 has a similar provision, and we support this section's reduction of documents. Although S. 754 contained the same effective date, on further consideration of technological capabilities we recommend that this amendment be made effective only with respect to hiring (or recruiting or referring) occurring after December 31, 1996.

Section 112 directs the President to conduct 3-year demonstration projects in five States to verify eligibility for employment and for benefits under government-funded programs of public assistance. The section provides that the demonstration projects verify eligibility for benefits under government-funded programs of public assistance, as well as eligibility for employment.

S. 754 provides for pilot projects to test various employment eligibility verification methods as described in the previous section. We believe demonstration pilots are unnecessary for verification of eligibility for benefits, since our current system -- the Systematic Alien Verification for Entitlements program (SAVE), enacted by section 121 of the Immigration Reform and Control Act (IRCA) -- works well for both citizens and noncitizens. We also believe that demonstration pilots must be evaluated before the creation of automated verification systems. Simultaneous implementation of both demonstration pilots and a permanent verification system is burdensome and may cause unnecessary and costly duplication of effort which may negatively affect employment opportunities of U.S. citizens and employment authorized aliens.

If this section is to be enacted, we believe the authority to conduct demonstration projects should be given directly to the Attorney General, rather than to the President. As a technical comment, the second reference to the Attorney General, at section

112(a) should be deleted.

Section 113 provides for an automated system with on-line access for verifying employment and public assistance eligibility. The system would be administered by a newly established Office of Employment and Public Assistance Eligibility Verification within the Department of Justice (DOJ).

We support enhancing the various immigration database systems. INS is currently undertaking significant database improvements. S. 754 authorizes employment verification pilot projects that will expand the Social Security Administration (SSA) databases and simulate links of INS and SSA databases. However, we do not support this provision because the specifics of an automated verification database should not be built into statute until the technical feasibility, cost effectiveness, resistance to fraud, and impact on employers and employees can be assessed and determined through pilot projects. We are concerned that the requirement that information be placed into the system within 10 business days will create an undue burden on INS resources.

As described in sections 111(a) and 112, the Administration supports testing various verification approaches over the next three years. We will request permanent authority from Congress only for pilot projects that work. Creation of a new Office of Employment and Public Assistance Eligibility Verification within the Department of Justice is duplicative of ongoing programs within the INS and other federal agencies. We believe that the effective way to administer this program is to retain the current responsibilities of gathering and verifying data within the contributing agencies, INS and the SSA.

Sec. 114 authorizes the Attorney General to require an individual to provide his or her Social Security account number; reduces the documents establishing both employment authorization and identity to the passport and resident alien card with appropriate security features; reduces the documents establishing employment authorization to the Social Security card and Employment Authorization Document; and requires the effective date with respect to hiring to be at least 180 days after the date of enactment of this Act.

For the reasons we outlined in our comments on Section 111(d) of the Committee Amendment to S. 269, we support this provision except for the effective date.

Sec. 115 provides that all copies of birth certificates

distributed by states or local agencies be issued in a standard form whose requirements are to be set forth by regulations issued by the Department of Health and Human Services after consultation with other agencies. State and local government agencies would be prohibited from accepting for evidentiary purposes a birth certificate issued in any other form, or issued by any entity other than a state or local government agency. No state or local government agency may issue an official copy of a birth certificate unless it has ascertained from the Social Security Administration (SSA) whether the person to whom the requested birth certificate pertains is deceased. No state or local government agency may accept a birth certificate for any evidentiary purpose, unless it has verified the certificate with the issuing agency or a new national birth registry that the SSA may establish, and unless it has verified with the SSA that the certificate does not pertain to a deceased person. A copy of any death certificate issued in the United States must be sent to the SSA (presumably by the issuing entity).

This section presents myriad constitutional, operational, and programmatic concerns, on which we want to work with the Subcommittee. First, it is not clear what enumerated power gives the federal government the authority to regulate birth certificates in this way. The Supreme Court has interpreted the federal government's authority over immigration quite broadly, but the relevant cases involved statutes that explicitly dealt with immigrants. See Fiallo v. Bell, 430 U.S. 787 (1977); Matthews v. Diaz, 426 U.S. 67 (1976). Section 115, though part of an immigration bill, does not by its terms involve immigration or immigrants; rather, it applies to all birth certificates. In light of the scope of section 115 and the absence of relevant cases, we are uncertain whether the Court would conclude that the bill is within the federal government's immigration authority. In addition, insofar as section 115 imposes non-ministerial duties on the states or compels policy decisions, it could be challenged as violative of the principles underlying the Tenth Amendment, under New York v. United States, 112 S. Ct. 2408 (1992).

We are concerned that requiring SSNs on all birth certificates may make the birth certificate a de facto national identification document which is contrary to the intent of S. 269 and S. 754.

Although SSA is not an official custodian of death data, SSA does receive death data from States and other sources. However, SSA is missing death data for an estimated 50 million persons to whom Social Security numbers (SSNs) were issued. Since most of these represent deaths occurring before SSA began receiving death data from the States, the States would have to furnish such data. Furthermore, many deaths involve children who were never issued SSNs, SSA could not maintain death records for these individuals

without first assigning them SSNs. Moreover, current State death data is only 94 percent accurate.

This provision would impose a tremendous unfunded mandate on States and localities as well as subject private citizens to burdensome requirements such as having their fingerprints added to their birth certificates by age 16. This section would also impose very substantial unbudgeted workload requirements on the SSA and the INS. SSA does not have the existing technological infrastructure or FTE's to accept the responsibilities required in section 115(a)(4) and (5). Since SSA is not authorized to use its trust funds for non-program purposes such as those envisioned by section 115, a specific appropriation of new funds would be required. The requirement that INS verify the authenticity of each birth certificate would cause an excessive workload burden on INS offices. The INS inspects over 500 million persons each year. We cannot verify every birth certificate presented as evidence of citizenship.

We ask that the following issues be clarified: (1) whether the requirements of this provision would be prospective only or retroactive; and (2) whether persons born abroad would have to obtain new birth certificates. Sec. 115(a)(3) should be amended to replace Passport Office with the Department of State. It should also be modified to read at the end "unless it is a foreign birth certificate for a person who is claiming acquisition of citizenship through birth abroad." Sec. 115(a)(5) should be modified to read "A copy of every death certificate issued in the United States and Report of Death Abroad issued by the Department of State shall be sent to the Social Security Administration."

While we have reservations about this provision, if it is enacted, we recommend that section 262 of the INA, which requires the INS to fingerprint aliens over the age of 14, be made uniform with the fingerprint requirement in this section.

Sec. 116 amends section 274(e)(4)(A) of the INA to increase the civil penalties for employer sanctions for first violations from the current range of \$250 to \$2,000 to a range of \$1,000 to \$3,000. The subsection also increase penalties for second violations from the current range of \$2,000 to \$5,000 to a range of \$3,000 to \$8,000. The penalties for subsequent violations are increased from a range of \$3,000 to \$10,000 to a range of \$8,000 to \$25,000.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269. However, we believe that the penalties for immigration-related discrimination, as covered by section 274B(g) of the INA, should be similarly increased.

Sec. 116(b) increases the penalties for employer sanctions paperwork violations from the current range of \$100 to \$1,000 to a range of \$200 to \$2,500.

S. 754 increases the penalties to a range of \$200 to \$5,000. We support this provision. However, we believe that the penalties for immigration-related discrimination, as covered by section 274B(g) of the INA, should be similarly increased.

Sec. 116(c) increases the criminal penalty for pattern and practice violations of employer sanctions to a felony offense, increasing the applicable fines from \$3,000 to \$9,000 and the criminal sentence which may be imposed from not more than six months to not more than two years.

S. 754 has a similar provision which raises the applicable fines to \$7,000 and the maximum criminal sentence to two years. We support this provision.

Sec. 116(d) authorizes an administrative law judge to increase the civil penalties provided under employer sanctions to an amount up to two times the normal penalties if labor standards violations are present.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269. However, we believe that this authority should also be extended to cover immigration-related discrimination, as covered by section 274B(g) of the INA.

Sec. 117 credits any employer sanctions penalties received in excess of \$5,000,000 to the INS Salaries and Expenses appropriations account that funds activities associated with employer sanctions enforcement.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 118 authorizes the Attorney General to hire for Fiscal Years 1996 and 1997 such additional Assistant United States Attorneys as may be necessary for INA prosecutions.

The President's Fiscal Year 1996 budget request includes resources to hire new Assistant U.S. Attorneys and support personnel to enhance immigration law enforcement. We support this provision.

Sec. 119 amends the INA to clarify that immigration officers

may issue subpoenas for investigations of employer sanctions offenses under section 274A. This section also authorizes the Secretary of Labor to issue subpoenas for investigations relating to the enforcement of any immigration program. It makes the authority contained in sections 9 and 10 of the Federal Trade Commission Act available to the Secretary of Labor. The Federal Trade Commission Act provisions allow access to documents and files of corporations, including the authority to call witnesses and require production of documents.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

PART 3--ALIEN SMUGGLING; DOCUMENT FRAUD

Sec. 121 grants wiretap authority to the INS for investigations of alien smuggling, identification document fraud, citizenship and naturalization procurement and document fraud, and passport and visa fraud.

We support this provision.

Sec. 122 amends 18 U.S.C. 1961(1) to include alien smuggling, identification document fraud, naturalization and citizenship procurement and document fraud, and visa and passport fraud offenses committed for personal financial gain as predicate offenses for racketeering charges.

S. 754 contains a similar provision, but it does not include identification document fraud, naturalization and citizenship procurement and document fraud, and visa and passport fraud offenses (18 U.S.C. §§ 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1546). We do not believe that there is a sufficient relationship between organized crime and these document fraud offenses to justify adding these offenses to RICO. We recommend that S. 269 adopt the S. 754 provision.

Sec. 123 adds conspiracy and aiding to alien smuggling offenses. This would subject conspirators to increased penalties for alien smuggling offenses rather than the penalty under the general conspiracy statute. This section provides that a person who smuggles aliens shall be fined or imprisoned for each alien to whom a violation occurs and not for each transaction constituting a violation, regardless of the number of aliens involved. This section also increases the penalties for alien smuggling offenses to not less than 3 years or more than 10 years for a first offense, to not less than 5 years or more than 10 years for a second offense, and to not less than 10 years or more

than 15 years for subsequent offenses.

S. 754 also adds conspiracy and aiding to alien smuggling offenses. We support the requirement that an alien smuggler be fined or imprisoned for each alien rather than for each transaction. However, while we do not object to increasing the maximum penalties for alien smuggling offenses, we do not believe that mandatory minimums are appropriate in this context. Providing for mandatory minimum penalties would produce anomalous results compared to penalties for other offenses of comparable severity. Furthermore, mandatory minimums are not necessary in view of the sentencing guidelines system, which is designed to provide appropriate and consistent penalties for all similar offenses.

Sec. 123(a)(5) makes it a criminal offense to hire an alien with knowledge that the alien is not authorized to work and that the alien was smuggled into the United States. The penalty for violating this section is a fine and imprisonment for not less than 2 years or more than 5 years.

S. 754 also criminalizes the employment of an alien knowing that such alien is not authorized to work and that the alien was smuggled into the United States. However, S. 754 provides for a term of imprisonment for not more than 5 years. The Administration does not believe that mandatory minimums are appropriate in this context. Such mandatory minimums would produce anomalous results and are unnecessary since the sentencing guidelines system already provides for consistent penalties for comparable offenses.

Sec. 123(b) creates a new offense for smuggling aliens with the intent or with reason to believe that the alien brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than one year.

This provision is substantially similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 123(c) directs the Sentencing Commission to promulgate or amend guidelines to provide that an offender convicted of smuggling, transporting, or harboring an unlawful alien under dangerous or inhumane conditions shall be assigned a base offense level of at least 22 for a first offense, at least 26 for an offender with one prior felony conviction, at least 32 for an offender with two prior felony convictions, an enhancement of between 2 and 6 levels in the case of bodily injury to such alien in proportion to the severity of the injury inflicted, and a base offense level of at least 41 in the case of the death of an alien.

Although the direction to the Sentencing Commission generally would provide for higher sentences than what the Department of Justice had proposed to the Sentencing Commission during this amendment cycle, we do not object to it.

Sec. 124 provides that the videotaped deposition of a witness to a violation of section 274(a) of the INA who has been deported from the U.S. may be admitted into evidence in an action brought for that violation if the witness was available for cross examination.

We support this provision.

Sec. 125 provides that any property, real or personal, which facilitates or is intended to facilitate, or which has been used in or is intended to be used in the commission of a violation of, or which constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of subsection 274(a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C., shall be subject to seizure and forfeiture. No property used by any person as a common carrier in the transaction of business shall be forfeited unless the owner or other person in charge of such property was a consenting party or privy to the illegal act. Also, no property shall be forfeited by reason of any act or omission established by the owner to have been committed or omitted by any person other than the owner while the property was unlawfully in the possession of a person other than the owner in violation of federal or state criminal laws. No property may be forfeited to the extent of an interest of any owner, by reason of any act or omission established by the owner to have been committed without the owner's knowledge or consent, unless the act or omission was committed by an employee or agent of the owner, and facilitated or was intended to facilitate, or was used in or intended to be used in, the commission of a violation of subsection (a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of title 18, U.S.C., which was committed by the owner or which was intended to further the business interests of the owner, or to confer any other benefit upon the owner.

It amends section 274(b)(2) by striking "conveyance" and inserting "property" and by striking "is being used in" and inserting "is being used in, is facilitating, has facilitated, or was intended to facilitate. It provides that before the seizure of any real property, the Attorney General shall provide notice and an opportunity to be heard to the owner of the property.

This section is similar to the Administration's proposal.

However, section 125's proposed new paragraph (E) to section 1324(b)(4) is unnecessary. The statute incorporated by reference therein (19 U.S.C. § 1616a(c)) is already incorporated into and made applicable to 8 U.S.C. § 1324(b) forfeitures. See 8 U.S.C. § 1324(b)(3) (incorporating the customs laws forfeiture procedures (19 U.S.C. § 1602 et seq.) by reference).

Sec. 126 provides that any person convicted of a violation of subsection 274(a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C., shall forfeit to the United States any conveyance, including any vessel, vehicle, or aircraft used in commission of a violation of 274(a) of the INA, and any property, real or personal, that constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of, or that facilitates or is intended to facilitate, or has been used in or is intended to be used in the commission of a violation of subsection 274(a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C.

The criminal forfeiture of property under this provision, including any seizure and disposition of the property and any related administrative or judicial proceeding shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, except for subsections 413(a) and 413(d) which shall not apply to forfeitures under this provision.

The provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269. We note, however, that the appropriate reference to the criminal provisions for alien smuggling are sections 274(a)(1) and (2) of the INA, and not 274A.

Sec. 127 establishes the illegality of bringing inadmissible aliens from foreign contiguous territories. It increases from \$3,000 to \$5,000 the fine for bringing in an alien unlawfully.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 128 increases the term of imprisonment for identification, passport, visa, naturalization, and citizenship document fraud from not more than five years to not more than 10 years for a first offense if the offender is under the age of 21. If the offender is 21 years of age or older, the term of

imprisonment for a first offense is not less than 2-1/2 or more than 10 years; for a second offense, not less than 5 years or more than 10 years; for subsequent offenses, not less than 10 or more than 15 years. The maximum term of imprisonment is up to 15 years if committed to facilitate a drug trafficking offense, and up to 20 years if committed to facilitate an act of international terrorism.

S. 754 amends 18 U.S.C. 1028(b)(1) on identification document fraud to increase the maximum term of imprisonment from 5 to 10 years. S. 754 has identical provisions for section 1028(b)(1) violations committed to facilitate a drug trafficking offense or an act of international terrorism.

Since the passport fraud statutes, 18 U.S.C. § 1542-1544 and §1546(a), are addressed in this section, we believe that 18 U.S.C. § 1541 (relating to passport issuance without authority) should also be included.

The Administration does not object to increasing the maximum penalties for third and subsequent offenses. However, we do not believe that the mandatory minimums in this section are appropriate. Providing for mandatory minimum penalties would produce anomalous results compared to penalties for other offenses of comparable severity, particularly many white collar crimes. Furthermore, mandatory minimums are not necessary in view of the sentencing guidelines system, which is designed to provide appropriate and consistent penalties for all similar offenses.

The Sentencing Commission recently adopted guideline amendments which will become effective on November 1, 1995 and will significantly increase the punishments for these offenses. In our view, the Commission's guideline amendments should be given an opportunity to work before additional changes are made.

Sec. 129 adds a new penalty to 18 U.S.C. 1546(a) for presenting a document that fails to contain any reasonable basis in law or fact.

We support this provision.

Sec. 130 adds a new criminal provision to section 274C of the Act which penalizes any person who knowingly and willfully fails to disclose, conceals, or covers up the fact that he or she has prepared or assisted in preparing an application for asylum which was falsely made for immigration benefits. A violation of this provision is a felony and a fine or imprisonment for 2 to 5 years, or both, may be imposed. This section prohibits a person who has been convicted of this offense from any further

involvement in the immigration application process. Anyone convicted of a subsequent violation is punishable by a fine, 5 to 15 years imprisonment, or both.

Current criminal statutes are adequate to punish this type of illegal conduct. We do not believe that a new and special offense is needed to prosecute a person involved in assisting in fraud in the asylum process.

Furthermore, mandatory minimum sentences are not appropriate in this context.

Sec. 131 inserts an additional violation to section 274C of the Act, by prohibiting preparing, filing, or assisting another in preparing or filing documents which are falsely made, in reckless disregard of the fact that the information is false or does not relate to the applicant.

While we support the intent of this provision, we believe that the provision is unnecessary because numerous existing document fraud statutes already cover this type of fraud.

This section also adds a penalty for those aliens who present a document upon boarding a carrier bound for the United States and then fail to present a document to the inspector at the port of entry. A discretionary waiver for penalties is provided if an alien is subsequently granted asylum or withholding of deportation.

This provision is substantially similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

This section also creates new civil penalties if the document fraud is committed in order to obtain a benefit under the INA. This section authorizes an administrative law judge to double civil penalties for document fraud if labor standards violations are present. S. 754 increases penalties for employer sanctions violations involving these same labor standards violations.

We support this provision.

Sec. 132 adds to the current exclusion ground for misrepresentation at section 212(a)(6) a ground for document fraud and for failure to present documents to the inspector at the port of entry. It makes excludable any alien who, in seeking entry to the United States, or upon boarding a common carrier for the purpose of coming to the United States, presents any document which, in the determination of the immigration officer, is

forged, counterfeit, altered, falsely made, stolen, or otherwise contains a misrepresentation of a material fact. It makes excludable any alien who is required to present prior to boarding a common carrier a document relating to the alien's eligibility to enter the United States but fails to present such document upon arrival.

We do not believe either of these provisions is needed. Current law at section 212(a)(6) is broad enough to cover fraudulent documents of any nature and already makes a person excludable who attempts to gain entry through use of such documents. Section 212(a)(7) makes excludable both immigrants and nonimmigrants who seek to enter without the required documents. We do not support this section.

Sec. 133 provides that aliens excludable because of document fraud and excludable aliens brought or escorted into the United States having been interdicted at sea are ineligible for relief from exclusion, including withholding of deportation and asylum, subject to a "credible fear of persecution" exception.

Sections 132 and 133 thus have the effect of eliminating the waivers for exclusion for fraud provided by the Act. Section 212(d)(3) provides for a general waiver of excludability for nonimmigrants. In addition, section 212(i) of the Act currently provides for a waiver for exclusion for fraud for an immigrant who is the spouse, parent, or son or daughter of a United States citizen or of a lawful permanent resident, or if the fraud occurred at least 10 years before an application for a visa or entry. We believe that these waivers are consistent with a fair and humanitarian immigration policy, and thus, are appropriate. Because we do not believe these waivers should be eliminated, we do not support Sections 132 and 133.

In addition, the restriction on withholding of deportation in section 133 for an alien who is inadmissible under section 212(a)(6)(C)(iii), as written, would apply irrespective of whether special exclusion is invoked. We do not support this provision.

Sec. 141 provides that the Attorney General may, without referral to an immigration judge or after such a referral, order the exclusion and deportation of an alien who appears to be excludable when (1) the alien has entered the U.S. without having been inspected and admitted by an immigration officer, unless such alien has been physically present in the U.S. for a continuous period of two years since entry without inspection, or the alien is excludable under section 212(a)(6)(C)(iii); (2) when the alien is brought or has arrived on board a smuggling vessel; or (3) the Attorney General determines that the numbers or

circumstances of aliens en route to or arriving in the U.S. present an extraordinary migration situation. The judgement whether an extraordinary migration situation exists or whether to invoke these provisions is committed to the sole and exclusive discretion of the Attorney General. The Attorney General may invoke the provisions of this section during an extraordinary migration situation for a period not to exceed 90 days, unless within such 90 day period or extension thereof, the Attorney General determines, after consultation with the House of Representatives and Senate Committees on the Judiciary, that an extraordinary migration situation continues to warrant such procedures remaining in place for an additional 90-day period.

A person will not be subject to expedited exclusion if he or she claims asylum and establishes a credible fear of persecution in his or her country of nationality. A special exclusion order is subject to administrative review only if an alien claims under oath to have been and appears to have been lawfully admitted for permanent residence.

We support making the applicability of the special exclusion procedures discretionary. We object strongly to making special exclusion applicable to aliens who entered without inspection. This provision has the effect of removing these aliens from the deportation procedures, and radically changing the long-standing "entry doctrine." This provision is impractical and unnecessary. The vast majority of aliens who are apprehended after having entered the United States without inspection depart voluntarily. For those aliens who have been here longer after having entered without inspection, the determination of when they entered will be difficult and could lead to protracted litigation.

We recommend that the Subcommittee adopt the special exclusion provision contained in S. 754.

As a technical comment, we note that section 141 contains the term "immigration judge." The INA uses the term "special inquiry officer." The term should be made consistent.

Sec. 142 streamlines judicial review of Orders of Exclusion or Deportation. This section revises and amends section 106 of the INA. Many of the provisions are similar to that of S. 754.

This section provides for judicial review of final administrative orders of both deportation and exclusion through a petition for review, filed in the judicial circuit in which the immigration judge completed the proceedings. Under current law, an order of exclusion is appealable to a district court and then appealable to the court of appeals. This provision is similar to the Administration's proposal.

This section requires that a petition for review be filed within 30 days, except that an aggravated felon must file within 15 days. We recommend that the uniform filing period of S. 754 be adopted, to avoid an additional issue for the courts.

The filing of a petition stays deportation except for aggravated felons, who must apply to the court for a stay. S. 754 contains a similar provision.

Under this bill, there is no review of discretionary denials under sections 212(c), 212(i), 244(a) and (d), and 245. We do not support this provision. We do not believe that appeals to the courts of such denials have unduly burdened the courts or unduly delayed deportations.

Denials of asylum are "conclusive unless manifestly contrary to law and an unconscionable abuse of discretion." S. 754 provides that all the administrative findings of fact supporting an order of exclusion or deportation are conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary. We recommend that the language of S. 754 be substituted as consistent with current decisional law and more workable.

As in current law, a court may review a final order only if the alien has exhausted all administrative remedies. This section adds a requirement that no other court may decide an issue, unless the petition presents grounds that could not have been presented previously or the remedy provided was inadequate or ineffective to test the validity of the order. S. 754 also retains this provision.

Under section 106(f) there is no judicial review of an individual order of special exclusion or of any other challenge relating to the special exclusion provisions. The only authorized review is through a habeas corpus proceeding, limited to determinations of alienage, whether the petitioner was ordered specially excluded, and whether the petitioner can prove by a preponderance of the evidence that he is an alien admitted for permanent residence and is entitled to further inquiry. In such cases the court may order no relief other than a hearing under section 236 or a determination in accordance with sections 235(a) or 273(d). There shall be no review of whether the alien was actually excludable or entitled to relief. S. 754 contains similar provisions. However, S. 754 does not make special exclusion applicable to the same circumstances as does S. 269, as noted in our comments on section 141 above.

Under new section 106(g), no collateral attack may be brought by an alien subject to penalties for improper entry or reentry. S. 754 contains a similar provision, at section 106(d).

Sec. 143 subjects an alien who willfully fails to depart on time pursuant to a final order of exclusion and deportation or a final order of deportation to a \$500 per day penalty.

This provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 144 permits deportation proceedings to be conducted by video conference or telephone. The alien must consent to such a hearing by telephone if it is to be a full contested evidentiary hearing on the merits.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 145 clarifies the authority of immigration judges to issue subpoenas in proceedings under sections 236 (exclusion) and 242 (deportation) of the INA.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 146 amends section 242B of the Act to eliminate the requirement that an order to show cause (OSC) be issued in Spanish to every alien.

We do not oppose this provision. The requirement that INS issue each OSC in Spanish involves unnecessary duplication of existing INS efforts to ensure that individuals are informed and comprehend the proceedings. Border Patrol agents and investigators generally speak Spanish and are able to communicate the nature of the deportation charges to the aliens. Those INS employees who do not speak Spanish have access to translator services. Such services are also available for languages other than Spanish. Furthermore, INS employees are required to advise aliens of their right to counsel, who can assist them in translating the OSC. At the actual deportation hearing, translators are provided when needed.

This section would also amend the requirement at 242B(b)(1) that an alien be given 14 days from service of an order to show cause (OSC) to obtain counsel before a hearing is scheduled, to provide that a hearing may be scheduled within three days for an alien who is detained. The section also amends section 292 to provide that the alien's right to obtain counsel must not

unreasonably delay proceedings.

We believe that the 14 day period gives the alien a fair opportunity to obtain counsel and question whether this provision would speed deportation proceedings. Because of the statutory right to a reasonable opportunity to obtain counsel, an immigration judge will normally provide at least one continuance to allow an alien that opportunity. The INS' experience has been that deportation proceedings move more quickly if an alien does have counsel. Because it may unintentionally cause delay or provide opportunity for appeals, we do not support this provision.

Sec. 147 authorizes withholding of nonimmigrant visas to nationals of countries that refuse or unduly delay acceptance of their nationals for deportation.

This provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 148 authorizes appropriation of \$10,000,000 in a special "no-year" fund for detaining and removing aliens who are subject to final orders of deportation.

We support this provision.

Sec. 149 authorizes appropriations for the Attorney General to conduct a pilot program or programs to study methods for increasing the efficiency of deportation and exclusion proceedings against detained aliens by increasing the availability of pro bono counseling and representation. The Attorney General may use funds to award grants to not-for-profit organizations assisting aliens.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 150 limits relief under section 212(c) of the INA to a person who has been lawfully admitted to the U.S. for at least 7 years, has been a legal permanent resident for at least 5 years, and is returning to such residence after having temporarily proceeded abroad not under an order of deportation. The 5-year and 7-year periods would end upon initiation of exclusion proceedings. An alien who has been convicted of one or more aggravated felonies and has been sentenced for such felonies to a term or terms of imprisonment totalling, in the aggregate, at

least 5 years is ineligible for 212(c) relief and cancellation of deportation. Also, relief under INA section 212(c) will be available only to persons in exclusion proceedings. Persons in deportation proceedings must now apply for cancellation of deportation.

Cancellation of deportation is available to an alien who has been a lawful permanent resident for at least 5 years who has resided in the U.S. continuously for 7 years after being lawfully admitted and has not been convicted of an aggravated felony or felonies for which the alien has been sentenced to a term or terms of imprisonment totalling, in the aggregate, at least 5 years.

The cancellation provisions replace the current suspension of deportation provisions. However, section 150 omits the current provision at section 244(a)(3), providing for suspension of deportation for battered spouses of U.S. citizens of lawful permanent residents, who have been physically present for three years. This provision was added to the INA by section 40703(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322, September 13, 1994). We recommend that the provisions of current section 244(a)(3) be included in section 150. Because this provision was just recently enacted and because of the special circumstances involving these applications, we recommend that the physical presence period not be deemed to end upon service of the order to show cause. Also, current subsection 244(g), relating to evidence submitted by abused or battered spouses, should remain.

This section does not permit appeal from a denial of a request for an order of voluntary departure. S. 754 allows such an appeal provided that no court shall have jurisdiction over an appeal regarding the length of voluntary departure where the alien has been granted voluntary departure for 30 days or more. We oppose eliminating judicial review as an unwarranted departure from longstanding procedural rights. We recommend that the Committee Amendment to S. 269 adopt the S. 754 provision.

We recommend that this provision include discretionary authority for the Attorney General to withhold deportation of an alien when the alien is cooperating in law enforcement efforts or in the interest of national security or for whatever the Attorney General deems appropriate. The provision ignores situations where we do not have diplomatic relations with the country of origin such as Libya or where the country of origin refuses to accept their nationals such as Cuba. We had problems historically with India and Pakistan refusing to accept their nationals, and some problems with firmly settled Afghans. This provision does not provide for situations where a state of war precludes return, such as Bosnia.

As a technical matter, we recommend amending section 244(a)(1) by adding "aggravated" before "felonies" to make it clear that the crimes involved must be aggravated felonies.

Sec. 151 defines a stowaway as any alien who obtains transportation without consent or through concealment of evasion. This section also clarifies that a stowaway is subject to immediate exclusion and deportation; however, a stowaway may apply for asylum or withholding of deportation. The carrier will be required to detain a stowaway until he or she has been inspected by an immigration officer and to pay for any detention costs incurred by the Attorney General should the alien be taken into custody. It raises the fine for failure to remove a stowaway from \$3,000 to \$5,000 per stowaway.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 152 directs the Attorney General, after consultation with the Secretary of State, to establish a pilot program for up to two years for deterring multiple unauthorized entries. The program may include interior repatriation, third country repatriation and other disincentives for multiple unlawful entries into the United States. This provision also requires the Attorney General, together with the Secretary of State, to submit a report to the Senate and House Committees on the Judiciary on the operation of the pilot program and whether the pilot program or any part thereof should be extended or made permanent.

This provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 153 authorizes the Attorney General and the Secretary of Defense to establish a pilot program for up to 2 years to determine the feasibility of the use of closed military bases as detention centers for INS. Within 35 months after enactment, they must submit a feasibility report to the House and Senate Committees on the Judiciary, and the House and Senate Committees on Armed Service.

The use of closed military bases would make additional detention space available to INS. At present, INS is forced to release many aliens who are awaiting proceedings due to lack of detention space. We have worked with the Department of Defense in conjunction with the Bureau of Prisons and other agencies to explore the use of closed bases. Conversion costs and staffing have been the most difficult problems to resolve. Accordingly,

this provision is unnecessary and does not address the underlying obstacles to achieving its goal.

Sec. 161 amends the definition of Aggravated Felony contained in 8 U.S.C. Sec. 1101(a)(43) to include: (1) an offense relating to laundering of monetary instruments or relating to engaging in monetary transactions in property derived from specific unlawful activity is an aggravated felony if the amount of funds exceeds \$10,000 (down from \$100,000); (2) a crime of violence, a theft offense (including receipt of stolen property) or burglary offense, or an offense relating to trafficking of fraudulent documents, for which the term of imprisonment is a minimum of at least two and one half years or a maximum of at least five years (down from 5 years); (3) a RICO offense, as well as offenses described in 18 U.S.C. 1084 or 1955, for which the term of imprisonment is a minimum of at least two and one half years or a maximum of at least five years (down from 5 years); (4) offenses relating to transportation for the purpose of prostitution for commercial advantage; (5) a violation of Section 601 of the National Security Act relating to protecting the identity of undercover agents; (6) an offense that involves fraud or deceit in which the loss to the victim exceeds \$10,000 (down from \$200,000) or involves tax evasion in which the revenue loss to the Government exceeds \$10,000 (down from \$200,000); (7) alien smuggling without regard to commercial advantage except for a first offense in which the alien has affirmatively shown that he or she committed the offense for the purpose of aiding only the alien's spouse, child or parent; (8) any violation of 18 U.S.C. 1546(a) (relating to document fraud) except for a first offense in which the alien has affirmatively shown that he or she committed the offense for the purpose of aiding only the alien's spouse, child or parent; (9A) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered, which is punishable by imprisonment for a minimum of at least two and one half years or a maximum of at least five years; (9B) any offense relating to perjury or subornation of perjury which is punishable by imprisonment for a minimum of at least two and one half years or a maximum of at least five years; (10) any offense relating to a defendant's failure to appear for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years (down from 15 years) or more.

This section also prohibits the Attorney General from withholding the deportation of aliens who have been convicted of one or more of the following: an aggravated felony or an attempt or conspiracy to commit an aggravated felony for which the term of imprisonment imposed or served is or was at least five years; a crime of violence or attempt or conspiracy to commit such a crime of violence for which the term of imprisonment imposed or served is or was at least three years; or any of the following

aggravated felonies or attempt or conspiracy to commit such offense: murder, illicit drug trafficking, illicit firearms trafficking, explosive materials offenses, demand for ransom, child pornography, racketeering, national security offense, slavery.

We oppose expanding the definition of aggravated felon to include persons convicted of crimes punishable by imprisonment for 2 1/2 years or more. The grave consequences of being considered an aggravated felon include being ineligible for withholding of deportation and asylum, and being subject to mandatory detention and expedited deportation proceedings, and should be imposed only on serious criminals. Current law gives immigration judges the discretion to weigh the seriousness of the crime against the positive equities of each individual case and to grant relief only where it is appropriate. Immigration judges should be allowed to retain this discretion. The expanded definition would also impose a burden on the operations of the INS which is required to detain all aggravated felons, except for certain lawful permanent residents. Finally, wide imposition of aggravated felon consequences run afoul of our obligations under the 1967 Protocol relating to the status of refugees not to return a refugee to a place of persecution and hinder law enforcement's ability to enter into cooperation agreements with aggravated felons.

We recommend that the Senate adopt the provisions in S. 754 which provide that an alien is ineligible for withholding of deportation based on an aggravated felony conviction when the sentence imposed is 5 years or more and which makes the definition of aggravated felony applicable to all convictions, regardless of the date committed or the effective date of any bill. These provisions will ensure compliance with United States obligations under the 1967 Protocol not to return a refugee to a place of persecution and will facilitate application of the definition, end controversy and litigation, and make the law truly effective in removing aggravated felons.

As a technical matter, the language "attempt or conspire to commit an aggravated felony" in section 161(c) is unnecessary since attempt or conspiracy to commit an aggravated felony is defined as an aggravated felony under current law, section 101(a)(43)(Q) of the INA.

Sec. 162 makes an alien convicted of an aggravated felony ineligible for suspension of deportation and adjustment of status.

We support this provision. As a technical matter, the appropriate subsection designation should be "(h)." Also the term "suspension" should read "cancellation."

Sec. 163 provides that the expeditious deportation of aggravated felons creates no enforceable right for aggravated felons. This provision is identical to section 604 of S. 754, and we support its inclusion in the Committee Amendment to S.269.

Sec. 164 permits the Attorney General to release an alien convicted of an aggravated felony if the alien is not a threat to the community and release from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member of such person. The section provides that the Attorney General shall take into custody any alien convicted of an aggravated felony when the alien is released and may release the alien only if he was lawfully admitted into the United States, likely to appear for any scheduled proceeding and not a threat to the community or when the Attorney General determines that release from custody is necessary to provide protection to a witness a person cooperating with an investigation into major criminal activity, or an immediate family member.

This provision is identical to section 308 of S. 754, and we support it.

Sec. 165 amends section 242A(d) of the INA to provide that a U.S. district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien (A) whose criminal conviction causes the alien to be conclusively presumed to be deportable as an aggravated felon; (B) who has at any time been convicted of a violation of section 276(a) or (b); (C) who has at any time been convicted of a violation of section 275; or (D) who is otherwise deportable pursuant to sections 241(a)(1)(A) through 241(a)(5).

It provides that a U.S. Magistrate shall have jurisdiction to enter a judicial order of deportation at the time of sentencing where the alien has been convicted of a misdemeanor offense and the alien is deportable under this Act. The U.S. Attorney, with the concurrence of the Commissioner, may enter into a plea agreement which calls for the alien, who is deportable under this Act, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of deportation as a condition of the plea agreement or as a condition of probation or supervised release, or both.

The existing judicial deportation statute authorizes a district court to order deportation at the time of sentencing if the conviction renders an alien deportable as an aggravated felon

or for certain crimes involving moral turpitude. This provision, however, would allow district judges and U.S. Magistrates (in misdemeanor cases) to order deportation on any grounds of deportability.

We believe that in order to maintain a coherent national immigration policy, close questions relating to alienage, deportability, and particularly relief from deportation should be initially decided in the context of administrative proceedings, followed by judicial review, rather than in criminal cases. Therefore, in view of the Department of Justice responsibility to administer and enforce immigration laws, we believe that judicial deportation authority should be limited to situations in which the alien is before the court for sentencing for an aggravated felony or a serious crime involving moral turpitude. The phrase "conclusively presumed to be," should be deleted from the proposed amendment to section 242A(d)(1)(A). It is confusing and adds nothing to an otherwise clear statement that an alien who has been convicted of an aggravated felony is deportable.

Sec. 166 permits the entry of orders of exclusion and deportation stipulated to by the alien and the INS and provides that stipulated orders are conclusive. Such orders may be entered without a personal appearance by the alien before the immigration judge. Department of Justice shall provide that an alien who stipulates to an exclusion or deportation order waives all appeal rights.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 167 permits a United States District Court or Magistrate to order deportation pursuant to a stipulation entered into by the defendant and the United States. In the absence of a stipulation, the Court or Magistrate may order deportation as a condition of probation, if, after notice and hearing pursuant to section 242A(c), the Attorney General demonstrates by clear and convincing evidence that the alien is deportable.

We do not support this provision because we believe it is unnecessary. Under 18 U.S.C. 3583(d), the District Court presently has the authority to order deportation as a condition of supervised release. Under that provision, if the District Court issues such an order, the alien is referred to INS for deportation. Section 302(d) of the Administration proposal would amend that section to provide that such an order be made "pursuant to the provisions of the Immigration and Nationality Act." This amendment would address an issue in litigation in which District Court judges have interpreted this section to

authorize them to order deportation irrespective of the provisions of the INA. We urge the Subcommittee to add section 302(d) in place of this provision.

Sec. 168 requires the Attorney General to submit within one year of the date of enactment and annually thereafter a report to the Committees on the Judiciary of the House and Senate on the number of illegal aliens incarcerated in state and federal prisons stating the number incarcerated for each type of offense; the number of illegal aliens convicted for felonies in any federal or state court but not sentenced to incarceration in the previous year, by type of offense; DOJ programs and plans underway to ensure the prompt removal from the United States of criminal aliens subject to exclusion or deportation; and methods for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the U.S. and removed from the United States.

We are concerned that paragraph (2) requires the Attorney General to report on the number of aliens convicted but not sentenced to incarceration. This provision requires complete cooperation of state prosecutors and courts which are not under the administrative jurisdiction of the Department of Justice. We do not support this provision.

Sec. 169 authorizes INS to use appropriated funds to lease space, establish, acquire, or operate business entities for undercover operations, proprietary corporations or businesses to facilitate undercover immigration-related criminal investigations. INS may deposit funds generated by these operations or use them to offset operational expenses. Authority may be exercised only upon written certification of the INS Commissioner in consultation with Deputy Attorney General.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 170 provides that the Secretary of State, together with the Attorney General, may enter into an agreement with any foreign country providing for the incarceration in that country of any individual who is a national of that country and is an alien who has been convicted of a criminal offense under federal or state law and who is not in lawful immigration status or is subject to deportation, for the duration of the prison term to which the individual was sentenced. Any such agreement may provide for the release of such individual pursuant to parole procedures of that country. The Secretary should give priority to concluding an agreement with any country for which the

President determines that the number of such individuals who are nationals of that country in the United States represents a significant percentage of all such individuals in the United States.

This section also provides that it is the Sense of Congress that no new treaty should permit the prisoner to refuse the transfer. It also provides that, except as required by treaty, the transfer of an alien shall not require the alien's consent.

We believe this provision is unnecessary. The Administration is already taking significant steps to enhance the prisoner transfer program. The Deputy Attorney General has directed a review to determine what further steps the Department of Justice can take to increase the number of prisoner transfers. However, limited prison capacity in countries such as Mexico may inhibit our ability to increase significantly the number of transfers.

Sec. 171 modifies the filing requirement for individuals who keep, maintain, control, support, or harbor in any house or place an alien for the purpose of prostitution. It limits application of the filing requirement to whomever knows or recklessly disregards the fact that said individual is an alien; expands application to any alien; and reduces the time period in which to file; increases the term of imprisonment from two to ten years; and clarifies that the information contained in the filing may be used in an action to enforce Section 274A of the INA.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 172 makes a technical correction to the Violent Crime Control Act of 1994. It also clarifies that the INS may place an alien in administrative deportation proceedings if a Federal district court judge has declined the Government's petition to issue a judicial deportation order.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 181 permits reimbursement of other Federal agencies, as well as the States, out of the immigration emergency fund. Reimbursements may be made to other countries for repatriation expenses without the requirement that the President declare an immigration emergency. It also permits the control and seizure of vessels when the Attorney General determines that urgent

circumstances exist due to a mass migration of aliens. This section also authorizes the Attorney General to designate local enforcement officers to enforce the immigration laws when the Attorney General determines that an actual or imminent mass migration of aliens presents urgent circumstances.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 182 repeals the ban on open field searches by the INS.

This provision was subject to much debate when it was first discussed and ultimately incorporated into the Immigration Reform and Control Act of 1986. The Administration has concerns about its repeal, and will work with the Subcommittee to resolve them.

Sec. 183 makes it unlawful for any alien to vote in any general or special election in the United States. A violation is subject to a fine of up to \$5,000 or by imprisonment for up to three years, or both.

We oppose this provision as unnecessary because laws prohibiting unlawful voting already exist. Furthermore, the Constitution does not confer on Congress any general authority to regulate the qualifications for voters in state or local elections. Accordingly, those qualifications are the exclusive province of the states except insofar as they violate the Constitution or an Act of Congress adopted pursuant to some other power.

While we find the constitutionality of section 183 questionable, we are unable to provide a definitive conclusion on the issue at this time. It is important to note, however, that all states now require citizenship as a prerequisite for voting in both state and federal elections. Some states permit local governments to allow non-citizen residents to vote in local, usually school board, elections.

Sec. 184 clarifies that the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed shall not be limited. This section would reverse a recent judicial decision which interpreted the existing language to require the Secretary of State to process visas in a specific location.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment

to S. 269.

Sec. 185 clarifies the content and format for passenger lists and manifests to be prepared and submitted by carriers to INS, including name, date of birth, gender, citizenship, travel document number, and arriving flight number.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 186 provides that a carrier, in consideration for bringing an alien transitting the United States without a visa, must agree to indemnify the United States for any costs of detaining or removing such an alien if the alien is refused admission to the United States, fails to continue his or her journey to a foreign country within the time prescribed, or is refused admission by the foreign country to which the alien is travelling while transitting the United States.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 187 authorizes the Attorney General to provide information furnished under the Legalization and Special Agricultural Worker programs when such information is requested in writing by a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not related to a crime). It allows the Attorney General, in her discretion, to furnish the information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce. The criminal penalties for violation of these provisions is retained.

We agree that confidentiality provisions should be modified because it is very difficult to obtain crucial information contained in these files, such as fingerprints and photographs, when the alien becomes a subject of a criminal investigation. However, we support a waiver of the confidentiality provisions, along the lines of the Administration's Omnibus Counterterrorism bill, that is, only if a federal judge authorizes disclosure of information to be used for identification of an alien who has been killed or severely incapacitated or for criminal law enforcement purposes against an alien if the alleged criminal activity occurred after the legalization or SAW application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated

felony.

Sec. 188 clarifies that the Attorney General is not required to rescind the lawful permanent resident status of a deportable alien separate and apart from the deportation proceeding under section 242 or 242A. This provision will allow INS to place a lawful permanent resident who has become deportable into deportation proceedings immediately.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 189 prohibits governmental entities from restricting availability of information related to the immigration status of an alien in the United States.

We have a number of concerns with this provision as drafted. In some instances the provision could raise troubling privacy and due process issues. We do not support this provision, but will work with the Subcommittee to explore appropriate alternatives.

Sec. 190 authorizes the Attorney General to accept, administer and utilize services of volunteers to assist in administering programs relating to naturalization, adjudication at ports of entry, and removal of criminal aliens. Such volunteers may not administer or score tests and may not adjudicate.

This provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 191 authorizes the Attorney General to acquire and utilize any federal equipment determined available for transfer to the Department of Justice by any other Federal agency upon request of the Attorney General in order to facilitate the detection, interdiction and reduction of illegal immigration.

We support this provision.

Sec. 192 denies any court jurisdiction of any cause or claim by or on behalf of any person asserting an interest under Section 245A (regarding legalization applications) unless such person in fact filed a complete application and application fee to an authorized legalization officer of the INS but had the application and fee refused by that officer.

This provision would affect several major class action lawsuits that involve the legalization program where district courts have granted relief to aliens who did not timely file for legalization. We support this provision, but note that the effective date is upon enactment. To effectuate its purpose, the provision relating to the court's lack of jurisdiction ought to be made effective as if included in the provisions of the Immigration Reform and Control Act of 1986, Pub. L. 99-603, November 6, 1986.

Sec. 193 tightens parole authority by changing the acceptable reasons from "emergent reasons" and "reasons deemed strictly in the public interest" to "urgent humanitarian reasons or significant public benefit," and by requiring a case-by-case determination.

We oppose this provision because current law provides the Attorney General with appropriate, needed flexibility to respond to compelling immigration situations.

Sec. 194 reduces the world-wide level of family-sponsored immigrants in a fiscal year by the number of parolees who were paroled in the two previous fiscal years and who remained in the United States for more than a year.

We oppose this provision because it may have a significant adverse effect on family reunification and result in longer waiting times for admission of relatives of United States citizens and legal permanent residents. Humanitarian parole and family sponsored immigration advance two vital, but distinct national interests. This section blurs the distinction between the two and hinders both.

Sec. 195 precludes an alien who used any fraudulent document to enter the United States or destroyed his or her document en route to the United States from applying for asylum unless the alien had to present such document to depart from a country in which he or she had a credible fear of persecution and travelled directly from such country to the United States. The alien shall be referred to an asylum officer for interview to determine credible fear. If the asylum officer determines that the alien does not have a credible fear of persecution, the alien may be specially excluded and deported. The Attorney General shall provide for prompt supervisory review of the determination that the alien does not have a credible fear. If the asylum officer determines that the alien does have a credible fear of persecution, the alien shall be taken before an immigration judge for an exclusion hearing.

Pursuant to this section, "credible fear" means there is a substantial likelihood that the statements made by the alien in support of his or her claim are true, and there is a significant possibility in light of such statements and of country conditions, that the alien could establish eligibility as a refugee.

We do not support this provision. We believe that the provisions for special exclusion in S. 754 are sufficient to allow us to process efficiently the asylum applications of excludable aliens. Absent smuggling or an extraordinary migration situation, we can handle asylum applications for excludable aliens under our regular procedures.

Furthermore, the concept of "presentation" of fraudulent documents pursuant to "direct departure" from a country in which the alien has a credible fear of persecution is problematic. The "presentation" of such documents is not necessary for departure. In addition, the concept of "direct departure" is unnecessary and confusing. Section 208(3)(5)(B) adequately addresses asylum shopping by an alien already present in a country in which she or he has no fear of persecution. Adding "direct departure" may cause needless litigation and confusion in the context of connecting air flights.

Sec. 196 requires that an application for asylum must be filed within 30 days of entry unless the alien who seeks to apply affirmatively shows that the claim is based on circumstances that arose after the alien's entry and that the claim is filed up to thirty days after the alien knew or reasonably should have known of such circumstances.

We strongly oppose this provision. It will require the INS to divert resources from adjudication of the merits of asylum applications to adjudication of the timeliness of filing. Since eligibility for withholding of deportation is not affected by this section, the Attorney General must still adjudicate the merits of a refugee claim. Our proposed special exclusion proceedings, limitations on judicial review, and standard of judicial review, along with the asylum regulations we have implemented give the INS sufficient mechanisms for processing asylum applications and prevent asylum abuse. We do not believe that this provision is needed.

Sec. 197 limits the employment authorization of an asylum applicant. The section provides that the Attorney General may deny any application for, or suspend or place conditions on any grant of, employment authorization of anyone who makes an application for asylum.

We do not support this provision. Section 208(e), which was added by section 130004 the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, September 13, 1994, is sufficient to address this concern. It would terminate employment authorization in some instances, such as when a non-immigrant who already has employment authorization applies for asylum. Current INS procedure to deny employment authorization for 180 days while an application for asylum is pending review has reduced the instances of asylum abuse.

Sec. 198 authorizes the Attorney General, for two years, in order to reduce the asylum backlog, to expend out of funds such amounts as may be necessary for leasing or acquiring property.

We have no objection to this portion of the section in regard to the leasing or acquiring of property for security and detention space. However, with regard to office space, this provision should be modified to require the Attorney General to lease space pursuant to the Federal Property and Administrative Services Act of 1949. Under the 1949 Act the Attorney General could request a delegation of the authority to lease office space from the General Services Administration's Administrator.

This section also authorizes the Attorney General to employ temporarily up to 300 persons, who by reason of retirement on or before January 1, 1993, are receiving annuities or retired or retainer pay as retired officers of regular components of the uniformed services.

This provision is unnecessary. Under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. §§ 8344(i) and 8468(f)), such reemployment can now be handled administratively. Nevertheless, if this provision remains in S. 269, we recommend that a parallel provision be added to authorize the Secretary of State to increase the number of personnel who address the asylum backlog.

Sec. 199 requires Congressional approval for refugee admissions above 50,000 in any fiscal year.

We do not support legislatively limiting annual refugee admissions. Under current law, the ceiling for annual refugee admissions is set by the President. The current process of consultation between Congress and the executive branch on the annual refugee admissions level, which began in 1981, is working well and allows Congress to participate in the process of determining appropriate refugee admissions levels. In recent years, refugee admission ceilings established by this consultation process have been decreasing. Imposing a strict and arbitrary numerical limitation on annual admissions would

constitute an unwarranted restriction on the process and on the President's responsibility to determine issues of foreign policy.

Sec. 199A repeals the Cuban Adjustment Act, P.L. 89-732 (1966). The Act provides for adjustment of status, in the discretion of the Attorney General, of any national or citizen of Cuba who has been inspected and admitted or paroled into the United States and has resided here for one year. This section extends the application of the Act to individuals who will be paroled into the United States pursuant to the Cuban Migration Agreement of 1995.

We oppose repeal of the Cuban Adjustment Act. Our long term goal, to which we are absolutely committed, is to bring democracy to Cuba. Until Cuba has a democratic government, we need flexibility to respond appropriately to changing conditions in Cuba. We look forward to the time when Cuban migration to the United States is normalized and on par with migration from other countries. We took major steps towards normalizing migration from Cuba to the United States when we signed the Cuban Migration Agreements.

While we are pleased that the Committee Amendment to S. 269 extends application of the Act to individuals who will be paroled into the United States pursuant to the Cuban Migration Agreement of 1995, we are concerned that this section continues to lack a means to adjust the immigration status of individuals who will be or have been paroled from Havana or from the safehavens in Guantanamo and Panama into the United States.

Sec. 199A also provides that the number of those paroled into the United States will be counted as family-sponsored immigrants for purposes of the world-wide and per-country ceiling.

We oppose this provision because it may have a significant adverse effect on family reunification and result in longer waiting times for admission of relatives of United States citizens and legal permanent residents from countries other than Cuba. Furthermore, we presently do not count the number of parolees as family-sponsored immigrants for purposes of the world-wide and per-country ceiling and see no reason to do so now.

Sec. 199B establishes the various effective dates of the provisions of the Immigrant Control and Financial Responsibility Act of 1995.

We support this section.

Title II--FINANCIAL RESPONSIBILITY

PART 1--RECEIPT OF CERTAIN PUBLIC BENEFITS

Part 1 of Title II of S. 269 contains provisions affecting the eligibility of legal and illegal aliens for certain benefits. While the Administration bill does not include comparable provisions, we support reinforcing current law restrictions that prevent illegal aliens from being eligible for most Federal public assistance. We also support reasonable extensions of the deeming policies that require sponsors to maintain a financial commitment to aliens they have sponsored. However, there are a number of specific problems under the various provisions of S. 269 as drafted that we believe should be remedied, most notably the bill would eliminate eligibility for thousands of legal immigrants currently receiving benefits. Our positions on the individual alien eligibility provisions are outlined in the following section-by-section discussion.

Section 201 defines "eligible alien" as an alien: lawfully admitted for permanent residence; granted refugee or asylee status; whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act; or who has been granted parole for a period of 1 year or more. All other aliens would be 'ineligible aliens' and would not be eligible for needs-based benefits under any Federal, state, or local program, except: (1) emergency medical services under title XIX of the Social Security Act; (2) short-term emergency disaster relief; (3) assistance or benefits under the National School Lunch Act; (4) assistance or benefits under the Child Nutrition Act of 1966; and (5) public health assistance for immunizations and for testing and treatment for communicable diseases. Ineligible aliens would be ineligible to receive any grant, contract, loan, professional license, or commercial license provided or funded by any Federal, state, or local government. Only aliens eligible to work would be able to receive unemployment benefits.

This section also requires the Secretary of the Department of Housing and Urban Development (HUD), within 90 days of the date of enactment, to submit a report to the Committees on Banking and Committees on the Judiciary of the House and Senate describing how HUD is enforcing section 214 of Housing & Community Development Act of 1980, including statistics of individuals denied assistance.

This section also limits benefits under the Social Security Act to United States citizens and eligible aliens who have been granted work authorization and then only those benefits attributable to the authorized employment. Ineligible aliens may not be reimbursed amounts paid into Social Security Administration accounts.

While we support the goal of establishing a uniform definition of alien eligibility, we have reservations about

section 201 as drafted. The provision would affect many diverse Federal, state, and local programs; represent a new mandate to many state and local governments; and target current immigrant beneficiaries.

We encourage you to examine the definition of eligible alien as the Administration proposed in its welfare reform bill introduced last year, the "Work and Responsibility Act of 1994."

We recommend this definition of eligibility apply only to the four primary needs-based programs--AFDC, SSI, Medicaid, and Food Stamps. We would also allow state and local programs of cash and medical general assistance to utilize the same alien eligibility criteria. Finally, we support the provision in section 201 that would retain the current law provision for illegal aliens to receive only emergency medical services under Medicaid.

The Administration's approach, unlike a unilateral bar, would avoid a number of problems. For example, the eligibility provision in S. 269 could be read to deny needs-based, education-related services and assistance paid for with Federal, State, or local funds--except for services under the National School Lunch Act--to undocumented alien children. Although the Federal Government could authorize the exclusion of such alien children from elementary and secondary schools, the principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to do so remain powerful. In addition, students who are not undocumented aliens could be stigmatized based on name or appearance, and parents, fearful of their children's safety or well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all students. The definition of an "eligible alien" in section 201(d) could be read to exclude certain post secondary students currently eligible for student assistance under title IV of the Higher Education Act of 1965; the negative consequences of varying eligibility requirements on these students and their educational institutions must be considered.

This provision should further be clarified so as not to apply to programs under section 214 of the Housing and Community Development Act of 1980. Without such clarification, this provision would impose a great burden on States and local governments that administer HUD mortgage programs, Federal Housing Administration contract programs, and Community Development Block Grants to identify noncitizens who may indirectly benefit from these non-direct assistance programs. Furthermore, it would jeopardize progress made and cooperation by HUD, INS, housing authorities, and multifamily project owners to smoothly implement section 214 of the Housing and Community Development Act of 1980.

Furthermore, the definition of "eligible alien" does not include Cuban and Haitian entrants as defined under section 501 of the Refugee Education and Assistance Act of 1980. If Cuban and Haitian entrants are not included in the list of eligible aliens, they no longer would be eligible for assistance and services under the refugee program. (This applies to those who do not fulfill the regular criteria for refugee status as defined in section 101(a)(42) of the INA.) The definition of "ineligible alien" by its silence includes United States nationals thus making natives of American Samoa ineligible for benefits under this section.

The definition of "eligible alien" also fails to include aliens lawfully admitted under temporary visas (e.g. B for business visitors, E for treaty traders and investors, L for intra-company transferees and H-1B for professionals) and aliens outside the United States. Under section 201 ineligible aliens would be unable to receive, inter alia, contracts, professional licenses, or commercial licenses provided or funded by any Federal, state, or local government. If the class of ineligible aliens is not specifically narrowed, section 201 may violate NAFTA provisions on services and investment (chapters 12 and 11), and potentially violate our obligations under the GATS agreement and bilateral investment treaties. Furthermore, NAFTA parties have agreed to eliminate citizenship and permanent residency requirements for professional licenses. Section 201 would be in violation of those obligations.

Section 201(a)(3) requires agencies administering public assistance programs to notify individually or by public notice all ineligible aliens of the termination of their benefits. It is not clear whether this section would impose a duty on agencies to make eligibility determinations for each individual served. There are many programs for which it would not be cost-effective, or in some cases feasible, to determine individual eligibility. These programs include soup kitchens, food banks, and public health programs. The Administration's approach which would apply this definition of eligibility to the four major federal entitlement programs would avoid these burdensome effects.

We believe section 201(c) has many unintended effects on the operation of the Social Security Trust Funds. This provision would deny Social Security benefits as well as Social Security tax refunds to aliens legally admitted on a temporary basis to work in the United States. The payment restrictions in this provision violate the terms of the bilateral Social Security totalization agreements with 17 foreign countries, including Canada and virtually all of Western Europe. Also, the U.S. has treaties with other countries that require the U.S. to pay Social Security benefits to foreign treaty nationals on the same basis as U.S. citizens. Legislation abrogating these agreements and treaties would presumably lead to retaliatory restrictions on the

payment of such benefits by other countries to U.S. citizens.

It is not clear whether the payment restrictions would be prospective or retrospective. If the Social Security benefits payable to current or future beneficiaries should not reflect credit for past periods of unauthorized work, INS would have to provide SSA with the necessary information about the beneficiary's work authorization history. This is probably not feasible because much of the necessary INS information is stored in paper format in Federal Records Centers.

Although it would be feasible for SSA to suspend Social Security benefits payable to a person who is currently in this country illegally, assuming appropriate evidence were obtained, such an approach would not impose any sanctions on legally admitted aliens who received Social Security credit for past periods of unauthorized work.

The payment restrictions are also inconsistent with current provisions of law that permit payment of benefits to aliens outside the U.S. if they are citizens of a country whose social insurance system does the same for U.S. citizens. About 65 countries meet this requirement.

Also the provision does not address the complex issue of Social Security benefit eligibility for citizens who are dependents or survivors of U.S. citizens, or ineligible aliens who are dependents or survivors of U.S. citizens.

Sec. 202 defines "public charge" for purposes of deportation as the receipt of certain benefits for an aggregate of more than 12 months in the first five years after entry as an immigrant or, in the case of an individual who entered as a non-immigrant, the first five years after adjustment to permanent resident status. Such benefits are limited to one or more of the following programs: AFDC, SSI, Medicaid, Food Stamps, state general assistance, or any other program of assistance funded in whole or in part by the Federal government for which eligibility is based on need (except the exempted programs noted in section 201).

This section also provides that any alien who during the public charge period becomes a public charge, regardless of when the cause arose, is deportable. This section exempts from the public charge definition refugees and asylees. Further, if the cause of the alien's becoming a public charge arose after entry as an immigrant or, in the case of a non-immigrant, after adjustment to permanent resident status, and was a physical illness or injury that kept the alien from working or a mental disability that required continuous hospitalization, then the alien would be exempt. While this section now excludes refugees and asylees from the public charge provision, it would place

Cuban and Haitian entrants at risk of deportation if they received benefits from one or more of the listed programs for more than an aggregate of 12 months. We strongly object to this provision and believe Cuban and Haitian entrants should be excluded from the public charge provision. We believe this would be consistent with the Administration's position on providing assistance to Cuban parolees to alleviate any State or local impact.

This section also requires the Attorney General to review applications for benefits under section 216, 245 or chapter 2 of Title III of the INA to determine whether the exception to the definition of public charge applies. If the exception does not apply, the Attorney General shall institute deportation proceedings unless she exercises discretion to withhold or suspend deportation.

The legislation would require increased administrative efforts to ascertain (1) whether an alien who had received benefits for more than an aggregate of 12 months during the public charge period was receiving such benefits due to a "pre-existing condition," or one that arose since entry or since adjustment of status; (2) whether a physical illness or injury was so serious that the alien could not work at any job; or (3) whether the alien's mental disability required continuous hospitalization. Since this section would create a number of administrative and legal complexities as drafted, we do not endorse these provisions without further clarification or amendment.

Furthermore, we urge the Subcommittee to clarify that this provision does not limit the ability of the INS to establish its enforcement priorities. For example, a requirement to institute deportation proceedings against an alien considered a public charge should not mandate the alien's removal prior to or in place of the removal of an aggravated felon who threatens the community.

Sec. 203 sets forth the requirements for a sponsor's affidavit of support. It requires that the affidavit of support be executed as a contract that is enforceable against the sponsor by the sponsored individual, the Federal government, a state, district, territory or possession or any subdivision thereof, that provide any benefits to sponsored eligible aliens. In the affidavit, the sponsor must agree to financially support the sponsored individual until the sponsored individual has worked in the U.S. for 40 qualifying quarters. A sponsor must be age 18 or over, a citizen or legal permanent resident, domiciled in any of the several states of the United States, the District of Columbia, or a territory or possession of the United States and demonstrate an ability to maintain an annual income of at least

125% poverty line for him or herself and the sponsored individual.

The governmental entities are authorized to seek reimbursement from sponsors of aliens who have received benefits, and to bring suit against sponsors that do not reimburse the relevant government agencies. No cause of action could be brought against sponsors after 10 years from an alien's last receipt of benefits. The sponsor is required to notify the Federal, state, and local governments of any change of the sponsor's address.

The Administration strongly supports making the current affidavit of support legally binding. However, we have reservations about requiring the affidavit to be effective for 40 qualifying quarters, particularly as this requirement interacts with the deeming provisions in section 204. We note that these two sections would require a sponsored immigrant to remain subject to deeming provisions for a minimum of 10 years, or potentially 5 years after becoming a citizen. We have reservations about applying immigration restrictions to people that have become full citizens of the United States.

Also, a number of legal immigrant children would be adversely affected by basing the deeming period on the requirement to work 40 qualifying quarters. Sponsored children that we have permitted to reside permanently in the U.S. would be ineligible for most assistance due to deeming until they had worked for 40 qualifying quarters. Since we do not expect children to work, this particular restriction is unreasonable when applied to immigrant children and would not be in the national interest.

We strongly suggest that rather than basing the time period for the legally binding affidavit on the immigrant working 40 qualifying quarters, that the legislation specify a period of years or until the immigrant naturalizes.

Because discrimination between citizens on the basis of national origin, even by the federal government, is in general subject to strict scrutiny, this section may be subject to a constitutional challenge as applied to naturalized aliens, who may be ineligible, solely because of their former status as aliens, for benefits to which other citizens are entitled. However, the section might be defended on the grounds that it merely regulates the process of naturalization, by making persons who intend to become citizens ineligible for certain benefits, even after their naturalization. On that theory, the section might be upheld as a valid exercise of Congress' power over immigration. We are unable at this time to opine definitively on the constitutional issue presented.

In addition, the definition of qualifying quarter is unworkable. Section 203(f)(3)(A) defines "qualifying quarter" as a 3-month period in which the sponsored individual has earned the minimum amount necessary for the period to count as a Social Security quarter of coverage. Since the implementation of annual wage reporting in 1978, SSA no longer maintains quarterly records of earnings and thus could not determine the amount earned in a calendar quarter. Quarters of coverage are now based on annual earnings. We recommend changing the definition of quarters of coverage to be consistent with the Social Security Act. Also, individuals may become entitled to disability insurance benefits with less than 40 quarters of work. The bill should clarify that an immigrant that otherwise qualifies for title II disability insurance would be eligible for benefits under title II and would be exempt from the deeming requirements for purposes of disability benefits under title XVI.

Sec. 203(b) should provide 180 days--not 90 days--to develop a new affidavit of support in light of the complex interagency consultations called for by the provision. We suggest that the Secretary of Treasury and the Commissioner of Social Security be included in the list of those responsible for formulating the new affidavit of support since determining which immigrants have worked for 40 qualifying quarters would potentially involve activities managed by those agencies.

Furthermore, it should be clarified that notifications of changes of address should be made to the Attorney General and that the Attorney General--not the Commissioner of Social Security--shall promulgate regulations to carry out actions to obtain reimbursement for any federal or state assistance received by the sponsored individual.

Section 203(e) would require that no state court may decline jurisdiction over any action brought against a sponsor for reimbursement of the costs of a benefit if the sponsored individual received assistance while residing in the state.

We do not object to this provision.

Sec. 204 requires that in determining the eligibility for and amount of benefits of an individual (whether a citizen or national of the United States or an alien) under any Federal program of assistance, or any program of assistance funded in whole or in part by the federal government for which eligibility is based on need, the entire amount of income and resources of the sponsor and sponsor's spouse would be presumed to be available to the individual. This section may also apply to any state or local program of assistance for which eligibility is based on need, or any need-based program of assistance

administered by a state or local government.

This "deeming" period would continue for the period for which the sponsor has agreed in the affidavit or for five years from the date the alien was first lawfully in the United States, whichever period is longer. Thus, immigrants that signed the new affidavit of support under section 203 would be deemed for a minimum of 10 years in order to meet the requirement of working 40 qualifying quarters. As mentioned under section 203, this requirement may lead to deeming even after the immigrant had become a naturalized citizen.

While we support the goal of making sponsors more responsible for the immigrants they sponsor, we have strong reservations about section 204 as drafted. This section would affect many current immigrant beneficiaries; apply to immigrants that have become naturalized citizens if they have signed the new affidavit of support; repeal the current law exemption from deeming for sponsored immigrants who become disabled after entry; affect many diverse Federal programs--including Medicaid; create new administrative complexities and requirements; and change the current deeming formula to include 100 percent of a sponsor's income and resources. By attributing 100 percent of a sponsor's income and resources to the sponsored immigrant, section 204 does not take into account the needs of the sponsor and his or her family and is inconsistent with current practice in the major entitlement programs. Legal challenges may also arise where the spouse was not a signatory to the affidavit or the spouse is separated from the sponsor.

The Administration proposed strengthening the deeming provisions in its welfare reform bill introduced last year, the "Work and Responsibility Act of 1994," and we would like to work with the Subcommittee to establish a reasonable deeming policy that addresses the concerns identified above. The Administration is opposed to unilaterally applying the new deeming and eligibility provisions to current recipients, including the disabled exempted under current law. In addition, we are deeply concerned about applying deeming provisions to the Medicaid program. We support providing state and local governments with the authority to implement the same deeming rules under their cash general assistance programs as the Federal government uses in its cash welfare programs.

Sec. 205 authorizes state and local governments to prohibit or limit assistance to aliens and to distinguish among classes of aliens in providing general public assistance so long as the restrictions are no more restrictive than that of comparable Federal programs.

We support this provision.

Sec. 206 denies eligibility for the earned income tax credit to individuals who are not, for the entire tax year, United States citizens or lawful permanent resident aliens. It amends section 32(c)(1) of the Internal Revenue Code of 1986 (relating to individuals eligible to claim the earned income tax credit) by adding that the term "eligible individual" does not include any individual who does not include on his or her tax return the individual's taxpayer identification number and their spouse's taxpayer identification number (if married). The section further provides that for purposes of the earned income tax credit a social security number issued to an individual pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act, i.e., to qualify for federal benefits, would not satisfy the taxpayer identification number reporting requirement. The section also authorizes IRS to use simplified procedures if a taxpayer claiming the earned income tax credit omits a correct taxpayer identification number.

We support this provision. The President's FY 1996 Budget contained a similar provision.

Sec. 207 requires that whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any U.S. department or agency, or any copy thereof; knowingly uses, affixes, or impresses such altered seal or copy to or upon any instrument; or with fraudulent intent possesses, sells, offers to sell, furnishes, offers to furnish, gives away, offers to give away, transports, offers to transport, imports, or offers to import any such seal or copy, knowing it to have been falsely made, shall be fined under this title, or imprisoned for up to 5 years, or both. If any of the above was done with the intent or effect of facilitating an unlawful alien's application for, or receipt of a federal benefit, the penalties which may be imposed for each offense shall be double the maximum fine, and three times the maximum imprisonment, or both. Each instance of forgery, counterfeiting, mutilation, or alteration shall constitute a separate offense.

We support this provision.

Sec. 208 permits a State that is certified by the Attorney General as having high illegal immigration, to establish and operate a program for the placement of anti-fraud investigators in State, county, and private hospitals to verify the immigration status and income eligibility of applicants for medical assistance under the State plan prior to the furnishing of medical assistance.

We note that this would be permitted under current law, and thus the provision is unnecessary.

Sec. 209 bars costs, attorney fees or expenses from being awarded under the Equal Access to Justice Act (EAJA) in any civil action brought by or on behalf of any individual who is not a United States citizen or legal permanent resident.

We do not support this provision. Although there are some problems related to litigation abuse and the EAJA as presently formulated, these are not resolved by a blanket denial of access to certain classes of aliens, most particularly refugees and asylees. The Administration is studying effective ways to address existing problems.

Sec. 211 authorizes the collection of a \$1 land border fee for each individual entering the U.S. as a pedestrian or in a noncommercial conveyance. The commercial conveyance fee shall be set by the Attorney General in consultation with the Secretary of State. The Attorney General may establish frequent crosser discounts and contract with private and public sector entities to collect the fee.

The section also provides that funds shall be deposited into the Fee Account as offsetting receipts and remain available until expended. The funds may be used to pay for inspection services and related expenses. Unused funds may be used for Border security, including hiring additional Border Patrol agents.

Revenues may be spent on providing inspection services and maintaining inspection facilities; expanding, operating and maintaining information systems for nonimmigrant control; employing additional permanent and temporary inspectors; minor construction costs, including commuter lanes; detecting fraudulent documents; and administering the border fee. Excess funds may be spent on additional border patrol, support and equipment resources. Any additional excess funds may be spent on deportations.

The Administration proposal also calls for a land border user fee. We recommend that section 211 be modified to be consistent with the key features of our proposal, which provides local flexibility on collecting such a fee. Our proposal adds a new subsection 286(s) to the INA, authorizing the Attorney General to charge and collect a border services user fee for every land border entry, including persons arriving at U.S. borders by ferry. The fee is to be collected in U.S. currency and is set at \$1.50 for each non-commercial conveyance, and \$.75 for each pedestrian. The Administration will soon transmit legislation authorizing the Department of Treasury to collect and

spend a parallel fee for Customs-related activities. Commercial passenger conveyances will be charged the pedestrian fee for the operator and each passenger, except that ferry crewmen are not subject to the fee.

The Administration proposal provides for funding of start-up costs. The fees proposed in this section are too low to generate the funds needed to accomplish the goal of timely and effective land border inspection.

The Administration proposal also provides for a "local option" which allows each State to determine at which, if any, ports the fee is to be collected. A State that exercises this local option may establish a Border Service Council for each port to develop priorities for use of the fees collected, for submission to the Commissioner. The Commissioner must consider these priorities in funding port services. Funds remaining after payment of the costs of port services are to be granted to the Councils to spend on port-related enhancements. The Commissioner will allocate enhancement funds for ports that do not set up a Border Service Council.

Section 212 authorizes additional commuter border crossing fees pilot projects, one on the northern land border and another one on the southern land border.

The Administration proposal provides for projects along the southern and northern land borders and does not limit the number of pilot projects that may be established. We recommend that S. 269 adopt the Administration proposal.

Sec. 213 removes the current exemption from payment of the \$6 immigration user fee for cruise ship passengers.

This provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 221 establishes the effective dates for the sections of this title. The date of enactment is the effective date except in the case of the section related to benefits (received or applied for on or after the date of enactment) and the section authorizing a border services user fee (which shall be six months after the date of enactment).

The new definition of eligible alien (section 201) and the 5 year deeming period (section 204) would apply to benefits being received at the time of enactment, and affect current recipients as well as future applicants. We are opposed to applying the new deeming and eligibility provisions to current recipients,

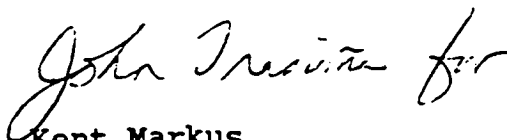
including the disabled. Benefits received after the date of enactment would be counted towards the new public charge provisions (section 202), and we are concerned about the ability to adequately inform current immigrants of the new rules concerning public charge and the potential for becoming deportable.

The provisions with the greatest SSI impact--the definition of "eligible alien" and sponsor-to-alien deeming--would be effective upon enactment. Such an effective date would eliminate benefit eligibility for as many as 250,000 legal immigrants under the SSI program. Even more immigrants would be affected when the other federal programs are considered. These are individuals who have already entered the country and "played by the rules." We do not support penalizing this group.

Mr. Chairman, we want to work with you on bipartisan immigration enforcement legislation that is in the national interest. We are pleased to see that S. 269 incorporates many of the provisions in S. 754. We look forward to working with you to address the core issues of worksite enforcement, border control, criminal alien deportation and comprehensive immigration law enforcement.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



Kent Markus
Acting Assistant Attorney General



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 12, 1995

The Honorable Lamar S. Smith
Chairman
Subcommittee on Immigration and Claims
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Smith:

This letter presents the views of the Administration concerning H.R. 1915, the "Immigration in the National Interest Act of 1995," scheduled to be marked up by the Immigration and Claims Subcommittee on Thursday, July 13. The brief period between the introduction of the bill and tomorrow's markup has afforded limited opportunity for a complete analysis of these new provisions. This letter, therefore, highlights some of the major areas and is a preliminary list of the Administration's views on this legislation.

Many of the provisions in H.R. 1915 advance the Administration's four-part strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and providing the Immigration and Naturalization Service (INS) with the necessary resources to be effective. The Administration's legislative proposal to advance that strategy is H.R. 1929, the "Immigration Enforcement Improvements Act of 1995," introduced by Representative Howard Berman on June 27, 1995. These two proposals share many common provisions. Our positions are outlined in the following discussion.

Title I - Deterrence of Illegal Immigration Through Improved Border Enforcement and Pilot Programs

Section 101 calls for an increase of 1000 Border Patrol personnel in each of the next five fiscal years. The Administration has greatly expanded the size of the Border Patrol and, for the first time, in many years, has taken serious efforts to eliminate hiring and attrition shortfalls. In some fiscal years, we will hire and train more than 1000 Border Patrol personnel. However, we ask the Subcommittee to be mindful of the danger to the law enforcement structure and mission should too many newly hired personnel be added at once. The International

Association of Chiefs of Police recently analyzed Border Patrol hiring and concluded that massive infusion of inexperienced law enforcement agents deployed in the field with new supervisors would jeopardize overall effectiveness and would carry with it a risk of unintended consequences such as cutting corners on training, excessive force, civil rights violations and decreased professionalism.

We recommend substitution of the mandated annual increase of 1000 Border Patrol personnel with language contained in the Administration bill that the hiring be at least 700 annually and to the maximum extent possible consistent with standards of professionalism and training.

We are concerned that section 105, which creates a civil penalty for illegal reentry, may generate less revenue than the costs it would incur and may not improve our ability to control our borders. The collection of such a fee may tie up detention space more appropriately used for criminal alien removal and impose a costly administrative burden on the INS. Further, in the case of refugees, a penalty is contrary to Article 31 of the 1951 Convention relating to refugees, by which the United States is bound by virtue of being a party to the 1967 Protocol relating to the Status of Refugees, which prohibits States from penalizing the illegal entry of persons deemed refugees so long as such persons present themselves without delay to the authorities and show good cause for illegal entry.

Title III - Inspection, Apprehension, Detention, Adjudication, and Removal of Inadmissible and Deportable Aliens

This subtitle makes some fundamental changes in the procedures for removal of aliens. An alien who enters the United States without having been inspected and admitted by an immigration officer will be treated as an applicant for admission. This represents a fundamental change in the "entry" doctrine. We agree that revision of the "entry" distinction between exclusion and deportation proceedings is long overdue. To afford more process to an alien who enters the United States by evading inspection than to a person who appears for inspection at a port of entry defies logic. We also support consolidating exclusion and deportation into one removal process. We are concerned, however, that elimination of benefits for those who enter without inspection will work a hardship on certain long-term residents and their family members.

With regard to section 302, we object to making special exclusion procedures applicable to all arriving aliens without valid entry documents. In the Administration's proposal such procedures would be available only in "extraordinary migration situations" as designated by the Attorney General. The

Administration's proposal affords appropriate discretion for the Attorney General to address fraudulent document use and smuggling situations.

We believe that the provision concerning the cancellation of removal and adjustment of status for certain nonpermanent residents in section 304 drastically curtails the ability of residents to apply for what is now called suspension of deportation. Suspension of deportation has been an avenue of relief for long-time residents, who, while clearly having entered or remained illegally in the United States, have also established family ties and responsibilities in this country, and for whom it would be an extreme hardship to leave the United States. Suspension has been sought by relatively few aliens. In the last year, only 4,254 applications were completed and only one-half were granted. Suspension of deportation operates as a mechanism to resolve those issues in which the requirements of immigration enforcement must be considered in concert with the need to keep families strong and unified. We believe that there is a need to retain this relief option for those limited circumstances.

Section 304 would also provide that aliens who accept voluntary departure in lieu of removal proceedings will be limited to 120 days voluntary departure time. Those who go through removal proceedings will be limited to 60 days following completion of the proceedings. This limitation to 60 days, while attempting to encourage quick departure from the United States at the conclusion of an alien's hearing, may in fact prolong the process in that it may force the alien to contest deportability and seek other remedies. The Immigration Judges have long been able to use voluntary departure as an incentive to encourage people to leave the United States on their own, without additional expense to the government. In addition, many aliens in removal proceedings will take voluntary departure rather than pursue other avenues of relief, if given sufficient time to conclude their affairs. The Administration's bill recognizes the value of a flexible and discretionary use of voluntary departure that is often very helpful in disposing of cases in a timely and efficient manner. Further, the Administration's bill will require a voluntary departure bond at the conclusion of deportation proceedings and civil penalties for failure to depart. These safeguards will further ensure the appropriate use of this relief.

With regard to eligibility for withholding of deportation in section 305, we recommend that H.R. 1915 adopt the provision in H.R. 1929 which deems an alien convicted of an aggravated felony for which the sentence imposed is five years or more as having been convicted of a particularly serious crime and thus ineligible for withholding of deportation. Our provision will remove more aggravated felons while still being consistent with United States obligations under the Refugee Protocol not to

return a refugee to a place of persecution.

Title III contains various provisions related to the exclusion, removal, and denial of asylum for alien terrorists. The Administration strongly supports measures to address domestic and international terrorism activities. The Administration has worked closely with the full Judiciary Committee on this important matter. Indeed, H.R. 1710 has been approved by the Committee and represents five days of Committee consideration in markup and numerous efforts to address terrorism in a comprehensive way. The Administration has views on the terrorism provisions contained in H.R. 1915 and prefers that H.R. 1710 continue to be the vehicle by which necessary statutory changes to fight terrorism be made.

Title IV - Enforcement of Restrictions Against Employment

Under section 403(e) the Attorney General must establish the employment eligibility confirmation mechanism no later than October 1, 1999. While we agree that a system for accurate verification of a potential employee's status is vital to assist employers in meeting their obligations to hire only authorized workers, we strongly oppose the requirement that a permanent verification system be established within four years. Under the Administration bill, pilot projects will be tested and evaluated for three years so that technical feasibility, cost effectiveness, resistance to fraud, effect on discrimination and privacy, and impact on employers and employees can be assessed and determined. H.R. 1929 authorizes employment verification pilot projects that will improve the INS databases; expand the telephone verification system for non-citizens up to 1,000 employers; simulate links between INS and Social Security Administration databases; and test a new two step process for citizens and non-citizens to verify employment authorization using INS and SEA data. The pilots will be built to guard against discrimination, violations of privacy, and document fraud. After three years, the pilots will be evaluated on the bases of discrimination, privacy, technical feasibility, cost effectiveness, impact on employers, and susceptibility to fraud. We will request permanent authority from Congress to implement only the pilot projects that work.

Title V - Reform of Legal Immigration System

The Administration looks forward to working with Congress to ensure that the Nation maintains a sound legal immigration policy in the national interest. This policy must promote reunification of family members; protect U.S. workers from unfair competition while providing employers with the highly-skilled specialists they need to compete in the international economy; and encourage legal immigrants to become full participants in the national community.

The process to address legal immigration reform is most appropriately conducted outside of the context of immigration enforcement legislation. Historically, previous Congresses and Administrations failed, most recently in the early 1980s, when legislative proposals sought to tackle both issues at once. It was not until the 99th Congress with the Immigration Reform and Control Act and the 101st Congress with the Immigration Act of 1990 that landmark reforms on these two distinct issues were enacted. The Administration believes that a similar course in this Congress will best ensure that responsible legislation in each area is enacted.

The Administration is ready to work with the bipartisan leadership and other interested members of both Houses to enact necessary legal immigration and enforcement legislation. Currently, however, it is premature to advance legislative proposals on legal immigration reform. The Jordan Commission has yet to issue its report with its rationale, detailed analysis and specific proposals for legal immigration reform. The Immigration and Naturalization Service just recently published legal immigration figures for Fiscal Year 1994. What these figures demonstrate is important to consider--the overall number of legal immigrants declined by 9.3%, the largest annual drop in fifteen years; several special programs, including registered nurse employment, resettlement of Amerasian children, and immigrant admissions under the Chinese Student Protection Act drew nearer to completion; legalized aliens brought fewer family members into the United States; and employment based visas, reflecting market demand, were underutilized. These developments require careful and deliberate consideration.

By contrast, there is a substantial confluence between the enforcement approaches taken by the Administration bill and the House and Senate subcommittee bills. The shared sense of urgency to build upon the progress already made and take further steps to control illegal immigration provides yet further reason to enact immigration enforcement reforms prior to legal immigration reform. We urge the Subcommittee to delete legal immigration reform provisions from H.R. 1915 and address them separately. The Administration is committed to reforming legal immigration in the appropriate context.

The Administration has already expressed its concerns about section 512, which requires immigrant parents of U.S. citizens to obtain health insurance that is at least comparable to Medicare parts A and B, and long-term care insurance at least comparable to Medicaid's long-term care benefits prior to admittance. The immigrant would be required to demonstrate to consular officials and the Attorney General that he or she would have such coverage throughout the period of residence in the United States. We have strong reservations about this section. The cost of purchasing health insurance comparable to Medicare is extremely high for an

individual in the non-group market. For long-term care, policies that are currently available in the private market are often time and dollar limited, rather than unlimited like Medicaid, and thus they are not comparable. Moreover, these policies are not subject to any uniform minimum quality standard. Unlimited coverage for a package of long-term care benefits comparable to Medicaid is very costly and may not be available at all in the private market. Therefore, these insurance requirements would effectively allow only wealthy American families to be reunited with their immigrant parents.

With regard to refugees, the Administration has already stated its opposition to legislatively limiting annual refugee admissions. Section 521 of H.R. 1915 provides that the number of annual refugee admissions designated by the President may not exceed 75,000 in fiscal year 1997, or 50,000 in any succeeding fiscal year. Section 521(a)(2)(B) provides that the number may exceed these limits if Congress enacts a law providing for a higher number. Under current law, the ceiling for annual refugee admissions is set by the President. The current process of consultation between Congress and the executive branch on the annual refugee admissions level, which began in 1981, is working well and allows Congress to participate in the process of determining appropriate refugee admissions levels. In recent years, refugee admission ceilings established by this consultation process have been decreasing. Imposing a strict and arbitrary numerical limitation on annual admissions would constitute an unwarranted restriction on the process and on the President's responsibility to determine issues of foreign policy.

The Administration has also stated its opposition to restricting the Attorney General's parole authority. Consequently, we oppose section 524. The current law provides the Attorney General with appropriate flexibility to deal with compelling immigration situations. For example, the amendment would not permit the parole of an alien to attend the funeral of a close family member or of a parent to accompany a child paroled into the United States for an organ transplant. In addition, one advantage of the special exclusion provisions included in both H.R. 1915 and H.R. 1929 is the opportunity they would afford to bring aliens intercepted at sea to the United States for a brief period for "credible fear" screening without implicating a full panoply of hearing and appeal rights. It is unclear whether this option would be available in light of the proposed restrictions on the Attorney General's parole authority. As currently written the parole restriction would appear to limit the ability of the Attorney General to parole from custody an alien seeking admission.

Title VI - Restrictions on Benefits for Illegal Aliens

While we support the goal of establishing a uniform definition of alien eligibility in affected programs, we have reservations about section 601 as drafted. The provision would affect too broad a range of diverse Federal, state, and local programs, and target current beneficiaries. We encourage you to examine the definition of eligible alien the Administration proposed in its welfare reform bill introduced last year, the "Work and Responsibility Act of 1994." We also urge that this definition apply only to the four primary needs-based programs -- AFDC, SSI, Medicaid, Food Stamps -- allowing for state and local cash and medical general assistance programs to also use this definition.

In addition, we do not think it is appropriate to include the Social Services Block Grant program as one of the 6 programs required to rely on 4 documents to determine eligibility. While the other 5 programs are clearly means-tested entitlements (AFDC, SSI, Medicaid, Food Stamps, and Housing Assistance), the Social Services Block Grant funds a wide variety of services in localities all over the United States, many of which are not means-tested.

The Administration's approach would avoid a number of problems. For example, section 601 could be read to deny needs-based, education-related services and assistance paid for with Federal, state, or local funds to undocumented alien children. However, the principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to authorize the exclusion of undocumented alien children from elementary and secondary schools remain powerful. In addition, students who are not undocumented aliens could be stigmatized based on name or appearance, and parents, fearful for their children's safety or well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all children. We urge that this section be clarified to exclude educational services provided to children in elementary or secondary school, or that an exemption for these services be provided in section 603.

Section 601 would undermine verification for public benefits. Our current system -- the Systematic Alien Verification for Entitlements Program (SAVE), enacted by section 121 of the Immigration Reform and Control Act of 1986 -- is an efficient, cost-effective means of verification. The SAVE database, which is called the Alien Status Verification Index, contains immigration status information on over 28 million resident aliens and 21 million non-immigrant aliens. Section 601 relies on a single document -- a passport, resident alien card, driver's license, or state identity card -- for verification rather than immigration status information from INS databases.

While we concur with the exemptions in section 603, we also

believe the bill should require several more, including: child welfare services, child nutrition, additional public health services, and other programs where it would be administratively burdensome to verify eligibility. We also note that section 603 would require the Attorney General to establish the definition of emergency medical services, in consultation with the Secretary of Health and Human Services. We believe that it is more appropriate for the Secretary of Health and Human Services to establish the definition of emergency medical services, in consultation with the Attorney General.

Section 604 requires the Secretary of Housing and Urban Development (HUD) to submit a report within 90 days to certain Committees of Congress describing the manner in which the Secretary is enforcing section 214 of the Housing and Community Development Act of 1980. By requiring this report of HUD, section 604 implies that the restrictions on assistance to noncitizens in HUD programs will continue to be governed by section 214. The legislation should state this explicitly.

The Administration supports HUD programs remaining subject to section 214. HUD published its final rule implementing section 214 on March 20, 1995, and on June 20, 1995, the rule became effective. The restrictions on assistance to noncitizens in HUD programs are being implemented by housing authorities and multifamily project owners. Systems and procedures to carry out these restrictions are in place. Without clarification, confusion would arise and the efforts of HUD and its housing partners (housing authorities and project owners) to ensure that scarce housing resources go to families with citizenship or eligible immigration status may be impeded.

Section 605 requires the Attorney General to define lawful presence in regulation. We would like to work with the Committee to further clarify the definition of this term, given the history of difficulties in defining lawful presence. For example, it would be essential in our view to ensure that certain categories of aliens including refugees and asylees are included in the definition of aliens who are lawfully present in the United States.

Section 622 would require a determination of whether immigrants had received benefits under the various assistance programs for more than 12 months during the 7 year public charge period due to reasons that existed before entry or occurred after entry. It is not clear who would be responsible for making such determinations -- the Attorney General or the various benefit programs. Regardless, this section would create a number of administrative and legal complexities as drafted, and we do not endorse these provisions without further clarification or amendment. Also, similar to our comment on section 601, we do not think it is appropriate to include the Social Services Block

Grant program in the list of other means-tested entitlement programs, since it is neither an entitlement program nor clearly means-tested.

We also object to making refugees, asylees, and Cuban and Haitian entrants deportable. Many of these immigrants may receive AFDC, Medicaid, SSI, and Food Stamps for more than an aggregate of 12 months within 7 years of entry. This provision would return such refugees, asylees, and Cuban and Haitian entrants back to the countries they fled because of persecution.

Furthermore, we urge the Subcommittee to clarify that this provision does not limit the ability of the INS to establish its enforcement priorities. For example, a requirement to institute deportation proceedings against an alien considered a public charge should not mandate the alien's removal prior to or in place of the removal of an aggravated felon who threatens the community.

In addition, section 622, similar to section 603, would require the Attorney General to establish the definition of emergency medical services, in consultation with the Secretary of Health and Human Services. As we noted before, we think it is more appropriate for the Secretary of Health and Human Services to establish the definition of emergency medical services, in consultation with the Attorney General.

While we support section 631's goal of making sponsors more responsible for the immigrants they sponsor, we have strong reservations about this section as drafted and may have additional comments after further review. This section would apply to immigrant children that have become naturalized citizens and are bound by the new affidavits; repeal the current law exemption from deeming for sponsored immigrants who become disabled after entry; affect many diverse Federal programs -- including Medicaid; create new administrative complexities and requirements; and change the current deeming formula to include 100 percent of a sponsor's income and resources. By attributing 100 percent of a sponsor's income and resources to the sponsored immigrant, section 631 does not take into account the needs of the sponsor and his or her family and is inconsistent with current practice in the major entitlement programs. Legal challenges may also arise where the spouse was not a signatory to the affidavit or the spouse is separated from the sponsor.

The Administration proposed strengthening the deeming provisions in its welfare reform bill introduced last year, the "Work and Responsibility Act of 1994," and we would like to work with the Subcommittee to establish a reasonable deeming policy that addresses the concerns identified above. The Administration is opposed to unilaterally applying the new deeming provisions to people that become disabled after entry. We have serious

concerns about the requirement that deeming provisions apply to minor children of U.S. citizens and permanent resident aliens until age 21, regardless of citizenship, especially since the petitioning age for naturalization begins at age 18. Further, many orphans and adopted children, as well as children of naturalized former legal permanent residents, become U.S. citizens while still minors, creating disparate access to benefits among U.S. citizen children. The Administration strongly opposes applying deeming to immigrants once they have become naturalized citizens since this would have the effect of creating two classes of American citizens. We are also deeply concerned about applying deeming provisions to the Medicaid and Foster Care programs. Finally, we have strong reservations about deeming 100 percent of a sponsor's income and resources.

We support providing state and local governments with the authority to implement the same deeming rules under their cash general assistance programs as the Federal government uses in its cash welfare programs. We also support only applying new deeming rules to immigrants who sign new, legally binding affidavits of support.

We strongly support making the affidavit of support legally binding. However, we have reservations with section 632 as drafted, particularly as it interacts with the deeming provisions in section 631. We note that section 632 does not provide for an effective mechanism to ensure or compel a sponsor to actually provide financial support to an alien he or she has sponsored. The reimbursement requirement would only apply to those sponsored immigrants that somehow become eligible for and receive benefits subsequent to having the deeming provisions applied to them under section 631. Since all Federal means-tested programs would be required to implement the new deeming provisions, very few immigrants would ever become eligible for Federal benefits during the deeming period; therefore, there would be few reasons to seek reimbursements from sponsors, except in cases of fraud. The same conditions would occur under state and local programs depending on whether states and localities implemented deeming rules similar to the Federal programs.

We recommend that, at a minimum, the sponsored immigrant be given authority to bring suit against a sponsor that has reneged on his or her agreement to provide financial support to the immigrant for a specified period of time.

Title VIII - Miscellaneous Provisions


Section 808 would limit the eligibility of an alien to adjust status under section 245(i) to those persons afforded protection from deportation under the family unity provisions of section 301 of the Immigration Act of 1990. Section 245(i),

which went into effect last year, has eliminated a burdensome paper process and has enabled the Department of State to shift critical resources into its anti-fraud and border control efforts. We oppose this restriction of section 245(i).

Mr. Chairman, we want to work with you on bipartisan immigration enforcement legislation that is in the national interest. We look forward to working with you to address the core issues of worksite enforcement, border control, criminal alien deportation and comprehensive immigration law enforcement.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



For A.F.

Andrew Fois
Assistant Attorney General



Office of the Deputy Attorney General

Washington, D.C. 20530

September 15, 1995

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Hyde:

This letter presents the views of the Administration concerning H.R. 2202, the "Immigration in the National Interest Act of 1995," as introduced on August 4, 1995.

Many of the provisions in H.R. 2202 advance the Administration's four-part strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and securing from Congress the resources to assist states with the costs of illegal immigration that are a result of failed enforcement policies of the past. The Administration's legislative proposal to advance that strategy is H.R. 1929, the "Immigration Enforcement Improvements Act of 1995," introduced by Representative Howard Berman on June 27, 1995. We are pleased that the bill before the Committee follows our policies to a significant extent. Our positions on the provisions in the bill are summarized in the following discussion.

Title I - Deterrence of Illegal Immigration Through Improved Border Enforcement and Pilot Programs

The Administration has already demonstrated that our borders can be controlled when there is a commitment to do so by the President and Congress. With an unprecedented infusion of resources since 1993, we have implemented a multi-year border control strategy of prevention through deterrence. We have carefully crafted long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore integrity to the border.

- **Border Patrol Agents:** We have increased the number of Border Patrol agents by 40% since 1993 and we support a further increase of 700 agents per year to reach a total strength of at least 7,281 Border Patrol agents by the end of FY 1998.

- Document Security: We support improved security of Border Crossing Cards and other documents, using advanced technology, within a reasonable period of time.
- Interior Repatriation: We support pilot programs to deter multiple unauthorized entries, including interior and third country repatriation.
- Penalty for illegal entry: We are currently prosecuting more repeat criminal alien illegal entry offenders than ever. Our increase in prosecutions is preferable to a burdensome civil penalty.

Title II - Enhanced Enforcement and Penalties against Alien Smuggling; Document Fraud

The Administration is aggressively investigating, apprehending, and prosecuting alien smugglers. H.R. 2202 and the Administration bill have a common goal of significantly increasing penalties for alien smuggling, document fraud, and related crimes. In fact, our bill goes beyond the provisions of H.R. 2202 by making conspiracy to violate the alien smuggling statutes a RICO predicate and by providing for civil forfeiture of proceeds of and property used to facilitate alien smuggling.

- Penalty increases: We support increases in the sentences for aliens who fail to obey a deportation order, illegally re-enter the U.S. after deportation, or commit passport or visa fraud.

Title III - Inspection, Apprehension, Detention, Adjudication, and Removal of Inadmissible and Deportable Aliens

Removals of criminal aliens have increased rapidly during this Administration. More than four times as many criminal aliens were removed in 1994 than in 1988. We will nearly triple the number of criminal alien removals from 20,138 in FY 93 to 58,200 in FY 96 by streamlining deportation procedures, expanding the Institutional Hearing Program, and enhancing the international prisoner transfer treaty program. Immigration and Naturalization Service (INS) technology enhancements have also played a critical role in removing criminal aliens, as have INS alternatives to formal deportation, such as stipulated, judicial, and administrative deportation.

- Special exclusion: We support special exclusion provisions which allow the Attorney General to order an alien excluded and deported without a hearing before an immigration judge when extraordinary situations threaten our ability to process cases and in the case of irregular boat arrivals.
- Removal procedures: We support consolidating exclusion and

deportation into one removal process and facilitating telephone and video hearings which save resources.

- Authorization for removals: We urge the Committee to increase the authorization for funding the detention and removal of inadmissible or deportable aliens to \$177.7 million, the amount in the President's FY 96 budget request, rather than the \$150 million in H.R. 2202.
- Relief from deportation: We support consolidating the processes and restricting the grounds which permit relief from deportation.

Title IV - Enforcement of Restrictions against Employment

The Administration strongly believes that jobs are the greatest magnet for illegal immigration and that a comprehensive effort to deter illegal immigration, particularly visa overstaying, must make worksite enforcement a top priority. The Administration is concerned by the cautious steps back H.R. 2202 takes with regard to enforcement of employer sanctions and will continue to work with the Committee to address this priority enforcement area.

- Enforcement personnel: The President's FY 96 budget request calls for 202 new DOL Wage and Hour personnel while H.R. 2202 calls for 150. We support the levels of new INS investigations personnel and new DOL Wage and Hour personnel requested in the President's FY 96 budget. These resources will enhance enforcement of laws prohibiting employment of illegal aliens and the minimum labor standards laws.
- Employment verification: H.R. 2202, in contrast to the Administration's bill, rejects the principle worksite enforcement recommendation of the Commission on Immigration Reform which was to thoroughly test and evaluate verification techniques before implementing them nationwide. We support continued pilot projects which will aid in the development of a system for accurate verification of a potential employee's status. Such a system will greatly assist employers in meeting their obligation to hire only authorized workers. Testing what works -- from business impact, cost effectiveness, privacy and discrimination perspectives -- is a necessary prerequisite for a nationwide verification system.
- Employment documents: We strongly support the reduction in the number of documents that can establish employment authorization.

Title V - Reform of Legal Immigration System

The Administration seeks legal immigration reform that promotes family reunification, protects U.S. workers from unfair competition while promoting the global competitiveness of our employers, and encourages naturalization to encourage full participation in the national community. The Administration supports a reduction in the overall level of legal immigration consistent with these principles.

We are proposing to reform legal immigration in ways that are consistent with the Jordan Commission's recommendations, that reduce annual levels of legal immigration, and that reach those lower numbers faster. We are also proposing a few ideas on how to use naturalization to reduce the second preference backlog numbers, which is a priority for the Commission and the Administration, while maintaining first and third family preferences for reunification of adult children of U.S. citizens.

- Refugee admissions: We do not support a statutory cap on the number of refugees resettled in the U.S. Refugee admissions, which have declined in recent years, are better determined through the established consultation process between the President and the Congress.
- Asylum proceedings: We do not support extensive changes in the asylum process which would reverse the significant progress the Administration has made in the asylum area.

TITLE VI - Restrictions on Benefits for Unauthorized Aliens

The Administration supports the denial of benefits to undocumented immigrants. The only exceptions should include matters of public health and safety--such as emergency medical services, immunization and temporary disaster relief assistance--and every child's right to a public education. In so doing, care must be taken not to limit or deny benefits or services to eligible individuals or in instances where denial does not serve the national interest. The Administration also supports tightening sponsorship and eligibility rules for non-citizens and requiring sponsors of legal immigrants to bear greater responsibility through legally enforceable sponsorship agreements for those whom they encourage to enter the United States. The Administration, however, strongly opposes application of new eligibility and deeming provisions to current recipients, including the disabled who are exempted under current law. The Administration also is deeply concerned about the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

TITLE VII - Facilitation of Legal Entry

The Administration is committed to improving services for legal entrants, and we support the provisions of this bill which

enable us to do so. We are already conducting commuter lane pilot programs on the Northern border to facilitate traffic at the ports of entry. Revenues from new service charges will enable us to hire additional inspectors and to enhance customer service to the traveling public at land border ports of entry.

As for air travel, our pre-inspection facilities enable us to expedite inspection at the arrival airports. In addition, we are already working with the travel industry to deter illegal traffic and improve customer services. For the past five years we have conducted a Carrier Consultant program at both United States and foreign locations in which we train airline employees and foreign government officials in the detection of fraudulent travel documents. This has resulted in a marked reduction of mala fide arrivals at United States gateway airports.

Title VIII - Miscellaneous

- Adjustment of status: We do not support limiting the class of aliens who can adjust status under section 245(i) of the Immigration and Nationality Act. This section has eliminated a burdensome paper process, and allowed resources to be shifted to anti-fraud and naturalization efforts.

Mr. Chairman, we want to work with you on bipartisan immigration enforcement legislation that is in the national interest. We look forward to working with you to address the core issues of worksite enforcement, border control, criminal alien deportation and comprehensive immigration law enforcement.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

COPY

Jamie S. Gorelick
Deputy Attorney General



Office of the Deputy Attorney General
Washington, D.C. 20530

September 15, 1995

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Hyde:

This letter presents the views of the Administration concerning H.R. 2202, the "Immigration in the National Interest Act of 1995," as introduced on August 4, 1995.

Many of the provisions in H.R. 2202 advance the Administration's four-part strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and securing from Congress the resources to assist states with the costs of illegal immigration that are a result of failed enforcement policies of the past. The Administration's legislative proposal to advance that strategy is H.R. 1929, the "Immigration Enforcement Improvements Act of 1995," introduced by Representative Howard Berman on June 27, 1995. These two proposals share many common provisions. Our positions on the individual provisions are outlined in the following section-by-section discussion.

Title I - Deterrence of Illegal Immigration Through Improved Border Enforcement and Pilot Programs

The Administration has already demonstrated that our borders can be controlled when there is a commitment to do so by the President and Congress. With an unprecedented infusion of resources since 1993, we have implemented a multi-year border control strategy of prevention through deterrence. We have carefully crafted long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore integrity to the border. The results of our flexible approach are reflected in the successful implementation of Operations "Hold-The-Line" in El Paso, "Gatekeeper" in San Diego, and "Safeguard" in Arizona. We have increased the number of Border Patrol agents by 40% since 1993 -- higher levels of staffing and support than ever before. For the first time in over a decade we are backfilling positions previously left vacant by attrition. We are committed to achieving a strength of at least 7,281 Border Patrol agents by the end of FY 1998. Border

Patrol personnel are now equipped with new and sophisticated technology and basic support allowing them to work more effectively. We appreciate the efforts by Congress to authorize and appropriate more funds for Border Patrol agents and equipment. We look forward to working together to further improve border management and control.

Section 101(a) provides that the number of Border Patrol agents be increased by 1000 per year from 1996 through 2000. Subsection (b) provides that the number of support personnel for border enforcement, investigations, detention and deportation, intelligence, information and records, legal proceedings, and management be increased in fiscal year (FY) 1996 by 800 positions above the number existing as of September 30, 1994. Subsection (c) requires the deployment of new border patrol agents to border areas in proportion to the level of illegal entries in the sector.

H.R. 1929 proposes increases of at least 700 agents in each of fiscal years 1996-1998, to the maximum extent possible consistent with standards of professionalism and training. This proposal reflects the Administration's commitment to achieve substantial increases in agent strength by the end of FY 1998. The Administration has greatly expanded the size of the Border Patrol and, for the first time, in many years, has taken serious efforts to eliminate hiring and attrition shortfalls. In some fiscal years, we will hire and train more than 1000 new and replacement Border Patrol personnel. However, we ask the Committee to be mindful of the danger to the law enforcement structure and mission should too many newly hired positions be created at once. We believe that an annual increase of 700 agents represents the maximum agent strength that the Border Patrol can responsibly achieve in each year at this time based upon a number of fundamental law enforcement considerations. The International Association of Chiefs of Police recently analyzed Border Patrol hiring and concluded that massive infusion of inexperienced law enforcement agents deployed in the field with new supervisors would jeopardize overall effectiveness and would carry with it a risk of unintended consequences such as cutting corners on training, excessive force, civil rights violations and decreased professionalism.

We recommend substitution of the mandated annual increase of 1000 Border Patrol personnel with language contained in the Administration bill that the hiring be at least 700 annually and to the maximum extent possible consistent with standards of professionalism and training. In the alternative, we urge that statutory and report language make clear that the mandated increase include new and replacement personnel in order to facilitate their full integration into the Border Patrol.

Section 102(a) provides that the Attorney General and the Commissioner of the Immigration and Naturalization Service (INS) install additional physical barriers and roads to deter

unauthorized crossings into the U.S. in areas of high illegal entry. Section 102(b) provides that in carrying out subsection (a) in the San Diego sector, the Attorney General provide for multiple fencing, separated by roads, for the 14 miles eastward of the Pacific Ocean. The section authorizes \$12,000,000 for these fences and roads. Section 102(c) provides for a waiver of the Endangered Species Act and other laws. Subsection 102(d) requires the Attorney General to submit a report within 6 months of the date of enactment regarding the forward deployment of border patrol agents.

We support reinforcing physical barriers along the border, and this Administration has continued to do so as an important part of its overall strategic plan. Indeed, on September 11, after a thorough evaluation, the INS announced its decision to construct a border fence west of El Paso to further enhance the security of the southwest border. The 1.3 mile fence will be constructed along the border at Sunland Park, New Mexico, and Colonia-Anapra, Chihuahua, Mexico, and the area will be lit with sodium vapor lighting at night. The fence will provide a firm, new response to the crime, banditry and smuggling activity that have dramatically increased in the area as well as significantly improve the safety of residents on both sides of the border.

However, the particular proposal of multiple layers of fencing risks endangering the physical safety of our Border Patrol agents. Multiple layers of fencing present a tactical problem. Agents working inside multiple fence lines become restricted to a single, predictable line of travel. Past experience has shown that alien smugglers will take advantage of that restriction and "ambush" agents by attacking vehicles and agents with rocks. Often, the only escape route for an agent under attack may be blocked by innocent women and children, more alien smuggler attackers, or with debris. We request that the Committee defer to the experience of those in the Border Patrol who are responsible for the safety of the Patrol's men and women and strike this section from the bill.

The INS has developed carefully crafted, long range strategic plans which rely on deterrence to restore integrity to the border. Because the geography, illegal crossing routes and methods, and demography and psychology of illegal immigration are unique to each border area and may vary with time, border control strategies must be tailored to meet the needs of each specific area. The results of our flexible approach are reflected in the successful implementation of Operations "Hold-The-Line" in El Paso, "Gatekeeper" in San Diego, and "Safeguard" in Arizona. Accordingly, the deployment of personnel, physical barriers, technology, and operational judgments are management decisions appropriately left to the people who are responsible for the day-to-day operation at the ground level.

In addition, \$12 million is inadequate to fund 14 miles of second and third fences. Depending on the cost of land acquisition and the type of fence used, the total cost will range from \$86.75 million to \$110 million, even before road construction costs are added. Land acquisition is expected to cost \$80,000 per acre. If the land is 120 feet wide and 14 miles long, the cost will be \$17.6 million. If the acquired land is the bare minimum width 116 feet and 14 miles long, the cost will be \$16.75 million. A wire mesh fence would cost \$92.4 million; a chainlink fence, \$70 million. Experience shows that without adequate resources for the construction and maintenance of any proposed fencing, it will fail to accomplish its purpose.

Waiver of the provisions of the Endangered Species Act (ESA) for construction of the barriers and roads is unnecessary, and we oppose it. Full compliance with the requirements of the ESA serves as no bar to the timely construction of the border improvements contemplated by this section. Grant of an ESA waiver under these circumstances is inconsistent with the Administration's proposal for reauthorization and full application of the ESA. Requirements and regulations under the ESA have already been streamlined to balance the interests underlying the ESA with that of the regulated community. Providing waivers on a piecemeal basis, particularly to another government agency, contravenes the explicit Congressional intent of the ESA to afford endangered species the highest of priorities, and that all federal actions undergo consultation with the appropriate agencies to determine the effects of that action upon listed endangered species. We oppose providing ESA waivers to government agencies because it undercuts the general applicability of the ESA and undermines the government's credibility in enforcing it.

Section 103 authorizes the Attorney General to acquire federal equipment, including aircraft, helicopters, vehicles, and night vision equipment, to improve the deterrence of illegal immigration into the United States.

The INS is already engaged in such efforts. We do not oppose this provision, but we do not believe it is necessary.

Section 104 amends the definition in section 101(a)(6) of the Immigration and Nationality Act (INA) of the "border crossing identification card" to require that within 6 months of the date of enactment, all new border crossing ID cards (which are issued only to aliens) include a machine readable biometric identifier, such as a handprint or fingerprint of the alien. The amendment also requires that within 18 months of the date of enactment of this Act, an alien cannot be admitted to the U.S. on the basis of such a card unless the biometric identifier on the card matches the appropriate biometric characteristic of the alien. Not later than one year after implementation of the biometric identifier

the Attorney General shall submit to Congress a report on the impact of such clause on border crossing activities.

We agree that border crossing cards and other documents issued by INS must be made more secure, and we are working to achieve that goal. However, we are concerned by the tight timeframe provided by this section. At this time, the Immigration Card Facility does not have the capacity to issue cards containing a machine readable biometric identifier. The INS would have to procure the equipment to make the cards and supply the ports of entry with the equipment to capture the biometric data for the card production. Given current technology, measuring the biometric of pedestrians would be feasible, but measuring the biometric of every person arriving in a vehicle would dramatically slow traffic. We will continue to work with the Committee to establish a more realistic timeframe which would take advantage of available technology to accomplish the goal of a machine-readable card with biometrics within a reasonable period of time. This effort involves developing an infrastructure for issuance of the card and a means to issue replacement cards for one million current cardholders while minimizing any diversion of resources from land border inspection and recognizing our current international obligation to issue new border crossing cards at no charge.

Section 105 provides that an alien apprehended while entering or attempting to enter the U.S. illegally is subject to a civil penalty of not less than \$50 nor more than \$250. The penalties are doubled in the case of an alien previously subject to such penalties.

We support effective deterrents and penalties for illegal entry. However, we oppose this provision for the following reasons. In the case of refugees, such a penalty is contrary to international standards. Article 31 of the 1951 Convention relating to the Status of Refugees, by which the U.S. is bound as a party to the 1967 Protocol relating to the Status of Refugees, provides that

... States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened ... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

The 1951 Convention relating to the Status of Refugees prohibits States from penalizing the illegal entry of persons deemed refugees so long as such persons present themselves without delay to the authorities and show good cause for their illegal entry. Section 105 of the bill, as currently drafted, would penalize

refugees as well as others who enter illegally. In order to remain consistent with U.S. obligations under the Protocol, the section should at least be modified to provide an exception for persons who establish refugee status or eligibility for withholding of deportation and who also meet the requirements of Article 31, i.e., present themselves without delay to U.S. authorities and show good cause for the illegal entry.

Even with this change, however, we are convinced that the costs and disadvantages of collecting such a fee outweigh the intended benefits. Enforcement of the fee provision would likely require detention of aliens, the vast majority of whom currently accept voluntary departure to be returned to their country of origin within hours of their illegal entry. This would likely tie up detention space more wisely used for criminal alien removal. Moreover, the section fails to address whether unauthorized aliens who are unable to pay would face prolonged detention at taxpayers' expense. Under its new IDENT system, INS obtains fingerprints of each illegal border crosser and is now in a position to prosecute second time illegal entrants. This new and effective deterrent serves the same purpose as this section without the attendant diversion of resources.

The assessment of a fine under this section would require a due process hearing. The Supreme Court has held that 5th Amendment due process requirements apply to aliens. Wong Wing v. United States, 163 U.S. 228, 238 (1896); Russian Volunteer Fleet v. United States, 282 U.S. 481, 489 (1930). Due process requirements applicable to deportation and exclusion are distinct from due process requirements applicable to taking or confiscating property. In Wong Wing, the Court held that Congress may enact legislation to exclude or expel aliens but that legislation confiscating an alien's property must include a "judicial trial." 163 U.S. at 237. To meet due process requirements, an administrative agency is generally required to hold a hearing at some point in the proceedings. Opp Cotton Mills v. Administrator, 213 U.S. 126, 152-153 (1941). This hearing must include notice of the hearing, notice of the contemplated government action, and an opportunity to present evidence. Wong Yang Sung v. McGrath, 339 U.S. 33, 50 (1950).

Given these hearing requirements, section 105 almost certainly would be extremely costly, may require the INS to detain unauthorized aliens for extended periods of time, may generate litigation on due process issues, and may not improve our ability to gain control of our borders. Indeed, it may divert important resources from border enforcement activities of far greater national interest. We oppose this provision.

Section 106 authorizes appropriations to the Attorney General of the sums needed to provide for detention and prosecution of each alien who violates section 275(a) of the INA

(illegal entry) if the alien has committed such an act on two previous occasions.

We oppose this requirement which is an unprecedented and arguably unconstitutional intrusion on prosecutorial discretion. The decision whether to prosecute for violation of a criminal statute is solely an Executive Branch function which cannot be taken away by statute.

Moreover, this provision is unnecessary because the Administration has increased dramatically the number of prosecutions of criminal aliens who reentered the United States after being deported. For example, in the Southern District of California where perhaps one-half of all undocumented aliens enter the United States, the Administration filed 179 cases in 1992. In 1995, the number will exceed 1,000. At the end of last year, the Attorney General authorized a squad of Special Assistant United States Attorneys to greatly augment prosecution of alien cases throughout the Southwest. Additional federal prosecutors devoted to criminal alien prosecutions are beginning to come on line now from resources authorized in the Violent Crime Control and Law Enforcement Act of 1994. Resource constraints require that these prosecutorial resources focus on criminal aliens. If this provision is enacted, there must be significant new resources for Assistant United States Attorneys, and detention and prison space. While we oppose for constitutional reasons a legislative requirement to prosecute every case, we can assure you that many more cases are being prosecuted than ever before. Also, H.R. 2202 and the Administration bill contain provisions for special pilot projects to deter multiple unauthorized entries, such as interior and third country repatriation.

Section 107 requires the Attorney General to continue to provide inservice training programs, including intensive language training, for full-time and part-time Border Patrol personnel in contact with the public to familiarize them with the rights and varied cultural backgrounds of aliens and citizens with whom they have contact and to ensure and safeguard the constitutional and civil rights, personal safety and human dignity of all individuals. The section authorizes such sums, to remain available until expended, as may be necessary to carry out its purpose.

We support this provision.

Section 111 requires the Attorney General, after consultation with the Secretary of State, to establish a pilot program for up to 2 years to deter multiple unauthorized entries into the U.S., which may include interior repatriation, third country repatriation, and other disincentives to multiple unlawful entries. Not later than 30 months after the date of

enactment, the Attorney General and Secretary of State must report on the pilot program, including whether the program or any part should be extended or made permanent.

This provision is similar to a provision in the Administration's bill, and we support it.

Section 112 requires the Attorney General and the Secretary of Defense to establish a pilot program for up to 2 years to determine the feasibility of using, as detention centers for the INS, military bases closed as a result of a base closure law. The Attorney General is to submit a report not later than 30 months after the date of enactment to the Committees on the Judiciary and the Committees on Armed Services of the House of Representatives and the Senate.

Current base closure authority permits the use of closed military bases for other Federal purposes, while ensuring the full participation of affected communities in reuse decisions. We have worked with the Department of Defense in conjunction with the Bureau of Prisons and other agencies to explore the use of closed bases. Section 112 provides no authority beyond what is available in current law, and it fails to address the difficult problems of conversion costs and staffing.

Section 113 would require the Commissioner of the INS, within 180 days of the date of enactment, to establish a pilot program in which INS officers would collect a record of departure for every alien departing the U.S. and match the record of departure with the record of the alien's arrival in the U.S. The program must be operated in not less than 3 of the 5 air ports of entry with the heaviest volume of arriving international air traffic. Under section 113(b), the Attorney General must submit a report not later than 2 years after implementation on the number of departure records collected and other statistics, the estimated cost of establishing a national system to verify the departure from the U.S. of persons admitted as nonimmigrants, and specific recommendations for the establishment of such a system. Section 113(c) requires that information regarding visa overstayers acquired by the pilot programs be integrated into the appropriate data bases of the INS.

We agree that improvements in the current system for tracking departures at ports of entry must be made, and we are working to achieve that goal. However, we are concerned by the tight timeframe provided by this section. Currently, INS is developing a plan to design pilot programs for testing departure control operations at both airports and land borders. This plan will address many issues, including: automating the collection of information on the form I-94; negotiating with the airlines and airport authorities on facilities for the inspectors and their assistance in automating the I-94; negotiating with the Mexican

and Canadian governments regarding land border departure control; staffing requirements; redesign of INS databases to support the automated I-94; and options for the collection of arrival and departure data on persons who do not require an I-94. However, the plan is not complete, and implementation of a pilot program within 180 days of enactment may be difficult. Since sufficient authority to conduct pilot programs already exists, we believe this section is unnecessary and perhaps too restrictive with respect to timeframes. We wish to work with the Committee to accomplish the goal of improving data collection on departing passengers within a reasonable period of time.

We also wish to alert the Committee to the substantial additional personnel resources a pilot program would require. Since the international departure areas at the heaviest volume airports are not at the same location as the arrival areas, we estimate that at least an additional one third more inspectors would be needed to staff all departure gates or airline check-in counters for this purpose. Authorization and appropriation of increased resources are critically necessary to conduct a successful pilot program.

Section 113(c) is unnecessary because the INS and Department of State (DOS) are already working to integrate their databases. The INS/DOS Data Sharing Initiative provides for the electronic transmission of visa information from stateside INS and DOS offices to the visa issuing posts and then back to the port-of-entry and Immigration Card Facility where an alien's permanent resident alien card is generated. A prototype project to electronically pass immigrant visa information through the entire visa information cycle is currently in the requirements analysis stage. The prototype should be operational by the end of the calendar year.

Section 121 requires the Attorney General to increase the number of INS investigators and enforcement personnel deployed in the interior to equal the personnel at the border, to the maximum extent possible consistent with standards of professionalism and training. We strongly support an increase in interior personnel, with the qualifications expressed in section 101, above. However, such increases should be calculated on the basis of our interior enforcement needs and not on the basis of our border resources.

Title II - Enhanced Enforcement and Penalties against Alien Smuggling; Document Fraud

The Administration is aggressively investigating, apprehending, and prosecuting alien smugglers. The INS, Federal Bureau of Investigation, Department of State, and Coast Guard have been sharing and developing information on numerous

smuggling endeavors. As a result of these efforts over 200 significant alien smuggling investigations were initiated in FY 94. Similar efforts are being conducted to address document fraud. This year, INS is adding new staffing positions to investigate and prosecute an increased number of fraudulent document vendors. This includes targeting major suppliers of fraudulent documents and employers who knowingly accept such documents as proof of employment authorization.

We urge the Committee to adopt the Administration's stronger enforcement provisions. H.R. 2202 and the Administration bill have a common goal of significantly increasing penalties for alien smuggling, document fraud, and related crimes. In fact, our bill goes beyond the provisions of H.R. 2202 by making conspiracy to violate the alien smuggling statutes a RICO predicate and by providing for civil forfeiture of proceeds of and property used to facilitate the smuggling or harboring of aliens.

Section 201 amends 18 U.S.C. 2516(1) to give INS the authority to use wiretaps in investigations of alien smuggling and document fraud violations.

This provision is similar to a provision in the Administration's bill, and we support it.

Section 202 amends 18 U.S.C. 1961(1) to include as racketeering offenses acts indictable under the provisions of Title 18, sections 1028, 1542, 1543, 1544, and 1546 (identification document, passport and visa fraud), sections 1581-1588 (peonage and slavery), and sections 274, 277, and 278 of the INA (alien smuggling and related offenses).

The Administration bill, H.R. 1929, contains a similar provision which differs from H.R. 2202 in three critical ways. First, H.R. 1929 makes a conspiracy to violate the alien smuggling statutes a RICO predicate; H.R. 2202 does not. The conspiracy provision is vital because alien smuggling is often carried out by close-knit gangs or groups of dangerous criminals. It is imperative to be able to charge all members, including co-conspirators. Second, H.R. 1929 does not add identification document, visa and passport fraud offenses (18 U.S.C. sections 1028, 1542, 1543, 1544, 1546) as RICO predicates. However, if these document fraud statutes remain in the section, we recommend that 18 U.S.C. 1541 (relating to passport issuance without authority) be included for consistency. Third, H.R. 1929 does not add the peonage and slavery statutes as RICO predicates. While we do not oppose adding these statutes, we would prefer that the Committee directly increase the penalties for violating the peonage and slavery statutes rather than adding them as RICO predicates. Direct increases in penalties would be the more effective way to strengthen the punishment for these crimes. We

urge the Committee to adopt the provision in H.R. 1929.

Section 203(a) amends section 274(a)(1)(B)(i) to provide that any person who violates the prohibitions in 274(a)(1)(A)(ii)-(iv) may be imprisoned for up to 10 years if the offense was committed for purposes of commercial advantage or private financial gain. It provides that a person who conspires or aids and abets smuggling may be fined and imprisoned for up to 10 years (alien smuggling) or up to 5 years (transportation, harboring, inducement). Section 203(b) creates a new offense for smuggling aliens with the intent or with reason to believe that the alien brought into the United States will commit a crime punishable by imprisonment for more than one year, and such a violator may be fined under title 18 and imprisoned for not less than 3 years nor more than 10 years. Section 203(c) provides that a person who smuggles aliens shall be fined or imprisoned for each alien to whom a violation occurs and not for each transaction constituting a violation, regardless of the number of aliens involved.

Section 203(a) is similar to the Administration's proposal, and we support it. Section 203(b) is also similar to the Administration's proposal. However, H.R. 1929, does not include the mandatory minimum sentence of three years. While we support increasing the maximum penalties for alien smuggling offenses, we do not believe that mandatory minimums are appropriate in this context. Providing for mandatory minimum penalties would produce anomalous results compared to penalties for other offenses of comparable severity. Furthermore, mandatory minimums are not necessary in view of the sentencing guidelines system, which is designed to provide appropriate and consistent penalties for all similar offenses. We support Section 203(c) which requires that an alien smuggler be fined or imprisoned for each alien rather than for each transaction. We urge the Committee to adopt H.R. 1929's provision which criminalizes the employment of an alien knowing that such alien is not authorized to work and that the alien was smuggled into the United States. H.R. 1929 provides for a term of imprisonment for not more than 5 years for such an offense. This provision is essential to combatting alien smuggling.

Section 204 provides that the number of Assistant U.S. Attorneys shall be increased in fiscal year 1996 by 25 and shall be specially trained for the prosecution of persons involved in alien smuggling or other crimes involving illegal aliens.

The President's FY 1996 budget request includes resources to hire new Assistant U.S. Attorneys and support personnel to enhance immigration law enforcement. We support this provision.

Section 205 amends title II of the INA to add a new section 294, providing authority for the INS to use appropriated funds

for the establishment and operation of undercover proprietary corporations or business entities.

This provision is similar to the Administration's proposal, and we support it.

Section 211(a) amends 18 U.S.C. 1028(b)(1), relating to fraud and misuse of government-issued identification documents, to increase the maximum term of imprisonment from 5 to 15 years. The maximum sentence is increased to 20 years if the offense is committed to facilitate a drug-trafficking crime, to 25 years if committed to facilitate an act of international terrorism.

The penalties for all the document fraud statutes (e.g. 18 U.S.C. 1028 and 1541-1546) should be consistent. Therefore, we urge the Committee to adopt the Administration's proposal for increasing these penalties.

Section 211(b) directs the Sentencing Commission to promulgate or amend existing sentencing guidelines relating to sections 1028(a) and 1546(a) of title 18 and to increase the basic offense level under section 2L2.1 of the Guidelines to level 15 if the offense involved 100 or more documents, level 20 if the offense involved 1,000 or more documents or was done to facilitate a drug offense or aggravated felony, and to level 25 if done to facilitate terrorism or racketeering.

The Sentencing Commission recently adopted guideline amendments which will become effective on November 1, 1995, and will significantly increase the punishments for these offenses. In our view, the Commission's guideline amendments should be given an opportunity to work before additional changes are made. Furthermore, the directives which have already been adopted by the Sentencing Commission are no longer needed.

If section 211(b) remains, it should make clear that the passport statutes (18 U.S.C. 1541-1544) are addressed along with those involving other travel and identification documents (18 U.S.C. 1028 and 1546). We also recommend that on page 29, line 16, the word "used" be changed to "provided" and that, on page 30, line 10, "known to be" be inserted before "involved". In the alternative, we suggest that the entire subsection be rewritten to ensure that it applies only to a defendant who provides a document(s) "knowingly, believing, or having reason to believe" that it is to be used to facilitate the felonies included in section 211(b).

Section 212(a) amends section 274C(a) by adding a new paragraph (5) to make it unlawful for any person knowingly or in reckless disregard of the fact that the information is false or does not relate to the applicant, to prepare, file, or assist another person in preparing or filing, documents which are

falsely made for the purpose of satisfying a requirement of the INA. The word "or" should be inserted immediately after "(5)" as the other provisions in this section require "knowing" conduct while paragraph (5) requires "reckless disregard." This section also adds a definition of the term "falsely made" to apply to section 274C. Section 212(b) amends section 274C(d)(3) by making a "cease and desist order" for previous civil penalty document fraud violations applicable to "each instance of a violation." Section 212(c) makes the provisions of this section effective for acts or violations occurring on or after the date of enactment.

With regard to section 212(a), we note that the definition of "falsely made" should follow new paragraph (6), added by section 213 of H.R. 2202, for purposes of clarity. We otherwise support section 212(a), which is similar to the Administration's proposal. With regard to section 212(b), we recommend that the Committee adopt the language of the Administration's bill, which makes such an order applicable to "each document that is the subject of a violation." Citing to each document that is the subject of a violation conforms with current practice and makes the provision clearer. We support section 212(c).

Section 213 amends section 274C(a) by adding a new paragraph (6) to make it unlawful for an alien to present upon boarding a common carrier a document relating to the alien's eligibility to be admitted to the U.S. and to fail to present the document upon arrival in the U.S. The Attorney General may waive these penalties if the alien is subsequently granted asylum or withholding of deportation.

This provision is similar to the Administration's proposal, and we support it.

Section 214 amends section 274C of the INA by adding a new subsection (e), providing that a person who fails to disclose or conceals his role in preparing, for fee or other remuneration, a false application for asylum shall be imprisoned for not less than 2 years nor more than 5 years and also shall be prohibited from preparing, whether or not for fee or other remuneration, any other such application. A person convicted under this section who later prepares or assists in preparing an application for asylum, regardless of whether for a fee or other remuneration, is subject to imprisonment of not less than 5 nor more than 15 years and is prohibited from preparing any other such application.

In general the Administration strongly supports increased penalties to support enforcement and deterrence objectives in fighting illegal immigration. Moreover, the Administration agrees that increased enforcement against those who help prepare false applications is needed. In this case, however, we advise the Committee that current criminal statutes are adequate to punish this type of illegal conduct. We do not believe that a

new and special offense is needed to prosecute a person involved in assisting in fraud in the asylum process. Furthermore, mandatory minimum sentences are not appropriate in this context. Mandatory minimum penalties would produce anomalous results compared to penalties for other offenses of comparable severity, particularly many white collar crimes. In addition, mandatory minimums are not necessary in view of the sentencing guidelines system, which is designed to provide appropriate and consistent penalties for all similar offenses.

Section 215 amends 18 U.S.C. 1546(a) to provide that the penalty for knowingly presenting a document which contains a false statement also extends to a document which fails to contain any reasonable basis in law or fact.

While we support the intent of this provision, we believe that the provision does not add meaningfully to existing enforcement powers or penalties because numerous existing document fraud statutes already cover this type of fraud.

Section 216 amends 18 U.S.C. 1015 by adding a new subparagraph (e), providing criminal penalties against any person who makes a false claim to U.S. citizenship or nationality for the purpose of obtaining, for himself or any other person, any federal benefit or service or employment in the U.S.

We support this provision.

Section 221 adds a new paragraph (6) to 18 U.S.C. 982(a) to provide that a person who is convicted of a fraud violation in connection with passport or visa issuance or use, shall forfeit any property, real or personal, which was used or intended to be used in facilitating the violation.

We support this provision. Moreover, we seek additional enforcement tools. We recommend allowing the Government to request issuance of a warrant authorizing seizure of property subject to criminal forfeiture if the court determines that there is probable cause to believe that a protective order may not be sufficient to assure the availability of the property for forfeiture in the event of conviction. As written, section 221 incorporates the protective order provisions of 21 U.S.C. 853(e), which permit the court to "enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property" subject to forfeiture. This suggested change would also include the warrant of seizure provisions found in 21 U.S.C. 853(f). Specifically, we recommend, on page 33, striking lines 21 and 22 and inserting in lieu thereof the following: "(2) in subsection (b)(1)(A), by inserting 'or (a)(6)' after '(a)(1)'."

We also recommend that section 221 provide for civil

forfeiture of proceeds of and property used to facilitate passport and visa offenses. As drafted, section 221 provides only for criminal forfeiture for such offenses. Civil forfeiture is critical for the following reasons. First, only the defendant's property may be forfeited in a criminal forfeiture case. Property used by the defendant but held by a third party cannot be forfeited criminally. For example, if the defendant uses a business, bank account or other asset to commit a passport or visa offense, but the business or other property is held by a corporation, business partner, or spouse of the defendant, the property may not be forfeited in a criminal case, even if the defendant is convicted. Under a civil forfeiture statute, however, property of such third parties may be forfeited, subject to the third party's innocent owner defense. If only criminal forfeiture is authorized, criminals will be able to insulate their property from forfeiture by making sure their property is held in the name of a spouse or confederate who is aware of the illegal activity, but whose role in the offense is such that the government is unlikely to bring criminal charges against them.

Second, the absence of civil forfeiture will make it impossible to use forfeitures in cases in which the offender has become a fugitive. That is because criminal forfeiture operates only upon the conviction of the defendant. If only criminal forfeiture is authorized, the government will be powerless to forfeit the proceeds of visa or passport violations found in the United States until such time as the defendant is apprehended and extradited to the United States. If the defendant is deceased, no forfeiture will ever be possible. Civil forfeiture has thus proven to be an essential tool in dealing with drug traffickers and other criminals who conduct their illegal operations from abroad. This consideration is particularly applicable to offenses involving visas and passports.

Third, there are times when the criminal prosecution of an offender is not necessary to vindicate the government's interest as long as the proceeds of and/or the property used in the violation can be forfeited civilly. If only criminal forfeiture is authorized, it will be necessary to bring criminal charges against persons who commit relatively minor offenses, or who play minimal roles in larger schemes, in order to forfeit the proceeds of those offenses. Where such forfeiture of criminal proceeds or the instrumentalities of a crime is a sufficient remedy for the violation that has occurred, it is not in the interests of justice to require the government to bring a criminal prosecution or else forego the forfeiture.

Section 222 amends section 986(a) of title 18 to permit the issuance of subpoenas for bank records in investigations of offenses under sections 1028, 1541, 1542, 1543, 1544, and 1546 of title 18.

This provision will assist investigations of immigration fraud operations, and we support it. However, section 986(a) provides for the issuance of subpoenas for bank records when civil forfeiture cases have been brought. Unless section 221 of H.R. 2202 is amended to provide for civil forfeiture as recommended, section 222's amendment to section 986(a) is meaningless and possibly confusing.

Section 223 makes the provisions of this subtitle (sections 221 and 222) effective on the first day of the first month that begins more than 90 days after the date of enactment. The remaining provisions of Title II would be effective upon enactment, as there is no specific effective date set by H.R. 2202.

We do not oppose these effective dates.

Title III - Inspection, Apprehension, Detention, Adjudication, and Removal of Inadmissible and Deportable Aliens

Removals of criminal aliens have increased rapidly during this Administration. The number of criminal aliens removed from the United States jumped by 12% in 1993, and by 17.6% in 1994 over 1992 levels. More than four times as many criminal aliens were removed in 1994 than in 1988. We will have even greater success deporting aliens this year. Reprogramming recently approved by Congress will provide new resources at the end of this fiscal year to further increase the number of removals. We will nearly triple the number of criminal alien removals from 20,138 in FY 93 to 58,200 in FY 96 by streamlining deportation procedures, expanding the Institutional Hearing Program, and enhancing the international prisoner transfer treaty program. We will more than triple the number of non-criminal alien removals from 16,862 in FY 93 to 53,080 in FY 96 by establishing absconder removal teams. Other INS initiatives, such as the National Alien Transportation Program, provide for the detention and removal of more criminal aliens. INS technology enhancements have also played a critical role in removing criminal aliens, as have INS alternatives to formal deportation, such as stipulated, judicial, and administrative deportation.

Section 300 provides an overview of the amendments made by this subtitle to the provisions of the INA relating to procedures for inspection, exclusion, and deportation of aliens.

This subtitle makes some fundamental changes in the procedures for removal of aliens. An alien who enters the United States without having been inspected and admitted by an immigration officer will be treated as an applicant for admission. This represents a dramatic change in the "entry" doctrine. We agree that revision of the "entry" distinction

between exclusion and deportation proceedings is long overdue. To afford more process to an alien who enters the United States by evading inspection than to a person who appears for inspection at a port of entry defies logic. We also support consolidating exclusion and deportation into one removal process. However, we believe that the Committee should retain certain appropriate exceptions or opportunities for a discretionary waiver in rare cases to prevent extreme hardship. We have additional concerns about the specific provisions of Subtitle A, discussed in the following section-by-section discussion.

Section 301(a) amends section 101(a)(13) of the INA by replacing the definition of "entry" with a definition for "admission" and "admitted." "Admission" means that an alien has entered the United States after inspection and authorization by an immigration officer. An alien who is paroled under section 212(d)(5) is not considered to have been admitted. An alien who has been admitted for lawful permanent residence is not considered to be seeking admission unless the alien has abandoned that status, engaged in criminal activity, been removed or extradited, or has been convicted of an aggravated felony and is not eligible for relief. This exception for lawful permanent residents comports with current law, but provides more precise language.

Section 301(b) amends section 212(a) of the INA by adding a new paragraph (9) which makes an alien who is present in the U.S. without being admitted or paroled, or who has arrived in the U.S. at any time or place other than as designated by the Attorney General, inadmissible.

Section 301(c) amends section 212(a)(6) of the INA to increase from one to five years the period of inadmissibility for an alien found inadmissible to the United States. It increases from five to ten years the period of inadmissibility for aliens removed under an order of removal.

We support this provision.

Section 301(c) also makes an alien who has resided in the U.S. unlawfully for an aggregate period in excess of 1 year inadmissible to the United States for 10 years, with exceptions for minors (children under 21) and aliens with bona fide asylum applications pending under section 208. The Attorney General may extend the period of 1 year to 15 months for an alien who applies for admission before the expiration of the 1 year period.

We oppose the provision attaching these automatic consequences to one year of unlawful residence. It would generate needless and costly litigation, in which the INS would bear the burden of proof, on the issue of the time period in which the individual was unlawfully in the United States. Once

this provision took full effect a year after enactment, it would virtually eliminate adjustments of status under section 245(i), enacted in 1994, which provides for the adjustment of certain unlawfully present individuals upon the payment of a substantial penalty fee. (Related section 808, which we also oppose, directly restricts section 245(i) to allow only family members of legalized aliens to adjust under its terms.) Since its enactment, section 245(i) has become an important source of revenue for the INS to improve its efforts to promote naturalization. Section 245(i) has also eliminated a burdensome paper process and has enabled the Department of State to shift critical resources into its anti-fraud and border control efforts. Section 245(i) helps only those eligible to immigrate, imposes a stiff penalty, and enables the government to serve more individuals.

If this provision is retained, we recommend that the Committee adopt a limited discretionary waiver of this ground of inadmissibility for an immigrant who is the spouse, parent, son or daughter of a U.S. citizen or lawful permanent resident. This would afford close family members of U.S. citizens and legal permanent residents the same treatment that is currently available for close family members of U.S. citizens and legal permanent residents who are inadmissible on the basis of fraud under section 212(i)(1). Exercise of this discretionary waiver would be limited to rare compelling cases involving extreme hardship on families, most of whose members are United States citizens or legal permanent residents.

An exception is provided in section 301(c) for time spent in the United States as a bona fide asylum applicant. We recommend the use of a 'non-frivolous' standard rather than a 'bona fide' application standard for this asylum exception for two reasons: (1) whether an application is bona fide can be determined only after adjudication of the merits of the claim, and (2) we have experience utilizing the non-frivolous standard in determining asylum claimants' eligibility for work authorization. We also note that the section should be entitled "asylum applicants" rather than "asylee" because an "asylee" is someone who has been granted asylum.

The section also provides an extension of the period of time of allowable unlawful presence from one year to 15 months for aliens who apply for admission to the Attorney General before the end of the one year period and establish that they are not inadmissible and that the failure to extend the period would constitute a hardship to the alien. Such an extension would provide an incentive to aliens illegally in the United States with bona fide claims to admission to make themselves known to the Attorney General prior to the conclusion of one year of unlawful presence and thereby affords the Attorney General additional time within which to consider bona fide applications

for admission that are filed within that period. However, we suggest that authorizing a six month extension (to eighteen months total for this limited class) would afford a more meaningful opportunity to examine an alien's application for benefits under the INA.

Section 301(d) conforms the deportation grounds to these new provisions. Subparagraph (B) of paragraph 241(a)(1) (entry without inspection) will be amended to state that an alien present in the U.S. in violation of law is deportable. The current category of persons who are deportable because they have made an entry without inspection are inadmissible under new paragraph (9) of subsection 212(a).

Section 302 amends section 235 of the INA, regarding the inspection of aliens arriving in the United States. Section 235(a), as rewritten by section 302, provides that an alien present in the United States who was not inspected and admitted is deemed an applicant for admission. Stowaways are not eligible to apply for admission. All aliens seeking admission, readmission, or transit through the U.S. must be inspected by an immigration officer, but may withdraw an application for admission and depart immediately. We support this provision as retaining the Attorney General's flexibility to determine whether to place an alien seeking admission to the United States in proceedings.

Section 235(b)(1) provides for expedited removal of arriving aliens. If an examining immigration officer determines that an alien is inadmissible under section 212(a)(6)(C) (fraud or misrepresentation) or 212(a)(7) (lack of valid documents), the officer may order the alien removed without further hearing or review. An alien who establishes a credible fear of persecution must be detained for further consideration of the application for asylum.

The Administration believes that there is an immediate need for such a provision and strongly supports its enactment. While the Administration prefers the procedure outlined in its proposed expedited exclusion provision, the Administration is prepared to work with the Committee to resolve differences between its proposal and H.R. 2202. A discussion of the differences between the two proposals follows.

H.R. 2202's special procedure for arriving aliens differs from the Administration's proposed "special exclusion" procedure in the following respects. First, the procedure applies to all arriving aliens without valid entry documents, whereas the Administration's proposal would apply only in "extraordinary migration situations" as designated by the Attorney General or in the case of escorted or irregular boat arrivals. H.R. 2202 requires assigning asylum officers and interpreters to all ports

at all times and securing additional space for their activity. This level of staffing would be wasteful and inefficient. We recommend instead that the Committee adopt the special exclusion provision in H.R. 1929, which authorizes the Attorney General to exclude and deport aliens without a hearing before an immigration judge when she determines that the numbers or circumstances of aliens en route to or arriving in the U.S. present an extraordinary migration situation. The judgment whether an extraordinary migration situation exists and whether to invoke these provisions is committed to the sole and exclusive discretion of the Attorney General. The Attorney General may invoke the provisions of this section during an extraordinary migration situation for a period not to exceed 90 days, unless within such 90 day period or extension thereof, the Attorney General determines, after consultation with the House of Representatives and Senate Committees on the Judiciary, that an extraordinary migration situation continues to warrant such procedures remaining in place for an additional 90 day period. The Administration's proposal affords appropriate discretion while H.R. 2202's provision, which subjects all arriving aliens without valid entry documents to these special procedures, is an inefficient, impractical, and unnecessary use of resources. Further, the Administration's proposal more clearly allows the Attorney General the flexibility to bring aliens to the United States when humanitarian concerns are present.

Second, the "credible fear" standard in H.R. 2202 is more stringent than the Administration's "credible fear" standard. H.R. 1915's credible fear standard requires that there be a "significant possibility" that the person could establish "eligibility for asylum," whereas the Administration's credible fear definition requires only a "reasonable possibility of establishing eligibility as a refugee." We understand "reasonable possibility" to be a lower standard than "significant possibility" and believe that it is more appropriate to the pre-screening function that this new process is intended to serve. We believe that aliens with an arguable claim to refugee status should have access to a full asylum adjudication on U.S. territory and that the "reasonable possibility" standard better ensures such a result.

Third, the Administration's expedited exclusion provision explicitly authorizes the expedited exclusion of aliens who are intercepted on the high seas, within the territorial sea or internal waters. The Coast Guard frequently interdicts illegal aliens on the high seas and is required to keep the aliens at sea while arrangements are made for a third country to accept the aliens so they may be repatriated. This is neither resource efficient nor cost effective. Two interdiction cases earlier this year consumed a total of 105 cutter days and 548 aircraft hours in order to deliver the interdicted migrants to El Salvador and Mexico. Using standard rates, these cases cost in excess of

\$7 million. Clearly, there is a need for expedited exclusion authority. Rapid delivery of the aliens to the United States for expedited exclusion would allow the Coast Guard vessels to promptly return to their primary law enforcement mission, including drug interdiction and search and rescue. We urge the Committee to adopt the Administration provision.

There is no administrative review of a removal order entered under this paragraph, but an alien claiming under penalty of perjury to be lawfully admitted for permanent residence is entitled to administrative review of such an order. An alien ordered removed under this paragraph may not make a collateral attack against the order in a prosecution under section 275(a) (illegal entry) or 276 (illegal reentry).

Section 235(b)(2) provides that an alien determined to be inadmissible by an immigration officer (other than an alien subject to removal under paragraph (b)(1), or an alien crewman or stowaway) be referred for a hearing before an immigration judge under new section 240. There is no provision for release from detention in the discretion of the Attorney General for arriving aliens. Under current law such release is authorized under the parole provisions of 212(d)(5). Given the restrictions on parole authority contained in section 524 of the bill, we recommend that a provision for discretionary release be included in the amended section 235. Under the new definition of "admission," aliens who entered without inspection would be included in this provision. We support applying these provisions to aliens who entered without inspection but recommend providing relief (i.e. cancellation of deportation) for compelling cases. Our recommendation in this regard is discussed in more detail below in our comments on section 304 of the bill.

Section 235(c) restates the provisions of current section 235(c) regarding the removal of aliens who are inadmissible on national security grounds. Section 302(d) restates provisions currently in subsection 235(a) authorizing immigration officers to search conveyances, administer oaths and receive evidence, and issue subpoenas enforceable in a United States district court.

Section 303(a) amends section 236 of the INA to include provisions currently contained in sections 236 and 242. Section 236(a) restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States. (The current authority in section 242(a) for a court in habeas corpus proceedings to review the conditions of detention or release pending the determination of the alien's inadmissibility or deportability is not retained.) The minimum bond for an alien released pending removal proceedings is raised from \$500 to \$1500.

We support the increase in the bond level. We also support the provision giving authority to the Attorney General to release cooperative witnesses.

New subsection 236(b) retains the authority of the Attorney General to revoke an alien's bond or parole. New subsection 236(c) restates the current provisions regarding the detention of an alien convicted of an aggravated felony. It provides for the release of such an alien if the Attorney General decides in accordance with 18 U.S.C. 3521 that release is necessary to provide protection to a witness, potential witness, a person cooperating with an investigation into major criminal activity, or a family member or close associate of such a witness or cooperator. This provision is similar to the Administration's proposal, and we support it.

New subsection 236(d) restates the current provisions in section 242(a)(3) regarding the identification of aliens convicted of aggravated felonies and amends those provisions to require that information be provided to the Department of State for inclusion in its automated visa lookout system. We do not oppose this provision.

Section 303(b) requires the Attorney General to increase detention facilities to at least 9000 beds by FY 1997. The estimated cost of the 5,550 beds that this provision would add to the current number is \$440 million. We strongly urge Congress to provide the Administration with adequate detention resources. Accordingly, we recommend that this provision explicitly be made subject to appropriations.

Section 304 redesignates current section 239 (designation of ports of entry for aliens arriving by civil aircraft) as section 234 and redesignates section 240 (records of admission) as section 240C. It adds two new sections, 239 and 240, to the INA. The new section 239 of the INA restates the current subsections, with certain modifications, regarding notice to aliens placed in removal proceedings.

The requirement that the Notice to Appear (formerly "Order to Show Cause") be provided in Spanish as well as English is deleted. We believe that this section would create more litigation on the adequacy and accuracy of the notice in English only. A written notice in a language the alien understands, which is most often Spanish, protects the INS from unnecessary delays of enforcement actions based upon whether sufficient notice was provided as well as informs the alien of the nature of the action. In order to avoid unnecessary and costly due process litigation, it would be best not to amend this provision of the INA.

The mandatory period between notice and the date of the

hearing is reduced to 10 days. We believe that the current 14 day period gives the alien a fair and better opportunity to obtain counsel. The INS' experience has been that deportation proceedings move more quickly if an alien does have counsel. In addition, immigration judges normally provide at least one continuance to allow an alien a reasonable opportunity to obtain counsel. H.R. 2202's proposed shortening of the time period in which aliens may obtain counsel may not achieve the intended result of speeding up deportation proceedings. In fact, it may unintentionally cause delay or encourage frivolous appeals. We do not support this provision.

New section 240(a) establishes a single proceeding for deciding whether an alien is inadmissible under section 212(a) or deportable under section 237 (formerly section 241(a)). Removal proceedings are not applicable to aliens inadmissible on national security grounds, aliens convicted of aggravated felonies, or aliens subject to expedited removal for lack of documents or fraud. We support consolidating exclusion and deportation into one removal process. We have already discussed our concerns about the unavailability of any relief from removal for aliens who entered without inspection. We note that although exclusion and deportation are consolidated, separate burdens of proof and differences in eligibility for relief remain, so that the distinction between "exclusion" and "deportation" remains.

Section 240(b) provides that the removal proceeding under this section be conducted by an immigration judge in largely the same manner as currently provided in sections 242 and 242B. The alien retains the right to counsel, at no expense to the Government, must be accorded a reasonable opportunity to examine evidence, present evidence and witnesses, and the Attorney General is required to maintain a complete record of the proceedings. Section 240(b)(2), provides that the proceeding may take place in person, through video conference, or, with the consent of the alien in hearings on the merits, through telephone conference. The Administration's bill has a similar provision, and we support this change to current law.

An alien who fails to appear for a hearing may be ordered removed if the INS establishes by clear, unequivocal, and convincing evidence that notice under section 239 was provided and the alien is inadmissible or deportable. There is no requirement to provide notice if the alien has failed to provide the address required under section 239(a)(1)(F). An in absentia order may only be rescinded through a motion to reopen filed within 180 days if the alien demonstrates that the failure was due to exceptional circumstances, or a motion to reopen filed at any other time if the alien demonstrates that the alien either did not receive notice of the hearing or was in federal or state custody and could not appear.

An alien who receives an in absentia order is ineligible for voluntary departure, cancellation, adjustment of status, change of nonimmigrant classification, or registry for a period of 10 years after the date of the final order. We do not oppose this provision. It is applicable only if the alien received proper notice. Further, an exception is provided for aliens who failed to appear because of "exceptional circumstances."

Section 240(c) requires an immigration judge to make a decision on removability based only upon the evidence at a hearing. An alien applicant for admission has the burden to establish that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible. (This standard will be applicable to aliens who entered without inspection, as they are considered applicants for admission.) An alien who has been admitted has the burden to establish by clear and convincing evidence that he or she is lawfully present in the U.S. pursuant to a prior admission. In the case of an alien who has been admitted to the United States, the INS has the burden to establish by clear and convincing evidence that the alien is deportable. We do not oppose these standards of proof.

Under section 240(c)(5), an alien is limited to one motion to reconsider the decision of an immigration judge and must file it within 30 days of the final administrative order of removal and must specify the errors of law or fact in the order. We do not object to this provision.

Under section 240(c)(6), an alien is limited to one motion to reopen proceedings, which must be filed within 90 days of the final administrative order of removal and must state the new facts to be proven at a hearing if the motion is granted. There is no time limit on the filing of a motion to apply for asylum or withholding of deportation which is based on changed country conditions arising in the alien's home country or country to which the alien is being removed, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding. The deadline also may be extended in the case of an in absentia order of removal if filed within 180 days and the alien establishes that the failure to appear was because of exceptional circumstances beyond the alien's control or because the alien did not receive notice. We do not object to this provision.

Section 240(d) requires the Attorney General to promulgate regulations for stipulated orders of removal. Such an order serves as a conclusive determination of the alien's removability from the United States. H.R. 1929 contains a similar provision.

Section 240(e) defines the terms "exceptional circumstances" and "removable". We do not object to these definitions.

New section 240A sets forth the provisions for relief from removal. Section 240A(a) provides that the Attorney General may grant "cancellation of removal" in the case of an alien lawfully admitted for permanent residence for five years or more if the alien has resided in the U.S. continuously for 7 years since being lawfully admitted in any status and has not been convicted of an aggravated felony or felonies for which the aggregate sentence is at least 5 years. This provision is similar to current section 212(c) of the INA, which has been made available as relief from deportation by case law. H.R. 2202 makes the relief available to lawful permanent resident aliens who are inadmissible or deportable. We support this provision.

Section 240A(b) provides that the Attorney General may cancel removal in the case of an alien who has been physically present in the U.S. for a continuous period of at least 7 years since being admitted to the U.S., has been a person of good moral character, has not been convicted of an aggravated felony, and establishes that removal would result in extreme hardship to the alien or to the alien's spouse, parent, or child who is a citizen of the U.S. or an alien lawfully admitted for permanent residence. The period of an alien's physical presence will be deemed to have ended when the alien is served notice. Under H.R. 2202, cancellation will be available only to a limited number of aliens. It will not be available to aliens who entered without inspection or to nonimmigrant students or visitors for business or pleasure, who overstay.

We believe that the Attorney General should not be completely precluded from the possibility of granting relief in cases of extreme hardship. We recommend that cancellation be extended to these aliens when "extreme hardship" would result to the alien's spouse, parent, or child who is a United States citizen or lawful permanent resident, but not when extreme hardship would result only to the alien. As drafted, section 304 drastically curtails the ability of aliens to apply for what is now called suspension of deportation. Suspension of deportation has been an avenue of relief for long-time residents, who, while clearly having entered or remained illegally in the United States, have their family and responsibilities in this country, and for whom it would be an extreme hardship to leave the United States. Suspension of deportation acts as an extraordinary measure assisting those people who face unusually difficult circumstances if they were deported, such as a parent whose U.S. citizen or legal permanent resident child has a serious medical illness for which inadequate or no treatment is available in the parent's country of origin. There are many cases in which children are brought to this country as infants and have spent their entire lives in the United States and are not equipped to return to a country with which they share no cultural or language link. Suspension also recognizes those individuals who have contributed so greatly to the United States through personal,

cultural, artistic, or other contributions, that it would be disadvantageous to the United States for them to be removed. These types of situations are relieved by suspension, albeit infrequently and only after requiring the alien to meet stringent statutory requirements. Suspension has been granted to relatively few aliens. In the last year, only 2,405 applications were granted. Suspension of deportation operates as a mechanism to resolve those issues in which the requirements of immigration enforcement must be considered in concert with the need to keep families strong and unified. We believe that there is a need to retain this relief option for those limited circumstances.

Section 240A(d) provides that the period of continuous residence or physical presence ends when an alien is served an order to show cause under section 239(a) (for the commencement of removal proceedings under section 240). A period of continuous physical presence is not broken if the alien's absence from the U.S. was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence. We believe that section 240A(d) will allow the INS to obtain final orders of removal more expeditiously because aliens will lose one significant incentive to prolong proceedings. This provision will also limit the numbers of aliens who are eligible for cancellation sufficiently and that relief should be extended to aliens as described above. This provision is similar to a provision in H.R. 1929, and we support it.

New section 240B establishes new conditions for the granting of voluntary departure, currently governed by sections 242(b), 242B(e), and 244(e) of the INA. The Attorney General may permit an alien voluntarily to depart the U.S. at the alien's expense prior to removal proceedings if the alien is not deportable as an aggravated felon or on national security and related grounds. Permission to depart voluntarily is not valid beyond a period exceeding 120 days and an alien may be required to post a voluntary departure bond.

Voluntary departure is not available to an alien arriving in the United States who is subject to removal proceedings as an inadmissible alien, but the alien may withdraw an application for admission. We support allowing aliens to withdraw their applications for admission as beneficial to the INS's ability to manage its enforcement priorities. However, we suggest that the language on page 79, lines 6-9 be amended to read "Nothing in this paragraph shall be construed as preventing the Attorney General, in the Attorney General's discretion, to permit an alien to withdraw the application for admission in accordance with section 235(a)(4)." This will clarify that permission to withdraw is committed to the discretion of the Attorney General.

Section 240B(b) provides that the Attorney General may permit an alien to depart the United States voluntarily at the

conclusion of proceedings if the alien has been physically present for at least one year, the alien has been a person of good moral character for the preceding 5 years, the alien is not deportable because of conviction for an aggravated felony or on national security and related grounds, and the alien has the means to depart the U.S. and intends to do so. The period for voluntary departure cannot exceed 60 days and a voluntary departure bond is required.

This limitation to 60 days, while attempting to encourage quick departure from the United States at the conclusion of an alien's hearing, may in fact prolong the process because it may induce an alien who needs a longer time to wrap up his affairs to contest deportability and seek other remedies. Immigration Judges have long been able to use voluntary departure as an incentive to encourage people to leave the United States on their own, without additional expense to the government. In addition, many aliens in removal proceedings will take voluntary departure rather than pursue other avenues of relief, if given sufficient time to conclude their affairs. The Administration's bill recognizes the value of a flexible and discretionary use of voluntary departure that is often very helpful in disposing of cases in a timely and efficient manner. Further, the Administration's bill will require a voluntary departure bond at the conclusion of deportation proceedings and civil penalties for failure to depart. These safeguards will further ensure the appropriate use of this relief. We oppose this provision and urge the Committee to adopt the comparable Administration bill provision.

Section 240B(c) provides that an alien who was previously granted voluntary departure after having been found inadmissible is ineligible to depart voluntarily. We support this provision.

Section 240B(d) provides that if an alien is permitted to depart voluntarily and fails to do so, the alien shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 and shall not be eligible for any further relief under this section or sections 240A, 245, 248, or 249 for a period of ten years. The current restriction for eligibility of such relief is five years. We support the increase to ten years.

Section 240B(e) provides that the Attorney General may by regulation limit eligibility for voluntary departure for any class or classes of aliens. This provision is similar to the Administration's proposal, and we support it.

Section 240B(f) provides that an alien may appeal from a denial of an order of voluntary departure but shall be removable from the United States 60 days after the entry of the order of removal and may prosecute the appeal from abroad. This provision is similar to the Administration's proposal, and we support it.

Section 305(a) strikes section 237, designates section 241 as section 237, and inserts a new section 241. The new section 241 requires the Attorney General to remove an alien within 90 days of the alien being ordered removed. This period begins with the latest of the following: (1) the date the alien's order is administratively final, (2) the date the alien is released from non-immigration related detention or confinement, or (3) the date of the court's final order if the alien has appealed his order to a court and removal has been stayed. The removal period is extended beyond 90 days if the alien wilfully refuses to apply for travel documents or takes other steps (other than appeals) to prevent removal. The Attorney General is required to detain the alien during the 90 day removal period. If space is not available, the Attorney General may release the alien on bond and under any conditions that the Attorney General may prescribe. Aliens not removed within 90 days must be released and are subject to supervision under conditions similar to those currently in section 242(d), e.g. the alien is required to appear before an immigration officer periodically for identification. The Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment.

The detention requirement necessarily involves significant additional financial resources. The requirement that an alien be removed within 90 days ignores the many barriers that are beyond the INS' control. Obtaining travel documents is labor intensive and may take considerable time. Such delays should not prejudice diligent enforcement efforts, and the INS should not be required to release aliens after 90 days in such instances. The Administration is making considerable progress in ensuring that an individual ordered deported is in fact deported. In FY 93, INS deported 20,138 criminal aliens. In FY 94, INS deported 21,992 criminal aliens. With the resources appropriated by Congress for FY 95 and the expediting provisions and resources authorized by the Violent Crime Control and Law Enforcement Act of 1994, we will be deporting more criminal aliens this year. With our innovations and the \$178 million budget enhancement requested for FY 96, criminal alien removals should reach 58,200, and the deportation of criminal and non-criminal aliens should triple from 37,000 in 1993 to more than 110,000 in FY 96. Accordingly, in the absence of significant new appropriations this provision is unworkable. With increased appropriations, this provision is unnecessary.

We share the Committee's concern that more be done to facilitate the execution of final orders of deportation, but we do not believe that mandatory detention is the answer especially absent adequate resources provided for this purpose by Congress. We suggest that the same objective can be accomplished by requiring that a custody redetermination be commenced after an adverse determination by an immigration judge or by the Board of Immigration Appeals. At that time a determination can be made

whether custody or perhaps a higher bond is appropriate in light of the determination adverse to the respondent. We believe this statutory requirement will achieve the same policy objective with less adverse effect on detention resources.

We note that section 305(a) does not expressly prohibit the release of aggravated felons upon arrest. We recommend that the Committee add a provision similar to section 236(c) as created by section 303 of this bill.

We recommend that the current provisions of the INA -- giving the Attorney General the discretion to detain an alien (other than an aggravated felon) after a final order and setting a six month period for removal, with an unlimited time for removal of an aggravated felon -- be retained. Further, current section 242(c) and (d) provide that the Attorney General may execute the final order beyond the six month period. H.R. 2202 should be amended to retain this provision.

We also recommend that this section include a provision that the removal requirements create no enforceable rights for aliens subject to removal.

As stated below, we support section 358 of this bill, which authorizes appropriations for detention costs. These appropriations, if approved, would assist INS's ability to detain a greater number of aliens. Adequate appropriations are an absolute prerequisite to our shared objectives in this area.

Under section 241(a)(5) if an alien reenters the U.S. illegally after having been removed or departed voluntarily under an order of removal, the prior order of removal is reinstated and the alien shall be removed under the prior order, which shall not be subject to review. We support this provision.

Under section 241(a)(6), an alien who is ordered removed as inadmissible under section 212 of the INA may be detained beyond the removal period, and is subject to the provisions of section 241(a)(3) if released. We support this provision.

Under section 241(a)(7), an alien who is subject to an order of removal may not be granted authorization to work in the U.S. unless there is no country willing to accept the alien, or the alien cannot be removed for reasons deemed strictly in the public interest. We support this provision.

Section 241(b) establishes the countries to which an alien may be removed, retaining current law.

Section 241(c) provides that an alien arriving at a port-of-entry who is ordered removed shall be removed immediately by the vessel or aircraft that brought the alien to the U.S., unless it

is impracticable to do so or the alien is a stowaway who has been ordered removed by operation of section 235(b)(1) but has a pending application for asylum. This subsection also restates the provisions in section 237(d) regarding stay of removal, and the provisions in section 237(a) regarding cost of detention and maintenance pending removal.

Section 241(d) restates the provisions in current section 237(b) requiring that the owner of the vessel or aircraft bringing an alien to the U.S. comply with orders of an immigration officer regarding the detention or removal of the alien. The subsection also revises and restates the requirements in section 273(d) that the owner of a vessel on which a stowaway has been brought to the U.S. not permit the stowaway to land except under orders of the Attorney General and to remove the alien from the U.S. when ordered to do so. This subsection also restates the provisions in section 243(e) regarding compliance with an order of the Attorney General that an alien ordered removed be taken on board and removed to a specified destination.

Section 241(e) restates the provisions in current sections 237(c) and 243(c) regarding the payment of expenses for removal of aliens who have been ordered removed. Section 241(e)(1) provides that the Attorney General may pay the cost of removing an "excludable" alien from the INS salaries and expenses appropriation. That provision currently applies to deportable aliens. Current law authorizes the use of Immigration User Fee Account funds to remove excludable aliens. We recommend that H.R. 2202 clarify that distinction and retain the language in current law "appropriation for the enforcement of this title."

Section 305(b) amends new section 241(h) (current section 242(j) of the INA) to require the Attorney General to compensate States for incarceration of undocumented criminal aliens who have committed two or more misdemeanors. It defines incarceration to include imprisonment in a State or local prison or jail the time of which is counted toward completion of a sentence. Current law authorizes reimbursement for undocumented or "out of status" aliens who have been sentenced for a felony conviction.

We strongly support reimbursement to states for the costs of incarcerating criminal aliens. We are the first Administration to reimburse states for such costs. We caution the Committee, however, that there is no reliable mechanism to ascertain periods of confinement for misdemeanors. At the outset, a mechanism would have to be developed to acquire information regarding the number of criminal aliens incarcerated in state and local prisons or jails for two or more misdemeanors. Accurate information regarding these criminals would have to be maintained by the states and localities to assure correct reimbursement and to establish an audit trail for the costs. We do not believe that

many states or localities currently have this ability through automated systems. Since the State Criminal Alien Assistance Program does not provide administrative funds to states and localities, this provision may impose an unrealistic burden on states and localities.

Section 306 amends section 242 to revise and restate the provisions relating to judicial review in current section 106, which is repealed.

Section 242(a) provides that a final order of removal, other than an order for removal under section 235(b)(1), is governed by chapter 158 of title 28. This is consistent with current section 106(a), except that it treats both exclusion and deportation orders uniformly. This subsection also provides that no court shall have jurisdiction to review a decision by the Attorney General to invoke section 235(b)(1), the application of such section to individual aliens (including the determination under section 235(b)(1)(B) regarding credible fear of persecution), or procedures and policies to implement section 235(b)(1). Individual determinations under section 235(b)(1) may be reviewed only under new subsection 242(f). H.R. 1929 has similar provisions.

Section 242(b)(1) provides that a petition for review must be filed within 30 days after the final order of removal, with the federal court of appeals for the circuit in which the immigration judge completed proceedings. Subsection (b)(3)(B) provides that the filing of a petition stays the removal of the alien unless the alien has been convicted of an aggravated felony. The remaining paragraphs of subsection (b) restate the provisions in subsections (3) through (8) of current section 106 regarding form, service, decision, treatment of a petitioner's claim that he or she is a national of the U.S., consolidation of motions to reopen and reconsider, challenge of validity of orders of removal, and detention and removal of alien petitioners. H.R. 1929 has similar provisions except that under H.R. 1929 the Attorney General's findings of fact would be conclusive "unless a reasonable adjudicator would be compelled to conclude to the contrary." This provision would codify existing case law and we recommend it.

Section 242(c) restates the provisions of current section 106 that a petition for review must state whether a court has upheld the validity of an order of removal, and if so, identifying the court and date and type of proceeding.

Section 242(d) restates the provisions of current section 106 requiring that a petitioner have exhausted administrative remedies and precluding a court from reviewing an order of removal that has been reviewed by another court.

Section 242(e) provides that a petition for review from an order of expedited removal may address only whether the alien has been correctly identified, has been convicted of an aggravated felony, and has been given the procedures described in section 238(b)(4). H.R. 1929 has similar provisions.

Section 242(f) provides rules for judicial review of orders of removal under section 235(b)(1). No court may issue injunctive or declaratory relief against the operation of expedited exclusion procedures. Judicial review is only available in habeas corpus and is limited to whether the petitioner is an alien, whether the petitioner was ordered removed under section 235(b)(1), and whether the petitioner can prove by a preponderance of the evidence that he or she is an alien lawfully admitted for permanent residence. If the court determines that the petitioner was not ordered excluded or is an alien lawfully admitted for permanent residence, the court may order no relief other than to require that the alien be provided a hearing under section 240 or, if applicable, proceedings under section 273(d). The habeas corpus proceeding shall not address whether the alien actually is admissible or entitled to any relief from removal. H.R. 1929 has similar provisions.

Section 242(g) provides that no court, except for the Supreme Court, has jurisdiction or authority to enjoin or restrain the provision of chapter 4 of Title II of the INA (inspection, apprehension, examination, exclusion, and removal). We support this provision.

Section 307 moves to section 243 the criminal provisions in current section 242(e) regarding penalties for failure to depart. It limits the period by which an alien must depart before becoming subject to criminal provisions from six months to 90 days. We support this provision.

Section 243(d) revises the provisions in current section 243(g) regarding sanctions against a country that refuses to accept an alien who is a citizen, subject, national, or resident of that country. Under the revision, the Secretary of State shall order that the issuance of both immigrant and nonimmigrant visas to citizens, nationals, subjects, or nationals of that country be suspended until the country has accepted the alien. (Current law provides only for the suspension of immigrant visas.) H.R. 1929 contains a similar provision, but H.R. 1929's provision allows the Secretary of State maximum flexibility in implementing this section of the law. We recommend that the suspension of nonimmigrant visas be discretionary and not automatic because there may be foreign policy, national security, or other reasons in a particular circumstance where suspension would not be in the best interest of the United States. We recommend that the Committee change "the Secretary of State shall" to "the Secretary of State may."

Section 308 makes a series of redesignation and conforming amendments in addition to those made in other sections.

Section 309 contains the effective date provisions for Subtitle A of Title III (sections 301 through 308).

Section 309(a) provides that, except as otherwise provided, the provisions of Subtitle A take effect on the first day of the first month beginning more than 180 days after the date of enactment. We are concerned that a 180-day transition period is insufficient time to complete all of the changes in rules, procedures, and training that will be required to implement these significant changes. We believe that a year would be a more workable transition period.

Section 309(b) provides that the Attorney General "shall first promulgate regulations" to carry out this subtitle at least 1 month before the effective date in section 309(a). This provision would require the regulations to be implemented within 150 days. We recommend that regulations be promulgated consistent with a one year effective date in section 309(a), and that the section clarify that the regulations will be interim in nature, to allow promulgation of regulations while preserving public comment.

Section 309(c) provides for the transition to new procedures. In general, the amendments made by this subtitle do not apply in the case of an alien already in exclusion or deportation proceedings on the effective date, and the proceedings (including judicial review) may continue to be conducted without regard to such amendments. The Attorney General may elect to apply the new procedures in a case in which an evidentiary hearing under current section 236 (exclusion) or sections 242 and 242B (deportation) has not been commenced as of the effective date. The Attorney General shall provide notice of such election to the alien, but the prior notice of hearing and order to show cause served upon the alien shall be effective to retain jurisdiction over the alien. The Attorney General also may elect, in a case in which there has been no final administrative decision, to terminate proceedings without prejudice to the Attorney General's ability to initiate new proceedings under the amendments made by this subtitle. Determinations in the terminated proceeding shall not be binding in the new proceeding. We support this provision.

This subsection also provides that in the case where a final order of exclusion or deportation is entered on or after the date of enactment and for which a petition for review or for habeas corpus under section 106 has not been filed as of such date, new rules shall apply to subsequent petitions for judicial review. All judicial review, both of exclusion and deportation decisions, shall be by petition for review to the court of appeals for the

judicial circuit in which the administrative proceedings before the special inquiry officer (immigration judge) were completed. The petition for review also must be filed not later than 30 days after the final order of exclusion or deportation.

Section 309(c)(5) provides that the period of continuous physical presence is deemed to have ended on the date the order to show cause was issued, for applications for suspension of deportation filed before, on, or after the effective date, if they have not been adjudicated within 30 days of enactment.

We object to the effective date of this provision. The 30-day period provided in section 309(c)(5) for the adjudication of pending suspension applications will present an administrative burden for both the INS and the Executive Office for Immigration Review. There are a number of cases pending where eligibility for suspension of deportation accrued subsequent to the filing of the order to show cause. It would not be possible to identify and give hearing priority to those cases within thirty days of enactment. Adjudication on the merits is the most appropriate way to dispose of the cases. The courts should not be denied the discretion to handle these cases in an equitable and expeditious manner. Accordingly, we recommend that current rules on determining physical presence remain in effect with respect to pending applications.

Section 309(c)(6) provides that the Attorney General may waive the new section 212(a)(9) exclusion ground (present without admission or parole) for aliens granted family unity benefits. We support this provision.

As we have discussed, Subtitle A of Title III dramatically limits eligibility for relief from deportation. We believe that these changes could result in increased numbers of aliens coming forward to seek relief from deportation in the time period between enactment of the law and the effective date, so that they may qualify under the current provisions of the INA. We anticipate that aliens who have been here illegally might come forward to demand placement in deportation proceedings to assure eligibility for relief from deportation. We note that the provisions relating to eligibility for deportation rather than exclusion, eligibility to apply for suspension, and the transitional rule on ending the term of physical presence at the time of issuance of the order to show cause could each create an unwarranted demand for immediate action by the INS. For these reasons, we strongly urge that an amendment be made to section 309 to clarify that no provision in Subtitle A (or elsewhere in the INA) creates a substantive or procedural right of any person to be placed in exclusion or deportation proceedings or to have any application or immigration procedure adjudicated or completed within any specific time. The amendment should be effective on enactment and should make it clear that the courts lack

jurisdiction to consider any such claim. This amendment is necessary to avoid litigation and to allow the INS to set and manage its priorities and resources in the best manner possible. We would be happy to work with the Committee to develop this amendment.

Subtitle B of Title III contains various provisions related to the exclusion, removal, and denial of asylum for alien terrorists. The Administration strongly supports measures to address domestic and international terrorism activities. The Administration has worked closely with the full Judiciary Committee on this important matter. Indeed, H.R. 1710 has been approved by the Committee and represents five days of Committee consideration in markup and numerous efforts to address terrorism in a comprehensive way. The Administration prefers that H.R. 1710 continue to be the vehicle by which necessary statutory changes to fight terrorism be made.

Section 341 amends section 101 of the INA to add a new paragraph (47), defining "stowaway" to mean any alien who obtains transportation without consent or through concealment or evasion of standard boarding procedures.

H.R. 1929 contains a similar provision, and we strongly support its inclusion in H.R. 2202. The absence of a statutory definition of the term "stowaway" has led to needless litigation. We believe it is appropriate to include in the definition of "stowaway", not only those who have physically secreted themselves aboard a vessel or aircraft, but also those who succeed in boarding a vessel or aircraft without the carrier's knowledge or permission.

Section 342 amends section 231(a) to provide that carriers shall provide manifests of persons arriving in the U.S., and that such lists include for each person transported the person's name, date of birth, gender, citizenship, and travel document number (if applicable).

H.R. 1929 contains a similar provision. The provision provides the INS with the data fields and flexibility needed to achieve the goal of automating the data collection process, without imposing undue additional requirements on the private sector.

Section 343 amends redesignated section 233 to provide that any carrier bringing aliens to the U.S. without a visa for the purpose of immediate and continuous transit shall indemnify the U.S. against any costs for detention and removal of the alien if the alien is refused admission, fails to continue his journey within the time prescribed by regulation, or is refused admission by the foreign country to which the alien is travelling.

This provision is similar to the Administration's proposal, and we strongly support it. The responsibility for the detention and removal of transit without visa (TWOV) passengers currently lies with the carrier as a contractual obligation. While the repeal of former section 233 of the Act in 1987 relieved the carriers of responsibility for the detention of inadmissible alien passengers, the repeal did not affect the responsibility of the carriers for TWOV passengers nor was the \$5 user fee calculated to cover the costs of detaining TWOV passengers. The concerns expressed by the carriers in this area principally relate to the responsibility for detaining TWOV passengers who apply for asylum in the United States. Admittedly current law affords a full panoply of rights to persons seeking admission to the United States leading to often lengthy proceedings. The special exclusion procedures of both H.R. 2202 and H.R. 1929 would dramatically reduce that process, particularly with respect to asylum seekers. Accordingly, we believe it appropriate to codify existing practice in this area by clarifying the responsibility of the carriers.

Section 344 amends section 273(a) of the INA to establish that carriers can be fined for bringing inadmissible aliens from foreign contiguous territories (carriers are already liable for bringing illegal aliens from other locations) and raising the fine amount from \$3,000 to \$5,000.

This provision is similar to the Administration's proposal, and we strongly support it. This provision only applies to carriers who violate the law. With the splendid cooperation of the carriers, the INS has developed carrier compliance and training initiatives that are beginning to bear fruit. In addition, the INS is in the process of promulgating regulations dealing with remission and mitigation of carrier fines. Notwithstanding these efforts, some carriers continue to violate the law. The current fine amount of \$3,000 has not engendered their compliance. We believe a fine increase is necessary to deter carriers who are presently violating the law.

Section 351 amends section 101(a) of the INA to add a new paragraph (47), defining conviction to mean a formal judgment of guilt entered by a court. If adjudication of guilt has been withheld, a judgment is nevertheless considered a conviction if (1) the judge or jury has found the alien guilty or the alien has pleaded guilty or nolo contendere; (2) the judge has imposed some form of punishment or restraint on liberty; and (3) a judgment of guilt may be imposed without further proceedings on guilt or innocence of the original charge if the alien violates the term of probation or otherwise fails to comply with the court's order.

We support this provision.

Section 352 amends paragraph (4) of section 101(b) to

replace the definition of "special inquiry officer" with a definition of "immigration judge:" an attorney designated by the Attorney General to conduct proceedings, including proceedings under section 240. The term "immigration judge" is substituted for "special inquiry officer" wherever it appears in the INA.

We prefer the following definition of "Immigration Judge": an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including proceedings under section 240. An Immigration Judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe.

Section 353 amends section 246(a) of the INA to clarify that the Attorney General is not required to rescind the lawful permanent resident status of a deportable alien separate and apart from the removal proceeding under section 240. This provision will allow INS to place a lawful permanent resident who has become deportable into deportation proceedings immediately.

This provision is identical to the Administration's proposal, and we support it.

Section 354 adds a new section 274D to the INA, providing that aliens under an order of removal who wilfully fail to depart or to take actions necessary to permit departure (apply for travel documents) shall pay a penalty of not more than \$500 for each day in violation. This section would not diminish the criminal penalties at section 243(a) for failure to depart or any other section of the INA.

This provision is identical to the Administration's proposal, and we support it.

Section 355 clarifies that the grant of jurisdiction under section 279 of the INA permits the Government to institute lawsuits to enforce the provisions of the INA and does not permit private parties to sue the Government. This has no effect on other statutory or constitutional grounds for private suits against the Government.

This provision is identical to the Administration's proposal, and we support it.

Section 356 would permit the hiring of retired military or federal civilian employees, with no reduction in retirement pay or annuity, for not longer than 24 months to perform duties in connection with the Institutional Hearing Program for removal of criminal aliens from the United States.

This provision is unnecessary. Under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. sections 8344(i) and

8468(F)), such reemployment can already be handled administratively.

Section 357 would instruct the Sentencing Commission to promptly promulgate amendments to the sentencing guidelines to reflect the amendments made in section 130001 and 130009 of the Violent Crime Control and Law Enforcement Act of 1994.

The United States Sentencing Commission has not acted on section 130001 of the Violent Crime Control and Law Enforcement Act of 1994. Consequently, we support subsection 357(a). We support the guideline amendments submitted to Congress on May 1 by the United States Sentencing Commission following its consideration of recommendations regarding section 130009 of the Violent Crime Control and Law Enforcement Act of 1994. Subsection 357(b) is no longer necessary.

Section 358 authorizes to be appropriated for each fiscal year beginning in fiscal year 1996 the sum of \$150,000,000 for costs associated with the removal of inadmissible or deportable aliens, including costs of detention of such aliens pending their removal.

The President's FY 96 budget request for the detention and removal of criminal and other deportable aliens is \$177,702,000. We urge the Committee to authorize the President's requested amount.

Section 359 amends section 280(b) to provide for the establishment of the "Immigration Enforcement Account," into which shall be deposited the civil penalties collected under sections 240B(d), 274C, 274D, and 275(b), as amended by this bill. The collected funds are to be used for specified immigration enforcement purposes.

We support this provision.

Section 360 advises the President to negotiate or renegotiate bilateral prisoner transfer treaties, to expedite the transfer of aliens unlawfully in the United States, to ensure that a transferred prisoner serves the balance of the sentence imposed by United States courts, and to eliminate the requirement that prisoners consent to such transfer. It allows for the President to provide appropriate financial incentives in cases where the United States is able to verify the adequacy of sites where aliens will be imprisoned. It requires the President to submit annual certifications to Congress on the effectiveness of each transfer treaty.

The Administration is committed to returning undocumented criminal aliens to their countries of origin. Since the inception of the transfer program, 1,236 Mexicans have

transferred to Mexico. In 1994, the Department of Justice conducted a pilot project to increase repatriation of Mexican nationals incarcerated in United States federal prisons. The project resulted in the largest number of transfers to Mexico ever. From December 1993 through December 1994, the Administration transferred 394 Mexican prisoners, compared to an average rate of approximately 160 Mexican prisoners per year in past years. Last year's Mexican transfers alone resulted in a savings of over \$7,500,000 for the Department of Justice.

The Administration is taking significant steps to further enhance the prisoner transfer program and to further increase the number of undocumented prisoners transferred. The Deputy Attorney General has directed a review to determine what further steps the Department of Justice can take to increase the number of prisoner transfers. The Administration looks forward to briefing the Committee on the outcome of its review when it is completed.

However, limited prison capacity in countries such as Mexico may inhibit our ability to increase significantly the number of transfers. In working with the Government of Mexico on our pilot project last year, they advised us that they would not be able to accommodate more than 400 prisoners -- the approximate number we in fact were able to transfer. In consultations this year with Mexican officials, we have cited as our goal for 1995 in excess of 400 prisoner transfers, but again the Mexican government has cautioned that prison capacity for transferees may be problematic. We are currently working with Mexico to assure there is sufficient space to accommodate at least our goal number of prisoners, and to address the problem of prison capacity on a longer term basis. It must be recognized that our efforts to increase the number of prisoners transferred to other countries such as Mexico will to a certain degree be dependent on those countries' ability to incarcerate the prisoners.

We respectfully request that this provision be dropped because attempting to renegotiate existing treaties could be counter-productive. The renegotiation of existing treaties would be time-consuming and in many cases unlikely to bear fruit. The negotiation of new treaties would be similarly problematic and inconsistent with our current policy, which is to discourage new bilateral conventions while encouraging countries to adhere to the multilateral Council of Europe convention on prisoner transfers as a quick and efficient way of establishing a prisoner transfer regime with the United States.

Section 360 raises other problems as well. First, a requirement that transferred prisoners serve the balance of the sentence imposed by U.S. courts is inconsistent with current international practice, where the country to which the prisoner is transferred (which in the case of transferred U.S. citizen

prisoners would be the United States) administers the sentence in accordance with its laws and procedures, including the application of any provisions for reduction of the term of confinement by parole, conditional release or otherwise. Second, the final sentence of section 360(a) is confusing and perhaps unwise. It could be read to imply that the United States would provide financial incentives to foreign prison systems where transferred aliens are incarcerated, a result that would imply major new financial obligations for the United States.

While we appreciate that this provision is advisory only, and therefore designed not to interfere with the President's constitutional authority to conduct foreign affairs, we believe that the recommendation is unnecessary and that it urges the Administration to undertake work that is an inappropriate solution to the present problem and unlikely to be worthwhile. We would also ask that the certification requirement in the proposed subsection (b) be deleted; as a general matter, the Administration discourages the imposition of regular reporting requirements, which require a commitment of resources that frequently is not justified. We are unaware of any significant concerns that any of our existing transfer treaties are not functioning appropriately, such that imposition of such an annual reporting requirement would be warranted.

Section 361 amends the Violent Crime Control and Law Enforcement Act of 1994 to rewrite the criminal alien identification system. It provides for the INS Commissioner to operate the system, rather than the Attorney General. It requires that the system be used to assist federal, state and local law enforcement agencies in identifying and locating aliens (1) subject to removal as aggravated felons, (2) subject to prosecution for illegal entry, (3) not lawfully present in the United States, or (4) otherwise removable. The system must provide for the recording of fingerprint records of previously arrested and removed aliens.

We believe that this section is unnecessary. The identification of criminal aliens by any U.S. law enforcement agency is already available through the FBI's National Crime Information Center (NCIC) and the INS Law Enforcement Support Center, provided they are fully funded. Development of a new identification system would be redundant and therefore would waste resources that could better be applied to additional detention space, worksite enforcement inspectors or other high priority Administration enforcement needs.

Section 362 revises section 212(d) of the INA, 8 U.S.C. 1182(d), by adding a new paragraph permitting the Attorney General to waive application of section 212(a)(6)(F) (excludability) for certain aliens who have committed document fraud in violation of section 274C of the INA if the fraud was

committed to assist a spouse, parent or child. This section would be similar to current section 212(c)(11), which waives excludability under section 212(a)(6)(E) for certain aliens who have smuggled into this country close family members. This section also permits the Attorney General to waive application of section 241(a)(3)(C) (deportation) for certain aliens who have committed document fraud in violation of section 274C of the INA if the fraud was committed to assist a spouse, parent or child. This section permits a discretionary waiver only in instances where the alien's sole motivation in committing document fraud was family reunification.

We support this provision because it is consistent with a humanitarian immigration policy. H.R. 1929 contains a similar provision.

Section 363 authorizes the Attorney General to prescribe special regulations and forms for the registration and fingerprinting of aliens who are or have been on criminal probation or criminal parole within the United States.

We support this provision because it will help identify and deport criminal aliens.

Title IV - Enforcement of Restrictions against Employment

The Administration strongly believes that jobs are the greatest magnet for illegal immigration and that a comprehensive effort to deter illegal immigration, particularly visa overstaying, must make worksite enforcement a top priority. The President's FY 96 budget request includes 365 new INS investigations personnel and 202 new DOL Wage and Hour and other personnel to enhance enforcement of laws prohibiting employment of illegal aliens and the minimum labor standards laws. Enforcement efforts will be focused on selected areas of high illegal immigration. Apprehensions of unauthorized aliens at worksites is expected to increase by more than 60%. Already the INS Atlanta and Dallas District Offices have successfully conducted Operation SouthPAW (Protecting America's Workers) and Operation Jobs, unprecedented interior enforcement initiatives which are designed to place authorized United States workers in job vacancies created by the arrest of unauthorized workers during worksite enforcement surveys. The Administration is concerned by the cautious steps back this bill takes with regard to enforcement of employer sanctions, and we will continue to work with the Committee to address this priority enforcement area.

Section 401 requires that the number of full-time personnel in the INS Investigations Division be increased by 350 and that the new personnel be assigned to investigate employer sanctions

provisions.

As drafted, this provision sounds good, but actually could weaken enforcement. Without appropriations, it would have a deleterious impact on the INS Salaries and Expenses account. We ask the Committee not to require the INS to designate its employees as exclusively employer sanctions investigators. Investigators assist in criminal alien removal and other vital immigration law enforcement activities in addition to employer sanctions enforcement. The Committee should allow the INS to retain the flexibility to establish assignments in these operations. The President's FY 96 budget request includes funding for 357 positions for employer sanctions, of which 292 would be agents and investigators.

Section 402 authorizes 150 additional staff positions for the Wage and Hour Division to investigate violations of wage and hour laws in areas where there are high concentrations of undocumented workers. This provision represents a substantially weaker commitment to worksite enforcement than the President's FY 96 budget request, which, as part of the President's comprehensive strategy to more effectively control illegal immigration, calls for 202 additional positions for the Department of Labor (DOL) -- 186 for Wage and Hour, and 16 for the Solicitor's office to prosecute the most serious labor standards violations arising from investigators' work.

The Administration strongly believes -- and the President has emphasized -- that enhanced worksite enforcement of both minimum labor standards and employer sanctions are essential components of the comprehensive strategy needed, and proposed by this Administration, to more effectively control illegal migration. We, therefore, urge the Committee to demonstrate more support for worksite enforcement and to authorize increases at the Administration's higher level request for Wage and Hour enforcement personnel and to ensure that the additional funds necessary to implement this provision are ultimately appropriated.

Section 403(a) eliminates three categories of documents that now can be used to establish both employment authorization and identity: certificate of citizenship, certificate of naturalization, and unexpired foreign passport stamped by Attorney General with employment authorization. This section also eliminates a birth certificate as a document that can be used to establish work authorization. Only a Social Security card would be acceptable for this purpose.

The Administration proposal contains similar provisions. However, H.R. 2202 deletes from the list of "C" documents that may establish employment eligibility "other documentation evidencing authorization of employment in the United States which

the Attorney General finds, by regulation, to be acceptable." H.R. 1929 retains such employment authorization documents. These documents are critical to the transition phase of document reduction, and we recommend that they be retained.

Section 403(a) also requires that an individual being hired provide his or her Social Security number on the employment verification attestation form. This provision is similar to the Administration's proposal, and we support it.

Section 403(b) makes the "good faith" defense to employer sanctions inapplicable to employers who have not made confirmation inquiries or received appropriate confirmation in response to such an inquiry. We support this provision.

Section 403(b)(3) establishes an employment eligibility confirmation mechanism. An employer must make an inquiry through the mechanism within 2 working days after the date of hiring and receive a confirmation within a time to be specified in regulations by the Attorney General. This section bars the denial of employment to an individual because of inaccurate or inaccessible data under the confirmation mechanism. This section also requires the Attorney General to ensure that there is a timely and accessible process to challenge nonconfirmations made through the mechanism. An employer is required to retain both the verification form as well as the receipt of confirmation for at least 3 years. This section requires the Attorney General to respond to inquiries by employers, through a toll-free telephone line or other electronic media, in the form of a confirmation code. No Social Security information may be disclosed or released. In order to monitor and prevent unlawful discrimination, the Attorney General shall implement a program of testers and investigative activities. Under section 403(e) the Attorney General must establish the employment eligibility confirmation mechanism no later than October 1, 1999.

H.R. 2202, in contrast to the Administration's bill, rejects the principle worksite enforcement recommendation of the Commission on Immigration Reform which was to thoroughly test and evaluate verification techniques before implementing them nationwide. While we agree that a system for accurate verification of a potential employee's status is vital to assist employers in meeting their obligations to hire only authorized workers, we strongly recommend that the results of the pilot programs be examined before directing a specific deadline for implementation. As drafted, H.R. 2202's October 1, 1999 deadline assumes the results of the pilots authorized under section 403(e)(2)(B) and assumes that implementation of a system resulting from those pilots should be implemented in a very brief period of time. Under the Administration proposal, pilot projects will be tested and evaluated for three years so that technical feasibility, cost effectiveness, resistance to fraud,

and impact on employers and employees can be assessed and determined. The Administration bill authorizes employment verification pilot projects that will improve the INS databases; expand the telephone verification system for non-citizens up to 1,000 employers; simulate links between INS and Social Security Administration (SSA) databases; and test a new two step process for citizens and non-citizens to verify employment authorization using INS and SSA data. The pilots will be built to guard against discrimination, violations of privacy, and document fraud. After three years the pilots will be evaluated on the bases of discrimination, privacy, technical feasibility, cost effectiveness, impact on employers, and susceptibility to fraud. We would then request authority from Congress to implement those projects that work. We urge the Committee to also adopt the principle of the Commission on Immigration Reform to test and evaluate verification techniques before implementing them.

Section 403(c) reduces paperwork requirements for the subsequent employers of certain employees whose eligibility to work has been confirmed by a prior employer. This provision applies in the case of an individual who is employed under a collective bargaining agreement, whose past and present employers are within the same agreement. We support this provision which would streamline and reduce paperwork burdens on employers, which is a major focus across government today.

Section 403(d) strikes subsection (i) through (n) of section 274A, which are dated provisions. Section 403(e) provides that the provisions relating to document reduction apply to hiring (or recruiting or referring) occurring on a date set by the Attorney General, but no later than 180 days after enactment. Although H.R. 1929 contains the same effective date, on further consideration of technological capabilities we recommend that this amendment be made effective only with respect to hiring (or recruiting or referring) occurring after December 31, 1996.

Section 403(e)(2) provides that the employment eligibility confirmation mechanism added in subsection (b) must be established no later than October 1, 1999. This subsection also requires the Attorney General to establish pilot projects to test the reliability and ease of the mechanism's use in at least 5 of the 7 States with the highest estimated population of unauthorized aliens, and must extend the pilot projects to all employers. The Attorney General shall issue annual reports, beginning in 1997, on the development and implementation of the mechanism.

While we agree that a system for accurate verification of an employee's status is vital to assist employers in meeting their obligations to hire only authorized workers, we strongly believe that critical pilot tests of a verification system -- as supported by the Jordan Commission and our own H.R. 1929 --

should be completed before a permanent verification system is established. As stated in section 403(b)(3), the pilots should be evaluated on the bases of discrimination, privacy, technical feasibility, cost effectiveness, impact on employers, and susceptibility to fraud before implementation. In addition, we urge the Committee to adopt the privacy safeguards in the Administration's bill, H.R. 1929.

Section 404 would require SSA to report to Congress on the number of Social Security numbers (SSN) issued to individuals not authorized to work for whom earnings are reported. SSA would be required to provide the Attorney General with the name and address of the individual to whom the number was issued as well as the name and address of the employer reporting the earnings.

While SSA can fulfill this requirement, the usefulness of this information has limitations. SSA records show the citizenship and work authorization status of a worker at the time his/her SSN is issued, but has no way of keeping that information up-to-date. Thus, the data reported would erroneously exclude persons whose work authorization expired after the SSN was issued and erroneously include persons who received work authorization (or became U.S. citizens) after their SSN without work authorization was issued. We believe this information is too often unreliable for cost effective and productive enforcement by the INS. This provision could thus lead to costly litigation for the federal government.

Section 405 amends section 264 of the INA to clarify that the Attorney General may require any alien to provide his or her social security number to be included in any record of the alien. This provision is identical to the Administration's proposal, and we support it.

Section 406 exempts an employer from liability for failing to comply with the employment verification requirements based upon a technical or procedural failure to meet a requirement in which there was a good faith attempt to comply with the requirement unless the INS has explained to the employer the basis for the failure, the employer has been provided at least 10 business days to correct the failure, and the employer failed to correct the failure within such period. The exemption shall not apply with respect to the engaging by any employer in a pattern or practice of employing an alien knowing the alien is unauthorized.

We object to this provision because it would undermine our employer sanctions and worksite enforcement efforts. The INS generally sanctions only those employers who have unauthorized aliens working on their premises during the INS on-site inspection or those who have violations on a large percentage of their employees. Less than half of our current Notices of Intent

to Fine (NIF) involve only verification violations. Of the verification-only NIFs, 58% involve arrests of unauthorized employees. The majority of the remainder involved employers whose I-9 forms showed verification violations for over 35% of their employees.

The current policy governing imposition of penalties in employer sanctions cases was issued on August 30, 1991. That policy closely follows the existing statutory provisions for violations of the verification requirements at section 274A(e)(5) of the INA. The statute requires the INS to consider the following factors: size of the business, good faith efforts of the employer, seriousness of the violations, whether the violation involved an unauthorized alien, and history of previous violations. The 1991 policy strongly discourages the imposition of civil money penalties in cases involving only minor verification violations and instructs that resources should be concentrated on serious, repeat offenders and the development of criminal prosecutions. The policy provides guidelines for the consideration of each of the factors required by statute. The guidelines for the seriousness of verification violations state that the test is "whether or not, and to what degree, the violation materially affects the purpose of the verification process, which is to avoid the possibility of hiring an unauthorized alien."

In instances in which the violations are technical, and involve only a small percentage of the employees, the INS' general practice is to issue a warning notice and to give the employer a reasonable amount of time in which to correct the violations.

The existing statutory and policy framework allows the INS to reinforce the need to take the law seriously in instances where the employer's good faith is not manifest and where unauthorized aliens have been hired. We are concerned that this section will create the expectation on the part of all employers that they will not be penalized for verification violations. Given the stiff legal test required to establish a knowing hire charge, we believe that diminishing our ability to enforce all the requirements of the law will result in diminishing compliance. We believe that this sends the wrong message to the employing community, and to the public at large. Furthermore, this section will create needless litigation regarding the definition of a "technical or procedural" failure. While we must look for opportunities to simplify compliance for businesses, particularly small businesses, it must not be at the price of rendering employer sanctions meaningless.

Section 407 requires the person or entity subject to an order for Unfair Immigration-Related Employment Discrimination issued at least 90 days after the date of enactment to retain the

names and addresses of applicants for up to a three year period and to educate all hiring personnel about the requirements of Immigration Reform and Control Act (IRCA) and to certify the fact of such education.

We note that most Administrative Law Judges, in the exercise of their discretion, already include these requirements in their decisions finding employers in violation of the law. The retention of job applicants' records provides the DOJ a valuable tool in monitoring compliance with the orders of the administrative tribunal. It also affords the DOJ a powerful investigative tool in determining whether an employer is engaging, or continues to engage in a pattern and practice of employment discrimination, especially in cases involving citizenship status discrimination. However, we suggest that this provision include some discretion for Administrative Law Judges to exempt an employer from this requirement in extreme financial hardship circumstances where this requirement would impose an overly burdensome administrative cost on an employer and potentially cause the employer to go out of business.

Title V - Reform of Legal Immigration System

The Administration seeks legal immigration reform that promotes family reunification, protects U.S. workers from unfair competition while providing employers with appropriate access to international labor markets to promote our global competitiveness, and enhances the value of naturalization to encourage full participation in the national community. Consistent with these principles, the Administration supports a reduction in the overall volume of legal immigration.

We are proposing to reform legal immigration in ways that are consistent with the Jordan Commission's recommendations, that reduce annual levels of legal immigration, and that reach those lower numbers faster. We are also proposing a few ideas on how to use naturalization to reduce the second preference backlog numbers, which is a priority for the Commission and the Administration, while maintaining first and third family preferences for reunification of adult children of U.S. citizens.

We believe that a balanced package of reforms can be crafted that, excluding refugees and asylees, will result in a total reduction of employment and family-based immigration to 490,000 annually. This is slightly lower than the comparable figure of 500,000 recommended by the Jordan Commission.

The Administration has already taken unprecedented action to toughen enforcement of our immigration laws against illegal entry and is eager to see enactment of legislation to control illegal immigration. We have been working with Congress for several

months and are confident that bipartisan agreement can be reached with both the House and Senate. We urge the Committee to send at least a completed illegal immigration enforcement bill to the President before the end of the year, even if you must split the illegal and legal immigration reform provisions into separate legislation to get them through Congress in that timeframe.

H.R. 2202 unduly narrows the definition of family and eliminates an immigrant benefit already granted to some U.S. citizens -- their petition to reunite with a married or unmarried adult child. We believe that in reforming legal immigration we must honor to the extent possible the commitments already made to U.S. citizens who have filed petitions to bring their adult children to the United States. Discontinuation of first and third preference categories would mean that several hundred thousand U.S. citizens would be unable to be reunited with their adult children. We believe that it is possible to retain visa preferences for adult children of U.S. citizens while relying on naturalization to effectively reduce the backlog in second preference.

While H.R. 2202 understates the likely impact of naturalization on increasing the numbers of petitions for immediate relatives of U.S. citizens, we propose to rely on naturalization to quickly cut into the second preference backlog size. INS estimates that naturalization will cut the backlog by an average of 60,000 people a year, with the largest number occurring in the first few years, then tapering downward. We are already making progress along this path in advance of current efforts to reform legal immigration. For instance, the sponsors of 25 percent of those currently in the second preference backlog will have naturalized and left the waiting line by the end of FY 97, the first year any legislation now under discussion could be implemented.

The Administration believes that family reunification and employment-based immigration are mutually supportive goals. H.R. 2202 puts them in conflict through a formula that potentially reduces employment visas by any excess over 330,000 reached in family visas. As noted above, the 330,000 benchmark is likely to be an underestimate, which would increase the potential for reducing the number of employment visas in any year. The Administration believes employers' demand for legitimately needed employment-based visas should influence the number of available visas, not the rate of naturalization or family immigration.

The Administration believes a level of 100,000 employment-based visas is reasonable for each year and until the next Congressional review of the total volume of legal immigration. The Administration's level, supported by the Jordan Commission, exceeds current market demand, provides for growth in skilled immigration, reinforces market economics as the rationale for the

number admitted each year, and protects U.S. workers from unfair competition.

The Administration agrees with the Jordan Commission that legal immigration reform should simplify the system. H.R. 2202 retains several undesirable complexities inherited from the Immigration and Nationality Act of 1990 that allow redistribution of numbers across categories. These complex rules add uncertainty to the number and characteristics of immigrants who enter each year.

The Administration agrees that Congress should review levels of immigration periodically. But it also believes that the core immigration system should be sufficiently inclusive and have the integrity to offer Congress broad policy choices among categories of legal immigrants. Elimination of entire priority categories in family-based immigration, as proposed by H.R. 2202, would limit the flexibility of Congress to review and reset numbers in subsequent years without a major overhaul of the entire system.

We ask the Committee to clarify the annual number of visas for nuclear family members of permanent residents. Section 500(2)(B)(ii) provides that the annual numerical limit "will be below 85,000". Section 501(a)(2) provides that the number will not go below 85,000. Section 512(a) provides that spouses and children of permanent residents "shall be allocated visas in a number not to exceed 85,000."

Section 512(a) amends section 203(a) of the INA to establish the new family-based preferences. The first family-based preference includes spouses and children of permanent residents. The second family-based preference includes parents of adult United States citizens who meet certain additional requirements. Spouse and children of permanent residents are guaranteed a minimum of 85,000 visas annually. If the total arrived at by subtracting the total of spouses and children of citizens from 330,000 exceeds 85,000, the amount by which it exceeds that figure (up to a maximum of 50,000) is available for qualified parents of United States citizens. If the total exceeds 85,000 by more than 50,000 then the residuum is added to the basic 85,000 for spouses and children of permanent residents.

Parents of adult United States citizens may qualify only if a majority of their children are either United States citizens or permanent resident aliens and are actually resident in the United States. It is doubtful that such a requirement can be effectively administered, since it will be virtually impossible to verify or refute claims that this is so.

We object to this section for both practical and policy reasons. This section would require the immigrant parents of U.S. citizens to obtain, prior to their admission to the U.S.,

health insurance that is at least comparable to Medicare parts A and B, and long-term care insurance that is at least comparable to Medicaid's long-term care benefits. The immigrants would be required to demonstrate to consular officials and the Attorney General that they would maintain such coverage throughout their period of residence in the United States.

The mandate would be inequitable because it applies only to qualifying parents and not to other classes of legal immigrants or U.S. citizens whose age, health, and uninsured status make them equally likely to incur uncompensated health care costs.

The cost of the required health insurance products would be prohibitively expensive. Our preliminary estimates indicate that, for parents age 65 and over, premiums for Medicare comparable acute care coverage plus a minimally acceptable long-term care policy would average between \$7,000 and \$13,000 per person per year, with costs only slightly lower for parents under the age of 65. These insurance requirements would effectively allow only wealthy American families to be reunited with their immigrant parents.

Second, imposing a mandate upon purchasers of health insurance, absent a corresponding mandate that insurers offer such coverage on an equitable basis, would set standards that are virtually impossible to meet. Private health insurance policies comparable to Medicare plus the long-term care benefits of Medicaid, as required by this section, are often unavailable at any price. Private long-term care policies in particular generally contain far more limited benefits than Medicaid, and thus cannot be considered comparable.

In addition, insurers generally require medical examinations and tests before they will offer individual acute care or long-term care policies and are unlikely to accept tests performed outside the United States. However, this section requires a demonstration of health insurance coverage prior to entry in the United States.

Moreover, the requirements in this section would necessitate reliance upon state insurance departments to determine the acceptability of individual policies, to monitor and to enforce continued coverage, and to convey this information to consular officials worldwide, with no additional resources provided in this bill to fund this additional administrative requirement on the states.

The long-term care insurance requirement is especially problematic. The long-term care insurance industry is in its infancy. Availability, type and quality of benefits, consumer safeguards, and regulation by state insurance departments all vary widely. It is not known whether current premiums will

provide sufficient revenue to pay promised benefits many years in the future.

Section 513 defines the new employment-based preference categories. Paragraph (1) makes available up to 15,000 visas per year to aliens with extraordinary ability. Paragraph (2) makes available up to 60,000 visas per year plus any unused visas from the previous category to aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. An immigrant visa may not be issued to an immigrant entering under proposed section 203(b)(2)(B) in the absence of a labor certification, except for 'certain multinational executives and managers,' as defined in proposed section 203(b)(2)(C). If the bill drafters' intent is to require labor certification for multinational executives and managers, the bill language will require modification.

Paragraph (3) makes up to 45,000 visas available per year to skilled workers and professionals, plus any unused visas from the previous category, less the reduction provided for excess family-based admissions. Professionals must hold a baccalaureate degree and have at least 5 years experience in the profession after receipt of the degree. Elementary and middle school foreign language teachers, however, are waived from the new 5 years experience requirement. Elementary and secondary school foreign language teachers are required to have a baccalaureate degree, 2 years experience in the subject -- not 5. These teachers will have up to 3 years of conditional rather than permanent residence, so that the sum of the years of experience plus the years of conditional status equals 5.

The Administration believes that this section which would provide conditional status for secondary foreign language teachers having only 2 years of experience teaching a foreign language "notwithstanding that the alien does not have 5 years of experience in the profession, if the alien is seeking to teach such language full-time in an accredited elementary or middle school," is unwise. First, we do not believe a sufficient rationale has been put forth, for establishing a special experience threshold for such teachers as compared to other teachers and professionals. Second, this section may encourage fraud or manipulation, since many aliens may seek to be admitted as teachers to take advantage of the lower experience threshold. This may result in the allocation of a disproportionate number of third preference visas to aliens seeking to enter the country as full-time elementary or middle school foreign language teachers. Third, the related proposed section 216(B) would apparently indenture the alien to the occupation for two years after he or she is admitted for permanent residence. Although this aspect of the program would be administered by INS, it introduces a new element regarding the admission of aliens immigrating for the purpose of employment. The Administration opposes such

provisions because they provide the potential for workplace exploitation, though not as great as if the alien was bound to both the employer and the occupation for two years.

Paragraph (4) includes investors seeking admission for purpose of engaging in a new commercial enterprise in which the alien has invested \$1 million and will employ full-time not less than 10 U.S. citizens or lawful permanent residents. Visas made available are not to exceed 10,000, less the reduction provided for excess family-based admissions.

Paragraph (5) includes qualified special immigrants defined in section 101(a)(27), with 5,000 assigned visas, not more than 4,000 of which shall be issued to special religious workers.

Section 521 amends paragraphs (1) and (2) of section 207(a) to provide that the number of annual refugee admissions designated by the President may not exceed 75,000 in FY 1997 or 50,000 in any succeeding fiscal year. The number may exceed these limits if Congress enacts a law providing for a higher number.

The Administration has already stated its opposition to legislatively limiting annual refugee admissions. Under current law, the ceiling for annual refugee admissions is set by the President. The current process of consultation between Congress and the executive branch on the annual refugee admissions level, which began in 1981, is working well and allows Congress to participate in the process of determining appropriate refugee admissions levels. In recent years, refugee admission ceilings established by this consultation process have been decreasing. Imposing a strict and arbitrary numerical limitation on annual admissions would constitute an unwarranted restriction on the process and on the President's responsibility to determine issues of foreign policy.

Section 522 amends section 209(b) to provide that not more than 10,000 persons who have been granted asylum may in any one year adjust to the status of an alien lawfully admitted for permanent residence. The section changes existing law by establishing a separate number for asylee adjustment, rather than charging them against authorized refugee admissions, but has no effect on the number of asylee adjustments.

We have no objection to this provision.

Section 523 authorizes the Attorney General to employ temporarily up to 300 persons, who by reason of retirement on or before January 1, 1993, are receiving annuities or retired or retainer pay as retired officers of regular components of the uniformed services.

This provision is unnecessary. Under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. §§ 8344(i) and 8468(f)), such reemployment can already be handled administratively. Section 523(b) authorizes the Attorney General to expend the funds necessary for leasing or acquisition of property.

Section 523(c) requires the Attorney General to increase the number of asylum officers to at least 600 by FY 1997. In FY 1995, Congress authorized funds permitting the asylum corps to expand from 150 to 330 officers. This increase was intended, in large part, to advance the Administration's twin goals of preventing abuse of the asylum system and of quickly granting the claims of bona fide refugees. Although only 75% of the authorized number of asylum officers have entered onto duty to date (the remainder will begin by the end of the fiscal year), the goals of asylum reform are already being met. Interviews of asylum applicants are being scheduled at the rate of 162 percent of the level of new receipts, thereby permitting the adjudication of backlogged cases as well as of current receipts. Asylum officers have completed over 61,000 cases in the first eight months of FY 1995, compared with nearly 35,000 cases in the first eight months of FY 1994, an increase of 76 percent. The number of asylum claims filed since implementation of the reforms has dropped by 14 percent when compared with the same period in fiscal year 1994. (See discussion on Section 524 below for further statistics on the recent successes of the asylum program.) Although there may be a need for additional asylum officers at some point in the future, the Administration does not believe that the goals of asylum reform would necessarily be served by the hiring of as many asylum officers as this provision would require. The program would benefit more from the hiring of additional clerical staff, the purchase of additional equipment, and the development of other necessary elements of an effective asylum program (e.g., investigation of fraudulent claims and the removal of failed asylum-seekers). The newness of the recent reforms warrant more time and experience to determine where the need for staff and resources is greatest. Thus, rather than require specifically that the number of asylum officers increase dramatically over the next fiscal year, the Department recommends that the Attorney General be given the flexibility to increase staffing and resources over the next several years at those points in the asylum process where she believes they are most needed.

Section 524 provides that the Attorney General may parole aliens into the United States on a case-by-case basis only for urgent humanitarian reasons or for a reason deemed strictly in the public interest. Humanitarian parole is restricted to medical emergencies for which an alien cannot otherwise receive treatment, for organ donations, or for imminent death of a close family member. Public interest parole is limited to matters in which the alien has assisted the United States government, such

as a criminal investigation, espionage, or other similar law enforcement activities where the alien's presence is required by the Government or the alien's life is threatened.

The Administration opposes restricting the Attorney General's parole authority. We oppose section 524. The current law provides the Attorney General with appropriate flexibility to deal with compelling immigration situations. For example, the amendment would not permit the parole of an alien to attend the funeral of a close family member or of a parent to accompany a child paroled into the United States for an organ transplant. In addition, one advantage of the special exclusion provisions included in both H.R. 2202 and H.R. 1929 is the opportunity they would afford to bring aliens intercepted at sea to the United States for a brief period for "credible fear" screening without implicating a full panoply of hearing and appeal rights. It is unclear whether this option would be available in light of the proposed restrictions on the Attorney General's parole authority. As currently written the parole restriction would appear to limit the ability of the Attorney General to parole from custody an alien seeking admission. (The Attorney General's parole authority pertains to excludable aliens in INS custody as well as excludable aliens who are physically outside the United States.) We do not believe that this was the drafters' intent. If the parole restrictions remain in the bill, an amendment clarifying this distinction between the two uses of the term should be adopted either in this section or in section 235(b)(2) of the INA as amended by section 302 of this bill.

Section 525 provides for the admission, subject to the worldwide level specified in section 201(e), of qualified immigrants of special humanitarian concern to the United States, selected on a case-by-case basis after having been identified for potential eligibility by the Attorney General. An alien who is a refugee is not entitled to admission as a humanitarian immigrant unless there are compelling reasons in the public interest to admit the alien under this provision. This section also limits issuance of humanitarian visas to natives of any single foreign state to 50 percent of the available numbers (or to natives of any dependent area to 15 percent of the available numbers). The Attorney General may waive the public charge ground of inadmissibility in the case of a humanitarian immigrant.

We support establishing an immigrant category for persons who do not meet the definition of refugee but who are of special humanitarian concern to the United States. We are concerned, however, that the numerical ceiling on humanitarian immigrant admissions will prove insufficient, at least in some years, to address the need for such visas in light of the proposed scope of the Attorney General's parole authority. We are especially concerned about the impact that these limits will have on the special immigration programs that the Administration has

established for Cubans pursuant to the recent agreement between the United States and the Government of Cuba. To date, this agreement has been highly successful in regularizing the flow of migrants from Cuba and has helped to avoid the type of mass exodus that occurred in August 1994. Under the terms of this agreement, the U.S. has agreed, inter alia, to admit 20,000 Cubans into the United States each year. Under H.R. 2202, the humanitarian immigrant category is the only one under which many of these persons might fit. Yet the strict numerical limits imposed by this section would prevent the United States from fulfilling its commitments under the agreement. Thus, the Administration recommends adoption of an exception to these limits for Cubans who fall under the terms of the existing agreement. We also propose that this section authorize the use of a portion of the humanitarian visa category, in the discretion of the Attorney General, to regularize the status of persons in the United States who have been afforded protection on a humanitarian basis. We would like to work with the Committee in considering possible ways to achieve this end.

Section 526 would dramatically transform the character of asylum proceedings in the United States. In general, we are strongly opposed to such extensive changes in the asylum process at the present time. In fact, some of the proposed changes may have the unintended result of reversing significant progress that we have made in the asylum area. Pursuant to a presidential directive, the Department of Justice engaged in extensive study and analysis of how to address abuse by mala fide asylum applicants and an ever-growing backlog of unadjudicated cases. This resulted in the promulgation of new asylum regulations in December 1994. These regulations, which went into effect in January 1995, sought to address the problems in the asylum process by establishing procedures that permit the quick identification and granting of meritorious claims and the referral of all others to immigration court for deportation proceedings, the decoupling of eligibility for employment authorization from the asylum application process, and the streamlining of asylum procedures to help asylum officers keep current with incoming applications. In addition, Congress appropriated substantial additional funds for the asylum program, which has made possible an increase of asylum officers from 150 to 330 and an increase of immigration judges from 116 to 179 in the current fiscal year. In FY 1996 we expect to have approximately 200 immigration judges.

To date, these reforms have had tremendous positive results. Interviews of asylum applicants are being scheduled at the rate of 162 percent of the level of new receipts, therefore permitting the adjudication of backlogged cases as well as of current receipts. Asylum officers have completed over 61,000 cases in the first eight months of FY 1995, compared with nearly 35,000 cases in the first eight months of FY 1994, an increase of 76

percent. 94 percent of all interviewed asylum applicants are returning to the Asylum Offices about 10 to 14 days after their interviews to personally pick up the decisions in their cases. Asylum applicants who are not granted asylum are automatically moving into deportation proceedings at that time. The number of post-reform asylum claims filed since implementation of the reforms has dropped significantly when compared with the same period in fiscal year 1994. In short, the reforms are working even though the INS has yet to fill all of its authorized 330 asylum officer positions (to date, 242, or 75 percent of the authorized positions have been filled). Once all the asylum officers authorized for this fiscal year are hired and on duty, the reforms will work even better.

The proposed revisions to section 208 risk derailing the current asylum reforms and setting back the overall processing of asylum claims. We object to such radical changes in light of the early indications of the recent asylum reforms' success. We are also concerned that some of the proposed changes would render U.S. law inconsistent with our international legal obligations under the 1967 Protocol relating to the Status of Refugees. We would be happy to work with the Committee on appropriate changes to this section that build upon progress we have already made. The Administration's views on the individual provisions of section 208, as rewritten, follow.

Section 208(a) provides that any alien who is physically present in the United States or who arrives at a port of entry is eligible to apply for asylum. This provision reflects current law.

Section 208(b) requires a mandatory grant of asylum where an alien can establish that it is more likely than not that such alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. In essence, the section requires that asylum be granted where the alien meets the current withholding of deportation standard (Section 243(h)) as construed by the Supreme Court. See INS v. Stevic, 467 U.S. 407, 429-30 (1984). Correspondingly, section 307 of the bill eliminates withholding of deportation altogether.

We strongly oppose the elimination of withholding of deportation and the creation of a mandatory form of asylum. Under current law, the Attorney General has discretionary authority to grant asylum to an alien who establishes eligibility for refugee status. This requires a showing that the alien has a reasonable fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion in his or her country of origin. However, the Attorney General must grant withholding of deportation if the alien can show that it is more likely than not (a higher standard of proof)

that such alien's life or freedom would be threatened in his or her country of origin. Thus, an alien who is denied asylum as a matter of discretion is eligible for a mandatory grant of withholding of deportation if the alien meets a higher standard of proof. This scheme is consistent with international refugee law under which there is no "right to asylum" per se but only a right to freedom from return (non-refoulement) to a place of persecution. The United States has never before accepted "a right to asylum" under either international or domestic law and we do not believe it is appropriate to do so now. Moreover, the practical effect of this proposed amendment would be to limit the Attorney General's discretion to deny the substantial benefits associated with a grant of asylum (including the right to bring immediate family members to the United States and to adjust one's legal status to that of a lawful permanent resident and, eventually, to that of a citizen) to aliens who are undesirable, for foreign policy or other reasons, but who are nevertheless entitled to a grant of withholding of deportation. For these reasons, the Administration strongly prefers to retain distinct provisions for asylum and withholding of deportation.

Nevertheless, we recognize that the current withholding of deportation scheme could be improved. Aliens who are granted withholding of deportation generally remain in the United States indefinitely in an irregular status. While the United States has the legal right to deport such persons to a country where they would not face persecution, this very rarely occurs because there are no countries willing to accept such persons. Consequently, such cases pose unusual and awkward administrative issues for INS. Rather than grant such persons mandatory asylum, we would prefer to work with the Committee to create a discretionary authority for the Attorney General to adjust the status of an alien granted withholding of deportation to that of an alien lawfully admitted for permanent residence. Such authority should be permissive rather than mandatory, so as to permit the Attorney General maximum flexibility in attempting to resolve the difficult and unique problems posed by such cases.

Section 208(b)(3)(A)(vi) precludes a grant of asylum where a country is willing to accept the alien and the alien is unable to establish that he or she would face a threat to life or freedom on account of one of the five grounds in such country. This provision establishes a new statutory ground of ineligibility for asylum. While we do not object to the sentiment of the proposed provision, we do not believe that this should be a mandatory ground of ineligibility for asylum and would prefer that the Attorney General retain the discretion to grant asylum to an alien described herein. For example, while we may be able to remove an alien to a country in which he or she would not face persecution, we may not wish to do so in all cases for compelling reasons such as family unity or foreign policy concerns.

In addition, we are currently in the process of considering a bilateral agreement with the Government of Canada which would embody this concept with respect to aliens who have traveled through Canada and then filed an asylum claim in the United States, or vice versa. The recently adopted asylum regulations contain a similar provision at 8 C.F.R. 208.14(e). There are important safeguards contained in that regulation which we believe bear repetition here, such as that the alien will have access to a full and fair procedure for determining his or her asylum claim, and that any such return should take place pursuant to a readmission agreement between the United States and the country to which the alien is being returned. We would prefer to work with the Committee to create a discretionary provision that would permit the Attorney General not to consider the asylum claim of an alien who can be removed to a country other than a country of feared persecution, with appropriate safeguards, but that would not require such a result in all cases.

Section 208(b)(3)(A)(v) precludes a grant of asylum where an alien is inadmissible for engaging in terrorist activity, where there is a reasonable ground to believe that the alien engaged in or is likely to engage in terrorist activity after entry, and where the alien is a representative of a terrorist organization. Current law is based upon the scheme for refugee protection established by the Refugee Convention and Protocol, which exclude from protection as a refugee, inter alia, those aliens who are regarded as a danger to the security of the country. Not all aliens described in section 212(a)(3)(B)(i) or proposed section 237(a)(4)(B) constitute a danger to the community, within the meaning of the Refugee Convention and Protocol. For example, an alien who was at one point a representative of an organization deemed to be terrorist but who has renounced the use of violence (and who may even be at risk with his former colleagues as a result) would be inappropriately covered by the current text. Consequently, we propose that the phrase "unless the Attorney General determines, in the Attorney General's unreviewable discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States" be added at the end of this section. This would provide the Attorney General with adequate flexibility to deal with deserving cases.

Section 208(b)(3)(B) deems an alien convicted of an aggravated felony to have committed a particularly serious crime. We recommend that H.R. 1915 adopt the provision in H.R. 1929 which deems an alien convicted of an aggravated felony for which the sentence imposed is five years or more as having been convicted of a particularly serious crime and thus ineligible for withholding of deportation. Our provision will remove more aggravated felons while still being consistent with United States obligations under the Refugee Protocol not to return a refugee to a place of persecution.

Section 208(d)(3) would permit the termination of asylum status where a "country willing to accept the alien has been identified to which the alien can be removed or deported...." We recommend the same approach to this provision as to section 208(b)(3)(A)(vi), see above, and would like to work with the Committee to develop an approach that permits this factor to be considered in the Attorney General's discretion.

Section 208(f)(1)(A) would impose new deadlines for the filing of asylum claims. An alien must have filed notice of intention to file an asylum application within 30 days of arrival in the United States and must have filed the application itself within 60 days of arrival in order to be considered for asylum. The only circumstances in which an alien is exempt from these deadlines is if the alien can show by clear and convincing evidence that circumstances in his or her country of origin that may affect eligibility for asylum have changed. Given that the bill replaces withholding of deportation with mandatory asylum, such an absolute time requirement for the filing of an asylum claim runs afoul of the duty of non-refoulement by which the U.S. is bound under the 1967 Protocol relating to the Status of Refugees. See Art. 33, 1951 Convention relating to the Status of Refugees.¹ This duty applies with respect to any refugee within the United States who would face a threat to his or her life or liberty in the country of feared persecution, regardless of when that alien makes known a need for such protection to the state concerned. Return of a refugee to a country where he or she faces a threat to his or her life or liberty simply because that refugee failed to make a timely request for protection would violate this fundamental duty. Moreover, the denial of the right to apply for asylum for failure to file a timely claim is contrary to international guidelines. See e.g. UNHCR Executive Committee Conclusion No. 15(i)(1979) ("While asylum seekers may be required to submit their asylum request within a certain time limit, failure to do so, or the non-fulfillment of other formal requirements, should not lead to an asylum request being excluded from consideration.) Thus, we believe that the imposition of time limits on all asylum claims, combined with the elimination of withholding of deportation, would be inconsistent with U.S. obligations under the Refugee Protocol as well as relevant international guidelines.

Furthermore, we believe that it would be very difficult, if not impossible, to enforce such deadlines given that many asylum applicants enter the U.S. illegally. In such cases, there is no record of the date of the alien's arrival in the United States,

¹ The 1967 Refugee Protocol incorporates all relevant obligations found in the 1951 Refugee Convention. Thus, by ratifying the Protocol, the United States became bound by all substantive provisions of the Refugee Convention.

thus making it unlikely that a deadline could be identified and enforced. Such a requirement will likely spawn needless litigation on the collateral issue of when an alien entered the country, thereby prolonging the asylum adjudication process and detracting from the more important task of determining the underlying merits of an alien's claim. Thus, we strongly oppose such a provision on practical as well as legal grounds.

Section 208(f)(2)(A)(i) would require that asylum interviews be conducted not later than 45 days after the filing of an asylum application. Under the current asylum program asylum officers are striving to conduct interviews within 60 days of the filing of an application. This goal is being met in the vast majority of the cases. However, circumstances sometimes arise which do not permit the achievement of this goal. The imposition of a mandatory 45-day deadline for the scheduling of an asylum interview is unrealistic. Moreover, the remedy for failure to meet this deadline is unclear. It is possible that the Department of Justice will routinely become subject to lawsuits in cases where an interview has not be held within 45 days. This would detract from the overall efficiency of the asylum program. In sum, the program is currently processing claims on a timely basis; a statutory provision attempting to accomplish the same is not necessary and would likely create new problems.

With regard to section 208(f)(2)(A)(ii), we recommend that 'international conditions' be replaced with 'international refugee and domestic asylum law' as this is the relevant training necessary for sound asylum adjudications, in addition to knowledge of the human rights records of foreign countries.

Sections 208(f)(2)(B) and 208(i) would empower only asylum officers to make asylum decisions in the Executive Branch and permit the appeal of such decisions only to the federal circuit courts. Thus, immigration judges and the Board of Immigration Appeals would no longer consider asylum claims. This would cause drastic changes in current asylum procedures. First, if their decisions are to be directly reviewed by the circuit courts, asylum officers would have to create extensive records of the proceedings before them. Under current asylum procedures, asylum officers are not qualified, trained or equipped to create such records. Such a change would require the hiring of a whole new group of asylum officers, with a requirement that they be lawyers, and a concomitant change in procedures. With such changes, the new cadre of asylum officers would virtually duplicate the present immigration judge corps. These significant changes would set back the current asylum program dramatically, and would in fact require replicating the present immigration judge process to include a hearing by a lawyer, with a full developed and recorded record, and the opportunity for presentation of evidence and cross-examination.

The elimination of the Board of Immigration Appeals from the asylum decisionmaking process would do away with a centralized legal authority that assists adjudicators, asylum officers and immigration judges alike, in making proper and consistent decisions. Asylum adjudicators would be able to look only to the federal circuit courts for guidance. This would likely produce widely disparate results in administrative decisionmaking. Moreover, the elimination of immigration judges and the Board of Immigration Appeals from the asylum process would also mean that a tremendously greater number of asylum decisions would be appealed directly to the federal circuit courts. This would inundate the circuit courts with asylum decisions. Since the federal circuit courts already have significant backlogs, direct appeal to these courts would further delay asylum adjudication as well as the resolution of other cases before them. As is the case in most other administrative programs, we believe that it is much more effective to have an administrative entity review first-instance decisions before requiring the involvement of the federal courts.

Furthermore, the proposed asylum appeals process fails to take account of the separate legal need to determine an alien's removability (i.e., deportability or excludability under current law) from the United States. Under current procedures, an immigration judge simultaneously determines issues of removability as well as the merits of an asylum claim. The former function involves the consideration of issues that are distinct from an asylum claim, such as whether the alien is removable, whether the alien should be detained until an order of removability is final, and whether the alien qualifies for other forms of relief from removability. The proposed asylum appeal from the asylum officer directly to the circuit courts would forestall the consideration of these crucial issues. An immigration judge would have to stay removal proceedings while the appeal of an asylum claim is pending at the circuit court. Moreover, once the asylum appeal is resolved, the case would have to undergo a new decision on the alien's removability. This determination would itself be subject to further appeals, including to the same circuit court. Thus, asylum claims could travel through the federal courts on two separate sets of issues. Such a duplicative process would further delay the removal of failed asylum seekers from the United States, further burden the already overburdened federal court system, and further consume scarce resources in the processing of illegal aliens. We believe that the current procedure which adjudicates asylum claims and issues of removability at the same time is more effective and efficient.

Section 551 provides that amendments made by this title take effect on October 1, 1996, and apply beginning with FY 1997, except that the provisions of section 523 and 554 take effect on the date of enactment of H.R. 2202.

We do not object to this provision.

Section 552 provides for transition of current classification petitions to the amendments made by this title.

We do not object to this provision.

Section 553 provides for special transition numbers for spouses and children of permanent residents, including legalized aliens. It provides that 150,000 visas (or, if greater, 1/5 of the number of pending petitions filed by legalized aliens) shall be available in each year from 1997 to 2001 for aliens who are classified as spouses or minor children of lawful permanent residents. The visas will be available in the order in which the petition was filed and will first be available to the spouses and children of lawful permanent residents who did not gain that status under the legalization or special agricultural worker programs.

We generally support the provision. However, we would prefer that the statute not dictate that numbers first be made available to any specific sub-classification of aliens within the 203(a)(1) classification (i.e., we support removal of paragraph (b)(2)). We believe that these additional numbers should be made available strictly according to the already established visa number priority date. Not only would this be more equitable by treating all aliens within this preference category equally, it would also be easier for the Department of State to administer and would be less likely to result in litigation arising from disputes on the manner in which it is administered.

Section 554 provides that the per country numerical limitations in section 202(a) will not apply in the last half of FY 1996 to the extent necessary to ensure that the priority date for an alien classified as an unmarried son or daughter of a citizen is not earlier than the priority date for aliens classified as unmarried sons and daughters of aliens lawfully admitted for permanent residence.

This section also provides that additional visa numbers will be available in FY 1997 without regard to per country numerical limitations for alien sons and daughters of citizens for whom a preference petition was approved as of September 30, 1996, and whose priority date was earlier than the priority date for alien sons and daughters of lawful permanent resident aliens of the same nationality for whom a petition had been approved on that date.

TITLE VI - RESTRICTIONS ON BENEFITS FOR ILLEGAL ALIENS

The Administration supports the denial of benefits to

undocumented immigrants. The only exceptions should include matters of public health and safety--such as emergency medical services, immunization and temporary disaster relief assistance--and every child's right to a public education. In so doing, care must be taken not to limit or deny benefits or services to eligible individuals or in instances where denial does not serve the national interest. The Administration also supports tightening sponsorship and eligibility rules for non-citizens and requiring sponsors of legal immigrants to bear greater responsibility through legally enforceable sponsorship agreements for those whom they encourage to enter the United States. The Administration, however, strongly opposes application of new eligibility and deeming provisions to current recipients, including the disabled who are exempted under current law. The Administration also is deeply concerned about the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

Section 600 makes certain statements concerning national policy with respect to welfare and legal and illegal immigration. We note that the title of this section should be renamed to include restrictions on benefits for legal immigrants.

Section 601 provides that aliens not lawfully present in the U.S. are uniformly ineligible to receive benefits under any means-tested program provided or funded, in whole or in part, by the Federal or State Governments and also are ineligible to receive any grant, contract or loan agreement, or to be issued any professional or commercial license, provided or funded by the Federal or State Governments. Six federal agencies must require applicants to provide sufficient proof of eligibility to receive assistance. Proof of eligibility is limited to showing one of the following four documents: (1) a United States passport (either current or expired if issued both within the previous 20 years and after the individual attained 18 years of age); (2) Resident alien card; (3) State driver's license, if presented with the individual's social security account number card; or (4) State identity card, if presented with the individual's social security account number card. State agencies are authorized to require proof of eligibility to receive State assistance.

We support the goal of establishing a uniform definition of alien eligibility in affected programs. We encourage you, however, to examine and adopt the definition of eligible alien the Administration proposed in its welfare reform bill introduced last year, the "Work and Responsibility Act of 1994." We also urge that this definition apply only to the four primary needs-based programs -- AFDC, SSI, Medicaid, Food Stamps -- allowing for state and local cash and medical general assistance programs to also use this definition.

In addition, we do not think it is appropriate to include

the Social Services Block Grant program as one of the 6 programs required to rely on 4 documents to determine eligibility. While the other 5 programs are clearly means-tested entitlements (AFDC, SSI, Medicaid, Food Stamps, and Housing Assistance), the Social Services Block Grant funds a wide variety of services in localities all over the United States, many of which are not means-tested. State and localities have wide discretion in the use of their social service block grant funds. Resources from the social service block grant are often co-mingled with funds provided by the states and localities themselves, or other sources. For example, funds may be used to help provide child care services or to help fund meals for the elderly or persons with disabilities that lack mobility. Many of these elderly persons and children, whether citizens or non-citizens, may have difficulty acquiring one of the four documents. We have concerns about imposing a new documentation requirement on states, localities, and clients that will be burdensome to a large number of U.S. citizens.

The Administration's approach would avoid a number of problems. For example, section 601 could be read to deny needs-based, education-related services and assistance paid for with federal, state, or local funds to undocumented alien children. However, the principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to authorize the exclusion of undocumented alien children from elementary and secondary schools remain powerful. In addition, many students who are United States citizens and legal permanent residents could be stigmatized based on name or appearance, and parents, fearful for their children's safety or well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all children and is likely to adversely effect and be divisive within our communities. We are concerned that this will impose higher costs to states and localities as a result of increased crime from keeping children out of school. We urge that this section be clarified to exclude educational services provided to children in elementary or secondary school, or that an exemption for these services be provided in section 603.

This provision should further be clarified so as not to apply to programs under section 214 of the Housing and Community Development Act of 1980. Without such clarification, this provision would impose a great burden on states and local governments that administer HUD mortgage programs, Federal Housing Administration contract programs, and Community Development Block Grants to identify noncitizens who may indirectly benefit from these non-direct assistance programs. Furthermore, it would jeopardize progress made and cooperation by HUD, INS, housing authorities, and multifamily project owners to smoothly implement section 214 of the Housing and Community Development Act of 1980.

Section 601 would undermine effective verification for public benefits. Our current system -- the Systematic Alien Verification for Entitlements Program (SAVE), enacted by section 121 of the IRCA of 1986 -- is an efficient, cost-effective means of verification. The SAVE process is a two-step verification process. The primary verification is accomplished through INS' centralized automated database, which is called the Alien Status Verification Index and contains immigration status information on over 28 million resident aliens and 21 million non-immigrant aliens. Although details of the procedure vary, states have an electronic link, for example, voice response unit or computer tape matches, to the INS database. If the alien registration number cannot be verified through the automated system, the state sends a photocopy of the documentation submitted by the alien to the INS. INS reviews and verifies the alien's status within 10 days through a secondary manual procedure. In FY 93, states reported receiving over 3.8 million AFDC applications. Slightly less than one million of those applications were denied. States reported that about 5,300 applications were denied because the applicant or other household members was an "undocumented alien." We believe these data indicate that most ineligible aliens are aware of the restrictions on their receipt of welfare benefits, and therefore do not apply for benefits. By contrast, section 601 relies on individual documents, e.g. a passport or resident alien card, for verification rather than immigration status information from INS databases. Verification based only upon the showing of a single document, particularly nonfederal documents, will certainly weaken present verification.

Section 602 provides that aliens are ineligible for unemployment benefits payable out of federal funds to the extent such benefits are attributable to any employment for which the alien was not authorized.

The Administration supports this as a matter of policy, however, it is not clear whether the payment restrictions would be prospective or retrospective. If the benefits payable to current or future beneficiaries should not reflect credit for past periods of unauthorized work, INS would have to provide the necessary information about the beneficiary's work authorization history. This is probably not feasible because much of the necessary INS information is stored in paper format in Federal Records Centers. Manually retrieving such information would impose a tremendous strain on INS' resources and would divert resources from other priority enforcement efforts. Payment restrictions do not advance an enforcement goal which would warrant the cost of capturing this information.

Section 603 provides that sections 601 and 602 does not apply to the provision of emergency medical services, public health immunizations, and short-term emergency disaster relief.

While we concur with the exemptions in section 603, we also believe the bill should exempt other limited programs to protect the greater public health and safety and children, such as those providing critical public health services; programs serving abused and neglected children and preventing family and domestic violence; and programs providing child nutrition. There are many programs that provide critical and often times life-saving services and assistance to individuals, particularly children and victims of domestic violence. We believe that in order to protect fundamental public health and safety, as well as on basic humanitarian grounds, no person should be denied such life-saving services.

We also note that section 603 would require the Attorney General to establish the definition of emergency medical services, in consultation with the Secretary of Health and Human Services. We believe that it is more appropriate for the Secretary of Health and Human Services to establish the definition of emergency medical services, in consultation with the Attorney General.

Section 604 appears to provide full Federal Medicaid reimbursement to State and local governments for emergency medical services furnished to undocumented immigrants in public hospitals or other public facilities, subject to amounts provided in appropriation acts. It requires hospitals and other facilities to verify the identity and immigration status of individuals as a condition for receiving reimbursement.

We have a number of concerns with section 604 as presently written. The federal government currently pays at least 50 percent of States' costs of providing required emergency medical services for unauthorized immigrants under the Medicaid program. As a policy matter, the Administration supports providing additional assistance to alleviate the burdens of states with the highest concentrations of unauthorized immigrants. The President's FY 96 budget request included \$150 million per year for five years to help pay some of the remaining non-federal share of Medicaid expenses for states with the highest concentrations of unauthorized immigrants. We would support greater levels of reimbursement to states should Congress appropriate them.

Under current law, the status of all aliens is verified through direct access to INS via the Systematic Alien Verification for Entitlement (SAVE) process. The SAVE process ensures that each applicant is properly identified as a U.S. citizen, or as an eligible immigrant and prevents unauthorized immigrants from receiving benefits for which they are ineligible.

If the intent of this section is to provide a mechanism to facilitate additional federal funding for emergency medical

services provided to unauthorized immigrants, then we suggest: (1) requiring all legal non-U.S. citizen immigrants to have their status verified by the INS through the current SAVE system; and (2) allowing hospitals to consider persons who cannot be verified through the SAVE system's two-step verification process to be undocumented immigrants solely for the purposes of reimbursement for emergency medical services provided to such persons. We note that any broader use of this information may scare some people, including legal residents and their children, from obtaining needed, even lifesaving, emergency medical care.

In addition, we have technical concerns with section 604(a) as written. We note that this section appears to limit full federal reimbursement to only emergency medical services provided through a public hospital or other public facility. This would deny federal reimbursement to localities where few or no public facilities are available, as is the case in many rural areas, and increasingly in under served urban areas as well. This provision may cause private facilities to shift patients into the public hospital system. We understand that members are considering changes to address this issue.

Section 605 requires the Secretary of Housing and Urban Development (HUD) to submit a report within 90 days to certain Committees of Congress describing the manner in which the Secretary is enforcing section 214 of the Housing and Community Development Act of 1980. By requiring this report of HUD, section 604 implies that the restrictions on assistance to noncitizens in HUD programs will continue to be governed by section 214. The legislation should state this explicitly.

The Administration is the first to enact regulations to require verification of eligibility pursuant to section 214. The Administration supports HUD programs remaining subject to section 214. HUD published its final rule implementing section 214 on March 20, 1995, and on June 19, 1995, the rule became effective. The restrictions on assistance to noncitizens in HUD programs are being implemented by housing authorities and multifamily project owners. Systems and procedures to carry out these restrictions are in place. Without clarification, confusion would arise and the efforts of HUD and its housing partners (housing authorities and project owners) to ensure that scarce housing resources go to families with citizenship or eligible immigration status may be impeded.

Section 606 provides that for purposes of this title, an alien is not considered lawfully present in the U.S. merely because the alien may be considered to be permanently residing in the United States under color of law ("PRUCOL") for purposes of any particular program. Section 606 requires the Attorney General to promulgate by regulation a definition of "lawful presence."

We do not object to this provision.

Section 607 requires that the Attorney General issue regulations carrying out this subpart (other than section 604) within 60 days of enactment. These regulations would take effect on an interim basis, pending changes based on public comment.

We are concerned by the tight time frame provided by this section. We wish to work with the Committee to establish a more feasible deadline for publication of the regulations.

The restrictions on benefits applies at least 30 and not more than 60 days after the date the regulations are first issued, but the restrictions regarding grants, contracts, loans, or licenses based on applications which are pending or approved on or before this date may be waived. The Attorney General must broadly disseminate information regarding these restrictions on eligibility before the effective dates.

We believe that restrictions on alien eligibility should apply to new applicants for benefits and should not apply to current recipients as long as they otherwise remain eligible. This position minimizes the disruption to current recipients, some of whom are elderly or severely disabled, and their communities.

Section 611 denies eligibility for the earned income tax credit to individuals who are not, for the entire tax year, United States citizens or lawful permanent resident aliens. The section also authorizes IRS to use simplified procedures if a taxpayer claiming the earned income tax credit omits a correct taxpayer identification number.

We support this provision. The President's FY 1996 Budget contains a similar provision.

Section 621 amends the public charge exclusion ground to provide that a family-sponsored immigrant or nonimmigrant is inadmissible if the alien cannot demonstrate that it is unlikely that the alien will become a public charge. An employment-based immigrant is inadmissible, other than an immigrant of extraordinary ability, unless the immigrant has a valid job offer at the time of immigration. An employment-based immigrant sponsored by a relative is inadmissible unless the relative has executed an affidavit of support.

The proposed section 212(a)(4)(B) would apply the affidavit of support requirement to nonimmigrant aliens subject to the numerical limitations contained in section 214 of the INA. These limitations apply only to H-1B and H-2B temporary workers whose admissibility is entirely conditioned upon their having a specific contract of employment in which the employer agrees to

pay the prevailing wage. Accordingly, it does not seem necessary or desirable to require that an affidavit of support be submitted on behalf of such workers. This condition may be detrimental to Americans businesses who are seeking such temporary workers.

We also note that under the proposed new employment-based preference system only an employer can file a petition to classify an alien under the second or third employment-based preference. If the employer subsequently withdraws the offer of employment, the petition and underlying labor certification are automatically revoked and the beneficiary ceases to be a qualified visa applicant. It thus seems unnecessary to add that the beneficiary is also excludable for public charge reasons.

Section 622 amends the public charge deportation ground to provide that an alien is deportable if the alien becomes a public charge within 7 years of admission from causes arising before admission. The Attorney General may waive this ground of deportation in the case of a refugee or an alien granted asylum. An alien is considered a public charge if he or she receives benefits under (1) Supplemental Security Income, (2) Aid to Families with Dependent Children, (3) Social Services Block Grants, (4) Medicaid, (5) Food Stamps, (6) State General Assistance or (7) certain federal housing assistance, for an aggregate period of at least 12 months within 7 years of admission. An alien will not be considered to be a public charge on the basis of receipt of emergency medical services, public health immunizations and short-term emergency disaster relief.

Section 622 would require a determination of whether immigrants had received benefits under the various assistance programs for more than 12 months during the 7 year public charge period due to reasons that existed before entry or occurred after entry. It is not clear who would be responsible for making such determinations -- the Attorney General or the various benefit programs. Regardless, this section would create a number of administrative and legal complexities as drafted, and we do not endorse these provisions without further clarification or amendment. Also, similar to our comment on section 601, we do not think it is appropriate to include the Social Services Block Grant program in the list of means-tested entitlement programs, since it is neither an entitlement program nor clearly means-tested.

We support granting the Attorney General the discretionary authority to waive this ground of deportation in the case of an alien who is admitted as a refugee under section 207 or granted asylum under section 208. This exemption is consistent with international law which prohibits the return of a refugee to a country where he or she faces a threat to life or freedom except in certain circumstances. Those circumstances do not include poverty or dependence on government resources.

In addition, section 622, similar to section 603, would require the Attorney General to establish the definition of emergency medical services, in consultation with the Secretary of Health and Human Services. As we noted before, we think it is more appropriate for the Secretary of Health and Human Services to establish the definition of emergency medical services, in consultation with the Attorney General.

Section 631 provides that in determining the eligibility and the amount of benefits of an alien for any federal means-tested public benefits program, the income and resources of the alien shall be deemed to include 100 percent of the income and resources of the person who executed an affidavit of support on behalf of such alien and that person's spouse. States may apply the same rule. Such deeming ends for parents of U.S. citizens at the time the parent becomes a citizen; for spouses of U.S. citizens and lawful permanent residents at the earlier of 7 years after the date the spouse becomes an alien lawfully admitted for permanent residence or the date the spouse becomes a citizen; and for minor children at the time the child reaches 21 years of age or, if earlier, the date the child becomes a citizen. The deeming period may end earlier than specified above if the alien is employed long enough to qualify for social security retirement benefits. Section 631 does not specify the deeming period for other sponsored aliens--such as employment-based immigrants sponsored by relatives under section 621--who are not the parents of U.S. citizens, or the spouses or minor children of U.S. citizens and lawful permanent residents.

While we support section 631's goal of making sponsors more responsible for the immigrants they sponsor, we have strong reservations about this section as drafted. This section would repeal the current law exemption from deeming for sponsored immigrants who become disabled after entry; affect many diverse federal programs -- including Medicaid; create new administrative complexities and requirements; and change the current deeming formula to include 100 percent of a sponsor's income and resources. By attributing 100 percent of a sponsor's income and resources to the sponsored immigrant, section 631 does not take into account the needs of the sponsor and his or her family and is inconsistent with current practice in the major entitlement programs. Legal challenges may also arise where the spouse was not a signatory to the affidavit or the spouse is separated from the sponsor.

The Administration proposed strengthening the deeming provisions in its welfare reform bill introduced last year, the "Work and Responsibility Act of 1994," and we would like to work with the Committee to establish a reasonable deeming policy that addresses the concerns identified above. The Administration is opposed to applying the new deeming provisions to people that become disabled after entry. We are also deeply concerned about

applying deeming provisions to the Medicaid and Foster Care programs.

We support providing state and local governments with the authority to implement the same deeming rules under their cash general assistance programs as the federal government uses in its cash welfare programs. We also support applying new deeming rules only to immigrants who sign new, legally binding affidavits of support.

Section 632 provides that an affidavit of support is acceptable only if executed as a contract legally enforceable against the sponsor for a period of 10 years after the alien last received any benefit. Upon notification that a sponsored alien has received a benefit, the appropriate official must request reimbursement from the sponsor. If the sponsor does not indicate a willingness to reimburse, or fails to abide by repayment terms, an action may be brought. A sponsor must notify the federal government and the sponsored alien's State of residence of any change of address of the sponsor.

This section restricts institutions from sponsoring aliens into the U.S. Sponsors also must be (1) the U.S. citizen or lawful permanent resident who is petitioning for the alien's admission; (2) at least 18 years old; and (3) domiciled in a State. Finally, sponsors must demonstrate the means to maintain an annual income equal to at least 200 percent of the poverty level. A person who has received assistance under a federal or State means-tested public benefit program for which a sponsor is liable is ineligible for naturalization, unless the alien provides satisfactory evidence that there are no outstanding amounts owed pursuant to such affidavit.

We strongly support making the affidavit of support legally binding. We note that section 632 does not provide for an effective mechanism to ensure or compel a sponsor to actually provide financial support to an alien he or she has sponsored. We believe that a more effective mechanism is necessary. We recommend that, at a minimum, the sponsored immigrant be given authority to bring suit against a sponsor that has reneged on his or her agreement to provide financial support to the immigrant for a specified period of time.

Moreover, we have reservations with section 632 as drafted, particularly as it interacts with the deeming provisions in section 631. The reimbursement requirement would only apply to those sponsored immigrants that somehow become eligible for and receive benefits subsequent to having the deeming provisions applied to them under section 631. Since all federal means-tested programs would be required to implement the new deeming provisions, very few immigrants would ever become eligible for federal benefits during the deeming period; therefore, there

would be few reasons to seek reimbursements from sponsors, except in cases of fraud. The same conditions would occur under state and local programs depending on whether states and localities implemented deeming rules similar to the federal programs.

We have strong concerns about the requirement that sponsors demonstrate the means to maintain an annual income at least 200 percent of the poverty level in order to be allowed to sponsor an immigrant. We are concerned that this requirement may be too restrictive of family reunification.

TITLE VII - FACILITATION OF LEGAL ENTRY

The Administration is committed to improving services for legal entrants, and we support the provisions of this bill which enable us to do so. We are already conducting commuter lane pilot programs on the Northern border to facilitate traffic at the ports of entry. Effective October 9, we will assess a service charge for the processing and issuance of replacement border crossing cards at the Mexican border and first issuance of five other INS travel documents at land border ports of entry. Revenues from these service charges will enable us to hire additional inspectors and to enhance customer service to the traveling public at land border ports of entry.

As for air travel, our pre-inspection facilities enable us to expedite inspection at the arrival airports. In addition, we are already working with the travel industry to deter illegal traffic and improve customer services. For the past five years we have conducted a Carrier Consultant program at both United States and foreign locations in which we train airline employees and foreign government officials in the detection of fraudulent travel documents. This has resulted in a marked reduction of mala fide arrivals at United States gateway airports.

Section 701 requires the Attorney General and the Secretary of the Treasury to increase the number of full-time land border inspectors in the INS and the Customs Service to a level adequate to assure full staffing during peak crossing hours of all border crossing lanes, and that personnel be deployed in proportion to the number of land border crossings in the border sectors. This section also requires that in completing infrastructure improvements to expedite the inspection of persons and vehicles seeking lawful admission at land borders, the Attorney General give priority to those areas where the need for such improvements is greatest.

This provision is similar to a provision in the Administration bill. However, the Administration bill does not contain any restrictions on the placement of the new inspectors. We do not believe that the location of new inspectors should be

based solely on the volume of border crossings. As drafted, this provision would require that many of the new inspectors be assigned to the Northern border, even though the risk, workload, and thus, the need are greater on the Southern border. We urge the Committee to adopt the Administration provision and to thus defer to the operational judgment of the Attorney General and the Secretary of the Treasury.

Section 702 amends section 286(q) of the INA and the 1994 Justice Appropriations Act to permit the expansion of commuter lane pilot programs at land borders. It removes the current restriction on commuter lanes on the Southern Border.

This provision is similar to a provision in the President's FY 96 budget request, and we support it.

Section 703 amends the INA to create a new section 235A, providing for the establishment within 2 years of preinspection stations at 5 of the 10 foreign airports having the greatest number of departures for the U.S., and to establish an additional 5 preinspection stations within 4 years.

We support the expansion of preinspection where economically and diplomatically feasible. However, an absolute requirement to establish preinspection operations at 5 airports in 2 years is unworkable. Expansion must be carefully planned. Cooperation and support of the host government, the airline industry, and the affected airport authorities are necessary to obtain the facilities and protection needed to conduct a successful preinspection operation. We recommend that the time requirements be removed.

We note that under section 235A(a) the Attorney General is required to "establish and maintain" the preinspection stations. Presently preinspection is accomplished through contractual arrangements authorized by section 238 of the INA (redesignated section 233 by section 308(b)(4) of this bill). Under section 238, the transportation lines are responsible for providing and maintaining suitable landing stations at their expense. We recommend that the Committee modify section 235A(a) to include a similar provision. We also note that section 238 provides for contracts for preinspection only with transportation lines bringing in aliens from foreign contiguous territory or from adjacent islands. Section 238 should be modified to extend its authority to non-contiguous countries or territories to clarify that the preinspections stations authorized by new section 235A are not limited to contiguous territories or islands.

Section 704 provides that in each fiscal year not less than 5 percent of the funds from the Immigration User Fee Account may be expended for the training of commercial airline personnel in the detection of fraudulent documents. If a commercial airline

has failed to comply with regulations relating to the detection of fraudulent documents, the Attorney General may suspend the entry of aliens transported to the U.S. by the airline.

This provision would add extreme pressure to the user fee account and thus would be detrimental to other activities it supports. In the current fiscal year INS would have been required to spend at least \$17.5 million from that account for this purpose. No specific expenditure amounts are imposed for other user fee activities and should not be imposed for this activity. As mentioned above, we have operated the successful Carrier Consultant program (CCP) for a fraction of the amount designated by this section.

The CCP provides guidance and assistance to the transportation industry on issues of admissibility and fraud deterrence in order to encourage carrier compliance with U.S. immigration laws and to reduce the arrival of improperly-documented passengers at the United States ports of entry. The benefits of the program include: (1) reducing the number of inadmissible aliens arriving at the ports of entry; (2) reducing government expenses associated with detention, processing and removal of aliens found to be excludable from the United States; (3) reducing the number of frivolous asylum claims and (4) decreasing the fines imposed against carriers for transporting improperly documented passengers to the United States. The program has been extremely well received by carriers and foreign governments. Carrier Consultants trained over 10,000 airline employees, and recorded 467 cases of inadequate or improper documentation during FY 92, FY 93, and FY 94. This represents a savings of over \$1 million to the carriers in fines alone.

In addition, the INS is establishing a Carrier Consultant and Support Unit to be located in Arlington, VA. The unit will provide information, guidance and assistance to the transportation industry on issues of passenger admissibility and fraud deterrence. The office will also provide information and direction to Ports of Entry. In addition to the current program of providing training and assistance to carriers, and document screening at selected locations overseas, under the permanent program being established this fiscal year, the Carrier Consultants' duties will expand to include: (1) assisting the industry to produce training programs for their trainers and analysts at corporate training centers; and (2) directly providing training to airline personnel at domestic locations such as airline facilities. The overseas training is coordinated with the Department of State and the INS' Office of International Relations and supplements training and screening activities by those offices. The CCP provides the flexibility to deploy larger groups of INS officers to locations for more intensive and larger scale training and document screening. It also enables the INS to coordinate activities with stateside carrier headquarters for

multi-carrier and multi-location operations. At the same time, essential follow-up support is provided directly to the carriers regardless of their location. Consequently, we do not support this provision.

TITLE VIII - MISCELLANEOUS

Section 801 amends the definition of aggravated felony in section 101(a)(43) of the INA, as amended by section 222 of the Immigration and Nationality Technical Corrections Act of 1994, to make certain technical corrections and to make the definition effective to all convictions entered at any time before, on, or after the date of enactment.

This provision is similar to the Administration's proposal, and we strongly support it.

Section 802 amends subparagraph (A) of section 101(b)(1) (definition of "child") by striking the term "legitimate child" and inserting "a child born in wedlock," and amends subparagraph (D) of section 101(b)(1) and section 101(b)(2) (definition of "parent") by striking the term "illegitimate child" and inserting "a child born out of wedlock."

We support this provision.

Section 803(a) clarifies that the Secretary of State has non-reviewable authority to establish procedures for the processing of immigrant visa applications and the locations where visas will be processed. The Administration strongly supports this amendment which clarifies existing law.

Section 803(b) amends section 222 of the INA by adding subsection (g) providing that an alien who overstayed a previous visa is not eligible for a nonimmigrant visa unless it is issued in a consular office located in the country of the alien's nationality, or in a country designated by the Secretary of State, if there is no consular office in the country of the alien's nationality. We do not object to this provision.

Section 804 provides that with respect to denial of an application for a visa, the Secretary of State may waive the requirement to notify the alien of the grounds for the denial if the alien is inadmissible on criminal grounds or security and related grounds.

We support this provision. Such a waiver is necessary to ensure that the U.S. Government is not required to inform an unsuccessful visa applicant that the U.S. Government has relevant investigative information concerning his or her criminal activities.

Section 805 provides that the Attorney General may waive the requirements of section 212(a)(7)(b)(i) regarding presentation of documents in the case of aliens who are granted permanent residence by the government of a foreign contiguous territory and who are residing in that territory.

We are concerned that this provision would no longer subject nationals from countries known for terrorist acts or for high incidence of visa and entry fraud who are residing in Canada to the additional scrutiny of the visa issuance process. We urge the Committee to clarify that expanding the language of section 212(d)(4) of the INA will not be construed to allow individuals whose entry documents are not currently waived to be exempt from presenting those documents. We also urge the Committee to adopt the term "permanent residents" over "residents" so that long-term nonimmigrant visitors such as students or temporary workers cannot rely on a literal interpretation of this section to claim such benefits.

Section 806 would amend Section 212(n) of the INA -- which establishes the criteria for admission and employment of nonimmigrant "professionals" in "specialty occupations" (and fashion models of distinguished merit and ability) under H-1B visas -- in a variety of ways. One of these proposed changes represents a welcome and overdue effort to implement a modification of the H-1B program previously requested by Labor Secretary Reich -- to prevent U.S. workers from being laid off or otherwise displaced by nonimmigrants. However, the changes incorporated in H.R. 2202 do not reflect the language requested by the Secretary, and provide a means of circumvention. We also note that H.R. 2202 does not include an additional change to the H-1B programs requested by the Secretary -- a requirement that employers of H-1B nonimmigrant workers attest to taking timely and significant steps to recruit and retain U.S. workers in the jobs for which they seek foreign workers. In addition, H.R. 2202 does not include a change to the H-1B program contemplated by the U.S. commitment under the World Trade Organization's General Agreement on Trade in Services (GATS) that the allowable period of admission and employment of H-1B nonimmigrants be reduced from six to three years.

While we have a number of serious concerns about the changes to the H-1B program contained in H.R. 2202 and would prefer to address more nonimmigrant programs in the broader context of the array of employment-based nonimmigrant programs for which the Department of Labor has responsibility, we find promise in its general framework for limited reform of this nonimmigrant program. Further, we understand that the bill's H-1B program changes, which were extensively amended in the Subcommittee markup, are continuing to evolve and are likely to be revised as the bill progresses through the legislative process. We have been working closely with the Committee and look forward to a

continuing dialogue to address and resolve the Administration's concerns. Our specific comments on sections 806(d) and 806(e) follow.

Section 806(d) modifies the method of computation of the prevailing wage rate for occupational classifications in higher education and related non-profit institutions in an area of employment by taking into account only employees at such institutions in the same area of employment. We believe that the language of this subsection as adopted is far too broad because it encompasses occupations and refers to entities that were never at issue.

It would apply to all occupational classifications for which permanent labor certification applications and H-1B labor condition applications are filed by colleges and universities, or "related" or "affiliated" entities. This would include all professionals, such as teachers, researchers, accountants, librarians, and computer specialists. For permanent admission, it would even include skilled and service workers, such as maintenance, protective service, and clerical personnel. The need for legislation is obviated by the Department of Labor's plan to initiate rule-making to rescind Hathaway's prevailing wage determination policy as it applies to researchers in colleges and universities. The Department of Labor is committed to completing the rule-making process as expeditiously as possible.

Section 806(e) prescribes the effective dates of the bill's substantive provisions. Whereas the revisions in sections 806(a) through (d) would apply to all LCAs filed starting 30 days after the bill's enactment, subsection (b)(3) of this section, which limits Department of Labor-initiated investigations of non-H-1B dependent employers, would apply to complaints filed, and to investigations or hearings initiated, on or after January 15, 1995. Thus, until an LCA is filed after the effective date, none of the other section 806 provisions -- including the new restrictions on enforcement actions -- are applicable. This provision would, in effect, "grandfather" all pre-enactment LCAs, leaving those employers outside the new "dependent"/"non-dependent" construct. In other words, because no employer under investigation or in the hearing process on the effective date could be an "H-1B-dependent employer," subsection (b)(3) could not affect any then current complaints, investigations or hearings. It appears that the bill intends section 806(b)(3) to have a retroactive effect, in that it would ostensibly terminate pre-enactment matters pertaining to employers not meeting the "H-1B-dependent" definition at the earliest enforcement stages -- complaint, investigation, or hearing -- occurring after January 15, 1995. If that is indeed the intent, the effective date section needs to be revised accordingly.

Section 807 extends the period in which an immigrant visa is valid from four to six months. We support this amendment.

Section 808 would limit the eligibility of an alien to adjust status under section 245(i) to those persons afforded protection from deportation under the family unity provisions of section 301 of the Immigration Act of 1990. This section shall apply to applications for adjustment of status filed after September 30, 1996.

Section 245(i), which went into effect last year, has eliminated a burdensome paper process and has enabled the Department of State to shift critical resources into its anti-fraud and border control efforts. Section 245(i) requires the alien to pay a substantial fee in order not to have to return to his or her home country for adjustment of status. The fee, often less than the amount it would cost the alien to depart and return, also enables the INS to make improvements in its naturalization efforts. Section 245(i) helps only those eligible to immigrate, imposes a stiff penalty, and enables the government to serve more individuals. It should not be curtailed. We strongly oppose this section.

Section 809(a) authorizes the Attorney General to disclose information in an application for legalization for the following purposes: to identify an alien believed to be dead or severely incapacitated; or for criminal law enforcement purposes if the alleged criminal activity occurred after the legalization application was filed and involves terrorist activity, a crime prosecutable as an aggravated felony (without regard to length of sentence) or poses an immediate risk to life or national security. Information limited to the date and disposition of the application, and the alien's immigration status or criminal convictions (if any) after the date of the application, may be disclosed for immigration enforcement purposes. Section 809(b) makes parallel amendments to the confidentiality provisions in Special Agricultural Worker Program.

We agree that confidentiality provisions should be modified because it is very difficult to obtain crucial information contained in these files, such as fingerprints and photographs, when the alien becomes a subject of a criminal investigation. However, we support a waiver of the confidentiality provisions, along the lines of the Administration's Omnibus Counterterrorism bill, that is, only if a federal judge authorizes disclosure of information to be used for identification of an alien who has been killed or severely incapacitated or for criminal law enforcement purposes against an alien if the alleged criminal activity occurred after the legalization or SAW application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony.

Section 810 creates a nonimmigrant category for an alien who is the spouse or child of an alien who is serving on active duty in the Armed Forces and is stationed in the U.S.

This new category is not necessary because current law permits the legal entry of such aliens under an existing nonimmigrant category.

Section 811 amends section 141(c) of the Immigration Act of 1990 to require the Commission on Immigration Reform to study and submit to Congress, not later than January 1, 1997, a report containing recommendations of methods to reduce or eliminate the fraudulent use of birth certificates for the purposes of obtaining identification documents that may be used to obtain benefits relating to immigration and employment.

We support this provision.

Section 812 requires the Secretary of Health and Human Services to set up a pilot project establishing an electronic network linking the vital statistics records of 3 of the 5 states with the largest number of undocumented aliens. The objective of the network is to thwart the use of false documents by allowing federal and state officials to match birth and death records of citizens or aliens within these states. Three years would be provided for establishment of the project. A report with recommendations on instituting the pilot as a national network would be due 180 days after establishment. Such sums as may be necessary would be authorized for this project.

Establishing an electronic network to allow federal and state officials to match birth and death records in a small number of states would allow for a realistic assessment of the feasibility of implementing such matching programs on a broader scale. This approach is appropriate and would help to identify likely areas of difficulty prior to making a decision about a national matching program. The pilot project would allow for the following likely areas of difficulty to be explored: the variation in the level of automation in the birth and death registration process found in different states; the difficulty of matching births and deaths in the absence of a uniform identifier; the variation in state laws protecting the confidentiality of birth and death data; and the complexity of incorporating into the system information on births and deaths that have occurred in the past when records were less likely to have been automated.

In addition, we have four technical comments. First, the bill language should be modified so that the pilot project links the vital statistics records of "3 of the 5 states or registration areas" in order to allow New York City to be considered for inclusion in the pilot. New York is one of the

states with the largest number of undocumented aliens. However, New York City is a separate "registration area", that handles its own vital statistics registration. Second, although up to 3 years is provided for setting up the project, only 180 days is provided for assessing it and making recommendations to Congress. More time might be required to properly assess the pilot project. Third, the project could not be conducted without adequate funding. If the SSA participates in the pilot, a specific authorization would be required. Since SSA's participation in the pilot would not be related to the administration of Social Security programs, funds from the Social Security trust funds could not be used to finance these activities. Finally, this provision requires an amendment to section 205(r) of the Social Security Act, which restricts the redisclosure of death information that SSA receives from the states. Current law restricts SSA's authority to redisclose this information except for the purpose of ensuring the proper payment of federally funded benefits.

Section 813 provides that notwithstanding any other provision of Federal, State, or local law, no State or local government entity shall prohibit or in any way restrict any government entity or official from sending to or receiving from the INS information regarding the immigration status of an alien in the U.S.

In some instances this provision could raise troubling privacy and due process issues. We do not support this provision as drafted, but we will work with the Committee to address legitimate concerns.

Section 814 provides that amounts appropriated under section 501 of the IRCA for fiscal year 1995 are to be available to reimburse the costs of undocumented criminal aliens incarcerated under the authority of political subdivisions of a State. This would extend the funds appropriated for reimbursement to States to local jail and detention facilities. We note that fiscal year 1995 will soon end and are concerned that this provision could adversely affect the administration and management of this program. We support this provision being made applicable in future fiscal years, subject to sufficient appropriations.

Section 815 makes a number of entirely technical corrections to the IRCA of 1986, the Immigration and Nationality Technical Corrections Act of 1994, the INA, and other legislation. We do not object to this provision.

H.R. 2202 does not contain the following provisions of the Administration's illegal immigration bill which would benefit the DOL in carrying out its immigration and worksite enforcement responsibilities: subpoena authority for the Secretary of Labor in immigration law enforcement investigations and hearings and

increased penalties for employer sanctions involving labor standards violations. We urge the Committee to adopt these provisions. In addition, the President's FY 96 budget request calls for 202 additional positions for the DOL while H.R. 2202 authorizes only 150 additional positions. We urge the Committee to authorize the President's requested number of new DOL personnel.

Mr. Chairman, we want to work with you on bipartisan immigration enforcement legislation that is in the national interest. We look forward to working with you to address the core issues of worksite enforcement, border control, criminal alien deportation and comprehensive immigration law enforcement.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

COPY

Jamie S. Gorelick
Deputy Attorney General



Office of the Deputy Attorney General

Washington, D.C. 20530

February 14, 1996

EXECUTIVE SUMMARY

This document is a summary of the Administration's views letter concerning S. 1394, the "Immigration Reform Act of 1995" as reported out of the Subcommittee on Immigration on November 29, 1995.

While the Administration strongly supports reform of the current immigration law that affects both illegal and legal immigration, and S. 1394 contains numerous responsible and thoughtful reforms, S. 1394 raises considerable concerns in specific areas that we hope the Committee will examine thoroughly before reporting the bill to the Senate floor. In particular, employment eligibility verification systems should contain necessary privacy protections and be piloted before any nationwide implementation. We urge the Committee to adopt our proposal to pilot programs for 3 years and then request Congressional authorization to implement only those pilot projects that work. Any increases in penalties for and enforcement of employer sanctions should be similarly increased for enforcement of laws against immigration related employment discrimination. The intentional discrimination standard in the document abuse provision of S. 1394 will severely undermine anti-discrimination enforcement. Labor and immigration law enforcement should be increased and coordinated. S. 1394 should adopt our proposal to hire 202 Department of Labor Wage and Hour Staff to investigate and prosecute labor standards and employer sanctions violators. The birth and death registry provision presents myriad constitutional, operational, and programmatic concerns and would impose a tremendous unfunded mandate on states and localities as well as a major burden on private individuals, such as having their fingerprints and Social Security numbers added to their birth certificates by age 16.

Expedited exclusion procedures should be established in extraordinary situations the Attorney General deems appropriate. Imposition of a 30 day time limit in which to apply for asylum would create needless protracted litigation on the issue of when an alien entered the United States (U.S.) rather than on the merits of the asylum claim. This would be detrimental to immigration law enforcement and humanitarian protections for true asylees.

Employer sponsored visas should be set at a level, 100,000 visas per year, to address both the needs of American businesses and workers. Family-sponsored visas for adult children of U.S. citizens and unlimited visas for mothers and fathers of U.S.

citizens must be maintained to protect our cherished principle of family reunification. Similarly, we support and want to reach agreement with Congress on an appropriate and equitable grandfathering process for persons in the fourth preference backlog that is consistent with our overall framework, priorities and principles.

The deeming provision for benefit eligibility should not create an unprecedented unconstitutional second class citizenship by extending beyond naturalization. The legislation should clarify that it does not call into question the full participation of any child in public elementary and secondary education, including pre-school and school lunch programs. We oppose the health and long term care insurance mandate imposed upon the mothers and fathers of U.S. citizens and disabled sons and daughters of U.S. citizens and lawful permanent residents. As currently drafted, the legislation requires purchase of coverage that is simply not available.

Repeal of the Cuban Adjustment Act would detract from the Administration's goal of returning democracy to Cuba and regularizing the flow of immigration from Cuba. In addition, restricting the Attorney General's parole authority will jeopardize the Attorney General's ability to quickly and appropriately respond to compelling immigration emergencies. Finally, we urge the Committee to ensure the bill's consistency with our international treaty obligations.

Many of the provisions in S. 1394 advance the Administration's strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and securing from Congress the resources to assist states with the costs of illegal immigration. Many of the provisions of S. 1394 are identical or similar to provisions in the Administration's bill, S. 754, the "Immigration Enforcement Improvements Act of 1995."

The Administration endorses a framework of legal immigration reform that respects our immigration tradition while achieving a moderate reduction in overall admission numbers to promote economic opportunities for all Americans. The Administration seeks legal immigration reform that promotes family reunification, protects U.S. workers from unfair competition while providing employers with appropriate access to international labor markets to promote our global competitiveness, and promotes naturalization to encourage full participation in the national community.

Title I--Immigrant Control

Subtitle A--Law Enforcement

Part 1--Additional Enforcement Personnel

The Administration has already demonstrated that our borders can be controlled when there is a commitment to do so by the President and Congress. With an unprecedented infusion of resources since 1993, we have implemented a multi-year border control strategy of prevention through deterrence. We have carefully crafted long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore integrity to the border.

- **Border Patrol Agents:** We have increased the number of Border Patrol agents by 40% since 1993, and we support a further increase of at least 700 agents per year to reach a total strength of at least 7,000 Border Patrol agents by the end of Fiscal Year 1998.
- **Enforcement personnel:** The President's Fiscal Year 1996 budget request calls for 202 new Department of Labor Wage and Hour personnel. S. 1394 does not provide for any additional Department of Labor Wage and Hour personnel. Additional personnel is critical to investigate and prosecute labor standards and employer sanctions violators, including sweatshop operators. We strongly urge the Committee to provide these enforcement personnel.

Part 2--Eligibility to Work and to Receive Government Benefits

Since jobs are the greatest magnet for illegal immigration, a comprehensive effort to deter illegal immigration, particularly visa overstaying, must make worksite enforcement a top priority. The Administration is deeply concerned by the provisions in this bill that will weaken employer sanctions and anti-discrimination enforcement. We urge the Committee to amend S. 1394 to be consistent with the Administration's proposal.

- **Employment verification:** S. 1394, in contrast to the Administration's bill, rejects the principal worksite enforcement recommendation of the Commission on Immigration Reform which was to thoroughly test and evaluate verification techniques before implementing them nationwide. We urge the Committee to adopt our proposal to pilot programs with necessary privacy protections for 3 years and then request Congressional authorization to implement only methods of verification that work, are cost-effective, and are proven to protect the rights of U.S. citizens and other work

authorized individuals.

- **Anti-Discrimination:** Any increases in penalties for and enforcement of employer sanctions should be similarly made for enforcement of laws against immigration related employment discrimination. The intentional discrimination standard in the document abuse provision of S. 1394 will severely undermine anti-discrimination enforcement.
- **Employment documents:** We strongly support the reduction in the number of documents that can establish employment authorization.
- **Birth and Death Registry:** While we strongly support addressing document fraud, section 116 presents myriad constitutional, operational, and programmatic concerns and would impose a tremendous unfunded mandate on states and localities as well as a major burden on private individuals, such as having their fingerprints and Social Security numbers added to their birth certificates by age 16.

Part 3--Alien Smuggling; Document Fraud

The Administration is aggressively investigating, apprehending, and prosecuting alien smugglers. S. 1394 and the Administration bill have a common goal of significantly increasing penalties for alien smuggling, document fraud, and related crimes.

- **Penalty increases:** We support increases in the sentences for persons who commit document fraud or smuggle aliens.
- **New criminal offenses:** We support criminalizing the employment of an alien knowing that such alien is not authorized to work and that the alien was smuggled into the United States.

Part 4--Exclusion and Deportation

The Administration's comprehensive strategy for identifying and removing undocumented aliens has had significant success over the past three years. In Fiscal Year 1994, we deported a total of 39,788 undocumented aliens. In Fiscal Year 1995, we deported 28,500 criminal aliens and set a new record of 31,654 non-criminal alien removals. Our calendar year removals for 1995 are 14 percent higher than our removals in 1994 and 74 percent higher than the removals in 1990. The prospects for 1996 are even better because we will establish absconder removal teams and make strategic use of enhanced detention and transportation capacity.

- Special exclusion: We support special exclusion provisions which allow the Attorney General to order an alien excluded and deported without a hearing before an immigration judge when extraordinary situations threaten our ability to process cases and in the case of irregular boat arrivals.
- Interior Repatriation: We support pilot programs to deter multiple unauthorized entries, including interior and third country repatriation.

Part 5--Criminal Aliens

The Administration has made removals of criminal aliens a priority and achieved dramatic success. The number of criminal aliens removed from the United States jumped by 12% in 1993, and by 17.6% in 1994 over 1992 levels. More than four times as many criminal aliens were removed in 1994 than in 1988. Even more criminal aliens will be deported next year as we further streamline deportation procedures, expand the Institutional Hearing Program, and enhance the international prisoner transfer treaty program.

Subtitle B--Other Control Measures

Part 1--Parole Authority

Restricting the Attorney General's parole authority will jeopardize the Attorney General's ability to quickly and appropriately respond to compelling immigration emergencies.

Part 2--Asylum

The Administration, with critical resources from the Violent Crime Control and Law Enforcement Act of 1994, dramatically restructured the asylum process to allow the INS to quickly identify and promptly grant valid claims, and to refer all other cases to immigration court for deportation proceedings; to grant work authorization only to applicants who are granted asylum or when an applicant's case is not adjudicated within 180 days; and to streamline procedures to help asylum officers keep current with incoming applications.

To date, these reforms have had tremendous positive results. New asylum claims filed with the INS have dropped 57 percent. Asylum officers completed 126,000 cases in calendar year (CY) 1995 compared to 61,000 in CY 1994. Immigration Judges completed 40,000 asylum cases in CY 1995 compared to 17,000 in CY 1994--an increase of 135 percent. More than 98 percent of the new non-American Baptist Churches v. Thornburgh cases were completed by Immigration Judges within 180 days from the initial INS receipt of the asylum application. We have streamlined procedures without reducing the quality of our asylum decisions. INS has

instituted quality assurance procedures to monitor the new system. Approval rates have not changed significantly.

- 30 Day Time Limit: Imposition of a 30 day time limit in which to apply for asylum would create needless protracted litigation on the issue of when an alien entered the United States rather than on the merits of the asylum claim. This would be detrimental to immigration law enforcement and humanitarian protections for true asylees and might hinder our reform's success.

Part 3--Cuban Adjustment Act

Repeal of the Cuban Adjustment Act would detract from the Administration's goal of returning democracy to Cuba and regularizing the flow of immigration from Cuba.

Title II--Financial Responsibility

Part 1--Receipt of Certain Public Benefits

The Administration generally supports the denial of means-tested benefits to undocumented immigrants. The only exceptions should include: (1) matters of public health and safety such as emergency medical services, immunization and temporary disaster relief assistance; (2) every child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs; and (3) benefits earned as a result of United States military service. In addition, because housing assistance would continue to be governed by section 214 of the Housing and Community Development Act of 1980, it should be exempted from the provisions of this part. In denying means-tested benefits to undocumented aliens, care must be taken not to limit or deny benefits or services to eligible individuals or in instances where denial does not serve the national interest or where denial imposes an unreasonable burden on local or non-profit service providers.

The Administration generally supports tightening sponsorship and eligibility rules for non-citizens and requiring sponsors of legal immigrants to bear greater responsibility through legally enforceable sponsorship agreements for those whom they encourage to enter the United States. The Administration, however, opposes application of new eligibility and deeming provisions to current recipients, particularly with regard to the disabled who are exempted under current law, to immigrants who have become United States citizens, and to lawful immigrants seeking to participate in student financial aid programs. The Administration also opposes the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

Part 2--User Fees

We do not support a mandatory land border fee. A better alternative is to allow each state to determine at which, if any, ports the fee is to be collected.

Title III--Legal Immigrants: Classifications and Numerical Limits

The Administration seeks legal immigration reform that promotes family reunification, protects U.S. workers from unfair competition while promoting the global competitiveness of our employers, and promotes naturalization to encourage full participation in the national community. The Administration supports a reduction in the overall level of legal immigration consistent with these principles.

- Employer-sponsored visas should be set at a level, 100,000 visas per year, to address both the needs of American businesses and workers.
- Employment-based immigration to fill skill shortages is sometimes unavoidable. However, the hiring of foreign workers over domestic workers should be the rare exception, not the rule. If employers must turn to foreign labor, this is a symptom of defects in the Nation's skill-building system. A fee levied on employers sponsoring skill-based immigrants, with the proceeds dedicated to building the skills and enhancing the competitiveness of U.S. workers, forges an admirably direct link between the problem of skill shortages and the only valid long term solution-- investment in the U.S. workforce.

We are proposing to reform legal family-sponsored immigration in ways that are consistent with the Jordan Commission's recommendations, that reduce annual levels of legal immigration, and that reach those lower numbers faster. We recommend promoting naturalizations to reduce the second preference backlog, which is a priority for the Commission and the Administration, and maintaining first and third family preferences for reunification of adult children of U.S. citizens.

- First and Third Preferences and Parents: Family-sponsored visas for adult children of U.S. citizens and unlimited visas for mothers and fathers of U.S. citizens must be maintained to protect our cherished principle of family reunification as a cornerstone of immigration policy.
- Fourth Preference: For U.S. citizens, whose brothers and sisters have already applied and are waiting in the backlog, we support and want to reach agreement with

Congress on an appropriate and equitable grandfathering process that is consistent with our overall framework, priorities and principles.

- Health Insurance: We oppose the health and long term care insurance mandate imposed upon the mothers and fathers of U.S. citizens and disabled sons and daughters of U.S. citizens and lawful permanent residents. As currently drafted, the legislation requires purchase of coverage that is simply not available. Erecting such barriers would undermine the goals of family reunification.

Title IV--Nonimmigrants

The Administration agrees with the general objectives of the nonimmigrant program changes in the bill to address abuses in these programs and provide adequate protections to U.S. workers. These protections should be targeted especially to those employers who seek to obtain relatively low-skilled "professional" workers. In particular, in nearly all situations it is entirely unreasonable that an employer in this country--as a matter of public policy--not only does not have to test the domestic labor market for the availability of qualified U.S. workers before gaining access to foreign workers, but is actually able to lay off U.S. workers to replace them with temporary foreign workers. This is exactly what is happening now; our public policy tolerates it, perhaps encourages it, and our policy must change.

Since this summary does not address all of the Administration's comments on S. 1394, we ask the Committee to carefully consider our comprehensive views letter. Throughout that letter we have noted potential inconsistencies between some of the provisions of S. 1394 and our international treaty obligations, particularly with regard to our commitments under the World Trade Organization's General Agreement on Trade in Services and the North American Free Trade Agreement. We urge the Committee to ensure the bill's consistency with our treaty obligations.



Office of the Deputy Attorney General
Washington, D.C. 20530

February 14, 1996

Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch:

This letter presents the views of the Administration concerning S. 1394, the "Immigration Reform Act of 1995" as reported out of the Subcommittee on Immigration (Subcommittee) on November 29, 1995.

While the Administration strongly supports reform of the current immigration law that affects both illegal and legal immigration, and S. 1394 contains numerous responsible and thoughtful reforms, S. 1394 raises considerable concerns in specific areas that we hope the Committee will examine thoroughly before reporting the bill to the Senate floor. In particular, employment eligibility verification systems should contain necessary privacy protections and be piloted before any nationwide implementation. We urge the Committee to adopt our proposal to pilot programs for 3 years and then request Congressional authorization to implement only those pilot projects that work. Any increases in penalties for and enforcement of employer sanctions should be similarly increased for enforcement of laws against immigration related employment discrimination. The intentional discrimination standard in the document abuse provision of S. 1394 will severely undermine anti-discrimination enforcement. Labor and immigration law enforcement should be increased and coordinated. S. 1394 should adopt our proposal to hire 202 Department of Labor (DOL) Wage and Hour Staff to investigate and prosecute labor standards and employer sanctions violators. The birth and death registry provision presents myriad constitutional, operational, and programmatic concerns and would impose a tremendous unfunded mandate on states and localities as well as a major burden on private individuals, such as having their fingerprints and Social Security numbers added to their birth certificates by age 16.

Expedited exclusion procedures should be established in extraordinary situations the Attorney General deems appropriate. Imposition of a 30 day time limit in which to apply for asylum would create needless protracted litigation on the issue of when

an alien entered the United States (U.S.) rather than on the merits of the asylum claim. This would be detrimental to immigration law enforcement and humanitarian protections for true asylees.

Employer sponsored visas should be set at a level, 100,000 visas per year, to address both the needs of American businesses and workers. Family-sponsored visas for adult children of U.S. citizens and unlimited visas for mothers and fathers of U.S. citizens must be maintained to protect our cherished principle of family reunification. Similarly, we support and want to reach agreement with Congress on an appropriate and equitable grandfathering process for persons in the fourth preference backlog that is consistent with our overall framework, priorities and principles.

The deeming provision for benefit eligibility should not create an unprecedented, unconstitutional second class citizenship by extending beyond naturalization. The legislation should clarify that it does not call into question the full participation of any child in public elementary and secondary education, including pre-school and school lunch programs. We oppose the health and long term care insurance mandate imposed upon the mothers and fathers of U.S. citizens and disabled sons and daughters of U.S. citizens and lawful permanent residents. As currently drafted, the legislation requires purchase of coverage that is simply not available.

Repeal of the Cuban Adjustment Act would detract from the Administration's goal of returning democracy to Cuba and regularizing the flow of immigration from Cuba. In addition, restricting the Attorney General's parole authority will jeopardize the Attorney General's ability to quickly and appropriately respond to compelling immigration emergencies. Finally, we urge the Committee to ensure the bill's consistency with our international treaty obligations.

Many of the provisions in S. 1394 advance the Administration's strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and securing from Congress the resources to assist states with the costs of illegal immigration. Many of the provisions of S. 1394 are identical or similar to provisions in the Administration's bill, S. 754, the "Immigration Enforcement Improvements Act of 1995."

The Administration endorses a framework of legal immigration reform that respects our immigration tradition while achieving a moderate reduction in overall admission numbers to promote economic opportunities for all Americans. The Administration

seeks legal immigration reform that promotes family reunification, protects U.S. workers from unfair competition while providing employers with appropriate access to international labor markets to promote our global competitiveness, and promotes naturalization to encourage full participation in the national community.

This Administration appreciates the continued opportunity to work with you and other members of the Committee. Our positions on the individual provisions of S. 1394 are outlined in the following section-by-section discussion.

Title I--Immigrant Control

Part 1--Additional Enforcement Personnel

The Administration has already demonstrated that our borders can be controlled when there is a commitment to do so by the President and Congress. With an unprecedented infusion of resources since 1993, we have implemented a multi-year border control strategy of prevention through deterrence. We have carefully crafted long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore integrity to the border. The results of our flexible approach are reflected in the successful implementation of Operations "Hold-The-Line" in El Paso, "Gatekeeper" in San Diego, and "Safeguard" in Arizona. We have increased the number of Border Patrol agents by 40% since 1993 -- higher levels of staffing than ever before. Those agents are also backed up by the highest level of support than ever before. For the first time in over a decade we are backfilling positions previously left vacant by attrition. We are committed to achieving a strength of more than 5,600 Border Patrol agents by the end of Fiscal Year 1996 and more than 7,000 agents by the end of Fiscal Year 1998. Border Patrol personnel are now equipped with new and sophisticated technology and basic support allowing them to work more effectively. We appreciate the efforts by Congress to authorize and appropriate more funds for Border Patrol agents and equipment. We look forward to working together to further improve border management and control.

Section 101 mandates the Attorney General in Fiscal Years 1996 through 2000 to increase the number of Border Patrol agents by no fewer than 700 each year and authorizes the Attorney General to increase by not more than 300 the number of Border Patrol support personnel each Fiscal Year from 1996 through 2000.

For Fiscal Year 1996, the Administration will start the training of 1480 new Border Patrol agents and complete the training of and deploy 700 new agents. We note with approval the similarity between S. 1394 and S. 754. However, we urge the Committee to incorporate the Administration's language which

would require that the hiring of Border Patrol agents be to the maximum extent possible consistent with standards of professionalism and training and to strike the limitation on the number of support personnel who can be hired.

Section 102 authorizes funding for 300 new positions for each of Fiscal Years 1996 through 1998 for investigators and support personnel to investigate alien smuggling and enforce employer sanctions.

We support an increase for personnel to investigate alien smuggling and enforce employer sanctions. However, we are concerned that this section does not provide the level of enforcement resources sought by the President. The President's Fiscal Year 1996 budget contained such an increase and also requested 202 new DOL Wage and Hour and other personnel to enhance enforcement of employer sanctions and labor standards laws. In order to underscore Congress' commitment to this important law enforcement function, we urge that section 102 be amended to specifically authorize this increase in DOL personnel.

This section would also limit administrative expenditures for the payment of overtime to an employee for any amount over \$25,000. The restrictions on overtime expenditures currently apply because they are included in the Fiscal Year 1995 Commerce, Justice, State Appropriations Act. The President's Fiscal Year 1996 budget request also includes these restrictions.

Section 103 mandates the Attorney General and Secretary of the Treasury to increase the number of land border inspectors by approximately equal numbers in Fiscal Years 1996 and 1997 to a level that will provide full staffing to end undue delay and facilitate inspections.

We strongly support increased service and inspections at land ports of entry. S. 754 includes a Border Services User Fee for this purpose. We urge the Committee to adopt the language from the Administration provision both here and in section 211 of S. 1394.

Part 2--Eligibility to Work and to Receive Public Assistance

Jobs are the greatest magnet for illegal immigration. Thus, a comprehensive effort to deter illegal immigration, particularly visa overstaying, must make worksite enforcement a top priority. The President's Fiscal Year 1996 budget requested 202 new DOL Wage and Hour and other personnel to enhance enforcement of laws prohibiting employment of unauthorized aliens and assuring minimum labor standards, including sweatshop enforcement. Enforcement efforts will focus on selected areas of high illegal immigration. Already the Atlanta and Dallas District Offices of the Immigration and Naturalization Service (INS) have

successfully conducted Operation SouthPAW (Protecting America's Workers) and Operation Jobs, unprecedented interior enforcement initiatives which are designed to place authorized U.S. workers in job vacancies created by the arrest of unauthorized workers during worksite enforcement surveys. The Administration is deeply concerned by the provisions in this bill that will weaken employer sanctions and anti-discrimination enforcement.

With regard to Federal benefits, under current law the status of aliens applying for major federal benefits is generally verified through direct access to INS via the Systematic Alien Verification for Entitlement program (SAVE), enacted by section 121 of the Immigration Reform and Control Act of 1986 (IRCA). The SAVE process seeks to ensure that each applicant born outside the U.S. is properly identified as a U.S. citizen, or as an eligible immigrant and to prevent unauthorized immigrants from receiving benefits for which they are ineligible. The SAVE process of verifying eligibility has worked well. Recently, SAVE was awarded the Federal Technology Leadership Award for 1995. Nevertheless, the Administration is conducting a review of the SAVE system to determine if improvements or changes are appropriate. We believe that the creation of a new system at this time would be premature, duplicative and unnecessary and would also siphon resources away from other enforcement priorities.

Section 111(a) requires the Attorney General, together with the Commissioner of Social Security, to establish within eight years a system to verify eligibility for employment and eligibility for benefits provided or funded by any Federal, State, or local government agency, as described in section 201 of this Act.

While we agree that verification systems are critical to immigration enforcement, we strongly oppose the requirement that permanent national verification systems be established within eight years. Under the Administration bill, pilot programs will be tested and evaluated for three years so that the technical feasibility, cost effectiveness, resistance to fraud, and impact on employers and employees can be assessed and determined. S. 754 authorizes employment verification pilot projects, which will improve the INS databases; expand the Social Security Administration (SSA) databases; simulate links of INS and SSA databases; expand the Verification Information System, formerly called the Telephone Verification System, for non-citizens to 1,000 employers; and test a new two-step process for citizens and non-citizens alike to verify employment authorization using INS and SSA data. The pilots will be built to guard against document fraud, discrimination, and violations of privacy. After three years, the pilots will be evaluated on the bases of deterrence of illegal immigration, discrimination, privacy, technical feasibility, cost effectiveness, impact on employers, and

susceptibility to fraud. We will request permanent authority from Congress only for methods that work, are cost-effective, and prove themselves capable of protecting citizens' and legal workers' rights. While we are pleased with the initial success of our pilot programs, careful review and evaluation are critical before mandated nationwide implementation both to improve their effectiveness and to prepare the nation's employers and employees.

As stated in our introduction to Part 2, under current law, the status of aliens applying for benefits is generally verified through direct access to INS via the SAVE program. The SAVE program attempts to ensure that each applicant born outside of the U.S. is properly identified as a U.S. citizen, or as an eligible immigrant and prevents unauthorized immigrants from receiving benefits for which they are ineligible. Since our review of the SAVE program is currently in process, we have not included the benefit programs in our proposed pilot projects.

We also urge the Committee to clarify that the phrase "eligibility for benefits provided or funded by any Federal, State, or local government agency, as described in section 201 of this Act" is limited to programs that provide benefits directly to individuals, and not programs such as Federal assistance provided to schools to assist disadvantaged children.

Under section 111(b), the system must be capable of reliably determining whether the person is eligible and whether the individual whose eligibility is being verified is claiming the identity of another person. It requires any document used by the system to be tamper-proof and prohibits its use as a national identification card except to verify eligibility for employment or benefits, to enforce the fraud provisions of Title 18, U.S.C., if the document was issued by the INS, or, if the document was designed for another purpose (e.g., driver license, certificate of birth, Social Security card), as required under law for that other purpose.

We agree that no legislative language should be included that could be construed to authorize, directly or indirectly, the establishment, issuance or use of national identification cards.

Section 111(b)(3) provides that the system may not be used other than to enforce the INA, the fraud provisions of Title 18, U.S.C., local laws relating to eligibility for certain Government-funded benefits, or laws relating to any document used by the system that was designed for another purpose. We support this provision.

Section 111(b)(4) provides that the privacy and security of personal information and identifiers obtained for and utilized in the system must be protected in accordance with industry

standards for privacy and security of confidential information. No personal information obtained from the system may be made available to any person except to the extent necessary for the lawful operation of the system.

Protecting citizens' and other authorized workers' privacy rights is fundamental. The bill's reliance upon industry standards is vague and is not adequate to protect the important personal privacy and security interests of employment authorized individuals. The Administration proposal requires that an employer participating in a pilot program have in place such procedures as the Attorney General shall require to safeguard all personal information from unauthorized disclosure and condition redisclosure of such information to any person or entity upon its agreement also to safeguard such information. The Administration proposal also (1) requires notice to all individuals of the right to request an agency to correct or amend the individual's record and of the steps to make such a request; (2) applies appropriate remedies and civil fines for unauthorized disclosure; and (3) provides that no adverse employment action (e.g. firing, demotion, change of title or duties) occur while the employee is challenging the accuracy of the eligibility information during the secondary verification or thereafter, until the situation has been corrected or verified. We strongly urge the inclusion of these privacy safeguards.

Section 111(b)(5) provides that a verification of eligibility may not be withheld or revoked for any reason other than the person's eligibility. We support this provision.

Section 111(c) relieves an employer from liability under section 274A of the INA if (1) the alien appeared throughout the term of employment to be prima facie eligible for employment, (2) the employer followed all procedures required in this new verification system, and (3) the alien was verified under such system as eligible for employment, or a secondary verification procedure was conducted with respect to the alien and the employer discharged the alien promptly after receiving notice that the secondary verification procedure failed to verify the eligibility of the employee.

We do not support this provision because it is unnecessary and potentially confusing. An employer who complies with employee verification requirements is not liable for employer sanctions penalties under current law and regulations. We are concerned that this provision could have an unintended effect of increasing employer challenges to 274A enforcement efforts. Furthermore, the Administration's pilot program called the Verification Information System gives an employee an additional opportunity after a failed secondary verification to verify eligibility for employment.

Section 112 directs the Attorney General, together with the Commissioner of Social Security, to conduct 3-year demonstration projects in five States to verify eligibility for employment and for benefits provided or funded by any Federal, State, or local government agency, as described in section 201 of this Act.

S. 754 provides for pilot projects to test various employment eligibility verification methods as described in the previous section. As described in our introduction to Part 2, we believe demonstration pilots are unnecessary for verification of eligibility for benefits, since our current system, SAVE, works well for noncitizens. We also believe that demonstration pilots must be evaluated before the creation of permanent new verification systems. Simultaneous implementation of both pilot projects and a permanent national verification system is a burdensome, unnecessary, and costly duplication of effort.

Section 113 provides for an automated system with on-line access for verifying employment and public assistance eligibility to be administered by a newly established Office of Employment and Public Assistance Eligibility Verification within the Department of Justice (DOJ).

We support enhancing the various immigration database systems and are currently doing so. S. 754 authorizes employment verification pilot projects that will expand the Social Security Administration (SSA) databases and simulate links of INS and SSA databases. However, we do not support section 113 because it builds the specifics of an automated verification database into statute when the technical feasibility, cost effectiveness, resistance to fraud, and impact on employers and employees have not been assessed and determined through pilot projects. We are concerned that the requirement that information be placed into the system within 10 business days will create an undue burden on INS resources. We also must reiterate our concerns that, as with section 111(b), privacy is not adequately protected. For example, a realtor or lender could request and obtain employment eligibility information on a customer without running afoul of section 1113(b)'s limitation on data use. Moreover, such information could be used by the realtor or lender to discriminate against U.S. citizens and legal aliens who look or sound "foreign."

As described in sections 111(a) and 112, the Administration supports testing various verification approaches over the next three years. We will request permanent authority from Congress for pilot projects that work based upon a thorough evaluation. Creation of a new Office of Employment and Public Assistance Eligibility Verification within the DOJ is duplicative of ongoing programs within the INS and other federal agencies. We believe that the effective way to administer this program is to retain the current responsibilities of gathering and verifying data

within the contributing agencies, INS and the SSA.

Section 114 authorizes the Attorney General to require an individual to provide his or her Social Security account number for purposes of complying with this section. S. 754 has a similar provision, and we support this provision.

This section also limits the documents which establish both employment authorization and identity to the U.S. passport and resident alien card containing appropriate security features. It limits the documents that establish employment authorization to the Social Security card and Employment Authorization Document. The section also gives the Attorney General the authority to restrict the use of certain documents establishing employment authorization or identity, if she finds the document is being used fraudulently to an unacceptable degree. This section shall apply to hiring beginning no more than 180 days from the date of enactment of the Act.

S. 754 has a similar provision, and we support this section's limitation on the number of documents. Although S. 754 contained the same effective date, on further consideration of technological capabilities we would like to work with the Committee on an appropriate timeframe for implementation.

Sec. 115 provides that an employer's request for more or different documents to verify an employee's employment eligibility or an employer's refusal to honor documents that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice only if made for the purpose or with the intent of discriminating against the employee because of his or her national origin or citizenship status.

We strongly oppose this section because of its potentially harmful and discriminatory impact on U.S. citizens, legal permanent residents, and all work-authorized persons who appear or sound "foreign". Under this section, all work-authorized persons--including citizens and legal permanent residents--who possess valid acceptable documentation of work eligibility under the law, but who do not possess the specific documents required by a certain employer, could lose a job and have no legal remedy. The DOJ Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC) currently litigates on behalf of such employees. In Texas, a publishing company refused to hire a native born U.S. citizen of Hispanic descent because she presented a state identification card and a Social Security card instead of a birth certificate. In Virginia, a janitorial service firm fired a naturalized U.S. citizen of Guatemalan descent after demanding to see his "green card" and U.S. passport and rejecting his driver's license, Social Security card and voter registration card. In Colorado, a major meatpacking

company discharged seven work authorized employees when they could not produce INS-issued work authorization extension documents although all seven had other legally sufficient evidence of their continued employment eligibility. This section would provide no remedy for such individuals who are unfairly denied jobs.

Under section 114, it will be difficult, if not impossible, for the OSC to demonstrate that the employer's conduct regarding documentation is tied to the national origin or citizenship status of the individual. Under section 115, all work authorized persons, citizens and non-citizens alike, who possess valid acceptable documentation under the law, but who do not possess the exact documents required by a specific employer, could lose an opportunity for employment and livelihood on that basis alone and have no legal remedy. If the driving force behind an employer's conduct is fear of INS sanctions, very few cases will be actionable, since it will be extremely difficult, if not impossible, to meet the proposed intent requirement. The employer will claim to be avoiding sanctions rather than discriminating intentionally. Clearly, the brunt of this change will fall on those who look or sound "foreign" -- legal immigrants and minority U.S. citizens -- because employers will be most critical of documentation produced by those persons most likely to lead to sanctions. Employers could pretextually support their alleged non-discriminatory position by highlighting the percentage of minority and non-U.S. citizens in their workforce to show that they have no reason to treat minorities or non-U.S. citizens more harshly in the employment verification process, but the effect on those authorized workers who do not have the specific documents requested by the employer will be the same: loss of employment and livelihood.

Congress knew when it enacted IRCA's anti-discrimination provision that fear of sanctions could result in employer discrimination against citizens and work-authorized aliens, especially those who "look or sound" foreign. When IRCA's antidiscrimination provision became law in 1986, Congress did not include an intent element in the prohibitions against citizenship-status or national origin discrimination. In 1990, when the document abuse provision was added to the law, the intent element was also absent. Thus, the protection afforded by the antidiscrimination provision was designed to protect workers not only from invidious discrimination, but also from employment discrimination resulting from employers' negligence or ignorance.

The Administration has worked closely and cooperatively with employer associations to educate them about their responsibilities under the law. Employer education efforts, including directly funding efforts by employer associations themselves and reducing the number of documents an employer must accept, have reduced the burdens on employers. By contrast,

section 115 would allow discrimination against U.S. citizens and authorized workers to go unchecked. We strongly urge the Committee to delete this section.

In addition, we urge the Committee to clarify the authority of the OSC to litigate pattern and practice cases and to grant the OSC the authority to investigate and prosecute discrimination charges involving the terms and conditions of employment.

Sec. 116 provides that all copies of birth certificates distributed by states or local agencies be issued in a standard form whose requirements are to be set forth by regulations issued by the Department of Health and Human Services (HHS) after consultation with other agencies. State and local government agencies would be prohibited from accepting for evidentiary purposes a birth certificate issued in any other form, or issued by any entity other than a state or local government agency. No state or local government agency may issue an official copy of a birth certificate unless it has ascertained from the Social Security Administration (SSA) whether the person to whom the requested birth certificate pertains is deceased. No state or local government agency may accept a birth certificate for any evidentiary purpose, unless it has verified the certificate with the issuing agency or a new national birth registry that the SSA may establish, and unless it has verified with the SSA that the certificate does not pertain to a deceased person. A copy of any death certificate issued in the U.S. must be sent to the SSA (presumably by the issuing entity).

The Administration supports the objective of addressing breeder document fraud. However, this section presents myriad constitutional, operational, and programmatic concerns, on which we want to work with the Committee. First, it is not clear what enumerated power gives the federal government the authority to regulate birth certificates in this way. The Supreme Court has interpreted the federal government's authority over immigration quite broadly, but the relevant cases involved statutes that explicitly dealt with immigrants. See Fiallo v. Bell, 430 U.S. 787 (1977); Mathews v. Diaz, 426 U.S. 67 (1976). Section 116, though part of an immigration bill, does not by its terms involve immigration or immigrants; rather, it applies to all birth certificates. Indeed, by its silence with regard to foreign birth certificates, it appears to apply only to U.S. citizens and to make a foreign born person's birth certificate unacceptable for identification. In light of the scope of section 116 and the absence of relevant cases, we are uncertain whether the Court would conclude that the bill is within the federal government's immigration authority. In addition, insofar as section 116 imposes non-ministerial duties on the states or compels policy decisions, it could be challenged as violative of the principles underlying the Tenth Amendment, under New York v. United States, 112 S. Ct. 2408 (1992).

We strongly oppose requiring Social Security Numbers (SSNs) and fingerprints on all birth certificates. Given the wide distribution and use planned for them, placing SSNs on birth certificates could actually facilitate fraud. Under this provision, every person's name, along with other identifying information, including a fingerprint, would be joined on the birth certificate with a verified SSN. Placing the SSN together with so much other personally identifying information would make it much easier for criminals who obtain copies of these birth certificates to commit fraud by assuming an individual's identity. The documents will be used extensively and subject to loss or theft. Moreover, the provision does not require the States to maintain the confidentiality of the SSN information that would be placed in their vital statistics records. Without such safeguards, the effect of this provision could be to make the SSNs and fingerprints of every individual born in the United States a matter of public record and, therefore, available to the public at large, including to individuals who intend to use the information to commit fraud. No state now makes this information generally available to members of the public simply upon request. In addition, requiring SSNs and fingerprints on all birth certificates would make the birth certificate a de facto national identification document, which is contrary to the intent of S. 1394 and S. 754.

Although SSA is not an official custodian of death data, SSA does receive death data from States and other sources. However, SSA is missing death data for an estimated 50 million persons to whom SSNs were issued. Since most of these represent deaths occurring before SSA began receiving death data from the States, the States would have to furnish such data. Furthermore, because many deaths involve children who were never issued SSNs, SSA could not maintain death records for these individuals without first assigning them SSNs. Moreover, current State death data are only 94 percent accurate. For the remaining six percent of cases, we are troubled by the anomalous and quite inadvertent predicament in which section 116 might place a live U.S. citizen-denial of a birth certificate because of the existence of a discrepancy in a record or a missing record indicating the person is dead.

Section 116 would impose a tremendous unfunded mandate with prohibitive costs on States and localities, as well as subject private individuals to burdensome requirements, such as having their fingerprints added to their birth certificates by age 16. This section also would impose very substantial unbudgeted workload requirements on the SSA and the INS. SSA does not have the existing technological infrastructure or FTE's to accept the responsibilities required in section 116(a)(4) and (5). Since SSA is not authorized to use its trust funds for non-program purposes such as those envisioned by section 116, a specific appropriation of new funds would be required. The requirement

that INS verify the authenticity of each birth certificate would cause an excessive workload burden on INS offices. The INS inspects over 500 million persons each year. We cannot verify every birth certificate presented as evidence of citizenship.

We ask that the following issues be clarified: (1) whether the requirements of this provision would be prospective only or retroactive; and (2) whether persons born abroad would have to obtain new birth certificates. Sec. 116(a)(3) and 116(b)(4) should be amended to replace "Passport Office" with "Department of State". Sec. 116(a)(3) also should be modified to read at the end "unless it is a foreign birth certificate for a person who is claiming acquisition of citizenship through birth abroad." Sec. 116(a)(5) should be modified to read "A copy of every death certificate issued in the United States and Report of Death Abroad issued by the Department of State shall be sent to the Social Security Administration." In addition, the term "birth certificate" should be defined as the certified copy of the birth certificate which is issued to individuals by state and local agencies for identification and other purposes.

Sec. 117 amends section 274(e)(4)(A) of the INA to increase the civil penalties for employer sanctions for first violations from the current range of \$250 to \$2,000 to a range of \$1,000 to \$3,000. The subsection also increases penalties for second violations from the current range of \$2,000 to \$5,000 to a range of \$3,000 to \$8,000. The penalties for subsequent violations are increased from a range of \$3,000 to \$10,000 to a range of \$8,000 to \$25,000.

This provision is identical to the Administration's proposal, and we support it. However, we believe that the penalties for immigration related discrimination, as covered by section 274B(g) of the INA, should be similarly increased. Members of this Committee made an important decision in the Immigration Act of 1990 to have the same penalties for both the anti-discrimination provisions and employer sanctions. Symmetry remains critical in these closely associated areas. Imbalance has the potential to create a financial incentive for employers to violate the lesser penalized statute of anti-discrimination law to avoid the higher penalties of the employer sanctions statute. This section will also eliminate the perception that there is an order of preference in enforcement efforts.

To further harmonize the sanctions and the anti-discrimination provisions of the INA, we urge the Committee to grant express authority to the Office of Special Counsel to pursue pattern or practice violations based on independent investigations, and that penalties equal to those set forth in the pattern or practice section of the employer sanctions provision be added for engaging in a pattern or practice of the antidiscrimination provision.

Sec. 117(b) increases the penalties for employer sanctions paperwork violations from the current range of \$100 to \$1,000 to a range of \$200 to \$2,500.

We support this provision. S. 754 increases the penalties to a range of \$200 to \$5,000. However, for the reasons described above, we believe that the penalties for immigration-related discrimination, as covered by section 274B(g) of the INA, should be similarly increased.

Sec. 117(c) increases the criminal penalty for pattern and practice violations of employer sanctions to a felony offense, increasing the applicable fines from \$3,000 to \$9,000 and the criminal sentence which may be imposed from not more than six months to not more than two years.

We support this provision. S. 754 has a similar provision which raises the applicable fines to \$7,000 and the maximum criminal sentence to two years.

Sec. 117(d) authorizes an administrative law judge to increase the civil penalties provided under employer sanctions to an amount up to two times the normal penalties if labor standards violations are present.

This provision is identical to the Administration's proposal, and we support it. However, we believe that this authority should also be extended to cover immigration-related discrimination, as covered by section 274B(g) of the INA.

Sec. 118 credits any employer sanctions penalties received in excess of \$5,000,000 to the INS Salaries and Expenses appropriations account that funds activities associated with employer sanctions enforcement.

This provision is identical to the Administration's proposal, and we support it.

Sec. 119 authorizes the Attorney General to hire for Fiscal Years 1996 and 1997 such additional Assistant U.S. Attorneys as may be necessary for INA prosecutions.

The President's Fiscal Year 1996 budget request includes resources to hire new Assistant U.S. Attorneys and support personnel to enhance immigration law enforcement. We support this provision.

Sec. 120 amends the INA to clarify that immigration officers may issue subpoenas for investigations of employer sanctions offenses under section 274A. This section also authorizes the Secretary of Labor to issue subpoenas for investigations relating to the enforcement of any immigration program. It makes the

authority contained in sections 9 and 10 of the Federal Trade Commission Act available to the Secretary of Labor. The Federal Trade Commission Act provisions allow access to documents and files of corporations, including the authority to call witnesses and require production of documents.

This provision is identical to the Administration's proposal, and we support it.

Sec. 120A creates an Office for the Enforcement of Employer Sanctions within the INS. The functions of this Office are to investigate and prosecute employer sanctions violations and to educate employers on the requirements of the law to prevent employment discrimination. This section authorizes \$100,000,000 to be appropriated to the Attorney General to carry out the functions of the Office.

Creation of a new Office for the Enforcement of Employer Sanctions is duplicative of ongoing programs within the INS and the DOJ OSC. The INS and the OSC are effectively carrying out their responsibilities to investigate and prosecute employer sanctions violations, employer discrimination violations, and to educate both employers about their responsibilities and employees concerning their rights under the Act. Thus, we urge the Committee to strike this section altogether as unnecessary and duplicative. It is critical that the protection of employees from employment discrimination remain within the jurisdiction of the Civil Rights Division which has tremendous expertise and experience in this area. Resources, not reorganization, will assist these important law enforcement and education efforts. Without resources, reorganization is ineffective. With resources, reorganization is unnecessary.

As we stated in sections 115 and 117, Congress recognized that a symmetry was necessary between penalizing the hiring of unauthorized workers and protecting employees from employment discrimination. An emphasis on penalizing unauthorized workers without a parallel emphasis on protecting employees from discrimination could create an unacceptable imbalance. In protecting employees from discrimination, educating employees about their rights under the law is just as important as educating employers about their responsibilities under the law. This section fails to mention employee education. In 1990, the Congress authorized the OSC to educate both employers and employees about the law's antidiscrimination provisions. We urge the Committee to create a balance between efforts to educate employers and efforts to educate employees. We support appropriation of additional funds to support Administration efforts to fight illegal employment and discrimination.

PART 3--ALIEN SMUGGLING; DOCUMENT FRAUD

The Administration is aggressively investigating, apprehending, and prosecuting alien smugglers. The INS, Federal Bureau of Investigation, Department of State, and Coast Guard have been sharing and developing information on numerous smuggling endeavors. As a result of these efforts over 200 significant alien smuggling investigations were initiated in Fiscal Year 1994. Similar efforts are being conducted to combat document fraud. INS is adding new staffing positions to investigate and prosecute an increased number of fraudulent document vendors. This includes targeting major suppliers of fraudulent documents and employers who knowingly accept such documents as proof of employment authorization. In general Part 3 appropriately cracks down on alien smugglers and individuals involved in document fraud. We are pleased the Committee has adopted many provisions from the Administration's bill.

Sec. 121 grants wiretap authority for investigations of alien smuggling, identification document fraud, citizenship and naturalization procurement and document fraud, and passport and visa fraud.

This provision is similar to the Administration's proposal, and we support it.

Sec. 122 amends 18 U.S.C. 1961(1) to include alien smuggling, identification document fraud, naturalization and citizenship procurement and document fraud, and visa and passport fraud offenses committed for personal financial gain as predicate offenses for racketeering charges.

S. 754 contains a similar provision, but it does not include identification document fraud, naturalization and citizenship procurement and document fraud, and visa and passport fraud offenses (18 U.S.C. §§ 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1546). We urge the Committee to adopt the S. 754 provision. We would prefer that the Committee directly increase the penalties for violating these statutes rather than adding them as RICO predicates. Direct increases in penalties would be the more effective way to strengthen the punishment for these crimes.

Sec. 123 adds conspiracy and aiding to alien smuggling offenses. This would subject conspirators to increased penalties for alien smuggling offenses rather than the penalty under the general conspiracy statute. This section provides that a person who smuggles aliens shall be fined or imprisoned for each alien to whom a violation occurs and not for each transaction constituting a violation, regardless of the number of aliens involved. This section also increases the penalties for alien smuggling offenses to not less than 3 years or more than 10 years for a first offense, to not less than 5 years or more than 10 years for a second offense, and to not less than 10 years or more

than 15 years for subsequent offenses.

S. 754 also adds conspiracy and aiding to alien smuggling offenses. We support the requirement that an alien smuggler be fined or imprisoned for each alien rather than for each transaction. However, while we do not object to increasing the maximum penalties for alien smuggling offenses, we do not believe that mandatory minimums are appropriate in this context. Providing for mandatory minimum penalties in this context would produce anomalous results compared to penalties for other offenses of comparable severity. The penalty for each alien rather than each transaction is a vastly more potent weapon against alien smugglers.

Sec. 123(a)(5) makes it a criminal offense to hire an alien with knowledge that the alien is not authorized to work and that the alien was smuggled into the U.S. The penalty for violating this section is a fine and imprisonment for not less than 2 years or more than 5 years.

S. 754 also criminalizes the employment of an alien knowing that such alien is not authorized to work and that the alien was smuggled into the U.S. However, S. 754 provides for a term of imprisonment for not more than 5 years. The Administration does not believe that mandatory minimums are appropriate in this context. Such mandatory minimums would produce anomalous results in this context.

Sec. 123(b) creates a new offense for smuggling aliens with the intent or with reason to believe that the alien brought into the U.S. will commit an offense against the U.S. or any State punishable by imprisonment for more than one year.

This provision is substantially similar to the Administration's proposal, and we support it.

Sec. 123(c) directs the Sentencing Commission to promulgate or amend guidelines to provide that an offender convicted of smuggling, transporting, or harboring an unlawful alien under dangerous or inhumane conditions shall be assigned a base offense level of at least 22 for a first offense, at least 26 for an offender with one prior felony conviction, at least 32 for an offender with two prior felony convictions, an enhancement of between 2 and 6 levels in the case of bodily injury to such alien in proportion to the severity of the injury inflicted, and a base offense level of at least 41 in the case of the death of an alien.

Although the direction to the Sentencing Commission generally would provide for higher sentences than what the DOJ had proposed to the Sentencing Commission during this amendment cycle, we do not object to it.

Sec. 124 provides that the videotaped deposition of a witness to a violation of section 274(a) of the INA who has been deported from the U.S. may be admitted into evidence in an action brought for that violation if the witness was available for cross examination.

We support this provision.

Sec. 125 provides that any property, real or personal, which facilitates or is intended to facilitate, or which has been used in or is intended to be used in the commission of a violation of, or which constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of subsection 274(a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C., shall be subject to seizure and forfeiture. No property used by any person as a common carrier in the transaction of business shall be forfeited unless the owner or other person in charge of such property was a consenting party or privy to the illegal act. Also, no property shall be forfeited by reason of any act or omission established by the owner to have been committed or omitted by any person other than the owner while the property was unlawfully in the possession of a person other than the owner in violation of federal or state criminal laws. No property may be forfeited to the extent of an interest of any owner, by reason of any act or omission established by the owner to have been committed without the owner's knowledge or consent, unless the act or omission was committed by an employee or agent of the owner, and facilitated or was intended to facilitate, or was used in or intended to be used in, the commission of a violation of subsection (a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of title 18, U.S.C., which was committed by the owner or which was intended to further the business interests of the owner, or to confer any other benefit upon the owner.

It amends section 274(b)(2) by striking "conveyance" and inserting "property" and by striking "is being used in" and inserting "is being used in, is facilitating, has facilitated, or was intended to facilitate." It provides that before the seizure of any real property, the Attorney General shall provide notice and an opportunity to be heard to the owner of the property.

This section is similar to the Administration's proposal. However, section 125's proposed new paragraph (E) to section 1324(b)(4) is unnecessary. The statute incorporated by reference therein (19 U.S.C. § 1616a(c)) is already incorporated into and made applicable to 8 U.S.C. § 1324(b) forfeitures. See 8 U.S.C. § 1324(b)(3) (incorporating the customs laws forfeiture procedures (19 U.S.C. § 1602 et seq.) by reference). We also recommend that conspiracy to commit any of the violations

included in this section be added as predicate offenses.

Sec. 126 provides that any person convicted of a violation of subsection 274(a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C., shall forfeit to the U.S. any conveyance, including any vessel, vehicle, or aircraft used in commission of a violation of 274(a) of the INA, and any property, real or personal, that constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of, or that facilitates or is intended to facilitate, or has been used in or is intended to be used in the commission of a violation of subsection 274(a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C.

The criminal forfeiture of property under this provision, including any seizure and disposition of the property and any related administrative or judicial proceeding shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, except for subsections 413(a) and 413(d) which shall not apply to forfeitures under this provision.

The provision is similar to the Administration's proposal, and we support it. We note, however, that the appropriate reference to the criminal provisions for alien smuggling are sections 274(a)(1) and (2) of the INA, and not 274A. We also recommend that conspiracy to commit any of the violations included in this section be added as predicate offenses.

Sec. 127 establishes the illegality of bringing inadmissible aliens from foreign contiguous territories. It increases from \$3,000 to \$5,000 the fine for bringing in an alien unlawfully.

This provision is identical to the Administration's proposal, and we support it.

Sec. 128 increases the term of imprisonment for identification, passport, visa, naturalization, and citizenship document fraud from not more than five years to not more than 10 years for a first offense if the offender is under the age of 21. If the offender is 21 years of age or older, the term of imprisonment for a first offense is not less than 2-1/2 or more than 10 years; for a second offense, not less than 5 years or more than 10 years; for subsequent offenses, not less than 10 or more than 15 years. The maximum term of imprisonment is up to 15 years if committed to facilitate a drug trafficking offense, and up to 20 years if committed to facilitate an act of international terrorism.

S. 754 amends 18 U.S.C. 1028(b)(1) on identification document fraud to increase the maximum term of imprisonment from 5 to 10 years. S. 754 has identical provisions for section 1028(b)(1) violations committed to facilitate a drug trafficking offense or an act of international terrorism.

For consistency we believe that any provisions affecting sections 1542-1546 in Chapter 75 (passports and visas) of title 18 U.S.C. should include section 1541 (relating to passport issuance without authority), which currently carries the same maximum penalties as the other Chapter 75 statutes.

The Administration does not object to increasing the maximum penalties for third and subsequent offenses. However, we do not believe that the mandatory minimums in this section are appropriate. Providing for mandatory minimum penalties in this context would produce anomalous results compared to penalties for other offenses of comparable severity, particularly many white collar crimes.

The Sentencing Commission recently adopted guideline amendments which became effective on November 1, 1995, and will significantly increase the punishments for these offenses. In our view, the Commission's guideline amendments should be given an opportunity to work before additional changes are made.

Sec. 129 adds a new penalty to 18 U.S.C. 1546(a) for presenting a document that contains a false statement or that fails to contain any reasonable basis in law or fact.

We support this provision.

Sec. 130 adds a new criminal provision to section 274C of the Act which penalizes any person who knowingly and willfully fails to disclose, conceals, or covers up the fact that he or she has prepared or assisted in preparing an application for asylum which was falsely made for immigration benefits. A violation of this provision is a felony and a fine or imprisonment for 2 to 5 years, or both, may be imposed. This section prohibits a person who has been convicted of this offense from any further involvement in the immigration application process. Anyone convicted of a subsequent violation is punishable by a fine, 5 to 15 years imprisonment, or both.

Current criminal statutes are adequate to punish this type of illegal conduct. Stepped up investigation efforts have led to indictments for fraudulent preparation of spurious asylum claims in New York, Los Angeles, San Francisco, and Arlington, Virginia. We do not believe that a new and special offense is needed to prosecute a person involved in assisting in fraud in the asylum process. Furthermore, mandatory minimum sentences are not appropriate in this context.

Sec. 131 inserts an additional violation to section 274C of the Act, by prohibiting preparing, filing, or assisting another in preparing or filing documents which are falsely made, in reckless disregard of the fact that the information is false or does not relate to the applicant. This section also adds a penalty for those aliens who present a document upon boarding a carrier bound for the U.S. and then fail to present a document to the inspector at the port of entry. A discretionary waiver for penalties is provided if an alien is subsequently granted asylum or withholding of deportation.

This provision is substantially similar to the Administration's proposal, and we support it.

This section also creates new civil penalties if the document fraud is committed in order to obtain a benefit under the INA. This section authorizes an administrative law judge to double civil penalties for document fraud if labor standards violations are present.

We support this provision.

Sec. 132 adds to the current exclusion ground for misrepresentation at section 212(a)(6) a ground for document fraud and for failure to present documents to the inspector at the port of entry. It makes excludable any alien who, in seeking entry to the U.S., or upon boarding a common carrier for the purpose of coming to the U.S., presents any document which, in the determination of the immigration officer, is forged, counterfeit, altered, falsely made, stolen, or otherwise contains a misrepresentation of a material fact. It makes excludable any alien who is required to present prior to boarding a common carrier a document relating to the alien's eligibility to enter the U.S. but fails to present such document upon arrival.

We do not believe either of these provisions is needed. Current law at section 212(a)(6) is broad enough to cover fraudulent documents of any nature and already makes a person excludable who attempts to gain entry through use of such documents. Section 212(a)(7) makes excludable both immigrants and nonimmigrants who seek to enter without the required documents. Consequently, we do not support this section.

Sec. 133 provides that aliens excludable because of document fraud under the new section 212(a)(6)(C)(iii) and excludable aliens brought or escorted into the U.S. having been interdicted at sea are ineligible for relief from exclusion, including withholding of deportation and asylum, subject to a "credible fear of persecution" exception.

Because the new section 212(a)(6)(C)(iii) subsumes much of what is now covered by section 212(a)(6)(C)(i), it may

effectively eliminate the waivers for exclusion for fraud provided by the INA. Section 212(d)(3) provides for a general waiver of excludability for nonimmigrants. In addition, section 212(i) of the INA currently provides for a waiver for exclusion for fraud for an immigrant who is the spouse, parent, or son or daughter of a U.S. citizen or of a lawful permanent resident, or if the fraud occurred at least 10 years before an application for a visa or entry. We believe that the availability of these discretionary waivers is consistent with a fair and humanitarian immigration policy.

Similarly, the restriction on withholding of deportation in section 133 for an alien who is inadmissible under section 212(a)(6)(C)(iii), as written, would apply irrespective of whether special exclusion is invoked. We do not support this provision, and we recommend limiting the restriction to those in special exclusion proceedings.

As a technical matter, we urge the Committee to replace the term "special inquiry officer" with "immigration judge" and to adopt the following definition for "immigration judge": an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including proceedings under section 240. An Immigration Judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe.

Part 4--EXCLUSION AND DEPORTATION

Our comprehensive strategy for identifying and removing undocumented aliens has had significant success over the past three years. In Fiscal Year (FY) 1994, the INS deported a total of 39,788 illegal aliens. An additional 1,023,000 aliens were voluntarily removed. A total of 5,597 aliens were excluded from entry, and another 5,794 were subject to required departures. We had even greater success deporting aliens in 1995. We surpassed our FY 1995 goal of 28,500 criminal alien removals and set a new record of 31,654 non-criminal alien removals. Our calendar year removals for 1995 are 14 percent higher than our removals in 1994 and 74 percent higher than the removals in 1990. The prospects for 1996 are even better. We will substantially increase the number of non-criminal alien removals in FY 1996 by establishing absconder removal teams and by making strategic use of enhanced detention and transportation capacity.

Sec. 141 provides that the Attorney General may, without referral to an immigration judge or after such a referral, order the exclusion and deportation of an alien who appears to be excludable when (1) the alien has entered the U.S. without having been inspected and admitted by an immigration officer, unless such alien has been physically present in the U.S. for a

continuous period of two years since entry without inspection, or the alien is excludable under section 212(a)(6)(C)(iii); (2) when the alien is brought or has arrived on board a smuggling vessel; or (3) the Attorney General determines that the numbers or circumstances of aliens en route to or arriving in the U.S. present an extraordinary migration situation. The judgement whether an extraordinary migration situation exists or whether to invoke these provisions is committed to the sole and exclusive discretion of the Attorney General. The Attorney General may invoke the provisions of this section during an extraordinary migration situation for a period not to exceed 90 days, unless within such 90 day period or extension thereof, the Attorney General determines, after consultation with the House of Representatives and Senate Committees on the Judiciary, that an extraordinary migration situation continues to warrant such procedures remaining in place for an additional 90-day period.

A person will not be subject to expedited exclusion if he or she claims asylum and establishes a credible fear of persecution in his or her country of nationality. A special exclusion order is subject to administrative review only if an alien claims under oath to have been and appears to have been lawfully admitted for permanent residence.

We are pleased that this section has moved significantly closer to the Administration's provision. We strongly support making the applicability of the special exclusion procedures discretionary and explicitly authorizing the special exclusion of aliens who are intercepted on the high seas, within the territorial sea or internal waters. The Coast Guard frequently interdicts illegal aliens on the high seas and is required to keep the aliens at sea while arrangements are made for a third country to accept the aliens so they may be resettled. This is neither resource efficient nor cost effective. Two interdiction cases in 1995 consumed a total of 105 cutter days and 548 aircraft hours in order to deliver the interdicted migrants to El Salvador and Mexico. Using standard rates, these cases cost in excess of \$7 million. Clearly, there is a need for special exclusion authority. Rapid delivery of the aliens to the United States for special exclusion would allow the Coast Guard vessels to promptly return to their primary law enforcement mission, including drug interdiction and search and rescue.

However, we have concerns about making special exclusion applicable to aliens who entered without inspection. For those aliens who have been here for lengthy periods after having entered without inspection, the determination of when they entered will be difficult and could lead to protracted litigation. If such authority is to be used at all, it should be invoked only in extraordinary migration situations and only in circumstances that would support a strong presumption that the person's entrance without inspection was quite recent. We would

be willing to work with the Committee to revise this provision in response to our concerns.

As we stated in section 133, we urge the Committee to replace the term "special inquiry officer" with "immigration judge" and to adopt our definition of "immigration judge".

Sec. 142 streamlines judicial review of Orders of Exclusion or Deportation. This section revises and amends section 106 of the INA. Many of the provisions are similar to that of S. 754.

This section provides for judicial review of final administrative orders of both deportation and exclusion through a petition for review, filed in the judicial circuit in which the immigration judge completed the proceedings. Under current law, an order of exclusion is appealable to a district court and then appealable to the court of appeals. This provision is similar to the Administration's proposal.

This section requires that a petition for review be filed within 30 days, except that an aggravated felon must file within 15 days. We recommend that the uniform filing period of thirty (30) days contained in S. 754 be adopted, to avoid an additional issue for the courts which, if litigated, would take far more than fifteen days to resolve.

The filing of a petition stays deportation except for aggravated felons, who must apply to the court for a stay. S. 754 contains a similar provision.

Under this bill, there is no review of discretionary denials under sections 212(c), 212(i), 244(a) and (d), and 245. We do not support this provision. We do not believe that appeals to the courts of such denials have unduly burdened the courts or unduly delayed deportations.

Denials of asylum are "conclusive unless manifestly contrary to law and an unconscionable abuse of discretion." S. 754 provides that all the administrative findings of fact supporting an order of exclusion or deportation are conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary. We recommend that the language of S. 754 be substituted as consistent with current decisional law and more workable.

As in current law, a court may review a final order only if the alien has exhausted all administrative remedies. This section adds a requirement that no other court may decide an issue, unless the petition presents grounds that could not have been presented previously or the remedy provided was inadequate or ineffective to test the validity of the order. S. 754 also includes this provision.

Under section 106(f) there is no judicial review of an individual order of special exclusion or of any other challenge relating to the special exclusion provisions. The only authorized review is through a habeas corpus proceeding, limited to determinations of alienage, whether the petitioner was ordered specially excluded, and whether the petitioner can prove by a preponderance of the evidence that he is an alien admitted for permanent residence and is entitled to further inquiry. In such cases the court may order no relief other than a hearing under section 236 or a determination in accordance with sections 235(a) or 273(d). There shall be no review of whether the alien was actually excludable or entitled to relief. S. 754 contains similar provisions. However, S. 754 does not make special exclusion applicable to all the same cases as S. 1394 does, as noted in our comments on section 141 above.

Under new section 106(g), no collateral attack may be brought by an alien subject to penalties for improper entry or reentry. S. 754 contains a similar provision, at section 106(d).

Sec. 143 subjects an alien who willfully fails to depart on time pursuant to a final order of exclusion and deportation or a final order of deportation to a \$500 per day penalty.

This provision is similar to the Administration's proposal, and we support it.

Sec. 144 permits deportation proceedings to be conducted by video conference or telephone. The alien must consent to such a hearing by telephone if it is to be a full contested evidentiary hearing on the merits.

This provision is identical to the Administration's proposal, and we support it.

Sec. 145 clarifies the authority of immigration judges to issue subpoenas in proceedings under sections 236 (exclusion) and 242 (deportation) of the INA.

This provision is identical to the Administration's proposal, and we support it.

Sec. 146 amends section 242B of the Act to eliminate the requirement that an order to show cause be issued in Spanish to every alien.

We believe that this section would create more litigation on the adequacy and accuracy of the notice in English only. A written notice in a language the alien understands, which is most often Spanish, protects the INS from unnecessary delays of enforcement actions based upon whether sufficient notice was provided as well as informs the alien of the nature of the

action. In order to avoid unnecessary and costly due process litigation, it would be best not to amend this provision of the INA.

This section would also amend the requirement at 242B(b)(1) that an alien be given 14 days from service of an order to show cause to obtain counsel before a hearing is scheduled, to provide that a hearing may be scheduled within three days for an alien who is detained. The section also amends section 292 to provide that the alien's right to obtain counsel must not unreasonably delay proceedings.

We believe that the current 14-day period gives the alien a fair and better opportunity to obtain counsel. The INS' experience has been that deportation proceedings move more quickly if an alien does have counsel. In addition, immigration judges normally provide at least one continuance to allow an alien a reasonable opportunity to obtain counsel. S. 1394's proposed shortening of the time period in which aliens may obtain counsel may not achieve the intended result of speeding up deportation proceedings. Like the notice language requirement, the 14 day period is not burdensome to INS and its repeal may unintentionally cause delay in deportations or encourage frivolous appeals. We do not support this provision.

Sec. 147 authorizes withholding of nonimmigrant visas to nationals of countries that refuse or unduly delay acceptance of their nationals for deportation.

S. 754 contains a similar provision, but S. 754's provision allows the Secretary of State maximum flexibility in implementing this section of the law. We recommend that the suspension of nonimmigrant visas be discretionary and not automatic because there may be foreign policy, national security, or other reasons in a particular circumstance where suspension would not be in the best interest of the U.S. We recommend that the Committee change the "Secretary of State shall" to the "Secretary of State may".

Sec. 148 authorizes appropriation of \$10,000,000 in a special "no-year" fund for detaining and removing aliens who are subject to final orders of deportation.

We support this provision.

Sec. 149 authorizes appropriations for the Attorney General to conduct a pilot program or programs to study methods for increasing the efficiency of deportation and exclusion proceedings against detained aliens by increasing the availability of pro bono counseling and representation. The Attorney General may use funds to award grants to not-for-profit organizations assisting aliens.

This provision is identical to the Administration's proposal, and we support it.

Sec. 150 limits relief under section 212(c) of the INA to a person who has been lawfully admitted to the U.S. for at least 7 years, has been a legal permanent resident for at least 5 years, and is returning to such residence after having temporarily proceeded abroad not under an order of deportation. The 5-year and 7-year periods would end upon initiation of exclusion proceedings. An alien who has been convicted of one or more aggravated felonies and has been sentenced for such felonies to a term or terms of imprisonment totalling, in the aggregate, at least 5 years is ineligible for 212(c) relief and cancellation of deportation. Also, relief under INA section 212(c) will be available only to persons in exclusion proceedings, and persons in deportation proceedings will need to apply for cancellation of deportation.

Cancellation of deportation is available to an alien who has been a lawful permanent resident for at least 5 years who has resided in the U.S. continuously for 7 years after being lawfully admitted and has not been convicted of an aggravated felony or felonies for which the alien has been sentenced to a term or terms of imprisonment totalling, in the aggregate, at least 5 years.

The cancellation of deportation provisions basically replace both the 212(c) remedy for legal permanent resident aliens who have not departed the United States, and the suspension remedy for aliens who have been here unlawfully. However, section 150 omits the current provision at section 244(a)(3), providing for suspension of deportation for battered spouses of U.S. citizens or lawful permanent residents, who have been physically present for three years. This provision was added to the INA by section 40703(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322, September 13, 1994). We recommend that the provisions of current section 244(a)(3) be included in section 150. Because this provision was just recently enacted and because of the special circumstances involving these applications, we recommend that for battered spouses of U.S. citizens or lawful permanent residents the physical presence period not be deemed to end upon service of the order to show cause. Also, current subsection 244(g), relating to evidence submitted by abused or battered spouses, should remain.

This section does not permit appeal from a denial of a request for an order of voluntary departure. S. 754 allows such an appeal provided that no court shall have jurisdiction over an appeal regarding the length of voluntary departure where the alien has been granted voluntary departure for 30 days or more. We oppose eliminating judicial review as an unwarranted departure from longstanding procedural rights. We recommend that the

Committee adopt the S. 754 provision.

Sec. 151 defines a stowaway as any alien who obtains transportation without consent or through concealment or evasion. This section also clarifies that a stowaway is subject to immediate exclusion and deportation; however, a stowaway may apply for asylum or withholding of deportation. The carrier will be required to detain a stowaway until he or she has been inspected by an immigration officer and to pay for any detention costs incurred by the Attorney General should the alien be taken into custody. It raises the fine for failure to remove a stowaway from \$3,000 to \$5,000 per stowaway.

This provision is identical to the Administration's proposal, and we support it.

Sec. 152 directs the Attorney General, after consultation with the Secretary of State, to establish a pilot program for up to two years for deterring multiple unauthorized entries. The program may include interior repatriation, third country repatriation and other disincentives for multiple unlawful entries into the U.S. This provision also requires the Attorney General, together with the Secretary of State, to submit a report to the Senate and House Committees on the Judiciary on the operation of the pilot program and whether the pilot program or any part thereof should be extended or made permanent.

This is an area of enforcement in which the Administration already has made progress. This provision is similar to the Administration's proposal, and we support it.

Sec. 153 authorizes the Attorney General and the Secretary of Defense to establish a pilot program for up to 2 years to determine the feasibility of the use of closed military bases as detention centers for INS. Within 35 months after enactment, they must submit a feasibility report to the House and Senate Committees on the Judiciary, and the House and Senate Committees on Armed Service.

The use of closed military bases would make additional detention space available to INS. At present, INS is forced to release many aliens who are awaiting proceedings due to lack of detention space. We have worked with the Department of Defense in conjunction with the Bureau of Prisons and other agencies to explore the use of closed bases. Conversion costs and staffing have been the most difficult problems to resolve. Accordingly, this provision does not address the underlying obstacles that would permit such a pilot to be conducted.

Sec. 154 would amend section 212 of the INA to exclude prospective immigrants who have not received immunizations against vaccine-preventable diseases for aliens seeking permanent

residency.

While reducing the number of unvaccinated persons in the United States is a laudable goal, the mechanism outlined in this section would present a number of implementation and other difficulties that may actually jeopardize the public health in the United States.

In many countries, the vaccines specified under this section might not be licensed. Even if these vaccines are licensed, they may not be readily available or the costs of these vaccines may be prohibitive for some prospective immigrants. In addition, an immigrant's visa could be delayed as much as 18 months in order to allow time to receive all recommended doses of the specified vaccines, over the interval recommended by the Advisory Committee Immunization Practices (ACIP).

The ACIP-recommended vaccine schedule is complex and lengthy and subject to regular revisions. It would be difficult and labor intensive for Department of State and INS officials at entry points in the U.S. to check individual immunizations records against ACIP schedule and to ensure that U.S. government officials are using the most up-to-date revisions. Neither the Department of State nor the INS have the resources to verify the authenticity of most vaccination certificates.

The requirements outlined in section 154 could subject immigrants to serious delays, considerable expense, and the prospect of having to choose between emigrating as a family or splitting up the family to allow, for example, an adult to emigrate to begin employment in the United States while other family members stay behind to complete the immunization requirements. The result might be that the immigrant might choose to secure false immunization records rather than attempt to comply with the requirements imposed by section 154. If that were to happen, the immigrant, once admitted to the U.S., would be thought to have been vaccinated. Yet, the immigrant could become infected and could transmit a vaccine-preventable disease to others in the U.S. To further confound the matter, the unimmunized person may be unwilling to admit he was not vaccinated, fearing that he could become subject to deportation.

Under current state laws, children in the U.S. are required to comply with immunization requirements before they enter school. Therefore, the current public health system would "capture" school-aged immigrant children almost immediately upon entry into the U.S. Even without the proposed provision in the immigration bill, these children would be vaccinated once they came to the U.S. In addition, in many states, licensed day care establishments also have immunization requirements.

We would like to work with the Committee to develop an

amendment to reduce the number of unvaccinated persons in the United States but that would address our concerns.

Sec. 155 requires immigrants and nonimmigrants, except physicians, who seek to work in the U.S. to obtain a qualifications certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or from an equivalent independent credentialing organization approved by the Secretary of Labor. Such certificate must verify that (1) the individual's education, training, and experience meet statutory and regulatory requirements for admission to the U.S. under the classification specified and are comparable to that required for U.S. workers in the health care occupation; (2) any foreign license submitted is authentic and unencumbered; (3) the individual has English language proficiency; and (4) foreign registered nurses have passed a nursing skills examination.

The Administration believes that this provision, as drafted, is far too broad and would require substantial additional resources for affected agencies to administer. In addition, the imposition of the credentialing requirement may not be in conformity with U.S. obligations undertaken in NAFTA, Chapter 16, and the English language requirement for all health care workers does not appear to be in conformity with U.S. obligations undertaken in NAFTA and GATS. If this provision is to be retained in the bill, we would recommend the following changes.

Since the INS has responsibility for and experience in determining the qualifications of aliens to be admitted to the U.S. and the acceptability of Credential Evaluation Services for such purposes, the Administration believes that any approval of a credentialing organization in lieu of CGFNS would be more appropriately administered by INS in consultation with the HHS rather than the Secretary of Labor.

The proposed provision covers all health care workers (except physicians) under any visa classification. This would involve more than 100 different occupations, many of which do not require licensure or formal minimum industry requirements for entry into the occupation. While CGFNS may now have the capacity to expand its operations to determine U.S. requirements for health care occupations, to evaluate foreign credentials, and to develop and administer occupational and English language proficiency tests world-wide, we know of no other equivalent organization in the United States. We would, therefore, recommend defining health care occupations to include only those which involve treatment of patients, dispensing of medication, operation of diagnostic equipment, and performing laboratory tests on blood or tissue. Further, only if the CGFNS ceased issuing certificates should INS, in consultation with HHS, designate another acceptable credentialing organization which may, or may not, be equivalent to CGFNS.

With regard to section 9(iv), which concerns requiring foreign nurses to pass a nursing examination, this section should be expanded to state that "if the alien is a registered nurse, the alien has passed an examination testing both nursing knowledge and English language proficiency."

Finally, Canadian and Mexican health care workers should be treated in a manner consistent with the NAFTA agreement. In addition, requirements applicable to other alien health care workers will need to take into account our other international trade obligations. We would be pleased to work with the Committee to effect such needed changes to this provision.

PART 5--CRIMINAL ALIENS

The Administration has made removals of criminal aliens a priority and achieved dramatic success. The number of criminal aliens removed from the U.S. jumped by 12% in 1993, and by 17.6% in 1994 over 1992 levels. More than four times as many criminal aliens were removed in 1994 than in 1988. We surpassed our FY 1995 goal of 28,500 criminal alien removals and set a new record of 31,654 non-criminal alien removals. Even more criminal aliens will be deported next year as we further streamline deportation procedures, expand the Institutional Hearing Program, and enhance the international prisoner transfer treaty program. In addition, other INS initiatives, such as the National Alien Transportation Program, provide for the detention and removal of more criminal aliens. INS technology enhancements are playing a critical role in removing criminal aliens, as are INS alternatives to formal deportation, such as stipulated, judicial, and administrative deportation.

Sec. 161 amends the definition of aggravated felony contained in 8 U.S.C. Sec. 1101(a)(43) to include: (1) an offense relating to laundering of monetary instruments or relating to engaging in monetary transactions in property derived from specific unlawful activity is an aggravated felony if the amount of funds exceeds \$10,000 (down from \$100,000); (2) a crime of violence, a theft offense (including receipt of stolen property) or burglary offense, or an offense relating to trafficking of fraudulent documents, for which the term of imprisonment is a minimum of at least two and one half years or a maximum of at least five years (down from 5 years imposed); (3) a RICO offense, as well as offenses described in 18 U.S.C. 1084 or 1955, for which the term of imprisonment is a minimum of at least two and one half years or a maximum of at least five years (down from 5 years); (4) offenses relating to transportation for the purpose of prostitution for commercial advantage; (5) a violation of Section 601 of the National Security Act relating to protecting the identity of undercover agents; (6) an offense that involves fraud or deceit in which the loss to the victim exceeds \$10,000 (down from \$200,000) or involves tax evasion in which the revenue

loss to the Government exceeds \$10,000 (down from \$200,000); (7) alien smuggling without regard to commercial advantage except for a first offense in which the alien has affirmatively shown that he or she committed the offense for the purpose of aiding only the alien's spouse, child or parent; (8) any violation of 18 U.S.C. 1546(a) (relating to document fraud) except for a first offense in which the alien has affirmatively shown that he or she committed the offense for the purpose of aiding only the alien's spouse, child or parent; (9A) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered, which is punishable by imprisonment for a minimum of at least two and one half years or a maximum of at least five years; (9B) any offense relating to perjury or subornation of perjury which is punishable by imprisonment for a minimum of at least two and one half years or a maximum of at least five years; (10) any offense relating to a defendant's failure to appear for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years (down from 15 years) or more.

This section also prohibits the Attorney General from withholding the deportation of aliens who have been convicted of one or more of the following: an aggravated felony or an attempt or conspiracy to commit an aggravated felony for which the term of imprisonment imposed or served is or was at least five years; a crime of violence or attempt or conspiracy to commit such a crime of violence for which the term of imprisonment imposed or served is or was at least three years; or any of the following aggravated felonies or attempt or conspiracy to commit such offense: murder, illicit drug trafficking, illicit firearms trafficking, explosive materials offenses, demand for ransom, child pornography, racketeering, national security offense, slavery.

We oppose expanding the definition of aggravated felon to include persons convicted of crimes punishable by imprisonment for 2 1/2 years or more. The grave consequences of being considered an aggravated felon include being ineligible for withholding of deportation and asylum, and being subject to mandatory detention and expedited deportation proceedings, and should be imposed only on serious criminals. Current law gives immigration judges the discretion to weigh the seriousness of the crime against the positive equities of each individual case and to grant relief only where it is appropriate. Immigration judges should be allowed to retain this discretion. The expanded definition would also impose a burden on the operations of the INS which is required to detain all aggravated felons, except for certain lawful permanent residents. Finally, wide imposition of aggravated felon consequences run afoul of our obligations under the 1967 Protocol relating to the Status of Refugees not to return a refugee who has not committed a particularly serious crime to a place of persecution and hinder law enforcement's

ability to enter into cooperation agreements with aggravated felons.

We recommend that the Senate adopt the provisions in S. 754 which provide that an alien is ineligible for withholding of deportation based on an aggravated felony conviction when the sentence imposed is 5 years or more. This provision will ensure compliance with U.S. obligations under the 1967 Refugee Protocol by only permitting the return to possible persecution of refugees who have committed a particularly serious crime and will facilitate application of the definition and make the law truly effective in removing aggravated felons.

Regarding section 161(a)(8) we believe that the "commercial advantage" language found in section 406 of S. 754 provides a more flexible approach for compelling cases than the narrower approach in section 161(a)(8). We urge the Committee to adopt the S. 754 "commercial advantage" language.

Sec. 162 makes an alien convicted of an aggravated felony ineligible for suspension of deportation and adjustment of status.

We support this provision.

Sec. 163 provides that the expeditious deportation of aggravated felons creates no enforceable right for aggravated felons.

This provision is identical to section 604 of S. 754, and we support it.

Sec. 164 permits the Attorney General to release an alien convicted of an aggravated felony if the alien is not a threat to the community and release from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member of such person. The section provides that the Attorney General shall take into custody any alien convicted of an aggravated felony when the alien is released and may release the alien only if he was lawfully admitted into the U.S., likely to appear for any scheduled proceeding and not a threat to the community or when the Attorney General determines that release from custody is necessary to provide protection to a witness, a person cooperating with an investigation into major criminal activity, or an immediate family member.

This provision is identical to section 308 of S. 754, and we support it.

Sec. 165 amends section 242A(d) of the INA to provide that a

U.S. District Court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien (A) whose criminal conviction causes the alien to be conclusively presumed to be deportable as an aggravated felon; (B) who has at any time been convicted of a violation of section 276(a) or (b); (C) who has at any time been convicted of a violation of section 275; or (D) who is otherwise deportable pursuant to sections 241(a)(1)(A) through 241(a)(5).

It provides that a U.S. Magistrate shall have jurisdiction to enter a judicial order of deportation at the time of sentencing where the alien has been convicted of a misdemeanor offense and the alien is deportable under this Act. The U.S. Attorney, with the concurrence of the Commissioner, may enter into a plea agreement which calls for the alien, who is deportable under this Act, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of deportation as a condition of the plea agreement or as a condition of probation or supervised release, or both.

The existing judicial deportation statute authorizes a U.S. District Court to order deportation at the time of sentencing if the conviction renders an alien deportable as an aggravated felon or for certain crimes involving moral turpitude. This provision, however, would allow U.S. District Judges and U.S. Magistrates (in misdemeanor cases) to order deportation on any grounds of deportability.

We believe that in order to maintain a coherent national immigration policy, close questions relating to alienage, deportability, and particularly relief from deportation should be initially decided in the context of administrative proceedings, followed by judicial review, rather than in criminal cases. Therefore, in view of the DOJ responsibility to administer and enforce immigration laws, we believe that judicial deportation authority should be limited to situations in which the alien is before the court for sentencing for an aggravated felony or a serious crime involving moral turpitude. The phrase "conclusively presumed to be," should be deleted from the proposed amendment to section 242A(d)(1)(A). It is confusing and adds nothing to an otherwise clear statement that an alien who has been convicted of an aggravated felony is deportable.

Sec. 166 permits the entry of orders of exclusion and deportation stipulated to by the alien and the INS and provides that stipulated orders are conclusive. Such orders may be entered without a personal appearance by the alien before the special inquiry officer. DOJ shall provide that an alien who stipulates to an exclusion or deportation order waives all appeal rights.

This provision is identical to the Administration's proposal, and we support it. However, as we stated in section 133 and 141, we urge the Committee to replace the term "special inquiry officer" with "immigration judge" and to adopt our definition of "immigration judge".

Sec. 167 permits a U.S. District Court or Magistrate to order deportation pursuant to a stipulation entered into by the defendant and the U.S. In the absence of a stipulation, the Court or Magistrate may order deportation as a condition of probation, if, after notice and hearing pursuant to section 242A(c), the Attorney General demonstrates by clear and convincing evidence that the alien is deportable.

We do not support this provision because we believe it is unnecessary. Under 18 U.S.C. 3583(d), the District Court presently has the authority to order deportation as a condition of supervised release. Under that provision, if the District Court issues such an order, the alien is referred to INS for deportation. Section 302(d) of the Administration proposal would amend that section to provide that such an order be made "pursuant to the procedures of the Immigration and Nationality Act." This amendment would address an issue in litigation in which District Court judges have interpreted this section to authorize them to order deportation irrespective of the provisions of the INA. We urge the Committee to add section 302(d) in place of this provision.

Sec. 168 requires the Attorney General to submit within one year of the date of enactment and annually thereafter a report to the Committees on the Judiciary of the House and Senate on the number of illegal aliens incarcerated in state and federal prisons stating the number incarcerated for each type of offense; the number of illegal aliens convicted for felonies in any federal or state court but not sentenced to incarceration in the previous year, by type of offense; DOJ programs and plans underway to ensure the prompt removal from the U.S. of criminal aliens subject to exclusion or deportation; and methods for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the U.S. and removed from the U.S.

We are concerned that paragraph (2) requires the Attorney General to report on the number of aliens convicted but not sentenced to incarceration. Without providing any resources, this provision would require significant effort on the part of state prosecutors and courts which are not under the administrative jurisdiction of the DOJ. We do not support this provision.

Sec. 169 authorizes INS to use appropriated funds to lease space, establish, acquire, or operate business entities for

undercover operations, proprietary corporations or businesses to facilitate undercover immigration-related criminal investigations. INS may deposit funds generated by these operations or use them to offset operational expenses. Authority may be exercised only upon written certification of the INS Commissioner in consultation with Deputy Attorney General.

This provision is identical to the Administration's proposal, and we support it.

Sec. 170 provides that the Secretary of State, together with the Attorney General, may enter into an agreement with any foreign country providing for the incarceration in that country of any individual who is a national of that country and is an alien who has been convicted of a criminal offense under federal or state law and who is not in lawful immigration status or is subject to deportation, for the duration of the prison term to which the individual was sentenced. Any such agreement may provide for the release of such individual pursuant to parole procedures of that country. The Secretary should give priority to concluding an agreement with any country for which the President determines that the number of such individuals who are nationals of that country in the United States represents a significant percentage of all such individuals in the United States.

This section also provides that it is the Sense of Congress that no new treaty should permit the prisoner to refuse the transfer. It also provides that, except as required by treaty, the transfer of an alien shall not require the alien's consent.

We agree that some level of nonconsensual prisoner transfer should be implemented; however, the current proposal is problematic in several areas. A number of concerns must be resolved prior to implementing such a regime.

Initially, the proposed legislation effectively directs the President to negotiate certain treaty provisions; the Administration believes that this type of Congressional direction is undesirable and may be inconsistent with the President's authority to make treaties and conduct foreign relations.

Section 170(a) provides that transferred aliens will be incarcerated for the duration of their sentences; however, this conflicts with the balance of that section which further provides for the release of such transferred persons pursuant to the parole procedures of that country. Section (b)(1) seeks to clarify the focus of 170(a) -- to expedite the transfer of affected aliens and ensure that the balance of their sentences are served, but it appears to contradict (a). This provision, however, may infringe upon the sovereignty of the parties in administering the transferred sentence thus raising concerns

related to international treaty obligations and relations with our treaty partners.

The proposal appears to offer little incentive for countries with large numbers of their nationals in U.S. prisons to renegotiate prisoner transfer treaties, or negotiate nonconsensual transfer agreements. Even to the extent that such countries have large numbers of U.S. nationals in their prisons, it is not clear that the transfer of U.S. prisoners is a high priority for the governments of these countries or, indeed, a desirable goal at all. To the extent that the U.S. has to put pressure on a reluctant country to renegotiate a prisoner transfer agreement, we are concerned that such pressure might lead to minimal or nominal compliance. Foreign governments that have entered into such agreements under duress may not vigorously honor their commitments to keep potentially dangerous convicted felons in prison.

The State Department has also noted that involuntary transfers of prisoners whose crimes were not particularly serious or who do not present a danger could run afoul of our obligations under the 1967 Protocol relating to the Status of Refugees not to return a refugee to a place of persecution. Further, the U.S. is severely limited in its ability to monitor activities in foreign countries' prisons, most importantly with respect to potential human rights abuses which might be directed against the transferred prisoners. The State Department notes that the U.S. might bear some legal responsibility in such human rights abuse cases. Finally, such agreements would almost certainly have to contain a reciprocal provision for the involuntary transfer of U.S. citizens imprisoned in foreign countries back to the U.S. Non-consensual transfers of U.S. citizens from foreign prisons back to the U.S. may well raise issues of a constitutional nature.

In 1994, we transferred 424 prisoners abroad, including 394 to Mexico. The Mexican transfers alone resulted in a savings of over \$7.5 million for the DOJ. As of December 31, 1995, we transferred 438 prisoners abroad, including 266 prisoners to Mexico. In May 1995, the United States and Mexico had committed to returning 400 Mexican nationals to Mexico pursuant to the prisoner transfer program, by the end of December 1995. By December 31, 1995, the DOJ had approved over 506 Mexican prisoner transfer applications. Due to the large number of prisoners scheduled to transfer to fulfill our commitment of 400, the December transfer was to be completed in January 1996; however, due to the government furlough, the second phase will occur at the end of February.

Limited prison capacity in other countries seriously inhibits our ability to increase significantly the number of prisoner transfers. In our view, the premature release of

transferred prisoners due to a lack of prison space would be unacceptable and inconsistent with the purposes of the transfer treaty.

Sec. 170A requires the Secretary of State and the Attorney General to submit to Congress not later than 180 days after this Act's enactment a report that describes the use and effectiveness of the prisoner transfer treaties with the three countries with the greatest number of their nationals incarcerated in the U.S. in removing from the U.S. such incarcerated nationals. The report shall include the recommendations of the Secretary of State and the Attorney General to increase the effectiveness and use of the treaties. In considering the recommendations, the Secretary of State and the Attorney General shall consult with State and local officials in areas disproportionately impacted by criminal aliens.

As a general matter, the Administration discourages the imposition of reporting requirements, which necessarily divert a significant commitment of resources away from prisoner transfers, particularly when the resources of the DOJ's Office of Enforcement Operations (OEO), which has responsibility for the International Prisoner Transfer Program, are already limited. Moreover, much of the information requested in the study would have to be collected by the states which have similar resource concerns. Previous reviews of the prisoner transfer program and requests for information from the states have been met with mixed responses.

When OEO assumed responsibility for the International Prisoner Transfer Program, only 34 states had implementing legislation. As a result of our outreach efforts, four more states enacted implementing legislation. Many of the states without the legislation expressed no interest in prisoner transfer because of the limited number of foreign nationals in their systems. Other states that expressed an interest have other major priorities, so state legislation to implement prisoner transfer has been delayed. Further, according to the American Correctional Association, which is comprised of correctional specialists from the various states, very few states have adequate prisoner tracking systems. Indeed, most do not include a question relating to nationality or citizenship in their intake process. Consequently, the ability to gather the data contemplated by the Congress would be haphazard, at best, because many states do not maintain such records. The DOJ is working to help states collect such data. DOJ's Office of Justice Programs has initiated a process to identify foreign nationals incarcerated in state and local institutions, but this system is only partially on-line and is not expected to be completed in time for the report mandated by this provision.

Sec. 170B modifies the filing requirement for individuals

who keep, maintain, control, support, or harbor in any house or place an alien for the purpose of prostitution. It limits application of the filing requirement to whomever knows or recklessly disregards the fact that said individual is an alien; expands application to any alien; and reduces the time period in which to file; increases the term of imprisonment from two to ten years; and clarifies that the information contained in the filing may be used in an action to enforce Section 274A of the INA.

This provision is identical to the Administration's proposal, and we support it.

Sec. 170C makes a technical correction to the Violent Crime Control Act of 1994. It also clarifies that the INS may place an alien in administrative deportation proceedings if a Federal district court judge has declined the Government's petition to issue a judicial deportation order.

This provision is identical to the Administration's proposal, and we support it.

PART 6--MISCELLANEOUS

Sec. 171 permits reimbursement of other Federal agencies, as well as the States, out of the immigration emergency fund. Reimbursements may be made to other countries for repatriation expenses without the requirement that the President declare an immigration emergency. It also permits the control and seizure of vessels when the Attorney General determines that urgent circumstances exist due to a mass migration of aliens. This section also authorizes the Attorney General to designate local enforcement officers to enforce the immigration laws when the Attorney General determines that an actual or imminent mass migration of aliens presents urgent circumstances.

This provision is identical to the Administration's proposal, and we support it.

Sec. 172 repeals the ban on open field searches by the INS.

Prior to 1986, searches of open agricultural areas constituted a substantial portion of the INS's interior enforcement efforts. However, since the employer sanctions provisions of IRCA became effective in 1987, the INS has focused its attention in this area on employer compliance and enforcement of section 274A. We intend to continue with that approach. Accordingly, while we do not object to the repeal of the "open field" restrictions, we do not anticipate a change in the INS's enforcement strategy as a result.

Sec. 173 makes it unlawful for any alien to vote in any general or special election in the U.S. A violation is subject

to a fine of up to \$5,000 or by imprisonment for up to three years, or both.

This provision is unnecessary because laws prohibiting unlawful voting already exist. False voter registration is a violation of federal law under the National Voter Registration Act, with more stringent penalties than those proposed in section 173 of S. 1394. 42 U.S.C. §1973gg-10(2). False assertion of citizenship is also a violation of federal law. 18 U.S.C. §911. Voter registration forms must list eligibility requirements, which include citizenship in all states. Persons must attest that they are eligible under penalty of perjury.

Section 173 also raises constitutional concerns. Although no states currently allow aliens to vote in state or federal elections, some states permit their local governments to allow non-citizen residents to vote in local, usually school board, elections only. However, Congress has no authority to regulate these local elections in the manner proposed in section 173. U.S. Const. art. 1, sec. 2, art. 1, sec. 4. The Constitution does not confer on Congress any general authority to regulate the qualifications for voters in state or local elections. On the contrary, the power to regulate their own elections was exclusively and intentionally reserved to the States by the Framers of the Constitution. See U.S. Const., Amdt. X. As Justice Black wrote in Oregon v. Mitchell, "[T]he whole Constitution reserves to the States the power to set voter qualifications in state and local elections, except to the limited extent that the people through constitutional amendments have specifically narrowed the powers of the States." 400 U.S. 112, 125 (1970); accord Gregory v. Ashcroft, 501 U.S. 452, 461-62 (1991); Sugarman v. Dougall, 413 U.S. 634, 647 (1973).

Our federal system of government thus recognizes the States as distinct sovereign entities with the inherent power to define their political communities. Sugarman, 413 U.S. at 643. The Supreme Court has said that the regulation of voter qualifications in state and local elections is a necessary aspect of this broad power: "No function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the Constitution the qualifications of their own voters for state, county, and municipal offices . . ." Oregon v. Mitchell, 400 U.S. at 125. By dictating to the States which of its residents may or may not be permitted to exercise the right to vote in local elections, Congress would be intruding upon the States' sovereignty over their own electorate. Only where Congress is acting pursuant to its enforcement powers under constitutional amendments that limit this traditional State authority -- such as the Fourteenth and Fifteenth Amendments -- has the Supreme Court sanctioned such intrusions. See, e.g., Oregon v. Mitchell, 400 U.S. 112 (upholding Congress' power to ban use of literacy tests

in state elections); South Carolina v. Katzenbach, 383 U.S. 301 (1966) (same); cf. Gregory v. Ashcroft, 501 U.S. at 461-68 (States' sovereignty over issues that "go to the heart of [their own] representative government" has force even as against proscriptions of Fourteenth Amendment). Such a situation is not present here.

Of course, Article I, § 8, cl. 4 of the Constitution does give Congress "broad power over immigration and naturalization." Mathews v. Diaz, 426 U.S. 67, 79-80 (1977). Congress' plenary authority to regulate both the status of aliens and the terms under which they enter and remain in the country, DeCanas v. Bica, 424 U.S. 351, 355 (1976), may be broad enough to justify legislation which makes it a crime for aliens to vote in the United States. Whether it is also broad enough to justify Congress' intrusion upon the States' sovereignty over their own political communities is unclear.

We are also concerned that section 173 may encourage discrimination against and harassment of people who look foreign and/or are language minorities, primarily Hispanics, Asians and Native Americans. This section could potentially dilute the vote of these groups of Americans by discouraging their participation in the electoral process.

Sec. 174 amends section 202(a)(1) of the INA, which provides that immigrant visas must be issued without discrimination because of race, sex, nationality, place of birth, or place of residence, to state that nothing in this subsection limits the authority of the Secretary of State to determine procedures for processing visas. This section would reverse a recent judicial decision which interpreted the existing language to require the Secretary of State to process visas in a specific location.

This provision is identical to the Administration's proposal, and we support it.

Sec. 175 clarifies the content and format for passenger lists and manifests to be prepared and submitted by carriers to INS, including name, date of birth, gender, citizenship, travel document number, and arriving flight number.

This provision is identical to the Administration's proposal, and we support it.

Sec. 176 requires the Attorney General to develop not later than 2 years after the enactment of this Act an automated entry and exit control system that can identify lawfully admitted nonimmigrants who overstay their visas.

The Administration is generally supportive of this provision's concept, which would allow us to more systematically

track nonimmigrant visa overstayers. We do not, however, believe that a two year statutory deadline is appropriate or feasible. INS is already reviewing new ways to identify overstayers, and it would be important to pilot test and evaluate some of these concepts before implementing a new automated entry and exit control system. We are prepared to brief the Committee on the Administration's plans for strengthening enforcement against illegal immigration by visa overstayers.

Sec. 177 provides that a carrier, in consideration for bringing an alien transitting the U.S. without a visa, must agree to indemnify the U.S. for any costs of detaining or removing such an alien if the alien is refused admission to the U.S., fails to continue his or her journey to a foreign country within the time prescribed, or is refused admission by the foreign country to which the alien is travelling while transitting the U.S.

This provision is identical to the Administration's proposal, and we support it.

Sec. 178 authorizes the Attorney General to provide information furnished under the Legalization and Special Agricultural Worker programs when such information is requested in writing by a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not related to a crime). It allows the Attorney General, in her discretion, to furnish the information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce. The criminal penalties for violation of these provisions is retained.

We agree that confidentiality provisions should be modified because it is very difficult to obtain crucial information contained in these files, such as fingerprints and photographs, when the alien becomes a subject of a criminal investigation. However, we support a waiver of the confidentiality provisions, along the lines of S. 735, the Antiterrorism Amendments Act of 1995, the bipartisan antiterrorism bill which the U.S. Senate passed in June of 1995, that is, only if a federal judge authorizes disclosure of information to be used for identification of an alien who has been killed or severely incapacitated or for criminal law enforcement purposes against an alien if the alleged criminal activity occurred after the legalization or SAW application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony.

Sec. 179 clarifies that the Attorney General is not required to rescind the lawful permanent resident status of a deportable alien separate and apart from the deportation proceeding under

section 242 or 242A. This provision will allow INS to place a lawful permanent resident who has become deportable into deportation proceedings immediately.

This provision is identical to the Administration's proposal, and we support it.

Sec. 180 prohibits governmental entities from restricting availability of information related to the immigration status of an alien in the U.S.

We have a number of concerns with this provision as drafted. In some instances the provision could raise troubling privacy and due process issues. While information restrictions may have been a problem in the 1970s or 1980s, we know of no existing local or state government policies on information availability which burden the INS. We do not support this provision, but will work with the Committee to explore appropriate alternatives.

Sec. 181 authorizes the Attorney General to accept, administer and utilize services of volunteers to assist in administering programs relating to naturalization, adjudication at ports of entry, and removal of criminal aliens. Such volunteers may not administer or score tests and may not adjudicate.

This provision is similar to the Administration's proposal, and we support it.

Sec. 182 authorizes the Attorney General to acquire and utilize any federal equipment determined available for transfer to the DOJ by any other Federal agency upon request of the Attorney General in order to facilitate the detection, interdiction and reduction of illegal immigration.

We support this provision.

Sec. 183 denies any court jurisdiction of any cause or claim by or on behalf of any person asserting an interest under section 245A (regarding legalization applications) of the INA unless such person in fact filed a complete application and application fee to an authorized legalization officer of the INS but had the application and fee refused by that officer.

This provision would affect several major class action lawsuits that involve the legalization program where district courts have granted relief to aliens who did not timely file for legalization. We support this provision.

Sec. 184 prohibits any alien who seeks adjustment of status as an employment-based immigrant and who is not in a lawful nonimmigrant status and any alien who worked while unauthorized

to work or who has otherwise violated the terms of a nonimmigrant visa from adjusting their status under section 245(a).

Section 245(c)(2) of the INA already provides that an alien "who ... continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States," may not apply for adjustment of status. Accordingly, we believe the proposed amendment does not represent a significant addition to current law and is unnecessary.

Subtitle B--Other Control Measures

Part 1--Parole Authority

Sec. 191 tightens parole authority by changing the acceptable reasons from "emergent reasons" and "reasons deemed strictly in the public interest" to "urgent humanitarian reasons or significant public benefit," and by requiring a case-by-case determination.

We oppose this provision as an inappropriate restriction on the Attorney General's parole authority. The case-by-case determination requirement would dangerously limit the Attorney General's ability to deal with emergency situations involving numerous aliens. Current law provides the Attorney General with appropriate, needed flexibility to respond to compelling immigration situations.

Sec. 192 reduces the world-wide level of family-sponsored immigrants in a fiscal year by the number of parolees who were paroled in the two previous fiscal years and who remained in the U.S. for more than a year.

We oppose this provision because it may have a significant adverse effect on family reunification and result in longer waiting times for admission of relatives of U.S. citizens and legal permanent residents. Humanitarian parole and family-sponsored immigration advance two vital, but distinct, national interests. This section blurs the distinction between the two and hinders both. It could also affect our ability to carry out the Cuban Migration agreements.

Part 2--Asylum

Pursuant to a presidential directive, the DOJ dramatically restructured the asylum process in January 1994. In addition, the Administration secured and Congress provided the resources necessary to do the job in the Violent Crime Control and Law

Enforcement Act of 1994 which more than doubled the authorized number of INS asylum officers from 150 to 325, and increased the number of Immigration Judges from 116 to 179. In FY 1996 we expect to have approximately 200 immigration judges. The new asylum process allows the INS to quickly identify and promptly grant valid claims, and to refer all other cases to immigration court for deportation proceedings; to grant work authorization only to applicants who are granted asylum or when an applicant's case is not adjudicated within 180 days; and to streamline procedures to help asylum officers keep current with incoming applications.

To date, these reforms have had tremendous positive results. New asylum claims filed with the INS dropped 57 percent. Asylum officers completed 126,000 cases in calendar year (CY) 1995 compared to 61,000 in CY 1994. Immigration Judges completed 40,000 asylum cases in CY 1995 compared to 17,000 in CY 1994--an increase of 135 percent. More than 98 percent of the new non-American Baptist Churches v. Thornburgh cases were completed by Immigration Judges within 180 days from the initial INS receipt of the asylum application. We have streamlined procedures without reducing the quality of our asylum decisions. INS has instituted quality assurance procedures to monitor the new system. Approval rates have not changed significantly.

In addition to restructuring the asylum process, the INS has stepped up its fraud investigation of preparers of spurious asylum claims. As noted earlier, investigations have resulted in indictments of preparers in Los Angeles, San Francisco, New York, and Arlington, VA. In addition, INS has requested additional funding in FY 1996 for detention and deportation of failed asylum seekers.

Sec. 193 precludes an alien who used any fraudulent document to enter the U.S. or destroyed his or her document en route to the U.S. from applying for asylum unless the alien had to present such document to depart from a country in which he or she had a credible fear of persecution and travelled directly from such country to the U.S. The alien shall be referred to an asylum officer for interview to determine credible fear. If the asylum officer determines that the alien does not have a credible fear of persecution, the alien may be specially excluded and deported. The Attorney General shall provide for prompt supervisory review of the determination that the alien does not have a credible fear. If the asylum officer determines that the alien does have a credible fear of persecution, the alien shall be taken before an immigration judge for an exclusion hearing.

Pursuant to this section, "credible fear" means there is a substantial likelihood that the statements made by the alien in support of his or her claim are true, and there is a significant possibility in light of such statements and of country

conditions, that the alien could establish eligibility as a refugee.

We do not support this provision. We believe that the provisions for special exclusion in S. 754 are sufficient to allow us to process efficiently the asylum applications of excludable aliens. Absent smuggling or an extraordinary migration situation, we can handle asylum applications for excludable aliens under our regular procedures.

Furthermore, the concept of "presentation" of fraudulent documents pursuant to "direct departure" from a country in which the alien has a credible fear of persecution is problematic. The "presentation" of such documents is not necessary for departure, and transit countries may refuse to accept the return of aliens who did not travel directly to the U.S. In addition, the concept of "direct departure" is unnecessary and confusing. Section 208(3)(5)(B) adequately addresses asylum shopping by an alien already present in a country in which she or he has no fear of persecution. Adding "direct departure" may cause needless litigation and confusion in the context of connecting air flights. It may also disadvantage individuals fleeing persecution from countries which lack direct flights to the United States such as countries in Africa.

Sec. 194 requires that an application for asylum must be filed within 30 days of entry unless the alien who seeks to apply affirmatively shows that the claim is based on circumstances that arose after the alien's entry and that the claim is filed up to thirty days after the alien knew or reasonably should have known of such circumstances.

We strongly oppose this provision as a matter of policy. To return a refugee to a country where he or she would face a threat to life or freedom simply because the refugee failed to make a timely request for protection violates a fundamental duty. Failure to file a timely asylum claim does not relieve the U.S. of its non-refoulement obligation under the Refugee Protocol. In addition, it will require the INS to divert resources from adjudication of the merits of asylum applications to adjudication of the timeliness of filing. Since eligibility for withholding of deportation is not affected by this section, the Attorney General must still adjudicate the merits of a refugee claim. Our proposed special exclusion proceedings, limitations on judicial review, and standard of judicial review, along with the asylum regulations we have implemented give the INS sufficient mechanisms for processing asylum applications and preventing asylum abuse. We do not believe that this provision is needed.

Sec. 195 limits the employment authorization of an asylum applicant. The section provides that the Attorney General may deny any application for, or suspend or place conditions on any

grant of, employment authorization of anyone who makes an application for asylum.

We do not support this provision. Section 208(e), which was added by section 130004 the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, September 13, 1994, is sufficient to address this concern. The provision in S. 1394 would terminate employment authorization in some instances, such as when a nonimmigrant who already has employment authorization applies for asylum. Current INS procedure to withhold employment authorization for 180 days while an application for asylum is pending review has reduced the incidence of asylum abuse.

Sec. 196 authorizes the Attorney General, for two years, in order to reduce the asylum backlog, to expend out of funds such amounts as may be necessary for leasing or acquiring property.

We have no objection to this provision as it relates to the leasing or acquiring of property for security and detention space. However, with regard to office space, this provision should be modified to require the Attorney General to lease space pursuant to the Federal Property and Administrative Services Act of 1949. Under the 1949 Act the Attorney General could request a delegation of the authority to lease office space from the General Services Administration's Administrator.

This section also authorizes the Attorney General to employ temporarily up to 300 persons, who by reason of retirement on or before January 1, 1993, are receiving annuities or retired or retainer pay as retired officers of regular components of the uniformed services.

This provision is unnecessary. Under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. §§ 8344(i) and 8468(f)), such reemployment can now be handled administratively. Nevertheless, if this provision remains in S. 1394, we recommend that a parallel provision be added to authorize the Secretary of State to increase the number of personnel who address the asylum backlog.

Part 3--Cuban Adjustment Act

Sec. 197 repeals the Cuban Adjustment Act, P.L. 89-732 (1966). The Act provides for adjustment of status, in the discretion of the Attorney General, of any national or citizen of Cuba who has been inspected and admitted or paroled into the U.S. and has resided here for one year. This section repeals the Act except as to individuals who will be paroled into the U.S. pursuant to the Cuban Migration Agreement of 1995.

We oppose repeal of the Cuban Adjustment Act. Our long term goal, to which we are absolutely committed, is to bring democracy

to Cuba. Until Cuba has a democratic government, we need flexibility to respond appropriately to changing conditions in Cuba. We look forward to the time when Cuban migration to the U.S. is normalized and on par with migration from other countries. We took major steps towards normalizing migration from Cuba to the U.S. when we concluded the Cuban Migration Agreements in September 1994 and May 1995.

While we are pleased that this section extends application of the Act to individuals who will be paroled into the U.S. pursuant to the Cuban Migration Agreement of 1995, we are concerned that this section fails to mention the Cuban Migration Agreement signed on September 9, 1994, the announcements by the President on October 14, 1994, and by the Attorney General on December 2, 1994, and thus continues to lack a means to adjust the immigration status of individuals who will be or have been admitted, inspected, or paroled from Havana or from the safehavens in Guantanamo and Panama into the U.S.

Sec. 197 also provides that the number of those obtaining lawful permanent resident status after being paroled into the U.S. will be counted as family-sponsored immigrants for purposes of the world-wide and per-country ceiling.

We oppose this provision because it may have a significant adverse effect on family reunification and result in longer waiting times for admission of relatives of U.S. citizens and legal permanent residents from countries other than Cuba.

Title II--FINANCIAL RESPONSIBILITY

PART 1--RECEIPT OF CERTAIN PUBLIC BENEFITS

The Administration generally supports the denial of means-tested benefits to undocumented immigrants. The only exceptions should include matters of public health and safety such as emergency medical services, immunization and temporary disaster relief assistance; every child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs; and benefits earned as a result of U.S. military service. In so doing, care must be taken not to limit or deny benefits or services to eligible individuals or in instances where denial does not serve the national interest. The Administration generally supports tightening sponsorship and eligibility rules for non-citizens and requiring sponsors of legal immigrants to bear greater responsibility through legally enforceable sponsorship agreements for those whom they encourage to enter the U.S. The Administration, however, opposes application of new eligibility and deeming provisions to current recipients, particularly with regard to the disabled who are exempted under current law, to immigrants who have become U.S. citizens, and to lawful immigrants seeking to participate in

student financial aid programs. The Administration also opposes the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

Section 201 defines "eligible alien" as an alien: lawfully admitted for permanent residence; granted refugee or asylee status; whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act; or who has been granted parole for a period of 1 year or more. All other aliens would be 'ineligible aliens' and would not be eligible for needs-based benefits under any Federal, state, or local program, except: (1) emergency medical services under title XIX of the Social Security Act; (2) short-term emergency disaster relief; (3) assistance or benefits under the National School Lunch Act; (4) assistance or benefits under the Child Nutrition Act of 1966; and (5) public health assistance for immunizations and for testing and treatment for communicable diseases. Ineligible aliens would be ineligible to receive any grant, contract, loan, professional license, or commercial license provided or funded by any Federal, state, or local government. Only aliens eligible to work would be able to receive unemployment benefits.

This section also requires the Secretary of the Department of Housing and Urban Development (HUD), within 90 days of the date of enactment, to submit a report to the Committees on Banking and Committees on the Judiciary of the House and Senate describing how HUD is enforcing section 214 of Housing & Community Development Act of 1980, including statistics of individuals denied assistance.

This section also limits benefits under the Social Security Act to U.S. citizens and eligible aliens who have been granted work authorization and then only those benefits attributable to the authorized employment. Ineligible aliens may not be reimbursed amounts paid into SSA accounts.

While we support the goal of establishing a uniform definition of alien eligibility, we oppose section 201 as drafted. The provision would affect many diverse Federal, state, and local programs; represents a new mandate to many state and local governments; and targets current immigrant beneficiaries, some of whom are residing lawfully in the U.S. with the knowledge and permission of the INS.

We encourage you to examine the definition of "qualified" alien as the Administration proposed in its welfare reform bill, introduced in 1994, the "Work and Responsibility Act of 1994" and in the Administration's Balanced Budget proposal.

We recommend this definition of eligibility apply only to the four primary needs-based programs--AFDC, SSI, and Medicaid.

The Food Stamps Act already defines an eligible alien. We would also allow state and local programs of cash and medical general assistance to utilize the same alien eligibility criteria. Finally, we support the provision in section 201 that would retain the current law provision for illegal aliens to receive only emergency medical services under Medicaid.

The Administration's approach would avoid a number of problems that would result under S. 1394. For example, the eligibility provision in S. 1394 might be read to deny needs-based, education-related services and assistance paid for with Federal, State, or local funds--except for services under the National School Lunch Act--to undocumented alien children. The principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to do so remain powerful. In addition, students who are not undocumented aliens could be stigmatized based on name or appearance, and parents, fearful of their children's well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all students and are likely to adversely affect, and be divisive within, our communities. Moreover, instead of making progress towards becoming productive, responsible adults, uneducated children are vastly more likely to wind up on the streets, possibly engaged in unlawful behavior. Finally, schools and school systems are ill-suited to make determinations about the citizenship status of students and should not be forced to bear the uncompensated expense and burden of doing so. We urge that this section be revised so that it does not call into question the full participation of any child in the U.S. in public elementary and secondary education, including participation in pre-school and school lunch programs.

In addition, the definition of an "eligible alien" in section 201(d) could be read to exclude certain postsecondary students currently eligible for student assistance under title IV of the Higher Education Act of 1965; the negative consequences of varying eligibility requirements on these students and their educational institutions must be considered.

This provision also should be modified to clarify that it has no effect on the applicability of section 214 of the Housing and Community Development Act of 1980 to HUD programs, and that it does not apply to assistance provided by HUD. Without such clarification, this provision would impose a great burden on States and local governments that administer HUD mortgage programs, Federal Housing Administration contract programs, and Community Development Block Grants to identify noncitizens who may indirectly benefit from these non-direct assistance programs. Furthermore, it would jeopardize progress made and cooperation by HUD, INS, housing authorities, and multifamily project owners to smoothly implement section 214 of the Housing and Community Development Act of 1980.

Furthermore, the definition of "eligible alien" does not include Cuban and Haitian entrants as defined under section 501 of the Refugee Education and Assistance Act of 1980. If Cuban and Haitian entrants are not included in the list of eligible aliens, they no longer would be eligible for assistance and services under the refugee program. The definition of "ineligible alien", by its silence, includes U.S. nationals, thus making natives of American Samoa ineligible for benefits under this section.

The definition of "eligible alien" also fails to include aliens lawfully admitted under temporary visas (e.g., B for business visitors, E for treaty traders and investors, L for intracompany transferees, and H-1B for professionals) and aliens outside the United States. Under section 201 ineligible aliens would be unable to receive, inter alia, contracts, professional licenses, or commercial licenses provided or funded by any federal, state, or local government. One concern is that by prohibiting the award of federal contracts and the granting of federal licenses, this section would preclude local acquisition by diplomatic posts and military bases in foreign countries to the extent that such acquisitions involve contracts with foreign individuals. In addition, section 201(a)(1), which would make ineligible aliens ineligible for government contracts, would be inconsistent with our obligations under the World Trade Organization's Agreement on Government Procurement.

Section 201 may violate NAFTA provisions on services and investment (chapters 11 and 12) and potentially violate our obligations under the GATS agreement and bilateral investment treaties if the class of ineligible aliens is not specifically narrowed. Furthermore, NAFTA parties have agreed to eliminate citizenship and permanent residency requirements for professional licenses, and section 201 would be in violation of those obligations.

This section appears to impose a duty on agencies to make new eligibility determinations for each individual served. There are many programs for which it would not be cost-effective, or in some cases feasible, to determine individual eligibility. These programs include soup kitchens, food banks, and public health programs such as community and migrant health centers. The Administration's approach which would apply this definition of eligibility to the four major federal entitlement programs would avoid these burdensome effects.

In addition, section 201(a)(3) requires agencies administering public assistance programs to notify individually or by public notices all ineligible aliens of the termination of their benefits. While we believe that it is important to notify individuals of their benefit determination, this requirement would place a significant burden on smaller benefit programs such

as those mentioned above. The effects of these requirements on smaller programs should be considered.

Section 201(c) has many undesirable effects on the operation of the Social Security program. The payment restrictions in this provision violate the terms of the bilateral Social Security totalization agreements with 17 foreign countries, including Canada and virtually all of Western Europe. Also, the U.S. has treaties with other countries that require the U.S. to pay Social Security benefits to foreign treaty nationals on the same basis as U.S. citizens. Legislation abrogating these agreements and treaties would presumably lead to retaliatory restrictions on the payment of such benefits by other countries to U.S. citizens. Furthermore, this provision would deny Social Security benefits as well as Social Security tax refunds to aliens legally admitted on a temporary basis to work in the U.S.

The payment restrictions are also inconsistent with current provisions of law that permit payment of benefits to aliens outside the U.S. if they are citizens of a country whose social insurance system does the same for U.S. citizens. About 65 countries meet this requirement.

It is not clear whether the payment restrictions would be prospective or retrospective. If the Social Security benefits payable to current or future beneficiaries should not reflect credit for past periods of unauthorized work, INS would have to provide SSA with the necessary information about the beneficiary's work authorization history. This is probably not feasible because much of the necessary INS information is stored in paper format in Federal Records Centers.

Although it would be feasible for SSA to suspend Social Security benefits payable to a person who is currently in this country illegally, assuming appropriate evidence were obtained, such an approach would not impose any sanctions on legally admitted aliens who received Social Security credit for past periods of unauthorized work.

Also the provision does not address the complex issue of Social Security benefit eligibility for citizens who are dependents or survivors of ineligible aliens, or ineligible aliens who are dependents or survivors of U.S. citizens.

The Administration would support a provision that would restrict the payment of Social Security benefits to aliens who are in the United States illegally if the provision were drafted in a manner that did not compromise existing international arrangements concerning payment of Social Security benefits. We look forward to working with the Committee to address these concerns.

We also would seek to ensure that programs of assistance to refugees under Title IV of the Social Security Act be designed to promote early economic self-sufficiency and social adjustment and to meet the specific needs of refugees. Our concern is that newly arriving refugees, for whom the federal government has a special responsibility, should be provided with services and work and training participation requirements that are adapted to their situation.

Sec. 202 defines "public charge" for purposes of deportation as the receipt of certain benefits for an aggregate of more than 12 months in the first five years after entry as an immigrant or, in the case of an individual who entered as a nonimmigrant, the first five years after adjustment to permanent resident status. Such benefits are limited to one or more of the following programs: AFDC, SSI, Medicaid, Food Stamps, state general assistance, or any other program of assistance funded in whole or in part by the Federal government for which eligibility is based on need (except the exempted programs noted in section 201).

This section also provides that any alien who during the public charge period becomes a public charge, regardless of when the cause arose, is deportable. This section exempts from the public charge definition refugees and asylees. Further, if the cause of the alien's becoming a public charge arose after entry as an immigrant or, in the case of a nonimmigrant, after adjustment to permanent resident status, and was a physical illness or injury that kept the alien from working or a mental disability that required continuous hospitalization, then the alien would be exempt. While this section now excludes refugees and asylees from the public charge provision, it would place Cuban and Haitian entrants at risk of deportation if they received benefits from one or more of the listed programs for more than an aggregate of 12 months. We strongly object to the effect of this provision and believe Cuban and Haitian entrants should be excluded from the public charge provision. We believe this would be consistent with the Administration's position on providing assistance to Cuban parolees to alleviate any State or local impact.

This section also requires the Attorney General to review applications for benefits under section 216, 245 or chapter 2 of Title III of the INA to determine whether the exception to the definition of public charge applies. If the exception does not apply, the Attorney General shall institute deportation proceedings unless she exercises discretion to withhold or suspend deportation.

The legislation would require increased administrative efforts to ascertain (1) whether an alien who had received benefits for more than an aggregate of 12 months during the public charge period was receiving such benefits due to a "pre-

existing condition," or one that arose since entry or since adjustment of status; (2) whether a physical illness or injury was so serious that the alien could not work at any job; or (3) whether the alien's mental disability required continuous hospitalization. Since this section would create a number of administrative and legal complexities as drafted, we do not endorse these provisions without further clarification or amendment.

Sec. 203 sets forth the requirements for a sponsor's affidavit of support. It requires that the affidavit of support be executed as a contract that is enforceable against the sponsor by the sponsored individual, the Federal government, a state, district, territory or possession or any subdivision thereof, providing any benefits to sponsored eligible aliens. In the affidavit, the sponsor must agree to financially support the sponsored individual until the sponsored individual has worked in the U.S. for 40 qualifying quarters. A sponsor must be age 18 or over, a citizen or legal permanent resident, domiciled in any of the several states of the U.S., the District of Columbia, or a territory or possession of the U.S. and demonstrate an ability to maintain an annual income of at least 125% poverty line for him or herself and the sponsored individual.

The governmental entities are authorized to seek reimbursement from sponsors of aliens who have received benefits, and to bring suit against sponsors that do not reimburse the relevant government agencies. No cause of action could be brought against sponsors after 10 years from an alien's last receipt of benefits. The sponsor is required to notify the Federal, state, and local governments of any change of the sponsor's address.

The Administration strongly supports making the current affidavit of support legally binding. However, we oppose requiring the affidavit to be effective for 40 qualifying quarters, particularly as this requirement interacts with the deeming provisions in section 204. We note that these two sections would require a sponsored immigrant to remain subject to deeming provisions for a minimum of 10 years, or potentially 5 to 7 years after becoming a citizen.

As more thoroughly described in our comments on section 204, the time period of the legally binding affidavit should specify a period of years but not extend beyond the time the immigrant becomes a U.S. citizen. The Administration strongly opposes such a provision which would treat naturalized citizens as second class citizens.

In addition, the definition of qualifying quarter is unworkable. Section 203(f)(3)(A) defines "qualifying quarter" as a 3-month period in which the sponsored individual has earned the

minimum amount necessary for the period to count as a Social Security quarter of coverage. Since the implementation of annual wage reporting in 1978, SSA no longer maintains quarterly records of earnings and thus could not determine the amount earned in a calendar quarter. Quarters of coverage are now based on annual earnings. We recommend changing the definition of quarters of coverage to be consistent with the Social Security Act. Also, individuals may become entitled to disability insurance benefits with less than 40 quarters of work. The bill should clarify that an immigrant that otherwise qualifies for title II disability insurance would be eligible for benefits under title II and would be exempt from the deeming requirements for purposes of disability benefits under title XVI if he or she became disabled after entry.

Section 203 should also clarify that a sponsor would not be liable for support during the time the sponsor may be bankrupt or in need of assistance. This could easily be accomplished by stipulating that a sponsor who received means-tested assistance would not be liable for assistance received by the sponsored alien during the time period the sponsor received assistance.

Sec. 203(b) should provide 180 days--not 90 days--to develop a new affidavit of support in light of the complex interagency consultations called for by the provision. We suggest that the Secretary of Treasury and the Commissioner of Social Security be included in the list of those responsible for formulating the new affidavit of support since determining which immigrants have worked for 40 qualifying quarters would potentially involve activities managed by those agencies.

Furthermore, it should be clarified that notifications of changes of address should be made to the Attorney General and that the Attorney General--not the Commissioner of Social Security--shall promulgate regulations to carry out actions to obtain reimbursement for any federal or state assistance received by the sponsored individual.

Sec. 203 (e) would allow an action to enforce the affidavit of support to be brought against the sponsor in any Federal or State court, by a sponsored individual with respect to financial support, or by a Federal, state, local agency with respect to reimbursement. This section also would require that no state court may decline jurisdiction over any action brought against a sponsor for reimbursement of the costs of a benefit if the sponsored individual received assistance while residing in the state.

We do not object to this provision.

Sec. 204 requires that in determining the eligibility for and amount of benefits of an individual (whether a citizen or

national of the U.S. or an alien) under any Federal program of assistance, or any program of assistance funded in whole or in part by the federal government for which eligibility is based on need, the entire amount of income and resources of the sponsor and sponsor's spouse would be presumed to be available to the individual. This section may also apply to any state or local program of assistance for which eligibility is based on need, or any need-based program of assistance administered by a state or local government.

This "deeming" period would continue for the period for which the sponsor has agreed in the affidavit or for five years from the date the alien was first lawfully in the U.S., whichever period is longer. Thus, immigrants that signed the new affidavit of support under section 203 would be deemed for a minimum of 10 years in order to meet the requirement of working 40 qualifying quarters. This requirement may lead to deeming even after the immigrant had become a naturalized citizen, a policy we oppose on constitutional and other grounds.

We have serious concerns about section 203's constitutionality as applied to naturalized citizens. So applied, the deeming provision would operate to deny, or reduce eligibility for, a variety of benefits including student financial assistance and welfare benefits to certain U.S. citizens because they were born outside the country. This appears to be an unprecedented result. Current federal sponsor-to-alien deeming provisions under various benefits programs do not apply after naturalization, (see, e.g., 42 U.S.C. § 615 (AFDC); 7 U.S.C. 2014(i) (Food Stamps)). As a matter of policy, we think it would be a mistake to begin now to relegate naturalized citizens -- who have demonstrated their commitment to our country by undergoing the naturalization process -- to a kind of second-class status.

This deeming provision, as applied to citizens, would contravene the basic equal protection tenet that "the rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive." Schneider v. Rusk, 377 U.S. 163, 165 (1964). To the same effect, the provision might be viewed as a classification based on national origin; among citizens otherwise eligible for government assistance, the class excluded by operation of the deeming provision is limited to those born outside the U.S. A classification based on national origin, of course, is subject to strict scrutiny under equal protection review, see Korematsu v. United States, 323 U.S. 214 (1944), and it is unlikely that the deeming provision could be justified under this standard. See Barannikov v. Town of Greenwich, 643 A.2d 251, 265 (Conn. 1994) (invalidating state deeming provision under strict scrutiny); El Souri v. Department of Social Services, 414 N.W.2d 679, 683 (Mich. 1987) (same).

Also, a number of legal immigrant children would be adversely affected by basing the deeming period on the requirement to work 40 qualifying quarters. Sponsored children that we have permitted to reside permanently in the U.S. would be ineligible for most assistance due to deeming until they had worked for 40 qualifying quarters. Since we do not expect children to work, this particular restriction is unreasonable when applied to immigrant children and would not be in the national interest.

While we support the goal of making sponsors more responsible for the immigrants they sponsor, we strongly oppose section 204 as drafted. This section would affect many current immigrant beneficiaries; apply to immigrants that have become naturalized citizens if they have signed the new affidavit of support; repeal the current law exemption from deeming for sponsored immigrants who become disabled after entry; affect many diverse Federal programs--including Medicaid and student financial assistance for post secondary education; create new administrative complexities and requirements; and change the current deeming formula to include 100 percent of a sponsor's income and resources. By attributing 100 percent of a sponsor's income and resources to the sponsored immigrant, section 204 does not take into account the needs of the sponsor and his or her family and is inconsistent with current practice in the major entitlement programs. Legal challenges may also arise where the spouse was not a signatory to the affidavit or the spouse is separated from the sponsor.

The Administration supports strengthening deeming, and we would like to work with the Committee to establish a reasonable deeming policy that addresses the concerns identified above. The Administration is opposed to unilaterally applying the new deeming and eligibility provisions to current recipients, including the disabled exempted under current law. In addition, we oppose applying deeming provisions to the Medicaid and student financial assistance programs. Access to student assistance by legal immigrants assists them in obtaining a postsecondary education that can provide them a productive and self-sufficient life in the economic mainstream. We support providing state and local governments with the authority to implement the same deeming rules under their cash general assistance programs as the Federal government uses in its cash welfare programs.

Sec. 205 authorizes state and local governments to prohibit or limit assistance to aliens and to distinguish among classes of aliens in providing general public assistance so long as the restrictions are no more restrictive than those of similar Federal programs.

We support this provision.

Sec. 206 denies eligibility for the earned income tax credit to individuals who are not, for the entire tax year, U.S. citizens or lawful permanent resident aliens. It amends section 32(c)(1) of the Internal Revenue Code of 1986 (relating to individuals eligible to claim the earned income tax credit) by adding that the term "eligible individual" does not include any individual who does not include on his or her tax return the individual's taxpayer identification number and their spouse's taxpayer identification number (if married). The section further provides that for purposes of the earned income tax credit a social security number issued to an individual pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act, i.e., to qualify for federal benefits, would not satisfy the taxpayer identification number reporting requirement. The section also authorizes IRS to use simplified procedures if a taxpayer claiming the earned income tax credit omits a correct taxpayer identification number.

We support this provision. The President's FY 1996 Budget contained a similar provision.

Sec. 207 requires that whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any U.S. department or agency, or any copy thereof; knowingly uses, affixes, or impresses such altered seal or copy to or upon any instrument; or with fraudulent intent possesses, sells, offers to sell, furnishes, offers to furnish, gives away, offers to give away, transports, offers to transport, imports, or offers to import any such seal or copy, knowing it to have been falsely made, shall be fined under this title, or imprisoned for up to 5 years, or both. If any of the above was done with the intent or effect of facilitating an unlawful alien's application for, or receipt of a federal benefit, the penalties which may be imposed for each offense shall be double the maximum fine, and three times the maximum imprisonment, or both. Each instance of forgery, counterfeiting, mutilation, or alteration shall constitute a separate offense.

We support this provision.

Sec. 208 permits a State that is certified by the Attorney General as having high illegal immigration to establish and operate a program for the placement of anti-fraud investigators in State, county, and private hospitals to verify the immigration status and income eligibility of applicants for medical assistance under the State plan prior to the furnishing of medical assistance.

We note that current law would permit a State to operate such a program, and thus the provision is unnecessary.

Sec. 209 bars costs, attorney fees or expenses from being awarded under the Equal Access to Justice Act (EAJA) in any civil action brought by or on behalf of any individual who is not a U.S. citizen or legal permanent resident.

We do not support this provision. Although there are some problems related to litigation abuse and the EAJA as presently formulated, these are not resolved by a blanket denial of access to certain classes of aliens, most particularly refugees and asylees.

Sec. 210 would require the Office of Refugee Resettlement to allocate grants to ensure that each qualifying county shall receive the same amount of assistance for each refugee and entrant residing in the county as of the beginning of the fiscal year who arrived in the United States not more than 60 months prior.

The amendment's formula for the allocation of Targeted Assistance (TA) funds is consistent with the Administration's policy to limit the provision of Office of Refugee Resettlement funded services to a refugee's first five years in the United States. We support the exception for the Targeted Assistance discretionary program. We note, however, that the amendment may limit Congress' ability to set aside special TA funds for Cuban and Haitian entrants which it has historically done through the appropriations process.

Part 2--User Fees

Sec. 211 authorizes the collection of a \$1 land border fee for each individual entering the U.S. as a pedestrian or in a noncommercial conveyance. The commercial conveyance fee shall be set by the Attorney General in consultation with the Secretary of State. The Attorney General shall establish frequent crosser discounts and may contract with private and public sector entities to collect the fee.

The section also provides that funds shall be deposited into the Fee Account as offsetting receipts and remain available until expended. The funds may be used to pay for inspection services and related expenses. Unused funds may be used for Border security, including hiring additional Border Patrol agents.

Revenues may be spent on providing inspection services and maintaining inspection facilities; expanding, operating and maintaining information systems for nonimmigrant control; employing additional permanent and temporary inspectors; minor construction costs, including commuter lanes; detecting fraudulent documents; and administering the border fee. Excess funds may be spent on additional border patrol, support and equipment resources. Any additional excess funds may be spent on

deportations.

The Administration does not support this bill's imposing a mandatory land border user fee upon states and localities rather than granting states and localities the authority to choose whether or not to charge such a fee. As our proposal last year indicated, policy in this area must provide for greater local choice and flexibility. Unlike S. 1394, the Administration's proposal last year provided for a "local option" which allows each state to determine at which, if any, ports the fee is to be collected. A State that exercises this local option may establish a Border Service Council for each port to develop priorities for use of the fees collected, for submission to the INS Commissioner. The INS Commissioner must consider these priorities in funding port services. Funds remaining after payment of the costs of port services are to be granted to the Councils to spend on port-related enhancements. The Commissioner will allocate enhancement funds for ports that do not set up a Border Service Council. The Administration's proposal also supported a frequent crosser discount to facilitate trade and commerce.

Section 212 authorizes additional commuter border crossing fees pilot projects, one on the northern land border and another one on the southern land border.

The Administration proposal provides for projects along the southern and northern land borders and does not limit the number of pilot projects that may be established. We recommend that S. 1394 adopt the Administration proposal.

Sec. 213 removes the current exemption from payment of the \$6 immigration user fee for cruise ship passengers.

This provision is similar to the Administration's proposal, and we support it.

TITLE III - IMMIGRANTS

Subtitle A--Changes in Immigrant Classifications

The legal immigrant and nonimmigrant visa systems must serve our national principles, goals and priorities. One principle that legal immigration should serve is family reunification, especially for closest family members. The Administration urges the Committee to moderately reduce the overall level of legal immigration while providing stronger support for pro-family principles.

We affirm the United States' proud heritage of providing humanitarian protection to those persecuted and fearing for their life in their own country.

Reducing existing backlogs of family reunification immigrants who are waiting for visas, with priority to close family members of U.S. citizens, is of fundamental importance. These U.S. citizens have submitted petitions and paid fees to the U.S. to allow their family members to immigrate, and the federal government approved these petitions. In past decades, while others jumped ahead of the line by entering the U.S. illegally, these U.S. citizens, who have applied on behalf of their family members, have "played by the rules" and have chosen to wait, in some cases for many years, in order to be legally reunited with their family members.

Our employment-based immigration policy must support the needs of both the U.S. workforce and employers. It must provide real incentives for business to prepare American workers for the high skilled jobs and high performance workplaces of the future while at the same time providing business a safety valve of access to foreign labor markets to meet skill demands that the U.S. workforce cannot supply in sufficient quantity or with sufficient speed.

The backbone of this country's edge in global competitiveness is the strength of our university, research, and technology communities. Therefore, in reforming employment-based immigration, the Administration will continue to work with Congress to ensure that the needs of employers who genuinely are unable to find U.S. workers to fill job openings are addressed.

Finally, we support a periodic review of the nation's immigration system to maintain flexibility and responsiveness in the system.

Sec. 301 narrows the "immediate relatives" classification by limiting the eligibility of parents of U.S. citizens to immigrate. This section defines a "qualifying parent" as a parent who is at least 65 years of age and the majority of whose sons and daughters normally reside in the U.S. as nationals or lawful permanent residents. This section further conditions admission of these parents on a showing that the son or daughter has purchased for their parent a health insurance policy, including long-term care.

The Administration believes that the value of family reunification to our communities and nation relies on more complete family units than this bill contemplates. It includes U.S. citizens' parents. In many U.S. citizen families, immigrant parents can provide essential household support which promotes economic well-being and mobility. Such reunified families often make the difference between a family that needs public assistance and one that is self-sufficient. Therefore, the Administration opposes the health insurance mandate on parents and the limitation of entry to parents who have a majority of children

who normally reside in the U.S. The Administration strongly believes in protecting against the misuse of public assistance programs, but it also seeks to strengthen families and provide them with the means to become self-sufficient and productive.

Section 301(b) of this bill would require each immigrant parent of a U.S. citizen or the petitioning son or daughter to obtain, prior to the immigrant's admission to the U.S., health insurance that is at least comparable to Medicare parts A and B, and long-term care insurance that is at least comparable to Medicaid's long-term care benefits. The immigrant would be required to demonstrate to consular officials and to the Attorney General that he or she would maintain such coverage throughout the period of residence in the U.S.

S. 1394 would require that the petitioning son or daughter agree to provide such health insurance coverage as part of a legally enforceable affidavit of support; establish civil monetary penalties if the sponsor fails to provide the agreed coverage; define judicial remedies available to enforce the requirement; and allow an exemption from the requirement for sponsors whose financial circumstances change such that providing insurance would reduce the sponsor's total family income to below the Federal poverty level.

The Administration believes this section would impose a mandate upon purchasers of health insurance that, absent a corresponding mandate that insurers offer such coverage on an equitable basis, would set standards that are virtually impossible to meet and, thereby, render this family reunification category largely meaningless. Private health insurance policies comparable to Medicare plus the long-term care benefits of Medicaid, as required by this section, are often unavailable, especially within a reasonable price range. Private long-term care policies in particular generally contain far more limited benefits than Medicaid, and thus cannot be considered comparable.

In addition, insurers often require medical examinations and tests before they will offer individual acute care or long-term care policies, and are unlikely to accept tests performed outside the U.S. This section would require a demonstration of health insurance coverage prior to entry into the U.S. This section would also necessitate reliance upon State insurance departments to determine the acceptability of individual policies, to monitor and to enforce continued coverage, and to convey this information to consular officials worldwide, with no additional resources provided in this bill to fund this additional administrative burden on the States.

The long-term care insurance requirement is especially problematic. The long-term care insurance industry is in its infancy. Availability, type and quality of benefits, consumer

safeguards, and regulation by State insurance departments all vary widely. It is not known whether current premiums will provide sufficient revenue to pay promised benefits many years in the future.

In addition to our other concerns, we believe the insurance mandate's costs would effectively allow only wealthy American families to reunite with their immigrant parents. For everyone but the wealthy, the required health insurance products would be prohibitively expensive. Our preliminary estimates indicate that, for parents age 65 and over, premiums for Medicare-comparable acute care coverage plus Medicaid-comparable long-term care coverage would average \$9,000 or more. Immigration laws should serve to strengthen U.S. citizen families. This section, however unintentionally, erects an unnecessary barrier to U.S. citizens being reunited with their parents.

Also, requiring the Department of State to establish how many children an applicant parent may have, where those children reside and their immigration status poses problems with respect to access to proof. Consular officers have no way of verifying the number of non-U.S. national children an applicant may have.

Sec. 302 allots no more than 85,000 visas to the spouses and minor children of lawful permanent residents and eliminates or greatly narrows the other family-sponsored preference classifications in current law -- e.g., unmarried adult sons and daughters of citizens (1st preference), married sons and daughters of citizens (3rd preference), unmarried adult sons and daughters of permanent residents (2B), and brothers and sisters of adult citizens (4th preference).

The Administration supports retention of the current preference for spouses and minor children of lawful permanent residents. The Administration estimates that new demand for spouses or children of lawful permanent residents will remain about 85,000 per year for the next five or so years. We recommend allocating 100,000 visas for spouses and children of lawful permanent residents to accommodate anticipated demand and provide any remaining visas (100,000 minus the estimated 85,000 per year) to help reduce more quickly the comparatively small number of relatives in the second preference backlog who are not sponsored by a legalized alien (roughly 20 percent of the current second preference backlog).

The Administration also strongly supports retention of the first and third preferences at current admission levels. This is consistent with protecting the interests of U.S. citizens, and can be accomplished within a framework that lowers the overall level of legal immigration and reduces the second preference backlog.

The Administration's underlying policy objective of a moderate reduction in overall admission numbers, coupled with granting highest priority to closest family members, supports the suspension of any new applications for fourth preference category admissions until subsequent review by Congress as contemplated under section 315. During this period, the Administration proposes to examine in greater detail this category and the nature of its existing backlog to better evaluate its role in national immigration policy. This examination would help guide Congress in its subsequent review to determine whether future immigration and economic trends allow room under the overall ceiling for new fourth preference admissions consistent with the framework, priorities and principles we have outlined.

For U.S. citizens, whose brothers and sisters have already applied and are waiting in the backlog, we support and want to reach agreement with Congress on an appropriate and equitable grandfathering process that is consistent with our overall framework, priorities and principles.

Reducing the backlog of family reunification immigrants who are waiting for visas, particularly close family members of U.S. citizens, is of fundamental importance in immigration law. These U.S. citizens have submitted petitions and paid fees to the U.S. government to allow their close family members to immigrate, and the federal government has approved these petitions. The U.S. citizens, who have applied on behalf of their family members, have "played by the rules" and have chosen to wait, in some cases nearly two decades, in order to be legally reunited with their family.

Sec. 303 changes the employment-based preference classifications, eliminating the unskilled worker category and reorganizing the remaining employment-based preferences into two categories: those subject to the labor market screening requirements and those who are exempt. It eliminates the five existing employment-based preference classifications and substitutes the following classifications that do not require labor market screening: aliens with extraordinary ability, certain multinational executives and managers, investors, and special immigrants. Outstanding professors and researchers, professionals with advanced degrees, professionals with baccalaureate degrees, and certain skilled workers with three years experience would require labor market screening. This section also specifies that these latter classifications would face two additional requirements: first, they would be required to pass an English language proficiency test; second, their lawful permanent resident status would be "conditional" for two years.

This section allocates 90,000 visas for employment-based preferences which are to be allocated in the order listed above with each successive category eligible only for the number of

visas not used by the previous category. The "professionals with advanced degrees" and "professionals with baccalaureate degrees" categories each inherit one half of the "fall down" from the preceding categories that are exempt from labor certification requirements. This "fall down" scheme does not apply to the special immigrant category, which is limited to 5,000. This section would also remove the existing authority for the Attorney General to waive the requirement of a job offer for advanced degree holders.

The Administration supports the exclusion of the unskilled immigrant category from the employment-based immigration system and the repeal of the diversity visa category of admission. We also support the general structure of the employment-based immigrant preferences contained in the bill. The bill generally does not dictate admission ceilings for each of the preference categories and thereby retains desirable flexibility to accommodate future changes in demand. In this regard, we question the necessity and value of allocating visa numbers between the categories including "members of the professions holding advanced degrees" and "professionals with baccalaureate degrees." The Administration also would eliminate the admission ceiling of 6,000 visas for outstanding professors and researchers.

The Administration is gratified that the Subcommittee added back the admission category for "outstanding professors and researchers," but notes that this category is now subject to the bill's labor market screening mechanism, though it was previously in an exempt preference category. The Administration has expressed its support for retaining first preference treatment of "outstanding professors and researchers" as under current law. In adding the "outstanding professors and researchers" category to the other categories listed in the bill as exempt from the labor market screening requirements, the Administration would give it second priority, immediately following the category of "aliens with extraordinary ability," and ahead of "certain multinational executives and managers." Consistent with the position stated in the previous paragraph, the Administration also would eliminate the admission ceiling of 6,000 visas for the category.

The Administration also is concerned that the current definition of the classification of "outstanding professors and researchers" is restricted to employment at U.S. universities, other institutions of higher learning, or a department, division, or institute of a private U.S. employer. This narrow language would not allow the National Institute of Health (NIH) and other governmental agencies to utilize this classification for recruiting truly outstanding foreign researchers to conduct research at government labs, such as the NIH. The Administration would prefer that "federal and non-profit research organizations"

be added to the list of eligible entities.

While the Administration preferred most of the changes in minimum qualifications and experience required of employment-based immigrants who would be subject to labor market screening as contained in S. 1394 before it was amended in Subcommittee, the new minimum qualification of English language proficiency for these categories of foreign workers is an unnecessary measure in managing employment-based immigration, and where it is a bona fide occupational requirement, is a requirement which would best be left to the employer. We are concerned that a federal agency would have to determine what test to use and what score passes regardless of whether the skills measured by the test are appropriate or necessary for diverse employment situations. We are also concerned by the uneven application of this requirement. S. 1394's English language proficiency is not required of those employment-based immigrants who would not be subject to labor market screening, including multinational executives and managers, investors, and "special" immigrants. We urge the Committee to delete this requirement from the bill.

The Administration is also pleased that the Subcommittee eliminated a provision from S. 1394 which would have required three years of work experience outside the United States. Nonetheless, the Administration continues to urge that new minimum qualifications requirements be tailored to address the use of work experience of all kinds while in a nonimmigrant status that can lead to adjustment of status -- a back door to legal immigration. Such measures could include disallowing work experience gained with the petitioning employer (to address misuse of the work experience connection), and certainly any experience gained if the prospective immigrant resided and worked illegally in the U.S., including as a visa overstayer. We would be pleased to work with the Committee staff to develop ways to address the essential objective of such proposed requirements.

Section 303 continues to include the concept of "conditional status" applicable to all employment-based immigrants who are subject to labor market screening. The Administration vigorously supports the goal of ending abuse of employment-based immigration categories, but must restate its strong belief that this new "conditional status" scheme raises grave concerns. We strongly urge that the Committee reconsider this provision. The Administration is concerned that the proposal, binding the immigrant to an employer for two years, creates the potential for exploitation in the workplace.

Under current law, employment-based immigrants gain lawful permanent resident status on entry (or adjustment of status) and all the rights attendant to such status, including freedom of movement in the labor market. "Conditional" status would bind the immigrant to the employer, and at the end of the two-year

period the immigrant would have to petition for removal of "conditional" status and obtain the cooperation of the employer to appear for a personal interview to demonstrate that the worker had remained employed by the employer and had continued to receive the required wage during the prior two year period. This requirement could easily foster a great, and entirely avoidable, potential for workplace exploitation.

Obtaining lawful permanent resident status is a primary motivation for employment-based immigrants. Therefore, this "conditional" status gives the employer tremendous power over the worker -- extending beyond any period of employment in nonimmigrant status during which the worker is also bound to the specific employer (but, in some cases at least, is better protected under the law).

The bill acknowledges the possibility of such exploitation by providing for waiver of the two-year employment requirement where the employer "committed illegal acts" or "so materially altered the terms and conditions on which employment was offered to and accepted by the alien, such that a reasonable person in the alien's position would feel compelled to resign the employment...." Both definitions are quite vague and extremely difficult to apply. In addition, in such circumstances, it is likely that the troubled employment relationship would either continue while the issue is contested, investigated and adjudicated, or would -- perhaps, more likely -- be terminated by the employer leaving the worker without a means of support, at least temporarily.

For all these reasons, the Administration opposes the creation of "conditional" status for employment-based immigrants. Because employment-based immigrants are frequently not paid the wage promised in the labor certification, and often actually are employed in a lesser capacity than described in the certification application, we believe that these problems should be effectively addressed through the enforcement mechanism discussed below.

Nonetheless, if "conditional status" is to be retained in the bill, we strongly urge changes in the proposed waiver criteria which would allow both reasonable worker protection and the prospect of being administrable. We would be pleased to work with the Committee toward such ends.

Under the bill, the wage requirement that must be satisfied during a period of such "conditional status" equates to "at least the compensation specified under section 212(a)(5)(A)(i) (including any increases that have occurred in the compensation because of increases in the actual or prevailing compensation)." As the bill goes on to replace the referenced section of the INA, it is unclear as to what this wage obligation actually is. We presume -- but it should be made clear -- that the reference is

to the wage level at which U.S. workers must be recruited -- i.e., "compensation (including wages, benefits, and all other compensation) equal in value to at least 100 percent of the actual level of compensation (including wages, benefits, and all other compensation) paid by the employer to other individuals with similar experience and qualifications for the specific employment in question, or 105 percent of the prevailing compensation for individuals in such employment (including wages, benefits, and all other compensation), whichever is greater...." We strongly agree that the prospective employer's wage obligation -- with or without "conditional status" -- should include consideration of the wage level that the employer actually pays similarly-employed workers (in addition to the locally prevailing wage level) so that such workers' wages cannot be undercut in those situations where they exceed the prevailing wage.

The Administration also recommends that Congress clarify the meaning of several phrases and terms used in this section that are problematic for adjudication of visas. Phrases such as "appropriate experts" and "potential for extraordinary achievement" are vague and may pose difficulties during the adjudication of visa requests. We suggest that the current exceptional ability classification might serve the same purpose as the "potential for extraordinary ability" category, without posing those difficulties.

The Administration supports inclusion of a definition of multinational company as a way to reduce fraud. We believe, however, that the threshold numbers in S. 1394 are too low to have much impact. We also note that the term "substantially common ownership" is vague and would be hard to use in adjudication.

Sec. 304 establishes new "labor market screening" systems which would replace the current labor certification system. Both of the new labor market screening systems proposed (discussed further below) would require (except for outstanding professors and researchers) the employer applicant to pay a fee which would provide a market-based mechanism to encourage employers to look first to the U.S. -- rather than the international -- labor market to meet their employment needs. The fee is intended to serve, over time, to increase the supply and competitiveness of U.S. workers with the requisite skills to meet these needs. Employers would be required to pay a fee equal to "\$10,000 or ten percent of the value of the annual compensation (including wages, benefits, and all other compensation) to be paid to the alien whose services are being sought, whichever is greater, minus the lesser of the amount that the employer expended in the employer's most recent taxable year for formal training of its employees in specialty occupations ... or 25 percent of the [above-described] amount" This "training fee" is to be paid into a private fund certified by the Secretary of Labor "as dedicated to

reducing the dependence of employers in the industry of which the petitioning employer is part on new foreign workers" with the expenditure of the fee proceeds directed in equal parts to college scholarships/fellowships and skills training.

This section provides that, as one alternative, the employer also certify that it attempted to recruit U.S. citizens or lawful permanent residents for the job, offering -- as cited above -- "compensation...equal in value to...the actual level of compensation...paid by the employer to other individuals with similar experience and qualifications for the specific employment in question, or 105 percent of the prevailing compensation for individuals in such employment...whichever is greater...." The section further provides that, as the second alternative system, if the Secretary of Labor determines that a national labor shortage exists with respect to an occupational classification, certification for petitions for that classification shall be deemed to have been issued. Conversely, if the Secretary of Labor determines that a labor surplus exists with respect to an occupational classification, petitions for that classification may not be issued. Any person may petition the Secretary of Labor for a surplus or shortage determination.

The Administration strongly supports reform that relies on market-based mechanisms. The Administration endorses the training fee, and the training fund which would be built from these fees, as the principal mechanism for ensuring that U.S. employers undertake appropriate efforts to first recruit, retain and retrain U.S. workers to meet their employment needs.

Employment-based immigration to fill skill shortages, as well as the temporary admission of skilled foreign workers, is sometimes unavoidable. But the Administration firmly believes that hiring foreign over domestic workers should be the rare exception, not the rule. And we believe that such exceptions should become even rarer, and more tightly targeted on gaps in the domestic labor market than is generally the case under current law. If employers must turn to foreign labor, this is a symptom signaling defects in the Nation's skill-building system. Our system for giving access to global labor markets should be structured to remedy such defects, not acquiesce to them. Our immigration system should progressively diminish, not merely perpetuate, firms' dependence on the skills of foreign workers.

Our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S. workforce to meet new demands. Importing needed skills should usually be a short-term response to meet urgent needs while we actively adjust to quickly changing circumstances. In this larger context, the Administration supports a shift towards an immigration system which relies more on market-type incentives to discourage employers from abandoning the domestic

workforce in favor of foreign labor while, at the same time, making it less necessary for them to do so. A fee levied on employers sponsoring skill-based immigrants, with the proceeds dedicated to building the skills and enhancing the competitiveness of U.S. workers, forges an admirably direct and efficient link between the problem of skill shortages and the only valid long-term solution -- investment in the U.S. workforce -- while at the same time providing a safety valve of access to foreign labor markets to meet skill demands that the U.S. workforce cannot supply in sufficient quantity or with sufficient speed.

The bill sets the required fee at "\$10,000 or ten percent of the value of the annual compensation (including wages, benefits, and all other compensation) to be paid to the alien whose services are being sought, whichever is greater, minus the lesser of the amount that the employer expended in the employer's most recent taxable year for formal training of its employees in specialty occupations ... or 25 percent of the [above-described] amount" An employer's financial contribution to the fund (the fee) must create a real incentive for employers to look first to the domestic labor market to recruit, retain, and retrain U.S. workers. In addition to creating an incentive to develop U.S. workers, the fee contribution should create a disincentive for employers seeking lower-skilled immigrant workers. We have examined the wage distribution of immigrant workers subject to labor certification in fiscal years 1993 and 1994; the large majority of immigrant workers in those years were to earn between \$15,000 and \$50,000. We have already pointed out to the Committee that if the amount of the fee that an employer must pay equates proportionately to the value of the compensation package it will provide the immigrant employee, this builds in incentives to keep these compensation costs as low as possible, creating the potential for abuses as well as undermining the wages and benefits offered similarly-employed U.S. workers. In addition, it creates an incentive for employers to seek lower-skilled, lower-paid immigrant workers, which works against the basic thrust of our employment-based immigration policy. On the other hand, a flat dollar amount fee allows employers of higher-skilled, higher-paid workers to pay a comparatively small fee that would have less effect in creating the proper incentives/disincentives. We are gratified that the bill now better accommodates these concerns while maintaining a "meaningful" contribution to increase the supply and competitiveness of U.S. workers.

We had urged that the legislation clarify that an employer's training fee be a genuine incentive -- that employers should not be able to satisfy the fee requirement by pointing to existing training that they may fund. However, the bill now does just that, introducing new layers of complexity in administration and new opportunities for fee avoidance. We urge that no such fee

offsets be allowed. The training fee provides a weak incentive, or no incentive at all, to invest in U.S. workers if employers can simply reduce its value by counting existing expenditures for training and education to satisfy their fee requirement. Further, as contemplated by the bill, employers must be expressly prohibited from shifting the cost of the fee to the immigrant worker, either directly or indirectly. Such a provision will restrain, although not entirely block, employers that want to exploit immigrant workers or "game" the training fee requirement. The Administration supports the mechanisms contained in the bill to prevent and penalize such cost-shifting, although reimbursement to the worker should be made either by the fund or by the employer as appropriate to the circumstances. In addition, in order to assure that employers do not recover the cost of the fee by reducing wages -- and as an appropriate safeguard of the wages and working conditions of similarly-employed U.S. workers -- employers of immigrant workers must be required to pay the immigrant worker the higher of the applicable prevailing wage or the actual wage paid to similarly-employed U.S. workers (as discussed above).

With respect to the structure of the training fund, the bill now refers to "a private fund certified by the Secretary of Labor as dedicated to reducing the dependence of employers in the industry of which the petitioning employer is part on new foreign workers" This statement of purpose has been amended to eliminate the parallel goal of "increasing the competitiveness of [U.S.] workers" which we believe is equally critical and should be explicitly stated in the bill.

While the amended bill is clearer about the use of training fund monies, we believe that still greater clarity is needed with regard to how the fund would accomplish its stated goals and how it would be managed. The Administration would like to work with the Committee to develop criteria for the use of fund monies that achieve the goals of the bill and a workable fund structure that provides the accountability that the public expects. Also, due to the uncertainty of the Federal government's employment and training structure, the Administration would like flexibility in assigning the responsibility of managing the criteria for the use of the fund. Thus, the Administration urges the reference to the Secretary of Labor in this instance changed to the "the Secretary of Labor and other departments as designated by the President."

In any case, the scope and content of the certification process as contemplated by the bill should be left to regulations; the issues involved in the certification criteria are simply too complicated to address in legislation. Also, greater flexibility will ensure that the goals of the training fund are achieved over time as the best means to regulate the fund and to adjust certification standards accordingly become apparent.

Consistent with this framework, a nexus between the disbursement of the training fee's proceeds and the labor shortage being addressed by the immigrant workers is needed. However, it is important to take a broad view of the problems that cause domestic skills shortages. Accordingly, the Administration believes that the bill should encourage, but not require, the use of the funds generated by the fee for training for the occupations in which the immigrant workers will be employed; broader use, including basic skills training -- but excluding anything that does not directly involve human resource development -- should be permitted.

We are pleased to see that the bill now also requires payment of additional fees to cover DOL "costs of administering the labor market screening required ..., including all enforcement activities in connection therewith." In these stringent budgetary times, it is best if taxpayers do not have to foot the bill for the cost of providing the benefits received by employers and immigrants who use this system.

As previously noted, the training fee/fund is a common component of the two new labor certification systems established by the bill. One of these systems supplements the training fee with a labor shortage/surplus determination system. The Administration opposes an employment-based immigrant admission system based on labor shortage/surplus determinations.

Under this system, if the Secretary of Labor found and declared that a national labor shortage exists in an occupational classification, certification for that occupation "shall be deemed to have been issued" provided that the training fee has been paid. On the other hand, if the Secretary found and declared that a national labor surplus exists in an occupational classification, certification could not be issued for that occupation.

This proposed system parallels one used under the current labor certification system. Nonetheless, as we have expressed on numerous occasions, the Administration has serious concerns about the technical feasibility of this approach which may make it unworkable. Based on our experience with a parallel "labor market information" pilot program a few years ago, while simple in concept, this approach is terribly complex and difficult in execution given its essential dependency on labor market information which is insufficient for this purpose. While the bill contemplates that such labor shortage/surplus findings would be based on evidence presented by parties seeking to establish the existence of national occupational shortages/surpluses, the very best data available has -- in our view -- already proven ill-suited and not sufficiently up-to-date nor sensitive to circumstances in the localities where immigrant workers are actually being sought. Development of current labor market

information on a locality basis would be prohibitively costly. Also, a complete exclusion rule tends to be a much blunter tool than is necessary to redress the abuses with which we should be concerned.

The other new labor market screening system created under Section 304 of the bill would replace the current labor certification system with one which requires the Secretary of Labor to certify that, in addition to making the required fee payments, the prospective employer has: (1) attempted to recruit U.S. workers for the job in which the immigrant would be employed, and (2) has filed an application with the Secretary stating that (a) it has not laid off similarly-employed U.S. workers during certain time periods relating to the application, and (b) it is not involved in a strike or lockout involving the target occupation. Recruitment procedures must meet industry-wide standards and offer a total compensation package as discussed previously.

The bill would require the Secretary of Labor to certify that the prospective employer had attempted to recruit "a citizen of the United States or an alien lawfully admitted for permanent residence for the job that will be done by the alien whose services are being sought" Certainly, we understand the bill to intend that the employer conduct *bona fide* recruitment in the domestic labor market, and -- while it would be preferable that the bill language be explicit in these regards -- we understand the intent of the bill to require certification of such recruitment in the domestic workforce, not limited to a single individual, and that the employer's domestic recruitment would, of course, have to be unsuccessful. In this regard, it would also be useful if the bill clarified the intended standards against which such unsuccessful recruitment would be measured to address the currently common practice of employers "tailoring" job descriptions to suit only the immigrant worker, thereby assuring that any domestic recruitment will be unsuccessful.

In its recruitment an employer would be required to offer "105 percent of the prevailing compensation for individuals in such employment (including wages, benefits, and all other compensation)." We agree that no loophole should be allowed which would permit undercutting U.S. workers' working conditions (and reduce the incentives/disincentives created by the training fee) by depriving immigrant workers of benefits that are typically provided. Yet the inherent difficulty of determining prevailing compensation packages for various occupations should not be underestimated. We have explored the availability of reliable, up-to-date information regarding total compensation by occupation and area and found very little. Further, the development of such information can be extremely costly and burdensome, and the legislation is too vague to provide guidance. To remedy this problem (which does not occur in the context of

the fee obligation) but still serve the goals stated above, we strongly recommend that the bill be revised -- wherever a "prevailing wage" payment or recruitment obligation is set forth -- to invoke the applicable prevailing wage plus the same benefits and additional compensation provided to similarly-employed workers by the employer.

The bill does not indicate that prevailing wage determinations would be made for the area where the immigrant will be employed. This deficiency, which we have previously pointed out, will create undesirable and probably unintended consequences. For example, employers in major metropolitan areas -- where wage rates and benefits tend to be higher -- could be encouraged to use the system due to their advantage of being able to recruit by offering compensation packages that meet a nationally prevailing wage standard -- but which might well be less than they actually pay their U.S. workers in those locations. On the other hand, employers in lower wage areas of the country could be discouraged from using the program because they would be seriously disadvantaged by being required to recruit offering a compensation package which satisfies the test but which actually represents much more than the applicable prevailing wage rate they pay similarly-employed U.S. workers in their location. However, requiring determination of prevailing compensation for an occupation only on a locality basis could be extremely resource intensive, so we again urge that the bill afford the flexibility to require determination of the prevailing wage on a local, State-wide, regional or national basis depending on the availability of reliable, up-to-date data for various occupations and industries.

In the Administration's view, the labor market screening system contained in S. 1394, as introduced, did not adequately protect U.S. workers from unfair competition with immigrant workers. In this regard, the Administration had strongly urged that, beyond requiring unsuccessful recruitment in the domestic labor market, additional labor protections be built into the proposed labor market screening system. We are gratified to see that the amended bill reflects our most important concerns -- that if employers are trying to find foreign workers to fill labor shortages caused by a breakdown in the nation's skill development system, there can be no legitimate justification for laying off or otherwise displacing U.S. workers or using immigrant workers as strike breakers.

Given the serious problems with the bill's "conditional" status concept (as discussed above) and the need to assure that the obligations of participation in the program are fully complied with by the employer, the Administration believes strongly that the bill needs to provide appropriate enforcement powers to the DOL. Such enforcement powers are important not only as a safeguard for workers' rights; they also ensure that

the market mechanism created by the training fee/fund functions properly. For example, an employer that can avoid paying the required wage or shift costs to the immigrant worker with impunity will have defeated the market-based incentive to recruit, retain, and retrain U.S. workers. In order to ensure that the requirements of the new labor market screening admission process are observed, the Labor Department must have the ability to seek out and identify employers that violate the law, assure that U.S. and immigrant workers are protected or made whole, and impose substantial penalties that will deter future violations and promote compliance. Thus, the legislation should vest the Labor Department with additional enforcement powers -- including the right to seek injunctive relief, the right to initiate investigations, and whistleblower protections -- and require remedies for employer violations that include "making whole" workers injured by the violation -- e.g., reinstatement of wrongfully laid off workers -- as well as substantial penalties for violations. These specific provisions must be included in the legislation as some cannot be created by regulation or administrative action.

Sec. 305 modifies the special immigrant classifications by adding a new category for certain disabled sons and daughters of U.S. citizens and lawful permanent residents. This section imposes insurance requirements upon the parent sponsor of such disabled immigrant sons and daughters similar to the insurance requirements imposed in section 301 upon son and daughter sponsors of elderly immigrant parents.

The Administration objects to this section for reasons similar to those described relating to section 301 regarding elderly immigrant parents. In addition, this requirement is even more impractical than the insurance requirement for elderly parents; private individual health insurance policies are even less likely to be available or affordable to the severely disabled.

This section also appears to offer a benefit which could, as a practical matter, only be met by a parent whose employer offers health insurance coverage that would extend to an adult son or daughter without pre-existing condition limits or exclusions. Very few parents are likely to have such coverage. While we note the exemption for changes in the sponsor's financial circumstances, this exemption would not cover changes in the sponsor's employment status or changes the sponsor's employer makes in health insurance coverage. It is also unclear who would be held responsible regarding health insurance coverage for a disabled son or daughter if the parent dies first, as would frequently be the case. We prefer retention, as noted above, of current first and third family preference categories, which necessarily would include this group of sons and daughters of U.S. citizens rather than creating a new special immigrant

category.

Sec. 306 would modify the effect of an approved immigrant visa petition by providing that the approval of an immigrant classification petition does not relieve the alien of the burden of proving to a consular officer that he/she has established eligibility to receive an immigrant visa in all respects. This section further provides that the denial of an immigrant visa by a consular officer, notwithstanding the presence of an approved petition, is non-reviewable.

Although the Administration supports efforts to prevent the issuance of visas based on the presentation of fraudulent immigrant visa petitions, section 306, as currently drafted, does not appear to achieve that result. For example, under section 212 of the INA, the mere presentation of a fraudulent visa petition does not automatically constitute a basis for denying a visa. Section 306 appears to reiterate the existing authority of consular officers to deny visas, rather than conferring additional authorities. At the same time, it raises questions. Would the INS be required to revoke the petition upon its "return to the Attorney General"? If so, would the revocation be subject to review? Under current law, there are mechanisms in place to correct errors if the consular officer believes a mistake has been made on a visa petition. Therefore, we strongly object to this new provision as written and would be happy to work with the Committee to clarify this section.

Sec. 307 would establish limitations and conditions on judicial review of agency actions relating to petitions for a visa or adjustment of status. The Administration believes these limitations and conditions on judicial review should include both immigrant and nonimmigrant visa petitions. The Administration also believes that, because the petitioner seeking relief under this section may be a U.S. citizen, the venue should lie in the district in which the petitioner resides. The requirement that the venue for these matters lies only in the U.S. District Court for the District of Columbia may also overburden this court which, in any case, does not have a particular history or expertise in immigration matters over the other federal courts.

Secs. 308 & 309 contain conforming amendments and repeals and transition provisions, respectively.

Subtitle B--Changes in Numerical Limitations on Immigrants

Sec. 311 establishes a worldwide numerical limitation on family-sponsored immigration of 85,000, plus any visas authorized for backlog reduction under section 314 (2nd preference). As stated in relation to section 302, the Administration strongly supports its own framework for legal immigration reform which lowers the level of legal immigration while providing stronger

support for family reunification principles.

Sec. 312 establishes a worldwide numerical limitation on employment-based immigration of 90,000 per year. The Administration supports an admission level of 100,000, which represents a substantial reduction from current law (140,000) but which allows U.S. employers to hire the employees they need to remain competitive in the global market.

Sec. 313 changes current law on per-country limits, providing that the level of family-sponsored and employment-based immigrants may not exceed 20,000 for non-contiguous foreign states, 40,000 for contiguous foreign states, or 5,000 for dependent areas. This limit would be reduced for a country in any fiscal year by the number of immediate relatives above 20,000 (or 40,000 for contiguous countries and 5,000 for dependent areas) admitted during the prior year. Immigrant visas made available to spouses and minor children of lawful permanent residents for backlog reduction are exempt from the per country limit.

The Administration has reservations about changing the nation's policy of equity among all countries, including our contiguous neighbors. The per country ceilings established in the bill may also create problems because of the increasing number of naturalizations and their resulting impact on immediate relative petitions. We hope to work with the Committee to explore the full potential impact of these and other changes in levels of admissions.

Sec. 314 creates a special "transition" program to reduce the backlog of spouses and minor children of lawful permanent residents, calling for 150,000 visas in the first year and the lesser of 150,000 or the difference between the total level of family-sponsored immigration (including immediate relatives) for the prior fiscal year and the same numbers for fiscal year 1995. These visas are to be made available first to relatives of aliens who did not become lawful permanent residents due to IRCA's legalization programs.

The Administration has proposed a preferable alternative to this approach to backlog reduction. The Administration strongly favors relying on its naturalization initiative to reduce the backlog of spouses and minor children of lawful permanent residents, rather than creating a special program. We estimate that 80 percent of the backlog consists of relatives of aliens who became lawful permanent residents through IRCA's legalization programs. With this Administration's commitment to improve the naturalization process, these aliens have an opportunity to step forward affirmatively to become U.S. citizens. Upon taking that step, they may petition for their spouse and minor children as immediate relatives of a U.S. citizen. The 20 percent of the

backlog who are not relatives of aliens legalized pursuant to IRCA should have preference for visas in this category.

Sec. 315 calls for Congress to review the annual numerical limitations on family-sponsored and employment-based immigrant classifications after the present backlog of spouses and minor children of permanent resident aliens has declined to 10,000 or 5 years after enactment, whichever comes later. It also creates special procedural rules for consideration of such legislation. The Administration supports Congressional review of immigration levels after 5 years. We do not believe, however, that the decline in second preference backlog numbers to 10,000 is a valuable triggering mechanism for review. We urge the Committee to consider the Administration's legal immigration reform proposal that maintains the integrity of the family preference categories and does not require a substantial overhaul of the system.

TITLE IV -- NONIMMIGRANTS

The Administration agrees with the general objectives of the nonimmigrant program changes in the bill to address abuses in these programs and provide adequate protections to U.S. workers. However, there are a number of provisions which require additional and careful review with regard to their consistency with U.S. trade agreement commitments. For example, the bill proposes changes to various visa categories, including H-1B and L, for which the U.S. has undertaken international obligations under the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) and the North American Free Trade Agreement (NAFTA).

Secs. 401-403 and 405-406 make important changes to the H-1B nonimmigrant visa category which allows the admission (or adjustment) of foreign "professionals" to be employed in "specialty occupations" (as well as fashion models of distinguished merit and ability). The Administration has long and vigorously urged amendment of the H-1B admission criteria, consistent with our GATS and NAFTA commitments, to effectively address real abuses in the program and assure adequate protection for U.S. workers.

The bill's amendments to the H-1B nonimmigrant program would require employers seeking to employ such nonimmigrants to pay a fee prescribed by the Secretary of Labor to cover the Department of Labor's costs of administering and enforcing the program requirements.¹ In addition, such an employer would be required

¹ Notably, the bill seems to lack a needed mechanism, similar to that which exists with respect to the other fee provisions, to prevent cost-shifting from the employer to the

to attest:

- * that it will pay a total compensation package that is the higher of the package paid similarly-employed U.S. workers or 105 percent of the prevailing compensation for the occupation;
- * that during certain periods it has not and will not lay off or otherwise displace U.S. workers in the target occupation;
- * that it has unsuccessfully attempted to recruit in the domestic labor market for the target job using industry-standard recruitment procedures and offering the higher of the actual or 105 percent of the prevailing compensation level; and,
- * whether it is dependent on H-1B workers, as defined in the bill.

Further, "job contractors" seeking to use this program would be precluded from placing H-1B nonimmigrant employees at worksites of customers which had not also attested to complying with the H-1B program criteria. The bill would also establish new guidelines for prevailing wage determinations applicable under this program.

No H-1B nonimmigrants would be admissible to work for "employers dependent on H-1B workers" unless:

- * the Secretary of Labor certified that the employer paid a training fee similar to that set out for employment-based immigrants subject to labor market screening (as discussed previously), which could not be shifted to the nonimmigrant worker;
- * the nonimmigrant has "demonstrated to the satisfaction of the Secretary of State and the Attorney General that the alien has a residence abroad which he has no intention of abandoning";
- * such employer takes timely, significant and effective

nonimmigrant employee. This deficiency needs to be fixed. In addition, the bill indicates that such fees should cover the costs to DOL of conducting regular, random audits, including of "the qualifications of the petition beneficiaries." This particular function has traditionally been the responsibility of the INS and, therefore, we suggest that the bill indicate that the fee be set by the Secretary of Labor so as to cover the costs to both DOL and INS of performing the specified audit functions.

steps to recruit and retain sufficient U.S. workers in order to remove as quickly as reasonably possible its dependence on H-1B workers (though it is not clear whether such dependent employers would be required to make any enforceable attestation in this regard); and,

- * the prospective employer has not been found within the prior two years to have failed to comply with the H-1B program requirements.

Finally, the bill would increase penalties for certain H-1B program violations and reduce the authorized period of stay of H-1B nonimmigrants from a maximum of six to three years.

The Administration appreciates and generally supports the thrust and objectives of these amendments. These provisions will help improve protections for U.S. workers. We must point out, however, that some of these H-1B program amendments raise a variety of technical and international trade agreement issues that need to be carefully examined and fully considered.

The Administration would strongly urge that the amendments it had previously proposed -- particularly with respect to the displacement of U.S. workers -- be adopted. The H-1B program amendments we requested in 1993 were carefully designed to assure continued business access to needed high-skill workers in the international labor market while adequately protecting U.S. workers and the businesses which employ them. These amendments are targeted especially to those employers who seek to obtain relatively low-skilled "professional" workers. Specifically, in nearly all situations it is entirely unreasonable that an employer in this country -- as a matter of public policy -- not only does not have to test the domestic labor market for the availability of qualified U.S. workers before gaining access to foreign workers, but is actually able to lay off U.S. workers to replace them with temporary foreign workers in their own employ or through contract. This is exactly what is happening now; our public policy tolerates it, perhaps encourages it, and our policy must change. The "no layoff" provision currently contained in S. 1394 should accomplish the desired change.

A second amendment we proposed in 1993 would require all employers of H-1B workers -- not just those who are already "dependent" on such workers -- to attest that they have and are taking timely and significant steps to recruit and retain U.S. workers in the jobs in which they seek to employ H-1B nonimmigrants. In this regard it is quite important that, if "significant step[s] to recruit and retain" U.S. workers are to be enumerated in the bill, they should be required to both be new actions by the employer and be meaningful. In our view, this is not the case with the current bill as drafted.

A new provision of the bill (compared to the original S.1394) would establish special procedures for determining prevailing wages for occupational classifications of employees in institutions of higher education or related or affiliated nonprofit entities or nonprofit research institutes. The Administration recommends two further amendments. In our view, this special procedure: (1) should be broadened to also apply to federal research organizations, such as the NIH, so that the government is not placed in the untenable position of having to match much higher salaries in the private sector, and (2) should be limited to only those individuals employed as researchers by academic, nonprofit, and federal research institutions.

The problem with the prevailing wage requirement (discussed above) in relation to section 304 (see page 67) also occurs in this section. The requirement should invoke the applicable prevailing wage plus the same benefits and additional compensation provided to similarly employed workers by the employer.

Sec. 404 of the bill would change the H-2B nonimmigrant visa classification -- for unskilled, non-agricultural temporary foreign workers -- to reduce the annual admission ceiling to roughly current usage, and to limit admission to workers who will provide "skilled services or skilled labor." While generally sympathetic with the goals of this latter change, and its consistency with the overall thrust of legal immigration reform in recent years, we strongly caution that this change could have significant and unintended repercussions, particularly in Guam.

Sec. 405 makes changes to the L visa criteria including limiting the availability of the visa to employees of "multinational firms" as defined in section 303(a)(1)(B)(ii), and increasing the length of time an employee must be employed by a multinational firm outside the U.S. prior to application, and modifying the definition of "specialized knowledge." Although the Administration supports the goal of reducing fraud, these particular provisions require further review with regard to their consistency with U.S. international obligations.

Sec. 406 limits the maximum length of stay for L, H-1B and H-2B nonimmigrants to three years. The Administration strongly supports the limitation on length of stay in the H visa programs as comporting with the "temporary" nature of these nonimmigrant visa categories. As a result, H-2B visa holders are currently subject and will remain subject to recertification by regulation on at least an annual basis. The limitation on the L visa, however, would be inconsistent with some of our international trade obligations.

Sec. 407 changes the F, J, and M nonimmigrant classifications to limit the duration of admission for student

visa holders to the proposed period of study or participation in the sponsoring exchange program. It also excludes from eligibility under the F classification persons studying English for six months or less and persons attending public elementary or secondary schools.

The amendments in section 407(b) would prevent a nonimmigrant student from obtaining a student visa in order to attend a public elementary or secondary school, although that student could obtain a student visa to attend a private elementary or secondary school. Nonimmigrant students other than those who entered the U.S. on a student visa, or who are here temporarily for business or pleasure, could still apply to attend public elementary or secondary schools.

Sec. 408, using language similar to section 407(b), also precludes a nonimmigrant student from obtaining a student visa to attend a public elementary or secondary school. The overlap and inconsistency between section 407(b) and section 408(a) should be resolved. Section 408(b) provides that a nonimmigrant admitted under section 101(a)(15)(F) for study at a private elementary and secondary school who fails to remain enrolled at such a school becomes excludable.

Sec. 409 establishes a pilot program to collect information from colleges and universities, establish an electronic tracking system of nonimmigrant foreign students, and make this information available to selected U.S. embassies and consulates. The information would include whether an alien is enrolled or has been accepted for enrollment, the alien's current U.S. address, whether the alien is studying full-time or part-time, and whether he or she is making normal progress toward the degree. The pilot would be funded by processing fees assessed by the Department of State and the Attorney General.

The Administration is currently working on an improved tracking system through the INS' Student Controls Task Force and believes that this approach is better than the one proposed in this bill. INS does not need to know when a student is placed on academic probation. The INS needs to know only when the student is still a full-time student, whether the student has interrupted his/her education, ceased attendance, or otherwise violated student status. Currently, these institutions are required to report only the withdrawal of students with student visas so this provision would increase the reporting burden on institutions. The Administration would like to work with the Committee to develop appropriate language to support implementation of a revised, efficient tracking system.

Currently, the bill requires, in subsection (f) a report on the feasibility of expanding the program to cover the nationals of all countries while subsection (g), requires that, not later

than six months after the submission of the report, expansion of the pilot program to cover the nationals of all countries must begin and be completed within one year, regardless of the report's conclusions. These subsections should be reconciled.

The bill also should clarify that the fee it proposes is in addition to the fee currently collected for normal processing that goes to the Exams Fee Account. There should be clearer definition of the appropriate distribution and collectors of the fee. The Department of State should collect the money, and the proceeds should be divided between the Department of State and the INS based on the costs they respectively incur.

The bill does specify that a fee will be collected for processing the J visa, and we oppose such a fee because it would adversely affect that group of J visitors that can least afford an additional fee, *i.e.* students. We are especially concerned about the impact the processing fee would have on government-funded programs, unless they are exempted. Government sponsored exchange programs would, in all likelihood, absorb this fee and thereby incur increased programming costs. However, for U.S. Information Agency (USIA) to participate in the pilot program, *i.e.* incorporating the J visa exchange visitors, would require additional appropriations.

We also recommend modifying the language of the clause referring to J visas in (h) to read "...or as a condition of their continued designation as an exchange visitor program by the Director of the USIA under section 101 (a) (15) (J) of such Act."

TITLE V -- EFFECTIVE DATE

Sec. 501 establishes that the effective date of titles I and II is the date of enactment of this Act and that the effective date of titles III and IV is October 1, 1996, unless otherwise provided. The provisions of section 201 and 204 shall apply to benefits and to applications for benefits received on or after the date of enactment of this Act. The amendments made by sections 132, 133, 141, 142 and 195 shall be effective upon the date of enactment and shall apply to aliens who arrive in or seek admission to the United States on or after such date; the Attorney General may issue interim final regulations to implement these sections at any time on or after the date of enactment. Such regulations may become effective upon publication without prior notice or opportunity for public comment.

We object to the provision specifying that the Attorney General may proceed directly to interim final rule in this section. Decisions about the form in which regulation should be issued are governed by the Administrative Procedures Act (APA). The Attorney General has sufficient authority there to determine when exceptions to the APA's notice-and-comment and 30 day

delayed effective date provisions are appropriate. Given these concerns, section 501(b)(2)(B) should be deleted as redundant and inconsistent with the APA.

The new definition of eligible alien (section 201) and the 5 year deeming period (section 204) would apply to benefits being received at the time of enactment, and affect current recipients as well as future applicants. We are opposed to applying the new deeming and eligibility provisions to current recipients, including the disabled. Benefits received after the date of enactment would be counted towards the new public charge provisions (section 202), and we are concerned about the ability to adequately inform current immigrants of the new rules concerning public charge and the potential for becoming deportable.

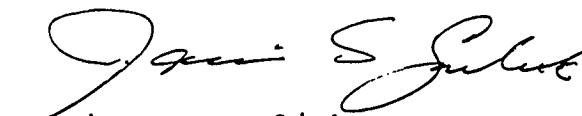
The provisions with the greatest SSI impact--the definition of "eligible alien" and sponsor-to-alien deeming--would be effective upon enactment. Such an effective date could eliminate benefit eligibility for as many as 250,000 legal immigrants under the SSI program. Even more immigrants would be affected when the other federal programs are considered. These are individuals who have already entered the country and "played by the rules." We do not support penalizing this group.

We are also concerned that it will be difficult to promulgate regulations, even interim regulations, before the date of enactment to allow for immediate implementation of the provisions such as special exclusion procedures. Special exclusion is a sensitive area that will require advance guidance to field officers to ensure fair and equitable treatment of aliens and to avoid unnecessary litigation. We believe that drafting proposed regulations and allowing public comment before implementation would be clearly preferable to issuing interim regulations for the many major changes made in this bill. Therefore, the effective date of this bill should be at least 270 days after enactment.

Mr. Chairman, we appreciate the continued support of this Committee for the initiatives taken by this Administration on urgent immigration matters. We have provided lengthy briefings to your staffs regarding the Administration's vision for immigration reform legislation, and we will continue to work with the members of this Committee on necessary improvements to achieve bipartisan immigration improvements legislation that is in the national interest.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,



Jamie S. Gorelick
Deputy Attorney General



Office of the Deputy Attorney General
Washington, D.C. 20530

March 13, 1996

The Honorable Richard A. Gephardt
Minority Leader
United States House of Representatives
Washington, D.C. 20515

Dear Speaker Gingrich:

This letter presents the views of the Administration concerning H.R. 2202, the "Immigration in the National Interest Act of 1995," as reported by the Committee on the Judiciary on October 24, 1995.

Many of the provisions in H.R. 2202 advance the Administration's four-part strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and securing from Congress the resources to assist states with the costs of illegal immigration that are a result of failed enforcement policies of the past. The Administration's legislative proposal to advance that strategy is H.R. 1929, the "Immigration Enforcement Improvements Act of 1995," introduced by Representative Howard Berman on June 27, 1995.

The Administration endorses a framework of legal immigration reform that respects our immigration tradition while achieving a moderate reduction in overall admission numbers to promote economic opportunities for all Americans. The Administration seeks legal immigration reform that promotes family reunification, protects U.S. workers from unfair competition while providing employers with appropriate access to international labor markets to promote our global competitiveness, and promotes naturalization to encourage full participation in the national community.

While the Administration strongly supports reform of the current immigration law that affects both illegal and legal immigration, and H.R. 2202 contains many provisions that are similar or identical to the Administration's legislative proposal, enforcement initiatives, and overall strategy, H.R. 2202 raises serious concerns in specific areas that we hope the House of Representatives will examine thoroughly. The Administration's concerns include, but are not limited to the following:

◆ Employment eligibility verification systems should contain necessary antidiscrimination and privacy protections and be piloted before any nationwide implementation. We urge the House to adopt our proposal to pilot programs for 3 years and then request Congressional authorization to implement only those pilot projects that work.

◆ This Administration has built and reinforced physical barriers along the Southwest border. Over the past several years, the Immigration and Naturalization Service (INS) with the support of military personnel and the National Guard has built miles of strategically placed fencing along the border to control drug trafficking, alien smuggling, crime, and illegal immigration. For example, there are now 28 miles of fencing in the San Diego Sector to support the Administration's increased deployment of Border Patrol agents, resources, and sophisticated technology. Recently, we began construction of a 1.3 mile fence along the border at Sunland Park, New Mexico. However, there is a right way and a wrong way to erect barriers. We believe the multiple layers of fencing required by H.R. 2202 will endanger the physical safety of our Border Patrol agents who may get trapped and ambushed between the layers of fencing. We urge the House of Representatives to strike this provision.

◆ Labor and immigration law enforcement should be increased and coordinated. H.R. 2202 should adopt our proposal to hire 202 Department of Labor (DOL) Wage and Hour Staff to investigate and prosecute labor standards and employer sanctions violators. Recent cases uncovering sweatshop operations underscore the importance of providing these enforcement personnel.

◆ Imposition of a 30 day time limit in which to apply for asylum would create needless protracted litigation on the issue of when an alien entered the United States (U.S.) rather than on the merits of the asylum claim. This would be detrimental to immigration law enforcement and humanitarian protections for true asylees. Expedited exclusion procedures should be established in extraordinary situations the Attorney General deems appropriate.

◆ Family-sponsored visas for adult children of U.S. citizens and unlimited visas for mothers and fathers of U.S. citizens must be maintained to protect our cherished principle of family reunification. Similarly, we support and want to reach agreement with Congress on an appropriate and equitable process to address the waiting list of persons in the fourth preference backlog that is consistent with our overall framework, priorities and principles. In addition, the diversity program is not consistent with our framework. The Administration has presented a plan that reduces the overall level of legal immigration while preserving the ability of U.S. citizens to reunite with their family members.

◆ The legislation should clarify that it does not call into question the full participation of any child in public elementary and secondary education, including pre-school and school lunch programs. We oppose the health and long term care insurance mandate imposed upon the mothers and fathers of U.S. citizens. As currently drafted, the legislation requires purchase of health care coverage that is neither currently affordable nor readily available. We strongly oppose application of new eligibility and deeming provisions to current recipients, including the disabled who are exempted under current law and to student financial aid programs. We also strongly oppose the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

◆ Restricting the Attorney General's parole authority will jeopardize the Attorney General's ability to quickly and appropriately respond to compelling immigration emergencies. Finally, we urge the House to ensure the bill's consistency with our international treaty obligations.

This Administration appreciates the continued opportunity to work with you and other members of the House of Representatives. Our positions on the individual provisions of H.R. 2202 are outlined in the following section-by-section discussion.

Title I - Deterrence of Illegal Immigration Through Improved Border Enforcement and Pilot Programs

The Administration has already demonstrated that our borders can be controlled when there is a commitment to do so by the President and Congress. With an unprecedented infusion of resources since 1993, we have implemented a multi-year border control strategy of prevention through deterrence. We have carefully crafted long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore integrity to the border. The results of our comprehensive strategy are reflected in the successful implementation of Operations "Hold-The-Line" in El Paso, "Gatekeeper" in San Diego, and "Safeguard" in Arizona. We have increased the number of Border Patrol agents by 40% since 1993 -- higher levels of staffing than ever before. For the first time in over a decade we are backfilling positions previously left vacant by attrition. These agents are also backed up by the highest level of support than ever before. We are committed to achieving a strength of more than 5,600 Border Patrol agents by the end of Fiscal Year 1996 and more than 7,000 agents by the end of FY 1998. Border Patrol personnel are now equipped with new and sophisticated technology, including night scopes and sensors, and basic support allowing them to work more effectively. We appreciate the efforts by Congress to authorize and appropriate more funds for Border Patrol agents and equipment. We look forward to working together to further improve border management

and control.

Section 101(a) provides that the number of Border Patrol agents be increased by 1000 per year from 1996 through 2000. Subsection (b) provides that the number of support personnel for border enforcement, investigations, detention and deportation, intelligence, information and records, legal proceedings, and management be increased in fiscal year (FY) 1996 by 800 positions above the number existing as of September 30, 1994. Subsection (c) requires the deployment of new border patrol agents to border areas in proportion to the level of illegal entries in the sector.

The Administration has greatly expanded the size of the Border Patrol and, for the first time, in many years, has taken serious efforts to eliminate hiring and attrition shortfalls. In some fiscal years, we will hire and train more than 1000 new and replacement Border Patrol personnel. However, we ask the House to be mindful of the danger to the law enforcement structure and mission should too many newly hired positions be created at once. We believe that an annual increase of 700 agents represents the maximum agent strength that the Border Patrol can responsibly achieve in each year at this time based upon a number of fundamental law enforcement considerations. The International Association of Chiefs of Police recently analyzed Border Patrol hiring and concluded that massive infusion of inexperienced law enforcement agents deployed in the field with new supervisors would jeopardize overall effectiveness and would carry with it a risk of unintended consequences such as cutting corners on training, excessive force, civil rights violations and decreased professionalism.

For these reasons, H.R. 1929 proposes increases of at least 700 agents in each of fiscal years 1996-1998, to the maximum extent possible consistent with standards of professionalism and training. This proposal reflects the Administration's commitment to achieve substantial increases in agent strength by the end of FY 1998.

We recommend substitution of the mandated annual increase of 1000 Border Patrol personnel with language contained in the Administration bill that the hiring be at least 700 annually and to the maximum extent possible consistent with standards of professionalism and training. In the alternative, we urge that statutory and report language make clear that the mandated increase include new and replacement personnel in order to facilitate their full integration into the Border Patrol.

Section 102(a) provides that the Attorney General and the Commissioner of the INS install additional physical barriers and roads to deter unauthorized crossings into the U.S. in areas of high illegal entry. Section 102(b) provides that in carrying out

subsection (a) in the San Diego sector, the Attorney General provide for multiple fencing, separated by roads, for the 14 miles eastward of the Pacific Ocean. The section authorizes \$12,000,000 for these fences and roads. Section 102(c) provides for a waiver of the Endangered Species Act and other laws. Subsection 102(d) requires the Attorney General to submit a report within 6 months of the date of enactment regarding the forward deployment of border patrol agents.

We support reinforcing physical barriers along the border, and this Administration has continued to do so as an important part of its overall strategic plan. Indeed, last September, after a thorough evaluation, the INS announced its decision to construct a border fence west of El Paso to further enhance the security of the southwest border. The 1.3 mile fence will be constructed along the border at Sunland Park, New Mexico, and Colonia-Anapra, Chihuahua, Mexico, and the area will be lit with sodium vapor lighting at night. The fence will provide a firm, new response to the crime, banditry and smuggling activity that have dramatically increased in the area as well as significantly improve the safety of residents on both sides of the border.

However, the bill's proposal of multiple layers of fencing risks endangering the physical safety of our Border Patrol agents. Multiple layers of fencing present a tactical problem. Agents working inside multiple fence lines become restricted to a single, predictable line of travel. Past experience has shown that alien smugglers will take advantage of that restriction and "ambush" agents by attacking vehicles and agents. Often, the only escape route for an agent under attack may be blocked by innocent women and children, more alien smuggler attackers, or with debris. We request that the House defer to the experience of those in the Border Patrol who are responsible for the safety of the Patrol's men and women and strike this section from the bill.

The INS has developed carefully crafted, long range strategic plans which rely on deterrence to restore integrity to the border. Because the geography, illegal crossing routes and methods, and demography and psychology of illegal immigration are unique to each border area and may vary with time, border control strategies must be tailored to meet the needs of each specific area. The results of our flexible approach are reflected in the successful implementation of Operations "Hold-The-Line" in El Paso, "Gatekeeper" in San Diego, and "Safeguard" in Arizona. Accordingly, the deployment of personnel, physical barriers, technology, and operational judgments are management decisions appropriately left to the people who are responsible for the day-to-day operation at the ground level.

In addition, \$12 million is inadequate to fund 14 miles of second and third fences. Depending on the cost of land

acquisition and the type of fence used, the total cost will range from \$86.75 million to \$110 million, even before road construction costs are added. Land acquisition is expected to cost \$80,000 per acre. If the land is 120 feet wide and 14 miles long, the cost will be \$17.6 million. If the acquired land is the bare minimum width 116 feet and 14 miles long, the cost will be \$16.75 million. A wire mesh fence would cost \$92.4 million; a chainlink fence, \$70 million. Experience shows that without adequate resources for the construction and maintenance of any proposed fencing, it will fail to accomplish its purpose.

Waiver of the provisions of the Endangered Species Act (ESA) for construction of the barriers and roads is unnecessary, and we oppose it. Full compliance with the requirements of the ESA serves as no bar to the timely construction of the border improvements contemplated by this section. Grant of an ESA waiver under these circumstances is inconsistent with the Administration's proposal for reauthorization and full application of the ESA. Requirements and regulations under the ESA have already been streamlined to balance the interests underlying the ESA with that of the regulated community. Providing waivers on a piecemeal basis, particularly to another government agency, contravenes the explicit Congressional intent of the ESA to afford endangered species the highest of priorities, and that all federal actions undergo consultation with the appropriate agencies to determine the effects of that action upon listed endangered species. We oppose providing ESA waivers to government agencies because it undercuts the general applicability of the ESA and undermines the government's credibility in enforcing it.

Section 103 authorizes the Attorney General to acquire federal equipment, including aircraft, helicopters, vehicles, and night vision equipment, to improve the deterrence of illegal immigration into the United States.

The INS is already engaged in such efforts. We do not oppose this provision, but we do not believe it is necessary.

Section 104 amends the definition in section 101(a)(6) of the Immigration and Nationality Act (INA) of the "border crossing identification card" to require that within 6 months of the date of enactment, all new border crossing ID cards (which are issued only to aliens) include a machine readable biometric identifier, such as a handprint or fingerprint of the alien. The amendment also requires that within 18 months of the date of enactment of this Act, an alien cannot be admitted to the U.S. on the basis of such a card unless the biometric identifier on the card matches the appropriate biometric characteristic of the alien. Not later than one year after implementation of the biometric identifier the Attorney General shall submit to Congress a report on the impact of such clause on border crossing activities.

We agree that border crossing cards and other documents issued by INS must be made more secure, and we are working to achieve that goal. However, we are concerned by the tight timeframe for issuance of new cards provided by this section. At this time, the Immigration Card Facility does not have the capacity to issue cards containing a machine readable biometric identifier. The INS would have to procure the equipment to make the cards and supply the ports of entry with the equipment to capture the biometric data for the card production. Given current technology, measuring the biometric of pedestrians would be feasible, but measuring the biometric of every person arriving in a vehicle would dramatically slow traffic and thereby hinder legal entry into the U.S. We believe 18 months is a more realistic timeframe which would take advantage of available technology to accomplish the goal of a machine-readable card with biometrics within a reasonable period of time. This effort involves developing an infrastructure for issuance of the card and a means to issue replacement cards for one million current cardholders while minimizing any diversion of resources from land border inspection and recognizing our current international obligation to issue new border crossing cards at no charge.

Section 105 provides that an alien apprehended while entering or attempting to enter the U.S. illegally is subject to a civil penalty of not less than \$50 nor more than \$250. The penalties are doubled in the case of an alien previously subject to such penalties.

We support effective deterrents and penalties for illegal entry. However, we oppose this provision for the following reasons. In the case of refugees, such a penalty is contrary to international standards. Article 31 of the 1951 Convention relating to the Status of Refugees, by which the U.S. is bound as a party to the 1967 Protocol relating to the Status of Refugees, provides that

... States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened ... enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

The 1951 Convention relating to the Status of Refugees prohibits States from penalizing the illegal entry of persons deemed refugees so long as such persons present themselves without delay to the authorities and show good cause for their illegal entry. Section 105 of the bill, as currently drafted, would penalize refugees as well as others who enter illegally. In order to remain consistent with U.S. obligations under the Protocol, the section should at least be modified to provide an exception for

persons who establish refugee status or eligibility for withholding of deportation and who also meet the requirements of Article 31, i.e., present themselves without delay to U.S. authorities and show good cause for the illegal entry.

Even with this change, however, we are convinced that the costs and disadvantages of collecting such a fee outweigh the intended benefits. Enforcement of the fee provision would likely require detention of aliens, the vast majority of whom currently accept voluntary departure to be returned to their country of origin within hours of their illegal entry. This would likely tie up detention space more wisely used for criminal alien removal. Moreover, the section fails to address whether unauthorized aliens who are unable to pay would face prolonged detention at taxpayers' expense. Under its new IDENT system, INS obtains fingerprints of each illegal border crosser and is now in a position to prosecute second time illegal entrants. This new and effective deterrent serves the same purpose as this section without the attendant diversion of resources.

The assessment of a fine under this section would require a due process hearing. The Supreme Court has held that 5th Amendment due process requirements apply to aliens. Wong Wing v. United States, 163 U.S. 228, 238 (1896); Russian Volunteer Fleet v. United States, 282 U.S. 481, 489 (1930). Due process requirements applicable to deportation and exclusion are distinct from due process requirements applicable to taking or confiscating property. In Wong Wing, the Court held that Congress may enact legislation to exclude or expel aliens but that legislation confiscating an alien's property must include a "judicial trial." 163 U.S. at 237. To meet due process requirements, an administrative agency is generally required to hold a hearing at some point in the proceedings. Opp Cotton Mills v. Administrator, 213 U.S. 126, 152-153 (1941). This hearing must include notice of the hearing, notice of the contemplated government action, and an opportunity to present evidence. Wong Yang Sung v. McGrath, 339 U.S. 33, 50 (1950).

Given these hearing requirements, section 105 almost certainly would be extremely costly, may require the INS to detain unauthorized aliens for extended periods of time, may generate litigation on due process issues, and may not improve our ability to gain control of our borders. Indeed, it may divert important resources from border enforcement activities of far greater national interest. We oppose this provision.

Section 106 requires the Attorney General to provide for the detention and prosecution of each alien who violates section 275(a) of the INA (illegal entry) if the alien has committed such an act on two previous occasions. The section authorizes appropriations for this purpose.

We oppose this requirement which is an unprecedented and arguably unconstitutional intrusion on prosecutorial discretion. The decision whether to prosecute for violation of a criminal statute is solely an Executive Branch function which cannot be taken away by statute.

Moreover, this provision is unnecessary because the Administration has increased dramatically the number of prosecutions of criminal aliens who reentered the United States after being deported. For example, in the Southern District of California where perhaps one-half of all undocumented aliens enter the United States, the U.S. Attorney's Office filed 72 cases in 1991. In 1995, the U.S. Attorney's Office filed 1334 cases. At the end of last 1994, the Attorney General authorized a squad of Special Assistant United States Attorneys to greatly augment prosecution of alien cases throughout the Southwest. The Violent Crime Control and Law Enforcement Act of 1994 provided for 80 new positions for the federal prosecution of criminal aliens; these persons are beginning to come on line now. If this provision is enacted, there must be significant new resources for Assistant United States Attorneys, and detention and prison space. While we oppose for constitutional reasons a legislative requirement to prosecute every case, we can assure you that many more cases are being prosecuted than ever before. Also, H.R. 2202 and the Administration bill contain provisions for special pilot projects to deter multiple unauthorized entries, such as interior and third country repatriation.

Section 107 requires the Attorney General to continue to provide inservice training programs, including intensive language training, for full-time and part-time Border Patrol personnel in contact with the public to familiarize them with the rights and varied cultural backgrounds of aliens and citizens with whom they have contact and to ensure and safeguard the constitutional and civil rights, personal safety and human dignity of all individuals. The section authorizes such sums, to remain available until expended, as may be necessary to carry out its purpose.

We support this provision.

Section 111 requires the Attorney General, after consultation with the Secretary of State, to establish a pilot program for up to 2 years to deter multiple unauthorized entries into the U.S., which may include interior repatriation, third country repatriation, and other disincentives to multiple unlawful entries. Not later than 30 months after the date of enactment, the Attorney General and Secretary of State must report on the pilot program, including whether the program or any part should be extended or made permanent.

This provision is similar to a provision in the

Administration's bill, and we support it.

Section 112 requires the Attorney General and the Secretary of Defense to establish a pilot program for up to 2 years to determine the feasibility of using, as detention centers for the INS, military bases closed as a result of a base closure law. The Attorney General is to submit a report not later than 30 months after the date of enactment to the Committees on the Judiciary and the Committees on Armed Services of the House of Representatives and the Senate.

Current base closure authority permits the use of closed military bases for other Federal purposes, while ensuring the full participation of affected communities in reuse decisions. We have worked with the Department of Defense in conjunction with the Bureau of Prisons and other agencies to explore the use of closed bases. Section 112 provides no authority beyond what is available in current law, and it fails to address the difficult problems of conversion costs and staffing.

Section 113 would require the Commissioner of the INS, within 180 days of the date of enactment, to establish a pilot program in which INS officers would collect a record of departure for every alien departing the U.S. and match the record of departure with the record of the alien's arrival in the U.S. The program must be operated in not less than 3 of the 5 airports of entry with the heaviest volume of arriving international air traffic. Under section 113(b), the Attorney General must submit a report not later than 2 years after implementation on the number of departure records collected and other statistics, the estimated cost of establishing a national system to verify the departure from the U.S. of persons admitted as nonimmigrants, and specific recommendations for the establishment of such a system. Section 113(c) requires that information regarding visa overstayers acquired by the pilot programs be integrated into the appropriate data bases of the INS.

We agree that improvements in the current system for tracking departures at ports of entry must be made, and we are working to achieve that goal. However, we are concerned by the tight timeframe provided by this section. Currently, INS is developing a plan to design pilot programs for testing departure control operations at both airports and land borders. This plan will address many issues, including: automating the collection of information on the form I-94; negotiating with the airlines and airport authorities on facilities for the inspectors and their assistance in automating the I-94; negotiating with the Mexican and Canadian governments regarding land border departure control; staffing requirements; redesign of INS databases to support the automated I-94; and options for the collection of arrival and departure data on persons who do not require an I-94. However, the plan is not complete, and implementation of a pilot program

within 180 days of enactment may be difficult. Since sufficient authority to conduct pilot programs already exists, we believe this section is unnecessary and perhaps too restrictive with respect to timeframes. We wish to work with the House to accomplish the goal of improving data collection on departing passengers within a reasonable period of time.

We also wish to alert the House to the substantial additional personnel resources a pilot program would require. Since the international departure areas at the heaviest volume airports are not at the same location as the arrival areas, we estimate that at least an additional one third more inspectors would be needed to staff all departure gates or airline check-in counters for this purpose. Authorization and appropriation of increased resources are critically necessary to conduct a successful pilot program.

Section 113(c) is unnecessary because the INS and Department of State (DOS) are already working to integrate their databases. The INS/DOS Data Sharing Initiative provides for the electronic transmission of visa information from stateside INS and DOS offices to the visa issuing posts and then back to the port-of-entry and Immigration Card Facility where an alien's permanent resident alien card is generated. A prototype project to electronically pass immigrant visa information through the entire visa information cycle is currently in the requirements analysis stage. The prototype should be operational by the end of the calendar year.

Section 121 requires the Attorney General, subject to the availability of appropriations, to increase the number of INS investigators and enforcement personnel deployed in the interior to a level that is adequate to properly investigate and enforce the immigration laws. We strongly support an increase in interior personnel, with the qualifications expressed in section 101, above.

Title II - Enhanced Enforcement and Penalties against Alien Smuggling; Document Fraud

The Administration is aggressively investigating, apprehending, and prosecuting alien smugglers. The INS, Federal Bureau of Investigation, Department of State, and Coast Guard have been sharing and developing information on numerous smuggling endeavors. As a result of these efforts over 230 significant alien smuggling investigations were initiated in FY 94. Similar efforts are being conducted to combat document fraud. INS is adding new staffing positions to investigate and prosecute an increased number of fraudulent document vendors. This includes targeting major suppliers of fraudulent documents and employers who knowingly accept such documents as proof of employment authorization.

We urge the House to adopt the Administration's stronger enforcement provisions. H.R. 2202 and the Administration bill have a common goal of significantly increasing penalties for alien smuggling, document fraud, and related crimes. In fact, our bill goes beyond the provisions of H.R. 2202 by making conspiracy to violate the alien smuggling statutes a RICO predicate and by providing for civil forfeiture of proceeds of and property used to facilitate the smuggling or harboring of aliens.

Section 201 amends 18 U.S.C. 2516(1) to provide authority to use wiretaps in investigations of alien smuggling and document fraud violations.

This provision is similar to a provision in the Administration's bill, and we support it.

Section 202 amends 18 U.S.C. 1961(1) to include as racketeering offenses acts indictable under the provisions of Title 18, sections 1028, 1542, 1543, 1544, and 1546 (identification document, passport and visa fraud), sections 1581-1588 (peonage and slavery), and sections 274, 277, and 278 of the INA (alien smuggling and related offenses).

The Administration bill, H.R. 1929, contains a similar provision which differs from H.R. 2202 in three critical ways. First, H.R. 1929 makes a conspiracy to violate the alien smuggling statutes a RICO predicate; H.R. 2202 does not. The conspiracy provision is vital because alien smuggling is often carried out by close-knit gangs or groups of dangerous criminals. It is imperative to be able to charge all members, including co-conspirators. Second, H.R. 1929 does not add identification document, visa and passport fraud offenses (18 U.S.C. sections 1028, 1542, 1543, 1544, 1546) as RICO predicates. However, if these document fraud statutes remain in the section, we recommend that 18 U.S.C. 1541 (relating to passport issuance without authority) be included for consistency, and that 18 U.S.C. 1028 violations be limited only to felonies. Third, H.R. 1929 does not add the peonage and slavery statutes as RICO predicates. While we do not oppose adding these statutes, we would prefer that the House directly increase the penalties for violating the peonage and slavery statutes rather than adding them as RICO predicates. Direct increases in penalties would be the more effective way to strengthen the punishment for these crimes. We urge the House to adopt the provision in H.R. 1929.

Section 203(a) amends section 274(a)(1)(B)(i) to provide that any person who violates the prohibitions in 274(a)(1)(A)(ii)-(iv) may be imprisoned for up to 10 years if the offense was committed for purposes of commercial advantage or private financial gain. It provides that a person who conspires or aids and abets smuggling may be fined and imprisoned for up to

10 years (alien smuggling) or up to 5 years (transportation, harboring, inducement). Section 203(b) creates a new offense for smuggling aliens with the intent or with reason to believe that the alien brought into the United States will commit a crime punishable by imprisonment for more than one year, and such a violator may be fined under title 18 and imprisoned for not less than 3 years nor more than 10 years. Section 203(c) provides that a person who smuggles aliens shall be fined or imprisoned for each alien to whom a violation occurs and not for each transaction constituting a violation, regardless of the number of aliens involved.

Section 203(a) is similar to the Administration's proposal, and we support it. Section 203(b) is also similar to the Administration's proposal. However, H.R. 1929, does not include the mandatory minimum sentence of three years. While we support increasing the maximum penalties for alien smuggling offenses, we do not believe that mandatory minimums are appropriate in this context. Providing for mandatory minimum penalties would produce anomalous results compared to penalties for other offenses of comparable severity. Furthermore, mandatory minimums are not necessary in view of the sentencing guidelines system, which is designed to provide appropriate and consistent penalties for all similar offenses. We support Section 203(c) which requires that an alien smuggler be fined or imprisoned for each alien rather than for each transaction. We urge the House to adopt H.R. 1929's provision which criminalizes the employment of an alien knowing that such alien is not authorized to work and that the alien was smuggled into the United States. H.R. 1929 provides for a term of imprisonment for not more than 5 years for such an offense. This provision is essential to combatting alien smuggling.

Section 204 provides that the number of Assistant U.S. Attorneys shall be increased in fiscal year 1996 by 25 and shall be specially trained for the prosecution of persons involved in alien smuggling or other crimes involving illegal aliens.

The President's FY 1996 budget request includes resources to hire new Assistant U.S. Attorneys and support personnel to enhance immigration law enforcement. We support this provision.

Section 205 amends title II of the INA to add a new section 294, providing authority for the INS to use appropriated funds for the establishment and operation of undercover proprietary corporations or business entities.

This provision is similar to the Administration's proposal, and we support it.

Section 211(a) amends 18 U.S.C. 1028(b)(1), relating to fraud and misuse of government-issued identification documents,

to increase the maximum term of imprisonment from 5 to 15 years. The maximum sentence is increased to 20 years if the offense is committed to facilitate a drug-trafficking crime, to 25 years if committed to facilitate an act of international terrorism.

The penalties for all the document fraud statutes (e.g. 18 U.S.C. 1028 and 1541-1546) should be consistent. Therefore, we urge the House to adopt the Administration's proposal for increasing these penalties.

Section 211(b) directs the Sentencing Commission to promulgate or amend existing sentencing guidelines relating to sections 1028(a) and 1546(a) of title 18 and to increase the basic offense level under section 2L2.1 of the Guidelines to level 15 if the offense involved 100 or more documents, level 20 if the offense involved 1,000 or more documents or was done to facilitate a drug offense or aggravated felony, and to level 25 if done to facilitate terrorism or racketeering.

The Sentencing Commission recently adopted guideline amendments which became effective November 1, 1995, and significantly increase the punishments for these offenses. In our view, the Commission's guideline amendments should be given an opportunity to work before additional changes are made. Furthermore, the directives which have already been adopted by the Sentencing Commission are no longer needed.

If section 211(b) remains, it should make clear that the passport statutes (18 U.S.C. 1541-1544) are addressed along with those involving other travel and identification documents (18 U.S.C. 1028 and 1546). We also recommend that in section 211(b)(2), "documents were used" be changed to "document or documents were provided" and that in section 211(b)(3), "document or" be inserted before "documents" each place it appears, and "known or suspected to be" be inserted before "involved" in section 211(b)(3)(C). In the alternative, we suggest that the entire subsection be rewritten to ensure that it applies only to a defendant who provides a document(s) "knowingly, believing, or having reason to believe" that it is to be used to facilitate the felonies included in section 211(b).

Section 212(a) amends section 274C(a) by adding a new paragraph (5) to make it unlawful for any person knowingly or in reckless disregard of the fact that the information is false or does not relate to the applicant, to prepare, file, or assist another person in preparing or filing, documents which are falsely made for the purpose of satisfying a requirement of the INA. The word "or" should be inserted immediately after "(5)" as the other provisions in this section require "knowing" conduct while paragraph (5) requires "reckless disregard." This section also adds a definition of the term "falsely made" to apply to section 274C. Section 212(b) amends section 274C(d)(3) by making

a "cease and desist order" for previous civil penalty document fraud violations applicable to "each instance of a violation." Section 212(c) makes the provisions of this section effective for acts or violations occurring on or after the date of enactment.

With regard to section 212(a), we note that the definition of "falsely made" should follow new paragraph (6), added by section 213 of H.R. 2202, for purposes of clarity. We otherwise support section 212(a), which is similar to the Administration's proposal. With regard to section 212(b), we recommend that the House adopt the language of the Administration's bill, which makes such an order applicable to "each document that is the subject of a violation." Citing to each document that is the subject of a violation conforms with current practice and makes the provision clearer. We support section 212(c).

Section 213 amends section 274C(a) by adding a new paragraph (6) to make it unlawful for an alien to present upon boarding a common carrier a document relating to the alien's eligibility to be admitted to the U.S. and to fail to present the document upon arrival in the U.S. The Attorney General may waive these penalties if the alien is subsequently granted asylum or withholding of deportation.

This provision is similar to the Administration's proposal, and we support it.

Section 214 amends section 274C of the INA by adding a new subsection (e), providing that a person who fails to disclose or conceals his role in preparing, for fee or other remuneration, a false application for asylum shall be imprisoned for not less than 2 years nor more than 5 years and also shall be prohibited from preparing, whether or not for fee or other remuneration, any other such application. A person convicted under this section who later prepares or assists in preparing an application for asylum, regardless of whether for a fee or other remuneration, is subject to imprisonment of not less than 5 nor more than 15 years and is prohibited from preparing any other such application.

In general, the Administration strongly supports increased penalties to support enforcement and deterrence objectives in fighting illegal immigration. Moreover, the Administration agrees that increased enforcement against those who help prepare false applications is needed. In this case, however, we advise the House that current criminal statutes are adequate to punish this type of illegal conduct. We do not believe that a new and special offense is needed to prosecute a person involved in assisting in fraud in the asylum process. Furthermore, mandatory minimum sentences are not appropriate in this context. Mandatory minimum penalties would produce anomalous results compared to penalties for other offenses of comparable severity, particularly many white collar crimes. In addition, mandatory minimums are

not necessary in view of the sentencing guidelines system, which is designed to provide appropriate and consistent penalties for all similar offenses.

Section 215 amends 18 U.S.C. 1546(a) to provide that the penalty for knowingly presenting a document which contains a false statement also extends to a document which fails to contain any reasonable basis in law or fact.

While we support the intent of this provision, we believe that the provision does not add meaningfully to existing enforcement powers or penalties because numerous existing document fraud statutes already cover this type of fraud.

Section 216 amends 18 U.S.C. 1015 by adding two new subparagraphs. Subparagraph (e) provides for criminal penalties against any person who makes a false claim to U.S. citizenship or nationality for the purpose of obtaining, for himself or any other person, any federal benefit or service or employment in the U.S. Subparagraph (f) provides for criminal penalties against a person who makes a similar false claim in order to vote in any Federal, State or local election. We support the amendment made by subparagraph (e). However, we do not believe that subparagraph (f) is necessary given that fraudulent voting is already a punishable crime in most, if not all, jurisdictions.

Section 221 adds a new paragraph (6) to 18 U.S.C. 982(a) to provide that a person who is convicted of a fraud violation in connection with passport or visa issuance or use, shall forfeit any property, real or personal, which was used or intended to be used in facilitating the violation.

We support this provision. Moreover, we seek additional enforcement tools. We recommend allowing the Government to request issuance of a warrant authorizing seizure of property subject to criminal forfeiture if the court determines that there is probable cause to believe that a protective order may not be sufficient to assure the availability of the property for forfeiture in the event of conviction. As written, section 221 incorporates the protective order provisions of 21 U.S.C. 853(e), which permit the court to "enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property" subject to forfeiture. This suggested change would also include the warrant of seizure provisions found in 21 U.S.C. 853(f). Specifically, we recommend striking "(2) in subsection (b)(1)(B), by inserting 'or (a)(6)' after '(a)(2)'" and inserting in lieu thereof the following: "(2) in subsection (b)(1)(A), by inserting 'or (a)(6)' after '(a)(1)'."

We also recommend that section 221 provide for civil forfeiture of proceeds of and property used to facilitate

passport and visa offenses. As drafted, section 221 provides only for criminal forfeiture for such offenses. Civil forfeiture is critical for the following reasons. First, only the defendant's property may be forfeited in a criminal forfeiture case. Property used by the defendant but held by a third party cannot be forfeited criminally. For example, if the defendant uses a business, bank account or other asset to commit a passport or visa offense, but the business or other property is held by a corporation, business partner, or spouse of the defendant, the property may not be forfeited in a criminal case, even if the defendant is convicted. Under a civil forfeiture statute, however, property of such third parties may be forfeited, subject to the third party's innocent owner defense. If only criminal forfeiture is authorized, criminals will be able to insulate their property from forfeiture by making sure their property is held in the name of a spouse or confederate who is aware of the illegal activity, but whose role in the offense is such that the government is unlikely to bring criminal charges against them.

Second, the absence of civil forfeiture will make it impossible to use forfeitures in cases in which the offender has become a fugitive. That is because criminal forfeiture operates only upon the conviction of the defendant. If only criminal forfeiture is authorized, the government will be powerless to forfeit the proceeds of visa or passport violations found in the United States until such time as the defendant is apprehended and extradited to the United States. If the defendant is deceased, no forfeiture will ever be possible. Civil forfeiture has thus proven to be an essential tool in dealing with drug traffickers and other criminals who conduct their illegal operations from abroad. This consideration is particularly applicable to offenses involving visas and passports.

Third, there are times when the criminal prosecution of an offender is not necessary to vindicate the government's interest as long as the proceeds of and/or the property used in the violation can be forfeited civilly. If only criminal forfeiture is authorized, it will be necessary to bring criminal charges against persons who commit relatively minor offenses, or who play minimal roles in larger schemes, in order to forfeit the proceeds of those offenses. Where such forfeiture of criminal proceeds or the instrumentalities of a crime is a sufficient remedy for the violation that has occurred, it is not in the interests of justice to require the government to bring a criminal prosecution or else forego the forfeiture.

Section 222 amends section 986(a) of title 18 to permit the issuance of subpoenas for bank records in investigations of offenses under sections 1028, 1541, 1542, 1543, 1544, and 1546 of title 18.

This provision will assist investigations of immigration

fraud operations, and we support it. However, section 986(a) provides for the issuance of subpoenas for bank records when civil forfeiture cases have been brought. Unless section 221 of H.R. 2202 is amended to provide for civil forfeiture as recommended, section 222's amendment to section 986(a) is meaningless and possibly confusing.

Section 223 makes the provisions of this subtitle (sections 221 and 222) effective on the first day of the first month that begins more than 90 days after the date of enactment. The remaining provisions of Title II would be effective upon enactment, as there is no specific effective date set by H.R. 2202.

We do not oppose these effective dates.

Title III - Inspection, Apprehension, Detention, Adjudication, and Removal of Inadmissible and Deportable Aliens

Removals of criminal aliens have increased rapidly during this Administration. The number of criminal aliens removed from the United States jumped by 12% in 1993, and by 17.6% in 1994 over 1992 levels. More than four times as many criminal aliens were removed in 1994 than in 1988. In FY 1995, we removed 31,753 criminal aliens and 17,538 non-criminal aliens. We will increase the number of criminal alien removals to 37,200 in FY 96 by enhancing and deploying extensive new resources for detention and deportation. We will increase the number of non-criminal alien removals to 24,800 in FY 96 through a major emphasis on locating and removing absconders, among other measures. Other INS initiatives, such as the National Alien Transportation Program, provide for the detention and removal of more criminal aliens. INS technology enhancements have also played a critical role in removing criminal aliens, as have INS alternatives to formal deportation, such as stipulated, judicial, and administrative deportation.

Section 300 provides an overview of the amendments made by this subtitle to the provisions of the INA relating to procedures for inspection, exclusion, and deportation of aliens.

This subtitle makes some fundamental changes in the procedures for removal of aliens. An alien who enters the United States without having been inspected and admitted by an immigration officer will be treated as an applicant for admission. This represents a dramatic change in the "entry" doctrine. We agree that revision of the "entry" distinction between exclusion and deportation proceedings is long overdue. To afford more process to an alien who enters the United States by evading inspection than to a person who appears for inspection at a port of entry defies logic. We also support consolidating

exclusion and deportation into one removal process. However, we believe that the House should retain certain appropriate exceptions or opportunities for a discretionary waiver in rare cases to prevent extreme hardship. We have additional concerns about the specific provisions of Subtitle A, discussed in the following section-by-section discussion.

Section 301(a) amends section 101(a)(13) of the INA by replacing the definition of "entry" with a definition for "admission" and "admitted." "Admission" means that an alien has entered the United States after inspection and authorization by an immigration officer. An alien who is paroled under section 212(d)(5) is not considered to have been admitted. An alien who has been admitted for lawful permanent residence is not considered to be seeking admission unless the alien has abandoned that status, engaged in criminal activity, been removed or extradited, or has been convicted of an aggravated felony and is not eligible for relief, or is attempting to enter or has entered the United States without inspection.

Section 301(b) amends section 212(a) of the INA by adding a new paragraph (9) which makes an alien who is present in the U.S. without being admitted or paroled, or who has arrived in the U.S. at any time or place other than as designated by the Attorney General, inadmissible. This paragraph also provides a waiver of this ground of inadmissibility in cases where the alien or alien's child has been battered or subjected to extreme cruelty by a spouse, parent or member of the spouse's or parent's family residing in the same household.

Section 301(c) amends section 212(a)(6) of the INA to increase from one to five years the period of inadmissibility for an alien found inadmissible to the United States. It increases from five to ten years the period of inadmissibility for aliens removed under an order of removal. It prohibits the reentry, at any time, of an alien convicted of an aggravated felony.

Section 301(c) also makes an alien who has resided in the U.S. unlawfully for an aggregate period in excess of 1 year inadmissible to the United States for 10 years, with exceptions for minors (children under 18) and aliens with bona fide asylum applications pending under section 208, and certain battered women and children. In addition, no period of time during which an alien is authorized to work in the United States or is a beneficiary of family unity protection would be taken into account in determining the length of unlawful presence. The Attorney General may extend the period of 1 year to 15 months for an alien who applies for admission before the expiration of the 1 year period.

We oppose the provision attaching these automatic consequences to one year of unlawful residence. It would

generate needless and costly litigation, in which the INS would bear the burden of proof, on the issue of the time period in which the individual was unlawfully in the United States. Once this provision took full effect a year after enactment, it would reduce the number of adjustments of status under section 245(i), enacted in 1994, which provides for the adjustment of certain unlawfully present individuals upon the payment of a substantial penalty fee. Since its enactment, section 245(i) has become an important source of revenue for the INS to improve its efforts to promote naturalization. Section 245(i) has also eliminated a burdensome paper process and has enabled the Department of State to shift critical resources into its anti-fraud and border control efforts. Section 245(i) helps only those eligible to immigrate, imposes a stiff penalty, and enables the government to serve more individuals.

If this provision is retained, we recommend that the House adopt a limited discretionary waiver of this ground of inadmissibility for an immigrant who is the spouse, parent, son or daughter of a U.S. citizen or lawful permanent resident. This would afford close family members of U.S. citizens and legal permanent residents the same treatment that is currently available for close family members of U.S. citizens and legal permanent residents who are inadmissible on the basis of fraud under section 212(i)(1). Exercise of this discretionary waiver would be limited to rare compelling cases involving extreme hardship on families, most of whose members are United States citizens or legal permanent residents.

An exception is provided in section 301(c) for time spent in the United States as a bona fide asylum applicant. We recommend the use of a 'non-frivolous' standard rather than a 'bona fide' application standard for this asylum exception for two reasons: (1) whether an application is bona fide can be determined only after adjudication of the merits of the claim, and (2) we have experience utilizing the non-frivolous standard in determining asylum claimants' eligibility for work authorization. We also note that the section should be entitled "asylum applicants" rather than "asylee" because an "asylee" is someone who has been granted asylum.

The section also provides an extension of the period of time of allowable unlawful presence from one year to 15 months for aliens who apply for admission to the Attorney General before the end of the one year period and establish that they are not inadmissible and that the failure to extend the period would constitute a hardship to the alien. Such an extension would provide an incentive to aliens illegally in the United States with bona fide claims to admission to make themselves known to the Attorney General prior to the conclusion of one year of unlawful presence and thereby affords the Attorney General additional time within which to consider bona fide applications

for admission that are filed within that period. However, we suggest that authorizing a six month extension (to eighteen months total for this limited class) would afford a more meaningful opportunity to examine an alien's application for benefits under the INA.

Section 301(c) authorizes the Attorney General to waive the 10 year admissibility bar, for humanitarian purposes, to assure family unity or if it is in the public interest, in the case of an alien who is a spouse, parent or child of a United States citizen or the spouse or child of a permanent resident. The 10 year bar may also be waived if such a waiver would benefit a national interest such as national security, law enforcement, health care or an economic or environmental benefit.

Section 301(d) amends section 212(i) of the INA to provide that an alien excludable for fraud or willful misrepresentation of a material fact may receive a waiver of this ground of inadmissibility only: (1) in the case of an immigrant who is a spouse, son or daughter of a U.S. citizen, or (2) in the case of an immigrant who is the spouse, son, or daughter of a permanent resident alien, if refusal of admission results in extreme hardship to the lawfully resident spouse or parent of such an alien. We support this provision.

Section 301(e) amends section 212(a)(10) of the INA, as redesignated by this bill, by adding a new subparagraph which makes inadmissible any alien, who is a former citizen and who the Attorney General determines has officially renounced his citizenship for purposes of avoiding taxation by the United States.

The Administration has proposed changes in the Internal Revenue Code to remove incentives that encourage certain U.S. citizens to avoid U.S. taxes by renouncing U.S. citizenship. The Administration approach has been passed by the Senate twice and is being considered in the ongoing balanced budget negotiations. The Administration believes that tax issues should be addressed within the context of the Internal Revenue Code, and that it would be inappropriate to use the INA to attempt to deter tax-motivated expatriation.

Section 301(f) amends section 212(a) by making an alien who seeks admission as an immigrant or who seeks adjustment of status to permanent residence excludable if the alien fails to present documentation of receiving vaccinations against vaccine-preventable diseases.

While reducing the number of unvaccinated persons in the United States is a laudable goal, the mechanism outlined in this section would present a number of implementation and other difficulties that may actually jeopardize the public health in

the United States.

In many countries, the vaccines specified under this section might not be licensed. Even if these vaccines are licensed, they may not be readily available or the costs of these vaccines may be prohibitive for some prospective immigrants. In addition, an immigrant's visa could be delayed as much as 18 months in order to allow time to receive all recommended doses of the specified vaccines, over the interval recommended by the Advisory Committee Immunization Practices (ACIP).

The ACIP-recommended vaccine schedule is complex and lengthy and subject to regular revisions. It would be difficult and labor intensive for Department of State and INS officials at entry points in the U.S. to check individual immunizations records against ACIP schedule and to ensure that U.S. government officials are using the most up-to-date revisions. Neither the Department of State nor the INS have the resources to verify the authenticity of most vaccination certificates.

The requirements outlined in section 301(f) could subject immigrants to serious delays, considerable expense, and the prospect of having to choose between emigrating as a family or splitting up the family to allow, for example, an adult to emigrate to begin employment in the United States while other family members stay behind to complete the immunization requirements. The result might be that the immigrant might choose to secure false immunization records rather than attempt to comply with the requirements imposed by section 301(f). If that were to happen, the immigrant, once admitted to the U.S., would be thought to have been vaccinated. Yet, the immigrant could become infected and could transmit a vaccine-preventable disease to others in the U.S. To further confound the matter, the unimmunized person may be unwilling to admit he was not vaccinated, fearing that he could become subject to deportation.

Under current state laws, children in the U.S. are required to comply with immunization requirements before they enter school. Therefore, the current public health system would "capture" school-aged immigrant children almost immediately upon entry into the U.S. Even without the proposed provision in the immigration bill, these children would be vaccinated once they came to the U.S. In addition, in many states, licensed day care establishments also have immunization requirements.

We would like to work with the House to develop an amendment to reduce the number of unvaccinated persons in the United States but that would address our concerns.

Section 301(g) conforms the deportation grounds to these new provisions. Subparagraph (B) of paragraph 241(a)(1) (entry without inspection) will be amended to state that an alien present in the U.S. in violation of law is deportable. The

current category of persons who are deportable because they have made an entry without inspection are inadmissible under new paragraph (9) of subsection 212(a).

Section 302 amends section 235 of the INA, regarding the inspection of aliens arriving in the United States. Section 235(a), as rewritten by section 302, provides that an alien present in the United States who was not inspected and admitted, who arrives in the United States, or who is brought to the United States after having been interdicted at sea is deemed an applicant for admission. Stowaways are not eligible to apply for admission. A stowaway may apply for asylum only if found to have a credible fear of persecution. However, in no case may a stowaway be considered an applicant for admission or eligible for a hearing under the removal proceedings provided in the bill. All aliens seeking admission, readmission, or transit through the U.S. must be inspected by an immigration officer, but may withdraw an application for admission and depart immediately. We support this provision as retaining the Attorney General's flexibility to determine whether to place an alien seeking admission to the United States in proceedings.

Section 235(b)(1) provides for expedited removal of arriving aliens. If an examining immigration officer determines that an alien is inadmissible under section 212(a)(6)(C) (fraud or misrepresentation) or 212(a)(7) (lack of valid documents), the officer may order the alien removed without further hearing or review. An alien who establishes a credible fear of persecution must be detained for further consideration of the application for asylum.

The Administration believes that there is an immediate need for such a provision and strongly supports its enactment. While the Administration prefers the procedure outlined in its proposed expedited exclusion provision, the Administration is prepared to work with the House to resolve differences between its proposal and H.R. 2202. A discussion of the differences between the two proposals follows.

H.R. 2202's special procedure for arriving aliens differs from the Administration's proposed "special exclusion" procedure in the following respects. First, the procedure applies to all arriving aliens without valid entry documents, whereas the Administration's proposal would apply only in "extraordinary migration situations" as designated by the Attorney General or in the case of escorted or irregular boat arrivals. H.R. 2202 requires assigning asylum officers and interpreters to all ports at all times and securing additional space for their activity. This level of staffing would be wasteful and inefficient. We recommend instead that the House adopt the special exclusion provision in H.R. 1929, which authorizes the Attorney General to exclude and deport aliens without a hearing before an immigration

judge when she determines that the numbers or circumstances of aliens en route to or arriving in the U.S. present an extraordinary migration situation. The judgment whether an extraordinary migration situation exists and whether to invoke these provisions is committed to the sole and exclusive discretion of the Attorney General. The Attorney General may invoke the provisions of this section during an extraordinary migration situation for a period not to exceed 90 days, unless within such 90 day period or extension thereof, the Attorney General determines, after consultation with the House of Representatives and Senate Committees on the Judiciary, that an extraordinary migration situation continues to warrant such procedures remaining in place for an additional 90 day period. The Administration's proposal affords appropriate discretion while H.R. 2202's provision, which subjects all arriving aliens without valid entry documents to these special procedures, is an inefficient, impractical, and unnecessary use of resources. Further, the Administration's proposal more clearly allows the Attorney General the flexibility to bring aliens to the United States when humanitarian concerns are present.

Second, the "credible fear" standard in H.R. 2202 is more stringent than the Administration's "credible fear" standard. H.R. 1915's credible fear standard requires that there be a "significant possibility" that the person could establish "eligibility for asylum," whereas the Administration's credible fear definition requires only a "reasonable possibility of establishing eligibility as a refugee." We understand "reasonable possibility" to be a lower standard than "significant possibility" and believe that it is more appropriate to the pre-screening function that this new process is intended to serve. We believe that aliens with an arguable claim to refugee status should have access to a full asylum adjudication on U.S. territory and that the "reasonable possibility" standard better ensures such a result.

Third, the Administration's expedited exclusion provision explicitly authorizes the expedited exclusion of aliens who are intercepted on the high seas, within the territorial sea or internal waters. The Coast Guard frequently interdicts illegal aliens on the high seas and is required to keep the aliens at sea while arrangements are made for a third country to accept the aliens so they may be repatriated. This is neither resource efficient nor cost effective. Two interdiction cases last year consumed a total of 105 cutter days and 548 aircraft hours in order to deliver the interdicted migrants to El Salvador and Mexico. Using standard rates, these cases cost in excess of \$7 million. Clearly, there is a need for expedited exclusion authority. Rapid delivery of the aliens to the United States for expedited exclusion would allow the Coast Guard vessels to promptly return to their primary law enforcement mission, including drug interdiction and search and rescue. We urge the

House to adopt the Administration provision.

There is no administrative review of a removal order entered under this paragraph, but an alien claiming under penalty of perjury to be lawfully admitted for permanent residence is entitled to administrative review of such an order. An alien ordered removed under this paragraph may not make a collateral attack against the order in a prosecution under section 275(a) (illegal entry) or 276 (illegal reentry).

Section 235(b)(2) provides that an alien determined to be inadmissible by an immigration officer (other than an alien subject to removal under paragraph (b)(1), or an alien crewman or stowaway) be referred for a hearing before an immigration judge under new section 240. There is no provision for release from detention in the discretion of the Attorney General for arriving aliens. Under current law such release is authorized under the parole provisions of 212(d)(5). Given the restrictions on parole authority contained in section 524 of the bill, we recommend that a provision for discretionary release be included in the amended section 235. Under the new definition of "admission," aliens who entered without inspection would be included in this provision. We support applying these provisions to aliens who entered without inspection but recommend providing relief (i.e. cancellation of deportation) for compelling cases. Our recommendation in this regard is discussed in more detail below in our comments on section 304 of the bill.

Section 235(c) restates the provisions of current section 235(c) regarding the removal of aliens who are inadmissible on national security grounds. Section 302(d) restates provisions currently in subsection 235(a) authorizing immigration officers to search conveyances, administer oaths and receive evidence, and issue subpoenas enforceable in a United States district court.

Section 303(a) amends section 236 of the INA to include provisions currently contained in sections 236 and 242. Section 236(a) restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States. (The current authority in section 242(a) for a court in habeas corpus proceedings to review the conditions of detention or release pending the determination of the alien's inadmissibility or deportability is not retained.) The minimum bond for an alien released pending removal proceedings is raised from \$500 to \$1500.

We support the increase in the bond level. We also support the provision giving authority to the Attorney General to release cooperative witnesses.

New subsection 236(b) retains the authority of the Attorney

General to revoke an alien's bond or parole. New subsection 236(c) restates the current provisions regarding the detention of an alien convicted of an aggravated felony. It provides for the release of such an alien if the Attorney General decides in accordance with 18 U.S.C. 3521 that release is necessary to provide protection to a witness, potential witness, a person cooperating with an investigation into major criminal activity, or a family member or close associate of such a witness or cooperator. This provision is similar to the Administration's proposal, and we support it.

New subsection 236(d) restates the current provisions in section 242(a)(3) regarding the identification of aliens convicted of aggravated felonies and amends those provisions to require that information be provided to the Department of State for inclusion in its automated visa lookout system. We do not oppose this provision.

Section 303(b) requires the Attorney General to increase detention facilities to at least 9000 beds by FY 1997. The estimated cost of the 5,550 beds that this provision would add to the current number is \$440 million. We strongly urge Congress to provide the Administration with adequate detention resources. Accordingly, we recommend that this provision explicitly be made subject to appropriations.

Section 304 redesignates current section 239 (designation of ports of entry for aliens arriving by civil aircraft) as section 234 and redesignates section 240 (records of admission) as section 240C. It adds two new sections, 239 and 240, to the INA. The new section 239 of the INA restates the current subsections, with certain modifications, regarding notice to aliens placed in removal proceedings.

The requirement that the Notice to Appear (formerly "Order to Show Cause") be provided in Spanish as well as English is deleted. We believe that this section would create more litigation on the adequacy and accuracy of the notice in English only. A written notice in a language the alien understands, which is most often Spanish, protects the INS from unnecessary delays of enforcement actions based upon whether sufficient notice was provided as well as informs the alien of the nature of the action. In order to avoid unnecessary and costly due process litigation, it would be best not to amend this provision of the INA.

The mandatory period between notice and the date of the hearing is reduced to 10 days. We believe that the current 14 day period gives the alien a fair and better opportunity to obtain counsel. The INS' experience has been that deportation proceedings move more quickly if an alien does have counsel. In addition, immigration judges normally provide at least one

continuance to allow an alien a reasonable opportunity to obtain counsel. H.R. 2202's proposed shortening of the time period in which aliens may obtain counsel may not achieve the intended result of speeding up deportation proceedings. In fact, it may unintentionally cause delay or encourage frivolous appeals. We do not support this provision.

New section 240(a) establishes a single proceeding for deciding whether an alien is inadmissible under section 212(a) or deportable under section 237 (formerly section 241(a)). Removal proceedings are not applicable to aliens inadmissible on national security grounds, aliens convicted of aggravated felonies, or aliens subject to expedited removal for lack of documents or fraud. We support consolidating exclusion and deportation into one removal process. We have already discussed our concerns about the unavailability of any relief from removal for aliens who entered without inspection. We note that although exclusion and deportation are consolidated, separate burdens of proof and differences in eligibility for relief remain, so that the distinction between "exclusion" and "deportation" remains.

Section 240(b) provides that the removal proceeding under this section be conducted by an immigration judge in largely the same manner as currently provided in sections 242 and 242B. The alien retains the right to counsel, at no expense to the Government, must be accorded a reasonable opportunity to examine evidence, present evidence and witnesses, and the Attorney General is required to maintain a complete record of the proceedings. The Administration generally supports these provisions. However, section 240(b)(1) grants new authority to immigration judges, under regulations promulgated by the Attorney General, to impose civil monetary fines for any action or inaction in contempt of the judge's proper exercise of authority.

This new authority provision, as written, could have a serious negative impact upon the INS. By the terms of the amendment, an immigration judge may impose a fine for "any" action or inaction that the judge feels is contemptuous to his or her authority. The immigration judge would not be precluded from levying fines against the INS. The immigration judges and the INS speak for the Attorney General in immigration matters and attempt to interpret and uphold the immigration laws of the United States. It would be inappropriate and undesirable for one component of the Justice Department which speaks for the Attorney General to sanction and fine another such component, and it is not clear how such fines might be enforced or reviewed. No such change should be adopted until there has been an opportunity for more careful study of its full implications.

Mechanisms for sanctioning inappropriate behavior already exist. 8 C.F.R. § 292.3 already provides procedures for the discipline of private attorneys and representatives. The

regulations also presently provide a mechanism by which to investigate inappropriate behavior by INS attorneys. Under 8 C.F.R. § 292.3(b)(2), complaints about INS attorneys currently are referred to, and investigated by, the Office of Professional Responsibility of the Department of Justice. The additional disciplinary threat of civil contempt is unwarranted. Therefore, the Administration urges the Members to strike this provision.

Section 240(b)(2), provides that the proceeding may take place in person, through video conference, or, with the consent of the alien in hearings on the merits, through telephone conference. The Administration's bill has a similar provision, and we support this change to current law.

An alien who fails to appear for a hearing may be ordered removed if the INS establishes by clear, unequivocal, and convincing evidence that notice under section 239 was provided and the alien is inadmissible or deportable. There is no requirement to provide notice if the alien has failed to provide the address required under section 239(a)(1)(F). An in absentia order may only be rescinded through a motion to reopen filed within 180 days if the alien demonstrates that the failure was due to exceptional circumstances, or a motion to reopen filed at any other time if the alien demonstrates that the alien either did not receive notice of the hearing or was in federal or state custody and could not appear.

An alien who receives an in absentia order is ineligible for voluntary departure, cancellation, adjustment of status, change of nonimmigrant classification, or registry for a period of 10 years after the date of the final order. We do not oppose this provision. It is applicable only if the alien received proper notice. Further, an exception is provided for aliens who failed to appear because of "exceptional circumstances."

Section 240(c) requires an immigration judge to make a decision on removability based only upon the evidence at a hearing. An alien applicant for admission has the burden to establish that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible. (This standard will be applicable to aliens who entered without inspection, as they are considered applicants for admission.) An alien who has been admitted has the burden to establish by clear and convincing evidence that he or she is lawfully present in the U.S. pursuant to a prior admission. In the case of an alien who has been admitted to the United States, the INS has the burden to establish by clear and convincing evidence that the alien is deportable. We do not oppose these standards of proof.

Under section 240(c)(5), an alien is limited to one motion to reconsider the decision of an immigration judge and must file it within 30 days of the final administrative order of removal

and must specify the errors of law or fact in the order. We do not object to this provision.

Under section 240(c)(6), an alien is limited to one motion to reopen proceedings, which must be filed within 90 days of the final administrative order of removal and must state the new facts to be proven at a hearing if the motion is granted. There is no time limit on the filing of a motion to apply for asylum or withholding of deportation which is based on changed country conditions arising in the alien's home country or country to which the alien is being removed, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding. The deadline also may be extended in the case of an in absentia order of removal if filed within 180 days and the alien establishes that the failure to appear was because of exceptional circumstances beyond the alien's control or because the alien did not receive notice. We do not object to this provision.

Section 240(d) requires the Attorney General to promulgate regulations for stipulated orders of removal. Such an order serves as a conclusive determination of the alien's removability from the United States. H.R. 1929 contains a similar provision.

Section 240(e) defines the terms "exceptional circumstances" and "removable". We do not object to these definitions.

New section 240A sets forth the provisions for relief from removal. Section 240A(a) provides that the Attorney General may grant "cancellation of removal" in the case of an alien lawfully admitted for permanent residence for five years or more if the alien has resided in the U.S. continuously for 7 years since being lawfully admitted in any status and has not been convicted of an aggravated felony or felonies for which the aggregate sentence is at least 5 years. This provision is similar to current section 212(c) of the INA, which has been made available as relief from deportation by case law. H.R. 2202 makes the relief available to lawful permanent resident aliens who are inadmissible or deportable. We support this provision.

Section 240A(b) provides that the Attorney General may cancel removal in the case of an alien who has been physically present in the U.S. for a continuous period of at least 7 years immediately preceding the date of the application, has been a person of good moral character, has not been convicted of an aggravated felony, and establishes that removal would result in extreme hardship to the alien or to the alien's spouse, parent, or child who is a citizen of the U.S. or an alien lawfully admitted for permanent residence. The period of an alien's physical presence will be deemed to have ended when the alien is served notice of proceedings. Adjustment of status of aliens granted cancellation of deportation shall be limited to 4,000 per

year.

We are in general support of this provision, but we do not believe that a ceiling on the number of adjustments is necessary or appropriate.

Section 240A(d) provides that the period of continuous residence or physical presence ends when an alien is served an order to show cause under section 239(a) (for the commencement of removal proceedings under section 240). A period of continuous physical presence is not broken if the alien's absence from the U.S. was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence. We believe that section 240A(d) will allow the INS to obtain final orders of removal more expeditiously because aliens will lose one significant incentive to prolong proceedings. This provision will also limit the numbers of aliens who are eligible for cancellation sufficiently and that relief should be extended to aliens as described above. This provision is similar to a provision in H.R. 1929, and we support it.

New section 240B establishes new conditions for the granting of voluntary departure, currently governed by sections 242(b), 242B(e), and 244(e) of the INA. The Attorney General may permit an alien voluntarily to depart the U.S. at the alien's expense prior to removal proceedings if the alien is not deportable as an aggravated felon or on national security and related grounds. Permission to depart voluntarily is not valid beyond a period exceeding 120 days and an alien may be required to post a voluntary departure bond.

Voluntary departure is not available to an alien arriving in the United States who is subject to removal proceedings as an inadmissible alien, but the alien may withdraw an application for admission. We support allowing aliens to withdraw their applications for admission as beneficial to the INS's ability to manage its enforcement priorities. However, we suggest that the last sentence in the new section 240B(a)(4) be amended to read "Nothing in this paragraph shall be construed as preventing the Attorney General, in the Attorney General's discretion, to permit an alien to withdraw the application for admission in accordance with section 235(a)(4)." This will clarify that permission to withdraw is committed to the discretion of the Attorney General.

Section 240B(b) provides that the Attorney General may permit an alien to depart the United States voluntarily at the conclusion of proceedings if the alien has been physically present for at least one year, the alien has been a person of good moral character for the preceding 5 years, the alien is not deportable because of conviction for an aggravated felony or on national security and related grounds, and the alien has the means to depart the U.S. and intends to do so. The period for

voluntary departure cannot exceed 60 days and a voluntary departure bond is required.

This limitation to 60 days, while attempting to encourage quick departure from the United States at the conclusion of an alien's hearing, may in fact prolong the process because it may induce an alien who needs a longer time to wrap up his affairs to contest deportability and seek other remedies. Immigration Judges have long been able to use voluntary departure as an incentive to encourage people to leave the United States on their own, without additional expense to the government. In addition, many aliens in removal proceedings will take voluntary departure rather than pursue other avenues of relief, if given sufficient time to conclude their affairs. The Administration's bill recognizes the value of a flexible and discretionary use of voluntary departure that is often very helpful in disposing of cases in a timely and efficient manner. Further, the Administration's bill will require a voluntary departure bond at the conclusion of deportation proceedings and civil penalties for failure to depart. These safeguards will further ensure the appropriate use of this relief. We oppose this provision and urge the House to adopt the comparable Administration bill provision.

Section 240B(c) provides that an alien who was previously granted voluntary departure after having been found inadmissible is ineligible to depart voluntarily. We support this provision.

Section 240B(d) provides that if an alien is permitted to depart voluntarily and fails to do so, the alien shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 and shall not be eligible for any further relief under this section or sections 240A, 245, 248, or 249 for a period of ten years. The current restriction for eligibility of such relief is five years. We support the increase to ten years.

Section 240B(e) provides that the Attorney General may by regulation limit eligibility for voluntary departure for any class or classes of aliens. This provision is similar to the Administration's proposal, and we support it.

Section 240B(f) provides that an alien may appeal from a denial of an order of voluntary departure but shall be removable from the United States 60 days after the entry of the order of removal and may prosecute the appeal from abroad. This provision is similar to the Administration's proposal, and we support it.

Section 305(a) strikes section 237, designates section 241 as section 237, and inserts a new section 241. The new section 241 requires the Attorney General to remove an alien within 90 days of the alien being ordered removed. This period begins with the latest of the following: (1) the date the alien's order is

administratively final, (2) the date the alien is released from non-immigration related detention or confinement, or (3) the date of the court's final order if the alien has appealed his order to a court and removal has been stayed. The removal period is extended beyond 90 days if the alien wilfully refuses to apply for travel documents or takes other steps (other than appeals) to prevent removal. The Attorney General is required to detain the alien during the 90 day removal period. If space is not available, the Attorney General may release the alien on bond and under any conditions that the Attorney General may prescribe. Aliens not removed within 90 days must be released and are subject to supervision under conditions similar to those currently in section 242(d), e.g. the alien is required to appear before an immigration officer periodically for identification. The Attorney General may not remove an alien who is sentenced to imprisonment until the alien is released from imprisonment.

The detention requirement necessarily involves significant additional financial resources. The requirement that an alien be removed within 90 days ignores the many barriers that are beyond the INS' control. Obtaining travel documents is labor intensive and may take considerable time. Such delays should not prejudice diligent enforcement efforts, and the INS should not be required to release aliens after 90 days in such instances. The Administration is making considerable progress in ensuring that an individual ordered deported or excluded is in fact removed. In FY 94, INS removed 30,300 criminal aliens. With the resources appropriated by Congress for FY 95 and the expediting provisions and resources authorized by the Violent Crime Control and Law Enforcement Act of 1994, we were able to remove 31,750 criminal aliens in FY 95. With our innovations and the \$140 million budget enhancement allocated for FY 96, criminal alien removals should reach 37,200, and the removal of criminal and non-criminal aliens should reach 62,000. Accordingly, in the absence of significant new appropriations this provision is unworkable. With increased appropriations, this provision is unnecessary.

We share the House's concern that more be done to facilitate the execution of final orders of deportation, but we do not believe that mandatory detention is the answer especially absent adequate resources provided for this purpose by Congress. We suggest that the same objective can be accomplished by requiring that a custody redetermination be commenced after an adverse determination by an Immigration Judge or by the Board of Immigration Appeals. At that time a determination can be made whether custody or perhaps a higher bond is appropriate in light of the determination adverse to the respondent. We believe this statutory requirement will achieve the same policy objective with less adverse effect on detention resources.

We note that section 305(a) does not expressly prohibit the release of aggravated felons upon arrest. We recommend that the

House add a provision similar to section 236(c) as created by section 303 of this bill.

We recommend that the current provisions of the INA -- giving the Attorney General the discretion to detain an alien (other than an aggravated felon) after a final order and setting a six month period for removal, with an unlimited time for removal of an aggravated felon -- be retained. Further, current section 242(c) and (d) provide that the Attorney General may execute the final order beyond the six month period. H.R. 2202 should be amended to retain this provision.

We also recommend that this section include a provision that the removal requirements create no enforceable rights for aliens subject to removal.

As stated below, we support section 358 of this bill, which authorizes appropriations for detention costs. These appropriations, if approved, would assist INS's ability to detain a greater number of aliens. Adequate appropriations are an absolute prerequisite to our shared objectives in this area.

Under section 241(a)(5) if an alien reenters the U.S. illegally after having been removed or departed voluntarily under an order of removal, the prior order of removal is reinstated and the alien shall be removed under the prior order, which shall not be subject to review. We support this provision.

Under section 241(a)(6), an alien who is ordered removed as inadmissible under section 212 of the INA may be detained beyond the removal period, and is subject to the provisions of section 241(a)(3) if released. We support this provision.

Under section 241(a)(7), an alien who is subject to an order of removal may not be granted authorization to work in the U.S. unless there is no country willing to accept the alien, or the alien cannot be removed for reasons deemed strictly in the public interest. We support this provision.

Section 241(b) establishes the countries to which an alien may be removed, retaining current law.

Section 241(c) provides that an alien arriving at a port-of-entry who is ordered removed shall be removed immediately by the vessel or aircraft that brought the alien to the U.S., unless it is impracticable to do so or the alien is a stowaway who has been ordered removed by operation of section 235(b)(1) but has a pending application for asylum. This subsection also restates the provisions in section 237(d) regarding stay of removal, and the provisions in section 237(a) regarding cost of detention and maintenance pending removal.

Section 241(d) restates the provisions in current section 237(b) requiring that the owner of the vessel or aircraft bringing an alien to the U.S. comply with orders of an immigration officer regarding the detention or removal of the alien. The subsection also revises and restates the requirements in section 273(d) that the owner of a vessel on which a stowaway has been brought to the U.S. not permit the stowaway to land except under orders of the Attorney General and to remove the alien from the U.S. when ordered to do so. This subsection also requires the Attorney General to grant a timely request to remove a stowaway on a vessel or aircraft other than that upon which the stowaway arrived if the carrier has obtained the necessary travel documents and removal of the stowaway would not be unreasonably delayed. This subsection also restates the provisions in section 243(e) regarding compliance with an order of the Attorney General that an alien ordered removed be taken on board and removed to a specified destination.

Section 241(e) restates the provisions in current sections 237(c) and 243(c) regarding the payment of expenses for removal of aliens who have been ordered removed. Section 241(e)(1) provides that the Attorney General may pay the cost of removing an "excludable" alien from the INS salaries and expenses appropriation. That provision currently applies to deportable aliens. Current law authorizes the use of Immigration User Fee Account funds to remove excludable aliens. We recommend that H.R. 2202 clarify that distinction and retain the language in current law "appropriation for the enforcement of this title."

Section 241(h) provides that nothing in Section 241 creates any enforceable rights for aliens subject to removal. We support this provision.

Section 305(b) amends new section 241(h) (current section 242(j) of the INA) to require the Attorney General to compensate States for incarceration of undocumented criminal aliens who have committed two or more misdemeanors. It defines incarceration to include imprisonment in a State or local prison or jail the time of which is counted toward completion of a sentence or the detention of an alien previously convicted of a felony or misdemeanor who has been rearrested and is being held for judicial action or transfer to Federal custody. Current law authorizes reimbursement for undocumented or "out of status" aliens who have been sentenced for a felony conviction.

We strongly support reimbursement to states for the costs of incarcerating criminal aliens. We are the first Administration to reimburse states for such costs. We caution the House, however, that there is no reliable mechanism to ascertain periods of confinement for misdemeanors. At the outset, a mechanism would have to be developed to acquire information regarding the number of criminal aliens incarcerated in state and local prisons

or jails for two or more misdemeanors. Accurate information regarding these criminals would have to be maintained by the states and localities to assure correct reimbursement and to establish an audit trail for the costs. We do not believe that many states or localities currently have this ability through automated systems. Since the State Criminal Alien Assistance Program does not provide administrative funds to states and localities, this provision may impose an unrealistic burden on states and localities.

Section 306 amends section 242 to revise and restate the provisions relating to judicial review in current section 106, which is repealed.

Section 242(a) provides that a final order of removal, other than an order for removal under section 235(b)(1), is governed by chapter 158 of title 28. This is consistent with current section 106(a), except that it treats both exclusion and deportation orders uniformly. This subsection also provides that no court shall have jurisdiction to review a decision by the Attorney General to invoke section 235(b)(1), the application of such section to individual aliens (including the determination under section 235(b)(1)(B) regarding credible fear of persecution), or procedures and policies to implement section 235(b)(1). Individual determinations under section 235(b)(1) may be reviewed only under new subsection 242(f). H.R. 1929 has similar provisions.

Section 242(b)(1) provides that a petition for review must be filed within 30 days after the final order of removal, with the federal court of appeals for the circuit in which the immigration judge completed proceedings. Subsection (b)(3)(B) provides that the filing of a petition stays the removal of the alien unless the alien has been convicted of an aggravated felony. The remaining paragraphs of subsection (b) restate the provisions in subsections (3) through (8) of current section 106 regarding form, service, decision, treatment of a petitioner's claim that he or she is a national of the U.S., consolidation of motions to reopen and reconsider, challenge of validity of orders of removal, and detention and removal of alien petitioners. H.R. 1929 has similar provisions except that under H.R. 1929 the Attorney General's findings of fact would be conclusive "unless a reasonable adjudicator would be compelled to conclude to the contrary." This provision would codify existing case law, and we recommend it.

Section 242(c) restates the provisions of current section 106 that a petition for review must state whether a court has upheld the validity of an order of removal, and if so, identifying the court and date and type of proceeding.

Section 242(d) restates the provisions of current section

106 requiring that a petitioner have exhausted administrative remedies and precluding a court from reviewing an order of removal that has been reviewed by another court.

Section 242(e) provides that a petition for review from an order of expedited removal may address only whether the alien has been correctly identified, has been convicted of an aggravated felony, and has been given the procedures described in section 238(b)(4). H.R. 1929 has similar provisions.

Section 242(f) provides rules for judicial review of orders of removal under section 235(b)(1). No court may issue injunctive or declaratory relief against the operation of expedited exclusion procedures. Judicial review is only available in habeas corpus and is limited to whether the petitioner is an alien, whether the petitioner was ordered removed under section 235(b)(1), and whether the petitioner can prove by a preponderance of the evidence that he or she is an alien lawfully admitted for permanent residence. If the court determines that the petitioner was not ordered excluded or is an alien lawfully admitted for permanent residence, the court may order no relief other than to require that the alien be provided a hearing under section 240 or, if applicable, proceedings under section 273(d). The habeas corpus proceeding shall not address whether the alien actually is admissible or entitled to any relief from removal. H.R. 1929 has similar provisions.

Section 242(g) provides that no court, except for the Supreme Court, has jurisdiction or authority to enjoin or restrain the provision of chapter 4 of Title II of the INA (inspection, apprehension, examination, exclusion, and removal). We support this provision.

Section 307 moves to section 243 the criminal provisions in current section 242(e) regarding penalties for failure to depart. It limits the period by which an alien must depart before becoming subject to criminal provisions from six months to 90 days. We support this provision.

Section 243(d) revises the provisions in current section 243(g) regarding sanctions against a country that refuses to accept an alien who is a citizen, subject, national, or resident of that country. Under the revision, the Secretary of State shall order that the issuance of both immigrant and nonimmigrant visas to citizens, nationals, subjects, or nationals of that country be suspended until the country has accepted the alien. (Current law provides only for the suspension of immigrant visas.) H.R. 1929 contains a similar provision, but H.R. 1929's provision allows the Secretary of State maximum flexibility in implementing this section of the law. We recommend that the suspension of nonimmigrant visas be discretionary and not automatic because there may be foreign policy, national security,

or other reasons in a particular circumstance where suspension would not be in the best interest of the United States. We recommend that the House change "the Secretary of State shall" to "the Secretary of State may."

Section 308 makes a series of redesignation and conforming amendments in addition to those made in other sections.

Section 309 contains the effective date provisions for Subtitle A of Title III (sections 301 through 308).

Section 309(a) provides that, except as otherwise provided, the provisions of Subtitle A take effect on the first day of the first month beginning more than 180 days after the date of enactment. We are concerned that a 180-day transition period is insufficient time to complete all of the changes in rules, procedures, and training that will be required to implement these significant changes. We believe that a year would be a more workable transition period.

Section 309(b) provides that the Attorney General "shall first promulgate regulations" to carry out this subtitle at least 1 month before the effective date in section 309(a). This provision would require the regulations to be implemented within 150 days. We recommend that regulations be promulgated consistent with a one year effective date in section 309(a), and that the section clarify that the regulations will be interim in nature, to allow promulgation of regulations while preserving public comment.

Section 309(c) provides for the transition to new procedures. In general, the amendments made by this subtitle do not apply in the case of an alien already in exclusion or deportation proceedings on the effective date, and the proceedings (including judicial review) may continue to be conducted without regard to such amendments. The Attorney General may elect to apply the new procedures in a case in which an evidentiary hearing under current section 236 (exclusion) or sections 242 and 242B (deportation) has not been commenced as of the effective date. The Attorney General shall provide notice of such election to the alien, but the prior notice of hearing and order to show cause served upon the alien shall be effective to retain jurisdiction over the alien. The Attorney General also may elect, in a case in which there has been no final administrative decision, to terminate proceedings without prejudice to the Attorney General's ability to initiate new proceedings under the amendments made by this subtitle. Determinations in the terminated proceeding shall not be binding in the new proceeding. We support this provision.

This subsection also provides that in the case where a final order of exclusion or deportation is entered on or after the date

of enactment and for which a petition for review or for habeas corpus under section 106 has not been filed as of such date, new rules shall apply to subsequent petitions for judicial review. All judicial review, both of exclusion and deportation decisions, shall be by petition for review to the court of appeals for the judicial circuit in which the administrative proceedings before the special inquiry officer (immigration judge) were completed. The petition for review also must be filed not later than 30 days after the final order of exclusion or deportation.

Section 309(c) (5) provides that the period of continuous physical presence is deemed to have ended on the date the order to show cause was issued, for applications for suspension of deportation filed after the date of enactment. We support this provision.

Section 309(c) (6) provides that the Attorney General may waive the new section 212(a) (9) exclusion ground (present without admission or parole) for aliens granted family unity benefits. We support this provision.

Subtitle B of Title III contains various provisions related to the exclusion, removal, and denial of asylum for alien terrorists. The Administration strongly supports measures to address domestic and international terrorism activities. We have worked closely with members of the House on this important matter. We prefer that H.R. 2703 continue to be the vehicle by which necessary statutory changes to fight terrorism be made.

Section 341 amends section 101 of the INA to add a new paragraph (47), defining "stowaway" to mean any alien who obtains transportation without consent of the carrier through concealment. This amended paragraph also provides that a passenger who boards with a valid ticket is not to be considered a stowaway.

The absence of a statutory definition of the term "stowaway" has led to needless litigation. We believe it is appropriate to include in the definition of "stowaway", not only those who have physically concealed themselves aboard a vessel or aircraft, but also those who succeed in boarding a vessel or aircraft without the carrier's knowledge or permission through evasion of standard procedures. Accordingly, we urge the members of the House to adopt the definition of stowaway contained in H.R. 1929.

Section 342 amends section 231(a) to provide that carriers shall provide manifests of persons arriving in the U.S., and that such lists include for each person transported the person's name, date of birth, gender, citizenship, and travel document number (if applicable).

H.R. 1929 contains a similar provision. The provision

provides the INS with the data fields and flexibility needed to achieve the goal of automating the data collection process, without imposing undue additional requirements on the private sector.

Section 343, which was deleted during the full Judiciary Committee mark up, would have amended redesignated section 233 to provide that any carrier bringing aliens to the U.S. without a visa for the purpose of immediate and continuous transit shall indemnify the U.S. against any costs for detention and removal of the alien if the alien is refused admission, fails to continue his journey within the time prescribed by regulation, or is refused admission by the foreign country to which the alien is travelling.

This provision was similar to the Administration's proposal, and we strongly urge its inclusion in the final bill. The responsibility for the detention and removal of transit without visa (TWOV) passengers currently lies with the carrier as a contractual obligation. While the repeal of former section 233 of the Act in 1987 relieved the carriers of responsibility for the detention of inadmissible alien passengers, the repeal did not affect the responsibility of the carriers for TWOV passengers nor was the \$5 user fee calculated to cover the costs of detaining TWOV passengers. The concerns expressed by the carriers in this area principally relate to the responsibility for detaining TWOV passengers who apply for asylum in the United States. Admittedly current law affords a full panoply of rights to persons seeking admission to the United States leading to often lengthy proceedings. The special exclusion procedures of both H.R. 2202 and H.R. 1929 would dramatically reduce that process, particularly with respect to asylum seekers. Accordingly, we believe it appropriate to codify existing practice in this area by clarifying the responsibility of the carriers.

Section 344, which was deleted during the full committee mark up, would have amended section 273(a) of the INA to establish that carriers can be fined for bringing inadmissible aliens from foreign contiguous territories (carriers are already liable for bringing illegal aliens from other locations) and raising the fine amount from \$3,000 to \$5,000.

This provision was similar to the Administration's proposal, and we strongly urge its inclusion in the final bill. This provision only applies to carriers who violate the law. With the splendid cooperation of the carriers, the INS has developed carrier compliance and training initiatives that are beginning to bear fruit. In addition, the INS is in the process of promulgating regulations dealing with remission and mitigation of carrier fines. Notwithstanding these efforts, some carriers continue to violate the law. The current fine amount of \$3,000

has not engendered their compliance. We believe a fine increase is necessary to deter carriers who are presently violating the law.

Section 351 amends section 101(a) of the INA to add a new paragraph (47), defining conviction to mean a formal judgment of guilt entered by a court. If adjudication of guilt has been withheld, a judgment is nevertheless considered a conviction if (1) the judge or jury has found the alien guilty or the alien has pleaded guilty or nolo contendere; (2) the judge has imposed some form of punishment or restraint on liberty; and (3) a judgment of guilt may be imposed without further proceedings on guilt or innocence of the original charge if the alien violates the term of probation or otherwise fails to comply with the court's order.

We support this provision.

Section 352 amends paragraph (4) of section 101(b) to replace the definition of "special inquiry officer" with a definition of "immigration judge". We support this provision.

Section 352(c) establishes a schedule for the levels and rates of pay for immigration judges. We support this provision.

Section 353 amends section 246(a) of the INA to clarify that the Attorney General is not required to rescind the lawful permanent resident status of a deportable alien separate and apart from the removal proceeding under section 240. This provision will allow INS to place a lawful permanent resident who has become deportable into deportation proceedings immediately.

This provision is identical to the Administration's proposal, and we support it.

Section 354 adds a new section 274D to the INA, providing that aliens under an order of removal who wilfully fail to depart or to take actions necessary to permit departure (apply for travel documents) shall pay a penalty of not more than \$500 for each day in violation. This section would not diminish the criminal penalties at section 243(a) for failure to depart or any other section of the INA.

This provision is identical to the Administration's proposal, and we support it.

Section 355 clarifies that the grant of jurisdiction under section 279 of the INA permits the Government to institute lawsuits to enforce the provisions of the INA and does not permit private parties to sue the Government. This has no effect on other statutory or constitutional grounds for private suits against the Government.

This provision is identical to the Administration's proposal, and we support it.

Section 356 would permit the hiring of retired military or federal civilian employees, with no reduction in retirement pay or annuity, for not longer than 24 months to perform duties in connection with the Institutional Hearing Program for removal of criminal aliens from the United States.

This provision is unnecessary. Under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. sections 8344(i) and 8468(F)), such reemployment can already be handled administratively.

Section 357 would instruct the Sentencing Commission to promptly promulgate amendments to the sentencing guidelines to reflect the amendments made in section 130001 and 130009 of the Violent Crime Control and Law Enforcement Act of 1994.

The United States Sentencing Commission has not acted on section 130001 of the Violent Crime Control and Law Enforcement Act of 1994. Consequently, we support subsection 357(a). However, regarding section 130009 of the Violent Crime Control and Law Enforcement Act of 1994, we support the United States Sentencing Commission's guideline amendments which became effective on November 1, 1995. In our view, the Commission's amendments, which significantly increase the punishments for these offenses, should be given an opportunity to work before additional changes are made. Therefore, section 357(b) is no longer necessary.

Section 358 authorizes to be appropriated for each fiscal year beginning in fiscal year 1996 the sum of \$150,000,000 for costs associated with the removal of inadmissible or deportable aliens, including costs of detention of such aliens pending their removal.

The President's FY 96 budget request for the detention and removal of criminal and other deportable aliens is \$177,702,000. We urge the House to authorize the President's requested amount.

Section 359 amends section 280(b) to provide for the establishment of the "Immigration Enforcement Account," into which shall be deposited the civil penalties collected under sections 240B(d), 274C, 274D, and 275(b), as amended by this bill. The collected funds are to be used for specified immigration enforcement purposes.

We support this provision.

Section 360 advises the President to negotiate or renegotiate bilateral prisoner transfer treaties, to expedite the

transfer of aliens unlawfully in the United States, to ensure that a transferred prisoner serves the balance of the sentence imposed by United States courts, to eliminate the requirement that prisoners consent to such transfer, and to allow the federal government or a state to keep its original prison sentences in force so that an alien who reenters the United States prior to completion of his original sentence may be returned to custody for the balance of that sentence. It allows for the President to provide appropriate financial incentives in cases where the United States is able to verify the adequacy of sites where aliens will be imprisoned. It requires the President to submit annual certifications to Congress on the effectiveness of each transfer treaty.

We agree that some level of nonconsensual prisoner transfer should be implemented; however, the current proposal is problematic in several areas. A number of concerns must be resolved prior to implementing such a regime.

The State Department has noted that involuntary transfers of prisoners whose crimes were not particularly serious or who do not present a danger could run afoul of our obligations under the 1967 Protocol relating to the Status of Refugees not to return a refugee to a place of persecution. Further, the U.S. is severely limited in its ability to monitor activities in foreign countries' prisons, most importantly with respect to potential human rights abuses which might be directed against the transferred prisoners. The State Department notes that the U.S. might bear some legal responsibility in such human rights abuse cases. Finally, such agreements would almost certainly have to contain a reciprocal provision for the involuntary transfer of U.S. citizens imprisoned in foreign countries back to the U.S. Non-consensual transfers of U.S. citizens from foreign prisons back to the U.S. may well raise issues of a constitutional nature.

In 1994, we transferred 424 prisoners abroad, including 394 to Mexico. The Mexican transfers alone resulted in a savings of over \$7.5 million for the Department of Justice. As of December 31, 1995, we transferred 438 prisoners abroad, including 266 prisoners to Mexico. In May 1995, the United States and Mexico had committed to returning 400 Mexican nationals to Mexico pursuant to the prisoner transfer program by the end of December 1995. By December 31, 1995, the Department of Justice had approved over 506 Mexican prisoner transfer applications. Due to the large number of prisoners scheduled to transfer to fulfill our commitment of 400, the December transfer was to be completed in January 1996; however, due to the government furlough, the second phase was completed in February.

Limited prison capacity in other countries seriously inhibits our ability to increase significantly the number of

prisoner transfers. In our view, the premature release of transferred prisoners due to a lack of prison space would be unacceptable and inconsistent with the purposes of the transfer treaty.

Section 360 raises other problems as well. First, a requirement that transferred prisoners serve the balance of the sentence imposed by U.S. courts is inconsistent with current international practice, where the country to which the prisoner is transferred (which in the case of transferred U.S. citizen prisoners would be the United States) administers the sentence in accordance with its laws and procedures, including the application of any provisions for reduction of the term of confinement by parole, conditional release or otherwise. Second, the final sentence of section 360(a) is confusing and perhaps unwise. It could be read to imply that the United States would provide financial incentives to foreign prison systems where transferred aliens are incarcerated, a result that would imply major new financial obligations for the United States.

While we appreciate that this provision is advisory only, and therefore designed not to interfere with the President's constitutional authority to conduct foreign affairs, we believe that the recommendation is unnecessary and that it urges the Administration to undertake work that is an inappropriate solution to the present problem and unlikely to be worthwhile. We would also ask that the certification requirement in the proposed subsection (b) be deleted; as a general matter, the Administration discourages the imposition of regular reporting requirements, which require a commitment of resources that frequently is not justified. We are unaware of any significant concerns that any of our existing transfer treaties are not functioning appropriately, such that imposition of such an annual reporting requirement would be warranted.

Section 361 amends the Violent Crime Control and Law Enforcement Act of 1994 to rewrite the criminal alien identification system. It provides for the INS Commissioner to operate the system, rather than the Attorney General. It requires that the system be used to assist federal, state and local law enforcement agencies in identifying and locating aliens (1) subject to removal as aggravated felons, (2) subject to prosecution for illegal entry, (3) not lawfully present in the United States, or (4) otherwise removable. The system must provide for the recording of fingerprint records of previously arrested and removed aliens. This section also directs the INS, upon the request of a governor or chief executive of any State, to assist state courts in identifying aliens unlawfully present in the United States pending criminal prosecution.

We believe that this section is unnecessary. The identification of criminal aliens by any U.S. law enforcement

agency is already available through the FBI's National Crime Information Center (NCIC) and the INS Law Enforcement Support Center, provided they are fully funded. NCIC capacity to assist law enforcement agencies in identifying previously deported felons is being expanded significantly with new FY 96 resources. Development of a new identification system would be redundant and therefore would waste resources that could better be applied to additional detention space, worksite enforcement inspectors or other high priority Administration enforcement needs.

Section 362 revises section 212(d) of the INA, 8 U.S.C. 1182(d), by adding a new paragraph permitting the Attorney General to waive application of section 212(a)(6)(F) (excludability) for certain aliens who have committed document fraud in violation of section 274C of the INA if the fraud was committed to assist a spouse, parent or child. This section would be similar to current section 212(c)(11), which waives excludability under section 212(a)(6)(E) for certain aliens who have smuggled into this country close family members. This section also permits the Attorney General to waive application of section 241(a)(3)(C) (deportation) for certain aliens who have committed document fraud in violation of section 274C of the INA if the fraud was committed to assist a spouse, parent or child. This section permits a discretionary waiver only in instances where the alien's sole motivation in committing document fraud was family reunification.

We support this provision because it is consistent with a humanitarian immigration policy. We would suggest, however, that the waiver be further altered to allow a waiver in the same limited circumstances allowed for other sorts of fraud, as in section 212(i) of the INA, amended by section 301(d) of H.R. 2202 as reported by the Committee on the Judiciary.

Section 363 authorizes the Attorney General to prescribe special regulations and forms for the registration and fingerprinting of aliens who are or have been on criminal probation or criminal parole within the United States.

We support this provision because it will help identify and deport criminal aliens.

Section 364 prohibits the Attorney General from making an adverse determination of inadmissibility or deportability of an alien using information furnished solely by a spouse or parent (or a family member of the spouse or parent) who battered an alien or an alien's child unless the alien has been convicted of a crime or crimes covered under Section 241(a)(2) of the INA. This section also precludes the Attorney General from permitting the unauthorized use or disclosure of information supplied by a battered spouse or child who is seeking to regularize his immigration status. This section provides for discretionary

exceptions to the ban on disclosure in cases where the information would be supplied in the same manner and circumstances as census information or legitimate law enforcement purposes.

We support this provision with certain clarifying amendments that have been discussed with Judiciary Committee staff.

Title IV - Enforcement of Restrictions against Employment

Jobs are the greatest magnet for illegal immigration. Thus, a comprehensive effort to deter illegal immigration, particularly visa overstaying, must make worksite enforcement a top priority. The President's FY 96 budget request includes 365 new INS investigations personnel and 202 new DOL Wage and Hour and other personnel to enhance enforcement of laws prohibiting employment of illegal aliens and assuring minimum labor standards, including sweatshop enforcement. Enforcement efforts will focus on selected areas of high illegal immigration. Already the Atlanta and Dallas District Offices of the INS have successfully conducted Operation SouthPAW (Protecting America's Workers) and Operation Jobs, unprecedented interior enforcement initiatives which are designed to place authorized U.S. workers in job vacancies created by the arrest of unauthorized workers during worksite enforcement surveys. The Administration is deeply concerned by the provisions in this bill that will weaken employer sanctions and anti-discrimination enforcement.

Section 401 requires that the number of full-time personnel in the INS Investigations Division be increased by 350 and that the new personnel be assigned to investigate employer sanctions provisions.

As drafted, this provision sounds good, but actually could weaken enforcement. Without appropriations, it would have a deleterious impact on the INS Salaries and Expenses account. We ask the House not to require the INS to designate its employees as exclusively employer sanctions investigators. Investigators assist in criminal alien removal and other vital immigration law enforcement activities in addition to employer sanctions enforcement. The House should allow the INS to retain the flexibility to establish assignments in these operations. The President's FY 96 budget request includes funding for 357 positions for employer sanctions, of which 292 would be agents and investigators.

Section 402 authorizes 150 additional staff positions for the Wage and Hour Division to investigate violations of wage and hour laws in areas where there are high concentrations of undocumented workers. This provision represents a substantially weaker commitment to worksite enforcement than the President's FY 96 budget request, which, as part of the President's

comprehensive strategy to more effectively control illegal immigration, calls for 202 additional positions for the DOL -- 186 for Wage and Hour, and 16 for the Solicitor's office to prosecute the most serious labor standards violations arising from investigators' work.

The Administration strongly believes -- and the President has emphasized -- that enhanced worksite enforcement of both minimum labor standards and employer sanctions are essential components of the comprehensive strategy needed, and proposed by this Administration, to more effectively control illegal migration. We, therefore, urge the House to demonstrate more support for worksite enforcement and to authorize increases at the Administration's higher level request for Wage and Hour enforcement personnel and to ensure that the additional funds necessary to implement this provision are ultimately appropriated.

Section 403(a) eliminates three categories of documents that now can be used to establish both employment authorization and identity: certificate of citizenship, certificate of naturalization, and unexpired foreign passport stamped by Attorney General with employment authorization. This section also eliminates a birth certificate as a document that can be used to establish work authorization. Only a Social Security card would be acceptable for this purpose.

The Administration proposal contains similar provisions. However, H.R. 2202 deletes from the list of "C" documents that may establish employment eligibility "other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable." H.R. 1929 retains such employment authorization documents. These documents are critical to the transition phase of document reduction, and we recommend that they be retained.

Section 403(a) also requires that an individual being hired provide his or her Social Security number on the employment verification attestation form. This provision is similar to the Administration's proposal, and we support it.

Section 403(b) makes the "good faith" defense to employer sanctions inapplicable to employers with more than three employees who have not made timely confirmation inquiries or received appropriate confirmation in response to such an inquiry. Overall, we support this provision but question whether employers with three or fewer employees should not be held to the same standard.

Section 403(b)(2) adds a provision to the existing retention requirements which requires a person or entity with three or more employees to seek confirmation of the identity, social security

number, and work eligibility of the individual within three working days of hire in accordance with prescribed procedures. Overall we support this provision, but question whether employers with three or fewer employees should be exempt from this requirement.

Section 403(b)(3) establishes an employment eligibility confirmation mechanism. An employer must make an inquiry through the mechanism within three working days after the date of hiring and receive a confirmation within three working days of the initial inquiry. In cases of tentative nonconfirmation, the Attorney General shall specify an expedited time period not to exceed 10 working days within which final confirmation or denial must be provided. This section bars the denial of employment to an individual because of inaccurate or inaccessible data under the confirmation mechanism. This section also requires the Attorney General to ensure that there is a timely and accessible process to challenge nonconfirmations made through the mechanism. This section requires the Attorney General or a designee (which may include a nongovernmental entity), to respond to inquiries by employers, through a toll-free telephone line or other electronic media, in the form of a confirmation code. The system must also be designed to register all times when response is not possible. No Social Security information may be disclosed or released. In order to monitor and prevent unlawful discrimination, the Attorney General shall implement a program of testers and investigative activities. In addition, no person shall be civilly or criminally liable for any action taken in good faith reliance on information provided through the confirmation mechanism.

Section 403(b)(3) also provides for application of this confirmation mechanism only to individuals hired under a pilot project established under this legislation. The provisions of this section require the Attorney General to undertake pilot projects for all employers in at least 5 of the 7 States with the highest estimated population of unauthorized aliens to test and assure that the confirmation mechanism is reliable and easy to use. The projects must be initiated within 6 months of enactment. However, the Attorney General cannot establish the pilot program in other States unless Congress so provides by law. The pilot projects shall terminate no later than October 1, 1999. At least one such pilot must be carried out with a nongovernmental entity as the confirmation mechanism. The Attorney General must submit annual reports to Congress in 1997, 1998, and 1999 on the development and implementation of the confirmation mechanism.

We agree that a system for accurate verification of a potential employee's status is vital to assist employers in meeting their obligations to hire only authorized workers and we agree that the results of the pilot programs be examined before

directing a specific deadline for implementation. This section allows pilot projects to be tested and evaluated until October 1, 1999, so that technical feasibility, cost effectiveness, resistance to fraud, and impact on employers and employees can be assessed and determined. H.R. 2202, however, requires that pilot projects be established for ALL employers in at least 5 States within six months of enactment. We believe such a large scale expansion of the pilot projects is not the best course of action. In addition, we oppose the addition of an unnecessary limitation on the Attorney General's ability to conduct pilots in other States. The Administration bill authorizes employment verification pilot projects that will improve the INS databases; expand the telephone verification system for non-citizens up to 1,000 employers; simulate links between INS and Social Security Administration (SSA) databases; and test a new two step process for citizens and non-citizens to verify employment authorization using INS and SSA data. The pilots will be built to guard against discrimination, violations of privacy, and document fraud. After three years the pilots will be evaluated on the bases of discrimination, privacy, technical feasibility, cost effectiveness, cost and burden impact on employers, and susceptibility to fraud. This approach was the principle worksite enforcement recommendation of the Commission on Immigration Reform and forms the basis of the approach recently adopted by the Senate Judiciary Committee.

Sec. 403(b)(3)(6)(E) states that an individual shall not "be denied employment because of inaccurate or inaccessible data under the confirmation mechanism." Further, section 403(b)(3)(6)(E)(iii) provides that "if an individual would not have been dismissed from a job but for an error of the confirmation mechanism, the individual will be entitled to compensation through the mechanism of the Federal Tort Claims Act."

The Administration suggests the following provision in lieu of the present language of section 403(b)(3)(6)(E)(iii):

In the event that an individual is injured because of the negligent or wrongful act or omission by any employee of the government during the confirmation process, the individual may pursue a remedy in accordance with the procedures of the Federal Tort Claims Act, subject to the limitations and exceptions applicable to those actions.

This alternative language may avoid unnecessary litigation over the intent of this notification provision to give notice to individuals that there is a potential FTCA remedy while not affecting the metes and bounds of the FTCA remedy.

Section 403(c) reduces paperwork requirements for the

subsequent employers of certain employees whose eligibility to work has been confirmed by a prior employer. This provision applies in the case of an individual who is employed under a collective bargaining agreement, whose past and present employers are within the same agreement. We support this provision which would streamline and reduce paperwork burdens on employers, which is a major focus across government today.

Section 403(d) strikes subsection (i) through (n) of section 274A, which are dated provisions.

Section 403(e)(2) provides 18 months after the date of enactment for the Attorney General to implement the document reduction provisions of sections 403(a)(1) and (a)(2). This amendment replaces language which mandated that the provisions be implemented within 180 days. In consideration of the technological capabilities, we find this provision much more favorable to effective implementation of the document reduction provisions.

Section 403(e)(5) mandates that not later than 180 days after the date of the enactment of this Act, the Attorney General shall issue regulations which shall provide for the electronic storage of Forms I-9.

We oppose this provision. The INS is currently conducting a demonstration project involving the electronic generation, completion and storage of the Form I-9. It is premature at this time for Congress to mandate regulations providing for electronic storage within 180 days. Enforcement and security concerns require that this process be analyzed carefully before implementation. The INS, through the demonstration project, is studying the most effective means of obtaining the level of security necessary to preserve enforcement efforts while providing a cost-effective method of storage for employers. We request time to complete our analysis of this project pilot before implementation is mandated by statute.

Section 404 would require SSA to report to Congress on the number of Social Security numbers (SSN) issued to individuals not authorized to work for whom earnings are reported. SSA would be required to provide the Attorney General with the name and address of the individual to whom the number was issued as well as the name and address of the employer reporting the earnings.

While SSA can fulfill this requirement, the usefulness of this information has limitations. SSA records show the citizenship and work authorization status of a worker at the time his/her SSN is issued, but has no way of keeping that information up-to-date. Thus, the data reported would erroneously exclude persons whose work authorization expired after the SSN was issued and erroneously include persons who received work authorization

(or became U.S. citizens) after their SSN without work authorization was issued. We believe this information is too often unreliable for cost effective and productive enforcement by the INS. This provision could thus lead to costly litigation for the federal government.

Section 405 amends section 264 of the INA to clarify that the Attorney General may require any alien to provide his or her social security number to be included in any record of the alien. This provision is identical to the Administration's proposal, and we support it.

Section 406 exempts an employer from liability for failing to comply with the employment verification requirements based upon a technical or procedural failure to meet a requirement in which there was a good faith attempt to comply with the requirement unless the INS has explained to the employer the basis for the failure, the employer has been provided at least 10 business days to correct the failure, and the employer failed to correct the failure within such period. The exemption shall not apply with respect to the engaging by any employer in a pattern or practice of employing an alien knowing the alien is unauthorized.

We object to this provision because it would undermine our employer sanctions and worksite enforcement efforts. The INS generally sanctions only those employers who have unauthorized aliens working on their premises during the INS on-site inspection or those who have violations on a large percentage of their employees. Less than half of our current Notices of Intent to Fine (NIF) involve only verification violations. Of the verification-only NIFs, 58% involve arrests of unauthorized employees. The majority of the remainder involved employers whose I-9 forms showed verification violations for over 35% of their employees.

The current policy governing imposition of penalties in employer sanctions cases was issued on August 30, 1991. That policy closely follows the existing statutory provisions for violations of the verification requirements at section 274A(e)(5) of the INA. The statute requires the INS to consider the following factors: size of the business, good faith efforts of the employer, seriousness of the violations, whether the violation involved an unauthorized alien, and history of previous violations. The 1991 policy strongly discourages the imposition of civil money penalties in cases involving only minor verification violations and instructs that resources should be concentrated on serious, repeat offenders and the development of criminal prosecutions. The policy provides guidelines for the consideration of each of the factors required by statute. The guidelines for the seriousness of verification violations state that the test is "whether or not, and to what degree, the

violation materially affects the purpose of the verification process, which is to avoid the possibility of hiring an unauthorized alien."

In instances in which the violations are technical, and involve only a small percentage of the employees, the INS' general practice is to issue a warning notice and to give the employer a reasonable amount of time in which to correct the violations.

The existing statutory and policy framework allows the INS to reinforce the need to take the law seriously in instances where the employer's good faith is not manifest and where unauthorized aliens have been hired. We are concerned that this section will create the expectation on the part of all employers that they will not be penalized for verification violations. Given the stiff legal test required to establish a knowing hire charge, we believe that diminishing our ability to enforce all the requirements of the law will result in diminishing compliance. We believe that this sends the wrong message to the employing community, and to the public at large. Furthermore, this section will create needless litigation regarding the definition of a "technical or procedural" failure. While we must look for opportunities to simplify compliance for businesses, particularly small businesses, it must not be at the price of rendering employer sanctions meaningless.

Section 407(a) requires the person or entity subject to an order for Unfair Immigration-Related Employment Discrimination issued at least 90 days after the date of enactment to retain the names and addresses of applicants for up to a three year period and to educate all hiring personnel about the requirements of Immigration Reform and Control Act (IRCA) and to certify the fact of such education.

We note that most Administrative Law Judges, in the exercise of their discretion, already include these requirements in their decisions finding employers in violation of the law. The retention of job applicants' records provides the Department of Justice a valuable tool in monitoring compliance with the orders of the administrative tribunal. It also affords the Department of Justice a powerful investigative tool in determining whether an employer is engaging, or continues to engage in a pattern and practice of employment discrimination, especially in cases involving citizenship status discrimination. However, we suggest that this provision include some discretion for Administrative Law Judges to exempt an employer from this requirement in extreme financial hardship circumstances where this requirement would impose an overly burdensome administrative cost on an employer and potentially cause the employer to go out of business.

Section 407(b) permits a person or entity to request a

document proving a renewal of employment authorization when a individual has previously submitted a time-limited document to satisfy the requirements of section 274A(b)(1). In addition, this section makes it permissible for a person or entity who possesses reason to believe that an individual presenting a document which reasonably appears on its face to be genuine is nonetheless an unauthorized alien may inform the person of the question about the document's validity and of the intention to verify the validity of such document and upon receiving confirmation that the person is not authorized to work, may dismiss the person with no benefits or rights accruing. Nothing in this provision prohibits an individual from offering alternative documents that satisfy the employment verification requirements. We oppose this provision as drafted.

The phrase "with no benefits or rights accruing on the basis of the period employed" should be struck from section 407(b)(2). That clause presently authorizes an employer, upon receiving confirmation that the individual is not unauthorized to work, to dismiss that individual "with no benefits or rights accruing on the basis of the period employed". This provision would clearly conflict with state and federal laws dealing, for example, with the payment of wages and fringe benefits for work performed. In addition to federal law, some states, e.g., Michigan, have labor laws that protect unauthorized workers, as well as citizens and work-authorized aliens, in such circumstances.

Absent this protection, unscrupulous employers would be encouraged to recruit and exploit unauthorized aliens, knowing that the wages earned by those workers could be withheld with impunity, and thereby encouraging illegal immigration. Alternatively, unscrupulous employers hiring itinerant labor may be encouraged to engage in dilatory tactics in conducting the employment eligibility verification, while withholding payment of wages until the completion of the process. Workers may be forced to move on, without receiving wages for work performed, and seek other employment prior to the conclusion of the verification process. This practice could have great adverse impact on migrant agricultural workers who are hired for a brief harvesting season and must follow the migrant stream, moving to other jurisdictions to harvest later crops.

It is also essential to strike the following language in section 407(b)(2): "if possessing reason to believe that an individual presenting a document which reasonably on its face appears to be genuine is nonetheless an unauthorized alien, may". In its stead, we recommend substituting: "when, subsequent to an I-9 audit conducted by the Immigration and Naturalization Service (INS), Department of Labor, or other U.S. government agency authorized by law to conduct such audits, a person or other entity is informed by such agency that the alien registration number produced by the individual does not appear in the INS

database or does not relate to that individual, the person or entity may:"

The current section 407(b)(2) does not define "reason to believe". As a result, an employer, for whatever reasons, even those that may appear arbitrary and capricious, may request additional verification. Thus, an employer may request further documentation when a worker "looks foreign", speaks a foreign language, or merely has a foreign sounding last name. We are concerned that the provision will have a major impact on work-authorized aliens and on citizens who "look or sound foreign", such as Latinos and Asian Americans. Many of these U.S. citizens may not have any additional documentation available besides their driver's licenses and Social Security cards. The provision may even be used as a pretext to engage in invidious discrimination against workers on the basis of their race, religion, national origin or other protected characteristics. The antidiscrimination provision was intended to prohibit such conduct.

Our proposed language provides a more defined and simple standard to guide employers as to when it is proper to seek additional documentation from an applicant or employee who initially presents documents that reasonably appear to be genuine. It is also consonant with the provision for the implementation of a pilot for an automated primary and a manual secondary verification system.

Additionally, by requiring that the employer first receive information suggesting that the individual may be undocumented from the INS, DOL, or other U.S. government agency authorized by law to conduct an I-9 audit before that employer may require additional documentation, the proposed language is in harmony with current law, which requires employers to accept any documents offered that on their face appear to be valid.

Title V - Reform of Legal Immigration System

The legal immigrant and nonimmigrant visa systems must serve our national principles, goals and priorities. One principle that legal immigration should serve is family reunification, especially for closest family members. The Administration urges the Committee to moderately reduce the overall level of legal immigration while providing stronger support for pro-family principles.

Reducing existing backlogs of family reunification immigrants who are waiting for visas, with priority to close family members of U.S. citizens, is of fundamental importance. These U.S. citizens have submitted petitions and paid fees to the U.S. to allow their family members to immigrate, and the federal government approved these petitions. In past decades, while

others jumped ahead of the line by entering the U.S. illegally, these U.S. citizens, who have applied on behalf of their family members, have "played by the rules" and have chosen to wait, in some cases for many years, in order to be legally reunited with their family members.

Our employment-based immigration policy must support the needs of both the U.S. workforce and employers. It must provide real incentives for business to prepare American workers for the high skilled jobs and high performance workplaces of the future while at the same time providing business a safety valve of access to foreign labor markets to meet skill demands that the U.S. workforce cannot supply in sufficient quantity or with sufficient speed.

The backbone of this country's edge in global competitiveness is the strength of our university, research, and technology communities. Therefore, to help sustain U.S. scientific leadership and technological competitiveness, in reforming employment-based immigration, the Administration will continue to work with Congress to address the needs of universities, government research agencies and their affiliated non-profit research institutions.

We affirm the United States' proud heritage of providing humanitarian protection to those persecuted and fearing for their life in their own country.

Finally, we support a periodic review of the nation's immigration system to maintain flexibility and responsiveness in the system.

As detailed below, the proposed reform of the legal immigration system contained in H.R. 2202 is flawed.

Section 511 narrows the "immediate relatives" classification to spouses or children of United States citizens. Consequently, parents of United States citizens would be subject to direct numerical limitations. The Administration believes that the strength of families and the value of family reunification to our communities and nation rely on more complete family units than this bill contemplates. It includes U.S. citizens' parents. In many U.S. citizen families, immigrant parents can provide essential household support which promotes economic well-being and mobility. Such reunified families often make the difference between a family that needs public assistance and one that is self-sufficient. Therefore, the Administration opposes numerical restrictions on the entrance of parents of United States citizens.

Section 512(a) amends section 203(a) of the INA to establish the new family-based preferences. The first family-based

preference includes spouses and children of permanent residents. The second family-based preference includes parents of adult United States citizens who meet certain additional requirements. Spouse and children of permanent residents are guaranteed a minimum of 85,000 visas annually. If the total arrived at by subtracting the total of spouses and children of citizens from 330,000 exceeds 85,000, the amount by which it exceeds that figure (up to a maximum of 45,000, but no less than 25,000) is available for qualified parents of United States citizens. Any remaining visas, not to exceed 50,000 are to be made available for qualified adult sons and daughters of United States citizens and permanent resident aliens. To the extent that demand for such visas exceeds the number available in a fiscal year, up to 5,000 additional visas may issued provided that there is a corresponding reduction in available employment-based immigrant visas.

An adult son and daughter of a United States citizen or permanent resident alien may qualify for an immigrant visa only if he or she is at least 21 but not more than 25 yrs old, has never been married, is childless, and would qualify as a dependent for Federal income tax purposes. This section would provide such adult sons and daughters with conditional status which could be removed pursuant to procedures similar to those already provided in the marriage fraud provisions of the INA.

The Administration strongly supports retention of the first and third preferences in their current forms and at current admission levels. This is consistent with protecting the interests of U.S. citizens, and can be accomplished within a framework that lowers the overall level of legal immigration and reduces the second preference backlog.

Section 512(a) would require the immigrant parents of U.S. citizens to obtain, prior to their admission to the U.S., health insurance that is at least comparable to Medicare parts A and B, and long-term care insurance that is at least comparable to Medicaid's long-term care benefits. The immigrants would be required to demonstrate to consular officials and the Attorney General that they would maintain such coverage throughout their period of residence in the United States.

We object to this provision for both practical and policy reasons. The mandate would be inequitable because it applies only to qualifying parents and not to other classes of legal immigrants or U.S. citizens whose age, health, and uninsured status make them equally likely to incur uncompensated health care costs.

The cost of the required health insurance products would be prohibitively expensive. Our preliminary estimates indicate that, for parents age 65 and over, Medicare comparable acute care

coverage plus Medicaid-comparable long term care insurance would cost \$9,000 or more and the cost of such coverage would increase dramatically with the age of the parent. These insurance requirements would effectively allow only wealthy American families to be reunited with their immigrant parents.

Second, imposing a mandate upon purchasers of health insurance, absent a corresponding mandate that insurers offer such coverage on an equitable basis, would set standards that are virtually impossible to meet. Private health insurance policies comparable to Medicare plus the long-term care benefits of Medicaid, as required by this section, are often unavailable at any price. Private long-term care policies in particular generally contain far more limited benefits than Medicaid, and thus cannot be considered comparable.

In addition, insurers generally require medical examinations and tests before they will offer individual acute care or long-term care policies and are unlikely to accept tests performed outside the United States. However, this section requires a demonstration of health insurance coverage prior to entry in the United States.

Moreover, the requirements in this section would necessitate reliance upon state insurance departments to determine the acceptability of individual policies, to monitor and to enforce continued coverage, and to convey this information to consular officials worldwide, with no additional resources provided in this bill to fund this additional administrative requirement on the states.

The long-term care insurance requirement is especially problematic. The long-term care insurance industry is in its infancy. Availability, type and quality of benefits, consumer safeguards, and regulation by state insurance departments all vary widely. It is not known whether current premiums will provide sufficient revenue to pay promised benefits many years in the future.

Section 512 would eliminate the current fourth preference category for brothers and sisters of United States citizens. The Administration's underlying policy objective of a moderate reduction in overall admission numbers, coupled with granting highest priority to closest family members, supports the suspension of any new applications for fourth preference category admissions until subsequent review by Congress as contemplated under section 505. During this period, the Administration proposes to examine in greater detail this category and the nature of its existing backlog to better evaluate its role in national immigration policy. This examination would help guide Congress in its subsequent review to determine whether future immigration and economic trends allow room under the overall

ceiling for new fourth preference admissions consistent with the framework, priorities and principles we have outlined.

For U.S. citizens whose brothers and sisters have already applied and are waiting in the backlog, we support and want to reach agreement with Congress on an appropriate and equitable process to address the backlog that is consistent with our overall framework, priorities and principles.

Section 513 defines the new employment-based preference categories and allocates 135,000 visas to these preferences. The Administration thinks this overall level is too high. Unlike the changes in virtually all other immigration categories, H.R. 2202 would actually increase the number of employment-based visas available to skilled workers each year because visas for unskilled workers are eliminated. Thus, the bill would allow 135,000 employment-based immigrants each year compared to a current, comparable demand of just over 90,000. The Administration believes that employment-based immigration should be reduced in proportion to the reduction in other important categories. Certainly, the Administration has grave concerns about a scheme that denies families the opportunity to reunite in order to provide unneeded slots for employment-based immigration. Employer-sponsored visas should be set at a level of 100,000 visas per year, to address both the needs of American businesses and workers.

Paragraph (1) makes up to 15,000 visas per year available to aliens with extraordinary ability. Paragraph (2) makes available up to 30,000 visas per year plus any unused visas from the previous category to aliens who are outstanding professors and researchers or multinational executives and managers. The Administration is gratified that the Committee added back the admission category for 'outstanding professors and researchers' but is concerned that the current definition of this classification is restricted to employment at U.S. universities or institutions of higher education or a department, division or institute of a private employer. This narrow language would not allow the National Institutes of Health (NIH) and other governmental agencies to utilize this classification for recruiting truly outstanding foreign researchers to conduct research at government labs, such as the NIH. The Administration would prefer that "federal and non-profit research institutes or agencies" be added to the list of eligible entities.

We question the necessity and value of allocating visa numbers between categories in the employment-based program, and suggest that with the existing "fall down" provisions greater flexibility would appropriately be afforded.

Paragraph (3) makes up to 30,000 visas available plus any unused visas from paragraphs (1) and (2) to aliens who are

members of the professions holding advanced degrees or aliens of exceptional ability.

Paragraph (4) makes up to 45,000 visas available plus any visas not required for the classes specified in paragraphs (1) through (3) for skilled workers and professionals. Skilled workers must be capable of performing skilled labor requiring at least 2 years of training or experience and have a total of 4 years training or experience with respect to such labor. A professional is an alien who holds a baccalaureate degree and is a member of the professions and has at least 2 years experience in the profession after the receipt of the degree. The Administration is in favor of the increased experience requirements for skilled workers and professionals.

Elementary and secondary school foreign language teachers would be classified as professionals, although they would not be required to have a baccalaureate degree. They would be required to have 2 years of experience in the subject before admission. These aliens would be required to have a total of 5 years' teaching experience prior to being granted permanent residence. Therefore, the bill requires a period of conditional status of up to 3 years, until the sum of the years of experience acquired before admission plus the experience gained during their conditional residence status would equal 5 years. Only then would they be eligible for permanent residence.

The Administration believes that imposing conditional residence on secondary foreign language teachers without a baccalaureate is unwise and unwarranted. First, we do not believe a sufficient rationale has been put forth for establishing a special experience threshold for such teachers as compared to other teachers and professionals. Second, this section may encourage fraud and manipulation, since many aliens may seek to be admitted as teachers to take advantage of the lower education threshold. (This, in turn, results in a lower experience threshold than required for skilled workers). The result may be the allocation of a disproportionate number of fourth preference visas to aliens seeking to enter the country as full-time elementary or middle school foreign language teachers. Third, the related proposed section 216(B) would apparently indenture the alien to the occupation for 3 years after he or she is admitted to the U.S. Although this aspect of the program would be administered by INS, it introduces a new element regarding the admission of aliens immigrating for the purpose of employment. The Administration opposes such provisions because they create the potential for workplace exploitation, though not as great as if the alien was bound to both the employer and the occupation for 3 years.

The Administration encourages the House to adopt the key elements of a new labor market screening provision put forth in

S. 1394 as reported by the Subcommittee on Immigration. While H.R. 2202 makes no changes in the current labor certification provision at section 212(a)(5)(A), the Senate bill amends section 212(a)(5)(A) and related provisions of the Immigration and Nationality Act to provide a new method of "labor market screening." This new labor market screening system recognizes that employment-based immigration to fill skill shortages is sometimes unavoidable. However, as we also point out in our comments on section 806, the Administration believes the hiring of foreign workers over domestic workers should be the rare exception, not the rule. And we believe that such exceptions should become rarer, and more tightly targeted on gaps in the domestic labor market than is usually the case under current law. If employers must turn to foreign labor, this is a symptom of defects in the Nation's skill-building system. Our system for giving access to global markets should be structured to remedy such defects, not acquiesce to them. Our immigration system should progressively diminish, not merely perpetuate, firms' dependence on the skills of foreign workers.

Our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S. workforce to meet new demands. Importing needed skills should usually be a short-term response to meet urgent needs while we actively adjust to quickly changing circumstances. The Administration strongly supports reform that relies on market-based mechanisms which discourage employers from abandoning the domestic workforce in favor of foreign labor while, at the same time, making it less necessary for them to do so. We support the key elements of the labor market screening system proposed in S. 1394 which include a fee levied on employers sponsoring skill-based immigrants, and a training fund which would be built from these fees dedicated to building the skills and enhancing the competitiveness of U.S. workers. This provides a market-based incentive for employers to consider U.S. workers before turning to foreign labor and forges an admirably direct link between the problems of skill shortages and the only valid long-term solution -- investment in U.S. workers -- while at the same time providing a safety valve of access to foreign labor markets to meet skill demands that the U.S. workforce cannot currently supply in sufficient quantity or with sufficient speed.

In addition to requiring employers to make contributions to a training fund, S. 1394 would replace the current labor certification system with one that would require the Secretary of Labor to certify that the prospective employer has filed an application with the Secretary stating that (a) it has not laid off similarly employed U.S. workers during certain time periods relating to the application and (b) it is not involved in a strike or lockout involving the target occupation. Recruitment procedures must meet industry-wide standards and offer a total

compensation package that includes wages, benefits, and all other compensation. We may have additional concerns on this issue shortly. The House should adopt the labor market screening mechanisms contained in S. 1394, although without a requirement of conditional legal status or a determination of a labor shortage/surplus.

Section 514 amends the existing diversity visa program to limit availability to natives of the ten states within each region-with the highest number of diversity registrants in the FY 95 and FY 96 diversity visa programs. Northern Ireland would not be treated as a separate state and Mexico would be included in the North America region. Aliens unlawfully present in the United States would not be eligible. Section 503 establishes a worldwide level of 27,000 visas per fiscal year.

The Administration does not support the retention of the diversity program. The visa numbers proposed for the diversity program would be more appropriately used to retain the first and third family preferences for the benefit of U.S. citizens.

Section 515 provides that an approved classification petition may expire not less than two years after the date of approval unless the petitioner files a form to reconfirm the petition. We support this provision.

Section 516 repeals certain obsolete special immigrant provisions, amends section 101(a)(27) to provide special immigrant status for certain NATO civilian employees, adopts a conforming amendment to section 101(a)(15)(N) regarding nonimmigrant status for certain parents of special immigrant children, and extends the sunset period for admission of certain religious workers as special immigrants from 1997 to 2005. We support this provision.

Section 517 amends section 216A(b) of the INA to provide that the conditional status of entrepreneurs may be terminated if the alien did not make the requisite investment or employ the requisite number of employees throughout substantially the entire period of conditional status. It provides a good faith exception for conditions beyond the alien's responsibility. Conditional status may be extended up to three years for aliens who meet the good faith exception. We support this provision.

Section 518 adds to the definition of child in section 101(b)(1) of the INA the disabled "child" of a U.S. citizen or lawful permanent resident regardless of his or her age. As stated above, the Administration supports retaining the existing family first preference, which would render this provision unnecessary.

Section 519 makes various conforming amendments to reflect

the changes made to the family-sponsored, employment-based, and humanitarian immigration categories.

Section 521(a) amends paragraphs (1) and (2) of section 207(a) to provide that the number of annual refugee admissions designated by the President may not exceed 75,000 in FY 1997 or 50,000 in any succeeding fiscal year. The number may exceed these limits if Congress enacts a law providing for a higher number.

Section 521(b) amends section 207(b) by deleting the requirement that emergency refugee situation must be "unforeseen" in order for the President to fix a number of refugees to be admitted in response to an emergency after appropriate consultation. Section 207(d)(1) is amended to provide that the President must provide a report on the foreseeable number of refugee admissions to the Committee on the Judiciary of the House of Representatives and of the Senate prior to June 1 of the fiscal year preceding the admissions. Finally, this subsection amends section 207(e) to provide that consultation with Congress on number of refugees admitted shall occur before July 1 of fiscal year preceding the admissions.

We recognize and appreciate efforts made by the Judiciary Committee to ameliorate the impact of a legislated cap on refugee admissions. The Administration has already stated its opposition to legislatively limiting annual refugee admissions and continues to oppose such a cap. Under current law, the ceiling for annual refugee admissions is set by the President. The current process of consultation between Congress and the executive branch on the annual refugee admissions level, which began in 1981, is working well and allows Congress to participate in the process of determining appropriate refugee admissions levels. In recent years, refugee admission ceilings established by this consultation process have been decreasing. Imposing a strict and arbitrary numerical limitation on annual admissions would constitute an unwarranted restriction on the process and on the President's responsibility to determine issues of foreign policy.

Section 522 amends section 101(a)(42) to define "persecution on account of political opinion" as including "coercive birth control" and harm resulting from "other resistance to a coercive population control program." This provision would also amend section 207 of the INA to limit annual refugee admissions on this basis to 1,000. The Administration is currently reviewing this provision.

Section 523 provides that the Attorney General may parole aliens into the United States on a case-by-case basis only for urgent humanitarian reasons or for a reason deemed strictly in the public interest. Humanitarian parole is restricted to medical emergencies for which an alien cannot otherwise receive

treatment, for organ donations, or for imminent death of a close family member. Public interest parole is limited to matters in which the alien has assisted the United States government, such as a criminal investigation, espionage, or other similar law enforcement activities where the alien's presence is required by the Government or the alien's life is threatened or if the alien is to be prosecuted in the United States for a crime.

The Administration opposes restricting the Attorney General's parole authority. We oppose section 523. The current law provides the Attorney General with appropriate flexibility to deal with compelling immigration situations. For example, the amendment would not permit the parole of an alien to attend the funeral of a close family member or of a parent to accompany a child paroled into the United States for an organ transplant. In addition, one advantage of the special exclusion provisions included in both H.R. 2202 and H.R. 1929 is the opportunity they would afford to bring aliens intercepted at sea to the United States for a brief period for "credible fear" screening without implicating a full panoply of hearing and appeal rights. It is unclear whether this option would be available in light of the proposed restrictions on the Attorney General's parole authority. As currently written the parole restriction would appear to limit the ability of the Attorney General to parole from custody an alien seeking admission. (The Attorney General's parole authority pertains to excludable aliens in INS custody as well as excludable aliens who are physically outside the United States.) We do not believe that this was the drafters' intent. If the parole restrictions remain in the bill, an amendment clarifying this distinction between the two uses of the term should be adopted either in this section or in section 235(b)(2) of the INA as amended by section 302 of this bill.

Section 524 provides for the admission, subject to the worldwide level specified in section 201(e), of qualified immigrants of special humanitarian concern to the United States, selected on a case-by-case basis after having been identified for potential eligibility by the Attorney General. An alien who is a refugee is not entitled to admission as a humanitarian immigrant unless there are compelling reasons in the public interest to admit the alien under this provision. This section also limits issuance of humanitarian visas to natives of any single foreign state to 50 percent of the available numbers (or to natives of any dependent area to 15 percent of the available numbers). The Attorney General may waive the public charge ground of inadmissibility in the case of a humanitarian immigrant.

We support establishing an immigrant category for persons who do not meet the definition of refugee but who are of special humanitarian concern to the United States. We are concerned, however, that the numerical ceiling on humanitarian immigrant admissions will prove insufficient, at least in some years, to

address the need for such visas in light of the proposed scope of the Attorney General's parole authority. We are especially concerned about the impact that these limits will have on the special immigration programs that the Administration has established for Cubans pursuant to the recent agreement between the United States and the Government of Cuba. To date, this agreement has been highly successful in regularizing the flow of migrants from Cuba and has helped to avoid the type of mass exodus that occurred in August 1994. Under the terms of this agreement, the U.S. has agreed, inter alia, to admit 20,000 Cubans into the United States each year. Under H.R. 2202, the humanitarian immigrant category is the only one under which many of these persons might fit. Yet the strict numerical limits imposed by this section would prevent the United States from fulfilling its commitments under the agreement. Thus, the Administration recommends adoption of an exception to these limits for Cubans who fall under the terms of the existing agreement. We also propose that this section authorize the use of the humanitarian visa category, in the discretion of the Attorney General and under carefully controlled procedures, to regularize the status of persons in the United States who have been afforded protection on a humanitarian basis. We would like to work with the Members of the House in considering possible ways to achieve this end.

Section 531 regarding asylum reform has been amended in significant ways since the last version of this bill. In many important respects, it is consistent with the asylum reform objectives of this Administration. Nevertheless, the Administration remains deeply opposed to several provisions in this section. In particular, we believe that one of these provisions -- the imposition of a deadline on the filing of an asylum claim -- would undermine the United States' historic support for the humanitarian institution of asylum and also have the unintended result of hampering further progress in asylum reform.

Pursuant to a presidential directive in 1993, the Department of Justice engaged in extensive study and analysis of how to address asylum abuse and the significant backlog of unadjudicated cases. This resulted in the promulgation of new asylum regulations in December 1994. These regulations, which went into effect in January 1995, sought to address the problems in the asylum process by establishing procedures that permit the quick identification and granting of meritorious claims and the referral of all others to immigration court for deportation proceedings, the decoupling of eligibility for employment authorization from the asylum application process, and the streamlining of asylum procedures to help asylum officers keep current with incoming applications. In addition, Congress appropriated substantial additional funds for the asylum program, which made possible an increase of asylum officers from 150 to

325 and of immigration judges from 116 to 179 in FY 1995. In FY 1996 we expect to increase the number of immigration judges to approximately 200.

To date, these reforms have had tremendous positive results. In the year since the reforms took effect, the number of new asylum claims filed with INS dropped by 57 percent.¹ In the same period of time, INS asylum officers were able to double their productivity, completing 126,000 cases in CY 1995 as compared with 61,000 in CY 1994. INS issued charging documents in 65,000 of those cases, as compared with 29,000 in CY 1994. Immigration judges completed approximately 40,000 asylum cases, compared to less than 17,000 in CY 1994--an increase of 135 percent. In addition, INS stepped up its investigation of preparers of fraudulent claims, resulting in indictments and convictions of preparers in Los Angeles, San Francisco, New York and Arlington, VA. In short, we believe that our reforms are working to address asylum abuse and the asylum backlog. We are concerned that several of the proposed revisions in this section may have the effect of hampering rather than helping us in carrying out these initiatives. We would be happy to work with the Members of the House on further appropriate changes to this section that build upon progress we have already made.

Section 208(a)(1) provides that any alien who is physically present in the United States or who arrives at a port of entry is eligible to apply for asylum. This provision is consistent with current law.

We strongly oppose H.R. 2202's elimination of the existing section 243(h) of the INA, concerning withholding of deportation. This elimination is of grave concern because section 243(h) is the means by which the U.S. implements the non-refoulement obligation of Article 33 of the Refugee Protocol--the obligation not to return a refugee to a place where the refugee's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion. This is a fundamental protection afforded to refugees under international law. Elimination of this provision seriously calls into question the U.S. commitment to protect refugees and our intention to abide by international obligations. We strongly urge that current law section 243(h) be maintained.

Section 208(a)(2) permits the Attorney General to deny an alien the right to apply for asylum if that alien may be removed to a safe country where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent

¹ These figures do not include applications filed as a result of the 1990 settlement in American Baptist Churches (ABC) v. Thornburgh, which provides for different procedures for certain Salvadorans and Guatemalans.

temporary protection. While we do not object to the sentiment behind this provision, we are concerned that permitting such removals to take place in the absence of a bilateral or multilateral agreement could result in the creation of "refugees in orbit" (aliens who are transferred from one country to the other because no country is willing to admit them) or eventual return of an alien to the country of feared persecution. (Such problems have occurred with the implementation of similar "safe country" provisions in Europe.) We would prefer that this provision be modified to ensure that such removals occur only where there is a bilateral or multilateral agreement that guards against either of these two consequences and otherwise ensures that removals under this provision take place in an orderly and predictable manner. Moreover, as a practical matter, in the absence of such an agreement, the Attorney General could not be sure at the time of adjudication that an alien could be removed to another country under this provision; in such instances, we would rather move forward with an assessment of such alien's asylum claim rather than await the uncertain outcome of efforts to remove the alien to that country.

Section 208(a)(2)(B) would require an alien to demonstrate by clear and convincing evidence that he has filed an asylum application within 30 days of his arrival in the United States. The only circumstance in which an alien would be exempt from this deadline is if the alien can show fundamentally changed circumstances affecting his eligibility for asylum. We strongly oppose this provision on legal, policy and practical grounds. First, in light of the fact that the current version of H.R. 2202 eliminates the withholding of deportation provision found in current law as discussed above, such an absolute time requirement for the filing of an asylum claim runs afoul of the duty of non-refoulement by which the U.S. is bound under the 1967 Protocol relating to the Status of Refugees. See Art. 33, 1951 Convention relating to the Status of Refugees.² This duty applies with respect to any refugee within the United States who would face a threat to his or her life or liberty in the country of feared persecution, regardless of when that alien makes known a need for such protection. The timeliness of an asylum seeker's claim to protection is not among the accepted grounds on which such a claim may be denied. This makes restoration of the withholding provision without a time limit for applications crucial to ensuring compliance with our international legal obligations. We understand that members of the Committee on the Judiciary intend to offer an amendment restoring withholding of removal. It is essential that such an amendment be adopted.

² The 1967 Refugee Protocol incorporates all relevant obligations found in the 1951 Refugee Convention. Thus, by ratifying the Protocol, the United States became bound by all substantive provisions of the Refugee Convention.

Second, we believe that a filing deadline is inconsistent with the fundamental humanitarian principles underlying the institution of asylum and the proud tradition of U.S. support for such an institution. Many bona fide refugees arrive in the United States without an adequate understanding of the U.S. immigration system. Many have difficulty in finding reliable information and guidance about how to put forward an asylum claim, or are initially fearful of approaching the authorities because of the persecution they suffered in the home country. For these reasons, we assume that many bona fide refugees will be unable to meet the 30-day deadline and would thereby be precluded from consideration for asylum. We find this an unfair and unnecessarily draconian result. It is also inconsistent with relevant international guidelines. We do not believe that the availability of asylum should be conditioned on when an alien lodges his or her claim.

Third, we are concerned that a deadline could hamper the success of our reform efforts by adding an additional layer of adjudication to the decision-making process. Most asylum applicants enter the U.S. without inspection. (From October 1, 1995 to January 1, 1996, 76% of all "affirmative" applicants entered the United States illegally.) In almost all such cases, the only evidence of the alien's date of arrival in the United States is provided by the alien; the government frequently has no other source for such information. (Once aliens become aware of the consequences of failing to meet the filing deadline, we imagine that this information will become even less reliable than it is now.) We believe that we will not be able to identify effectively the date of entry in most asylum cases. Thus, where the deadline is raised as an issue in such cases, it will likely result in needless investigation and litigation. This would prolong the adjudication process in those cases and detract from the more important task of determining the underlying merits of the claim.

We also believe that any deadline will result in greater burdens upon asylum officers and immigration judges. It is unlikely that asylum seekers who are able to comply with the deadline under section 208(c)(4) will be able to file more than a skeletal application within a 30-day time period, even with competent assistance from counsel or an accredited organization. This means that adjudicators will have to collect almost all of the necessary information through their interviews and hearings, rather than through a review of the written application. This will substantially slow down the adjudication process for cases in which the applicant would have otherwise been able to submit a complete application.

Section 208(a)(3) prohibits judicial review of all determinations by the Attorney General in cases where the alien is ineligible to apply for asylum. While we are in favor of the

administrative efficiencies that result from insulating certain determinations from judicial review, we are concerned that preventing judicial review of decisions under this subsection would be inconsistent with relevant international guidelines on refugee status determination. The UNHCR Executive Committee, of which the United States is a member, has articulated minimum standards with which it encourages states to comply in developing their own refugee status determination procedures. See Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status 46, para. 192 (1992) quoting UNHCR Executive Committee Conclusion No. 8 (1977). These standards provide that "[i]f the [asylum] applicant is not recognized [as a refugee], he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or a different authority, whether administrative or judicial, according to the prevailing system." Id. The "prevailing system" in the United States permits asylum applicants to appeal determinations of the merits of their claims to the federal courts; such remains the case under this legislation. Insofar as the provisions of section 208(a)(2) preclude a person from obtaining a merits-based asylum determination in the first place, it would seem that any negative determination under these provisions should be subject to the same level of review. Otherwise, a strange anomaly results; determinations on access to the asylum procedure are subject to less review than determinations on the merits of individual claims.

Section 208(b)(2)(A)(v) precludes a grant of asylum where an alien is inadmissible for engaging in terrorist activity, where there is a reasonable ground to believe that the alien engaged in or is likely to engage in terrorist activity after entry, and where the alien has been affiliated with a terrorist organization. An alien affiliated with a terrorist organization is inadmissible unless the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States. We support this provision..

We also have concerns about the limitation on judicial review for decisions regarding the termination of refugee status under section 208(c)(4). As we note above, this legislation would permit asylum applicants to continue to seek judicial review of negative determinations on the merits of their claims. In terms of outcome, the termination of asylum status is indistinguishable from finding an asylum claimant ineligible to receive asylum; in both cases, the alien is subject to return to the country of alleged persecution. In our view, it is inconsistent to permit judicial review of the latter determination but not the former. If such were the case, an alien could obtain judicial review of a finding that he was firmly resettled that was made during the adjudication of his

claim on the merits, but not of a similar finding made in a termination proceeding. For the sake of consistency, we recommend that this section be stricken.

Section 208(d)(5)(A)(ii) would require that, except in exceptional circumstances, asylum interviews or hearing be conducted not later than 45 days after the filing of an asylum application. We share the concern that asylum adjudications be carried out as quickly as possible. Indeed, one of our commitments under asylum reform is to conduct interviews of asylum applications with the INS or hearings before an immigration judge within 60 days of the filing of an application--a goal we are achieving in almost all cases at present. We oppose fixing rigid processing times by statute, but at the least, we urge an amendment to set the time period at 60 rather than 45 days so that it is consistent with current practice.

We are also quite concerned about proposed section 208(d)(6), which would permanently render an alien ineligible for any benefits under the INA if the alien has knowingly made a frivolous application for asylum by including a willful misrepresentation or concealment of a material fact. While we support the desire to reduce the incidence of fraud in asylum applications, the proposed provision is overly broad and risks running afoul of U.S. obligations under the Refugee Protocol. A person who qualifies as a refugee, even when the misrepresented fact is not considered or the concealed fact is considered, or a person who once filed a frivolous application but now has a bona fide claim, is no less deserving of the protections of the Refugee Protocol. Indeed, the United States would violate the non-refoulement treaty obligation if such person were returned to a place of persecution. Consequently, we strongly oppose the proposed provision as formulated.

Section 532 amends section 209(b) to provide that not more than 10,000 persons who have been granted asylum may in any one year adjust to the status of an alien lawfully admitted for permanent residence. The section changes existing law by establishing a separate number for asylee adjustment, rather than charging them against authorized refugee admissions, but has no effect on the number of asylee adjustments.

We have no objection to this provision.

Section 533 authorizes the Attorney General to employ temporarily up to 300 persons who, by reason of retirement on or before January 1, 1993, are receiving annuities or retired or retainer pay as retired officers of regular components of the uniformed services.

This provision is unnecessary. Under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. §§ 8344(i) and 8468(f)),

such reemployment can already be handled administratively. Section 523(b) authorizes the Attorney General to expend the funds necessary for leasing or acquisition of property.

Section 533(c) requires the Attorney General to increase the number of asylum officers to at least 600 by FY 1997. In FY 1995, Congress authorized funds permitting the asylum corps to expand from 150 to 325 officers. This increase was intended, in large part, to advance the Administration's twin goals of preventing abuse of the asylum system and of quickly granting the claims of bona fide refugees. Although only 75% of the authorized number of asylum officers have entered onto duty to date (we intend to hire the remainder in FY 1996), the goals of asylum reform are already being met. (See statistics in discussion on section 531.) Although there may be a need for additional asylum officers at some point in the future, the Administration does not believe that the goals of asylum reform would necessarily be served by the hiring of as many asylum officers as this provision would require. The program would benefit more from the hiring of additional clerical staff, the purchase of additional equipment, and the development of other necessary elements of an effective asylum program (e.g., investigation of fraudulent claims and the removal of failed asylum-seekers). The newness of the recent reforms warrant more time and experience to determine where the need for staff and resources is greatest. Thus, rather than require specifically that the number of asylum officers increase dramatically over the next fiscal year, we recommend that the Attorney General be given the flexibility to increase staffing and resources over the next several years at those points in the asylum process where she believes they are most needed.

Section 551 provides that amendments made by this title take effect on October 1, 1996, and apply beginning with FY 1997, except that the provisions of section 523 and 554 take effect on the date of enactment of H.R. 2202.

We do not object to this provision.

Section 552 provides for transition of current classification petitions to the amendments made by this title.

We do not object to this provision.

Section 553 provides for special transition numbers for spouses and children of permanent residents, including legalized aliens. It provides that 150,000 visas (or, if greater, 1/5 of the number of pending petitions filed by legalized aliens) shall be available in each year from 1997 to 2001 for aliens who are classified as spouses or minor children of lawful permanent residents. The visas will be available in the order in which the petition was filed and will first be available to the spouses and

children of lawful permanent residents who did not gain that status under the legalization or special agricultural worker programs.

The Administration has proposed a preferable alternative to this approach to backlog reduction. The Administration strongly favors relying on its naturalization initiative to reduce the backlog of spouses and minor children of lawful permanent residents, rather than creating a special program. We estimate that 80 percent of the backlog consists of relatives of aliens who became lawful permanent residents through IRCA's legalization programs. With this Administration's commitment to improve the naturalization process, these aliens have an opportunity to step forward affirmatively to become U.S. citizens. Upon taking that step, they may petition for their spouses and minor children as immediate relatives of a U.S. citizen. The 20 percent of the backlog who are not relatives of aliens legalized pursuant to IRCA should have preference for visas in this category.

Section 554 provides that the per country numerical limitations in section 202(a) will not apply in the last half of FY 1996 to the extent necessary to ensure that the priority date for an alien classified as an unmarried son or daughter of a citizen is not earlier than the priority date for aliens classified as unmarried sons and daughters of aliens lawfully admitted for permanent residence.

This section also provides that additional visa numbers will be available in FY 1997 without regard to per country numerical limitations for alien sons and daughters of citizens for whom a preference petition was approved as of September 30, 1996, and whose priority date was earlier than the priority date for alien sons and daughters of lawful permanent resident aliens of the same nationality for whom a petition had been approved on that date.

Section 555 authorizes, subject to appropriations, the Attorney General to establish a process for the reimbursement of all fees paid by a petitioner to the United States for a petition which was not disapproved and for which visa has not been issued for family sponsored category eliminated under this bill.

As discussed previously, the Administration prefers to reorder but retain the existing family preferences (with no new applications for fourth preference). That approach would render this section unnecessary.

TITLE VI - RESTRICTIONS ON BENEFITS FOR ILLEGAL ALIENS

The Administration generally supports the denial of means-tested benefits to undocumented immigrants. The only exceptions should include matters of public health and safety such as

emergency medical services, immunization and temporary disaster relief assistance; every child's right to full participation in public elementary and secondary education, including pre-school and school-related nutrition programs; and benefits earned as a result of U.S. military service. In so doing, care must be taken not to limit or deny benefits or services to eligible individuals or in instances where denial does not serve the national interest. The Administration generally supports tightening sponsorship and eligibility rules for non-citizens and requiring sponsors of legal immigrants to bear greater responsibility through legally enforceable sponsorship agreements for those whom they encourage to enter the United States. The Administration, however, strongly opposes application of new eligibility and deeming provisions to current recipients, particularly with regard to the disabled who are exempted under current law and to lawful immigrants seeking to participate in student financial aid programs. The Administration also opposes the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

Section 600 makes certain statements concerning national policy with respect to welfare and legal and illegal immigration. We note that the title of this section should be renamed to include restrictions on benefits for legal immigrants.

Section 601 provides that aliens not lawfully present in the U.S. are uniformly ineligible to receive benefits under any means-tested program provided or funded, in whole or in part, by the Federal or State Governments and also are ineligible to receive any grant, contract or loan agreement, or to be issued any professional or commercial license, provided or funded by the Federal or State Governments. This section provides an exception from the limitations on eligibility for an illegal alien or an illegal alien's child who has been battered or subject to extreme cruelty in the United States by the alien's spouse, parent or by a member of the alien's spouse or parent's family residing in the same household and the alien is seeking to regularize his status in the United States. Federal agencies administering six programs must require applicants to provide sufficient proof of identity to be considered for such assistance. Proof of identity is limited to showing one of the following four documents: (1) a United States passport (either current or expired if issued both within the previous 20 years and after the individual attained 18 years of age); (2) Resident alien card; (3) State driver's license, if presented with the individual's social security account number card; or (4) State identity card, if presented with the individual's social security account number card. State agencies are authorized to require proof of eligibility to receive State assistance.

While we support the goal of establishing a uniform definition of alien eligibility, we oppose section 601 as

drafted. The provision would affect many diverse Federal, state and local programs, and represents a new mandate to many state and local governments. We also urge that this definition apply only to the four primary needs-based programs -- AFDC, SSI, Medicaid, Food Stamps -- allowing for state and local cash and medical general assistance programs to also use this definition.

In addition, we do not think it is appropriate to include the Social Services Block Grant program as one of the 6 programs required to rely on 4 documents to determine identity. While the other 5 programs are clearly means-tested entitlements (AFDC, SSI, Medicaid, Food Stamps, and Housing Assistance), the Social Services Block Grant funds a wide variety of services in localities all over the United States, many of which are not means-tested. State and localities have wide discretion in the use of their social service block grant funds. Resources from the social service block grant are often co-mingled with funds provided by the states and localities themselves, or other sources. For example, funds may be used to help provide child care services or to help fund meals for the elderly or persons with disabilities that lack mobility. Many of these elderly persons and children, whether citizens or non-citizens, may have difficulty acquiring one of the four documents. We have concerns about imposing a new documentation requirement on states, localities, and clients that will be burdensome to a large number of community agencies and U.S. citizens.

We encourage you to examine a similar provision that the Administration proposed in its welfare reform proposals. The Administration's approach would avoid a number of problems. For example, section 601 could be read to deny needs-based, education-related services and assistance paid for with federal, state, or local funds to undocumented alien children. However, the principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to authorize the exclusion of undocumented alien children from elementary and secondary schools remain powerful. In addition, many students who are United States citizens and legal permanent residents could be stigmatized based on name or appearance, and parents, fearful for their children's safety or well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all children and is likely to adversely effect and be divisive within our communities. Schools and school systems are ill-suited to make determinations about the citizenship status of students and should not be forced to bear the uncompensated expense and burden of doing so. We urge that this section be clarified to exclude educational services provided to children in elementary or secondary school, or that an exemption for these services be provided in section 603.

Section 601 should be further clarified to make clear that

it has no effect on the applicability of section 214 of the Housing and Community Development Act of 1980 on HUD programs, and that it does not apply to assistance provided by the Department of Housing and Urban Development. Without such clarification, this provision would impose a great burden on states and local governments that administer HUD mortgage programs, Federal Housing Administration contract programs, and Community Development Block Grants to identify noncitizens who may indirectly benefit from these non-direct assistance programs. Furthermore, it would jeopardize progress made and cooperation by HUD, INS, housing authorities, and multifamily project owners to smoothly implement section 214 of the Housing and Community Development Act of 1980.

Section 601 would bar receipt of need-based federal benefits for veterans of the Armed Forces of the United States, their dependents and survivors. Those who have served faithfully in our Nation's defense have earned these entitlements, and their immigration or naturalization status has no bearing on the United States' obligations to them. We urge the House to exempt veterans benefits and services.

Section 601 would undermine current verification for public benefits. Our current system -- the Systematic Alien Verification for Entitlements Program (SAVE), enacted by section 121 of the IRCA of 1986 -- seeks to ensure that each applicant born outside the U.S. is properly identified as a U.S. citizen, or as an eligible immigrant and to prevent unauthorized immigrants from receiving benefits for which they are ineligible. The SAVE process of verifying eligibility has worked well. Recently, SAVE was awarded the Federal Technology Leadership Award for 1995. Nevertheless, the Administration is conducting a review of the SAVE system to determine if improvements or changes are appropriate.

The SAVE process is a two-step verification process. The primary verification is accomplished through INS' centralized automated database, which is called the Alien Status Verification Index and contains immigration status information on over 28 million resident aliens and 21 million non-immigrant aliens. Although details of the procedure vary, states have an electronic link, for example, voice response unit or computer tape matches, to the INS database. If the alien registration number cannot be verified through the automated system, the state sends a photocopy of the documentation submitted by the alien to the INS. INS reviews and verifies the alien's status within 10 days through a secondary manual procedure. In FY 93, states reported receiving over 3.8 million AFDC applications. Slightly less than one million of those applications were denied. States reported that about 5,300 applications were denied because the applicant or other household members was an "undocumented alien." We believe these data indicate that most ineligible aliens are aware

of the restrictions on their receipt of welfare benefits, and therefore do not apply for benefits. By contrast, section 601 relies on individual documents, e.g. a passport or resident alien card, for verification rather than immigration status information from INS databases. Verification based only upon the showing of a single document, particularly nonfederal documents, will certainly weaken present verification.

Section 602 provides that aliens are ineligible for unemployment benefits payable out of federal funds to the extent such benefits are attributable to any employment for which the alien was not authorized.

The Administration supports this as a matter of policy, however, it is not clear whether the payment restrictions would be prospective or retrospective. If the benefits payable to current or future beneficiaries should not reflect credit for past periods of unauthorized work, INS would have to provide the necessary information about the beneficiary's work authorization history. This is probably not feasible because much of the necessary INS information is stored in paper format in Federal Records Centers. Manually retrieving such information would impose a tremendous strain on INS' resources and would divert resources from other priority enforcement efforts. Payment restrictions do not advance an enforcement goal which would warrant the cost of capturing this information.

Section 603 provides that sections 601 and 602 does not apply to the provision of emergency medical services, public health immunizations, and short-term emergency disaster relief, family violence services, and assistance programs carried out under the National School Lunch Act and the Child Nutrition Act of 1966.

While we concur with the exemptions in section 603, we also believe the bill should exempt other limited programs to protect the greater public health and safety and children, such as those providing critical public health services. There are many programs that provide critical and often times life-saving services and assistance to individuals, particularly children. We believe that in order to protect fundamental public health and safety, as well as on basic humanitarian grounds, no person should be denied such life-saving services.

We also note that section 603 would require the Attorney General to establish the definition of emergency medical services, in consultation with the Secretary of Health and Human Services. We believe that it is more appropriate for the Secretary of Health and Human Services to establish the definition of emergency medical services, in consultation with the Attorney General.

Section 604 appears to provide full Federal Medicaid reimbursement to State and local governments for emergency medical services furnished to undocumented immigrants in public hospitals or other public facilities, subject to amounts provided in appropriation acts. It requires hospitals and other facilities to verify the identity and immigration status of individuals as a condition for receiving reimbursement.

We have a number of concerns with section 604 as presently written. In FY 1996, the federal government pays from 50 to 78 percent of States' costs of providing required emergency medical services for unauthorized immigrants under the Medicaid program. As a policy matter, the Administration supports providing additional assistance to alleviate the burdens of states with the highest concentrations of unauthorized immigrants. The President's FY 96 budget request and the President's balanced budget proposal for Medicaid included grants to states to help pay some of the remaining non-federal share of Medicaid expenses for states with the large numbers of undocumented immigrants.

As discussed in section 601, under current law, the status of all aliens is generally verified through direct access to INS via the SAVE process. The SAVE process ensures that each foreign born applicant is properly identified as a U.S. citizen, or as an eligible immigrant and prevents unauthorized immigrants from receiving benefits for which they are ineligible.

If the intent of this section is to provide a mechanism to facilitate additional federal funding for emergency medical services provided to unauthorized immigrants, then we suggest: (1) requiring all legal non-U.S. citizen immigrants seeking emergency medical services to have their status verified by the INS through the current SAVE system; and (2) allowing hospitals to consider persons who cannot be verified through the SAVE system's two-step verification process to be undocumented immigrants solely for the purposes of reimbursement for emergency medical services provided to such persons. We note that any broader use of this information may scare some people, including legal residents and their children, from obtaining needed, even lifesaving, emergency medical care.

In addition, we have two technical concerns with section 604(a). First, we note this section has been amended and, as a result, appears to have been broadened to cover additional types of hospitals and facilities. If this is a correct interpretation, then we support this increased flexibility in coverage. However, the language as presently drafted is confusing and may not accomplish its intended purpose. We are available to provide technical assistance in clarifying this provision. Second, section 604(a) still contains provisions requiring hospitals and facilities to seek reimbursement from other Federal programs and recovery from undocumented individuals

and other persons, which would be impracticable and unworkable.

Section 605 requires the Secretary of Housing and Urban Development (HUD) to submit a report within 90 days to certain Committees of Congress describing the manner in which the Secretary is enforcing section 214 of the Housing and Community Development Act of 1980. By requiring this report of HUD, section 604 implies that the restrictions on assistance to noncitizens in HUD programs will continue to be governed by section 214. The legislation should state this explicitly.

The Administration is the first to enact regulations to require verification of eligibility pursuant to section 214. The Administration supports HUD programs remaining subject to section 214. HUD published its final rule implementing section 214 on March 20, 1995, and on June 19, 1995, the rule became effective. The restrictions on assistance to noncitizens in HUD programs are being implemented by housing authorities and multifamily project owners. Systems and procedures to carry out these restrictions are in place. Without clarification, confusion would arise and the efforts of HUD and its housing partners (housing authorities and project owners) to ensure that scarce housing resources go to families with citizenship or eligible immigration status may be impeded.

Section 606 provides that no student shall be eligible for postsecondary Federal student financial assistance unless it is verified by the Secretary of Education that the student is a citizen or national of the United States or an alien lawfully admitted for permanent residence.

We oppose this section because it is unnecessary and would restrict, perhaps inadvertently, current eligibility for student financial assistance under title IV of the Higher Education Act (HEA). As required by section 484(p) of the HEA, the Secretary of Education, in cooperation with the Commissioner of the Social Security Administration, has established a computer matching program that enables the Department of Education to confirm that the Social Security number and citizenship status of title IV student aid applicants are valid at the time of application. The Department of Education also has in place a system to verify the immigration status of non-citizen applicants, as required under section 484(g) of the HEA. Section 606 of the bill would needlessly duplicate these systems, and add an extra bureaucratic layer by requiring the Attorney General to determine the verification procedure to be used by the Secretary of Education.

Section 606 would also apparently eliminate the current eligibility of students who are in the United States "for other than a temporary purpose." We strongly oppose changing the current scope of eligibility for student assistance for postsecondary education.

Section 607 provides that the payment of public assistance benefits (other than those described in section 603) shall be made only "through" an individual who is not ineligible to receive such benefits on the basis of immigration status.

We oppose section 607 because it would likely harm children who are U.S. citizens and legal immigrants. We believe this provision is intended to address the existence of welfare cases in which an unlawful alien parent receives the assistance payment on behalf of his or her eligible U.S. citizen or legal immigrant child. Thus, while the benefit eligibility and amount is for the citizen child only, the parent receives the benefit since he or she is the caretaker of the child. Section 607 would prohibit the parent from receiving the benefit on behalf of the child. However, as discussed below, the provision could also apparently prohibit certain *legal immigrant* parents from receiving the benefit on behalf of their citizen or legal immigrant children.

The provision would cause a number of problems, even if limited to the cases in which parents were unlawful aliens. For example, it is the experience of the AFDC program that very few individuals ever step forward to act as third party representatives, due to the time commitments involved in making daily living decisions and the conflicts with parents that often result from such third party "stewardship" cases. Also, a parent generally places a higher priority on his or her child's welfare than any other third party adult, thus ensuring proper use of the benefit in enhancing the child's welfare.

In addition, we are concerned about the way section 607 has been drafted, particularly as it would interact with section 631 of H.R. 2202 relating to deeming, or with various other provisions that have been proposed recently by Congress to restrict the eligibility of legal immigrants. Section 607 would apparently not allow a *legal immigrant* parent who was ineligible for benefits due to deeming under section 631 to receive a benefit on behalf of his or her eligible citizen or legal immigrant child. Similarly, if a *legal immigrant* parent became ineligible for benefits due to some other enacted provisions--for example, under welfare reform legislation--than that would also prevent the parent from receiving a benefit on behalf of his or her citizen child.

Due to all of these reasons, we believe the potential harm to U.S. citizen and legal immigrant children outweighs what we assume to be the policy goal of limiting payment of benefits to individuals who are citizens, nationals, or lawful aliens. In addition, to achieve even that goal would require changes to section 607 as currently drafted.

Section 608 provides that for purposes of this title, an alien is not considered lawfully present in the U.S. merely

because the alien may be considered to be permanently residing in the United States under color of law ("PRUCOL") for purposes of any particular program. Section 606 requires the Attorney General to promulgate by regulation a definition of "lawful presence."

We do not object to this provision.

Section 609 requires that the Attorney General issue regulations carrying out this subpart (other than section 604) within 60 days of enactment. These regulations would take effect on an interim basis, pending changes based on public comment.

We are concerned by the tight time frame provided by this section. We wish to work with the House to establish a more feasible deadline for publication of the regulations.

The restrictions on benefits applies at least 30 and not more than 60 days after the date the regulations are first issued, but the restrictions regarding grants, contracts, loans, or licenses based on applications which are pending or approved on or before this date may be waived. The Attorney General must broadly disseminate information regarding these restrictions on eligibility before the effective dates.

We believe that restrictions on alien eligibility should apply to new applicants for benefits and should not apply to current recipients as long as they otherwise remain eligible. This position minimizes the disruption to current recipients, some of whom are elderly or severely disabled, and their communities.

Section 611 denies eligibility for the earned income tax credit to individuals who are not, for the entire tax year, United States citizens or lawful permanent resident aliens. The section also authorizes IRS to use simplified procedures if a taxpayer claiming the earned income tax credit omits a correct taxpayer identification number.

We support this provision. The President's FY 1996 Budget contains a similar provision.

Section 621 amends the public charge exclusion ground to provide that a family-sponsored immigrant or nonimmigrant is inadmissible if the alien cannot demonstrate that it is unlikely that the alien will become a public charge. An employment-based immigrant is inadmissible, other than an immigrant of extraordinary ability, unless the immigrant has a valid job offer at the time of immigration. An employment-based immigrant sponsored by a relative is inadmissible unless the relative has executed an affidavit of support.

The proposed section 212(a)(4)(B) would apply the affidavit of support requirement to nonimmigrant aliens subject to the numerical limitations contained in section 214 of the INA. These limitations apply only to H-1B and H-2B temporary workers whose admissibility is entirely conditioned upon their having a specific contract of employment in which the employer agrees to pay the prevailing wage. Accordingly, it does not seem necessary or desirable to require that an affidavit of support be submitted on behalf of such workers. This condition may be detrimental to Americans businesses who are seeking such temporary workers.

We also note that under the proposed new employment-based preference system only an employer can file a petition to classify an alien under the second or third employment-based preference. If the employer subsequently withdraws the offer of employment, the petition and underlying labor certification are automatically revoked and the beneficiary ceases to be a qualified visa applicant. It thus seems unnecessary to add that the beneficiary is also excludable for public charge reasons.

Section 622 amends the public charge deportation ground to provide that an alien is deportable if the alien becomes a public charge within 7 years of admission from causes arising before admission. The Attorney General may waive this ground of deportation in the case of a refugee or an alien granted asylum. An alien is considered a public charge if he or she receives benefits under (1) Supplemental Security Income, (2) Aid to Families with Dependent Children, (3) Medicaid, (4) Food Stamps, (5) State General Cash Assistance or certain federal housing assistance, for an aggregate period of at least 12 months within 7 years of admission. The aggregate period is extended to 48 months in the case of an alien who can demonstrate that the alien or the alien's child has been battered or subject to extreme cruelty in the United States by a spouse or parent or member of the spouse or parent's family residing in the same household and that the public assistance received was substantially connected to the battery or cruelty. The 48 month period may be exceeded in the case of an alien who can demonstrate ongoing battery or cruelty which has led to a judicial order. An alien will not be considered to be a public charge on the basis of receipt of emergency medical services, public health immunizations and short-term emergency disaster relief.

Section 622 would require a determination of whether immigrants had received benefits under the various assistance programs for more than 12 months during the 7 year public charge period due to reasons that existed before entry or occurred after entry. It is not clear who would be responsible for making such determinations -- the Attorney General or the various benefit programs. Regardless, this section would create a number of administrative and legal complexities as drafted, and we do not endorse these provisions without further clarification or

amendment.

We support granting the Attorney General the discretionary authority to waive this ground of deportation in the case of an alien who is admitted as a refugee under section 207 or granted asylum under section 208. This exemption is consistent with international law which prohibits the return of a refugee to a country where he or she faces a threat to life or freedom except in certain circumstances. Those circumstances do not include poverty or dependence on government resources.

In addition, section 622, similar to section 603, would require the Attorney General to establish the definition of emergency medical services, in consultation with the Secretary of Health and Human Services. As we noted before, we think it is more appropriate for the Secretary of Health and Human Services to establish the definition of emergency medical services, in consultation with the Attorney General.

As a technical note, we believe the reference to 'subparagraph (D) (iv)' in the last sentence of the new 241(a) (5) (C) (i) should read 'subparagraph (D) (iii)'.

Section 631 provides that in determining the eligibility and the amount of benefits of an alien for any federal means-tested public benefits program, the income and resources of the alien shall be deemed to include 100 percent of the income and resources of the person who executed an affidavit of support on behalf of such alien and that person's spouse. States may apply the same rule. Such deeming ends for parents of U.S. citizens at the time the parent becomes a citizen; for spouses of U.S. citizens and lawful permanent residents at the earlier of 7 years after the date the spouse becomes an alien lawfully admitted for permanent residence or the date the spouse becomes a citizen; and for minor children at the time the child reaches 21 years of age or, if earlier, the date the child becomes a citizen. The deeming period may end earlier than specified above if the alien is employed long enough to qualify for social security retirement benefits. The deeming provisions shall not apply for up to 48 months in the case of an alien who can demonstrate that the alien or the alien's child has been battered or subject to extreme cruelty in the United States by a spouse or parent or member of the spouse or parent's family residing in the same household and that the public assistance received was substantially connected to the battery or cruelty. The 48 month period may be exceeded in the case of an alien who can demonstrate ongoing battery or cruelty which has led to a judicial order. Because section 631 does not specify when the deeming period ends for other sponsored aliens--such as employment-based immigrants sponsored by relatives under section 621--who are not the parents of U.S. citizens, or the spouses or minor children of U.S. citizens and lawful permanent residents, sponsor deeming to these aliens would

end only if they acquired sufficient work credits to qualify for social security retirement benefits--a point in time that might be attained after the date they became naturalized citizens.

While we support section 631's goal of making sponsors more responsible for the immigrants they sponsor, we oppose this section as drafted. This section would override the current law exemption from deeming for sponsored immigrants who become disabled after entry; affect many diverse federal programs -- including Medicaid and student financial assistance for post-secondary education; create new administrative complexities and requirements; and change the current deeming formula to include 100 percent of a sponsor's income and resources. By attributing 100 percent of a sponsor's income and resources to the sponsored immigrant, section 631 does not take into account the needs of the sponsor and his or her family and is inconsistent with current practice in the major entitlement programs. Legal challenges may also arise where the spouse was not a signatory to the affidavit or the spouse is separated from the sponsor.

The Administration is committed to strengthening the deeming provisions and would like to work with the House to establish a reasonable deeming policy that addresses the concerns identified above. However, the Administration is opposed to applying the new deeming provisions to people who become disabled after entry. We also oppose applying deeming provisions to the Medicaid and child protection programs authorized by Titles IVB-IVE of the Social Security Act or any other program which protects individual health and safety. In addition, we oppose applying deeming provisions to student financial assistance programs. Access to student assistance by legal immigrants assists them in achieving productive and self-sufficient lives in the economic mainstream.

We support providing state and local governments with the authority to implement the same deeming rules under their cash general assistance programs as the federal government uses in its cash welfare programs. We also support applying new deeming rules only to immigrants who sign new, legally binding affidavits of support.

Section 632 provides that an affidavit of support is acceptable only if executed as a contract legally enforceable against the sponsor by Federal, state or local governments for a period of 10 years after the alien last received any benefit. Upon notification that a sponsored alien has received a benefit, the appropriate official must request reimbursement from the sponsor. If the sponsor does not indicate a willingness to reimburse, or fails to abide by repayment terms, an action may be brought. A sponsor must notify the federal government and the sponsored alien's State of residence of any change of address of the sponsor.

This section restricts institutions from sponsoring aliens into the U.S. Sponsors also must be (1) the U.S. citizen or lawful permanent resident who is petitioning for the alien's admission or accepts joint and several liability with the petitioner; (2) at least 18 years old; and (3) domiciled in a State. Finally, sponsors must demonstrate the means to maintain an annual income equal to at least 200 percent of the poverty level. Sponsors who are on active duty in the Armed Forces of the United States need only demonstrate the means to maintain an annual income of 100 percent of the poverty level.

This section further provides that a person who has received assistance under a federal or State means-tested public benefit program for which a sponsor is liable is ineligible for naturalization, unless the alien provides satisfactory evidence that there are no outstanding amounts owed pursuant to such affidavit. This provision, however, does not apply in the case of an applicant who can demonstrate that the alien or the alien's child has been battered or subject to extreme cruelty in the United States by a spouse or parent or member of the spouse or parent's family residing in the same household, such battery or cruelty led to a judicial order, and that the amounts owing are substantially connected to the battery or cruelty.

We strongly support making the affidavit of support legally binding, but oppose the requirement that a sponsor demonstrate the means to maintain an annual income at least 200 percent of the poverty level in order to sponsor an immigrant. We believe this requirement would be too restrictive of family reunification.

We also note that section 632 does not provide for an effective mechanism to ensure or compel a sponsor to actually provide financial support to an alien he or she has sponsored. We believe that a more effective mechanism is necessary. We recommend that, at a minimum, the sponsored immigrant be given authority to bring suit against a sponsor that has reneged on his or her agreement to provide financial support to the immigrant for a specified period of time.

Moreover, we have reservations with section 632 as drafted, particularly as it interacts with the deeming provisions in section 631. The reimbursement requirement would only apply to those sponsored immigrants that somehow become eligible for and receive benefits subsequent to having the deeming provisions applied to them under section 631. Since all federal means-tested programs would be required to implement the new deeming provisions, very few immigrants would ever become eligible for federal benefits during the deeming period; therefore, there would be few reasons to seek reimbursements from sponsors, except in cases of fraud. The same conditions would occur under state and local programs depending on whether states and localities

implemented deeming rules similar to the federal programs.

Section 632 should clarify that a sponsor is not liable for support if he or she herself has become bankrupt or is in need of assistance. This might easily be accomplished by stipulating that a sponsor who receives means-tested assistance is not liable for assistance received by the sponsored alien during the time period the sponsor receives assistance.

TITLE VII - FACILITATION OF LEGAL ENTRY

The Administration is committed to improving services for legal entrants, and we support the provisions of this bill which enable us to do so. We are already conducting commuter lane pilot programs on the Northern border to facilitate traffic at the ports of entry. Since October, 1995, we have been assessing a service charge for the processing and issuance of replacement border crossing cards at the Mexican border and first issuance of five other INS travel documents at land border ports of entry. Revenues from these service charges will enable us to hire additional inspectors and to enhance customer service to the traveling public at land border ports of entry.

As for air travel, our pre-inspection facilities enable us to expedite inspection at the arrival airports. In addition, we are already working with the travel industry to deter illegal traffic and improve customer services. For the past five and a half years we have conducted a Carrier Consultant program at both United States and foreign locations in which we train airline employees and foreign government officials in the detection of fraudulent travel documents. This has resulted in a marked reduction of mala fide arrivals at United States gateway airports.

Section 701 requires the Attorney General and the Secretary of the Treasury to increase the number of full-time land border inspectors in the INS and the Customs Service to a level adequate to assure full staffing during peak crossing hours of all border crossing lanes, and that personnel be deployed in proportion to the number of land border crossings in the border sectors. This section also requires that in completing infrastructure improvements to expedite the inspection of persons and vehicles seeking lawful admission at land borders, the Attorney General give priority to those areas where the need for such improvements is greatest.

This provision is similar to a provision in the Administration bill. However, the Administration bill does not contain any restrictions on the placement of the new inspectors. We do not believe that the location of new inspectors should be based solely on the volume of border crossings. As drafted, this provision would require that many of the new inspectors be

assigned to the Northern border, even though the risk, workload, and thus, the need are greater on the Southern border. We urge the House to adopt the Administration provision and to thus defer to the operational judgment of the Attorney General and the Secretary of the Treasury.

Section 702 amends section 286(q) of the INA and the 1994 Justice Appropriations Act to permit the expansion of commuter lane pilot programs at land borders. It removes the current restriction on commuter lanes on the Southern Border.

This provision is similar to a provision in the President's FY 96 budget request, and we support it.

Section 703 amends the INA to create a new section 235A, providing for the establishment within 2 years of preinspection stations at 5 of the 10 foreign airports having the greatest number of departures for the U.S., and to establish an additional 5 preinspection stations within 4 years.

We support the expansion of preinspection where economically and diplomatically feasible. However, an absolute requirement to establish preinspection operations at 5 airports in 2 years is unworkable. Expansion must be carefully planned. Cooperation and support of the host government, the airline industry, and the affected airport authorities are necessary to obtain the facilities and protection needed to conduct a successful preinspection operation. We recommend that the time requirements be removed.

We note that under section 235A(a) the Attorney General is required to "establish and maintain" the preinspection stations. Presently preinspection is accomplished through contractual arrangements authorized by section 238 of the INA (redesignated section 233 by section 308(b)(4) of this bill). Under section 238, the transportation lines are responsible for providing and maintaining suitable landing stations at their expense. We recommend that the House modify section 235A(a) to include a similar provision. We also note that section 238 provides for contracts for preinspection only with transportation lines bringing in aliens from foreign contiguous territory or from adjacent islands. Section 238 should be modified to extend its authority to non-contiguous countries or territories to clarify that the preinspections stations authorized by new section 235A are not limited to contiguous territories or islands.

Section 704 provides that in each fiscal year not less than 5 percent of the funds from the Immigration User Fee Account may be expended for the training of commercial airline personnel in the detection of fraudulent documents. If a commercial airline has failed to comply with regulations relating to the detection of fraudulent documents, the Attorney General may suspend the

entry of aliens transported to the U.S. by the airline.

This provision would add extreme pressure to the user fee account and thus would be detrimental to other activities it supports. In the current fiscal year INS would have been required to spend at least \$17.5 million from that account for this purpose. No specific expenditure amounts are imposed for other user fee activities and should not be imposed for this activity. As mentioned above, we have operated the successful Carrier Consultant program (CCP) for a fraction of the amount designated by this section.

The CCP provides guidance and assistance to the transportation industry on issues of admissibility and fraud deterrence in order to encourage carrier compliance with U.S. immigration laws and to reduce the arrival of improperly documented passengers at the United States ports of entry. The benefits of the program include: (1) reducing the number of inadmissible aliens arriving at the ports of entry; (2) reducing government expenses associated with detention, processing and removal of aliens found to be excludable from the United States; (3) reducing the number of frivolous asylum claims and (4) decreasing the fines imposed against carriers for transporting improperly documented passengers to the United States. The program has been extremely well received by carriers and foreign governments. Carrier Consultants trained over 10,000 airline employees, and recorded 467 cases of inadequate or improper documentation during FY 92, FY 93, and FY 94. This represents a savings of over \$1 million to the carriers in fines alone.

In addition, the INS is establishing a Carrier Consultant and Support Unit to be located in Arlington, VA. The unit will provide information, guidance and assistance to the transportation industry on issues of passenger admissibility and fraud deterrence. The office will also provide information and direction to Ports of Entry. In addition to the current program of providing training and assistance to carriers, and document screening at selected locations overseas, under the permanent program being established this fiscal year, the Carrier Consultants' duties will expand to include: (1) assisting the industry to produce training programs for their trainers and analysts at corporate training centers; and (2) directly providing training to airline personnel at domestic locations such as airline facilities. The overseas training is coordinated with the Department of State and the INS' Office of International Relations and supplements training and screening activities by those offices. The CCP provides the flexibility to deploy larger groups of INS officers to locations for more intensive and larger scale training and document screening. It also enables the INS to coordinate activities with stateside carrier headquarters for multi-carrier and multi-location operations. At the same time, essential follow-up support is provided directly to the carriers

regardless of their location. Consequently, we do not support this provision.

TITLE VIII - MISCELLANEOUS

The Administration would support an amendment to H.R. 2202 which would add language similar to that already in section 155 of the Senate immigration bill, S. 1394, requiring the prescreening of foreign health care workers and the authentication of their foreign degrees and licenses.

Section 801 creates a nonimmigrant category for an alien who is the spouse or child of an alien who is serving on active duty in the Armed Forces and is stationed in the U.S.

This new category is not necessary because current law permits the legal entry of such aliens under an existing nonimmigrant category.

Section 802 amends the definition of aggravated felony in section 101(a)(43) of the INA, as amended by section 222 of the Immigration and Nationality Technical Corrections Act of 1994, to make certain technical corrections and to make the definition effective to all convictions entered at any time before, on, or after the date of enactment.

This provision is similar to the Administration's proposal, and we strongly support it. In order to clarify the intent of the modification to section 101(a)(43)(O), relating to document fraud, we suggest inserting "or private financial gain" after "commercial advantage." We also suggest that a provision be added to make an identical modification in section 101(a)(43)(N), relating to alien smuggling.

Section 803(a) clarifies that the Secretary of State has non-reviewable authority to establish procedures for the processing of immigrant visa applications and the locations where visas will be processed. The Administration strongly supports this amendment which clarifies existing law.

Section 803(b) amends section 222 of the INA by adding subsection (g) providing that an alien who overstayed a previous visa is not eligible for a nonimmigrant visa unless it is issued in a consular office located in the country of the alien's nationality, or in a country designated by the Secretary of State, if there is no consular office in the country of the alien's nationality. We do not object to this provision.

Section 804 provides that with respect to denial of an application for a visa, the Secretary of State may waive the requirement to notify the alien of the grounds for the denial if the alien is inadmissible on criminal grounds or security and

related grounds.

We support this provision. Such a waiver is necessary to ensure that the U.S. Government is not required to inform an unsuccessful visa applicant that the U.S. Government has relevant investigative information concerning his or her criminal activities.

Section 805 provides that the Attorney General may waive the requirements of section 212(a)(7)(b)(i) regarding presentation of documents in the case of aliens who are granted permanent residence by the government of a foreign contiguous territory and who are residing in that territory.

We are concerned that this provision would no longer subject nationals from countries known for terrorist acts or for high incidence of visa and entry fraud who are residing in Canada to the additional scrutiny of the visa issuance process. We urge the House to clarify that expanding the language of section 212(d)(4) of the INA will not be construed to allow individuals whose entry documents are not currently waived to be exempt from presenting those documents. We also urge the House to adopt the term "permanent residents" over "residents" so that long-term nonimmigrant visitors such as students or temporary workers cannot rely on a literal interpretation of this section to claim such benefits.

Section 806 would make changes to the current nonimmigrant program that allows the temporary entry for employment of foreign "professionals" and fashion models of distinguished merit and ability. These amendments would have the overall effect of substantially weakening protections for U.S. workers from unfair competition with foreign workers rather than fixing flaws in the existing H-1B program.

Our immigration policy should provide a safety valve of access to foreign labor markets to meet skill demands that the U.S. workforce cannot supply in sufficient quantity or with sufficient speed. But our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S. workforce to meet new skill demands.

The H-1B program changes contained in H.R. 2202 are almost wholly inconsistent with this fundamental policy principle. Therefore, the Administration again strongly urges that the amendments it proposed nearly three years ago be adopted instead of the changes contained in this bill. The H-1B program amendments we requested in 1993 were carefully designed to assure continued business access to needed high-skill workers in the international labor market while adequately protecting U.S. workers and the businesses which employ them. The

Administration's amendments are targeted especially to those employers who seek to obtain relatively low-skilled "professional" workers. Specifically, in nearly all situations, it is entirely unreasonable that -- as a matter of public policy -- an employer in this country not only does not have to test the domestic labor market for the availability of qualified U.S. workers before gaining access to foreign workers, but is actually able to lay off U.S. workers to replace them with temporary foreign workers in their own employ or through contract. This is exactly what is happening now; current law tolerates it, perhaps even encourages it, and our policy must change.

To this end, the amendments we have requested -- and again urge careful consideration by the House -- would preclude employers access to H-1B workers to replace U.S. workers laid off or otherwise displaced in the occupational classification; require certain employers of H-1B workers to attest that they have and are taking timely and significant steps to recruit and retain U.S. workers in the jobs in which they seek to employ H-1B nonimmigrants; and reduce the authorized length of stay from six to three years to be more consistent with the ostensibly temporary nature of the visa category.

The changes to the H-1B program contained in Section 806 of H.R. 2202 generally go in quite a different direction, falling into four categories:

- requiring employers to pay higher wages to foreign workers brought in to the U.S. to replace laid off U.S. workers;
- making certain program protections inapplicable to the large majority of employers who use the program;
- establishing lower wage payment requirements; and,
- increasing penalties for program violations.

The first category of H-1B program amendments in H.R. 2202 would require employers to pay higher wages to foreign workers who are brought in to replace laid off U.S. workers -- presumably in the hope that this requirement will discourage such behavior -- rather than simply precluding employers from bringing in foreign workers in such circumstances, as the Administration has proposed. The requirement of higher wages for H-1B workers following a layoff of U.S. workers would create an incentive for employers to stop engaging in this behavior. However, the provision is not an adequate way to achieve this end. The Administration favors a prohibition on the hiring of H-1B temporary workers after layoffs of U.S. workers. Further, the proposed disincentive is crafted to be excessively narrow in scope -- applying only to individuals "with substantially equivalent qualifications and experience in the specific

employment as to which the nonimmigrant is sought or is employed," and not other laid off U.S. workers who are qualified -- or even better qualified -- for the job, or could become qualified with even modest investment in training. The Administration urges the House to scrap this ill-advised provision and adopt a blanket prohibition on replacing laid off U.S. workers with foreign temporary workers.

The bill defines a category of H-1B employers as "H-1B dependent" -- those with more than 20 percent nonimmigrants in their workforce; 15 percent for employers with more than 150 full-time employees. It then enumerates a number of current regulatory requirements which would not apply to all employers that are not H-1B "dependent." However, the Administration has expressed its interest in establishing appropriate and tailored compliance obligations for employers who are or become dependent on temporary nonimmigrant workers. We reaffirm this interest and would be willing to work with the Congress to this end.

Another related provision would preclude only H-1B "dependent" employers (see below) from placing their H-1B employees with other employers where there "are indicia of an employment relationship between the nonimmigrant and such other employer" unless either (1) the other employer "has executed an attestation" that it complies with the no lay off requirement or (2) the worker's employer pays its H-1B workers ten percent more than the U.S. workers laid off by the other employer. This provision is intended to deal with lay offs of U.S. workers replaced by foreign workers through "contracting out" -- a necessary concern -- but suffers from the same inadequacies and unintended results as the companion provision. The Administration opposes this provision of H.R. 2202 and again urges adoption of its proposed amendment to more directly address the central issue of U.S. worker displacement by prohibiting it.

The second general category of H-1B program amendments in H.R. 2202 would weaken certain program protections by exempting the large majority of employers that use this program. The bill establishes provisions -- which the Administration strongly opposes -- under which even those employers that meet the definition of H-1B "dependent" will "be treated as a non-H-1B-dependent employer for five years on a probationary status" and, thus, also be exempt from the enumerated requirements. This latter provision shifts some burden from the employers who benefit from this program to the taxpayers by requiring that the Secretary of Labor establish a system for annually reviewing qualifications of H-1B dependent employers on probation as non-dependent.

Under these provisions, the large majority of employers which use this nonimmigrant program would not be H-1B "dependent." Thus, these employers would not be subject to the

following worker protections:

- Non-dependent employers would not be subject to a compliance review by the DOL unless a complaint alleging violations is filed with the Department. This provision prevents the Department from investigating compliance without a complaint even in circumstances where it has reason to believe for other reasons that violations may be occurring.
- Non-dependent employers would no longer be required to give notice of their employment of temporary foreign workers to U.S. workers at worksites within a local area when they assign their H-1B employees to new or different places of employment. Giving such notice is an essential element of the H-1B program's protections, intended to empower U.S. workers with information about the employment of foreign workers at their workplace. This change would deprive U.S. workers of this information.
- Non-dependent employers would not be required to file an application to employ foreign workers in areas other than where they were brought in to work when the H-1B worker is in the different area for less than 45 work days in a year or 90 work days in a three year period, or "such nonimmigrant's principal place of employment" has not changed to the area for which no application has been filed. Further, the employer would not be required to "pay per diem and transportation costs at any specified rate" for work performed in the area for which no application has been filed. These changes in current program requirements create significant potential for serious abuse. Employers would apparently be able to bring in temporary foreign workers ostensibly to work in relatively low-wage areas and then temporarily reassign them to work in higher wage areas without making any warranted wage adjustment or otherwise compensating for the wage differential through the reimbursement of travel (temporary assignment) expenses incurred by the worker, thereby undercutting U.S. workers' wages and unfairly competing with U.S. businesses in such areas. Because the employer would not have to file an application for such area, it would also appear that the employer would be relieved of providing notice to U.S. workers at any worksites in the area, again depriving them of the information that the law perceives as so essential to the protection of their interests. These proposed changes in the law seriously undermine the effectiveness of two important protections built into the current law.

The changes to current law in H.R. 2202 simply go in the wrong direction, eliminating essential existing protections -- which are already inadequate -- rather than establishing more stringent standards particularly for employers dependent on foreign

workers. The Administration strongly opposes these changes because they create great potential for harm to the interests of U.S. workers, in competition with temporary foreign workers, and the businesses which employ them.

Thirdly, section 806 would make four changes to current law in establishing H-1B employers' wage obligations, the net effect of which would most likely be to lower the wage levels required under existing law. First, it would in many cases effectively repeal the requirement in existing law that employers pay their H-1B nonimmigrant workers the same as similarly-employed U.S. workers. The existing requirement assures that the wages of U.S. workers are not undercut. This effective repeal of such protection derives from employers not being required to have and document an objective wage system, as required under the current program regulations. As a consequence, employers' "actual" wage could be entirely subjective and individualized, in effect nullifying the essential protection found in current law. The Administration opposes this change.

Section 806 would also establish a system for large employers who are not "H-1B dependent" to establish an actual wage system to be certified by the Secretary of Labor. While of somewhat questionable value in light of the above-described change, this new requirement would shift some compliance burden from employers who directly benefit from access to temporary foreign workers to the Government (and, thus, the taxpayers) by establishing new workloads for the DOL. The Administration could, however, support such a change if the appropriate resources are provided to accommodate the potentially significant additional workload.

The third change affecting wage requirements would create a new procedure for determining applicable prevailing wage obligations. The need for these changes is questionable in that current law already allows prevailing wage determinations to be based on other "authoritative" or "legitimate" sources used by employers, in addition to (*i.e.*, in lieu of) Government sources. Nonetheless, this section would allow employers to use published surveys, or determinations by "an accepted private source, or any other legitimate source." This change would again shift some of the burden of compliance from employers to the taxpayers by requiring that the Secretary of Labor establish a system for reviewing and accepting or rejecting such other prevailing wage sources within 45 days of receipt and issuing "a written decision ... detailing the legitimate reasons that the determination is not acceptable" (or else it is deemed to be accepted). The Administration opposes this provision on the basis that it is both unnecessary and creates additional burdens on the taxpayer.

The final change in the area of wage payment obligations affects an unrelated provision regarding the procedures to be

used in determining prevailing wages for employees of institutions of higher education, or related or affiliated non-profit entities, or non-profit scientific research organizations. In our view, this special procedure: (1) should be broadened to also apply to Federal research organizations, such as the NIH, so that the government is not placed in the position of having to match higher salaries in the private sector; and (2) should be narrowed to only individuals employed as researchers. This is the only occupational category where there has been any expressed concern.

Finally, section 806 establishes increased penalties for H-1B program violations, both the maximum civil money penalties that can be assessed and the period of debarment for repeated violations. While the Administration generally supports these changes, we question why repeated violations occurring within one year of initial violations should not be subject to an increased debarment penalty.

U.S. employers seeking access to the international labor market to meet their needs for skilled workers ought to be required to attempt to recruit U.S. workers for their jobs and be taking steps to develop U.S. workers to meet their long-term needs. U.S. employers seeking access to the international labor market for skilled workers ought to be precluded from laying off or otherwise displacing U.S. workers to replace them with temporary foreign workers. U.S. employers ought not be allowed, much less encouraged, to develop long-term dependencies on temporary foreign workers. These simple principles should be reflected in our immigration law. They are not at present, and section 806 of H.R. 2202 would have the overall effect of moving away from achieving these principles. The Congress should instead accept the amendments proposed by the Administration which would advance these important principles.

The Administration may have comments in the near future regarding the eligibility of nurses to qualify for H-1B visas.

Section 807 extends the period in which an immigrant visa is valid from four to six months. We support this amendment.

Section 808 substantially raises the fee that an alien would have to pay to adjust status under section 245(i) of the INA to \$2500 per application. This section shall apply to applications for adjustment of status filed after September 30, 1996.

Section 245(i), which went into effect last year, has eliminated a burdensome paper process and has enabled the Department of State to shift critical resources into its anti-fraud and border control efforts. We believe this provision as written is seriously flawed because the \$2,500 fee would prove prohibitive to many aliens. Section 245(i) already requires the

alien to pay a substantial fee in order not to have to return to his or her home country for adjustment of status. These fees have provided INS with additional resources to make improvements in its naturalization efforts. We urge members of the House to allow the existing program established via section 245(i) of the INA to run its course and then to evaluate the necessity for adjustments. Changes to the current section 245(i) are not necessary at this time.

This section also eliminates the restriction against receiving an immigrant visa within 90 days following their departure from the United States. We oppose this provision.

Section 809 authorizes the Attorney General to disclose information in a legalization or Special Agricultural Worker (SAW) application only if a federal judge authorizes disclosure of such information to be used for identification of an alien who has been killed or severely incapacitated or for criminal law enforcement purposes against an alien if the alleged criminal activity occurred after the legalization or SAW application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony.

This provision is similar to that proposed in the Administration's Omnibus Counterterrorism bill, and we support it.

Section 810 would amend section 248 of the INA to provide that an alien whose nonimmigrant status is changed under that provision of law may apply to the Secretary of State for a visa without having to leave the United States and apply at a visa office.

We oppose this section which would create a tremendous unjustified workload for the domestic visa office of the Department of State, which is not equipped to issue the hundreds of thousands of visas covered under this section. Once the Attorney General has authorized a change in the nonimmigrant visa status of an alien, the alien is legally in status in the United States and does not require a new visa. It is only when the alien has departed from the United States and subsequently attempts to reenter that he or she needs a new visa. Under current procedures, the alien can apply for the appropriate visa at any of the Department of State's more than 200 embassies or consulates overseas. These offices are staffed to handle the workload in a timely fashion. Should this section be made law, aliens applying for visas that they do not need until they depart the United States could be subject to considerable delays and unnecessary inconvenience in view of the lack of resources in the domestic visa office.

In addition, requiring an office of the Department of State itself to adjudicate these applications could lead to judicial review of visa refusals, since the "doctrine of consular non-reviewability" might not survive a challenge when the refusal was made in Washington, not at a consular office abroad, and the applicant was in the United States.

Section 831 amends section 141(c) of the Immigration Act of 1990 to require the Commission on Immigration Reform to study and submit to Congress, not later than January 1, 1997, a report containing recommendations of methods to reduce or eliminate the fraudulent use of birth certificates for the purposes of obtaining identification documents that may be used to obtain benefits relating to immigration and employment.

We support this provision.

Section 832 requires the Secretary of Health and Human Services to set up a pilot project establishing an electronic network linking the vital statistics records of 3 of the 5 states with the largest number of undocumented aliens. The objective of the network is to thwart the use of false documents by allowing federal and state officials to match birth and death records of citizens or aliens within these states. Two years would be provided for establishment of the project. A report with recommendations on instituting the pilot as a national network would be due 180 days after establishment. Such sums as may be necessary would be authorized for this project.

Establishing an electronic network to allow federal and state officials to match birth and death records in a small number of states would allow for a realistic assessment of the feasibility of implementing such matching programs on a broader scale. This approach is appropriate and would help to identify likely areas of difficulty prior to making a decision about a national matching program. The pilot project would allow for the following likely areas of difficulty to be explored: the variation in the level of automation in the birth and death registration process found in different states; the difficulty of matching births and deaths in the absence of a uniform identifier; the variation in state laws protecting the confidentiality of birth and death data; and the complexity of incorporating into the system information on births and deaths that have occurred in the past when records were less likely to have been automated.

We are concerned with the amendment added to the bill in the Judiciary Committee that would reduce the time period for implementing the pilot project from 3 years to 2 years. In order to plan, implement, establish, and evaluate the pilot project, the Department of Health and Human Services would require at least 3 years.

In addition, we have four technical comments. First, the bill language should be modified so that the pilot project links the vital statistics records of "3 of the 5 states or registration areas" in order to allow New York City to be considered for inclusion in the pilot. New York is one of the states with the largest number of undocumented aliens. However, New York City is a separate "registration area", that handles its own vital statistics registration. Second, although up to 2 years is provided for setting up the project, only 180 days is provided for assessing it and making recommendations to Congress. More time might be required to properly assess the pilot project. Third, the project could not be conducted without adequate funding. The SSA participation in the pilot would require a specific authorization. Since SSA's participation in the pilot would not be related to the administration of Social Security programs, funds from the Social Security trust funds could not be used to finance these activities. Finally, this provision requires an amendment to section 205(r) of the Social Security Act, which restricts the redisclosure of death information that SSA receives from the states. Current law restricts SSA's authority to redisclose this information except for the purpose of ensuring the proper payment of federally funded benefits.

Section 833 provides that notwithstanding any other provision of Federal, State, or local law, no State or local government entity shall prohibit or in any way restrict any government entity or official from sending to or receiving from the INS information regarding the immigration status, lawful or unlawful, of an alien in the U.S.

The Administration has concerns with this provision.

Section 834 provides that amounts appropriated under section 501 of the IRCA for fiscal year 1995 are to be available to reimburse the costs of undocumented criminal aliens incarcerated under the authority of political subdivisions of a State. This would extend the funds appropriated for reimbursement to States to local jail and detention facilities. Since the fiscal year 1995 awards are already being distributed to the States, we support this provision being made applicable in future fiscal years, subject to sufficient appropriations.

Section 835 requires the INS, in cooperation with the Department of State, to make available for all aliens issued immigrant or nonimmigrant visas, prior to or upon arrival in the United States, information concerning the illegality in the United States of and the harm caused by the practice of female genital mutilation. To the extent practicable this information should be limited to distribution among aliens from countries in which female genital mutilation is commonly practiced.

We do not oppose this provision.

Section 836 designates Portugal as a visa waiver pilot program country with probationary status under Section 217(g) of the INA. Currently Portugal does not satisfy the requirements for designation as a probationary country. The Administration is reviewing this provision and may have further comments shortly.

Section 851 makes a number of entirely technical corrections to the IRCA of 1986, the Immigration and Nationality Technical Corrections Act of 1994, the INA, and other legislation. We do not object to this provision.

H.R. 2202 does not contain the following provisions of the Administration's illegal immigration bill which would benefit the DOL in carrying out its immigration and worksite enforcement responsibilities: (1) subpoena authority for the Secretary of Labor in immigration law enforcement investigations and hearings and (2) increased penalties for employer sanctions involving labor standards violations. We urge the House to adopt these provisions. In addition, the President's FY 96 budget request calls for 202 additional positions for the DOL while H.R. 2202 authorizes only 150 additional positions. We urge the House to authorize the President's requested number of new DOL personnel.

Mr. Speaker, although we oppose several provisions of H.R. 2202 as reported by the House Judiciary Committee, we want to work with you to craft bipartisan immigration enforcement legislation that is in the national interest. We look forward to working together to address the core issues of worksite enforcement, border control, criminal alien deportation and comprehensive immigration law enforcement.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

COPY

Jamie S. Gorelick
Deputy Attorney General



SOCIAL SECURITY

Office of the Commissioner

MAR 19 1996

The Honorable Jim Bunning
U.S. House of Representatives
2437 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Bunning:

I am writing today to state the Administration's concerns regarding an amendment to H.R. 2202, the Immigration in the National Interest Act of 1995, which will be offered by Representative Bill McCollum (R., FL). Mr. McCollum's amendment would require the Social Security Administration to improve the physical design, technical specifications, and materials used in the Social Security card, to ensure that it is a genuine official document, and that it is secure against counterfeiting, forgery, alteration and misuse. Beginning in 1999, all new and replacement Social Security cards would need to contain these features. We are opposed to the adoption of this amendment.

In making these improvements, the amendment would require SSA to use two performance standards. The first would be to ensure that new and replacement Social Security cards would be as secure against counterfeiting as the \$100 Federal reserve note. The second performance standard would require SSA to make the Social Security card as secure against fraudulent use as a United States passport.

The current Social Security card that is issued by SSA is already counterfeit-resistant. The current card includes most of the features that have recently been incorporated in the newly redesigned \$100 bill, such as small disks that can be seen with the eye, but that cannot be reproduced by color photocopiers. In addition, the current card is printed on banknote-quality paper that has a blue marbled background with raised printing that can be felt by running one's fingers across the card.

While the McCollum amendment's requirements are non-specific, it appears that, at a minimum, SSA would be required to place an individual's photograph on each Social Security card, effectively turning it into a photo-identification document similar to the U.S. passport. It is not clear what other features might be required.

We are opposed to this amendment because it changes the basic nature of the Social Security card. The card is intended to enable employees and employers to assure that wages paid to an individual are properly recorded to the employee's Social Security earnings record. Throughout its history, the card has never contained any identifying information other than the name of the individual to whom the number has been assigned. Many editions of the card have expressly stated that the card was not intended for identification

This has assured that the Social Security card did not become a de facto national identity card. Mr. McCollum's amendment includes language stating that the new card would not be a National identification card. However, to the extent that an individual's Social Security card has information of identity, the practical effect is to establish that card as a National identification document. The Administration is opposed to the establishment, both de jure and de facto, of the Social Security card as a National identification document.

The Administration is also concerned that a de facto National identification card, such as the upgraded Social Security card, has the potential for becoming a source of harassment for citizens and non-citizens who appear or sound "foreign." Such individuals could be subject to discriminatory status checks by law enforcement officials, banks, merchants, schools, landlords, and others who might ask for an individual's Social Security identification card. We are opposed to jeopardizing the civil rights of such individuals and urge the Members of the House to oppose the McCollum amendment from this perspective as well.

Moreover, we believe that the additional workload associated with placing a photograph and other additional features on all new and replacement Social Security cards would adversely affect SSA's ability to handle its core mission, which is to administer the Social Security program. In that regard, I would note that the current Social Security card is entirely satisfactory from the perspective of fulfilling its role in the administration of the Social Security program.

Any implementation of the McCollum amendment, should it be enacted, would have a substantial fiscal and personnel impact. We estimate that placing photographs on Social Security cards would increase SSA's administrative needs by as much as \$450 million annually. Over 5 years, this would result in additional administrative spending by SSA of as much as \$2.25 billion. If the effect of the McCollum amendment is to replace all Social Security cards currently in use, the cost would be \$3 to \$6 billion, depending on the features required.

Finally, this workload would increase SSA's staffing needs by an estimated 5,700 work years annually. This would be a 10 percent increase in SSA's projected authorized staffing for 1999. The amendment would adversely affect SSA's core mission because it would establish a costly new work load that would significantly increase SSA's staffing needs. As you know, the Congress in 1994 passed crime legislation calling for a reduction in overall Federal staffing by 272,000 work years. SSA's projected share of this reduction is about 4,500 work years.

To assure that these work year savings were realized, the crime bill placed a ceiling on all Federal employment. This, coupled with the freeze that has been imposed on the domestic discretionary spending cap, which includes SSA's administrative budget, makes it highly unlikely that SSA will be provided with the additional resources required for placing photographs on Social Security cards.

If SSA did not have authority to employ additional staff, the only other alternative available to the agency would be to defer or discontinue other work loads associated with the administration of the Social Security program. We believe that this possibility could pose a grave threat to SSA's ability to carry out the essential tasks associated with assuring that benefits are paid to those who apply for them as soon as possible.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in cursive script, reading "Shirley S. Chater".

Shirley S. Chater
Commissioner of Social Security



SOCIAL SECURITY

Office of the Commissioner

MAR 19 1996

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The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in black ink, reading "Shirley Chater". The signature is written in a cursive, flowing style.

Shirley S. Chater
Commissioner of Social Security



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

MARCH 20, 1996

The Honorable Orrin Hatch
Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Administration, I would like to express our strong support for three of the amendments that may be offered during the Senate Judiciary Committee mark-up of Title II of S. 1394, the Immigration Reform Act of 1995.

We understand that an amendment will be offered to limit the application of deeming rules to programs that currently "deem" an immigrant's income to include the income of his or her sponsor (AFDC, Food Stamps, and SSI). The Administration supports this amendment. As currently drafted, S. 1394 would broaden the application of deeming rules to all means-tested programs. This would include Medicaid, the Maternal and Child Health Services programs, the School Lunch program, student financial assistance programs for postsecondary education and scores of other Federal programs. The Administration opposes deeming under the Medicaid program. Broadening the scope of deeming could endanger the public health and safety by precluding immigrants in need of health care from receiving assistance. In addition, this provision would significantly complicate the administration of programs that do not currently deem, especially those programs run by local charities and non-profit organizations.

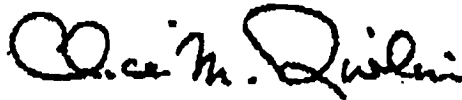
The Administration also supports an amendment that would limit the application period of deeming rules until the sponsored immigrant becomes a naturalized U.S. citizen. Under S. 1394, future immigrants would be subject to deeming — even after attaining citizenship — until they have worked 40 qualifying quarters. Thus, a sponsored immigrant would be subject to deeming for a minimum of 10 years, or potentially 5 to 7 years after becoming a U.S. citizen. A sponsored immigrant who did not fulfill the 40 quarters requirement would be subject to deeming forever. Deeming beyond citizenship would treat naturalized citizens differently from natural born citizens, creating two classes of citizens. It would be a mistake to relegate naturalized U.S. citizens — who have demonstrated their commitment to our country by undergoing the naturalization process — to a kind of second class citizenship status. Furthermore, the Department of Justice has serious concerns about the constitutionality of this provision as applied to naturalized citizens.

In addition, the Administration supports an amendment that would make the binding affidavit of support legally binding only until the sponsored immigrant becomes a naturalized U.S. citizen. Under the proposed legislation, the affidavit of support would be legally binding for a

period of 40 qualifying quarters. This section would hold a sponsor legally liable to support a sponsored immigrant, even after the immigrant has become a U.S. citizen. While the Administration supports making the current affidavit of support legally binding, we oppose an affidavit of support which would be binding after the immigrant has naturalized. We have been advised by the Department of Justice that there may be constitutional concerns related to this section as well.

We strongly urge you and other members of the Committee to support these amendments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alice M. Rivlin".

Alice M. Rivlin
Director

Identical letters sent to The Honorable Joseph Biden, The Honorable Thomas Daschle,
and The Honorable Robert Dole.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 16, 1996

Honorable Robert Dole
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

This letter presents the views of the Administration concerning S. 1664, the "Immigration Control and Financial Responsibility Act of 1996", as reported by the Committee on the Judiciary on March 21, 1996.

Many of the provisions in S. 1664 advance the Administration's four-part strategy to control illegal immigration. This strategy calls for regaining control of our borders; protecting U.S. workers and removing the job magnet through worksite enforcement; aggressively removing criminal and other deportable aliens; and securing from Congress the resources to support the Administration's illegal immigration enforcement strategy and to assist states with the costs of illegal immigration. Many of the provisions of S. 1664 are identical or similar to provisions in the Administration's bill, S. 754, the "Immigration Enforcement Improvements Act of 1995."

While the Administration strongly supports reform of the current immigration law that deters illegal immigration, and S. 1664 contains many provisions that are similar or identical to the Administration's legislative proposal, enforcement initiatives, and overall strategy, S. 1664 raises serious concerns in specific areas that we hope the Senate will examine thoroughly during floor consideration of the bill. The Administration's concerns include, but are not limited to the following:

◆ If S. 1664 were presented to the President with provisions that would jeopardize any child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs, the Secretary of Education and the Attorney General would recommend that the bill be vetoed.

◆ The Administration opposes broadening the application of deeming rules from a well-defined set of programs to all means-tested programs including Medicaid, the Maternal and Child Health Services program, the School Lunch program, student financial assistance programs for postsecondary education and scores of

additional programs.

◆ The penalties for and enforcement of employer sanctions should be increased. Similar increases should be included for the enforcement of laws against immigration-related employment discrimination. The intentional discrimination standard in the document abuse provision of S. 1664 will severely undermine anti-discrimination enforcement.

◆ Repeal of the Cuban Adjustment Act would detract from the Administration's goal of returning democracy to Cuba and regularizing the flow of immigration from Cuba. In addition, restricting the Attorney General's parole authority will jeopardize the Attorney General's ability to quickly and appropriately respond to compelling immigration emergencies.

◆ This Administration has built and reinforced physical barriers along the Southwest border. S. 1394's multiple layers of fencing will endanger the physical safety of our Border Patrol agents who may get trapped and ambushed between the layers of fencing. We support the authorization of further appropriations for the purpose of constructing barriers, but we do not support limiting the use of those funds to one untested type of physical barrier. Funds should be authorized for multiple fencing as deemed appropriate along with other types of physical barriers and sensors. We would like to work with the Senate to ensure that appropriate deterrence technologies are deployed along the border.

◆ We oppose S. 1664's greatly expanded definition of "aggravated felony," which would encompass crimes, even nonviolent ones, for which the sentence imposed is one year or more. Aggravated felons are subject to streamlined removal procedures and are precluded from many forms of relief from deportation, including fundamental refugee protections required by treaty. While we have made the removal of criminal aliens a top priority, such a drastic expansion of the definition eliminates the chance to consider individual circumstances even in the most exceptional cases.

◆ While we strongly support the objective of combating breeder document fraud, federal regulation of birth certificates would impose a large unfunded mandate with costs on states and localities as well as subject private individuals to burdensome and costly requirements. One possible effect of the standardization of birth certificates is a flood of millions of citizens in state and local offices paying for new birth certificates. The Administration has concerns about this section and would like to work with the Senate to address them.

◆ If S. 1664 were presented to the President with amendments containing a new agricultural guestworker program, the Attorney

General and the Secretary of Labor would recommend that the bill be vetoed. The Administration strongly opposes a new agricultural guestworker program because it would: (1) reduce work opportunities for U.S. citizens and other legal residents; (2) depress wages and work standards for U.S. farmworkers; (3) not be a sustainable solution to any labor shortage that might develop; and (4) increase illegal immigration.

This Administration appreciates the continued opportunity to work with you and other members of the Senate. Our positions on the individual provisions of S. 1664 are outlined in the following section-by-section discussion.

Title I--Immigrant Control

Part 1--Additional Enforcement Personnel

The Administration has already demonstrated that our borders can be controlled when there is a commitment to do so by the President and Congress. With an unprecedented infusion of resources since 1993, we have implemented a multi-year border control strategy of prevention through deterrence. We have carefully crafted long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore integrity to the border. The results of our flexible approach are reflected in the successful implementation of Operations "Hold-The-Line" in El Paso, "Gatekeeper" in San Diego, and "Safeguard" in Arizona. We have increased the number of Border Patrol agents by 40% since 1993 -- a higher level of staffing than ever before. Those agents are also backed up by the highest level of support than ever before. For the first time in over a decade we are backfilling positions previously left vacant by attrition. We are committed to achieving a strength of more than 5,600 Border Patrol agents by the end of Fiscal Year (FY) 1996 and more than 7,000 agents by the end of FY 1998. Border Patrol personnel are now equipped with new and sophisticated technology and basic support allowing them to work more effectively.

Sec. 101 mandates that the number of Border Patrol agents be increased by no fewer than 700 in FY 1996 and by no fewer than 1,000 in each of FYs 1997 through 2000. The number of Border Patrol support personnel would be increased by not more than 300 each FY from 1996 through 2000.

For FY 1996, the Administration will start the training of 1480 new Border Patrol agents and complete the training of and deploy 700 new agents. S. 754 proposes increases of at least 700 agents in each of FYs 1996-1998, to the maximum extent possible consistent with standards of professionalism and training. This reflects the Administration's commitment to achieve substantial increases in agent strength by the end of FY 1998. The

Administration has greatly expanded the size of the Border Patrol and, for the first time in many years, has undertaken serious efforts to eliminate hiring and attrition shortfalls. In some FYs, we will hire and train more than 1000 new and replacement Border Patrol personnel. However, we ask the members of the Senate to be mindful of the danger to the law enforcement structure and mission should too many newly hired positions be created at once. We believe that the net annual increase of 700 agents represents the maximum agent strength that the Border Patrol can responsibly achieve in each year at this time based upon a number of fundamental law enforcement considerations. The International Association of Chiefs of Police recently analyzed Border Patrol hiring and concluded that a massive infusion of inexperienced law enforcement agents deployed in the field with new supervisors would jeopardize overall effectiveness and would carry with it a risk of unintended consequences such as cutting corners on training, excessive force, civil rights violations and decreased professionalism. We urge the Senate to incorporate the Administration's proposal on the number of Border Patrol agents to be hired each year and to strike the limitation on the number of support personnel who can be hired.

Sec. 102 authorizes funding for 300 new positions for each of FYs 1996 through 1998 for investigators and support personnel to investigate alien smuggling and enforce employer sanctions. We support this increase for personnel to investigate alien smuggling and enforce employer sanctions.

This section would also limit administrative expenditures for the payment of overtime to an employee for any amount over \$25,000. The restrictions on overtime expenditures currently apply because they are included in the FY 1996 Commerce, Justice, State Appropriations Act. The President's FY 1996 budget request also includes this restriction but proposes an increase in the overtime limit to \$30,000. Accordingly, we recommend that the overtime provision be stricken from the bill and be addressed in the appropriations bill.

Sec. 103 would increase the number of land border inspectors by approximately equal numbers in FYs 1996 and 1997 to a level that will provide full staffing to end undue delay and facilitate inspections.

We strongly support increased service and inspections at land ports of entry.

Sec. 104 authorizes an increase of 300 investigators in FY 1996 for the investigation of visa overstayers. The Administration's approach to the problem of visa overstayers includes greater enforcement of the employer sanctions provision and worksite enforcement. Consequently, the additional investigators authorized by this section should also be

authorized to do worksite enforcement. We urge the Senate to remove language limiting these investigators' powers to the investigation of "visa overstayers" per se.

Sec. 105 authorizes the hiring of not more than 350 investigators and staff in FYs 1996 and 1997 in the Wage and Hour Division of the Department of Labor for the enforcement of existing Federal wage and hour laws. Priority shall be given to the employment of multilingual candidates who are proficient in English and such other language or languages as may be spoken in the region in which such personnel are likely to be deployed.

We support this provision to ensure that worksite enforcement serve its critical role in comprehensive and effective illegal immigration control.

Sec. 106 requires the Attorney General, subject to appropriations, to provide for an increase in detention space of at least 9,000 beds by the end of FY 1997. While we recommend and support an increase in available detention capacity, that capacity includes more than beds and facilities, for example detention and deportation staffing. Also, while a capacity of 9,000 may be appropriate, specifying a number would appear premature and speculative prior to the submission by the Attorney General of the study and report on detention space requirements provided for in section 182.

Sec. 107 requires that the Attorney General review INS hiring and training standards and where necessary revise those standards to ensure their consistency with relevant standards of professionalism. This section requires the Attorney General to certify to Congress after each of the next five FYs that all personnel hired and trained pursuant to Title I during that FY were hired and trained pursuant to appropriate standards.

We do not object to this provision, but we believe it is unnecessary given the high level of attention and commitment to professionalism and skill development reflected in the INS hiring and training programs.

Sec. 108 requires the construction of triple fencing with roads in between the fences along the 14 miles of the United States border with Mexico from the Pacific Ocean and extending eastward. Funds to carry out this section are authorized to be appropriated in an amount not to exceed \$12 million.

This Administration has built and reinforced physical barriers along the Southwest border. Over the past several years, the Immigration and Naturalization Service (INS) with the support of military personnel and the National Guard has built miles of strategically placed fencing along the border to control drug trafficking, alien smuggling, crime, and illegal

immigration. For example, there are now 28 miles of fencing in the San Diego Sector to support the Administration's increased deployment of Border Patrol agents, resources, and sophisticated technology. Recently, we began construction of a 1.3 mile fence along the border at Sunland Park, New Mexico. We support the authorization of further appropriations for the purpose of constructing barriers, but we do not support limiting the use of those funds to one untested type of physical barrier. Funds should be authorized for multiple fencing as deemed appropriate along with other types of physical barriers and sensors. We would like to work with the Senate to ensure that appropriate deterrence technologies are deployed along the border.

Part 2--Eligibility to Work and to Receive Public Assistance

Jobs are the greatest magnet for illegal immigration. Thus, a comprehensive effort to deter illegal immigration, particularly visa overstaying, must make worksite enforcement a top priority. The Administration is committed to hiring more DOL Wage and Hour and other personnel to enhance enforcement of laws prohibiting employment of unauthorized aliens and assuring minimum labor standards, including sweatshop enforcement. Enforcement efforts will focus on selected areas of high illegal immigration. Already the Atlanta and Dallas District Offices of the Immigration and Naturalization Service (INS) have successfully conducted Operation SouthPAW (Protecting America's Workers) and Operation Jobs, unprecedented interior enforcement initiatives which are designed to place authorized U.S. workers in job vacancies created by the arrest of unauthorized workers during worksite enforcement surveys. The Administration is deeply concerned by the provisions in this bill that will weaken employer sanctions and anti-discrimination enforcement. In particular, we are concerned that the Committee on the Judiciary eliminated increases in employer sanctions penalties and failed to adopt commensurate increases in penalties for immigration-related employment discrimination. We recommend that the penalty increases contained in the former section 117 of S. 1664 as reported by the Subcommittee on Immigration be restored and that commensurate increases be included for violations of the anti-discrimination provisions of the INA.

With regard to Federal benefits, under current law the status of aliens applying for major federal benefits is generally verified through direct access to INS via the Systematic Alien Verification for Entitlement program (SAVE), enacted by section 121 of the Immigration Reform and Control Act of 1986 (IRCA). The SAVE process seeks to ensure that each applicant born outside the U.S. is properly identified as a U.S. citizen, or as an eligible immigrant and to prevent unauthorized immigrants from receiving benefits for which they are ineligible. The SAVE process of verifying eligibility has worked well. Recently, SAVE was awarded the Federal Technology Leadership Award for 1995.

Nevertheless, the Administration is conducting a review of the SAVE system to determine if improvements or changes are appropriate. We believe that the creation of a new system at this time would be premature, duplicative and unnecessary and would also siphon resources away from other enforcement priorities.

Sections 111 through 113, which were substantially amended by the Committee on the Judiciary, are now consistent with the Administration's proposal. These sections provide for the completion and evaluation of demonstration programs prior to the enactment by Congress of a new verification system for employment and benefit eligibility. It gives the Executive Branch flexibility to select appropriate techniques for demonstration program and evaluation purposes.

Section 111 requires the President to submit a report to Congress setting forth a recommended plan for the establishment of a system to verify eligibility for employment and immigration status for purposes of eligibility for benefits under federal, state, and local government public assistance programs. Under section 112, the President, acting through the Attorney General is directed to undertake demonstration projects, including a project with the legislative branch of the federal government, that are consistent with the objectives set forth in section 111. The authority to conduct the projects is effective for four years after the date of enactment unless the President determines that an existing project should be extended or a new one undertaken prior to the recommendation of a plan for implementation. Such a determination will result in a three-year extension of the authority. The Attorney General or the Attorney General's representatives shall consult with the Judiciary Committees at least every twelve months from the date of enactment on the demonstration projects initiated and being evaluated. The Attorney General shall submit to Congress the estimated costs to employers of each demonstration project. To the extent a demonstration project is determined to meet certain established criteria, participants in the project need not comply with the existing verification requirements of the INA.

Section 111 includes strong provisions for the protection of privacy, penalties for wrongful disclosure of information about an individual, and remedies for persons who are harmed by the wrongful disclosure of such information. Use of personal information gained under the system is limited to specified eligibility, fraud, and immigration purposes. Any new document that would be required for use must be resistant to counterfeiting and tampering and may not be required as a national identification card or be presented for other than the specified purposes. Under section 111, the system must ensure that information is complete, accurate, verifiable, and timely. Corrections must be made within ten working days of receipt.

Section 113 provides that the demonstration projects authorized under section 112 will be tracked, monitored and evaluated by the Comptroller General. The evaluation will include hiring data on employers who are not participating in the projects to serve as a baseline against which to measure any unlawful discriminatory practices. The Comptroller General will report every twelve months and finally within 60 days of the submission to Congress of the recommended plan required under section 111.

We strongly support the approach to verification adopted in sections 111 through 113, as amended, with one reservation.

Section 111(e) relieves an employer from liability under section 274A of the INA if (1) the alien appeared throughout the term of employment to be prima facie eligible for employment, (2) the employer followed all procedures required in the new verification system, and (3) the alien was verified under such system as eligible for employment, or a secondary verification procedure was conducted with respect to the alien and the employer discharged the alien promptly after receiving notice that the secondary verification procedure failed to verify the eligibility of the employee. The Judiciary Committee also adopted an amendment that limits liability under section 274A of the INA for any person who takes an action adverse to an individual on the basis of information relating to that individual gained from the new verification system or a demonstration project.

The presence of two provisions which seemingly address the same issue, i.e. employer liability under the INA, is confusing. Moreover, neither provision is necessary in our view. An employer who complies with employee verification requirements is entitled to raise a good faith defense against the imposition of penalties for knowingly hiring an unauthorized alien. Moreover, section 274A does not impose liability on an employer for an adverse action taken against an employee. We are concerned that these provisions could have an unintended effect of increasing employer challenges to 274A enforcement efforts and discrimination against employees who are in fact later verified to be work authorized. Furthermore, the Administration's pilot program called the Verification Information System gives an employee an additional opportunity after a failed secondary verification to verify eligibility for employment. Accordingly, we recommend that the Senate strike both provisions. If both provisions are to be retained, their relationship should be clarified.

Sec. 114 provides that nothing in the Act may be construed to preempt existing rights or remedies except to the extent such right or remedy is inconsistent with Title I.

Sec. 115 contains definitions of "Administration", "Employment Authorized Alien", and "Service" as those terms are used in Subpart A.

Sec. 116 authorizes the Attorney General to require an individual to provide his or her Social Security account number for purposes of complying with this section. S. 754 has a similar provision, and we support this provision.

We also support this section's limits upon the number of documents which establish both employment authorization and identity and the number of documents which establish employment authorization. This section shall apply to hiring beginning no more than 180 days from the date of enactment of the Act. Although S. 754 contained the same effective date, on further consideration of technological capabilities this timeframe appears unworkable. We would like to work with the Senate on an appropriate timeframe for implementation.

Sec. 117 provides that an employer's request for more or different documents to verify an employee's employment eligibility or an employer's refusal to honor documents that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice only if made for the purpose or with the intent of discriminating against the employee because of his or her national origin or citizenship status.

We strongly oppose this section because of its potentially harmful and discriminatory impact on U.S. citizens, legal permanent residents, and all work-authorized persons who appear or sound "foreign". Under this section, all work-authorized persons--including citizens and legal permanent residents--who possess valid acceptable documentation of work eligibility under the law, but who do not possess the specific documents required by a certain employer, could lose a job and have no legal remedy. The DOJ Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC) currently litigates on behalf of such employees. In Texas, a publishing company refused to hire a native born U.S. citizen of Hispanic descent because she presented a state identification card and a Social Security card instead of a birth certificate. In Virginia, a janitorial service firm fired a naturalized U.S. citizen of Guatemalan descent after demanding to see his "green card" and U.S. passport and rejecting his driver's license, Social Security card and voter registration card. In Colorado, a major meatpacking company discharged seven work authorized employees when they could not produce INS-issued work authorization extension documents although all seven had other legally sufficient evidence of their continued employment eligibility. This section would provide no remedy for such individuals who are unfairly denied jobs.

Under section 117, it will be difficult, if not impossible, for the OSC to demonstrate that the employer's conduct regarding documentation is tied to the national origin or citizenship status of the individual. Under section 117, all work authorized persons, citizens and non-citizens alike, who possess valid acceptable documentation under the law, but who do not possess the exact documents required by a specific employer, could lose an opportunity for employment and livelihood on that basis alone and have no legal remedy. If the driving force behind an employer's conduct is fear of INS sanctions, very few cases will be actionable, since it will be extremely difficult, if not impossible, to meet the proposed intent requirement. The employer will claim to be avoiding sanctions rather than discriminating intentionally. Clearly, the brunt of this change will fall on those who look or sound "foreign" -- legal immigrants and minority U.S. citizens -- because employers will be most critical of documentation produced by those persons most likely to lead to sanctions. Employers could pretextually support their alleged non-discriminatory position by highlighting the percentage of minority and non-U.S. citizens in their workforce to show that they have no reason to treat minorities or non-U.S. citizens more harshly in the employment verification process, but the effect on those authorized workers who do not have the specific documents requested by the employer will be the same: loss of employment and livelihood.

Congress knew when it enacted IRCA's anti-discrimination provision that fear of sanctions could result in employer discrimination against citizens and work-authorized aliens, especially those who "look or sound" foreign. When IRCA's antidiscrimination provision became law in 1986, Congress did not include an intent element in the prohibitions against citizenship-status or national origin discrimination. In 1990, when the document abuse provision was added to the law, the intent element was also absent. Thus, the protection afforded by the antidiscrimination provision was designed to protect workers not only from invidious discrimination, but also from employment discrimination resulting from employers' negligence or ignorance.

The Administration has worked closely and cooperatively with employer associations to educate them about their responsibilities under the law. Employer education efforts, including directly funding efforts by employer associations themselves and reducing the number of documents an employer must accept, have reduced the burdens on employers. By contrast, section 117 would allow discrimination against U.S. citizens and authorized workers to go unchecked. We strongly urge the Committee to delete this section.

In addition, we urge the Committee to clarify the authority of the OSC to litigate pattern and practice cases and to grant the OSC the authority to investigate and prosecute discrimination

charges involving the terms and conditions of employment.

Former Section 117 as reported by the Subcommittee on Immigration was amended in the Committee by striking subsections (a), (b), and (c) and redesignating the succeeding subsections accordingly. Former subsection 117(a) would have amended section 274(e)(4)(A) of the INA to increase the civil penalties for employer sanctions for first violations from the current range of \$250 to \$2,000 to a range of \$1,000 to \$3,000. The subsection also increases penalties for second violations from the current range of \$2,000 to \$5,000 to a range of \$3,000 to \$8,000. The penalties for subsequent violations are increased from a range of \$3,000 to \$10,000 to a range of \$8,000 to \$25,000. Sec. 117(b) would have increased the penalties for employer sanctions paperwork violations from the current range of \$100 to \$1,000 to a range of \$200 to \$2,500. Sec. 117(c) would have increased the criminal penalty for pattern and practice violations of employer sanctions to a felony offense, increasing the applicable fines from \$3,000 to \$9,000 and the criminal sentence which may be imposed from not more than six months to not more than two years.

These penalty increases are consistent with those proposed by the Administration. Their elimination is inconsistent with any effort to deter the hiring of unauthorized aliens by employers and to foster compliance with the law. We strongly recommend that the deleted subsections be restored.

We also believe that the penalties for immigration related discrimination, as covered by section 274B(g) of the INA, should be similarly increased. Congress made an important decision in the Immigration Act of 1990 to have the same penalties for both the anti-discrimination provisions and employer sanctions. Symmetry remains critical in these closely associated areas. Imbalance has the potential to create a financial incentive for employers to violate the lesser penalized statute of anti-discrimination law to avoid the higher penalties of the employer sanctions statute. This section will also eliminate the perception that there is an order of preference in enforcement efforts.

To further harmonize the sanctions and the anti-discrimination provisions of the INA, we urge the Senate to grant express authority to the Office of Special Counsel to pursue pattern or practice violations based on independent investigations, and that penalties equal to those set forth in the pattern or practice section of the employer sanctions provision be added for engaging in a pattern or practice of the antidiscrimination provision.

Sec. 118 would require the Secretary of Health and Human Services (HHS) to issue regulations mandating a standard format for copies of birth certificates. Effective October 1, 1997,

Federal agencies, and state agencies that issue driver's licenses and identification documents, could accept for official purposes only copies of birth certificates issued in this standard format. The provision also requires that copies of birth certificates prominently note (to the extent that it is known) that an individual is deceased; provides for the Secretary of HHS to prepare a report on birth certificate fraud; and authorizes two grant programs to be administered through the National Center for Health Statistics (NCHS). The first grant program would provide grants to states to encourage them to develop the capability to match birth and death records. The other would provide for a pilot project in 5 states to demonstrate the feasibility of providing information establishing the fact of death within 24 hours for each individual dying within the state. Appropriations would be authorized for these grant programs.

The Administration supports the objective of addressing breeder document fraud. However, this section presents myriad constitutional, operational, and programmatic concerns. First, it is not clear what enumerated power gives the federal government the authority to regulate birth certificates in this way. The Supreme Court has interpreted the federal government's authority over immigration quite broadly, but the relevant cases involved statutes that explicitly dealt with immigrants. See Fiallo v. Bell, 430 U.S. 787 (1977); Mathews v. Diaz, 426 U.S. 67 (1976). Section 118, though part of an immigration bill, does not by its terms involve immigration or immigrants; rather, it applies to all birth certificates. Indeed, by its silence with regard to foreign birth certificates, it appears to apply only to U.S. citizens and to make a foreign born person's birth certificate unacceptable for identification. In the absence of relevant cases, we are uncertain whether the Court would conclude that the bill is within the federal government's immigration authority. In addition, insofar as section 118 imposes non-ministerial duties on the states or compels policy decisions, it could be challenged as violative of the principles underlying the Tenth Amendment, under New York v. United States, 112 S. Ct. 2408 (1992).

This provision would prohibit Federal agencies and state agencies that issue driver's licenses or identification documents from accepting copies of birth certificates that did not meet a standard format as specified by HHS. The standardized format for birth certificates likely creates an unfunded mandate on those states which must change their current processes. Also, the requirement to obtain and present the new birth certificate for benefits likely creates a large unfunded mandate on members of the public. Current copies of birth certificates would be useless if needed for any Federal agency or for acquiring driver's licenses. Eventually almost everyone in the country would have to undergo the inconvenience and cost of replacing the copy of their birth certificate. This represents a significant

intrusion by the federal government into the responsibilities of states and the personal lives of law-abiding citizens.

As an example, there are about 60 million Americans under age 16. If each had to replace the copy of his or her birth certificate before applying for a driver's license, and states charged an average of \$10 for a certified copy of a birth certificate, this would cost these teenagers a total of \$600 million. In addition, the cost of this section to senior citizens and others who do business with the SSA would be at least \$100 million annually. About 5 million elderly persons would have to purchase a new birth certificate each year in order to apply for Medicare and cash benefits. Another 5 million would have to purchase a new birth certificate each year to apply for Social Security cards.

In addition, the Administration has a number of concerns regarding the section on drivers' licenses. First, this section would likely create an unfunded mandate on those states and localities that have to change their drivers' licenses, e.g. format, required information, and procedures for issuing a license. Second, we have strong reservations about requiring a Social Security number on drivers' licenses, which could then become tantamount to a universal identification card. Lastly, we are concerned about the constitutional and operational aspects of attempting to regulate state-issued drivers' licenses and state procedures.

The requirement that HHS submit a report on ways to reduce the fraudulent obtaining and use of birth certificates places the responsibility for the report in just one of the agencies that has an interest in this issue. We remain concerned about the constitutional and operational aspects of attempting to regulate birth certificates. The language approved by the Judiciary Committee represents an improvement over previous language, but the Administration continues to have concerns.

Former Section 118 as reported by the Subcommittee on Immigration, would have credited any employer sanctions penalties received in excess of \$5,000,000 to the INS Salaries and Expenses appropriations account that funds activities associated with employer sanctions enforcement, but was stricken from the bill by the Judiciary Committee. This provision was identical to the Administration's proposal. It would represent a substantial commitment to the enforcement of the employer sanctions provisions of the INA, and we recommend that it be restored.

Sec. 119 authorizes an administrative law judge to increase the civil penalties provided under employer sanctions to an amount up to two times the normal penalties if labor standards violations are present.

This provision is identical to the Administration's proposal, and we support it. However, we believe that this authority should also be extended to cover immigration-related discrimination, as covered by section 274B(g) of the INA.

Sec. 120 authorizes the Attorney General to hire for FYs 1996 and 1997 such additional Assistant U.S. Attorneys as may be necessary for INA prosecutions. We support this provision.

Sec. 120A amends the INA to clarify that immigration officers may issue subpoenas for investigations of employer sanctions offenses. This section also authorizes the Secretary of Labor to issue subpoenas for investigations relating to the enforcement of any immigration program. It makes the authority contained in sections 9 and 10 of the Federal Trade Commission Act--provisions which allow access to documents and files of corporations, including the authority to call witnesses and require production of documents--available to the Secretary of Labor.

This provision is identical to the Administration's proposal, and we support it.

Sec. 120B provides for a task force within the Department of Justice to provide advice and guidance to employers and employees, relating to employer sanctions and unfair immigration-related employment practices and to assist employers in complying with these laws. We support this section.

Sec. 120C authorizes appropriations to expand the IDENT fingerprint system into a nationwide program. We do not object to this provision.

Sec. 120D requires a State agency that refers an individual for employment to comply with the verification requirements of section 274A of the INA. This provision would impose an unfunded mandate on the states. Under current law, a state agency may, but need not comply. Some have instituted successful programs. The mandatory provision should be stricken.

Sec. 120E limits the liability of an employer for the retention of records under section 274A of the INA in cases of disaster, acts of God, and other events beyond the employer's control. We do not object to this section.

PART 3--ALIEN SMUGGLING; DOCUMENT FRAUD

The Administration is aggressively investigating, apprehending, and prosecuting alien smugglers. The INS, Federal Bureau of Investigation, Department of State, and Coast Guard have been sharing and developing information on numerous smuggling endeavors. As a result of these efforts over 200

significant alien smuggling investigations were initiated in FY 1994. Similar efforts are being conducted to combat document fraud. INS is adding new staffing positions to investigate and prosecute an increased number of fraudulent document vendors. This includes targeting major suppliers of fraudulent documents and employers who knowingly accept such documents as proof of employment authorization. In general Part 3 appropriately cracks down on alien smugglers and individuals involved in document fraud. We are pleased the Committee has adopted many provisions from the Administration's bill.

Sec. 121 grants wiretap authority for investigations of alien smuggling, identification document fraud, citizenship and naturalization procurement and document fraud, and passport and visa fraud.

This provision is similar to the Administration's proposal, and we support it.

Sec. 122 amends 18 U.S.C. 1961(1) to include alien smuggling, identification document fraud, naturalization and citizenship procurement and document fraud, and visa and passport fraud offenses committed for personal financial gain as predicate offenses for racketeering charges.

The Administration proposal contains a similar provision, but it does not include identification document fraud, naturalization and citizenship procurement and document fraud, and visa and passport fraud offenses (18 U.S.C. §§ 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1546). We urge the Committee to adopt the S. 754 provision. We would prefer that the Committee directly increase the penalties for violating these statutes rather than adding them as RICO predicates. Direct increases in penalties would be the more effective way to strengthen the punishment for these crimes.

Sec. 123 adds conspiracy and aiding to alien smuggling offenses. This section provides that a person who smuggles aliens shall be fined or imprisoned for each alien to whom a violation occurs and not for each transaction constituting a violation, regardless of the number of aliens involved. It also increases the penalties for alien smuggling offenses to not more than 10 years for a first or second offense, and to not more than 15 years for subsequent offenses. We support this provision.

Sec. 123(a)(5) makes it a criminal offense subject to fine and imprisonment for not more than 5 years to hire an alien with knowledge that the alien is not authorized to work and that the alien was smuggled into the U.S. This parallels the Administration's proposal, and we support this provision.

Sec. 123(b) creates a new offense punishable by imprisonment

for more than one year for smuggling aliens with the intent or with reason to believe that the alien will commit an offense against the U.S. or any State. This provision is substantially similar to the Administration's proposal, and we support it.

Sec. 123(c) directs the Sentencing Commission to promulgate or amend guidelines to: increase the base offense level by at least three levels for an offender convicted of smuggling, transporting, or harboring an unlawful alien; increase the sentencing enhancement by at least 50 percent based on the number of aliens involved; impose an appropriate enhancement for an offender with one prior similar felony conviction; impose an additional appropriate enhancement for an offender with two prior felony convictions; and impose an appropriate sentencing enhancement for an offender who murders or otherwise causes death or bodily injury, uses or threatens to use a firearm or dangerous weapon, or engages in conduct that recklessly places another in serious danger of death or serious bodily injury. This section also directs the Sentencing Commission to consider appropriate downward departures for offenses involving less than six aliens or where the offense was committed for other than profit.

We strongly support section 123(c) because the sentencing guidelines provide wholly inadequate sentences for many serious alien smuggling and related offenses. Under the current guidelines smuggling between 25 and 99 aliens, then entering into a high-speed chase to avoid apprehension by Border Patrol agents, and finally causing the death of several people in an ensuing accident would produce a guideline sentence of only 18-24 months of imprisonment for a first offender -- or less if the offender accepted responsibility for the offense. Such a low sentence cannot serve as a deterrent to unlawful and dangerous behavior involving alien smuggling and related offenses.

The directive to the United States Sentencing Commission in section 123(c) of the bill would require the Commission to raise the base offense level for alien smuggling and related offenses and to provide sentencing enhancements for a variety of important aggravating factors, as noted above. The directive would cause the Sentencing Commission to provide much-needed increased guideline sentences to reflect the increased statutory maximum sentences enacted as part of the Violent Crime Control and Law Enforcement Act of 1994.

Because we view the need for an improved alien smuggling guideline as an urgent matter, we recommend that S. 1664 be amended to provide for the promulgation of sentencing guideline amendments on an expedited basis to implement section 123(c). Without such an amendment, the Sentencing Commission's statutorily established guideline cycle would not permit the promulgation of such an amendment until well into 1997, with a likely effective date of November 1, 1997.

Sec. 124 provides that the videotaped deposition of a witness to a violation of section 274(a) of the INA who was available for cross examination and who has been deported from the U.S. may be admitted into evidence. We support this provision.

Sec. 125 provides for seizure and forfeiture of any property, real or personal, which facilitates or is intended to facilitate, or which has been used in or is intended to be used in the commission of a violation of, or which constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of subsection 274(a) of the INA, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C. It provides that before the seizure of any real property, the Attorney General shall provide notice and an opportunity to be heard to the owner of the property.

The three separate but overlapping innocent owner defenses to civil forfeiture in paragraphs A through C of section 1324(b)(1) in S. 1664's section 125 are drawn from existing, flawed innocent owner provisions that the Department of Justice's proposed forfeiture legislation (section 123) would rectify. The innocent owners provisions in S. 1664 will carry the same problems that the proposed uniform innocent owner provision is designed to correct. See, e.g., United States v. One 1973 Rolls Royce, 43 F.3d 794 (3d Cir. 1994) (holding that present innocent owner defense in 21 U.S.C. § 881 precludes forfeiture from any person who acquired the property after the offense giving rise to the forfeiture action). The proposed new uniform innocent owner defense in the Department's Forfeiture Act is to be codified at 18 U.S.C. § 983 and apply to any civil forfeiture provision in Title 18, United States Code, the Controlled Substances Act, and the Immigration and Naturalization Act (which includes section 1324(b)).

Section 125 also appears to try to codify the Supreme Court's decision in United States v. James Daniel Good Real Property, 114 S.Ct. 492 (1993). This provision is unnecessary because the pre-seizure due process requirements for seizures of real property for civil forfeiture (and the exceptions to those requirements not set out in section 125, e.g., exigent circumstances) are more clearly explained by the Good decision itself. Additionally, the provision unnecessarily would make 8 U.S.C. § 1324(b) inconsistent with other civil forfeiture provisions to which the Good standards also apply for seizures of real property. The regulations called for by the proposal to provide guidance to meet the requirements of Good are also unnecessary. On November 14, 1994, the Department of Justice Executive Office for Asset Forfeiture issued such guidance in a ten-page Directive No. 94-8, captioned "Seizure of Real Property In Civil In Rem Proceedings in Light of the Supreme Court's

Decision in United States v. James Daniel Good Real Property."

Similarly, proposed 1324(b)(4)(E) at section 125(a)(5) of S. 1664 is unnecessary. Provision for the transfer of property forfeited under section 1324(b) is already present through 19 U.S.C. § 1616a(c) which is already incorporated into and made applicable to 8 U.S.C. § 1324(b) forfeitures. See 8 U.S.C. § 1324(b)(3) (incorporating the customs laws forfeiture procedures (19 U.S.C. § 1602 et seq.) by reference).

Sec. 126 provides that any person convicted of a violation of subsection 274(a) of the INA, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C., shall forfeit to the U.S. any conveyance, including any vessel, vehicle, or aircraft used in commission of a violation of 274(a) of the INA, and any property, real or personal, that constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of, or that facilitates or is intended to facilitate, or has been used in or is intended to be used in the commission of a violation of subsection 274(a) of INA, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C.

The criminal forfeiture of property under this provision, including any seizure and disposition of the property and any related administrative or judicial proceeding shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, except for subsections 413(a) and 413(d) which shall not apply to forfeitures under this provision.

The provision is similar to the Administration's proposal, and we support it. We note, however, that references to 274(a)(1) and (2) should have been stricken pursuant to an amendment adopted by the Judiciary Committee. These sections are civil employer sanctions provisions to which criminal asset forfeiture should not apply.

Sec. 127 increases the term of imprisonment for identification, passport, visa, naturalization, and citizenship document fraud from not more than five years to not more than 10 years for a first or second offense and to not more than 15 years for third and subsequent offenses. The maximum term of imprisonment is up to 15 years if committed to facilitate a drug trafficking offense, and up to 20 years if committed to facilitate an act of international terrorism. The Administration supports increasing the maximum penalties for these offenses.

This section also directs the Sentencing Commission to make appropriate adjustments to the sentencing guidelines. The Sentencing Commission recently adopted guideline amendments which became effective on November 1, 1995, and will significantly

increase the punishments for these offenses. In our view, the Commission's guideline amendments should be given an opportunity to work before additional changes are made.

Sec. 128 adds a new penalty to 18 U.S.C. 1546(a) for presenting a document that contains a false statement or that fails to contain any reasonable basis in law or fact. We support this provision.

Sec. 129 adds a new criminal provision to section 274C of the Act which penalizes any person who knowingly and willfully fails to disclose, conceals, or covers up the fact that he or she has prepared or assisted in preparing an application for asylum which was falsely made for immigration benefits. A violation of this provision is a felony and a fine or imprisonment for 2 to 5 years, or both, may be imposed. This section prohibits a person who has been convicted of this offense from any further involvement in the immigration application process. Anyone convicted of a subsequent violation is punishable by a fine, 5 to 15 years imprisonment, or both.

Current criminal statutes are adequate to punish this type of illegal conduct. Stepped up investigation efforts have led to indictments for fraudulent preparation of spurious asylum claims in New York, Los Angeles, San Francisco, and Arlington, Virginia. We do not believe that a new and special offense is needed to prosecute a person involved in assisting in fraud in the asylum process. Furthermore, mandatory minimum sentences are not appropriate in this context.

Sec. 130 inserts an additional violation to section 274C of the Act, by prohibiting preparing, filing, or assisting another in preparing or filing documents which are falsely made, in reckless disregard of the fact that the information is false or does not relate to the applicant. This section also adds a penalty for those aliens who present a document upon boarding a carrier bound for the U.S. and then fail to present a document to the inspector at the port of entry. A discretionary waiver for penalties is provided if an alien is subsequently granted asylum or withholding of deportation.

This provision is substantially similar to the Administration's proposal, and we support it.

This section also creates new civil penalties if the document fraud is committed in order to obtain a benefit under the INA. This section authorizes an administrative law judge to double civil penalties for document fraud if labor standards violations are present.

We support this provision.

Sec. 131 adds to the current exclusion ground for misrepresentation at section 212(a)(6) a ground for document fraud and for failure to present documents to the inspector at the port of entry.

We believe this provision is unnecessary. Current law at section 212(a)(6) is broad enough to cover fraudulent documents of any nature and already makes a person excludable who attempts to gain entry through use of such documents. Section 212(a)(7) makes excludable both immigrants and nonimmigrants who seek to enter without the required documents. Consequently, we do not support this section.

Sec. 132 provides that aliens excludable because of document fraud under the new section 212(a)(6)(C)(iii) and excludable aliens brought or escorted into the U.S. having been interdicted at sea are ineligible for relief from exclusion, including withholding of deportation and asylum, subject to a "credible fear of persecution" exception.

Because the new section 212(a)(6)(C)(iii) subsumes much of what is now covered by section 212(a)(6)(C)(i), it may effectively eliminate the waivers for exclusion for fraud provided by the INA. Section 212(d)(3) provides for a general waiver of excludability for nonimmigrants. In addition, section 212(i) of the INA currently provides for a waiver for exclusion for fraud for an immigrant who is the spouse, parent, or son or daughter of a U.S. citizen or of a lawful permanent resident, or if the fraud occurred at least 10 years before an application for a visa or entry. We believe that the availability of these discretionary waivers is consistent with a fair and humanitarian immigration policy.

Similarly, the restriction on withholding of deportation in section 132 for an alien who is inadmissible under section 212(a)(6)(C)(iii), as written, would apply irrespective of whether special exclusion is invoked. We do not support this provision, and we recommend limiting the restriction to those in special exclusion proceedings.

As a technical matter, we urge the Senate to replace the term "special inquiry officer" with "immigration judge" and to adopt the following definition for "immigration judge": an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including proceedings under section 240. An Immigration Judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe.

Sec. 133 increases the maximum criminal sentences for peonage, slavery, involuntary servitude, and transportation of

slaves from the United States from five years to ten years. This section also directs the Sentencing Commission to examine any disparities in the Sentencing Guidelines between the sentences for the above-mentioned crimes and the sentences for kidnapping and alien smuggling. To the extent disparities exist, the Sentencing Commission is directed to make appropriate adjustments in the guidelines considering the heinous nature of the listed offenses. We support this provision.

Sec. 134 adds the provision of false documentation to the list of the types of material support to a terrorist organization which under section 212(a)(3)(B)(iii)(III) of the INA will render an alien excludable. We support this provision.

Part 4--EXCLUSION AND DEPORTATION

Removals of criminal aliens have increased dramatically during this Administration. The number of criminal aliens removed from the United States jumped by 12% in 1993, and by 17.6% in 1994 over 1992 levels. More than four times as many criminal aliens were removed in 1994 than in 1988. In FY 1995, we removed 31,787 criminal aliens and 17,593 non-criminal aliens. We will increase the number of criminal alien removals to 37,200 in FY 1996 by enhancing and deploying extensive new resources for detention and deportation. We will increase the number of non-criminal alien removals to 24,800 in FY 1996 through a major emphasis on locating and removing absconders, among other measures. Other INS initiatives, such as the National Alien Transportation Program, provide for the detention and removal of more criminal aliens. INS technology enhancements have also played a critical role in removing criminal aliens, as have INS alternatives to formal deportation, such as stipulated, judicial, and administrative deportation.

Sec. 141 provides that the Attorney General may, without referral to an immigration judge or after such a referral, order the exclusion and deportation of an alien who appears to be excludable when (1) the alien has entered the U.S. without having been inspected and admitted by an immigration officer, unless such alien has been physically present in the U.S. for a continuous period of two years since entry without inspection, or the alien is excludable under section 212(a)(6)(C)(iii); (2) when the alien is brought or has arrived on board a smuggling vessel; or (3) the Attorney General determines that the numbers or circumstances of aliens en route to or arriving in the U.S. present an extraordinary migration situation. The judgement whether an extraordinary migration situation exists or whether to invoke these provisions is committed to the sole and exclusive discretion of the Attorney General. The Attorney General may invoke the provisions of this section during an extraordinary migration situation for a period not to exceed 90 days, unless within such 90 day period or extension thereof, the Attorney

General determines, after consultation with the House of Representatives and Senate Committees on the Judiciary, that an extraordinary migration situation continues to warrant such procedures remaining in place for an additional 90-day period.

A person will not be subject to expedited exclusion if he or she claims asylum and establishes a credible fear of persecution in his or her country of nationality. A special exclusion order is subject to administrative review only if an alien claims under oath to have been and appears to have been lawfully admitted for permanent residence.

We are pleased that this section has moved significantly closer to the Administration's provision. We strongly support making the applicability of the special exclusion procedures discretionary and explicitly authorizing the special exclusion of aliens who are intercepted on the high seas, within the territorial sea or internal waters. The Coast Guard frequently interdicts illegal aliens on the high seas and is required to keep the aliens at sea while arrangements are made for their repatriation or for a third country to accept the aliens so they may be resettled. This is neither resource efficient nor cost effective. Two interdiction cases in 1995 consumed a total of 105 cutter days and 548 aircraft hours in order to deliver the interdicted migrants to El Salvador and Mexico. Using standard rates, these cases cost in excess of \$7 million. Clearly, there is a need for special exclusion authority. Rapid delivery of the aliens to the United States for special exclusion would allow the Coast Guard vessels to promptly return to their primary law enforcement mission, including drug interdiction and search and rescue.

However, we have concerns about making special exclusion applicable to aliens who entered without inspection. For those aliens who have been here for lengthy periods after having entered without inspection, the determination of when they entered will be difficult and could lead to protracted litigation. If such authority is to be used at all, we would expect to invoke it only in extraordinary migration situations and only in circumstances that would support a strong presumption that the person's entrance without inspection was quite recent.

As we stated in section 132, we urge the Senate to replace the term "special inquiry officer" with "immigration judge" and to adopt our definition of "immigration judge".

Sec. 142 streamlines judicial review of Orders of Exclusion or Deportation. Many of the provisions are similar to those of S. 754.

This section provides for judicial review of final administrative orders of both deportation and exclusion through a

petition for review, filed in the judicial circuit in which the immigration judge completed the proceedings. Under current law, an order of exclusion is appealable to a district court and then appealable to the court of appeals. This provision is similar to the Administration's proposal.

This section requires that a petition for review be filed within 30 days, except that an aggravated felon must file within 15 days. We recommend that the uniform filing period of thirty (30) days contained in S. 754 be adopted, to avoid an additional issue for the courts which, if litigated, would take far more than fifteen days to resolve.

The filing of a petition no longer stays deportation. The alien must apply to the court for a stay. We support this provision.

This section would eliminate judicial review for virtually all aliens who are found excludable or deportable on the basis of a criminal conviction. This restriction applies to review of applications for relief as well as the underlying determination of excludability or deportability. We oppose this provision as being overly broad in its restrictions on judicial review. As written, it would not permit even challenges based on mistaken identity or constitutional issues. While we favor limitations on judicial review for criminal aliens, we urge the Senate to consider retaining the very limited scope of review that had been proposed in subsection 106(e) as reported by the Subcommittee on Immigration.

Under this bill, there is no review of discretionary denials under sections 212(c), 212(i), 244(a) and (d), and 245. We do not support this provision. We do not believe that appeals to the courts of such denials have unduly burdened the courts or unduly delayed deportations.

Denials of asylum are "conclusive unless manifestly contrary to law and an abuse of discretion." S. 754 provides that all the administrative findings of fact supporting an order of exclusion or deportation are conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary. We recommend that the language of S. 754 be substituted as consistent with current decisional law and more workable.

As in current law, a court may review a final order only if the alien has exhausted all administrative remedies. This section adds a requirement that no other court may decide an issue, unless the petition presents grounds that could not have been presented previously or the remedy provided was inadequate or ineffective to test the validity of the order. S. 754 also includes this provision.

Under section 106(f) there is no judicial review of an individual order of special exclusion or of any other challenge relating to the special exclusion provisions. The only authorized review is through a habeas corpus proceeding, limited to determinations of alienage, whether the petitioner was ordered specially excluded, and whether the petitioner can prove by a preponderance of the evidence that he is an alien admitted for permanent residence and is entitled to further inquiry. In such cases the court may order no relief other than a hearing under section 236 or a determination in accordance with sections 235(a) or 273(d). There shall be no review of whether the alien was actually excludable or entitled to relief. S. 754 contains similar provisions. However, S. 754 does not make special exclusion applicable to all the same cases as S. 1394 does, as noted in our comments on section 141 above.

Under new section 106(g), no collateral attack may be brought by an alien subject to penalties for improper entry or reentry. S. 754 contains a similar provision, at section 106(d).

This section provides that the automatic stay of deportation in section 242B of the INA for an alien who files a motion to reopen an in absentia order of deportation is effective only until the immigration judge's decision. A stay may be issued upon a showing of individually compelling circumstances. We support this provision.

Sec. 143 subjects an alien who willfully fails to depart on time pursuant to a final order of exclusion and deportation or a final order of deportation to a \$500 per day penalty. This section also provides that an alien who remains in the United States for more than sixty days beyond the period of validity of a nonimmigrant visa shall be ineligible for a nonimmigrant or immigrant visa for three years (five years in the case of an alien who failed to appear or remain during the deportation proceeding). There is a good cause exception.

The penalty provision is similar to the Administration's proposal, and we support it. We do not object to the limitation on nonimmigrant visa eligibility for overstayers; however, we are concerned that the immigrant visa restriction would result in a hardship for U.S. citizenship and permanent resident relations.

Sec. 144 permits deportation proceedings to be conducted by video conference or telephone. The alien must consent if it is to be a full contested evidentiary hearing on the merits.

This provision is identical to the Administration's proposal, and we support it.

Sec. 145 clarifies the authority of immigration judges to issue subpoenas in proceedings under sections 236 (exclusion) and

242 (deportation) of the INA.

This provision is identical to the Administration's proposal, and we support it.

Sec. 146 amends section 242B of the Act to eliminate the requirement that an order to show cause be issued in Spanish to every alien.

We believe that this section would create substantial litigation on the adequacy and accuracy of the notice in English only. A written notice in a language the alien understands, which is most often Spanish, protects the INS from unnecessary delays of enforcement actions based upon whether sufficient notice was provided as well as informs the alien of the nature of the action. In order to avoid unnecessary and costly due process litigation, it would be best not to amend this provision of the INA.

This section would shorten the time that an alien who is detained is given to obtain counsel before a hearing is scheduled from 14 days to 3 after service of an order to show cause. The section also provides that the alien's right to obtain counsel must not unreasonably delay proceedings.

We believe that the current 14-day period gives the alien a fair and appropriate opportunity to obtain counsel. The INS' experience has been that deportation proceedings move more quickly if an alien does have counsel. In addition, immigration judges normally provide at least one continuance to allow an alien a reasonable opportunity to obtain counsel. S. 1664's proposed shortening of the time period in which aliens may obtain counsel may not achieve the intended result of speeding up deportation proceedings. Like the notice language requirement, the 14 day period is not burdensome to INS and its repeal may unintentionally cause delay in deportations or encourage frivolous appeals. We do not support this provision.

Sec. 147 directs the withholding of nonimmigrant visas to nationals of countries that refuse or unduly delay acceptance of their nationals for deportation. This requirement may be waived if it is determined to be in the national interest or necessary to comply with a treaty or international agreement.

S. 754 contains a similar provision, and we support it.

Sec. 148 authorizes appropriation of \$10,000,000 in a special "no-year" fund for detaining and removing aliens who are subject to final orders of deportation.

We support this provision.

Sec. 149 authorizes appropriations for the Attorney General to conduct a pilot program or programs to study methods for increasing the efficiency of deportation and exclusion proceedings against detained aliens by increasing the availability of pro bono counseling and representation. The Attorney General may use funds to award grants to not-for-profit organizations assisting aliens.

This provision is identical to the Administration's proposal, and we support it.

Sec. 150 limits relief under section 212(c) of the INA to a person who has been lawfully admitted to the U.S. for at least 7 years, has been a legal permanent resident for at least 5 years, and is returning to such residence after having temporarily proceeded abroad not under an order of deportation. The 5-year and 7-year periods would end upon initiation of exclusion proceedings. An alien who has been convicted of one or more aggravated felonies and has been sentenced for such felonies to a term or terms of imprisonment totalling, in the aggregate, at least 5 years is ineligible for 212(c) relief and cancellation of deportation. Also, relief under INA section 212(c) will be available only to persons in exclusion proceedings, and persons in deportation proceedings will need to apply for cancellation of deportation.

Cancellation of deportation is available to an alien who has been a lawful permanent resident for at least 5 years who has resided in the U.S. continuously for 7 years after being lawfully admitted and has not been convicted of an aggravated felony or felonies for which the alien has been sentenced to a term or terms of imprisonment totalling, in the aggregate, at least 5 years.

The cancellation of deportation provisions basically replace both the 212(c) remedy for legal permanent resident aliens who have not departed the United States, and the suspension remedy for aliens who have been here unlawfully.

Section 244(a)(1)(C) of the INA, as amended by section 150, provides for suspension of deportation for battered spouses of U.S. citizens or lawful permanent residents, who have been physically present for three years. The purpose of this provision was to avoid the situation in which a battered alien spouse is forced to remain in a dangerous relationship in hopes of gaining legal status through the citizen or permanent resident spouse. Under the amendments made by section 150, the time period for calculating physical presence in the United States is cut off at the time of service of an order to show cause to place the alien in deportation proceedings. If this "cutoff" is applied to the battered spouse provision, it may have the anomalous result of forcing a battered spouse to remain in a

dangerous situation or to avoid seeking help until the three-year period has passed. Because of the special circumstances involving these applications, we recommend that for battered spouses of U.S. citizens or lawful permanent residents the physical presence period not be deemed to end upon service of the order to show cause. Also, current subsection 244(g), relating to evidence submitted by abused of battered spouses, has not been included and should be restored.

This section does not permit appeal from a denial of a request for an order of voluntary departure. S. 754 allows such an appeal provided that no court shall have jurisdiction over an appeal regarding the length of voluntary departure where the alien has been granted voluntary departure for 30 days or more. We oppose eliminating judicial review as an unwarranted departure from longstanding procedural rights. We recommend that the Senate adopt the S. 754 provision.

Sec. 151 defines a stowaway as any alien who obtains transportation without consent or through concealment or evasion. A passenger who boards with a ticket is not to be considered a stowaway. This section also clarifies that a stowaway is subject to immediate exclusion and deportation; however, a stowaway may apply for asylum or withholding of deportation. The carrier will be required to detain a stowaway until he or she has been inspected by an immigration officer and to pay for any detention costs incurred by the Attorney General should the alien be taken into custody. It raises the fine for failure to remove a stowaway from \$3,000 to \$5,000 per stowaway.

This provision is similar to the Administration's proposal, and we support it.

Sec. 152 directs the Attorney General, after consultation with the Secretary of State, to establish a pilot program for up to two years for deterring multiple unauthorized entries. The program may include interior repatriation, third country repatriation and other disincentives for multiple unlawful entries into the U.S. This provision also requires the Attorney General, together with the Secretary of State, to submit a report to the Senate and House Committees on the Judiciary on the operation of the pilot program and whether the pilot program or any part thereof should be extended or made permanent.

This is an area of enforcement in which the Administration already has made progress. This provision is similar to the Administration's proposal, and we support it.

Sec. 153 authorizes the Attorney General and the Secretary of Defense to establish a pilot program for up to 2 years to determine the feasibility of the use of closed military bases as detention centers for INS. Within 35 months after enactment,

they must submit a feasibility report to the House and Senate Committees on the Judiciary, and the House and Senate Committees on Armed Service.

The use of closed military bases would make additional detention space available to INS. For years, INS has been forced to release many aliens who are awaiting proceedings due to lack of detention space. We have worked with the Department of Defense in conjunction with the Bureau of Prisons and other agencies to explore the use of closed bases. Conversion costs and staffing have been the most difficult problems to resolve. Accordingly, this provision does not address the underlying obstacles that would permit such a pilot to be conducted.

Sec. 154 would amend section 212 of the INA to exclude aliens seeking permanent residency who have not received immunizations against vaccine-preventable diseases.

While reducing the number of unvaccinated persons in the United States is a laudable goal, the mechanism outlined in this section would present a number of implementation and other difficulties that may actually jeopardize the public health in the United States.

In many countries, the vaccines specified under this section might not be licensed. Even if these vaccines are licensed, they may not be readily available or the costs of these vaccines may be prohibitive for some prospective immigrants. In addition, an immigrant's visa could be delayed as much as 18 months in order to allow time to receive all recommended doses of the specified vaccines, over the interval recommended by the Advisory Committee Immunization Practices (ACIP).

The ACIP-recommended vaccine schedule is complex and lengthy and subject to regular revisions. It would be difficult and labor intensive for Department of State and INS officials to check individual immunizations records against ACIP schedule and to ensure that U.S. government officials are using the most up-to-date revisions. Neither the Department of State nor the INS have the resources to verify the authenticity of most vaccination certificates.

The requirements outlined in section 154 could subject immigrants to serious delays, considerable expense, and the prospect of having to choose between emigrating as a family or splitting up the family to allow, for example, an adult to emigrate to begin employment in the United States while other family members stay behind to complete the immunization requirements. The result might be that the immigrant will choose to secure false immunization records rather than attempt to comply with the requirements imposed by section 154. If that were to happen, the immigrant, once admitted to the U.S., would

be thought to have been vaccinated. Yet, the immigrant could become infected and could transmit a vaccine-preventable disease to others in the U.S. To further confound the matter, the unimmunized person may be unwilling to admit he was not vaccinated, fearing that he could become subject to deportation. We also note that because of the lack of centralized immunization records in most countries, it would be difficult, if not impossible, for the INS and the State Department officials to detect fraudulent vaccination certificates.

Under current state laws, children in the U.S. are required to comply with immunization requirements before they enter school. Therefore, the current public health system would "capture" school-aged immigrant children almost immediately upon entry into the U.S. Even without the proposed provision in the immigration bill, these children would be vaccinated once they came to the U.S. In addition, in many states, licensed day care establishments also have immunization requirements.

We suggest modifying this provision and making immunization part of the medical examination process now covered by section 134 of the INA. In working with Senate staff, we understand that an amendment may be offered on the Senate floor that addresses our concerns regarding this section, which we support.

Sec. 155 requires immigrants and nonimmigrants, except physicians, who seek to work in the U.S. to obtain a qualifications certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services. Such certificate must verify that (1) the individual's education, training, license, and experience meet statutory and regulatory requirements for admission to the U.S. under the classification specified, are comparable to that required for U.S. workers in the health care occupation, and any foreign license submitted is authentic and unencumbered; (2) the individual has English language proficiency as shown by passing a nationally recognized standardized test of speaking and writing ability; and (3) if a majority of states licensing the profession recognize a test predicting success on the profession's licensing and certification examination, the alien has passed such a test.

The imposition of the credentialing requirement may not be in conformity with certain U.S. international obligations. We recommend that the Senate adopt an amendment that would permit the Administration to address these concerns.

Sec. 156 increases the bar to reentry for aliens previously removed under an exclusion order from one year to five years and to twenty years for any second or subsequent removal. This section also makes technical changes to section 276 of the INA.

We support this section.

Sec. 157 prohibits consulate shopping for visa overstayers by requiring that an alien who has previously overstayed a visa obtain a visa for admission to the United States at a consulate in the alien's country of nationality. There is an exception where no consulate exists in that country or the Secretary of State finds the existence of extraordinary circumstances. We do not object to this provision.

Sec. 158 provides for the exclusion of an alien who has indicated an intention to cause death or serious bodily harm, incited terrorism, engaged in targeted racial vilification, or has threatened the overthrow of the United States or the death or serious bodily harm to a U.S. citizen or Government official. We oppose inclusion of this section in S. 1664 since expansion of the exclusion grounds for someone involved in terrorism is already adequately addressed in the pending antiterrorism legislation. We also note that expanding exclusion to cover vague, difficult to define concepts such as racial vilification is not necessary.

Sec. 159 permits withholding of deportation to a country where the alien's life or freedom would be threatened if the Attorney General determines that it would be necessary to ensure compliance with the United Nations 1967 Refugee Protocol. We strongly support this provision.

PART 5--CRIMINAL ALIENS

The Administration has made removals of criminal aliens a priority and achieved dramatic success. The number of criminal aliens removed from the U.S. jumped by 12% in 1993, and by 17.6% in 1994 over 1992 levels. More than four times as many criminal aliens were removed in 1994 than in 1988. We surpassed our FY 1995 goal of 28,500 criminal alien removals and set a new record of 31,654 non-criminal alien removals. Even more criminal aliens will be deported next year as we further streamline deportation procedures, expand the Institutional Hearing Program, and enhance the international prisoner transfer treaty program. In addition, other INS initiatives, such as the National Alien Transportation Program, provide for the detention and removal of more criminal aliens. INS technology enhancements are playing a critical role in removing criminal aliens, as are INS alternatives to formal deportation, such as stipulated, judicial, and administrative deportation.

Sec. 161 amends the definition of aggravated felony contained in 8 U.S.C. Sec. 1101(a)(43) to include: (1) an offense relating to laundering of monetary instruments or relating to engaging in monetary transactions in property derived from specific unlawful activity is an aggravated felony if the amount

of funds exceeds \$10,000 (down from \$100,000); (2) a crime of violence, a theft offense (including receipt of stolen property) or burglary offense, or an offense relating to trafficking of fraudulent documents, for which the term of imprisonment imposed is at least one year (down from 5 years imposed); (3) a RICO offense, as well as offenses described in 18 U.S.C. 1084 or 1955, for which a term of imprisonment of one year or more may be imposed (down from 5 years); (4) offenses relating to transportation for the purpose of prostitution for commercial advantage; (5) a violation of Section 601 of the National Security Act relating to protecting the identity of undercover agents; (6) an offense that involves fraud or deceit in which the loss to the victim exceeds \$10,000 (down from \$200,000) or involves tax evasion in which the revenue loss to the Government exceeds \$10,000 (down from \$200,000); (7) alien smuggling without regard to commercial advantage except for a first offense in which the alien has affirmatively shown that he or she committed the offense for the purpose of aiding only the alien's spouse, child or parent; (8) any violation of 18 U.S.C. 1546(a) (relating to document fraud) except for a first offense in which the alien has affirmatively shown that he or she committed the offense for the purpose of aiding only the alien's spouse, child or parent; (9A) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered for which the term of imprisonment imposed is one year or more; (9B) any offense relating to perjury or subornation of perjury for which the term of imprisonment imposed is one year or more; (10) any offense relating to a defendant's failure to appear for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years (down from 15 years) or more.

Regarding section 161(a)(8) we believe that the "commercial advantage" language found in section 406 of S. 754 provides a more flexible approach for compelling cases than the narrower approach in section 161(a)(8). We urge the Committee to adopt the S. 754 "commercial advantage" language. We also recommend that the reference to 8 U.S.C. 1101(a)(3)(O) in section 161(a)(2) be deleted, as it conflicts with the action taken in section 161(a)(8).

We oppose expanding the definition of aggravated felon to include persons convicted of crimes for which the term of imprisonment imposed is one year or more. The grave consequences of being considered an aggravated felon include being ineligible for withholding of deportation and asylum, and being subject to mandatory detention and expedited deportation proceedings, and should be imposed only on serious criminals. Current law gives immigration judges the discretion to weigh the seriousness of the crime against the positive equities of each individual case and to grant relief only where it is appropriate. Immigration judges should be allowed to retain this discretion. The expanded

definition would also impose a burden on the operations of the INS which is required to detain all aggravated felons, except for certain lawful permanent residents. Wide imposition of aggravated felon consequences would also hinder law enforcement's ability to enter into cooperation agreements with aggravated felons.

This section also prohibits the Attorney General from withholding the deportation of aliens whose life or freedom would be threatened in the country of return if they have been convicted of one or more of the following: an aggravated felony or an attempt or conspiracy to commit an aggravated felony for which the term of imprisonment imposed or served is or was at least five years; a crime of violence or attempt or conspiracy to commit such a crime of violence for which the term of imprisonment imposed or served is or was at least three years; or any of the following aggravated felonies or attempt to conspiracy to commit such offense: murder, illicit drug trafficking, illicit firearms trafficking, explosive materials offenses, demand for ransom, child pornography, racketeering, national security offense, slavery. As discussed above, section 159 permits withholding of deportation where the Attorney General determines, in the Attorney General's unreviewable discretion, that it would be necessary to ensure compliance with the United Nations 1967 Refugee Protocol. We support this provision.

However, we continue to urge the Senate to adopt the provisions in S. 754 which provide that an alien is ineligible for withholding of deportation based on an aggravated felony conviction when the sentence imposed is 5 years or more. This provision would provide a clear basis for distinguishing particularly serious crimes from less serious crimes; would facilitate application of the definition; and would make the law truly effective in removing aggravated felons.

Sec. 162 makes an alien convicted of an aggravated felony ineligible for suspension of deportation and adjustment of status.

We support this provision.

Sec. 163 provides that the expeditious deportation of aggravated felons creates no enforceable right for aggravated felons.

This provision is identical to section 604 of S. 754, and we support it.

Sec. 164 amends section 242 of the INA to require the Attorney General to take into custody and not release aliens convicted to virtually any offense that renders them deportable. The Attorney General must remove such aliens within thirty days

of release from criminal incarceration or a final order of deportation, whichever is later. The custody and removal requirements may only be waived in the case of an alien who is cooperating with law enforcement authorities or for purposes of national security. This section also amends section 242(f) of the INA to provide a 15-year sentence, in addition to the punishment provided for any other crime, for any alien who unlawfully reenters the United States after having been previously deported for a criminal conviction.

We strongly oppose the mandatory detention requirements of this section. They would apply irrespective of whether the alien is a permanent resident and notwithstanding any relief from deportation for which the alien may be eligible. There is no provision for release where travel documents can not be secured. Given the limitations on habeas review of custody status, the scope of this provision raises serious constitutional concerns as it relates to permanent resident aliens. Operationally, this provision will have a serious adverse impact on the availability of space for the detention of both criminal and non-criminal aliens. Under current law, the Attorney General must detain all aggravated felons as a general rule. She is, however, vested with discretion to release a lawfully admitted alien who is likely to appear for future proceedings and who presents no danger to the community. Accordingly, in our view current law permits the appropriate allocation of resources to our objective of removing criminals and other deportable aliens. We do support the provision that affords discretion to release a cooperating witness.

The amendment to 242(f) to include penalties for reentry of criminal aliens would appear to be inconsistent with the provisions of existing section 276 which provides for a 20-year sentence for the unlawful reentry of an alien who was previously deported as an aggravated felon. We do not support this provision.

Sec. 165 amends section 242A(d) of the INA to provide that a U.S. District Court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien (A) whose criminal conviction causes the alien to be conclusively presumed to be deportable as an aggravated felon; (B) who has at any time been convicted of a violation of section 276(a) or (b); (C) who has at any time been convicted of a violation of section 275; or (D) who is otherwise deportable pursuant to sections 241(a) (1) (A) through 241(a) (5).

It provides that a U.S. Magistrate shall have jurisdiction to enter a judicial order of deportation at the time of sentencing where the alien has been convicted of a misdemeanor offense and the alien is deportable under this Act. The U.S. Attorney, with the concurrence of the Commissioner, may enter

into a plea agreement which calls for the alien, who is deportable under this Act, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of deportation as a condition of the plea agreement or as a condition of probation or supervised release, or both.

The existing judicial deportation statute authorizes a U.S. District Court to order deportation at the time of sentencing if the conviction renders an alien deportable as an aggravated felon or for certain crimes involving moral turpitude. This provision, however, would allow U.S. District Judges and U.S. Magistrates (in misdemeanor cases) to order deportation on any grounds of deportability.

We believe that in order to maintain a coherent national immigration policy, close questions relating to alienage, deportability, and particularly relief from deportation should be initially decided in the context of administrative proceedings, followed by judicial review, rather than in criminal cases. Therefore, in view of the DOJ responsibility to administer and enforce immigration laws, we believe that judicial deportation authority should be limited to situations in which the alien is before the court for sentencing for an aggravated felony or a serious crime involving moral turpitude. The phrase "conclusively presumed to be," should be deleted from the proposed amendment to section 242A(d)(1)(A). It is confusing and adds nothing to an otherwise clear statement that an alien who has been convicted of an aggravated felony is deportable.

Section 165 also provides that a State sentencing court is authorized to enter a finding of deportability based on certain criminal convictions. Such a finding would be binding on any agency or court. This provision is unnecessary and will result in needless litigation in State trial and appellate courts over often complicated issues of federal law, including issues of citizenship and nationality. State court convictions currently provide conclusive evidence of deportability. Their validity cannot be challenged in immigration court. Accordingly, existing law affords appropriate finality to State court criminal convictions for deportation purposes.

We do not support this provision, and we urge the Senate to strike it from the bill.

Sec. 166 permits the entry of orders of exclusion and deportation stipulated to by the alien and the INS and provides that stipulated orders are conclusive. Such orders may be entered without a personal appearance by the alien before the special inquiry officer. DOJ shall provide that an alien who stipulates to an exclusion or deportation order waives all appeal rights.

This provision is identical to the Administration's proposal, and we support it. However, as we stated in section 133 and 141, we urge the Senate to replace the term "special inquiry officer" with "immigration judge" and to adopt our definition of "immigration judge".

Sec. 167 permits a U.S. District Court or Magistrate to order deportation pursuant to a stipulation entered into by the defendant and the U.S. In the absence of a stipulation, the Court or Magistrate may order deportation as a condition of probation, if, after notice and hearing pursuant to section 242A(c), the Attorney General demonstrates by clear and convincing evidence that the alien is deportable.

We do not support this provision because we believe it is unnecessary. Under 18 U.S.C. 3583(d), the District Court presently has the authority to order deportation as a condition of supervised release. Under that provision, if the District Court issues such an order, the alien is referred to INS for deportation. Section 302(d) of the Administration proposal would amend that section to provide that such an order be made "pursuant to the procedures of the Immigration and Nationality Act." This amendment would address an issue in litigation in which District Court judges have interpreted this section to authorize them to order deportation irrespective of the provisions of the INA. We urge the Committee to add section 302(d) in place of this provision.

Sec. 168 requires the Attorney General to submit within one year of the date of enactment and annually thereafter a report to the Committees on the Judiciary of the House and Senate on the number of illegal aliens incarcerated in state and federal prisons stating the number incarcerated for each type of offense; the number of illegal aliens convicted for felonies in any federal or state court but not sentenced to incarceration in the previous year, by type of offense; DOJ programs and plans underway to ensure the prompt removal from the U.S. of criminal aliens subject to exclusion or deportation; and methods for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the U.S. and removed from the U.S.

We are concerned that paragraph (2) requires the Attorney General to report on the number of aliens convicted but not sentenced to incarceration. Without providing any resources, this provision would require significant effort on the part of state prosecutors and courts which are not under the administrative jurisdiction of the DOJ. We do not support this provision.

Sec. 169 authorizes INS to use appropriated funds to lease space, establish, acquire, or operate business entities for

undercover operations, proprietary corporations or businesses to facilitate undercover immigration-related criminal investigations. INS may deposit funds generated by these operations or use them to offset operational expenses. Authority may be exercised only upon written certification of the INS Commissioner in consultation with Deputy Attorney General.

This provision is identical to the Administration's proposal, and we support it.

Sec. 170 advises the President to begin to negotiate or renegotiate, no later than ninety days after the date of enactment, bilateral prisoner transfer treaties providing for the incarceration in that country of any individual who is a national of that country and is an alien who has been convicted of a criminal offense under federal or state law and who is not in lawful immigration status or is subject to deportation, for the duration of the prison term to which the individual was sentenced. Any such agreement may provide for the release of such individual pursuant to parole procedures of that country. The Secretary should give priority to concluding an agreement with any country for which the President determines that the number of such individuals who are nationals of that country in the United States represents a significant percentage of all such individuals in the United States.

This section also provides that it is the Sense of Congress that no new treaty should permit the prisoner to refuse the transfer. It also provides that, except as required by treaty, the transfer of an alien shall not require the alien's consent. The focus of such negotiations shall be to expedite the transfer of aliens unlawfully in the United States who are about to be incarcerated in U.S. prisons, to ensure that a transferred prisoner serves the balance of the sentence imposed, to eliminate the requirement that the alien consent to the transfer, and to allow the U.S. to maintain the original sentence in effect so that a transferred prisoner who returns to the United States may be returned to custody for the balance of the sentence. The section authorizes the payment of compensation to countries where the conditions and length of custody can be verified. The section requires an annual report by the Attorney General on the effectiveness of prisoner transfer treaties in effect.

We agree that some level of nonconsensual prisoner transfer should be implemented; however, the current proposal is problematic in several areas. A number of concerns must be resolved prior to implementing such a regime.

Section 170(a) provides that transferred aliens will be incarcerated for the duration of their sentences; however, this conflicts with the balance of that section which further provides for the release of such transferred persons pursuant to the

parole procedures of that country. Section (b)(1) seeks to clarify the focus of 170(a) -- to expedite the transfer of affected aliens and ensure that the balance of their sentences are served, but it appears to contradict (a). This provision, however, may infringe upon the sovereignty of the parties in administering the transferred sentence thus raising concerns related to international treaty obligations and relations with our treaty partners.

The State Department has noted that involuntary transfers of prisoners whose crimes were not particularly serious or who do not present a danger could run afoul of our obligations under the 1967 Protocol relating to the Status of Refugees not to return a refugee to a place of persecution. Further, the U.S. is severely limited in its ability to monitor activities in foreign countries' prisons, most importantly with respect to potential human rights abuses which might be directed against the transferred prisoners. The U.S. might bear some legal responsibility in such human rights abuse cases. Finally, such agreements would almost certainly have to contain a reciprocal provision for the involuntary transfer of U.S. citizens imprisoned in foreign countries back to the U.S. Non-consensual transfers of U.S. citizens from foreign prisons back to the U.S. may well raise issues of a constitutional nature.

In 1994, we transferred 424 prisoners abroad, including 394 to Mexico. The Mexican transfers alone resulted in a savings of over \$7.5 million for the DOJ. As of December 31, 1995, we transferred 438 prisoners abroad, including 266 prisoners to Mexico. In May 1995, the United States and Mexico had committed to returning 400 Mexican nationals to Mexico pursuant to the prisoner transfer program, by the end of December 1995. By December 31, 1995, the DOJ had approved over 506 Mexican prisoner transfer applications. Due to the large number of prisoners scheduled to transfer to fulfill our commitment of 400, the December transfer was to be completed in January 1996; however, due to the government furlough, the second phase was completed in February.

Limited prison capacity in other countries seriously inhibits our ability to increase significantly the number of prisoner transfers. In our view, the premature release of transferred prisoners due to a lack of prison space would be unacceptable and inconsistent with the purposes of the transfer treaty.

Sec. 170A requires the Secretary of State and the Attorney General to submit to Congress not later than 180 days after this Act's enactment a report that describes the use and effectiveness of the prisoner transfer treaties with the three countries with the greatest number of their nationals incarcerated in the U.S. in removing from the U.S. such incarcerated nationals.

As a general matter, the Administration discourages the imposition of reporting requirements, which necessarily divert a significant commitment of resources away from prisoner transfers, particularly when the resources of the DOJ's Office of Enforcement Operations (OEO), which has responsibility for the International Prisoner Transfer Program, are already limited. Moreover, much of the information requested in the study would have to be collected by the states which have similar resource concerns. Previous reviews of the prisoner transfer program and requests for information from the states have been met with mixed responses.

When OEO assumed responsibility for the International Prisoner Transfer Program, only 34 states had implementing legislation. As a result of our outreach efforts, four more states enacted implementing legislation. Many of the states without the legislation expressed no interest in prisoner transfer because of the limited number of foreign nationals in their systems. Other states that expressed an interest have other major priorities, so state legislation to implement prisoner transfer has been delayed. Further, according to the American Correctional Association, which is comprised of correctional specialists from the various states, very few states have adequate prisoner tracking systems. Indeed, most do not include a question relating to nationality or citizenship in their intake process. Consequently, the ability to gather the data contemplated by the Congress would be haphazard, at best, because many states do not maintain such records. The DOJ is working to help states collect such data. DOJ's Office of Justice Programs has initiated a process to identify foreign nationals incarcerated in state and local institutions, but this system is only partially on-line and is not expected to be completed in time for the report mandated by this provision.

Sec. 170B modifies the filing requirement for individuals who keep, maintain, control, support, or harbor in any house or place an alien for the purpose of prostitution. This provision is identical to the Administration's proposal, and we support it.

Sec. 170C makes a technical correction to the Violent Crime Control Act of 1994. It also clarifies that the INS may place an alien in administrative deportation proceedings if a Federal district court judge has declined the Government's petition to issue a judicial deportation order.

This provision is identical to the Administration's proposal, and we support it.

Sec. 170D authorizes the Attorney General to conduct a demonstration project for six months in Anaheim, California to study the feasibility of identifying illegal aliens among those

persons detained in the local prison awaiting arraignment. This provision is similar to a successful Administration project in the Los Angeles County Jail, and we support the extension of our work to Anaheim.

PART 6--MISCELLANEOUS

Sec. 171 permits reimbursement of other Federal agencies, as well as the States, out of the immigration emergency fund. Reimbursements may be made to other countries for repatriation expenses without the requirement that the President declare an immigration emergency. It also permits the control and seizure of vessels when the Attorney General determines that urgent circumstances exist due to a mass migration of aliens. This section also authorizes the Attorney General to designate local enforcement officers to enforce the immigration laws when the Attorney General determines that an actual or imminent mass migration of aliens presents urgent circumstances.

This provision is identical to the Administration's proposal, and we support it.

Sec. 172 amends section 202(a)(1) of the INA, which provides that immigrant visas must be issued without discrimination because of race, sex, nationality, place of birth, or place of residence, to state that nothing in this subsection limits the authority of the Secretary of State to determine procedures for processing visas. This section would reverse a recent judicial decision which interpreted the existing language to require the Secretary of State to process visas in a specific location.

This provision is identical to the Administration's proposal, and we support it.

Sec. 173 calls for a study to develop a plan for automated data collection at ports of entry. We support this provision.

Sec. 174 requires the Attorney General to develop not later than 2 years after the enactment of this Act an automated entry and exit control system that can identify lawfully admitted nonimmigrants who overstay their visas.

The Administration is generally supportive of this provision's concept, which would allow us to more systematically track nonimmigrant visa overstayers. We do not, however, believe that a two year statutory deadline is appropriate or feasible. INS is already reviewing new ways to identify overstayers, and it would be important to pilot test and evaluate some of these concepts before implementing a new automated entry and exit control system. We are prepared to brief Senate staff on the Administration's plans for strengthening enforcement against illegal immigration by visa overstayers.

Sec. 175 authorizes the Attorney General to provide information furnished under the Legalization and Special Agricultural Worker programs when such information is requested in writing by a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not related to a crime). It allows the Attorney General, in her discretion, to furnish the information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce. The criminal penalties for violation of these provisions is retained.

We agree that confidentiality provisions should be modified because it is very difficult to obtain crucial information contained in these files, such as fingerprints and photographs, when the alien becomes a subject of a criminal investigation. However, we support a waiver of the confidentiality provisions, along the lines of S. 735, the Antiterrorism Amendments Act of 1995, the bipartisan antiterrorism bill which the U.S. Senate passed in June of 1995, that is, only if a federal judge authorizes disclosure of information to be used for identification of an alien who has been killed or severely incapacitated or for criminal law enforcement purposes against an alien if the alleged criminal activity occurred after the legalization or SAW application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony.

Sec. 176 clarifies that the Attorney General is not required to rescind the lawful permanent resident status of a deportable alien separate and apart from the deportation proceeding under section 242 or 242A. This provision will allow INS to place a lawful permanent resident who has become deportable into deportation proceedings immediately.

This provision is identical to the Administration's proposal, and we support it.

Sec. 177 prohibits governmental entities from restricting availability of information related to the immigration status of an alien in the U.S.

We have a number of concerns with this provision as drafted. In some instances the provision could raise troubling privacy and due process issues. While information restrictions may have been a problem in the 1970s or 1980s, we know of no existing local or state government policies on information availability which burden the INS. We do not support this provision, but will work with Senate staff to explore appropriate alternatives.

Sec. 178 authorizes the Attorney General to accept, administer and utilize services of volunteers to assist in

administering programs relating to naturalization, adjudication at ports of entry, and removal of criminal aliens. Such volunteers may not administer or score tests and may not adjudicate.

This provision is similar to the Administration's proposal, and we support it.

Sec. 179 authorizes the Attorney General to acquire and utilize any federal equipment determined available for transfer to the DOJ by any other Federal agency upon request of the Attorney General in order to facilitate the detection, interdiction and reduction of illegal immigration.

We support this provision.

Sec. 180 denies any court jurisdiction of any cause or claim by or on behalf of any person asserting an interest under section 245A (regarding legalization applications) of the INA unless such person in fact filed a complete application and application fee to an authorized legalization officer of the INS but had the application and fee refused by that officer.

This provision would affect several major class action lawsuits that involve the legalization program where district courts have granted relief to aliens who did not timely file for legalization. We support this provision.

Sec. 181 prohibits any alien from adjusting his or her status under section 245(a) as an employment-based immigrant if he or she is not in a lawful nonimmigrant status and worked while unauthorized to work or has otherwise violated the terms of a nonimmigrant visa.

Section 245(c)(2) of the INA already provides that an alien "who ... continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States" may not apply for adjustment of status. Accordingly, we believe the proposed amendment does not represent a significant addition to current law and is unnecessary.

Sec. 182 requires the Attorney General to submit a report on the amount of detention space that would be required under several different detention policy assumptions. We do not object to this requirement.

Sec. 183 establishes levels of compensation for immigration judges. We support this provision and note, as a technical

matter, that the table of contents should be conformed to read "immigration judge" instead of "special inquiry officer."

Sec. 184 authorizes the Attorney General to enter into agreements with States and local governments for the purpose of authorizing State or local officers or employees to perform functions related to the arrest or detention of aliens in the United States. Such functions may be carried out at the expense of the State or local government and to the extent consistent with State and local law. The performance of any designated functions shall be subject to the direction and supervision of the Attorney General.

While a number of factors, including training and scope of control, must be considered in determining whether and where to exercise this authority, the authority will aid the mission of the INS, and we support it.

Sec. 185 would increase the number of alien cooperating witnesses who may be admitted as nonimmigrants from 100 to 200 for witnesses possessing information relating to criminal organizations and enterprises and from 25 to 50 for witnesses with information concerning terrorist organizations.

We support this provision. As a technical matter, the reference to section 101(a)(15)(5)(ii) should read "101(a)(15)(S)(ii)."

Subtitle B--Other Control Measures

Part 1--Parole Authority

Sec. 191 tightens parole authority by changing the acceptable reasons from "emergent reasons" and "reasons deemed strictly in the public interest" to "urgent humanitarian reasons or significant public benefit," and by requiring a case-by-case determination.

We oppose this provision as an inappropriate restriction on the Attorney General's parole authority. The case-by-case determination requirement would dangerously limit the Attorney General's ability to deal with emergency situations involving numerous aliens. Current law provides the Attorney General with appropriate, needed flexibility to respond to compelling immigration situations.

Sec. 192 reduces the world-wide level of family-sponsored immigrants in a fiscal year by the number of parolees who were paroled in the two previous fiscal years and who remained in the U.S. for more than a year.

We oppose this provision because it may have a significant

adverse effect on family reunification by creating longer waiting times for admission of relatives of U.S. citizens and legal permanent residents. Humanitarian parole and family-sponsored immigration advance two vital, but distinct, national interests. This section blurs the distinction between the two and hinders both. It also could affect our ability to carry out the Cuban Migration agreements.

Part 2--Asylum

Pursuant to a presidential directive to address asylum abuse, the DOJ dramatically restructured the asylum process in January 1994. In addition, the Administration secured and Congress provided the resources necessary to do the job in the Violent Crime Control and Law Enforcement Act of 1994 which more than doubled the authorized number of INS asylum officers from 150 to 325, and increased the number of Immigration Judges from 116 to 179. In FY 1996 we expect to have approximately 200 immigration judges. The new asylum process allows the INS to quickly identify and promptly grant valid claims, and to refer all other cases to immigration court for deportation proceedings; to grant work authorization only to applicants who are granted asylum or when an applicant's case is not adjudicated within 180 days; and to streamline procedures to help asylum officers keep current with incoming applications.

To date, these reforms have had tremendous positive results. New asylum claims filed with the INS dropped 57 percent. Asylum officers completed 126,000 cases in calendar year (CY) 1995 compared to 61,000 in CY 1994. Immigration Judges completed 40,000 asylum cases in CY 1995 compared to 17,000 in CY 1994--an increase of 135 percent. More than 98 percent of the new non-American Baptist Churches v. Thornburgh cases were completed by Immigration Judges within 180 days from the initial INS receipt of the asylum application. We have streamlined procedures without reducing the quality of our asylum decisions. INS has instituted quality assurance procedures to monitor the new system. Approval rates have not changed significantly.

In addition to restructuring the asylum process, the INS has stepped up its fraud investigation of preparers of spurious asylum claims. As noted earlier, investigations have resulted in indictments of preparers in Los Angeles, San Francisco, New York, and Arlington, VA. In addition, INS has requested additional funding in FY 1996 for detention and deportation of failed asylum seekers.

Sec. 193 precludes an alien who used any fraudulent document to enter the U.S. or destroyed his or her document en route to the U.S. from applying for asylum unless the alien had to present such document to depart from a country in which he or she had a credible fear of persecution and travelled directly from such

country to the U.S. The alien shall be referred to an asylum officer for interview to determine credible fear. If the asylum officer determines that the alien does not have a credible fear of persecution, the alien may be specially excluded and deported. The Attorney General shall provide for prompt supervisory review of the determination that the alien does not have a credible fear. If the asylum officer determines that the alien does have a credible fear of persecution, the alien shall be taken before an immigration judge for an exclusion hearing.

Pursuant to this section, "credible fear" means there is a substantial likelihood that the statements made by the alien in support of his or her claim are true, and there is a significant possibility in light of such statements and of country conditions, that the alien could establish eligibility as a refugee.

We do not support this provision. We believe that the provisions for special exclusion in S. 754 are sufficient to allow us to process efficiently the asylum applications of excludable aliens. Absent smuggling or an extraordinary migration situation, we can handle asylum applications for excludable aliens under our regular procedures.

Furthermore, the concept of "presentation" of fraudulent documents pursuant to "direct departure" from a country in which the alien has a credible fear of persecution is problematic. The "presentation" of such documents is not necessary for departure, and transit countries may refuse to accept the return of aliens who did not travel directly to the U.S. In addition, the concept of "direct departure" is unnecessary and confusing. Section 208(3)(5)(B) adequately addresses asylum shopping by an alien already present in a country in which she or he has no fear of persecution. Adding "direct departure" may cause needless litigation and confusion in the context of connecting air flights. It may also disadvantage individuals fleeing persecution from countries which lack direct flights to the United States such as countries in Africa.

Sec. 194 requires that an application for asylum filed for the first time during a deportation or exclusion proceeding may not be considered, absent a showing of good cause for the untimely filing, if the proceeding was commenced more than one year after the alien's entry of admission into the United States.

We oppose this provision as a matter of policy. To return a refugee to a country where he or she would face a threat to life or freedom simply because the refugee failed to make a timely request for protection violates a fundamental duty. Failure to file a timely asylum claim does not relieve the U.S. of its non-refoulement obligation under the Refugee Protocol. In addition, it will require the DOJ to divert resources from adjudication of

the merits of asylum applications to adjudication of the timeliness of filing. Since eligibility for withholding of deportation is not affected by this section, the Attorney General must still adjudicate the merits of a refugee claim. Our proposed special exclusion proceedings, limitations on judicial review, and standard of judicial review, along with the asylum regulations we have implemented give the DOJ sufficient mechanisms for processing asylum applications and preventing asylum abuse. We do not believe that this provision is needed. However, if the Senate chooses to adopt a deadline, we strongly support the exception for good cause.

We also note, as a technical matter, that not all aliens in exclusion proceedings under this bill will have entered or been admitted to the United States. Accordingly, if this provision is retained the language "arrival in the United States or" should be inserted after "alien's".

Sec. 195 limits the employment authorization of an asylum applicant. The section provides that the Attorney General may deny any application for, or suspend or place conditions on any grant of, employment authorization of anyone who makes an application for asylum.

We do not support this provision because it is unnecessary. Section 208(e), which was added by section 130004 the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, September 13, 1994, is sufficient to address this concern. The provision in S. 1664 would terminate employment authorization in some instances, such as when a nonimmigrant who already has employment authorization applies for asylum. Current INS procedure to withhold employment authorization for 180 days while an application for asylum is pending review has reduced the incidence of asylum abuse.

Sec. 196 authorizes the Attorney General, for two years, in order to reduce the asylum backlog, to expend out of funds such amounts as may be necessary for leasing or acquiring property.

We have no objection to this provision as it relates to the leasing or acquiring of property for security and detention space. However, with regard to office space, this provision should be modified to require the Attorney General to lease space pursuant to the Federal Property and Administrative Services Act of 1949. Under the 1949 Act the Attorney General could request a delegation of the authority to lease office space from the General Services Administration's Administrator.

This section also authorizes the Attorney General to employ temporarily up to 300 persons, who by reason of retirement on or before January 1, 1993, are receiving annuities or retired or retainer pay as retired officers of regular components of the

uniformed services.

This provision is unnecessary. This can already be accomplished administratively under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. §§ 8344(i) and 8468(f)).

Part 3--Cuban Adjustment Act

Sec. 197 repeals the Cuban Adjustment Act, P.L. 89-732 (1966). The Act provides for adjustment of status, in the discretion of the Attorney General, of any national or citizen of Cuba who has been inspected and admitted or paroled into the U.S. and has resided here for one year. This section repeals the Act except as to individuals who will be paroled into the U.S. pursuant to the Cuban Migration Agreement of 1995.

We oppose repeal of the Cuban Adjustment Act. Our long term goal, to which we are absolutely committed, is to bring democracy to Cuba. Until Cuba has a democratic government, we need flexibility to respond appropriately to changing conditions in Cuba. We look forward to the time when Cuban migration to the U.S. is normalized and on par with migration from other countries. We took major steps towards normalizing migration from Cuba to the U.S. when we concluded the Cuban Migration Agreements in September 1994 and May 1995.

While we are pleased that this section extends application of the Act to individuals who will be paroled into the U.S. pursuant to the Cuban Migration Agreement of 1995, we are concerned that this section fails to mention the Cuban Migration Agreement signed on September 9, 1994, the announcements by the President on October 14, 1994, and by the Attorney General on December 2, 1994, and thus continues to lack a means to adjust the immigration status of individuals who will be or have been admitted, inspected, or paroled from Havana or from the safehavens in Guantanamo and Panama into the U.S.

Sec. 197 also provides that the number of those obtaining lawful permanent resident status after being paroled into the U.S. will be counted as family-sponsored immigrants for purposes of the world-wide and per-country ceiling.

We oppose this provision because it may have a significant adverse effect on family reunification by creating longer waiting times for admission of relatives of U.S. citizens and legal permanent residents from countries other than Cuba.

Sec. 198 establishes that the effective date of title I is the date of enactment of this Act, unless otherwise provided. The amendments made by sections 131, 132, 141 and 195 shall be effective upon the date of enactment and shall apply to aliens who arrive in or seek admission to the United States on or after

such date. The amendments made by sections 122, 126, 128, 129, 143, and 150(b) shall apply with respect to offenses occurring on or after the date of enactment. The Attorney General may issue interim final regulations to implement these sections at any time on or after the date of enactment. Such regulations may become effective upon publication without prior notice or opportunity for public comment.

We object to the provision specifying that the Attorney General may proceed directly to interim final rule in this section. Decisions about the form in which regulation should be issued are governed by the Administrative Procedures Act (APA). The Attorney General has sufficient authority there to determine when exceptions to the APA's notice-and-comment and 30 day delayed effective date provisions are appropriate. Given these concerns, section 501(b)(2)(B) should be deleted as redundant and inconsistent with the APA.

We are also concerned that it will be difficult to promulgate regulations, even interim regulations, before the date of enactment to allow for immediate implementation of the provisions such as special exclusion procedures. Special exclusion is a sensitive area that will require advance guidance to field officers to ensure fair and equitable treatment of aliens and to avoid unnecessary litigation. We believe that drafting proposed regulations and allowing public comment before implementation would be clearly preferable to issuing interim regulations for the many major changes made in this title. Therefore, the effective date of this title should be at least 270 days after enactment.

Title II--FINANCIAL RESPONSIBILITY

SUBTITLE A--RECEIPT OF CERTAIN PUBLIC BENEFITS

The Administration generally supports the denial of means-tested benefits to undocumented immigrants. The only exceptions should include matters of public health and safety such as emergency medical services, immunization and temporary disaster relief assistance; every child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs; and benefits earned as a result of U.S. military service. In so doing, care must be taken not to limit or deny benefits or services to eligible individuals or in instances where denial does not serve the national interest or is costly and intrusive on small businesses.

The Administration generally supports tightening sponsorship and eligibility rules for non-citizens and requiring sponsors of legal immigrants to bear greater responsibility through legally enforceable sponsorship agreements for those whom they encourage to enter the U.S. The Administration, however, opposes

application of new eligibility and deeming provisions to current recipients, particularly with regard to the disabled who are exempted under current law, and to lawful immigrants seeking to participate in student financial aid programs. The Administration also opposes the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

Section 201 defines "eligible alien" as an alien: lawfully admitted for permanent residence; granted refugee or asylee status; whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act; or who has been granted parole for a period of 1 year or more. All other aliens would be 'ineligible aliens' and would not be eligible for needs-based benefits under any Federal, state, or local program, except: (1) emergency medical services under title XIX of the Social Security Act including prenatal and postpartum services only in limited situations; (2) short-term emergency disaster relief; (3) assistance or benefits under the National School Lunch Act; (4) assistance or benefits under the Child Nutrition Act of 1966; (5) public health assistance for immunizations and for testing and treatment for communicable diseases; and (6) services provided by nonprofit or charitable organizations. Ineligible aliens would be ineligible to receive any grant, contract, loan, professional license, or commercial license provided or funded by any Federal, state, or local government. Only aliens eligible to work would be able to receive unemployment benefits.

This section also requires the Secretary of the Department of Housing and Urban Development (HUD), within 90 days of the date of enactment, to submit a report to the Committees on Banking and Committees on the Judiciary of the House and Senate describing how HUD is enforcing section 214 of Housing & Community Development Act of 1980, including statistics of individuals denied assistance.

This section also limits benefits under the Social Security Act to U.S. citizens and eligible aliens who have been granted work authorization and then only those benefits attributable to the authorized employment. Ineligible aliens may not be reimbursed amounts paid into SSA accounts.

While we support the goal of establishing a uniform definition of alien eligibility, we oppose section 201 as drafted. The provision would affect many diverse Federal, state, and local programs; represents a new mandate to many state and local governments; and targets current immigrant beneficiaries, some of whom are residing lawfully in the U.S. with the knowledge and permission of the INS.

We encourage you to examine the definition of "qualified" alien as the Administration proposed in its welfare reform bill,

introduced in 1994, the "Work and Responsibility Act of 1994" and in the Administration's Balanced Budget proposal.

We recommend this definition of eligibility apply only to the four primary needs-based programs--AFDC, SSI, and Medicaid--and only to noncitizens who apply for such benefits after enactment. The Food Stamp Act already defines an eligible alien. We would also allow state and local programs of cash and medical general assistance to utilize the same alien eligibility criteria. Finally, we support the provision in section 201 that would retain the current law provision for illegal aliens to receive only emergency medical services under Medicaid.

While we recognize the public health importance of providing prenatal and postpartum care, we have technical and administrative concerns with section 201(a). We have not completed our review of this section and may advance additional concerns once our review is finished. We support providing additional assistance to alleviate the burden on states that provide health care services to high numbers of undocumented immigrants. The President's FY 1997 budget request proposes a funding pool to states to help pay for some of the remaining non-federal share of Medicaid expenses for states with large numbers of undocumented immigrants.

The Administration's approach would avoid a number of problems that would result under S. 1664. For example, the eligibility provision in S. 1664 might be read to deny needs-based, education-related services and assistance paid for with Federal, State, or local funds--except for services under the National School Lunch Act--to undocumented alien children. The principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to do so remain powerful. In addition, students who are not undocumented aliens could be stigmatized based on name or appearance, and parents, fearful of their children's well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all students and are likely to adversely affect, and be divisive within, our communities. Moreover, instead of making progress towards becoming productive, responsible adults, uneducated children are vastly more likely to wind up on the streets, possibly engaged in unlawful behavior. Finally, schools and school systems are ill-suited to make determinations about the citizenship status of students and should not be forced to bear the uncompensated expense and burden of doing so. We urge that this section be revised so that it does not call into question the full participation of any child in the U.S. in public elementary and secondary education, including participation in pre-school and school lunch programs.

In addition, the definition of an "eligible alien" in section 201(d) could be read to exclude certain postsecondary

students currently eligible for student assistance under title IV of the Higher Education Act of 1965; the negative consequences of varying eligibility requirements on these students and their educational institutions must be considered.

Also, section 201 implies that each of the hundreds of thousands of businesses that provide contractual goods or services to the federal government every year would have to provide proof of the owner's identity as a citizen or eligible alien. For example, most doctors and health care providers might be forced to provide such proof before being reimbursed under Medicare or the Federal Employees Health Benefits Program. As another example, small businesses that provide a myriad of supplies and services through purchase orders and credit card orders would face this problem. At best, such a requirement would be costly to both the businesses and the government to administer. At worst, the statute implies that this proof would have to be provided in person to federal agencies in order to properly verify identity. The travel alone would be extremely burdensome. We are unaware of any substantial problem that would warrant such a strict requirement. A similar problem could arise with regard to federal grants, many thousands of which flow annually to small organizations and businesses.

This provision also should be modified to clarify that it has no effect on the applicability of section 214 of the Housing and Community Development Act of 1980 to HUD programs, and that it does not apply to assistance provided by HUD. Without such clarification, this provision would impose a great burden on States and local governments that administer HUD mortgage programs, Federal Housing Administration contract programs, and Community Development Block Grants to identify noncitizens who may indirectly benefit from these non-direct assistance programs. Furthermore, it would jeopardize progress made and cooperation by HUD, INS, housing authorities, and multifamily project owners to smoothly implement section 214 of the Housing and Community Development Act of 1980.

Furthermore, the definition of "eligible alien" does not include Cuban and Haitian entrants as defined under section 501 of the Refugee Education and Assistance Act of 1980. If Cuban and Haitian entrants are not included in the list of eligible aliens, they no longer would be eligible for assistance and services under the refugee program.

The definition of "eligible alien" also fails to include aliens lawfully admitted under temporary visas (e.g., B for business visitors, E for treaty traders and investors, L for intracompany transferees, and H-1B for professionals) and aliens outside the United States. Under section 201 ineligible aliens would be unable to receive, inter alia, contracts, professional licenses, or commercial licenses provided or funded by any

federal, state, or local government. One concern is that by prohibiting the award of federal contracts and the granting of federal licenses, this section would preclude local acquisition by diplomatic posts and military bases in foreign countries to the extent that such acquisitions involve contracts with foreign individuals. In addition, section 201(a)(1), which would make ineligible aliens ineligible for government contracts, would be inconsistent with our obligations under the World Trade Organization's Agreement on Government Procurement. We recommend including "contracts with nonimmigrants authorized to work in the United States, or with aliens outside of the United States" among benefits exempted from the definition of "government benefits."

Section 201 may violate NAFTA provisions on services and investment (chapters 11 and 12) and potentially violate our obligations under the GATS agreement and bilateral investment treaties if the class of ineligible aliens is not specifically narrowed. Furthermore, NAFTA parties have agreed to eliminate citizenship and permanent residency requirements for professional licenses, and section 201 would be in violation of those obligations.

This section appears to impose a duty on agencies to make new eligibility determinations for each individual served. There are many programs for which it would not be cost-effective, or in some cases feasible, to determine individual eligibility. These programs include public health programs such as community and migrant health centers. The Administration's approach which would apply this definition of eligibility to the four major federal entitlement programs would avoid these burdensome effects.

In addition, section 201(a)(3) requires agencies administering public assistance programs to notify individually or by public notices all ineligible aliens of the termination of their benefits. While we believe that it is important to notify individuals of their benefit determination, this requirement would place a significant burden on smaller benefit programs such as those mentioned above. The effects of these requirements on smaller programs should be considered.

Section 201(c) has many undesirable effects on the operation of the Social Security program. The payment restrictions in this provision violate the terms of the bilateral Social Security totalization agreements with 17 foreign countries, including Canada and virtually all of Western Europe. Also, the U.S. has treaties with other countries that require the U.S. to pay Social Security benefits to foreign treaty nationals on the same basis as U.S. citizens. Legislation abrogating these agreements and treaties would presumably lead to retaliatory restrictions on the payment of such benefits by other countries to U.S. citizens. Furthermore, this provision would deny Social Security benefits

as well as Social Security tax refunds to aliens legally admitted on a temporary basis to work in the U.S.

The payment restrictions are also inconsistent with current provisions of law that permit payment of benefits to aliens outside the U.S. if they are citizens of a country whose social insurance system does the same for U.S. citizens. About 65 countries meet this requirement.

It is not clear whether the payment restrictions would be prospective or retrospective. If the Social Security benefits payable to current or future beneficiaries should not reflect credit for past periods of unauthorized work, INS would have to provide SSA with the necessary information about the beneficiary's work authorization history. This is probably not feasible because much of the necessary INS information is stored in paper format in Federal Records Centers.

Although it would be feasible for SSA to dispend Social Security benefits payable to a person who is currently in this country illegally, assuming appropriate evidence were obtained, such an approach would not impose any sanctions on legally admitted aliens who received Social Security credit for past periods of unauthorized work.

Also the provision does not address the complex issue of Social Security benefit eligibility for citizens who are dependents or survivors of ineligible aliens, or ineligible aliens who are dependents or survivors of U.S. citizens.

The Administration would support a provision that would restrict the payment of Social Security benefits to aliens who are in the United States illegally if the provision were drafted in a manner that did not compromise existing international arrangements concerning payment of Social Security benefits. We look forward to working with the Committee to address these concerns.

We also would seek to ensure that programs of assistance to refugees under Title IV of the Social Security Act be designed to promote early economic self-sufficiency and social adjustment and to meet the specific needs of refugees. Our concern is that newly arriving refugees, for whom the federal government has a special responsibility, should be provided with services and work and training participation requirements that are adapted to their situation.

Sec. 202 defines "public charge" for purposes of deportation as the receipt of certain benefits for an aggregate of more than 12 months in the first five years after entry as an immigrant or, in the case of an individual who entered as a nonimmigrant, the first five years after adjustment to permanent resident status.

Such benefits are limited to one or more of the following programs: AFDC, SSI, Medicaid, Food Stamps, state general assistance, or any other program of assistance funded in whole or in part by the Federal government for which eligibility is based on need (except the exempted programs noted in section 201).

This section also provides that any alien who during the public charge period becomes a public charge, regardless of when the cause arose, is deportable. This section exempts from the public charge definition refugees and asylees. Further, if the cause of the alien's becoming a public charge arose after entry as an immigrant or, in the case of a nonimmigrant, after adjustment to permanent resident status, and was a physical illness or injury that kept the alien from working or a mental disability that required continuous hospitalization, then the alien would be exempt. While this section now excludes refugees and asylees from the public charge provision, it would place Cuban and Haitian entrants at risk of deportation if they received benefits from one or more of the listed programs for more than an aggregate of 12 months. We strongly object to the effect of this provision and believe Cuban and Haitian entrants should be excluded from the public charge provision. We believe this would be consistent with the Administration's position on providing assistance to Cuban parolees to alleviate any State or local impact.

We also strongly object to including the receipt of financial assistance under title IV of the Higher Education Act of 1965 as grounds for becoming a public charge, and thus deportable. Student financial assistance offers legal immigrants a way to achieve productive and self-sufficient lives in the economic mainstream--the opposite of becoming a public charge.

This section also requires the Attorney General to review applications for benefits under section 216, 245 or chapter 2 of Title III of the INA to determine whether the exception to the definition of public charge applies. If the exception does not apply, the Attorney General shall institute deportation proceedings unless she exercises discretion to withhold or suspend deportation.

The legislation would require increased administrative efforts to ascertain (1) whether an alien who had received benefits for more than an aggregate of 12 months during the public charge period was receiving such benefits due to a "pre-existing condition," or one that arose since entry or since adjustment of status; (2) whether a physical illness or injury was so serious that the alien could not work at any job; or (3) whether the alien's mental disability required continuous hospitalization. Since this section would create a number of administrative and legal complexities as drafted, we do not endorse these provisions without further clarification or

amendment.

Sec. 203 sets forth the requirements for a sponsor's affidavit of support. It requires that the affidavit of support be executed as a contract that is enforceable against the sponsor by the sponsored individual, the Federal government, a state, district, territory or possession or any subdivision thereof, providing any benefits to sponsored eligible aliens. In the affidavit, the sponsor must agree to financially support the sponsored individual until the sponsored individual becomes a U.S. citizen or has worked in the U.S. for 40 qualifying quarters or has become a U.S. citizen, whichever occurs first. A sponsor must be age 18 or over, a citizen or legal permanent resident, domiciled in any of the several states of the U.S., the District of Columbia, or a territory or possession of the U.S. and demonstrate an ability to maintain an annual income of at least 125% of the poverty line for him or herself and the sponsored individual.

The governmental entities are authorized to seek reimbursement from sponsors of aliens who have received benefits, and to bring suit against sponsors that do not reimburse the relevant government agencies. No cause of action could be brought against sponsors after 10 years from an alien's last receipt of benefits. The sponsor is required to notify the Federal, state, and local governments of any change of the sponsor's address.

We strongly support making the current affidavit of support legally binding until citizenship or until the noncitizen has worked in the U.S. for a significant period of time. We applaud the passage of the amendment in the Judiciary Committee that limits enforcement of the affidavit of support until the sponsored individual obtains citizenship. However, we have serious concerns with a number of remaining provisions in section 203. The definition of qualifying quarter is unworkable and unreasonable. For example, section 203(f)(3)(A) defines "qualifying quarter" as a 3-month period in which the sponsored individual has earned the minimum amount necessary for the period to count as a Social Security quarter of coverage. Since the implementation of annual wage reporting in 1978, SSA no longer maintains quarterly records of earnings and thus could not determine the amount earned in a calendar quarter. Quarters of coverage are now based on annual earnings. We recommend changing the definition of "qualifying quarters" to be consistent with the Social Security Act. Also, individuals may become entitled to disability insurance benefits with less than 40 quarters of work. The bill should clarify that an immigrant that otherwise qualifies for title II disability insurance would be eligible for benefits under title II and would be exempt from the deeming requirements for purposes of disability benefits under title XVI if he or she became disabled after entry.

In addition, sections 203(f)(3)(B) and 203(f)(3)(C) require that in order to be considered as a qualifying quarter, the sponsored individual must not have received needs-based public assistance and must have income tax liability for the year in which the quarter was earned. Making case-by-case determinations of when these conditions have been met will be difficult and will significantly increase administrative costs and burden. More important, it is unreasonable to penalize hard working, but low income immigrant families by continuing to apply deeming rules just because they have not incurred income tax liability. For example, a family of three with one wage earner employed an entire year at the minimum wage would earn less than \$9,000 leaving that family not only significantly below the poverty level, but also means they would not incur income tax liability due to those low wages.

Section 203 should also clarify that a sponsor would not be liable for support during the time the sponsor may be bankrupt or in need of assistance. This could easily be accomplished by stipulating that a sponsor who received means-tested assistance would not be liable for assistance received by the sponsored alien during the time period the sponsor received assistance.

Sec. 203(b) should provide 180 days--not 90 days--to develop a new affidavit of support in light of the complex interagency consultations called for by the provision. We suggest that the Secretary of Treasury and the Commissioner of Social Security be included in the list of those responsible for formulating the new affidavit of support since determining which immigrants have worked for 40 qualifying quarters would potentially involve activities managed by those agencies.

Furthermore, it should be clarified that notifications of changes of address should be made to the Attorney General and that the Attorney General--not the Commissioner of Social Security--shall promulgate regulations to carry out actions to obtain reimbursement for any federal or state assistance received by the sponsored individual.

Sec. 203(e) would allow an action to enforce the affidavit of support to be brought against the sponsor in any Federal or State court, by a sponsored individual with respect to financial support, or by a Federal, state, local agency with respect to reimbursement. This section also would require that no state court may decline jurisdiction over any action brought against a sponsor for reimbursement of the costs of a benefit if the sponsored individual received assistance while residing in the state.

We do not object to this provision.

Sec. 204 requires that in determining the eligibility for

and amount of benefits of a noncitizen under any Federal program of assistance, or any program of assistance funded in whole or in part by the federal government for which eligibility is based on need except for services provided by nonprofit, charitable organizations, the entire amount of income and resources of the sponsor and sponsor's spouse would be presumed to be available to the individual. This section may also apply to any state or local program of assistance for which eligibility is based on need, or any need-based program of assistance administered by a state or local government.

This "deeming" period would continue for the period for which the sponsor has agreed in the affidavit or for five years from the date the alien was first lawfully in the U.S., whichever period is longer. Thus, immigrants who signed the new affidavit of support under section 203 would be deemed for 40 qualifying quarters or until they become U.S. citizens, whichever occurs first.

We applaud the changes made to this title in the Judiciary Committee that ensures sponsor-to-alien deeming would not be applied to citizens, and while we support the goal of making sponsors more responsible for the immigrants they sponsor, we strongly oppose section 204 as drafted. This section would affect many current immigrant beneficiaries; repeal the current law exemption from deeming for sponsored immigrants who become disabled after entry; affect many diverse Federal programs-- including Medicaid and student financial assistance for post secondary education; create new administrative complexities and requirements; and change the current deeming formula to include 100 percent of a sponsor's income and resources. By attributing 100 percent of a sponsor's income and resources to the sponsored immigrant, section 204 does not take into account the needs of the sponsor and his or her family and is inconsistent with current practice in the major entitlement programs. Legal challenges may also arise where the spouse was not a signatory to the affidavit or the spouse is separated from the sponsor.

The Administration supports strengthening deeming, and we would like to work with the Committee to establish a reasonable deeming policy that addresses the concerns identified above. The Administration is opposed to unilaterally applying the new deeming and eligibility provisions to current recipients, including the disabled exempted under current law. In addition, we oppose applying deeming provisions to the Medicaid and student financial assistance programs. Access to student assistance by legal immigrants assists them in obtaining a postsecondary education that can provide them a productive and self-sufficient life in the economic mainstream. We support providing state and local governments with the authority to implement the same deeming rules under their cash general assistance programs as the Federal government uses in its cash welfare programs.

Sec. 205 would require the Secretary of Education and the Commissioner of the Social Security Administration to transmit jointly to Congress a report on the Department of Education's computer matching program under section 484(p) of the Higher Education Act of 1965 (HEA). The Administration has no objection to this reporting requirement, and it is far preferable to the provision it replaced, which would have added a duplicative verification system that may have had other, unintended consequences. The Department of Education's computer matching program enables the Department of Education to confirm that the Social Security number and citizenship status of title IV student aid applicants are valid at the time of application. The Department of Education also has in place a system to verify the immigration status of non-citizen applicants, as required under section 484(g) of the HEA. These two systems ensure that illegal immigrants do not receive student financial assistance under title IV of the HEA, whether by falsely claiming an eligible immigrant status or by falsely claiming citizenship.

Sec. 206 authorizes state and local governments to prohibit or limit assistance to aliens and to distinguish among classes of aliens in providing general cash public assistance so long as the restrictions are no more restrictive than those of similar Federal programs.

We support this provision.

Sec. 207 denies eligibility for the earned income tax credit to individuals who are not, for the entire tax year, U.S. citizens or lawful permanent resident aliens. We support this provision. The President's FY 1996 Budget contained a similar provision.

Sec. 208 requires that whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any U.S. department or agency, or any copy thereof; knowingly uses, affixes, or impresses such altered seal or copy to or upon any instrument; or with fraudulent intent possesses, sells, offers to sell, furnishes, offers to furnish, gives away, offers to give away, transports, offers to transport, imports, or offers to import any such seal or copy, knowing it to have been falsely made, shall be fined under this title, or imprisoned for up to 5 years, or both. If any of the above was done with the intent or effect of facilitating an unlawful alien's application for, or receipt of a federal benefit, the penalties which may be imposed for each offense shall be double the maximum fine, and three times the maximum imprisonment, or both. Each instance of forgery, counterfeiting, mutilation, or alteration shall constitute a separate offense.

We support this provision.

Sec. 209 permits a State that is certified by the Attorney General as having high illegal immigration to establish and operate a program for the placement of anti-fraud investigators in State, county, and private hospitals to verify the immigration status and income eligibility of applicants for medical assistance under the State plan prior to the furnishing of medical assistance.

We note that current law would permit a State to operate such a program, and thus the provision is unnecessary.

Sec. 210 would require the Office of Refugee Resettlement to allocate grants to ensure that each qualifying county shall receive the same amount of assistance for each refugee and entrant residing in the county as of the beginning of the fiscal year who arrived in the United States not more than 60 months prior.

The amendment's formula for the allocation of Targeted Assistance (TA) funds is consistent with the Administration's policy to limit the provision of Office of Refugee Resettlement funded services to a refugee's first five years in the United States. We support the exception for the Targeted Assistance discretionary program. We note, however, that the amendment may limit Congress' ability to set aside special TA funds for Cuban and Haitian entrants which it has historically done through the appropriations process.

SUBTITLE B--MISCELLANEOUS PROVISIONS

Sec. 211 requires the Attorney General to reimburse the full costs incurred by state or local authorities for emergency ambulance services provided to aliens injured while entering the U.S. without inspection. The obligation occurs only when the injured alien is taken into the custody of the state or local authority as a result of a transfer or other action by a federal authority. Lastly, the section allows the Attorney General to seek reimbursement for emergency medical services provided to aliens.

We support this provision because it encourages local authorities to provide customary emergency medical transport to aliens that have been detected or discovered, but not arrested, by the INS. Under current law, INS may only pay the medical transportation costs in instances where the alien is under arrest. This authority will alleviate the financial burden accruing to some border communities experiencing a large number of emergency medical transports. This provision will encourage rapid transport of aliens injured during an illegal entry without regard to the state of their immigration processing.

Sec. 212 appears to provide full Federal reimbursement to

State and local governments for emergency medical services furnished to undocumented immigrants in public or private hospitals or other facilities, subject to amounts provided in appropriation acts. It requires hospitals and other facilities to confirm immigration status of individuals as a condition for receiving reimbursement. The confirmation procedure would be determined by the Secretary of HHS in consultation with the Attorney General.

As a policy matter, the Administration supports providing additional assistance to alleviate the burdens of states that provide health care services with the highest concentrations of unauthorized immigrants. The President's FY 97 budget proposes a funding pool to help pay for some of the remaining non-federal share of Medicaid expenses for states with the large numbers of undocumented immigrants.

However, we have technical concerns with this section. First, this section still contains provisions requiring hospitals and facilities to seek reimbursement from other Federal programs and recovery from undocumented individuals and other persons, which would be impracticable and unworkable. Second, it is unclear what the definition of emergency services would be or how reimbursements would be made, particularly to local governments. This could result in substantial additional administrative costs.

Sec. 213 authorizes additional commuter border crossing fees pilot projects, one on the northern land border and another one on the southern land border.

The Administration proposal provides for projects along the southern and northern land borders and does not limit the number of pilot projects that may be established. We recommend that S. 1394 adopt the Administration proposal.

Sec. 213 removes the current exemption from payment of the \$6 immigration user fee for cruise ship passengers.

This provision is similar to the Administration's proposal, and we support it.

Sec. 221 establishes that the effective date of title II is the date of enactment of this Act, unless otherwise provided. The provisions of section 201 and 204 shall apply to benefits and to applications for benefits received on or after the date of enactment of this Act.

The new definition of eligible alien (section 201) and the 5 year deeming period (section 204) would apply to benefits being received at the time of enactment, and affect current recipients as well as future applicants. We are opposed to applying the new deeming and eligibility provisions to current recipients,

including the disabled. Benefits received after the date of enactment would be counted towards the new public charge provisions (section 202), and we are concerned about the ability to adequately inform current immigrants of the new rules concerning public charge and the potential for becoming deportable.

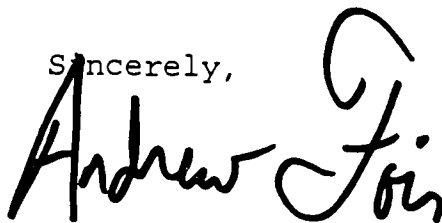
The provisions with the greatest SSI impact--the definition of "eligible alien" and sponsor-to-alien deeming--would be effective upon enactment. Such an effective date could eliminate benefit eligibility for as many as 250,000 legal immigrants under the SSI program. Even more immigrants would be affected when the other federal programs are considered. These are individuals who have already entered the country and "played by the rules." We do not support penalizing this group.

We are also concerned that it will be difficult to promulgate regulations, even interim regulations, before the date of enactment to allow for immediate implementation of the provisions of this title. We believe that drafting proposed regulations and allowing public comment before implementation would be clearly preferable to issuing interim regulations for the many major changes made in this title. Therefore, the effective date of this title should be at least 270 days after enactment.

Senator Dole, we appreciate the continued support of the Senate for the initiatives taken by this Administration on urgent immigration matters. We have provided lengthy briefings to the staff of the Judiciary Committee and others regarding the Administration's vision for immigration reform legislation, and we will continue to work with the members of the Senate on necessary improvements to achieve bipartisan immigration improvements legislation that is in the national interest.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in black ink that reads "Andrew Fois". The signature is written in a cursive style with a large, looping initial "A" and "F".

Andrew Fois
Assistant Attorney General



Office of the Deputy Attorney General

Washington, D.C. 20530

May 31, 1996

The Honorable Alan K. Simpson
Chairman, Subcommittee on Immigration
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter presents the views of the Administration on H.R. 2202, the "Immigration Control and Financial Responsibility Act of 1996". The Administration is reversing decades of neglect in controlling illegal immigration. Many of the provisions in both the House and Senate bills would ratify the Administration's efforts in the field to combat illegal immigration. The Administration's four-part strategy calls for regaining control of our borders; protecting U.S. workers through worksite enforcement; aggressively removing criminal and other deportable aliens; and obtaining the resources that are necessary to make the strategy work. Both the House and Senate bills contain many provisions that support the Administration's enforcement initiatives and are based on or similar to the Administration's legislative and budget proposals.

We look forward to working with the conference committee to craft a strong, fair, and effective immigration bill. However, H.R. 2202 raises serious concerns in specific areas that we hope the conference committee will examine thoroughly. In addition, a number of amendments to the Immigration and Nationality Act (INA) made by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104 -132, present substantial obstacles to the effective enforcement of the immigration laws. The conference committee has an opportunity to remedy some of those problems with a careful and more comprehensive approach to amending the INA. The Administration's views include, but are not limited to the following:

◆ The House-passed bill could result in the removal of many children from schools. Children denied education are more likely to engage in crime and other anti-social behavior and could fall prey to drug dealers and gangs. If H.R. 2202 were presented to the President with provisions that would jeopardize any child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs, the Secretary of Education and the Attorney General would recommend

that the bill be vetoed. We urge the conference committee to adopt the Senate position.

◆ The Administration opposes providing welfare benefits to illegal immigrants and has effectively targeted its enforcement efforts at the cash and food assistance programs which are at risk for the most abuse. H.R. 2202, however, goes too far in limiting benefits to legal immigrants and therefore could jeopardize public health. The Administration strongly opposes broadening the application of deeming rules and the "public charge" provision from a well-defined set of cash assistance programs to nearly all means-tested programs including Medicaid and emergency medical services, child protective services, student financial assistance programs for postsecondary education, veterans benefits, and scores of additional programs. In addition, the Administration opposes applying the new deeming and eligibility restrictions to current program recipients as well as the disabled who are exempt under current law.

◆ We urge the conference committee to adopt the Senate provision which authorizes the hiring of 350 additional Wage and Hour investigators to enforce current Federal wage and hour laws in areas where there are high concentrations of illegal immigrants employed. We urge the conference committee to adopt the House position on increasing penalties for and enforcement of employer sanctions. Similar increases should be included for the enforcement of laws against immigration-related employment discrimination.

◆ Both the House and the Senate have made clear their intention to separate the issues of illegal and legal immigration. Consistent with that clear intent, we urge the conferees to drop Section 806 of the House bill, which deals with criteria for admission of one class of employment-based nonimmigrants (H-1B workers). Not only does the inclusion of this section in a bill on illegal immigration entangle two issues the Congress has decided to keep separate, but the provisions of Section 806 simply go in the wrong direction, eliminating essential U.S. worker protections in current law, which are already inadequate. These amendments would have the overall effect of substantially weakening protections for U.S. workers from unfair competition with foreign temporary workers rather than fixing serious flaws in the existing H-1B program.

◆ We urge the conference committee to adopt special exclusion authority that may be invoked at the discretion of the Attorney General in extraordinary migration situations and for interdictions at sea that permits the prompt removal of inadmissible aliens and includes a fair process for assessing

fear of persecution.

- ◆ We urge the conference committee to adopt a comprehensive change in removal procedures that consolidates exclusion and deportation processes and that retains discretionary authority--with current exceptions--to cancel removal in compelling cases of aliens who have resided in the United States for a lengthy period and whose removal would present an extreme hardship.
- ◆ The intentional discrimination standard in the document abuse provision of the Senate bill will severely undermine anti-discrimination enforcement. The House provision is also problematic and should be modified to require that employers may seek verification only if the employer has information that would lead a reasonable person to believe that the individual is not work authorized, and that the employer can terminate the individual only after the Immigration and Naturalization Service (INS) confirms that the individual is not work authorized.
- ◆ We urge the conference committee to adopt a streamlined process for judicial review that consolidates review in the courts of appeals and requires constitutional and statutory challenges to be raised in connection with the judicial review of an individual removal order.
- ◆ We strongly support the Senate's authorization of appropriations for the construction of appropriate physical barriers and the use of technology in high traffic areas along the southwest border. The House version does not take into account the safety of our Border Patrol agents and unnecessarily waives the Endangered Species Act.
- ◆ We urge the conference committee to allow the existing adjustment of status program established by section 245(i) of the INA to run its course through Fiscal Year 1997, and then to evaluate what, if any, changes are required.
- ◆ We strongly support the Senate's authorization to conduct pilot studies of employment and benefits eligibility verification that includes privacy and anti-discrimination safeguards although we would recommend enhancing the Attorney General's flexibility to identify which projects will be most effective within technological capabilities.

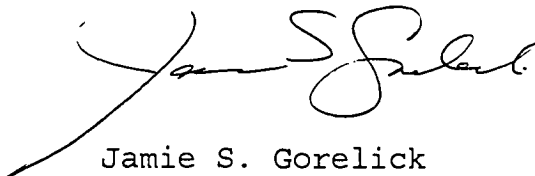
Attached is a discussion of some of the key issues. We will shortly provide you a comprehensive side-by-side comparison.

I appreciate this opportunity to provide the views of the Administration to the conference committee for the immigration

The Honorable Alan K. Simpson
Page 4

bill. The Administration is committed to working with the Congress to provide strong, fair, and effective measures for addressing illegal immigration to the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie S. Gorelick". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Jamie S. Gorelick
Deputy Attorney General

cc: The Honorable Orrin G. Hatch
The Honorable Strom Thurmond
The Honorable Charles E. Grassley
The Honorable Arlen Specter
The Honorable Jon L. Kyl
The Honorable Edward M. Kennedy
The Honorable Patrick J. Leahy
The Honorable Paul Simon
The Honorable Herbert H. Kohl
The Honorable Dianne Feinstein

DISCUSSION OF SOME OF THE KEY ISSUES

Denying Public Education to Undocumented Children

Denying an education to any child is costly, to the child and to our country. Undocumented alien children could grow up to become illiterate, unskilled adults if they are denied schooling. Such individuals would be unable to participate effectively in our economy, which relies increasingly on a highly skilled workforce, and would swell the ranks of the unemployed and those dependent on public assistance. In addition, as President Clinton has stated, children denied education are more likely to engage in crime and other antisocial behavior. This view is widely shared throughout the law enforcement community. Opponents of this provision include the Executive Director of the National Association of Police Organizations, Inc., the National President of the Fraternal Order of Police, the Los Angeles County Sheriff, the Superintendent of Police for the City of Chicago, and the International Secretary-Treasurer and Legislative Liaison for the International Union of Police Associations AFL-CIO. Moreover, it is fundamentally unfair to punish children--possibly for the rest of their lives--for the conduct of their parents, which they are powerless to control. Finally, requiring school districts and the INS to verify the immigration status of public school students would be extremely burdensome and would divert carefully targeted resources from other enforcement priorities including border enforcement and criminal alien removal.

Benefits

H.R. 2202's approach to immigrants' eligibility for benefits is preferable to the approach taken in H.R. 4, the welfare reform bill, which would have imposed an outright ban on benefits for most legal immigrants. However, the approach taken in H.R. 2202 is at variance with the Administration's position as stated in our welfare reform proposal, and therefore, the Administration opposes these provisions. By requiring states to apply new deeming rules to scores of programs including Medicaid, emergency medical services within Medicaid, child protection services, and student financial assistance for postsecondary education, H.R. 2202, as passed by the Senate, could jeopardize public health and safety and could create a significant unfunded mandate on local and state governments. Furthermore, the Senate bill's deeming provisions would establish an inequitable situation where legal immigrants could no longer receive benefits for which undocumented immigrants would still be eligible such as Medicaid's emergency medical services.

We urge the conference committee to clarify that non-U.S. citizens residing abroad should not be considered "ineligible aliens" for purposes of entitlement to various federal benefits,

including pensions. We also urge the conference committee to clarify that Cuban and Haitian entrants will continue to be eligible for assistance to avoid placing an undue burden on State and local governments. We oppose the House provisions to require that payments of public assistance benefits be made only "through" an individual who is not ineligible to receive such benefits on the basis of immigration status because it would likely harm children who are U.S. citizens and legal immigrants. This provision also requires the government to insert an outside third party into the family. In addition, we oppose provisions in both versions of the bill that would make a legal immigrant who received federal benefits and services for which they are eligible deportable on public charge grounds. This is particularly objectionable when the immigrant received the benefit without his or her knowledge such as subsidized child care and transportation services for the disabled and elderly. Finally, the House provision requiring that sponsors have an income equal to 200 percent of the federal poverty level would keep many U.S. families from being able to reunite with their immediate relatives.

Special Exclusion

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, amended the INA to require the Attorney General to order the removal of an alien who is inadmissible for having presented fraudulent documents or because of a lack of proper documents without a hearing before an immigration judge. There is an exception for asylum applicants who can demonstrate a credible fear of persecution based on an interview with an asylum officer. Aside from a review of the officer's "credible fear" determination, there is no administrative review of such an order and judicial review is limited. These provisions would become effective on November 1, 1996. The special exclusion provisions of the House bill are virtually identical to those added by the AEDPA.

Expedited exclusion authority is critically important to our ability to deal with organized alien smuggling and fraud at our ports of entry. The Coast Guard frequently interdicts illegal aliens on the high seas and is required to keep the aliens at sea while arrangements are made for their repatriation or for a third country to accept the aliens so they may be resettled. This is neither resource efficient nor cost effective. Two interdiction cases in 1995 consumed a total of 105 cutter days and 548 aircraft hours in order to deliver the interdicted migrants to El Salvador and Mexico. Using standard rates, these cases cost in excess of \$7 million. Rapid delivery of the aliens to the United States for special exclusion would allow the Coast Guard vessels to promptly return to their primary law enforcement mission, including drug interdiction and search and rescue. Accordingly, the Administration has strongly supported expedited exclusion

provisions that have appropriate safeguards and reflect a proper concern for practical and sensible administration.

In this light, the AEDPA changes raise a major concern. The expedited exclusion procedures would operate at all times in parallel with the normal exclusion process. This is unnecessary and an inappropriate use of resources. The Administration's proposal and the Senate immigration bill, on the other hand, would authorize expedited exclusion, but would provide the Attorney General the flexibility to determine the circumstances in which it should be implemented.

We recommend that the conference committee adopt the Senate provisions at section 141 with several important modifications: First, in addition to extraordinary migration situations, the Attorney General should have the explicit authority to apply special exclusion to aliens who are interdicted at sea without the need to find that an extraordinary migration situation exists. Second, the definition of "asylum officer" should be amended to afford more flexibility in assigning appropriately trained officers to assess asylum applications. Third, the conference report should make clear that by using the term "manifestly unfounded" the committee intends to adopt the international standard, as reflected, e.g., in the resolution on "manifestly unfounded" asylum applications adopted by the immigration ministers of the European Union, and not to revive the now repealed INS regulations defining "frivolous" asylum applications. Finally, the committee should adopt provisions for judicial review of special exclusion procedures and administrative review of special exclusion orders that afford prompt consideration appropriate for and consistent with an expedited process. We would be happy to work with the committee to develop language for such review.

Normal Exclusion and Deportation Proceedings

The House bill undertakes a comprehensive re-write of the procedures for removal of aliens. It would consolidate exclusion and deportation proceedings into one removal proceeding. Aliens who enter without inspection (EWI) would be subject to exclusion, but would continue to be eligible for relief from deportation upon a showing of seven years continuous presence, good moral character, and extreme hardship. This relief was eliminated for EWIs under the AEDPA amendments that become effective November 1, 1996, a change that will likely result in thousands of private bill requests being filed with the Congress on behalf of aliens in compelling circumstances. Both the Senate and the House provisions would restore, with specific exceptions, relief from deportation for long-term permanent residents who are deportable on the basis of criminal convictions, with an exception for aggravated felons who have been sentenced to imprisonment for five years or more.

We strongly recommend adoption of the House provisions contained in sections 301¹ (except 301(c) and (f)), 303, 304, 305, 307, 308, and 309. However, an amendment must be made to strike section 241(d) (added by the AEDPA) which provides that aliens "found in" the United States without having been inspected and admitted are inadmissible. This language is problematic; will lead to litigation; and is inconsistent with the House immigration bill. In addition, there is no waiver provision for inadmissibility under the newly-created section 212(a)(9), even for immediate relatives of U.S. citizens. We strongly recommend the inclusion of a discretionary waiver of inadmissibility.

We note that an error was apparently made in compiling the bill passed by the House. The text should be amended at page 86, lines 14 and 15, by inserting "or excludable" after "is deportable." We also note an inadvertent omission in compiling the House bill. The text should be amended at page 90, line 3, by inserting 'or deportable under subparagraph (a)(4)(D) of section 241' after 'section 237(a)(4)'. The Senate amendment (sec. 142(b)) to section 242B of the INA which limits stays of final orders of deportation should be incorporated into the House bill.

Intent to Discriminate

Under current law, an employer's request for additional or specific work authorization documents constitutes an unfair immigration-related employment practice. The Senate immigration bill makes such a request an unfair immigration-related employment practice only if the request is made "for the purpose or with the intent of discriminating". This intent requirement will severely undermine anti-discrimination enforcement. Intent is hard to prove, and virtually all employers could allege that they requested additional or specific documents for the purpose of avoiding employer sanctions and not with the intent of discriminating. An intent standard will deprive a U.S. citizen, denied employment because she did not have an employer-specified document, of a legal remedy.

¹With regard to section 301(b), we support adding the ground of exclusion for aliens who are unlawfully present in the United States, but we object to the effect that section 301(b) in the absence of a waiver provision will have on aliens who are otherwise eligible to obtain a visa or to adjust status. Accordingly, we strongly urge the committee to provide a discretionary waiver for the ground of inadmissibility added by section 301(b). We also strongly support the exception for battered spouses and children; however, we believe that a waiver for such persons would be preferable to an exception for consistency and practicality.

While the House provision is less problematic, the vagueness of the phrases "reason to believe" and "confirmation" will lead to discrimination against "foreign" looking or sounding work authorized individuals. The conference report should require the employer to possess "information that would lead a reasonable person to believe" that the individual is not an authorized worker, and the employer should be able to terminate the individual only after the INS confirms the individual is not work authorized. Only with these modifications, we urge the conference committee to adopt the House provision.

Judicial Review in Deportation and Exclusion Proceedings

Both bills would streamline judicial review by eliminating a layer of review in exclusion cases, shortening the time period to file for review, and permitting the removal of inadmissible aliens pending review in the case of exclusion proceedings. The Senate bill, however, goes too far in restricting judicial review. Under the Senate provisions there would be no judicial review of deportation orders against criminal aliens and no review of denials of discretionary relief from deportation. We support limiting judicial review in cases involving criminals, but not eliminating review altogether. We also support retaining judicial review of denials of discretionary relief, particularly in asylum cases. Accordingly, we recommend that the conference committee adopt the House provisions contained in section 306 with modifications.

We recommend adding the Administration's proposal regarding the standard of review of factual determinations. The Administration's proposal, S. 754, would provide that all findings of fact supporting an order of deportation or exclusion are conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary. In addition, we recommend that the House bill be modified to include the Senate provisions eliminating the automatic stay of deportation upon the filing of a petition for review and requiring that constitutional and statutory challenges relating to removal actions be raised only in connection with review of an administratively final order of removal. We would be happy to work with the committee to craft the appropriate language to accomplish these recommendations.

Mandatory Custody

Section 414(c) of the AEDPA amended the INA to require the Attorney General to assume custody of all aggravated felons and most other criminal aliens and to maintain custody without exception until removal. This provision severely restricts the Attorney General's discretion and cannot be fully implemented without a massive increase in detention resources. Under an amendment added in 1990, the INA permitted release of a lawfully admitted alien who had been convicted of an aggravated felony, if

he or she were found not to be a threat to the community and likely to appear for hearings. Before that amendment, numerous court decisions had questioned the constitutionality of the previous "no-release" rule or held it invalid. The AEDPA essentially reinstates the earlier questionable provision and invites renewal of litigation. A number of habeas corpus petitions challenging mandatory custody already have been filed. In addition, the AEDPA amendments require the detention of aliens who have been convicted of lesser crimes and who may not have been sentenced to confinement for those crimes. We believe the Attorney General should be allowed to retain her discretion to determine who must be held in custody during the pendency of the hearing process.

The capacity to detain non-criminal aliens is a vital component of a balanced immigration enforcement strategy. We must have the authority to release less serious criminal offenders who may be eligible for relief and who pose no danger to the community in order to continue to detain aliens apprehended at worksites, those encountered in anti-smuggling operations, and recidivist illegal entrants along the Southwest border. We recommend rejecting section 164 of the Senate bill and adopting the House provisions at sections 303 and 305 which will accomplish the goal of prompt removal of criminal aliens while providing the Attorney General with the appropriate discretion regarding the use of detention facilities. In addition, the conference committee should reject the Senate bill's expansion of the definition of aggravated felony in section 161. A similar definition is in the AEDPA. By expanding the group of aliens for whom detention is strictly required, the Senate approach would effectively negate the more favorable House provision related to mandatory custody.

Verification of eligibility for employment and benefits

The Senate bill, which provides for the completion and evaluation of demonstration programs prior to the enactment by Congress of a new verification system for employment and benefit eligibility, is consistent with the Administration's proposal. We strongly support the approach to verification adopted in sections 111 through 113 with two reservations. First, section 112(a)(1)(A)(iv) limits the executive branch's discretion to choose appropriate demonstration projects by requiring the testing of three specified systems. The Administration recommends that the Attorney General retain flexibility to identify which projects will be the most instructive, taking into account technical feasibility and lessons learned from earlier pilots. Second, section 111(e) relieves an employer from liability under section 274A of the INA under certain conditions while section 111(g) limits liability under section 274A of the INA for any person who takes an action adverse to an individual in good faith reliance on information relating to that individual

gained from the new verification system or a demonstration project. The presence of two provisions which seemingly address the same issue, i.e. employer liability under the INA, is confusing, and we recommend that section 111(g) be stricken because it excuses an employer from liability even if she fails to comply with her voluntarily assumed responsibilities under the pilot. If both provisions are to be retained, their relationship should be clarified. Overall, we prefer the verification system provisions contained in the Senate bill except for section 117, intent to discriminate which is discussed above.

We also support the limits in section 116 of the Senate bill upon the number of documents which establish both employment authorization and identity and the number of documents which establish employment authorization. The House bill deletes from section 274A(b)(1)(C), "other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable." These documents are critical to the transition phase of document reduction, and we recommend that they be retained. We strongly prefer the Senate bill provisions on document reduction, but recommend that the effective date be 18 months as provided by the House bill to permit appropriate time for the promulgation of regulations.

We support adoption of section 403(d) of the House bill which specifically defines the term "entity" to include an entity in any Branch of the Federal Government. But we strongly oppose adoption of section 403(f) which mandates that not later than 180 days after the date of the enactment of this Act, the Attorney General shall issue regulations which shall provide for the electronic storage of Forms I-9. The INS currently is conducting a demonstration project involving the electronic generation, completion, and storage of the Form I-9. At present, forensic examination of Form I-9 is essential to the successful prosecution of fraud cases. It is premature at this time for Congress to mandate regulations providing for electronic storage within 180 days.

However, we support the House provision to study and conduct pilot studies to eliminate the fraudulent use of birth certificates.

Asylum

The House bill would require that all applications for asylum, both affirmative and defensive, must be filed within 180 days of arriving in the United States. There is an exception for "fundamentally changed" circumstances in the alien's country that affect eligibility for asylum. The Senate bill would require that defensive asylum claims (those filed for the first time in deportation or exclusion proceedings) must be filed within one

year of arrival. There is a "good cause" exception for having failed to file timely. The Administration is opposed to filing deadlines for asylum. We believe enforcement of the deadlines would unnecessarily divert resources from the adjudication of claims, create a new class of fraud, and have a negative effect on productivity. In our view, recent improvements in the asylum process make legislative asylum reform unnecessary. In addition, we believe that returning a refugee to a country where he or she would face a threat to life or freedom simply because the refugee failed to make a timely request for protection substantially undermines U.S. leadership in refugee protection. However, if the conference committee is intent on imposing a deadline on asylum applications, we recommend that the committee adopt the Senate version, as we believe it is essential to include an exception for good cause in order to maintain the flexibility to continue to protect bona fide refugees.

Pursuant to a presidential directive to address asylum abuse, the Department of Justice dramatically restructured the asylum process in January 1994. In addition, the Administration requested and Congress provided the resources necessary to do the job in the Violent Crime Control and Law Enforcement Act of 1994 which more than doubled the authorized number of INS asylum officers from 150 to 377 and increased the number of Immigration Judges from 116 to 179. By the end of Fiscal Year 1996, we expect to have approximately 210 immigration judges. The new asylum process allows the INS to quickly identify and promptly grant valid claims, and to refer all other cases to immigration court for deportation proceedings; to grant work authorization only to applicants who are granted asylum or when an applicant's case is not adjudicated within 180 days; and to streamline procedures to help asylum officers keep current with incoming applications.

To date, these reforms have had tremendous positive results. New asylum claims that are not part of the American Baptist Churches v. Thornburgh class action lawsuit (non-ABC) filed with the INS dropped 57 percent. Asylum officers completed 126,000 cases in calendar year (CY) 1995 compared to 61,000 in CY 1994. Immigration Judges completed 40,000 asylum cases in CY 1995 compared to 17,000 in CY 1994--an increase of 135 percent. More than 98 percent of the new non-ABC cases were completed by Immigration Judges within 180 days from the initial INS receipt of the asylum application. We have streamlined procedures without reducing the quality of our asylum decisions. INS has instituted quality assurance procedures to monitor the new system. Approval rates have not changed significantly.

In addition to restructuring the asylum process, the INS has stepped up its fraud investigation of preparers of spurious asylum claims. Investigations have resulted in indictments of preparers in Los Angeles, San Francisco, New York, and Arlington,

VA. In addition, INS requested and received additional funding in Fiscal Year 1996 for detention of absconders, including failed asylum seekers.

Triple Fence

This Administration has built and reinforced physical barriers along the Southwest border. Over the past several years, the INS with the support of military personnel and the National Guard has built miles of strategically placed fencing along the border to control drug trafficking, alien smuggling, crime, and illegal immigration. For example, there are now 28 miles of fencing in the San Diego Sector to support the Administration's increased deployment of Border Patrol agents, resources, and sophisticated technology. Recently, we began construction of a 1.3 mile fence along the border at Sunland Park, New Mexico. We support the Senate provision because it defers to the experience of the INS to determine whether multiple fencing would be safe and effective and allows for incorporation of necessary safety features to ensure the well-being of Border Patrol agents. We also support the Senate version because it does not waive the Endangered Species Act (ESA). We oppose providing ESA waivers to government agencies because it undercuts the general applicability of the ESA and undermines the government's credibility in enforcing it. Requirements and regulations under the ESA have been and continue to be streamlined to balance the interests underlying the ESA with those of the regulated community.

Adjustment of Status

Section 245(i) of the INA permits otherwise qualified aliens who entered the United States illegally or who were employed in the United States without authorization to adjust status in the United States upon the payment of a substantial penalty fee to the Examinations Fee Account. Relatives of legalized aliens who are permitted to remain in the United States under the "family unity" provisions may adjust under this provision without payment of the fee. Section 245(i), which expires in 1997, was intended to eliminate pro forma immigrant processing overseas for qualified applicants who were residing in the United States. This provision has enabled the INS dramatically to improve its services and the State Department to reduce its overseas visa processing staff.

Section 808 of the House Bill would make 245(i) available only for family unity beneficiaries. Since family unity beneficiaries are exempt from the fee requirement, this amendment would eliminate a substantial source of funding which would be spent by applicants, instead, to travel abroad to obtain immigrant visas. Section 245(i) revenues totaled \$135,000,000 in fiscal year 1995. If Congress either repeals or fails to extend

section 245(i), the new positions created by section 245(i) revenues will be eliminated and there will be a large adverse fiscal impact on the quality and level of services given to adjudicating petitions and applications for immigration benefits. Furthermore, as a result of 245(i), the Department of State has been able to reprogram positions to high priority anti-fraud and nonimmigrant visa work. Returning this pro forma immigrant visa processing to the Department of State without sufficient resources would cause severe disruption of service to the public. If the conference committee decides not to extend 245(i) adjustment authority beyond September 30, 1997, it should amend section 245(i) to provide adjustment authority for applications filed on or before that date. As currently written, the authority will sunset with respect to any application not adjudicated before September 30, 1997. Such an amendment would enable the INS to properly investigate and adjudicate pending cases without adversely affecting other priorities, e.g., naturalization, and will prevent forum shopping among INS district offices.

The Senate bill does not amend section 245(i) directly, but limits the underlying eligibility of certain alien status violators for immigrant status. Section 317 of the Senate bill provides that no petition may be approved on behalf of an alien who at any time has been apprehended for entering without inspection or who has failed to depart the U.S. within one year of the expiration date of any nonimmigrant visa (subject to a "good cause" exception) unless the alien has been outside of the U.S. for 10 years. Such an alien is inadmissible and ineligible to adjust status. This provision also prohibits such an alien from seeking a new nonimmigrant classification during the 10-year bar. Certain exceptions are prescribed, and Family Unity beneficiaries are exempt. Similarly, sections 301(b) and (c) of the House bill affect the eligibility of aliens to adjust status. Any alien present in the U.S. without inspection or who arrives in the U.S. without inspection is inadmissible. There is no waiver of this ground. Any alien who has been unlawfully present in the U.S. for an aggregate period of at least one year is inadmissible unless the alien remains outside the U.S. for at least ten years. There are waivers for close relatives of U.S. citizens and lawful permanent residents and those whose admission is deemed to be in the national interest.

The Administration opposes the restrictions on admissibility and eligibility to adjust contained in section 317 of the Senate bill and section 301 of the House bill. These provisions will not deter illegal immigration, but will likely result in a class of aliens who would otherwise be eligible for legal status remaining undocumented and in hiding. In particular, we oppose the provision in the House bill which attaches restrictions on those present unlawfully for a period of one year or more. This provision will generate needless and costly litigation on the

issue of the time period during which the alien was unlawfully present in the United States.

International Obligations

We are concerned over whether certain provisions in H.R. 2202 are consistent with U.S. international trade obligations, and would appreciate the opportunity for a discussion of these issues so that they may be taken up in the conference.



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

June 19, 1996

The Honorable Alan K. Simpson
Chairman, Immigration Subcommittee
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We wish to take this opportunity to advise you of our views on certain provisions in H.R. 2202, currently pending in conference. This letter expands on the letter you received from the Department of Justice on H.R. 2202 dated May 31, 1996. In this letter, we address only those provisions that would create a number of new eligibility restrictions for legal and illegal aliens under a wide variety of assistance programs.

The Administration believes strongly in the need for bipartisan legislation to deter illegal immigration, but we continue to have major concerns with specific provisions in the House and Senate versions that would restrict the eligibility of *legal immigrants* for certain benefits and services. The Administration's views on the final legislation adopted by the Congress will ultimately depend on whether it maintains an adequate and fair safety net for legal immigrants and does not impose massive new costs and mandates on State and local governments.

I. Extending Deeming To Other Programs And Services

While we support strengthening the deeming rules under the major cash and food assistance programs, we oppose the broad application of deeming to numerous and varied programs, and oppose the repeal of current exemptions from deeming, such as those provided to aliens who become severely disabled after entry. We support a balanced approach that reduces welfare utilization by sponsored immigrants without turning our back on the goal of family reunification that has been a cornerstone of our modern immigration policies, and without imposing substantial administrative costs and burdens on State and local governments, and other entities.

(A) Medicaid And Other Public Health Programs

We continue to strongly oppose broadening the application of deeming rules from a well-defined set of cash and food assistance programs to nearly all Federal means-tested programs, including Medicaid and (under the Senate version) emergency medical services under Medicaid and other public health programs. Denying legal aliens access to Medicaid, emergency services under Medicaid, and preventive and primary care services could endanger the overall public health. Without early detection and intervention, many preventable diseases could spread to the community as a whole.

Also, denying legal aliens (primarily women and children) routine and relatively inexpensive preventive and primary care could increase utilization of emergency care services and could result in more expensive medical treatment. Hospitals and other providers, including State and local governments, are likely to be burdened with these increased costs.

In addition--unlike cash, food, or shelter--medical services cannot be easily shared by a sponsor with an alien. Furthermore, the current, employment-based market for individual and group health insurance does not provide access to all consumers. This reality could make it difficult to obtain health insurance for some sponsored legal aliens, even when their sponsors are financially able and willing to purchase health insurance for them.

At a minimum, the programs or organizations exempted from deeming should include all of those listed in both the House and Senate versions of H.R. 2202. In particular, the House version includes exemptions for emergency medical services under Medicaid and other public health programs, while the Senate version exempts nonprofit charitable organizations and certain community-based providers. We believe that all of these exemptions should be included in the conference report. Similarly, new deeming rules should apply only to sponsors and aliens who sign new, legally binding affidavits of support, as called for in the House version.

(B) Protecting Aliens Who Become Severely Disabled After Entry Into The U.S.

Current deeming rules exempt legal aliens who become severely disabled after entry into the United States. This policy recognizes that while sponsors should be held responsible for supporting the aliens they sponsor, they cannot possibly foresee circumstances that result in legal aliens becoming severely disabled. For example, a sponsored legal alien child or adult may suffer severe disabilities as a result of a car accident. Current law recognizes that this exemption is reasonable and necessary to support our policy of family reunification.

Both the Senate and House versions of H.R. 2202 would repeal this exemption from deeming for aliens who become disabled after entry. Thus, H.R. 2202 would essentially require U.S. citizen and legal immigrant sponsors to become completely impoverished before the aliens they have sponsored would be eligible for any financial or medical assistance, even though the sponsors could not possibly have foreseen or expected the disabling condition that may affect the alien after entering the U.S. We strongly oppose applying deeming to legal aliens who become severely disabled after entry, and strongly recommend that this current exemption from deeming be maintained in H.R. 2202.

At a minimum, H.R. 2202 should allow for some portion of a sponsor's income and resources to be disregarded in the deeming calculation. Thus, in the situation in which the sponsored alien becomes disabled after entry or otherwise needs assistance from sponsors, we should ensure that the sponsor and his or her family is allowed to retain enough income and resources so that they themselves do not become dependent on welfare. It simply does not make sense to impose new rules that may result in increasing poverty and welfare dependence among hard-working U.S. citizens and legal immigrants, and undermine our policy of family reunification.

(C) Other Social Investment Programs

In addition to applying deeming to health programs for the first time, both versions would also introduce deeming to a number of social investment programs, such as child care, job training and postsecondary student aid. The Senate version would also apply deeming to many Head Start programs, including centers run by local governments (such as New York City and Salt Lake City), and by numerous school districts across the country.

We strongly oppose the application of deeming to means-tested job training programs. Legal immigrants are currently eligible for means-tested employment and training services under JTPA Title II (including year-round programs for disadvantaged adults and youths, and the summer youth employment and training program), JTPA Title IV (Job Corps, Migrant and Seasonal Farmworker, and Indian and Native American programs) and Title V of the Older Americans Act (Senior Community Service Employment Program). Studies have demonstrated that Job Corps and JTPA training for disadvantaged adults are particularly wise investments, boosting the earnings and employment of participants. The ability of workers to build and deploy skills is essential to the health of our economy. It is in no one's interest to deny legal immigrants services that will help them become more productive members of our society.

Similarly, we strongly oppose the application of new deeming rules to other social investment programs. Programs such as child care, Head Start, job training and postsecondary student aid are aimed at *reducing* welfare dependency of legal immigrants and integrating them more quickly into the economic and social mainstream. Preventing legal immigrants from obtaining such services due to deeming goes against a long and admirable tradition in this country of welcoming legal immigrants and ensuring they receive a hand-up to attain self-sufficiency, rather than a hand-out.

At a minimum, the programs and organizations exempted from deeming should include all of those listed in the House and Senate versions of H.R. 2202. The House version includes an exemption for Head Start and other education programs. These provisions should be retained, and means-tested job training and employment programs should be added to the list of programs exempted from deeming in the conference report. In addition, the conference report should include the Senate provision relieving nonprofit charitable organizations of the burden of determining eligibility under these social investment programs.

(D) Protecting Children And Victims Of Domestic Violence

It is our fundamental responsibility to ensure that victims of physical and/or mental abuse, particularly children, are protected from such abuse or neglect regardless of immigration status. We strongly oppose provisions in the Senate bill that would apply deeming to a variety of child protective services. We support provisions in the House bill that exempt from deeming those services directly related to assisting the victims of domestic violence or child abuse.

In addition, assistance for which a U.S. citizen child is eligible should not be denied based on the immigration status of the parent. The House bill includes a provision that would prohibit payment of assistance to individuals who were determined to be not lawfully present. Thus, a parent who was not lawfully present would not be able to receive assistance on behalf of a U.S. citizen child who was eligible for such assistance. Instead, some other lawfully present adult would be required to step forward to act as a third party representative on behalf of the eligible child. We oppose this provision, since it would likely harm a number of innocent children who are U.S. citizens or legal immigrants. In selecting payees on behalf of children, the experience of the AFDC and SSI programs is that the parent with whom the child lives is the preferred choice in virtually all cases. Very few noncustodians ever step forward to act as payees, due to the time commitments involved in making daily living decisions and the conflicts with parents that often result from such cases. Ultimately, this provision is likely to delay necessary assistance for U.S. citizen and legal immigrant children. While this issue is difficult,

we strongly believe that the goal of reducing illegal immigration should not be achieved by harming U.S. citizen and legal immigrant children.

(E) **Imposing New Burdens And Costs On State And Local Governments, And Other Entities**

The broad application of new deeming rules to a number of Federal means-tested programs would impose significant new administrative costs and burdens on State and local governments, and other entities such as hospitals. For example, both versions would require applicants for child care under the Child Care and Development Block Grant to have their alien eligibility determined and to have deeming calculations performed for sponsored aliens. This would require States and localities to dedicate additional personnel, training, and other resources to carry out these new requirements.

Denying Federal Medicaid reimbursement for health services to legal immigrants could likely increase the utilization of emergency medical services and could lead to increased medical costs in the future. Hospitals, particularly public hospitals, and State and local governments that help fund public hospitals, would have to absorb such increased costs, since hospitals cannot deny treatment for emergency medical conditions. Localities with high immigrant populations, which are often localities where public hospitals face precarious financial condition, could also confront increased health care costs due to the deeming provisions in H.R. 2202. Although hospitals may be given authority to recoup payment from an immigrant's sponsor, such actions may not fully compensate hospitals, since recoupment is costly.

(F) **Termination Of Deeming (And Affidavit Of Support) Based On Work**

The provision that terminates deeming and the support agreement when the alien acquires 40 qualifying quarters is technically and administratively problematic. We believe that this requirement should be modified to be quarters of coverage as defined in section 213 of the Social Security Act. In addition, the Administration supports a termination of deeming and the support agreement after 20 quarters instead of 40 quarters.

II. New Sponsor Requirements

Both versions would impose new income requirements on U.S. citizens and legal immigrants who wished to sponsor close family members. The House bill would require sponsors to demonstrate an annual income of 200 percent of poverty; the Senate would require an annual income of 125 percent of poverty. We oppose these provisions, since they would effectively limit family reunification to relatively

wealthy families. Ninety million Americans have income below 200 percent of poverty and would be denied the opportunity to be reunited with close family members. In addition, enhanced deeming and other eligibility restrictions are sufficient to limit the use of the major cash and food welfare programs by sponsored immigrants. If new requirements on sponsors are adopted, it should reflect the lower income threshold as provided for in the Senate bill.

III. Deportation As Public Charge

Both versions would define as a "public charge" any legal alien who received certain benefits for an aggregate period of 12 months within either 5 years (Senate) or 7 years (House) of entry. The Senate version would treat receipt of virtually any Federal, State, or local needs-based assistance as applicable to the determination of whether an alien was a public charge. Similar to our opposition to the deeming provisions, we oppose such a broad and sweeping approach. The House version is preferable, since it limits the number of programs for which receipt of assistance would render an alien deportable to SSI, AFDC, Medicaid, Food Stamps, housing assistance, and State general cash assistance. However, the Senate bill contains a desirable provision that would limit the time period in which an alien could be deported to 5 years after the alien last received a benefit during the public charge period. We also prefer the Senate provision which exempts refugees from deportation on public charge grounds.

We also have serious concerns about implementation difficulties of both the House and Senate public charge deportation provisions. For example, it is not clear how information from the various State and local agencies administering most of these assistance programs would be transmitted to the Federal government for purposes of determining whether an alien was a public charge. These provisions could potentially add to the increased State and local administrative costs already described above.

IV. Cuban and Haitian Entrants

We oppose the Senate provision that would make Cuban and Haitian entrants ineligible for means-tested assistance. This would place an undue burden on State and local governments, and we strongly recommend that Cuban and Haitian entrants remain eligible for assistance.

V. Effective Date Provisions

The deeming provisions in both versions would require careful coordination among Executive branch agencies and State agencies responsible for program

administration, and require the establishment of new standards for the affidavits of support executed by sponsors of family-based visa applicants. The House version would require that a new affidavit form be promulgated within ninety days of enactment and that an alien applicant's income and resources be deemed to include the assets of the sponsor no later than ninety days thereafter. The Senate provisions for deeming would take effect on the date of enactment, leaving no time for coordination among the Federal and State agencies prior to implementation.

If sufficient lead time is not provided, the burdens of administering the new provisions while guidance is being developed would be felt most severely by state and local governments. We strongly urge the conferees to adopt an effective date of one year after enactment. This would permit the development of a functional and enduring system for sponsorship requirements and attribution of resources, and allow full Federal and State coordination and public input. A one-year period for implementation of the deeming requirements would obviate the necessity for separate deadlines for the development of an affidavit of support form and for the use of such form.

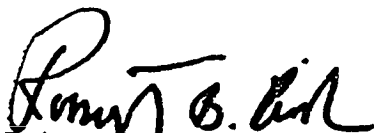
Similarly, the House version would require the Attorney General to publish regulations within sixty days of enactment to implement provisions that limit the availability of benefits to aliens who are lawfully present in the United States. We believe these new eligibility requirements should apply to aliens applying for benefits after date of enactment. And, as with the deeming provisions, the need for coordination among Federal, State and local agencies regarding this important regulation warrants a six-month effective date.

VI. Summary

We look forward to Congress enacting bipartisan legislation that attacks illegal immigration and reduces the utilization of welfare by sponsored legal immigrants. However, we are committed to achieving these goals in a manner that also protects the fundamental values of allowing American families to reunite; protecting public health and safety; providing legal immigrants with a hand-up, rather than a hand-out; protecting children; and limiting costly new mandates on State and local governments. A bill that honors these values will be acceptable; one that threatens public health and goes too far in denying a wide range of services to legal immigrants will not be acceptable. The Administration calls on the conferees to enact legislation that takes action against illegal immigrants but honors our tradition of treating legal immigrants fairly.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program. An identical letter is being sent to Senator Edward M. Kennedy, Representatives Lamar Smith and John Bryant, and a copy to House and Senate Conferees.

Sincerely,



Robert B. Reich
Secretary of Labor



Donna E. Shalala
Secretary of Health and Human Services



Shirley S. Chater
Commissioner of Social Security

LEGISLATIVE Bulletin

SOCIAL SECURITY
ADMINISTRATION

104-8

June 27, 1995

SENATE JUDICIARY IMMIGRATION SUBCOMMITTEE REPORTS S. 269

On Wednesday, June 14, the Senate Committee on the Judiciary, Subcommittee on Immigration, reported S. 269, Chairman Simpson's "Immigrant Control and Financial Responsibility Act of 1995", by a vote of 4-2. While several amendments were adopted, none affected the SSA-related provisions contained in the bill as introduced. These provisions include:

SSI-Related Provisions

- o Noncitizens, except for "eligible aliens," would be prohibited from receiving any benefits under any program of needs-based assistance, including SSI, that are provided in whole or in part by the Federal Government or any State or local government. "Eligible aliens" would be aliens lawfully admitted for permanent residence, asylees, refugees, aliens whose deportations have been withheld, and parolees who have been paroled for a period of 1 year or more. SSA would be required to notify all aliens whose eligibility would end because of this provision either individually or by public notice.
- o Sponsors' affidavits of support would be made legally enforceable against the sponsors by the sponsored aliens, the Federal Government, or any State or local government for 10 years after the last month for which the aliens received assistance. The affidavit would be required to include the sponsors' agreement to support the aliens until the aliens have worked for 40 quarters in the United States. The agencies would be required to seek reimbursement from the sponsors for any assistance the aliens receive; if the sponsors do not reimburse, the agencies may take legal action to recover monies. The Commissioner of Social Security would be required to prescribe regulations for carrying out the reimbursement provision.

All of the sponsor's (and sponsor's spouse's) income and resources would be deemed to the alien--regardless of his or her entry status or if he or she has naturalized--for a 5-year period beginning the day the alien was first lawfully in the United States or, if specified in the affidavit, until the alien has worked 40 quarters in the United States, whichever is later.

- o Aliens who receive SSI, AFDC, Medicaid, food stamps, State general assistance, or any other needs based Federal, State, and local assistance benefits for more than an aggregate of 12 months within the 5-year period after the admission for lawful permanent residence status would be considered "public charges" and, thus, deportable. This "public charge" provision would not apply to refugees or asylees, or to lawful permanent residents who have physical illness or injuries so serious that they could not work at any job, or a mental disability that required continuous hospitalization.

The provisions would be effective upon enactment with regard to applicants and current beneficiaries except that the "public charge" provision would be effective with respect to aliens who become lawfully admitted for permanent residence after the date of enactment.

Other SSA-Related Provisions

- o Requires the Attorney General, together with the Commissioner of Social Security, to establish within eight years a system to verify eligibility for employment and eligibility for benefits under government-funded programs of public assistance.
 - The system must be capable of determining the identity of the applicant and whether the individual is eligible.
 - Any document used by the system must be tamper-proof and cannot be used as a national identification document.
 - Within 12 months of the date of enactment, the Attorney General is to establish an automated system using Immigration and Naturalization (INS) and Social Security Administration data bases to determine work authorization. The Commissioners of SSA and INS are to establish procedures for secondary verification when the automated system is unable to verify information.

- Use of the system would be generally restricted to enforcement of the Immigration and Nationality Act, certain Federal laws, and local laws relating to eligibility for certain government-funded benefits.
- Privacy and security standards would be established for personal information and identifiers obtained for and used by the system.
- o Limits the documents which establish employment authorization to the Social Security card and the Employment Authorization Document (issued by INS) and authorizes INS to require aliens to provide their SSN.
- o Directs the Attorney General and the Commissioner of Social Security to conduct 3-year demonstration projects in 5 States to verify eligibility for employment and for benefits under government-funded programs of public assistance.
- o Requires that all copies of birth certificates be counterfeit-proof, tamper-resistant, and include an SSN. Prohibits State and local agencies from issuing a birth certificate without verifying with SSA that the individual is not deceased.
- o Requires that a copy of every death certificate issued in the U.S. be sent to SSA.
- o Prohibits Federal, State, and local agencies from accepting as evidence any birth certificate which does not meet the requirements described above and requires that SSA verify that the individual is not deceased.
- o Requires SSA to establish procedures whereby the identity of every individual born in the U.S. would be verified by age 16 and a fingerprint or other biometric data would be added to the individual's birth certificate.
- o Requires State-issued drivers' licenses and identification documents to include an SSN that has been verified with SSA before issuance. Such documents must also be tamper resistant and contain a fingerprint or other biometric data. Prohibits Federal, State, and local agencies from accepting as evidence any driver's license or identification document which does not meet the requirements described above.

- o Limits eligibility for Social Security benefits to U.S. citizens and eligible aliens who have been granted work authorization. An eligible alien is an individual who has been lawfully admitted for permanent residence, has been granted asylum, is a refugee, has had his/her deportation withheld, or is a parolee for a period of 1 year or more. Benefits could not be based on earnings from unauthorized employment. Ineligible aliens would not be reimbursed for Social Security taxes.

The effective dates for these provisions will be supplied in a subsequent Legislative Bulletin.

SENATE FINANCE COMMITTEE REPORTS PUBLIC TRUSTEES

On June 8, 1995, the Senate Finance Committee reported Public Trustee nominees--Stephen Kellison and Marilyn Moon as members of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, for a term of four years. Full Senate consideration of the Public Trustees' confirmation has not been scheduled; however, confirmation is expected before the July recess.

LEGISLATIVE Bulletin

SOCIAL
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104-12

November 7, 1995

HOUSE COMMITTEE ON THE JUDICIARY COMPLETES MARKUP OF H.R. 2202, IMMIGRATION IN THE NATIONAL INTEREST ACT

On October 24, 1995, the House Committee on the Judiciary completed markup of H.R. 2202 (Immigration in the National Interest Act). This bill would revise the nation's immigration laws, including limiting legal immigration, deterring illegal immigration, improving the verification of work authorization, and reducing benefits of illegal immigrants. Further House action is not expected until next year. Several Social Security-related provisions are described below.

Employment Authorization

- o Requires the Attorney General, in consultation with the Commissioner of Social Security, to test an employment eligibility confirmation process under which most employers in 5 of the 7 States with the highest population of unauthorized aliens would verify the identity, Social Security number (SSN), and work eligibility of a newly hired employee.
 - Pilot projects would terminate no later than October 1, 1999. Nationwide expansion of these pilot projects would require congressional approval.
 - The confirmation process would include a toll-free telephone line or other electronic media to confirm whether an individual is authorized to be employed and a record of each confirmation attempt.
 - The Commissioner of Social Security would have to establish a reliable, secure method which verifies the SSN and name match and indicates whether the SSN is valid for employment.

- o Provides that a Social Security card (other than a card which specifies that the card does not authorize employment) is the only document that would verify employment authorization.
- o Requires SSA to report annually to the Congress the number of SSNs issued to persons not authorized to work to which earnings have been reported to SSA. Also, requires SSA to provide the Attorney General with the name and address of such person, the name and address of the employer reporting the earnings, and the amount of the earnings.

Prohibition of Eligibility

- o Generally prohibits any noncitizen who is not "lawfully present" in the United States from being eligible for, or serving as a representative payee for, Federal assistance benefits, including SSI.

Sponsor-To-Alien Deeming

- o With certain limited exceptions, all of the sponsor's (and sponsor's spouse's) income and resources would be deemed to the alien--regardless of his or her disability status--for certain specified periods depending on the sponsor's relationship to the alien.

Affidavit of Support

- o Requires an affidavit to include the sponsor's agreement to support the alien until the alien has acquired 40 quarters of coverage in the United States.

Miscellaneous

- o Requires HHS to conduct a pilot program of an electronic network linking vital statistics records for 3 of the 5 States with the largest number of undocumented aliens. The network would provide for the matching of deaths and births and allow access to such information by any Federal or State agency.

LEGISLATIVE **Bulletin**

*SOCIAL SECURITY
ADMINISTRATION*

104-21

March 29, 1996

HOUSE PASSES IMMIGRATION REFORM LEGISLATION

On March 21, 1996, the House passed H.R. 2202, Immigration in the National Interest Act, by a vote of 333-87. There was one amendment that affected a Social Security-related provision as reported by the House Committee on the Judiciary. (See Legislative Bulletin No. 104-12.)

The employment authorization provision requires the Attorney General, in consultation with the Commissioner of Social Security, to test an employment eligibility confirmation process for all employers in 5 of the 7 States with the highest population of unauthorized aliens. The amendment that passed on the House floor allows employers to voluntarily participate in the employment eligibility confirmation program.

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SOCIAL SECURITY
ADMINISTRATION

104-24

May 10, 1996

THE SENATE PASSES H.R. 2202 (S. 1664) THE "IMMIGRATION CONTROL AND FINANCIAL RESPONSIBILITY ACT OF 1996"

On May 2, 1996, the Senate passed H.R. 2202, the "Immigration Control and Financial Responsibility Act of 1996," by a vote of 97 yeas to 3 nays. After floor debate, the Senate replaced the text of the House-passed version of H.R. 2202 (see Legislative Bulletin 104-21) with the text of S. 1664, as amended. H.R. 2202 as passed by the Senate would amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States. Both the Senate and the House must now appoint conferees and schedule a conference to reconcile the differences between the Senate- and House-passed bills.

The Senate bill contains the following Social Security-related provisions.

EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM

- o Requires the Attorney General to develop a number of local and regional pilot projects to demonstrate the feasibility of alternative systems for verifying: (1) eligibility for employment in the U.S.; and (2) immigration status for purposes of eligibility for benefits under public assistance and other Government benefit programs. Projects are to begin within 6 months of the date of enactment and terminate within 4 years after the date of enactment.
- o Requires the pilot projects to test at least the following:
 - telephone verification of SSNs and verification of identity through U.S. passport, State driver's license or identification document, or INS identification document;
 - a counterfeit-resistant driver's license with a machine-readable SSN in States that already require an SSN on the license; and
 - a verification system of immigration status that would apply only to noncitizens (citizens would attest to their citizenship).

- o Provides that if the Attorney General determines that a pilot satisfies privacy, anti-discrimination, and accuracy criteria, the project's requirements will supersede current law. If a pilot is determined adequate, the Attorney General may require mandatory participation. However, no employer would be required to both participate in a pilot and meet current law requirements related to employment eligibility verification, once the pilot has been determined satisfactory.

BIRTH CERTIFICATE REQUIREMENTS

- o Requires all Federal agencies and State and local government agencies that issue driver's licenses and identification documents to accept only copies of birth certificates that conform to standards set by a Federal agency, to be designated by the President, in consultation with other appropriate Federal agencies and State vital statistics agencies. (Birth certificate requirements apply only to births registered in the U.S.)

Federal standards would be set forth in regulations and include:

- certification by the issuing agency;
 - use of safety paper, the seal of the issuing agency, and other features designed to resist tampering, counterfeiting, and duplicating for fraudulent purposes;
 - annotations on the original birth certificates that an individual is deceased based on information obtained from SSA, from an interstate system of birth-death matching, or otherwise; and
 - copies of birth certificates issued after a person's death to prominently note that the individual is deceased.
- o Requires a report to Congress on the proposed standards within one year of the date of enactment. Regulations on the proposed standards would not go into effect until two years after the report is released.
 - o Requires the Department of Health and Human Services (HHS) to provide grants:
 - to encourage States to develop the capability to match birth and death records, within each State and among the States, and to note the fact of death on the birth certificates of deceased persons; and
 - for projects in 5 States to demonstrate the feasibility of a system by which State vital statistics records would reflect in-State deaths within 24 hours.

- o Requires HHS, one year after the date of enactment, to submit a report to Congress on ways to reduce birth certificate fraud, including any use of a birth certificate to obtain an SSN or State or Federal identification or immigration document.

DRIVER'S LICENSES/IDENTIFICATION DOCUMENTS

- o Generally requires SSNs to be included on licenses or identification documents. (The requirement does not apply if the State had a law, policy, or regulation in effect prior to the date of enactment that: (1) requires every applicant for a license to submit his/her SSN; (2) requires State verification with SSA that the SSN is valid and not a nonwork SSN; and (3) does not require the SSN to appear on the license.)
- o Phases-in the improved driver's license identification document form over six years beginning October 1, 2000. Only improved licenses and identification documents could be used for evidentiary purposes by government agencies.

SOCIAL SECURITY BENEFITS

- o Prohibits payment of Social Security benefits to any noncitizen in the U.S. for any month the noncitizen is not lawfully present in the U.S. (to be determined by the Attorney General). Effective for benefits based on applications filed on or after the date of enactment.
- o Requires the Comptroller General to conduct a study and report to Congress, no later than 18 months after enactment, on the extent to which noncitizens in the U.S. qualify for OASDI benefits based on their own earnings record.

NONCITIZEN ELIGIBILITY FOR SUPPLEMENTAL SECURITY INCOME (SSI) BENEFITS

- o Limits the payment of benefits to noncitizens under Federal, State, or locally funded needs-based public assistance programs, including SSI, to those who are:
 - lawfully admitted for permanent residence (LAPR);
 - refugees;
 - parolees who have been paroled for a period of 1 year or more;
 - asylees;
 - noncitizens whose deportations have been withheld under section 243 (h) of the Immigration and Nationality Act (INA); and
 - noncitizens who have been battered or subjected to extreme cruelty by family members living in the same household and noncitizens whose

children have been battered by such individuals, if the battered individuals petition the INS (or have a petition filed on their behalf) for adjustment of their immigration status as spouses or children of citizens or LAPRs, or have been granted suspension of deportation under section 244 (a)(3) of the INA.

The provision would be effective upon enactment. SSA would be required to "notify individually or by public notice" all individuals whose eligibility would end under this provision.

SPONSORSHIP DEEMING

- o Provides that all of the sponsor's (and sponsor's spouse's) income and resources would be deemed to the noncitizen--regardless of his or her entry or disability status--for a 5-year period beginning the day the noncitizen was first lawfully in the United States. Deeming would end upon citizenship.
- o Provides that deeming also would end when a noncitizen has 40 "qualifying quarters"--i.e., an individual earns 40 quarters of Social Security coverage, did not receive needs-based public assistance during any such quarter, and has income tax liability for the year during which the quarters were earned. Quarters earned by a spouse would be counted toward the 40 qualifying quarters under the same conditions if the individual and spouse filed a joint tax return. Likewise, if a sponsored noncitizen is listed as a dependent on another individual's tax return, quarters earned by such individual would be considered the noncitizen's.
- o Provides that only the amount of income and resources actually provided the noncitizen by the sponsor would be counted for deeming purposes, if a sponsor is indigent, and the agency makes a determination that without SSI benefits the noncitizen is unable to obtain food and shelter taking into account the noncitizen's income and cash, food, housing, and other assistance provided by any individual including the sponsor.
- o Provides that deeming would not apply for a 4-year period to noncitizens if they or their children have been battered or subjected to extreme cruelty by family members living in the same household. The 4-year period would be extended if the battering were ongoing, has led to an order from a judge or INS, and the battery or cruelty has a causal relationship to the need for benefits.

The provisions would be effective upon enactment, except for the 40-qualifying-quarter provision which is effective with respect to new legally enforceable affidavits of support (see below).

AFFIDAVITS OF SUPPORT

- o Provides that affidavits would be made legally enforceable against the sponsor by the sponsored immigrant, the Federal, State, and local governments and would be required to include the sponsor's agreement to support the noncitizen until he or she has, or is credited with, 40 qualifying quarters.
- o Requires the agency to seek reimbursement from the sponsor for any assistance the noncitizen receives; if the sponsor does not reimburse, the agency may take legal action against the sponsor to recover monies. The Commissioner of Social Security would be required to promulgate regulations regarding such a reimbursement process.

The Secretary of State, Attorney General, and Secretary of Health and Human Services would be required to develop a legally enforceable affidavit no later than 90 days after enactment.

SPONSOR'S (DEEMOR) SSN REQUIRED

- o Requires the sponsor of an immigrant to provide his/her SSN on the affidavit of support.
- o Requires the Attorney General, in consultation with the Secretary of State, to develop an automated system to maintain the SSN data.
- o Requires the Attorney General to submit an annual report to Congress on the total number of sponsors and the number in compliance with the financial obligations of the sponsor-to-alien deeming provisions.

PUBLIC CHARGE

- o Provides that any noncitizen who receives more than 12-months' worth of benefits within the 5-year period after admission for lawful permanent residence under Federal, State, or locally funded needs-based programs (with several exceptions) would be considered deportable as a "public charge." Would not apply if a noncitizen has physical illness or injuries so serious that they could not work at any job, or a mental disability that required continuous hospitalization.
- o Provides that in cases in which the noncitizen or his or her child were battered or subjected to extreme cruelty, the 12-month period would be 48 months and could be longer if the battering were ongoing.

Would apply only to noncitizens who enter United States on or after the date of enactment and to those who entered prior to enactment but adjust or apply to adjust their statuses on or after such date.

SOCIAL SECURITY CARD

- o Requires the Commissioner of Social Security to develop a prototype of a counterfeit-resistant Social Security card that:
 - is made of durable, tamper-resistant material (e.g., plastic);
 - employs technologies that provide security features (e.g., magnetic stripe); and
 - provides individuals with reliable proof of citizenship or legal resident alien status.

- o Requires the Commissioner of Social Security to study and report on different methods of improving the Social Security card application process, including:
 - evaluation of the cost and workload implications of issuing a counterfeit-resistant Social Security card for all individuals over a 3-, 5-, and 10-year period;
 - evaluation of the feasibility and cost implications of imposing a user fee for replacement cards and cards issued to individuals who apply for such a card prior to the scheduled 3-, 5-, and 10-year phase-in options.

- o Requires the Commissioner to submit the report and a facsimile of the prototype card to the Congress within one year of the date of enactment.

LEGISLATIVE Bulletin

SOCIAL SECURITY
ADMINISTRATION

104-34

October 4, 1996

**PRESIDENT CLINTON SIGNS AN OMNIBUS BUDGET BILL
H.R. 3610, WHICH INCLUDES THE ILLEGAL IMMIGRATION REFORM
AND IMMIGRANT RESPONSIBILITY ACT OF 1996 AND
THE FY 1997 APPROPRIATIONS FOR SSA**

On September 30, 1996, The President signed into law H.R. 3610 (P.L. 104-208), the Department of Defense Appropriations Act, 1997. This omnibus budget bill includes six FY 1997 appropriations measures and contains SSA's FY 1997 appropriation. The bill also includes the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Included in the immigration reform section of H.R. 3610 were the following provisions of interest to SSA:

PROVISIONS RELATED TO NONCITIZENS

Definition of "Qualified Alien"

- o Amends section 431 of P.L. 104-193 to add to the list of six specific immigration categories that comprise the definition of "qualified alien," the following new category:
 - Aliens and their children who have been battered or subjected to extreme cruelty by a spouse or parent or a member of the spouse's or parent's family living in the same household as the alien if the alien has a petition for adjustment of immigration status approved or pending and the Attorney General determines that there is a substantial connection between such battery or cruelty and the need for benefits. A noncitizen would not be considered to be a qualified alien for any month in which the noncitizen lives in the same household as the individual responsible for the battery or extreme cruelty.

NOTE: In order to be eligible for SSI, a "qualified alien" would also have to meet the noncitizen SSI eligibility criteria under P.L. 104-193 (see Legislative Bulletin 104-32).

Sponsorship Deeming

- o Amends section 421 of P.L. 104-193 to add the following two exceptions to sponsor-to-immigrant deeming:
 - Requires that if a noncitizen is indigent and the agency makes a determination that without SSI benefits the noncitizen is unable to obtain food and shelter taking into account the noncitizen's income and cash, food, housing, and other assistance provided by any individual including the sponsor, then only the amount of income and resources *actually provided* the noncitizen by the sponsor is counted for deeming purposes. In all cases in which such determinations are made, the agency would be required to report the names of the noncitizens and their sponsors to the Attorney General.
 - Provides that deeming would not apply for a 12-month period if noncitizens or their children have been battered or subjected to extreme cruelty by family members. The deeming exemption period would be extended if the battering or cruelty has led to an order from a judge, an Administrative Law Judge (ALJ), or the Immigration and Naturalization Service (INS), and the benefit-paying agency determines that the need for benefits has a *substantial connection* to the battery or cruelty. The deeming exemption would not apply for any month in which the noncitizen lives in the same household as the person responsible for the battery or extreme cruelty.

The "indigent noncitizen" provision is effective for noncitizens whose sponsors execute legally enforceable affidavits of support (see below). The "battery/cruelty" exception provision is effective upon enactment.

Affidavits Of Support

- o Replaces the affidavit of support provisions in P.L. 104-193 with the following:
 - Requires that affidavits of support be made contracts under which the sponsor agrees to provide support at an annual income that is not less than 125 percent of the poverty line. Affidavits of support would be made legally enforceable against the sponsor by the sponsored immigrant, the

Federal, State, and local governments and would be required to include the sponsors' agreement to support the noncitizens until they become U.S. citizens or until they (or, under certain conditions, their spouses or individuals who claimed them as dependents on their income tax return) have worked 40 quarters in the United States, whichever is earlier.

- Requires the agency to request reimbursement from the sponsor for assistance provided the noncitizen. If 45 days after the reimbursement request, the sponsor is unresponsive or unwilling to make reimbursement, the agency has 10 years to take legal action against the sponsor. Allows the agency to hire individuals to collect reimbursement.

The Attorney General, in consultation with the Secretary of Health and Human Services (HHS), would be required to develop a standard affidavit of support within 90 days after enactment and the provision would be effective no earlier than 60, and no later than 90, days after enactment.

Study of Noncitizens Who Are Not "Qualified Aliens" Receiving SSI on Another's Behalf

- o Requires that the General Accounting Office within 180 days of enactment submit a report to Congress and the Department of Justice on the extent to which means-tested benefits are being paid to noncitizens acting as representative payees who are not "qualified aliens".

Reports Of Earnings Of Noncitizens Not Authorized To Work

- o Requires the Commissioner to report to Congress, no later than 3 months after the end of each fiscal year, the aggregate number of Social Security numbers (SSNs) issued to noncitizens not authorized to work, but under which earnings were reported.

Effective beginning with fiscal year 1996.

- o Requires the Commissioner to transmit to the Attorney General, within 1 year of enactment, a report on the extent to which SSNs and Social Security cards are used by noncitizens for fraudulent purposes.

Maintaining Information On Noncitizens

- o Authorizes the Attorney General to require any noncitizen to provide his/her SSN for purposes of inclusion in any record maintained by the Attorney General or INS.

Effective on the date of enactment.

Ineligibility Of Noncitizens Not Lawfully Present For Social Security Benefits

- o Prohibits payment of Social Security benefits to any noncitizen in the U.S. for any month in which the noncitizen is not lawfully present in the U.S. (as determined by the Attorney General).

Effective for benefits based on applications filed on or after the first day of the first month that begins at least 60 days after the date of enactment.

IMPROVEMENTS IN IDENTIFICATION-RELATED DOCUMENTS

Birth Certificate Requirements

- o Prohibits Federal agencies from accepting copies of domestic birth certificates that do not conform to standards set forth in Federal regulations. The President would select one or more Federal agencies to develop appropriate standards for birth certificates and include them in a final regulation to be promulgated no later than 1 year after the date of enactment. The regulation would:
 - provide for certification by the issuing agency;
 - provide for use of safety paper, the seal of the issuing agency, and other features designed to resist tampering, counterfeiting, and duplicating for fraudulent purposes;
 - not require a single design to be used by all States; and
 - accommodate the differences between States in the manner and form in which birth records are stored and birth certificates are produced.

The restriction on the acceptance of birth certificates by Federal agencies applies to birth certificates issued after the day that is 3 years after promulgation of the regulation.

- o Requires the Department of Health and Human Services (HHS) to provide grants:

- to encourage States to develop the capability to match birth and death records, within each State and among the States, and to note the fact of death on the birth certificates of deceased persons (focusing first on individuals born after 1950); and
 - for projects in 5 States to demonstrate the feasibility of a system by which State vital statistics records would reflect in-State deaths within 24 hours.
- o Requires HHS to submit a report to Congress within 1 year of enactment on ways to reduce birth certificate fraud, including any use of a birth certificate to obtain an SSN or State or Federal identification or immigration document.

Effective upon enactment

Driver's License Requirements

- o Prohibits Federal agencies from accepting for any identification-related purpose a driver's license, or comparable identification document, issued by a State, unless the license:
 - has an application process that requires the presentation of such evidence of identity as is required by regulations published by the Secretary of Transportation within 1 year of enactment;
 - is consistent with regulations that require security features designed to limit tampering, counterfeiting, photocopying, and use of the license or document by impostors; and
 - contains the SSN which can be read visually or by electronic means. (This requirement does not apply if the State does not require the SSN to appear on the license; requires every applicant for a license to submit his/her SSN; and requires State verification with SSA that the SSN is valid.)

The restriction on acceptance of drivers licenses by Federal agencies would be effective beginning October 1, 2000.

Development Of Prototype Of Counterfeit-Resistant Social Security Card

- o Requires the Commissioner of Social Security, within 1 year of enactment, to develop a prototype of a counterfeit-resistant Social Security card that:
 - is made of durable, tamper-resistant material (e.g., plastic);
 - employs technologies that provide security features (e.g., magnetic stripe);
 - and

- provides individuals with reliable proof of citizenship or legal resident noncitizen status.
- o Requires the Commissioner of Social Security and the Comptroller General each to study and report to Congress on different methods of improving the Social Security card application process, including:
 - evaluation of the cost and workload implications of issuing a counterfeit-resistant Social Security card for all individuals over a 3-, 5-, and 10-year period; and
 - evaluation of the feasibility and cost implications of imposing a user fee for replacement cards and cards issued to individuals who apply for such a card prior to the scheduled 3-, 5-, and 10-year phase-in options.

OTHER PROVISIONS

Employment Verification

- o Requires 3 specific pilot programs to begin no later than 1 year after enactment and end no later than 4 years after the pilot begins.
- o Provides for employers to participate voluntarily in any one of the pilots.
 - Basic Pilot--employers in 5 of the 7 States with the highest population of noncitizens not lawfully present would confirm, through a toll-free telephone line or other electronic media system established by the Attorney General, the identity and employment eligibility of the individual based on SSN and immigration document (if applicable).
 - Citizen Attestation Pilot--an employer would not confirm identity or work authorization for individuals attesting that they are citizens. This pilot would operate only in States with a driver's license that contains a photograph and has been determined by the Attorney General to have security features/reliable means of identification.
 - Machine-readable Document Pilot--an employer would confirm an individual's identity and work authorization by means of a machine-readable SSN on a driver's license. This pilot would apply to individuals who do not attest citizenship and would operate only in States with a driver's license that contains a photograph and has been determined by the Attorney General to have security features/reliable means of identification.

- o Requires that, in cases where the Attorney General has a possible non-confirmation, SSA and the INS provide a secondary verification process to confirm the validity of the information provided. SSA would advise whether the name and number match SSA records and whether the SSN is valid for employment.

Verification Of Student Eligibility For Post-Secondary Federal Student Financial Assistance

- o Requires the Secretary of Education and the Commissioner of Social Security jointly to submit to Congress within 1 year of enactment a report on the Department of Education computer matching program for student loan, grant, or work assistance purposes. The report is to include:
 - an assessment of the effectiveness of the computer matching program, and a justification for such assessment;
 - the ratio of successful matches under the program to inaccurate matches; and
 - such other information as the Secretary and the Commissioner jointly consider appropriate.

LISTING OF REFERENCE MATERIALS

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U.S. Congress. House. Committee on the Judiciary, Subcommittee on Immigration and Claims. Hearing on Removal of Criminal and Illegal Aliens. March 23, 1995. 104th Congress, 1st Session.

U.S. Congress. House. Committee on the Judiciary, Subcommittee on Immigration and Claims. Hearing on Improving Alien and Immigration Status Verification Systems for Employment and Benefit Eligibility. March 30, 1995. 104th Congress, 1st Session.

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U.S. Congress. Senate. Committee on the Judiciary, Subcommittee on Immigration. Hearing on The Use of Supplemental Security Income and Other Welfare Programs by Immigrants. February 6, 1996. 104th Congress, 2nd Session.

U.S. Congress. House. Committee on the Judiciary, Subcommittee on Immigration and Claims. Hearing on Legal Immigration Projections. May 16, 1996. 104th Congress, 2nd Session.

U.S. Congress. Senate. Committee on the Judiciary, Subcommittee on Immigration. Hearing on Immigration and Naturalization Service Oversight. October 2, 1996. 104th Congress, 2nd Session.