Public Law 99-603
99th Congress

An Act

To amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes.

Nov. 6, 1986
[S. 1200]

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

Immigration Reform and Control Act of 1986.
8 USC 1101 note.

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Immigration Reform and Control Act of 1986".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of, a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

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TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—EMPLOYMENT

SEC. 101. CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS.

(a) IN GENERAL.—

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

"UNLAWFUL EMPLOYMENT OF ALIENS

8 USC 1324a.

"SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

"(1) IN GENERAL.—It is unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States—

"(A) an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

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

"(2) CONTINUING EMPLOYMENT.—It is unlawful for a person or other entity, after hiring an alien for employment 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) DEFENSE.—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) USE OF LABOR THROUGH CONTRACT.—For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

"(5) USE OF STATE EMPLOYMENT AGENCY DOCUMENTATION.—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) EMPLOYMENT VERIFICATION SYSTEM.—The requirements referred to in paragraphs (1)(B) and (3) 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, the requirements specified in the following three paragraphs:

"(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

"(A) IN GENERAL.—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 not an unauthorized alien by examining—

"(i) a document described in subparagraph (B), or

"(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of such sentence, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such a document.

"(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTITY.—A document described in this subparagraph is an individual's—

"(i) United States passport;

"(ii) certificate of United States citizenship;

"(iii) certificate of naturalization;

"(iv) unexpired foreign passport, if the passport has an appropriate, unexpired endorsement of the Attorney

General authorizing the individual's employment in the United States; or

"(v) resident alien card or other alien registration card, if the card—

"(I) 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 subsection, and

"(II) is evidence of authorization of employment in the United States.

"(C) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is an individual's—

"(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

"(ii) certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section; or

"(iii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

"(D) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is an individual's—

"(i) 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

"(ii) 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 clause (ii), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

"(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment.

"(3) RETENTION OF VERIFICATION FORM.—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 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 for a fee (without hiring) of an individual, three years after the date of the 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.

"(4) COPYING OF DOCUMENTATION PERMITTED.—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 law) for the purpose of complying with the requirements of this subsection.

"(5) LIMITATION ON USE OF ATTESTATION FORM.—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 Act and sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

"(c) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

"(d) EVALUATION AND CHANGES IN EMPLOYMENT VERIFICATION SYSTEM.—

"(1) PRESIDENTIAL MONITORING AND IMPROVEMENTS IN SYSTEM.—

"(A) MONITORING.—The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

"(B) IMPROVEMENTS TO ESTABLISH SECURE SYSTEM.—To the extent that the system established under subsection (b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

"(2) RESTRICTIONS ON CHANGES IN SYSTEM.—Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

"(A) RELIABLE DETERMINATION OF IDENTITY.—The system must be capable of reliably determining whether—

"(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

"(ii) the employee or prospective employee is claiming the identity of another individual.

"(B) USING OF COUNTERFEIT-RESISTANT DOCUMENTS.—If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

Public information.

"(C) LIMITED USE OF SYSTEM.—Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

"(D) PRIVACY OF INFORMATION.—The system must protect the privacy and security of personal information and identifiers utilized in the system.

"(E) LIMITED DENIAL OF VERIFICATION.—A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

"(F) LIMITED USE FOR LAW ENFORCEMENT PURPOSES.—The system may not be used for law enforcement purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

"(G) RESTRICTION ON USE OF NEW DOCUMENTS.—If the system requires individuals to present a new 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 to be presented for any purpose other than under this Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

"(3) NOTICE TO CONGRESS BEFORE IMPLEMENTING CHANGES.—

President of U.S. Reports.

"(A) IN GENERAL.—The President may not implement any change under paragraph (1) unless at least—

"(i) 60 days,

"(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

"(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

Federal Register, publication.

Classified information.

"(B) CONTENTS OF REPORT.—In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for un-

authorized use or disclosure of the information or identifiers contained in such system.

"(C) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—

"(i) HEARINGS AND REVIEW.—The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

"(ii) CONGRESSIONAL ACTION.—No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

"(D) MAJOR CHANGES REQUIRING TWO YEARS NOTICE AND CONGRESSIONAL REVIEW.—As used in this paragraph, the term 'major change' means a change which would—

"(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

"(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

"(iii) require any change in any card used for accounting purposes under the Social Security Act, including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act. 42 USC 301 note. 42 USC 405.

"(E) GENERAL REVENUE FUNDING OF SOCIAL SECURITY CARD CHANGES.—Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act.

"(4) DEMONSTRATION PROJECTS.—

"(A) AUTHORITY.—The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than three years. President of U.S.

"(B) REPORTS ON PROJECTS.—The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

"(e) COMPLIANCE.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Attorney General shall establish procedures—

"(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a),

"(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

"(C) for the investigation of such other violations of subsection (a) as the Attorney General determines to be appropriate, and

"(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) under this subsection.

"(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

"(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated, and

"(B) administrative law judges may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

"(3) HEARING.—

"(A) IN GENERAL.—Before imposing an order described in paragraph (4) or (5) 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.

"(B) CONDUCT OF HEARING.—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. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

"(C) ISSUANCE OF ORDERS.—If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4) or (5).

"(4) CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTY FOR HIRING, RECRUITING, AND REFERRAL VIOLATIONS.—With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection—

"(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

"(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

"(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this subparagraph, or

"(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this subparagraph; and

"(B) may require the person or entity—

"(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

"(ii) to take such other remedial action as is appropriate.

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 referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(5) ORDER FOR CIVIL MONEY PENALTY FOR PAPERWORK VIOLATIONS.—With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

"(6) ADMINISTRATIVE APPELLATE REVIEW.—The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless, within 30 days, the Attorney General modifies or vacates the decision and order, in which case the decision and order of the Attorney General shall become a final order under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

"(7) JUDICIAL REVIEW.—A person or entity adversely affected by a final order respecting an assessment may, within 45 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.

"(8) ENFORCEMENT OF ORDERS.—If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review. Courts, U.S.

"(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

"(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $3,000 for each unauthorized

alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

"(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—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 appropriate district court of the United States 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.

"(g) PROHIBITION OF INDEMNITY BONDS.—

"(1) PROHIBITION.—It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

"(2) CIVIL PENALTY.—Any person or entity which is determined, after notice and opportunity for an administrative hearing, to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

"(h) MISCELLANEOUS PROVISIONS.—

"(1) DOCUMENTATION.—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.

State and local governments.

"(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

"(3) DEFINITION OF UNAUTHORIZED ALIEN.—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.

"(i) EFFECTIVE DATES.—

"(1) 6-MONTH PUBLIC INFORMATION PERIOD.—During the six-month period beginning on the first day of the first month after the date of the enactment of this section—

"(A) the Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration, shall disseminate forms and information to employers, employment agencies, and organizations representing employees and provide for

public education respecting the requirements of this section, and

"(B) the Attorney General shall not conduct any proceeding, nor issue any order, under this section on the basis of any violation alleged to have occurred during the period.

"(2) 12-MONTH FIRST CITATION PERIOD.—In the case of a person or entity, in the first instance in which the Attorney General has reason to believe that the person or entity may have violated subsection (a) during the subsequent 12-month period, the Attorney General shall provide a citation to the person or entity indicating that such a violation or violations may have occurred and shall not conduct any proceeding, nor issue any order, under this section on the basis of such alleged violation or violations.

"(3) DEFERRAL OF ENFORCEMENT WITH RESPECT TO SEASONAL AGRICULTURAL SERVICES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), before the end of the application period (as defined in subparagraph (C)(i)), the Attorney General shall not conduct any proceeding, nor impose any penalty, under this section on the basis of any violation alleged to have occurred with respect to employment of an individual in seasonal agricultural services.

"(B) PROHIBITION OF RECRUITMENT OUTSIDE THE UNITED STATES.—

"(i) IN GENERAL.—During the application period, it is unlawful for a person or entity (including a farm labor contractor) or an agent of such a person or entity, to recruit an unauthorized alien (other than an alien described in clause (ii)) who is outside the United States to enter the United States to perform seasonal agricultural services.

"(ii) EXCEPTION.—Clause (i) shall not apply to an alien who the person or entity reasonably believes meets the requirements of section 210(a)(2) of this Act (relating to performance of seasonal agricultural services). *Post*, p. 3417.

"(iii) PENALTY FOR VIOLATION.—A person, entity, or agent that violates clause (i) shall be deemed to be subject to a order under this section in the same manner as if it had violated paragraph (1)(A), without regard to paragraph (2) of this subsection.

"(C) DEFINITIONS.—In this paragraph:

"(i) APPLICATION PERIOD.—The term 'application period' means the period described in section 210(a)(1).

"(ii) SEASONAL AGRICULTURAL SERVICES.—The term 'seasonal agricultural services' has the meaning given such term in section 210(h).

"(j) GENERAL ACCOUNTING OFFICE REPORTS.—

"(1) IN GENERAL.—Beginning one year after the date of enactment of this Act, and at intervals of one year thereafter for a period of three years after such date, the Comptroller General of the United States shall prepare and transmit to the Congress and to the taskforce established under subsection (k) a report describing the results of a review of the implementation and enforcement of this section during the preceding twelve-month period, for the purpose of determining if—

"(A) such provisions have been carried out satisfactorily;

"(B) a pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment; and

"(C) an unnecessary regulatory burden has been created for employers hiring such workers.

"(2) DETERMINATION ON DISCRIMINATION.—In each report, the Comptroller General shall make a specific determination as to whether the implementation of that section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin.

"(3) RECOMMENDATIONS.—If the Comptroller General has determined that such a pattern of discrimination has resulted, the report—

"(A) shall include a description of the scope of that discrimination, and

"(B) may include recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

"(k) REVIEW BY TASKFORCE.—

"(1) ESTABLISHMENT OF JOINT TASKFORCE.—The Attorney General, jointly with the Chairman of the Commission on Civil Rights and the Chairman of the Equal Employment Opportunity Commission, shall establish a taskforce to review each report of the Comptroller General transmitted under subsection (j)(1).

Discrimination, prohibition.

"(2) RECOMMENDATIONS TO CONGRESS.—If the report transmitted includes a determination that the implementation of this section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin, the taskforce shall, taking into consideration any recommendations in the report, report to Congress recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

"(3) CONGRESSIONAL HEARINGS.—The Committees on the Judiciary of the House of Representatives and of the Senate shall hold hearings respecting any report of the taskforce under paragraph (2) within 60 days after the date of receipt of the report.

"(l) TERMINATION DATE FOR EMPLOYER SANCTIONS.—

"(1) IF REPORT OF WIDESPREAD DISCRIMINATION AND CONGRESSIONAL APPROVAL.—The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under subsection (j), if—

"(A) the Comptroller General determines, and so reports in such report, that a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment solely from the implementation of this section; and

"(B) there is enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

"(2) SENATE PROCEDURES FOR CONSIDERATION.—Any joint resolution referred to in clause (B) of paragraph (1) shall be considered in the Senate in accordance with subsection (n).

"(m) EXPEDITED PROCEDURES IN THE HOUSE OF REPRESENTATIVES.—For the purpose of expediting the consideration and adoption of joint

resolutions under subsection (l), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(n) EXPEDITED PROCEDURES IN THE SENATE.—

"(1) CONTINUITY OF SESSION.—For purposes of subsection (l), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated.

"(2) RULEMAKING POWER.—Paragraphs (3) and (4) of this subsection are enacted—

"(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of joint resolutions referred to in subsection (l), and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

"(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

"(3) COMMITTEE CONSIDERATION.—

"(A) MOTION TO DISCHARGE.—If the committee of the Senate to which has been referred a joint resolution relating to the report described in subsection (l) has not reported such joint resolution at the end of ten calendar days after its introduction, not counting any day which is excluded under paragraph (1) of this subsection, it is in order to move either to discharge the committee from further consideration of the joint resolution or to discharge the committee from further consideration of any other joint resolution introduced with respect to the same report which has been referred to the committee, except that no motion to discharge shall be in order after the committee has reported a joint resolution with respect to the same report.

"(B) CONSIDERATION OF MOTION.—A motion to discharge under subparagraph (A) of this paragraph may be made only by a Senator favoring the joint resolution, is privileged, and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the joint resolution, the time to be divided equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(4) MOTION TO PROCEED TO CONSIDERATION.—

"(A) IN GENERAL.—A motion in the Senate to proceed to the consideration of a joint resolution shall be privileged. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(B) DEBATE ON RESOLUTION.—Debate in the Senate on a joint resolution, and all debatable motions and appeals in connection therewith, shall be limited to not more than 10

hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(C) DEBATE ON MOTION.—Debate in the Senate on any debatable motion or appeal in connection with a joint resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a joint resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(D) MOTIONS TO LIMIT DEBATE.—A motion in the Senate to further limit debate on a joint resolution, debatable motion, or appeal is not debatable. No amendment to, or motion to recommit, a joint resolution is in order in the Senate.".

8 USC 1324a note.

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

8 USC 1324a note.

(3) GRANDFATHER FOR CURRENT EMPLOYEES.—(A) Section 274A(a)(1) of the Immigration and Nationality Act shall not apply to the hiring, or recruiting or referring of an individual for employment which has occurred before the date of the enactment of this Act.

Ante, p. 3360.

8 USC 1324a note.

(B) Section 274A(a)(2) of the Immigration and Nationality Act shall not apply to continuing employment of an alien who was hired before the date of the enactment of this Act.

(b) CONFORMING AMENDMENTS TO MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—(1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) is amended—

29 USC 1801 note.

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

Post, p. 3411.

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

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

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

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

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

Ante, p. 3360.

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

(D) by striking out "section 106" in section 501(b) (29 U.S.C. 1851(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

29 USC 1802 note.

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

(c) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 274 the following new item:

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

(d) STUDY ON THE USE OF A TELEPHONE VERIFICATION SYSTEM FOR DETERMINING EMPLOYMENT ELIGIBILITY OF ALIENS.—(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall conduct a study for use by the Department of Justice in determining employment eligibility of aliens in the United States. Such study shall concentrate on those data bases that are currently available to the Federal Government which through the use of a telephone and computation capability could be used to verify instantly the employment eligibility status of job applicants who are aliens. 8 USC 1324a note.

(2) Such study shall be conducted in conjunction with any existing Federal program which is designed for the purpose of providing information on the resident or employment status of aliens for employers. The study shall include an analysis of costs and benefits which shows the differences in costs and efficiency of having the Federal Government or a contractor perform this service. Such comparisons should include reference to such technical capabilities as processing techniques and time, verification techniques and time, backup safeguards, and audit trail performance.

(3) Such study shall also concentrate on methods of phone verification which demonstrate the best safety and service standards, the least burden for the employer, the best capability for effective enforcement, and procedures which are within the boundaries of the Privacy Act of 1974. 5 USC 552a notes.

(4) Such study shall be conducted within twelve months of the date of enactment of this Act.

(5) The Attorney General shall prepare and transmit to the Congress a report— Reports.

(A) not later than six months after the date of enactment of this Act, describing the status of such study; and

(B) not later than twelve months after such date, setting forth the findings of such study.

(e) FEASIBILITY STUDY OF SOCIAL SECURITY NUMBER VALIDATION SYSTEM.—The Secretary of Health and Human Services, acting through the Social Security Administration and in cooperation with the Attorney General and the Secretary of Labor, shall conduct a study of the feasibility and costs of establishing a social security number validation system to assist in carrying out the purposes of section 274A of the Immigration and Nationality Act, and of the privacy concerns that would be raised by the establishment of such a system. The Secretary shall submit to the Committees on Ways and Means and Judiciary of the House of Representatives and to the Committees on Finance and Judiciary of the Senate, within 2 years after the date of the enactment of this Act, a full and complete report on the results of the study together with such recommendations as may be appropriate. 8 USC 1324a note. *Ante*, p. 3360.

(f) COUNTERFEITING OF SOCIAL SECURITY ACCOUNT NUMBER CARDS.—(1) The Comptroller General of the United States, upon consultation with the Attorney General and the Secretary of Health and Human Services as well as private sector representatives (including representatives of the financial, banking, and manufacturing industries), shall inquire into technological alternatives for 42 USC 405 note. Science and technology.

producing and issuing social security account number cards that are more resistant to counterfeiting than social security account number cards being issued on the date of enactment of this Act by the Social Security Administration, including the use of encoded magnetic, optical, or active electronic media such as magnetic stripes, holograms, and integrated circuit chips. Such inquiry should focus on technologies that will help ensure the authenticity of the card, rather than the identity of the bearer.

(2) The Comptroller General of the United States shall explore additional actions that could be taken to reduce the potential for fraudulently obtaining and using social security account number cards.

Reports.

(3) Not later than one year after the date of enactment of this Act, the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and the Committee on the Judiciary and the Committee on Finance of the Senate a report setting forth his findings and recommendations under this subsection.

SEC. 102. UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Chapter 8 of title II is further amended by inserting after section 274A, as inserted by section 101(a), the following new section:

"UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

8 USC 1324b.

"SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

"(1) GENERAL RULE.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

"(A) because of such individual's national origin, or

"(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of such individual's citizenship status.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) a person or other entity that employs three or fewer employees,

"(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964, or

42 USC 2000e-2.

"(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

State and local governments.

"(3) DEFINITION OF CITIZEN OR INTENDING CITIZEN.—As used in paragraph (1), the term 'citizen or intending citizen' means an individual who—

"(A) is a citizen or national of the United States, or

"(B) is an alien who—

"(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208, and 8 USC 1255. 8 USC 1157. 8 USC 1158.

"(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not include (I) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (II) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

"(4) ADDITIONAL EXCEPTION PROVIDING RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

"(b) CHARGES OF VIOLATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's behalf) or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

"(2) NO OVERLAP WITH EEOC COMPLAINTS.—No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section. 42 USC 2000e.

"(c) SPECIAL COUNSEL.—

"(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for President of U.S.

Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the 'Special Counsel') within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

"(2) DUTIES.—The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (j)(1).

"(3) COMPENSATION.—The Special Counsel is entitled to receive compensation at a rate not to exceed the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code.

"(4) REGIONAL OFFICES.—The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

"(d) INVESTIGATION OF CHARGES.—

"(1) BY SPECIAL COUNSEL.—The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

"(2) PRIVATE ACTIONS.—If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

"(3) TIME LIMITATIONS ON COMPLAINTS.—No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

"(e) HEARINGS.—

"(1) NOTICE.—Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing, upon the motion of the party filing the complaint, in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear

in person or otherwise and give testimony at the place and time fixed in the complaint.

"(2) JUDGES HEARING CASES.—Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

"(3) COMPLAINANT AS PARTY.—Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the said proceeding and to present testimony.

"(f) TESTIMONY AND AUTHORITY OF HEARING OFFICERS.—

"(1) TESTIMONY.—The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

"(2) AUTHORITY OF ADMINISTRATIVE LAW JUDGES.—In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

"(g) DETERMINATIONS.—

"(1) ORDER.—The administrative law judge shall issue and cause to be served on the parties to the proceeding an order, which shall be final unless appealed as provided under subsection (i).

"(2) ORDERS FINDING VIOLATIONS.—

"(A) IN GENERAL.—If, upon the preponderance of the evidence, an administrative law judge determines that that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

"(B) CONTENTS OF ORDER.—Such an order also may require the person or entity—

"(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

Ante, p. 3360.

8 USC 1324.

"(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274(b)(5), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

"(iii) to hire individuals directly and adversely affected, with or without back pay; and

"(iv)(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

"(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

"(C) LIMITATION ON BACK PAY REMEDY.—In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with an administrative law judge. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such subparagraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

"(D) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physicially separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(3) ORDERS NOT FINDING VIOLATIONS.—If upon the preponderance of the evidence an administrative law judge determines that the person or entity named in the complaint has not engaged or is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

"(h) AWARDING OF ATTORNEYS' FEES.—In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

"(i) REVIEW OF FINAL ORDERS.—

"(1) IN GENERAL.—Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

"(2) FURTHER REVIEW.—Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its

judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

"(j) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—

"(1) IN GENERAL.—If an order of the agency is not appealed under subsection (i)(1), the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

"(2) COURT ENFORCEMENT ORDER.—Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

"(3) ENFORCEMENT DECREE IN ORIGINAL REVIEW.—If, upon appeal of an order under subsection (i)(1), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

"(4) AWARDING OF ATTORNEY'S FEES.—In any judicial proceeding under subsection (i) or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs but only if the losing party's argument is without reasonable foundation in law and fact.

"(k) TERMINATION DATES.—

"(1) This section shall not apply to discrimination in hiring, recruiting, referring, or discharging of individuals occurring after the date of any termination of the provisions of section 274A, under subsection (l) of that section. *Ante*, p. 3360.

"(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 274A(j) if—

"(A) the Comptroller General determines, and so reports in such report that—

"(i) no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 274A, or

"(ii) such section has created an unreasonable burden on employers hiring such workers; and

"(B) there has been enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

The provisions of subsections (m) and (n) of section 274A shall apply to any joint resolution under subparagraph (B) in the same manner as they apply to a joint resolution under subsection (l) of such section.".

(b) NO EFFECT ON EEOC AUTHORITY.—Except as may be specifically provided in this section, nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), or any other authority provided therein. 8 USC 1324b note.

(c) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 274A (as added by section 101(c)) the following new item:

"Sec. 274B. Unfair immigration-related employment practices.".

SEC. 103. FRAUD AND MISUSE OF CERTAIN IMMIGRATION-RELATED DOCUMENTS.

(a) APPLICATION TO ADDITIONAL DOCUMENTS.—Section 1546 of title 18, United States Code, is amended—

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

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

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

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

(4) by striking out "$2,000" and inserting in lieu thereof "in accordance with this title";

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

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

"(b) Whoever uses—

"(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

"(2) an identification document knowing (or having reason to know) that the document is false, or

"(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined in accordance with this title, or imprisoned not more than two years, or both.

Ante, p. 3360.

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

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

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

PART B—IMPROVEMENT OF ENFORCEMENT AND SERVICES

SEC. 111. AUTHORIZATION OF APPROPRIATIONS FOR ENFORCEMENT AND SERVICE ACTIVITIES OF THE IMMIGRATION AND NATURALIZATION SERVICE. 8 USC 1101 note.

(a) TWO ESSENTIAL ELEMENTS.—It is the sense of Congress that two essential elements of the program of immigration control established by this Act are—

(1) an increase in the border patrol and other inspection and enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States and the violation of the terms of their entry, and

(2) an increase in examinations and other service activities of the Immigration and Naturalization Service and other appropriate Federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act.

8 USC 1101 note.

(b) INCREASED AUTHORIZATION OF APPROPRIATIONS FOR INS AND EOIR.—In addition to any other amounts authorized to be appropriated, in order to carry out this Act there are authorized to be appropriated to the Department of Justice—

(1) for the Immigration and Naturalization Service, for fiscal year 1987, $422,000,000, and for fiscal year 1988, $419,000,000; and

(2) for the Executive Office of Immigration Review, for fiscal year 1987, $12,000,000, and for fiscal year 1988, $15,000,000.

Of the amounts authorized to be appropriated under paragraph (1) sufficient funds shall be available to provide for an increase in the border patrol personnel of the Immigration and Naturalization Service so that the average level of such personnel in each of fiscal years 1987 and 1988 is at least 50 percent higher than such level for fiscal year 1986.

(c) USE OF FUNDS FOR IMPROVED SERVICES.—Of the funds appropriated to the Department of Justice for the Immigration and Naturalization Service, the Attorney General shall provide for improved immigration and naturalization services and for enhanced community outreach and in-service training of personnel of the Service. Such enhanced community outreach may include the establishment of appropriate local community taskforces to improve the working relationship between the Service and local community groups and organizations (including employers and organizations representing minorities).

Community development.

(d) SUPPLEMENTAL AUTHORIZATION OF APPROPRIATIONS FOR WAGE AND HOUR ENFORCEMENT.—There are authorized to be appropriated, in addition to such sums as may be available for such purposes, such sums as may be necessary to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standards Administration of the Department in order to deter the employment of unauthorized aliens and remove the economic incentive for employers to exploit and use such aliens.

SEC. 112. UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES.

(a) CRIMINAL PENALTIES.—Subsection (a) of section 274 (8 U.S.C. 1324) is amended to read as follows:

"(a) CRIMINAL PENALTIES.—(1) Any person who—

"(A) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

"(B) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

"(C) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation; or

"(D) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law,

shall be fined in accordance with title 18, United States Code, imprisoned not more than five years, or both, for each alien in respect to whom any violation of this subsection occurs.

"(2) 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 in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this paragraph, regardless of the number of aliens involved—

"(A) be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both; or

"(B) in the case of—

"(i) a second or subsequent offense,

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

"(iii) 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 in accordance with title 18, United States Code, or imprisoned not more than five years, or both.".

(b) MISCELLANEOUS AMENDMENTS TO SEIZURE AND FORFEITURE PROCEDURES.—Subsection (b) of such section is amended—

(1) in paragraph (1) before subparagraph (A) by striking out "is used" and inserting in lieu thereof "has been or is being used",

(2) by striking out "subject to seizure and" in paragraph (1) and inserting in lieu thereof "seized and subject to",

(3) by inserting "or is being" after "has been" in paragraph (2),

(4) by striking out "conveyances" in paragraph (3) and inserting in lieu thereof "property",

(5) by inserting ", or the Federal Maritime Commission if appropriate under section 203(i) of the Federal Property and Administrative Services Act of 1949," in paragraph (4)(C) after "General Services Administration", 40 USC 484.

(6) in paragraph (4)—

(A) by striking out "or" at the end of subparagraph (B),

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; or", and

(C) by inserting after such subparagraph the following new subparagraph:

"(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.";

(7) by striking out ": *Provided,* That" in paragraph (5) and inserting in lieu thereof ", except that",

(8) by striking out "was not lawfully entitled to enter, or reside within, the United States" in paragraph (5) and inserting in lieu thereof "had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law" each place it appears, and

(9) by inserting "or of the Department of State" in paragraph (5)(B) after "Service".

SEC. 113. IMMIGRATION EMERGENCY FUND.

Section 404 (8 U.S.C. 1101 note) is amended by inserting "(a)" after "SEC. 404." and by adding at the end the following new subsection:

"(b) There are authorized to be appropriated to an immigration emergency 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 as requested by 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.". Appropriation authorization. State and local governments.

SEC. 114. LIABILITY OF OWNERS AND OPERATORS OF INTERNATIONAL BRIDGES AND TOLL ROADS TO PREVENT THE UNAUTHORIZED LANDING OF ALIENS.

Section 271 (8 U.S.C. 1321) is amended by inserting at the end the following new subsection:

"(c)(1) Any owner or operator of a railroad line, international bridge, or toll road who establishes to the satisfaction of the Attorney General that the person has acted diligently and reasonably to fulfill the duty imposed by subsection (a) shall not be liable for the penalty described in such subsection, notwithstanding the failure of the person to prevent the unauthorized landing of any alien.

"(2)(A) At the request of any person described in paragraph (1), the Attorney General shall inspect any facility established, or any method utilized, at a point of entry into the United States by such person for the purpose of complying with subsection (a). The Attorney General shall approve any such facility or method (for such period of time as the Attorney General may prescribe) which the Attorney General determines is satisfactory for such purpose.

"(B) Proof that any person described in paragraph (1) has diligently maintained any facility, or utilized any method, which has been approved by the Attorney General under subparagraph (A) (within the period for which the approval is effective) shall be prima facie evidence that such person acted diligently and reasonably to fulfill the duty imposed by subsection (a) (within the meaning of paragraph (1) of this subsection).".

SEC. 115. ENFORCEMENT OF THE IMMIGRATION LAWS OF THE UNITED STATES.

It is the sense of the Congress that—

(1) the immigration laws of the United States should be enforced vigorously and uniformly, and

(2) in the enforcement of such laws, the Attorney General shall take due and deliberate actions necessary to safeguard the constitutional rights, personal safety, and human dignity of United States citizens and aliens.

SEC. 116. RESTRICTING WARRANTLESS ENTRY IN THE CASE OF OUTDOOR AGRICULTURAL OPERATIONS.

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

"(d) Notwithstanding any other provision of this section other than paragraph (3) of subsection (a), an officer or employee of the Service may 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 agricultural 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.".

SEC. 117. RESTRICTIONS ON ADJUSTMENT OF STATUS.

Section 245(c)(2) (8 U.S.C. 1255(c)(2) is amended by inserting after "hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status" the following: "or who is not in legal immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own for technical reasons) to maintain continuously a legal status since entry into the United States".

PART C—VERIFICATION OF STATUS UNDER CERTAIN PROGRAMS

SEC. 121. VERIFICATION OF IMMIGRATION STATUS OF ALIENS APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS.

(a) REQUIRING IMMIGRATION STATUS VERIFICATION.—

(1) UNDER AFDC, MEDICAID, UNEMPLOYMENT COMPENSATION, AND FOOD STAMP PROGRAMS.—Section 1137 of the Social Security Act (42 U.S.C. 1320b-7) is amended—

(A) in the matter in subsection (a) before paragraph (1), by inserting "which meets the requirements of subsection (d) and" after "income and eligibility verification system",

(B) in subsection (b), by striking out "income verification system" in the matter preceding paragraph (1) and inserting in lieu thereof "income and eligibility verification system", and

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

State and local governments.

"(d) The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:

"(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b), a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status. Children and youth.

"(B) In this subsection—

"(i) in the case of the program described in subsection (b)(1), any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's being considered a dependent child or to the individual's being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 402(a)(7), 8 USC 1546.

"(ii) in the case of the program described in subsection (b)(4)—

"(I) any reference to the State shall be considered a reference to the State agency, and

"(II) any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's eligibility to participate in the program as a member of a household, and

"(III) the term 'satisfactory immigration status' means an immigration status which does not make the individual ineligible for benefits under the applicable program.

"(2) If such an individual is not a citizen or national of the United States, there must be presented either—

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

"(A) the State—

"(i) shall provide a reasonable opportunity to submit to the State evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

"(i) the State shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

"(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

"(5) If the State determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status under the applicable program—

"(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

"(B) the applicable fair hearing process shall be made available with respect to the individual.

"(e) Each Federal agency responsible for administration of a program described in subsection (b) shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to any error in the State's determination to make an individual eligible for benefits based on citizenship or immigration status—

"(1) if the State has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

"(2) because the State, under subsection (d)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

"(3) because the State, under subsection (d)(4)(B)(ii), was required to wait for the response of the Immigration and Naturalization Service to the State's request for official verification of the immigration status of the individual, or

"(4) because of a fair hearing process described in subsection (d)(5)(B).".

(2) UNDER HOUSING ASSISTANCE PROGRAMS.—Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) is amended by adding at the end the following new subsections:

"(d) The following conditions apply with respect to financial assistance being provided for the benefit of an individual:

Children and youth.

"(1)(A) There must be a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the

United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

"(B) In this subsection, the term 'satisfactory immigration status' means an immigration status which does not make the individual ineligible for financial assistance.

"(2) If such an individual is not a citizen or national of the United States, there must be presented either—

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the Secretary determines constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the Secretary shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for financial assistance, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

"(A) the Secretary—

"(i) shall provide a reasonable opportunity to submit to the Secretary evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the Secretary determines constitutes reasonable evidence indicating such status—

"(i) the Secretary shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the Secretary may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status, and

"(iii) the Secretary shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

"(5) If the Secretary determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status—

"(A) the Secretary shall deny or terminate the individual's eligibility for financial assistance, and

"(B) the applicable fair hearing process shall be made available with respect to the individual.

In this subsection and subsection (e), the term 'Secretary' refers to the Secretary and to a public housing authority or other entity which makes financial assistance available.

"(e) The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an entity with respect to any error in the entity's determination to make an individual eligible for financial assistance based on citizenship or immigration status—

"(1) if the entity has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

"(2) because the entity, under subsection (d)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

"(3) because the entity, under subsection (d)(4)(B)(ii), was required to wait for the response to the Immigration and Naturalization Service to the entity's request for official verification of the immigration status of the individual, or

"(4) because of a fair hearing process described in subsection (d)(5)(B).".

(3) UNDER TITLE IV EDUCATIONAL ASSISTANCE.—Section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091) is amended by adding at the end the following new subsections:

Ante, p. 1480.

Grants.
Loans.

"(c) The following conditions apply with respect to an individual's receipt of any grant, loan, or work assistance under this title as a student at an institution of higher education:

"(1)(A) There must be a declaration in writing to the institution by the student, under penalty of perjury, stating whether or not the student is a citizen or national of the United States, and, if the student is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

"(B) In this subsection, the term 'satisfactory immigration status' means an immigration status which does not make the student ineligible for a grant, loan, or work assistance under this title.

"(2) If the student is not a citizen or national of the United States, there must be presented to the institution either—

"(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

"(B) such other documents as the institution determines (in accordance with guidelines of the Secretary) constitutes reasonable evidence indicating a satisfactory immigration status.

"(3) If the documentation described in paragraph (2)(A) is presented, the institution shall utilize the individual's alien file or alien admission number to verify with the Immigration and

Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with institutions) that—

"(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

"(B) protects the individual's privacy to the maximum degree possible.

"(4) In the case of such an individual who is not a citizen or national of the United States, if the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

"(A) the institution—

"(i) shall provide a reasonable opportunity to submit to the institution evidence indicating a satisfactory immigration status, and

"(ii) may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided; and

"(B) if there are submitted documents which the institution determines constitutes reasonable evidence indicating such status—

"(i) the institution shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

"(ii) pending such verification, the institution may not delay, deny, reduce, or terminate the individual's eligibility for the grant, loan, or work assistance on the basis of the individual's immigration status, and

"(iii) the institution shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

"(5) If the institution determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status—

"(A) the institution shall deny or terminate the individual's eligibility for such grant, loan, or work assistance, and

"(B) the fair hearing process (which includes, at a minimum, the requirements of paragraph (6)) shall be made available with respect to the individual.

"(6) The minimal requirements of this paragraph for a fair hearing process are as follows:

"(A) The institution provides the individual concerned with written notice of the determination described in paragraph (5) and of the opportunity for a hearing respecting the determination.

"(B) Upon timely request by the individual, the institution provides a hearing before an official of the institution at which the individual can produce evidence of a satisfactory immigration status.

"(C) Not later than 45 days after the date of an individual's request for a hearing, the official will notify the

individual in writing of the official's decision on the appeal of the determination.

"(d) The Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an institution of higher education with respect to any error in the institution's determination to make a student eligible for a grant, loan, or work assistance based on citizenship or immigration status—

"(1) if the institution has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

"(2) because the institution, under subsection (c)(4)(A)(ii), was required to provide a reasonable opportunity to submit documentation,

"(3) because the institution, under subsection (c)(4)(B)(ii), was required to wait for the response of the Immigration and Naturalization Service to the institution's request for official verification of the immigration status of the student, or

"(4) because of a fair hearing process described in subsection (c)(5)(B).

"(e) Notwithstanding subsection (c), if—

"(1) a guaranty is made under this title for a loan made with respect to an individual,

"(2) at the time the guaranty is entered into, the provisions of subsection (c) had been complied with,

"(3) amounts are paid under the loan subject to such guaranty, and

"(4) there is a subsequent determination that, because of an unsatisfactory immigration status, the individual is not eligible for the loan,

the official of the institution making the determination shall notify and instruct the entity making the loan to cease further payments under the loan, but such guaranty shall not be voided or otherwise nullified with respect to such payments made before the date of the entity receives the notice.".

(b) PROVIDING 100 PERCENT REIMBURSEMENT FOR COSTS OF IMPLEMENTATION AND OPERATION.—

42 USC 603. (1) UNDER AFDC PROGRAM.—Section 403(a)(3) of the Social Security Act is amended by inserting before subparagraph (B) the following new subparagraph:

"(A) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d),".

42 USC 1396b. (2) UNDER MEDICAID PROGRAM.—Section 1903(a) of such Act is amended by inserting after paragraph (3) the following new paragraph:

"(4) an amount equal to 100 percent of the sums expended during the quarter which are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus".

42 USC 1320b-7.

42 USC 502. (3) UNDER UNEMPLOYMENT COMPENSATION PROGRAM.—The first sentence of section 302(a) of such Act is amended by inserting before the period at the end the following: ", including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1137(d)".

(4) UNDER CERTAIN TERRITORIAL ASSISTANCE PROGRAMS.—Sections 3(a)(4), 1003(a)(3), 1403(a)(3), and 1603(a)(4) of the Social Security Act (as in effect without regard to section 301 of the Social Security Amendments of 1972) are each amended by redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following new subparagraph: 42 USC 303, 1203, 1353, 1383 note. 42 USC 1381-1383c.

"(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1137(d); plus".

(5) UNDER THE FOOD STAMP PROGRAM.—Section 16 of the Food Stamp Act of 1977 (7 U.S.C. 2025) is amended by adding at the end the following new subsection:

"(h) The Secretary is authorized to pay to each State agency an amount equal to 100 per centum of the costs incurred by the State agency in implementing and operating the immigration status verification system described in section 1137(d) of the Social Security Act.". State and local governments.

(6) UNDER HOUSING ASSISTANCE PROGRAMS.—The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following new section: 42 USC 1320b-7.

"PAYMENT FOR IMPLEMENTATION OF IMMIGRATION STATUS VERIFICATION SYSTEM

"SEC. 20. The Secretary is authorized to pay to each public housing authority an amount equal to 100 percent of the costs incurred by the authority in implementing and operating the immigration status verification system under section 214(c) of the Housing and Community Development Act of 1980 with respect to financial assistance made available pursuant to this Act.". 42 USC 1437r. 42 USC 1436a.

(7) UNDER TITLE IV EDUCATIONAL ASSISTANCE.—Section 489(a) of the Higher Education Act of 1965 (20 U.S.C. 1096) is amended by adding at the end the following: "In addition, the Secretary shall provide for payment to each institution of higher education an amount equal to 100 percent of the costs incurred by the institution in implementing and operating the immigration status verification system under section 484(c).". *Ante*, p. 1491. 20 USC 1091.

(c) EFFECTIVE DATES.—

(1) IMMIGRATION AND NATURALIZATION SERVICE ESTABLISHING VERIFICATION SYSTEM BY OCTOBER 1, 1987.—The Commissioner of Immigration and Naturalization shall implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act (as amended by this section) so that the system is available to all the States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved. State and local governments. 42 USC 1320b-7 note. 42 USC 1320b-7. Discrimination, prohibition.

(2) HIGHER MATCHING EFFECTIVE IN FISCAL YEAR 1988.—The amendments made by subsection (b) take effect on October 1, 1987. 42 USC 502 note.

(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—Except as provided in paragraph (4), the amendments made by subsection (a) take effect on October 1, 1988. States Effective date. 42 USC 1320b-7 note.

have until that date to begin complying with the requirements imposed by those amendments.

42 USC 1320b-7 note.

(4) USE OF VERIFICATION SYSTEM NOT REQUIRED FOR A PROGRAM IN CERTAIN CASES.—

(A) REPORT TO RESPECTIVE CONGRESSIONAL COMMITTEES.—With respect to each covered program (as defined in subparagraph (D)(i)), each appropriate Secretary shall examine and report to the appropriate Committees of the House of Representatives and of the Senate, by not later than April 1, 1988, concerning whether (and the extent to which)—

(i) the application of the amendments made by subsection (a) to the program is cost-effective and otherwise appropriate, and

(ii) there should be a waiver of the application of such amendments under subparagraph (B).

Effective date.

The amendments made by subsection (a) shall not apply with respect to a covered program described in subclause (II), (V), (VI), or (VII) of subparagraph (D)(i) until after the date of receipt of such report with respect to the program.

(B) WAIVER IN CERTAIN CASES.—If, with respect to a covered program, the appropriate Secretary determines, on the Secretary's own initiative or upon an application by an administering entity and based on such information as the Secretary deems persuasive (which may include the results of the report required under subsection (d)(1) and information contained in such an application), that—

(i) the appropriate Secretary or the administering entity has in effect an alternative system of immigration status verification which—

(I) is as effective and timely as the system otherwise required under the amendments made by subsection (a) with respect to the program, and

(II) provides for at least the hearing and appeals rights for beneficiaries that would be provided under the amendments made by subsection (a), or

(ii) the costs of administration of the system otherwise required under such amendments exceed the estimated savings,

such Secretary may waive the application of such amendments to the covered program to the extent (by State or other geographic area or otherwise) that such determinations apply.

(C) BASIS FOR DETERMINATION.—A determination under subparagraph (B)(ii) shall be based upon the appropriate Secretary's estimate of—

(i) the number of aliens claiming benefits under the covered program in relation to the total number of claimants seeking benefits under the program,

(ii) any savings in benefit expenditures reasonably expected to result from implementation of the verification program, and

(iii) the labor and nonlabor costs of administration of the verification system,

the degree to which the Immigration and Naturalization Service is capable of providing timely and accurate information to the administering entity in order to permit a

reliable determination of immigration status, and such other factors as such Secretary deems relevant.

(D) DEFINITIONS.—In this paragraph:

(i) The term "covered program" means each of the following programs:

(I) The aid to families with dependent children program under part A of title IV of the Social Security Act. Children and youth. 42 USC 601.

(II) The medicaid program under title XIX of the Social Security Act. Medicaid. 42 USC 1396.

(III) Any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act. 42 USC 301, 1201, 1351, 1381.

(IV) The unemployment compensation program under section 3304 of the Internal Revenue Code of 1954. 26 USC 3304.

(V) The food stamp program under the Food Stamp Act of 1977. 7 USC 2026.

(VI) The programs of financial assistance for housing subject to section 214 of the Housing and Community Development Act of 1980. 42 USC 1436a.

(VII) The program of grants, loans, and work assistance under title IV of the Higher Education Act of 1965. *Ante*, p. 1308.

(ii) The term "appropriate Secretary" means, with respect to the covered program described in—

(I) subclauses (I) through (III) of clause (i), the Secretary of Health and Human Services;

(II) clause (i)(IV), the Secretary of Labor;

(III) clause (i)(V), the Secretary of Agriculture;

(IV) clause (i)(VI), the Secretary of Housing and Urban Development; and

(V) clause (i)(VII), the Secretary of Education.

(iii) The term "administering entity" means, with respect to the covered program described in—

(I) subclause (I), (II), (III), (IV), or (V) of clause (i), the State agency responsible for the administration of the program in a State;

(II) clause (i)(VI), the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance; and

(III) clause (i)(VII), an institution of higher education involved.

(5) FUNDS AUTHORIZED.—Such sums as may be necessary are authorized for the Immigration and Naturalization Service to carry out the purposes of this section.

(d) GAO REPORTS.— 42 USC 1320b-7 note.

(1) REPORT ON CURRENT PILOT PROJECTS.—The Comptroller General shall—

(A) examine current pilot projects relating to the System for Alien Verification of Eligibility (SAVE) operated by, or through cooperative agreements with, the Immigration and Naturalization Service, and Contracts.

(B) report, not later than October 1, 1987, to Congress and to the Commissioner of the Immigration and Naturalization Service concerning the effectiveness of such projects and

any problems with the implementation of such projects, particularly as they may apply to implementation of the system referred to in subsection (c)(1).

(2) REPORT ON IMPLEMENTATION OF VERIFICATION SYSTEM.—The Comptroller General shall—

(A) monitor and analyze the implementation of such system,

(B) report to Congress and to the appropriate Secretaries described in subsection (c)(4)(D)(ii), by not later than April 1, 1989, on such implementation, and

(C) include in such report such recommendations for changes in the system as may be appropriate.

TITLE II—LEGALIZATION

SEC. 201. LEGALIZATION OF STATUS.

(a) PROVIDING FOR LEGALIZATION PROGRAM.—(1) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

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

8 USC 1255a.

"SEC. 245A. (a) TEMPORARY RESIDENT STATUS.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

"(1) TIMELY APPLICATION.—

"(A) DURING APPLICATION PERIOD.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

"(B) APPLICATION WITHIN 30 DAYS OF SHOW-CAUSE ORDER.—An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under

8 USC 1252.

section 242, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 18-month period or on the date of the issuance of such order, whichever day is later.

"(C) INFORMATION INCLUDED IN APPLICATION.—Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be

8 USC 1154.

filed by the applicant at any later date under section 204(a).

"(2) CONTINUOUS UNLAWFUL RESIDENCE SINCE 1982.—

"(A) IN GENERAL.—The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

"(B) NONIMMIGRANTS.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such

date through the passage of time or the alien's unlawful status was known to the Government as of such date.

"(C) EXCHANGE VISITORS.—If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien must establish that 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. 8 USC 1101. 8 USC 1182.

"(3) CONTINUOUS PHYSICAL PRESENCE SINCE ENACTMENT.—

"(A) IN GENERAL.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

"(B) TREATMENT OF BRIEF, CASUAL, AND INNOCENT ABSENCES.—An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

"(C) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

"(4) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

"(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) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act. 50 USC app. 451.

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. 8 USC 1522 note.

"(b) SUBSEQUENT ADJUSTMENT TO PERMANENT RESIDENCE AND NATURE OF TEMPORARY RESIDENT STATUS.—

"(1) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

"(A) TIMELY APPLICATION AFTER ONE YEAR'S RESIDENCE.—The alien must apply for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

"(B) CONTINUOUS RESIDENCE.—

"(i) IN GENERAL.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

"(ii) TREATMENT OF CERTAIN ABSENCES.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

"(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

"(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and

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

"(D) BASIC CITIZENSHIP SKILLS.—

"(i) IN GENERAL.—The alien must demonstrate that he either—

8 USC 1423.

"(I) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

"(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

"(ii) EXCEPTION FOR ELDERLY INDIVIDUALS.—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older.

"(iii) RELATION TO NATURALIZATION EXAMINATION.—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

8 USC 1401.

"(2) TERMINATION OF TEMPORARY RESIDENCE.—The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)—

"(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

"(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

"(C) at the end of the thirty-first month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

"(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under subsection (a)—

"(A) AUTHORIZATION OF TRAVEL ABROAD.—The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the

alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

"(B) AUTHORIZATION OF EMPLOYMENT.—The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

"(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

"(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

"(A) with the Attorney General, or

"(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term "qualified designated entity" means an organization or person designated under paragraph (2).

"(2) DESIGNATION OF QUALIFIED ENTITIES TO RECEIVE APPLICATIONS.—For purposes of assisting in the program of legalization provided under this section, the Attorney General—

"(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

"(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

8 USC 1159, 1255.
8 USC 1255 note.

"(3) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

"(4) LIMITATION ON ACCESS TO INFORMATION.—Files and records of qualified designated entities relating to an alien's seeking assistance or information with respect to filing an application under this section 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.

"(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

"(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6),

"(B) make any publication whereby the information furnished by any particular individual can be identified, or

"(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with

respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Law enforcement and crime.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(7) APPLICATION FEES.—

"(A) FEE SCHEDULE.—The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1).

"(B) USE OF FEES.— The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

"(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

"(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

8 USC 1151, 1152.

"(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

"(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

8 USC 1182.

"(B) WAIVER OF OTHER GROUNDS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

"(I) Paragraphs (9) and (10) (relating to criminals).

"(II) Paragraph (15) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence by an alien other than an alien who is eligible for benefits under title XVI of the Social Security Act or section 212 of Public Law 93-66 for the month in which such alien is granted lawful temporary residence status under subsection (a).

42 USC 1381.
42 USC 1382 note.

"(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

"(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

"(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

"(iii) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance. 8 USC 1182.

"(C) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

"(e) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

"(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) 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), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

"(A) may not be deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

"(A) may not be deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

"(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) NO REVIEW FOR LATE FILINGS.—No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

"(3) ADMINISTRATIVE REVIEW.—

"(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a determination described in paragraph (1).

"(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(4) JUDICIAL REVIEW.—

"(A) LIMITATION TO REVIEW OF DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106.

8 USC 1105a.

"(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial 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 abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

"(g) IMPLEMENTATION OF SECTION.—

"(1) REGULATIONS.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

"(A) regulations establishing a definition of the term 'resided continuously', as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

"(B) such other regulations as may be necessary to carry out this section.

"(2) CONSIDERATIONS.—In prescribing regulations described in paragraph (1)(A)—

"(A) PERIODS OF CONTINUOUS RESIDENCE.—The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

"(B) ABSENCES CAUSED BY DEPORTATION OR ADVANCED PAROLE.—The Attorney General shall provide that—

"(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

"(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

"(C) WAIVERS OF CERTAIN ABSENCES.—The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subpara-

graph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

"(D) USE OF CERTAIN DOCUMENTATION.—The Attorney General shall require that—

"(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

"(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

"(3) INTERIM FINAL REGULATIONS.—Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

"(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

"(A) except as provided in paragraphs (2) and (3), 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 (but in any event including the program of aid to families with dependent children under part A of title IV of the Social Security Act), 42 USC 601.

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and 42 USC 1396.

"(iii) assistance under the Food Stamp Act of 1977; and 7 USC 2026.

"(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

"(2) EXCEPTIONS.—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), or 8 USC 1255 note.

"(B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien

Aged persons.
Blind persons.
Handicapped persons.

who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

"(3) RESTRICTED MEDICAID BENEFITS.—

"(A) CLARIFICATION OF ENTITLEMENT.—Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

"(i) paragraph (1) shall not apply,

"(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and

42 USC 1396.

"(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

"(B) RESTRICTION OF BENEFITS.—

"(i) LIMITATION TO EMERGENCY SERVICES AND SERVICES FOR PREGNANT WOMEN.—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

Ante, pp. 201, 208.

"(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

Ante, p. 209.

"(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

"(ii) NO RESTRICTION FOR EXEMPT ALIENS AND CHILDREN.—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

"(C) DEFINITION OF MEDICAL ASSISTANCE.—In this paragraph, the term 'medical assistance' refers to medical assistance under a State plan approved under title XIX of the Social Security Act.

42 USC 1396.

"(4) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

42 USC 1751 note.
42 USC 1771 note.
20 USC 2301 note.
20 USC 3801 *et seq.*
42 USC 2921.
29 USC 1501 note.
20 USC 1070.
42 USC 201 note.
42 USC 701, 1381, 1397, 620, 651, 670.
42 USC 301, 1201, 1351, 1381.
42 USC 1381–1383e.
8 USC 1522 note.

"(A) The National School Lunch Act.

"(B) The Child Nutrition Act of 1966.

"(C) The Vocational Education Act of 1963.

"(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"(E) The Headstart-Follow Through Act.

"(F) The Job Training Partnership Act.

"(G) Title IV of the Higher Education Act of 1965.

"(H) The Public Health Service Act.

"(I) Titles V, XVI, and XX, and parts B, D, and E of title IV, of the Social Security Act (and titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

"(5) ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be contin-

ued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(i) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.".

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

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

(b) CONFORMING AMENDMENTS.—(1) Section 402 of the Social Security Act is amended by adding at the end thereof the following new subsection: Children and youth. 42 USC 602.

"(f)(1) For temporary disqualification of certain newly legalized aliens from receiving aid to families with dependent children, see subsection (h) of section 245A of the Immigration and Nationality Act. *Ante*, p. 3394.

"(2) In any case where an alien disqualified from receiving aid under such subsection (h) is the parent of a child who is not so disqualified and who (without any adjustment of status under such section 245A) is considered a dependent child under subsection (a)(33), or is the brother or sister of such a child, subsection (a)(38) shall not apply, and the needs of such alien shall not be taken into account in making the determination under subsection (a)(7) with respect to such child, but the income of such alien (if he or she is the parent of such child) shall be included in making such determination to the same extent that income of a stepparent is included under subsection (a)(31).".

(2)(A) Section 472(a) of such Act is amended by adding at the end thereof (after and below paragraph (4)) the following new sentence: 42 USC 672.
"In any case where the child is an alien disqualified under section 245A(h) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 473(a)(1)(B)), with respect to that month, if he or she would have satisfied such requirements but for such disqualification.".

(B) Section 473(a)(1) of such Act is amended by adding at the end thereof (after and below subparagraph (C)) the following new sentence: 42 USC 673.
"The last sentence of section 472(a) shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence.".

(c) MISCELLANEOUS PROVISIONS.— 8 USC 1255a note.

(1) PROCEDURES FOR PROPERTY ACQUISITION OR LEASING.—Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Attorney General is authorized to expend from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act, such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of this 8 USC 1101 note.

section. This authority shall end two years after the effective date of the legalization program.

(2) USE OF RETIRED FEDERAL EMPLOYEES.—Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the annuity of a retired employee of the Federal Government who retired on or before January 1, 1986, shall not be reduced while such individual is temporarily employed by the Immigration and Naturalization Service for a period of not to exceed 18 months to perform duties in connection with the adjustment of status of aliens under this section. The Service shall not temporarily employ more than 300 individuals under this paragraph. Notwithstanding any other provision of law, the annuity of a retired employee of the Federal Government shall not be increased or redetermined under chapter 83 or 84 of title 5, United States Code, as a result of a period of temporary employment under this paragraph.

5 USC 8301 *et seq.; ante,* p. 516.

8 USC 1255a note.

SEC. 202. CUBAN-HAITIAN ADJUSTMENT.

(a) ADJUSTMENT OF STATUS.—The status of any alien described in subsection (b) may be adjusted by the Attorney General, in the Attorney General's discretion and under such regulations as the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

(1) the alien applies for such adjustment within two years after the date of the enactment of this Act;

(2) the alien is otherwise eligible to receive an immigrant visa and is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for exclusion specified in paragraphs (14), (15), (16), (17), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act shall not apply;

8 USC 1182.

(3) the alien is not an alien described in section 243(h)(2) of such Act;

8 USC 1253.

(4) the alien is physically present in the United States on the date the application for such adjustment is filed; and

(5) the alien has continuously resided in the United States since January 1, 1982.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—The benefits provided by subsection (a) shall apply to any alien—

(1) who has received an immigration designation as a Cuban/Haitian Entrant (Status Pending) as of the date of the enactment of this Act, or

(2) who is a national of Cuba or Haiti, who arrived in the United States before January 1, 1982, with respect to whom any record was established by the Immigration and Naturalization Service before January 1, 1982, and who (unless the alien filed an application for asylum with the Immigration and Naturalization Service before January 1, 1982) was not admitted to the United States as a nonimmigrant.

(c) NO AFFECT ON FASCELL-STONE BENEFITS.—An alien who, as of the date of the enactment of this Act, is a Cuban and Haitian entrant for the purpose of section 501 of Public Law 96-422 shall continue to be considered such an entrant for such purpose without regard to any adjustment of status effected under this section.

8 USC 1522 note.

(d) RECORD OF PERMANENT RESIDENCE AS OF JANUARY 1, 1982.—Upon approval of an alien's application for adjustment of status

under subsection (a), the Attorney General shall establish a record of the alien's admission for permanent residence as of January 1, 1982.

(e) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—When an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act and the Attorney General shall not be required to charge the alien any fee. 8 USC 1101 note.

(f) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing contained in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude the alien from seeking such status under any other provision of law for which the alien may be eligible.

SEC. 203. UPDATING REGISTRY DATE TO JANUARY 1, 1972.

(a) IN GENERAL.—Section 249 (8 U.S.C. 1259) is amended—

(1) by striking out "JUNE 30, 1948" in the heading and inserting in lieu thereof "JANUARY 1, 1972", and

(2) by striking out "June 30, 1948" in paragraph (a) and inserting in lieu thereof "January 1, 1972".

(b) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The item in the table of contents relating to section 249 is amended by striking out "June 30, 1948" and inserting in lieu thereof "January 1, 1972".

(c) CLARIFICATION.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act shall not apply to aliens provided lawful permanent resident status under section 249 of that Act. 8 USC 1259 note. 8 USC 1151, 1152.

SEC. 204. STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS.

(a) APPROPRIATION OF FUNDS.— 8 USC 1255a note.

(1) IN GENERAL.—Out of any money in the Treasury not otherwise appropriated, there are appropriated to carry out this section (and including Federal, State, and local administrative costs) $1,000,000,000 (less the amount described in paragraph (2)) for fiscal year 1988 and for each of the three succeeding fiscal years.

(2) OFFSET.—

(A) IN GENERAL.—Subject to subparagraphs (B) through (D), the amount described in this paragraph for a fiscal year is equal to the amount estimated to be expended by the Federal Government in the fiscal year for the programs of financial assistance, medical assistance, and assistance under the Food Stamp Act of 1977 for aliens who would not be eligible for such assistance under paragraph (1)(A) of section 245A(h) of the Immigration and Nationality Act but for the provisions of paragraph (2) or paragraph (3) of such section. 7 USC 2026. *Ante*, p. 3394.

42 USC 1381.
42 USC 1396.
42 USC 1382 note.
Ante, p. 3394.
42 USC 1382c.

(B) NO OFFSET FOR CERTAIN SSI ELIGIBLE INDIVIDUALS.—The amount described in this paragraph shall not include any amounts attributable to supplemental security benefits paid under title XVI of the Social Security Act or medical assistance furnished under a State plan approved under title XIX of the Social Security Act, in the case of an alien who is determined by the Secretary of Health and Human Services, based on an application for benefits under title XVI of the Social Security Act or section 212 of Public Law 93-66 filed prior to the date designated by the Attorney General in accordance with section 245A(a)(1)(A) of the Immigration and Nationality Act, to be permanently residing in the United States under color of law as provided in section 1614(a)(1)(B)(ii) of the Social Security Act and to be eligible to receive such benefits for the month prior to the month in which such date occurs, for such time as such alien continues without interruption to be eligible to receive such benefits in accordance with the provisions of title XVI of the Social Security Act or section 212 of Public Law 93-66, as appropriate.

(C) ESTIMATED INITIAL OFFSET.—For purposes of subparagraph (A), with respect to fiscal year 1988, the amount estimated to be expended is equal to $70,000,000. For subsequent fiscal years, the amount estimated to be expended shall be such estimate as is contained in the annual fiscal budget submitted for that year to the Congress by the President.

(D) ADJUSTMENT FOR ESTIMATES.—If the actual amount of expenditures by the Federal Government described in subparagraph (A) for a fiscal year exceeds, or is less than, the amount estimated to be expended for that year under subparagraph (C) for that year (taking into account any adjustment under this subparagraph), then for the subsequent fiscal year the amount described in this paragraph shall be decreased, or increased, respectively, by the amount of such excess or deficit for that previous fiscal year.

(b) ENTITLEMENT OF STATES.—(1) From the sums appropriated under subsection (a) for a fiscal year (less the amount reserved for Federal administrative costs), the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall allot to each State with an application approved under subsection (d)(1) an amount determined in accordance with a formula, established by the Secretary by regulation, which takes into account—

(A) the number of eligible legalized aliens (as defined in subsection (j)(4)) residing in the State in that fiscal year;

(B) the ratio of the number of eligible legalized aliens in the State to the total number of residents of that State and to the total number of such aliens in all the States in that fiscal year;

(C) the amount of expenditures the State is likely to incur in that fiscal year in providing assistance for eligible legalized aliens for which reimbursement or payment may be made under this section;

(D) the ratio of the amount of such expenditures in the State to the total of all such expenditures in all the States;

(E) adjustments for the difference in previous years between the State's actual expenditures (described in subparagraph (C))

incurred and the allocation provided the State under this section for those years; and

(F) such other factors as the Secretary deems appropriate to provide for an equitable distribution of such amounts.

(2) To the extent that all the funds appropriated under this section for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under this section for the fiscal year or because some States have indicated in their description of activities that they do not intend to use, in that fiscal year or the succeeding fiscal year, the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(3) In determining the number of eligible legalized aliens for purposes of paragraph (1)(A), the Secretary may estimate such number on the basis of such data as he may deem appropriate.

(4) For each fiscal year the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under this subsection. Any amount paid to a State for any of the following fiscal years and remaining unobligated at the end of such year shall remain available to such State for the purposes for which it was made in subsequent fiscal years, but shall not remain available after September 30, 1994.

(c) PROVIDING ASSISTANCE.—(1) Of the amounts allotted to a State under this section, the State may only use such funds, in accordance with this section—

(A) for reimbursement of the costs of programs of public assistance provided with respect to eligible legalized aliens, for which such aliens were not disqualified under section 245A(h) of the Immigration and Nationality Act at the time of such assistance, *Ante*, p. 3394.

(B) for reimbursement of the costs of programs of public health assistance provided to any alien who is, or is applying on a timely basis under section 245A(a) of such Act to become, an eligible legalized alien, and

(C) to make payments to State educational agencies for the purpose of assisting local educational agencies of that State in providing educational services for eligible legalized aliens.

Subject to paragraph (2), the State may select the distribution of the use of such funds among such purposes.

(2)(A) Subject to subparagraphs (B) and (C), of the amounts allotted to a State under this section in any fiscal year, 10 percent shall be used by the State for reimbursement under paragraph (1)(A), 10 percent shall be used by the State for reimbursement under paragraph (1)(B), and 10 percent shall be used by the State for payments under paragraph (1)(C).

(B) If a State does not require the use of the full 10 percent provided under subparagraph (A) for a particular function described in a subparagraph of paragraph (1) for a fiscal year, the unused portion shall be equally distributed among the two other subparagraphs.

(C) In no case shall the funds provided under this section be used to provide reimbursement for more than 100 percent of the costs described in paragraph (1)(A) or (1)(B).

(3) To the extent that a State provides for the use of funds for the purpose described in paragraph (1)(C), the definitions and provisions of the Emergency Immigrant Education Act of 1984 (title VI of

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Public Law 98-511; 20 U.S.C. 4101 et seq.) shall apply to payments under such paragraph in the same manner as they apply to payments under that Act, except that, in applying this paragraph—

(A) any reference in such Act to "immigrant children" shall be deemed to be a reference to "eligible legalized aliens" (including such aliens who are over 16 years of age) during the 60-month period beginning with the first month in which such an alien is granted temporary lawful residence under section 245A(a) of the Immigration and Nationality Act;

Ante, p. 3394.

(B) in determining the amount of payment with respect to eligible legalized aliens who are over 16 years of age, the phrase "described under paragraph (2)" shall be deemed to be stricken from section 606(b)(1)(A) of such Act (20 U.S.C. 4105(b)(1)(A));

(C) the State educational agency may provide such educational services to adult eligible legalized aliens through local educational agencies and other public and private nonprofit organizations, including community-based organizations of demonstrated effectiveness; and

(D) such services may include English language and other programs designed to enable such aliens to attain the citizenship skills described in section 245A(b)(1)(D)(i) of the Immigration and Nationality Act.

(d) STATEMENTS AND ASSURANCES.—(1) No State is eligible for payment under subsection (b) unless the State—

(A) has filed with, and had approved by, the Secretary an application containing such information, including the information described in paragraph (2) and criteria for and administrative methods of disbursing funds received under this section, as the Secretary determines to be necessary to carry out this section, and

(B) transmits to the Secretary a statement of assurances that certifies that (i) funds allotted to the State under this section will only be used to carry out the purposes described in subsection (c)(1), (ii) the State will provide a fair method (as determined by the State) for the allocation of funds among State and local agencies in accordance with paragraph (2) and subsection (c)(2), and (iii) fiscal control and fund accounting procedures will be established that are adequate to meet the requirements of paragraph (2) and subsections (e) and (f).

(2) The application of each State under this subsection for each fiscal year must include detailed information on—

(A) the number of eligible legalized aliens residing in the State, and

(B) the costs (excluding any such costs otherwise paid from Federal funds) which the State and each locality is likely to incur for the purposes described in subsection (c)(1).

(e) REPORTS AND AUDITS.—(1)(A) Each State shall prepare and submit to the Secretary annual reports on its activities under this section. In order to properly evaluate and to compare the performance of different States assisted under this section and to assure the proper expenditure of funds under this section, such reports shall be in such form and contain such information as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary—

(i) to secure an accurate description of those activities,

(ii) to secure a complete record of the purposes for which funds were spent, and of the recipients of such funds, and

(iii) to determine the extent to which funds were expended consistent with this section.

Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(B) The Secretary shall annually report to the Congress on activities funded under this section and shall provide for transmittal of a copy of such report to each State.

(2)(A) For requirements relating to audits of funds received by a State under this section, see chapter 75 of title 31, United States Code (relating to requirements for single audit). 31 USC 7501 *et seq.*

(B) Each State shall repay to the United States amounts ultimately found not to have been expended in accordance with this section, or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this section.

(C) The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this section in accordance with this section. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(3) The State shall make copies of the reports and audits required by this subsection available for public inspection within the State.

(4)(A) For the purpose of evaluating and reviewing the assistance provided under this section, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such assistance, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

(B) In conjunction with an evaluation or review under subparagraph (A), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with subparagraph (A).

(f) LIMITATION ON PAYMENTS.—(1) Payment under this section shall not be made for costs to the extent the costs are otherwise reimbursed or paid for under other Federal programs.

(2) Payment may only be made to a State with respect to costs for assistance of a program of public assistance or a program public health assistance to the extent such assistance is otherwise generally available under such programs to citizens residing in the State.

(g) CRIMINAL PENALTIES FOR FALSE STATEMENTS.—Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or misrepresentation of a material fact in connection with the furnishing of assistance or services for which payment may be made by a State from funds allotted to the State under this section, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined in accordance with title 18, United States Code, imprisoned for not more than five years, or both.

(h) ANTI-DISCRIMINATION PROVISION.—(1)(A) For the purpose of applying the prohibitions against discrimination on the basis of age

42 USC 3001 note.
29 USC 794.
20 USC 1681.
42 USC 2000d.

under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities funded in whole or in part with funds made available under this section are considered to be programs and activities receiving Federal financial assistance.

(B) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this section.

(2) Whenever the Secretary finds that a State or locality which has been provided payment from an allotment under this section has failed to comply with a provision of law referred to in paragraph (1)(A), with paragraph (1)(B), or with an applicable regulation (including one prescribed to carry out paragraph (1)(B)), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, as may be applicable, or

(C) take such other action as may be provided by law.

(3) When a matter is referred to the Attorney General pursuant to paragraph (2)(A), or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in paragraph (1)(A) or in violation of paragraph (1)(B), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

Regulations.

(i) CONSULTATION WITH STATE AND LOCAL OFFICIALS.—In establishing regulations and guidelines to carry out this section, the Secretary shall consult with representatives of State and local governments.

(j) DEFINITIONS.—For purposes of this section:

(1) The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

8 USC 1101.

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

(A) provide for cash, medical, or other assistance (as defined by the Secretary) designed to meet the basic subsistence or health needs of individuals,

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

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

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

(A) provide public health services, including immunizations for immunizable diseases, testing and treatment for tuberculosis and sexually-transmitted diseases, and family planning services,

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

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

(4) The term "eligible legalized alien" means an alien who has been granted lawful temporary resident status under section 245A of the Immigration and Nationality Act, but only until the end of the five-year period beginning on the date the alien was granted such status. *Ante*, p. 3394.

TITLE III—REFORM OF LEGAL IMMIGRATION

PART A—TEMPORARY AGRICULTURAL WORKERS

SEC. 301. H-2A AGRICULTURAL WORKERS.

(a) PROVIDING NEW "H-2A" NONIMMIGRANT CLASSIFICATION FOR TEMPORARY AGRICULTURAL LABOR.—Paragraph (15)(H) of section 101(a) (8 U.S.C. 1101(a)) is amended by striking out "to perform temporary services or labor," in clause (ii) and inserting in lieu thereof "(a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) to perform other temporary service or labor". 26 USC 3121.

(b) INVOLVEMENT OF DEPARTMENTS OF LABOR AND AGRICULTURE IN H-2A PROGRAM.—Section 214(c) (8 U.S.C. 1184(c)) is amended by adding at the end the following: "For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term 'appropriate agencies of Government' means the Department of Labor and includes the Department of Agriculture. The provisions of section 216 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).". *Supra.* *Infra.*

(c) ADMISSION OF H-2A WORKERS.—Chapter 2 of title II is amended by adding after section 215 the following new section:

"ADMISSION OF TEMPORARY H-2A WORKERS

"SEC. 216. (a) CONDITIONS FOR APPROVAL OF H-2A PETITIONS.—(1) A petition to import an alien as an H-2A worker (as defined in subsection (i)(2)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that— 8 USC 1186.

"(A) 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

"(B) 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.

"(2) 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) CONDITIONS FOR DENIAL OF LABOR CERTIFICATION.—The Secretary of Labor may not issue a certification under subsection (a)

with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

"(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

"(2)(A) The employer during the previous two-year period employed H-2A workers 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.

"(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

"(3) The employer has not provided the Secretary with 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.

"(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H-2A workers depart for the employer's place of employment.

"(c) SPECIAL RULES FOR CONSIDERATION OF APPLICATIONS.—The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

"(1) DEADLINE FOR FILING APPLICATIONS.—The Secretary of Labor may not require that the application be filed more than 60 days before the first date the employer requires the labor or services of the H-2A worker.

"(2) NOTICE WITHIN SEVEN DAYS OF DEFICIENCIES.—(A) 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 subsection (a)(1)(A)) for approval.

"(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

"(3) ISSUANCE OF CERTIFICATION.—(A) 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 subsection (a)(1) if—

"(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

"(ii) 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.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H-2A-employers in the same or comparable occupations and crops.

"(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

"(ii) The requirement of clause (i) shall not apply to any employer who—

"(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 3(u) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)),

"(II) is not a member of an association which has petitioned for certification under this section for its members, and

"(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

"(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H-2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis,

regulations based on his findings which shall be effective no later than three years from the effective date of this section.

"(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: *Provided,* That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

"(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

"(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H-2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H-2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

"(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H-2A workers in order to force the hiring of domestic workers under clause (i).

"(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

"(4) HOUSING.—Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accomodations or other substantially similar class of habitation: *Provided,* That in the absence of applicable local standards, State standards for rental and/or public accomodations or other substantially similar class of habitation shall be met: *Provided further,* That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: *Provided further,* That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: *Provided further,* That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: *And provided further,* That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986.

Regulations.
Animals.

"(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

"(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

"(3) TREATMENT OF VIOLATIONS.—

"(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

"(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

"(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

"(e) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

"(2) 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 an H-2A worker 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 workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

"(f) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

"(g) AUTHORIZATIONS OF APPROPRIATIONS.—(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, $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 section 101(a)(15)(H)(ii)(a), and

Ante, p. 3411.

"(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

"(2) 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 section.

"(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 212(a)(14).

8 USC 1182.

"(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

"(h) MISCELLANEOUS PROVISIONS.—(1) 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.

Ante, p. 3411.

Ante, p. 3360.

State and local governments.

"(2) The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

"(i) DEFINITIONS.—For purposes of this section:

"(1) The term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(h)) with respect to that employment.

"(2) The term 'H-2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).".

8 USC 1186 note.

(d) EFFECTIVE DATE.—The amendments made by this section apply to petitions and applications filed under sections 214(c) and 216 of the Immigration and Nationality Act on or after the first day of the seventh month beginning after the date of the enactment of this Act (hereinafter in this section referred to as the "effective date").

8 USC 1186 note.

(e) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(H)(ii)(a) and 216 of the Immigration and Nationality Act. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.

Ante, p. 3411.

Ante, p. 3411.

President of U.S.

8 USC 1186 note.

(f) SENSE OF CONGRESS RESPECTING CONSULTATION WITH MEXICO.—It is the sense of Congress that the President should establish an advisory commission which shall consult with the Governments of

Mexico and of other appropriate countries and advise the Attorney General regarding the operation of the alien temporary worker program established under section 216 of the Immigration and Nationality Act.

Ante, p. 3411.

(g) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 215 the following new item:

"Sec. 216. Admission of temporary H-2A workers.".

SEC. 302. LAWFUL RESIDENCE FOR CERTAIN SPECIAL AGRICULTURAL WORKERS.

(a) IN GENERAL.—(1) Chapter 1 of title II is amended by adding at the end the following new section:

"SPECIAL AGRICULTURAL WORKERS

"SEC. 210. (a) LAWFUL RESIDENCE.— 8 USC 1160.

"(1) IN GENERAL.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien meets the following requirements:

"(A) APPLICATION PERIOD.—The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after the date of enactment of this section.

"(B) PERFORMANCE OF SEASONAL AGRICULTURAL SERVICES AND RESIDENCE IN THE UNITED STATES.—The alien must establish that he has—

"(i) resided in the United States, and

"(ii) performed seasonal agricultural services in the United States for at least 90 man-days,

during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

"(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2).

"(2) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence on the following date:

"(A) GROUP 1.—Subject to the numerical limitation established under subparagraph (C), in the case of an alien who has established, at the time of application for temporary residence under paragraph (1), that the alien performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-month periods ending on May 1, 1984, 1985, and 1986, the adjustment shall occur on the first day after the end of the one-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

"(B) GROUP 2.—In the case of aliens to which subparagraph (A) does not apply, the adjustment shall occur on the

day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

"(C) NUMERICAL LIMITATION.—Subparagraph (A) shall not apply to more than 350,000 aliens. If more than 350,000 aliens meet the requirements of such subparagraph, such subparagraph shall apply to the 350,000 aliens whose applications for adjustment were first filed under paragraph (1) and subparagraph (B) shall apply to the remaining aliens.

"(3) TERMINATION OF TEMPORARY RESIDENCE.—During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this Act that the alien is deportable.

"(4) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an 'employment authorized' endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

"(5) IN GENERAL.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under paragraph (1), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)), other than under any provision of the immigration laws.

"(b) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

"(1) TO WHOM MAY BE MADE.—

"(A) WITHIN THE UNITED STATES.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

"(i) with the Attorney General, or

"(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

"(B) OUTSIDE THE UNITED STATES.—The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a)(1) at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

"(2) DESIGNATION OF ENTITIES TO RECEIVE APPLICATIONS.—For purposes of receiving applications under this section, the Attorney General—

"(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor

organizations, and associations of agricultural employers, and

"(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

8 USC 1159, 1255.
8 USC 1255 note.

"(3) PROOF OF ELIGIBILITY.—

"(A) IN GENERAL.—An alien may establish that he meets the requirement of subsection (a)(1)(B)(ii) through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

"(B) DOCUMENTATION OF WORK HISTORY.—(i) An alien applying for adjustment of status under subsection (a)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of man-days (as required under subsection (a)(1)(B)(ii)).

"(ii) If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Attorney General.

Regulations.

"(iii) An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described in subsection (a)(1)(B)(ii) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

"(4) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

"(5) LIMITATION ON ACCESS TO INFORMATION.—Files and records prepared for purposes of this section by designated entities operating under this section 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.

"(6) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

"(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (7),

"(B) make any publication whereby the information furnished by any particular individual can be identified, or

"(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Law enforcement and crime.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(7) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

"(A) CRIMINAL PENALTY.—Whoever—

"(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

"(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

Law enforcement and crime.

"(B) EXCLUSION.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(19).

8 USC 1182.

"(c) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

"(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

8 USC 1151, 1152.

"(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsection (a)(1)(C)—

"(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

8 USC 1182.

"(B) WAIVER OF OTHER GROUNDS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

"(I) Paragraph (9) and (10) (relating to criminals).

"(II) Paragraph (15) (relating to aliens likely to become public charges).

"(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

"(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

"(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

"(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance. 8 USC 1182.

"(d) TEMPORARY STAY OF EXCLUSION OR DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

"(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a nonfrivolous 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), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

"(A) may not be excluded or deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

"(A) may not be excluded or deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(e) ADMINISTRATIVE AND JUDICIAL REVIEW.—

"(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) ADMINISTRATIVE REVIEW.—

"(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

"(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(3) JUDICIAL REVIEW.—

"(A) LIMITATION TO REVIEW OF EXCLUSION OR DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 106. 8 USC 1105a.

"(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial 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 abuse of discretion or that the findings Records.

are directly contrary to clear and convincing facts contained in the record considered as a whole.

"(f) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING AID TO FAMILIES WITH DEPENDENT CHILDREN.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law, the alien is not eligible for aid under a State plan approved under part A of title IV of the Social Security Act. Notwithstanding the previous sentence, in the case of an alien who would be eligible for aid under a State plan approved under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph (3) of section 245A(h) shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 245A(h)(3) to paragraph (1) is deemed a reference to the previous sentence.

42 USC 601.

Ante, p. 3394.

"(g) TREATMENT OF SPECIAL AGRICULTURAL WORKERS.—For all purposes (subject to subsections (b)(3) and (f)) an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 101(a)(20)).

8 USC 1101.

"(h) SEASONAL AGRICULTURAL SERVICES DEFINED.—In this section, the term 'seasonal agricultural services' means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.".

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

"Sec. 210. Special agricultural workers.".

42 USC 602.

(b) CONFORMING AMENDMENTS.—(1) Section 402(f) of the Social Security Act (as added by section 201(b)(1) of this Act) is amended—

(A) by inserting "and subsection (f) of section 210 of such Act" before the period at the end of paragraph (1);

(B) by inserting "or (f)" after "such subsection (h)" in paragraph (2); and

(C) by inserting "or 210" after "such section 245A" in paragraph (2).

42 USC 672.

(2) The last sentence of section 472(a) of such Act (as added by section 201(b)(2)(A) of this Act) is amended by inserting "or 210(f)" after "245A(h)".

SEC. 303. DETERMINATIONS OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.

42 USC 401.

(a) IN GENERAL.—Chapter 1 of title II is amended by adding after section 210 (added by section 302 of this title) the following new section:

"DETERMINATION OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS

8 USC 1161.

"SEC. 210A. (a) DETERMINATION OF NEED TO ADMIT ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

"(1) IN GENERAL.—Before the beginning of each fiscal year (beginning with fiscal year 1990 and ending with fiscal year 1993), the Secretaries of Labor and Agriculture (in this section referred to as the 'Secretaries') shall jointly determine the number (if any) of additional aliens who should be admitted to

the United States or who should otherwise acquire the status of aliens lawfully admitted for temporary residence under this section during the fiscal year to meet a shortage of workers to perform seasonal agricultural services in the United States during the year. Such number is, in this section, referred to as the 'shortage number'.

"(2) OVERALL DETERMINATION.—The shortage number is—

"(A) the anticipated need for special agricultural workers (as determined under paragraph (4)) for the fiscal year, minus

"(B) the supply of such workers (as determined under paragraph (5)) for that year,

divided by the factor (determined under paragraph (6)) for man-days per worker.

"(3) NO REPLENISHMENT IF NO SHORTAGE.—In determining the shortage number, the Secretaries may not determine that there is a shortage unless, after considering all of the criteria set forth in paragraphs (4) and (5), the Secretaries determine that there will not be sufficient able, willing, and qualified workers available to perform seasonal agricultural services required in the fiscal year involved.

"(4) DETERMINATION OF NEED.—For purposes of paragraph (2)(A), the anticipated need for special agricultural workers for a fiscal year is determined as follows:

"(A) BASE.—The Secretaries shall jointly estimate, using statistically valid methods, the number of man-days of labor performed in seasonal agricultural services in the United States in the previous fiscal year.

"(B) ADJUSTMENT FOR CROP LOSSES AND CHANGES IN INDUSTRY.—The Secretaries shall jointly—

"(i) increase such number by the number of man-days of labor in seasonal agricultural services in the United States that would have been needed in the previous fiscal year to avoid any crop damage or other loss that resulted from the unavailability of labor, and

"(ii) adjust such number to take into account the projected growth or contraction in the requirements for seasonal agricultural services as a result of—

"(I) growth or contraction in the seasonal agriculture industry, and

"(II) the use of technologies and personnel practices that affect the need for, and retention of, workers to perform such services.

"(5) DETERMINATION OF SUPPLY.—For purposes of paragraph (2)(B), the anticipated supply of special agricultural workers for a fiscal year is determined as follows:

"(A) BASE.—The Secretaries shall use the number estimated under paragraph (4)(A).

"(B) ADJUSTMENT FOR RETIREMENTS AND INCREASED RECRUITMENT.—The Secretaries shall jointly—

"(i) decrease such number by the number of man-days of labor in seasonal agricultural services in the United States that will be lost due to retirement and movement of workers out of performance of seasonal agricultural services, and

"(ii) increase such number by the number of additional man-days of labor in seasonal agricultural services in the United States that can reasonably be ex-

pected to result from the availability of able, willing, qualified, and unemployed special agricultural workers, rural low skill, or manual, laborers, and domestic agricultural workers.

"(C) BASES FOR INCREASED NUMBER.—In making the adjustment under subparagraph (B)(ii), the Secretaries shall consider—

"(i) the effect, if any, that improvements in wages and working conditions offered by employers will have on the availability of workers to perform seasonal agricultural services, taking into account the adverse effect, if any, of such improvements in wages and working conditions on the economic competitiveness of the perishable agricultural industry,

"(ii) the effect, if any, of enhanced recruitment efforts by the employers of such workers and government employment services in the traditional and expected areas of supply of such workers, and

"(iii) the number of able, willing and qualified individuals who apply for employment opportunities in seasonal agricultural services listed with offices of government employment services.

Wages.

"(D) CONSTRUCTION.—Nothing in this subsection shall be deemed to require any individual employer to pay any specified level of wages, to provide any specified working conditions, or to provide for any specified recruitment of workers.

"(6) DETERMINATION OF MAN-DAY PER WORKER FACTOR.—

"(A) FISCAL YEAR 1990.—For fiscal year 1990—

"(i) IN GENERAL.—Subject to clause (ii), for purposes of paragraph (2) the factor under this paragraph is the average number, as estimated by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in fiscal year 1989 by special agricultural workers whose status is adjusted under section 210 and who performed seasonal agricultural services in the United States at any time during the fiscal year.

"(ii) LACK OF ADEQUATE INFORMATION.—If the Director determines that—

"(I) the information reported under subsection (b)(2)(A) is not adequate to make a reasonable estimate of the average number described in clause (i), but

"(II) the inadequacy of the information is not due to the refusal or failure of employers to report the information required under subsection (b)(2)(A),

the factor under this paragraph is 90.

"(B) FISCAL YEAR 1991.—For purposes of paragraph (2) for fiscal year 1991, the factor under this paragraph is the average number, as estimated by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in fiscal year 1990 by special agricultural workers who obtained lawful temporary resident status under this section.

"(C) FISCAL YEARS 1992 AND 1993.—For purposes of paragraph (2) for fiscal years 1992 and 1993, the factor under

this paragraph is the average number, as estimated by the Director of the Bureau of the Census under subsection (b)(3)(A)(ii), of man-days of seasonal agricultural services performed in the United States in each of the two previous fiscal years by special agricultural workers who obtained lawful temporary resident status under this section during either of such fiscal years.

"(7) EMERGENCY PROCEDURE FOR INCREASE IN SHORTAGE NUMBER.—

"(A) REQUESTS.—After the beginning of a fiscal year, a group or association representing employers (and potential employers) of individuals who perform seasonal agricultural services may request the Secretaries to increase the shortage number for the fiscal year based upon a showing that extraordinary, unusual, and unforeseen circumstances have resulted in a significant increase in the shortage number due to (i) a significant increase in the need for special agricultural workers in the year, (ii) a significant decrease in the availability of able, willing, and qualified workers to perform seasonal agricultural services, or (iii) a significant decrease (below the factor used for purposes of paragraph (6)) in the number of man-days of seasonal agricultural services performed by aliens who were recently admitted (or whose status was recently adjusted) under this section.

"(B) NOTICE OF EMERGENCY PROCEDURE.—Not later than 3 days after the date the Secretaries receive a request under subparagraph (A), the Secretaries shall provide for notice in the Federal Register of the substance of the request and shall provide an opportunity for interested parties to submit information to the Secretaries on a timely basis respecting the request. Federal Register, publication.

"(C) PROMPT DETERMINATION ON REQUEST.—The Secretaries, not later than 21 days after the date of the receipt of such a request and after consideration of any information submitted on a timely basis with respect to the request, shall make and publish in the Federal Register their determination on the request. The request shall be granted, and the shortage number for the fiscal year shall be increased, to the extent that the Secretaries determine that such an increase is justified based upon the showing and circumstances described in subparagraph (A) and that such an increase takes into account reasonable recruitment efforts having been undertaken. Federal Register, publication.

"(8) PROCEDURE FOR DECREASING MAN-DAYS OF SEASONAL AGRICULTURAL SERVICES REQUIRED IN THE CASE OF OVER-SUPPLY OF WORKERS.—

"(A) REQUESTS.—After the beginning of a fiscal year, a group of special agricultural workers may request the Secretaries to decrease the number of man-days required under subparagraphs (A) and (B) of subsection (d)(2) with respect to the fiscal year based upon a showing that extraordinary, unusual, and unforeseen circumstances have resulted in a significant decrease in the shortage number due to (i) a significant decrease in the need for special agricultural workers in the year, (ii) a significant increase in the availability of able, willing, and qualified workers to

perform seasonal agricultural services, or (iii) a significant increase (above the factor used for purposes of paragraph (6)) in the number of man-days of seasonal agricultural services performed by aliens who were recently admitted (or whose status was recently adjusted) under this section.

Federal Register, publication.

"(B) NOTICE OF REQUEST.—Not later than 3 days after the date the Secretaries receive a request under subparagraph (A), the Secretaries shall provide for notice in the Federal Register of the substance of the request and shall provide an opportunity for interested parties to submit information to the Secretaries on a timely basis respecting the request.

Federal Register, publication.

"(C) DETERMINATION ON REQUEST.—The Secretaries, before the end of the fiscal year involved and after consideration of any information submitted on a timely basis with respect to the request, shall make and publish in the Federal Register their determination on the request. The request shall be granted, and the number of man-days specified in subparagraphs (A) and (B) of subsection (d)(2) for the fiscal year shall be reduced by the same proportion as the Secretaries determine that a decrease in the shortage number is justified based upon the showing and circumstances described in subparagraph (A).

"(b) ANNUAL NUMERICAL LIMITATION ON ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

"(1) ANNUAL NUMERICAL LIMITATION.—

"(A) FISCAL YEAR 1990.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful temporary residence under such subsection for fiscal year 1990 is—

"(i) 95 percent of the number of individuals whose status was adjusted under section 210(a), minus

"(ii) the number estimated under paragraph (3)(A)(i) for fiscal year 1989 (as adjusted in accordance with subparagraph (C)).

"(B) FISCAL YEARS 1991, 1992, AND 1993.—The numerical limitation on the number of aliens who may be admitted under subsection (c)(1) or who otherwise may acquire lawful temporary residence under such subsection for fiscal year 1991, 1992, or 1993 is—

"(i) 90 percent of the number described in this clause for the previous fiscal year (or, for fiscal year 1991, the number described in subparagraph (A)(i)), minus

"(ii) the number estimated under paragraph (3)(A)(i) for the previous fiscal year (as adjusted in accordance with subparagraph (C)).

"(C) ADJUSTMENT TO TAKE INTO ACCOUNT CHANGE IN NUMBER OF H-2 AGRICULTURAL WORKERS.—The number used under subparagraph (A)(ii) or (B)(ii) (as the case may be) shall be increased or decreased to reflect any numerical increase or decrease, respectively, in the number of aliens admitted to perform temporary seasonal agricultural services (as defined in subsection (g)(2)) under section 101(a)(15)(H)(ii)(a) in the fiscal year compared to such number in the previous fiscal year.

Ante, p. 3411.

"(2) REPORTING OF INFORMATION ON EMPLOYMENT.—In the case of a person or entity who employs, during a fiscal year (begin-

ning with fiscal year 1989 and ending with fiscal year 1992) in seasonal agricultural services, a special agricultural worker—

"(A) whose status was adjusted under section 210, the person or entity shall furnish an official designated by the Secretaries with a certificate (at such time, in such form, and containing such information as the Secretaries establish, after consultation with the Attorney General and the Director of the Bureau of the Census) of the number of man-days of employment performed by the alien in seasonal agricultural services during the fiscal year, or

"(B) who was admitted or whose status was adjusted under this section, the person or entity shall furnish the alien and an official designated by the Secretaries with a certificate (at such time, in such form, and containing such information as the Secretaries establish, after consultation with the Attorney General and the Director of the Bureau of the Census) of the number of man-days of employment performed by the alien in seasonal agricultural services during the fiscal year.

"(3) ANNUAL ESTIMATE OF EMPLOYMENT OF SPECIAL AGRICULTURAL WORKERS.—

"(A) IN GENERAL.—The Director of the Bureau of the Census shall, before the end of each fiscal year (beginning with fiscal year 1989 and ending with fiscal year 1992), estimate—

"(i) the number of special agricultural workers who have performed seasonal agricultural services in the United States at any time during the fiscal year, and

"(ii) for purposes of subsection (a)(5), the average number of man-days of such services certain of such workers have performed in the United States during the fiscal year.

"(B) FURNISHING OF INFORMATION TO DIRECTOR.—The official designated by the Secretaries under paragraph (2) shall furnish to the Director, in such form and manner as the Director specifies, information contained in the certifications furnished to the official under paragraph (2).

"(C) BASIS FOR ESTIMATES.—The Director shall base the estimates under subparagraph (A) on the information furnished under subparagraph (B), but shall take into account (to the extent feasible) the underreporting or duplicate reporting of special agricultural workers who have performed seasonal agricultural services at any time during the fiscal year. The Director shall periodically conduct appropriate surveys, of agricultural employers and others, to ascertain the extent of such underreporting or duplicate reporting.

"(D) REPORT.—The Director shall annually prepare and report to the Congress information on the estimates made under this paragraph.

"(c) ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

"(1) IN GENERAL.—For each fiscal year (beginning with fiscal year 1990 and ending with fiscal year 1993), the Attorney General shall provide for the admission for lawful temporary resident status, or for the adjustment of status to lawful temporary resident status, of a number of aliens equal to the shortage number (if any, determined under subsection (a)) for

the fiscal year, or, if less, the numerical limitation established under subsection (b)(1) for the fiscal year. No such alien shall be admitted who is not admissible to the United States as an immigrant, except as otherwise provided under subsection (e).

"(2) ALLOCATION OF VISAS.—The Attorney General shall, in consultation with the Secretary of State, provide such process as may be appropriate for aliens to petition for immigrant visas or to adjust status to become aliens lawfully admitted for temporary residence under this subsection. No alien may be issued a visa as an alien to be admitted under this subsection or may have the alien's status adjusted under this subsection unless the alien has had a petition approved under this paragraph.

"(d) RIGHTS OF ALIENS ADMITTED OR ADJUSTED UNDER THIS SECTION.—

"(1) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (c) to that of an alien lawfully admitted for permanent residence at the end of the 3-year period that begins on the date the alien was granted such temporary resident status.

"(2) TERMINATION OF TEMPORARY RESIDENCE.—During the period of temporary resident status granted an alien under subsection (c), the Attorney General may terminate such status only upon a determination under this Act that the alien is deportable.

"(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under this section, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an 'employment authorized' endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

"(4) IN GENERAL.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (c), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)), other than under any provision of the immigration laws.

8 USC 1101.

"(5) EMPLOYMENT IN SEASONAL AGRICULTURAL SERVICES REQUIRED.—

"(A) FOR 3 YEARS TO AVOID DEPORTATION.—In order to meet the requirement of this paragraph (for purposes of this subsection and section 241(a)(20)), an alien, who has obtained the status of an alien lawfully admitted for temporary residence under this section, must establish to the Attorney General that the alien has performed 90 man-days of seasonal agricultural services—

8 USC 1251.

"(i) during the one-year period beginning on the date the alien obtained such status,

"(ii) during the one-year period beginning one year after the date the alien obtained such status, and

"(iii) during the one-year period beginning two years after the date the alien obtained such status.

"(B) FOR 5 YEARS FOR NATURALIZATION.—Notwithstanding any provision in title III, an alien admitted under this section may not be naturalized as a citizen of the United States under that title unless the alien has performed 90 man-days of seasonal agricultural services in each of 5 fiscal years (not including any fiscal year before the fiscal year in which the alien was admitted under this section). 8 USC 1401.

"(C) PROOF.—In meeting the requirements of subparagraphs (A) and (B), an alien may submit such documentation as may be submitted under section 210(b)(3). *Ante*, p. 3417.

"(D) ADJUSTMENT OF NUMBER OF MAN-DAYS REQUIRED.—The number of man-days specified in subparagraphs (A) and (B) are subject to adjustment under subsection (a)(8).

"(6) DISQUALIFICATION FROM CERTAIN PUBLIC ASSISTANCE.—The provisions of section 245A(h) (other than paragraph (1)(A)(iii)) shall apply to an alien who has obtained the status of an alien lawfully admitted for temporary residence under this section, during the five-year period beginning on the date the alien obtained such status, in the same manner as they apply to an alien granted lawful temporary residence under section 245A; except that, for purposes of this paragraph, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) or under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) shall not be construed to be financial assistance described in section 245A(h)(1)(A)(i). *Ante*, p. 3394. *Ante*, p. 3394.

"(e) DETERMINATION OF ADMISSIBILITY OF ADDITIONAL WORKERS.—In the determination of an alien's admissibility under subsection (c)(1)—

"(1) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply. 8 USC 1182.

"(2) WAIVER OF CERTAIN GROUNDS FOR EXCLUSION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(B) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under subparagraph (A):

"(i) Paragraphs (9) and (10) (relating to criminals).

"(ii) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

"(iii) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

"(iv) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

"(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

"(3) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to undergo such a medical examination

(including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

"(f) TERMS OF EMPLOYMENT RESPECTING ALIENS ADMITTED UNDER THIS SECTION.—

"(1) EQUAL TRANSPORTATION FOR DOMESTIC WORKERS.—If a person employs an alien, who was admitted or whose status is adjusted under subsection (c), in the performance of seasonal agricultural services and provides transportation arrangements or assistance for such workers, the employer must provide the same transportation arrangements or assistance (generally comparable in expense and scope) for other individuals employed in the performance of seasonal agricultural services.

"(2) PROHIBITION OF FALSE INFORMATION BY CERTAIN EMPLOYERS.—A farm labor contractor, agricultural employer, or agricultural association who is an exempt person (as defined in paragraph (5)) shall not knowingly provide false or misleading information to an alien who was admitted or whose status was adjusted under subsection (c) concerning the terms, conditions, or existence of agricultural employment (described in subsection (a), (b), or (c) of section 301 of MASAWPA).

29 USC 1831.

"(3) PROHIBITION OF DISCRIMINATION BY CERTAIN EMPLOYERS.—In the case of an exempt person and with respect to aliens who have been admitted or whose status has been adjusted under subsection (c), the provisions of section 505 of MASAWPA shall apply to any proceeding under or related to (and rights and protections afforded by) this section in the same manner as they apply to proceedings under or related to (and rights and protections afforded by) MASAWPA.

29 USC 1855.

"(4) ENFORCEMENT.—If a person or entity—

"(A) fails to furnish a certificate required under subsection (b)(2) or furnishes false statement of a material fact in such a certificate,

"(B) violates paragraph (1) or (2), or

"(C) violates the provisions of section 505(a) of MASAWPA (as they apply under paragraph (3)),

the person or entity is subject to a civil money penalty under section 503 of MASAWPA in the same manner as if the person or entity had committed a violation of MASAWPA.

29 USC 1853.

"(5) SPECIAL DEFINITIONS.—In this subsection:

"(A) MASAWPA.—The term 'MASAWPA' means the Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470).

29 USC 1801 note.

"(B) The term 'exempt person' means a person or entity who would be subject to the provisions of MASAWPA but for paragraph (1) or (2), or both, of section 4(a) of MASAWPA.

"(g) GENERAL DEFINITIONS.—In this section:

"(1) The term 'special agricultural worker' means an individual, regardless of present status, whose status was at any time adjusted under section 210 or who at any time was admitted or had the individual's status adjusted under subsection (c).

"(2) The term 'seasonal agricultural services' has the meaning given such term in section 210(h).

"(3) The term 'Director' refers to the Director of the Bureau of the Census.

"(4) The term 'man-day' means, with respect to seasonal agricultural services, the performance during a calendar day of at least 4 hours of seasonal agricultural services.".

(b) DEPORTATION OF CERTAIN WORKERS WHO FAIL TO PERFORM SEASONAL AGRICULTURAL SERVICES.—Section 241(a) (8 U.S.C. 1251(a)) is amended—

(1) by striking out "or" at the end of paragraph (18),

(2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or", and

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

"(20) obtains the status of an alien who becomes lawfully admitted for temporary residence under section 210A and fails to meet the requirement of section 210A(d)(5)(A) by the end of the applicable period.".

Ante, p. 3422.

(c) APPLICATION OF CERTAIN STATE ASSISTANCE PROVISIONS.—For purposes of section 204 of this Act (relating to State legalization assistance), the term "eligible legalized alien" includes an alien who becomes an alien lawfully admitted for permanent or temporary residence under section 210 or 210A of the Immigration and Nationality Act, but only until the end of the 5-year period beginning on the date the alien was first granted permanent or temporary resident status.

8 USC 1255a note.

Ante, pp. 3417, 3422.

(d) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 210 (as inserted by section 302) the following new item:

"Sec. 210A. Determination of agricultural labor shortages and admission of additional special agricultural workers.".

(e) CONFORMING AMENDMENTS.—(1) Section 402(f) of the Social Security Act (as added by section 201(b)(1) of this Act and amended by section 302(b)(1) of this Act) is further amended—

42 USC 602.

(A) by striking out "and subsection (f) of section 210 of such Act" in paragraph (1) and inserting in lieu thereof ", subsection (f) of section 210 of such Act, and subsection (d)(7) of section 210A of such Act";

(B) by striking out "such subsection (h) or (f)" in paragraph (2) and inserting in lieu thereof "such subsection (h), (f), or (d)(7)"; and

(C) by striking out "such section 245A or 210" in paragraph (2) and inserting in lieu thereof "such section 245A, 210, or 210A".

(2) The last sentence of section 472(a) of such Act (as added by section 201(b)(2)(A) of this Act and amended by section 302(b)(2) of this Act) is further amended by striking out "245A(h) or 210(f)" and inserting in lieu thereof "245A(h), 210(f), or 210A(d)(7)".

42 USC 672.

SEC. 304. COMMISSION ON AGRICULTURAL WORKERS.

(a) ESTABLISHMENT AND COMPOSITION OF COMMISSION.—(1) There is established a Commission on Agricultural Workers (hereinafter in this section referred to as the "Commission"), to be composed of 12 members—

8 USC 1160 note.

(A) six to be appointed by the President,

(B) three to be appointed by the Speaker of the House of Representatives, and

(C) three to be appointed by the President pro tempore of the Senate.

(2) In making appointments under paragraph (1)(A), the President shall consult—

(A) with the Attorney General in appointing two members,

(B) with the Secretary of Labor in appointing two members, and

(C) with the Secretary of Agriculture in appointing two members.

(3) A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(4) Members shall be appointed to serve for the life of the Commission.

(b) FUNCTIONS OF COMMISSION.—(1) The Commission shall review the following:

(A) The impact of the special agricultural worker provisions on the wages and working conditions of domestic farmworkers, on the adequacy of the supply of agricultural labor, and on the ability of agricultural workers to organize.

(B) The extent to which aliens who have obtained lawful permanent or temporary resident status under the special agricultural worker provisions continue to perform seasonal agricultural services and the requirement that aliens who become special agricultural workers under section 210A of the Immigration and Nationality Act perform 90 man-days of seasonal agricultural services for certain periods in order to avoid deportation or to become naturalized.

Ante, p. 3422.

(C) The impact of the legalization program and the employers' sanctions on the supply of agricultural labor.

(D) The extent to which the agricultural industry relies on the employment of a temporary workforce.

(E) The adequacy of the supply of agricultural labor in the United States and whether this supply needs to be further supplemented with foreign labor and the appropriateness of the numerical limitation on additional special agricultural workers imposed under section 210A(b) of the Immigration and Nationality Act.

(F) The extent of unemployment and underemployment of farmworkers who are United States citizens or aliens lawfully admitted for permanent residence.

(G) The extent to which the problems of agricultural employers in securing labor are related to the lack of modern labor-management techniques in agriculture.

(H) Whether certain geographic regions need special programs or provisions to meet their unique needs for agricultural labor.

(I) Impact of the special agricultural worker provisions on the ability of crops harvested in the United States to compete in international markets.

(2) The Commission shall conduct an overall evaluation of the special agricultural worker provisions, including the process for determining whether or not an agricultural labor shortage exists.

(c) REPORT TO CONGRESS.—The Commission shall report to the Congress not later than five years after the date of the enactment of this Act on its reviews under subsection (b). The Commission shall include in its report recommendations for appropriate changes that should be made in the special agricultural worker provisions.

(d) COMPENSATION OF MEMBERS.—(1) Each member of the Commission who is not an officer or employee of the Federal Government is entitled to receive, subject to such amounts as are provided in advance in appropriations Acts, the daily equivalent of the mini-

mum annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual performance of duties of the Commission. Each member of the Commission who is such an officer or employee shall serve without additional pay. 5 USC 5332.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

(e) MEETINGS OF COMMISSION.—(1) Five members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(2) The Chairman and the Vice Chairman of the Commission shall be elected by the members of the Commission for the life of the Commission.

(3) The Commission shall meet at the call of the Chairman or a majority of its members.

(f) STAFF.—(1) The Chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other additional personnel as may be necessary to enable the Commission to carry out its functions, without regard to the laws, rules, and regulations governing appointment in the competitive service. Any Federal employee subject to those laws, rules, and regulations may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(2) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the minimum annual rate of basic pay payable for GS–18 of the General Schedule.

(g) AUTHORITY OF COMMISSION.—(1) The Commission may for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

(2) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

(3) The Commission may accept, use, and dispose of gifts or donations of services or property.

(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(5) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(h) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(2) Notwithstanding any other provision of this section, the authority to make payments, or to enter into contracts, under this section shall be effective only to such extent, or in such amounts, as are provided in advance in appropriations Acts.

(i) TERMINATION DATE.—The Commission shall cease to exist at the end of the 63-month period beginning with the month after the month in which this Act is enacted.

(j) DEFINITIONS.—In this section:

(1) The term "employer sanctions" means the provisions of section 274A of the Immigration and Nationality Act.

Ante, p. 3360.

(2) The term "legalization program" refers to the provisions of section 245A of the Immigration and Nationality Act.

Ante, p. 3394.

(3) The term "seasonal agricultural services" has the meaning given such term in section 210(h) of the Immigration and Nationality Act.

Ante, p. 3417.

(4) The term "special agricultural worker provisions" refers to sections 210 and 210A of the Immigration and Nationality Act.

Ante, p. 3422.

8 USC 1101 note.

SEC. 305. ELIGIBILITY OF H-2 AGRICULTURAL WORKERS FOR CERTAIN LEGAL ASSISTANCE.

A nonimmigrant worker admitted to or permitted to remain in the United States under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) for agricultural labor or service shall be considered to be an alien described in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)) for purposes of establishing eligibility for legal assistance under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.), but only with respect to legal assistance on matters relating to wages, housing, transportation, and other employment rights as provided in the worker's specific contract under which the nonimmigrant was admitted.

Ante, p. 3411.

PART B—OTHER CHANGES IN THE IMMIGRATION LAW

SEC. 311. CHANGE IN COLONIAL QUOTA.

(a) INCREASE TO 5,000.—(1) Section 202(c) (8 U.S.C. 1152(c)) is amended by striking out "six hundred" and inserting in lieu thereof "5,000".

(2) Section 202(e) (8 U.S.C. 1152(e)) is amended by striking out "600" and inserting in lieu thereof "5,000".

8 USC 1152 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to fiscal years beginning after the date of the enactment of this Act.

SEC. 312. G-IV SPECIAL IMMIGRANTS.

(a) SPECIAL IMMIGRANT STATUS FOR CERTAIN OFFICERS AND EMPLOYEES OF INTERNATIONAL ORGANIZATIONS AND THEIR IMMEDIATE FAMILY MEMBERS.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; or", and by adding at the end of the following new subparagraph:

"(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II)

applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

"(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later;

"(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph before January 1, 1993, and no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or Retirement.

"(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.".

(b) NONIMMIGRANT STATUS FOR CERTAIN PARENTS AND CHILDREN OF ALIENS GIVEN SPECIAL IMMIGRANT STATUS.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking out "or" at the end of subparagraph (L), by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or", and by adding at the end the following new paragraph:

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

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

SEC. 313. VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS.

(a) ESTABLISHING VISA WAIVER PILOT PROGRAM.—Chapter 2 of title II, as amended by section 301(c), is further amended by adding after section 216 the following new section:

"VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

"SEC. 217. (a) ESTABLISHMENT OF PILOT PROGRAM.—The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this section referred to as the 'pilot program') under which the requirement of paragraph (26)(B) of section 212(a) may be waived by the Attorney General and the 8 USC 1187. 8 USC 1182.

Secretary of State, acting jointly and in accordance with this section, in the case of an alien who meets the following requirements:

"(1) SEEKING ENTRY AS TOURIST FOR 90 DAYS OR LESS.—The alien is applying for admission during the pilot program period (as defined in subsection (e)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.

8 USC 1101.

"(2) NATIONAL OF PILOT PROGRAM COUNTRY.—The alien is a national of a country which—

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

"(B) is designated as a pilot program country under subsection (c).

"(3) EXECUTES ENTRY CONTROL AND WAIVER FORMS.—The alien before the time of such admission—

"(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3), and

"(B) executes a waiver of review and appeal described in subsection (b)(4).

"(4) ROUND-TRIP TICKET.—The alien has a round-trip, nontransferable transportation ticket which—

"(A) is valid for a period of not less than one year,

"(B) is nonrefundable except in the country in which issued or in the country of the alien's nationality or residence,

Contracts.

"(C) is issued by a carrier which has entered into an agreement described in subsection (d), and

"(D) guarantees transport of the alien out of the United States at the end of the alien's visit.

Defense and national security. Safety.

"(5) NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

"(6) NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

"(b) CONDITIONS BEFORE PILOT PROGRAM CAN BE PUT INTO OPERATION.—

"(1) PRIOR NOTICE TO CONGRESS.—The pilot 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 paragraph (2) is operational and effective and that the form described in paragraph (3) has been produced.

"(2) AUTOMATED DATA ARRIVAL AND DEPARTURE SYSTEM.—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 into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the pilot program.

"(3) VISA WAIVER INFORMATION FORM.—The Attorney General shall develop a form for use under the pilot program. Such form shall be consistent and compatible with the control system developed under paragraph (2). Such form shall provide for, among other items—

"(A) a summary description of the conditions for excluding nonimmigrant visitors from the United States under section 212(a) and under the pilot program, 8 USC 1182.

"(B) a description of the conditions of entry with a waiver under the pilot program, including the limitation of such entry to 90 days and the consequences of failure to abide by such conditions, and

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

"(4) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the pilot program unless the alien has waived any right—

"(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

"(B) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(c) DESIGNATION OF PILOT PROGRAM COUNTRIES.—

"(1) UP TO 8 COUNTRIES.—The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot program countries for purposes of the pilot program.

"(2) INITIAL QUALIFICATIONS.—For the initial period described in paragraph (4), a country may not be designated as a pilot program country unless the following requirements are met:

"(A) LOW NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS 2-YEAR PERIOD.—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.

"(B) LOW NONIMMIGRANT VISA REFUSAL RATE FOR EACH OF 2 PREVIOUS YEARS.—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.

"(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS.—For each fiscal year (within the pilot program period) after the initial period—

"(A) CONTINUING QUALIFICATION.—In the case of a country which was a pilot program country in the previous fiscal year, a country may not be designated as a pilot program 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 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

"(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a pilot program country unless the following requirements are met:

"(i) LOW NONIMMIGRANT VISA REFUSAL RATE IN PREVIOUS 2-YEAR PERIOD.—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 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(ii) LOW NONIMMIGRANT VISA REFUSAL RATE IN EACH OF THE 2 PREVIOUS YEARS.—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) INITIAL PERIOD.—For purposes of paragraphs (2) and (3), the term 'initial period' means the period beginning at the end of the 30-day period described in subsection (b)(1) and ending on the last day of the first fiscal year which begins after such 30-day period.

"(d) CARRIER AGREEMENTS.—

"(1) IN GENERAL.—The agreement referred to in subsection (a)(4)(C) 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 the pilot program—

"(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 subsection (a)(1)(A), and

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

"(2) TERMINATION OF AGREEMENTS.—The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(e) DEFINITION OF PILOT PROGRAM PERIOD.—For purposes of this section, the term 'pilot program period' means the period beginning at the end of the 30-day period referred to in subsection (b)(1) and ending on the last day of the third fiscal year which begins after such 30-day period.".

(b) LIMITATION ON STAY IN UNITED STATES.—Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.".

Ante, p. 3435.

(c) PROHIBITION OF ADJUSTMENT TO IMMIGRANT STATUS.—Section 245(c) (8 U.S.C. 1255(c)), as amended by section 312(b), is further amended by striking out "or" before "(4)" and by inserting before the period at the end the following: "; or (5) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as

a nonimmigrant visitor without a visa under section 212(l) or section 217".

8 USC 1182; *ante*, p. 3435.

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

"(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.".

(e) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by adding after the item relating to section 216 the following new item:

"Sec. 217 Visa waiver pilot program for certain visitors.".

SEC. 314. MAKING VISAS AVAILABLE TO NONPREFERENCE IMMIGRANTS.

8 USC 1153 note.

(a) AUTHORIZATION OF ADDITIONAL VISAS.—Notwithstanding the numerical limitations in section 201(a) of the Immigration and Nationality Act (8 U.S.C. 1151(a)), but subject to the numerical limitations in section 202 of such Act, there shall be made available to qualified immigrants described in section 203(a)(7) of such Act 5,000 visa numbers in each of fiscal years 1987 and 1988.

8 USC 1152.
8 USC 1153.

(b) DISTRIBUTION OF VISA NUMBERS.—The Secretary of State shall provide for making visa numbers provided under subsection (a) available in the same manner as visa numbers are otherwise made available to qualified immigrants under section 203(a)(7) of the Immigration and Nationality Act, except that—

(1) the Secretary shall first make such visa numbers available to qualified immigrants who are natives of foreign states the immigration of whose natives to the United States was adversely affected by the enactment of Public Law 89-236, and

8 USC 1151.

(2) within groups of qualified immigrants, such visa numbers shall be made available strictly in the chronological order in which they qualify after the date of the enactment of this Act.

(c) WAIVER OF LABOR CERTIFICATION.—Section 212(a)(14) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(14)) shall not apply in the determination of an immigrant's eligibility to receive any visa made available under this section or in the admission of such an immigrant issued such a visa under this section.

(d) APPLICATION OF DEFINITIONS OF IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act shall apply in the administration of this section. Nothing in this section 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 such Act or any other law relating to immigration, nationality, or naturalization.

8 USC 1101 note.

SEC. 315. MISCELLANEOUS PROVISIONS.

(a) EQUAL TREATMENT OF FATHERS.—Section 101(b)(1)(D) (8 U.S.C. 1101(b)(1)(D)) is amended by inserting "or to its natural father if the father has or had a bona fide parent-child relationship with the person" after "natural mother".

(b) SUSPENSION OF DEPORTATION FOR CERTAIN ALIENS.—Section 244(b) (8 U.S.C. 1254(b)), as amended by section 312(c), is further amended by adding at the end the following new paragraph:

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"(3) An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.".

8 USC 1253 note.

(c) SENSE OF CONGRESS RESPECTING TREATMENT OF CUBAN POLITICAL PRISONERS.—It is the sense of the Congress that the Secretary of State should provide for the issuance of visas to nationals of Cuba who are or were imprisoned in Cuba for political activities without regard to section 243(g) of the Immigration and Nationality Act (8 U.S.C. 1253(g)).

Maritime affairs.
Aircraft and air carriers.
8 USC 1101 note.

(d) DENIAL OF CREW MEMBER NONIMMIGRANT VISA IN CASES OF STRIKES.—(1) Except as provided in paragraph (2), during the one-year period beginning on the date of the enactment of this Act, an alien may not be admitted to the United States as an alien crewman (under section 101(a)(15)(D) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(D)) for the purpose of performing service on board a vessel or aircraft at a time when there is a strike in the bargaining unit of the employer in which the alien intends to perform such service.

(2) Paragraph (1) shall not apply to an alien employee who was employed before the date of the strike concerned and who is seeking admission to enter the United States to continue to perform services as a crewman to the same extent and on the same routes as the alien performed such services before the date of the strike.

TITLE IV—REPORTS TO CONGRESS

8 USC 1364.

SEC. 401. TRIENNIAL COMPREHENSIVE REPORT ON IMMIGRATION.

President of U.S.

(a) TRIENNIAL REPORT.—The President shall transmit to the Congress, not later than January 1, 1989, and not later than January 1 of every third year thereafter, a comprehensive immigration-impact report.

(b) DETAILS IN EACH REPORT.—Each report shall include—

(1) the number and classification of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preferences classifications, or as nonimmigrants), paroled, or granted asylum, during the relevant period;

(2) a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 241 of the Immigration and Nationality Act; and

8 USC 1251.

(3) a description of the impact of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the period on the economy, labor and housing markets, the educational system, social services, foreign policy, environmental quality and resources, the rate, size, and distribution of population growth in the United States, and the impact on specific States and local units of government of high rates of immigration resettlement.

(c) HISTORY AND PROJECTIONS.—The information (referred to in subsection (b)) contained in each report shall be—

(1) described for the preceding three-year period, and

(2) projected for the succeeding five-year period, based on reasonable estimates substantiated by the best available evidence.

(d) RECOMMENDATIONS.—The President also may include in such report any appropriate recommendations on changes in numerical limitations or other policies under title II of the Immigration and Nationality Act bearing on the admission and entry of such aliens to the United States. 8 USC 1151.

SEC. 402. REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT.

President of U.S. 8 USC 1324a note.

The President shall transmit to Congress annual reports on the implementation of section 274A of the Immigration and Nationality Act (relating to unlawful employment of aliens) during the first three years after its implementation. Each report shall include— *Ante*, p. 3360.

(1) an analysis of the adequacy of the employment verification system provided under subsection (b) of that section;

(2) a description of the status of the development and implementation of changes in that system under subsection (d) of that section, including the results of any demonstration projects conducted under paragraph (4) of such subsection; and

(3) an analysis of the impact of the enforcement of that section on—

(A) the employment, wages, and working conditions of United States workers and on the economy of the United States,

(B) the number of aliens entering the United States illegally or who fail to maintain legal status after entry, and

(C) the violation of terms and conditions of nonimmigrant visas by foreign visitors.

SEC. 403. REPORTS ON H-2A PROGRAM.

8 USC 1186 note.

(a) PRESIDENTIAL REPORTS.—The President shall transmit to the Committees on the Judiciary of the Senate and of the House of Representatives reports on the implementation of the temporary agricultural worker (H-2A) program, which shall include—

(1) the number of foreign workers permitted to be employed under the program in each year;

(2) the compliance of employers and foreign workers with the terms and conditions of the program;

(3) the impact of the program on the labor needs of the United States agricultural employers and on the wages and working conditions of United States agricultural workers; and

(4) recommendations for modifications of the program, including—

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

(B) removing any economic disincentives to hiring United States citizens or permanent resident aliens for jobs for which temporary foreign workers have been requested,

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

(D) the relative benefits to domestic workers and burdens upon employers of a policy which requires employers, as a condition for certification under the program, to continue

to accept qualified United States workers for employment after the date the H-2A workers depart for work with the employer.

The recommendations under subparagraph (D) shall be made in furtherance of the congressional policy that aliens not be admitted under the H-2A program unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or services needed and that 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.

(b) DEADLINES.—A report on the H-2A temporary worker program under subsection (a) shall be submitted not later than two years after the date of the enactment of this Act, and every two years thereafter.

8 USC 1255a note.

SEC. 404. REPORTS ON LEGALIZATION PROGRAM.

President of U.S.

(a) IN GENERAL.—The President shall transmit to Congress two reports on the legalization program established under section 245A of the Immigration and Nationality Act.

Ante, p. 3394.

(b) INITIAL REPORT DESCRIBING LEGALIZED ALIENS.—The first report, which shall be transmitted not later than 18 months after the end of the application period for adjustment to lawful temporary residence status under the program, shall include a description of the population whose status is legalized under the program, including—

(1) geographical origins and manner of entry of these aliens into the United States,

(2) their demographic characteristics, and

(3) a general profile and characteristics.

(c) SECOND REPORT ON IMPACT OF LEGALIZATION PROGRAM.—The second report, which shall be transmitted not later than three years after the date of transmittal of the first report, shall include a description of—

(1) the impact of the program on State and local governments and on public health and medical needs of individuals in the different regions of the United States,

(2) the patterns of employment of the legalized population, and

(3) the participation of legalized aliens in social service programs.

8 USC 1187 note.

SEC. 405. REPORT ON VISA WAIVER PILOT PROGRAM.

(a) MONITORING AND REPORT ON THE PILOT PROGRAM.—The Attorney General and the Secretary of State shall jointly monitor the pilot program established under section 217 of the Immigration and Nationality Act and shall report to the Congress not later than two years after the beginning of the program.

Ante, p. 3435.

(b) DETAILS IN REPORT.—The report shall include—

(1) an evaluation of the program, including its impact—

(A) on the control of alien visitors to the United States,

(B) on consular operations in the countries designated under the program, as well as on consular operations in other countries in which additional consular personnel have been relocated as a result of the implementation of the program, and

(C) on the United States tourism industry; and

(2) recommendations—
(A) on extending the pilot program period, and
(B) on increasing the number of countries that may be designated under the program.

SEC. 406. REPORT ON IMMIGRATION AND NATURALIZATION SERVICE.

Not later than 90 days after the date of the enactment of this Act, the Attorney General shall prepare and transmit to the Congress a report describing the type of equipment, physical structures, and personnel resources required to improve the capabilities of the Immigration and Naturalization Service so that it can adequately carry out services and enforcement activities, including those required to carry out the amendments made by this Act.

SEC. 407. SENSE OF THE CONGRESS.

Mexico.
President of U.S.
8 USC 1101 note.

It is the sense of the Congress that the President of the United States should consult with the President of the Republic of Mexico within 90 days after enactment of this Act regarding the implementation of this Act and its possible effect on the United States or Mexico. After the consultation, it is the sense of the Congress that the President should report to the Congress any legislative or administrative changes that may be necessary as a result of the consultation and the enactment of this legislation.

TITLE V—STATE ASSISTANCE FOR INCARCERATION COSTS OF ILLEGAL ALIENS AND CERTAIN CUBAN NATIONALS

SEC. 501. REIMBURSEMENT OF STATES FOR COSTS OF INCARCERATING ILLEGAL ALIENS AND CERTAIN CUBAN NATIONALS.

8 USC 1365.

(a) REIMBURSEMENT OF STATES.—Subject to the amounts provided in advance in appropriation Acts, the Attorney General shall reimburse a State for the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony by such State.

(b) ILLEGAL ALIENS CONVICTED OF A FELONY.—An illegal alien referred to in subsection (a) is any alien who is any alien convicted of a felony who is in the United States unlawfully and—
(1) whose most recent entry into the United States was without inspection, or
(2) whose most recent admission to the United States was as a nonimmigrant and—
(A) whose period of authorized stay as a nonimmigrant expired, or
(B) whose unlawful status was known to the Government, before the date of the commission of the crime for which the alien is convicted.

(c) MARIELITO CUBANS CONVICTED OF A FELONY.—A Marielito Cuban convicted of a felony referred to in subsection (a) is a national of Cuba who—
(1) was allowed by the Attorney General to come to the United States in 1980,
(2) after such arrival committed any violation of State or local law for which a term of imprisonment was imposed, and
(3) at the time of such arrival and at the time of such violation was not an alien lawfully admitted to the United States—
(A) for permanent or temporary residence, or

(B) under the terms of an immigrant visa or a non-immigrant visa issued,

under the laws of the United States.

(d) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

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

TITLE VI—COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT

8 USC 1101 note.

SEC. 601. COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT.

(a) ESTABLISHMENT AND COMPOSITION OF COMMISSION.—(1) There is established a Commission for the Study of International Migration and Cooperative Economic Development (in this section referred to as the "Commission"), to be composed of twelve members—

(A) three members to be appointed by the Speaker of the House of Representatives;

(B) three members to be appointed by the Minority Leader of the House of Representatives;

(C) three members to be appointed by the Majority Leader of the Senate; and

(D) three members to be appointed by the Minority Leader of the Senate.

(2) Members shall be appointed for the life of the Commission. Appointments to the Commission shall be made within 90 days after the date of the enactment of this Act. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(3) A majority of the members of the Commission shall elect a Chairman.

(b) DUTY OF COMMISSION.—The Commission, in consultation with the governments of Mexico and other sending countries in the Western Hemisphere, shall examine the conditions in Mexico and such other sending countries which contribute to unauthorized migration to the United States and mutually beneficial, reciprocal trade and investment programs to alleviate such conditions. For purposes of this section, the term "sending country" means a foreign country a substantial number of whose nationals migrate to, or remain in, the United States without authorization.

(c) REPORT TO THE PRESIDENT AND CONGRESS.—Not later than three years after the appointment of the members of the Commission, the Commission shall prepare and transmit to the President and to the Congress a report describing the results of the Commission's examination and recommending steps to provide mutually beneficial reciprocal trade and investment programs to alleviate conditions leading to unauthorized migration to the United States.

(d) COMPENSATION OF MEMBERS, MEETINGS, STAFF, AUTHORITY OF COMMISSION, AND AUTHORIZATION OF APPROPRIATIONS.—(1) The provisions of subsections (d), (e)(3), (f), (g), and (h) of section 304 shall apply to the Commission in the same manner as they apply to the Commission established under section 304.

Ante, p. 3431.

(2) Seven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(e) TERMINATION DATE.—The Commission shall terminate on the date on which a report is required to be transmitted by subsection (c), except that the Commission may continue to function for not more than thirty days thereafter for the purpose of concluding its activities.

TITLE VII—FEDERAL RESPONSIBILITY FOR DEPORTABLE AND EXCLUDABLE ALIENS CONVICTED OF CRIMES

SEC. 701. EXPEDITIOUS DEPORTATION OF CONVICTED ALIENS.

Section 242 (8 U.S.C. 1254) is amended by adding at the end the following new subsection: 8 USC 1252.

"(i) In the case of an alien who is convicted of an offense which makes the alien subject to deportation, the Attorney General shall begin any deportation proceeding as expeditiously as possible after the date of the conviction.".

SEC. 702. IDENTIFICATION OF FACILITIES TO INCARCERATE DEPORTABLE OR EXCLUDABLE ALIENS.

The President shall require the Secretary of Defense, in cooperation with the Attorney General and by not later than 60 days after the date of the enactment of this Act, to provide to the Attorney General a list of facilities of the Department of Defense that could be made available to the Bureau of Prisons for use in incarcerating aliens who are subject to exclusion or deportation from the United States. President of U.S.

Approved November 6, 1986.

LEGISLATIVE HISTORY—S. 1200 (H.R. 3810):

HOUSE REPORTS: No. 99-682, Pt. 1 (Comm. on the Judiciary), Pt. 2 (Comm. on Education and Labor), Pt. 3 (Comm. on Ways and Means), Pt. 4 (Comm. on Energy and Commerce), and Pt. 5 (Comm. on Agriculture), all accompanying H.R. 3810.

SENATE REPORTS: No. 99-132 (Comm. on the Judiciary) and No. 99-1000 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 131 (1985): Sept. 11-13, 16-19, considered and passed Senate.

Vol. 132 (1986): Oct. 9, H.R. 3810 considered and passed House; proceedings vacated and S. 1200, amended, passed in lieu.

Oct. 15, House agreed to conference report.

Oct. 17, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 22 (1986):

Nov. 6, Presidential statement and remarks.

Public Law 99-604
99th Congress

An Act

Nov. 6, 1986
[H.R. 897]

To recognize the Army and Navy Union of the United States of America.

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

CHARTER

Ohio.
36 USC 3901.

SECTION 1. The Army and Navy Union of the United States of America, organized and incorporated under the laws of the State of Ohio, is hereby recognized as such and is granted a charter.

POWERS

State and local governments.
36 USC 3902.

SEC. 2. The Army and Navy Union of the United States of America (hereinafter referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

OBJECTS AND PURPOSES OF CORPORATION

36 USC 3903.

SEC. 3. The objects and purposes of the corporation are those provided in its articles of incorporation and shall also be—

(a) to hold true allegiance to the Government of the United States of America and fidelity to its Constitution, laws, and institutions;

(b) to serve our Nation under God in peace as well as in war by fostering the ideals of faith and patriotism, loyalty, justice, and liberty; by inculcating in the hearts of young and old, through precept and practice, the spirit of true Americanism; by participating in civic activities for the good of our country and our community;

(c) to unite in fraternal fellowship those who have served honorably and those who are now serving honorably in the Armed Forces of the United States of America; to protect and advance their civic, social, and economic welfare; to aid them in sickness and distress; to assist in the burial and commemoration of their dead; and to provide help for their widows and orphans; and

(d) to perpetuate the memory of patriotic deeds performed by the defenders of our country.

SERVICE OF PROCESS

State and local governments.
36 USC 3904.

SEC. 4. With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.