*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.*

* * * * * * *

*(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 90 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 30-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*

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*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 90 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 lien 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 30-day period described in paragraph (2)(A) and ending on the last day of the first fiscal year which begins after such 30-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 2.0 percent 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 percent 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 percent 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 previ-*

*ous full fiscal years was less than 2.0 percent 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 percent 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 15 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 waiver does not present a threat to the welfare, safety, or security of the United States.*

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney

General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248, such alien will depart from the United States. *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. 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 90 days or 15 days, respectively, from the date of admission.*

* * * * * * *

(c)(1) The question of importing any alien as a nonimmigrant under section 101(a)(15) (H) or (L) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. *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 20 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 accomodations, 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 72 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 (c), 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).*

* * * * * * *

*(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 agriculture 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 agriculture 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 percent, 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 pro-*

*hibit 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.*

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## CHAPTER 3—ISSUANCE OF ENTRY DOCUMENTS

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### APPLICATIONS FOR VISAS

SEC. 222. (a) * * *

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(f)*(1)* The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter *(whether as an immigrant, nonimmigrant, refugee, or otherwise)* the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that in the discretion of the Secretary of State certified copies of such records may be made available to a court which certifies that the information contained in such records is needed by the court in the interest of the ends of justice in a case pending before the court.

*(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 relevant to that particular application, subparagraph (A) shall not be construed as limiting that applicant's access to such records or documents except insofar as such records or documents otherwise are exempt from disclosure under section 552(b) of title 5, United States Code.*

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## CHAPTER 4—PROVISIONS RELATING TO ENTRY AND EXCLUSION

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### PHYSICAL AND MENTAL EXAMINATION

SEC. 234. The physical and mental examination of arriving aliens (including alien crewmen) shall be made by medical offiers of the United States Public Health Service, who shall conduct all medical examinations and shall certify, for the information of the immigration officers and the [special inquiry officers] *administrative law judges,* any physical and mental defect or disease observed by such medical officers in any such alien. If medical officers of the United States Public Health Service are not available, civil surgeons of not less than four years' professional experience may be employed for such service upon such terms as may be prescribed by the Attorney General. Aliens (including alien crewmen) arriving at ports of the United States shall be examined by at least one such medical officer or civil surgeon under such administrative regulations as the Attorney General may prescribe, and under medical regulations prepared by the Surgeon General of the United States Public Health Service. Medical officers of the United States Public Health Service who have had special training in the diagnosis of insanity and mental defects shall be detailed for duty or employed at such ports of entry as the Attorney General may designate, and such medical officers shall be provided with suitable facilities for the detention and examination of all arriving aliens who it is suspected may be excludable under paragraphs (1), (2), (3), (4), or (5) of section 212(a), and the services of interpreters shall be provided for such examination. Any alien certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) may appeal to a board of medical officers of the United States Public Health Service, which shall be convened by the Surgeon General of the United States Public Health Service, and any such alien may introduce before such board on expert medical witness at his own cost and expense.

### INSPECTION BY IMMIGRATION OFFICERS

SEC. 235. (a) The inspection, other than the physical and mental examination, of aliens (including alien crewmen) seeking admission or readmission to, or the privilege of passing through the United

States shall be conducted by immigration officers, except as otherwise provided in regard to [special inquiry officers] *administrative law judges*. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are hereby authorized and empowered to board and search any aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States. The Attorney General and any immigration officer[, including special inquiry officers,] *and any administrative law judge* shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and, where such action may be necessary, to make a written record of such evidence. Any person coming into the United States may be required to state under oath the purpose or purposes for which he comes, the length of time he intends to remain in the United States, whether or not be intends to remain in the United States permanently and, if an alien, whether he intends to become a citizen thereof, and such other items of information as will aid the immigration officer in determining whether he is a national of the United States or an alien and, if the latter, whether he belongs to any of the excluded classes enumerated in section 212. The Attorney General and any immigration officer[, including special inquiry officers,] shall have power to require by subpena the attendance and testimony of witnesses before immigration officers [and special inquiry officers] *and administrative law judges* and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act, and the administration of the Service, and to that end may invoke the aid of any court of the United States. Any United States district court within the jurisdiction of which investigations or which investigations or inquiries are being conducted by an immigration officer or [special inquiry officer] *administrative law judge* may, in the event of neglect or refusal to respond to a subpena issued under this subsection or refusal to testify before an immigration officer or [special inquiry officer] *administrative law judge*, issue an order requiring such persons to appear before an immigration officer or [special inquiry officer,] *administrative law judge*, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

[(b) Every alien (other than an alien crewman), and except as otherwise provided in subsection (c) of this section and in section 273(d), who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer. 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 a special inquiry officer for further inquiry.]

*(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 State,*

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

*(III) does not indicate an intention to apply for aslyum 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 accordace with section 291) 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 admistrative law judge (after a non-adversarial, 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 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.*

(c) Any alien (including an alien crewman) who may appear to the examining immigration officer or to [the special inquiry officer during the examination before either of such officers] *during the examination or an administrative law judge during an exclusion hearing* to be excludable under paragraph (27), (28), or (29) of section 212(a) shall be temporarily excluded, and no further [inquiry by a special inquiry officer] *examination or exclusion hearing* shall be conducted until after the case is reported to the Attorney General together with any such written statement and accompanying information, if any, as the alien or his representative may

desire to submit in connection therewith and such an [inquiry or further inquiry] *examination or hearing* is directed by the Attorney General. If the Attorney General is satisfied that the alien is excludable under any of such paragraphs on the basis of information of a confidential nature, the disclosure of which the Attorney General, in the exercise of his discretion, and after consultation with the appropriate security agencies of the Government, concludes would be prejudicial to the public interest, safety, or security, he may in his discretion order such alien to be excluded and deported without [any inquiry or further inquiry by a special inquiry officer.] *any examination or hearing.* Nothing in this subsection shall be regarded as requiring [an inquiry before a special inquiry officer] *an exclusion hearing before an administrative law judge* in the case of an alien crewman.

EXCLUSIONS OF ALIENS

SEC. 236. (a) [A special inquiry officer] *An administrative law judge* shall conduct proceedings under this section[, administer oaths, present and receive evidence, and interrogate, examine, and cross-examine the alien or witnesses]. He shall have authority in any case to determine whether an arriving alien who has been detained for [further inquiry] *an exclusion hearing* under section 235 shall be allowed to enter or shall be excluded and deported. The determination of such special inquiry officer shall be based only on the evidence produced at the [inquiry] *hearing.* [No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this section) in prosecuting functions.] Proceedings before [a special inquiry officer] *an administrative law judge* under this section shall be conducted in accordance with this section, the applicable provisions of sections 235 and 287(b), and such [regulations as the Attorney General shall prescribe] *rules as the United States Immigration Board shall establish,* and shall be the sole and exclusive procedure for determining admissibility of a person to the United States under the provisions of this section. At such inquiry, which shall be kept separate and apart from the public, the alien may have one friend or relative present, under such conditions as may be prescribed by the Attorney General. A complete record of the proceedings and of all testimony and evidence produced at such [inquiry] *hearing,* shall be kept.

(b) [From a decision of a special inquiry officer excluding an alien, such alien may take a timely appeal to the Attorney General] *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,* and any such alien shall be advised of his right to take such appeal. No appeal may be taken from a temporary exclusion under section 235(c). [From a decision of the special inquiry officer to admit an alien, the immigration officer in charge at the port where the inquiry is held may take a timely appeal to the Attorney General.] An appeal by the

alien, or such officer in charge, shall operate to stay any final action with respect to any alien whose case is so appealed until the final decision of the [Attorney General] *United States Immigration Board* is made. Except as provided in section 235(c) such decision shall be rendered solely upon the evidence adduced before the [special inquiry officer] *administrative law judge.*

(c) Except as provided in subsections (b) or (d), in every case where an alien is excluded from admission into the United States, under this Act or any other law or treaty now existing or hereafter made, the decision of [a special inquiry officer] *an administrative law judge* shall be final unless reversed on appeal [to the Attorney General].

(d) If a medical officer or civil surgeon or board of medical officers has certified under section 234 that an alien is afflicted with a disease specified in section 212(a)(6), or with any mental disease, defect, or disability which would bring such alien within any of the classes excluded form admission to the United States under paragraphs (1), (2), (3), (4), or (5) of section 212(a), the decision of the [special inquiry officer.] *administrative law judge* shall be based solely upon such certification. No alien shall have a right to appeal from such an excluding decision of [a special inquiry officer] *an administrative law judge.* If an alien is excluded by a special inquiry officer because of the existence of a physical disease, defect, or disability, other than one specified in section 212(a)(6), the alien may appeal from the excluding decision in accordance with subsection (b) of this section, and the provisions of section 213 may be invoked.

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## CHAPTER 5—DEPORTATION; ADJUSTMENT OF STATUS

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### APPREHENSION AND DEPORTATION OF ALIENS

SEC. 242. (a) * * *

(b) [A special inquiry officer] *An administrative law judge* shall conduct proceedings under this section to determine the deportability of any alien, and [shall administer oaths, present and receive evidence, interrogate, examine, and cross-examine the alien or witnesses, and as authorized by the Attorney General.] shall make determinations, including orders of deportation. Determination of deportability in any case shall be made only upon a record made in a proceeding before [a special inquiry officer] *an administrative law judge,* at which the alien shall have reasonable opportunity to be present, unless by reason of the alien's mental incompetency it is impracticable for him to be present, in which case the [Attorney General shall prescribe] *United States Immigration Board shall establish* necessary and proper safeguards for the rights and privileges of such alien. If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend or remain in attendance at such proceeding, the [special inquiry officer] *administrative law judge* may proceed to a determination in like manner as if the

alien were present. [In any case or class of cases in which the Attorney General believes that such procedure would be of aid in making a determination, he may require specifically or by regulation that an additional immigration officer.] *An immigration officer* shall be assigned to present the evidence on behalf of the United States and [in such case such additional immigration officer] shall have authority to present evidence, and to interrogate, examine and cross-examine the alien or other witnesses in the proceedings. [Nothing in the preceding sentence shall be construed to diminish the authority conferred upon the special inquiry officer conducting such proceedings. No special inquiry officer shall conduct a proceeding in any case under this section in which he shall have participated in investigative functions or in which he shall have participated (except as provided in this subsection) in prosecuting functions.] Proceedings before [a special inquiry officer] *an administrative law judge* acting under the provisions of this section shall be in accordance with such regulations, not inconsistent with this Act, as the Attorney General shall prescribe *rules as are established by the United States Immigration Board.* Such [regulations] *rules* shall include requirements that—

(1) the alien shall be given notice, reasonable under all the circumstances, of the nature of the charges against him and of the time and place at which the proceedings will be held;

(2) the alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;

(3) the alien shall have a reasonable opportunity to examine the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; and

(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

The procedure so prescribed shall be the sole and exclusive procedure for determining the deportability of an alien under this section. In any case in which an alien is ordered deported from the United States under the provisions of this Act, or of any other law or treaty, the decision of the [Attorney General shall be final] *administrative law judge shall be final unless reversed on appeal.* In the discretion of the Attorney General, and under such regulations as he may prescribe, deportation proceedings, including issuance of a warrant of arrest, and a finding of deportability under this section need not be required in the case of any alien who admits to belonging to a class of aliens who are deportable under section 241 if such alien voluntarily departs from the United States at his own expense or is removed at Government expense as hereinafter authorized, unless the Attorney General has reason to believe that such alien is deportable under paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), (18), or (19) of section 241(a). If any alien who is authorized to depart voluntarily under the preceding sentence is financially unable to depart at his own expense and the Attorney General deems his removal to be in the best interest of the United

States, the expense of such removal may be paid from the appropriation for the enforcement of this Act.

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COUNTRIES TO WHICH ALIENS SHALL BE DEPORTED; COST OF DEPORTATION

SEC. 243. (a) * * *

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(h)(1) * * *

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*(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.*

* * * * * * *

SUSPENSION OF DEPORTATION; VOLUNTARY DEPARTURE

SEC. 244. (a) * * *

(b)*(1)* The requirement of continuous physical presence in the United States specified in paragraphs (1) and (2) of subsection (a) of this section shall not be applicable to an alien who (A) has served for a minimum period of twenty-four months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and (B) at the time of his enlistment or induction was in the United States.

*(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).*

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) * * *

* * * * * * *

(c) The provisions of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status *or who is not in legal immigration status on the date of filing the application for adjustment of status;* [or] (3) any alien admitted in transit without visa under section 212(d)(4)(C)*; 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.*

* * * * * * *

*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 90 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 end of the 30-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 organziations 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 paragraphs (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 unit, 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 es-*

*tablishing 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 30 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 the 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 65 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 consultation 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.*

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CHANGE OF NONIMMIGRANT CLASSIFICATION

SEC. 248. The Attorney General may, under suc conditions as he may prescribe, authorize a change from any nonimmigrant classification to any ofther nonimmigrant classification in the case of any alien lawfully admitted to the United State as a nonimmigrant who is continuing to maintain that status, except in the case of—

(1) an alien classified as a nonimmigrant under paragraph (C), (D), or (K) of section 101(a)(5),

(2) an alien classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who came to the United States or acquired such classification in order to receive graduate medical eduation or training, [and]

(3) an alien (other than an alien described in paragraph (2) classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who is subject to the two-year foreign residence requirement of section 212(e) and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 101(a)(15) to a classification under subparagraph (A) or (G) of such section[.], *and*

*(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.*

RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JULY 1, 1924 OR [JUNE 30, 1948] *JANUARY 1, 1973*

SEC. 249. A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulation as he may prescribe, be made in the case of any alien, as of the date of the approval of his application or, if entry occurred prior to June 1, 1924, as of the date of such entry, if no such record is otherwise available and such alien shall satisfy the Attorney General that he is not inadmissible under section 212(a) insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotic laws or smugglers of aliens, and he establishes that he—

(a) entered the United States prior to [June 30, 1948;] *January 1, 1973;*

(b) has had his residence in the United States continuously since such entry;

(c) is a person of good moral character; and

(d) is not ineligible to citizenship.

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## CHAPTER 8—GENERAL PENALTY PROVISIONS

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### UNLAWFUL BRINGING OF ALIENS INTO UNITED STATES

SEC. 273. (a) * * *

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(d) The owner, charterer, agent, consignee, commanding officer, or master of any vessel or aircraft arriving at the United States from any place outside thereof who fails to detain on board or at such other place as may be designated by an immigration officer any alien stowaway until such stowaway has been inspected by an immigration officer, or who fails to detain such stowaway on board or at such other designated place after inspection if ordered to do so by an immigration officer, or who fails to deport such stowaway on the vessel or aircraft on which he arrived or on another vessel or aircraft at the expense of the vessel or aircraft on which he arrived when required to do so by an immigration officer, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each alien stowaway, in respect of whom any such failure occurs. Pending final determination of liability for such fine no such vessel or aircraft shall be granted clearance, except that clearance may be granted upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs. The provisions of section 235 for detention of aliens for examination before [special inquiry officers] *administrative law judges* and the right of appeal provided for in section 236 shall not apply to aliens who arrive as stowaways and no such alien shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the At-

torney General may prescribe for the ultimate departure or removal or deportation of such alien from the United States.

BRINGING IN AND HARBORING CERTAIN ALIENS

SEC. 274. (a) Any person, including the owner, operator, pilot, master, commanding officer, agent or consignee of any means of transportation who—

(1) brings into or lands in the United States, by any means of transportation or otherwise, or attempts, by himself or through another, to bring into or land in the United States, by any means of transportation or otherwise;

(2) knowing that he is in the United States in violation of law, and knowing or having reasonable grounds to believe that his last entry into the United States occurred less than three years prior thereto, transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(3) willfully or knowingly conceals, barbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

(4) willfully or knowingly encourage or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this Act or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs[: *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].

(b)(1) Any conveyance, including any vessel, vehicle, or aircraft, which is used in the commission of a violation of subsection (a) *or subsection (c)* shall be subject to seizure and forfeiture, except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to the illegal act; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

* * * * * * *

*(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 transaction 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.*

**[**(c)**]** *(d)* No officer or person shall have authority to make any arrest for a violation of any provision of this section except officers and employees of the Service designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

*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 notification 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 paragraph (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 16 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 residency 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 presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under the 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 indiviudal 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 witheld for any reason other than that the individual is an unauthorized alien, and*

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*(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 administrative hearing under paragraph (4)(A)(i)) to have violated paragraphs (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, 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 200 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 60 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 18 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 36 and 54 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.*

* * * * * * *

JURISDICTION OF DISTRICT COURTS

SEC. 279. [The district courts] *Except as otherwise provided under section 106, the district courts* of the United States shall have jurisdiction of all causes, civil and criminal, arising under any of the provisions of this title. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at which the violation may occur or at which the person charged with a violation under section 275 or 276 may be apprehended. No suit or proceeding for a violation of any of the provisions of this title shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reasons therefor.

* * * * * * *

## CHAPTER 9—MISCELLANEOUS

### NONIMMIGRANT VISA FEES *AND ALIEN USER FEES*

SEC. 281. *(a)* The fees for the furnishing and verification of applications for visas by nonimmigrants of each foreign country and for the issuance of visas to nonimmigrants of each foreign country shall be prescribed by the Secretary of State, if practicable, in amounts corresponding to the total of all visa, entry, residence, or other similar fees, taxes, or charges assessed or levied against nationals of the United States by the foreign countries of which such nonimmigrants are nationals or stateless residents: *Provided,* That nonimmigrant visas issued to aliens coming to the United States in transit to and from the headquarters district of the United Nations in accordance with the provisions of the Headquarters Agreement shall be gratis.

*(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 provisions of such services attributable to aliens' use of such facilities and services.*

* * * * * * *

### POWERS OF IMMIGRATION OFFICERS AND EMPLOYEES

SEC. 287. (a) Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, or expulsion of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States; and

(4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, or expulsion of aliens, if he has reason to believe that the person so arrested is guilty of

such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be taken without unnecessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States. Any such employee shall also have the power to execute any warrant or other process issued by any officer under any law regulating the admission, exclusion, or expulsion of aliens.

(b) Any officer or employee of the Service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this Act and the administration of the Service; and any person to whom such oath has been administered (or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code), under the provisions of this Act, who shall knowingly or willfully give false evidence or swear (or subscribe under penalty of perjury as permitted under section 1746 of title 28, United States Code) to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621, title 18, United States Code.

(c) Any officer or employee of the Service authorized and designated under regulations prescribed by the Attorney General, whether individually or as one of a class, shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for exclusion from the United States under this Act which would be disclosed by such search.

*(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.*

* * * * * * *

RIGHT TO COUNSEL

SEC. 292. [In any exclusion or deportation proceedings before a special inquiry officer and in any appeal proceedings] *In any proceeding or hearing before an administrative law judge and in any appeal before the United States Immigration Board from any such proceeding* before the Attorney General from any such exclusion or deportation proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government *and at*

*no unreasonable delay*) by such counsel, authorized to practice in such proceedings, as he shall choose.

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## TITLE III—NATIONALITY AND NATURALIZATION

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### CHAPTER 4—MISCELLANEOUS

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#### PROCEEDINGS FOR DECLARATION OF UNITED STATES NATIONALITY IN THE EVENT OF DENIAL OF RIGHTS AND PRIVILEGES AS NATIONAL

SEC. 360. (a) * * *

* * * * * * *

(c) A person who has been issued a certificate of identity under the provisions of subsection (b), and while in possession thereof, may apply for admission to the United States at any port of entry, and shall be subject to all the provisions of this Act relating to the conduct of proceedings (and appeals thereof) involving aliens seeking admission to the United States. [A final determination by the Attorney General that any such person is not entitled to admission to the United States shall be subject to review by any court of competent jurisdiction in habeas corpus proceedings and not otherwise.] Any person described in this section who is finally excluded from admission to the United States shall be subject to all the provisions of this Act relating to aliens seeking admission to the United States.

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## TITLE IV—MISCELLANEOUS AND REFUGEE ASSISTANCE

### CHAPTER 1—MISCELLANEOUS

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#### [AUTHORIZATION OF APPROPRIATIONS

[SEC. 404. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act (other than chapter 2 of title IV).]

#### *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*

*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.*

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## MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

TABLE OF CONTENTS

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TITLE I—FARM LABOR CONTRACTORS

* * * * * * *

[Sec. 106. Prohibition against employing illegal aliens.]

* * * * * * *

DEFINITIONS

SEC. 3. As used in this Act—

(1) * * *

* * * * * * *

(8)(A) Except as provided in subparagraph (B), the term "migrant agricultural worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.

(B) The term "migrant agricultural worker" does not include—

(i) any immediate family member of an agricultural employer or a farm labor contractor; or

(ii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections [101(a)(15)(H)(ii) and 214(c)] *101(a)(15)(H)(ii)(a), 101(a)(15)(O), 214(c), and 214(e)* of the Immigration and Nationality Act.

* * * * * * *

(10)(A) Except as provided in subparagraph (B), the term "seasonal agricultural worker" means an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence—

(i) when employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or

(ii) when employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.

(B) The term "seasonal agricultural worker" does not include—

(i) any migrant agricultural worker;

(ii) any immediate family member of an agricultural employer or a farm labor contractor; or

(iii) any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections [101(a)(15)(H)(ii) and 214(c)] *101(a)(15)(H)(ii)(a), 101(a)(15)(O), 214(c), and 214(e)* of the Immigration and Nationality Act.

* * * * * * *

REGISTRATION DETERMINATIONS

SEC. 103. (a) In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or evoke, a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder—

(1) * * *

* * * * * * *

(4) has failed—

(A) to pay any court judgment obtained by the Secretary or any other person under this Act or any regulation under this Act or under the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act, [or]

(B) to comply with any final order issued by the Secretary as a result of a violation of this Act or any regulation under this Act or a violation of the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act; or

(5) has been convicted within the preceding five years—

(A) of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities; or

(B) of any felony under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally[.]*; or*

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

* * * * * * *

[PROHIBITION AGAINST EMPLOYING ILLEGAL ALIENS

[SEC. 106. (a) No farm labor contractor shall recruit, hire, employ, or use, with knowledge, the services of any individual who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment.

[(b) A farm labor contractor shall be considered to have complied with subsection (a) if the farm labor contractor demonstrates that the farm labor contractor relied in good faith on documentation prescribed by the Secretary, and the farm labor contractor had no reason to believe the individual was an alien referred to in subsection (a).]

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## TITLE V—GENERAL PROVISIONS

### PART A—ENFORCEMENT PROVISIONS

#### CRIMINAL SANCTIONS

SEC. 501. (a) Any person who willfully and knowingly violate this Act or any regulation under this Act shall be fined not more than $1,000 or sentenced to prison for a term not to exceed one year, or both. Upon conviction for any subsequent violation of this Act or any regulation under this Act, the defendant shall be fined not more than $10,000 or sentenced to prison for a term not to exceed three years, or both.

(b) If a farm labor contractor who commits a violation of [section 106] *paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act* has been refused issuance or renewal of, or has failed to obtain, a certificate of registration or is a farm labor contractor whose certificate has been suspended or revoked, the contractor shall, upon conviction, be fined not more than $10,000 or sentenced to prison for a term not to exceed three years, or both.

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# TITLE 18, UNITED STATES CODE

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## CHAPTER 75—PASSPORTS AND VISAS

Sec.
1541. Issuance without authority.
1542. False statement in application and use of passport.
1543. Forgery or false use of passport.
1544. Missue of passport.
1545. Safe conduct violation.
1546. Fraud and misuse of visas, permits, and other [entry] documents.

* * * * * * *

**§ 1546. Fraud and misuse of visas, permits, and other [entry] documents**

(*a*) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, [or other document required for entry into the United States] *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,* or utters, uses, attempts to use, possess, obtains, accepts, or receives any such visa, permit [or document], *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,* knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false, statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement—

Shall be fined not more than [$2,000] *$5,000* or imprisoned not more than five years, or both.

*(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).*

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PUBLIC LAW 97-116

AN ACT To amend the Immigration and Nationality Act, and for other purposes

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SEC. 19. The numerical limitations contained in sections 201 and 202 of the Immigration and Nationality Act shall not apply to any alien who is present in the United States and who, on or before June 1, 1978—

(1) qualified as a nonpreference immigrant under section 203 (a)(8) of such Act (as in effect on June 1, 1978);

(2) was determined to be exempt from the labor certification requirement of section 212(a)(14) of such Act because *(A)* the alien had actually invested, before such date, capital in an enterprise in the United States of which the alien became a principal manager and which employed a person or persons (other than the spouse or children of the alien) who are citizens of the United States or aliens lawfully admitted for permanent residence, *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;* and

(3) applied for adjustment of status to that of an alien lawfully admitted for permanent residence.

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PUBLIC LAW 89-732

[AN ACT To adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes

[*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act, the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least two years, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of

status, the Attorney General shall create a record of the alien's admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

[SEC. 2. In the case of any alien described in section 1 of this Act who, prior to the effective date thereof, has been lawfully admitted into the United States for permanent residence, the Attorney General shall, upon application, record his admission for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant or as a parolee, or a date thirty months prior to the date of enactment of this Act, whichever date is later.

[SEC. 3. Section 13 of the Act entitled "An Act to amend the Immigration and Nationality Act, and for other purposes", approved October 3, 1965 (Public Law 89-236), is amended by adding at the end thereof the following new subsection:

["(c) Nothing contained in subsection (b) of this section shall be construed to affect the validity of any application for adjustment under section 245 filed with the Attorney General prior to December 1, 1965, which would have been valid on that date; but as to all such applications the statutes or parts of statutes repealed or amended by this Act are, unless otherwise specifically provided therein, continued in force and effect."

[SEC. 4. Except as otherwise specifically provided in this Act, the definitions contained in sections 101 (a) and (b) of the Immigration and Nationality Act shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.]

## ADDITIONAL VIEWS OF MESSRS. LUNGREN AND FISH

Eight months ago in the last Congress, the Judiciary Committee, in favorably reporting the Immigration Reform and Control Act of 1982, recommended a legalization program with a January 1, 1977 cut-off date for eligibility for permanent resident status and a January 1, 1980 cut-off date for temporary resident status. The bill of the last Congress required candidates for legalization to have entered the United States prior to the applicable cut-off date and remained in the United States in continuous illegal status since that date. This two-tiered legalization proposal was much more generous to undocumented aliens than the Administration's original recommendation. A special provision permitted certain nationals of Cuba and Haiti, whose involvement with the Immigration Service predated January 1, 1981, to qualify for temporary resident status. Persons who obtained temporary resident status through legalization could apply for permanent resident status after three years.

H.R. 1510, as introduced in February 1983, incorporated the work product of last year's Judiciary Committee markup. However, the Immigration Subcommittee eliminated the two-tiered legalization and adopted a one-tier January 1, 1981 cut-off date for permanent resident status. Then the full Committee, by a 15 to 14 vote, advanced the eligibility date still further to January 1, 1982.

We believe the Judiciary Committee acted unwisely this year in rejecting last year's carefully crafted compromise proposal on legilization. The Senate Judiciary Committee, in contrast to our Committee, retained the two-tiered legalization program with 1977 and 1980 cut-off dates—similar to last year's House Judiciary Committee reported bill.

The two formulations of legalization lead to strikingly different results. A January 1, 1980 cut-off date will result in an estimated 1.7 million persons participating in legalization, in contrast to 2.3 million with a January 1, 1981 date and 2.9 million based on the January 1, 1982 cut-off. The costs of legalization, moreover, increase by an estimated $2 billion for the fiscal year 1984–1987 period as a result of moving from the two-tiered legalization program with 1977 and 1980 dates to a single-stage program with a 1982 date. Total costs also will increase during the fiscal year 1988–1990 period, but some savings will be realized as a result of the full Committee's adoption of a five-year federal public assistance disqualification (with certain exceptions) in place of the Subcommittee's four-year disqualification.

A two-tiered legalization appropriately treats more recent illegal arrivals differently from persons who have lived in illegal status for longer periods of time. A temporary status gives an illegal alien (who lacks the equities of long-term U.S. residence) an opportunity to earn permanent residence through good conduct during a trial period. This is a reasonable requirement for someone who has

chosen to enter or remain in the United States in violation of our laws.

The Carter Administration, in its proposed legislation combining employer sanctions and legalization, offered permanent residence to persons who entered prior to 1970 and temporary residence (for a five-year period) to persons who could meet a January 1, 1977 cut-off date. "The purpose of granting a temporary status," President Carter informed Congress, "is to preserve a decision on the final status of these undocumented aliens, until much more precise information about their number, location, family size and economic situation can be collected and reviewed." The Judiciary Committee's 1982 proposal, in contrast to the Carter Administration's bill provided a temporary status that would last only three years (rather than five) and lead to permanent residence for persons who met minimal qualifications (in contrast to the uncertain futures that awaited beneficiaries of the Carter temporary status).

The offer in H.R. 1510 (as introduced) of an interim legal status with work authorization—followed by a virtual assurance of permanent residence—constitutes a humane and generous response to the plight of persons with approximately 3½ to 6½ years' illegal residence. Immediate access to permanent resident status for this group, by contrast, ignores the claims of persons who have waited many years to immigrate legally and provides too great a magnet for future illegal flows.

Approximately sixty percent of newly legalized aliens, under the two-tiered proposal with 1980 and 1977 cut-offs, will obtain temporary residence and forty percent will obtain permanent residence. The single-stage proposal with a 1982 cut-off increases the numbers of potential beneficiaries of permanent residence from approximately 700,000 to 2.9 million. These figures have important implications for legal immigration to the United States.

Permanent residence can petition for their immediate relatives under the second preference. The filing of large numbers of second preference petitions within a short period of time will greatly exacerbate waiting periods in that preference—forcing persons who immigrated legally to wait inordinately to bring in their immediate relatives. A two-tiered proposal initially confers petitioning rights on a much smaller group and then increases the size of that group three years hence. A 1980 cut-off date, of course, imposes a much lower limit on the size of the pool of potential beneficiaries of second preference petitions than a 1982 cut-off.

The 1982 full Committee's January 1, 1980 cut-off date for legalization, in my view, represented an appropriate compromise between the views of those who would eliminate the legalization provisions entirely or only advance the registry date to 1973 and those who would provide lawful permanent resident status to persons who entered prior to January 1, 1982. A failure to provide a substantial legalization ignores the equities of persons who have lived in the United States for a number of years, perpetuates the existence of a large underclass of illegal aliens, and continues to subject citizens and lawful permanent resident aliens (as well as undocumented aliens) to enormous social costs.

The Select Commission's unanimous vote in favor of legalization underscores the absence of a viable alternative to conferring legal

status on many illegal aliens. The United States simply lacks the machinery to deport millions of people. Even an attempt at mass deportations, moreover, would subject members of minority groups to discriminatory treatment and involve the United States in foreign policy difficulties with major sending countries. For a variety of reasons, a legalization program is needed.

A legalization that is overly broad, on the other hand, carries great risks. Advancing the eligibility date to January 1, 1982 embraces the large number of undocumented aliens who arrived during a recent two-year period. The Select Commission recommended—in a unanimous December 1980 vote—that "no one be eligible [for legalization] who was not in the United States before January 1, 1980." That cut-off date excludes people who came to the United States after the Select Commission began actively discussing legalization. Although two years have passed since the Select Commission issued its report in March 1981, the legislative process generally does not work faster than this. The passage of time since March 1981 is not unanticipated—and does not justify advancing the date to the point where persons who entered in anticipation of legalization would be covered.

There is a substantial turnover among undocumented aliens in the United States. This is reflected in estimates indicating that a large percentage of illegal aliens came in the last few years. The fact that we choose to legalize part of the undocumented population does not mean that the residual population will live indefinitely in the United States in a limbo status. Many of these illegal aliens, like prior flows, plan to return voluntarily to their home countries after working here for a year or more. Employer sanctions, moreover, will make it more difficult for a residual undocumented population to remain in the United States. The conferral of legal status, included in proposals for a very recent cut-off date, is likely to make this temporary population permanent.

The argument that legalization represents a humane response to the plight of undocumented aliens who have become a part of our society does not apply to recent arrivals (who have not built up equities). Permitting illegal aliens with approximately three and one-half years continuous residence—the January 1, 1980 cut-off date in last year's full Committee reported bill—to become temporary residents on a track toward permanent residence and citizenship itself is very generous. Advancing the date will encourage future flows in anticipation of another legalization. By adhering firmly to the 1980 date—the original date in this legislation—rather than rolling the date forward—we lend credence to the argument that this is a one-time legalization that will not be repeated. The perception that legalization will not be repeated is essential if we hope to avoid providing a new magnet to illegal migration.

DANIEL E. LUNGREN.
HAMILTON FISH, Jr.

## ADDITIONAL VIEWS OF CONGRESSMAN BILL McCOLLUM

Although I am the author of the amendment to strike the legalization (amnesty) section of the bill and feel strongly about the need to make substantial changes in other areas when it is considered on the Floor, the Immigration Reform and Control Act is an excellent piece of legislation which must be passed even with its present deficiencies if we are going to gain control over our runaway immigration policies and maintain the quality of life we have held so dear in this country. The very fabric of our society is being torn apart by the unrelenting surge of undocumented aliens entering our country each year in search of prosperity which eludes the people of their homelands. Ironically, those seeking a new life may be destroying the very prosperity which they seek to share.

Employers' sanctions such as are in this bill are absolutely essential to regaining control over our borders in the only way possible—by cutting off the magnet of job opportunities for those who circumvent the normal channels of legal immigration. Hand in hand with these sanctions is a liberalized H–2 temporary worker program to protect those industries like agriculture which may be faced with tremendous labor shortages when the pool of undocumented alien workers dries up. Just as essential are the provisions in the bill which steamline the adjudication procedures for exclusion, deportation, and political asylum matters.

The worst feature in the bill is the legalization or amnesty program. Granting amnesty to the up to 12 million illegal aliens who were here prior to 1982 rewards lawbreakers and is a slap in the face of those thousands of potential immigrants waiting in line. It will act as a magnet to draw thousands more across our borders in the belief that if we have granted amnesty once, we will certainly do it again someday, and it isn't worth the wait for a legal immigrant visa. In addition, it creates the potential for an enormous and indeterminable amount of expense for the taxpayer when these illegals come forward to take advantage of the privileges of their new status. Notwithstanding the fact that the Immigration and Naturalization Service needs to be shored up and to get tougher with their enforcement efforts, no one is suggesting by efforts to strike the amnesty provisions that mass deportation actions be taken. The bill provides safeguards for those who have been here for extended periods of time by updating the registry date to January 1973. In addition, the Attorney General has the discretion to grant suspension of deportation to aliens present in the United States for more than seven years. There is no good reason for legalization, and a lot of good reasons why it should be stricken.

While the procedures for handling exclusion, deportation, and political asylum have been vastly improved over the present law, the bill fails to create a clearly independent Article 1 Court and in its

court review procedures leaves the door open for the use of delay tactics by those claiming political asylum and whose primary interest is just staying in this country, not resolving the issues expenditiously. The Administrative Law Judge system set up under the bill is not controlled by the Administrative Procedures Act, and the Department of Justice under which the judges operate has no power to set aside their decision; in reality, there is a court being created, but it is lacking in being so named and in being given powers which are possible for Article 1 Courts.

This should be corrected, but, more importantly, we must find a way to circumvent the endless reivew potentially available to those claiming asylum through the use of habeas corpus petitions in Federal district courts or the seeking of other extraordinary relief in such courts. Under the bill there will be a limited right to a review of virtually all decisions affecting those aliens subject to exclusion, deportation and asylum determinations in the Circuit Courts of Appeal around the country. Furthermore, the exhaustion of appeal in this arena does not preclude the habeas corpus petition in the lower Federal courts and an extended review process of those determinations with interminable delays just as is found in the handling of many criminal cases today. The key to a Constitutional and due process solution to the potential abuses in this area is the placing of exclusive jurisidiction for review and habeas corpus and other extraordinary writ purposes in the hands of the new Court of Appeals for the Federal Circuit. Since this is a nationwide court, it would assure uniformity of decision and its use would most likely deter unwarranted seeking of judicial review.

The bill as originally considered by the Subcommittee during the 96th Congress contained an immigration cap which should be reinstated. There needs to be a total and reasonable legal limit on the number of aliens coming into this country each year including immediate family relatives and refugees. Additionally, there needs to be provision for some "seed" immigrants who have no relatives in this country, but who are possessed of special skills and abilities or are willing to make investments in our country which will result in the creation of a number of substantial jobs.

Lastly, whereas I fully support the concept of Federal impact aid to reimburse the state and local governments for costs incurred in connection with the legalization program, should it remain intact, I am concerned about the broadness of the provisions in the bill and would suggest some restrictions.

While this bill is far from perfect—and I hope it will be substantially improved by amendments on the Floor—the passage of legislation which embodies the general framework of this bill is absolutely essential to the well-being of our nation. With or without the adoption of key amendments which I will offer or support on the Floor of the House, I believe this legislation should be adopted.

BILL MCCOLLUM.

## ADDITIONAL VIEWS OF ROBERT W. KASTENMEIER

I am writing separately to emphasize my support for the provisions of the bill relating to judicial review. As a result of amendments adopted in the Committee on the Judiciary, both last Congress and this, access to the Federal courts has been preserved for the adjudication of immigration claims. Continued access to a fair and effective forum for the resolution of these cases is essential to a rational and humane immigration policy.

### JUDICIAL REVIEW OF INDIVIDUAL CASES

The first set of judicial review amendments that dramatically improved this bill was adopted in the committee last Congress and carried forward without change this Congress. These amendments preserved the right of individuals in deportation cases to have claims that are denied by the executive branch reviewed by the various courts of appeal. In addition, these amendments made more rational the system of judicial review for individual exclusion and asylum cases by providing for direct appeals to the various circuit courts.[1] Finally, these amendments retained current law by providing access to habeas corpus relief for alleged violations of the Constitution and laws.[2] In sum, these amendments provide individuals who are aggrieved by a decision of the executive branch with effective access to the courts.

### COURT STRUCTURE

The second major improvement in this bill occurred as a result of an amendment adopted by the Committee on the Judiciary this Congress. The basic thrust of this amendment was a retention of the current court structure for the adjudication of immigration cases. This particular amendment did not modify current law with

[1] These provisions help carry forward our obligations under Article 33(1) of the 1951 Convention and the 1967 United Nations Protocol relating to the Status of Refugees. These treaty obligations require that we take adequate measures to protect against the refoulement (e.g., return or expulsion) of a refugee where his or her life or freedom would be threatened on account of race, religion, nationality or membership in a particular social group or political opinion. 19 U.S.T. 6257, T.I.A.S. No. 2322, 606 U.N.T.S. 268; See also 8 U.S.C. 1253(h); *Bertrand* v. *Sava,* 684 F. 2d 204 (2nd Cir. 1982), *Stevic* v. *Sava,* 684 F2d 204 (2d Cir. 1982) cert. granted, 51 U.S.L.W. 3636 (Feb. 28, 1983).

[2] The habeas corpus provisions of the bill permit a challenge to the illegality of custody to be based on either a violation of the Constitution, laws or treaties so as to carry forward without change current law. *See* United States Constitution Article 1, section 9, 28 U.S.C. 2441 et seq.; 8 U.S.C. 1105a(a). The bill properly continues the liberal rule of construction with respect to the limited nature of any deprivation of liberty that is required to establish "custody." *See* section 123; *Jones* v. *Cunningham,* 371 U.S. 236 (1963) (where "restraints are not shared by the public generally"); *Varga* v. *Rosenberg,* 237 F. Supp. 282 (S.D. Cal. 1964) (challenge permitted for an alien released on bond after a deportation order); *Marcello* v. *District Director,* 472 F. Supp. 1199, 1204 (E.D. La. 1979), aff'd, 634 F. 2d 964 (5th Cir. 1981), cert. denied, 452 U.S. 917 (1981).

Section 123(b) also permits the use of multiple habeas corpus proceedings. Thus, current law is carried forward by the bill. *Bertrand* v. *Sava,* 684 F. 2d 204. (2nd Cir. 1982).

respect to access to the federal courts, rather it returned the bill to the status quo.

Under the terms of the bill that was before the Committee on the Judiciary, all judicial review of deportation, exclusion and asylum cases would have been consolidated in the Court of Appeals for the Federal Circuit. The bill also limited access to the federal courts for habeas corpus cases to the Court of Appeals for the Federal Circuit. Finally, the bill provided that any facts found by an administrative law judge were to be deemed conclusive.

The committee wisely accepted an amendment that rejected these provisions for several reasons. First, under the bill as reported by the Subcommittee on Immigration and International Law, the caseload of the newly created Court of Appeals for the Federal Circuit would have been increased by between 50 and 100 percent. This sudden shift would not have reduced the time to disposition of immigration cases and would have burdened parties with additional expenses associated with litigating in a distant Washington, D.C.-based forum.[3]

In addition, the proposed consolidation was not justified on the basis of need. According to the best available estimates, there is not a significant problem as a result of intercircuit conflict in the immigration area.[4]

There are potential constitutional and practical problems with providing for habeas corpus review in the Court of Appeals for the Federal Circuit. The circuit courts are much better prepared to review the factual record developed by a district court. Thus, it would have been a serious mistake to eliminate the various district courts from the habeas corpus process. Moreover, access to rapid disposition can be best achieved at the district court level.

Because the subcommittee bill attempted to limit the discretion of the appeals court on questions of fact, it created a standard of greater deference to the views of administrative law judges in the immigration area than any other area of federal law. The committee found this standard of review inappropriate and constitutionally unsound.

### FEDERAL QUESTION JURISDICTION RELATING TO A PATTERN OR PRACTICE OF ILLEGAL ACTS

The third important area of judicial review retained by this bill relates to federal question jurisdiction. In recent years, groups of persons caught up in the immigration process have found it neces-

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[3] According to the clerk of the new Court of Appeals for the Federal Circuit, the anticipated time lag between final submission and decision in that court will be approximately eight months. This amount of processing time is similar to that in the various geographically distributed circuit courts of appeal. *See* "Reports of the Proceedings of the Judicial Conference of the United States/Annual Report of the Director of the Administrative Office of the United States Courts—1982", 204, 206 (1982).

[4] In a recent year there were approximately 5,300 petitions for certiorari to the United States Supreme Court. Of those, only about 40 appear to directly involve immigration matters. Of the approximately forty immigration cases presented to the Supreme Court, very few appear to present intolerable circuit conflicts. In fact, only recently the Court agreed to resolve a case involving a real circuit conflict. *INS* v. *Delgado*, 681 F. 2d 624 (9th Cir. 1982), cert. granted, 51 U.S. L.W. 3770 (Apr. 25, 1983). To the extent that circuit conflict is a national judicial problem, I submit that the preferred solution may be in the creation of a temporary, experimental Intercircuit Tribunal to resolve such conflicts. See H.R. 1970 and Burger, "Report on the State of the Judiciary" 69 A.B.A.J. 442 (1983) (and the accompanying articles by Daniel J. Meador and Judge Schaeffer).

sary to challenge the legality of certain government practices. These cases have been brought in federal district courts, using as a jurisdictional basis the provisions of 28 U.S.C. 1331 and section 279 of title 8. As a result of an amendment which I offered, the Committee on the Judiciary continued this jurisdictional basis.[5]

The text of my amendment provides that the Federal courts have jurisdiction to adjudicate the merits of claims that meet certain prerequisites. First, the action must be a class action. Thus, the case must meet the procedural conditions of rule 23 of the Federal Rules of Civil Procedure. Second, the complaint must allege a pattern or practice of violations of the Constitution.[6] Allegations of such policies or practices could relate, for example, to the allegedly improper actions of the Immigration and Naturalization Service, administrative law judges, the Immigration Appeals Board or other Government agencies insofar as they affect the processing or decisionmaking in immigration cases.

Third, before relief can be granted, the plaintiff must show that exhaustion of administrative remedies is inappropriate. *Jean* v. *Smith,* No. 82-5772 (11th Cir. April 12, 1982) (slip op. at 105); *Haitian Refugee Center* v. *Smith*, 676 F. 2d 1023, 1035 (5th Cir. Unit B, 1982) (cases cited therein).[7]

The fourth qualification is that a delay of adjudication under this provision would adversely affect the rights of the class members who brought the suit. Examples of such prejudice in previous cases include forced and illegal involuntary departures prior to filing of immigration claims and failure to provide the required notification of right to counsel.[8] The fourth requirement also provides that a "timely determination of such rights would be most consistent with providing for the efficient judicial review" of the issues presented. *Jean* v. *Nelson, supra,* at 98.

My amendment on federal question jurisdiction, adopted by the committee, also contains some cautionary notes. The district courts are not empowered under this jurisdictional grant to review indi-

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[5] See *Jean* v. *Nelson,* No. 82-5772 (11th Cir. Apr. 12, 1983); *Haitian Refugee Center* v. *Smith,* 676 F. 2d 1023 (5th Cir., Unit B, 1982); *Orantes-Hernandez* v. *Smith,* 541 F. Supp. 351 (C.D. Cal. 1982); *Nunez* v. *Boldin,* 537 F. Supp. 578 (S.D. Tex. 1982). The amendment is structured so that jurisdiction is conferred by virtue of either 28 U.S.C. 1331 or section 279 of the Immigration and Nationality Act. The other requirements set forth in the amendment are not jurisdictional prerequisites; rather, they serve as conditions precedent to the granting of relief.

[6] In both *Jean* v. *Nelson, supra,* and *Haitian Refugee Center, supra,* the court stressed the relevance of finding constitutional violations in order to justify the exercise of jurisdiction. Current law is carried forward through the explicit jurisdictional grant in this amendment. However it is necessary in the interests of judicial efficiency to consolidate any alleged statutory or treaty violations, nothing in this amendment precludes the exercise of such pendent jurisdiction. *Romero* v. *International Term. Op.,* 358 U.S. 354, 380-81 (1959); *Rosado* v. *Wyman,* 397 U.S. 397, 402-5 (1970). Such pendent jurisdiction cannot be used to permit the court to review the propriety of individual decisions with respect to exclusion, deportation or asylum.

[7] As the court said in the Haitian Refugee Center case, ". . . the (usual) exhaustion requirement is not a jurisdictional requirement but a matter committed to the sound discretion of the trial court. *Haitian Refugee Center* v. *Smith,* 676 F. 2d 1023, 1033 (5th Cir., Unit B, 1982). Exhaustion of administrative remedies has been found unnecessary when: (a) such remedies are inadequate. *Orantes-Hernandez* v. *Smith,* 541 F. Supp. 351, 364 (C.D. Cal. 1982); *Walker* v. *Southern Railway,* 385 U.S. 196 (1966); (b) when the claimant seeks to have a legislative act declared unconstitutional and administrative action will be futile, *Public Utilities Comm.* v. *United States,* 355 U.S. 534 (1958); (c) when the claim about the inadequacy of the administrative process is co-extensive with the merits of the claim, *Fuentes* v. *Roher,* 519 F. 379 (2d Cir. 1975); or (d) when exhaustion would be futile because the claim will be rejected. *City Bank Farmers Trust Co.* v. *Schnader,* 291 U.S. 24 (1934).

[8] *Orantes-Hernandez* v. *Smith,* supra; *Nunez* v. *Bolden,* supra; *Louis* v. *Meissner,* 530 F. Supp., 924, 928 (S.D. Fla. 1982); 544 F. Supp. 973 (S.D. N.Y., 1982); aff'd. in part, rev'd. in part, *Jean* v. *Nelson, supra.*

vidual determinations in exclusion, deportation or asylum cases. This view comports with the views expressed by the former 5th Circuit Court of Appeals which said:

> Our holding is not to be construed as permitting a constitutional challenge in the district court based on a procedural ruling in a deportation proceeding with which an alien is dissatisfied. We refuse to condone any such end run around the administrative process. Casting as a constitutional violation an interlocutory procedural ruling by an immigration judge will not confer jurisdiction on the district court. Such a result would indeed defeat the congressional purpose behind the enactment of section 106(a)—the elimination of dilatory tactics by aliens challenging deportation order in piecemeal fashion. Congress resolved this problem by consolidating jurisdiction over challenges to final orders of deportation in one court, the court of appeals. We do not intend by our holding today to emasculate that solution, and given the narrowness of our holding, we do not expect such a result.

*Haitian Refugee Center* v. *Smith,* 676 F. 2d 1023, 1033 (1982); *see also Jean* v. *Nelson, supra.*

The committee amendment finally provides that the Federal courts shall, to the extent practicable, prevent unnecessary delays in the conduct of the exclusion, deportation or asylum proceedings. This admonition is designed to assure that the narrow set of cases that are possible under this provision will not, as a general rule, serve to disrupt the general process of adjudicating individual cases.

ROBERT W. KASTENMEIER.

## ADDITIONAL VIEWS OF REPRESENTATIVE DON EDWARDS

As the author of the amendment to the Immigration reform and Control Act regarding reimbursement to the states for the costs of legalization, I would like to address the intent of that part of the amendment dealing with education reimbursement which became Sec. 303(c) of the bill.

The amendment was supported by the majority of the members of the Judiciary Committee in the 97th Congress. It was incorporated into the final bill in the 97th Congress and remains a part of the bill in the 98th Congress. During the May, 1983, Judiciary Committee's markup of the bill, all attempts to amend Sec. 303 were defeated. The language remains as I introduced it. The intent also remains the same.

The federal government clearly has responsibility for the education of those aliens who are enrolled in our schools because of the failure of the federal government to control our borders. Sec. 303(c) authorizes the appropriation of monies to offset the impact that the illegal aliens who become legalized have on local education budgets. While the federal government should assume full responsibility for educating these aliens, just as the federal government should assume full responsibility for educating refugees, that has not been the case for refugees and surely will not be the case for legalized aliens. The federal government has only been providing about $150 per capita for refugees for education services and it is unrealistic to expect that the Appropriations Committee will provide more than an equivalent amount for legalized aliens. This is true even though such education services cost the states many times more than they are reimbursed.

Sec. 303(c) is intended to recognize at least a limited federal responsibility and provides the means for at least some federal reimbursement for the cost of educating illegal aliens who become legalized under this bill. These aliens represent a special responsibility in that they require special services. These special services are not limited to but include English language instruction, instruction in regular courses in their native language until English is learned, special counseling, acculturation courses, and compensatory tutoring in reading and math.

The intent of Sec. 303(c) is to insure that the federal responsibility to pay for the provision of such special services is clear. This intent was accepted by the majority of the Judiciary Committee members in both the 97th and the 98th Congresses when they voted to accept my amendment to the original bill and when they voted against any amendments to the language contained in Section 303 in general and in Section 303(c) in particular.

DON EDWARDS.

## ADDITIONAL VIEWS OF CONGRESSMAN WILLIAM J. HUGHES

For the past several years, we have been engaged in a great debate which will determine the future of U.S. immigration policy for decades to come. If enacted, the legislation the Judiciary Committee is reporting will directly affect millions of individuals who look toward this country as a source of hope, a place in which they can build a new life

As all of us know, immigration reform is long overdue. But, as the intensity of the Judiciary Committee's debate and the large number of amendments which were proposed when similar legislation was scheduled for floor consideration at the end of the 97th Congress indicate, there is no clear consensus of how to best go about the task of controlling immigration, securing our borders, and dealing with the large number of illegal aliens already in this country.

As a member of the Judiciary Committee, I have had the opportunity to participate in the controversial debate surrounding this legislation. Clearly, it is not a perfect bill, resolving everyone's concern. Instead, it is a compromise proposal, representing many hours of hard work on the part of the distinguished chairman, members, and dedicated staff of the Immigration Subcommittee.

I am particularly concerned over the "lack of teeth" in the enforcement provisions outlined in the legislation. I strongly believe that legalization without increased law enforcement and border control activity will only encourage thousands of new immigrants to come into this country illegally and require another amnesty program in the years to come. Implementing employer sanctions, without increasing border patrol, inspection, anti-smuggling, and other enforcement personnel, will not stem this flow.

The Select Commission on Immigration and Refugee Policy clearly recognized the need to adequately enforce the borders and implement employer sanction provisions before proceeding with legalization in its 1981 report entitled, "U.S. Immigration Policy and the National Interest." In addition to recommending that legalization not proceed until appropriate enforcement mechanisms have been instituted, the Commission also highlighted the need to increase border patrol and I.N.S. funding to provide for a substantial increase in the numbers and training of enforcement personnel.

Although the bill before us includes authorizations for increases in the numbers of border control, investigations, inspections and anti-smuggling personnel, there is little hope that the funds necessary to adequately enforce our borders and immigration laws will be appropriated. It is all too clear that the immigration service is already overrun with paperwork and that the Border Patrol is severely understaffed. Moving the "legalization" date forward to 1982 will, among other things, increase the burden on the I.N.S. and

divert critically needed resources away from enforcement and other activities.

The United states desperately needs a workable solution to the immigration problems facing us today. The implementation of an effective employer-sanctions program and the legalization of many of those who have resided in this country for a long period of time are only part of the solution. To assure that illegal immigration does not mushroom into an uncontrollable situation, however, we must also make the commitment to give the I.N.S. and the Border Patrol the resources to patrol our borders and enforce the immigration laws. Without this final element, legalization and employer sanctions will be meaningless.

I firmly believe that the far-reaching immigration problems facing this country must be resolved in a timely and comprehensive manner. A worldwide depression, coupled with increased opportunities to move across border, has created overwhelming immigration pressures. Border agents are virtually overrun, and immigration inspectors cannot control tourists and visitors who enter the United States as "nonimmigrants" and then remain. Overworked and under-supported I.N.S. investigators cannot curtail the increase in alien-smuggling, false documents, marriage frauds, and the placement of undocumented aliens in U.S. jobs.

I believe that we should follow the recommendations of the Select Commission by providing the resources needed to secure our borders and by bringing I.N.S. and Border Patrol law enforcement activities up to the level needed to control illegal immigration, before proceeding with legalization. Unless we can do that, Congress will again be faced with the need to institute a massive legalization program in the years ahead. We should not allow that to happen without making every effort to give our Immigration Service the support it needs to do the job that the Congress and the American people expect.

WILLIAM J. HUGHES.

## DISSENTING VIEWS OF REPRESENTATIVES DON EDWARDS, JOHN CONYERS, JR., AND PATRICA SCHROEDER

Reform of our immigration laws is an incredibly complex task, involving the balancing of many competing values. We commend the Chairman, Congressman Mazzoli, and the distinguished members of the Subcommittee on Immigration, Refugees, and International Law for undertaking this arduous task and for their dedicated efforts in revising the Immigration and Nationality Act. Similarly, the full Judiciary Committee made a valiant effort to further the achievement of that balance. Nevertheless, we cannot support the bill as reported from the Committee because we must reject the philosophy and reasoning upon which the product rests.

The heart of the bill remains the employer sanctions provision. This provision contains criminal penalties for employers who hire people who are in this country illegally. The theory is that employer penalties will reduce the demand for illegal workers and that, once the word gets out that there is no opportunity for employment for them, the illegal aliens will stop coming here.

This approach, in theory, might seem like a sensible way of dealing with the problem of large numbers of people illegally entering this country. Unfortunately, employer sanctions do not work.

A look at history shows that wherever employer sanctions have been tried, they have proven ineffective. The U.S. General Accounting Office, at the behest of Senator Alan Simpson, the Senate author of a comparable bill, conducted a study of some 19 countries. On August 31, 1982, the GAO report, "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries," was released. The conclusion of the study was that:

> Such laws were not an effective deterrent to stemming illegal employment for primarily two reasons. First, employers either were able to evade responsibility for illegal employment or, once apprehended, were penalized too little to deter such acts. Second, the laws generally were not being effectively enforced because of strict legal constraints on investigations, noncommunication between government agencies, lack of enforcement resolve, and lack of personnel.

In our own country, the federal Farm Labor Contractor Registration Act of 1963 gives evidence that employer sanctions have been ineffective at the national level. In addition, employer sanctions have been proven ineffective at the state level in the many states with such laws on the books. Indeed, a 1980 report by the Comptroller General found that all the state laws had produced was one $250 fine.

Employer sanctions in the Committee bill will fail for the same reasons these other laws have failed. Enforcement, if present en-

forcement efforts of the Immigration and Naturalization Service are any guide, is not likely to be effective. Not only are they ineffective, employer sanctions also raise serious constitutional problems. First, employers will have an excuse for not hiring, or subjecting to more rigorous scrutiny, Americans who are foreign looking or who have foreign surnames. For example, Americans of Spanish descent in the Southwest, will be likely victims.

Those who suffer such discrimination will be without effective redress. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et. seq., forbidding employment discrimination on the bases of race, color, religion, sex, or national origin, will be of little use since many employers are exempt. In any event, the standard of proof necessary to make out a claim is so high that few victims of discrimination would be successful here. In addition, the evisceration of the Legal Services Corporation will deplete the supply of attorneys to assist in such cases and thus will render the claims virtually unavailable.

Even in those rare instances where a litigant is otherwise able to proceed on a discrimination claim, the records necessary to establish the claim are not likely to exist because of a provision adopted by the full Committee. That provision only requires an employer to maintain records of job applicants after having been found to have violated the law by hiring an illegal alien. Thus, the Committee bill compounds the existing difficulties for making out a claim. Without records, it will be virtually impossible to prevail in an employment discrimination suit. Further, despite the Committee bill's language, a national system of identification is likely to become an integral part of any employer sanctions program. Such a system must, by its very nature, impinge on the privacy rights of American citizens.

There is an alternative to employer sanctions that is more likely to be successful—namely, greater emphasis on securing the borders. The Immigration and Naturalization Service has informed us that there is only one officer per 12.5 miles of border. No one could seriously suggest that this is a real effort at keeping the borders secure. The Committee, to its credit, has taken some steps to improve border security. However, greater resources must be devoted to this effort.

The money necessary to fund the employer sanctions provision, with its accompanying secure ID system, would better be used to provide INS with adequate resources to enforce fully the existing laws rather than to create a system that is not likely to curtail illegal immigration and that may well cause significant harm to lawful residents of this country.

DON EDWARDS.
JOHN CONYERS.
PATRICIA SCHROEDER.

## DISSENTING VIEWS OF F. JAMES SENSENBRENNER, JR.

Last Congress, I was sorely disappointed at the Immigration Reform and Control Act that was reported to the House for consideration. Although I feel strongly that our immigration laws are in desperate need of reform, that bill fell far short of its intended purpose. Because of the lateness of the session, the entire matter was held over for this Congress to effect the appropriate changes in our immigration laws and policy.

Whatever deficiencies that bill might have had, and there were many, H.R. 1510, this year's version of the Immigration Reform and Control Act, far surpasses anything any reasonable American might consider as immigration reform or control.

H.R. 1510 is nothing more than amnesty for millions upon millions of illegal aliens, permitting them to become permanent residents of the United States. There is no immigration reform—the system of legal immigration is scarcely mentioned in the bill. What little control there might have been in the bill has become so diluted that I fear it will only be a paperwork burden for employers, and a burdening of our Immigration and Naturalization Service that defies the imagination.

One of the major criticisms the American people have with the present immigration law is we have "different strokes for different folks" or different quotas for different people, resulting in no hard or fast limitation on how many foreigners are legally admitted into the United States on an annual basis. If a cap on legal immigration is not enacted, then the current number of legal immigrants entering our country will continue to mushroom. In 1982, legal immigration was over 435,000; add to that another 93,000 to 97,000 refugees admitted (depending on whose figures one uses) and you have legally added over one half million people to our population in one year's time.

Legal immigration exploded at a time when our country could least afford it. Unemployment among U.S. citizens has been at an all time high. As our economy struggles to get back on its feet to provide for those who have been unemployed for months on end, it ill behooves us to purposely enact policies that will irritate and exacerbate this problem. The American people are soured on the entire issue of immigration, and the compassion Americans have felt toward refugees from oppression and political and religious persecution has become strained to the breaking point. Americans are having a difficult time understanding why our government continues to allow more people into this country who compete for jobs and place a drain on the treasuries of our state, local, and federal governments. Public opinion polls show that 80 percent of the American people want reductions in legal admissions. "Compassion fatigue" has, indeed, set in.

While some have argued that these are unsubstantiated fears, there are hard facts to support these concerns. For instance, a Presidential report in 1980 revealed that taxpayers have spent over $2 billion a year in refugee admissions. Billions of dollars more have been spent since this report was issued. These figures are put into greater perspective by a GAO report which showed that over 70 percent of the Indo-Chinese refugees of employable age had requested public assistance. Most requests were made within 30 days of arrival. In my own state of Wisconsin, which held more than 15,000 Cuban-Haitian refugees at Fort McCoy, I heard many complaints from both the state and local government officials strongly objecting to the open ended refugee policies.

Not only were these policies open ended, but state and local officials were unable to apprehend and return any refugee who escaped from Fort McCoy because they were not given authority to deal with these special people temporarily relocated in their area. These refugees ran the spectrum from honest, hardworking individuals who truly desired to escape to a free society, to hardened criminals released from jail and sent immediately to the United States. To add insult to injury, the full Committee rejected an amendment which would have urged the Attorney General to seek the active assistance of state and local law enforcement officials to provide immigration officers and the border patrol with desperately needed assistance.

Placing refugees under the legal immigration cap is essential for our country to be able to withstand increasing pressure in the future for more refugee admissions. The current refugee explosion is only a preview of things to come. For instance, our world population will increase another two billion by the end of the century. This means the world labor force will grow by 900,000,000 people, who will join some 50 million currently unemployed and 300 million underemployed. At the same time, economic and political tensions will add millions more. In other words, our country will be able to absorb only a small fraction of a percent of this number.

When H.R. 1510 comes before the U.S. House of Representatives, I will be offering an amendment to place a cap of legal immigrants entering this country. My amendment will place refugees under a flexible ceiling ranging from 300,000 to 420,000 for total legal immigration. This figure is generous when it is compared with the period from 1921 to 1980, when our average total legal immigration was under 300,000 per annum. This figure in my amendment is slightly above a 1980 Roper Poll figure of 400,000 which 80 percent of the American people wanted. Until refugees are included within this cap, there is not reform of legal immigration. My amendment also maintains flexibility to respond to the world situation. If an international crisis requires the admission of more refugees in one year, the President can come to the Congress for an exception above and beyond the ceiling. Also, my amendment does nothing to affect the expanded change in the colonial quota.

A second problem affecting legal immigration concerns the method of allocating the admission of immigrants other than refugees into this country. H.R. 1510 does nothing to limit the 5th preference. The problem of "chain immigration," whereby alien brothers and sisters of U.S. citizens are given a preference for per-

manent residence, remains unchanged. Currently there is a 5th preference backlog of almost 900,000, and it is growing by leaps and bounds. Last year the backlog was 689,400 and in 1981, 551,800. Not only is the backlog growing, but the numbers processed have been decreasing. In 1982, alone, 207,702 5th preference applications were filed.

Since 1980, only 36 percent of the visas granted are for the actual brother or sister of the applicant. All the rest are for the spouses and children of the beneficiary. In simple English, 3 of 8 applicants are the principal beneficiaries of 5th preference, and 5 of 8 are not. If the 5th preference is not modified, then closer family members, i.e., spouses, sons, and daughters will continue to have problems being united. If family reunification is to be a preferred public policy, it should be for the closest relatives—not a loophole to bring "every" relative into the country.

Because of the way in which the preference system is allocated, family reunification is becoming the principal way for immigrants, other than refugees, to enter this country. This will be felt even more a few years down the road when all the legal immigrants, which includes refugees, become citizens; and, if amnesty is granted, the millions of now illegal aliens will be eligible for citizenship, and naturally will want to bring their relatives into this country. As the "spill down" from other preference categories declines, fewer and fewer 5th preference visas will be processed. It is not unreasonable to project that in a few short years, the only 5th preference visas processed will be the numbers allocated—64,000 (24 percent of 270,000). Then what kind of a backlog will there be? What incentive will there be to wait in line for legal immigration?

The most objectionable feature of H.R. 1510, however, is the provision which grants amnesty to unknown millions of illegal aliens. Instead of a two-tier provision which would have granted permanent residence to illegal aliens who have resided in the U.S. for a number of years, and have at least some equity in our country, this bill provides amnesty to all illegal aliens who have resided in this country prior to January 1, 1982. This date was advanced, supposedly to provide for the approximately 1-2,000 detained Haitian entrants who arrived prior to that date. However, in accomplishing this, the door has been opened to as many as 900,000 other illegal aliens, which perhaps might have been the actual reason for advancing the date. H.R. 1510 uses the report from the Select Commission of Immigration and Refugee Policy, chaired by Father Hesburgh, as its basis for an amnesty or legalization program. However, this bill selects only those parts of the Commission's report and totally ignores the criteria set for an amnesty or legalization program—strict employer sanctions, changes in the current legal immigration program, a stronger border patrol, and effective measures to gain control of our entire immigration policy. The date for legalization the Commission selected was 1980, two years earlier than the date contained in H.R. 1510. I believe this date was chosen with the knowledge that immigration reform would require a period of time to pass the Congress and that the discussion or idea of amnesty or legalization should not act as a magnet for futher illegal immigration. This was reiterated by Father Hesburgh in his testimony before the Subcommittee hearings in March.

The costs of the amnesty bill are unclear because it is not known how many illegal aliens will take advantage of this program. Last year the CBO estimated the number of illegal aliens to be 4.5 million; the Justice Department estimates the number to be 6 million; and other estimates vary from 8 to 10 to 12 million illegal aliens. Obviously, the costs will be astronomical. All these costs will be absorbed by either the federal, state, or local governments, some of which are already subject to enormous pressure to cut their budgets and reduce their spending. These additional costs could bankrupt some of these jurisdictions in the next few years. If as some people claim, only about one half the eligible illegal aliens come forward and apply for legalization, that still leaves a sizable population of illegal aliens, and renders the entire program as an expensive exercise in futility.

Aside from the billions of dollars of increased costs to the federal, state, and local governments, there are numerous other reasons for opposing this legalization program.

The legalization program has no safeguards. It does not provide protection against aliens purchasing false documents, i.e., leases, affidavits, etc. to provide they have been in this country the required number of years. In addition, the amnesty program will be an incentive for more illegal aliens to enter our country. The limitations as to who will be eligible for amnesty will not filter down to the citizens residing in economically depressed countries. They will only hear that amnesty is being granted and the influx will start.

Amnesty is a bad precedent for our country to set. It shows our country is not serious about enforcing its immigration laws. It truly makes our borders in the southwest borderless. Aliens will continue to come to the United States hoping in the future they, too, will be granted amnesty.

I fear that the U.S. Supreme Court decision rendered in *Plyler, Superintendent, Tyler Independent School District et al.* v. *Doe, Guardian,* which forced the state of Texas to provide free education benefits to children of illegal aliens, will be extended to include other benefits. This is yet another incentive for a family to move illegally to the United States.

The employer sanctions in the bill are equally ineffective. Illegal aliens drawn by the "economic magnet" to the U.S. will not be hindered. Supporters of the bill will argue the employer sanctions will turn off the "economic magnet." However, this is not true. The employer sanctions were considerably weakened in the full Judiciary Committee. The burden of proof in enforcement of immigration laws has now been shifted from the government to the employer. Employer sanctions must be stronger for the magnet to be turned off. Illegal aliens must not have an incentive to come or to stay in this country.

Blanket amnesty is unfair to the over one million immigrant applicants, some of whom have been waiting as long as 12 years to come to this country legally, and still don't know how much longer they will have to wait. We are saying to these people, they were stupid for obeying the law. If they had come here illegally, they would be rewarded. However, because they decided to abide by our law, they are penalized. We are keeping law abiding applicants out of the country while giving resident status to lawbreakers.

There also will be a negative impact in the years to come on these prospective applicants if illegal aliens are granted amnesty. When the amnestied aliens are granted citizenship, they will bring into this country millions of relatives who are not subject to any numerical limitation. According to a Washington Post editorial of September 13, 1982, a single citizen filed petitions for 69 relatives. In certain areas, the current waiting period for relatives to enter this country is as long as 12 years. What will happen to family reunification when you add millions of newly eligible petitioners? What will the waiting periods be then?

Finally, it seems ludicrous to be granting amnesty to millions of illegal aliens at a time when our country is suffering from such high unemployment. The Congressional Budget Office shows that each unemployed American receives $7,000 annually in unemployment benefits and from public assistance programs. With 10 million unemployment, the American taxpayers are spending a minimum of $70 billion annually. Our country should be considering ways to remove the illegal drain on the work force. Former Secretary of Labor Ray Marshall stated that removing illegal aliens from the work force could cut the unemployment rate in half. This would amount to a savings of at least $35 billion per year. It has been said that illegal aliens are not a drain on the labor forces because they work at jobs "no Americans want to take." After legalization, there will be an incentive for them to move away from their traditional employment fields and put them in direct competition with American labor, thus causing further imbalances in the labor market.

I would hope the U.S. could continue as much as possible its "open door" tradition and policy toward the displaced, the persecuted, and the ambitious of the world. However, the reality of our economic and resource situation is that we simply cannot continue to be a nation without borders. We must limit the influx of aliens and immigrants and have an orderly and fair system for admitting those we are able to absorb. The Simpson-Mazzoli measure as reported by the House Judiciary Committee provides neither, so it cannot be regarded either as a true "reform" of our messed up immigration laws or as the first step toward restoring order to our immigration system. If it cannot be amended on the floor of the House to remedy these deficiencies, it should be defeated.

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