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Part 1

IMMIGRATION REFORM AND CONTROL ACT OF 1983

MAY 13, 1983.—Ordered to be printed

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

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1510]

[Including cost estimate of the Congressional Budget Office]

The Committee on Judiciary, to whom was referred the bill (H.R. 1510) to revise and reform the Immigration and Nationality Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE; REFERENCES IN ACT

SECTION 1. (a) This Act may be cited as the "Immigration Reform and Control Act of 1983".

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act.

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TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 101. (a)(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

"UNLAWFUL EMPLOYMENT OF ALIENS

"SEC. 274A. (a)(1) It is unlawful for a person or other entity after the date of the enactment of this section to hire, or to recruit or refer for a fee or other consideration, for employment in the United States—

"(A) an alien knowing the alien is an unauthorized alien (as defined in paragraph (4)) with respect to such employment, or

"(B) an individual without complying with the requirements of subsection (b).

Subparagraph (B) shall not apply to a person or entity until the Attorney General, based upon evidence or information he deems persuasive, has notified the person or entity in writing that the person or entity has in his employ (or has referred or recruited) an unauthorized alien and the person or entity is thereafter required to comply with the requirements of subparagraph (B), except that any such person that voluntarily complies with such requirements before the date of such notifica-

tion must comply with such requirements for all individuals with respect to which such requirements may apply.

"(2) It is unlawful for a person or other entity, after hiring an alien for employment subsequent to the date of the enactment of this section and in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

"(4) As used in this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

"(5) For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

"(b) Except as provided in subsection (c), the requirements and procedures referred to in paragraphs (1)(B), (3), and (5) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, that—

"(1) the person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is eligible to be employed (or recruited or referred for employment) in the United States by examining the individual's—

"(A) United States passport, or

"(B)(i) social security account number card or certificate of birth in the United States or establishing United States nationality at birth, and

"(ii)(I) alien documentation, identification, and telecommunication card, or similar alien registration card issued by the Attorney General to aliens and designated for use for this purpose,

"(II) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section, or

"(III) in the case of individuals under sixteen years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in subclause (II), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification;

"(2) the individual must attest, on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment; and

"(3) after completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or of the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

"(A) in the case of the recruiting or referral (without hiring) of an individual, three years after the date of such recruiting or referral, and

"(B) in the case of the hiring of an individual—

"(i) three years after the date of such hiring, or

"(ii) one year after the date the individual's employment is terminated,

whichever is later.

A person or entity has complied with paragraph (1) with respect to examination of a document if the document reasonably appears on its face to be genuine. Notwithstanding any other provision of law, the person or entity may copy a document pre-

sented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection. A person or entity has complied with the requirements of this subsection, with respect to the hiring of an individual, if the requirements of this subsection are first met not later than noon of the day following the day on which the individual is first employed by that person or entity. A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this section or section 1546 of title 18, United States Code.

"(c)(1)(A) Within three years after the date of the enactment of this section, the President shall study and report to the Congress concerning the possible need for and costs of changes in or additions to the requirements of subsection (b) as conform to the requirements of paragraph (2) of this subsection and as may be necessary to establish a secure system to determine employment eligibility in the United States. In considering possible changes or additions, the President shall consider use of a telephone verification system.

"(B) Nothing in this subsection shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards.

"(2) Such changes or additions shall be designed in a manner so that—

"(A) personal information utilized by the system is available only to employers, recruiters, and referrers for employment and to Government agencies and only to the extent necessary for the purpose of verifying that an individual is not an unauthorized alien,

"(B) if the changes or additions provide a verification method to determine an individual's eligibility to be employed in the United States—

"(i) the verification may not be withheld for any reason other than that the individual is an unauthorized alien, and

"(ii) the verification method may not be used for law enforcement purposes (other than for enforcement of this section or section 1546 of title 18, United States Code), and

"(C) if the system requires individuals to present a card or other document designed specifically for use for this purpose at the time of hiring, recruitment, or referral, then such document may not be required (i) to be presented for any purpose other than under this section (or enforcement of section 1546 of title 18, United States Code) or (ii) to be carried on one's person.

"(d)(1)(A) In the case of a person or entity which has not previously been cited under this subparagraph, if the Attorney General, based on evidence or information he deems persuasive, reasonably concludes that the person or entity has hired, or has recruited or referred for a fee or other consideration, for employment in the United States an unauthorized alien, the Attorney General may serve a citation on the person or entity containing a notification that the alien's employment is not authorized and a warning of the penalties and injunctive remedy set forth in this subsection.

"(B) In the case of a person or entity which has previously been cited under subparagraph (A), which is determined (after notice and opportunity for an adminstrative hearing under paragraph (4)(A)(i)) to have violated paragraph (1)(A) or (2) of subsection (a), and which—

"(i) has not previously been subject to a civil penalty under this subparagraph, the person or entity shall be subject to a civil penalty of $1,000 for each unauthorized alien with respect to which the violation occurred, or

"(ii) has previously been subject to a civil penalty under this subparagraph in one or more instances, the person or entity shall be subject to a civil penalty of $2,000 for each unauthorized alien with respect to which the violation occurred.

"(C) A person or entity which violates paragraph (1)(A) or (2) of subsection (a) and which has previously been subject to a civil penalty under subparagraph (B) in two or more instances shall be fined not more than $3,000, imprisoned not more than one year, or both, for each unauthorized alien with respect to which the violation occurred.

"(2) Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the United States district court for the district in which the person or entity resides or in which the violation occurred requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

"(3) A person or entity which is determined (after notice and opportunity for an administrative hearing under paragraph (4)(A)(i)) to have violated subsection (a)(1)(B) shall be subject to a civil penalty of $500 for each individual with respect to which such violation occurred.

"(4)(A)(i) Before issuing a citation on, or imposing a civil penalty against, a person or entity under this subsection for a violation of subsection (a), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

"(ii) Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code and rules of the United States Immigration Board established under section 107. The hearing shall be held within two hundred miles of the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the assessment shall constitute a final and unappealable order.

"(iii) A person or entity (including the Attorney General) adversely affected by a final order respecting an assessment may, within sixty days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

"(B)(i) If the person or entity against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the Attorney General shall file a suit to collect the amount in the United States district court for the district in which the person or entity resides or in which the violation (with respect to which the penalty was assessed) occurred.

"(ii) In any suit described in clause (i) based on an assessment—

"(I) made after a hearing before an administrative law judge, the suit shall be determined solely upon the administrative record upon which the civil penalty was assessed and the administrative law judge's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, or

"(II) for which a timely request for a hearing was not made, the validity and appropriateness of the final order imposing the assessment shall not be subject to review.

"(5)(A) In determining the level of sanction that is applicable under paragraph (1) for violations of paragraph (1)(A) or (2) of subsection (a), determinations of more than one violation in the course of a single proceeding or adjudication shall be counted as a single determination.

"(B) In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referral for employment without reference to the practices of, or under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(e) In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

"(f) The provisions of this section preempt any State or local law imposing civil or criminal sanctions upon those who employ, or recruit or refer for a fee or other consideration for employment, unauthorized aliens.

"(g)(1) The President shall monitor, and shall consult with the Congress every six months concerning, the implementation of this section (including the effectiveness of the verification and record-keeping system described in subsection (b) and the status of the changes and additions described in subsection (c)) and the impact of this section on the economy of the United States and on employment (including discrimination in employment) of citizens and aliens in the United States, on the illegal entry of aliens into the United States, and on the failure of aliens who have legally entered the United States to remain in legal status.

"(2)(A) The Civil Rights Commission shall monitor the implementation and enforcement of the provisions of this section and shall investigate allegations that the enforcement or implementation of this section has been conducted in a manner that results in unlawful discrimination by race or nationality against citizens of the United States or aliens who are not unauthorized aliens (as defined in subsection (a)(4)).

"(B) The Civil Rights Commission, not later than eighteen months after the month in which this section is enacted, shall prepare and transmit to the Committees on the Judiciary of the House of Representatives and of the Senate a report

describing the implementation and enforcement of the provisions of this section during the preceding period, for the purpose of determining if a pattern of such unlawful discrimination has resulted. Two more such reports shall be prepared and transmitted thirty-six and fifty-four months after the month in which this section is enacted.

"(3) The Attorney General, jointly with the Secretary of Labor and the Chairman of the Equal Employment Opportunity Commission, shall establish a taskforce to monitor the implementation of this section and to review and investigate complaints registered of employment discrimination which may be attributable to the operation of this section.".

(2)(A) No citation, civil or criminal penalty, or injunction may be issued under section 274A of the Immigration and Nationality Act for the hiring, or recruiting or referring for a fee or other consideration, for employment of individuals occurring before the first day of the seventh month beginning after the date of the enactment of this Act.

(B) During the one-year period beginning on the date of the enactment of this Act, the Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for public education respecting the requirements of section 274A of the Immigration and Nationality Act.

(C) The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act, first issue, on an interim or other basis, such regulations as may be necessary in order to implement section 274A of the Immigration and Nationality Act.

(3) The table of contents is amended by inserting after the item relating to section 274 the following new item:

"Sec. 274A. Unlawful employment of aliens.".

(b)(1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) is amended—

(A) by striking out "101(a)(15)(H)(ii) and 214(c)" in paragraphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802) and inserting in lieu thereof "101(a)(15)(H)(ii)(a), 101(a)(15)(O), 214(c), and 214(e)";

(B) in section 103(a) (29 U.S.C. 1813(a))—

(i) by striking out "or" at the end of paragraph (4),

(ii) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or", and

(iii) by adding at the end the following new paragraph:

"(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.";

(C) by striking out section 106 (29 U.S.C. 1816) and the corresponding item in the table of contents; and

(D) by striking out "section 106" in section 501(b) (29 U.S.C. 1856(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

(2) The amendments made by paragraph (1) shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act.

FRAUD AND MISUSE OF CERTAIN DOCUMENTS

SEC. 102. (a) Section 1546 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

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

(2) by striking out "or other document required for entry into the United States" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States",

(3) by striking out "or document" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States",

(4) by striking out "$2,000" and inserting in lieu thereof "$5,000",

(5) by inserting "(a)" before "Whoever" the first place it appears, and

(6) by adding at the end the following new subsections:

"(b) Whoever knowingly uses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document or a false attestation for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

"(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).".

(b) The item relating to section 1546 in the table of sections of chapter 75 of such title is amended to read as follows:

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

PART B—ENFORCEMENT AND FEES

IMMIGRATION ENFORCEMENT ACTIVITIES AND AUTHORIZATION OF APPROPRIATIONS

SEC. 111. (a) An essential element of the program of immigration control and reform established by this Act is an increase in border patrol and other enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States.

(b)(1) Section 404 (8 U.S.C. 1101 note) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS AND IMMIGRATION EMERGENCY FUND

"SEC. 404. (a) There are authorized to be appropriated to the Department of Justice for the Immigration and Naturalization Service for the purpose of carrying out this Act (other than chapter 2 of this title)—

"(1) for fiscal year 1984, $716,550,000,

"(2) for fiscal year 1985, $689,232,000, and

"(3) for fiscal year 1986, $731,327,000.

"(b) In addition to the funds authorized to be appropriated under subsection (a), there are authorized to be appropriated for each of fiscal years 1984, 1985, and 1986, not less than $6,000,000, for the activities of the taskforce described in section 274A(g)(3).

"(c) There are authorized to be appropriated to an immigration emergency revolving fund, to be established in the Treasury, $35,000,000, to be used to provide for an increase in border patrol or other enforcement activities of the Service and for reimbursement of State and localities in providing assistance to the Attorney General in meeting an immigration emergency, except that no amounts may be withdrawn from such fund with respect to an emergency unless the President has determined that the immigration emergency exists and has certified such fact to the Judiciary Committees of the House of Representatives and of the Senate.".

(2) In addition to the funds otherwise authorized to be appropriated for fiscal year 1983, there are authorized to be appropriated for such fiscal year to the Department of Justice for the Immigration and Naturalization Service $35,480,000.

(3) The item in the table of contents relating to section 404 is amended to read as follows:

"Sec. 404. Authorization of appropriations and immigration emergency fund.".

UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES

SEC. 112. Section 274 (8 U.S.C. 1324) is amended—

(1) by striking out ": *Provided, however*" and all that follows up to the period at the end of subsection (a),

(2) by inserting "or subsection (c)" in subsection (b)(1) after "subsection (a)",

(3) by redesignating subsection (c) as subsection (d), and

(4) by inserting after subsection (b) the following new subsection:

"(c) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States such alien by himself or through another in any manner whatsoever, regardless of whether or not fraudulent, evasive, or surreptitious means are used and regardless of any official action which may later be taken with respect to such alien, shall, for each transac-

tion constituting a violation of this subsection (regardless of the number of aliens involved)—

"(1) be fined not more than $5,000 or imprisoned not more than one year, or both, or

"(2) in the case of—

"(A) a second or subsequent offense under this subsection,

"(B) an offense done for the purpose of commercial advantage or private gain, or

"(C) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined not more than $10,000 or imprisoned not more than five years, or both.".

FEES

SEC. 113. (a) Section 281 (8 U.S.C. 1351) is amended—

(1) by amending the heading to read as follows:

"NONIMMIGRANT VISA FEES AND ALIEN USER FEES";

(2) by inserting "(a)" after "SEC. 281."; and

(3) by adding at the end the following new subsection:

"(b) The Attorney General, in consultation with the Secretary of State, may impose fees on aliens with respect to their use of border facilities or services of the Service in such amounts as may reasonably reflect the portion of costs of maintenance and operation of such facilities and provision of such services attributable to aliens' use of such facilities and services.".

(b) The item in the table of contents relating to section 281 is amended to read as follows:

"Sec. 281. Nonimmigrant visa fees and alien user fees.".

RESTRICTING WARRANTLESS ENTRY IN THE CASE OF OUTDOOR OPERATIONS

SEC. 114. Section 287 (8 U.S.C. 1357) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of this section other than paragraph (3) of subsection (a), an officer or employee of the Service shall not enter without the consent of the owner (or agent thereof) or a properly executed warrant onto the premises of a farm or other outdoor operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States or for activities related to that purpose.".

PART C—ADJUDICATION PROCEDURES AND ASYLUM

INSPECTION AND EXCLUSION

SEC. 121. Subsection (b) of section 235 (8 U.S.C. 1225) is amended to read as follows:

"(b)(1)(A) An immigration officer shall inspect each alien who is seeking entry to the United States.

"(B)(i) If the examining immigration officer determines that the alien seeking entry—

"(I) does not present the documentation required (if any) to obtain entry to the United States,

"(II) does not have any reasonable basis for legal entry into the United States, and

"(III) does not indicate an intention to apply for asylum under section 208, subject to clause (ii), the alien shall be excluded from entry into the United States without a hearing.

"(ii) Before excluding an alien without a hearing under clause (i), the examining immigration officer shall inform the alien of his right to be represented by counsel (in accordance with section 292) and to have an administrative law judge redetermine the conditions described in clause (i). If the alien requests such a redetermination by an administrative law judge, the alien shall not be so excluded without a hearing until and unless the administrative law judge (after a nonadversarial, summary proceeding in which the alien may appear personally) redetermines that the alien meets the conditions of subclauses (I) through (III) of clause (i).

"(C) If the examining immigration officer determines that an alien seeking entry, other than an alien crewman and except as otherwise provided in subparagraph (B), subsection (c), or section 273(d), is otherwise not clearly and beyond a doubt entitled to land, the alien shall be detained for a hearing before an administrative law judge on exclusion of the alien.

"(2) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to land is so challenged, before an administrative law judge for a hearing on exclusion of the alien.

"(3) The Attorney General shall establish, after consultation with the Judiciary Committees of the Congress, procedures which assure that aliens are not excluded under paragraph (1)(B) without an inquiry into their reasons for seeking entry into the United States.

"(4) In the case of an alien who would be excluded from entry under paragraph (1)(B) but for indicating an intention to apply for asylum, the exclusion hearing with respect to such entry shall be limited to the issues raised in connection with the alien's application for asylum.".

UNITED STATES IMMIGRATION BOARD AND ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE SYSTEM

SEC. 122. (a) Title I is amended by adding at the end the following new section:

"UNITED STATES IMMIGRATION BOARD; USE OF ADMINISTRATIVE LAW JUDGES

"SEC. 107. (a)(1) There is established, as an independent agency in the Department of Justice, a United States Immigration Board (hereinafter in this section referred to as the 'Board') composed of a Chairman and six other members appointed by the President by and with the advice and consent of the Senate.

"(2) The term of office of the Chairman and all other members of the Board shall be six years except that—

"(A) of the members first appointed under this subsection, two shall be appointed for a term of two years, two shall be appointed for a term of four years, and three shall be appointed for a term of six years,

"(B) a member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and

"(C) a member may serve after the expiration of his term until reappointed or his successor has taken office.

"(3) A member of the Board may be removed by the President only for neglect of duty or malfeasance in office.

"(4) Members of the Board (other than the Chairman) are entitled, subject to the amounts provided in advance in appropriation Acts, to receive compensation at the rate now or hereafter provided for grade GS–17 of the General Schedule, under section 5332 of title 5, United States Code. The Chairman is entitled, subject to the amounts provided in advance in appropriation Acts, to receive compensation at the rate now or hereafter provided for grade GS–18 of such General Schedule.

"(5) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board. The Board shall establish rules of practice and procedure for itself and for the administrative law judges.

"(b)(1) The Board shall hear and determine appeals from—

"(A) final decisions of administrative law judges under this Act, other than a redetermination excluding an alien under section 235(b)(1)(B)(ii) or a determination granting voluntary departure under section 244(e) within a period of at least thirty days if the sole ground of appeal is that a greater period of departure time should have been fixed;

"(B) decisions on applications for the exercise of the discretionary authority contained in section 212(c) or section 212(d)(3)(B);

"(C) decisions involving the imposition of administrative fines and penalties under title II of this Act, including mitigation thereof;

"(D)(i) decisions on petitions filed in accordance with section 204, other than petitions to accord preference status under paragraph (3) or (6) of section 203(a) or petitions on behalf of a child described in section 101(b)(1)(F), and

"(ii) decisions on requests for revalidation and decisions revoking approval of such petitions under section 205;

"(E) determinations relating to bond, parole, or detention of an alien under sections 242(a) and 242(c); and

"(F) such other administrative decisions and determinations under this Act as the Attorney General may provide by regulation.

"(2) Three members of the Board constitute a quorum of the Board, except that the Chairman (or any member of the Board designated by the Chairman) is empowered to decide nondispositive motions.

"(3) The Board shall act in panels of three or more members or en banc (as designated by the Chairman in accordance with the rules of the Board). A final decision of such a panel shall be considered to be a final decision of the Board.

"(4)(A) Appeals to the Board from final orders of deportation or exclusion (including an order respecting asylum contained in such an order) shall be filed not later than twenty days after the date of the final order.

"(B) The Board shall review the decision of an administrative law judge based solely upon the administrative record upon which the decision is made and the findings of fact in the judge's order, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive.

"(5) A final decision of the Board shall be binding on all administrative law judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by a court of the United States.

"(6) In a case in which the Board is considering an appeal of a decision of an administrative law judge respecting an application for asylum, the Board shall render its decision on the appeal not later than sixty days after the date the appeal is filed.

"(c)(1) The Chairman, in accordance with sections 3105 and 5108 and other provisions of title 5, United States Code, relating to administrative law judges in the competitive service, shall—

"(A) appoint administrative law judges, and

"(B) designate one such judge to serve as chief administrative law judge.

"(2) In accordance with rules established by the Board, the chief administrative law judge—

"(A) shall have responsibility for the administrative activities affecting administrative law judges, and

"(B) may designate any administrative law judge in active service to hear and decide any cases described in paragraph (3).

"(3) Administrative law judges shall hear and decide—

"(A) exclusion cases under sections 236 and 360(c),

"(B) deportation and suspension of deportation cases under sections 242, 243, and 244,

"(C) rescission of adjustment of status cases under section 246,

"(D) with respect to judges designated to hear such cases, applications for asylum under section 208,

"(E) the assessment of civil penalties under section 274A, and

"(F) such other cases arising under this Act as the Attorney General may provide by regulation.

Administrative law judges may also, without a formal hearing, make redeterminations pursuant to section 235(b)(1)(B)(ii).

"(4) In considering and deciding cases coming before them, administrative law judges may administer oaths, shall record and receive evidence and render findings of fact and conclusions of law, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as the Attorney General may specify for the just and equitable disposition of cases coming before such judges.".

(b) The table of contents is amended by inserting immediately after the item relating to section 106 the following new item:

"Sec. 107. United States Immigration Board; use of administrative law judges.".

JUDICIAL REVIEW

SEC. 123. (a) Subsection (a) of section 106 (8 U.S.C. 1105a) is amended—

(1) by striking out "AND EXCLUSION" in the heading and inserting in lieu thereof ", EXCLUSION, AND ASYLUM";

(2) in the matter before paragraph (1), by striking out "The procedure" and all that follows through "any prior Act" and inserting in lieu thereof the following: "Notwithstanding section 279 of this Act, section 1331 of title 28, United States Code, or any other provision of law (except as provided under subsection (b)), the procedures prescribed by and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of exclusion or deportation (including determinations respecting asylum encompassed within such orders and

regardless of whether or not the alien is in custody and not including exclusions effected without a hearing pursuant to section 235(b)(1)(B)) made against aliens within (or seeking entry into) the United States";

(3) in paragraph (1), by striking out "not later than six months" and all that follows through "whichever is the later" and inserting in lieu thereof "by the alien involved or the Service not later than sixty days from the date of the final order";

(4) inserting ", in the case of review sought by an individual petitioner," in paragraph (2) after "in whole or in part, or";

(5) by inserting "in the case of review sought by an individual petitioner," in paragraph (3) after "(3)";

(6) by inserting "exclusion or" before "deportation" in paragraphs (3) and (4);

(7) by striking out "Attorney General's findings of fact" in paragraphs (4) and (6) and inserting in lieu thereof "findings of fact in the order";

(8) by striking out "(4) except as provided in" in paragraph (4) and inserting in lieu thereof "(4)(A) except as provided in subparagraph (B) and in";

(9) by adding at the end of paragraph (4) the following new subparagraph:

"(B) to the extent that an order relates to a determination on an application for asylum, the court shall only have jurisdiction to review (i) whether the jurisdiction of the administrative law judge or the United States Immigration Board was properly exercised, (ii) whether the asylum determination was made in accordance with applicable laws and regulations, (iii) the constitutionality of the laws and regulations pursuant to which the determination was made, and (iv) whether the decision was arbitrary or capricious;";

(10) in paragraph (7)—

(A) by inserting "or exclusion" after "deportation" each place it appears,

(B) by striking out "subsection (c) of section 242 of this Act" and inserting in lieu thereof "section 235(b) or 242(c)", and

(C) by striking out "a deportation order;" and inserting in lieu thereof "an exclusion or deportation order; and";

(11) by striking out "; and" at the end of paragraph (8) and inserting in lieu thereof a period; and

(12) by striking out paragraph (9).

(b) Subsection (b) of such section is amended to read as follows:

"(b)(1)(A) Nothing in the provisions of this section shall be construed as limiting the right of habeas corpus under chapter 153 of title 28, United States Code. Petitions for habeas corpus based upon custody effected pursuant to this Act may be brought individually or on a multiple party basis as the interests of judicial efficiency and justice may require.

"(B) Nothing in this section shall preclude a class action under section 279 or under section 1331 of title 28, United States Code where—

"(i) the action alleges a pattern or practice of violations of provisions of the Constitution;

"(ii) administrative remedies have not been exhausted, but the exhaustion of administration remedies is inappropriate; and

"(iii) a delay of a determination on the issues presented pending judicial review under subsection (a) would significantly and irreparably impair the rights of the class members in the proceedings, and a timely determination of such rights would be most consistent with providing for the efficient judicial review of the issues presented.

This subparagraph shall not be construed as permitting district courts to review individual determinations in exclusion, deportation, or asylum cases. In any action under this subparagraph, the court shall, to the extent practicable, prevent unnecessary delays in the conduct of the exclusion, deportation, or asylum proceedings.

"(2) No court shall have jurisdiction to entertain a petition relating to a determination concerning asylum under section 208 except in a petition for review under subsection (a).

"(3) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction to review determinations of administrative law judges or of the United States Immigration Board respecting the reopening or reconsideration of exclusion or deportation proceedings or asylum determinations outside of such proceedings, the reopening of an application for asylum because of changed circumstances, the Attorney General's denial of a stay of execution of an exclusion or deportation order, or a redetermination to exclude an alien from entering the United States under section 235(b)(1)(B)(ii).".

(c) Subsection (c) of such section is amended by striking out "deportation or of exclusion" and inserting in lieu thereof "an administrative law judge".

(d) Section 279 (8 U.S.C. 1329) is amended by striking out "The district courts" in the first sentence and inserting in lieu thereof "Except as otherwise provided under section 106, the district courts".

(e) The item in the table of contents relating to section 106 is amended to read as follows:

"Sec. 106. Judicial review of orders of deportation, exclusion, and asylum.".

(f) In the case of a final order of deportation or exclusion entered before the date of the enactment of this Act, a petition for review with respect to that order may in no case be filed under section 106(a)(1) of the Immigration and Nationality Act later than the earlier of (1) sixty days after the date of the enactment of this Act, or (2) the date (if any) such petition was required to be filed under the law in existence before the date of the enactment of this Act.

ASYLUM

SEC. 124. (a)(1) Subsection (a) of section 208 (8 U.S.C. 1158) is amended to read as follows:

"(a)(1)(A) Except as provided in subparagraph (B), any alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.

"(B)(i) In the case of an alien against whom exclusion or deportation proceedings have been instituted, the alien's application for asylum may not be considered unless—

"(I) not later than fourteen days after the date of the service of the notice instituting such proceedings, the alien has filed notice of intention to file an application for asylum and, not later than thirty days after the date of filing such notice of intention, the alien has actually filed the application for asylum,

"(II) the alien can make a clear showing, to the satisfaction of the administrative law judge conducting the proceeding, that changed circumstances after the date of the notice instituting the proceeding have resulted in a change in the basis for the alien's claim for asylum, or

"(III) the administrative law judge determines, solely in his discretion, that the interests of justice require the consideration of the application.

"(ii) An alien who has previously applied for asylum and had such application denied may not again apply for asylum unless the alien can make a clear showing that changed circumstances after the date of the denial of the previous application have resulted in a change in the basis for the alien's claim for asylum.

"(2) Applications for asylum shall be considered before administrative law judges who are specially designated by the United States Immigration Board as having special training in international relations and international law. An individual who has served as a special inquiry officer under this title before the date of the enactment of the Immigration Reform and Control Act of 1983 may not be designated to hear applications under this section, unless the individual has received such special training after the date of the enactment of such Act.

"(3)(A)(i) Upon the filing of an application for asylum, an administrative law judge, at the earliest practicable time and after consultation with the attorney for the Government and the applicant, shall set the application for hearing on a day certain or list it for trial on a weekly or other short-term hearing calendar, so as to assure a speedy hearing.

"(ii) Unless the applicant consents in writing to the contrary, the hearing on the asylum application shall commence not later than forty-five days after the date the application has been filed. The holding of an asylum hearing shall not delay the holding of any exclusion or deportation proceeding.

"(iii) In the case of an alien who has filed an application for asylum and who has been continuously detained pursuant to section 235 or 242 since the date the application was filed, if a hearing on the application is not held on a timely basis under clause (ii) or a decision on the application rendered on a timely basis under subparagraph (D), and if actions or inaction by the applicant have not resulted in unreasonable delay in the proceedings, the Attorney General shall provide for the release of the alien on parole subject to such reasonable conditions as the Attorney General may establish to assure the presence of the alien at any appropriate proceedings, unless the Attorney General has reason to believe that the release of the alien would pose a danger to any other person or to the community.

"(B)(i) A hearing on the asylum application shall be open to the public, unless the applicant requests that it be closed to the public.

"(ii) At the time of filing of notice of intention to apply for asylum, the alien shall be advised of the privilege of being represented by counsel (in accordance with section 292) and of the availability of legal services.

"(iii) The applicant is entitled to have the asylum hearing closed to the public, to present evidence and witnesses in his own behalf, to examine and object to evidence against him, and to cross-examine witnesses presented by the Government.

"(C) A complete record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The hearing shall be recorded verbatim. The Attorney General, and the United States Immigration Board, shall provide that a transcript of a hearing held under this section is made available not later than ten days after the date of completion of the hearing.

"(D) The administrative law judge shall render a determination on the application not later than thirty days after the date of completion of the hearing. The determination of the administrative law judge shall be based only on the evidence produced at the hearing.

"(E) The Attorney General shall allocate sufficient resources so as to assure that applications for asylum are heard and determined on a timely basis under this paragraph.

"(4) An alien may be granted asylum only if the administrative law judge determines that the alien (A) is a refugee within the meaning of section 101(a)(42) (A), and (B) does not meet a condition described in one of the subparagraphs of section 243(h)(2).

"(5) The burden of proof shall be upon the alien applying for asylum to establish that the alien is a refugee within the meaning of section 101(a)(42)(A).

"(6) After making a determination on an application for asylum under this section, an administrative law judge may not reopen the proceeding at the request of the applicant except upon a clear showing that, since the date of such determination, changed circumstances have resulted in a change in the basis for the alien's claim for asylum.".

(2) Subsection (b) of such section is amended by inserting "(1)" after "determines that the alien" and by inserting before the period at the end the following: ", or (2) meets a condition described in one of the subparagraphs of section 243(h)(2)".

(3) Such section is further amended by adding at the end the following new subsections:

"(d) The procedures set forth in this section shall be the sole and exclusive procedure for determining asylum.

"(e) The Attorney General shall report to the Congress annually on the number of applications for asylum (by country of nationality of applicant) (1) submitted during the year, (2) approved during the year, (3) denied during the year, and (4) pending at the end of the year, and shall also include in such report such other general information relating to such applications as may be appropriate.".

(b) Section 243(h) (8 U.S.C. 1253(h)) is amended by adding at the end the following new paragraph:

"(3) An application for relief under this subsection shall be considered to be an application for asylum under section 208 and shall be considered in accordance with the procedures set forth in that section.".

(c) Section 222(f) (8 U.S.C. 1202(f)) is amended—

(1) by inserting "(whether as an immigrant, nonimmigrant, refugee, or otherwise)" after "enter the United States",

(2) by inserting "(1)" after "(f)" and

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

"(2)(A) Except as provided in subparagraph (B), the records or any document of the Department of Justice, the Department of State, or any other Government agency, or foreign government, pertaining to the approval or denial of any application for asylum or withholding of deportation under sections 207 and 243(h) of this Act, or any other application arising under a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group, shall be confidential and exempt from disclosure and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. In the discretion of the Attorney General or the Secretary of State, as the case may be, certified copies of such records or document may be made available to a court which certifies that the information contained in such records or document is needed by the court in the interests of the ends of justice in a case pending before the court.

"(B) In the case of an applicant for asylum or withholding of deportation who seeks records or documents revelant to that particular application, subparagraph (A) shall not be construed as limiting that applicant's access to such records or docu-

ments except in so far as such records or documents otherwise are exempt from disclosure under section 552(b) of title 5, United States Code.".

EFFECTIVE DATES AND TRANSITION

SEC. 125. (a)(1) Except as otherwise provided in this section, the amendments made by this part take effect on the date of the enactment of this Act.

(2)(A) Except as provided in subparagraph (B), the amendments made by this part (other than those made by sections 121, 123(a)(2), 123(a)(3), 123(a)(6), 123(a)(10), 123(a)(12), 123(b), 123(d), and 124(b)) shall not apply to—

(i) any exclusion or deportation proceeding (or administrative or judicial review thereof) which was initiated before the hearing transition date (designated under subsection (c)(1)(A)), or

(ii) to any application for asylum filed before the asylum transition date (designated under subsection (c)(1)(B)).

In the case of such proceedings and such applications initiated before such dates which continue after such dates, the United States Immigration Board shall provide that administrative law judges may assume and perform such functions of special inquiry officers as may be appropriate and consistent with their duties as administrative law judges.

(B) Paragraphs (1)(B), (3)(B)(ii), (3)(B)(iii), (4), and (6) of section 208(a) and section 208(b) of the Immigration and Nationality Act (as amended by section 124(a) of this part) shall apply to applications for asylum made after the date of the enactment of this Act, except that—

(i) in the case of an alien against whom exclusion or deportation proceedings have been instituted as of the date of the enactment of this Act, the restriction of paragraph (1)(B)(i) of section 208(a) of the Immigration and Nationality Act (as so amended) shall apply to asylum applications made more than 14 days after the date of the enactment of this Act (rather than the date of the service of the notice of such exclusion or deportation proceeding), and

(ii) references in any such paragraph to an administrative law judge shall be deemed (before the asylum transition date) to be a reference to the immigration officer conducting the asylum hearing.

(b)(1) The President shall nominate the Chairman and other members of the United States Immigration Board (hereinafter in this section referred to as the "Board") not later than forty-five days after the date of the enactment of this Act.

(2) The Chairman, in consultation with the Attorney General, shall designate a date, not later than forty-five days after the Chairman and a majority of the members of the Board are appointed, on which the Board shall assume the present functions of the Board of Immigration Appeals (under existing rules and regulations).

(3)(A) The Board shall provide promptly for establishment of interim final rules of practice and procedure which will apply to the Board (when not acting as the Board of Immigration Appeals under paragraph (2)) and administrative law judges under the Immigration and Nationality Act, after the hearing transition date or asylum transition date, designated under subsection (c)(1), as the case may be.

(B) Not later than sixty days after the date such interim final rules are established, the Chairman shall appoint at least ten administrative law judges who are qualified to be designated to hear asylum cases under section 208 of the Immigration and Nationality Act. The Board shall provide for such special training of these administrative law judges as it deems appropriate.

(c)(1) In order to provide for the orderly transfer of proceedings from the existing special inquiry system to the administrative law judge system, the Board, in consultation with the Attorney General, shall designate—

(A) a "hearing transition date", to be not later than forty-five days after the date interim final rules of practice and procedure are established under subsection (b)(3)(A), and

(B) an "asylum transition date", after the establishment of interim final rules of practice and procedure respecting applications for asylum and after the appointment and designation of administrative law judges, in accordance with section 3105 of title 5, United States Code, under subsection (b)(3)(B).

(2) During the period before the hearing transition date or the asylum transition date (in the case of asylum hearings), any proceeding or hearing under the Immigration and Nationality Act which may be conducted by a special inquiry officer may be conducted by an individual appointed and qualified as an administrative law judge in accordance with all the rules and procedures otherwise applicable to a special inquiry officer's conduct of such proceeding or hearing.

(d) Individuals acting as special inquiry officers on the date of the enactment of this Act and on the hearing transition date may (without regard to other provisions of law) continue to conduct proceedings or hearings under the Immigration and Nationality Act after such transition date during the period ending two years after the date of the enactment of this Act.

(e)(1) The enactment of this part shall not result in any loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Board of Immigration Appeals or before special inquiry officers on the day before the date this Act takes effect.

(2) Under rules established by the United States Immigration Board, with respect to exclusion and deportation cases pending as of the hearing transition date and applications for asylum pending as of the asylum transition date, the United States Immigration Board shall be deemed to be a continuation of the Board of Immigration Appeals and administrative law judges shall be deemed to be a continuation of special inquiry officers for the purposes of effectuating the continuation of all existing powers, rights, and jurisdiction.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 126. (a)(1) Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

"(43) The term 'administrative law judge' means such a judge appointed under section 107.".

(2) Section 101(b) (8 U.S.C. 1101(b)) is amended by striking out paragraph (4) and redesignating paragraph (5) as paragraph (4).

(b) The first sentence of section 234 (8 U.S.C. 1124) is amended by striking out "special inquiry officers" and inserting in lieu thereof "administrative law judges".

(c)(1) Subsection (a) of section 235 (8 U.S.C. 1225) is amended—

(A) by striking out "special inquiry officers" in the first sentence and inserting in lieu thereof "administrative law judges",

(B) by striking out ", including special inquiry officers," in the fourth sentence and inserting in lieu thereof "and any administrative law judge",

(C) by striking out ", including special inquiry officers," in the sixth sentence,

(D) by striking out "and special inquiry officers" in the sixth sentence and inserting in lieu thereof "and administrative law judges", and

(E) by striking out "special inquiry officer" each place it appears in the seventh sentence and inserting in lieu thereof "administrative law judge".

(2) Subsection (c) of such section is amended—

(A) by striking out "the special inquiry officer during the examination before either of such officers" in the first sentence and inserting in lieu thereof "during the examination or an administrative law judge during an exclusion hearing",

(B) by striking out "no further inquiry by a special inquiry officer" in the first sentence and inserting in lieu thereof "no further examination or exclusion hearing",

(C) by striking out "inquiry or further inquiry" in the first sentence and inserting in lieu thereof "examination or hearing",

(D) by striking out "any inquiry or further inquiry by a special inquiry officer" in the second sentence and inserting in lieu thereof "any examination or hearing", and

(E) by striking out "an inquiry before a special inquiry officer" in the third sentence and inserting in lieu thereof "an exclusion hearing before an administrative law judge".

(d) Sections 106(a)(2), 236, and 242(b) (8 U.S.C. 1105a(a)(2), 1126, 1252(b)) are each amended by striking out "A" and "a" each place either appears before "special inquiry officer" and inserting in lieu thereof "An" and "an", respectively.

(e)(1) Sections 106(a)(2) and 236 (8 U.S.C. 1105a(a)(2), 1226) are each amended by striking out "special inquiry officer" and inserting in lieu thereof "administrative law judge" each place it appears.

(2) Subsection (a) of section 236 (8 U.S.C. 1226) is amended—

(A) by amending the first sentence to read as follows: "An administrative law judge shall conduct proceedings under this section.",

(B) by striking out "for further inquiry" in the second sentence and inserting in lieu thereof "for an exclusion hearing",

(C) by striking out "at the inquiry" in the third sentence and inserting in lieu thereof "at the hearing",

(D) by striking out the fourth sentence,

(E) by striking out "regulations as the Attorney General shall prescribe" in the fifth sentence and inserting in lieu thereof "rules as the United States Immigration Board shall establish", and

(F) by striking out "inquiry" in the seventh sentence and inserting in lieu thereof "hearing".

(3) Subsection (b) of such section is amended—

(A) by striking out "From a decision" and all that follows through "Attorney General" in the first sentence and inserting in lieu thereof the following: "From a decision of an administrative law judge excluding or admitting an alien, the alien or the immigration officer in charge at the port where the hearing is held, respectively, may file a timely appeal of the decision with the United States Immigration Board in accordance with rules established by the Board",

(B) by striking out "Attorney General" in the fourth sentence and inserting in lieu thereof "United States Immigration Board", and

(C) by striking out the third sentence.

(4) Subsection (c) of such section is amended by striking out "to the Attorney General".

(f) Section 242(b) (8 U.S.C. 1252(b)) is amended—

(1) by striking out "special inquiry officer" each place it appears in the first, second, third, and seventh sentences and inserting in lieu thereof "administrative law judge",

(2) by striking out "shall administer oaths" and all that follows through "Attorney General," in the first sentence,

(3) by striking out "Attorney General shall prescribe" in the second sentence and inserting in lieu thereof "United States Immigration Board shall establish",

(4) by striking out "In any case" and all that follows through "an additional immigration officer" in the fourth sentence and inserting in lieu thereof "An immigration officer" and by striking out "in such case such additional immigration officer" in that sentence,

(5) by striking out the fifth and sixth sentences,

(6) by striking out "such regulations" and all that follows through "shall prescribe" in the seventh sentence and inserting in lieu thereof "rules as are established by the United States Immigration Board",

(7) by striking out "Such regulations" in the eighth sentence and inserting in lieu thereof "Such rules", and

(8) by striking out "Attorney General shall be final" in the tenth sentence and inserting in lieu thereof "administrative law judge shall be final unless reversed on appeal".

(g) The last sentence of section 273(d) (8 U.S.C. 1323(d)) is amended by striking out "special inquiry officers" and inserting in lieu thereof "administrative law judges".

(h) Section 292 (8 U.S.C. 1362) is amended—

(1) by striking out "In" and all that follows through "proceedings," and inserting in lieu thereof "In any proceeding or hearing before an administrative law judge and in any appeal before the United States Immigration Board from any such proceeding", and

(2) by inserting "and at no unreasonable delay" after "Government".

(i) Section 360(c) (8 U.S.C. 1503(c)) is amended—

(1) by inserting "(and appeals thereof)" in the first sentence after "proceedings", and

(2) by striking out the second sentence.

(j) Any reference in section 203(h) of the Immigration and Nationality Act, as in effect before March 17, 1980, to a special inquiry officer shall be deemed to be a reference also to an administrative law judge under section 101(a)(43) of such Act.

PART D—ADJUSTMENT OF STATUS

LIMITATIONS ON ADJUSTMENT OF NONIMMIGRANTS TO IMMIGRANT STATUS BY OUT-OF-STATUS ALIENS

SEC. 131. (a) Section 245(c)(2) (8 U.S.C. 1255(c)(2)) is amended by inserting after "hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status" the following: "or who is not in legal immigration status on the date of filing the application for adjustment of status".

(b) The amendment made by subsection (a) shall apply to applications for adjustment of status pending on the date of the enactment of this Act.

(c) For amendment prohibiting certain nonimmigrant students and visitors entering under visa waivers from adjusting their status to immigrants, see section 212(b) of this Act.

TITLE II—REFORM OF LEGAL IMMIGRATION

PART A—IMMIGRANTS

PROVIDING ADDITIONAL IMMIGRANT VISA NUMBERS FOR NATIVES OF CONTIGUOUS COUNTRIES

SEC. 201. (a) Section 201 (8 U.S.C. 1151) is amended—

(1) by inserting "certain aliens provided immigrant visa numbers under subsection (c)," in subsection (a) after "subsection (b) of this section,", and

(2) by adding at the end the following new subsection:

"(c) Whenever the Secretary of State estimates that for a fiscal year at least 90 per centum of the maximum number of visas will be made available under section 202(a) to natives of either of the foreign states contiguous to the United States, then, without regard to the numerical limitations specified in subsection (a), an additional number of aliens born in that foreign state may also be issued immigrant visas or may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, which number shall not in any of the first three-quarters of the fiscal year exceed a total of 5,500 and shall not in the fiscal year exceed 20,000.".

(b) Section 202 (8 U.S.C. 1152) is amended—

(1) by inserting "and (c)" in subsection (a) after "section 201(b)",

(2) by striking out "under section 202" in the matter in subsection (e) before paragraph (1) and inserting in lieu thereof "under subsection (a)", and

(3) by adding at the end of subsection (e) the following: "This subsection shall not apply to visas made available under section 201(c) and allotted under section 203(f).".

(c) Section 203 (8 U.S.C. 1153) is amended by adding at the end the following new subsection:

"(f)(1) Aliens who are subject to the numerical limitations specified in section 201(c) shall be allotted visas in the same manner, subject to the same conditions, and in the same order as aliens who are subject to the numerical limitations specified in section 201(a) are allotted visas under subsection (a), except that the percentage limitations specified in paragraphs (1) through (6) thereof shall not apply.

"(2) Requirements respecting acquisition of preference status by reason of a relationship or occupational qualification described in a paragraph of subsection (a) shall apply, in the same manner, for the acquisition of preference status under paragraph (1) of this subsection.".

(d) The amendments made by this section shall apply to fiscal years beginning with fiscal year 1984.

CHANGE IN COLONIAL QUOTA

SEC. 202. (a)(1) Section 202(c) (8 U.S.C. 1152(c)) is amended by striking out "six hundred" and inserting in lieu thereof "three thousand".

(2) Section 202(e) (8 U.S.C. 1152(e)) is amended by striking out "600" and inserting in lieu thereof "3,000".

(b) The amendments made by subsection (a) shall apply to fiscal years beginning with fiscal year 1984.

REPORT ON ADMISSIONS AND NUMERICAL LIMITATIONS

SEC. 203. (a) Chapter 1 of title I is amended by adding at the end the following new section:

"PRESIDENTIAL REPORT ON IMMIGRATION ADMISSIONS AND IMPACTS

"SEC. 210. (a) The President shall transmit to the Congress, not later than January 1, 1987, and not later than January 1 of every third year thereafter, a comprehensive report on the impact on the economy, labor market, housing market, educational system, social services, foreign policy, environmental quality, resources, and population growth rate of the United States of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the preceding three-year period and on the projected impact (based on reasonable estimates

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substantiated by the best available evidence) on such factors of admissions and other entries during the succeeding five-year period.

"(b)(1) The President shall include in such report the number and classification of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preferences classifications, or as nonimmigrants), paroled, or granted asylum during the relevant period as well as a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 241.

"(2) The President also shall include in such report any appropriate recommendations on changes in numerical limitations or other policies under this title bearing on the admission and entry of such aliens to the United States.

"(c) Not later than ninety days after the date of receipt of such a report, the Committees on the Judiciary of the House of Representatives and of the Senate shall hold public hearings to review the findings and recommendations contained in such report.".

(b) The table of contents is amended by inserting after the item relating to section 209 the following new item:

"Sec. 210. Presidential report on immigration admissions and impacts.".

G–4 SPECIAL IMMIGRANTS

SEC. 204. (a) Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(I) an immigrant who entered the United States with the status of a nonimmigrant under paragraph (15)(G)(iv) and who—

"(i) is the unmarried son or daughter of an officer or employee of an international organization described in paragraph (15)(G)(iv), and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and eighteen years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later; or

"(ii) is the surviving spouse of a deceased officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided in the United States within seven years of the date of application for a visa under this subparagraph and for a period or periods aggregating at least fifteen years prior to the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later.".

(b) Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking out "or" at the end of subparagraph (L), by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(N)(i) the parent of an alien accorded the status of a special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27)(I)(ii).".

MISCELLANEOUS PROVISIONS

SEC. 205. (a) Section 101(b)(1)(D) (8 U.S.C. 1101(b)(1)(D)) is amended by inserting "or natural father" after "natural mother".

(b) Section 19(2) of Public Law 97–116 is amended by inserting "(A)" after "because" and by adding before the semicolon at the end the following: ", or (B) the alien was entering the United States for the purpose of retirement, would not seek gainful employment in the United States, had purchased property in the United States before such date, and had demonstrated the ability for self-support while in retirement".

(c) In the case of an alien—

(1) who was in the United States on October 1, 1982,

(2) who, as of such date—

(A) had a petition approved for classification under section 203(a) (3) or (6) of the Immigration and Nationality Act, and

(B) had been issued a labor certification under section 212(a)(14) of such Act with respect to employment for an employer,

(3) who intends to remain in the United States for the purpose of performing such employment, and

(4) with respect to whom the Attorney General estimates that an immigrant visa will become available before October 1, 1984,

the Attorney General may provide that, notwithstanding any provision of section 214 of the Immigration and Nationality Act, the alien may be classified as a nonimmigrant under section 101(a)(15)(H)(ii) of such Act with respect to such employment until October 1, 1984, or, if earlier, one month after the date the alien's immigrant visa becomes available. For purposes of applying section 245 of such Act to an alien classified as a nonimmigrant under this subsection, the alien shall be considered to have been inspected and admitted into the United States and subsection (c)(2) of that section shall not apply.

(d) Section 204(g)(3)(A) (8 U.S.C. 1154(g)(3)(A)) is amended by striking out "(C)(i) of paragraph 2" and inserting in lieu thereof "(C)(ii) of paragraph (2)".

(e) Section 212(a)(14)(A) (8 U.S.C. 1182(a)(14)(A)) is amended—

(1) by inserting "(i)" before "who are members",

(2) by striking out "or who have" and inserting in lieu thereof ", (ii) who have", and

(3) by inserting after "sciences or the arts" the following: ", or (iii) who have doctoral degrees and are seeking to enter the United States to be employed as researchers at colleges, universities, or other nonprofit educational or research institutions".

Part B—Nonimmigrants

H–2 workers and transitional nonimmigrant agricultural worker program

Sec. 211. (a)(1) Paragraph (15)(H) of section 101(a) (8 U.S.C. 1101(a)) is amended by striking out "to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country" in clause (ii) and inserting in lieu thereof "(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, of a temporary or seasonal nature, or (b) to perform other temporary services or labor".

(2) Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by section 204(b) of this Act, is further amended by striking out "or" at the end of subparagraph (M), by striking out the period at the end of subparagraph (N) and inserting in lieu thereof "; or", and by adding at the end the following new subparagraph:

"(O) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States to perform temporary services or labor in seasonal agricultural employment (as defined in section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act) under the transitional agricultural labor program provided for under section 214(e).".

(b) Section 214 (8 U.S.C. 1184) is amended—

(1) by adding at the end of subsection (a) the following new sentences: "An alien may not be admitted to the United States as a nonimmigrant—

"(1) under section 101(a)(15)(H)(ii)(a) for an aggregate period longer than the period (or periods) determined by regulations of the Secretary of Labor, or

"(2) under section 101(a)(15)(H)(ii) if the alien was admitted to the United States as such a nonimmigrant within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section and to provide notice for purposes of section 274A.",

(2) by inserting "(1)" after "(c)" in subsection (c),

(3) by adding at the end of subsection (c)(1), as so redesignated, the following: "For purposes of this paragraph the term 'appropriate agencies of Government' means the Department of Labor and includes, with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the Department of Agriculture.

"(2)(A)(i) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(I) there are not sufficient workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition, and

"(II) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(ii) A petition to import an alien as a nonimmigrant under section 101(a)(15)(H)(ii)(b) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(I) there are not sufficient qualified workers available in the United States to perform the labor or services involved in the petition, and

"(II) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(iii) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

"(B) The Secretary of Labor may not issue a certification under subparagraph (A)—

"(i) if there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification,

"(ii) with respect to an employer if the employer during the previous two-year period employed nonimmigrant aliens admitted to the United States under section 101(a)(15)(H)(ii) and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers, or

"(iii) for an employer unless the Secretary has been provided satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

No employer may be denied certification under clause (ii) for more than three years for any violation described in such clause.

"(3)(A) In the case of an application for a labor certification for a nonimmigrant described in section 101(a)(15)(H)(ii)(a)—

"(i) the Secretary of Labor may not require that the application be filed more than 50 days before the first date the employer requires the labor or services of the alien;

"(ii) the employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in paragraph (2)(A)(i)(I)) for approval and if it does not, such notice shall include the reasons therefor and permit the employer an opportunity to resubmit promptly a modified application for approval;

"(iii) the Secretary of Labor shall make, not later than twenty days before the date such labor or services are first required to be performed, the certification described in paragraph (2)(A)(i) if the employer has complied with the criteria for certification, including criteria for the recruitment of eligible individuals as prescribed by the Secretary, and if the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary, except that the terms of such a labor certification remain effective only if the employer continues to accept for employment, until the date the aliens depart for work with the employer, qualified eligible individuals who apply or are referred to the employer; and

"(iv) in the employer's complying with terms and conditions of employment respecting the furnishing of housing, the employer shall be permitted, at the employer's option and in lieu of arranging for suitable housing accommodations, to substitute payment of a reasonable housing allowance, but only if housing is otherwise available in the proximate area of employment.

"(B) A petition to import an alien as an nonimmigrant described in section 101(a)(15)(H)(ii)(a), and an application for a labor certification with respect to such an alien, may be filed by an association representing agricultural producers which use agricultural labor or services. The filing of such a petition or application on a member's behalf does not relieve the member of any liability for representations made in such petition or application.

"(C)(i) The Secretary of Labor shall provide for an expedited procedure for the review of a denial of certification under paragraph (2)(A)(i) or, at the applicant's request, for a de novo administrative hearing respecting the denial.

"(ii) The Secretary of Labor shall expeditiously, but in no case later than seventy-two hours after the time a new determination is requested, make a new determination on the request for certification in the case of importing a nonimmigrant described in section 101(a)(15)(H)(ii)(a) if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified eligible individuals. If the employer asserts that any eligible individuals who have been referred are not able, willing or qualified, the burden of proof is on the employer to establish that the individuals referred are not able, willing, or qualified because of employment-related reasons as shown by their job performance.

"(D) For purposes of this paragraph, the term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(a)(4)) with respect to that employment.

"(4) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall annually report to the Congress on the certifications provided under this subsection and on the work permits issued under subsection (e), the impact of aliens admitted pursuant to such certifications or permits on labor conditions in the United States, and on compliance of employers and nonimmigrants with the terms and conditions of such nonimmigrants' admission to the United States.

"(5) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, $10,000,000 for the purposes (A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in sections 101(a)(15)(H)(ii) and 101(a)(15)(O), and (B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States. The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this subsection or subsection (e).

"(6) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1984, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this subsection and under section 212(a)(14).", and

(4) by adding at the end thereof the following new subsection:

"(e)(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall by regulation establish a three-year transitional agricultural labor program (hereinafter in this subsection referred to as 'the transitional program') to assist agricultural employers in shifting from the employment of unauthorized aliens to the employment of eligible individuals (described in subsection (c)(3)(D)).

"(2)(A) No person is eligible to employ a nonimmigrant described in section 101(a)(15)(O) unless the person (or a person or association representing the person) applies for registration with the Attorney General during the first year of the transitional program (as designated by the Attorney General). In such application, the person shall provide such information relating to the person's requirements for seasonal agricultural labor in months or other periods in previous and future years as the Attorney General may specify.

"(B) In approving applications for registration under this paragraph and taking into consideration the needs specified in the applications, the historical employment needs of agricultural employers for seasonal agricultural labor, and the availability of domestic agricultural labor, the Attorney General shall specify, with respect to each registration, the maximum number of nonimmigrants described in section 101(a)(15)(O) the person can employ during the various months in the first year of the transitional program, which number shall approximate the employer's maximum reasonable requirement for nondomestic seasonal agricultural workers. The approval of an employer's application for registration under this paragraph and the

issuance of work permits thereunder is conditioned upon the employer's compliance with the terms and conditions of this subsection and regulations issued thereunder.

"(C) If the Attorney General approves the employment of a number of such nonimmigrants for a month or other period in the first year of the transitional program, the Attorney General shall issue to the employer a nonimmigrant labor form (hereinafter in this subsection referred to as a 'work permit') for each such nonimmigrant for the month or other period specified. The Attorney General may require by regulation, as a condition of issuing work permits, the payment of a fee to recover the reasonable cost of processing registration applications and issuance of work permits under this subsection.

"(D) For months or other periods in the second or third years of the transitional program, the Attorney General shall provide for the issuance (to each registered employer who has complied with the terms of the program and of the program described in subsection (c) in previous years of the program) of a number of work permits equal to 67 or 33 per centum, respectively, of the number of such permits issued with respect to that month or period for that employer in the first year of the transitional program.

"(E) No work permit shall be issued under this subsection with respect to the employment of any alien for any period after the third year of the transitional program.

"(3) An agricultural employer desiring to employ in seasonal agricultural labor for a month or other period an alien who is not otherwise an eligible individual (as described in subsection (c)(3)(D), but for this subsection) must—

"(A)(i) complete and endorse a copy of a work permit for that month or other period directly to the alien, who shall retain a copy of the work permit for inspection, (ii) transmit a copy of such endorsed permit to the Attorney General, and (iii) retain a copy for the employer's records; or

"(B) provide for transmittal of the work permit to an appropriate consular officer to provide for the issuance of a visa to a qualified alien as a nonimmigrant described in section 101(a)(15)(O) to perform seasonal agricultural employment for that employer for the period specified.

Upon the receipt of an endorsed copy of a work permit of an alien under subparagraph (A), the Attorney General shall provide for the recordation of the alien as a nonimmigrant described in section 101(a)(15)(O), except that such recordation shall not prevent the deportation of the alien after the expiration of the work permit or on any ground (other than on the ground described in section 241(a)(2) or on the basis, under section 241(a)(1), of being excludable at the time of entry under paragraph (19), (20), or (26) of section 212(a)).

"(4)(A) An agricultural employer employing an alien with a work permit must provide for the same wages and working conditions as those which would be required with respect to the employment of nonimmigrants described in section 101(a)(15)(H)(ii)(a), and, in the case of such an alien described in paragraph (3)(B), must meet such other transportation and similar conditions as are required with respect to the importation of nonimmigrants described in section 101(a)(15)(H)(ii)(a).

"(B) In accordance with regulations of the Attorney General, a work permit issued under this section shall be considered an alien registration card for purposes of section 274A(b)(1)(B)(ii)(I) and an alien employed by an employer and in possession of a properly endorsed work permit for a period of time shall be considered (for purposes of section 274A(a)(4)) to be authorized by the Attorney General to be so employed during that period of time. For purposes of section 3121(a)(1) of the Internal Revenue Code of 1954 and section 210(a) of the Social Security Act, a nonimmigrant described in section 101(a)(15)(O) performing seasonal agricultural services for a registered employer with a properly endorsed work permit shall be considered to be lawfully admitted to the United States on a temporary basis to perform agricultural labor.

"(5)(A) The Attorney General may provide for such suspensions and conditions on participation in the transitional program as are consistent with suspensions and conditions of participation of agricultural employers under the program described in subsection (c).

"(B) The Attorney General shall suspend the registration of an agricultural employer under the transitional program, and may prohibit the employer from participating in the program under subsection (c), for a period of up to three years if the Attorney General determines, after opportunity for a hearing, that the employer, during the previous two-year period (after the effective date of the transitional program)—

"(i) has knowingly discriminated in terms or conditions of employment against eligible individuals without work permits,

"(ii) has knowingly hired aliens not permitted under law to be so employed,

"(iii) has employed an alien classified or recorded as a nonimmigrant described in section 101(a)(15)(O) for services other than seasonal agricultural employment or for a period for which a work permit has not been issued and is not in effect,

"(iv) has become ineligible for a certification under subsection (c)(2)(B)(ii), or

"(v) otherwise has at any time during the period substantially violated a material term or condition of the registration with respect to the employment of domestic or nonimmigrant workers.

"(6) Aliens employed pursuant to work permits issued under this subsection are fully protected by all applicable Federal and State laws and regulations governing the employment of migrant and seasonal agricultural workers.".

(c) The amendments made by this section apply to petitions and applications filed under section 214(c) of the Immigration and Nationality Act on or after the first day of the seventh month beginning after the date of the enactment of this Act (hereinafter in this section referred to as the "effective date").

(d) The Attorney General, in consultation with the Secretary of Labor and, in connection with agricultural labor or services, the Secretary of Agriculture, shall approve all regulations to be issued implementing the amendments made by this section. Notwithstanding any other provision of law, final regulations implementing the amendments made by this section shall first be issued, on an interim or other basis, not later than the effective date.

(e) The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, shall report to the Congress not later than eighteen months after the effective date on recommendations for improvements in the temporary alien worker program amended by this section, including recommendations—

(1) improving the timeliness of decisions regarding admission of temporary foreign workers under the program,

(2) removing any current economic disincentives to hiring United States citizens or permanent resident aliens where temporary foreign workers have been requested, and

(3) improving the cooperation among Government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign workers.

(f) It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 214(c) of the Immigration and Nationality Act and of the transitional seasonal agricultural worker program under section 214(e) of such Act.

(g) For amendments prohibiting nonimmigrants under the seasonal agricultural worker program from adjusting their status to immigrant or other nonimmigrant status, see sections 212(b) and 213(d) of this Act.

STUDENTS

SEC. 212. (a) Section 212(e) (8 U.S.C. 1182(e)) is amended—

(1) by striking out "(e) No person" and inserting in lieu thereof "(e)(1) No person (A)",

(2) by inserting after "training," the following: "or (B) except as provided in paragraph (2), admitted under subparagraph (F) or (M) of section 101(a)(15) or acquiring such status after admission,",

(3) by striking out "clause (iii)" in the second proviso and inserting in lieu thereof "clause (A)(iii) or clause (B) of the first sentence",

(4) by striking out ": *Provided,* That upon" and inserting in lieu thereof ". Upon",

(5) by striking out ": *And provided further,* That except" and inserting in lieu thereof ". Except", and

(6) by adding at the end the following:

"The Attorney General may waive such two-year foreign residence requirement in the case of an alien described in clause (B) of the first sentence who is an immediate relative (as specified in section 201(b)).

"(2) The Attorney General, in the case of an alien described in clause (B) of the first sentence of paragraph (1) who has the status of a nonimmigrant under section 101(a)(15)(F), may waive the two-year foreign residence requirement of paragraph (1) if the Attorney General determines that the waiver is in the public interest and that—

"(A) the alien—

"(i)(I) has obtained an advanced degree from a college or university in the United States and has been offered a position on the faculty (including as a researcher) of a college or university in the United States in the field in which he obtained the degree,

"(II) has obtained a degree in a natural science, mathematics, computer science, or an engineering field from a college or university in the United States and has been offered a research or technical position by a employer in the field in which he obtained the degree, or

"(III) has obtained an advanced degree in business or economics from a college or university in the United States, has exceptional ability in business or economics, and has been offered employment which requires such exceptional ability;

"(ii) is applying for a visa as an immigrant described in paragraph (3) or (6) of section 203(a),

"(iii) has received a certification under section 212(a)(14) with respect to position referred to in clause (i), and

"(iv) has applied for a waiver under this paragraph before September 30, 1989; or

"(B) the alien—

"(i) has obtained a degree in a natural science, mathematics, computer science, or in a field of engineering or business,

"(ii) is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii),

"(iii) will receive no more than three years of training by a firm, corporation, or other legal entity in the United States, which training will enable the alien to return to the country of his nationality or last residence and be employed there as a manager by the same firm, corporation, or other legal entity, or a branch, subsidiary, or affiliate thereof, and

"(iv) furnishes the Attorney General each year with an affidavit (in such form as the Attorney General shall prescribe) that attests that the alien (I) is in good standing in the training program in which the alien is participating, and (II) will return to the country of his nationality or last residence upon completion of the training program.".

(b) Section 245(c) (8 U.S.C. 1255(c)) is amended by striking out "or" before "(3)" and by inserting before the period at the end the following: ", or (4) an alien (other than an immediate relative specified in section 201(b) or an alien who has received a waiver under section 212(e)(2)(A)) who entered the United States classified as a nonimmigrant under subparagraph (F), (M), or (O) of section 101(a)(15) or who was admitted as a nonimmigrant visitor without a visa under subsection (l) or (m) of section 212".

(c) Section 244(b) (8 U.S.C. 1254(b)) is amended—

(1) by striking out "(b)" and inserting in lieu thereof "(b)(1)", and

(2) by adding at the end the following:

"(2) In determining the period of continuous physical presence in the United States under subsection (a), there shall not be included any period in which the alien was in the United States as—

"(A) a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15), or

"(B) a nonimmigrant described in section 101(a)(15)(H)(iii), pursuant to a waiver under section 212(e)(2)(B).".

(d)(1) The amendments made by subsection (a) apply to aliens admitted to the United States as a nonimmigrant described in subparagraph (F) or (M) of section 101(a)(15) of the Immigration and Nationality Act after the date of the enactment of this Act or who otherwise acquire such status after such date.

(2) The amendments made by subsection (b) apply to aliens without regard to the date the aliens enter the United States.

(3) The amendments made by subsection (c) apply to periods occurring on or after the date of the enactment of this Act and shall not have the effect of excluding (in the determination of a period of continuous physical presence in the United States) any period before the date of the enactment of this Act.

VISA WAIVER FOR CERTAIN VISITORS

SEC. 213. (a) Section 212 (8 U.S.C. 1182) is amended by adding at the end thereof the following new subsections:

"(l)(1) The Attorney General and the Secretary of State are authorized to establish a pilot program (hereinafter in this subsection referred to as the 'program') under which the requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this subsection, in the case of an alien who—

"(A) is applying for admission during the pilot program period (as defined in paragraph (5)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding ninety days;

"(B) is a national of a country which—

"(i) extends or agrees to extend reciprocal privileges to citizens and nationals of the United States, and

"(ii) is designated as a pilot country under paragraph (3);

"(C) before such admission completes such immigration form as the Attorney General shall establish under paragraph (2)(C) and executes a waiver of review and appeal described in paragraph (2)(D);

"(D) has a round trip, nonrefundable, nontransferable, open-dated transportation ticket which—

"(i) is issued by a carrier which has entered into an agreement described in paragraph (4), and

"(ii) guarantees transport of the alien out of the United States at the end of the alien's visit; and

"(E) has been determined not to represent a threat to the welfare, safety, or security of the United States;

except that no such alien may be admitted without a visa pursuant to this subsection if the alien failed to comply with the conditions of any previous admission as a nonimmigrant.

"(2)(A) The program may not be put into operation until the end of the thirty-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in subparagraph (B) is operational and that the form described in subparagraph (C) has been produced.

"(B) The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival and departure into the United States of nonimmigrant visitors receiving a visa waiver under the program.

"(C) The Attorney General shall develop a form for use under the program. Such form shall be consistent and compatible with the control system developed under subparagraph (B). Such form shall provide for, among other items—

"(i) a summary description of the conditions for excluding nonimmigrant visitors from the United States under subsection (a) and this subsection,

"(ii) a description of the conditions of entry with a waiver under this subsection, including the limitation of such entry to ninety days and the consequences of failure to abide by such conditions, and

"(iii) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(D) An alien may not be provided a waiver under this subsection unless the alien has waived any right (i) to review or appeal under the Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States or (ii) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(3)(A) The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot countries for purposes of this subsection.

"(B) For the period beginning after the thirty-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such thirty-day period, a country may not be designated as a pilot country unless—

"(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(ii) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(C) For each fiscal year (within the pilot program period) after the period specified in subparagraph (B)—

"(i) in the case of a country which was a pilot country in the previous fiscal year, a country may not be designated as a pilot country unless the sum of—

"(I) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(II) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2.0 per centum of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year, or

"(ii) in the case of another country, the country may not be designated as a pilot country unless—

"(I) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years, and

"(II) the average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 per centum of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) The agreement referred to in paragraph (1)(D)(i) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under this subsection—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in paragraph (1)(A)(i), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under this subsection.

The Attorney General may terminate such an agreement with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(5) For purposes of this subsection, the term 'pilot program period' means the period beginning at the end of the 30-day period referred to in paragraph (2)(A) and ending on the last day of the third fiscal year which begins after such 30-day period.

"(6) The Attorney General and the Secretary of State shall jointly monitor the program and shall report to the Congress not later than two years after the beginning of the pilot program, and shall include in such report recommendations respecting extension of the pilot program period and of the number of countries that may be designated under paragraph (3)(A).

"(m) The requirement of paragraph (26)(B) of subsection (a) may be waived by the Attorney General, the Secretary of State, and the Secretary of the Interior, acting jointly, in the case of an alien applying for admission as a nonimmigrant visitor for business or pleasure and solely for entry into and stay on Guam for a period not to exceed fifteen days, if the Attorney General, the Secretary of State, and the Secretary of the Interior jointly determine that—

"(1) the territory of Guam has developed an adequate arrival and departure control system, and

"(2) such a waiver does not present a threat to the welfare, safety, or security of the United States.".

(b) Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to subsection (l) or (m) of section 212 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding ninety days or fifteen days, respectively, from the date of admission.".

(c) For amendment prohibiting nonimmigrant visitors entering under visa waivers from adjusting their status to immigrants, see section 212(b) of this Act.

(d) Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(4) an alien classified as a nonimmigrant under section 101(a)(15)(O) or admitted as a nonimmigrant visitor without a visa under subsection (l) or (m) of section 212.".

TITLE III—LEGALIZATION

LEGALIZATION

SEC. 301. (a) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

"SEC. 245A. (a) The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for permanent residence if—

"(1) the alien has entered the United States, is physically present in the United States, and applies for such adjustment during the one-year period beginning on a date (not later than ninety days after the date of the enactment of this section) designated by the Attorney General,

"(2)(A) the alien (other than an alien who entered as a nonimmigrant) establishes that he entered the United States prior to January 1, 1982, and has resided continuously in the United States in an unlawful status since January 1, 1982, or

"(B) the alien entered the United States as a nonimmigrant before January 1, 1982, the alien's period of authorized stay as a nonimmigrant expired before January 1, 1982, through the passage of time or the alien's unlawful status was known to the Government as of January 1, 1982, and the alien has resided continuously in the United States in an unlawful status since January 1, 1982; and

"(C) in the case of an alien who at any time was a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof; and

"(3) the alien—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (b)(3),

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

"(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(D) registers under the Military Selective Service Act, if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States. Notwithstanding paragraph (1), an alien who (at any time during the one-year period described in paragraph (1)) is the subject of an order to show cause issued under section 242, must make application under such paragraph not later than the end of the thirty-day period beginning either on the first day of such one-year period or on the date of the issuance of such order, whichever day is later.

"(b)(1)(A) The Attorney General shall provide that applications for adjustment of status under subsection (a) may be made to and received, on behalf of the Attorney General, by qualified voluntary agencies and other qualified state, local, and community organizations, which have been designated for such purpose by the Attorney General.

"(B) Files and records of designated agencies and organizations under this paragraph are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

"(C) In the case of an alien who submits an application under subsection (a) to the Attorney General (or to an organization designated under subparagraph (A) and who approves the forwarding of the application to the Attorney General), the alien is subject to a criminal penalty under section 1001 of title 18, United States Code for knowingly and willfully making false, fictitious, or fraudulent statements in the process of submitting the application. An organization designated under subparagraph (A) which receives such a statement and which, without knowledge that it is false, fictitious, or fraudulent and with the consent of the alien involved, forwards the statement to the Attorney General is not subject to such a penalty.

"(2) The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

"(3)(A) The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not be applicable in the determination of an alien's admissibility under subsection (a)(3)(A), and the Attorney General, in making such determination, may waive any other provision of such section other than paragraph (9), (10), (23) (except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana), (27), (28), (29), or (33) with respect to the alien involved for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(B) In determining whether or not an alien is admissible to the United States for purposes of this section, the alien shall be required, at the alien's expense, to meet the same requirements with respect to a medical examination as are required of aliens seeking entry into the United States as immigrants.

"(4) During the six-month period beginning on the date of the enactment of this section, the Attorney General, in cooperation with agencies and organizations designated under paragraph (1), shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

"(5)(A) Notwithstanding any other provision of law, the Attorney General shall first issue, on an interim or other basis and before the beginning of the one-year period described in subsection (a)(1), such regulations as are necessary to implement this section on a timely basis.

"(B) The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and the Senate and with agencies and organizations designated pursuant to paragraph (1)(A), shall prescribe regulations establishing a definition of the term 'resided continuously', as used in this section, and for establishing the requirements necessary to prove eligibility for immigration benefits under this section. Such regulations may be prescribed to take effect on an interim basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(6) The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the one-year application period described in subsection (a)(1), and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period) may not be deported until he has had the opportunity, during the first thirty days of the one-year period, to file an application for such adjustment.

"(7) The provisions of this section shall not apply to an alien described in section 2(b) of Public Law 97-271.

"(c)(1) During the five-year period beginning on the date an alien is granted lawful permanent resident status under subsection (a) and during the five-year period beginning on the date an alien is provided a record of lawful admission for permanent residence under section 249 based on an entry into the United States on or after June 30, 1948, and notwithstanding any other provision of law—

"(A) except as provided in paragraph (2), the alien is not eligible for—

"(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

"(iii) assistance under the Food Stamp Act of 1977, and

"(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A), provide that the alien is not eligible for the programs of financial or medical assistance furnished under the law of that State or political subdivision.

"(2) Paragraph (1) shall not apply—

"(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983);

"(B) in the case of assistance provided to aliens who are determined (in accordance with regulations prescribed by the Attorney General in consultation with the Secretary of Health and Human Services) to require such assistance because of age (in the case of aliens sixty-five years of age or older), blindness, or disability, and

"(C) in the case of medical assistance provided to aliens who are determined (in accordance with regulations prescribed by the Attorney General in consulta-

tion with the Secretary of Health and Human Services) to require such assistance in the interest of public health or because of serious illness or injury.

The requirements of State plans under title XIX of the Social Security Act are superceded to the extent required to restrict the medical assistance in the manner described in subparagraph (C) and paragraph (1)(A)(ii).

"(3) For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-422), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(d)(1) There shall be no administrative or judicial review (by class action or otherwise) of a determination respecting an application for adjustment of status under subsection (a) except in accordance with this subsection.

"(2) The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination. Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application.

"(3)(A) There shall be no judicial review of such a determination, unless the applicant has exhausted the administrative review described in paragraph (2).

"(B) There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106. Such review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish gross abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.".

(b) The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for permanent residence.".

(c) The President shall transmit to Congress, not later than eighteen months after the date of the enactment of this Act, a report on the impact of the enactment of the legalization program described in section 245A of the Immigration and Nationality Act, including such impact on State and local governments in the different regions of the United States.

(d)(1) Public Law 89-732 (approved November 2, 1966) is repealed.

(2) The repeal made by paragraph (1) shall not apply to a native or citizen of Cuba who has been inspected and admitted or paroled into the United States before April 21, 1980.

UPDATING REGISTRY DATE TO JANUARY 1, 1973

SEC. 302. (a) Section 249 (8 U.S.C. 1259) is amended—

(1) by striking out "JUNE 30, 1948" in the heading and inserting in lieu thereof "JANUARY 1, 1973", and

(2) by striking out "June 30, 1948" in paragraph (a) and inserting in lieu thereof "January 1, 1973".

(b) The item in the table of contents relating to section 249 is amended by striking out—

"June 30, 1948",

and inserting in lieu thereof—

"January 1, 1973".

STATE LEGALIZATION ASSISTANCE

SEC. 303. (a) There are authorized to be appropriated to carry out subsections (b) and (c) of this section such sums as may be necessary for fiscal year 1984 and for each of the three succeeding fiscal years.

(b)(1) Subject to the amounts provided in advance in appropriation Acts, the Secretary of Health and Human Services shall provide reimbursement to each State (as defined in paragraph (2)(A)) for 100 per centum of the costs of programs of public assistance (as defined in paragraph (2)(B)) provided to any eligible legalized alien (as defined in paragraph (2)(C)).

(2) For purposes of this subsection:

(A) The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

(B) The term "programs of public assistance" means programs existing in a State or local jurisdiction which—

(i) provide for cash, medical, or other assistance designed to meet the basic subsistence or health needs of individuals or required in the interest of public health,

(ii) are generally available to needy individuals residing in the State or locality, and

(iii) receive funding from units of State or local government.

(C) The term "eligible legalized alien" means—

(i) an alien who has been granted permanent resident status under section 245A(a) of the Immigration and Nationality Act, but only until the end of the five-year period beginning on the date the alien was granted such status; and

(ii) an alien who has been provided a record of lawful admission for permanent residence under section 249 of such Act based on an entry into the United States on or after June 30, 1948, but only until the end of the five-year period beginning on the date the alien was provided such record.

(c)(1) Subject to the amounts provided in advance in appropriation Acts and in accordance with this section, the Secretary of Education shall make payments to State educational agencies for the purpose of assisting local educational agencies of that State in providing educational services for eligible legalized aliens (as defined in subsection (b)(2)(C)).

(2) The amount of the payment to a State educational agency under this subsection for a fiscal year shall be based on the number of eligible legalized aliens (as defined in subsection (b)(2)(C)) who are enrolled in elementary and secondary public schools under the jurisdiction of each local educational agency within that State.

(3) For purposes of this subsection, the terms "elementary school", "local educational agency", "secondary school", "State", and "State educational agency" have the meanings given such terms under section 198(a) of the Elementary and Secondary Education Act of 1965.

TITLE IV—EXTENDED VOLUNTARY DEPARTURE FOR SALVADORANS

EXTENDED VOLUNTARY DEPARTURE FOR SALVADORANS

SEC. 401. It is the sense of Congress that in the case of nationals of El Salvador who otherwise qualify for voluntary departure (in lieu of deportation) under the Immigration and Nationality Act, the Attorney General shall extend the date such aliens are required to depart voluntarily until such date as the Secretary of State determines that the situation in El Salvador has changed sufficiently to permit their safely returning to El Salvador.

PURPOSE OF BILL

The purpose of the Committee bill is to control illegal immigration to the U.S., reform the process for determining the validity of political asylum requests, make limited changes in the system for legal immigration, and provide a controlled legalization of status program for certain undocumented aliens who have entered this country prior to 1982. The bill establishes penalties for employers who knowingly hire undocumented aliens, thereby ending the magnet that lures them to this country. It also reforms the administrative and judicial process for the consideration and review of asylum and exclusion matters. The Committee bill provides for a revised program for the temporary entry of foreign agricultural workers and limits the ability of foreign students to remain in this country after completing their studies.

COMMITTEE HISTORY

97TH CONGRESS

H.R. 6514 was introduced by Congressman Romano Mazzoli, Chairman of the House Judiciary Subcommittee on Immigration, Refugees and International Law, for himself and Congressman

Hamilton Fish, Jr., on May 27, 1982 after subcommittee markup of H.R. 5872 on May 18 and 19, 1982. The bill was unanimously approved by the subcommittee May 19., The fill Judiciary Committee considered H.R. 6514 on September 14, 15, 16, 21, and 22 and on the last day favorably reported the bill to the House with a single amendment in the nature of a substitute. (H. Rept. 97-890, Pt. 1.)

The introduction of H.R. 5872 was preceded by the 1981 report of the Select Commission on Immigration and Refugee Policy (U.S. Immigration Policy and the National Interest, Joint Committee hearings, Print No. 8) and by the announcement of the Reagan Administration's proposals for immigration and refugee policy reform at a joint hearing of the House and Senate Judiciary immigration subcommittees on July 30, 1981. The Administration's proposals were introduced on behalf of the Reagan Administration as H.R. 4832/S. 1765 on October 22, 1981 by the Chairmen of the House and Senate Judiciary Committees.

Extensive and comprehensive hearings were conducted by the House Judiciary Immigration Subcommittee on various aspects of immigration law and policy as well as on specific aspects of the Administration bill during October and November 1981 (Final Report of the Select Commission on Immigration and Refugee Policy, Serial No. J-97-38 Immigration Reform, Pts. 1 & 2, Ser. No. 30). The hearings culminated in the introduction of identical companion bills (H.R. 5872/S. 2222) entitled the "Immigration Reform and Control Act of 1982" on March 17, 1982, by the Chairmen of the House and Senate Judiciary Immigration Subcommittees, Congressman Romano Mazzoli and Senator Alan Simpson. The purposes of the bills as described by Congressman Mazzoli were "to reform outmoded and unworkable provisions of the present immigration law and gain control of our national borders." On April 1 and 20, 1982, the House and Senate Judiciary Immigration Subcommittee conducted joint hearings on the bills (Immigration Reform, Serial No. 40).

Prior to Floor action, on H.R. 6514, the Speaker referred the bill to the following Committees: Agriculture, Education and Labor, Energy and Commerce, and Ways and Means. A report was issued by the Committee on Education and Labor (H. Rept. 97-890, Pt. II) and the other Committees were discharged.

On December 16, 17, 18, 1982, the House considered H.R. 7357, which was introduced with a technical amendment, coming to no resolution thereon. S. 2222 passed the Senate August 17, 1982 and was referred to the Judiciary Committee.

98TH CONGRESS

On February 17, 1983, Congressman Romano L. Mazzoli introduced H.R. 1510, the Immigration Reform and Control Act of 1983. This was essentially the same bill passed by the House Judiciary Committee in the 97th Congress.

The Subcommittee on Immigration, Refugees, and International Law held six days of hearings on the bill in March, covering 26 hours and 74 witnesses. (Hearings before the Subcommittee on Immigration, Refugees, and International Law of the Committee on

the Judiciary, on H.R. 1510, Serial No. 2, March 1983—hereinafter cited as 1983 Immigration Subcommittee Hearings.)

COMMITTEE VOTE

The full Judiciary Committee considered the bill on May 3-5, 1983, and on May 5, the full Committee, after adopting a single amendment in the nature of a substitute to the bill, ordered H.R. 1510, as amended, favorably reported to the House by a record vote of 20-9.

NEED FOR LEGISLATION

CONTROL OF ILLEGAL IMMIGRATION

Employment

The Immigration Reform and Control Act seeks, in a paraphrase of the Select Commission on Immigration and Refugee Policy, to close the back door on illegal immigration so that the front door on legal immigration may remain open. The principal means of closing the back door, or curtailing future illegal immigration, is through employer sanctions. The bill would prohibit the employment of aliens who are unauthorized to work in the United States because they either entered the country illegally, or are in an immigration status which does not permit employment. U.S. employers who violate this prohibition would be subject to a graduated series of civil and criminal penalties.

Employment is the magnet that attracts aliens here illegally or, in the case of nonimmigrants, leads them to accept employment in violation of their status. Employers will be deterred by such a Federal law from hiring unauthorized aliens and this, in turn, will deter aliens from entering illegally or violating their status in search of employment.

The logic of this approach has been recognized and backed by their past four administrations, and was recently endorsed by the Select Commission on Immigration and Refugee Policy. Legislation establishing employer sanctions passed the House of Representatives by overwhelming majorities in 1972 and 1973, but received no Senate action.

Now, as in the past, the Committee remains convinced of the need for employer sanctions. While there is no doubt that many who enter illegally do so for the best of motives and contribute their labor, immigration must proceed under the law, in an orderly and regulated fashion. As a sovereign nation, we must secure our borders. Beyond this, we are obligated to protect our own workers from adverse competition in the labor market, and to prevent the further development of an underground culture beyond the reach and protection of the law. As Associate Attorney General Rudolph Giuliani testified during Subcommittee hearings:

> It is not now illegal to hire undocumented aliens. This must change. As long as no credible deterrent exists, those from countries where work is not available will spend a lifetime of savings and take great personal risk to find jobs in the United States. Their success in finding such jobs

> will result in some job displacement and depression of wage and working standards for American workers. They will lead fugitive lives as members of an underclass, with negative consequences for American society as a whole.
>
> Without removal of the powerful incentive of jobs for illegal aliens, the United States' back door will remain open as a result of an ambiguous immigration policy which says yes in its actions and no in its rhetoric (Immigration Reform, Pt. 1, Ser. No. 30, p. 223).

The need for control is underscored by international demographics. Undocumented aliens tend to come from countries with high population growth and few employment opportunities. The United States is not in a position to redress this imbalance by absorbing these workers into our economy and our population. U.S. unemployment currently stands at 9.8 percent, and is much higher among the minority groups with whom undocumented workers directly—and often successfully—compete.

As an indication of the magnitude of the flow of undocumented aliens, apprehensions by INS of undocumented aliens have exceeded 1 million in fiscal year 1977 through 1979, and continue to be very high. This compares to 110,371 apprehensions in 1965, just 15 years ago. The size of the current undocumented alien population in the United States is unknown, but it was estimated recently by the U.S. Census Bureau as being somewhere between 3.5 and 6 million.

Many witnesses testified during recent hearings before the Subcommittee on Immigration, Refugees, and International Law that the most effective way to close this backdoor access to the United States and its labor market is to reduce the aliens' incentive for coming—the promise of employment. Employer sanctions were strongly endorsed by the Chairman of the Select Commission on Immigration and Refugee Policy, the Reverend Theodore M. Hesburgh, by officials from the current Administration as well as by two previous Attorneys General, Benjamin Civiletti and Elliot Richardson, by the AFL–CIO and other labor organizations, and by numerous other organizations and experts on the subject. Additionally, employer sanctions have been enacted and successfully implemented by many other countries, including France, Germany, Italy, and Hong Kong.

The employer sanctions provisions establish an identification and verification procedure. The Committee recommends temporary reliance on the existing forms of identification during 3-year period following enactment while the Executive Branch and Congress study the effectiveness of existing documents and the need for improvement.

The Committee is well aware of the susceptibility of existing identification, such as the social security card and State-issued birth certificates, to fraudulent misuse. For example, in a 1980 report, the U.S. General Accounting Office noted that "crimes based on false identification, which frequently include false and legitimate social security numbers, are estimated to cost the American taxpayers more than $15 billion annually." On the other hand, the Committee recognizes that the development of a more secure

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identification system such as an enhanced social security card or a telephone call-in data bank requires further study.

In the opinion of the Reverend Theodore M. Hesburgh, a uniform, nondiscriminatory identification system linked to employer sanctions would not constitute a threat to privacy. He stated that:

> I am also persuaded that concerns about the abuse of privacy are not warranted. What protects our society and individuals in it against the abuse of privacy is the existence of traditions, habits and laws which sustain our 1st, 5th, and 14th amendment rights concerning freedom and due process. These constitute a national will to resist governmental control or private misuse of personal information.
>
> In fact, the employer eligibility system should be the occasion to make explicit in legislative language the privacy protections due individuals in our society (Final Report Hearings, pp. 26–27).

H.R. 1510 also addresses the issue of identification fraud as it relates specifically to immigration by providing criminal penalties for the fraudulent use of any document which may be presented to satisfy the employment verification process.

Adjudications and asylum

The Refugee Act of 1980 was prompted by the refugee crisis resulting from the fall of Vietnam and Cambodia in the spring of 1975. By the end of the 1970s, a consensus had been reached that a more coherent and equitable approach to refugee admission and resettlement was needed. The result was the amendments to the Immigration and Nationality Act contained in the Refugee Act of 1980, enacted on March 17, 1980.

The 1980 amendments made provision for both a regular flow and the emergency admission of refugees, following legislatively prescribed consultation with the Congress. The Refugee Act also established for the first time a statutory basis for granting asylum to aliens physically present or at a U.S. land border or port of entry. The law directs the Attorney General to establish asylum procedures and provides that the alien must meet the definition of refugee to be granted such status. It was anticipated at that time that the relatively small number of asylum applicants (3,000–5,000 annually) would remain stable and provision is made for the adjustment (to permanent resident status) of only 5,000 asylees annually.

Current asylum procedures were established by regulation in accordance with the provisions of the Refugee Act (8 CFR 208). The procedures allow aliens to make an application for asylum and, if denied, to reapply in exclusion or deportation proceedings. The procedures require the requests be considered on a case-by-case basis and they provide for full administrative and judicial review. They also require advisory opinions from the Bureau of Human Rights and Humanitarian Affairs in the Department of State on the merits of the asylum claim.

Shortly after the enactment of the Refugee Act of 1980, large numbers of Cubans entered the United States through Southern Florida, totalling an estimated 125,000, along with continuing

smaller numbers of Haitians and asylum applicants of other nationalities. In fiscal years 1980 and 1981, INS received 10 to 15 times as many asylum applications as they received in previous years. The Service's attempts to process these applications were impeded by both a lack of resources as well as by the cumbersome nature of the procedures designed to accommodate far fewer applicants. Moreover, efforts of the Immigration and Naturalization Service (INS) to expedite the process resulted in court challenges that further backlogged the system. As of January, 1983, INS reported there were approximately 140,000 asylum applications pending.

Alan C. Nelson, INS Commissioner, has characterized the procedures as involving a multi-tiered administration hearing and appeal system as well as judicial review on several levels. Representatives from the American Civil Liberties Union have pointed out that the asylum system is "cumbersome" and "has been justly criticized by Members of Congress, by officials of the State and Justice Departments and by lawyers representing asylum applicants."

The backlog of asylum applications has created a situation where those who have valid asylum claims are not being heard in a timely fashion, while those with frivolous claims are able to use the procedures as a delaying tactic in order to remain in the United States. In addition, representatives from States and localities have testified that the large numbers of people seeking asylum who remain in this country for long periods pending the outcome of their claims have adversely affected the communities in which they reside, particularly South Florida. It is likely that people will continue to be attracted to the United States for both economic and political reasons. The current asylum, exclusion, and deportation procedures may even serve as a "pull" factor for those seeking to come to the United States.

The Select Commission on Immigration and Refugee Policy recognized the need to reform the current asylum system and recommended that the U.S. process asylum claims "on an individual basis as expeditiously as possible and not hesitate to deport those persons who come to U.S. shores—even when they come in large numbers—who do not meet the established criteria for asylees." The Commission further recommended that a more expeditious review system be established, by allowing a "single asylum appeal to be heard . . . by whatever institution routinely hears other immigration appeals."

The Committee believes that the increase in the number of asylum applications necessitates procedural changes that are both fair and expeditious. A streamlining of these procedures will enable the U.S. to maintain the integrity of its borders, as well as curtail long stays by asylum applicants.

REFORM OF LEGAL IMMIGRATION

The Committee Amendment modifies and adds certain provisions to the Immigration and Nationality Act in five areas.

First, it creates a new special immigrant category for dependents of international organizations who have resided in the United States for a long period of time. The Committee notes the unique

situation in which such persons—children and widows of the principal G–4 representative of an international organization—find themselves once the principal dies or transfers to the home country.

The second area of legal immigration which the Committee has addressed in the legislation relates to H–2 workers. The program in effect today in large measure dates back to 1952 though it was overshadowed by a much larger "bracero" program under the authority of P.L. 78, which ended in the early 1960's. The H–2 program remains relatively small, and the agricultural segment of the program accounts for about 18,000 entries of foreign workers annually from 1979–1981. Florida, Virginia, and New York have employed the largest number of H–2 agricultural workers recently; respectively sugarcane, apples and tobacco, and apples. The H–2 program, and particularly its agricultural segment, has been the focus of considerable interest during consideration of the Immigration Reform and Control Act because of the belief that some sectors of agriculture, particularly seasonal agriculture in the Southwest and on the West Coast, are heavily dependent on undocumented workers. The Committee is not adverse to a streamlining of the H–2 program in order to increase administrative flexibility, and the Committee Amendment, indeed, provides for a more practical and reasonable program, as well as a transitional program in order to phase down existing reliance on undocumented aliens.

The third area addressed in the Committee Amendment restricts the ability of many foreign students to adjust status in the United States. In theory, the foreign student program exposes citizens of other countries to the institutions and culture of the United States, helps cement alliances with other countries, and provides for the transfer of knowledge and skills to other countries. The Committee is greatly concerned, however, that many foreign students simply do not return home. Studies of INS data suggest that approximately 10 percent of the foreign student population have their status adjusted to that of permanent residents of the United States and that an additional 10 percent fail to maintain their status and are apprehended by INS. The impact of the number of students remaining in the United States is exacerbated by the fact that in recent years, a high percentage of foreign students in the United States come from developing countries in need of scientific and technical manpower for their development. For example, in 1980–81, the three leading countries of origin of foreign students in the United States were Iran, Taiwan and Nigeria. Therefore, the Committee has placed restrictions on the ability of these students to remain in the United States and seek lawful permanent resident alien status.

Fourth, the Committee Amendment changes the allocation of visas in two ways: increases the colonial ceiling from 600 to 3,000; and provides 20,000 additional visas for each of the two countries contiguous to the U.S. It also mandates a Presidential report by 1987 on the impact of all admissions of aliens to the U.S. on our country.

The last area which the Committee has addressed is that of providing a nonimmigrant visa waiver program for countries whose nationals have traditionally abided by U.S. immigration law. The

Committee believes that a pilot visa waiver program will promote better relations with some of our closest allies and other friendly nations. It would eliminate an unnecessary barrier to travel and stimulate the tourism industry in the United States. Also, it would alleviate vast amounts of paperwork allowing U.S. consular offices to better meet high priority responsibilities such as visa screening in high fraud areas. Because the Committee remains concerned with the potential for abuse, the program is linked to the establishment of an arrival-departure system for the continued screening of immigrants as well as nonimmigrants.

LEGALIZATION

The United States has a large undocumented alien population living and working within its borders. Many of these people have been here for a number of years and have become a part of their communities. Many have strong family ties here which include U.S. citizens and lawful residents. They have built social networks in this country. They have contributed to the United States in myriad ways, including providing their labor and tax dollars. However, because of the undocumented status, these people live in fear, afraid to seek help when their rights are violated or they become ill. Moreover, their presence, in violation of our immigration law, bears witness to our past failure to maintain the integrity of our borders.

Continuing to ignore this situation is harmful to both the United States and the aliens. However, the alternative of attempting mass deportations would be both costly and ineffective.

The Committee believes that the solution lies in legalizing the status of aliens who have been present in the United States for several years, recognizing that past failures to enforce the immigration laws have allowed them to enter and to settle here. The Administration and scholars have testified in support of such a program. This step would enable INS to target its enforcement efforts on new flows of undocumented aliens and, in conjunction with the proposed employer sanctions programs, help stem the flow of undocumented people to the United States. It would allow qualified aliens to contribute more to society and it would help to prevent the exploitation of this vulnerable population in the workplace. It would also provide for the first time reliable data on the source and characteristics of undocumented aliens to further facilitate enforcement efforts to curtail future flows. As the Administration testified, ". . . a one-time legalization program is a necessary part of an effective enforcement program. . . ." (Immigration Reform, Serial No. 30, p. 131.)

History of Legislation

Legislation pertaining to the control of illegal or undocumented immigration received serious attention by the Congress in the early 1950s and for the past 10 years, since 1971. Chief among the legislative approaches to the problems has been the proposed establishment of penalties for the employment of undocumented aliens, known to be in the country in violation of the immigration law.

Attempts to pass legislation prohibiting the employment and establishing penalties for the harboring of undocumented aliens back in 1951 and 1952 were only partially successful. The result was the Act of March 20, 1952, subsequently recodified as sections 274 and 287(a)(3) of the Immigration and Nationality Act of 1952. Under the law then and now, the willful importation, transportation, or harboring of undocumented aliens is a felony, punishable by a $2,000 fine or imprisonment of up to 5 years, or both. However, employment is specifically exempted from the penalties for harboring in what was popularly referred to as the "Texas proviso," which reads as follows: "*Provided, however,* That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring."

Extensive investigative and legislative hearings on the problem of undocumented aliens were held during the 92d Congress beginning in 1971, by the House Judiciary Subcommittee with special jurisdiction over immigration matters, then under the chairmanship of Representative Peter W. Rodino, Jr. Quoting from a 1975 House Judiciary Committee report, "The basic conclusion reached by the majority of the members of the subcommittee as a result of the hearings was that the adverse impact of illegal aliens was substantial, and warranted legislation both to protect U.S. labor and the economy, and to assure the orderly entry of immigrants into this country" (H. Rept. 94–506, p. 3).

These hearings formed the basis for a series of bills prohibiting the knowing employment of undocumented aliens, and establishing a graduated three-step series of administrative, civil, and criminal penalities for employers violating this prohibition. The basic rationale for this approach was explained as follows during the 94th Congress by the House Judiciary Committee:

> The committee believes that the primary reason for the illegal alien problem is the economic imbalance between the United States and the countries from which aliens come, coupled with the chance of employment in the United States. Consequently, it is apparent that this problem cannot be solved as long as jobs can be obtained by those who enter this country illegally and by those who enter legally as nonimmigrants for the sole purpose of obtaining employment.
>
> The committee, therefore, is of the opinion that the most reasonable approach to this problem is to make unlawful the "knowing" employment of illegal aliens, thereby removing the economic incentive which draws such aliens to the United States as well as the incentive for employers to exploit this source of labor (H. Rept. 54–506, p. 6).

Legislation embodying this approach passed the House of Representatives during the 92nd and 93d Congresses, and received the continuous support of the Nixon and Ford administrations during this period. H.R. 16188 passed the House during the 92nd Congress on September 12, 1972 by voice vote after a motion to recommit it to the Judiciary Committee was defeated by a vote of 297 yeas to 53 nays. During the 93rd Congress, H.R. 982 passed the House on

May 3, 1973 by vote of 297 yeas to 63 nays. However, neither bill received Senate action.

A bill identical to the House-passed H.R. 982 of the 93d Congress was introduced at the beginning of the 94th Congress, and hearings were held by the House Judiciary Subcommittee on Immigration, Citizenship, and International Law. A clean bill, H.R. 8713, was reported to the House on September 24, 1975, but received no further action by the House. H.R. 8713 differed from earlier versions of the House Judiciary undocumented alien bill most notably in the inclusion of a provision allowing for the regularization of status or legalization of certain undocumented aliens who had been in the country since July 1, 1968, as well as a provision intended to prevent employment discrimination against those of foreign appearance who are legally entitled to work.

In a related area, legislation was enacted in the 93d Congress amending the Farm Labor Contractor Registration Act of 1963 to establish criminal penalties (in addition to the existing sanction of registration revocation), for certain farm labor contractors who knowingly engage the service of undocumented aliens. Legislation enacted by the 94th Congress, the Immigration and Nationality Act Amendments of 1976 (Public Law 94–571), included a provision prohibiting aliens who have entered the country legally as nonimmigrants, and who have subsequently violated the terms of their admission by accepting unauthorized employment, from adjusting their status to that of permanent resident alien while in this country. The provision was aimed at deterring tourists, foreign students, and other nonimmigrants from working illegally.

The issue of illegal immigration continued to be of concern to the Executive Branch. On January 6, 1975, President Gerald Ford established a Cabinet-level Domestic Council Committee on Illegal Aliens, chaired by Attorney General Edward Levi. In its report dated December 1976, the Domestic Council Committee concluded that the major impact of undocumented aliens seemed to be in the labor market, and recommended enactment of legislation establishing penalties for knowing employment of undocumented aliens as well as enactment of a provision allowing for the regularization of status of certain undocumented aliens.

The problem received extensive study by the Carter administration, principally under the direction of Attorney General Griffin Bell, INS Commissioner Leonel Castillo, and Secretary of Labor Ray Marshall. On August 4, 1977, President Carter submitted a message to the Congress outlining "a set of actions to help markedly reduce the increasing flow of undocumented aliens in this country and to regulate the presence of the millions of undocumented aliens already here" (H. Doc. 95–202). President Carter proposed civil penalties for the employment of undocumented aliens increased Southwest border enforcement, continued cooperation with major source countires and a legalization program.

The administration bill, entitled the "Alien Adjustment and Employment Act of 1977," was introduced in the House in the 95th Congress as H.R. 9531 by Judiciary Committee Chairman Peter W. Rodino on October 12, 1977; and in the Senate as S. 2252 by Judiciary Committee Chairman James O. Eastland on October 28, 1977.

The Carter Administration bill did not receive action during the 95th Congress beyond the Senate Judiciary Committee hearings on S. 2252 in May 1978. However, the Immigration and Nationality Act was amended by P.L. 95-582 to provide for the seizure and forfeiture of vehicles used to illegally transport aliens into the United States.

Another enactment in the 95th Congress of relevance to the undocumented alien issue was P.L. 95-412, the Act of October 5, 1978, which created a 16-member Select Commission on Immigration and Refugee Policy to conduct a study of immigration and refugee laws, policies and procedures and report to the President and the Congress on its findings and recommendations for legislative and administrative change.

The 16-member Select Commission on Immigration and Refugee Policy consisted of 4 members of the House Judiciary Committee (Representatives Rodino, McClory, Holtzman, Fish); 4 members of the Senate Judiciary Committee (Senators Kennedy, Mathias, DeConcini, Simpson); 4 Carter Administration Cabinet members (State, Justice, Health and Human Services (HHS), Labor); and 4 public members appointed by President Carter, including its Chairman the Reverend Theodore Hesburgh, President of Notre Dame University.

The Select Commission's basic conclusion that immigration has been and continues to be in the national interest underlies many of the report's recommendations which included enactment of legislation making it illegal to hire undocumented aliens, increased border and interior enforcement, and legalization of the status of certain aliens illegally present in the United States.

Joint hearings were held on the report and recommendations of the Select Commission on Immigration and Refugee Policy on May 5, 6, and 7, 1981, by the Senate Judiciary Subcommittee on Immigration, and Refugee Policy and the House Judiciary Subcommittee on Immigration, Refugees, and International Law, under the chairmanship of Senator Simpson (R., Wyo.) and Representative Mazzoli (D., Ky.). These were the first joint congressional hearings on immigration since those held in 1951 on the legislation subsequently enacted as the Immigration and Nationality Act of 1952.

Analysis or Major Provisions of Legislation, as Amended

CONTROL OF ILLEGAL IMMIGRATION

Employer sanctions

As noted earlier in this report, the Committee is convinced that as long as job opportunities are available to undocumented aliens, the intense pressure to surreptitiously enter this country or to violate status once admitted as a nonimmigrant in order to obtain employment will continue. In an effort to eliminate the availability of employment, the Congress has established a 4-tiered penalty structure for those employers who hire, recruit or refer undocumented aliens.

The penalties are uniformly applied to all employers regardless of the number of employees, as well as to those persons who for a fee or other consideration recruit or refer undocumented aliens for

employment. These penalties are prospective and shall apply only to acts of employment, referral or recruitment that take place after the enactment of this legislation. The Committee felt such as approach would be the least disruptive to the American businessman and would also minimize the possibility of employment discrimination.

The Committee amendment requires a one year period of public education. During the first six months, the penalties and injunctive remedy would not apply. The prohibition on such employment, recruitment or referral would, nevertheless, still be in effect during the six month period in an effort to promote voluntary compliance.

The bill, as amended, also provides an affirmative defense for employers, referrers or recruiters who show "good faith" compliance with the recordkeeping requirements described later in this section of the report. In order to assist employers in meeting their responsibilities under this legislation, the Attorney General is required to develop and disseminate forms to employers, referrers and recruiters. These forms will then be executed by employers, referrers and recruiters, as well as the person employed or referred and retained for inspection by INS and the Department of Labor.

By meeting these requirements in "good faith" an employer, referrer or recruiter can establish an affirmative defense that he or she has not hired, recruited or referred an undocumented alien in violation of this legislation. The Committee intends that the act of establishing "good faith" compliance could be shown by proof of the employer's, referrer's or recruiter's review of the documents specified in the legislation and retention of the verification forms, inclusive of the employee's attestation. It can also be shown in the case of referrals from State employment agencies by the employer's retention of appropriate documentation (including status verification) issued by the referral agency.

In other words, it the person or entity performs these activities, a rebuttable presumption is established that he or she has acted in "good faith," and the burden is shifted to the government to prove otherwise. It should be noted that this is not an absolute defense, and the government could rebut the presumption by offering proof that the documents did not reasonably appear on their face to be genuine, that the verification process was pretextual, or that the employer, recruiter or referrer colluded with the employee in falsifying documents, etc.

Of course, even if the employer does not seek to establish an affirmative defense, the burden of proving a violation of the hiring, recruitment or referral prohibition always remains on the government—by a preponderance of the evidence in the case of civil penalties and beyond a reasonable doubt in the case of criminal penalties.

Some concern was expressed during full Committee consideration that the language of the legislation would impose a burden on employers who desire to avoid sanctions to periodically verify the status of their employees. Specifically, questions arose as to whether the language subjecting an employer to sanctions for an employee who "becomes an unauthorized alien" would impose any such obligation on an employer. The Committee does not intend to impose a continuing verification obligation on employers. However,

if an employer has knowledge that an alien's employment becomes unauthorized due to a change in nonimmigrant status, or that the alien has fallen out of a status for which work permission is authorized, sanctions would apply.

It is not the intent of this Committee that sanctions would apply in the case of casual hires (i.e., those that do not involve the existence of an employer/employee relationship). Similarly, sanctions are not intended to apply to those few employers who make a "good faith" effort to comply with this legislation, but who, because of unique and special circumstances, confront processing delays on the part of INS or the Department of Labor. For example, it has been brought to the Committee's attention that the National Hockey League has encountered some difficulties in securing timely labor certifications and temporary worker (H) petition approvals.

The Committee recognizes the special problems facing professional sports and does not intend that sanctions would be applicable in the case of technical violations caused by exigent circumstances or processing delays. The Committee expects INS to develop appropriate administrative procedures to insure that the employment of alien professional athletes is temporarily authorized, pending the final adjudication of labor certification applications and temporary worker (H) petitions.

The penalties contained in this legislation are intended to specifically preempt any state or local laws providing civil and/or criminal sanctions on the hiring, recruitment or referral of undocumented aliens.

1. Citation.—The four-step penalty structure would commence with the service of a citation by the Attorney General on a person or entity which is found to have employed, recruited or referred an undocumented alien. This citation would issue if, upon evidence or information which the Attorney General deems persuasive, he concludes that such person or entity has engaged in such conduct. The Committee expects the Attorney General to issue guidelines including specific examples as to what he would consider persuasive evidence or information.

The Committee amendment also requires that the citation contain a "notification that the alien's employment is not authorized and a warning of the penalties and injunctive remedy" provided in the legislation.

No judicial review of a citation is anticipated, since it has no immediate legal or detrimental effect. Instead, it is intended to serve as a personal notification to an offending employer as to the existence of a Federal prohibition on the employment of undocumented aliens, as well as a warning as to the penalties that will be applied in the event of further violations.

2. Civil penalties.—A knowing violation (not a requirement in the citation stage) subsequent to issuance of a citation will subject the offending party to a civil fine of $1,000 for each undocumented alien. This is followed by a $2,000 fine for each alien. It is the Committee's intent that the second civil fine is not applicable until the first fine is administratively final.

As in the case of a citation, the offending party may request a hearing on any civil penalty assessed against him or her by the At-

torney General. Such hearing shall be conducted before an Administrative Law Judge in accordance with the adjudication requirements set forth in the Administrative Procedures Act (5 USC § 554). It shall be held within 200 miles of the place of residence of the offending party or of the place where the alleged violation occurred. An appeal can be taken to the U.S. Immigration Board from a final decision of the Administrative Law Judge.

Judicial review of the Board's decision is also available. An appeal to the U.S. Circuit Courts can be taken within 60 days of a final order. Alternatively, failure to pay a civil penalty will subject the offending party to a collection suit by the Attorney General in the appropriate U.S. District Court. In other words, if the assessment has been contested, judicial review may be pursued before the circuit courts; if the assessment has not been contested, the Attorney General will commence a collection suit in the appropriate district court.

3. Criminal penalties.—A knowing violation subsequent to the assessment of a civil penalty which has become final would expose the offending party to a fine of not more than $3,000 and/or imprisonment for not more than one year for each alien in respect to whom a violation occurs. In addition, the Attorney General is granted the option to continue to proceed civilly (as opposed to criminally) once the second civil fine has been assessed and finalized.

It should be emphasized that this particular provision—unlike the recordkeeping requirements discussed below—imposes no direct obligations or affirmative requirements upon an employer. Instead, this section prohibits the employment, recruitment or referral of undocumented aliens, and it is the Committee's belief that by and large most employers will desist from hiring undocumented aliens when it is known that civil and criminal penalties will attach to such activity.

4. Injunctive remedy.—In addition to imposing civil and criminal penalties, the Committee Amendment also grants U.S. district courts jurisdiction to enjoin employers from engaging in a "pattern or practice" of illegal employment, referral or recruitment and authorizes the Attorney General to bring such actions.

This provision is designed to strengthen the legislation and improve the government's ability to deal with repeat offenders. Experience has demonstrated that many employers continue to hire aliens even after INS has visited their business and located undocumented aliens, notwithstanding attempts by INS to discourage this practice.

The Committee is of the opinion that this injunctive remedy as a supplement to the penalties in the legislation will prove to be a quick and effective enforcement tool. It is intended that this remedy be available at any time (i.e., it would not be necessary to commence the graduated procedure prior to seeking an injunction). The injunctive remedy is not available, however, during the first six months following the bill's enactment—as is the case for the graduated penalties described above.

5. Counting of violations.—The legislation also provides that in counting the number of previous determinations of violations for purposes of determining which penalty applies, determinations of

more than one violation in the course of a single proceeding or adjudication are counted as a single determination. Moreover, in the case of a corporation or other entity composed of distinct, physically separate subdivisions which do their own hiring and recruiting for employment (without reference to the practices of, or under the control of, or common control with another subdivision) such subdivision shall be considered a separate person or entity. Under this provision a parent corporation, such as a large automaker, which has several subdivisions that hire independently of each other would be held jointly responsible whenever one of its subdivisions violates the provisions of this Section.

For example, suppose automaker A has two distinct subdivisions, X and Y. In 1984, subdivision X commits its second violation, i.e., it becomes liable under the first civil fine provision. At that point, automaker A is jointly responsible with X for such liability. In 1985, subdivision Y commits its first violation (which, by definition, results in a citation only). At that point, automaker A is, like Y, responsible for that violation. However, insofar as A is concerned, the violation by Y is A's first violation. That is to say, the violation by Y is not added to the previous two violations by X to create third stage liability (i.e. a second level civil fine) for automaker A. In short, the parent corporation can never be subject to a level of offense that is higher than the highest level reached by any of its independent subdivisions.

It must be emphasized that this limitation applies only to those situations where the subdivisions of the corporation or entity do their own hiring and recruiting for employment completely independent and irrespective of the other subdivisions.

6. Paperwork requirements.—In order to protect both persons subject to penalties and members of minority groups legally in this country, the bill provides a system to verify that prospective employees are eligible to work in the United States.

The verification system is optional until a person or entity is found to have employed, recruited, or referred an undocumented alien. In such case, the Attorney General shall notify the offending party in writing of the violation and, at that point, such party shall be required to comply with the verification procedure. It should be noted that neither imposition of the verification requirements nor issuance of the citation requires a "knowing" violation.

If a person complies with the verification requirements (prior to their being mandated by the Attorney General with proper notice), the same procedures must be followed for all prospective employees. If the procedures are not uniformly applied to all new hires during this optional period, an employer is not acting in "good faith" and the affirmative defense for "good faith" compliance should not be available.

In the Committee's judgment, an effective verification system, combined with an affirmative defense for those who in good faith follow the proper procedure, is essential. Otherwise, the system cannot both be effective and avoid discrimination.

For at least the first three years after enactment, a transitional verification system will be used. It will involve examination of either a U.S. passport or two other existing documents adequate to verify both that the applicant is presenting his true identity and

that he is authorized to work. The user of the system will then sign a statement that the required documents have been examined, and obtain the signature of the prospective employee that he is a U.S. citizen, permanent resident alien, or alien authorized to perform the particular work.

In the case of recruitment or referral (without hiring) of an individual, these forms must be retained and made available for inspection, if requested, for a period of three years after such recruitment or referral. In case of employment, the employer must do so for three years after the date of hiring or one year after employment is terminated, whichever is later.

Those persons who are covered by the requirements are subject to a $500 civil fine for failure to satisfy them.

It is the Committee's expectation that employers will make every effort to apply the verification process to job applicants who are being seriously considered for employment so that the possibility of employment discrimination based on national origin will be minimized.

The Committee amendment specifically prohibits the use of attestation forms for purposes unrelated to the enforcement of this legislation or 18 USC 1546—relating to the fraud and misuse of various immigration documents. Concern has been expressed that verification information could create a "paper trail" resulting in the utilization of this information for the purpose of apprehending undocumented aliens. The Committee amendment is designed to insure that this information will not be used by the INS in its alien enforcement activities. It is not intended, however, to prevent information from being used where there is a charge of employment discrimination.

The Committee directs that INS fully cooperate with employers who desire to understand their verification obligations. It is not expected that employers ascertain the legitimacy of documents presented during the verification process. However, should employers seek to check on the authenticity of any alien identification document, INS officials are expected to assist them in a timely manner.

In this regard, the Department of Justice this year submitted the following prepared response to a Subcommittee inquiry on this matter:

> INS will establish a program for employers who report documents of a suspect nature. We will direct such employers not to make critical judgments of the authenticity of documents, but hire such individuals and request that INS make an audit of the documents. INS will also continue to verify the status of lawful resident aliens who request such verification prior to seeking employment. More importantly INS will handle, on an immediate basis, the request for verification of documentation from any U.S. citizen or permanent resident alien or other alien authorized to work in the U.S., whose documentation has been mistakenly rejected by an employer. (1983 Immigration Subcommittee Hearings, p. 1458.)

7. Permanent verification system.—While the bill does allow for the use of existing identifiers during the transitional verification

process, it does require the President, within 3 years, to study and report to Congress concerning the possible need for and costs of any changes or additions as may be necessary to establish a secure employment verification system. The President must consider, in recommending such changes, use of a telephone verification system (such as that used to verify credit transactions). The bill specifically requires the President to consult with Congress every six months on any proposed changes or additions to the verification system.

Because of the Committee's deep concern that the President's authority may be misinterpreted, it has adopted a number of provisions to clarify his authority to examine the need for a more secure system.

For example, the Committee amendment specifically states that nothing in the legislation "shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards."

Further, the bill imposes several restrictions and conditions on any verification system.

These include:

(1) Personal information utilized by the system will only be available to the extent necessary for the purpose of verifying employment eligibility;

(2) Verification may not be withheld except on the basis that the prospective employee is an undocumented alien;

(3) The verification method will not be used for law enforcement purposes (except for enforcement of laws relating to falsification of documents); and

(4) No identification document or card designed specifically for use under the modified system can be required to be presented except for purposes of the system nor can it be required to be carried on one's person.

While, it is the Committee's intent that no document should be required to be carried on one's person for general identification purposes, the bill would not preclude the development of a verification system, which utilizes a card or other document specifically designed for demonstrating employment eligibility. Such card or document, if developed would only be presented to an employer at the time one applies for a job.

The Committee notes that the Social Security Administration will be producing a tamper-proof Social Security card. It is the Committee's hope that this development, as well as the telephone verification system, be explored in depth by the President, as he considers recommending changes to the verification system.

The Committee believes that the aforementioned safeguards sufficiently minimize the risk of governmental abuse or misuse, invasion of privacy and infringement of civil liberties.

It is also noted that the Select Commission on Immigration and Refugee Policy also recommended the development of "some system of more secure identification" rather than mere reliance on existing identifiers.

8. Reports on discrimination.—Critics of this legislation have consistently maintained that employer sanctions will increase the possibility of national origins employment discrimination. The Committee has carefully drafted this legislation in an effort to minimize this possibility.

By establishing an extensive public education program, a graduated penalty structure (including a citation/warning only for a first violation) and a verification procedure (and creating an affirmative defense based on compliance with the verification procedure), the Committee has attempted to insure responsible, "good faith" employers that they will not be subject to civil and criminal sanctions.

Furthermore, it should be noted that Title VII of the Civil Rights Act of 1964 currently prohibits employment discrimination based on national origin. The Supreme Court discussed this prospective legislation at some length in *Espinoza* v. *Farah Manufacturing Co.*, 414 U.S. 86 (1973) and stated that "certainly it would be unlawful for an employer to discriminate against aliens because of race, color, religion, or national origin—i.e., by hiring aliens of Anglo-Saxon background but refusing to hire those of Mexican or Spanish ancestry."

It is clear from this decision and regulations which have been promulgated by the Equal Employment Opportunity Commission subsequent to this decision that any outright refusal by an employer to hire, as well as the dismissal of, individuals because of their foreign appearance or ethnic background would contravene the provisions of Title VII.

Nevertheless, in order to respond to the allegations that employment discrimination would result from the enactment of this legislation, the Committee has included several provisions requiring close monitoring of the implementation of the employer sanctions portion of H.R. 1510, as amended.

First, the bill requires the President to monitor, and consult semi-annually with the Congress concerning, implementation of employer sanctions and their impact on employment, including discrimination in employment directed against Hispanic-Americans and other groups. In addition, funds are authorized for such monitoring.

Second, it requires the U.S. Civil Rights Commission to monitor implementation of the provisions, to investigate allegations of unlawful discrimination in employment resulting from the implementation, and to submit 3 reports (18, 36, and 54 months after enactment) to the Judiciary Committees of Congress on any pattern of unlawful discrimination which has resulted from employer sanctions.

Finally, it requires the Attorney General, jointly with the Secretary of Labor and the Chairman of EEOC to establish a task force to monitor and review allegations of discrimination resulting from this legislation. The Committee Amendment authorizes $6 million for each of the next three fiscal years for the activities of the task force. To assist the Congress in meeting its oversight responsibilities, the Committee directs the task force to report its findings and conclusion to the Judiciary Committees in a timely manner.

International considerations

The Committee acknowledges that employer sanctions, coupled with a verification system, will not totally eliminate the problem of illegal immigration. As long as there is an economic imbalance between the sending countries and the United States, the pressure to migrate to this country will continue.

For obvious jurisdictional reasons, the Committee is unable to address the severe economic "push factors" in the various developing countries, that have traditionally produced large numbers of undocumented aliens. It is the consensus of the Committee that bilateral and multilateral cooperation is essential to respond to this international phenomenon—the movement of people legally and illegally across international borders.

In particular, the Committee is convinced of the need for close and continuous contact between the U.S. and Mexico during the implementation of this legislation. Committee Members have consistently voiced their strong support for generous bilateral programs to assist Mexico in reducing the economic pressures to emigrate—temporarily or permanently—to the U.S.

The Select Commission also recognized the importance or international cooperation on migration issues and unanimously recommended that "the U.S. expand bilateral consultations with other governments, especially Mexico and other regional neighbors, regarding migration."

The Committee clearly recognizes the long-range nature of these suggestions, but firmly believes that bold bilateral measures and other diplomatic initiatives must be taken as this legislation is implemented. The Committee intends to communicate its concerns in this regard to the appropriate legislative Committee—the House Committee on Foreign Affairs.

Immigration enforcement activities and authorization of appropriations

The Committee has long been aware that the Immigration and Naturalization Service has been consistently underfunded, undermanned and neglected by the Department of Justice and the Office of Management and Budget. The lack of attention and appreciation of the responsibilities of the Service has been largely to blame for the chaotic state of our present immigration situation.

The enactment of this legislation will impose significant additional responsibilities on the Immigration and Naturalization Service, not only for its implementation, but also for increased enforcement measures which are deemed to be an "essential element" of this entire effort to reform and control our immigration program.

Sec. 111(a) of the bill specifically sets forth the enforcement concept by calling for increases in border patrol and other enforcement authorities of INS and other federal agencies "to prevent and deter the illegal entry of aliens into the United States".

Some concerns have been voiced by Members of the Committee that the present budgetary state of the Federal government will not permit sufficient funding to implement the provisions of this bill.

In spite of budgetary constraints, the Committee fully expects the Administration to honor the commitment made to the Committee and provide all the necessary manpower and funding resources to accomplish the objectives of this legislation.

Sec. 111(b)(1) of the bill authorizes to be appropriated the following sums to the Immigration and Naturalization Service for purposes of carrying out the provisions of the Act:

Fiscal year:	
1983 (Supplemental)	$35,480,000
1984	716,550,000
1985	689,232,000
1986	731,327,000

The amounts cited, except for the fiscal year 1983 supplemental figure, use as a base the fiscal year 1984 Administration budget request for INS. A ten percent inflation factor is calculated in the fiscal year 1985 and fiscal year 1986 totals. To each of these base figures, the following amounts are added as implementation costs for legalization, employer sanctions, asylum processing and enhanced enforcement:

Fiscal year:	
1984	$203,944,000
1985	125,366,000
1986	111,075,000

Therefore, each amount authorized in Sec. 111(b)(1) includes monies for normal INS operations for the fiscal year, enhanced enforcement and service to the public, and the INS implementation costs for each of these years for the new program established by H.R. 1510.

The Immigration and Naturalization Service intends to off-set legalization costs by charging applicants an appropriate fee for each application submitted. It is expected that these receipts will make up the entire cost for the legalization program.

The Committee noted that the INS budget request for fiscal year 1984 maintains a "status quo" posture, virtually ignoring the increases authorized by this Committee in the fiscal year 1983 budget of 642 positions and $29 million. While the fiscal year 1984 includes $22 million for furthering the automated data processing capabilities of the Service and $10 million for the establishment of a National Records Processing Center, it did nothing to enhance either the enforcement functions or the service to the public activities of the Service.

The Committee's fiscal year 1984 budget figure includes funding for 1,713 positions and over $94 million for increased enforcement and service to the public. The increases include funding for 141 investigative positions for which no monies were provided in the Administration's request and 140 additional adjudicators.

These latter positions are especially important to permit District offices which are heavily backlogged in the adjudication of petitions to be adequately staffed. Although enforcement is highly emphasized in the implementation of H.R. 1510, the Committee feels strongly that benefits conferred upon aliens by the Immigration and Nationality Act should be granted promptly and courteously.

Any funding appropriated in fiscal year 1984 pursuant to this Committee's authorization action in the fiscal year 1984 Department of Justice authorization bill will be adjusted in considering implementation resources for H.R. 1510.

The Committee also authorizes to be appropriated not less than $6,000,000 for each fiscal year 1984, 1985 and 1986 for the activities of a task force established to monitor the implementation of the employer sanctions provisions. The task force, appointed jointly by the Attorney General, the Secretary of Labor and the Chairman of

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the Equal Employment Opportunity Commission, is responsible for reviewing and investigating complaints registered of employment dicrimination under the employer sanctions provision.

The section also contains an authorization for the establishment of a $35,000,000 immigration emergency revolving fund within the Department of the Treasury. The purpose of the fund is to provide for increased enforcement capabilities for the Service, as well as funds for reimbursement to state and local governments providing assistance, in meeting an immigration emergency. With the experience of the Mariel boatlift and the disjointed response to the influx of thousands of aliens on the Florida communities, the Committee felt that certain funds should be set aside and made available to respond to a similar emergency should one reoccur so that agencies and local governments are not forced to meet unusual and unforeseen expenditures out of normal operating funds. The bill provides that these funds may be drawn upon only after the President has determined that an emergency exists and has certified the fact to the Judiciary Committees of the House and Senate.

The Committee believes that it has acted realistically in authorizing funds in this bill to carry out its provisions. It has grave doubts that the bill will achieve its objectives without full funding. Certain Members of the Committee are still not convinced that the Administration is sufficiently committed to provide the full range of resources. The Committee reiterates its hope that the Administration will honor its commitment.

The Committee Amendment further provides that no officer or employee of the Service may enter onto a farm or other outdoor operation beyond the 25 mile limit from the border for the purpose of interrogating a person believed to be an alien without first obtaining either the owner's consent or a properly executed warrant.

Fees

Although there are no plans at the present time to impose fees on aliens to offset costs of the operation of border facilities and the provision of services attributable to the alien for use of such facilities and services, the legislation amends Section 281 of the Immigration and Nationality Act and authorizes the Attorney General, in consultation with the Secretary of State, to impose such fees. This provision broadens the scope for collection of fees to include those experienced by INS by extending this authority to the Attorney General which heretofore rested only the Secretary of State.

INS at the present time collects fees for all types of services, applications, and petitions which they process in their services to the public. As noted above, INS has projected the collection of fees in the legalization program which will largely offset the costs of that program.

ADJUDICATION PROCEDURES AND ASYLUM

Inspection and exclusion

In order to facilitate the prompt expulsion of aliens who can offer no justification for their presence in the United States, the Committee Amendment provides for an expedited exclusion proceeding. Specifically, it authorizes an expedited procedure when-

ever the examining immigration officer at the time of attempted entry determines that the alien: (1) fails to present any documentation required for entry, or presents patently fraudulent or inappropriate documentation; (2) does not articulate concerns that would reasonably lead the officer to believe that the alien may have a colorable claim to asylum; and (3) is unable to proffer any reasonable claim for entry into the United States.

The Committee Amendment further specifies, however, that no alien shall be excluded without first having been notified of his right to be represented by counsel (at no expense to the government) and to have an administrative law judge review the examining officer's determination. In the event the alien elects to avail himself of a redetermination before an administrative law judge, the examining officer would immediately notify the administrative law judge of such request, and the administrative law judge would schedule a hearing a soon as possible. Such hearing would be nonadversarial and summary. The Committee envisions that the United States Immigration Board will issue rules spelling out the precise procedures to be used during these hearings. Such rules may incorporate any of the protections listed in Section 124 or any of the protections which are afforded aliens in non-summary exclusion hearings. However, to the extent such protections would conflict with the requirements that the hearing be nonadversarial and summary they should not be afforded.

If at any point during the redetermination before the administrative law judge the alien claims asylum or it becomes apparent that the alien may have a colorable claim to asylum, the proceeding would be immediately suspended and a proceeding in conformity with the requirements of Section 124 would be held. Similarly, if it appears that the examining officer erroneously concluded that the required documentation was not presented or that the alien presented no reasonable claim for entry into the United States the summary procedure would be terminated and full exclusion hearing would be afforded. Under no circumstances should an alien who has a facially valid visa, or other documentation required to obtain entry under any legal classification, be subjected to expedited exclusion merely because the examining officer believes the alien may violate a condition of entry.

A question has arisen as to what constitutes a "reasonable basis for legal entry into the United States." Clearly, an individual claiming to be a U.S. citizen or lawful permanent resident alien will have provided a reasonable basis for legal entry into the United States. Although other cases may not be a clear-cut, the Committee believes that the examining officer should view the statements offered by the alien in a light most favorable to the alien. Only in cases clearly and beyond a reasonable doubt manifesting no entitlement to entry into the United States or the right to a full exclusion or asylum hearing should the examining officer (and in cases of redetermination, the administrative law judge) find the alien subject to expedited exclusion.

Final administative decisions with respect to expedited exclusion are not subject to judicial review. The Committee is aware, however, that the Constitution guarantees every U.S. citizen the right to return to the United States. Clearly, in such cases administative

review and judicial review under Section 106 of the Immigration and Nationality Act as amendned by Section 123 of this act would be available once a final order to exclusion has been entered. In face, such review would be possible whenever a constitutional, as opposed to statutorily created, right has allegedly been violated. The Committee wishes to make clear that an alien who feels he was unconstitutionally subjected to an expedited exclusion process should seek judicial review through habeas corpus.

It should be noted that the concept of expedited expulsion already exists under current law. For example, alien stowaways may be excluded without a hearing under Section 273(d) of the Immigration and Nationality Act. Similarly alien crewmen have no right to a hearing before an immigration judge and no right to appeal their expulsion under Section 252 of the Immigration and Nationality Act. The Committee thus envisions that the expedited procedures created by the Committee Amendment will parallel the aforementioned provisions of existing law.

Finally, this section provides that an alien who would have been subject to expedited exlcusion but for his articulation of circumstances amounting to a fear of persecution will be precluded from raising non-asylum issues during his exclusion hearing. This provision is designed to prevent aliens from delaying their expulsion by raising issues never before put in controversy. Only under the most extraordinary circumstances which indicate that it was impossible for the alien to raise his non-asylum claim at an earlier time should the administrative law judge, the United States Immigration Board, or the courts allow an alien to raise such peripheral issues.

U.S. Immigration Board and establishment of administrative law judge system

The Committee Amendment establishes a new system for the adjudication of asylum, exclusion, and deportation cases, as well as other types of immigration cases. Basically the Committee Amendment dictates that such cases will henceforward be heard by administrative law judges within the Department of Justice, not, as is now the case, by special inquiry officers (immigration judges) within the Immigration and Naturalization Service. Further, such decisions would be appealable to the newly-created United States Immigration Board (U.S.I.B.), an independent agency within the Department of Justice. Under current law, the decisions of special inquiry officers may be appealed to the Board of Immigration Appeals (B.I.A.), a body created entirely by regulation and operating under the direct supervision of the Attorney General.

Under the Committee Amendment, the five member B.I.A. would be replaced by the seven member U.S.I.B. This would create, for the first time, a statutory basis for the existence of an appellate administrative body to hear immigration cases. Further, the stature of the U.S.I.B. would be enhanced in that its members would be appointed by the President, for six year terms, with the advice and consent of the Senate. Currently, B.I.A. members are appointed by, and serve at the pleasure of, the Attorney General.

The Chairman of the U.S.I.B. would be charged with the duty of overseeing the administrative operations of the U.S.I.B. The

U.S.I.B. in turn would have broad responsibility for formulating its own rules of practice, as well as the rules of practice for the administrative law judges. With the exception of employer sanctions cases under Section 101 of this bill, there is no requirement the U.S.I.B. proceedings or administrative law judge proceedings be conducted in accordance with the Administrative Procedure Act or the Federal Rules of Civil Procedure. The Committee further expects that the U.S.I.B. and the administrative law judges will be provided with adequate support systems and personnel.

The Committee Amendment gives the U.S.I.B. a scope of appellate jurisdiction very similar to that now possessed by the B.I.A. For example, like the B.I.A., the U.S.I.B. would have jurisdiction to hear deportation cases, exclusion cases, cases involving administrative fines, cases involving the revocation of visas, and cases involving asylum once a final order of exclusion or deportation has been entered. In addition, the Attorney General would have authority to expand the Board's jurisdiction to include other immigration matters. Both the alien and the Immigration and Naturalization Service would be allowed to seek judicial review of U.S.I.B. decisions.

It should be noted that unlike B.I.A. decisions, U.S.I.B. decisions would not be subject to reversal by the Attorney General. Further, unlike the B.I.A., the U.S.I.B. would be governed by the substantial evidence test i.e. it would not be able to conduct *de novo* findings of fact. The Committee believes this restriction is more in keeping with its function as are viewing body. In all other material respects, the Committee anticipates that the U.S.I.B. will function much the same as the B.I.A.

With respect to the newly created administrative law judges, the bill provides that they shall be appointed by the Chairman of the U.S.I.B. in accordance with the competitive merit system used for such appointments by the Office of Personnel Management. One such administrative law judge will serve as the chief administrative law judge who will supervise the day to day functions of all administrative law judges. The precise duties of the chief administrative law judges will be enunciated in rules promulgated by the U.S.I.B.

Just as the matters reviewable by the U.S.I.B. would be similar to the matters now reviewable by the B.I.A., so to would administrative law judges perform the tasks now performed by special inquiry officers. The bill makes clear, however, that whereas special inquiry officers do not hear all asylum cases (some are heard by INS district directors) every asylum application would be heard by an administrative law judge. Further, the bill specifies that in deciding cases coming before them, administrative law judges may exercise the discretionary authorities of the Attorney General if the Attorney General delegates such authority to them and the exercise of such authority would promote the ends of justice. The Committee believes that should such circumstances arise on a regular basis the Attorney General should delegate his discretionary authority through a blanket, but of course revocable, regulation.

The Committee Amendment further specifies that decisions of administrative law judges must be appealed within 20 days. In the event such petition for review is not filed within this time limit, the right of appeal will lapse.

Judicial review

The Committee Amendment reforms the present system of judicial review of final orders of exclusion and asylum. First, the Committee Amendment provides for circuit court review of final orders of exclusion. Under current law judicial review of such orders is possible only through habeas corpus. The Committee believes that habeas corpus should be used only as an extraordinary remedy, in keeping with its historical function of testing not mere irregularities, but instances "where the processes of justice are actually subverted". *Fay* v. *Noia,* 372 U.S. 391, 411 (1962). Further, habeas corpus may be used only to test the legality of detention. The Committee thus believes that habeas corpus is an inappropriate method of testing final orders of exclusion. The Committee believes that judicial challenges to exclusion orders should be viewed for what they in fact are—appeals. Accordingly, the Committee Amendment vests the judicial review of final orders of exclusion in the various U.S. Circuit Courts of Appeal.

The Committee Amendment retains that portion of current law which allows for the judicial review of final orders of deportation by the circuit courts. The Committee Amendment, however, makes clear that regardless of whether or not the alien is in custody the proper and sole avenue of review is through the circuit courts. The Committee Amendment thus overturns that portion of the Fifth Circuit Court of Appeals decision in *United States ex rel. Marcello* v. *District Director, INS,* 634 F. 2d 964, 972 (1981) which held that there existed "alternative methods of obtaining review, one available to aliens not 'held in custody' and the other to those who were."

The Committee Amendment specifically provides for judicial review of asylum determinations. However, except for "pattern or practice" cases (described below), there is to be no judicial review of any aspect of the asylum process until a final order of exclusion or deportation is entered by the U.S.I.B. Quite simply, until the danger of expulsion is real and present (i.e., until a final administrative order has been issued) there is no reason to provide access to the courts. This prohibition on premature petitioning of the courts encompasses not only final orders denying the asylum applications, but also any actions or inactions by the Service, or the administrative law judges, or the U.S.I.B., or any other party which even tangentially relates to the manner in which the asylum process is carried forth.

The Committee Amendment sets forth the scope of review in asylum cases. First, the asylum applicant could challenge the jurisdiction of the administrative law judge or the U.S.I.B. which rendered the decision. Such a challenge could involve, for example, an allegation that the administrative law judge who conducted the proceeding was not one specially trained in asylum matters, as required by Section 124 of the Committee Amendment. Second, the alien could challenge the procedures by which the hearing was conducted on the ground, for example, that he was denied access to counsel. Third, the alien could challenge the legality or constitutionality of the statutes, rules, or regulations which governed the asylum process. Fourth, the alien could attack the determination

on its merits, arguing that the determination was arbitrary or capricious. In this regard, it should be noted that the substantial evidence test would not apply. Of course, the U.S.I.B. and the courts should give great weight to any factual determinations or decision on the merits rendered by the administrative law judge.

The Committee has also found that the provision of current law which permits the filing of a petition for circuit court review at any time prior to six months after the entry of a final administrative order permits, if not encourages, unnecessary delay in the filing of such petitions. Accordingly, the Committee has reduced that jurisdictional time limit to 60 days. This amendment, which applies not only to the alien but also to the INS, will promote quicker resolution of appeals while at the same time allowing ample opportunity for the preparation of the petitions for review.

The Committee Amendment specifically notes that nothing contained within the Amendment should be construed as limiting the right of habeas corpus under the fundamental habeas corpus statutes contained in Title 28 of the United States Code. The Committee Amendment further authorizes the use of multiple party habeas actions when such actions would promote judicial efficiency and the ends of justice. To this end, the class action formula of Rule 23 of the Federal Rules of Civil Procedure should serve as a basis for developing multiple party habeas actions in the immigration field. The Committee envisions that such actions would be most appropriate for challenging the Attorney General's denial of release on parole. Nothing in this provision, however, should be construed as authorizing, or even suggesting, that habeas actions of any sort might be brought in the district courts prior to the full exhaustion of judicial remedies provided for by Section 106, as amended by this bill.

The Committee Amendment would bring a degree of finality to the judicial review process by providing that motions to reopen, reconsider, or stay administrative proceedings would not be judicially reviewable. Currently, an alien can effectively delay his expulsion for several years by filing various frivolous motions after the normal administrative and judicial processes have apparently run their course. As the Justice Department noted in its departmental report, last year, "the provisions in Section 123 on review of motions and stays should reduce the abuse of judicial review by deportable aliens."

The preclusion of judicial review of the aforementioned motions and requests for stays would be waived only in instances when the denial of the motion or request has been subsumed by the original final order of deportation or exclusion. In those cases, since the case is already before the circuit court, it would make little sense to preclude judicial review of any administrative denials which have become part of the final expulsion order. However, it must be borne in mind that the Committee Amendment provides that petitions for circuit court review must be filed within 60 days of the final adminstrative order. Thus, if the motion or request is filed within that 60 day period, the court would retain jurisdiction to review both the final order of expulsion and the denial of the subsequent motion or request. In all other such cases, however, judicial review would be denied.

The Committee Amendment provides a much needed clarification as to the circumstances under which class action challenges to administrative actions might be permissible. Presently, the Immigration and Nationality Act offers the courts no guidance on this issue. Thus, in *Louis* v. *Meissner,* 532F. Supp. 881, 886 (S.D. Fla. 1982) the court, in attempting to construe Section 106(b) of the Act, stated:

> The Statute provides that habeas corpus is the sole and exclusive procedure for the judicial review of final orders of exclusion. However, it does not explicitly preclude judicial review of procedures utilized in exclusion proceedings prior to the entry of a final order. In this respect the provisions of Section [106(b)] are ambiguous and unclear.

Similarly, the Act is silent as to when (or whether) the district courts have jurisdiction to review preliminary decisions in deportation cases.

To remove this confusion, the Committee Amendment sets forth the limited circumstances under which an alien may seek declaratory or injunctive relief before a district court prior to the issuance of an administratively final order of exclusion or deportation. First, the action must allege a pattern or practice of violations by those responsible for enforcing or administering our immigration laws. Second, the case may be brought only as a duly certified class action. Third, the complaint must allege substantial violations of *constitutional* (not statutory) rights. Fourth, it must be apparent that administrative remedies would be incapable of correcting the abuses. Fifth, the class members must show that absent immediate judicial review their rights would be significantly and irreparably impaired. And sixth, it must be shown that the adjudication of such claims would be more efficient for the judiciary than allowing each class member to pursue circuit court review on an individual basis. Although the Committee expresses no view as to when violations may be so fundamental as to constitute constitutional violations, the Committee Amendment specifically adopts and incorporates that portion of the Eleventh Circuit's decision in *Jean* v. *Nelson,* 82-5772 (April 12, 1983) which held that pattern or practice, or wholesale scheme, of constitutional violations by immigration officials could give rise to a district court class action prior to the entry of final orders of exclusion. Similarly, the Committee Amendment does not preclude district court challenges to administratively final orders of deportation or exclusion so long as the conditions specified in the Committee Amendment are met. Thus, the Committee also concurs with the jurisdictional statements of the Fifth Circuit in *Haitian Refugee Center* v. *Smith,* 676 F. 2d 1023 (1982).

Asylum

In addition to guaranteeing circuit court review of asylum cases, the Committee Amendment sets forth a number of procedural rights for the protection of aliens during the course of their asylum hearing. Preliminarily, however, the bill as amended requires that the alien file a notice of intent to file an asylum application within 14 days of the initiation of exclusion or deportation proceedings.

Further the actual application must be filed within 30 days of the filing of the notice of intent. These time restrictions, however, can be waived by the presiding administrative law judge, but only if he deems it to be in the interests of justice. The decision of the judge as to whether or not to allow late filings will be committed to his discretion. Of course, these filing deadlines would not be applicable in cases where exclusion or deportation proceedings have not commenced.

Upon the filing of an application for asylum any deportation or exclusion hearing which had already commenced would be suspended while the asylum determination was taking place. At such point, the full panoply of rights enjoyed by asylum applicants would come into effect, and an administrative law judge specially trained in asylum matters would preside over the hearing. The Committee is convinced that such exceptional protections are in order in asylum cases in that such cases may quite literally involve matters of life and death. It is for that reason that a specially trained administrative law judge will hear asylum cases. Such special training should consist of detailed knowledge of the 1980 Refugee Act, country reports on human rights conditions published by the State Department, the United Nations handbook on refugee processing, and any other reputable sources of refugee or asylum information. The U.S.I.B. will be responsible, through its rulemaking power, for seeing that such training is provided on a regular basis.

The Committee Amendment does not alter the test for determining whether an alien may be granted asylum. The alien will be compelled, as he is under current law, to bear the burden of proving that he is clearly a refugee within the meaning of section 101(a)(42)(A) of the INA.

The Committee Amendment addresses the problem of asylum caseload backlogs by requiring, for the first time, that asylum cases be processed on an expedited basis. In effect, the Committee Amendment establishes a "speedy trial" rule similar to that established under the federal speedy trial statute for criminal offenses. The Committee was deeply troubled by the long-term detention of Haitian nationals undergoing asylum hearings. Indeed, many of these individuals had been incarcerated for well over a year, despite the fact that they were not criminals. Under the Committee Amendment, an administrative law judge would be compelled to commence the asylum hearing within 45 days of the filing of the asylum application. The Committee anticipates that such commencement will be a bona fide commencement, and not one designed solely to meet the requirements of this bill. Only the applicant would be able to waive this 45-day rule. The Committee Amendment further provides that the holding of an asylum hearing shall not delay the holding of an exclusion or deportation proceeding. This provision should not be construed to authorize the holding of simultaneous hearings. Rather, the Committee intends that deportation or exclusion hearings, if appropriate, be commenced with dispatch immediately upon the conclusion of the asylum case.

Another aspect of the Committee Amendment's "speedy trial" provision requires administrative law judges to render a determina-

tion on the application not later than 30 days after the completion of the hearing. This time limit cannot be waived. If such decision is not rendered, or if the hearing through no fault of the applicant is not begun within 45 days, the Committee amendment specifies that the alien, if not already released, shall be immediately released on parole. The Committee intends that the Attorney General would fix such conditions to the parole release that would insure the presence of the alien at any required proceeding (including an actual departure proceeding). However, in no event should the Attorney General release an alien who might be a danger to the community.

Since the "speedy hearing" provisions of the Committee Amendment were designed to obviate the possibility that aliens awaiting asylum determinations might be subject to lengthy detention, the Committee Amendment, though applicable, is nonremedial in cases in which the alien has not been in continuous detention from the date of the filing of the application to the point at which the violation occurred. "Continuous," however, should not be construed as synonymous with "uninterrupted," and an alien who has been released for a brief period at sometime between the filing of the application and the "speedy trial" violation should be deemed to have been in "continuous" detention. Any alleged violation of these provisions should be pursued, if judicial review is necessary to secure rights provided by this section, through a request for a writ of habeas corpus from the appropriate district court. It should be noted, however, that the violation of the "speedy hearing" rules should under no circumstances result in the actual granting of asylum.

The Committee Amendment guarantees to each asylum applicant a hearing at which he will be entitled to present evidence and witnesses in his own behalf, examine and object to evidence against him, and cross examine witnesses presented by the Government. Although these rights should be read liberally, the Committee does not intend that these rights be read as prohibiting the use of classified information (so long as the alien is informed that such evidence is being used) or as entitling the asylum applicant to confront any U.S. employee who may have had a hand in preparing a report on the conditions in the alien's home country. Further, the administrative law judge conducting an asylum hearing should not feel compelled to request routinely a report from any particular national, international, or private organization or agency familiar with refugee conditions. Instead, the Committee expects that the special training afforded such judges would enable them to issue well reasoned and just decisions without constant recourse to the opinions of other agencies or organizations. The administrative law judge should feel free to request information from any reputable source, at any time, if such request might lead to the production of relevant and material evidence.

Information contained in an asylum applicant's file is often highly sensitive. Its disclosure may jeopardize confidential sources, innocent persons in the applicant's home country, or the applicant himself. Accordingly, the Committee Amendment provides that such files shall not be subject to Freedom of Information Act disclosure. However, the Committee recognizes that an asylum applicant might have an interest in governmental reports or records that

may impact upon his asylum claim. Accordingly, the Committee Amendment provides that an alien whose asylum case is pending may, upon a showing of relevancy, obtain such records from the relevant department or agency of the United States. Disclosure, however, shall be denied if the documents would be exempt from disclosure under the Freedom of Information Act. Since an applicant bears the burden of proving his asylum claim, the presiding administrative law judge should not postpone or delay an asylum hearing merely because a request has been made or a dispute has arisen regarding disclosure. It must also be noted that the disclosure provision of the Committee Amendment does not apply to refugee or visa files heretofore kept confidential.

The United States became a party to the United Nations Protocol Relating to the Status of Refugees, which incorporates the 1951 United Nations Convention Relating to the Status of Refugees, in 1968. By accession to the Protocol the United States agreed not to deport a refugee "to frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group, or political opinion." Some question has arisen as to whether the United States by agreeing to the Protocol, intended to expand or modify the rights of aliens seeking asylum in the United States. The Committee is convinced that nothing in present law, nor in the Committee Amendment, should be construed as providing less protection than the Protocol. That is, the Committee views the Protocol as creating no substantive or procedural rights not already existing either under current law or under the law as modified by the Committee Amendment. The Committee thus agrees with the holding in *Pierre* v. *United States,* 547 F.2d 1281, 1288 (5th Cir. 1977) wherein it is stated that "accession to the Protocol by the United States was neither intended to nor had the effect of substantially altering the statutory immigration scheme."

REFORM OF LEGAL IMMIGRATION

Increase in visa allocation for contiguous countries

The Committee Amendment allows 20,000 extra visas for Canada and Mexico. On various occasions, the Committee has considered our allocation of extra visas for contiguous countries because of the unique social, political and cultural ties with these countries.

The Committee Amendment recognizes this special relationship and the historic ties the U.S. has had with our neighbors.

Change in colonial quota

The Committee Amendment also increases the number of visas for colonies from 600 to 3,000.

In recent history, there have been a number of former colonies claiming independence, thereby becoming eligible to the 20,000 per country ceiling on immigration. The few remaining colonies experience severe backlogs in visa issuance because of the small allocation of visas. The Committee is of the opinion an increase in visa allocation for the colonies will not adversely affect worldwide immigration but will benefit substantially general immigration policy.

Adjustment of status

Under current law, aliens may adjust from nonimmigrant to immigrant status, at the discretion of the Attorney General, if they are eligible to receive an immigrant visa, are admissible for permanent residence, and if an immigrant visa is immediately available at the time their application is filed. This is an administrative convenience designed to save aliens a pointless trip home to obtain a visa, and has the additional benefit of alleviating the burden on consular officers.

Adjustment of status is a privilege in which the Attorney General has wide discretion. The Committee has sought to limit such privileges to those who have in most respects abided by the law. In 1976, the Committee excluded from adjustment of status those persons who engaged in unathorized employment. This bill further limits the privilege to aliens who have maintained their nonimmigrant status while in the United States.

Report to Congress

The Committee Amendment requires a comprehensive report by the President starting 1987 and every 3 years thereafter on alien admissions and impacts. Such report shall assess the impacts of immigration: the economy, labor and housing markets, education, society, foreign policy, environmental quality, resources and population growth. The Committee expects the report to include recommendations on future admission levels. The Committee notes many members of Congress have expressed concern regarding admissions levels and the increasing backlogs of persons awaiting immigration within the preference system.

The Committee does not believe changes in the system of legal immigration are appropriate at this time. The Committee needs up-to-date information on the matters to be included in the Presidential report so that Congress can consider such information in the future in revising our policy on legal immigration.

The Select Commission on Immigration and Relief Policy considered the creation of a council of experts with ongoing responsibility for studying domestic and international conditions and for making periodic recommendations regarding the adjustment of immigration levels and the revision of immigration policy. The Committee Amendment will assist the Committee in assessing the need for flexible immigration ceilings.

G–4 aliens

This provision is intended to alleviate the severe hardships that our immigration laws may impose upon long-time employees of international organizations and their immediate families. Granting special status is intended to reflect the fact that some aliens who have been employed by international organizations, such as the World Bank or the United Nations, are assigned to the United States for substantial portions of their working lives during which they, and their families, fully integrate themselves into our society. Presently, if such an employee dies or retires, the family is required to leave the United States and return to their native country—often on extemely short notice—despite the fact that they

have been out of touch with that country for many years. For the children, having grown up and gone to school here, they tend to become fully "Americanized." When they return home their experience difficulties in a country in whose language they have not been trained, whose culture is alien to their adopted culture, where they have no immediate family members and few employable skills.

The bill provides for special immigrant status only if a certain period of continuous residence in the United States has been complied with.

In the case of an unmarried son or daughter of an official, the requisite period is 7 years between the ages 5 and 18, and in the case of the widow of the principal G alien, 15 years prior to the death of the deceased officer, and an application for benefits must be made within 6 months of death.

Only dependent employees of those organizations granted privileges and immunities by Executive order pursuant to the International Organizations Immunities Act (59 Stat. 669) are covered by this section.

Labor certification

The Committee Amendment allows researchers who have doctoral degrees to be treated in the same fashion as university teaching faculty in the processing of labor certification applications. In 1976, the Congress enacted special labor certification requirements for teachers sought by colleges and universities. The Committee notes that such institutions have nationwide competitive recruitment procedures which accomplish the objectives of Section 212(a)(14), although in a separate procedure. The seven year experience with this law has promoted our nation's educational goals, and the inclusion of researchers within this narrow exception will additionally benefit U.S. interests.

(H-2) temporary agricultural worker program

Under current law, there is only brief statutory reference to the H-2 program, which allows the temporary entry of foreign workers to perform temporary or seasonal work. The H-2 program is generally governed by regulations issued by the Department of Labor (DOL) and the Immigration and Naturalization Service (INS).

The Committee has established a specific statutory basis for an H-2 program for agricultural workers, separating it from the H-2 program for non-agricultural workers. Current DOL regulations distinguish between agricultural and non-agricultural H-2 workers, but there is no such statutory distinction. For nonagricultural H-2 workers, the Committee Amendment basically continues the existing program. The program for agricultural workers is modified in a manner to streamline the labor certification process, while at the same time maintaining the integrity of the H-2 visa; that is, a temporary visa based on a certification by the Department of Labor that American workers are not available and that the wages paid to the H-2 workers and their working conditions will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

The Committee believes that the H-2 program must be structured to protect job opportunities for American workers. At the same time, when Americans are not available, not willing, or not qualified to fill certain temporary jobs, then the program must operate effectively so that employers will have workers.

The Committee Amendment also establishes a transitional agricultural program.

1. Authority for and admission of H-2 workers

The Committee Amendment grants authority for the Secretary of Labor to define agricultural services of labor, including existing definitions in the Internal Revenue Code of 1954 and the Fair Labor Standards Act of 1938. The labor or services must be of a temporary or seasonal nature.

The Committee amendment allows the Secretary of Labor to set the maximum period of entry for H-2 workers. H-2 workers can, under existing regulations, be admitted for a maximum period of 11 months, though the Committee notes that the average time period for H-2 workers is currently six months. The Committee believes that such workers should only remain in the United States for the period required to do the specific task for which they have received labor certification. The Committee will carefully monitor the time period established to insure that H-2 workers are not permitted to develop substantial equities during their stay in the United States.

H-2 workers who violate their terms of entry are banned from entering again for a minimum of five years.

Under current law, the Attorney General has the final determination on whether an H-2 worker may enter the country. He consults with the appropriate agencies of government, which the Committee defines to include the Secretary of Labor and the Secretary of Agriculture.

The Committee expects the Secretary of Labor to continue to play the primary role in making labor market determinations (i.e. deciding upon the availability of American workers). It is also the Committee's intent under this legislation that the Secretary of Labor will be responsible for issuing regulations regarding the labor certification process.

The Secretary of Agriculture will provide reports that the Attorney General may find helpful in making admission determinations, such as expected crop sizes. Also, in an unusual circumstance when the Attorney General has received advice from the Secretary of Labor about labor availability or the lack thereof and still has doubts about the need to admit H-2 workers, he may consult the Secretary of Agriculture on the need for workers. However, the Secretary of Agriculture will not be consulted on every admission or every negative determination by the Secretary of Labor.

In order to obtain a labor certification from the Secretary of Labor, the agricultural employer must establish that there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved. Also, the employer must establish that the H-2 workers will not adversely affect the wages and working condition of workers similarly employed in the United States.

Regarding strikes or lockouts, the Committee Amendment leaves the definition of a strike or lockout where it is now, namely, in the time-tested regulations of the Immigration and Naturalization Service and the Department of Labor. The Committee believes that those regulations now in force together establish appropriate standards and the Committee has been shown no evidence or other justification for change in the limitations set forth in those regulations.

Employers of H-2 workers who substantially violate a material term or condition of labor certification within two years of application can be denied certification for a maximum of three years. The Committee believes that a substantial violation would require knowledge or recklessness, or negligence by the employer. An employer charged with a violation is entitled to an administrative hearing.

In cases where the H-2 workers would not be covered by a State worker's compensation law, the employer must provide, at no cost to the worker, coverage for the worker arising out of work related injury or disease at least equal to that provided under the State worker's compensation law.

The Committee expects the Secretary of Labor to impose reasonable recruiting requirements on the prospective employers. At the same time, the Committee expects the Department of Labor through its own offices and working with various unions and migrant farmworker groups to see that information about available jobs is widely disseminated throughout the United States, especially in areas where migrant farmworkers are prevalent.

2. Procedure for labor certification.

The Committee Amendment allows the Secretary of Labor to require applications for H-2 foreign workers to be filed up to 50 days before the workers are required. The Secretary of Labor is required to notify the employer within seven days in writing if the application is incomplete or technically defective, and give the employer opportunity to submit a correct application.

No more than 20 days before the date the H-2 workers are required, the Secretary of Labor must make a positive or negative decision on whether to certify the need for H-2 workers for an employer, and if so certified, the number of such workers. The Secretary of Labor is to make a positive determination if the employer has complied with the criteria for certification and if qualified, eligible domestic workers are not available. Nevertheless, even after a certification is given by the Secretary, the employer must accept qualified eligible U.S. workers who come forward until the date the H-2 workers depart for work with the employer.

In determining whether an employer has met the necessary terms and conditions regarding housing for employing an H-2 worker, the Secretary of Labor shall insure that the employer either has provided housing directly for the worker or, when there is housing available within the proximate area of employment, has provided a reasonable housing allowance. Every H-2 worker must be provided either housing or a housing allowance.

The Committee Amendment permits an association of agricultural producers to file an application for H-2 workers as under current regulations. Each member of the association must have specif-

ic information on the application as required by the Secretary of Labor. No member of the association is relieved responsibilities for any violations of the H-2 program that may occur while the H-2 is working for that employer, or for misrepresentations made in the application or petition.

If and employer seeks an agricultural H-2 employee and is denied certification by the Department of Labor, the employer is entitled to an expedited administrative review of that denial, under procedures established by the Secretary of Labor. At the applicant's request, this may be a de novo hearing, so long as the applicant is able to proffer information previously unavailable to him. Also, if at the time of actual need of the employees, those U.S. workers who were allegedly available are not, in fact, available, the employer is entitled to have a new determination on his or labor certification request made expeditiously, but in no case more than 72 hours after the request for a new determination.

When an employer asserts that the U.S. workers he has been provided are not able, willing, or qualified, the burden of proof is on the employer to establish that fact based on employment related performance at that job.

The Attorney General, in consultation with the Secretary of Labor, and, in connection with agricultural labor services, the Secretary of Agriculture, shall approve all regulations to be issued implementing the H-2 program changes and the transition program, discussed below.

3. Monitoring of program

The Committee Amendment requires the Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, to report annually to Congress on the impact of H-2 workers and the compliance by the employers and the H-2 workers with the program. The legislation also authorizes $10 million in Fiscal Year 1984 to assist in recruiting domestic workers for jobs which might otherwise be taken by H-2 workers, and for monitoring compliance with the terms of the H-2 program. The Secretary of Labor is authorized to take actions necessary to assure employer compliance with the terms of the H-2 program. It is the Committee's intention that adequate funds be provided for such monitoring and for ensuring employer compliance.

The Committee Amendment authorizes such sums as are necessary for the Secretary of Labor to make determinations and certifications in the H-2 program and other immigrant and nonimmigrant programs which require labor certification.

The effective date of the newly structured H-2 program is the first day of the seventh month after the bill is signed into law.

The Secretary of Labor, in consultation with the Attorney General and the Secretary of Agriculture, is directed to report to Congress within eighteen months after the changes in the H-2 program become effective on recommendations for improvement in the program, including recommendations on: (1) improving the timeliness of decisions; (2) removing disincentives for hiring U.S. workers where H-2 workers have been requested; and (3) improving cooperation among interested parties to end the dependence of any industry on a constant supply of temporary foreign workers.

The Committee Amendment states the sense of Congress that the President should establish an advisory commission to consult with the Government of Mexico and other governments and to advise the Attorney General regarding the temporary worker program. Mexico, other countries of the Caribbean, and Central and South America are affected by the U.S. immigration policy generally, and by a temporary worker program specifically. Therefore, the Attorney General should have the best advice possible on developments in those countries when making immigration decisions, such as those regarding the temporary worker program.

4. Transitional agriculture program

The Committee Amendment requires the Attorney General, in consultation with the Secretary of Labor and Secretary of Agriculture, to establish a three year, phased down, transitional agricultural labor program to assist agricultural employers in shifting from the employment of unauthorized aliens to the employment of eligible individuals.

Agricultural employers wishing to participate in the program must enter during the first year, specifying to the Attorney General their needs for nondomestic seasonal agricultural labor based on previous experience. The Attorney General will approve the employment of these nondomestic seasonal workers if he believes they are needed in light of data presented to him by the employer, based upon the historical employment needs of agricultural employers for nondomestic seasonal agricultural labor, and the availability of domestic agricultural labor.

The Attorney General will provide the employer with work permits, limited to the specific time period requested by the employer. The employer will then issue these to the prospective employees in one of two ways: (a) by sending them to a U.S. consulate abroad to be issued so the workers can enter the U.S. legally with a temporary visa, or (b) by providing them to undocumented aliens already in the U.S.

The work permits will be a triplicate form, so the employees, employers, and the INS will each have a copy. The employee will be in legal status while in possession of a work permit that has not expired, and will be guaranteed labor protections provided to H–2 workers.

In the second and third years of the transition program, the employer will be provided with, respectively, two thirds and then one third of the work permits he or she was provided in the first year of the program. At the end of the three years, no further transition program work permits will be provided. Employers will have to fill their labor needs through American workers or using the H–2 program.

Employers who abuse the transition program can be barred from the program.

Foreign students

Section 212 of the legislation requires nonimmigrant foreign students who enter the United States after the affective date of the bill to leave the country after completion of their studies. They are precluded from adjustment of status or from changing to an H or L

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nonimmigrant visa. If they wish to return to the United States as permanent resident aliens or in H or L status, they must first reside in their home countries or country of last residence for two years.

The bill provides certain waivers of the prohibition of adjustment of status and two-year foreign residence requirement of students:

(1) Students with advanced degrees and who have been offered a faculty position,

(2) Students who have a degree in the natural sciences, mathematics, computer science or engineering and have been offered a research or technical position by an employer in the field of his degree,

(3) Students who have obtained advanced degrees in business or economics and have exceptional ability and have been offered employment due to such ability.

Labor certification is a prerequisite for obtaining these waivers which sunset in 1989.

Another area where the Attorney General may waive the residence requirement is on behalf of students who have obtained a degree in a natural science, mathematics, computer science, or engineering or business who is changing status to an H-3 to receive training to enable the person to return abroad to pursue a managerial position in the same firm in which he or she received training.

These exceptions are drawn very narrowly to specific areas—faculty at universities, high technology fields, and export trade—because of the great short-term need for such persons in the U.S. The Committee has long held that American teaching institutions have access to the "best and the brightest" to educate American youth and this, of course, does nto always come with a "born in the U.S." label. In providing waivers for high technology fields, the Committee seeks to address some of the short term needs in these areas. With the expectation they will meet the challenge of future decades with U.S. workers. The last area of waivers for permanent residence relates to persons with exceptional ability who would enhance U.S. trade and commerce because of their unique knowledge of the cultural and economic structures of foreign countries. In providing this particular waiver, the Committee acknowledges what appears to be a U.S. disadvantage in the highly competitive international trade markets due to the lack of persons who possess not only exceptional economic expertise but multilingual skills.

Foreign students who entered the country prior to the date of enactment are also subject to the limitations on adjustment of status in the United States but are not subject to the 2 year foreign residence requirement.

The Committee serves notice now and with the sunset to the 300,000 students who are studying in the United States each year that they must return to their home countries upon completion of their studies. Allowing these students to adjust status circumvents the normal immigration procedures turning nonimmigrants into immigrants, and contributes to the "brain drain" of resources beneficial to developing countries.

Visa waiver for certain visitors

Section 213 of H.R. 1510 authorizes the Attorney General and the Secretary of State to establish a pilot program to waive visa requirements for certain non-immigrant visitors who are nationals of a designated "low risk" country coming to the U.S. for a limited stay for purposes of business or pleasure.

The non-immigrant visa waiver issue has been periodically before the Congress since the 1960's. Reasons advanced in favor of this legislation over the years are that the elimination of the visa requirement will bring U.S. practices into conformity with Western European countries which exempt Americans from visa requirements. Also, it will serve as testimony to our commitment to the principle of promoting freedom of travel as expressed in the Helsinki Final Act. Many contend that the waiving of non-immigrant visas will promote increased tourist travel to the U.S. thereby benefitting our tourist industry, as well as our balance of payments. The Department of State maintains that this action will substantially reduce the consular workload in many of our overseas posts.

The Committee over the years has considered legislation on this issue and has held lengthy and comprehensive hearings on the subject. While supporting the concept of visa waiver in general and the goals to be achieved by such a measure, the Committee has consistently opposed a blanket visa waiver program. The Committee's opposition was mainly prompted by evidence that the Immigration and Naturalization Service did not have the capability of reconciling the arrivals and departures of non-immigrants. Without this capability, coupled with the shortage of inspectors at ports of entry and the elimination of any screening of visa applications by consular offices, the Committee felt that a large scale visa waiver program would lead to a substantial increase in illegal immigration. Additionally, the Committee was concerned that national security could be jeopardized by relaxing vigilance over the possible entry of terrorists via this route.

The Committee is sympathetic to the objectives of the program of effecting economies, promoting tourism and demonstrating reciprocal gestures towards other countries. However, it feels that before embarking on a broad scale visa waiver program, it should establish a limited pilot program in order to gain knowledge of the feasibility of a more expanded program.

A pilot program is authorized by H.R. 1510. In order for an alien to avail himself of the visa waiver provision, the following conditions must be met:

(a) The visit to the U.S. by the non-immigrant is for purpose of business or pleasure and limited to 90 days.

(b) The visitor must be a national of a country extending or agreeing to extend reciprocal privileges to U.S. citizens.

(c) The visitor is required to execute an immigration form to be devised by the Attorney General summarizing exclusion conditions, limitation of stay to 90 days, consequences for failure to comply with conditions and a record of any previous visa denial.

(d) The visitor agrees to waive any right to a review or an appeal of an Immigration Officer's determination at the port of entry.

(e) The visitor must be in possession of a round trip, nonrefundable, nontransferable, open-dated transportation ticket upon arrival.

(f) The visitor will have been determined at the time of inspection not to represent a threat to the welfare, safety or security of the U.S.

The bill specifies that the Attorney General and the Secretary of State jointly may designate up to eight countries to participate in the pilot program. The countries selected will be from among those whose visa refusal statistics qualify it as "low risk." In addition, the visa wavier provisions will only go into effect after the Attorney General certifies to Congress that an automated nonimmigrant arrival and departure control system is operational.

In January 1983, after strong urging by the Committee, INS installed the Nonimmigrant Information System (NIIS) which was designed to fulfill the requirements imposed by this bill. Because the system has only been operational for a short time, no evaluation of its efficacy has as yet been made. It is the judgment of INS that NIIS will meet the criteria established by the bill for controlling nonimmigrants.

The legislation requires that the Attorney General and the Secretary of State jointly monitor the program and report to Congress, after the pilot program has been operational for two years, with regard to recommendations as to the future of the program respecting the extension of the pilot program period and the number of countries to be designated in continuing it.

H.R. 1510 also establishes a visa waiver program for Guam permitting non-immigrant visits for business or pleasure for a period not to exceed 15 days. The establishment of this system for Guam is dependent upon a determination by the Attorney General that an adequate arrival and departure control system has been developed by the Territory and that the granting of a waiver does not present a threat to the welfare, safety and security of the U.S. This determination will be made jointly by the Attorney General, the Secretary of State and the Secretary of the Interior.

Because questions have arisen on whether an additional burden would be imposed on the INS inspectors at ports of entry due to the waiving of non-immigrant visas, it is the intention of the Committee to exercise its oversight jurisdiction in the course of the implementation of the pilot program to determine the effect of the program on the inspection function.

LEGALIZATION

A large number of undocumented aliens live and work in the United States, many of whom having done so for a number of years.

The Committee Amendment provides for the legalization of those who have developed equities during their period in the United States and are not excludable. None of these legalized will immedi-

ately become United States citizens but must meet the naturalization requirements under existing law.

The bill allows legalization opportunities for undocumented aliens depending on their date of entry into the United States or the date on which they became undocumented, if they entered the country legally and became undocumented because they stayed longer than authorized. Implementation of the legalization program is not discretionary. The Attorney General shall implement the program and he is vested with the specific authority to adjudicate legalization applications.

Eligibility

Undocumented aliens who entered the United States prior to January 1, 1982, or who fell into undocumented status by that date, and have resided here continuously since then, and are not excludable under the provisions of the bill can be granted permanent resident alien status. They will be eligible for other immigration benefits such as petitioning rights and after the requisite period of residence may seek naturalization.

Undocumented aliens who entered the country or whose period of entry expired after December 31, 1981, are not eligible for the legalization program. Also, nonimmigrant aliens who entered the country and whose period of authorized stay did not expire prior to the cutoff dates in the bill are not eligible for the legalization program. Nonimmigrant aliens who were in technical violation of their terms of entry, for example, foreign students who worked though they were not authorized to do so, are also not eligible for legalization based only on that technical violation.

The Committee believes that in interpreting eligibility for the legalization program for nonimmigrants who entered the United States without documents or whose period of authorized stay expired before the cutoff dates, but who were allowed to remain in the United States through the mechanism of blanket extended voluntary departure for all people in the United States from a particular country, the Attorney General should not consider them to have been here legally during their period in extended voluntary departure for purposes of determining eligibility for the legalization program.

Also, Cuban/Haitian entrants are considered to be in an unlawful status and can apply for legalization.

Applicants for legalization are subject to most of the 33 grounds of exclusion in the current law which are applied to all immigrants intending to come to the U.S. Serious violations of the law and the related grounds of exclusion cannot be waived by the Attorney General under any circumstances. Some minor paperwork exclusions are automatically waived. The remaining grounds of exclusion are waivable by the Attorney General for humanitarian purposes, to assure family unity, or when it is in the public interest. The Committee expects the Attorney General to examine the legalization applications in which there is a waivable ground of exclusion carefully, but sympathetically. The Committee's intent is that legalization should be implemented in a liberal and generous fashion, as has been the historical pattern with other forms of administrative relief granted by the Congress. In most case, denials of le-

galization on the basis of the waivable exclusions should only occur when the applicant also falls within one of the specified nonwaiverable grounds of exclusion. Applicants for legalization will also be ineligible if they have been convicted of a felony or three or more misdemeanors while in the United States, or if they have engaged in any form of persecution. Applicants required to register for the draft under the Military Selective Service Act must do so at the time of legalization.

Applicants, at their own expense, must receive a medical examination at the time of application, the same as is required of intending immigrants. The Committee does not believe this should be a major financial burden on applicants and their families, and urges the Attorney General and the various organizations participating in the legalization outreach to work together to minimize any costs.

Processing

The bill directs the Attorney General to work through qualified voluntary agencies and through qualified state, local, and community organizations which he or she so designates in attempting to encourage all eligible undocumented aliens to apply for legalization. These organizations may receive the initial applications and advise the applicants, but all decisions on applications must be made by the Attorney General following a personal interview by an INS official.

The Committee has learned that legalization programs in other countries have usually produced a low rate of participation among the eligible candidates. At least part of the reason is distrust of authority and lack of understanding among the undocumented population. The Committee hopes that by working through the voluntary agencies, the Attorney General might be able to encourage participation among undocumented aliens who fear coming forward.

The Attorney General will provide funds to these outreach organizations to assist in their activities, though the Committee encourages the organizations to seek private funding also.

The files and records kept by the organizations are confidential, and not accessible to the Attorney General or any other governmental entity, until the applicant allows the application to be forwarded for official processing. The confidentiality of the records is meant to assure applicants that the legalization process is serious, and not a ruse to invite undocumented aliens to come forward only to be snared by the INS.

When an alien makes a formal application to the Attorney General, there are serious penalties for knowingly making fraudulent statements.

The Committee understands that the Immigration and Naturalization Service may have a large processing task for the legalization program.

While the Committee expects the INS to be vigilant in its processing so the *mala fide* applicants are not given legalized status, the Committee also expects the INS to use its professional experience to differentiate between classes of applications which can be processed expeditiously and those which require more careful scrutiny. Treating each application with the same level of scrutiny may

mean tremendous backlogs, unnecessary staff time on *bona fide* applicants, and insufficient scrutiny of applications which require extensive investigation.

Applications for legalization will be accepted during a one year period beginning not later than 90 days after the date of enactment of the bill. Aliens who are apprehended prior to the beginning of the application period and who have a prima facie case of being eligible for legalization shall not be deported until they have had a chance to file for legalization, but in no case later than 30 days after the start of the period for accepting applications. Aliens who are given an order to show cause why they should not be deported and who wish to be legalized must also apply within 30 days of the beginning of the legalization application period if the order is issued prior to that date, and within 30 days of the issuance of the show cause order if it falls within the one year period.

The bill provides for limited administrative and judicial review of denials of applications for legalization. The Attorney General is to establish a single level of administrative review for reconsideration of denied cases. When the administrative review is exhausted and also yields a negative decision, and when the applicant is in a deportation proceeding (but not an exclusion proceeding), the applicant can appeal a negative decision within the context of judicial review of a deportation order. The applicant will have to establish gross abuse of discretion or that the findings are directly contrary to the clear and convincing facts in the record in order for the court to reverse a negative decision.

FEDERAL AND/OR STATE ASSISTANCE TO LEGALIZED ALIENS

A person who is legalized under the program, or under the change in the registry date, discussed below, is not eligible for Federal financial assistance, Medicaid or food stamps for a five-year period beginning after he or she becomes a permanent resident alien, with limited exceptions.

The exceptions are that the Attorney General may, through regulations developed in consultation with the Secretary of Health and Human Services, allow federal assistance to recently legalized aliens because of age, blindness, disability, or medical conditions that require treatment in the interests of public health or because of serious illness or injury. This is an exception, not an entitlement. It is also not an indirect method of affording newly legalized aliens automatic access to Supplemental Security Income, Medicaid, or Medicare. The Committee bill permits state and local governments also to limit benefits to newly legalized aliens. The Committee believes that limited Federal medical benefits can be provided to newly legalized aliens without such benefits leading indirectly to complete access to Medicaid programs.

The Committee takes exception to the position of the Department of Health and Human Services (HHS) that a limited emergency medical program cannot be developed because it would be, in HHS' view, "disruptive, expensive, and difficult to target." The Committee expects HHS to develop and implement a limited medical benefits program in accordance with the statutory mandate set forth in this legislation.

The limitations on benefits do not apply to newly legalized aliens who prior to legalization, were Cuban/Haitian entrants.

The Committee is convinced that the public benefit restrictions imposed upon newly legalized aliens are constitutionally permissible. The Committee has reviewed the Supreme Court decision in *Mathews* v. *Diaz,* 426 U.S. 67 (1976) and is convinced that the restrictions contained in the Committee Amendment are authorized by that decision. In that case a permanent resident alien challenged that portion of the Medicare law which denies eligibility to permanent resident aliens unless they have resided in the United States for five years. In upholding the statute against the plaintiff's due process challenge, the Court stated:

> In particular, the fact that Congress has provided some welfare benefits for citizens does not require it to provide like benefits for *all aliens.* * * * The decision to share that bounty with our guests may take into account the character of the relationship between the alien and his country: Congress may decide that as the alien's tie grows stronger, so does the strength of his claim to an equal share of that munificence. *Id.* at 80 (emphasis in original).

Likewise, the Committee believes that the provision of the bill that authorizes the states to deny state welfare benefits to newly legalized aliens is constitutionally sound. In this regard, the Committee notes that such restrictions would be wholly consistent with Federal policy. Cf. *Plyler* v. *Doe,* 102 S. Ct. 2382 (1982) (state statute denying free public education to undocumented alien children held unconstitutional for failure to comport with Federal policy). The Committee further notes that this provision, and the provision restricting access to Federal benefits have been reviewed by the Office of Legal Counsel in the Department of Justice and found to be "constitutionally sound." (See testimony of Attorney General Smith, 1983 Immigration Subcommittee Hearings, p. 1459.)

IMPACT ON STATES AND LOCALITIES

The Committee provides that the President shall report to Congress, not later than 18 months after the bill is signed into law, on the impact of the legalization program, particularly its impact on state and local governments. While the Committee believes that the legalization program is not likely to be financial burden on state and local governments, and the entire bill will work to their benefit, the Committee also realizes states and local governments have some concerns which merit serious examination.

The Committee bill authorizes, subject to the amounts provided for in advance in appropriations acts, a program for Fiscal Years 1984, 1985, 1986, and 1987, that will reimburse states and localities for certain costs they incur because of legalized aliens.

This is not an entitlement program.

Specifically, the Committee bill provides that the Secretary of Health and Human Services shall provide 100 percent reimbursement to states for the cost and public assistance to legalized aliens the first five years after they become permanent residents. Public

assistance programs are those which are already in existence in the states and localities and given to residents of those states.

This reimbursement is subject to appropriations made in advance.

The Committee Amendment also provides that the Secretary of Education shall make payments to state educational agencies for assisting local educational agencies of that state in providing educational services for aliens who are newly enrolled in educational programs because of the legalization program. The payments are not for the costs local educational agencies are incurring prior to legalization because of undocumented alien children already enrolled in the schools because of state and local policies or court orders. The payments are for new or additional costs arising because of legalization.

These payments are also subject to appropiations made in advance. For calculations of the level of reimbursement, newly legalized aliens under both programs are eligible for five years from the dates they are legalized.

REGISTRY DATE

The Committee Amendment moves the existing registry date from 1948 to 1973. The registry date provision allows the Attorney General in his discretion to lawfully admit undocumented aliens in the United States who entered prior to the established date, who have resided in the United States continuously since, are of good moral character, are eligible for citizenship, and who are not inadmissible because of certain past actions.

The Cuban Adjustment Act of 1966 is repealed.

EXTENDED VOLUNTARY DEPARTURE FOR EL SALVADORANS

The Committee Amendment expresses the Sense of the Congress that El Salvadorans in the United States be granted extended voluntary departure by the Attorney General. Similar language concerning case-by-case relief for such persons was incorporated in the "International Security and Development Cooperation Act of 1981" (P.L. 97-113).

There are approximately 15,000 natives of El Salvador in the United States who have submitted applications for asylum and the Congress seeks to recognize the plight of many of these individuals. H. Res. 304 in the 97th Congress, which passed the House on December 15, 1981, similarly set forth Congress' concern with respect to natives of Poland. Extended voluntary departure has been granted to natives of other countries from time to time by INS at the recommendation of the Department of State. Nationals benefiting from such relief include Afghans, Ugandans, and Ethiopians.

SECTION-BY-SECTION OF H.R. 1510, AS AMENDED

Sec. 1.—Short title, "Immigration Reform and Control Act of 1983"

New Sec. 274(A)(a).—Makes it unlawful for any one after enactment to hire or for a fee or other consideration to recruit or refer, for employment in the United States an alien who is known to be unauthorized to be so employed. A person or entity that complies in good faith with the verification process under subsection (b), may establish an affirmative defense against such unlawful activity. Makes it unlawful for anyone who has been found to have previously employed, or recruited or referred for consideration, an unauthorized alien to hire, or for a fee or other consideration to recruit or refer, for employment any individual without complying with the verification process described in subsection (b).

New Sec. 274(A)(b).—Sets forth the interim verification process, which utilizes existing identifiers. The interim verification process first requires that the employer, recruiter, or referrer, attest (under penalty of perjury) on a form approved by the Attorney General that he has examined what appears on its face to be either (A) the employee's U.S. passport, or (B) both (i) the employee's social security card or U.S. birth certificate and (ii) another identifier, such as an alien immigration ID card, a driver's license or other state identification card, or (for children under 16 and in States that do not issue identification documents) another reliable personal identification document designated by the Attorney General. Next, it requires the prospective employee to attest on this form that the employee is a citizen, permanent resident alien, or otherwise authorized to be employed. Lastly, the employer, recruiter, or referrer is required to retain the completed form, and make it available for inspection by the INS and the Department of Labor for three years or, if later in the case of hiring of the individual, one year after the date the employment is terminated. Without regard to other laws, an employer, recruiter, or referrer it permits these persons to make copies of documentation presented solely for the purpose of complying with these requirements. The process must be completed by noon after the date of hiring and the verification form cannot be used for other purposes.

New Sec. 274(A)(c).—Requires the President to study and report to the Congress, within 3 years, such changes in or additions to the verification process as may be necessary to establish a secure employment verification system. Any changes and additions would be made in a manner so that personal information is only used for the purpose of verifying eligibility for employment. Under any modified verification system, verification can only be withheld because the individual is an alien not authorized to be employed and the system may not be used for law enforcement purposes, other than as related to enforcement of the new section or the provisions relating to falsification of documents. Lastly, no identification document or card designed specifically for use under the modified system could be required to be presented except for purposes of the system nor can it be required to be carried on one's person.

New Sec. 274(A)(d).—Provides graduated penalties for employment, recruiting or referral of unauthorized aliens including citations, civil finds and criminal penalties. Authorizes the Attorney General to bring civil suits to enjoin persons engaging in a "pat-

tern or practice" of employment, recruitment, or referral. Provides for hearing before an administrative law judge for violations of the section.

New Sec. 274(A)(e).—Requires that in any documentation of an alien's authorization of employment the Attorney General provide that limitations on such authorization be conspicuous.

New Sec. 274(A)(f).—Provides that these provisions pre-empt State and local laws providing civil or criminal sanctions for employment, recruitment, or referral for employment of aliens not authorized to be employed.

New Sec. 274(A)(g).—Requires the President to monitor, and consult semiannually with the Congress concerning implementation of these provisions. Requires Civil Rights Commission to monitor and report to Congress on alleged discriminatory aspects resulting from the legislation. Requires the Attorney General jointly with the Secretary of Labor and the Chairman of the Equal Employment Opportunity Commission, to establish a taskforce to monitor and review allegations of discrimination.

Sec. 101 (a)(2).—Provides that although these provisions take effect immediately, no citation or penalty can be imposed for actions occurring during the six months after enactment. During the first year after enactment forms will be disseminated to employers, employees, and the public. Interim and final regulations for implementation of this section are to be issued not later than the seventh month after enactment.

Subsec. (b).—Revises the Migrant and Seasonal Agricultural Worker Protection Act to eliminate duplicative penalities for unlawful employment of unauthorized aliens and to provide for revocation of registration of farm labor contractors who violate the requirements of section 274(A)(a) of the INA. These amendments apply to employment, recruitment, and referral occurring on or after the first day of the seventh month after enactment.

FRAUD AND MISUSE OF CERTAIN DOCUMENTS

Sec. 102.—Extends the criminal penalties for falsification of immigration-related documents to include border crossing cards, alien registration receipt cards, and other documents prescribed as evidence of lawful entry or employment in the United States. Increases the fine for this violation from $2,000 to $5,000. Provides a similar criminal penalty for knowing use of a false identification document (or another's identification document) and false attestations in order to satisfy the employment verification process established under Section 101 of this Act.

IMMIGRATION ENFORCEMENT ACTIVITIES

Sec. 111.—States that an increase in INS border patrol and enforcement activities of the INS and other Federal agencies is a critical element of the overall immigration proposal contained in the legislation. Provides for annual authorizations of $716 million, $689 million, and $731 million for INS for fiscal year 1984, 1985, and 1986; $6 million for those years for the anti-discrimination taskforce; a $35 million authorizatrion for an immigration emergency fund in the Treasury Department for use in Presidentially

declared immigration emergencies; and a fiscal year 1983 supplemental authorization of $35 million.

UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES

Sec. 112.—Eliminates the so-called "Texas proviso", which prevents employment from being considered as an element of harboring an alien. Establishing a criminal penalty for bringing an unauthorized alien to the United States, without regard to whether or not the entry was fraudulent, evasive, or surreptitious. The penalty for this is a fine of up to $5,000 or imprisonment up to one year, or both, except that in the case of a second or later offense or an offense done for commercial advantage or in which the entering alien is not immediately presented to an appropriate immigration officer, the penalty is a fine of up to $10,000 or imprisonment up to five years, or both.

FEES

Sec. 113.—Authorizes the Attorney General, in consultation with the Secretary of State, to impose on aliens an order to recover the part of the expenses of the INS incurred in providing services to aliens, including the maintenance and operation of border facilities used by aliens.

RESTRICTING WARRANTLESS ENTRY IN THE CASE OF OUTDOOR OPERATIONS

Sec. 114.—Requires INS to obtain consent of owner or a warrant before entering outdoor operations to interrogate individuals to determine if undocumented aliens are present.

INSPECTION AND EXCLUSION

Sec. 121.—Provides that aliens who do not present documentation required for entry, assert no reasonable basis for legal entry, and do not indicate an intention to apply for asylum are excluded from entry to the United States, without any further hearing. However, these aliens must be informed of their right of counsel and their right to have a redetermination made by an administrative law judge in an expedited proceeding. The Attorney General is required, after consultation with the Judiciary Committees of Congress, to establish procedures to assure that aliens are not excluded without an inquiry into their reasons for seeking entry into the United States. If an alien's only claim for entry is a request for asylum, the exclusion for that alien would be limited to the asylum issue.

U.S. IMMIGRATION BOARD AND ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE SYSTEM

New Sec. 107(a).—Creates a 7 member United States Immigration Board, as an independent agency in the Department of Justice. Members have terms (initially staggered) of six years, may be reappointed, can only be removed for neglect of duty or malfeasance in office, and are compensated at the rate for GS–17 (or GS–18 in the case of the Chairman). The Chairman is responsible for administra-

tive operations of the Board and the Board establishes rules of practice and procedure for itself and for the administrative law judges.

New Sec. 107(b).—Provides for the Board's jurisdiction to hear and determine appeals from nearly all final decisions of administrative law judges, as well as review of certain exercises of discretionary authority, the imposition of administrative fines and penalties, the determinations of most preference petitions (and revocation thereof), determinations respecting bond, parole and detention and other administrative matters identified by the Attorney General. Provides 20 days in which to appeal from exclusion or deportation decisions to the USIB. In hearing cases, the Board acts in banc or in panels of 3 or more members, as designated by the Chairman, except that individual members can act to decide nondispositive motions. The Board reviews administrative law judge's decisions based on the administrative record and will not challenge a finding of fact in that record if supported by reasonable, substantial, and probative evidence in that record considered as a whole. The Board's final decisions in individual cases are binding on immigration and consular officers, unless otherwise modified or reversed by a court.

New Sec. 107(c).—Authorizes the Chairman of the Immigration Board to appoint administrative law judges and to designate a chief administrative law judge. This chief administrative law judge designates judges to hear cases. The administrative law judges can hear cases of exclusion, deportation (and suspension of deportation), rescision of adjustment of status, asylum, assessment of civil penalties for unlawful employment of aliens, and such other immigration cases as the Attorney General may designate. In hearing the cases, the judges can administer oaths, determine applications for discretionary relief, and exercise such of the Attorney General's discretionary authority as the Attorney General delegates to them in order to effect a just and equitable disposition of cases before them.

JUDICIAL REVIEW

Sec. 123(a).—Provides for judicial review of exclusion, as well as deportation, cases. Clarifies that these procedures are to be used instead of any other avenue of judicial review. Specifies that asylum determinations can only be reviewed in the context of judicial review of final orders of exclusion or deportation. Requires that notice of appeals be filed within 60 days (rather than 6 months) of the date of a final order of deportation or exclusion. Restricts judicial review of asylum determinations to whether jurisdiction was properly exercised, whether laws and regulations were complied with, the constitutionality of those regulations and procedures, and whether the determination was arbitrary and capricious.

Subsec. (b).—Permits individual or multiple-party (so called "class action") habeas corpus and permits class action suits before exhaustion of administrative remedies to challenge pattern or practice of violating constitutional rights. Prohibits courts from reviewing asylum determinations except as provided in the judicial review of a final exclusion or deportation order. Prohibits courts of

the United States from reviewing decisions to reopen or reconsider exclusion, deportation, or asylum determinations, from reviewing the Attorney General's denial of stays or exclusion or deportation orders, and from reviewing expedited exclusion determinations.

Subsec. (d).—Clarifies that the provisions of section 279 of the INA are generally superseded by the judicial review provisions of section 106 in the case of deportation, exclusion, and asylum cases.

ASYLUM

Sec. 124(a).—Establishes a statutory procedure in section 208(a) of the INA under which aliens can apply for asylum. Aliens previously denied asylum cannot apply again unless they can show changed circumstances since the date asylum was previously denied. Under paragraph (2), asylum applications are considered before administrative law judges specially designated by the United States Immigration Board who have special training in international relations and international law; individuals who have previously served as special inquiry officers may not be so designated unless and until they have received the necessary special training. Provides that the Attorney General can terminate asylum if the alien meets one of the conditions (i.e. such as committing a particularly serious crime or becoming a danger to the national security) described in 243(h)(2) of the INA.

Under paragraph (3)(A), upon the filing of asylum applications and after consultation with the applicant and the Government, the asylum judge sets the case for hearing at the earliest practicable date, which is within 45 days of application unless the applicant consents to a later date. If an applicant for asylum has been continuously detained in a deportation or exclusion proceeding, if the applicant has not unreasonably delayed the asylum proceeding, and if the asylum hearing is not held on a timely basis (or the decision rendered on a timely basis), the Attorney General must provide for parole of the alien subject to reasonable conditions to assure the alien's presence at the appropriate proceedings.

Under paragraph (3)(B), asylum hearings are open to the public (unless the applicant requests otherwise), the applicant is notified at the time of application of the privilege of representation by counsel (as provided under section 292 of the INA, and without charge to the government or unreasonable delay in the proceedings) and of any legal services that are available, and the applicant is entitled to present evidence and present and cross-examine witnesses. Under paragraph (3)(C) a complete and verbatim record of the hearing is maintained, and a transcript, must be made available within 10 days of completion of the hearing. Under paragraph (3)(D) the asylum judge's determination must be initially rendered within 30 days after completion of the hearing and the judge's determination must be based only on the evidence produced at the hearing. Under paragraph (3)(E) the Attorney General is instructed to allocate sufficient resources so as to assure that asylum cases are scheduled, heard, and decided on a timely basis.

Under paragraph (4), an alien may be granted asylum if the judge determines that the alien is a refugee (within the meaning of section 101(a)(2)(42) of the INA) and if the alien has not engaged in

improper activities (described in section 243(h)(2)), such as persecution of others, constituting a serious danger to the community of the United States, or being a danger to the national security, which would otherwise permit return of the alien to the country of origin under the Geneva Protocol. Under paragraph (5), the applicant has the burden of establishing asylum (as under current law). Paragraph (6) prohibits the reopening of asylum application without a clear showing that there have been changed circumstances in the basis for the asylum claim since the date of the previous determination. A new subsection (e) requires annual reports on treatment of asylum cases.

Subsec. (b).—Amends section 243(h) of the INA to reflect that applications for relief under that section will be considered to be applications for asylum under section 208.

Subsec. (c).—Provides that Government records relating to asylum or refugees are generally exempt from the Freedom of Information Act, the Privacy Act, and similar laws requiring disclosure, except that asylum applicants can obtain records relating to their specific application if the information is otherwise not exempt from disclosure under F.O.I.A. In addition, the Attorney General or the Secretary of State may, in their discretion, certify copies of these records to courts where the interests of justice so require.

EFFECTIVE DATES AND TRANSITION

Sec. 125(a).—Provides the general rule that the amendments made by part C of Title I take effect upon enactment, with specific exceptions. Specifically, the changes in adjudications and asylum procedures (other than those relating to expedited exclusion (§ 121), providing for direct judicial review of exclusion determinations (§ 123(a) (2), (6), and (10), § 123(d)) the reduction of the time period for filing deportion and exclusion appeals (§ 123(a)(3)), striking out permitting habeas corpus review of custody under deportation orders (§ 123(a)(12)), requiring judicial review of asylum determinations to be part of judicial review of exclusion and deportation orders (§ 123 (b)) and having 243(h) claims tried under asylum procedures (§ 124 (b)), which would all take effect upon enactment) do *not* apply with respect to exclusion and deportation cases begun before a "hearing transition date" or with respect to asylum applications filed before an "asylum transition date". However, certain new provisions relating to asylum (namely, those restricting asylum claims during exclusion or deportation hearings or after a previous claim as denied (§ 208(a)(1)(B) of INA)), rights of applicant to counsel and closed hearing (§ 208 (a)(3)(B) (ii) and (iii) of INA), standards for determination of asylum (§ 208(a)(4) of INA), restrictions on reopening asylum determinations (§ 208(a)(6) of INA), and additional grounds for revocation of asylum (§ 208(b) of INA) apply to pending asylum claims with appropriate transition provisions to take account of hearings previously begun and the fact that immigration officers will continue (until the "asylum transition date") to handle asylum claims. The provision also permits administrative law judges to succeed special inquiry officers in cases begun before those dates.

Subsec. (b).—Requires the President to nominate the Chairman and other members to the U.S. Immigration Board within 45 days after enactment and requires the selection of a date for the U.S. Immigration Board to assume and continue present functions of the Board of Immigration Appeals. The U.S. Immigration Board is then required to promptly provide for new interim rules of practice. Not later than 60 days after promulgating such interim new rules 10 asylum judges are to be appointed.

Subsec. (c).—Provides for the designation by the U.S. Immigration Board of transition dates for the new adjudication and asylum precedures.

Subsec. (d).—Permits present special inquiry officers to serve as administrative law judges (other than in asylum proceedings) for two years after the hearing transition date.

Subsec. (e) provides a savings clause of existing cases and permits the U.S. Immigration Board and administrative law judges to serve as a continuation of the Board of Immigration Appeals and special inquiry officers.

TECHNICAL AND CONFORMING CHANGES

Sec. 126.—Makes various technical and conforming changes to the Immigration and Nationality Act reflecting titles of officers and transferring authority under this legislation.

ADJUSTMENT OF STATUS

Sec. 131(a).—Provides that aliens who are not in legal immigration status are ineligible to adjust from nonimmigrant to immigrant status with in the United States. *Subsec. (b)* clarifies that this change applies to applications already filed, but not yet acted upon.

PROVIDING ADDITIONAL IMMIGRANT VISA NUMBERS FOR NATIVES OF CONTIGUOUS COUNTRIES

Sec. 201.—Provides beginning fiscal year 1984 for an additional 20,000 immigrant visas for Canada and Mexico when it has used at least 18,000 preference immigrant visas in the previous fiscal year. These additional numbers are made available in the same manner as preference immigrant visas by preference classification, but are not subject to the percentage limitations which otherwise may apply to the classifications.

CHANGE IN COLONIAL QUOTA

Sec. 202.—Increases the colonial quota from 600 to 3,000, effective fiscal year 1984.

REPORT ON ADMISSIONS AND NUMERICAL LIMITATIONS

Sec. 203.—Requires a comprehensive Presidential report to Congress every three years on the past and projected immigration impact on the United States, including specific data on admissions as well as recommendations for approximate changes in immigration policy and numerical limitations. The Judiciary Committee of the House and Senate would hold hearings on these reports.

G–4 SPECIAL IMMIGRANTS

Sec. 204(a).—Amends section 101(a)(27) of the INA to create an additional "I" class of special immigrant. Two groups of aliens are eligible. First, unmarried sons and daughters of employees and officers of international organizations, and second, a surviving spouse of an officer or employee of an international organization with certain residence requirements in each case.

Subsec. (b).—Amends section 101(a)(15) of the INA to create a new "N" nonimmigrant status for two groups of aliens: (1) parents of children who are given the "I" special immigrant status, while the children are minors, and (2) other children of such a parent or of a surviving spouse given "I" special immigrant status.

MISCELLANEOUS CHANGES

Sec. 204(a).—Permits natural fathers (so called "putative fathers") to petition for entry of their children, without the need for legitimation or adoption.

Subsec. (b).—Extends to certain self-supporting retirees the waiver of numerical limitations provided under that section to certain nonpreference investors who are in the United States and who, as of June 1, 1978, had applied and qualified for nonpreference status and who made application for adjustment of status.

Subsec. (c).—Permits certain aliens who were in the United States on October 1, 1982, had been issued labor certification for employment, had a preference priority date which will be reached within two years, and wish to remain in the United States to perform that employment, to obtain H–2 status for the interim period.

Subsec. (d).—Makes technical correction.

Subsec. (e).—Permits university researchers to be treated as faculty for purposes of the certification process.

H–2 WORKERS AND TRANSITIONAL NONIMMIGRANT AGRICULTURAL WORKER PROGRAM

Sec. 211(a).—Creates a separate temporary worker (H–2) program for agricultural labor or services and creates a new "O" nonimmigrant classification for the transitional agricultural worker program.

Subsec. (b).—Provides that aliens can be admitted to perform temporary agricultural labor and services for a period (or periods) determined under regulations of the Secretary of Labor. Aliens will be refused temporary worker admission if they violated the terms of admission as a temporary worker within the previous 5 years. The Attorney General is required to establish proper endorsement of immigration documents so employers can be made aware of any time and location limitations on employment of temporary workers. States that the Attorney General should consult with the Secretary of Agriculture, as well as the Secretary of Labor, in the process of admitting temporary agricultural workers.

Temporary agricultural workers cannot be admitted unless a petition has been filed with the Secretary of Labor for a certification that (I) there are not sufficient able, willing, and qualified workers available at the time and place required to perform the labor, and

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(II) the employment of a temporary alien worker will not adversely affect wages and working conditions of employees in the United States who are similarly employed. The Secretary of Labor cannot approve a labor certification if there is a strike or lockout in the course of a labor dispute which, under regulations, precludes such certification. The Secretary of Labor can accept a reasonable housing allowance (instead of housing) where housing is actually available in the area of employment.

There are certain expedited procedures for filing, approval, and/or denial of certifications for H–2 agricultural workers.

Authorizes $10 million for such fiscal year to recruit domestic workers for temporary work. Authorizes the Secretary of Labor, to take such actions, including providing civil monetary penalties, as may be necessary to assure employer compliance with the conditions of alien and domestic employment under the H–2 program and the transitional program.

Also establishes a three-year transitional agricultural labor program. Employers would register with the Attorney General in the first year of the program and would be assigned a maximum number of work permits for the first year, which would be decreased by one-third in each of the two succeeding years. These permits could be used for employment of aliens otherwise illegally in the United States and would require the same wages and working conditions as those required under the H–2 program.

Subsec. (c).—Makes these changes effective for petitions filed beginning in the seventh month after enactment. *Subsec. (d)* requires interim final regulations to be issued on a timely basis. *Subsec. (e)* requires the Secretary of Labor to report to Congress within 18 months after the effective date on recommendations for further improvements in the H–2 program.

Subsec. (f).—States the sense of Congress that the President should establish an advisory commission to consult with the Governments of Mexico and other appropriate countries and advise the Attorney General regarding the temporary worker program and the transitional agricultural program.

STUDENTS

Sec. 212(a).—Requires foreign students, whether academic or vocational, to return to their country for at least two years after attending school in the United States. The Attorney General may waive this requirement in the case of students who are immediate relatives of U.S. citizens. Additionally, the Attorney General may waive the requirement in the case of academic students who have advanced degrees and a job offer from a university in the field of study, who have a degree in a natural science, mathematics, computer science or engineering from a college or university in the United States and have been offered a research or technical position by an employer in the field of study and who have an advanced degree and exceptional ability in business or economics and have been offered employment that requires such exceptional ability. A waiver for change of nonimmigrant status may be obtained on behalf of a student changing to an H–3 trainee visa with a com-

pany for transfer overseas. Provides that all these changes apply only to aliens who obtain student status after enactment.

Subsec. (b).—Prohibits students, other than those for whom a waiver is available, "*O*" nonimmigrants, and visitors under the visa waiver provisions, for adjusting their status. *Sec. 212(d)(2)* provides that these changes apply to aliens currently in the U.S. as well as those who may enter in the future.

Subsec. (c).—Precludes time spent in student status or H–3 status as counting for purpose of eligibility for suspension of deportation.

VISA WAIVER FOR CERTAIN VISITORS

Sec. 213.—Authorizes the Attorney General and the Secretary of State jointly to establish a three-year pilot program for up to 8 countries for the admission of foreign tourists without the need to obtain a visitor's visa. Certain restrictions apply with regard to participating countries as well as aliens who enter the U.S. under the program. In addition, the amendment authorizes the establishment of a visa waiver program for foreign tourists coming only to Guam.

LEGALIZATION

Sec. 301(a).—Adds a new section 245(A) to the INA.

New Sec. 245(A)(a).—Grants the Attorney General discretionary authority to adjust to *permanent residence* aliens who apply during a 12-month period (or within 30 days of beginning a deportation hearing) and establish that they entered the United States before January 1, 1982, and have resided continously in the U.S. in an unlawful status (including "Cuban/Haitian entrant" status) since that date, and are otherwise admissible as an immigrant. In addition, if the alien had entered previously as a nonimmigrant the period of authorized stay must have expired before January 1, 1982, for reasons other than passage of time or the alien's unlawful status was known to the Government as of January 1, 1982. If the alien previously entered as an exchange visitor, the alien must have satisfied the two year foreign residence requirement or had such requirement waived.

Lastly, the alien could not have been convicted of any felony (or three or more misdemeanors) in the U.S. nor have assisted in persecuting any persons on account of race, religion, nationality, membership in a particular social group, or political opinion and must register under the military Selective Service Act.

New Sec. 245(A)(b).—Requires the Attorney General to work with qualified voluntary agencies and organizations in processing applications for permanent status, and treats their records as confidential, and provides criminal penalty for false statements. It waives numerical limitations and the labor certification, documentation, and improper entry grounds for exclusion and permits the Attorney General to waive additional grounds (except criminal and most drug offenses, and security-related grounds) for humanitarian purposes, to assure family unity, or when it is otherwise in the national interest. The Attorney General, during the first 6 months, is required in cooperation with qualified agencies and organizations widely to disseminate information on the program of adjustment of

status provided under the section. The Attorney General is required, notwithstanding the Administrative Procedure Act and similar rerquirements (such as those effected under the Paperwork Reduction Act of 1980), to issue within 3 months, such interim final regulations as may be necessary to implement the legalization program on a timely basis. In addition, in the case of aliens who are apprehended after enactment and before the beginning of the legalization program, and who can make out a prima facie case of eligibility for legalization, the Attorney General will defer deportation or exclusion proceedings until the alien has had a reasonable opportunity to apply for legalization.

New Sec. 245(A)(c).—States that legalized aliens are not eligible for five years after obtaining permanent resident status or registry, for programs of Federal financial assistance furnished on the basis of financial need, or for medicaid or food stamp assistance, except (1) in the case of Cuban/Haitian entrants. (2) for assistance required because of old age, blindness, or disability, or, (3) for medical assistance required in the interest of public health or because of the seriousness of the illness or injury. In addition. Congress specifically permits States and local governments to impose similar restrictions on financial and medical assistance programs they operate. The adjustment of status of Cuban/Haitian entrants under this section does not affect the continuation of assistance with respect to them under the so-called "Fascell-Stone" provision (title V of the Refugee Education Assistance Act of 1980).

New Sec. 245(A)(d).—Limits administrative review to a single level of administrative appellate review and limits judicial review, after exhaustion of administrative remedies, to judicial reveiw of deportation proceedings.

Subsec. (c).—Requires the President to report to Congress within 18 months on the impact of the legalization program, particularly as it impacts on the various State and local governments in different regions of the United States.

Subsec. (d).—Repeals the separate provisions of law providing for adjustment of status of certain Cuban parolees, effective for aliens who entered after April 21, 1980.

UPDATING REGISTRY DATE TO JANUARY 1, 1973

Sec. 302.—Updates the date for legal registry from June 30, 1948, to January 1, 1973.

STATE LEGALIZATION ASSISTANCE

Sec. 303(a).—Authorizes appropriations for fiscal years 1984 through 1987 in such sums as may be necessary to carry out State legalization assistance under this section.

Subsec. (b).—Requires, subject to available appropriations, the Secretary of Health and Human Services to provide to States 100 percent reimbursement for costs of programs of public assistance to aliens during the period in which they are otherwise ineligible to be provided assistance under Federal financial and medical assistance programs. These programs of public assistance can be State or local programs, must provide cash, medical, or other assistance which is designed to meet the basic subsistence or health needs of

individuals or which is required in the public health, must be generally available to needy individuals residing in the State or locality, and must receive funds from the State or local government.

Subsec. (c).—Requires, subject to available appropriations, the Secretary of Education to make payments to State educational agencies, based on the number of aliens who have been legalized within the past 5 years and who are enrolled in elementary or secondary public schools in localities in the State, to assist local educational agencies of the State in providing educational services for these legalized aliens.

EXTENDED VOLUNTARY DEPARTURE FOR SALVADORANS

Sec. 401.—States the sense of Congress that voluntary departure should be extended for nationals of El Salvador until it is safe to return there.

ADMINISTRATION POSITION

The Administration strongly supports the enactment of H.R. 1510, as amended. No formal reports were received on the instant legislation; however, the testimony presented during consideration by the Subcommittee is set forth below:

DEPARTMENT OF JUSTICE

STATEMENT OF WILLIAM FRENCH SMITH, ATTORNEY GENERAL

March 1, 1983.

Chairman Mazzoli and members of the Subcommittee.

I am delighted to have an opportunity to appear before you to discuss a matter on which we agree so fully—the urgent need for immigration reform. Yesterday, I testified before the Senate Judiciary Subcommittee on Immigration and Refugee Policy. The scheduling of these early hearings clearly demonstrates your recognition of the need for reform.

Some years ago, a delegation of American Indians visited Washington to dramatize the plight of their people. The leader of the delegation, Chief Ben American Horse of the Sioux, stopped here at the Capitol to visit Alben Barkley, who was then Vice President of the United States. After a long discussion, the Chief rose to leave. He then paused for a moment, looked the Vice President in the eye, and said: "Young fellow, let me give you a little advice. Be careful of your immigration laws. We were careless with ours."

The United States has indeed in recent years been careless about its immigration laws. In spite of the best efforts by the Immigration and Naturalization Service, those laws themselves have proved inadequate to meet the pressure of ever-increasing illegal immigration that even now threatens to engulf us. Simply put, we have lost control of our own borders. As a result we need new immigration laws—and we need them now.

Discussing the need for immigration reform with this Committee is, however, a little like describing another kind of flood to Noah. During the 97th Congress this Subcommittee made a tremendous stride toward that goal. The Administration appreciates your commitment to this difficult task and the prompt introduction in the 98th Congress of H.R. 1510, the Immigration Reform and Control Act of 1983.

In recent years, we have all been through an exhaustive legislative and executive branch discussion about immigration reform. Although disappointed by failure to enact legislation last year, we have the benefit of those debates to chart the legislative course this year. We are now all well informed on the issues of enforcement, civil liberties, cost, social equity, and labor force protection important in any discussion of immigration reform.

Before specifically addressing the most important provisions of the Immigration Reform and Control Act of 1983, I would like to begin with a few, more general observations. This legislation would increase the law enforcement powers of the Immigration and Naturalization Services by imposing sanctions on those who knowingly hire illegal aliens. And it would reform and expedite our procedures to return those who come or remain here illegally. At the same time, the bill would both deal realistically with illegal aliens who are now here—and safeguard against discrimination—by granting many of them a legal status. By establishing certain statutory provisions for the present H-2 temporary worker program, it acknowledges the likely need for some kind of legal foreign labor, but would protect U.S. workers.

Failure to enact reform legislation of this kind can only result in further illegal migration, greater public frustration over the government's inability to control our borders, and the negative social and economic effects occasioned by so large a number of persons living outside the law. Each day lost in enacting effective reform legislation makes it increasingly difficult to remedy these problems. For all these reasons, the Administration strongly supports the enactment of a balanced and fair immigration bill.

At the root of illegal immigration is the ready access of illegal entrants and visa abusers to jobs that are very attractive when compared to employment opportunities in their homelands. The cornerstone of immigration control in H.R. 1510 is therefore a provision making it illegal knowingly to hire aliens who are not authorized to work in the United States. Employer sanctions is the only remaining, credible tool to stop the flood of illegal immigration. As long as the American job market remains open to them, illegal aliens will risk: the dangers of illegal entry, the cost of smuggling or fraudulent visas, and the likelihood of apprehension and deportation.

As I said in my testimony last year, "In pursuing a law that will close the labor force to illegal arrivals, we must

do so in a manner that is not unreasonably burdensome in cost and that is consistent with our values of individual liberty and privacy." Toward those ends, the Administration has several recommendations concerning employer sanctions.

We should work together as contemplated by the bill to ensure the adequacy of our system for verifying employment eligibility, but we should do nothing that would result in a national identity card or system. The President's Task Force on Immigration and Refugee Policy reviewed the alternatives to the use of existing documentation for establishing employment eligibility. As we indicated last year, the Administration is willing to study and report to you on the need for and feasibility of improvements in present documentation. We would be prepared to begin the implementation of appropriate changes within three years of enactment of this legislation. This period will provide us with an opportunity to evaluate the efficacy of relying on existing documentation and to determine what, if any, improvements would be appropriate.

We believe that adequate civil penalties should be imposed—perhaps in the range of $1,000 to $2,000 as provided in your bill—but that criminal fines or prison terms should be imposed by a court only when an injunction against repeated offenses has been violated. Broad voluntary compliance can be expected, but substantial civil fines and injunctions for a pattern and practice of violations will assure even greater compliance.

The provisions for administrative and judicial review of employer sanctions violations should be simplified. The potential for employers to seek administrative and judicial review of civil penalties and the requirement that the Government affirmatively institute a collection suit to secure payment of penalties ultimately upheld on appeal could so burden the system that it would dramatically reduce the number of actions brought. Both administrative and judicial rights of appeal should be limited and consistent with due process. In addition, a final order affirming the imposition of a civil penalty should not require a subsequent action to secure payment.

We look forward to working with the Subcommittee to further review these recommendations to ensure that an employer sanctions law would achieve its goal of controlling the unlawful employment of aliens.

The Administration agrees with the premise behind the legalization provisions in H.R. 1510, that we must deal realistically with the aliens who now live in the United States illegally. The failure to act realistically merely allows the problem to grow—adding perhaps 500,000 new illegal aliens per year to an illegal alien population estimated to be 3.5 to 6 million in 1980. It would not be realistic to attempt widespread deportation or to allow the status quo to continue perpetuating a class of society beyond the protections and sanctions of law. At the same

time, we cannot—in fairness to American citizens, legal residents, and would-be immigrants waiting patiently to come here legally—provide unduly generous terms of legalization or eligibility for benefits at a time of high unemployment and budget austerity. This bill would provide an opportunity to acquire legal status for those illegal aliens who have shown a commitment to becoming permanent members of our society. It is a sensible and humane approach.

Although some have criticized legalization as a reward for lawbreakers, it represents a practical decision that is consistent with effective law enforcement. The failure to include such a legalization program would aggravate enforcement of employer sanctions. It would leave in place those long term illegal aliens who are most likely to resist removal from the United States by relying on the procedural safeguards and administrative relief available under the existing law. This would divert important resources of the Immigration and Naturalization Service at precisely the time when its enforcement priority should be effective implementation of employer sanctions.

Concerning legalization, H.R. 1510 represents the limits of reasonable compromise—since our original proposal contained a ten-year permanent residence requirement. Under this bill illegal aliens who were in the United States before January 1, 1977 would be eligible for permanent resident status. Those who came here between 1977 and January 1, 1980, would be eligible for temporary resident status, and permanent status after three more years as law abiding, self-sufficient residents. Aliens who have a criminal history, have assisted in political persecution, or are otherwise inadmissible would not be eligible for legalization.

The Administration supports the granting of temporary or permanent residence to those aliens who meet the criteria set forth in H.R. 1510.

The bill would also amend section 249 of the Immigration and Nationality Act, by updating the so-called "registry" date from June 30, 1948, to January 1, 1973. While sympathetic to the updating of the "registry" date, we would, however, recommend against taking that action at this time. To do so, would in essence be to set up an alternate legalization program for at least 175,000–300,000 aliens who could demonstrate continuous residence since before January 1, 1973. This alternative program would have different standards for screening and would permit these permanent residents to qualify immediately for federal social welfare programs.

During temporary residency and the first three years of permanent residency legalized aliens would—under this bill—be ineligible for federal social welfare programs. Persons requiring assistance because of age, blindess, or disability, and those requiring medical assistance because of serious illness or injury or in the interest of public health,

would be exempted from ineligibility. The legislation also authorizes full reimbursement to States for the costs of public assistance provided legalized aliens as well as payments to state educational agencies to assist in providing educational services to such aliens.

The Administration opposes the exception to federal benefit ineligiblity set forth in H.R. 1510. We are even more strongly opposed to the provision authorizing full reimbursement for state and local cash and medical assistance to legalized aliens. Those two provisions would generate estmated costs of four billion between 1984 and 1987 compared to the 1.7 billion estimated for the Senate bill. At a time when the Nation requires budget austerity, such extraordinary added costs cannot be justified. Further, a policy for full federal reimbursement does not provide incentives for cost control.

The authorization of federal support for educational assistance on behalf of legalized aliens is also unwarranted. It would create a new area of federal responsibility without addressing any real need. Only a few jurisdictions were making any attempt to distinguish illegal alien children within their school population prior to the Supreme Court decision in *Plyler* v. *Doe* last year.

The Administration does support the inclusion of a block grant program to assist states and localities in providing medical care or other welfare services to newly legalized residents. This appropriately reflects shared federal, state, and local responsibility for social welfare costs that may occur with legalization. This approach would help to offset costs for persons who become seriously ill or incapacitated or otherwise become eligible for state and local assistance programs because of unforeseen circumstances. It would not, however, create an open-ended federal financial responsibility for state program.

Illegal aliens eligible for legalization will have to provide evidence of past and current employment in order to be granted legal status. The legalized aliens will be paying taxes—income, sales, property—to state and local governments. They will be contributing to their local economies, which is part of the rationale for legalization. Consequently, shared responsibility for health and welfare benefits to those legalized aliens who qualify under the terms of state and local laws is appropriate.

A legalization program is a sensible and humane response to the large shadow population of illegal aliens in this country. The terms of the legalization should emphasize long term continuous residence, along the lines of H.R. 1510, and grant legal status only to those who truly are members of their communities—in order to avoid encouraging additional illegal migration. A block grant program for medical care and other support for the newly legalized residents would appropriately reflect the shared responsibility of federal, state, and local government and should be

substituted for the reimbursement provisions currently in H.R. 1510.

With the passage of the Immigration and Nationality Act in 1952, Congress authorized the entry of temporary foreign labor if sufficient domestic workers were not available and their entry would not adversely affect the wages and working conditions of Americans. It is acknowledged that the labor needs of certain sectors of our economy have been filled over the past years by a sizable number of illegal aliens, who did not enter under the temporary worker provisions of the Act. As we prohibit the employment of illegal aliens, it is important that we also provide a legal mechanism for employers to hire temporary workers when they are unable to find American workers.

The Administration supports a statutory authorization of a distinct H-2 temporary worker program. This program may be particularly important for agriculture during the transition period from dependence on illegal alien labor to reliance on domestic labor. During the past year, the Departments of Justice, Labor, and Agriculture have been reviewing both the existing H-2 program and proposed statutory modifications. We seek a balanced program that would ensure a source of foreign labor, but would not exploit employees or provide an added incentive to hire foreign rather than resident workers. Where there are not American workers to fill needed jobs, legislation should provide a legal avenue to admit foreign workers. It should also provide safeguards to ensure that American workers are not adversely affected by foreign labor. And it should protect the rights and welfare of all workers.

The Administration also enthusiastically supports measures to make immigration adjudication and asylum procedures more effective and efficient. The current appeals process, by allowing multiple opportunities for administrative and judicial review, has resulted in unconscionable backlogs and has seriously undermined the enforcement of immigration laws.

We are very supportive of the provisions of H.R. 1510 that would allow currently designated immigration judges to hear asylum claims under the new bill once they have received special training. I continue to be concerned, however, by the provisions that would establish the U.S. Immigration Board as an independent agency within the Department of Justice. It is extremely unwise to splinter further the Executive's authority to administer what was intended to be an integrated and coherent body of immigration law. The absence of accountability for this new agency would only compound the managment problems that preceded our recent reorganization efforts and could further protract already slow proceedings.

The Administration prefers that the statutory U.S. Immigration Board established by H.R. 1510 remain under the supervisory authority of the Attorney General—as is currently the case with the Board of Immigration Appeals.

Particularly if the availability of judicial review is clarified as you have recommended, the desired independence of the Board and the immigration judges can be achieved without the total loss of Executive oversight.

While continuing to share the Committee's aim of achieving a better adjudication and asylum system, the Administration also has reservations about some of the provisions currently contained in H.R. 1510.

First, in order to preserve flexibility for emergency situations and workload changes, the number of immigration judges should not be fixed by statute.

Second, the jurisdiction of the U.S. Immigration Board should be capable of expansion by regulation of the Attorney General, as you have provided concerning the jurisdiction of immigration judges. H.R. 1510 incorporates the present regulations on the jurisdiction of the Board, but the Department is currently considering changes in some areas of the Board's jurisdiction. Without this flexibility, the Department would be obliged to seek legislation when any addition is deemed necessary or advisable.

Third, we are concerned about the bill's retention of the adversary-type hearing process for asylum adjudications. The Administration's original proposal attempted to create a non-adversary system for the adjudication of asylum claims. We continue to believe that the current asylum backlog demonstrates the difficulty of dealing with these claims through the traditional adversary system, and that a more non-adversarial approach should be implemented.

Fourth, while appreciating and sharing the Committee's concerns regarding delay in the asylum process, we have grave concerns regarding the various time limits imposed under the bill. Basically, compliance with strict statutory limits upon the commencement and decision of asylum cases may not be achievable. This is particularly true for a U.S. Immigration Board that is independent and not subject to the control of the Attorney General. The sanction for failure to comply with time limits—release of a detained aline into the community—offers the public inadequate protection, which would become critical in the event of a large-scale concentrated migration that would overburden the asylum system.

We appreciate the Subcommittee's consideration of these recommendations concerning adjudication procedures and asylum. We will, of course, provide whatever additional supporting materials you desire.

Concerning legal immigration, we propose two changes: (1) increasing the number of visas available to Canada and Mexico, which should decrease the number of illegal entries for family reunification, and (2) streamlining the labor certification process.

This Subcommittee and your counterpart in the Senate brought us to the threshold of historic action on immigration reform in the last Congress. Your continuing commitment to that reform is exemplified by our hearing today—

and the hearings you have scheduled during the next two weeks to provide all interested parties an opportunity to present their views on this important subject.

The Administration remains strongly convinced that it is in the national interest that comprehensive immigration reform legislation be enacted without further delay. In the bipartisan tradition that should continue to dominate debate on this subject, we pledge our support in achieving that goal. Together, we can ensure an end to the kind of carelessness with immigration laws about which Chief Ben American Horse warned. We can ensure continued opportunity for both old and new Americans.

DEPARTMENT OF STATE

STATEMENT OF HON. DIEGO C. ASENCIO, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS

March 2, 1983.

Mr. Chairman, members of the committee, I am pleased to be here today to testify regarding H.R. 1510, and I congratulate you, Mr. Chairman, for introducing it so early in this session. Although it differs in some respects from H.R. 5872 on which I testified last year, it closely parallels that bill in many particulars and my testimony, therefore, will bear a similar resemblance to may earlier remarks on it.

We continue to believe, for example, in the need for measures to regularize the status of some of those in the United States illegally, to reduce the "pull factors" that induce such illegality, and to expedite administrative procedures relating to admission, exclusion and deportation. Moreover, we continue to support strongly the concept of addressing the problems resulting from illegal migration in an overall "package" approach. In connection with the regularization of status proposal, I would also note that it would serve not only our own interests but would diminish the concerns expressed by Mexico and other countries respecting the circumstances of their nationals in the United States.

I shall defer to the views of the agencies more directly affected by many of the issues covered in this proposed legislation, and address primarily those items of special interest to the Department of State in the substantive sense.

We appreciate the General Validity of the "user fee" concept. However, the Department has grave foreign relations and other reservations about the imposition of such fees at U.S. land border ports of entry. The mere imposition of such fees would itself almost certainly appear to Mexico and Canada as inconsistent with the spirit of cross-border cooperation which the President has emphasized. This reaction, based on a matter of principle, would at a minimum be another irritant in bilateral relations and could lead to reciprocal action.

In addition to those foreign relations concerns, we are disturbed by the essential impracticality of this proposal. We are all very award of the traffic tie-ups that already exist at such ports. There would be a quantum jump in those delays if fees had to be assessed on a per capita basis. It is obvious that a simple unmanned tollbooth operation would not suffice, not only becaue of fluctuating exchange rates in both neighboring countries but more particularly because such a system could account only for the vehicle and not for the number of passengers, let alone their nationality. I would note, however, that we prefer this bill's provision, which is not mandatory and seems more fair, to that in the Senate immigration bill.

We welcome the consensus on the need for special asylum officers but are seriously concerned that this bill does not incorporate a consultative role for the Department of State. We believe that State's expertise on foreign aspects bearing on asylum questions is essential to their proper adjudication. It is because the current statute does not make this clear that we prefer a legislative mandate for consultation to the current reliance on the Service's regulations which lack such a specific basis. We would prefer that the legislation provide that the Secretary of State make available to the Attorney General reports on the condition of human rights in all countries, and that the asylum adjudication officer should use such reports as general guidelines in making the asylum determination. We would also prefer that the legislation provide that the Secretary of State may submit comments on individual applications to the asylum adjudicator.

We regret also that portion of the asylum provisons which calls for open hearings but permits closed hearings upon the request of the applicant. At best, we find it inconsistent with the recognition in section 124(c) of the need to protect documents associated with asylum hearings, and have some difficulty understanding how documents used at an open hearing can be kept "confidential".

More important, we believe it is essential in the interest of the claimant, as well as of any family members or members of the same group still in the country from which the applicant has fled, that all materials bearing on the matter—especially those that the claimant presents—be confidential. Many unsophisticated asylum claimants will not realize in advance that they have the right to a closed hearing nor an awareness of the importance to others that the matter be treated on a confidential basis. By contrast, however, it seems certain that those who believe that publicity is a prerequisite to just treatment will instinctively seek an open hearing. We would urge, therefore, that this provision be amended to establish a closed hearing except at the expressed desire of the applicant.

With regard to the students provision, we find little merit in dropping the distinction between private students and sponsored exchange visitors and have to wonder

whether foreign governments will not also be confused by this blurring of purpose. We would also note a probably unintentional inequity—certainly in contrast to our usual emphasis on family unification—in the waiver provision, which would make it possible for spouses of citizens and certain persons needed by industry to acquire resident status without first residing abroad for 2 years but would withhold that opportunity from the spouses of resident aliens.

We have no objection to the proposal to benefit certain children and surviving spouses of international civil servants who have long resided in the United States.

Finally, and of particular importance to State, is the nonimmigrant visa waiver provision. We believe that a waiver under the broader terms we originally proposed would prove to be effectively manageable. However, believing also that, if the programs were initially limited as proposed in this bill, the Congress would, in fact, extend and expand it, we are prepared to accept the concept of a pilot program, limited in both duration and the number of countries. Not surprisingly, we would prefer the larger number (eight) that is in S. 529 to the five provided in this legislative proposal.

The modified criteria proposed for inclusion of a country in the program are, however, deeply troubling. They enlarge substantially the bases for exclusion from the list and, at the same time, they cut the precentage of incidence of those factors that would be permissible. This would preclude meeting the objectives of the provision—that is, to extend reciprocity to our closest allies who have waived visas for U.S. visitors for many years and to eliminate unnecessary processing of visa at our major posts. Some major countries would not qualify under this revision of standards.

We are particularly disturbed by the failure to use a 2-year average as the indicator. There are economic and political events that skew data from 1 year to the next for reasons not bearing on whether a country's nationals are good nonimmigrant risks. Use of only the prior year's data quite probably would result in such aberrations as a country not being found eligible for the program which should be or, worse, being found eligible when it should not be.

We recognize that some of the proposals about which we have expressed reservations are predicated on philosophic issues on which honorable men can honestly differ. We believe, however, that some may be essentially technical or drafting matters and would be pleased to work with the committee members and staff to develop modifications that would be mutually satisfactory.

DEPARTMENT OF LABOR

STATEMENT OF ROBERT W. SEARBY, DEPUTY UNDER SECRETARY FOR INTERNATIONAL LABOR AFFAIRS

March 16, 1983.

Mr. Chairman and Members of the Subcommittee: I welcome the opportunity to testify today regarding the labor-related aspects of H.R. 1510, the Immigration Reform and Control Act of 1983. I applaud your continuing efforts to achieve the pressing and long overdue reform of our immigration laws, which is critical to any effective reduction of the increasingly large flow of undocumented aliens into our nation and our labor market.

As we have all discovered, illegal immigration is a complex and troubling issue which touches, directly or indirectly, the lives of many individuals and the welfare of many interest groups, both at home and abroad. Your efforts reflect a keen understanding of the importance and complexity of this issue and a sensitivity to the wide-ranging implications of your proposals. Both merit the respect and admiration of all of us who are invovled in immigration policy.

Employer sanctions.—Once again, the basic building blocks of your bill, strongly supported by this Department, are amendments to the Immigration and Nationality Act (INA) that would prohibit the knowing employment of aliens without work authorization, provide employers with a mechanism for determining the work eligibility of all job applicants, and establish a legalization program as the only practical and humane means of dealing with the current illegal population.

Additional controls over the entry of foreign nationals into our labor market are necessary because illegal immigration has clearly been increasing. During the past decade, for example, Immigration and Naturalization Service (INS) apprehensions of deportable aliens increased by more than 300 percent. An estimated 0.5 million more come each year. Most enter the U.S. Labor market and find employment in low-level jobs, where even the minimum wage is up to 10 times more than the wage available to them in their homelands.

Illegal immigration is principally the result of international disparities in wages and employment opportunities. Thus, effective control of our borders requires controls over access to our labor market. The Department of Labor therefore strongly supports employer sanctions. We believe that this proposed amendment to the INA would be a critical step toward improving the employment opportunities, wages, and working conditions of our most vulnerable workers—the low-skilled American and legal immigrant workers, with whom undocumented workers most often compete.

While it is impossible to quantify the precise impact of this additional supply of undocumented alien workers on similarly employed U.S. workers, the laws of supply and demand dictate the direction of those effects. Illegal immigration, because it constitutes an increase in the supply of low-skill workers, depresses the wages and working conditions of low-skilled workers in this country, and reduces their employment opportunities. In a cautious calculation of the labor-market impact of illegal immigration, labor economist Michael Wachter has suggested a 20 to 30 percent displacement effect. This does not include displacement of U.S. workers who leave the labor force entirely and therefore do not count as unemployed. According to Wachter, this latter group could be about the same size as the displaced unemployed, or another 20 to 30 percent of the size of the undocumented alien workforce. Since Wachter's analysis assumes a situation of full employment, the displacement effects of continuing illegal immigration are likely to be even more dramatic in a situation of high unemployment.

It is also important to recognize that the claim that undocumented aliens are employed only in jobs that Americans will not take cannot be sustained. In 1982, close to 30 percent of all workers employed in this country—some 29 million people—were holding down the kinds of low-skilled industrial, service, and agricultural jobs in which undocumented aliens typically find employment (see attached table). Nor can it be claimed that Americans will not take low-wage jobs. In 1981, an estimated 10.5 million workers were employed at or below the minimum wage ($3.35 an hour). An estimated 10 million more were employed in jobs earning within 30–40 cents more per hour than the minimum wage.

The U.S. workers with whom illegals compete are demonstrably also our most vulnerable workers. The unemployment rate of blue-collar workers in 1982 was nearly three times that of white-collar workers: 14.2 percent, as compared with 4.9 percent. The unemployment rates of unskilled blue-collar workers—for example, nonfarm laborers—have been especially high: 18.5 percent in 1982. in addition, as we all known, the unemployment rates of young workers, blacks and Hispanics, many of whom are low-skilled, have been conspicuously high during recent years. Unemployment rates for teenagers last month were 19.7 percent for whites; 30.2 percent for Hispanics; and 45.4 percent for blacks.

Finally, depressed wages and lost employment opportunities not only harm already vulnerable low-skill and low-wage U.S. workers, they also are very costly to the Federal Government. Each percentage point of unemployment costs the Government $28 billion—$7 billion in increased outlays; $21 billion in decreased revenues. If one illegal immigrant in five is performing a job that would be filled by an unemployed U.S. worker in the absence of illegal immi-

gration (a conservative estimate), then 500,000 new undocumented workers entering the labor force annually will increase unemployment by 100,000 each year. At the estimated rate of outlay, continuing illegal immigration costs the Government an additional $0.7 billion per year, or a total of $2.8 billion between fiscal years 1983 and 1986.

Labor Certification for Immigrants.—As we stated in testimony before the 97th Congress, the Department strongly supports the amendment to section 212(a)(14) of the INA, which would streamline the current cumbersome and time-consuming labor certification procedures for immigrants seeking admission for permanent employment.

The labor certification provision has two basic functions: first, to protect the U.S. labor force from competition from alien labor; and second, to allow for entry of needed workers in the United States.

DEPARTMENT OF AGRICULTURE

STATEMENT OF A. JAMES BARNES, GENERAL COUNSEL

March 16, 1983.

Chairman Mazzoli and Members of the Subcommittee, I appreciate the opportunity to appear today on behalf of the Department of Agriculture to discuss with you this issue of national concern. I will, of course, be directing my comments to certain of the issues addressed in H.R. 1510, the Immigration Reform and Control Act of 1983. Before addressing the bill, I would like to make a few observations to help put our comments in perspective.

In the agricultural sector, there is both an awareness of the serious immigration control problem we face and an understanding of the need to take corrective action. Agricultural employers generally support return to a rule of law and to regaining control over our nation's borders. At the same time, there is a consistently expressed concern that the government allow an adequate, timely, legal supply of labor for agriculture by providing a mechanism for the use of alien labor on a temporary basis if qualified domestic workers are not available and the use of such aliens will not adversely affect U.S. workers.

For a number of reasons, we share this concern. As a matter of fundamental fairness, if it will be illegal to hire undocumented workers, then access to a legal workforce should be provided when needed. At the same time, failure to provide access to an adequate legal workforce would doubtless result in continued use of undocumented workers, which would undermine our overall objective of improved immigration control. Furthermore, failure to provide access to an adequate legal workforce could result in loss of production of some crops to other countries, reducing the nation's self-sufficiency in fresh fruit and vegetable food production and the positive contribution agriculture makes to our balance of payments.

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There are currently an estimated 300,000–500,000 undocumented aliens who work each year on our nation's farms and ranches. They are primarily engaged in seasonal harvest work in the Southwest and along the West Coast. From World War II until 1964, this area relied on the "Bracero" program to provide much of its seasonal labor supply. When that program ended, the area turned to using illegal aliens to help fill its seasonable labor needs. Thus, as an immigration control program is implemented, the greatest potential for dislocation of agricultural production and the greatest need for access to a legal workforce to replace the current illegal workforce, is in the Southwest and along the West Coast. However, over the past year agricultural employers in other parts of the country have discovered that some employees they thought were legal aliens, were in fact illegally here.

We were pleased that the bill (S. 2222) passed last year by the Senate, as well as H.R. 7357 which the House was debating at the time it adjourned, explicitly recognized that need by providing a statutory basis for a temporary agricultural H–2 worker program. Similarly, we were pleased to note that such a program is also included in H.R. 1510. As we have previously testified, we believe that a streamlined H–2 temporary agriculture worker program is a responsible, targeted vehicle for helping assure access to an adequate, timely legal supply of labor to agriculture, that at the same time protects the legitimate interests of the domestic workforce. In fact the administration submitted a substitute H–2 program which we continue to support.

The present "H–2" program is, of course, defined and established almost entirely by regulations of the Immigration and Naturalization Service and the Department of Labor. These regulations are based on clause (H)(ii) of section 101(a)(15) of the Immigration and Nationality Act, which defines an H–2 worker as a nonimmigrant alien resident of a foreign country who comes temporarily to the United States to perform temporary services or labor if unemployed persons capable of performing such service or labor are not available. Section 211 of the bill would, to some extent, codify portions of the H–2 program now contained in the regulations.

The current H–2 program is working fairly well although we believe some changes in it are desirable. However, as we try to assess its possible use on a broader scale in other parts of the country, notably the Southwest and West Coast, it is critical to note a number of significant differences between the agricultural labor situation there and on the East Coast. There may be a much greater need in the West for flexibility for workers to move from one farm to another, or from one crop to another, to meet the changing labor needs than is true in the East. Moreover, larger numbers of H–2 workers might be involved in the West. Some 12,000 H–2 workers are now admitted to fill

some 18,000 jobs in agriculture primarily on the East Coast, while the need could be significantly larger in the Southwest and West Coast regions.

As indicated in the Attorney General's testimony, the Administration supports a statutory authorization of an H-2 temporary worker program. We believe it provides a reasonable basis for protecting the interests of American workers, our agricultural sector, and the rights and welfare of foreign workers. H.R. 1510 should provide that the program be developed and administered in a manner that will assure that the various competing interests would be fully heard and, to the extent possible, accommodated in a manner consistent with the national interest.

We would be happy to work with the committee to develop the legislation necessary to implement such a program.

As I conclude, I would of course be happy to respond to any questions the committee may have.

Estimate of Cost

The Committee wishes to emphasize that the long term economic benefits of this legislation will be substantial. By reducing illegal immigration through employer sanctions, it is expected that INS' enforcement costs will, in time, be reduced, a positive impact on our balance of payments will be achieved and increased tax revenues will be obtained as the result of the legalization program. Most important, job opportunities will be made available for millions of unemployed Americans and there will be a concomitant decrease in expenditures (unemployment, public assistance, etc.) made in behalf of such workers.

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives, the Committee states that it generally concurs with the cost estimate submitted by the Congressional Budget Office and set forth below. The Committee wishes to note, however, that the Department of Labor in its testimony (reprinted earlier in this report) stated that "continuing illegal immigration costs the Government an additional $0.7 billion per year, or a total of $2.8 billion between fiscal years 1983 and 1986."

Budgetary Information

Clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budget authority. Pursuant to Clause 2(l)(3)(C) of Rule XI, the following estimate was prepared by the Congressional Budget Office and submitted to the Committee:

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 1510.
2. Bill title: Immigration Reform and Control Act of 1983.
3. Bill status: As ordered reported by the House Committee on the Judiciary, May 5, 1983.

4. Bill purpose: H.R. 1510 makes some major revisions and reforms to the Immigration and Nationality Act. Title I focuses on the control of illegal immigration. Part A of this title establishes new guidelines for the employment of immigrants, directs the President to report to the Congress within three years of enactment on the possibility of establishing a secure system to determine the employment eligibility of all job applicants, and requires the Attorney General to establish a new task force for the purpose of reviewing complaints of job discrimination resulting from the bill. Part B expresses the intent of Congress to increase the level of border patrol and other enforcement activities, makes it unlawful to transport any unauthorized alien into the United States, and allows the Attorney General to impose fees on aliens which reflect the cost of their use of the border facilities. Part B also authorizes appropriations to the Immigration and Naturalization Service (INS) and provides for the establishment of an immigration emergency revolving fund. Part C establishes a United States Immigration Board and provides for the appointment of at least 10 new administrative law judges to hear and decide cases involving alien exclusion, deportation, suspension of deportation, asylum, and civil penalties. Part C also amends the existing law governing alien asylum in the United States. Part D changes the law concerning adjustment of nonimmigrants to immigrant status.

Title II reforms existing law regarding legal immigration. Part A establishes new numerical limitations and performance guidelines, revises the Department of Labor's labor certification system, and amends the immigration laws regarding G–4 special immigrants. Part B amends those provisions of the Immigration Act relating to nonimmigrant workers (H–2 workers), amends the procedures for obtaining approval of H–2 petitions, allows the Secretary of Labor to charge fees to recover the cost of processing applications for certification, authorizes a program designed to recruit domestic workers for temporary labor, and establishes a pilot program of visa waivers for certain visitors. Further, this part of the bill calls for the Attorney General, in cooperation with the Secretaries of Labor and Agriculture, to establish a transitional labor program lasting three years to assist agricultural employers in shifting from hiring illegal aliens to hiring eligible workers. The Attorney General is also authorized to collect a fee covering the costs of processing applications from employers requesting permission to employ unauthorized aliens.

Title III of the bill relates to the legalization of unauthorized aliens already in the country. This section empowers the Attorney General to adjust, at his discretion, the status of unauthorized aliens to that of lawfully admitted aliens eligible for permanent residence if they apply, meet certain conditions, can establish that they illegally entered the United States prior to January 1, 1982, and have been residing here continuously since then. In addition, it limits federal program benefits for which the unauthorized aliens granted permanent residence are eligible, and authorizes appropriations for fiscal years 1984 through 1987 to reimburse states for the costs of providing public assistance to legalized aliens and educational services to alien children.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Direct spending provisions:						
Required budget authority:						
Function 550				1	5	3
Function 600		−5	−20	−35	−45	−60
Estimated outlays:						
Function 550				25	60	60
Function 600		75	215	270	295	285
Amounts subject to appropriation action:						
Estimated authorization level:						
Function 550			20	50	70	80
Function 600		739	1,046	1,550	1,906	95
Function 750	36	768	705	747	10	10
Estimated outlays:						
Function 550			20	50	70	80
Function 600		89	920	1,509	1,863	849
Function 750	32	651	701	742	98	17
Total spending:						
Estimated authorization level/required budget authority	36	1,502	1,751	2,313	1,946	128
Estimated outlays	32	815	1,856	2,596	2,386	1,291
Estimated revenues	15	185	45	45	50	50
Net budget impact: Estimated net increase to the deficit	17	630	1,811	2,551	2,336	1,241

Basis of estimate

The bill authorizes appropriations to the Immigration and Naturalization Service totalling $716.6 million in 1984, $689.2 million in 1985, and $731.3 million in 1986. These authorized levels include funding for both current INS activities and for all additional expenses resulting from the bill. The bill also authorizes a supplemental appropriation of $35.5 million for the INS in 1983. Annual appropriations of $6 million for fiscal years 1984 through 1986 are authorized to establish a task force to review and investigate employment discrimination complaints resulting from the bill, and a permanent authorization of $10 million a year is provided for the domestic worker recruitment program. In addition, the bill authorizes $35 million for an immigration emergency contingency fund. Also, authorization is provided in fiscal years 1984 through 1987 for payments to states to cover the cost of providing public assistance and education services to legalized aliens. For purposes of this estimate, it is assumed that the full amounts authorized will be appropriated. The bill would also result in additional future federal liabilities through an extension of existing entitlement authority and would require subsequent appropriations to provide the necessary budget authority.

The table below shows the estimated budget authority and outlays required to perform the tasks required by the bill that fall under function 750 (Administration of Justice).

ESTIMATED BUDGET IMPACT—FUNCTION 750

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
INS programs:						
Authorization level	36	717	689	731		
Estimated outlays	32	635	685	726	88	7

ESTIMATED BUDGET IMPACT—FUNCTION 750—Continued

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Immigration emergency contingency fund:						
Authorization level		35				
Estimated outlays						
Domestic worker program:						
Authorization level		10	10	10	10	10
Estimated outlays		10	10	10	10	10
Civil Rights task force:						
Authorization level		6	6	6		
Estimated outlays		6	6	6		
Total authorization level	36	768	705	747	10	10
Total outlays	32	651	701	742	98	17

The INS authorization includes current immigration programs, increased INS enforcement of existing immigration laws, and new Department of Justice (DOJ) programs designed to curtail the flow of illegal immigrants into this country. The authorization levels for these programs exceed the President's amended budget request by $202 million in 1984, $169 million in 1985, and $203 million in 1986. The major part of this increase in expenditures results from the establishment of employer sanctions, increased enforcement of border control laws, and the cost of processing alien applications for permanent residency.

Based on information provided by the INS, CBO estimates that enforcing the employer sanctions provision would require an additional 600 investigation workyears plus first-year startup costs. This would allow the INS to investigate 10,000 employer worksites annually, to detain 16,000 individuals, and to handle any additional workload generated by worksite investigations and apprehensions. The total cost of this provision is estimated to be $40 million to $50 million a year, beginning in 1984. The cost to the INS of increasing border patrols is estimated to be about $85 million in 1984, and $70 to $80 million a year in subsequent years. INS expenditures associated with the processing of applications for permanent residency would result in additional outlays of about $80 million in 1984, falling to about $15 million by 1986. This decline results from the fact that residency applications can be filed only in the first year following the bill's enactment.

While these provisions to control illegal immigration may reduce the number of unauthorized aliens entering this country, the CBO estimate does not include any potential savings for this reason. It has been argued that unauthorized aliens displace U.S. workers, giving rise to added federal transfer costs, for example for unemployment insurance or welfare. The evidence on the extent and type of such displacement, however, is inconclusive. Moreover, the magnitude of the net inflow of unauthorized aliens is unknown and the effectiveness of the bill's provisions to reduce net alien inflows is uncertain.

The bill also requires the federal government to establish a program to assist employers in locating domestic workers for jobs that

would otherwise be performed by temporary nonimmigrant laborers (H–2 workers). A total of $10 million a year beginning in 1984 is authorized to be appropriated for this purpose. In addition, the bill authorizes the appropriation of $6 million a year for fiscal years 1984 through 1986 to the civil rights task force created by the act.

The bill allows the Attorney General, in consultation with the Secretary of State, to impose fees on aliens entering the United States at border facilities to recover the cost of their use of the facilities. Based on information provided by the INS, CBO estimates that an average of 200 million aliens will enter the United States by land, sea, or air in each of the next five years, at a total cost to the INS of $40 million a year at 1983 prices. The INS would be able to recover this cost by imposing a fee of $0.20 per entry in 1983, with small upward adjustments in subsequent years to reflect inflation. CBO estimates that revenues resulting from this fee will total approximately $15 million in 1983, increasing to between $40 million and $50 million a year during the 1984 through 1988 period.

Current law authorizes the Attorney General to collect a fee of $50 for each application submitted by an alien for permanent residency. Since Title III of the bill would result in a dramatic increase in the number of residency applications, revenues from this fee would also increase significantly. Assuming that 2.9 million aliens apply for permanent residency and that the fee is $50, CBO estimates that the government would receive revenues totalling $145 million in 1984. Estimated revenues are summarized in the following table.

ESTIMATED REVENUES

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Entry fee	15	40	45	45	50	50
Residency application fee		145				
Total revenues	15	185	45	45	50	50

Title III ("Legalization") would have a major impact on federal outlays in functions 550 (Health) and 600 (Income Security). First, the provisions that legalize unauthorized aliens would entitle the aliens to receive benefits after five years from a number of federal assistance programs. Such programs as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid, and Food Stamps now require recipients to be citizens or have resident status. Because the provisions of the bill preclude most aliens granted resident status from receiving any program of federal financial assistance based on "financial need," Medicaid, and Food Stamps for a period of five years, federal outlays for these programs generally do not arise until fiscal year 1989, beyond our estimating period. An exception is made in the bill for the aged, blind, and disabled and for medical assistance required "in the interest of public health or because of serious illness or injury." Hence, the cost estimate does show increased federal outlays for

SSI-equivalent benefits and Medicaid-equivalent benefits beginning in fiscal year 1985. In addition, in other programs that are not based on "financial need," such as Disability Insurance (DI), many legalized aliens who would not have collected benefits would now be expected to do so.

Second, Title III provides an authorization for the appropriation of such sums as may be necessary in fiscal years 1984 through 1987 to reimburse states for 100 percent of the costs of public assistance to eligible legalized aliens. Aliens granted resident status are eligible for five years. In addition, there is a four-year authorization to provide for payments to state educational agencies to assist in providing educational services for the legalized alien children in elementary and secondary schools.

Added program outlays in functions 550 and 600 as a result of legalizing unauthorized aliens under Title III of the bill are shown in the table below. These added outlays are estimated to be $164 million, $1,155 million, $1,854 million, $2,288 million, and $1,274 million in fiscal years 1984 through 1988, respectively.

ESTIMATED BUDGET IMPACT—FUNCTIONS 550 AND 600

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
SSI—Equivalent benefit (Function 600):						
Estimated authorization level			20	55	75	85
Estimated outlays			20	55	75	85
Food stamps (Function 600):						
Estimated authorization level			5	5	10	10
Estimated outlays			5	5	10	10
Unemployment compensation (Function 600):						
Required budget authority						
Estimated outlays		5	40	90	110	95
Disability insurance (Function 600):						
Required budget authority		−5	−20	−35	−45	−60
Estimated outlays		70	175	180	185	190
Medicaid—Equivalent benefit (Function 550):						
Estimated authorization level			20	50	70	80
Estimated outlays			20	50	70	80
Medicare (Function 550:)						
Required budget authority				1	5	3
Estimated outlays				25	60	60
Reimbursement of State public assistance costs (Function 600):						
Estimated authorization level		40	285	715	1,005	
Estimated outlays		40	285	715	1,005	
Payments to States for Education costs (Function 600):						
Estimated authorization level		699	736	775	816	
Estimated outlays		49	610	734	773	754
Subtotal: Direct spending provisions:						
Required budget authority		−5	−20	−34	−40	−57
Estimated outlays		75	215	295	355	345
Subtotal: Amounts subject to appropriation action:						
Estimated authorization level		739	1,066	1,600	1,976	175
Estimated outlays		89	940	1,559	1,933	929
Total Functions 550 and 600:						
Estimated authorization level/required budget authority		734	1,046	1,566	1,936	118
Estimated outlays		164	1,155	1,854	2,288	1,274

This estimate is very uncertain. First, it includes estimated authorization levels for the reimbursements to states that are large enough to cover the full estimated costs to states for assistance to the legalized aliens. Less than the full costs, however, may be appropriated. Second, very little is known about either the numbers of unauthorized aliens in the United States or their characteristics.

It has been generally accepted that there were 3 to 6 million unauthorized aliens in the United States in the late 1970's. Some have suggested that there has been a net inflow of such aliens into the United States in the last few years, raising the number of aliens above 3 to 6 million. However, the Census Bureau has recently estimated that only 2 million unauthorized aliens were counted in the 1980 Census. It is unlikely that the undercount of such aliens in the Census would have been high enough to justify estimated numbers of aliens at or above 6 million. Hence, the CBO estimate uses the midpoint of the original 3 to 6 million range: 4.5 million illegal aliens. Of these aliens, it is assumed based on Immigration and Naturalization Service studies that 65 percent have resided continuously in the United States since January 1, 1982, qualifying for permanent residence. Further, the CBO estimate assumes that 60 percent of the potentially eligible aliens would apply for legalization and be granted resident status. The resulting numbers of illegal aliens who would be granted permanent resident total 1,750,000.

At the time these aliens are granted resident status, the intent of the legislation is that they would have to show that they have not been nor are they likely to be "public charges." CBO has assumed that the "public charge" test would be effectively administered. Hence, at the time the aliens would become residents, they would presumable be working. Over time, however, this group of aliens could be expected to resemble the United States population as to recipiency of income support programs. By 1987 and 1988, we have assumed that recipiency rates would resemble those of the United States population for similar age, sex, ethnic origin, and income groupings.

The remaining discussion provides details for the estimates in each individual program shown in the preceding table. SSI program benefits, or their equivalent are assumed to be given to the aged, blind, and disabled, subject to regulations issued by the Attorney General in consultation with the Secretary of the Department of Health and Human Services, as permitted in Title III. These benefits are shown in the preceding table as SSI-equivalent benefits. The CBO cost estimate is based on a recipiency rate of 0.90 percent for the aged and 0.94 percent for the blind and disabled. The recipiency rate for the aged is based on Census data which show 1.80 percent of illegal aliens to be aged, and assumed income eligibility of 100 percent, and a participation rate for the eligible of 50 percent. The recipiency rate for the blind and disabled is based on the current recipiency rate for the United States population. Annual benefits per recipient are estimated to be $1,686 for the aged and $2,688 for the disabled in fiscal year 1985.

Food Stamp outlays are for aged, blind, and disabled recipients of SSI. It is assumed that 60 percent of those SSI participants would also receive food stamps. This is similar to the current rate of par-

ticipation in food stamps among SSI households. The average monthly benefit per person is assumed to be about $36 during 1985.

The estimate of unemployment compensation outlays associated with the bill is made by applying assumed unemployment rate of 9.5 percent, 8.7 percent, 8.0 percent, 7.6 percent, and 7.1 percent for fiscal years 1984 through 1988, respectively, to the estimated adult alien population. These rates are slightly lower than those used to estimate the CBO baseline, because it is assumed that the alien population is less prone to both cyclical and frictional unemployment. According to information from the Justice Department, the bill's prohibition of aliens from receipt of federal financial assiatance would not apply to unemployment benefits. It is assumed that the newly approved residents would receive somewhat lower average weekly benefit amount than the general population because they are most likely working in relatively low-paying jobs.

In the DI program, it is assumed that only one-half of the aliens would become eligible for DI in the 1984 to 1988 period. Several factors contribute to this assumption. First, it is probable that many would not have worked for the required number of calendar quarters needed to receive benefits (20 out of the last 40). Second, others may have improper Social Security numbers, while some might be presently collecting benefits. Thus, an estimated 850,000 to 900,000 aliens would qualify for DI benefits by the end of 1985. Assuming a disability incidence rate paralleling the current group of eligibles, approximately 26,000 new disabled worker recipients would begin receiving benefits by the start of fiscal year 1985. Average family benefits per recipient are estimated to be $7,100 in fiscal year 1984.

Medicaid-equivalent benefits are based on the costs of providing medical care to those individuals who qualify for SSI-equivalent benefits. The medical care costs for this group are assumed to be the same as costs for the current Medicaid SSI population. The costs of Medicare are for those aliens who receive DI.

The estimates for the reimbursements to states of public assistance and education costs assume the appropriation of funds to cover all state costs. As noted earlier, less than the full amounts may be appropriated. In public assistance, the cost estimate assumes that cash and medical benefits currently available at the state and local government level would be provided to the legalized aliens. For cash benefits, it is assumed that 1.3 percent of the aliens would qualify for state and local general assistance programs to persons without children. In addition, those persons eligible for AFDC, but precluded from receiving benefits by this bill, are assumed to receive general assistance (GA), except for aliens living in states like Florida with limited GA programs. AFDC eligibility is based on the assumption that 52 percent of the aliens given permanent resident status are married men and women, reflecting demographic data on illegal aliens, which show about 79 percent to be adults and the majority to be young and male, and marital rates in the United States. Of the married men and women, 4.5 percent of those not of Spanish origin and 17.0 percent of those of Spanish origin are estimated to receive AFDC. These rates of AFDC recipiency are those which currently exist in the program. Monthly GA benefits in fiscal year 1984 are estimated to

be $148 per person. In addition, estimated reimbursement costs include state supplements to SSI. For medical benefits, it is assumed that the GA population would receive benefits that resemble those currently received by the GA and the medically indigent population in the United States.

In education, CBO's estimated cost is based on the estimated number of eligible alien children multiplied by the total projected average per pupil expenditure. Approximately 15 percent of the total new legalized alien population of 1.75 million, or 265,000, are estimated to be children of school age. Little data is available on how many of these children are currently attending school. It is assumed that all 265,000 would be attending school by the fall of 1984. Average per pupil costs are estimated to $2,657 in 1984. As provided for in the bill, the 1984 authorization level assumes advance funding for the 1984–85 school year. Outlays reflect an advance funding spending pattern of 7 percent in the first year, 80 percent in the second year, and the remainder in the third year.

In addition to the effects of legalization on federal outlays, there are potential effects on federal revenues. On the one hand, federal revenues would increase in some of the aliens who are not having income taxes withheld from their wages at present were to have taxes withheld as a result of the legislation. On the other hand, federal revenues would decrease if some of the aliens who are having income taxes withheld are entitled to tax refunds they do not claim but which they would claim if the bill were enacted. Given the uncertainties concerning characteristics of illegal aliens, and rough estimates showing the two effects above to be approximately offsetting, CBO shows no effect of the bill on federal revenues.

6. Estimated cost to State and local governments: By legalizing certain unauthorized aliens currently residing in the U.S., this bill could have sizable effects on state and local government budgets. First, unauthorized aliens are not eligible for welfare programs that are partially- or fully-funded by states and localities. When legalized, these aliens would be eligible for such programs. To offset these costs, the bill would authorize for fiscal years 1984 through 1987 such sums as are necessary to provide reimbursements to states for programs of public assistance to eligible legalized aliens. Second, payments to states are authorized for the same four-year period for education assistance. Because states have usually educated these alien children, and are now required to do so by the Supreme Court in *Plyler* vs. *Doe* (June 15, 1982), the payments to states for education costs would substitute for current spending of states. Hence, the education payments are estimated to result in savings to state and local governments. Third, states are currently spending on public assistance for Cuban and Haitian entrants, which could be reimbursed under the bill and result in savings to the states. The estimated net impact on state and local expenditures is shown in the following table.

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Public assistance						1,035
Education assistance		−49	−610	−734	−773	−754
Cuban and Haitian entrants		−15	−25	−25	−25	
Total estimated State and local outlays		−64	−635	−759	−798	281

In addition, if the provisions of the bill that provide for employer sanctions and other means of reducing the flow of unauthorized aliens into the U.S. are effective, there would be some associated savings to state and local governments. For example, there would be fewer alien children to educate. The CBO cost estimate does not include such savings, given the uncertainties concerning flows of unauthorized aliens into the U.S. and the potential effectiveness of the bill's sanction provisions.

Basis of estimate

Cost to states and localities for providing public assistance to the legalized aliens are shown only for fiscal year 1988. For fiscal years 1984 through 1987, the bill authorizes reimbursements to states for public assistance costs.

For purposes of this estimate, it is assumed that funds for the reimbursements for states' public assistance costs during 1984–87 would be appropriated in full. If less than the full amount is appropriated, states and localities would have added budgetary costs during these years. On the other hand, if the full amount is appropriated, states and localities might experience some budgetary savings to the extent that some of the unauthorized aliens are illegally receiving public assistance at present or to the extent that the reimbursements cover free health care presently being provided to the aliens in public hospitals. Such potential savings are not shown in the cost estimate because of lack of information.

In fiscal year 1988, states and localities would have added public assistance costs in GA, SSI, and medical care, as shown in the table above. There is no authorization in the bill in 1988 for the reimbursement of state public assistance costs. Yet the aliens are precluded from the receipt of federal public assistance benefits by the bill. For purposes of this estimate, it is assumed that states and localities would continue to provide state and local public assistance to eligible aliens. Most state laws and/or constitutions require the provision of benefits to legalized aliens and citizens alike. The state and local government costs shown in the table were developed using the same methodology as for federal costs, which was described earlier.

The payments to states for the education of legalized alien children would save money in those states and localities in which the children live. In most cases, the states and localities have been paying for the education of these children. Hence, for the purposes of this estimate, it is assumed that the payments would decrease expenditures on a dollar for dollar basis.

In fiscal years 1984–1987, states would have reduced expenditures to the extent that the reimbursement covers state public as-

sistance costs for Cuban and Haitian entrants. The states' shares of such costs are presently paid for from state funds. The CBO estimate of the reimbursement includes $15 million in 1984 and $25 million in 1985 through 1987 to cover public assistance costs of the Cuban and Haitian entrants, which become savings to the state and local governments.

7. Estimate comparison: A cost estimate is not yet available from the Administration.

8. Previous CBO estimate: On April 21, 1983, CBO prepared a cost estimate for S. 529, the Immigration Reform and Control Act of 1983, as ordered reported by the Senate Committee on the Judiciary, April 19, 1983. The costs of this bill are shown below:

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987	1988
Net budget impact: Estimated net increase to the deficit	17	80	415	925	1,507	1,225

There are significant differences between the law enforcement provisions contained in H.R. 1510 and S. 529. Unlike S. 529, H.R. 1510 not only authorizes appropriations for new immigration programs, but reauthorizes existing INS programs for fiscal years 1984 through 1986. H.R. 1510 also differs from the Senate verision of the bill in that it does not require the President to establish a secure identification system within three years of the date of enactment. Rather, H.R. 1510 only requires the President to report to the Congress on the possible need for such a system within a three-year period. Finally, H.R. 1510 authorizes the appropriation of $35 million for a contingency fund to be used only in the event of an immigration emergency.

The legalization provisions of H.R. 1510 and S. 529 also differ significantly. First, in H.R. 1510, unauthorized aliens qualify for permanent residence if they arrived in the U.S. before January 1, 1982; in S. 529, they qualify for permanent residence if they arrived before January 1, 1977 and for temporary residence if they arrived before January 1, 1980. Consequently, the House bill would make more aliens eligible for resident status—1,750,000 versus 920,000—and would result in higher outlays for state assistance and federally-funded income security and health programs. Second, S. 529 provides no education assistance to states. Third, S. 529 provides a block grant to states for public assistance costs in 1988 and 1989, as well as in 1984 through 1987 as in H.R. 1510; aliens originally granted permanent resident status, however, are not eligible for these grants beyond 1986. Fourth, S. 529 precludes receipt of federal program benefits based on "financial need" for three years for permanent residents and six years for temporary residents, instead of H.R. 1510's five years. Finally, S. 529 does not except the aged and the disabled or necessary medical care from the prohibition on receipt of federal benefits.

9. Estimate prepared by: Janice Peskin, Charles Essick, Hinda Ripps Chaikind, Stephen Chaikind, Malcolm Curtis, Carmela Pena, Richard Hendrix, Deborah, Kalcevic, Kelly Lukins, John Navratil, and Kathleen O'Connell.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis.)

OVERSIGHT STATEMENT

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee states that it has exercised close oversight with regard to the administration of the Immigration and Nationality Act by both the Departments of State and Justice. In fact, during the 97th Congress the Subcommittee on Immigration, Refugees, and International Law held 7 days of hearings to review the implementation of the Immigration and Nationality Act by these departments. This Committee will continue that close oversight in the 98th Congress and will carefully monitor the implementation of H.R. 1510. Additionally, in its role as authorizing Committee for appropriations for the Immigration and Naturalization Service the Committee will review the administration of this legislation. The bill does require reports to the Congress on various sections of the bill, and the Committee will closely review those reports.

Clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives is inapplicable since no oversight findings and recommendations have been received from the Committee on Government Operations.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will not have a significant inflationary effect on prices and costs in the operation of the national economy.

COMMITTEE RECOMMENDATION

After careful consideration of this legislation, the Committee is of the opinion that this bill should be enacted and accordingly recommends that H.R. 1510, as amended, do pass.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

TABLE OF CONTENTS

TITLE I—GENERAL

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—
(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to each or conduct research, or both, at or for such institution or agency; or (ii) who is coming temporarily to the United States [to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country] *(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, of a temporary or seasonal nature, or (b) to perform other temporary services or labor,* but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

* * * * * * *

(L) an alien who, immediately preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him; [or]

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor

children of any such alien if accompanying him or following to join him[.];

(N)(i) the parent of an alien accorded the status of a special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27)(I)(ii); or

(O) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States to perform temporary services or labor in seasonal agricultural employment (as defined in section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act) under the transitional agricultural labor program provided for under section 214(e).

(27) The term "special immigrant" means—

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 324(a) or 327 of title III, apply for reacquisition of citizenship;

(C)(i) an immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States has been, and who seeks to enter the United States solely for the purpose of carrying on the vocation of minister of a religious denomination, and whose services are needed by such religious denomination having a bona fide organization in the United States; and (ii) the spouse or the child of any such immigrant, if accompanying or following to join him;

(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided,* That the principal officer of a Foreign Service establishment, in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3(a)(1) of the Panama Canal Act of 1979) enters into force, who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty, and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force, has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who on the date on which such

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Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment; [or]

(H) an immigrant, and his accompanying spouse and children, who—

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

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

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry[.]; *or*

(I) an immigrant who entered the United States with the status of a nonimmigrant under paragraph (15)(G)(iv) and who—

(i) is the unmarried son or daughter of an officer or employee of an international organization described in paragraph (15)(G)(iv), and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States within seven years of the date of application for a visa under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 18 years, (II) applies for admission under this subparagraph no later than this twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later; or

(ii) is the surviving spouse of a deceased officer or employee of such an international organization, and (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided in the United States within seven years of the date of application for a visa under this subparagraph and for a period or periods aggregating at least 15 years prior to the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later.

* * * * * * *

(43) The term "administrative law judge" means such a judge appointed under section 107.

* * * * * * *

(b) As used in titles I and II—

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

(A) a legitimate child;

(B) a stepchild, whether or not born our of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) an illegitimate child, by through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother *or natural father;*

* * * * * * *

[(4) The term "special inquiry officer" means any immigration officer who the Attorney General deems specially qualified to conduct specified classes of proceedings, in whole or in part, required by this Act to be conducted by or before a special inquiry officer and who is designated and selected by the Attorney General, individually or by regulation, to conduct such proceedings. Such special inquiry officer shall be subject to such supervision and shall perform such duties, not inconsistent with this Act, as the Attorney General shall prescribe.]

[(5)] *(4)* The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

* * * * * * *

JUDICIAL REVIEW OF ORDERS OF DEPORTATION [AND EXCLUSION], *EXCLUSION, AND ASYLUM*

SEC. 106. (a) [The procedure prescribed by, all the provisions of the Act of December 29, 1950, as amended (64 Stat. 1129; 68 Stat. 961; 5 U.S.C. 1031 et seq.), shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders of deportation heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings under section 242(b) of this Act or comparable provisions of any prior Act]. *Notwithstanding section 279 of this Act, section 1331 of title 28, United States Code, or any other provision of law (except as provided under subsection (b)), the procedures prescribed by and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial*

review of all final orders of exclusion or deportation (including determinations respecting asylum encompassed within such orders and regardless of whether or not the alien is in custody and not including exclusions effected without a hearing pursuant to section 235(b)(1)(B)) made against aliens within (or seeking entry into) the United States, except that—

(1) a petition for review may be filed [not later than six months from the date of the final deportation order or from the effective date of this section, whichever is the later] *by the alien involved or the Service not later than 60 days from the date of the final order;*

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

(3) *in the case of review sought by an individual petitioner,* the action shall be brought against the Immigration and Naturalization Service, as respondent. Service of the petition to review shall be made upon the Attorney General of the United States and upon the official of the Immigration and Naturalization Service in charge of the Service district in which the office of the clerk of the court is located. The service of the petition for review upon such official of the Service shall stay the *exclusion or* deportation of the alien pending determination of the petition by the court, unless the court otherwise directs;

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

(B) to the extent that an order relates to a determination on an application for asylum, the court shall only have jurisdiction to review (i) whether the jurisdiction of the administrative law judge or the United States Immigration Board was properly exercised, (ii) whether the asylum determination was made in accordance with applicable laws and regulations, (iii) the constitutionality of the laws and regulations pursuant to which the determination was made, and (iv) whether the decision was arbitrary or capricious;

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

if such proceedings were originally initiated in the district court under the provisions of section 2201 of title 28, United States Code. Any such petitioner shall not be entitled to have such issue determined under section 360(a) of this Act or otherwise;

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

(7) nothing in this section shall be construed to require the Attorney General to defer deportation *or exclusion* of an alien after the issuance of a deportation *or exclusion* order because of the right of judicial review of the order granted by this section, or to relieve any alien from compliance with subsections (d) and (e) of section 242 of this Act. Nothing contained in this section shall be construed to preclude the Attorney General from detaining or continuing to detain an alien or from taking him into custody pursuant to [subsection (c) of section 242 of this Act] *section 235(b) or 242(c)* at any time after the issuance of [a deportation order;] *an exclusion or deportation order; and*

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

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

[(b) Notwithstanding the provisions of any other law, an alien against whom a final order of exclusion has been made heretofore or hereafter under the provisions of section 236 of this Act or com-

parable provisions of any prior Act may obtain judicial review of such order by habeas corpus proceedings and not otherwise.]

(b)(1)(A) Nothing in the provisions of this section shall be construed as limiting the right of habeas corpus under chapter 153 of title 28, United States Code. Petitions for habeas corpus based upon custody effected pursuant to this Act may be brought individually or on a multiple party basis as the interests of judicial efficiency and justice may require.

(B) Nothing in this section shall preclude a class action under section 279 or under section 1331 of title 28, United States Code where—

(i) the action alleges a pattern or practice of violations of provisions of the Constitution;

(ii) administrative remedies have not been exhausted, but the exhaustion of administration remedies is inappropriate; and

(iii) a delay of a determination on the issues presented pending judicial review under subsection (a) would significantly and irreparably impair the rights of the class members in the proceedings, and a timely determination of such rights would be most consistent with providing for the efficient judicial review of the issues presented.

This subparagraph shall not be construed as permitting district courts to review individual determinations in exclusion, deportation, or asylum cases. In any action under this subparagraph, the court shall, to the extent practicable, prevent unnecessary delays in the conduct of the exclusion, deportation, or asylum proceedings.

(2) No court shall have jurisdiction to entertain a petition relating to a determination concerning asylum under section 208 except in a petition for review under subsection (a).

(3) Notwithstanding any other provision of law, no court of the United States shall have jurisdiction to review determinations of administrative law judges or of the United States Immigration Board respecting the reopening or reconsideration of exclusion or deportation proceedings or asylum determinations outside of such proceedings, the reopening of an application for asylum because of changed circumstances, the Attorney General's denial of a stay of execution of an exclusion or deportation order, or a redetermination to exclude an alien from entering the United States under section 235(b)(1)(B)(ii).

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

UNITED STATES IMMIGRATION BOARD; USE OF ADMINISTRATIVE LAW JUDGES

SEC. 107. (a)(1) There is established, as an independent agency in the Department of Justice, a United States Immigration Board (hereinafter in this section referred to as the "Board") composed of a Chairman and six other members appointed by the President by and with the advice and consent of the Senate.

(2) The term of office of the Chairman and all other members of the Board shall be six years except that—

(A) of the members first appointed under this subsection, two shall be appointed for a term of two years, two shall be appointed for a term of four years, and three shall be appointed for a term of six years,

(B) a member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term, and

(C) a member may serve after the expiration of his term until reappointed or his successor has taken office.

(3) A member of the Board may be removed by the President only for neglect of duty or malfeasance in office.

(4) Members of the Board (other than the Chairman) are entitled to receive compensation at the rate or hereafter provided for grade GS–17 of the General Schedule, under section 5332 of title 5, United States Code: The Chairman is entitled to receive compensation at the rate now or hereafter provided for grade GS–18 of such General Schedule.

(5) The Chairman shall be responsible on behalf of the Board for the administrative operations of the Board. The Board shall establish rules of practice and procedure for itself and for the administrative law judges.

(b)(1) The Board shall hear and determine appeals from—

(A) final decisions of administrative law judges under this Act, other than a redetermination excluding an alien under section 235(b)(1)(B)(ii) or a determination granting voluntary departure under section 244(e) within a period of at least 30 days if the sole ground of appeal is that a greater period of departure time should have been fixed;

(B) decisions on applications for the exercise of the discretionary authority contained in section 212(c) or section 212(d) (3)(B);

(C) decisions involving the imposition of administrative fines and penalties under title II of this Act, including mitigation thereof;

(D)(i) decisions on petitions filed in accordance with section 204, other than petitions to accord preference status under paragraph (3) or (6) of section 203(a) or petitions on behalf of a child described in section 101(b)(1)(F), and

(ii) decisions on requests for revalidation and decisions revoking approval of such petitions under section 205;

(E) determinations relating to bond, parole, or detention of an alien under sections 242(a) and 242(c); and

(F) such other administrative decisions and determinations under this Act as the Attorney General may provide by regulation.

(2) Three members of the Board constitute a quorum of the Board, except that the Chairman (or any member of the Board designated by the Chairman) is empowered to decide nondispositive motions.

(3) The Board shall act in panels of three or more members or in banc (as designated by the Chairman in accordance with the rules of the Board). A final decision of such a panel shall be considered to be a final decision of the Board.

(4)(A) Appeals to the Board from final orders of deportation or exclusion (including an order respecting asylum contained in such an order) shall be filed not later than 20 days after the date of the final order.

(B) The Board shall review the decision of an administrative law judge based solely upon the administrative record upon which the decision is made and the findings of fact in the judge's order, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive.

(5) A final decision of the Board shall be binding on all administrative law judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by a court of the United States.

(6) In a case in which the Board is considering an appeal of a decision of an administrative law judge respecting an application for asylum, the Board shall render its decision on the appeal not later later than 60 days after the date the appeal is filed.

(c)(1) The Chairman, in accordance with sections 3105 and 5108 and other provisions of title 5, United States Code, relating to administrative law judges in the competitive service, shall—

(A) appoint administrative law judges, and

(B) designate one such judge to serve as chief administrative law judge.

(2) In accordance with rules established by the Board, the chief administrative law judge—

(A) shall have responsibility for the administrative activities affecting administrative law judges, and

(B) may designate any administrative law judge in active service to hear and decide any cases described in paragraph (3).

(3) Administrative law judges shall hear and decide—

(A) exclusion cases under section 236 and 360(c),

(B) deportation and suspension of deportation cases under sections 242, 243, and 244,

(C) rescission of adjustment of status cases under section 246,

(D) with respect to judges designated to hear such cases, applications for asylum under section 208,

(E) the assessment of civil penalties under section 274A, and

(F) such other cases arising under this Act as the Attorney General may provide by regulation.

Administrative law judges may also, without a formal hearing, make redeterminations pursuant to section 235(b)(1)(B)(ii).

(4) In considering and deciding cases coming before them, administrative law judges may administer oaths, shall record and receive evidence and render findings of fact and conclusions of law, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as the Attorney General

may specify for the just and equitable disposition of cases coming before such judges.

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

NUMERICAL LIMITATIONS

SEC. 201. (a) Exclusive of special immigrants defined in section 101(a)(27), immediate relatives specified in subsection (b) of this section, *certain aliens provided immigrant visa numbers under subsection (c),* and aliens who are admitted or granted asylum under section 207 or 208, the number of aliens born in any foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, shall not in any of the first three quarters of any fiscal year exceed a total of seventy-two thousand and shall not in any fiscal year exceed two hundred and seventy thousand: *Provided,* That to the extent that in a particular fiscal year the number of aliens who are issued immigrant visas or who may otherwise acquire the status of aliens lawfully admitted for permanent residence, and who are subject to the numerical limitations of this section, together with the aliens who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the annual numerical limitation in effect pursuant to this section for such year, the Secretary of State shall reduce to such extent the annual numerical limitation in effect pursuant to this section for the following fiscal year.

* * * * * * *

(c) Whenever the Secretary of State estimates that for a fiscal year at least 90 percent of the maximum number of visas will be made available under section 202(a) to natives of either of the foreign states contiguous to the United States, then, without regard to the numerical limitations specified in subsection (a), an additional number of aliens born in that foreign state may also be issued immigrant visas or may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence, which number shall not in any of the first three quarters of the fiscal year exceed a total of 5,500 and shall not in the fiscal year exceed 20,000.

NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

SEC. 202. (a) No person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of his race, sex, nationality, place of birth, or place of residence, except as specifically provided in section 101(a)(27), section 201(b) *and (c),* and section 203: *Provided,* That the total number of immigrant visas made available to natives of any single foreign state under paragraphs (1) through (7) of section 203(a) shall not exceed 20,000 in any fiscal year: *And provided further,* That to the extent that in a particular fiscal year the number of such natives who are issued immigrant visas or who may otherwise acquire the

status of aliens lawfully admitted for permanent residence and who are subject to the numerical limitation of this section, together with the aliens from the same foreign state who adjust their status to aliens lawfully admitted for permanent residence pursuant to subparagraph (H) of section 101(a)(27) or section 19 of the Immigration and Nationality Amendments Act of 1981, exceed the numerical limitation in effect for such year pursuant to this section, the Secretary of State shall reduce to such extent the numerical limitation in effect for the natives of the same foreign state pursuant to this section for the following fiscal year.

* * * * * * *

(c) Any immigrant born in a colony or other component or dependent area of a foreign state overseas form the foreign state, other than a special immigrant, as defined in section 101(a)(27), or an immediate relative of a United States citizen, as defined in section 201(b), shall be chargeable for the purpose of the limitation set forth in section 202(a), to the foreign state, and the number of immigrant visas available to each such colony or other component or dependent area shall not exceed [six hundred] *three thousand* in any one fiscal year.

* * * * * * *

(e) Whenever the maximum number of visas have been made available [under section 202] *under subsection (a)* to natives of any single foreign state as defined in subsection (b) of this section or any dependent area as defined in subsection (c) of this section in any fiscal year, in the next following fiscal year a number of visas, not to exeed 20,000, in the case of a foreign state or [600] *3,000* in the case of a dependent area, shall be made available and allocated as follows:

(1) Visas shall first be made available, in a number not to exceed 26 per centum of the number specified in this subsection, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

(2) Visas shall next be made available, in a number not to exceed 26 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are the spouses, unmarried sons, or unmarried daughters of an alien lawfully admitted for permanent residence.

(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services in the professions, sciences, or arts are sought by an employer in the United States.

(4) Visas shal next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (3), to qualified immigrants who are the

married sons or the married daughters of citizens of the United States.

(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in this subsection, plus any visas not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in this subsection, to qualified immigrants capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

(7) Visas so allocated but not required for the classes specified in paragraphs (1) through (6) shall be made available to other qualified immigrants striclty in the chronological order in which they qualify.

This subsection shall not apply to visas made available under section 201(c) and allotted under section 203(f).

ALLOCATION OF IMMIGRANT VISAS

SEC. 203. (a) * * *

* * * * * * *

(f)(1) Aliens who are subject to the numerical limitations specified in section 201(c) shall be allotted visas in the same manner, subject to the same conditions, and in the same order as aliens who are subject to the numerical limitations specified in section 201(a) are allotted visas under subsection (a), except that the percentage limitations specified in paragraphs (1) through (6) thereof shall not apply.

(2) Requirements respecting acquisition of preference status by reason of a relationship or occupational qualification described in a paragraph of subsection (a) shall apply, in the same manner, for the acquisition of preference status under paragraph (1) of this subsection.

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a) * * *

* * * * * * *

(g)(1) * * *

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(3) In considering petitions filed under paragraph (1), the Attorney General shall—

(A) consult with appropriate governmental officials and officials of private voluntary organizations in the country of the alien's birth in order to make the determinations described in subparagraphs (A) and [(C)(i) of paragraph 2] *(C)(ii) of paragraph (2)*; and

(B) consider the physical appearance of the alien and any evidence provided by the petitioner, including birth and baptismal certificates, local civil records, photographs of, and letters

or proof of financial support from, a putative father who is a citizen of the United States, and the testimony of witnesses, to the extent it is relevant or probative.

* * * * * * *

ASYLUM PROCEDURE

SEC. 208. [(a) The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A).] *(a)(1)(A) Except as provided in subparagraph (B), any alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.*

(B)(i) In the case of an alien against whom exclusion or deportation proceedings have been instituted, the alien's application for asylum may not be considered unless—

(I) not later than 14 days after the date of the service of the notice instituting such proceedings, the alien has filed notice of intention to file an application for asylum and, not later than 30 days after the date of filing such notice of intention, the alien has actually filed the application for asylum,

(II) the alien can make a clear showing, to the satisfaction of the administrative law judge conducting the proceeding, that changed circumstances after the date of the notice instituting the proceeding have resulted in a change in the basis for the alien's claim for asylum, or

(III) the administrative law judge determines, solely in his discretion, that the interests of justice require the consideration of the application.

(ii) An alien who has previously applied for asylum and had such application denied may not again apply for asylum unless the alien can make a clear showing that changed circumstances after the date of the denial of the previous application have resulted in a change in the basis for the alien's claim for asylum.

(2) Applications for asylum shall be considered before administrative law judges who are specially designated by the United States Immigration Board as having special training in international relations and international law. An individual who has served as a special inquiry officer under this title before the date of the enactment of the Immigration Reform and Control Act of 1983 may not be designated to hear applications under this section, unless the individual has received such special training after the date of the enactment of such Act.

(3)(A)(i) Upon the filing of an application for asylum, an administrative law judge, at the earliest practicable time and after consultation with the attorney for the Government and the applicant, shall set the application for hearing on a day certain or list it for trial on a weekly or other short-term hearing calendar, so as to assure a speedy hearing.

(ii) Unless the applicant consents in writing to the contrary, the hearing on the asylum application shall commence not later than

45 days after the date the application has been filed. The holding of an asylum hearing shall not delay the holding of any exclusion or deportation proceeding.

(iii) In the case of an alien who has filed an application for asylum and who has been continuously detained pursuant to section 235 or 242 since the date the application was filed, if a hearing on the application is not held on a timely basis under clause (ii) or a decision on the application rendered on a timely basis under subparagraph (D), and if actions or inaction by the applicant have not resulted in unreasonable delay in the proceedings, the Attorney General shall provide for the release of the alien on parole subject to such reasonable conditions as the Attorney General may establish to assure the presence of the alien at any appropriate proceedings unless the Attorney General has reason to believe that the release of the alien would pose a danger to any other person or to the community.

(B)(i) A hearing on the asylum application shall be open to the public, unless the applicant requests that it be closed to the public.

(ii) At the time of filing of notice of intention to apply for asylum, the alien shall be advised of the privilege of being represented by counsel (in accordance with section 292) and of the availability of legal services.

(iii) The applicant is entitled to have the asylum hearing closed to the public, to present evidence and witnesses in his own behalf, to examine and object to evidence against him, and to cross-examine witnesses presented by the Government.

(C) A complete record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The hearing shall be recorded verbatim. The Attorney General, and the United States Immigration Board, shall provide that a transcript of a hearing held under this section is made available not later than 10 days after the date of completion of the hearing.

(D) The administrative law judge shall render a determination on the application not later than 30 days after the date of completion of the hearing. The determination of the administrative law judge shall be based only on the evidence produced at the hearing.

(E) The Attorney General shall allocate sufficient resources so as to assure that applications for asylum are heard and determined on a timely basis under this paragraph.

(4) An alien may be granted asylum only if the administrative law judget determnes that the alien (A) is a refugee within the meaning of section 101(a)(42) (A), and (B) does not meet a condition described in one of the subparagraphs of section 243(h)(2).

(5) The burden of proof shall be upon the alien applying for asylum to establish the alien's eligibility for asylum.

(6) After making a determination on an application for asylum under this section, an administrative law judge may not reopen the proceeding at the request of the applicant except upon a clear showing that, since the date of such determination, changed circumstances have resulted in a change in the basis for the alien's claim for asylum.

(b) Asylum granted under subsection (a) may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that the alien *(1)* is no longer a

refugee within the meaning of section 101(a)(42)(A) owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided, *or (2) meets a condition described in one of the subparagraphs of section 243(h)(2).*

(c) A spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E)) of an alien who is granted asylum under subsection (a) may, if not otherwise eligible for asylum under such subsection, be granted the same status as the alien if accompanying, or following to join, such alien.

(d) The procedures set forth in this section shall be the sole and exclusive procedure for determining asylum.

(e) The Attorney General shall report to the Congress annualy on the number of applications for asylum (by country of nationality of applicant) (1) submitted during the year, (2) approved during the year, (3) denied during the year, and (4) pending at the end of the year, and shall also include in such report such other general information relating to such applications as may be appropriate.

* * * * * * *

PRESIDENTIAL REPORT ON IMMIGRATION ADMISSIONS AND IMPACTS

SEC. 210. (a) The President shall transmit to the Congress, not later than January 1, 1987, and not later than January 1st of every third year thereafter, a comprehensive report on the impact of the economy, labor market, housing market, eductional system, social services, foreign policy, environmental quality, resources, and population growth rate of the United States of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the preceding three-year period and on the projected impact (based on reasonable estimates substantiated by the best available evidence) on such factors of admissions and other entries during the succeeding five-year period.

(b)(1) The President shall include in such report the number and classification of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preferences classifications, or as nonimmigrants), paroled, or granted asylum during the relevant period as well as a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 241.

(2) The President also shall include in such report any appropriate recommendations on changes in numerical limitations or other policies under this title bearing on the admission and entry of such aliens to the United States.

(c) Not later than 90 days after the date of receipt of such a report, the Committees on the Judiciary of the House of Representatives and of the Senate shall hold public hearings to review the findings and recommendations contained in such report.

CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVER OF INADMISSIBILITY

SEC. 212. (a) Except as otherwise provided in the Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(1) * * *

* * * * * * *

(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens *(i)* who are members of the teaching profession [or], *(ii)* who have exceptional ability in the sciences or the arts, *or (iii) who have doctoral degrees and are seeking to enter the United States to be employed as researchers at colleges, universities, or other nonprofit educational or research institutions*), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in section 203(a) (3) and (6), and to nonpreference immigrant aliens described in section 203(a)(7);

* * * * * * *

[(e) No person] *(e)(1) No person* (*A*) admitted under section 101(a)(15)(J) or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Secretary of State pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, *or (B) except as provided in paragraph (2), admitted under subparagraph (F) or (M) of section 101(a)(15) or acquiring such status after admission,* shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States [: *Provided,* That upon]. *Upon* the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse

or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest[: *And provided further,* That except]. *Except* in the case of an alien described in [clause (iii),] *clause (A)(iii) or clause (B) of the first sentence,* the Attorney General may, upon the favorable recommendation of the Secretary of State, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien. *The Attorney General may waive such two-year foreign residence requirement in the case of an alien described in clause (B) of the first sentence who is an immediate relative (as specified in section 201(b)).*

(2) The Attorney General, in the case of an alien described in clause (B) of the first sentence of paragraph (1) who has the status of a nonimmigrant under section 101(a)(15)(F), may waive the two-year foreign residence requirement of paragraph (1) if the Attorney General determines that the waiver is in the public interest and that—

(A) the alien—

(i)(I) has obtained an advanced degreee from a college or university in the United States and has been offered a position on the faculty (including as a researcher) of a college or university in the United States in the field in which he obtained the degree,

(II) has obtained a degree in a natural science, mathematics, computer science, or an engineering field from a college or university in the United States and has been offered a research or technical position by a employer in the field in which he obtained the degree, or

(III) has obtained an advanced degree in business or economics, has exceptional ability in business or economics from a college or university in the United States, and has been offered employment which requires such exceptional ability;

(ii) is applying for a visa as an immigrant described in paragraph (3) or (6) of section 203(a),

(iii) has received a certification under section 212(a)(14) with respect to position referred to in clause (i), and

(iv) has applied for a waiver under this paragraph before September 30, 1989; or

(B) the alien—

(i) has obtained a degree in a natural science, mathematics, computer science, or in a field of engineering or business,

(ii) is applying for a visa as a nonimmigrant described in section 101(a)(15)(H)(iii),

(iii) will receive no more than three years of training by a firm, corporation, or other legal entity in the United States,