

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3809

To revise, codify, and enact without substantive change certain general and permanent laws, related to aliens and nationality, as title 8, United States Code, “Aliens and Nationality”.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1994

Mr. BROOKS introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To revise, codify, and enact without substantive change certain general and permanent laws, related to aliens and nationality, as title 8, United States Code, “Aliens and Nationality”.

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

3 **SECTION 1. TITLE 8, UNITED STATES CODE.**

4 Certain general and permanent laws of the United States, related to  
5 aliens and nationality, are revised, codified, and enacted as title 8, United  
6 States Code, “Aliens and Nationality”, as follows:

7 **TITLE 8—ALIENS AND NATIONALITY**

SUBTITLE	Sec.
I. GENERAL .....	101
II. ALIENS .....	2101
III. UNLAWFUL EMPLOYMENT PRACTICES .....	11101
IV. REFUGEE AND IMMIGRANT PROGRAMS .....	13101
V. CITIZENSHIP AND NATIONALITY .....	20101

8 **SUBTITLE I—GENERAL**

CHAPTER	Sec.
1. DEFINITIONS .....	101

3. ORGANIZATION AND ADMINISTRATION .....	301
5. PASSPORTS AND TRAVEL REQUIREMENTS .....	501
7. GENERAL MISCELLANEOUS .....	701

1

**CHAPTER 1—DEFINITIONS**

Sec.

- 101. Adjacent islands.
- 102. Advocates.
- 103. Advocating a doctrine.
- 104. Affiliating with an organization.
- 105. Agency.
- 106. Aggravated felony.
- 107. Alien.
- 108. Application for admission.
- 109. Border crossing identification card.
- 110. Child.
- 111. Consular officer.
- 112. Crewmember.
- 113. Doctrine.
- 114. Entry.
- 115. Executive agency.
- 116. Executive capacity.
- 117. Foreign country.
- 118. Good moral character.
- 119. Graduate of a medical school.
- 120. Immediate relative.
- 121. Immigrant.
- 122. Immigration laws.
- 123. Immigration officer.
- 124. Ineligible for citizenship.
- 125. International organization.
- 126. Lawfully admitted for permanent residence.
- 127. Managerial capacity.
- 128. National.
- 129. National of the United States.
- 130. Naturalization.
- 131. Nonimmigrant.
- 132. Organization.
- 133. Parent, father, and mother.
- 134. Passport.
- 135. Refugee.
- 136. Residence.
- 137. Special immigrant.
- 138. Special inquiry officer.
- 139. Spouse, wife, and husband.
- 140. State.
- 141. Totalitarian dictatorship.
- 142. Totalitarian party.
- 143. United States.
- 144. Unmarried.

2 **§ 101. Adjacent islands**

3 In this title, “adjacent islands” includes the Bahamas, Barbados, Ber-  
4 muda, Cuba, the Dominican Republic, Haiti, Jamaica, Martinique,  
5 Miquelon, Saint Pierre, Trinidad, the Windward and Leeward Islands, and  
6 other British, French, and Dutch territories and possessions in or bordering  
7 on the Caribbean Sea.

8 **§ 102. Advocates**

9 In this title, “advocates” includes advises, recommends, furthers by overt  
10 act, and admits belief in.

1 **§ 103. Advocating a doctrine**

2 In this title, “advocating a doctrine” includes giving, lending, or promis-  
3 ing support, money, or other value to be used for advocating a doctrine.

4 **§ 104. Affiliating with an organization**

5 In this title, “affiliating with an organization” is presumed from giving,  
6 lending, or promising support, money, or other value to an organization for  
7 any purpose.

8 **§ 105. Agency**

9 In this title, “agency” means a department, agency, or instrumentality  
10 of the United States Government.

11 **§ 106. Aggravated felony**

12 (a) GENERAL.—In this title, “aggravated felony” means any of the fol-  
13 lowing, or an attempt or conspiracy to commit any of the following:

14 (1) murder.

15 (2) illicit trafficking in a controlled substance (as defined by section  
16 102 of the Comprehensive Drug Abuse Prevention and Control Act of  
17 1970 (21 U.S.C. 802)), including a drug trafficking crime (as defined  
18 by section 924(c)(2) of title 18).

19 (3) illicit trafficking in a firearm or destructive device (as defined by  
20 section 921(a) of title 18).

21 (4) an offense described by section 1956 of title 18.

22 (5) a crime of violence (as defined by section 16 of title 18, except  
23 a purely political offense) for which the term of imprisonment imposed  
24 (regardless of any suspension) is at least 5 years.

25 (b) APPLICABLE LAW.—Subsection (a) of this section applies to an of-  
26 fense under a law of—

27 (1) a State or the United States; or

28 (2) a foreign country if the term of imprisonment for the offense was  
29 completed within the prior 15 years.

30 **§ 107. Alien**

31 In this title, “alien” means an individual who is not a national of the  
32 United States.

33 **§ 108. Application for admission**

34 In this title, “application for admission” means an application for admis-  
35 sion to the United States and not an application for a visa.

36 **§ 109. Border crossing identification card**

37 In this title, “border crossing identification card” means a document of  
38 identity—

39 (1) having the designation “border crossing identification card”;

1 (2) granted by a consular officer or an immigration officer to an  
 2 alien lawfully admitted for permanent residence or an alien residing in  
 3 foreign territory contiguous to the United States; and

4 (3) to be used by the alien in crossing a border between the United  
 5 States and foreign territory contiguous to the United States.

6 **§ 110. Child**

7 (a) SUBTITLES I–III.—In subtitles I–III of this title, “child” means an  
 8 unmarried individual under 21 years of age who—

9 (1) is a legitimate child;

10 (2) is a stepchild, whether or not born illegitimate, if the child was  
 11 under 18 years of age when the marriage making the child a stepchild  
 12 occurred;

13 (3) was legitimated under the law of the child’s or father’s residence  
 14 or domicile if the legitimation occurred when the child was under 18  
 15 years of age and in the legal custody of the legitimating parent or par-  
 16 ents;

17 (4) is illegitimate, but the individual is a child only in regard to the  
 18 individual’s—

19 (A) natural mother; or

20 (B) natural father if the father has or had a parent-child rela-  
 21 tionship with the child;

22 (5) was adopted under 16 years of age if the child has been in the  
 23 legal custody of, and resided with, the adopting parent or parents for  
 24 at least 2 years; or

25 (6)(A) is under 16 years of age when a petition is filed to classify  
 26 the child as an immediate relative;

27 (B) is an orphan because both parents have died, disappeared, de-  
 28 serted the child, or been separated from the child, or has only one par-  
 29 ent and the parent is unable to provide the proper care and irrevocably  
 30 in writing has released the child for emigration and adoption, except  
 31 that in this clause the term “parent” does not include the natural fa-  
 32 ther if—

33 (i) the child is illegitimate as described by clause (4) of this sub-  
 34 section and has not been legitimated as described by clause (3) of  
 35 this subsection; and

36 (ii) the father has disappeared or deserted the child or irrev-  
 37 ocably in writing has released the child for emigration and adop-  
 38 tion;

39 (C)(i) was adopted outside the United States by a citizen of the  
 40 United States and the citizen’s spouse, or by an unmarried citizen of

1 the United States at least 25 years of age, who observed the child be-  
2 fore or during the adoption proceedings; or

3 (ii) is coming to the United States for adoption by a citizen of the  
4 United States and the citizen's spouse, or by an unmarried citizen of  
5 the United States at least 25 years of age, who complied with the  
6 preadoption requirements of the child's proposed residence; and

7 (D) will be cared for properly to the satisfaction of the Attorney  
8 General if admitted to the United States.

9 (b) SUBTITLE V.—In subtitle V of this title, "child" means an unmarried  
10 individual under 21 years of age and includes a child who—

11 (1) is a legitimate child;

12 (2) was legitimated under the law of the child's or father's residence  
13 or domicile (even if outside the United States) if the legitimation oc-  
14 curred when the child was under 16 years of age and in the legal cus-  
15 tody of the legitimating parent or parents; or

16 (3) except as provided by sections 20305–20307 of this title, was  
17 adopted in the United States if the adoption occurred when the child  
18 was under 16 years of age and in the legal custody of the adopting  
19 parent or parents.

20 **§ 111. Consular officer**

21 In this title, "consular officer" means an officer or employee of the Unit-  
22 ed States Government designated under regulations to grant visas.

23 **§ 112. Crewmember**

24 In this title, "crewmember" means an individual serving in any capacity  
25 on a vessel or aircraft.

26 **§ 113. Doctrine**

27 In this title, "doctrine" includes a policy, practice, purpose, aim, or proce-  
28 dure.

29 **§ 114. Entry**

30 In this title, "entry" means a coming of an alien into the United States  
31 from a foreign port or place or from American Samoa and includes a com-  
32 ing into the United States involuntarily. However, an alien having a lawful  
33 permanent residence in the United States is deemed not to be making an  
34 entry under the immigration laws if the alien—

35 (1) satisfies the Attorney General that the alien did not intend or  
36 reasonably expect to depart to a foreign port or place or to American  
37 Samoa or that the alien's departure was involuntary; and

38 (2) did not depart because of deportation, extradition, or other legal  
39 process.

1 **§ 115. Executive agency**

2 In this title, “executive agency” means a department, agency, or instru-  
3 mentality in the executive branch of the United States Government.

4 **§ 116. Executive capacity**

5 (a) GENERAL.—In this title, “executive capacity” means an assignment  
6 of an individual employed in an organization in which the individual pri-  
7 marily—

8 (1) directs the management of the organization or a major compo-  
9 nent or function of the organization;

10 (2) establishes the goals and policies of the organization, component,  
11 or function;

12 (3) has wide latitude in making discretionary decisions; and

13 (4) receives only general supervision or direction from higher level  
14 executives, the board of directors, or stockholders of the organization.

15 (b) STAFFING LEVELS AS FACTOR.—If staffing levels are used as a fac-  
16 tor in deciding whether an individual is acting in an executive capacity, the  
17 Attorney General shall consider the reasonable needs of the organization,  
18 component, or function in light of the overall purpose and stage of develop-  
19 ment of the organization, component, or function. An individual is not act-  
20 ing in an executive capacity only because of the number of employees the  
21 individual supervises, directs, or has supervised or directed.

22 **§ 117. Foreign country**

23 In this title, “foreign country” includes the territories and possessions of  
24 a foreign country, but a self-governing dominion or a territory under trust-  
25 eeship is deemed to be a separate foreign country.

26 **§ 118. Good moral character**

27 In this title, each of the following individuals is an individual not of good  
28 moral character:

29 (1) an individual who, during the period for which good moral char-  
30 acter is required—

31 (A) was a habitual drunkard;

32 (B) was within a class of individuals, whether excludable or not,  
33 described by—

34 (i) section 6306 or 6307(a)(5) or (6) of this title; or

35 (ii) section 6307(a)(1)–(4) of this title (except as section  
36 6307(a)(3) is related to a single offense of simple possession  
37 of not more than 30 grams of marijuana), if the individual  
38 admits committing or was convicted of committing the offense  
39 and committed the offense during the period for which good  
40 moral character is required;

1 (C) derived income principally from unlawful gambling activi-  
2 ties;

3 (D) committed at least 2 gambling offenses for which the indi-  
4 vidual has been convicted;

5 (E) gave false testimony to obtain a benefit under this title (ex-  
6 cept subchapter I of chapter 5, subchapters III and IV of chapter  
7 131, and chapters 133–137); or

8 (F) served a total of at least 180 days in a penal institution  
9 for conviction of an offense or offenses, even if the offense or of-  
10 fenses were not committed during the period for which good moral  
11 character is required.

12 (2) an individual convicted of murder or, after November 28, 1990,  
13 of another aggravated felony, regardless of whether the offense or con-  
14 viction was during the period for which good moral character is re-  
15 quired.

16 (3) an individual found for other reasons to be not of good moral  
17 character.

18 **§ 119. Graduate of a medical school**

19 In this title, “graduate of a medical school” means an alien who has  
20 graduated from a medical school or has qualified to practice medicine in a  
21 foreign country, except an alien of national or international renown in the  
22 field of medicine.

23 **§ 120. Immediate relative**

24 In this title, “immediate relative” means—

25 (1) a child of a citizen of the United States;

26 (2) a spouse of a citizen of the United States, except that if the citi-  
27 zen has died, the spouse remains an immediate relative after the death  
28 only if the spouse—

29 (A) was married to the citizen for at least 2 years before the  
30 date of death;

31 (B) was not legally separated from the citizen on the date of  
32 death;

33 (C) files a petition under section 4301(a)(1) of this title not  
34 later than 2 years after the date of death; and

35 (D) has not remarried; and

36 (3) a parent of a citizen of the United States if the citizen is at least  
37 21 years of age.

38 **§ 121. Immigrant**

39 In this title, “immigrant” means any alien except a nonimmigrant.

1 **§ 122. Immigration laws**

2 In this title, “immigration laws” includes this title and all laws, conven-  
3 tions, and treaties of the United States related to the immigration, exclu-  
4 sion, deportation, or expulsion of aliens.

5 **§ 123. Immigration officer**

6 In this title, “immigration officer” means an officer or employee of the  
7 United States Government designated by the Attorney General, individually  
8 or by regulation, to carry out the duties and powers of an immigration offi-  
9 cer under this title.

10 **§ 124. Ineligible for citizenship**

11 In this title, “ineligible for citizenship” means permanently debarred at  
12 any time under this title or another law from becoming a citizen of the  
13 United States.

14 **§ 125. International organization**

15 In this title, “international organization” means an international organi-  
16 zation as defined by section 1 of the International Organizations Immunities  
17 Act (22 U.S.C. 288).

18 **§ 126. Lawfully admitted for permanent residence**

19 In this title, “lawfully admitted for permanent residence” means the sta-  
20 tus of lawfully having been given the privilege of residing permanently in  
21 the United States as an immigrant under the immigration laws, that status  
22 not having changed.

23 **§ 127. Managerial capacity**

24 (a) GENERAL.—In this title, “managerial capacity” means an assignment  
25 of an individual employed in an organization in which the individual pri-  
26 marily—

27 (1) manages the organization or a department, subdivision, compo-  
28 nent, or function of the organization;

29 (2) supervises and controls the work of other supervisory, profes-  
30 sional, or managerial employees, or manages an essential function in  
31 the organization or a department or subdivision of the organization;

32 (3)(A) has the authority to hire and fire or recommend hiring, firing,  
33 and other personnel actions, if an employee is supervised directly; or

34 (B) works at a senior level in the organizational hierarchy or with  
35 regard to the function managed, if no employee is supervised directly;  
36 and

37 (4) has discretion over the day-to-day operations of the activity or  
38 function for which the individual has authority.

39 (b) FIRST-LINE SUPERVISOR.—A first-line supervisor does not act in a  
40 managerial capacity only because of the supervisor’s supervisory duties un-  
41 less the employees supervised are professional.

1 (c) STAFFING LEVELS AS FACTOR.—If staffing levels are used as a factor  
2 in deciding whether an individual is acting in a managerial capacity, the At-  
3 torney General shall consider the reasonable needs of the organization, com-  
4 ponent, or function in light of the overall purpose and stage of development  
5 of the organization, component, or function. An individual is not acting in  
6 a managerial capacity only because of the number of employees the individ-  
7 ual supervises, directs, or has supervised or directed.

8 **§ 128. National**

9 In this title, “national” means an individual owing permanent allegiance  
10 to a country.

11 **§ 129. National of the United States**

12 In this title, “national of the United States” means—

13 (1) a citizen of the United States; or

14 (2) an individual, not a citizen of the United States, owing perma-  
15 nent allegiance to the United States.

16 **§ 130. Naturalization**

17 In this title, “naturalization” means the conferring of nationality of a  
18 country on an individual after birth by any means.

19 **§ 131. Nonimmigrant**

20 In this title, “nonimmigrant” means an alien classified as a non-  
21 immigrant under subchapter I of chapter 23 of this title.

22 **§ 132. Organization**

23 In this title, “organization” includes a corporation, partnership, associa-  
24 tion, trust, foundation, fund, or group of persons associated together with  
25 joint action on any subject.

26 **§ 133. Parent, father, and mother**

27 (a) SUBTITLES I–III.—In subtitles I–III of this title, “parent”, “father”,  
28 and “mother” mean a parent, father, and mother of a child, but do not in-  
29 clude—

30 (1) the natural parent of a child as defined by section 110(a)(5) of  
31 this title; or

32 (2) the natural parent or prior adoptive parent of a child as defined  
33 by section 110(a)(6) of this title.

34 (b) SUBTITLE V.—In subtitle V of this title, “parent”, “father”, and  
35 “mother” include a deceased parent, father, and mother of a posthumous  
36 child.

37 **§ 134. Passport**

38 In this title, “passport” means a travel document—

39 (1) granted by competent authority;

40 (2) showing the bearer’s origin, identity, and nationality; and

41 (3) valid for the entry of the bearer into a foreign country.

**§ 135. Refugee**

In this title (except chapters 133 and 135), “refugee”—

(1) means an individual who—

(A)(i) is outside the country of the individual’s nationality or, if the individual has no nationality, is outside the country in which the individual last habitually resided; and

(ii) is unable or unwilling to return to, and make use of the protection of, that country because of persecution or a well-founded fear of persecution because of race, religion, nationality, membership in a particular social group, or political opinion; or

(B) in circumstances the President after appropriate consultation (as defined by section 5101(a) of this title) specifies—

(i) is in the country of the individual’s nationality or, if the individual has no nationality, is in the country in which the individual is habitually residing; and

(ii) is persecuted or has a well-founded fear of persecution because of race, religion, nationality, membership in a particular social group, or political opinion; but

(2) does not include an individual who ordered, incited, assisted, or otherwise participated in the persecution of an individual because of race, religion, nationality, membership in a particular social group, or political opinion.

**§ 136. Residence**

In this title, “residence” means the principal, actual dwelling place of an individual without regard to the individual’s intent.

**§ 137. Special immigrant**

(a) GENERAL.—In this title, “special immigrant” means each of the following immigrants:

(1) an immigrant lawfully admitted for permanent residence returning from a temporary visit outside the United States (including a period of employment by the American University of Beirut).

(2) an immigrant who was a citizen of the United States and may be naturalized under section 20315 or 20317(a) of this title.

(3)(A) an immigrant who—

(i) for at least 2 years immediately before applying for admission has been a member of a religious denomination having a non-profit, religious organization in the United States;

(ii) is coming to the United States—

(I) only to serve as a minister of that religious denomination;

1 (II) before October 1, 1994, to work for the organization,  
2 at the request of the organization, in a professional capacity  
3 in a religious vocation or occupation; or

4 (III) before October 1, 1994, to work for the organization  
5 or for an organization affiliated with the religious denomina-  
6 tion and exempt from taxation as an organization described  
7 by section 501(c)(3) of the Internal Revenue Code of 1986  
8 (26 U.S.C. 501(c)(3)), at the request of the organization, in  
9 a religious vocation or occupation; and

10 (iii) has served as a minister or performed the work described  
11 by subclause (ii) of this clause continuously for at least the 2-year  
12 period described by subclause (i) of this clause; and

13 (B) the immigrant's spouse and children if accompanying or follow-  
14 ing to join the immigrant.

15 (4)(A) an immigrant who is an employee or an honorably retired  
16 former employee of the United States Government outside the United  
17 States who has performed faithful service for at least 15 years, if the  
18 principal officer of a Foreign Service establishment of the United  
19 States recommends that the immigrant be granted special immigrant  
20 status because of exceptional circumstances and the Secretary of State  
21 approves the recommendation after finding that it is in the interest of  
22 the United States to grant the status; and

23 (B) the immigrant's spouse and children if accompanying the immi-  
24 grant.

25 (5)(A) an immigrant who—

26 (i) resided in the Panama Canal Zone on April 1, 1979;

27 (ii) was an employee of the Panama Canal Company or the  
28 Canal Zone Government before October 1, 1979; and

29 (iii) performed faithful service as such an employee for at least  
30 one year; and

31 (B) the immigrant's spouse and children if accompanying the immi-  
32 grant.

33 (6)(A) an immigrant who—

34 (i) is a national of Panama;

35 (ii) performed faithful service as an employee of the United  
36 States Government in the Panama Canal Zone for at least 15  
37 years before October 1, 1979; and

38 (iii) honorably retired from that employment at any time; and

39 (B) the immigrant's spouse and children if accompanying the immi-  
40 grant.

41 (7)(A) an immigrant—

- 1 (i) who was an employee of the Panama Canal Company or the  
2 Canal Zone Government on April 1, 1979;
- 3 (ii) who performed faithful service as such an employee for at  
4 least 5 years; and
- 5 (iii) whose personal safety, or whose spouse's or child's personal  
6 safety, is placed in reasonable danger directly because of the Pan-  
7 ama Canal Treaty of 1977 and the special nature of the immi-  
8 grant's employment; and
- 9 (B) the immigrant's spouse and children if accompanying the immi-  
10 grant.
- 11 (8)(A) an immigrant who—
- 12 (i) has graduated from a medical school or has qualified to  
13 practice medicine in a foreign country;
- 14 (ii) was completely and permanently licensed to practice medi-  
15 cine in a State on January 9, 1978, and was practicing medicine  
16 in a State on that date;
- 17 (iii) entered the United States as a nonimmigrant under any of  
18 sections 2312–2316 or 2325 of this title before January 10, 1978;  
19 and
- 20 (iv) has been continuously present in the United States in the  
21 practice or study of medicine since the date of entry; and
- 22 (B) the immigrant's spouse and children if accompanying the immi-  
23 grant.
- 24 (9) an immigrant who—
- 25 (A) is the unmarried son or daughter of a present or former of-  
26 ficer or employee of an international organization;
- 27 (B) while classified as a nonimmigrant under section 2302(5)  
28 or 2324 of this title, has resided and been physically present in  
29 the United States for—
- 30 (i) periods totaling at least half of the 7 years before the  
31 date of application for a visa or for a change of status to spe-  
32 cial immigrant status under this clause (9); and
- 33 (ii) periods totaling at least 7 years between the ages of 5  
34 and 21; and
- 35 (C) applies for a visa or change of status to special immigrant  
36 status under this clause (9) not later than the immigrant's 25th  
37 birthday or April 24, 1989, whichever is later.
- 38 (10) an immigrant who—
- 39 (A) is the surviving spouse of a deceased officer or employee of  
40 an international organization;

1 (B) while classified as a nonimmigrant under section 2302(5)  
2 or 2324 of this title, has resided and been physically present in  
3 the United States for—

4 (i) periods totaling at least half of the 7 years before the  
5 date of application for a visa or for a change of status to spe-  
6 cial immigrant status under this clause (10); and

7 (ii) periods totaling at least 15 years before the date of  
8 death of the officer or employee; and

9 (C) files a petition for special immigrant status under this  
10 clause (10) not later than 6 months after the date of death of the  
11 officer or employee or April 24, 1989, whichever is later.

12 (11)(A) an immigrant who—

13 (i) is a retired officer or employee of an international organiza-  
14 tion;

15 (ii) while classified as a nonimmigrant under section 2302(5) of  
16 this title, has resided and been physically present in the United  
17 States for periods totaling at least half of the 7 years before the  
18 date of application for a visa or for a change of status to special  
19 immigrant status under this clause (11), and for periods totaling  
20 at least 15 years before the date of the officer's or employee's re-  
21 tirement from the international organization; and

22 (iii) files a petition for special immigrant status under this  
23 clause (11) not later than 6 months after the date of retirement  
24 or April 24, 1989, whichever is later, but before January 1, 1993;  
25 and

26 (B) the immigrant's spouse if accompanying or following to join the  
27 immigrant as a member of the immediate family.

28 (12) an immigrant—

29 (A) who has been declared a dependent of a juvenile court in  
30 the United States and found eligible by that court for long-term  
31 foster care; and

32 (B) for whom it has been decided in an administrative or judi-  
33 cial proceeding that it would not be in the alien's best interest to  
34 be returned to the alien's or alien's parent's previous country of  
35 nationality or country of last habitual residence.

36 (13)(A) an immigrant who—

37 (i) after October 15, 1978, and after original lawful enlistment  
38 outside the United States under a treaty or agreement in effect  
39 on October 1, 1991, has served honorably on active duty in the  
40 armed forces of the United States for—

- 1 (I) 12 years and, if separated from the service, was sepa-  
 2 rated only under honorable conditions; or  
 3 (II) 6 years if the immigrant is on active duty when seek-  
 4 ing special immigrant status under this clause (13) and has  
 5 reenlisted to incur a total active duty obligation of at least  
 6 12 years; and  
 7 (ii) is recommended by the head of the executive department  
 8 under which the immigrant has served to receive special immigrant  
 9 status under this clause (13); and  
 10 (B) the immigrant's spouse and children if accompanying or follow-  
 11 ing to join the immigrant.

12 (b) TEMPORARY ABSENCES UNDER SUBSECTION (a) (9)–(11).—An alien  
 13 who is a present or former officer or employee of an international organiza-  
 14 tion, or is the surviving spouse, unmarried son, or unmarried daughter of  
 15 a present or former officer or employee, is deemed under subsection (a) (9)–  
 16 (11) of this section to be residing and physically present in the United  
 17 States during a period in which the alien is residing in, but absent from,  
 18 the United States if—

19 (1) the alien is absent because of the officer's or employee's need to  
 20 conduct official business for the organization or because of customary  
 21 leave; and

22 (2) during the absence—

23 (A) the officer or employee continues to have a duty station in  
 24 the United States; and

25 (B) with respect to an unmarried son or daughter, the son or  
 26 daughter is not enrolled in a school outside the United States.

27 (c) RIGHTS, PRIVILEGES, OR STATUS NOT ACQUIRED BY PARENTS OF  
 28 CERTAIN SPECIAL IMMIGRANTS.—A natural parent or prior adoptive parent  
 29 of a special immigrant as defined by subsection (a)(12) of this section may  
 30 not be given a right, privilege, or status under this title (except subchapter  
 31 I of chapter 5, subchapters III and IV of chapter 131, and chapters 133–  
 32 137) because of the relationship.

33 **§ 138. Special inquiry officer**

34 In this title, “special inquiry officer” means an immigration officer des-  
 35 ignated by the Attorney General, individually or by regulation, to carry out  
 36 the duties and powers of a special inquiry officer.

37 **§ 139. Spouse, wife, and husband**

38 In this title, “spouse”, “wife”, and “husband” include a spouse, wife, and  
 39 husband by a marriage ceremony during which both parties were not phys-  
 40 ically present only if the parties consummated the marriage.

1 **§ 140. State**

2 In this title (except subchapter I of chapter 5, subchapters I, III, and  
3 IV of chapter 131, chapters 133–137, and section 13902), “State” means  
4 a State of the United States, the District of Columbia, Puerto Rico, Guam,  
5 and the Virgin Islands.

6 **§ 141. Totalitarian dictatorship**

7 In this title, “totalitarian dictatorship” means a system of government  
8 that is not representative and is characterized by—

- 9 (1) the existence of a single political party, organized on a dictatorial  
10 basis, whose policies are so closely identified with the governmental  
11 policies that the party and the government are indistinguishable; and  
12 (2) the forcible suppression of opposition to the party.

13 **§ 142. Totalitarian party**

14 In this title, “totalitarian party” means an organization advocating the  
15 establishment of a totalitarian dictatorship in the United States.

16 **§ 143. United States**

17 In this title (except subchapter I of chapter 5, subchapters I, III, and  
18 IV of chapter 131, chapters 133–137, and section 13902), “United States”  
19 means the States of the United States, the District of Columbia, Puerto  
20 Rico, Guam, and the Virgin Islands.

21 **§ 144. Unmarried**

22 In this title, “unmarried”, when used in reference to an individual as of  
23 a particular time, means an individual who was not married at that time,  
24 even if previously married.

25 **CHAPTER 3—ORGANIZATION AND ADMINISTRATION**

SUBCHAPTER I—DEPARTMENT OF JUSTICE

Sec.

301. General authority of the Attorney General.  
302. Immigration and Naturalization Service.  
303. Oaths and testimony.  
304. Enforcement authority.  
305. Local jurisdiction over immigrant stations.  
306. Records on aliens.  
307. Information about transporting alien females for prostitution and debauchery.  
308. Working hours and premium pay for officers and employees of the Immigration and  
Naturalization Service.  
309. Providing immigration services for scheduled flights.  
310. Reimbursement for immigration inspection services.  
311. Travel expenses and expenses of interment.  
312. Providing services and articles at immigrant stations.  
313. Operation of photographic studios by welfare organizations.  
314. Crediting appropriations.  
315. Interest on immigration bonds.  
316. Breached Bond/Detention Fund.  
317. Immigration User Fee Account.  
318. Immigration Examinations Fee Account.  
319. Land border inspection fees.  
320. Advisory committee on inspection services.  
321. Immigration emergency fund.  
322. Reports.  
323. Information system on impact of immigration laws.

## SUBCHAPTER II—DEPARTMENT OF STATE

- 331. General authority of the Secretary of State.
- 332. Bureau of Consular Affairs.
- 333. Sharing information about foreign traffickers in controlled substances.

## SUBCHAPTER III—MISCELLANEOUS

- 341. Liaison with internal security officers.
- 342. Confidentiality of records and proof of nonexistence.
- 343. Disposition of receipts.
- 344. Triennial immigration-impact report.
- 345. Setting immigration adjudication and naturalization fees.

## SUBCHAPTER I—DEPARTMENT OF JUSTICE

**§ 301. General authority of the Attorney General**

(a) GENERAL AUTHORITY.—(1) Except as otherwise provided by law, the Attorney General shall carry out this title and other laws related to the immigration and naturalization of aliens.

(2) The Attorney General may prescribe regulations and forms of bonds to carry out the duties and powers of the Attorney General under this title.

(b) CONTROL OF BORDERS.—The Attorney General shall control the borders of the United States against the unlawful entry of aliens.

(c) DELEGATION TO OTHER AGENCIES.—In carrying out this title, the Attorney General, with the consent of the head of an agency, may require or authorize an officer or employee of the agency to carry out a duty or power of an officer or employee of the Immigration and Naturalization Service.

(d) ESTABLISHMENT OF OFFICES IN FOREIGN COUNTRIES.—The Attorney General—

(1) with the concurrence of the Secretary of State, may establish an office of the Service in a foreign country; and

(2) after consulting with the Secretary, may detail an officer or employee of the Service for duty in a foreign country when the Attorney General considers the detail necessary to carry out this title.

(e) PLACES OF DETENTION.—The Attorney General shall arrange for appropriate places of detention for aliens detained pending deportation or a decision on deportation. When United States Government facilities are unavailable or facilities adapted or suitably located for detention are unavailable for rental, the Attorney General may expend from the appropriation “Immigration and Naturalization Service—Salaries and Expenses”, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5) or section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities (including living quarters for immigration officers if not otherwise available) necessary for detention.

1 **§ 302. Immigration and Naturalization Service**

2 (a) ORGANIZATION.—The Immigration and Naturalization Service is a  
3 service in the Department of Justice.

4 (b) COMMISSIONER OF IMMIGRATION AND NATURALIZATION.—The head  
5 of the Service is the Commissioner of Immigration and Naturalization. The  
6 Commissioner is appointed by the President, by and with the advice and  
7 consent of the Senate. The Commissioner must be a citizen of the United  
8 States.

9 (c) GENERAL AUTHORITY OF THE COMMISSIONER.—The Commissioner  
10 shall—

11 (1) carry out duties and powers prescribed by the Attorney General;  
12 and

13 (2) maintain direct and continuous liaison with the Assistant Sec-  
14 retary of State for Consular Affairs to carry out the immigration and  
15 nationality laws in a coordinated, uniform, and efficient way.

16 (d) OFFICE, RECORDS, AND FACILITIES.—The Attorney General shall  
17 provide the Commissioner with a suitable office in the District of Columbia  
18 and records and facilities necessary to carry out the Commissioner's duties  
19 and powers.

20 (e) AVAILABILITY OF APPROPRIATION.—The appropriation "Immigration  
21 and Naturalization Service—Salaries and Expenses" is available to pay for  
22 the following:

23 (1) the costs of hiring privately owned horses for use on official busi-  
24 ness, under contract with officers or employees of the Service.

25 (2) the pay of interpreters and translators who are not citizens of  
26 the United States.

27 (3) the costs of distributing citizenship textbooks to aliens without  
28 charge to the aliens.

29 (4) at a rate specified by the applicable appropriation law, allowances  
30 to aliens for work performed when held in custody under the immigra-  
31 tion laws.

32 (5) if authorized by an appropriation law, spending by the Attorney  
33 General for unforeseen emergencies of a confidential character.

34 (f) CERTIFICATE FOR CONFIDENTIAL EXPENDITURES.—The Attorney  
35 General shall make a certificate for any amount of expenditures under sub-  
36 section (e)(5) of this section that the Attorney General considers advisable  
37 not to specify. The certificate is a sufficient voucher that the amount stated  
38 was expended.

1 **§ 303. Oaths and testimony**

2 (a) GENERAL.—In carrying out this title, the Attorney General, immigration  
3 tion officers, and other officers and employees of the Immigration and Nat-  
4 uralization Service designated by the Attorney General, may—

- 5 (1) administer oaths;  
6 (2) take evidence; and  
7 (3) subpoena witnesses to testify and produce records.

8 (b) ENFORCEMENT OF SUBPENAS.—If a witness disobeys a subpoena is-  
9 sued under subsection (a) of this section, the Attorney General, immigration  
10 officer, or designated officer or employee of the Service may bring a civil  
11 action to enforce the subpoena in the district court of the United States for  
12 the judicial district in which the proceeding is being conducted, or, if the  
13 subpoena is related to an application for naturalization, in any district court  
14 of the United States. The court may issue an order to obey the subpoena  
15 and punish a refusal to obey as a contempt of court.

16 (c) DEPOSITIONS.—An officer or employee of the Service designated by  
17 the Attorney General may take a deposition without charge on a matter re-  
18 lated to carrying out a naturalization or citizenship law. In a case involving  
19 a likelihood of hardship or unusual delay, the Attorney General may author-  
20 ize the deposition to be taken before a postmaster without charge or before  
21 an individual authorized to administer oaths for general purposes.

22 **§ 304. Enforcement authority**

23 (a) CARRYING FIREARMS AND SERVING AND EXECUTING PROCESS.—  
24 Under regulations prescribed by the Attorney General, an officer or em-  
25 ployee of the Immigration and Naturalization Service may—

- 26 (1) carry a firearm; and  
27 (2) serve and execute an order, warrant, subpoena, summons, or other  
28 process issued under the authority of the United States Government.

29 (b) AUTHORITY WITHOUT WARRANT.—An officer or employee of the  
30 Service authorized by regulations prescribed by the Attorney General may,  
31 without a warrant—

- 32 (1) interrogate an individual believed to be an alien about the indi-  
33 vidual's right to be or remain in the United States;  
34 (2) search an individual seeking admission to the United States and  
35 the personal effects in the possession of the individual if the officer or  
36 employee has reason to suspect that the search will disclose grounds  
37 for excluding the individual from the United States;  
38 (3) board a vehicle, aircraft, or other conveyance within a reasonable  
39 distance from a United States border, or board a vessel within the ter-  
40 ritorial waters of the United States, to search for aliens;

1 (4) within 25 miles from a United States border, have access to pri-  
2 vate land (but not a dwelling) to patrol the border to prevent the un-  
3 lawful entry of aliens;

4 (5) arrest an alien who, in the presence or view of the officer or em-  
5 ployee, is trying to enter the United States unlawfully, or arrest an  
6 alien in the United States who the officer or employee has reason to  
7 believe is in the United States unlawfully and is likely to escape before  
8 a warrant for the alien's arrest can be obtained, but the alien arrested  
9 shall be taken without unnecessary delay before an immigration officer  
10 for inspection about the alien's right to enter or remain in the United  
11 States;

12 (6) arrest a person for an offense against the United States if—

13 (A) the officer or employee is performing duties related to en-  
14 forcement of the immigration laws at the time of the arrest;

15 (B) the offense is committed in the presence of the officer or  
16 employee; and

17 (C) the person is likely to escape before a warrant for the per-  
18 son's arrest can be obtained;

19 (7) arrest a person for a felony against the United States under a  
20 law of the United States regulating the admission, exclusion, or depor-  
21 tation of aliens if—

22 (A) the officer or employee has reason to believe the person has  
23 committed the felony; and

24 (B) the person is likely to escape before a warrant for the per-  
25 son's arrest can be obtained; and

26 (8) arrest a person for any other felony against the United States  
27 if—

28 (A) the officer or employee is performing duties related to en-  
29 forcement of the immigration laws at the time of the arrest;

30 (B) the officer or employee has reason to believe the person is  
31 committing or has committed the felony;

32 (C) the person is likely to escape before a warrant for the per-  
33 son's arrest can be obtained; and

34 (D) the officer or employee has received certification of comple-  
35 tion of a training program as required under subsection (d) of this  
36 section.

37 (c) RESTRICTION ON WARRANTLESS ENTRY OF OUTDOOR AGRICUL-  
38 TURAL OPERATIONS.—Except as provided by subsection (b)(4) of this sec-  
39 tion, an officer or employee of the Service may not enter the premises of  
40 a farm or other outdoor agricultural operation, without a warrant or the  
41 consent of the owner or owner's agent, to interrogate an individual believed

1 to be an alien about the individual's right to be or remain in the United  
2 States.

3 (d) REGULATIONS ON ENFORCEMENT ACTIVITIES.—An arrest may be  
4 made under subsection (b)(8) of this section only on and after the date the  
5 Attorney General prescribes final regulations that specify—

6 (1) the categories of officers and employees of the Service who may  
7 use force (including deadly force) and the circumstances under which  
8 the force may be used;

9 (2) standards for enforcement activities of the Service;

10 (3) a requirement that, before an officer or employee may make an  
11 arrest under subsection (b)(8) of this section, the officer or employee  
12 has received certification of completion of a training program covering  
13 the arrests and the standards described by clause (2) of this sub-  
14 section; and

15 (4) an expedited, internal review process for violations of the stand-  
16 ards, consistent with standard agency procedure regarding confidential-  
17 ity of matters related to internal investigations.

18 (e) DETAINING ALIENS FOR CONTROLLED SUBSTANCES VIOLATIONS.—  
19 (1) The Attorney General shall decide promptly whether to issue a detainer  
20 to detain an alien if any United States, State, or local law enforcement offi-  
21 cial—

22 (A) arrests an alien for violating a law related to controlled sub-  
23 stances;

24 (B) has reason to believe that the alien is in the United States un-  
25 lawfully;

26 (C) expeditiously informs the Attorney General of the arrest and of  
27 facts about the alien's status; and

28 (D) requests the Attorney General to issue the detainer.

29 (2) If the detainer is issued and the alien is not otherwise detained by  
30 a United States, State, or local law enforcement official, the Attorney Gen-  
31 eral shall take custody of the alien expeditiously.

32 **§ 305. Local jurisdiction over immigrant stations**

33 A law enforcement official responsible for enforcing the law of a State,  
34 territory, or possession of the United States in which an immigrant station  
35 is located has jurisdiction over the station and may enter the station to pre-  
36 serve the peace and make arrests for offenses under the laws of the State,  
37 territory, or possession. A court of the State, territory, or possession has  
38 jurisdiction over the immigrant station on a matter related to the enforce-  
39 ment of the law of the State, territory, or possession.

1 **§ 306. Records on aliens**

2 (a) CENTRAL FILE ON ALIENS.—For the use of security and enforcement  
3 agencies of the United States Government, the Attorney General shall main-  
4 tain in the Immigration and Naturalization Service a central file on aliens  
5 that is based on the records of the Service. The file shall contain—

6 (1) the name of each alien admitted to or excluded from the United  
7 States;

8 (2) the name of the alien's sponsor of record; and

9 (3) other information relevant to the enforcement of this title that  
10 the Attorney General may require.

11 (b) PROVIDING INFORMATION TO THE ATTORNEY GENERAL.—On request  
12 of the Attorney General—

13 (1) the head of an agency shall provide the Attorney General with  
14 information in the records of the agency about the identity and location  
15 of an alien in the United States; and

16 (2) the Secretary of Health and Human Services shall notify the At-  
17 torney General when an alien is issued a social security account num-  
18 ber.

19 **§ 307. Information about transporting alien females for**  
20 **prostitution and debauchery**

21 To prevent the transportation in foreign commerce of alien females for  
22 prostitution and debauchery, and to carry out the arrangement adopted July  
23 25, 1902, for the suppression of white-slave traffic, the Attorney General  
24 shall—

25 (1) maintain a central file of information about the procurement of  
26 alien females for prostitution and debauchery;

27 (2) establish the identity of the alien females, take statements they  
28 may make, ascertain who induced them to leave their native countries,  
29 and supervise the females; and

30 (3) receive statements filed under this section and section 2424 of  
31 title 18, and provide receipts to individuals filing the statements.

32 **§ 308. Working hours and premium pay for officers and em-**  
33 **ployees of the Immigration and Naturalization**  
34 **Service**

35 (a) REGULATING WORKING HOURS.—The Attorney General may regulate  
36 the working hours of officers and employees of the Immigration and Natu-  
37 ralization Service performing work at a port to coincide with the customary  
38 working hours at that port. This subsection does not change the length of  
39 a working day or the rate provided by subsection (b) of this section.

40 (b) PREMIUM PAY RATES.—An officer or employee of the Service per-  
41 forming work related to the inspection and landing of passengers and crew

1 of a vessel, aircraft, or vehicle arriving in the United States from a foreign  
2 port is entitled to premium pay at the following rates:

3 (1) For overtime work, the rate is one-half day's pay for each 2  
4 hours (or part of a 2-hour period of at least one hour), but the total  
5 pay for the period between the end of the individual's regular shift and  
6 the beginning of the individual's next regular shift may not be more  
7 than 2.5 days' pay.

8 (2) For work on a Sunday or holiday, the rate is 2 days' pay.

9 (c) METHOD OF PAYMENT.—(1) Except as provided by section 53 of the  
10 Airport and Airway Development Act of 1970 (49 App. U.S.C. 1741), when  
11 an officer or employee of the Service performs work referred to in sub-  
12 section (b) of this section, the master, owner, agent, or consignee of the ves-  
13 sel, aircraft, or vehicle shall pay to the Attorney General an amount equal  
14 to the pay to which the officer or employee is entitled under subsection (b).  
15 The amount shall be paid if the officer or employee was ordered to report  
16 for work and did report, even if an inspection did not take place. However,  
17 this paragraph does not apply to an inspection, at a designated port of  
18 entry, of passengers arriving by an international ferry, bridge, or tunnel, or  
19 by a vessel on the Great Lakes and connecting waterways, an aircraft, or  
20 a vehicle, when the vessel, aircraft, or vehicle is operating on a regular  
21 schedule.

22 (2) The Attorney General shall deposit in the Treasury an amount paid  
23 under this subsection. The amount shall be credited to the appropriation  
24 "Immigration and Naturalization Service—Salaries and Expenses". The  
25 amount credited to the appropriation is available for payment of the over-  
26 time, Sunday, and holiday pay.

### 27 **§ 309. Providing immigration services for scheduled flights**

28 Notwithstanding section 308(c)(1) of this title or another law, the immi-  
29 gration services required to be provided to passengers on arrival in the Unit-  
30 ed States on a scheduled flight shall be provided adequately, not later than  
31 45 minutes after their presentation for inspection, when needed and at no  
32 cost to the air carrier or passengers, except for the fee specified in section  
33 6909(a) of this title, at—

34 (1) airports at which immigration services are provided; and

35 (2) places outside the United States at which an immigration officer  
36 is stationed to provide immigration services.

### 37 **§ 310. Reimbursement for immigration inspection services**

38 (a) INSPECTIONS IN FOREIGN CONTIGUOUS TERRITORIES.—Section 209  
39 of title 18 does not prohibit reimbursement for the services of an immigra-  
40 tion officer related to inspecting aliens in a foreign contiguous territory. The

1 reimbursement shall be credited to the appropriation “Immigration and  
2 Naturalization Service—Salaries and Expenses”.

3 (b) REQUESTED INSPECTION SERVICES.—The Attorney General may re-  
4 ceive reimbursement from the owner, operator, or agent of a private or com-  
5 mercial vessel or aircraft, or from a seaport or airport authority, for ex-  
6 penses incurred by the Attorney General in providing immigration inspec-  
7 tion services requested by the owner, operator, agent, or authority, including  
8 the pay and expenses of individuals employed by the Attorney General to  
9 provide the services. The Attorney General’s authority to receive reimburse-  
10 ment under this section ends as soon as an amount is appropriated to pro-  
11 vide the services.

12 **§ 311. Travel expenses and expenses of interment**

13 (a) TRAVEL EXPENSES.—Under regulations prescribed by the Attorney  
14 General, an officer or employee of the Immigration and Naturalization Serv-  
15 ice is entitled to travel expenses when the officer or employee—

16 (1) is ordered to carry out duties and powers in a foreign country;

17 (2) is transferred from one station to another in the United States  
18 or in a foreign country; or

19 (3) in carrying out duties and powers in a foreign country, becomes  
20 eligible for voluntary retirement and returns to the United States.

21 (b) EXPENSES OF TRANSPORTING SPOUSE, CHILDREN, AND PROP-  
22 erty.—The Attorney General may reimburse an officer or employee de-  
23 scribed by subsection (a) of this section for expenses incurred in transport-  
24 ing the officer’s or employee’s spouse, dependent children, and personal  
25 property, including (as provided under subchapter II of chapter 57 of title  
26 5) the expenses for packing, crating, freight, unpacking, temporary storage,  
27 and drayage.

28 (c) EXPENSES OF INTERMENT.—When an officer or employee of the  
29 Service dies when in, or in transit to, a foreign country on official business,  
30 the Attorney General may pay the ordinary and necessary expenses of inter-  
31 ment.

32 **§ 312. Providing services and articles at immigrant stations**

33 (a) AWARDING CONTRACTS.—Subject to section 3709 of the Revised  
34 Statutes (41 U.S.C. 5), the Attorney General may award an exclusive con-  
35 tract to provide money exchange services, to transport passengers or bag-  
36 gage, to provide food and eating facilities, or to provide similar services at  
37 an immigrant station only to the lowest responsible and capable bidder (ex-  
38 cept an alien). The Attorney General may charge a reasonable rental for  
39 the use of United States Government property in providing the services.  
40 However, the Attorney General may provide a necessary service at an immi-

1 grant station if the Attorney General finds that it would be more economical  
2 and efficient.

3 (b) SALE OF NECESSARY ARTICLES BY THE ATTORNEY GENERAL.—If  
4 aliens detained at an immigrant station cannot readily obtain articles that  
5 the Attorney General decides are necessary to their health and welfare, the  
6 Attorney General may sell the articles to the aliens at reasonable prices  
7 through canteens operated by the Attorney General.

8 (c) INTOXICATING LIQUORS.—Intoxicating liquors may not be sold at an  
9 immigrant station.

10 (d) DEPOSIT OF AMOUNTS RECEIVED.—The Attorney General shall de-  
11 posit amounts received under this section in the Treasury to the credit of  
12 the appropriation “Immigration and Naturalization Service—Salaries and  
13 Expenses”.

14 **§313. Operation of photographic studios by welfare organi-**  
15 **zations**

16 On recommendation of the Attorney General, an officer or employee in  
17 charge of property owned or leased by the United States Government may  
18 provide space, without payment of rent, in a building occupied by the Immi-  
19 gration and Naturalization Service, for a photographic studio operated by  
20 a welfare organization without profit and only for the benefit of individuals  
21 seeking to comply with the immigration and nationality laws. The Attorney  
22 General shall supervise a studio operated under this section.

23 **§314. Crediting appropriations**

24 (a) LANDING STATIONS.—Amounts deposited in the Treasury to reim-  
25 burse the Immigration and Naturalization Service for expenses paid by the  
26 Service from the appropriation “Immigration and Naturalization Service—  
27 Salaries and Expenses” for a landing station referred to in section 6905(c)  
28 of this title and for detained aliens shall be credited to that appropriation  
29 for the fiscal year in which the expenses were incurred.

30 (b) AMOUNTS RECOVERED AFTER BUYING EVIDENCE.—Amounts ex-  
31 pended from the appropriation “Immigration and Naturalization Service—  
32 Salaries and Expenses” to buy evidence and later recovered shall be credited  
33 to that appropriation for the fiscal year in which the recovery is made.

34 (c) INCREASED PENALTIES RESULTING FROM CERTAIN AMENDMENTS.—  
35 Notwithstanding section 3302 of title 31, the amounts collected from the  
36 increase in penalties resulting from the amendments made by sections  
37 203(b), 543(a), and 544 of the Immigration Act of 1990 (Public Law 101-  
38 649, 104 Stat. 5018, 5057, 5059) shall be credited to the appropriation—

39 (1) “Immigration and Naturalization Service—Salaries and Ex-  
40 penses” for activities that enhance enforcement of subtitles I–III of  
41 this title (except subchapter I of chapter 5), including—

- 1 (A) identifying, investigating, and apprehending criminal aliens;  
2 (B) implementing the system described by section 6531(c)(4) of  
3 this title; and  
4 (C) repairing, maintaining, or constructing, on the United  
5 States border in areas experiencing high levels of apprehensions of  
6 illegal aliens, structures to deter illegal entry into the United  
7 States; and  
8 (2) for the Executive Office for Immigration Review in the Depart-  
9 ment of Justice to remove the backlogs in preparing transcripts of de-  
10 portation proceedings conducted under section 6532 of this title.

11 **§ 315. Interest on immigration bonds**

12 (a) EARNING OF INTEREST.—The Attorney General shall deposit in the  
13 Treasury cash received as security on an immigration bond, with the cash  
14 to be held in trust for the obligor on the bond. The cash shall earn interest  
15 at a rate the Secretary of the Treasury prescribes, but the rate may not  
16 be more than 3 percent a year. Interest shall accrue from the date of de-  
17 posit through the date of withdrawal or the date of breach of the bond,  
18 whichever is earlier. However, cash received as security on an immigration  
19 bond and deposited by the Attorney General in the postal savings system  
20 discontinued on April 27, 1966, shall earn interest under this subsection  
21 from the date the cash stopped earning interest under the system. Appro-  
22 priations to the Department of the Treasury for interest on uninvested  
23 amounts are available for payment of the interest.

24 (b) DISPOSITION OF INTEREST.—Interest earned under this section shall  
25 be disposed of in the same way as the principal, except that interest earned  
26 before the date of a breach shall be paid to the obligor on the bond.

27 **§ 316. Breached Bond/Detention Fund**

28 (a) ESTABLISHMENT.—There is a separate account in the Treasury  
29 known as the “Breached Bond/Detention Fund”.

30 (b) REFUNDS.—(1) At least quarterly, the Secretary of the Treasury  
31 shall refund amounts from the Fund to the Immigration and Naturalization  
32 Service for—

- 33 (A) expenses incurred in collecting breached bonds; and  
34 (B) expenses associated with the detention of illegal aliens.

35 (2) The amount required to be refunded for the fiscal year ending Sep-  
36 tember 30, 1994, and each subsequent fiscal year, shall be refunded in ac-  
37 cordance with estimates made in the budget request of the Attorney General  
38 for that fiscal year. However, any proposed change in the amount des-  
39 ignated in the budget request may be made only after notification to the  
40 Committees on Appropriations of the House of Representatives and the Sen-  
41 ate under section 606 of the Departments of Commerce, Justice, and State,

1 the Judiciary, and Related Agencies Appropriations Act, 1993 (Public Law  
2 102-395, 106 Stat. 1873).

3 (c) DEPOSITS.—All breached cash and surety bonds, more than  
4 \$8,000,000, posted under this title and recovered by the Attorney General  
5 shall be deposited in the Fund.

6 (d) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Fund remain  
7 available until expended.

8 (e) REPORTS.—The Attorney General shall submit annually to Congress  
9 a statement on the financial condition of the Fund, including the beginning  
10 balance, receipts, refunds to appropriations, transfers to the general fund,  
11 and the ending balance.

12 **§ 317. Immigration User Fee Account**

13 (a) ESTABLISHMENT.—There is a separate account in the Treasury  
14 known as the “Immigration User Fee Account”.

15 (b) REFUNDS.—(1) The Secretary of the Treasury shall refund out of the  
16 Account to any appropriation the amount paid out of that appropriation for  
17 expenses incurred by the Attorney General in—

18 (A) providing immigration inspection and preinspection services for  
19 a commercial vessel or aircraft;

20 (B) providing overtime, Sunday, or holiday immigration inspection  
21 services for a commercial vessel or aircraft;

22 (C) administering debt recovery, including establishing and operating  
23 a national collections office;

24 (D) expanding, operating, and maintaining information systems for  
25 nonimmigrant control and debt collection;

26 (E) detecting fraudulent documents used by passengers traveling to  
27 the United States;

28 (F) providing detention and deportation services for an excludable  
29 alien—

30 (i) arriving on a commercial vessel or aircraft; or

31 (ii) attempting to enter illegally by avoiding immigration inspec-  
32 tion at an air or sea port of entry; and

33 (G) providing exclusion and asylum proceedings at an air or sea port  
34 of entry for an excludable alien—

35 (i) arriving on a commercial vessel or aircraft, including provid-  
36 ing exclusion proceedings resulting from presentation of fraudulent  
37 documentation or failure to present documentation; or

38 (ii) attempting to enter illegally by avoiding immigration inspec-  
39 tion at an air or sea port of entry.

40 (2) Amounts required to be refunded under paragraph (1) of this sub-  
41 section shall be refunded at least quarterly on the basis of estimates, made

1 by the Attorney General, of the expenses referred to in paragraph (1). Prop-  
2 er adjustments shall be made in the amounts subsequently refunded under  
3 paragraph (1) to the extent prior estimates were more or less than the  
4 amount required to be refunded.

5 (c) DEPOSITS.—The following shall be deposited in the Account:

6 (1) fees collected under section 6909 of this title.

7 (2) civil penalties collected under sections 10120, 10122, and 10123  
8 of this title.

9 (3) liquidated damages and expenses collected under this title.

10 (d) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Account  
11 under subsection (c)(1) of this section remain available until expended.

12 (e) REPORTS.—(1) At the end of each 2-year period beginning with the  
13 establishment of the Account, the Attorney General, following a public regu-  
14 latory proceeding with notice and an opportunity for comment, shall submit  
15 a report to Congress—

16 (A) describing the status of the Account, including the balance; and

17 (B) recommending any change in the fee specified in section 6909(a)  
18 of this title to ensure that amounts collected from the fee for the suc-  
19 ceeding 2 years equal, as closely as possible, the cost of providing the  
20 services for which the fee is charged.

21 (2) In addition to the reporting requirement under paragraph (1) of this  
22 subsection, the Attorney General shall submit to Congress not later than  
23 March 31 of each year a statement showing—

24 (A) the financial condition of the Account, including the beginning  
25 balance, revenues, withdrawals and their purpose, the ending balance,  
26 projections for the next fiscal year, and a complete workload analysis  
27 showing on a port-by-port basis the current and projected need for in-  
28 spectors; and

29 (B) the success rate of the Immigration and Naturalization Service  
30 in meeting the 45-minute inspection standard imposed by section 309  
31 of this title, detailed statistics on the number of passengers inspected  
32 within the standard, progress being made to expand the use of United  
33 States citizen by-pass, the number of passengers for whom the stand-  
34 ard is not met and the length of their delay, locational breakdown of  
35 these statistics, and the steps being taken to correct any nonconform-  
36 ity.

37 **§ 318. Immigration Examinations Fee Account**

38 (a) ESTABLISHMENT.—There is a separate account in the Treasury  
39 known as the “Immigration Examinations Fee Account”.

1 (b) USE OF AMOUNTS.—Amounts in the Account are available to the At-  
2 torney General to reimburse any appropriation by the amount paid from  
3 that appropriation for expenses in—

4 (1) providing immigration adjudication and naturalization services;  
5 and

6 (2) collecting, safeguarding, and accounting for fees deposited in,  
7 and amounts reimbursed from, the Account.

8 (c) DEPOSITS.—Immigration adjudication fees designated by the Attorney  
9 General by regulation shall be deposited in the Account, whether collected  
10 directly by the Attorney General or through clerks of courts. However, fees  
11 the Attorney General receives from applicants residing in the Virgin Islands  
12 or Guam shall be paid to the treasury of the Virgin Islands or the treasury  
13 of Guam, respectively.

14 (d) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Account re-  
15 main available to the Attorney General until expended.

16 (e) REPORTS.—The Attorney General shall submit annually to Congress  
17 a statement on the financial condition of the Account, including the begin-  
18 ning balance, revenues, withdrawals, the ending balance, and projections for  
19 the next fiscal year.

20 **§ 319. Land border inspection fees**

21 (a) FEE AUTHORITY.—The Attorney General may continue, only on the  
22 northern border of the United States, the land border inspection fee pilot  
23 project authorized under section 286(q) of the Immigration and Nationality  
24 Act. The project may include commuter lanes to be made available to quali-  
25 fied citizens of the United States and aliens, as the Attorney General de-  
26 cides. Fees collected under this subsection shall be deposited in the Account  
27 established under subsection (b)(1) of this section.

28 (b) LAND BORDER INSPECTION FEE ACCOUNT.—(1) There is a separate  
29 account in the Treasury known as the “Land Border Inspection Fee Ac-  
30 count”.

31 (2) At least quarterly, the Secretary of the Treasury shall refund out of  
32 the Account to any appropriation amounts for expenses incurred in provid-  
33 ing inspection services at land border places of entry on the northern border  
34 of the United States, including expenses of—

35 (A) providing overtime inspection services;

36 (B) expanding, operating, and maintaining information systems for  
37 nonimmigrant control;

38 (C) employing additional permanent and temporary inspectors;

39 (D) minor construction costs associated with the addition of new  
40 traffic lanes (with the concurrence of the Administrator of General  
41 Services);

1 (E) detecting fraudulent documents used by passengers traveling to  
2 the United States; and

3 (F) administering the Account.

4 (3) Amounts required to be refunded from the Account for each fiscal  
5 year shall be refunded in accordance with estimates made in the budget re-  
6 quest of the Attorney General for that fiscal year. However, any proposed  
7 change in the amount designated in the budget request may be made only  
8 after notification to the Committees on Appropriations of the House of Rep-  
9 resentatives and the Senate under section 606 of the Departments of Com-  
10 merce, Justice, and State, the Judiciary, and Related Agencies Appropria-  
11 tions Act, 1990 (Public Law 101-162, 103 Stat. 1031).

12 (c) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Account re-  
13 main available until expended.

14 (d) REPORTS.—(1) The Attorney General shall submit annually to Con-  
15 gress a statement on the financial condition of the Account, including the  
16 beginning balance, revenues, withdrawals, the ending balance, and projec-  
17 tions for the next fiscal year.

18 (2) The Attorney General shall submit quarterly to Congress a status re-  
19 port on the project.

20 (e) EXPIRATION.—This section expires on September 30, 1996.

### 21 **§ 320. Advisory committee on inspection services**

22 (a) ESTABLISHMENT.—The Attorney General shall establish an advisory  
23 committee consisting of representatives from air carriers and other modes  
24 of transportation that may be subject to a fee authorized by law or proposed  
25 by the Immigration and Naturalization Service to cover expenses incurred  
26 by the Service.

27 (b) MEETINGS AND ADVICE.—The advisory committee shall meet on a  
28 periodic basis and advise the Attorney General on issues related to the per-  
29 formance of the inspection services of the Immigration and Naturalization  
30 Service. This advice shall include such issues as the time periods during  
31 which the services should be performed, the proper number and deployment  
32 of inspection officers, the level of fees, and the appropriateness of any pro-  
33 posed fee. The Attorney General shall give substantial consideration to the  
34 views of the committee.

### 35 **§ 321. Immigration emergency fund**

36 (a) ESTABLISHMENT.—There is an immigration emergency fund in the  
37 Treasury.

38 (b) USES.—(1) Amounts in the fund may be used—

39 (A) to provide for an increase in border patrol or other enforcement  
40 activities of the Immigration and Naturalization Service;

1 (B) to reimburse State and local governments for providing assist-  
2 ance requested by the Attorney General in meeting an immigration  
3 emergency, but only if the President has decided that an emergency ex-  
4 ists and has certified the existence of the emergency to the Committees  
5 on the Judiciary of the House of Representatives and the Senate; and

6 (C) subject to paragraphs (2)–(4) of this subsection, to reimburse  
7 State and local governments for providing assistance required by the  
8 Attorney General, without the need for a decision by the President that  
9 an emergency exists—

10 (i) when a district director of the Service certifies to the Com-  
11 missioner of Immigration and Naturalization that the number of  
12 asylum applications filed in the director’s district during a cal-  
13 endar quarter is at least 1,000 more than the number of asylum  
14 applications filed in that district during the prior calendar quarter;

15 (ii) when the lives, property, safety, or welfare of the residents  
16 of a State or locality are endangered; or

17 (iii) in other circumstances that the Attorney General decides.

18 (2) Providing parole at a place of entry in a district shall be counted,  
19 under paragraph (1)(C)(i) of this subsection, as filing an application for  
20 asylum in that district.

21 (3) Not more than \$20,000,000 may be made available for all State and  
22 local governments under paragraph (1)(C) of this subsection.

23 (4) A State or local government seeking reimbursement under paragraph  
24 (1)(C) of this subsection must file an application with the Attorney General.  
25 The Attorney General shall make a decision on the application not later  
26 than 15 days after receiving the application.

27 (c) AUTHORIZATION OF APPROPRIATIONS.—An amount may be appro-  
28 priated to the fund each fiscal year so that the balance in the fund is  
29 \$35,000,000.

### 30 **§ 322. Reports**

31 (a) REPORTS ON CERTAIN NONIMMIGRANTS.—Not later than April 1 of  
32 each year, the Attorney General shall submit to the Committees on the Ju-  
33 diciary of the House of Representatives and the Senate a report describing  
34 for each class under sections 2313–2316, 2318–2320, and 2325 of this title  
35 the following:

36 (1) the number of petitions filed.

37 (2) the number of petitions approved and the number of workers (by  
38 occupation) included in the approved petitions.

39 (3) the number of petitions denied and the number of workers (by  
40 occupation) requested in the denied petitions.

41 (4) the number of petitions withdrawn.

1 (5) the number of petitions pending final action.

2 (b) REPORTS ON NATURALIZATION STATISTICS.—(1) The Attorney Gen-  
3 eral shall prepare annually, from the records of the Immigration and Natu-  
4 ralization Service, a report in statistical form with analytical comment. The  
5 report shall show by nationality—

6 (A) the relation between the number of aliens seeking citizenship of  
7 the United States and the number of aliens arriving each year;

8 (B) the relation between the number of aliens seeking citizenship of  
9 the United States and the prevailing census populations of the foreign  
10 born; and

11 (C) the economic, vocational, and other classifications of aliens seek-  
12 ing citizenship of the United States.

13 (2) Payment for the equipment used in preparing the report under this  
14 subsection shall be made from the appropriation “Immigration and Natu-  
15 ralization Service—Salaries and Expenses”.

16 **§ 323. Information system on impact of immigration laws**

17 (a) ESTABLISHMENT.—In consultation with interested academicians, gov-  
18 ernmental authorities, and other parties, the Attorney General shall provide  
19 for a system to collect and disseminate information not in individually iden-  
20 tifiable form that is useful in evaluating the social, economic, environmental,  
21 and demographic impact of the immigration laws.

22 (b) TYPE OF INFORMATION TO BE COLLECTED AND DISSEMINATED.—  
23 Information collected under subsection (a) of this section shall include infor-  
24 mation on—

25 (1) the alien population in the United States;

26 (2) the rates of naturalization and emigration of resident aliens;

27 (3) aliens who have been admitted, paroled, or granted asylum;

28 (4) nonimmigrants in the United States (by occupation, basis for ad-  
29 mission, and length of stay);

30 (5) aliens who have been excluded or deported from the United  
31 States;

32 (6) the number of applications filed and granted for suspension of  
33 deportation; and

34 (7) the number of aliens estimated to be present unlawfully in the  
35 United States in each fiscal year.

36 (c) FREQUENCY OF COLLECTION AND DISSEMINATION AND RECIPIENTS  
37 OF INFORMATION.—The system shall provide that information be collected  
38 and disseminated at least annually to Congress and the public.

39 (d) REPORT.—The Attorney General shall submit annually to Congress  
40 a report containing—

1 (1) a summary of information collected under subsection (a) of this  
2 section;

3 (2) an analysis of trends in immigration and naturalization; and

4 (3) information on the number, and rate of denial administratively,  
5 of applications for naturalization, for each district office of the Immi-  
6 gration and Naturalization Service and by national origin group.

7 SUBCHAPTER II—DEPARTMENT OF STATE

8 **§ 331. General authority of the Secretary of State**

9 (a) GENERAL AUTHORITY.—The Secretary of State shall carry out the  
10 provisions of this title, and other immigration and nationality laws, related  
11 to—

12 (1) duties and powers of the Bureau of Consular Affairs;

13 (2) duties and powers of diplomatic and consular officers, except du-  
14 ties and powers of consular officers related to granting and refusing  
15 visas; and

16 (3) a decision about the nationality of an individual not in the Unit-  
17 ed States.

18 (b) DELEGATION TO OTHER AGENCIES.—In carrying out this title, the  
19 Secretary, with the consent of the head of an agency, may require or au-  
20 thorize an officer or employee of the agency to carry out a duty or power  
21 of an officer or employee of the Department of State.

22 **§ 332. Bureau of Consular Affairs**

23 (a) ORGANIZATION.—The Bureau of Consular Affairs is a bureau in the  
24 Department of State.

25 (b) ASSISTANT SECRETARY FOR CONSULAR AFFAIRS.—The head of the  
26 Bureau is the Assistant Secretary of State for Consular Affairs. The Assist-  
27 ant Secretary must be a citizen of the United States and be qualified by  
28 experience.

29 (c) GENERAL AUTHORITY OF THE ASSISTANT SECRETARY.—The Assist-  
30 ant Secretary shall—

31 (1) carry out duties and powers prescribed by the Secretary of State;

32 (2) maintain close liaison with the appropriate committees of Con-  
33 gress to advise them on the administration of this title by consular offi-  
34 cers; and

35 (3) maintain direct and continuous liaison with the Commissioner of  
36 Immigration and Naturalization to carry out the immigration and na-  
37 tionality laws in a coordinated, uniform, and efficient way.

38 (d) OFFICES OF THE BUREAU.—(1) The Bureau has a Passport Office,  
39 a Visa Office, and other offices the Secretary decides are appropriate. The  
40 head of each office is a director. The Directors of the Passport Office and

1 the Visa Office must be experienced in carrying out the immigration and  
2 nationality laws.

3 (2) The Passport Office carries out laws related to granting passports.  
4 The Visa Office carries out immigration laws related to granting visas.

5 (3) The Visa Office has a General Counsel appointed by the Secretary.  
6 The General Counsel serves under the general direction of the Legal Adviser  
7 of the Department. The General Counsel may maintain liaison with the ap-  
8 propriate officers of the Immigration and Naturalization Service to achieve  
9 a uniform interpretation of this title.

10 **§ 333. Sharing information about foreign traffickers in con-**  
11 **trolled substances**

12 To ensure that foreign traffickers in controlled substances are denied  
13 visas to enter the United States (as required by section 6307(a)(3) of this  
14 title)—

15 (1) the Secretary of State shall cooperate with United States law en-  
16 forcement agencies, including the Drug Enforcement Administration  
17 and the Customs Service, in establishing a comprehensive information  
18 system on all drug arrests of foreign nationals in the United States so  
19 that the information can be communicated to the appropriate United  
20 States embassies; and

21 (2) the National Drug Enforcement Policy Board shall agree on uni-  
22 form guidelines that would permit the sharing of information of foreign  
23 traffickers in controlled substances.

24 SUBCHAPTER III—MISCELLANEOUS

25 **§ 341. Liaison with internal security officers**

26 To exchange information for use in enforcing this title in the interest of  
27 the internal security of the United States, the Commissioner of Immigration  
28 and Naturalization and the Assistant Secretary of State for Consular Af-  
29 fairs may maintain direct and continuous liaison with the Directors of the  
30 Federal Bureau of Investigation and Central Intelligence and with other in-  
31 ternal security officers of the United States Government.

32 **§ 342. Confidentiality of records and proof of nonexistence**

33 (a) CONFIDENTIALITY OF VISA AND PERMIT RECORDS.—A record of the  
34 Department of State or of a diplomatic or consular office related to grant-  
35 ing or refusing a visa or permit to enter the United States is confidential.  
36 The record may be used only in developing, changing, or carrying out a law  
37 of the United States. However, the Secretary of State may provide a cer-  
38 tified copy of the record to a court if the court certifies that it needs the  
39 record in the interest of justice in a case pending before the court.

40 (b) PROOF OF NONEXISTENCE OF RECORD.—A certification by the Attor-  
41 ney General, or by an officer or employee of the Immigration and Natu-

1 realization Service designated by the Attorney General, that a diligent search  
2 of the records of the Service has failed to disclose a particular record is ad-  
3 missible in any proceeding as evidence that the records of the Service do  
4 not contain the record.

5 **§ 343. Disposition of receipts**

6 Except as otherwise provided by this title, an amount received in payment  
7 of a fee or administrative penalty shall be deposited in the Treasury as mis-  
8 cellaneous receipts. However, a fee received from an applicant residing in  
9 the Virgin Islands or Guam and paid under section 2125 of this title shall  
10 be paid to the treasury of the Virgin Islands or the treasury of Guam, re-  
11 spectively.

12 **§ 344. Triennial immigration-impact report**

13 (a) REPORTING REQUIREMENT.—The President shall submit a com-  
14 prehensive immigration-impact report to Congress not later than January  
15 1, 1989, and not later than January 1 of each 3d year thereafter.

16 (b) CONTENT.—Each report shall include—

17 (1) the number and classification of aliens admitted and to be admit-  
18 ted (whether as immediate relatives, special immigrants, refugees, pref-  
19 erence immigrants, or nonimmigrants), paroled and to be paroled, and  
20 granted and to be granted asylum during the periods specified in sub-  
21 section (c) of this section;

22 (2) a reasonable estimate of the number of aliens who entered and  
23 will enter the United States during those periods without visas or who  
24 became or will become deportable during those periods under chapter  
25 65 of this title; and

26 (3) a description of the impact of—

27 (A) admissions and other entries of immigrants, refugees,  
28 asylees, and parolees into the United States during those periods  
29 on the economy, labor and housing markets, educational system,  
30 social services, foreign policy, environmental quality and resources,  
31 and rate, size, and distribution of population growth in the United  
32 States; and

33 (B) high rates of immigration resettlement on State and local  
34 governments.

35 (c) HISTORY AND PROJECTIONS.—In each report, the information re-  
36 ferred to in subsection (b) of this section shall be—

37 (1) described for the prior 3-year period; and

38 (2) projected for the next 5-year period, based on reasonable esti-  
39 mates substantiated by the best available evidence.

40 (d) RECOMMENDATIONS.—The President also may include recommenda-  
41 tions on changes in numerical limitations or other policies under subtitles

1 II and III of this title affecting the admission and entry of aliens into the  
2 United States.

3 **§ 345. Setting immigration adjudication and naturalization**  
4 **fees**

5 Fees for providing immigration adjudication and naturalization services  
6 may be set at a level that will ensure recovery of—

- 7 (1) the costs of providing those services;  
8 (2) the costs of providing similar services without charge to asylum  
9 applicants or other immigrants; and  
10 (3) any additional costs associated with the administration of the  
11 fees collected.

12 **CHAPTER 5—PASSPORTS AND TRAVEL REQUIREMENTS**

SUBCHAPTER I—PASSPORTS

Sec.

501. Individuals eligible for passports.  
502. Granting and verifying passports.  
503. Validity and use.  
504. Passport fees.  
505. Limitation on acquiring paper for passports.

SUBCHAPTER II—TRAVEL REQUIREMENTS

511. Travel document requirements.  
512. Certain rights to enter or leave unaffected.  
513. Records about residents permanently leaving the United States.  
514. Travel restrictions on citizens of foreign countries.

13 SUBCHAPTER I—PASSPORTS

14 **§ 501. Individuals eligible for passports**

15 (a) NATIONALS OF THE UNITED STATES.—A passport may be granted  
16 only to, or verified only for, a national of the United States.

17 (b) APPLICATIONS.—An individual may be granted a passport only if the  
18 individual submits a signed application containing all information required  
19 by law and regulations. If the individual previously has not been granted  
20 a United States passport, the application must be executed under oath be-  
21 fore an individual authorized by the Secretary of State to administer oaths.

22 **§ 502. Granting and verifying passports**

23 (a) INDIVIDUALS AUTHORIZED TO GRANT AND VERIFY.—Under regula-  
24 tions prescribed by the President, the Secretary of State may—

- 25 (1) grant and verify passports; and  
26 (2) authorize only the following to grant and verify passports:  
27 (A) the chief executive officer of a territory or possession of the  
28 United States.  
29 (B) in a foreign country, diplomatic representatives of the Unit-  
30 ed States, consuls general, consuls, and vice consuls when in  
31 charge.

32 (b) REPORTS.—As required by the Secretary, an individual granting or  
33 verifying a passport shall report to the Secretary—

- 1 (1) the granting or verifying of the passport; and
- 2 (2) the information contained in the passport.

3 **§ 503. Validity and use**

4 (a) PERIOD OF VALIDITY.—A passport is valid for 10 years from the date  
5 it is granted. However, the Secretary may limit the validity of a passport  
6 to a shorter period in an individual case or on a general basis by regulation.

7 (b) RESTRICTIONS ON TRAVEL OR USE.—(1) Except as provided by para-  
8 graph (2) of this subsection or another law, a passport may not be des-  
9 ignated as restricted for travel to, or use in, any country.

10 (2) A passport may be designated as restricted for travel to, or use in,  
11 a country—

- 12 (A) with which the United States is at war;
- 13 (B) in which armed hostilities are in progress; or
- 14 (C) in which there is imminent danger to the public health or phys-  
15 ical safety of United States travelers.

16 **§ 504. Passport fees**

17 (a) ESTABLISHING FEES.—The Secretary of State shall prescribe by reg-  
18 ulation the fee for a passport and the fee for executing a passport applica-  
19 tion. However, the following individuals are exempt from paying the pass-  
20 port fee and, when executing the application before an officer or employee  
21 of the United States Government, from paying the execution fee:

22 (1) an officer or employee of the Government going outside the Unit-  
23 ed States on official business, and a member of the immediate family  
24 of the officer or employee.

25 (2) a sailor needing a passport for service on a vessel of the United  
26 States.

27 (3) a widow, child, parent, brother, or sister of a deceased member  
28 of the armed forces of the United States going outside the United  
29 States to visit the member's grave.

30 (b) COLLECTION AND RETENTION OF APPLICATION FEES.—The Sec-  
31 retary by regulation may—

32 (1) authorize an official of a State to collect and retain the fee for  
33 each passport application executed before the official; and

34 (2) transfer to the United States Postal Service the fee for each ap-  
35 plication executed before the Service.

36 (c) DEPOSITS IN THE TREASURY.—Except for fees retained or trans-  
37 ferred under subsection (b) of this section, fees collected under this section  
38 shall be deposited in the Treasury.

39 (d) REFUNDS.—(1) The Secretary may refund a passport fee—

40 (A) paid by an individual exempt from payment under subsection (a)  
41 of this section; or

1 (B) paid to an officer or employee of the Government by an individ-  
2 ual granted a passport who is refused a visa in the United States by  
3 the appropriate officer of a government of a foreign country if the indi-  
4 vidual within 6 months from the date the passport is granted makes  
5 a written request and returns the unused passport.

6 (2) Amounts are appropriated to the Secretary to make refunds under  
7 paragraph (1)(B) of this subsection.

8 (e) FEES USED FOR MACHINE-READABLE PASSPORTS AND VISAS.—Not-  
9 withstanding another law and to the extent provided by an appropriation  
10 law, not more than \$5,000,000 in passport fees collected by the Secretary  
11 of State may be credited each fiscal year to a Department of State account.  
12 Amounts credited to the account are available only for costs associated with  
13 acquiring and producing machine-readable United States passports and  
14 visas and compatible reading equipment. Amounts credited under this sub-  
15 section remain available until expended.

#### 16 **§ 505. Limitation on acquiring paper for passports**

17 Amounts may not be used to acquire paper for passports if—

18 (1) the paper is manufactured outside the United States and the ter-  
19 ritories and possessions of the United States or would be acquired from  
20 an entity owned or controlled by a person that is not a citizen of the  
21 United States; and

22 (2) a domestic manufacturer for paper for passports exists.

#### 23 SUBCHAPTER II—TRAVEL REQUIREMENTS

#### 24 **§ 511. Travel document requirements**

25 (a) DEFINITIONS.—In this section—

26 (1) “permit” means a passport, visa, reentry permit, or other docu-  
27 ment used to enter or leave the United States.

28 (2) “person”, in addition to its meaning under section 1 of title 1,  
29 includes a governmental entity.

30 (3) “United States” includes all territory and waters subject to the  
31 jurisdiction of the United States.

32 (b) ENTERING OR LEAVING THE UNITED STATES.—(1) Subject to condi-  
33 tions and exceptions prescribed by the President, a citizen of the United  
34 States may enter or leave, or attempt to enter or leave, the United States  
35 only if the citizen has a valid passport.

36 (2) An alien may enter or leave, or attempt to enter or leave, the United  
37 States only under regulations prescribed or orders issued by the President.

38 (c) OTHER RESTRICTIONS.—Unless otherwise ordered by the President,  
39 a person may not—

1 (1) transport or attempt to transport an individual into or out of the  
2 United States if the person has reason to believe that the entry or de-  
3 parture is prohibited by this section;

4 (2) knowingly make a false statement in an application for a permit  
5 with the intent to have the permit granted for any individual;

6 (3) knowingly give, attempt to give, or assist in giving an individual  
7 a permit not intended for the individual;

8 (4) knowingly use or attempt to use a permit not granted or in-  
9 tended for that person;

10 (5) forge, change, or mutilate a permit, or have a permit forged,  
11 changed, or mutilated; or

12 (6) knowingly use, attempt to use, or give to another for use, a per-  
13 mit that is forged, changed, mutilated, or invalid.

14 (d) ALIENS OTHERWISE INADMISSIBLE.—This title does not entitle an  
15 alien to enter the United States if the alien is granted a permit but other-  
16 wise is inadmissible.

17 (e) REVOCATION OF REGULATION OR ORDER.—Revocation of a regula-  
18 tion prescribed or order issued under this section does not prevent prosecu-  
19 tion, or imposition of penalties, for violation of the regulation or order be-  
20 fore it was revoked.

21 **§ 512. Certain rights to enter or leave unaffected**

22 This title does not affect the rights of the following individuals to enter  
23 or leave the United States:

24 (1) an American Indian born in Canada who is at least 50 percent  
25 of American Indian descent.

26 (2) an alien member of the armed forces of the United States enter-  
27 ing or leaving the United States under orders or with permission when  
28 the member is in uniform or carrying identification as a member of the  
29 armed forces.

30 **§ 513. Records about residents permanently leaving the**  
31 **United States**

32 The Attorney General may authorize an immigration officer to record the  
33 following information about a resident of the United States leaving the  
34 United States through Canada or Mexico for permanent residence in a for-  
35 eign country:

36 (1) name.

37 (2) race, age, and sex.

38 (3) country of birth.

39 (4) marital status.

40 (5) occupation.

41 (6) whether the resident can read or write.

- 1 (7) nationality.  
 2 (8) country of which the resident is a citizen or subject.  
 3 (9) last permanent residence in the United States.  
 4 (10) intended future permanent residence.  
 5 (11) time and port of last entry into the United States.  
 6 (12) if the resident claims to be a national of the United States,  
 7 facts on which the claim is based.

8 **§ 514. Travel restrictions on citizens of foreign countries**

9 (a) GENERAL POLICY.—(1) To carry out the general principles of the  
 10 Final Act of the Conference on Security and Cooperation in Europe empha-  
 11 sizing the lowering of international barriers to the free movement of people  
 12 and ideas and in accordance with the Vienna Convention on Diplomatic Re-  
 13 lations establishing the legal principles of nondiscrimination and reciprocity,  
 14 it is the general policy of the United States to impose restrictions on travel  
 15 within the United States by citizens of a foreign country only when the gov-  
 16 ernment of that foreign country imposes restrictions on travel by citizens  
 17 of the United States within that country.

18 (2) This subsection does not limit a restriction on travel within the Unit-  
 19 ed States that the United States Government, on a reciprocal basis, imposes  
 20 on an official of a government of a foreign country.

21 (b) CONVEYANCE OF POLICY AND ELIMINATION OF RESTRICTIONS.—The  
 22 Secretary of State shall—

23 (1) ensure that the policy of subsection (a) of this section is conveyed  
 24 clearly to the government of a foreign country imposing travel restric-  
 25 tions on citizens of the United States; and

26 (2) seek the elimination, on a mutual and reciprocal basis, of travel  
 27 restrictions imposed by that government and by the United States Gov-  
 28 ernment on each other's citizens.

29 **CHAPTER 7—GENERAL MISCELLANEOUS**

Sec.

701. Certain treaties unaffected.

702. Construing references to organizations about advocating overthrow of United States  
 Government.

30 **§ 701. Certain treaties unaffected**

31 Except as provided by section 20702(c) of this title, this title does not  
 32 affect a treaty ratified by the Senate before December 25, 1952.

33 **§ 702. Construing references to organizations about advo-**  
 34 **cating overthrow of United States Government**

35 A reference in this title to an organization may not be construed as a  
 36 declaration that the organization does not advocate the overthrow of the  
 37 United States Government by unconstitutional means.

**SUBTITLE II—ALIENS**

## PART A—NONIMMIGRANTS

CHAPTER		Sec.
21.	ADMISSION AND DOCUMENTATION .....	2101
23.	CLASSIFICATIONS .....	2301
25.	TEMPORARY AGRICULTURAL WORKERS .....	2501
27.	ALIEN CREWMEMBERS .....	2701
29.	FACILITIES EMPLOYING REGISTERED NURSES .....	2901

## PART B—IMMIGRANTS

41.	NUMERICAL LIMITATIONS .....	4101
43.	PETITIONS AND DOCUMENTATION .....	4301
45.	CONDITIONAL PERMANENT RESIDENT STATUS .....	4501

## PART C—REFUGEES

51.	ADMISSIONS .....	5101
-----	------------------	------

## PART D—ENTRY, EXCLUSION, AND DEPORTATION

61.	ARRIVAL, INSPECTION, AND ADMISSION .....	6101
63.	EXCLUSION .....	6301
65.	DEPORTATION OF ALIENS IN THE UNITED STATES .....	6501
67.	TEMPORARY PROTECTED STATUS .....	6701
69.	REGULATION OF PERSONS PROVIDING TRANSPORTATION .....	6901

## PART E—ADDITIONAL REQUIREMENTS AND LIMITATIONS

81.	REGISTRATION AND FINGERPRINTING .....	8101
83.	MISCELLANEOUS .....	8301

## PART F—CHANGE OF STATUS AND CLASSIFICATION

91.	CHANGE OF STATUS AND CLASSIFICATION .....	9101
93.	CHANGE OF STATUS FOR CERTAIN ALIENS WHO ENTERED THE UNITED STATES BEFORE 1982.	9301

## PART G—PENALTIES

101.	PENALTIES .....	10101
------	-----------------	-------

## PART A—NONIMMIGRANTS

**CHAPTER 21—ADMISSION AND DOCUMENTATION**

## SUBCHAPTER I—ADMISSION

Sec.	
2101.	Admission.
2102.	Presumption.
2103.	Application of certain provisions to diplomats.

## SUBCHAPTER II—DOCUMENTATION

2121.	Documentation requirements.
2122.	Applications for nonimmigrant visas and registration.
2123.	Granting nonimmigrant visas and other documentation.
2124.	Period of validity and revocation.
2125.	Fees.
2126.	Burden of proof.
2127.	Visa waiver pilot program.

## SUBCHAPTER I—ADMISSION

**§ 2101. Admission**

Except as otherwise provided, an alien may be admitted to the United States as a nonimmigrant for the time and under conditions the Attorney General prescribes by regulation. The Attorney General may require the alien to file a bond or undertaking, in the amount and containing conditions

1 the Attorney General prescribes, to ensure that the alien will leave the Unit-  
2 ed States when—

3 (1) the time for which the alien is admitted expires; or

4 (2) the alien does not remain a member of the nonimmigrant class  
5 under which the alien was admitted or to which the Attorney General  
6 changes the alien under section 9108 of this title.

7 **§ 2102. Presumption**

8 An alien (except a nonimmigrant classified under section 2313, 2317, or  
9 2325 of this title) is presumed to be an immigrant until the alien satisfies  
10 the consular officer, at the time of application for a visa, and the immigra-  
11 tion officer, at the time of application for admission, that the alien qualifies  
12 as a nonimmigrant.

13 **§ 2103. Application of certain provisions to diplomats**

14 Except as otherwise provided by this title, those provisions of this title  
15 related to ineligibility for a visa and exclusion or deportation of an alien do  
16 not apply to a nonimmigrant described by—

17 (1) section 2301(1) of this title, except that the nonimmigrant is  
18 subject—

19 (A) to those provisions requiring a passport and visa for identi-  
20 fication and proof of the nonimmigrant's classification under that  
21 section; and

22 (B) under regulations prescribed by the President, to section  
23 6308(a)–(c) of this title; or

24 (2) section 2301(2) or 2302(1)–(5) of this title, except that the non-  
25 immigrant is subject to—

26 (A) those provisions requiring a passport and visa for identifica-  
27 tion and proof of the nonimmigrant's classification under one of  
28 those sections; and

29 (B) section 6308(a)–(c) of this title.

30 SUBCHAPTER II—DOCUMENTATION

31 **§ 2121. Documentation requirements**

32 (a) GENERAL.—Except as provided by this section and section 2127 of  
33 this title, an alien classified as a nonimmigrant under chapter 23 of this  
34 title may be admitted to the United States only if, when applying for admis-  
35 sion, the nonimmigrant has—

36 (1) a passport that—

37 (A) is valid for at least 6 months after the last day of the  
38 alien's initial period of admission or contemplated initial period of  
39 admission; and

1 (B) authorizes the alien during those 6 months to return to the  
2 foreign country from which the alien came or to enter another for-  
3 eign country; and

4 (2) a nonimmigrant visa or border crossing identification card at the  
5 time of applying for admission.

6 (b) GENERAL WAIVERS.—The Attorney General and the Secretary of  
7 State jointly may waive a requirement of subsection (a) of this section—

8 (1) in an individual case because of an unforeseen emergency;

9 (2) on a reciprocal basis, for nationals of foreign contiguous territory  
10 or of adjacent islands and for residents of that territory or islands who  
11 have a common nationality with those nationals; and

12 (3) for an alien proceeding in immediate and continuous travel  
13 through the United States on a carrier operating under a contract au-  
14 thorized by section 6905(b)(1)(B) of this title.

15 (c) WAIVERS FOR VISITORS TO GUAM.—(1) The Attorney General, the  
16 Secretary of State, and the Secretary of the Interior jointly may waive sub-  
17 subsection (a) of this section for an alien applying for admission as a non-  
18 immigrant visitor under section 2303 of this title, but only for entry into  
19 and stay on Guam for not more than 15 days, if they jointly decide, after  
20 consulting with the Governor of Guam, that—

21 (A) an adequate arrival and departure control system has been devel-  
22 oped on Guam; and

23 (B) the waiver does not represent a threat to the welfare, safety, or  
24 security of the United States or its territories or possessions.

25 (2) An alien may be granted a waiver under this subsection only if the  
26 alien waives any right—

27 (A) to a review or appeal under this title of an immigration officer's  
28 decision on the admissibility of the alien at the port of entry into  
29 Guam; or

30 (B) to contest (except on the basis of an application for asylum) an  
31 action for deportation against the alien.

32 (3) An alien admitted to Guam without a visa under this subsection may  
33 not—

34 (A) stay in Guam for more than 15 days after the date of admission  
35 to Guam; or

36 (B) enter or stay in the United States under that admission, except  
37 in Guam.

38 (4) If adequate appropriated amounts to carry out this subsection are not  
39 available, the Attorney General may accept amounts tendered by the govern-  
40 ment of Guam to cover any part of the cost of carrying out this subsection.

1 **§2122. Applications for nonimmigrant visas and registra-**  
2 **tion**

3 (a) APPLICATION REQUIREMENTS.—An alien applying for a non-  
4 immigrant visa must apply in the way prescribed by regulation. The applica-  
5 tion must contain the following information about the alien:

6 (1) the complete true name of the alien.

7 (2) a personal description, including height, complexion, color of hair  
8 and eyes, and marks of identification.

9 (3) the date and place of birth.

10 (4) nationality.

11 (5) marital status.

12 (6) the purpose in going to the United States.

13 (7) the period of intended stay in the United States.

14 (8) additional information prescribed by regulation that is necessary  
15 to identify the alien and enforce the immigration and nationality laws.

16 (b) ADDITIONAL REQUIREMENTS.—An alien applying for a nonimmigrant  
17 visa must—

18 (1) register as provided by chapter 81 of this title when applying for  
19 the visa;

20 (2) if required by the consular officer to decide whether the alien  
21 may receive a visa, take a physical or mental examination, or both; and

22 (3) provide the consular officer, with the application, a certified copy  
23 of any document about the alien that may be required by regulation.

24 (c) STATEMENT ABOUT NO ENTITLEMENT TO ENTER THE UNITED  
25 STATES.—An application for a nonimmigrant visa shall inform the applicant  
26 that a visa or other documentation issued to an alien does not entitle the  
27 alien to enter the United States if, on arrival at a port of entry, the alien  
28 is found to be inadmissible.

29 (d) SIGNATURE AND OATH.—Except as otherwise prescribed by regula-  
30 tion, an alien must—

31 (1) sign an application for a nonimmigrant visa in the presence of  
32 a consular officer; and

33 (2) take an oath administered by the consular officer verifying the  
34 application.

35 (e) DISPOSITION OF APPLICATIONS.—An application for a nonimmigrant  
36 visa or other documentation as a nonimmigrant shall be disposed of as pre-  
37 scribed by regulation.

1 **§ 2123. Granting nonimmigrant visas and other documenta-**  
2 **tion**

3 (a) GENERAL.—Except as provided by subsection (b) of this section, a  
4 consular officer may grant a nonimmigrant visa to an eligible nonimmigrant  
5 who has made a proper application for the visa.

6 (b) PROHIBITIONS.—(1) A consular officer may not grant a non-  
7 immigrant visa or other documentation to an alien if—

8 (A) the alien is required to be registered under section 8101(a)(1)  
9 of this title and is not registered;

10 (B) the alien's application does not comply with this title or regula-  
11 tions prescribed under this title; or

12 (C) the alien is excludable from admission to the United States; or

13 (D) the consular officer has reason to believe the alien is ineligible  
14 for the visa or other documentation.

15 (2) Notwithstanding paragraph (1)(D) of this subsection, a consular offi-  
16 cer may grant a nonimmigrant visa or other documentation to—

17 (A) an alien to whom section 6304(a) of this title applies if—

18 (i) the alien otherwise may receive the visa or other documenta-  
19 tion; and

20 (ii) the consular officer receives notice from the Attorney Gen-  
21 eral that the alien filed a bond or undertaking under section  
22 6304(b) of this title; or

23 (B) an alien applying as a nonimmigrant under section 2303 or  
24 2310 of this title if the alien otherwise may receive the visa or other  
25 documentation, and the consular officer receives notice from the Attor-  
26 ney General that the alien filed a bond or undertaking, in the amount  
27 and containing conditions the consular officer prescribes, to ensure that  
28 the alien will leave the United States when—

29 (i) the time for which the alien is admitted expires; or

30 (ii) the alien does not remain a member of the nonimmigrant  
31 class under which the alien was admitted or to which the Attorney  
32 General changes the alien under section 9108 of this title.

33 (c) FORM AND CONTENT OF VISAS.—Except as otherwise prescribed by  
34 regulation, the granting of a nonimmigrant visa shall be shown by a stamp  
35 placed by a consular officer in the alien's passport. The visa shall specify—

36 (1) the alien's nonimmigrant classification under chapter 23 of this  
37 title;

38 (2) the expiration date of the visa; and

39 (3) additional information that may be required.

**§ 2124. Period of validity and revocation**

(a) PERIOD OF VALIDITY.—A nonimmigrant visa is valid for the period prescribed by regulation. In prescribing the period of validity, the Secretary of State, to the extent practicable, shall treat nationals of a foreign country the same as the government of that country treats nationals of the United States within a similar class.

(b) REVOCATION.—A consular officer or the Secretary may revoke a visa or other documentation issued to a nonimmigrant. A revocation invalidates the visa or documentation from the date the visa or documentation was granted. The Attorney General shall be notified of each revocation.

**§ 2125. Fees**

The Secretary of State shall prescribe fees for providing and verifying a nonimmigrant visa application for, and granting a nonimmigrant visa to, a nonimmigrant of each foreign country. If practicable, the total amount of the fees shall correspond to the total of all visa, entry, residence, or similar fees the country imposes on nationals of the United States. An alien described by section 11 of the Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations (61 Stat. 761) and traveling to or from the headquarters district of the United Nations shall be granted a nonimmigrant visa without charge.

**§ 2126. Burden of proof**

An individual applying for a nonimmigrant visa or other documentation required for entering the United States as a nonimmigrant has the burden of proving that the individual is eligible to be granted the visa or documentation. A consular officer may grant the visa or documentation only if satisfied that the individual is eligible to receive the visa or documentation.

**§ 2127. Visa waiver pilot program**

(a) ESTABLISHMENT OF PROGRAM.—The Attorney General and the Secretary of State jointly may maintain a pilot program for the fiscal years ending September 30, 1989–1994, under which they jointly may waive section 2121(a)(2) of this title for an alien eligible for a waiver under subsection (c) of this section.

(b) DESIGNATION OF PILOT PROGRAM COUNTRIES.—(1) The Attorney General and the Secretary jointly may designate any foreign country as a pilot program country if the government of that country extends (or agrees to extend) reciprocal privileges to nationals of the United States and meets the requirements of paragraphs (2) and (3) of this subsection. A designation is only for a fiscal year.

(2) Subject to paragraph (3) of this subsection, a country may be designated as a pilot program country only if—

1 (A) the average number of refusals of nonimmigrant visitor visas for  
2 nationals of that country during the prior 2 fiscal years was less than  
3 2 percent of the number of nonimmigrant visitor visas for nationals of  
4 that country that were granted or refused during those years;

5 (B) the average number of refusals of nonimmigrant visitor visas for  
6 nationals of that country during either of those 2 years was less than  
7 2.5 percent of the number of nonimmigrant visitor visas for nationals  
8 of that country that were granted or refused during that year;

9 (C) the government of that country certifies that it has or is develop-  
10 ing a program to issue machine-readable passports to citizens of that  
11 country; and

12 (D) the Attorney General decides that the law enforcement interests  
13 of the United States would not be compromised by the designation of  
14 that country.

15 (3) A country that was a pilot program country in the prior fiscal year  
16 may be designated as a pilot program country in a subsequent fiscal year  
17 of the program only if the total number of nationals referred to in clauses  
18 (A) and (B) of this paragraph is less than 2 percent of the number of na-  
19 tionals of that country who applied for admission as nonimmigrant visitors  
20 during that prior fiscal year:

21 (A) the number of nationals of that country who were excluded from  
22 admission or withdrew their application for admission during that prior  
23 fiscal year as nonimmigrant visitors; plus

24 (B) the number of nationals of that country who were admitted as  
25 nonimmigrant visitors during that prior fiscal year and who violated a  
26 condition of that admission.

27 (c) ELIGIBLE ALIENS.—An alien is eligible for a waiver under the pro-  
28 gram if the alien—

29 (1) is applying to be admitted not later than September 30, 1994,  
30 as a nonimmigrant visitor under section 2303 of this title for not more  
31 than 90 days;

32 (2) is a national of, and presents a passport issued by, a foreign  
33 country designated as a pilot program country under subsection (b) of  
34 this section;

35 (3) before admission, completes an immigration form prescribed by  
36 the Attorney General;

37 (4) before being provided a waiver under the program, waives any  
38 right—

39 (A) to a review or appeal under this title of an immigration offi-  
40 cer's decision on the admissibility of the alien at the port of entry  
41 into the United States; or

1 (B) to contest (except on the basis of an application for asylum)  
2 an action for deportation against the alien;

3 (5) when arriving by air or sea, arrives at the port of entry into the  
4 United States on a carrier that has an agreement with the Attorney  
5 General to guarantee transportation of the alien out of the United  
6 States if the alien is found inadmissible or deportable by an immigra-  
7 tion officer;

8 (6) has a round-trip transportation ticket unless the Attorney Gen-  
9 eral by regulation waives this requirement;

10 (7) is not a threat to the welfare, health, safety, or security of the  
11 United States; and

12 (8) complied with the conditions of any previous admission without  
13 a visa under the program.

14 (d) ADMISSION UNDER VISA WAIVER PILOT PROGRAM.—An alien admit-  
15 ted to the United States under this section without a visa may not stay in  
16 the United States as a nonimmigrant visitor for more than 90 days after  
17 the date of admission to the United States.

18 (e) CARRIER AGREEMENTS.—(1) A carrier and the Attorney General may  
19 make an agreement referred to in subsection (c)(5) of this section under  
20 which the carrier agrees, in consideration of the waiver of the visa require-  
21 ment for a nonimmigrant visitor under the program—

22 (A) to indemnify the United States Government against costs of  
23 transporting that visitor from the United States if the visitor is refused  
24 admission or remains in the United States unlawfully after the end of  
25 the period of admission referred to in subsection (c)(1) of this section;

26 (B) to submit each day to immigration officers any immigration  
27 forms received about nonimmigrant visitors given a waiver under the  
28 program; and

29 (C) to be liable, under regulations the Attorney General prescribes,  
30 for transporting a national of a pilot program country into the United  
31 States without a passport.

32 (2) If a carrier does not comply with an agreement made under para-  
33 graph (1) of this subsection, the Attorney General may end the agreement  
34 on 5 days' notice to the carrier.

35 (f) DENIAL OF WAIVERS.—Notwithstanding subsections (a)–(c) and (e)  
36 of this section, the Attorney General and the Secretary jointly may—

37 (1) for any reason refuse to waive the visa requirement for a na-  
38 tional of a foreign country that otherwise may qualify for designation  
39 as a pilot program country under this section; or

40 (2) rescind at any time a waiver or designation previously granted  
41 under this section.

1

**CHAPTER 23—CLASSIFICATIONS**

## SUBCHAPTER I—GENERAL

Sec.

- 2301. Officials of governments of foreign countries.
- 2302. Representatives to international organizations.
- 2303. Visitors for business and pleasure.
- 2304. Aliens in immediate and continuous travel.
- 2305. Crewmembers.
- 2306. Aliens entitled to enter under treaties of commerce and navigation.
- 2307. Philippine nationals.
- 2308. Media representatives.
- 2309. Aliens engaged to marry citizens.
- 2310. Students in academic institutions and language training programs.
- 2311. Students in nonacademic institutions.
- 2312. Participants in programs designated by the Director of the United States Information Agency.
- 2313. Aliens employed temporarily in specialty occupations or as fashion models.
- 2314. Temporary and seasonal agricultural employees.
- 2315. Aliens performing labor or services for which United States workers are unavailable.
- 2316. Aliens receiving training.
- 2317. Intra-company transferees.
- 2318. Aliens with extraordinary ability or with distinction in the arts, motion pictures, or television.
- 2319. Athletes and entertainers.
- 2320. Participants in international exchange programs.
- 2321. Aliens in religious occupations.
- 2322. Participants in cooperative research, development, and coproduction projects.
- 2323. Participants in special education programs.
- 2324. Relatives of special immigrants.
- 2325. Registered nurses.

## SUBCHAPTER II—SPECIAL REQUIREMENTS

- 2351. Employer applications for aliens employed temporarily in specialty occupations or as fashion models.
- 2352. Advisory opinions for aliens with extraordinary ability or with distinction in the arts, motion pictures, or television.
- 2353. Advisory opinions for athletes and entertainers.

2

## SUBCHAPTER I—GENERAL

3

**§ 2301. Officials of governments of foreign countries**

4

An alien is classified as a nonimmigrant under this section if the alien is—

5

6

(1)(A) an ambassador, public minister, or career diplomatic or consular officer accredited by a government of a foreign country recognized de jure by the United States Government who is accepted by the President or the Secretary of State; or

7

8

9

(B) a member of the immediate family of the ambassador, minister, or officer;

10

11

12

(2) on a reciprocal basis—

13

14

(A) another official or employee accredited by a government of a foreign country recognized de jure by the United States Government who is accepted by the Secretary; or

15

16

(B) a member of the immediate family of the official or employee; or

17

18

(3) on a reciprocal basis—

1 (A) an attendant, servant, or personal employee of an alien de-  
2 scribed by clause (1)(A) or (2)(A) of this section; or

3 (B) a member of the immediate family of the attendant, serv-  
4 ant, or personal employee.

5 **§ 2302. Representatives to international organizations**

6 An alien is classified as a nonimmigrant under this section if the alien  
7 is—

8 (1)(A) a designated principal resident representative of a government  
9 of a foreign country to an international organization if the government  
10 is recognized de jure by the United States Government and is a mem-  
11 ber of the international organization; or

12 (B) a member of the immediate family of the representative;

13 (2)(A) an accredited resident member of the staff of a representative  
14 described by clause (1)(A) of this section; or

15 (B) a member of the immediate family of the member;

16 (3)(A) an accredited representative (except a representative described  
17 by clause (1)(A) of this section) of a government of a foreign country  
18 to an international organization if the government is recognized de jure  
19 by the United States Government and is a member of the international  
20 organization; or

21 (B) a member of the immediate family of the representative;

22 (4)(A) an alien described by clause (1)(A), (2)(A), or (3)(A) of this  
23 section, except that the government of the foreign country is not recog-  
24 nized de jure by the United States Government or is not a member of  
25 an international organization; or

26 (B) a member of the immediate family of the alien;

27 (5)(A) an officer or employee of an international organization; or

28 (B) a member of the immediate family of the officer or employee;

29 or

30 (6)(A) an attendant, servant, or personal employee of an alien de-  
31 scribed by clause (1)(A), (2)(A), (3)(A), (4)(A), or (5)(A) of this sec-  
32 tion; or

33 (B) a member of the immediate family of the attendant, servant, or  
34 personal employee.

35 **§ 2303. Visitors for business and pleasure**

36 An alien is classified as a nonimmigrant under this section if the alien—

37 (1) has a residence in a foreign country that the alien has no inten-  
38 tion of abandoning; and

39 (2) is visiting the United States temporarily for business or pleasure  
40 (except to study, to perform skilled or unskilled labor, or to work as  
41 a representative of foreign information media).

**§ 2304. Aliens in immediate and continuous travel**

An alien is classified as a nonimmigrant under this section if the alien is—

(1) in immediate and continuous travel through the United States;

or

(2) entitled to travel between a foreign country and the headquarters district of the United Nations under section 11(3), (4), or (5) of the Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United Nations (61 Stat. 761).

**§ 2305. Crewmembers**

(a) GENERAL.—(1) Except as provided by subsection (c) of this section, an alien is classified as a nonimmigrant under this section if the alien—

(A) is a crewmember serving as a crewmember in a capacity required for normal operation and service on a vessel (except a fishing vessel having its home port or an operating base in the United States) or on an aircraft; and

(B) intends to land temporarily and only as a crewmember and to depart on a vessel or aircraft.

(2) Serving in a capacity required for normal operation and service on a vessel under paragraph (1)(A) of this subsection only includes performing longshore work (as defined by section 2721 of this title) to the extent provided under sections 2723–2725 of this title.

(b) CREWMEMBERS OF FISHING VESSELS LANDING IN GUAM.—(1) Except as provided by subsection (c) of this section, an alien is classified as a nonimmigrant under this section if the alien—

(A) is a crewmember serving as a crewmember in any capacity required for normal operation and service on a fishing vessel having its home port or an operating base in the United States; and

(B) intends to land in Guam temporarily and only as a crewmember and to depart on the vessel on which the alien arrived.

(2) An alien is deemed to have departed from Guam under paragraph (1)(B) of this subsection after leaving the territorial waters of Guam without regard to whether the alien arrives in a foreign country before returning to Guam.

(c) CREWMEMBERS EMPLOYED IN LABOR DISPUTES.—(1) An alien who intends to land to perform service on a vessel of the United States (as defined by section 2101 of title 46) or on an aircraft of an air carrier (as defined by section 101 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301)) during a labor dispute in which there is a strike or lockout of the

1 bargaining unit of the employer in which the alien intends to perform that  
2 service—

3 (A) is not entitled to be classified as a nonimmigrant under this sec-  
4 tion;

5 (B) may not be paroled into the United States under section 6123  
6 of this title, unless the Attorney General decides that the parole of the  
7 alien is necessary to protect the security of the United States; and

8 (C) is not a crewmember under section 2703(d) of this title.

9 (2) Paragraph (1) of this subsection does not apply to an alien if the air  
10 carrier or owner or operator of the vessel employing the alien provides docu-  
11 mentation that satisfies the Attorney General that the alien—

12 (A) has been employed by that employer for at least a one-year pe-  
13 riod before the date that the strike or illegal lockout began;

14 (B) has served as a qualified crewmember for that employer at least  
15 once in each of 3 months during the 12-month period before that date;  
16 and

17 (C) will continue to perform the same services that the alien provided  
18 during the alien's employment described by clause (B) of this para-  
19 graph.

20 **§2306. Aliens entitled to enter under treaties of commerce**  
21 **and navigation**

22 (a) DEFINITION.—In this section, “citizen of Mexico” has the same  
23 meaning given that term in Annex 1608 of the North American Free Trade  
24 Agreement.

25 (b) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
26 tion if the alien—

27 (1)(A) is entitled to enter the United States under a treaty of com-  
28 merce and navigation between the United States Government and the  
29 government of the foreign country of which the alien is a national  
30 only—

31 (i) to carry on an amount of trade (including trade in services  
32 or technology) principally between the United States and the coun-  
33 try of which the alien is a national, that the Secretary of State  
34 decides, after consulting with appropriate agencies, is substantial;  
35 or

36 (ii) to develop and direct the operations of an enterprise in  
37 which the alien has invested or is actively in the process of invest-  
38 ing an amount of capital that the Secretary of State decides, after  
39 consulting with appropriate agencies, is substantial; or

40 (B) is the spouse or child of an alien described by subclause (A) of  
41 this clause if accompanying or following to join the alien;

1 (2) on a reciprocal basis under the United States-Canada Free-Trade  
2 Agreement—

3 (A)(i) is a citizen of Canada; and

4 (ii) is coming to the United States only for a purpose specified  
5 by Annex 1502.1 (United States of America), Part B—Traders  
6 and Investors, of the United States-Canada Free-Trade Agree-  
7 ment, but only if the purpose is specified by that Annex on Janu-  
8 ary 1, 1989; or

9 (B) is the spouse or child of an alien described by subclause (A)  
10 of this clause if accompanying or following to join the alien;

11 (3)(A)(i) is a citizen of Canada;

12 (ii) is coming to the United States under Annex 1502.1 (United  
13 States of America), Part C—Professionals, of the United States-Can-  
14 ada Free-Trade Agreement to engage in business activities at a profes-  
15 sional level as provided by that Annex; and

16 (iii) may be admitted to engage in those activities under regulations  
17 prescribed by the Attorney General after consulting with the Secretar-  
18 ies of State and Labor; or

19 (B) is the spouse or child of an alien described by subclause (A) of  
20 this clause if accompanying or following to join the alien;

21 (4) subject to subsection (e) of this section, on a reciprocal basis  
22 under the North American Free Trade Agreement—

23 (A)(i) is a citizen of Canada or a citizen of Mexico; and

24 (ii) is coming to the United States only for a purpose specified  
25 by section B of Annex 1603 of the Agreement but only if the pur-  
26 pose is specified by Annex 1603 on January 1, 1994; or

27 (B) is the spouse or child of an alien described by subclause (A)  
28 of this clause if accompanying or following to join the alien; or

29 (5)(A) subject to subsections (c)–(e) of this section—

30 (i) is a citizen of Canada or a citizen of Mexico;

31 (ii) is coming to the United States under section D of Annex  
32 1603 of the North American Free Trade Agreement to engage in  
33 business activities at a professional level as provided by Annex  
34 1603; and

35 (iii) may be admitted to engage in those activities under regula-  
36 tions prescribed by the Attorney General after consulting with the  
37 Secretaries of State and Labor; or

38 (B) is the spouse or child of an alien described by subclause (A) of  
39 this clause if accompanying or following to join the alien.

40 (c) NUMERICAL LIMITATIONS ON CITIZENS OF MEXICO.—(1) The Attor-  
41 ney General shall establish an annual numerical limitation on the number

1 of citizens of Mexico classified under subsection (b)(5) of this section, as  
2 provided by Appendix 1603.D.4 of Annex 1603 of the North American Free  
3 Trade Agreement. Subject to paragraph (2) of this subsection, the limita-  
4 tion—

5 (A) may be increased after December 31, 1994, under paragraph  
6 5(a) of section D of Annex 1603 of the Agreement; and

7 (B) shall cease to apply as provided by paragraph 3 of Appendix  
8 1603.D.4.

9 (2) The limitation referred to in paragraph (1) of this subsection may be  
10 increased or shall cease to apply (other than under paragraph 3 of Appendix  
11 1603.D.4) only if—

12 (A) the President has obtained advice about the proposed action  
13 from the appropriate advisory committees established under section  
14 135 of the Trade Act of 1974 (19 U.S.C. 2155);

15 (B) the President has submitted a report to the Committees on the  
16 Judiciary of the Senate and the House of Representatives that states  
17 the action proposed to be taken, the reasons for the proposed action,  
18 and the advice obtained under clause (A) of this paragraph;

19 (C) at least 60 days have passed after the President meets the re-  
20 quirements of clauses (A) and (B) of this paragraph; and

21 (D) the President consults with those committees during that 60-day  
22 period about the proposed action.

23 (d) ADDITIONAL REQUIREMENTS FOR CITIZENS OF MEXICO.—During  
24 the period that Appendix 1603.D.4 of Annex 1603 of the North American  
25 Free Trade Agreement applies, an alien who is a citizen of Mexico and en-  
26 ters under section D of Annex 1603 must comply—

27 (1) for a registered nurse, with the attestation requirements of sec-  
28 tion 2902 of this title, to the extent and in the way provided by regula-  
29 tions prescribed by the Secretary of Labor;

30 (2) for all other professions set out in Appendix 1603.D.1 of Annex  
31 1603, with the application requirements of section 2351 of this title,  
32 to the extent and in the way provided by regulations prescribed by the  
33 Secretary of Labor; and

34 (3) with the employer petition requirements of this chapter, to the  
35 extent and in the way provided by regulations prescribed by the Attor-  
36 ney General.

37 (e) LABOR DISPUTES.—An alien who is a citizen of Canada or a citizen  
38 of Mexico and who is coming to the United States under section B, C, or  
39 D of Annex 1603 of the North American Free Trade Agreement is not enti-  
40 tled to be classified as a nonimmigrant under those sections if there is a  
41 strike or lockout during a labor dispute in the occupational classification at

1 the alien's place or intended place of employment, unless the alien estab-  
 2 lishes under regulations prescribed by the Attorney General that the alien's  
 3 entry will not adversely affect the settlement of the strike or lockout or the  
 4 employment of any individual who is involved in the strike or lockout. Notice  
 5 of a decision by the Attorney General under this subsection shall be given  
 6 in the way required by paragraph 3 of Article 1603 of the Agreement.

7 (f) COUNTRIES WITHOUT TREATIES.—Each of the following foreign  
 8 countries shall be deemed to be a foreign country described by subsection  
 9 (b)(1) of this section if the government of the foreign country extends recip-  
 10 rocal nonimmigrant treatment to nationals of the United States:

11 (1) the largest country in each region (as defined by section  
 12 4105(a)(7) of this title) that—

13 (A) has at least one dependent area as determined for purposes  
 14 of sections 4111 and 4112 of this title; and

15 (B) does not have a treaty of commerce and navigation with the  
 16 United States Government.

17 (2) the country that—

18 (A) was identified as an adversely affected foreign country  
 19 under section 314 of the Immigration Reform and Control Act of  
 20 1986 (Public Law 99–603, 100 Stat. 3439);

21 (B) had a treaty of commerce and navigation with the United  
 22 States before 1925; and

23 (C) does not have a treaty of commerce and navigation with the  
 24 United States Government.

25 **§ 2307. Philippine nationals**

26 On a reciprocal basis secured by agreement between the Presidents of the  
 27 United States and of the Philippines, an alien is classified as a non-  
 28 immigrant under this section if the alien is—

29 (1) a national of the Philippines who is coming to the United States  
 30 only—

31 (A) to carry on an amount of trade (including trade in services  
 32 or technology) principally between the United States and the Phil-  
 33ippines, that the Secretary of State decides, after consulting with  
 34 appropriate agencies, is substantial; or

35 (B) to develop and direct the operations of an enterprise in  
 36 which the alien has invested or is actively in the process of invest-  
 37ing an amount of capital that the Secretary decides, after consult-  
 38ing with the appropriate agencies, is substantial; or

39 (2) the spouse or child of an alien described by clause (1) of this  
 40 section if accompanying or following to join the alien.

1 **§ 2308. Media representatives**

2 On a reciprocal basis, an alien is classified as a nonimmigrant under this  
3 section if the alien is—

4 (1) a representative of foreign information media who is coming to  
5 the United States only to work as a representative of foreign informa-  
6 tion media; or

7 (2) the spouse or child of an alien described by clause (1) of this  
8 section if accompanying or following to join the alien.

9 **§ 2309. Aliens engaged to marry citizens**

10 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
11 tion if the alien is—

12 (1) engaged to marry a citizen of the United States and is coming  
13 to the United States only to marry the citizen within 90 days after  
14 entry; or

15 (2) the child of an alien described by clause (1) of this subsection  
16 if accompanying or following to join the alien.

17 (b) PETITIONS TO CLASSIFY.—A visa may be granted to an alien apply-  
18 ing to be classified as a nonimmigrant under this section only after the con-  
19 sular officer receives a petition filed in the United States by the citizen  
20 fiancée or fiancé of the alien and approved by the Attorney General. The  
21 petition must be in the form and contain the information the Attorney Gen-  
22 eral prescribes by regulation. The Attorney General may approve the peti-  
23 tion only if satisfied that the parties—

24 (1) previously have met in person during the 2 years before the date  
25 the petition was filed, except that the Attorney General may waive this  
26 requirement;

27 (2) intend to marry; and

28 (3) are legally able and willing to marry not later than 90 days after  
29 the alien arrives in the United States.

30 **§ 2310. Students in academic institutions and language**  
31 **training programs**

32 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
33 tion if the alien—

34 (1)(A) has a residence in a foreign country that the alien has no in-  
35 tention of abandoning;

36 (B) is a student qualified to take a full course of study; and

37 (C) is coming to the United States temporarily and only to take a  
38 full course of study at an established academic institution or in a lan-  
39 guage training program designated by the alien and approved by the  
40 Attorney General under subsection (b) of this section; or

1 (2) is the spouse or child of an alien described by clause (1) of this  
2 subsection if accompanying or following to join the alien.

3 (b) APPROVAL OF INSTITUTIONS AND PROGRAMS.—(1) The Attorney  
4 General may approve an institution or language training program referred  
5 to in subsection (a) of this section only after—

6 (A) the Attorney General has consulted with the Secretary of Edu-  
7 cation; and

8 (B) the institution or the place of study for the program has agreed  
9 to report promptly to the Attorney General the termination of attend-  
10 ance of each nonimmigrant student.

11 (2) The Attorney General shall withdraw the approval if the institution  
12 or place of study fails to report promptly.

13 **§ 2311. Students in nonacademic institutions**

14 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
15 tion if the alien—

16 (1)(A) has a residence in a foreign country that the alien has no in-  
17 tention of abandoning; and

18 (B) is coming to the United States temporarily and only to take a  
19 full course of study (except in a language training program) at a recog-  
20 nized nonacademic institution designated by the alien and approved by  
21 the Attorney General under subsection (b) of this section; or

22 (2) is the spouse or child of an alien described by clause (1) of this  
23 subsection if accompanying or following to join the alien.

24 (b) APPROVAL OF INSTITUTIONS.—(1) The Attorney General may ap-  
25 prove an institution referred to in subsection (a) of this section only after—

26 (A) the Attorney General has consulted with the Secretary of Edu-  
27 cation; and

28 (B) the institution has agreed to report promptly to the Attorney  
29 General the termination of attendance of each nonimmigrant student.

30 (2) The Attorney General shall withdraw the approval if the institution  
31 fails to report promptly.

32 **§ 2312. Participants in programs designated by the Director  
33 of the United States Information Agency**

34 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
35 tion if the alien—

36 (1)(A) has a residence in a foreign country that the alien has no in-  
37 tention of abandoning;

38 (B) is a student, scholar, trainee, teacher, researcher, leader, or simi-  
39 lar individual in a field of specialized knowledge or skill; and

40 (C) is coming to the United States temporarily to teach, study, ob-  
41 serve, conduct research, consult, or demonstrate skills in a program

1 designated by the Director of the United States Information Agency,  
2 and, if coming to participate in a program of graduate medical edu-  
3 cation or training, satisfies the requirements of subsections (b) and (c)  
4 of this section; or

5 (2) is the spouse or child of an alien described by clause (1) of this  
6 subsection if accompanying or following to join the alien.

7 (b) ADDITIONAL REQUIREMENTS FOR ALIENS IN MEDICAL PROGRAMS.—

8 The following additional requirements apply to an alien coming to the Unit-  
9 ed States as a nonimmigrant under subsection (a)(1) of this section to par-  
10 ticipate in a program of graduate medical education or training:

11 (1) A school of medicine or of another health profession accredited  
12 by a body approved by the Secretary of Education must agree in writ-  
13 ing to provide the graduate medical education or training under the  
14 program for which the alien is coming to the United States or to ar-  
15 range for an appropriate public or nonprofit private agency or institu-  
16 tion to provide the education or training. Before making the agree-  
17 ment, the school must be satisfied that the alien satisfies paragraph  
18 (2) of this subsection. If the agreement is by a school of medicine, any  
19 of its affiliated hospitals that will participate in providing the education  
20 or training must be a party to the agreement.

21 (2) The alien must—

22 (A) have graduated from a school of medicine accredited by a  
23 body approved by the Secretary of Education (regardless of wheth-  
24 er the school is in the United States); or

25 (B)(i) have passed parts I and II of the National Board of Med-  
26 ical Examiners Examination or an examination the Secretary of  
27 Health and Human Services decides is equivalent;

28 (ii) be competent in oral and written English;

29 (iii) be able to adapt to the educational and cultural environ-  
30 ment in which the alien will be receiving the education or training;  
31 and

32 (iv) have adequate prior education and training to participate  
33 satisfactorily in the program.

34 (3) The government of the foreign country of the alien's nationality  
35 or last residence must provide a written assurance satisfactory to the  
36 Secretary of Health and Human Services that the country needs indi-  
37 viduals with the skills the alien will acquire in the program.

38 (4) The alien must agree to return to the foreign country of the  
39 alien's nationality or last residence on completing the program.

1 (5) The alien must give the Attorney General annually an affidavit  
 2 (in the form prescribed by the Attorney General) attesting that the  
 3 alien—

4 (A) is in good standing in the program; and

5 (B) will return to the foreign country of the alien's nationality  
 6 or last residence on completing the program.

7 (6) The alien's participation in the program is limited to the period  
 8 typically required to complete the program, as determined by the Direc-  
 9 tor at the time the alien enters the United States. The Director shall  
 10 base the determination on criteria, established in coordination with the  
 11 Secretary of Health and Human Services, that consider the published  
 12 requirements of the medical specialty board administering the program.  
 13 However—

14 (A) the period may be more than 7 years only if the alien satis-  
 15 fies the Director that the foreign country to which the alien will  
 16 return on completing the program has an exceptional need for an  
 17 individual with the skills the alien will acquire in the program; and

18 (B) the alien may change programs once within the first 2 years  
 19 after entering the United States (or after being reclassified) as a  
 20 nonimmigrant under subsection (a) of this section if the Director  
 21 approves the change and a written assurance and an agreement  
 22 are given for the new program as provided by paragraphs (3) and  
 23 (4) of this subsection.

24 (c) SATISFACTION OF REQUIREMENTS BY CERTAIN MEDICAL SCHOOL  
 25 GRADUATES.—An alien who is a graduate of a medical school satisfies sub-  
 26 section (b)(2)(B)(i) of this section if the alien on January 9, 1978—

27 (1) was completely and permanently licensed to practice medicine in  
 28 a State; and

29 (2) was practicing medicine in a State.

30 (d) REPORT ON AFFIDAVITS.—The Director shall submit to Congress  
 31 each year a report on aliens who have submitted affidavits under subsection  
 32 (b)(5) of this section. The report shall include the name and address of each  
 33 alien, the program of graduate medical education or training in which the  
 34 alien is participating, and the status of the alien in the program.

35 **§2313. Aliens employed temporarily in specialty occupa-**  
 36 **tions or as fashion models**

37 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
 38 tion if the alien is—

39 (1) coming to the United States temporarily to be employed—

40 (A) in a specialty occupation (except as a registered nurse dur-  
 41 ing the period specified by section 2325(c) of this title or to per-

1 form services described by section 2314, 2318, or 2319 of this  
2 title) that requires theoretical and practical application of a body  
3 of highly specialized knowledge and a bachelor's, or higher, degree  
4 in the specialty, or its equivalent, as a minimum for entry into the  
5 occupation in the United States and who—

6 (i) is fully licensed by a State to practice the occupation  
7 if a license is required to practice that occupation;

8 (ii) has completed the degree described by this subclause  
9 (A) of this paragraph for that occupation; or

10 (iii) has experience in the specialty equivalent to the com-  
11 pletion of that degree and recognition of expertise in the spe-  
12 cialty through progressively more responsible positions related  
13 to the specialty; and

14 (B) for whom the Secretary of Labor has certified to the Attor-  
15 ney General that the employer intending to employ the alien has  
16 filed with the Secretary an application under subsection (d) of this  
17 section;

18 (2)(A) coming to the United States temporarily to be employed as  
19 a fashion model and demonstrates distinguished merit and ability; and

20 (B) for whom the Secretary of Labor has certified to the Attorney  
21 General that the employer intending to employ the alien has filed with  
22 the Secretary an application under subsection (d) of this section; or

23 (3) the spouse or child of an alien described by clause (1) or (2) of  
24 this subsection if accompanying or following to join the alien.

25 (b) NUMERICAL AND TIME LIMITATIONS.—(1) The total number of aliens  
26 who may be issued visas or classified as nonimmigrants under subsection  
27 (a)(1) and (2) of this section during a fiscal year may be not more than  
28 65,000. Those aliens shall be issued visas or classified as a nonimmigrant  
29 under that subsection in the order in which petitions are filed for those visas  
30 or that classification.

31 (2) An alien classified as a nonimmigrant under subsection (a)(1) or (2)  
32 of this section may be admitted to the United States for not more than 6  
33 years.

34 (c) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien apply-  
35 ing to be classified as a nonimmigrant under subsection (a)(1) or (2) this  
36 section only after the Attorney General approves a petition filed by the pro-  
37 spective employer. The petition must be in the form and contain the infor-  
38 mation the Attorney General prescribes. Before approving a petition, the At-  
39 torney General shall consult with the heads of appropriate agencies. Ap-  
40 proval of the petition does not establish by itself that the alien is a non-  
41 immigrant.

1 (2) If a petition is filed and denied under this subsection, the Attorney  
2 General shall notify the petitioner of the decision and the reasons for the  
3 denial and the way in which the petitioner may appeal the decision.

4 (d) EMPLOYER APPLICATION REQUIREMENT.—An alien may be classified  
5 as a nonimmigrant under subsection (a)(1) or (2) of this section only if the  
6 employer files an application with the Secretary of Labor as required by sec-  
7 tion 2351 of this title.

8 (e) LIMITATIONS ON CLASSIFICATION AND ADMISSION OF MEDICAL  
9 SCHOOL GRADUATES.—An alien who is a graduate of a medical school and  
10 is coming to the United States to perform services as a member of the medi-  
11 cal profession may be classified and admitted as a nonimmigrant under sub-  
12 section (a)(1) or (2) of this section only if the alien—

13 (1) has been invited by a public or nonprofit private educational or  
14 research institution or agency in the United States to come to the  
15 United States to teach or conduct research, or both, at or for the insti-  
16 tution or agency; or

17 (2)(A) has passed the licensing examination administered by the  
18 Federation of State Medical Boards of the United States or an exam-  
19 ination the Secretary of Health and Human Services decides is equiva-  
20 lent; and

21 (B)(i) is competent in oral and written English; or

22 (ii) is a graduate of a medical school that is accredited by a body  
23 approved by the Secretary of Education (regardless of whether the  
24 school is in the United States).

25 (f) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—In  
26 obtaining a visa or obtaining or maintaining the classification as a non-  
27 immigrant under in subsection (a)(1) or (2) of this section, the fact that  
28 an alien has applied for a classification under subchapter I of chapter 43  
29 of this title or otherwise has sought permanent residence in the United  
30 States is not evidence of an intention to abandon a residence in a foreign  
31 country if the alien had obtained a change of classification under section  
32 9108 of this title to a classification as such a nonimmigrant before the  
33 alien's most recent departure from the United States.

34 **§ 2314. Temporary and seasonal agricultural employees**

35 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
36 tion if the alien—

37 (1)(A) has a residence in a foreign country that the alien has no in-  
38 tention of abandoning; and

39 (B) is coming to the United States temporarily to perform temporary  
40 or seasonal agricultural labor or services as defined by the Secretary  
41 of Labor by regulation, including agricultural labor as defined by sec-

1 tion 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C.  
2 3121(g)) and agriculture as defined by section 3(f) of the Fair Labor  
3 Standards Act of 1938 (29 U.S.C. 203(f)); or

4 (2) is the spouse or child of an alien described by clause (1) of this  
5 subsection if accompanying or following to join the alien.

6 (b) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien apply-  
7 ing to be classified as a nonimmigrant under subsection (a)(1) of this sec-  
8 tion only after the Attorney General approves a petition filed by the pro-  
9 spective employer. The petition must be in the form and contain the infor-  
10 mation the Attorney General prescribes. Before approving a petition, the At-  
11 torney General shall consult with the heads of appropriate agencies, includ-  
12 ing the Secretaries of Labor and Agriculture. The Attorney General may ap-  
13 prove the petition only if the Secretary of Labor has issued a certification  
14 under section 2504 of this title. Approval of the petition does not establish  
15 by itself that the alien is a nonimmigrant.

16 (2) If a petition is filed and denied under this subsection, the Attorney  
17 General shall notify the petitioner of the decision and the reasons for the  
18 denial and the way in which the petitioner may appeal the decision.

19 **§ 2315. Aliens performing labor or services for which United**  
20 **States workers are unavailable**

21 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
22 tion if the alien—

23 (1)(A) is not a graduate of a medical school coming to the United  
24 States to perform services as a member of the medical profession;

25 (B) has a residence in a foreign country that the alien has no inten-  
26 tion of abandoning; and

27 (C) is coming to the United States temporarily to perform temporary  
28 labor or services (except labor or services described by section 2314 of  
29 this title) for which unemployed workers able to perform the labor or  
30 services are unavailable in the United States; or

31 (2) is the spouse or child of an alien described by clause (1) of this  
32 subsection if accompanying or following to join the alien.

33 (b) NUMERICAL LIMITATIONS.—The total number of aliens who may be  
34 issued visas or classified as nonimmigrants under subsection (a)(1) of this  
35 section during a fiscal year may be not more than 66,000. Those aliens shall  
36 be issued visas or classified as such a nonimmigrant in the order in which  
37 petitions are filed for those visas or that classification.

38 (c) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien apply-  
39 ing to be classified as a nonimmigrant under subsection (a)(1) of this sec-  
40 tion only after the Attorney General approves a petition filed by the pro-  
41 spective employer. The petition must be in the form and contain the infor-

1 information the Attorney General prescribes. Before approving a petition, the At-  
2 torney General shall consult with the heads of appropriate agencies. Ap-  
3 proval of the petition does not establish by itself that the alien is a non-  
4 immigrant.

5 (2) If a petition is filed and denied under this subsection, the Attorney  
6 General shall notify the petitioner of the decision and the reasons for the  
7 denial and the way in which the petitioner may appeal the decision.

8 (d) EMPLOYMENT IN THE VIRGIN ISLANDS.—The Attorney General may  
9 approve a petition filed for an alien applying to be classified as a non-  
10 immigrant under subsection (a)(1) of this section for employment in the  
11 Virgin Islands only—

12 (1) if the alien is to be employed as an entertainer or athlete; and

13 (2) for not more than 45 days.

14 **§ 2316. Aliens receiving training**

15 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
16 tion if the alien—

17 (1)(A) has a residence in a foreign country that the alien has no in-  
18 tention of abandoning; and

19 (B) is coming to the United States temporarily to receive training  
20 (except graduate medical education or training) in a training program  
21 that is not designed primarily to provide productive employment; or

22 (2) is the spouse or child of an alien described by clause (1) of this  
23 section if accompanying or following to join the alien.

24 (b) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien apply-  
25 ing to be classified as a nonimmigrant under subsection (a)(1) of this sec-  
26 tion only after the Attorney General approves a petition filed by the pro-  
27 spective employer. The petition must be in the form and contain the infor-  
28 mation the Attorney General prescribes. Before approving a petition, the At-  
29 torney General shall consult with the heads of appropriate agencies. Ap-  
30 proval of the petition does not establish by itself that the alien is a non-  
31 immigrant.

32 (2) If a petition is filed and denied under this subsection, the Attorney  
33 General shall notify the petitioner of the decision and the reasons for the  
34 denial and the way in which the petitioner may appeal the decision.

35 **§ 2317. Intra-company transferees**

36 (a) GENERAL.—(1) An alien is classified as a nonimmigrant under this  
37 section if the alien—

38 (A) within the 3 years before applying for admission, has been em-  
39 ployed continuously for at least one year by a corporation or other legal  
40 entity or an affiliate or subsidiary of the entity and is coming to the

1 United States temporarily to continue employment with the same em-  
2 ployer or an affiliate or subsidiary of the entity—

3 (i) in an executive or managerial capacity; or

4 (ii) that involves a specialized knowledge of the product of the  
5 entity, affiliate, or subsidiary and its application in international  
6 markets or an advanced level of knowledge of processes and proce-  
7 dures of the entity, affiliate, or subsidiary; or

8 (B) is the spouse or child of an alien described by clause (A) of this  
9 paragraph if accompanying or following to join the alien.

10 (2) The period of admission for an alien classified as a nonimmigrant  
11 under—

12 (A) paragraph (1)(A)(i) of this subsection may be not more than 7  
13 years; and

14 (B) paragraph (1)(A)(ii) of this subsection may be not more 5 years.

15 (3) In applying paragraph (1) of this subsection, a partnership or similar  
16 organization organized outside the United States to provide accounting serv-  
17 ices is deemed to be an affiliate of a partnership organized in the United  
18 States to provide accounting services if—

19 (A) the partnership or similar organization organized outside the  
20 United States markets its accounting services under an internationally  
21 recognized name under an agreement with a worldwide coordinating or-  
22 ganization owned and controlled by the member accounting firms of  
23 which the United States partnership is also a member; and

24 (B) the United States partnership markets its accounting services  
25 under the same internationally recognized name under an agreement  
26 with the worldwide coordinating organization.

27 (b) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien apply-  
28 ing to be classified as a nonimmigrant under subsection (a)(1)(A) of this  
29 section only after the Attorney General approves a petition filed by the pro-  
30 spective employer. The petition must be in the form and contain the infor-  
31 mation the Attorney General prescribes. Before approving a petition, the At-  
32 torney General shall consult with the heads of appropriate agencies. Ap-  
33 proval of the petition does not establish by itself that the alien is a non-  
34 immigrant.

35 (2) The Attorney General shall establish a procedure under which an em-  
36 ployer that meets the requirements the Attorney General prescribes may file  
37 a petition for more than one alien applying to be classified as a non-  
38 immigrant under subsection (a)(1)(A) of this section instead of filing indi-  
39 vidual petitions under paragraph (1) of this subsection for those aliens. The  
40 procedure shall allow the expedited processing of visas for the entry of  
41 aliens under such a petition.

1 (3) The Attorney General shall provide for a procedure for reviewing and  
 2 acting on petitions filed under this subsection not later than 30 days after  
 3 the date a completed petition is filed.

4 (4) If a petition is filed and denied under this subsection, the Attorney  
 5 General shall notify the petitioner of the decision and the reasons for the  
 6 denial and the way in which the petitioner may appeal the decision.

7 (c) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—In  
 8 obtaining a visa or obtaining or maintaining the classification as a non-  
 9 immigrant under subsection (a)(1)(A) of this section, the fact that an alien  
 10 has applied for a classification under subchapter I of chapter 43 of this title  
 11 or otherwise has sought permanent residence in the United States is not  
 12 evidence of an intention to abandon a residence in a foreign country if the  
 13 alien has obtained a change of classification under section 9108 of this title  
 14 to a classification as such a nonimmigrant before the alien's most recent  
 15 departure from the United States.

16 **§ 2318. Aliens with extraordinary ability or with distinction**  
 17 **in the arts, motion pictures, or television**

18 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
 19 tion if the alien—

20 (1)(A)(i) has extraordinary ability in the sciences, education, busi-  
 21 ness, or athletics as demonstrated by sustained national or inter-  
 22 national acclaim;

23 (ii) is distinguished in the arts as demonstrated by sustained na-  
 24 tional or international acclaim; or

25 (iii) with regard to motion picture and television productions has  
 26 demonstrated a record of extraordinary achievement and whose achieve-  
 27 ments have been recognized in the field through extensive documenta-  
 28 tion; and

29 (B) is coming to the United States to continue work in that field  
 30 of extraordinary ability or distinction;

31 (2) has a residence in a foreign country that the alien has no inten-  
 32 tion of abandoning and—

33 (A) is coming to the United States temporarily and only to ac-  
 34 company and assist an alien classified under clause (1) of this sub-  
 35 section in the artistic or athletic performance for any specific  
 36 event;

37 (B) is an integral part of the actual performance; and

38 (C)(i) has critical skills and experience with the alien admitted  
 39 under clause (1) of this section that are not general in nature and  
 40 that cannot be performed by other individuals; or

1 (ii) for a motion picture or television production, has skills and  
 2 experience with the alien admitted under clause (1) of this sub-  
 3 section that are not general in nature and are critical because of  
 4 a longstanding working relationship or, for a specific production,  
 5 because significant production (including pre-production and post-  
 6 production work) will take place both inside and outside the Unit-  
 7 ed States and the continuing participation of the alien described  
 8 by this clause is essential to the successful completion of the pro-  
 9 duction; or

10 (3) is the spouse or child of an alien described by clause (1) or (2)  
 11 of this subsection if accompanying or following to join the alien.

12 (b) PERIOD OF ADMISSION.—An alien classified as a nonimmigrant under  
 13 this section may be admitted for the period the Attorney General specifies  
 14 to provide for any event for which the nonimmigrant is admitted.

15 (c) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien apply-  
 16 ing to be classified as a nonimmigrant under subsection (a)(1) or (2) of this  
 17 section only after the Attorney General approves a petition filed by the pro-  
 18 spective employer. The petition must be in the form and contain the infor-  
 19 mation the Attorney General prescribes. Before approving a petition, the At-  
 20 torney General shall consult with the heads of appropriate agencies. Ap-  
 21 proval of the petition does not establish by itself that the alien is a non-  
 22 immigrant.

23 (2) If a petition is filed and denied under this subsection, the Attorney  
 24 General shall notify the petitioner of the decision and the reasons for the  
 25 denial and the way in which the petitioner may appeal the decision.

26 (d) CONSULTATION REQUIREMENTS.—The Attorney General may approve  
 27 a petition under subsection (c)(1) of this section only after the petitioner  
 28 satisfies the consultation requirements of section 2352 of this title.

29 **§ 2319. Athletes and entertainers**

30 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
 31 tion if the alien—

32 (1) has a residence in a foreign country that the alien has no inten-  
 33 tion of abandoning who—

34 (A)(i) performs as an athlete, individually or as a member of  
 35 a group or team, at an internationally recognized level of perform-  
 36 ance; and

37 (ii) is coming to the United States temporarily and only to per-  
 38 form as an athlete for a specific athletic competition;

39 (B)(i) performs with, or is an integral and essential part of the  
 40 performance of, an entertainment group that, except as provided  
 41 by section 2353(b)(1)(A) of this title, has been recognized inter-

1 nationally as being outstanding in the discipline for a sustained  
2 and substantial period of time;

3 (ii) if a performer or entertainer, except as provided by section  
4 2353(b)(1)(B) and (2) of this title, has had a sustained and sub-  
5 stantial relationship with that group (ordinarily for at least one  
6 year) and performs functions integral to the performance of the  
7 group; and

8 (iii) is coming to the United States temporarily and only to per-  
9 form as such a performer or entertainer or as an integral and es-  
10 sential part of a performance;

11 (C)(i) performs as an artist or entertainer, individually or as a  
12 member of a group, or is an integral part of the performance of  
13 that group; and

14 (ii) is coming to the United States temporarily and only to per-  
15 form as such an artist or entertainer or with that group under a  
16 reciprocal exchange program between an organization in the Unit-  
17 ed States and an organization in a foreign country that provides  
18 for the temporary exchange of artists and entertainers; or

19 (D)(i) performs as an artist or entertainer, individually or as a  
20 member of a group, or is an integral part of the performance of  
21 that group; and

22 (ii) is coming to the United States temporarily and only to per-  
23 form, teach, or coach as such an artist or entertainer or with that  
24 group under a commercial or non-commercial program that is cul-  
25 turally unique; or

26 (2) is the spouse or child of an alien described by clause (1) of this  
27 section if accompanying or following to join the alien.

28 (b) PERIOD OF ADMISSION.—(1) Except as provided by paragraph (2) of  
29 this subsection, an alien classified as a nonimmigrant under this section  
30 may be admitted for the period the Attorney General specifies in order to  
31 provide for any competition, event, or performance for which the non-  
32 immigrant is admitted.

33 (2) An alien classified as a nonimmigrant under this section and admitted  
34 as an individual athlete may be admitted for an initial period of not more  
35 than 5 years during which the nonimmigrant will perform as an athlete. The  
36 Attorney General may extend that period for an additional period of not  
37 more than 5 years.

38 (c) PETITIONS.—(1) A person may petition the Attorney General for clas-  
39 sification of an alien as a nonimmigrant under this section.

40 (2) A visa may be granted to an alien applying to be classified as a non-  
41 immigrant under subsection (a)(1)(A) or (B) of this section only after the

1 Attorney General approves a petition filed by the prospective employer. The  
 2 petition must be in the form and contain the information the Attorney Gen-  
 3 eral prescribes. Before approving a petition, the Attorney General shall con-  
 4 sult with the heads of appropriate agencies. Approval of the petition does  
 5 not establish by itself that the alien is a nonimmigrant.

6 (3) If a petition is filed and denied under this subsection, the Attorney  
 7 General shall notify the petitioner of the decision and the reasons for the  
 8 denial and the way in which the petitioner may appeal the decision.

9 (d) CONSULTATION REQUIREMENTS.—The Attorney General may approve  
 10 a petition under subsection (c) of this section only after the petitioner satis-  
 11 fies the consultation requirements of section 2353 of this title.

12 **§ 2320. Participants in international exchange programs**

13 An alien is classified as a nonimmigrant under this section if the alien—

14 (1) has a residence in a foreign country that the alien has no inten-  
 15 tion of abandoning;

16 (2) is coming to the United States for a period of not more than  
 17 15 months to participate in an international cultural exchange program  
 18 approved by the Attorney General that provides practical training, em-  
 19 ployment, and the sharing of history, culture, and traditions of the for-  
 20 eign country of the alien's nationality; and

21 (3) will be employed for the same wages and under the same working  
 22 conditions as United States workers.

23 **§ 2321. Aliens in religious occupations**

24 An alien is classified as a nonimmigrant under this section if the alien—

25 (1)(A) for the 2 years immediately before the alien's application for  
 26 admission, has been a member of a religious denomination that has a  
 27 nonprofit religious organization in the United States; and

28 (B) is coming to the United States for a period of not more than  
 29 5 years to perform work described by section 137(a)(3)(ii)(I), (II), or  
 30 (III) of this title; or

31 (2) is the spouse or child of an alien described by clause (1) of this  
 32 section if accompanying or following to join the alien.

33 **§ 2322. Participants in cooperative research, development,  
 34 and coproduction projects**

35 (a) GENERAL.—On a reciprocal basis, an alien is classified as a non-  
 36 immigrant under this section if the alien—

37 (1)(A) has a residence in a foreign country that the alien has no in-  
 38 tention of abandoning; and

39 (B) is coming to the United States for not more than 10 years to  
 40 provide services of an exceptional nature requiring merit and ability re-  
 41 lated to a cooperative research and development project or a

1 coproduction project provided under a government-to-government  
2 agreement carried out by the Secretary of Defense; or

3 (2) is the spouse or child of an alien described by clause (1) of this  
4 section if accompanying or following to join the alien.

5 (b) NUMERICAL LIMITATION.—Not more than 100 aliens classified as  
6 nonimmigrants under this section may be admitted to the United States at  
7 any time.

### 8 **§ 2323. Participants in special education programs**

9 (a) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
10 tion if the alien—

11 (1)(A) has a residence in a foreign country that the alien has no in-  
12 tention of abandoning; and

13 (B) is coming to the United States for not more than 18 months  
14 to participate in a special education training program that provides  
15 practical training and experience in educating children with physical,  
16 mental, or emotional disabilities; or

17 (2) is the spouse or child of an alien described by clause (1) of this  
18 section if accompanying or following to join the alien.

19 (b) NUMERICAL LIMITATION.—Not more than 50 aliens classified as  
20 nonimmigrants under this section may be admitted to the United States in  
21 a fiscal year.

### 22 **§ 2324. Relatives of special immigrants**

23 An alien is classified as a nonimmigrant under this section if the alien  
24 is—

25 (1) the parent of an alien who is a special immigrant as defined by  
26 section 137(a)(9) of this title, but only when the alien is a child; or

27 (2) a child of—

28 (A) a parent described by clause (1) of this section; or

29 (B) an alien who is a special immigrant as defined by section  
30 137(a)(10) or (11) of this title.

### 31 **§ 2325. Registered nurses**

32 (a) DEFINITION.—In this section, “facility” includes an employer that  
33 employs registered nurses in a home setting.

34 (b) GENERAL.—An alien is classified as a nonimmigrant under this sec-  
35 tion if the alien—

36 (1)(A) is coming to the United States temporarily to perform serv-  
37 ices as a registered nurse;

38 (B) has obtained a full and unrestricted license to practice profes-  
39 sional nursing in the foreign country in which the alien obtained nurs-  
40 ing education or has received nursing education in the United States  
41 or Canada;

1 (C) has passed an appropriate examination (recognized in regula-  
2 tions prescribed in consultation with the Secretary of Health and  
3 Human Services) or has a full and unrestricted license under State law  
4 to practice professional nursing in the State of intended employment;

5 (D) is fully qualified and eligible under the laws (including tem-  
6 porary licensing requirements authorizing the nurse to be employed)  
7 governing the place of intended employment to engage in the practice  
8 of professional nursing as a registered nurse immediately on admission  
9 to the United States and is authorized under those laws to be employed  
10 by the facility; and

11 (E) is one for whom the Secretary of Labor has certified to the At-  
12 torney General that each facility (including the petitioner under sub-  
13 section (c)(1) of this section and each worksite, except a private house-  
14 hold worksite, that is not the alien's employer or controlled by the em-  
15 ployer) at which the alien will perform the services has an attestation  
16 on file and in effect under section 2902 of this title; or

17 (2) is the spouse or child of an alien described by clause (1) of this  
18 subsection if accompanying or following to join the alien.

19 (c) EMPLOYER PETITIONS.—(1) A visa may be granted to an alien apply-  
20 ing to be classified as a nonimmigrant under subsection (b)(1) of this sec-  
21 tion only after the Attorney General approves a petition filed by the pro-  
22 spective employer. The Attorney General may approve a petition filed under  
23 this section only if the petition is filed during the period from September  
24 1, 1990, through August 31, 1995. The petition must be in the form and  
25 contain the information the Attorney General prescribes. Before approving  
26 a petition, the Attorney General shall consult with the heads of appropriate  
27 agencies. Approval of a petition does not establish by itself that the alien  
28 is a nonimmigrant.

29 (2) If a petition is filed and denied under this subsection, the Attorney  
30 General shall notify the petitioner of the decision and the reasons for the  
31 denial and the way in which the petitioner may appeal the decision.

32 (d) PERIOD OF ADMISSION.—An alien classified as a nonimmigrant under  
33 this section may be admitted for an initial period of not more than 3 years.  
34 The initial period may be extended for one or more periods, but the total  
35 period of admission may not be more than 5 years (or 6 years if the Attor-  
36 ney General decides there are extraordinary circumstances).

37 (e) INTENTION TO ABANDON RESIDENCE IN A FOREIGN COUNTRY.—In  
38 obtaining a visa or obtaining or maintaining the classification as a non-  
39 immigrant under this section, the fact that an alien has applied for a classi-  
40 fication under subchapter I of chapter 43 of this title or otherwise has  
41 sought permanent residence in the United States is not evidence of an in-

1     tention to abandon a residence in a foreign country if the alien has obtained  
 2     a change of classification under section 9108 to a classification as such a  
 3     nonimmigrant before the alien's most recent departure from the United  
 4     States.

5                   SUBCHAPTER II—SPECIAL REQUIREMENTS

6     **§2351. Employer applications for aliens employed tempo-**  
 7                   **rarily in specialty occupations or as fashion mod-**  
 8                   **els**

9           (a) GENERAL.—An alien may be classified and admitted to the United  
 10     States as a nonimmigrant under section 2313(a)(1) or (2) of this title only  
 11     if the employer files an application with the Secretary of Labor stating the  
 12     following:

13           (1) The employer—

14                   (A) during the period of authorized employment, is offering and  
 15                   will offer the alien classified or admitted as a nonimmigrant under  
 16                   section 2313(a)(1) or (2) of this title wages that, based on the  
 17                   best information available at the time the application is filed, are  
 18                   at least the greater of—

19                           (i) the actual wage level paid by the employer to all other  
 20                           individuals with similar experience and qualifications for the  
 21                           specific employment in question; or

22                           (ii) the prevailing wage level of the occupational classifica-  
 23                           tion in the area of employment; and

24                   (B) will provide working conditions for the nonimmigrant that  
 25                   will not adversely affect the working conditions of workers simi-  
 26                   larly employed.

27           (2) There is no strike or lockout during a labor dispute in the occu-  
 28     pational classification at the place of employment.

29           (3) At the time the application was filed, the employer—

30                   (A) provided notice of the filing of an application under this  
 31                   subsection to the bargaining representative of the employer's em-  
 32                   ployees in the occupational classification and area for which aliens  
 33                   are sought; or

34                   (B) if there is no bargaining representative, posted notice of the  
 35                   filing in conspicuous locations at the place of employment.

36           (4) There is a specification of the number of workers sought, the oc-  
 37     cupational classification in which the workers will be employed, and  
 38     wage rate and conditions under which they will be employed.

39           (b) PUBLIC AVAILABILITY OF APPLICATIONS AND APPLICATION LISTS.—

40           (1) Not later than one working day after the date on which an application  
 41     under this subsection is filed, the employer shall make available for public

1 examination at the employer's principal place of business or worksite a copy  
2 of each application filed under subsection (a) of this section and necessary  
3 accompanying documentation.

4 (2) On a current basis and by employer and occupational classification,  
5 the Secretary shall compile a list of the applications filed. That list shall  
6 include the wage rate, number of aliens sought, period of intended employ-  
7 ment, and the date of need. The Secretary shall make that list available for  
8 public examination in the District of Columbia.

9 (c) SECRETARIAL REVIEW OF APPLICATIONS.—The Secretary shall re-  
10 view an application only for completeness and obvious inaccuracies. Unless  
11 the Secretary finds that the application is incomplete or obviously inac-  
12 curate, the Secretary shall make the certification described by section  
13 2313(a)(1)(B) or (2)(B) of this title not later than 7 days after the date  
14 the application is filed.

15 (d) FAILURE TO MEET APPLICATION CONDITIONS AND MISREPRESENTA-  
16 TIONS.—(1) The Secretary shall establish a procedure for receiving, inves-  
17 tigating, and disposing of complaints about a petitioner's failure to meet a  
18 condition specified by an application submitted under subsection (a) of this  
19 section or a petitioner's misrepresentation of a material fact in that applica-  
20 tion. An adversely affected person (including a bargaining representative)  
21 may file a complaint under this subsection but the complaint must be filed  
22 not later than 12 months after the date of the failure or misrepresentation.  
23 The Secretary shall conduct an investigation as provided by this subsection  
24 if there is reasonable cause to believe that a failure or misrepresentation has  
25 occurred.

26 (2) Not later than 30 days after the date a complaint is filed, the Sec-  
27 retary shall decide whether a reasonable basis exists to make a finding  
28 under paragraph (3) or (4) of this subsection. If the Secretary decides that  
29 a reasonable basis exists, the Secretary shall provide interested parties no-  
30 tice and an opportunity for a hearing under section 556 of title 5 about  
31 the complaint not later than 60 days after deciding that a reasonable basis  
32 exists. If a hearing is requested, the Secretary shall make a finding about  
33 the complaint not later than 60 days after the date of the hearing. The Sec-  
34 retary may consolidate hearings on similar complaints about the same appli-  
35 cant.

36 (3) If the Secretary finds, after notice and an opportunity for a hearing  
37 under paragraph (2) of this subsection, that there has been a failure to  
38 meet a condition of subsection (a)(2) of this section, a substantial failure  
39 to meet a condition described by subsection (a)(3) or (4) of this section, a  
40 willful failure to meet a condition of subsection (a)(1) of this section, or  
41 misrepresentation of a material fact in an application—

1 (A) the Secretary shall notify the Attorney General of that finding  
2 and may impose administrative remedies the Secretary decides are ap-  
3 propriate, including a penalty of not more than \$1,000 for each viola-  
4 tion; and

5 (B) the Attorney General may not approve a petition filed by the em-  
6 ployer under section 2352 of this title or subchapter I of chapter 43  
7 for at least one year.

8 (4) If the Secretary finds after notice and an opportunity for a hearing  
9 under paragraph (2) of this subsection that an employer has not paid wages  
10 at the wage level specified under the application and required under sub-  
11 section (a)(1) of this section, the Secretary shall order the employer to pro-  
12 vide back pay required to comply with subsection (a)(1) in addition to any  
13 other penalty imposed under paragraph (3) of this subsection.

14 **§2352. Advisory opinions for aliens with extraordinary abil-**  
15 **ity or with distinction in the arts, motion pictures,**  
16 **or television**

17 (a) GENERAL REQUIREMENTS.—(1) The Attorney General may approve  
18 a petition—

19 (A) for an alien applying to be classified as a nonimmigrant under  
20 section 2318(a)(1)(A)(i) or (ii) of this title, only after the petitioner  
21 consults with a peer group or other person (including a labor organiza-  
22 tion) the alien chooses with expertise in the specific field involved by  
23 submitting with the petition an advisory opinion from that group or  
24 person;

25 (B) for an alien applying to be classified as a nonimmigrant under  
26 section 2318(a)(2)(A)–(C)(i) of this title, only after the petitioner  
27 consults with a labor organization with expertise in the area of the  
28 skills and experience involved by submitting with the petition with an  
29 advisory opinion from that labor organization; or

30 (C) for an alien applying to be classified as a nonimmigrant under  
31 section 2318(a)(1)(A)(iii) or (2)(C)(ii) of this title for a motion picture  
32 or television production, after consulting with the appropriate labor or-  
33 ganization representing the alien’s occupational peers and a manage-  
34 ment organization in the area of the alien’s ability.

35 (2) An opinion by a labor organization about an alien referred to in para-  
36 graph (1)(C) of this subsection trying to enter the United States for a mo-  
37 tion picture or television production is advisory only. An opinion rec-  
38 ommending denial of an application for that alien must be in writing. In  
39 making a decision on the petition, the Attorney General shall consider the  
40 exigencies and scheduling of the production. The Attorney General shall at-  
41 tach any advisory opinion to that decision.

1 (3)(A) If a petitioner does not submit an advisory opinion from the ap-  
2 propriate labor organization as required by paragraph (1)(A) or (B) of this  
3 subsection, the Attorney General shall forward a copy of the petition and  
4 supporting documents to the national office of an appropriate labor organi-  
5 zation not later than 5 days after receiving the petition. If the employer's  
6 employees in the occupational classification for which the alien is being  
7 sought have a collective bargaining representative, that representative is the  
8 appropriate labor organization.

9 (B) A person or organization receiving a copy of a petition as provided  
10 by subparagraph (A) of this paragraph has not more than 15 days after  
11 receiving the petition to submit a written advisory opinion or provide a let-  
12 ter stating that the person or organization has no objection. At the end of  
13 the 15-day period, the Attorney General shall give the petitioner an oppor-  
14 tunity, when appropriate, to provide rebuttal evidence. The Attorney Gen-  
15 eral shall act on the petition not later than 14 days after the end of the  
16 15-day period, or if rebuttal evidence is provided, not later than 14 days  
17 after receiving that evidence. The Attorney General may shorten a time pe-  
18 riod under this paragraph for emergency reasons unless the shorter period  
19 is an unreasonable burden on a participant in the process.

20 (4) If a petitioner referred to in paragraph (1)(A) or (B) of this sub-  
21 section establishes that an appropriate peer group (including a labor organi-  
22 zation) does not exist, the Attorney General shall act on the petition without  
23 requiring an advisory opinion.

24 (5) The Attorney General shall prescribe regulations to establish expe-  
25 dited consultation procedures for nonimmigrant—

26 (A) artists and entertainers described by section 2318 of this title  
27 to accommodate the exigencies and scheduling of a given production or  
28 event; and

29 (B) athletes described by section 2318(a)(1) of this title in the case  
30 of emergency circumstances, including trades during a season.

31 (6) Consultation with a nongovernmental entity does not authorize the  
32 Attorney General to delegate authority under this subsection to a non-  
33 governmental entity. The Attorney General shall give advisory opinions  
34 under this subsection the weight the Attorney General decides, in the Attor-  
35 ney General's sole discretion, is appropriate.

36 (b) WAIVERS.—The Attorney General shall prescribe regulations to pro-  
37 vide for the waiver of the consultation requirement under subsection  
38 (a)(1)(A) of this section for an alien admitted as a nonimmigrant under sec-  
39 tion 2318(a)(1)(A)(ii) of this title because of distinction in the arts and who  
40 is trying to be readmitted to perform similar services within 2 years after  
41 the date of a consultation under subsection (a)(1)(A) of this section. Not

1 later than 5 days after a waiver is provided, the Attorney General shall for-  
2 ward a copy of the petition and supporting documents to the national office  
3 of the appropriate labor organization.

4 **§ 2353. Advisory opinions for athletes and entertainers**

5 (a) GENERAL REQUIREMENTS.—(1) The Attorney General may approve  
6 a petition for an alien applying to be classified as a nonimmigrant—

7 (A) under section 2319(a)(1)(A), (B), or (D) of this title, only after  
8 the petitioner consults with a labor organization with expertise in the  
9 specific field of athletics or entertainment involved by submitting with  
10 the petition an advisory opinion from that labor organization; or

11 (B) under section 2319(a)(1)(C) of this title, only after consultation  
12 with labor organizations representing artists and entertainers in the  
13 United States.

14 (2) If a petitioner does not submit an advisory opinion from the appro-  
15 priate labor organization required by paragraph (1)(A) of this subsection,  
16 the Attorney General shall forward a copy of the petition and supporting  
17 documents to the national office of an appropriate labor organization not  
18 later than 5 days after receiving the petition. If the employer's employees  
19 in the occupational classification for which the alien is being sought have  
20 a collective bargaining representative, that representative is the appropriate  
21 labor organization.

22 (3) A person or organization receiving a copy of a petition as provided  
23 by paragraph (2) of this subsection has not more than 15 days after receiv-  
24 ing the petition to submit a written advisory opinion or provide a letter stat-  
25 ing that the person or organization has no objection. At the end of the 15-  
26 day period, the Attorney General shall give the petitioner an opportunity,  
27 when appropriate, to provide rebuttal evidence. The Attorney General shall  
28 act on the petition not later than 14 days after the end of the 15-day pe-  
29 riod, or if rebuttal evidence is provided, not later than 14 days after receiv-  
30 ing that evidence. The Attorney General may shorten a time period under  
31 this paragraph for emergency reasons unless the shorter period is an unrea-  
32 sonable burden on a participant in the process.

33 (4) If a petitioner referred to in paragraph (1)(A) of this subsection es-  
34 tablishes that an appropriate peer group (including a labor organization)  
35 does not exist, the Attorney General shall act on the petition without requir-  
36 ing an advisory opinion.

37 (5) The Attorney General shall prescribe regulations to establish exped-  
38 ited consultation procedures for nonimmigrant—

39 (A) artists and entertainers under section 2319 of this title to ac-  
40 commodate the exigencies and scheduling of a given production or  
41 event; and

1 (B) athletes described by section 2319(a)(1)(A) of this title in the  
2 case of emergency circumstances, including trades during a season.

3 (6) Consultation with a nongovernmental entity does not authorize the  
4 Attorney General to delegate authority under this subsection to a non-  
5 governmental entity. The Attorney General shall give advisory opinions  
6 under this subsection the weight the Attorney General decides, in the Attor-  
7 ney General's sole discretion, is appropriate.

8 (b) WAIVERS AND NONAPPLICATION.—(1) The Attorney General may  
9 waive—

10 (A) in consideration of special circumstances, the international rec-  
11 ognition requirement of section 2319(a)(1)(B)(i) of this title for an en-  
12 tertainment group that is recognized nationally as being outstanding in  
13 its discipline for a sustained and substantial period of time; and

14 (B) the one-year relationship requirement of section  
15 2319(a)(1)(B)(ii) of this title for an alien who—

16 (i) replaces an essential member of the group, because of illness  
17 or unanticipated or exigent circumstances; or

18 (ii) augments the group by performing a critical role.

19 (2) The one-year relationship requirement of section 2319(a)(1)(B)(ii) of  
20 this title does not apply to 25 percent of the performers in a group.

21 (3) The requirements of section 2319(a)(1)(B)(i) and (ii) of this title do  
22 not apply to an alien who performs as part of a circus or circus group or  
23 who is an integral and essential part of the performance of that circus or  
24 group, but only if the alien is coming to the United States to join a circus  
25 that has been recognized nationally as outstanding for a sustained and sub-  
26 stantial period of time or as part of such a circus.

27 **CHAPTER 25—TEMPORARY AGRICULTURAL WORKERS**

Sec.

2501. Definitions.

2502. Certification requirements.

2503. Applications for certification.

2504. Conditions for issuing certifications.

2505. Associations of agricultural producers.

2506. Housing.

2507. Expedited administrative review.

2508. Disqualification of aliens for violating conditions of prior admission.

2509. Enforcement authority of the Secretary of Labor.

2510. Endorsement of entry and exit documentation.

2511. Preemption of State and local law.

2512. Biennial reports.

2513. Approval of regulations.

2514. Authorization of appropriations.

28 **§ 2501. Definitions**

29 In this chapter—

30 (1) “temporary agricultural worker” means a nonimmigrant de-  
31 scribed by section 2314 of this title.

1           (2) “United States worker” means an individual who is not an unau-  
2           thorized alien (as defined by section 11101 of this title) with respect  
3           to particular employment.

4           **§ 2502. Certification requirements**

5           (a) REQUIREMENTS.—The Attorney General may approve a petition filed  
6           under section 2314 of this title by a prospective employer of an alien apply-  
7           ing to be classified as a temporary agricultural worker only if the Secretary  
8           of Labor, on application by the employer, has certified that—

9                 (1) there are not sufficient United States workers who are able, will-  
10              ing, and qualified, and who will be available at the time and place need-  
11              ed, to perform the labor or services described by the petition; and

12                 (2) employment of the alien to provide the labor or services will not  
13              affect adversely the wages and working conditions of United States  
14              workers similarly employed.

15           (b) REGULATIONS.—The Secretary shall prescribe regulations based on  
16           findings in furtherance of the policy that aliens be admitted as temporary  
17           agricultural workers only if the conditions specified by subsection (a) of this  
18           section are satisfied.

19           **§ 2503. Applications for certification**

20           (a) DEADLINE FOR FILING.—The Secretary of Labor may not require  
21           that an application for a certification under this chapter be filed more than  
22           60 days before the first date the employer requires the labor or services of  
23           a temporary agricultural worker.

24           (b) NOTICE OF DEFICIENCIES.—If an application does not meet the con-  
25           ditions for issuing a certification (except the conditions specified by section  
26           2502(a)(1) of this title), the Secretary shall—

27                 (1) notify the employer in writing not later than 7 days after the  
28              application is filed, giving the reasons the application does not meet the  
29              conditions; and

30                 (2) allow the employer to submit promptly an amended application.

31           (c) FEE.—The Secretary may prescribe by regulation a fee to cover the  
32           reasonable costs of processing an application for certification.

33           **§ 2504. Conditions for issuing certifications**

34           Not later than 20 days before the labor or services are first required, the  
35           Secretary of Labor shall issue a certification if the following conditions are  
36           met:

37                 (1) The conditions specified by section 2502(a) of this title are met.

38                 (2) The employer has complied with the requirements for certifi-  
39              cation, including requirements the Secretary prescribes for recruiting  
40              United States workers.

1 (3) The Secretary concludes that the employer has made positive re-  
2 3 4 5 6 7 8 9 10  
recruitment efforts within a multi-State region of traditional or expected  
labor supply in which the Secretary finds there are a significant num-  
ber of qualified United States workers who, if recruited, would be will-  
ing to 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 of the employer's job offer through  
the interstate employment service system. The requirement to engage  
in positive recruitment ends on the date the temporary agricultural  
workers depart for the employer's place of employment.

11 (4) The employer does not have, or has not been provided with refer-  
12 13 14 15 16 17 18  
rals of, qualified United States workers who have indicated their avail-  
ability to perform the labor or services on the terms of a job offer  
meeting the Secretary's requirements. In considering whether a specific  
qualification in a job offer is appropriate, the Secretary shall apply the  
normal and accepted qualifications required by employers not employ-  
ing temporary agricultural workers in the same or comparable occupa-  
tions and crops.

19 (5) The employer has provided the Secretary with satisfactory assur-  
20 21 22 23 24 25  
ances that if the employment for which the certification is sought is  
not covered by a State workers' compensation law, the employer will  
provide, at no cost to the worker, insurance covering injury and disease  
arising out of and during the worker's employment that will provide  
benefits at least equal to those provided under the State workers' com-  
pensation law for comparable employment.

26 (6) There is no strike or lockout during a labor dispute that, under  
27 regulations prescribed by the Secretary, precludes the certification.

28 (7) The employer employed temporary agricultural workers during  
29 the prior 2 years, and the Secretary has decided, after notice and an  
30 opportunity for a hearing on the record, that the employer during that  
31 period did not substantially violate a material condition of the certifi-  
32 cation related to the employment of nonimmigrant or United States  
33 workers. The Secretary may decide not to approve a certification for  
34 not more than 3 years for an employer who commits a violation de-  
35 scribed by this paragraph.

36 **§ 2505. Associations of agricultural producers**

37 (a) PERMITTED FILINGS.—An association of agricultural producers using  
38 agricultural services may file—

39 (1) a petition under section 2314 of this title for an alien applying  
40 to be classified as a temporary agricultural worker; and

41 (2) an application for a certification under this chapter.

1 (b) ASSOCIATIONS ACTING AS EMPLOYERS.—If an association referred to  
2 in subsection (a) of this section is the joint or sole employer of a temporary  
3 agricultural worker, a certification granted under this chapter to the asso-  
4 ciation may be used for the certified job opportunities of any of the mem-  
5 bers of the association. The worker may be transferred among the members  
6 to perform agricultural services of a temporary or seasonal nature for which  
7 the certification was granted.

8 (c) EFFECT OF VIOLATIONS.—(1) If the Secretary of Labor has decided  
9 that a member of an association that is a joint employer of a temporary  
10 agricultural worker has committed an act resulting in a decision by the Sec-  
11 retary not to approve a certification of the member under section 2504(7)  
12 of this title, the decision applies only to that member unless the Secretary  
13 decides that the association or another member participated in, or knew or  
14 had reason to know of, the violation.

15 (2) If the Secretary has decided that an association that is a joint em-  
16 ployer has committed an act resulting in a decision by the Secretary not  
17 to approve a certification of the association under section 2504(7) of this  
18 title, the decision applies only to the association unless the Secretary decides  
19 that a member participated in, or knew or had reason to know of, the viola-  
20 tion.

21 (3) If the Secretary has decided that an association, certified as the sole  
22 employer of a temporary agricultural worker, has committed an act result-  
23 ing in a decision by the Secretary not to approve a certification of the asso-  
24 ciation under section 2504(7) of this title, a member of the association, dur-  
25 ing the period the decision is in effect, may not be the beneficiary of the  
26 services of temporary agricultural workers in the commodity and occupation  
27 in which the worker was employed by the association whose certification was  
28 not approved, unless the member employs the workers in the commodity and  
29 occupation directly or through an association that is a joint employer of the  
30 workers with the member.

### 31 **§ 2506. Housing**

32 (a) REQUIREMENT.—An employer shall provide housing for temporary  
33 agricultural workers as provided by regulations prescribed by the Secretary  
34 of Labor.

35 (b) REGULATIONS.—(1) Regulations prescribed under this section shall  
36 allow the employer, at the employer's option, to provide housing meeting ap-  
37 plicable standards of the United States Government for temporary labor  
38 camps or to secure housing that meets applicable local standards for rental  
39 or public accommodations or other substantially similar class of habitation.  
40 In the absence of applicable local standards, State standards for those ac-  
41 commodated or that class of habitation shall apply. In the absence of ap-

1 plicable local and State standards, standards of the Government for tem-  
2 porary labor camps shall apply.

3 (2) The regulations shall include specific requirements about housing for  
4 employees principally engaged in the range production of livestock.

5 (3) When the prevailing practice in the area and occupation of intended  
6 employment is to provide family housing, the employer shall provide family  
7 housing to workers with families requesting it.

8 (c) EXCEPTION.—This section does not require an employer to provide  
9 housing for workers not entitled to it under the temporary labor certifi-  
10 cation regulations in effect on June 1, 1986.

### 11 **§ 2507. Expedited administrative review**

12 (a) PROCEDURE FOR EXPEDITED REVIEW.—Regulations prescribed by  
13 the Secretary of Labor under this chapter shall provide for an expedited  
14 procedure for a review of a decision of the Secretary not to approve or to  
15 revoke a certification or, at the applicant's request, a de novo administrative  
16 hearing on the record on the decision.

17 (b) DECISIONS ON AVAILABILITY OF UNITED STATES WORKERS.—(1)  
18 The Secretary shall make a new decision about an application for certifi-  
19 cation under this chapter expeditiously, but not later than 72 hours after  
20 the time the new decision is requested, if the certification originally was not  
21 approved in any part because of the availability of able, willing, and quali-  
22 fied United States workers and they are not available at the time the labor  
23 or services are needed.

24 (2) An employer asserting that a United States worker referred to the  
25 employer is not able, willing, or qualified has the burden of proving that  
26 the worker is not able, willing, or qualified because of employment-related  
27 reasons.

### 28 **§ 2508. Disqualification of aliens for violating conditions of** 29 **prior admission**

30 An alien may not be admitted to the United States as a temporary agri-  
31 cultural worker if, during the prior 5 years, the alien was admitted as a  
32 temporary agricultural worker and violated a term of that admission.

### 33 **§ 2509. Enforcement authority of the Secretary of Labor**

34 The Secretary of Labor may take actions necessary to ensure that em-  
35 ployers comply with the terms of employment under this chapter, includ-  
36 ing—

37 (1) imposing appropriate penalties; and

38 (2) seeking appropriate equitable relief, including specific perform-  
39 ance of contractual obligations.

1    **§ 2510. Endorsement of entry and exit documentation**

2       The Attorney General shall provide for the endorsement of entry and exit  
3       documentation of temporary agricultural workers necessary to carry out this  
4       chapter and to provide notice under chapter 111 of this title.

5    **§ 2511. Preemption of State and local law**

6       This chapter and sections 2101 and 2314 of this title preempt State and  
7       local law regulating the admissibility of nonimmigrant workers.

8    **§ 2512. Biennial reports**

9       (a) REPORTING REQUIREMENT.—Not later than November 6 of each  
10       even-numbered year, the President shall submit a report on the temporary  
11       agricultural worker program under this chapter to the Committees on the  
12       Judiciary of the Senate and the House of Representatives. The report shall  
13       include—

14           (1) the number of temporary agricultural workers permitted to be  
15           employed under the program in each year;

16           (2) the compliance of employers and temporary agricultural workers  
17           with the terms of the program;

18           (3) the impact of the program on the labor needs of United States  
19           agricultural employers and on the wages and working conditions of  
20           United States agricultural workers; and

21           (4) recommendations for changing the program, including—

22               (A) improving the timeliness of decisions about the admission  
23               of temporary agricultural workers under the program;

24               (B) removing any economic disincentive to hiring United States  
25               workers for jobs for which temporary agricultural workers have  
26               been requested;

27               (C) improving cooperation among government agencies, employ-  
28               ers, employer associations, workers, unions, and other worker as-  
29               sociations to end the dependence of any industry on a constant  
30               supply of temporary agricultural workers; and

31               (D) the relative benefits to United States workers and burdens  
32               on employers of the policy of requiring employers, as a condition  
33               for certification under the program, to continue to accept qualified  
34               United States workers for employment after the date the tem-  
35               porary agricultural workers depart for work with the employer.

36       (b) RECOMMENDATIONS CONSISTENT WITH POLICY.—The recommenda-  
37       tions under subsection (a)(4)(D) of this section shall be made in furtherance  
38       of the policy that aliens be admitted as temporary agricultural workers only  
39       if the conditions specified by section 2502(a) of this title are satisfied.

1 **§ 2513. Approval of regulations**

2 In consultation with the Secretaries of Labor and Agriculture, the Attor-  
3 ney General shall approve all regulations prescribed under this chapter and  
4 section 2314 of this title.

5 **§ 2514. Authorization of appropriations**

6 (a) GENERAL AUTHORIZATIONS.—Necessary amounts may be appro-  
7 priated each fiscal year to—

8 (1) the Secretary of Labor to make findings and issue certifications  
9 under this chapter and section 4104(g)(2) of this title; and

10 (2) the Secretary of Agriculture to carry out the Secretary's duties  
11 and powers under section 2314 of this title related to this chapter.

12 (b) SPECIFIC AUTHORIZATIONS.—Not more than \$10,000,000 may be ap-  
13 propriated each fiscal year—

14 (1) to recruit United States workers for temporary labor and services  
15 that otherwise might be performed by temporary agricultural workers;  
16 and

17 (2) to monitor the terms under which temporary agricultural workers  
18 and United States workers employed by the same employer are em-  
19 ployed in the United States.

20 **CHAPTER 27—ALIEN CREWMEMBERS**

SUBCHAPTER I—GENERAL

Sec.

2701. Providing lists.

2702. Reports on unlawful landings.

2703. Conditional permits to land temporarily.

2704. Control of alien crewmembers.

2705. Alien crewmembers afflicted with certain disabilities and diseases.

2706. Discharging alien crewmembers.

SUBCHAPTER II—LONGSHORE WORK

2721. Definition.

2722. General.

2723. Prevailing practice.

2724. Reciprocity.

2725. Longshore work in Alaska.

2726. Relationship to other laws and application.

21 SUBCHAPTER I—GENERAL

22 **§ 2701. Providing lists**

23 (a) ON ARRIVAL.—Except as provided by subsection (c) of this section,  
24 when a vessel or aircraft arrives in the United States from a place outside  
25 the United States, the owner, agent, master, commanding officer, or con-  
26 signee of the vessel or aircraft shall give an immigration officer at the port  
27 of arrival a list containing—

28 (1)(A) the name and position of each alien crewmember on the vessel  
29 or aircraft;

30 (B) information on when and where each alien crewmember was  
31 shipped or employed; and

1 (C) the name of each alien crewmember who is to be paid off or dis-  
2 charged in the port of arrival; or

3 (2) information the Attorney General prescribes by regulation.

4 (b) ON DEPARTURE.—Except as provided by subsection (c) of this sec-  
5 tion, before a vessel or aircraft departs from a port in the United States,  
6 the owner, agent, master, commanding officer, or consignee of the vessel or  
7 aircraft shall give an immigration officer at the port a list containing—

8 (1) the name of each alien crewmember—

9 (A) not employed on the vessel or aircraft when it arrived but  
10 who is leaving on the vessel or aircraft;

11 (B) paid off or discharged at the port; or

12 (C) who deserted or landed at the port; or

13 (2) information the Attorney General prescribes by regulation.

14 (c) EXCEPTION.—The Attorney General shall prescribe when a list under  
15 this section shall be given for a vessel operating only on the Great Lakes,  
16 the Saint Lawrence River, and a connecting waterway.

17 (d) REGULATIONS ON ARRIVAL AND DEPARTURE.—The Attorney General  
18 may prescribe by regulation when a vessel or aircraft is deemed under this  
19 chapter to be arriving in, or departing from, the United States or a port  
20 of the United States.

21 **§ 2702. Reports on unlawful landings**

22 As soon as it is discovered that an alien crewmember has landed unlaw-  
23 fully in the United States from a vessel or aircraft, the owner, agent, mas-  
24 ter, commanding officer, or consignee of the vessel or aircraft shall—

25 (1) report the unlawful landing in writing to an immigration officer;  
26 and

27 (2) give the immigration officer a description of the crewmember and  
28 information likely to lead to taking the crewmember into custody.

29 **§ 2703. Conditional permits to land temporarily**

30 (a) GENERAL REQUIREMENT.—An alien crewmember may land tempo-  
31 rarily in the United States only as provided under this section or section  
32 2705(b), 6122, or 6123 of this title.

33 (b) AUTHORITY TO GRANT PERMITS.—Under regulations the Attorney  
34 General prescribes, an immigration officer may grant an alien crewmember  
35 a conditional permit to land temporarily in the United States if the officer  
36 finds, after inspection, that the crewmember—

37 (1) is a nonimmigrant under section 2305 of this title;

38 (2) otherwise is admissible; and

39 (3) has agreed to accept the permit.

40 (c) PERIOD OF VALIDITY.—A permit granted under subsection (b) of this  
41 section is valid for not more than—

1 (1) the period (but not more than 29 days) that the vessel or aircraft  
2 on which the alien crewmember arrived remains in port if the immigra-  
3 tion officer is satisfied the crewmember intends to leave on that vessel  
4 or aircraft; or

5 (2) 29 days if the immigration officer is satisfied the crewmember  
6 intends to leave on another vessel or aircraft within the period for  
7 which the crewmember is allowed to land.

8 (d) REVOCATION.—(1) If an alien is granted a permit for a period under  
9 subsection (c)(1) of this section, and an immigration officer then decides the  
10 alien is not a crewmember or does not intend to leave on the vessel or air-  
11 craft on which the alien arrived, the immigration officer, under regulations  
12 prescribed by the Attorney General, may—

13 (A) revoke the permit;

14 (B) take the alien into custody; and

15 (C) if practicable, require the master or commanding officer of the  
16 vessel or aircraft on which the alien arrived to detain the alien on the  
17 vessel or aircraft.

18 (2) The owner of the vessel or aircraft on which an alien, detained under  
19 paragraph (1)(C) of this subsection, arrived in the United States shall pay  
20 the costs of detaining and deporting the alien.

21 (3) An alien detained under paragraph (1)(C) of this subsection is not  
22 entitled to a deportation proceeding under section 6532 of this title.

23 **§ 2704. Control of alien crewmembers**

24 (a) DETENTION AND DEPORTATION.—The owner, agent, master, com-  
25 manding officer, charterer, or consignee of a vessel or aircraft arriving in  
26 the United States from a place outside the United States shall—

27 (1) detain an alien crewmember on the vessel, or, at the expense of  
28 the aircraft owner, detain an alien crewmember of an aircraft at a  
29 place an immigration officer designates, until—

30 (A) an immigration officer inspects, and a medical officer exam-  
31 ines, the alien crewmember; and

32 (B) the alien crewmember is—

33 (i) granted a conditional permit to land temporarily under  
34 section 2703(b) of this title; or

35 (ii) allowed to land temporarily under section 2705(b) or  
36 6123 of this title for medical or hospital treatment; and

37 (2) deport an alien crewmember if required by an immigration offi-  
38 cer, whether before or after the crewmember is allowed to land tempo-  
39 rarily under section 2703(b), 2705(b), or 6123 of this title.

40 (b) PROOF OF FAILURE TO DETAIN OR DEPORT.—Except as the Attor-  
41 ney General prescribes by regulation, proof that the name of an alien crew-

1 member is not on the outgoing manifest of the vessel or aircraft on which  
2 the crewmember arrived in the United States from a place outside the Unit-  
3 ed States, or that the master or commanding officer of the vessel or aircraft  
4 reported the crewmember as a deserter, is prima facie evidence of the failure  
5 to detain or deport the crewmember.

6 (c) DEPORTATION ON ANOTHER VESSEL OR AIRCRAFT.—(1) If the Attor-  
7 ney General finds that deporting an alien crewmember under this section  
8 on the vessel or aircraft on which the crewmember arrived is impracticable  
9 or will cause unreasonable hardship to the crewmember, the Attorney Gen-  
10 eral may require the crewmember to be deported from any port on another  
11 vessel or aircraft of the same owner unless the Attorney General finds de-  
12 portation on such a vessel or aircraft to be impracticable. The owner of the  
13 vessel or aircraft on which the crewmember arrived shall pay the costs of  
14 deporting the crewmember as required by this subsection, including the  
15 costs of transferring the crewmember within the United States under condi-  
16 tions the Attorney General prescribes. The vessel or aircraft may be cleared  
17 only after the costs are paid or the Attorney General is satisfied that pay-  
18 ment is guaranteed.

19 (2) A transfer under this subsection is not a landing under this title.

20 **§ 2705. Alien crewmembers afflicted with certain disabilities**  
21 **and diseases**

22 (a) EMPLOYMENT PROHIBITIONS.—An alien crewmember afflicted with  
23 feeble-mindedness, insanity, epilepsy, tuberculosis, leprosy, or a dangerous  
24 contagious disease may not be employed on a vessel or aircraft carrying pas-  
25 sengers when the vessel or aircraft arrives in the United States from a place  
26 outside the United States.

27 (b) HOSPITALIZATION AND OBSERVATION.—An alien crewmember found  
28 on arrival at a port in the United States to be afflicted with feeble-minded-  
29 ness, insanity, epilepsy, tuberculosis, leprosy, or a dangerous contagious dis-  
30 ease shall be treated in a hospital designated by the immigration officer in  
31 charge of the port. An alien crewmember suspected of being afflicted may  
32 be removed from the vessel or aircraft on which the alien crewmember ar-  
33 rived to an appropriate place for observation to enable an examining medical  
34 officer to decide whether the crewmember is afflicted.

35 (c) PAYMENT OF COSTS.—The owner, agent, master, commanding officer,  
36 or consignee of the vessel or aircraft on which the alien crewmember arrived  
37 shall pay all costs incurred under subsection (b) of this section, including  
38 burial if the crewmember dies. The costs may not be deducted from the pay  
39 of the crewmember. The vessel or aircraft may be cleared only after the  
40 costs are paid or payment is guaranteed and the Secretary of the Treasury  
41 is notified by the immigration officer in charge of the port.

(d) RETURNING AN INCURABLE CREWMEMBER.—When the immigration officer in charge of the port is satisfied that a crewmember hospitalized under subsection (b) of this section cannot be cured within a reasonable time, the owner of the vessel or aircraft on which the crewmember arrived shall return the crewmember or pay the costs of returning the crewmember under conditions the Attorney General prescribes to ensure that the crewmember is cared for properly and the spread of contagious disease is prevented.

**§ 2706. Discharging alien crewmembers**

A person may pay off or discharge an alien crewmember (except a crewmember lawfully admitted for permanent residence) employed on a vessel or aircraft arriving in the United States only with the consent of the Attorney General.

SUBCHAPTER II—LONGSHORE WORK

**§ 2721. Definition**

In this subchapter, “longshore work”—

(1) means an activity in the United States or the coastal waters of the United States related to—

(A) loading or unloading cargo of a vessel;

(B) operating cargo-related equipment; and

(C) handling mooring lines on the dock when the vessel is made fast or let go; but

(2) does not include loading or unloading cargo for which the Secretary of Transportation has prescribed regulations under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), chapter 37 of title 46, section 105 or 106 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1804, 1805), or section 4106 of the Oil Pollution Act of 1990 (Public Law 101–380, 104 Stat. 513) on—

(A) handling or stowing that cargo;

(B) manning, and the duties, qualifications, and training of the officers and crewmembers of, vessels transporting that cargo; and

(C) reducing or eliminating discharge during ballasting, tank cleaning, or handling of that cargo.

**§ 2722. General**

An alien crewmember may perform longshore work only as provided by section 2723, 2724, or 2725 of this title.

**§ 2723. Prevailing practice**

(a) GENERAL.—(1) An alien crewmember performing a particular activity of longshore work in or around a port is serving in a capacity required for normal operation and service on a vessel under section 2305(a) of this title if—

1 (A) each collective bargaining agreement for that port covering at  
2 least 30 percent of the employees performing longshore work allows  
3 that activity to be performed by alien crewmembers; or

4 (B)(i) there is no collective bargaining agreement for the port cover-  
5 ing at least 30 percent of the employees performing longshore work;  
6 and

7 (ii) except as provided by paragraph (2) of this subsection, an em-  
8 ployer of the alien crewmember or the employer's designated represent-  
9 ative files an attestation described by subsection (b)(1) of this section  
10 with the Secretary of Labor at least 14 days before the date the activ-  
11 ity will be performed or, if necessary because of an unanticipated emer-  
12 gency, not later than the date the activity will be performed.

13 (2) An employer must file an attestation under paragraph (1)(B)(ii) of  
14 this subsection for a particular activity of longshore work involving the use  
15 of an automated self-loading conveyor belt or vacuum-actuated system on  
16 a vessel only if the Secretary finds under subsection (f)(2) of this section  
17 that the activity is not an activity described by subsection (b)(1)(A) of this  
18 section.

19 (b) ATTESTATION REQUIREMENTS.—(1) The attestation filed with the  
20 Secretary under subsection (a) of this section shall provide evidence that—

21 (A) the performance of the particular activity of longshore work by  
22 an alien crewmember is allowed under the prevailing practice at the  
23 port at the time of the filing and that the alien crewmember is not  
24 being employed for that activity—

25 (i) during a strike or lockout in a labor dispute; or

26 (ii) to influence an election of a bargaining representative for  
27 employees in the port; and

28 (B) the owner, agent, master, commanding officer, or consignee has  
29 given notice of the attestation—

30 (i) to the bargaining representative of longshore workers at the  
31 port; or

32 (ii) if there is no bargaining representative, to the longshore  
33 workers employed at the port.

34 (2) An attestation—

35 (A) expires at the end of the one-year period beginning on the date  
36 it is filed under subsection (a) of this section; and

37 (B) applies to alien crewmembers arriving in the United States dur-  
38 ing that period if the owner, agent, master, commanding officer, or  
39 consignee states in each list provided under section 2701 of this title  
40 that the employer continues to comply with the conditions in the attes-  
41 tation.

1 (3) An owner, agent, master, commanding officer, or consignee may pro-  
2 vide a single list under section 2701 of this title to meet the requirements  
3 of paragraph (2)(B) of this subsection for more than one alien crewmember.

4 (c) PUBLIC INFORMATION.—The Secretary shall compile and make avail-  
5 able for public examination in a timely way in the District of Columbia—

6 (1) information identifying each owner, agent, master, commanding  
7 officer, and consignee that has filed a list under section 2701 of this  
8 title for an alien crewmember classified as a nonimmigrant under sec-  
9 tion 2305(a) of this title for whom an attestation under subsection (a)  
10 of this section or section 2725(b) of this title is filed; and

11 (2) for each employer a copy of—

12 (A) the attestation and accompanying documentation; and

13 (B) each list filed for the employer under section 2701 of this  
14 title and described by clause (1) of this subsection.

15 (d) COMPLAINTS.—(1) Any adversely affected person, including a bar-  
16 gaining representative, association the Secretary decides is appropriate, or  
17 other adversely affected person as provided under regulations of the Sec-  
18 retary, may file a complaint—

19 (A) about an employer's failure to meet conditions stated in an attes-  
20 tation filed under subsection (a) of this section;

21 (B) about an employer's misrepresentation of a material fact in the  
22 attestation; or

23 (C) for longshore work described by subsection (a)(2) of this section,  
24 that the particular activity of longshore work is not an activity de-  
25 scribed by subsection (b)(1)(A) of this section.

26 (2) The Secretary shall establish a procedure for receiving, investigating,  
27 and disposing of complaints filed under this subsection. The Secretary shall  
28 conduct an investigation under this subsection promptly if there is reason-  
29 able cause to believe the allegations of the complaint.

30 (3)(A) If the Secretary decides that reasonable cause exists to conduct  
31 an investigation about a complaint filed under paragraph (1)(A) or (B) of  
32 this subsection, the person making the complaint may request that the em-  
33 ployer stop, during the hearing procedure under subsection (e) of this sec-  
34 tion, the particular activity of longshore work attested to by the employer.  
35 The employer shall be notified of the request and shall respond not later  
36 than 14 days after receiving the notice.

37 (B) If the Secretary makes an initial decision that the complaint is sup-  
38 ported by a preponderance of the evidence submitted, the Secretary imme-  
39 diately shall require that the employer stop that activity until after the hear-  
40 ing procedure under subsection (e) of this section.

1 (4)(A) If the Secretary decides that reasonable cause exists to conduct  
2 an investigation about a complaint under paragraph (1)(C) of this sub-  
3 section, the person making the complaint may request that the employer  
4 stop, during the hearing procedure under subsection (e) of this section, the  
5 particular activity of longshore work involved in the complaint unless the  
6 employer files an attestation with the Secretary under subsection (a) of this  
7 section. The employer shall be notified of the request and shall respond not  
8 later than 14 days after receiving the notice.

9 (B) If the Secretary makes an initial decision that the complaint is sup-  
10 ported by a preponderance of the evidence submitted, the Secretary imme-  
11 diately shall require that the employer stop that activity until after the hear-  
12 ing procedure under subsection (e) of this section, unless the employer files  
13 an attestation under subsection (a) of this section.

14 (e) PROCEEDINGS.—Not later than 180 days after a complaint is filed  
15 under subsection (d) of this section, or later for good cause shown, the Sec-  
16 retary shall decide whether a basis exists to make a finding described by  
17 subsection (f) of this section. The Secretary shall give interested persons no-  
18 tice of that decision and an opportunity for a hearing on the complaint not  
19 later than 60 days after making the decision.

20 (f) FINDINGS.—(1)(A) If, after notice and an opportunity for a hearing  
21 under subsection (e) of this section, the Secretary finds that an employer  
22 has failed to meet a condition, or has misrepresented a material fact, in an  
23 attestation filed under subsection (a) of this section, the Secretary—

24 (i) shall notify the Attorney General of the finding; and

25 (ii) may impose other administrative remedies, including a civil pen-  
26 alty under section 10118 of this title, the Secretary decides are appro-  
27 priate.

28 (B) When the Attorney General receives notice under this paragraph, the  
29 Attorney General shall deny any vessel owned or chartered by the employer  
30 entry to a port of the United States for not more than one year.

31 (2) For longshore work described by subsection (a)(2) of this section, if  
32 the Secretary finds, after notice and an opportunity for a hearing under  
33 subsection (e) of this section and based on a preponderance of the evidence  
34 submitted by any interested person, that the particular activity of longshore  
35 work is not an activity described by subsection (b)(1)(A) of this section—

36 (A) the Secretary shall notify the Attorney General of the finding;  
37 and

38 (B) the employer shall file an attestation under subsection (a) of this  
39 section for that activity.

40 (3) When the Secretary finds that an alien crewmember is not allowed  
41 to perform a particular activity of longshore work under the prevailing prac-

1 tice at a port, another attestation under subsection (a) of this section about  
2 that activity in that port may not be filed for one year.

3 (g) LONGSHORE WORK IN ALASKA.—Except as provided by section  
4 2725(c) of this title, this section does not apply to longshore work per-  
5 formed in Alaska.

6 **§ 2724. Reciprocity**

7 (a) DEFINITION.—In this section, “practice” means an activity normally  
8 performed in a foreign country during the one-year period before a vessel  
9 arrives in the United States or the coastal waters of the United States.

10 (b) GENERAL.—(1) An alien crewmember performing a particular activity  
11 of longshore work in or about a port is serving in a capacity required for  
12 normal operation and service on a vessel under section 2305(a) of this title,  
13 and the Attorney General shall allow an alien crewmember on a vessel to  
14 perform a particular activity of longshore work, if—

15 (A) that vessel is registered in a foreign country that by law, regula-  
16 tion, or practice does not prohibit that activity by crewmembers on  
17 United States vessels; or

18 (B) nationals of a foreign country that, by law, regulation, or prac-  
19 tice does not prohibit that activity by crewmembers on United States  
20 vessels, hold a majority ownership interest in that vessel.

21 (2) The Secretary of State shall compile and annually maintain, under  
22 section 553 of title 5, a list, by particular activity of longshore work, of for-  
23 eign countries in which crewmembers on United States vessels are prohib-  
24 ited by law, regulation, or practice from performing a particular activity of  
25 longshore work.

26 **§ 2725. Longshore work in Alaska**

27 (a) DEFINITIONS.—In this section—

28 (1) “contract stevedoring companies” means those stevedoring com-  
29 panies licensed to do business in Alaska that meet the requirements of  
30 section 32 of the Longshore and Harbor Workers’ Compensation Act  
31 (33 U.S.C. 932).

32 (2) “employer” includes any agent or representative designated by  
33 the employer.

34 (b) GENERAL.—(1) An alien crewmember performing a particular activity  
35 of longshore work at a particular location in Alaska is serving in a capacity  
36 required for normal operation and service on a vessel under section 2305(a)  
37 of this title if an employer of the alien crewmember files an attestation with  
38 the Secretary of Labor at least 30 days before the date the activity will be  
39 performed or at least 24 hours before the activity will be performed if the  
40 employer shows that the employer reasonably could not have anticipated the  
41 need to file an attestation for that location at that time.

1 (2) The attestation filed under paragraph (1) of this subsection shall pro-  
2 vide evidence that—

3 (A) the employer will request from the parties to whom notice has  
4 been given under clause (D) (ii) and (iii) of this paragraph United  
5 States longshore workers who, under industry standards in Alaska, in-  
6 cluding safety considerations, are qualified and available in sufficient  
7 numbers to perform the activity at the particular time and location, ex-  
8 cept that—

9 (i) when 2 or more contract stevedoring companies have signed  
10 a joint collective bargaining agreement with a single labor organi-  
11 zation described by clause (D)(i) of this paragraph, the employer  
12 may request longshore workers from only one of those companies;  
13 and

14 (ii) a request to a private dock operator for longshore workers  
15 may be made only for longshore work to be performed at that dock  
16 and only if the operator meets the requirements of section 32 of  
17 the Longshore and Harbor Workers' Compensation Act (33 U.S.C.  
18 932);

19 (B) the employer will employ all those United States longshore work-  
20 ers made available under clause (A) of this paragraph who, under in-  
21 dustry standards in Alaska, including safety considerations, are quali-  
22 fied and available in sufficient numbers and who are needed to perform  
23 the longshore activity at the particular time and location;

24 (C) using alien crewmembers for that activity is not intended or de-  
25 signed to influence an election of a bargaining representative for work-  
26 ers in Alaska; and

27 (D) the employer has given notice of the attestation—

28 (i) to labor organizations recognized as exclusive bargaining rep-  
29 resentatives of United States longshore workers within the mean-  
30 ing of the National Labor Relations Act (29 U.S.C. 141 et seq.)  
31 and that make, or intend to make, workers available at the par-  
32 ticular location where the longshore work is to be performed;

33 (ii) to contract stevedoring companies that employ or intend to  
34 employ United States longshore workers at the location; and

35 (iii) to operators of private docks at which the employer will use  
36 longshore workers.

37 (3)(A) During the period that an attestation an employer files under  
38 paragraph (1) of this subsection is valid, the employer must request and  
39 employ United States longshore workers as provided under paragraph (2)  
40 before using alien crewmembers to perform the activity specified in the at-  
41 testation. However, an employer is not required to request United States

1 longshore workers from a person who has given the employer written notice  
2 that the person does not intend to make United States longshore workers  
3 available at the particular location where the longshore work is to be per-  
4 formed.

5 (B) If a person that provided notice under subparagraph (A) of this para-  
6 graph later gives the employer written notice that the person is prepared  
7 to make available United States longshore workers who, under industry  
8 standards in Alaska, including safety considerations, are qualified and avail-  
9 able in sufficient numbers to perform the longshore activity at the particular  
10 location where the longshore work is to be performed, the obligation of the  
11 employer to that person under paragraph (2) (A) and (B) of this subsection  
12 begins 60 days after the date the notice was given under this clause.

13 (4)(A) An employer filing an attestation under paragraph (1) of this sub-  
14 section is not required—

15 (i) to hire less than a full work unit of United States longshore  
16 workers needed to perform the longshore activity;

17 (ii) to provide overnight accommodations for the longshore workers  
18 while employed; or

19 (iii) to provide transportation to the particular location where the  
20 longshore activity will be performed, except where—

21 (I) surface transportation is available;

22 (II) that transportation may be accomplished safely;

23 (III) travel time to the vessel is not more than one-half hour  
24 each way; and

25 (IV) travel distance to the vessel from the point of embarkation  
26 is not more than 5 miles.

27 (B) In the case of Wide Bay, Alaska, and Klawock/Craig, Alaska, the  
28 travel time and distance described by clause (A)(iii) of this paragraph are  
29 extended to 45 minutes and 7.5 miles, respectively, unless the person re-  
30 sponding to the request for longshore workers agrees to the lesser time and  
31 distance limitations described by clause (A)(iii).

32 (5) Except as provided by section 2723(c)–(e) of this title, an attestation  
33 filed under paragraph (1) of this subsection—

34 (A) expires at the end of the one-year period beginning on the date  
35 specified in the attestation that the employer anticipates the longshore  
36 work will begin; and

37 (B) applies to alien crewmembers arriving in the United States dur-  
38 ing that period if the owner, agent, master, commanding officer, or  
39 consignee states in each list provided under section 2701 of this title  
40 that the employer continues to comply with the conditions in the attes-  
41 tation.

1 (c) APPLICATION OF SECTION 2723.—(1) Except as provided by para-  
 2 graph (2) of this subsection, section 2723(b)(3)–(f)(2) of this title applies  
 3 to an attestation filed under subsection (b)(1) of this section.

4 (2) Section 2723 of this title applies to the use of alien crewmembers to  
 5 perform longshore work in Alaska involving the use of an automated self-  
 6 loading conveyor belt or vacuum-actuated system on a vessel.

7 (d) REGULATIONS.—The Secretary shall prescribe regulations necessary  
 8 to carry out this section.

9 **§ 2726. Relationship to other laws and application**

10 This section does not affect—

11 (1) the meaning or scope of longshore work under another provision  
 12 of law, a collective bargaining agreement, or an international agree-  
 13 ment; or

14 (2) the performance of longshore work by nationals of the United  
 15 States.

16 **CHAPTER 29—FACILITIES EMPLOYING REGISTERED**  
 17 **NURSES**

2901. Definition.

2902. Attestation requirements.

2903. State plans.

2904. Public availability of information.

2905. Complaints, investigations, and penalties.

18 **§ 2901. Definition**

19 In this chapter, “facility” includes an employer that employs registered  
 20 nurses in a home setting.

21 **§ 2902. Attestation requirements**

22 (a) GENERAL.—Except as provided by subsection (b) of this section, a  
 23 facility seeking to employ a nonimmigrant registered nurse under section  
 24 2325 of this title must file with the Secretary of Labor an attestation stat-  
 25 ing the following:

26 (1) A substantial disruption in the delivery of health care services  
 27 of the facility would occur through no fault of the facility without the  
 28 services of a nonimmigrant registered nurse.

29 (2) Employment of a nonimmigrant registered nurse will not ad-  
 30 versely affect the wages and working conditions of other registered  
 31 nurses similarly employed.

32 (3) A nonimmigrant registered nurse employed by the facility will be  
 33 paid at the wage rate paid for other registered nurses similarly em-  
 34 ployed by the facility.

35 (4) The facility—

36 (A) has taken or is taking timely and significant steps to recruit  
 37 and retain sufficient registered nurses who are citizens of the  
 38 United States or immigrants authorized to perform nursing serv-

1           ices, to remove as quickly as reasonably possible the dependence  
2           of the facility on nonimmigrant registered nurses; or

3           (B) is subject to a State plan for the recruitment and retention  
4           of nurses approved under section 2903 of this title.

5           (5) There is no strike or lockout in the course of a labor dispute,  
6           and the employment of nonimmigrant registered nurses is not intended  
7           or designed to influence an election for a bargaining representative for  
8           registered nurses of the facility.

9           (6) At the time of filing the petition under section 2325(c) of this  
10          title, the facility has given notice of the filing to the bargaining rep-  
11          resentative of the registered nurses employed by the facility or, if there  
12          is no bargaining representative, to the registered nurses employed by  
13          the facility by posting the notice in conspicuous locations.

14         (b) WAIVERS.—For a nonimmigrant registered nurse performing services  
15         at a worksite (except at the employer’s worksite or at a worksite controlled  
16         by the employer) and for whom the employer has filed an attestation under  
17         subsection (a) of this section, the Secretary may waive the requirement to  
18         file an attestation for the worksite as may be appropriate—

- 19                 (1) to avoid duplicative attestations;  
20                 (2) in temporary, emergency situations;  
21                 (3) for information the attestor does not know; or  
22                 (4) for other good cause.

23         (c) FAULT IF FACILITY HAS LAID OFF NURSES.—A facility does not  
24         meet subsection (a)(1) of this section if the facility has laid off registered  
25         nurses within the prior year. However, a facility that lays off a registered  
26         nurse (except a staff nurse) meets subsection (a)(1) if the facility has at-  
27         tested that it will not replace the nurse with a nonimmigrant registered  
28         nurse described by section 2325(b) of this section for one year after the  
29         date of the layoff.

30         (d) SIGNIFICANT STEPS TO RECRUIT AND RETAIN NURSES.—(1) Each  
31         of the following is a significant step reasonably designed to recruit and re-  
32         tain registered nurses meeting the requirement of subsection (a)(4)(A) of  
33         this section:

34                 (A) operating a training program for registered nurses at the facility  
35                 or financing (or providing participation in) a training program for reg-  
36                 istered nurses elsewhere.

37                 (B) providing career development programs and other methods of fa-  
38                 cilitating health care workers to become registered nurses.

39                 (C) paying registered nurses at a rate higher than that currently  
40                 being paid to registered nurses similarly employed in the geographic  
41                 area.

1 (D) providing adequate support services to free registered nurses  
2 from administrative and other non-nursing duties.

3 (E) providing reasonable opportunities for meaningful salary ad-  
4 vancement by registered nurses.

5 (2) Paragraph (1) of this subsection is not an exclusive list of the steps  
6 that may be taken to meet the requirement of subsection (a)(4)(A) of this  
7 section. A facility is not required to take more than one step if the facility  
8 can demonstrate that taking an additional step is not reasonable.

9 (e) EFFECTIVENESS OF ATTESTATION.—(1) Subject to section 2905 of  
10 this title, an attestation under subsection (a) of this section—

11 (A) expires at the end of the one-year period beginning on the date  
12 the attestation is filed with the Secretary; and

13 (B) applies to petitions filed during that one-year period if the facil-  
14 ity states in each petition filed under section 2325(c) of this title that  
15 it continues to comply with the conditions in the attestation.

16 (2) A facility may file a single petition to meet the requirements of this  
17 section for more than one registered nurse.

### 18 **§ 2903. State plans**

19 The Secretary of Labor shall provide for a procedure under which a State  
20 may submit to the Secretary of Labor a plan for the recruitment and reten-  
21 tion of citizens of the United States and immigrants authorized to perform  
22 nursing services as registered nurses in facilities in the State. A plan may  
23 include counseling and educating health workers and other individuals about  
24 employment opportunities available to registered nurses. Annually in con-  
25 sultation with the Secretary of Health and Human Services, the Secretary  
26 of Labor shall provide for approving or disapproving the State plan as pro-  
27 vided by section 2902(a)(4)(B) of this title. A plan may be approved in re-  
28 gard to a facility only if the plan provides for taking significant steps de-  
29 scribed by section 2902(a)(4)(A) of this title to recruit and retain registered  
30 nurses at that facility.

### 31 **§ 2904. Public availability of information**

32 The Secretary of Labor shall compile and make available for public exam-  
33 ination in a timely manner in the District of Columbia—

34 (1) a list of facilities that have filed petitions to employ non-  
35 immigrant registered nurses applying to be classified under section  
36 2325 of this title; and

37 (2) for each facility, a copy of the petitions, attestations, and accom-  
38 panying documentation filed by each facility.

### 39 **§ 2905. Complaints, investigations, and penalties**

40 (a) COMPLAINTS AND INVESTIGATIONS.—(1) The Secretary of Labor  
41 shall establish a procedure for receiving, investigating, and disposing of

1 complaints filed about a facility's failure to satisfy a condition attested to,  
2 or a facility's misrepresentation of a material fact, in an attestation.

3 (2) Any person adversely affected by an attestation under section 2902(a)  
4 of this title, including a bargaining representative, association the Secretary  
5 decides is appropriate, or other adversely affected person, may file a com-  
6 plaint with the Secretary. The Secretary shall conduct an investigation if  
7 there is reasonable cause to believe that the facility does not meet a condi-  
8 tion attested to.

9 (3) Not later than 180 days after a complaint is filed, the Secretary shall  
10 decide whether a basis exists to make a finding described by subsection (b)  
11 of this section. If the Secretary decides that a basis exists, the Secretary  
12 shall give notice of that decision to the interested parties and an opportunity  
13 for a hearing on the complaint not later than 60 days after making the deci-  
14 sion.

15 (b) FINDINGS AND PENALTIES.—(1) If the Secretary finds, after notice  
16 and an opportunity for a hearing, that a facility has failed to satisfy a con-  
17 dition attested to or has misrepresented a material fact in an attestation,  
18 the Secretary—

19 (A) shall notify the Attorney General of the finding;

20 (B) may impose other administrative remedies, including a civil pen-  
21 alty of not more than \$1,000 for each violation; and

22 (C) if the facility has not paid the prevailing wage as attested to  
23 under section 2902(a)(3) of this title, shall order the facility to pay an  
24 amount of back wages necessary to comply with section 2902(a)(3).

25 (2) For at least one year after receiving notice under paragraph (1)(A)  
26 of this subsection, the Attorney General may not approve a petition filed  
27 under subsection 2325(c) of this title by that facility for the employment  
28 of a nonimmigrant registered nurse.

## 29 PART B—IMMIGRANTS

### 30 CHAPTER 41—NUMERICAL LIMITATIONS

Sec.

- 4101. General requirements.
- 4102. Annual worldwide numerical limitations.
- 4103. Visa allocation for family-sponsored immigrants.
- 4104. Visa allocation for employment-based immigrants.
- 4105. Visa allocation for diversity immigrants.
- 4106. Special immigrants having honorable military service.
- 4107. Special immigrants employed in Panama.
- 4108. Status of spouses and children.
- 4109. Estimating number of visas to be granted.
- 4110. Pilot program.
- 4111. Limitations on admissions from individual foreign countries.
- 4112. Charging immigrants to foreign countries.
- 4113. Burden of proof.

**§ 4101. General requirements**

Except for aliens described by section 4102(d) of this title, an alien may be granted an immigrant visa or otherwise become an alien lawfully admitted for permanent residence only if—

(1)(A) the alien is a family-sponsored immigrant described by section 4103(b)–(e) of this title or admitted under section 4311(a)(1) of this title because a visa previously was granted to the accompanying parent under section 4103(b)–(e) of this title; and

(B) the numerical limitations of section 4102(a) of this title are not exceeded;

(2)(A) the alien is an employment-based immigrant described by sections 4104(b)–(f) and 4106(a) of this title or admitted under section 4311(a)(1) of this title because a visa previously was granted to the accompanying parent under section 4104(b)–(f) or 4106(a) of this title; and

(B) the numerical limitations of section 4102(b) of this title are not exceeded; or

(3)(A) for fiscal years beginning after September 30, 1994, the alien is a diversity immigrant described by section 4105(c)–(h) of this title or admitted under section 4311(a)(1) of this title because a visa previously was granted to the accompanying parent under section 4105(c)–(h) of this title; and

(B) the numerical limitations of section 4102(c) of this title are not exceeded.

**§ 4102. Annual worldwide numerical limitations**

(a) FAMILY-SPONSORED IMMIGRANTS.—(1) The worldwide numerical limitation for family-sponsored immigrants for a fiscal year is the greater of—

(A)(i) 480,000 (except that for the fiscal year ending September 30, 1994, the maximum number is 465,000); minus

(ii) the number of aliens described by subsection (d)(6)–(8) of this section granted immigrant visas or who otherwise became aliens lawfully admitted for permanent residence in the prior fiscal year; plus

(iii) any difference between the maximum number of employment-based immigrant visas that could have been granted and the number that were granted during the prior fiscal year; or

(B) 226,000.

(2) In each of the first 3 quarters of a fiscal year, the number of aliens granted visas and otherwise becoming aliens lawfully admitted for permanent residence as family-sponsored immigrants may not be more than 27 percent of the numerical limitation computed under paragraph (1) of this section for that fiscal year.

1 (b) EMPLOYMENT-BASED IMMIGRANTS.—(1) The worldwide numerical  
2 limitation for employment-based immigrants for a fiscal year is—

3 (A) not more than 140,000; plus

4 (B) any difference between the maximum number of family-spon-  
5 sored immigrant visas that could have been granted and the number  
6 that were granted during the prior fiscal year.

7 (2) In each of the first 3 quarters of a fiscal year, the number of aliens  
8 granted visas and otherwise becoming aliens lawfully admitted for perma-  
9 nent residence as employment-based immigrants may not be more than 27  
10 percent of the numerical limitation computed under paragraph (1) of this  
11 section for that fiscal year.

12 (c) DIVERSITY IMMIGRANTS.—(1) The worldwide numerical limitation for  
13 diversity immigrants for a fiscal year is 55,000.

14 (2) In each of the first 3 quarters of a fiscal year, the number of aliens  
15 granted visas and otherwise becoming aliens lawfully admitted for perma-  
16 nent residence as diversity immigrants may not be more than 27 percent  
17 of the numerical limitation computed under paragraph (1) of this section  
18 for that fiscal year.

19 (d) NONAPPLICATION.—The numerical limitations of this section do not  
20 apply to—

21 (1) a special immigrant as defined by section 137(a)(1) or (2) of this  
22 title;

23 (2) an alien admitted under section 5105 of this title or whose status  
24 is changed under section 5107 of this title;

25 (3) an alien who becomes lawfully admitted for permanent residence  
26 under chapter 93 of this title or section 210 or 210A of the Immigra-  
27 tion and Nationality Act (ch. 477, 66 Stat. 163);

28 (4) an alien whose deportation is suspended under section 6538(a)  
29 of this title;

30 (5) an alien whose status is changed to that of an alien lawfully ad-  
31 mitted for permanent residence under section 9104 of this title;

32 (6) an immediate relative;

33 (7) an alien admitted under section 4311(a)(1) of this title because  
34 the accompanying parent is an immediate relative previously granted  
35 a visa; and

36 (8) an alien born to an alien lawfully admitted for permanent resi-  
37 dence during a temporary visit outside the United States.

38 **§ 4103. Visa allocation for family-sponsored immigrants**

39 (a) GENERAL.—Aliens subject to the worldwide numerical limitation of  
40 section 4102(a) of this title for qualified family-sponsored immigrants shall  
41 be allocated visas each fiscal year as provided by this section.

1 (b) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Not more than  
2 23,400 visas, plus visas not required under subsection (e) of this section,  
3 shall be allocated to unmarried sons and unmarried daughters of citizens  
4 of the United States.

5 (c) FAMILIES OF ALIENS LAWFULLY ADMITTED.—Not more than  
6 114,200 visas, plus the number by which the worldwide numerical limitation  
7 is more than 226,000, plus visas not required under subsection (b) of this  
8 section, shall be allocated to the spouses, children, and unmarried sons and  
9 unmarried daughters (but not children) of aliens lawfully admitted for per-  
10 manent residence. At least 77 percent of visas allocated under this sub-  
11 section shall be made available to those spouses and children.

12 (d) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Not more than  
13 23,400 visas, plus visas not required under subsections (b) and (c) of this  
14 section, shall be allocated to married sons and married daughters of citizens  
15 of the United States.

16 (e) BROTHERS AND SISTERS OF CITIZENS.—Not more than 65,000 visas,  
17 plus visas not required under subsections (b)–(d) of this section, shall be  
18 allocated to brothers and sisters of citizens of the United States who are  
19 at least 21 years of age.

20 **§ 4104. Visa allocation for employment-based immigrants**

21 (a) GENERAL.—Aliens subject to the worldwide numerical limitation of  
22 section 4102(b) of this title for qualified employment-based immigrants  
23 shall be allocated visas each fiscal year as provided by this section.

24 (b) PRIORITY WORKERS.—(1) A number of visas equal to not more than  
25 28.6 percent of the worldwide numerical limitation of section 4102(b) of this  
26 title, plus visas not required under subsections (e) and (f) of this section,  
27 shall be allocated to the following aliens:

28 (A) a qualified immigrant—

29 (i) having extraordinary ability in the sciences, arts, education,  
30 business, or athletics that has been demonstrated by sustained na-  
31 tional or international acclaim;

32 (ii) whose achievements have been recognized in the field  
33 through extensive documentation;

34 (iii) who is seeking to enter the United States to continue work  
35 in the area of extraordinary ability; and

36 (iv) whose entry will benefit the United States substantially.

37 (B) a qualified immigrant—

38 (i) recognized internationally as outstanding in a specific aca-  
39 demic area;

40 (ii) with at least 3 years of teaching or research experience in  
41 the academic area; and

1 (iii) who is seeking to enter the United States for a tenured (or  
2 tenure-track) position in a university or institution of higher edu-  
3 cation to teach in the academic area, for a comparable position  
4 with a university or institute of higher education to conduct re-  
5 search in the area, or for a comparable position to conduct re-  
6 search in the area with a department, division, or institute of a  
7 private employer that employs at least 3 individuals full-time in  
8 research activities and has achieved documented accomplishments  
9 in an academic field.

10 (C) a qualified immigrant—

11 (i) who, in the 3 years prior to the application for classification  
12 and admission to the United States under this paragraph, has  
13 been employed for at least one year by an entity or an affiliate  
14 or subsidiary of the entity; and

15 (ii) who is seeking to enter the United States to continue to pro-  
16 vide services to the same employer, or an affiliate or subsidiary of  
17 the employer, in a managerial or executive capacity.

18 (2) In applying paragraph (1)(C) of this subsection, a partnership or  
19 similar organization organized outside the United States to provide account-  
20 ing services is deemed to be an affiliate of a partnership organized in the  
21 United States to provide accounting services if—

22 (A) the partnership or similar organization organized outside the  
23 United States markets its accounting services under an internationally  
24 recognized name under an agreement with a worldwide coordinating or-  
25 ganization owned and controlled by the member accounting firms of  
26 which the United States partnership is also a member; and

27 (B) the United States partnership markets its accounting services  
28 under the same internationally recognized name under an agreement  
29 with the worldwide coordinating organization.

30 (c) MEMBERS OF PROFESSIONS.—(1) A number of visas equal to not  
31 more than 28.6 percent of the worldwide numerical limitation of section  
32 4102(b) of this title, plus visas not required under subsection (b) of this  
33 section, shall be allocated to qualified immigrants—

34 (A) who are members of the professions holding advanced degrees or  
35 their equivalent or who because of their exceptional ability in the  
36 sciences, arts, or business will benefit substantially the economy, cul-  
37 tural or educational interests, or welfare of the United States; and

38 (B) whose services in the sciences, arts, professions, or business are  
39 sought by an employer in the United States.

1 (2) An alien may be granted an immigrant visa under this subsection only  
2 if the consular officer has received the decision and certification of the Sec-  
3 retary of Labor under subsection (g)(2) of this section.

4 (3) When the Attorney General considers it to be in the interest of the  
5 United States, the Attorney General may waive the requirement of para-  
6 graph (1) of this subsection that an alien's services in the sciences, arts,  
7 professions, or business be sought by an employer in the United States.

8 (4) Possession of a degree, diploma, certificate, or similar award from an  
9 institution of learning, a license to practice, or certification for a profession  
10 or occupation is not sufficient evidence by itself under paragraph (1) of this  
11 subsection that an immigrant has exceptional ability.

12 (d) SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—(1)  
13 Except as provided by paragraph (2) of this subsection, a number of visas  
14 equal to not more than 28.6 percent of the worldwide numerical limitation  
15 of section 4102(b) of this title, plus visas not required under subsections  
16 (b) and (c) of this section, shall be allocated to the following aliens not de-  
17 scribed by subsection (c)(1) of this section:

18 (A) a qualified immigrant who is capable, when petitioning for classi-  
19 fication under this subsection, of performing skilled labor that requires  
20 at least 2 years training or experience, that is not temporary or sea-  
21 sonal, and for which qualified workers are not available in the United  
22 States.

23 (B) a qualified immigrant who holds a baccalaureate degree and is  
24 a member of a profession.

25 (C) a qualified immigrant capable, when petitioning for classification  
26 under this subsection, of performing unskilled labor that is not tem-  
27 porary or seasonal and for which qualified workers are not available in  
28 the United States.

29 (2) Not more than 10,000 of the visas allocated under this subsection in  
30 a fiscal year are available for immigrants described by paragraph (1)(C) of  
31 this subsection.

32 (3) An alien may be granted an immigrant visa under this subsection only  
33 if the consular officer has received the decision and certification of the Sec-  
34 retary of Labor under subsection (g)(2) of this section.

35 (e) CERTAIN SPECIAL IMMIGRANTS.—A number of visas equal to not  
36 more than 7.1 percent of the worldwide numerical limitation of section  
37 4102(b) of this title shall be allocated to qualified special immigrants as de-  
38 fined by section 137(a)(3)–(13) of this title, except that not more than  
39 5,000 of those visas may be allocated in a fiscal year to special immigrants  
40 as defined by section 137(a)(3)(A)(ii)(II) and (III) of this title.

41 (f) EMPLOYMENT CREATION.—(1) In this subsection—

1 (A) “targeted employment area” means, at the time of investment,  
2 a rural area or an area that has experienced unemployment that is at  
3 least 150 percent of the national average.

4 (B) “rural area” means an area not in a metropolitan statistical  
5 area or not in the outer boundary of a city or town having a popu-  
6 lation, based on the latest United States decennial census, of at least  
7 20,000.

8 (2) A number of visas equal to not more than 7.1 percent of the world-  
9 wide numerical limitation of section 4102(b) of this title shall be allocated  
10 to qualified immigrants seeking to enter the United States to engage in a  
11 new commercial enterprise—

12 (A) that the alien has established;

13 (B) in which the alien has invested after November 29, 1990, or is  
14 actively in the process of investing, at least \$1,000,000; and

15 (C) that will benefit the United States economy and create full-time  
16 employment for at least 10 United States citizens, aliens lawfully ad-  
17 mitted for permanent residence, or other immigrants lawfully author-  
18 ized to be employed in the United States, except the qualified immi-  
19 grant and the qualified immigrant’s spouse, sons, and daughters.

20 (3) At least 3,000 of the visas allocated under paragraph (1) of this sub-  
21 section in each fiscal year shall be reserved for qualified immigrants who  
22 establish a new commercial enterprise described by paragraph (1) that will  
23 create employment in a targeted employment area.

24 (4)(A) In consultation with the Secretaries of Labor and State, the Attor-  
25 ney General may prescribe regulations increasing the amount specified by  
26 paragraph (2)(B) of this subsection.

27 (B) For an investment made in a targeted employment area, the Attorney  
28 General may specify that the amount of capital required under paragraph  
29 (2)(B) of this subsection be less than, but at least 50 percent of, the  
30 amount specified by paragraph (2)(B).

31 (C) For an investment made in a metropolitan statistical area that at the  
32 time of investment is not a targeted employment area and has an unemploy-  
33 ment rate significantly below the national average, the Attorney General  
34 may specify that the amount of capital required under paragraph (2)(B) of  
35 this subsection be more than, but not more than 3 times, the amount speci-  
36 fied in paragraph (2)(B).

37 (g) ADDITIONAL REQUIREMENTS FOR EMPLOYMENT-BASED IMMI-  
38 GRANTS.—(1) An alien applying for a visa under subsection (c) or (d) of  
39 this section who is a graduate of a medical school not accredited by an en-  
40 tity approved by the Secretary of Education and who is coming to the Unit-

1 ed States principally to perform services as a member of the medical profes-  
2 sion may be granted the visa only if the alien—

3 (A) has passed parts I and II of the National Board of Medical Ex-  
4 aminers Examination or an examination the Secretary of Health and  
5 Human Services decides is equivalent, or on January 9, 1978, was fully  
6 and permanently licensed to practice medicine in a State and was prac-  
7 ticing medicine in a State on that date; and

8 (B) is competent in oral and written English.

9 (2) An alien applying for a visa under subsection (c) or (d) of this section  
10 to perform skilled or unskilled labor may be granted the visa only if the  
11 Secretary of Labor decides and certifies to the Secretary of State and the  
12 Attorney General that—

13 (A) there are not enough workers who are able, willing, qualified (or  
14 equally qualified if the alien is a member of the teaching profession or  
15 has exceptional ability in the sciences or arts), and available when the  
16 alien applies for the visa and admission and where the alien is to per-  
17 form that labor; and

18 (B) employment of the alien will not affect adversely the pay and  
19 working conditions of similarly employed workers in the United States.

20 (3) Before making a decision and certification under paragraph (2) of  
21 this subsection, the Secretary of Labor shall provide that—

22 (A) a certification may be made only if the applicant, when filing the  
23 application, has provided notice of the filing to the bargaining rep-  
24 resentative of the employer's employees in the occupational classifica-  
25 tion and area for which aliens are sought or, if there is no bargaining  
26 representative, to employees employed at the facility through posting at  
27 conspicuous locations; and

28 (B) any person may submit documentary evidence related to the ap-  
29 plication, including information on available workers, pay and working  
30 conditions, and the employer's failure to meet conditions of employing  
31 alien workers and co-workers.

32 **§ 4105. Visa allocation for diversity immigrants**

33 (a) DEFINITIONS.—In this section—

34 (1) “high-admission foreign country” means a foreign country for  
35 which the number determined under subsection (c) of this section is  
36 more than 50,000.

37 (2) “high-admission region” means a region for which the total of  
38 the numbers determined under subsection (c) of this section for foreign  
39 countries in the region is more than one-sixth of the total of the num-  
40 bers for all foreign countries.

1 (3) “low-admission foreign country” means a foreign country that is  
2 not a high-admission foreign country.

3 (4) “low-admission region” means a region that is not a high-admis-  
4 sion region.

5 (5) Northern Ireland is deemed to be a separate foreign country.

6 (6) an overseas dependent area of a foreign country is deemed to be  
7 part of the foreign country.

8 (7) the area in each of the following is a separate region:

9 (A) Africa.

10 (B) Asia.

11 (C) Europe.

12 (D) North America, except Mexico.

13 (E) Oceania.

14 (F) South America, Mexico, Central America, and the Carib-  
15 bean.

16 (b) GENERAL.—Aliens subject to the worldwide numerical limitations of  
17 section 4102(c) of this title for qualified diversity immigrants shall be allo-  
18 cated visas for each fiscal year as provided by this section.

19 (c) DETERMINATION OF NUMBERS OF CERTAIN ALIENS.—For the most  
20 recent prior 5-year period for which information is available, the Attorney  
21 General shall determine the total number of aliens who are natives of each  
22 foreign country and who—

23 (1) were admitted or otherwise acquired the status of an alien law-  
24 fully admitted for permanent residence (except under this section); and

25 (2) were subject to the numerical limitations for family-sponsored  
26 and employment-based immigrants under sections 4103 and 4104 of  
27 this title or were admitted or otherwise acquired the status of an alien  
28 lawfully admitted for permanent residence as an alien described by sec-  
29 tion 4102(d)(6)–(8) of this title.

30 (d) IDENTIFICATION.—The Attorney General shall identify each high-  
31 admission foreign country and region and each low-admission country and  
32 region.

33 (e) PERCENTAGE AND RATIO DETERMINATIONS.—The Attorney General  
34 shall determine—

35 (1) the percentage of the total of the number determined under sub-  
36 section (c) of this section that applies to foreign countries in high-  
37 admission regions;

38 (2) based on available estimates for each region, the total population  
39 of each region, excluding the population of any high-admission foreign  
40 country;

1 (3) for each low-admission region, the ratio of the population of the  
2 region determined under clause (2) of this subsection to the total popu-  
3 lation determined under clause (2) for all low-admission regions; and

4 (4) for each high-admission region, the ratio of the population of the  
5 region determined under clause (2) of this subsection to the total popu-  
6 lation determined under clause (2) for all high-admission regions.

7 (f) ALLOCATION OF VISAS.—(1) The percentage of visas allocated under  
8 this section to natives of a high-admission foreign country is 0.

9 (2) Except as provided by subsection (g) of this section, the percentage  
10 of visas allocated under this section to natives (except natives of a high-  
11 admission foreign country) in a low-admission region is the product of—

12 (A) the percentage determined under subsection (e)(1) of this sec-  
13 tion; multiplied by

14 (B) the population ratio for the region determined under subsection  
15 (e)(3) of this section.

16 (3) Except as provided by subsection (g) of this section, the percentage  
17 of visas allocated under this section to natives (except natives of a high-  
18 admission foreign country) in a high-admission region is the product of—

19 (A) 100 percent minus the percentage determined under subsection  
20 (e)(1) of this section; multiplied by

21 (B) the population ratio for the region determined under subsection  
22 (e)(4) of this section.

23 (g) REDISTRIBUTION OF VISAS AND LIMITATION.—(1) Except as pro-  
24 vided by paragraph (2) of this subsection, if the Secretary of State esti-  
25 mates that the number of immigrant visas to be granted for a fiscal year  
26 to natives in a region under this section will be less than the number of  
27 immigrant visas allocated for the fiscal year to those natives under this sec-  
28 tion, the excess visa numbers shall be made available to natives (except na-  
29 tives of a high-admission foreign country) of the other regions in proportion  
30 to the percentages specified in subsection (f)(2) and (3) of this section.

31 (2) The percentage of visas allocated under this section for a fiscal year  
32 to natives of a single foreign country may not be more than 7 percent of  
33 the total number of visas allocated under this section for the fiscal year.

34 (h) REQUIREMENT OF EDUCATION OR WORK EXPERIENCE.—An alien is  
35 eligible for a visa under this section only if the alien—

36 (1) has at least a high school education or its equivalent; or

37 (2) not later than 5 years after the date of the application for a visa  
38 has at least 2 years of work experience in an occupation requiring at  
39 least 2 years of training or experience.

1 (i) MAINTAINING INFORMATION.—The Secretary of State shall maintain  
2 information on the age, occupation, education level, and other relevant char-  
3 characteristics of immigrants granted visas under this section.

4 **§ 4106. Special immigrants having honorable military serv-**  
5 **ice**

6 (a) TREATY AND AGREEMENT LIMITATION.—(1) The number of immi-  
7 grant visas allocated in a fiscal year to special immigrants as defined by  
8 section 137(a)(13) of this title (except the spouse and children of such an  
9 immigrant) may not be more than—

10 (A) 2,000 for aliens who are nationals of a foreign country for which  
11 there was a treaty or agreement in effect on October 1, 1991, that  
12 authorized and limited the number of aliens who are nationals of the  
13 foreign country who may enlist each year in the armed forces of the  
14 United States; and

15 (B) 100 for aliens who are nationals of another foreign country.

16 (2) This subsection does not apply to individuals who met the definition  
17 of section 137(a)(13) on October 1, 1991.

18 (b) NONAPPLICATION OF NUMERICAL LIMITATIONS.—(1) Except as pro-  
19 vided by paragraph (2) of this subsection, the numerical limitations of sec-  
20 tions 4104 and 4111(a) and (b)(3) and (4) of this title do not apply to im-  
21 migrant visas made available to special immigrants as defined by section  
22 137(a)(13) of this title.

23 (2) The number of visas allocated in a fiscal year—

24 (A) under subsections (b), (c), and (d) of section 4104 of this title  
25 shall each be reduced by one-third of the number of visas allocated in  
26 the prior fiscal year to special immigrants as defined by section  
27 137(a)(13) of this title;

28 (B) to natives of a foreign country under section 4111(a) and (b)(3)  
29 and (4) of this title shall be reduced by the number of visas allocated  
30 in the prior fiscal year to special immigrants as defined by section  
31 137(a)(13) who are natives of the foreign country; and

32 (C) under subsections (b), (c), and (d) of section 4104 for a foreign  
33 country subject to section 4111(b)(1) and (2) of this title in that fiscal  
34 year and the prior fiscal year shall be reduced by one-third of the num-  
35 ber of visas allocated in the prior fiscal year to special immigrants as  
36 defined by section 137(a)(13) who are natives of the foreign country.

37 **§ 4107. Special immigrants employed in Panama**

38 Not more than 15,000 aliens may be admitted to the United States as  
39 special immigrants as defined by section 137(a)(5)–(7) of this title. Not  
40 more than 5,000 aliens may be admitted in a fiscal year as special immi-  
41 grants as defined by section 137(a)(5)–(7).

1 **§ 4108. Status of spouses and children**

2 The spouse or child (as defined by section 110(a)(1)–(5) of this title) ac-  
3 companying or following to join an alien who is in a class described by sec-  
4 tion 4103, 4104, 4105, or 4106 of this title is entitled to be placed in the  
5 same class and preference order as the alien if the spouse or child otherwise  
6 is not entitled to immigrant status and the immediate granting of a visa  
7 under section 4103, 4104, 4105, or 4106.

8 **§ 4109. Estimating number of visas to be granted**

9 In carrying out sections 4103–4106, 4108, and 4313(a) and (b) of this  
10 title, the Secretary of State may make estimates of the anticipated number  
11 of immigrant visas to be granted during any quarter of a fiscal year under  
12 each class of sections 4103–4106 of this title. The Secretary may rely on  
13 those estimates in authorizing the granting of those visas.

14 **§ 4110. Pilot program**

15 (a) ESTABLISHMENT OF PROGRAM AND ALLOCATION OF VISAS.—The  
16 Secretary of State, with the Attorney General, shall set aside 300 visas each  
17 year for 5 years from the visas otherwise available under section 4104(f)  
18 of this title for a pilot program to carry out section 4104(f). The program  
19 shall include a regional center in the United States for promoting economic  
20 growth, including increased export sales, improved regional productivity, job  
21 creation, and increased domestic capital investment. The visas are allocated  
22 for aliens eligible for admission under section 4104(f) and spouses and chil-  
23 dren eligible under this title to accompany or follow to join the alien.

24 (b) DETERMINATION OF NUMBER OF JOBS CREATED.—In establishing  
25 compliance with section 4104(f)(2)(C) of this title and notwithstanding the  
26 requirements of section 204.6 of title 8, Code of Federal Regulations, the  
27 Attorney General shall allow aliens admitted under the program to establish  
28 reasonable methodologies for determining the number of jobs created by the  
29 program, including jobs estimated to have been created indirectly through  
30 revenue produced from increased exports resulting from the program.

31 **§ 4111. Limitations on admissions from individual foreign**  
32 **countries**

33 (a) TOTAL NUMBER OF VISAS AVAILABLE IN A FISCAL YEAR.—(1) Ex-  
34 cept as provided by this section, not more than 7 percent of the total num-  
35 ber of immigrant visas allocated under sections 4103, 4104, and 4106 of  
36 this title in a fiscal year are allocated to natives of a foreign country, and  
37 not more than 2 percent of the total number are allocated to natives of a  
38 dependent area.

39 (2) If, because of the application of paragraph (1) of this subsection to  
40 at least one foreign country or dependent area, the total number of visas  
41 allocated under sections 4103, 4104, and 4106 of this title for a calendar

1 quarter is more than the number of qualified immigrants who otherwise may  
2 be granted a visa, paragraph (1) does not apply to visas allocated to any  
3 such foreign country or dependent area during the remainder of the cal-  
4 endar quarter.

5 (3) Except for the United States and American Samoa, an independent  
6 country, self-governing dominion, or territory under the international trust-  
7 eeship system of the United Nations is a foreign country under this sub-  
8 section when approved by the Secretary.

9 (4) Approval is deemed to have been given under paragraph (3) of this  
10 subsection to—

11 (A) Taiwan (China); and

12 (B) Hong Kong.

13 (5) The Secretary of State shall specify the foreign country to which any  
14 other inhabited land is to be attributed. The Secretary shall issue appro-  
15 priate instructions to diplomatic and consular offices when the territorial  
16 limits of a foreign country change and the Secretary recognizes the change.

17 (b) ALLOCATION WHEN MAXIMUM NUMBER OF VISAS ALLOCATED.—(1)  
18 If the total number of immigrant visas allocated under sections 4103, 4104,  
19 and 4106 of this title to natives of a foreign country or dependent area is  
20 more than the applicable numerical limitation established under subsection  
21 (a)(1) of this section in a fiscal year, visa numbers for natives of that coun-  
22 try or area shall be allocated under sections 4103, 4104, and 4106 (to the  
23 extent practicable and otherwise consistent with this section and sections  
24 4103, 4104, and 4106) so that—

25 (A) the ratio of the visa numbers allocated under section 4103 of  
26 this title to the visa numbers made available under sections 4104 and  
27 4106 of this title equals the ratio of the worldwide numerical limita-  
28 tions of section 4102(a) of this title to the worldwide numerical limita-  
29 tion under section 4102(b) of this title;

30 (B) except as provided by paragraphs (3) and (4) of this subsection,  
31 the proportion of the visa numbers allocated under each of subsections  
32 (b), (c), (d), and (e) of section 4103 of this title equals the ratio of  
33 the total number of visas allocated under each of those subsections to  
34 the total number of visas allocated under section 4103; and

35 (C) the proportion of the visa numbers allocated under each of sub-  
36 sections (b), (c), (d), (e), and (f) of section 4104 of this title equals  
37 the ratio of the total number of visas allocated under each of those sub-  
38 sections to the total number of visas allocated under sections 4104 and  
39 4106.

40 (2) Paragraph (1) of this subsection does not limit the number of visas  
41 that may be granted—

1 (A) to natives of a foreign country or dependent area under section  
2 4103 of this title if there is insufficient demand for visas for those na-  
3 tives under sections 4104 and 4106 of this title;

4 (B) to natives of a foreign country or dependent area under sections  
5 4104 and 4106 of this title if there is insufficient demand for visas for  
6 those natives under section 4103 of this title; or

7 (C) under paragraph (3)(A) of this subsection.

8 (3) Of the visa numbers allocated under section 4103(c) of this title in  
9 a fiscal year to qualified immigrants who are the spouses and children of  
10 aliens lawfully admitted for permanent residence—

11 (A) 75 percent of the 77 percent of the total number of visas allo-  
12 cated to those immigrants shall be granted without regard to the nu-  
13 merical limitation established under subsection (a)(1) of this section;  
14 and

15 (B) 25 percent of the 77 percent shall be allocated for a foreign  
16 country or dependent area subject to paragraph (1) of this subsection  
17 only to the extent the total number of visas granted under subpara-  
18 graph (A) of this paragraph to natives of the country or area is less  
19 than 77 percent of the maximum number of visas that may be allocated  
20 under section 4103(c) of this title to immigrants who are natives of the  
21 country or area under section 4103(c) consistent with paragraph (1).

22 (4) For a foreign country or dependent area to which paragraph (1) of  
23 this subsection applies—

24 (A) the number of immigrant visas that may be allocated under sec-  
25 tion 4103(c) of this title to natives of the country or area who are  
26 qualified immigrants and the unmarried sons and unmarried daughters  
27 (but not children) of aliens lawfully admitted for permanent residence  
28 may not be more than the greater of—

29 (i) 23 percent of the maximum number of visas that may be al-  
30 located under section 4103(c) of this title to immigrants of the  
31 country or area described by section 4103(c) consistent with para-  
32 graph (1) of this subsection; or

33 (ii) the number, if any, by which the maximum number of visas  
34 that may be allocated under section 4103(c) of this title to immi-  
35 grants of the country or area described by section 4103(c) is more  
36 than the number of visas granted under section 4103(c) to quali-  
37 fied immigrants who are the spouses and children of aliens law-  
38 fully admitted for permanent residence; and

39 (B) if the total number of visas granted under section 4103(c) of  
40 this title is more than the maximum number of visas that may be allo-  
41 cated to immigrants of the country or area under section 4103(c), all

1 visas are deemed to have been required for the preferences specified in  
2 section 4103(b) and (c) of this title when applying section 4103(d) and  
3 (e) of this title under paragraph (1)(B) of this subsection.

4 **§ 4112. Charging immigrants to foreign countries**

5 An immigrant is chargeable to the foreign country in which the immi-  
6 grant was born except in the following circumstances:

7 (1) When an alien child is accompanied by or following to join an  
8 alien parent of the child, the child may be charged to the foreign coun-  
9 try of either parent if—

10 (A) the parent has received or qualifies for an immigrant visa;

11 (B) necessary to prevent the separation of the child from the  
12 parent; and

13 (C) immigration charged to the foreign country to which the  
14 parent has been or would be chargeable has not reached the nu-  
15 merical limitation established by section 4111(a)(1) of this title.

16 (2) When an alien is chargeable to a foreign country different from  
17 that of the spouse of the alien, the alien may be charged to the foreign  
18 country of the spouse the alien is accompanying or following to join  
19 if—

20 (A) the spouse has received or qualifies for an immigrant visa;

21 (B) necessary to prevent the separation of the alien and spouse;  
22 and

23 (C) immigration charged to the foreign country to which the  
24 spouse has been or would be chargeable has not reached the nu-  
25 merical limitation established by section 4111(a)(1) of this title.

26 (3) An alien born in the United States is deemed to have been born  
27 in the foreign country of which the alien is a citizen or subject. If the  
28 alien is not a citizen or subject of a foreign country, the alien is  
29 deemed to have been born in the last foreign country in which the con-  
30 sular officer decides that the alien resided.

31 (4) An alien born in a foreign country in which neither parent of  
32 the alien was born and in which neither parent resides at the time of  
33 the birth of the alien may be charged to the foreign country of either  
34 parent.

35 (5) An alien born in a dependent area of a foreign country, except  
36 an alien described by section 4102(d) of this title, is chargeable to that  
37 country.

38 **§ 4113. Burden of proof**

39 An alien claiming to be an immigrant described by sections 4103–4106  
40 and 4108 of this title, a special immigrant, or an immediate relative has

1 the burden of proving that the alien is such an immigrant or an immediate  
2 relative.

3 **CHAPTER 43—PETITIONS AND DOCUMENTATION**

SUBCHAPTER I—PETITIONS

Sec.

- 4301. General.
- 4302. Approving petitions for children.
- 4303. Petitions for married aliens.
- 4304. Revoking approved petitions.

SUBCHAPTER II—DOCUMENTATION

- 4311. Documentation requirements.
- 4312. Applications for immigrant visas and registration.
- 4313. Granting immigrant visas and other documentation.
- 4314. Period of validity and revocation.
- 4315. Unused immigrant visas.
- 4316. Reentry permits.
- 4317. Burden of proof.
- 4318. Documentation waivers.

4 SUBCHAPTER I—PETITIONS

5 **§ 4301. General**

6 (a) PETITIONS TO THE ATTORNEY GENERAL.—The following individuals  
7 may petition the Attorney General for the classification of aliens as follows:

8 (1) a citizen of the United States claiming classification for an alien  
9 entitled to be classified as an immediate relative or under section  
10 4103(b), (d), or (e) of this title.

11 (2) an alien lawfully admitted for permanent residence claiming clas-  
12 sification for an alien entitled to be classified under section 4103(c) of  
13 this title.

14 (3) an alien desiring to be classified under section 4104(b)(1)(A) of  
15 this title, or a person for the alien.

16 (4) an individual intending to employ in the United States an alien  
17 entitled to be classified under section 4104(b)(1)(B) or (C), (c), or (d)  
18 of this title.

19 (5) except a special immigrant (as defined by section 137(a)(4) of  
20 this title), an alien desiring to be classified under section 4104(e) of  
21 this title, or a person for the alien.

22 (6) an alien desiring to be classified under section 4104(f) of this  
23 title.

24 (b) PETITIONS TO THE SECRETARY OF STATE.—(1) An alien claiming  
25 classification as a special immigrant (as defined by section 137(a)(4) of this  
26 title) may petition the Secretary of State to be classified as that special im-  
27 migrant. The alien may file a petition only after being notified by the Sec-  
28 retary that the classification has been recommended and approved as pro-  
29 vided by section 137(a)(4).

30 (2)(A) An alien desiring to be classified under section 4105 of this title  
31 may petition the Secretary of State to be classified under section 4105.

1 (B) The alien shall file the petition at the place and time the Secretary  
2 of State decides by regulation. Only one petition may be filed during a peti-  
3 tioning period established by the Secretary. If more than one petition is filed  
4 during a period, all petitions filed by the alien during that period are void.

5 (C)(i) The Secretary of State shall designate a period during which a pe-  
6 tition for a visa that may be granted under section 4105 of this title for  
7 the fiscal year beginning after the end of the period may be filed.

8 (ii) An alien who qualifies for a visa under section 4105 of this title re-  
9 mains eligible to receive the visa through the end of the fiscal year for which  
10 the alien was selected.

11 (iii) The Secretary of State shall prescribe regulations necessary to carry  
12 out this subparagraph.

13 (D) A petition under this paragraph shall—

14 (i) be in a form the Secretary of State prescribes by regulation; and

15 (ii) contain information and documentary evidence the Secretary re-  
16 quires.

17 (c) APPROVING PETITIONS.—After investigating the facts about a peti-  
18 tion, and after consulting with the Secretary of Labor about a petition to  
19 classify an alien under section 4104(c) or (d) of this title, the Attorney Gen-  
20 eral shall approve the petition if the Attorney General decides the facts stat-  
21 ed in the petition are true and the alien is entitled to be classified as re-  
22 quested as an immediate relative or under section 4103, 4104, or 4106 of  
23 this title. After approving the petition, the Attorney General shall submit  
24 one copy to the Secretary of State. The Secretary then shall authorize the  
25 appropriate consular officer to classify the alien as approved.

26 (d) NONDISCRIMINATION.—Except as provided by sections 137,  
27 4102(d)(6)–(8), 4103–4106, 4108, and 4111(a)(1) of this title, an alien  
28 may not be classified or be discriminated against in granting an immigrant  
29 visa under section 4313 of this title because of the alien’s race, sex, nation-  
30 ality, place of birth, or place of residence.

31 (e) NO ENTITLEMENT TO ENTER THE UNITED STATES.—This sub-  
32 chapter does not entitle an immigrant for whom a petition is approved  
33 under this subchapter to enter the United States if found not to be entitled  
34 to the classification on arrival in the United States.

### 35 **§ 4302. Approving petitions for children**

36 (a) FAVORABLE HOME STUDY REQUIREMENT.—Notwithstanding section  
37 4301 of this section, a petition for a child (as defined by section 110(a)(6)  
38 of this title) may be approved only if a valid home study has been rec-  
39 ommended favorably—

40 (1) by an agency of the State of the proposed residence of the child;

1 (2) by an agency authorized to conduct the study by the State of  
2 the proposed residence of the child; or

3 (3) for a child adopted outside the United States, by an appropriate  
4 adoption agency licensed in the United States.

5 (b) PETITIONS FOR CERTAIN CHILDREN FATHERED BY CITIZENS OF  
6 THE UNITED STATES.—(1) An alien claiming to be an alien described by  
7 paragraph (2)(A) of this subsection, or a person for the alien, may petition  
8 the Attorney General to be classified as an immediate relative or under sec-  
9 tion 4103(b) or (d) of this title, as appropriate.

10 (2) After investigating the facts about a petition, the Attorney General  
11 shall approve the petition if—

12 (A) the Attorney General has reason to believe that the alien was  
13 born in Kampuchea, Korea, Laos, Thailand, or Vietnam after Decem-  
14 ber 31, 1950, and before October 22, 1982, and was fathered by a citi-  
15 zen of the United States;

16 (B) the Attorney General has received an acceptable guarantee of  
17 legal custody and financial responsibility described by paragraph (5) of  
18 this subsection; and

19 (C) for an alien less than 18 years of age—

20 (i) an appropriate child welfare agency licensed in the United  
21 States and actively involved in the intercountry placement of chil-  
22 dren arranged the placement of the alien with a sponsor in the  
23 United States; and

24 (ii) the mother or guardian of the alien, in writing, irrevocably  
25 released the alien for emigration.

26 (3) In considering a petition filed under this subsection, the Attorney  
27 General shall—

28 (A) consult with appropriate government officials and officials of pri-  
29 vate voluntary organizations in the foreign country in which the alien  
30 was born in making the findings described by paragraph (2)(A) and  
31 (C)(i) of this subsection; and

32 (B) consider the physical appearance of the alien and evidence pro-  
33 vided by the petitioner, including—

34 (i) birth and baptismal certificates;

35 (ii) local civil records;

36 (iii) photographs of, and letters or proof of financial support  
37 from, a putative father who is a citizen of the United States; and

38 (iv) relevant or probative testimony of witnesses.

39 (4) After approving the petition, the Attorney General shall submit one  
40 copy to the Secretary of State.

1 (5) A guarantee of legal custody and financial responsibility for an alien  
2 required by paragraph (2) of this subsection must—

3 (A) be signed in the presence of a consular officer or an immigration  
4 officer by a sponsor who is—

5 (i) at least 21 years of age;

6 (ii) of good moral character; and

7 (iii) a citizen of the United States or an alien lawfully admitted  
8 for permanent residence; and

9 (B) provide that the sponsor agrees—

10 (i) for an alien less than 18 years of age, to assume legal cus-  
11 tody for the alien when the alien departs for the United States  
12 and until the alien becomes 18 years of age, as provided under the  
13 laws of the State in which the alien and the sponsor will reside;  
14 and

15 (ii) to provide, during the longer of the 5-year period beginning  
16 on the date the alien acquires the status of an alien lawfully ad-  
17 mitted for permanent residence or the period beginning on that  
18 date and ending on the date the alien becomes 21 years of age,  
19 financial support necessary to maintain the family in the United  
20 States of which the alien is a member at a level equal to at least  
21 125 percent of the current official poverty line (established by the  
22 Director of the Office of Management and Budget under section  
23 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42  
24 U.S.C. 9902(2) and revised by the Secretary of Health and  
25 Human Services under section 673(2)) for a family the same size  
26 as that of the family of the alien.

27 (6) The Attorney General may bring a civil action against the sponsor  
28 in the district court of the United States for the judicial district in which  
29 the sponsor resides to enforce a guarantee of legal custody and financial re-  
30 sponsibility made under paragraph (5) of this subsection. However, a spon-  
31 sor or the estate of the sponsor is not liable under the guarantee if the  
32 sponsor dies or is adjudicated a bankrupt under title 11.

33 **§ 4303. Petitions for married aliens**

34 (a) LIMITATIONS ON APPROVING PETITIONS FOR CERTAIN SPOUSES.—  
35 The Attorney General may approve a spousal petition under section 4103(c)  
36 of this title filed by an alien who, because of a prior marriage, had become  
37 an alien lawfully admitted for permanent residence as the spouse of a citizen  
38 of the United States or an alien lawfully admitted for permanent residence  
39 only if—

40 (1) 5 years have passed since the alien had become an alien lawfully  
41 admitted for permanent residence;

1 (2) the alien, by clear and convincing evidence, satisfies the Attorney  
2 General that the prior marriage was not entered into to evade the im-  
3 migration laws; or

4 (3) the prior marriage of the alien ended by the death of the alien's  
5 spouse.

6 (b) PROHIBITION ON APPROVING PETITIONS BECAUSE OF MARRIAGES  
7 TO EVADE IMMIGRATION LAWS.—Notwithstanding section 4301(c) of this  
8 title, a petition to classify an alien may not be approved if—

9 (1) an alien previously was classified, or sought to be classified, as  
10 an immediate relative or under section 4108 of this title as a spouse  
11 of a citizen of the United States or an alien lawfully admitted for per-  
12 manent residence because of a marriage the Attorney General decides  
13 was entered into to evade the immigration laws; or

14 (2) the Attorney General decides the alien has attempted or con-  
15 spired to enter into a marriage to evade the immigration laws.

16 (c) REQUIRED RESIDENCE OUTSIDE THE UNITED STATES FOR CERTAIN  
17 ALIENS INVOLVED IN PROCEEDINGS.—(1) Notwithstanding section 4301(a)  
18 and (b) of this title, a petition to classify an alien as an immediate relative  
19 or under section 4103, 4104, 4105, or 4106 of this title because of a mar-  
20 riage entered into after November 9, 1986, and during the period described  
21 by section 9101(f)(1)(C) of this title may not be approved until the alien  
22 resides outside the United States for 2 years after the marriage.

23 (2) Paragraph (1) of this subsection does not apply to a marriage if the  
24 alien establishes by clear and convincing evidence satisfactory to the Attor-  
25 ney General that—

26 (A) the marriage was entered into in good faith and under the laws  
27 of the place where the marriage took place;

28 (B) the marriage was not entered into to procure the alien's entry  
29 as an immigrant; and

30 (C) no consideration was given, except to an attorney for assistance  
31 in preparing a petition, for filing a petition under section 2329(b) or  
32 4301(a) or (b) of this title for an alien spouse or alien son or daughter.

33 (3) Under regulations of the Attorney General, the Attorney General shall  
34 allow only one level of administrative appellate review for each alien under  
35 paragraph (2) of this subsection.

36 **§ 4304. Revoking approved petitions**

37 The Attorney General may revoke at any time a petition approved by the  
38 Attorney General under section 4301(c) of this title if the Attorney General  
39 considers that there is good cause to revoke. Revocation is effective as of  
40 the date of approval of the petition if notice of the revocation is mailed to  
41 the last known address of the petitioner and the Secretary of State notifies

1 the alien for whom the petition was filed of the revocation before the alien  
2 begins traveling to the United States. If notice is not given as required by  
3 this section and the alien applies for admission to the United States, the  
4 admissibility of the alien shall be decided as provided by sections 6103,  
5 6331(a)–(d) and (f)–(h), and 6332 of this title.

6 SUBCHAPTER II—DOCUMENTATION

7 **§ 4311. Documentation requirements**

8 (a) DOCUMENTS REQUIRED.—(1) An immigrant may be admitted to the  
9 United States only if, when applying for admission, the immigrant—

10 (A)(i) has an unexpired entry document required by this title; or

11 (ii) was born after an entry document was granted to the accom-  
12 panying parent;

13 (B) has an unexpired travel document or document of identity and  
14 nationality when required by regulations the Attorney General pre-  
15 scribes; and

16 (C) has a visa granted as provided under sections 4103–4106 and  
17 4313(b) of this title.

18 (2) This section does not apply to an alien admitted under section 5105  
19 of this title.

20 (b) WAIVER FOR CERTAIN SPECIAL IMMIGRANTS.—Under conditions that  
21 may be prescribed by regulations of the Attorney General, the Attorney  
22 General may readmit a special immigrant (as defined by section 137(a)(1)  
23 of this title) returning to the United States, without the alien’s having to  
24 obtain a passport, immigrant visa, reentry permit, or other documentation,  
25 if the alien otherwise is admissible.

26 **§ 4312. Applications for immigrant visas and registration**

27 (a) APPLICATION REQUIREMENTS.—An alien applying for an immigrant  
28 visa must apply in the way and at the place prescribed by regulation. The  
29 application must contain the following information about the alien:

30 (1) the complete true name of the alien and each alias ever used.

31 (2) a personal description, including age, sex, height, complexion,  
32 color of hair and eyes, and marks of identification.

33 (3) the date and place of birth.

34 (4) present and prior addresses.

35 (5) marital status and the names and addresses of the alien’s spouse  
36 and children.

37 (6) the names and addresses of parents, and if neither parent is liv-  
38 ing, the name and address of a next of kin in the foreign country from  
39 which the alien is coming.

40 (7) occupation.

41 (8) any language the alien can speak, read, or write.

1 (9) whether the alien is going to join a relative or friend in the  
2 United States and, if so, the name and address of the relative or  
3 friend.

4 (10) the purpose in going to the United States.

5 (11) the period of intended stay in the United States.

6 (12) the port of entry into the United States.

7 (13) any final destination beyond the port of entry, and whether the  
8 alien has a ticket through to the final destination.

9 (14) whether the alien has ever been arrested, convicted, imprisoned,  
10 or in a poorhouse.

11 (15) whether the alien has ever been granted a pardon or amnesty.

12 (16) whether the alien has ever been treated for mental disease.

13 (17) whether the alien is claiming to be an immediate relative, an  
14 immigrant entitled to be classified under section 4103, 4104, 4105, or  
15 4106 of this title, or a special immigrant, and the facts supporting the  
16 claim.

17 (18) whether the alien may be excluded under the immigration laws  
18 from admission to the United States, and whether the alien is claiming  
19 exemption from exclusion.

20 (19) additional information prescribed by regulation that is necessary  
21 to identify the alien and enforce the immigration and nationality laws.

22 (b) ADDITIONAL REQUIREMENTS.—(1) An alien applying for an immi-  
23 grant visa must—

24 (A) register as provided by chapter 81 of this title when applying  
25 for the visa;

26 (B) take a physical and mental examination prescribed by regulation;

27 (C) if required under regulations the Secretary of State prescribes,  
28 present a passport or other suitable travel document or a document of  
29 identity and nationality; and

30 (D) provide the consular officer, with the application, with a certified  
31 copy of—

32 (i) a statement from the appropriate police authorities stating  
33 what their records show about the alien;

34 (ii) any existing prison record, military record, and record of  
35 birth of the alien; and

36 (iii) any other record or documentation about the alien that the  
37 consular officer may require.

38 (2) Each certified copy provided under paragraph (1)(D) of this sub-  
39 section shall be attached to the application and become a part of the appli-  
40 cation. If the alien satisfies the consular officer that it is not possible to

1 obtain the certified copy, the consular officer may allow the alien to submit  
2 other satisfactory evidence of the fact to which the copy relates.

3 (c) SIGNATURE AND OATH.—Except as otherwise prescribed by regula-  
4 tion, an alien must—

5 (1) sign an application for an immigrant visa in the presence of a  
6 consular officer; and

7 (2) take an oath administered by the consular officer verifying the  
8 application.

9 (d) PROCESSING IMMIGRANT VISA APPLICATIONS OF CUBAN NATIONALS  
10 IN 3D COUNTRIES.—(1) In this subsection, “process” means accepting and  
11 reviewing an application and preparing necessary documents and making  
12 appropriate decisions related to the application.

13 (2) Notwithstanding sections 4313(f) and 6106 of this title, a consular  
14 officer shall process an application for an immigrant visa by a Cuban na-  
15 tional located in a 3d country on the same basis as an application for an  
16 immigrant visa by a national of another country.

17 (e) STATEMENT ABOUT NO ENTITLEMENT TO ENTER THE UNITED  
18 STATES.—An application for an immigrant visa shall inform the applicant  
19 that a visa or other documentation granted to an alien does not entitle the  
20 alien to enter the United States if, on arrival at a port of entry, the alien  
21 is found to be inadmissible.

### 22 **§ 4313. Granting immigrant visas and other documentation**

23 (a) REGISTRATION ON WAITING LISTS.—Waiting lists of aliens applying  
24 for immigrant visas shall be maintained under regulations the Secretary of  
25 State prescribes.

26 (b) ORDER OF GRANTING VISAS.—(1) Immigrant visas allocated under  
27 section 4103 or 4104 of this title shall be granted to qualified immigrants  
28 in the order in which a petition for each immigrant is filed with the Attor-  
29 ney General (or with the Secretary of State for special immigrants as de-  
30 fined by section 137(a)(4) of this title) under section 4301 (a) or (b) of this  
31 title.

32 (2) Immigrant visas allocated under section 4105 of this title shall be  
33 granted to qualified immigrants randomly as the Secretary prescribes for  
34 the fiscal year involved.

35 (c) GRANTING VISAS.—(1) A consular officer grants an immigrant visa  
36 at the office of the consular officer outside the United States. A consular  
37 officer may grant an immigrant visa to an eligible immigrant who has made  
38 a proper application for the visa.

39 (2) A consular officer may grant a special immigrant or an immediate  
40 relative an immigrant visa as a special immigrant or an immediate relative  
41 on receiving satisfactory proof, under regulations prescribed under this title,

1 that the applicant is entitled to be classified as a special immigrant or an  
2 immediate relative.

3 (d) PROHIBITIONS.—(1) A consular officer may not grant an immigrant  
4 visa or other documentation to an alien if—

5 (A) the alien is required to be registered under section 8101(a)(1)  
6 of this title and is not registered;

7 (B) the alien's application does not comply with this title or regula-  
8 tions prescribed under this title;

9 (C) the alien is excludable from admission to the United States; or

10 (D) the consular officer has reason to believe the alien is ineligible  
11 for the visa or other documentation.

12 (2) Notwithstanding paragraph (1)(D) of this subsection, a consular offi-  
13 cer may grant an immigrant visa or other documentation to an alien to  
14 whom section 6304(a) of this title applies if—

15 (A) the alien otherwise may receive the visa or other documentation;  
16 and

17 (B) the consular officer receives notice from the Attorney General  
18 that the alien filed a bond or undertaking under section 6304(b) of this  
19 title.

20 (e) CONTENTS OF VISAS.—An immigrant visa consists of the application  
21 for the visa, when visaed by the consular officer. The visa shall specify—

22 (1) the foreign country and the classification to which the immigrant  
23 is charged;

24 (2) the expiration date of the visa; and

25 (3) additional required information.

26 (f) DISCONTINUING GRANTING VISAS WHEN COUNTRY DENIES OR  
27 DELAYS ACCEPTING ALIEN.—On being notified by the Attorney General  
28 that the government of a foreign country denies or unreasonably delays ac-  
29 cepting an alien who is a citizen, subject, national, or resident of that coun-  
30 try after the Attorney General asks whether the government will accept the  
31 alien under section 6537(a)(2)(B) of this title, the Secretary of State shall  
32 order consular officers in that foreign country to discontinue granting immi-  
33 grant visas to citizens, subjects, nationals, and residents of that country  
34 until the Attorney General notifies the Secretary that the country has  
35 accepted the alien.

36 **§ 4314. Period of validity and revocation**

37 (a) VALIDITY.—An immigrant visa is valid for the period prescribed by  
38 regulation, but for not more than 4 months. However, an immigrant visa  
39 granted to a child legally adopted by a citizen of the United States or a  
40 spouse of the citizen when the citizen is serving outside the United States  
41 in the armed forces of the United States, is employed outside the United

1 States by the United States Government, or is temporarily outside the Unit-  
2 ed States on business, is valid until the regular return of the citizen to the  
3 United States from the service, employment, or business, but for not more  
4 than 3 years.

5 (b) REVOCATION.—A consular officer or the Secretary of State may re-  
6 voke at any time an immigrant visa or other documentation granted to an  
7 immigrant. A revocation invalidates the visa or documentation from the date  
8 the visa or documentation is granted. The Attorney General shall be notified  
9 of each revocation.

#### 10 **§ 4315. Unused immigrant visas**

11 (a) REPLACING UNUSED VISAS.—A consular officer may replace an im-  
12 migrant visa under its original number during the fiscal year it was granted  
13 if—

14 (1) the immigrant establishes to the satisfaction of the consular offi-  
15 cer that the immigrant was unable to use the visa when it was valid  
16 for reasons that the immigrant did not cause and that were beyond the  
17 immigrant's control;

18 (2) the consular officer finds the immigrant is eligible for an immi-  
19 grant visa; and

20 (3) the immigrant pays again the statutory fees for an application  
21 and immigrant visa.

22 (b) GRANTING UNUSED VISAS.—An eligible immigrant may be granted  
23 an unused immigrant visa that the immigrant qualifies for if the visa origi-  
24 nally was granted to another immigrant—

25 (1) deported after being excluded from admission;

26 (2) not applying for admission before the visa expires; or

27 (3) as a preference immigrant and the immigrant is found not to be  
28 a preference immigrant.

#### 29 **§ 4316. Reentry permits**

30 (a) APPLICATIONS.—An alien lawfully admitted for permanent residence  
31 who intends to leave the United States temporarily may apply to the Attor-  
32 ney General for a reentry permit to reenter the United States. The applica-  
33 tion must—

34 (1) state the length of, and reason for, the departure;

35 (2) state other information and be accompanied by photographs of  
36 the applicant that the Attorney General prescribes by regulation; and

37 (3) be made under oath.

38 (b) GRANTING REENTRY PERMITS.—The Attorney General may grant the  
39 reentry permit if the Attorney General finds—

40 (1) the application is made in good faith; and

1 (2) the alien's departure is not contrary to the interests of the Unit-  
2 ed States.

3 (c) PERIOD OF VALIDITY.—A reentry permit may be granted for not  
4 more than 2 years from the date it is granted and may not be renewed.  
5 The alien may use the permit for any number of reentries into the United  
6 States. The alien shall surrender the permit to the Attorney General when  
7 the permit expires.

8 (d) PRESENTATION OF REENTRY PERMIT ON RETURNING TO THE UNIT-  
9 ED STATES.—An alien granted a reentry permit shall present the permit  
10 to the immigration officer at the port of entry on returning to the United  
11 States. The immigration officer shall accept the permit as a substitute for  
12 any visa otherwise required under this title. The permit has no effect under  
13 the immigration laws except to establish that the alien is returning from a  
14 temporary departure. However, this section does not require a reentry per-  
15 mit as the only way that an alien may establish a return from a temporary  
16 departure.

17 (e) FORM OF APPLICATIONS AND PERMITS.—The Attorney General shall  
18 prescribe by regulation the form of the application and reentry permit, ex-  
19 cept that the permit shall be in a form to identify the alien completely and  
20 shall be printed on distinctive safety paper.

21 **§ 4317. Burden of proof**

22 An individual applying for an immigrant visa or other documentation re-  
23 quired for entering the United States as an immigrant has the burden of  
24 proving that the individual is eligible to be granted the visa or documenta-  
25 tion. A consular officer may grant the visa or documentation only if satis-  
26 fied that the individual is eligible to receive the visa or documentation.

27 **§ 4318. Documentation waivers**

28 The Attorney General may waive sections 4311(a)(1) and 6313(a)(2) and  
29 (c) of this title for an immigrant who has an immigrant visa and otherwise  
30 is admissible if the Attorney General is satisfied that the immigrant did not  
31 know, and by reasonable diligence, could not have known, of the immi-  
32 grant's excludability—

33 (1) before the vessel or aircraft on which the alien came to the Unit-  
34 ed States left the last port outside the United States and outside for-  
35 eign contiguous territory; or

36 (2) for an immigrant coming from foreign contiguous territory, be-  
37 fore the immigrant applied for admission.

38 **CHAPTER 45—CONDITIONAL PERMANENT RESIDENT**  
39 **STATUS**

SUBCHAPTER I—CERTAIN ALIEN SPOUSES, SONS, AND DAUGHTERS

Sec.

4501. Definitions.



1 (b) NOTICE REQUIREMENTS.—When an alien spouse or alien son or  
2 daughter acquires the status of an alien lawfully admitted for permanent  
3 residence on a conditional basis under subsection (a) of this section, the At-  
4 torney General shall notify the spouse, son, or daughter about this sub-  
5 chapter and the requirements of section 4503 of this title to have the condi-  
6 tional basis of the status removed. However, the failure of the Attorney  
7 General to provide notice does not affect the enforcement of this subchapter  
8 against the spouse, son, or daughter.

9 **§ 4503. General requirements to remove conditional basis**

10 To remove the conditional basis established under section 4502(a) of this  
11 title, the alien spouse and the petitioning spouse (if living)—

12 (1) jointly must submit to the Attorney General a petition requesting  
13 the removal of the conditional basis and containing, under penalty of  
14 perjury, the information required by section 4504(b) of this title; and

15 (2) must appear before the Attorney General for a personal interview  
16 about the information required by section 4504(b).

17 **§ 4504. Petitions**

18 (a) TIME FOR SUBMISSION.—(1) Except as provided by paragraph (2) of  
19 this subsection, the petition required by section 4503(1) of this title must  
20 be submitted during the 90-day period immediately before the 2d anniver-  
21 sary that the alien acquired the status of an alien lawfully admitted for per-  
22 manent residence.

23 (2) A petition submitted after the 90-day period may be considered only  
24 if the alien satisfies the Attorney General that good cause and extenuating  
25 circumstances existed for not submitting the petition during that period.

26 (3) The Attorney General may stay a deportation proceeding against an  
27 alien who did not submit a petition within the 90-day period required under  
28 paragraph (1) of this subsection pending the submission of the petition  
29 under paragraph (2) of this subsection.

30 (4) At or about the beginning of the 90-day period, the Attorney General  
31 shall try to notify the alien spouse or alien son or daughter of the require-  
32 ments of section 4503 of this title. However, the failure of the Attorney  
33 General to provide notice does not affect the enforcement of this subchapter  
34 against the spouse, son, or daughter.

35 (b) CONTENTS.—Each petition shall contain the following information:

36 (1) that the qualifying marriage—

37 (A) complied with the laws of the place where the marriage took  
38 place;

39 (B) has not been annulled judicially or ended, except through  
40 the death of a spouse; and

1 (C) was not entered into to procure the entry of an alien as an  
2 immigrant.

3 (2) that no consideration was given, except to an attorney for assist-  
4 ance in preparing the petition, for filing under section 2309(b) or 4301  
5 (a) or (b) of this title a petition for an alien spouse or an alien son  
6 or daughter.

7 (3) the actual residence of each party to the qualifying marriage  
8 since the date the alien spouse acquired the status of an alien lawfully  
9 admitted for permanent residence on a conditional basis under section  
10 4502(a) of this title.

11 (4) each employer and place of employment of each party since that  
12 date.

13 **§ 4505. Personal interviews**

14 (a) TIME AND LOCATION REQUIREMENTS.—(1) The personal interview  
15 required by section 4503(2) of this title shall be conducted—

16 (A) within 90 days after the date a petition is submitted as required  
17 by section 4503(1) of this title; and

18 (B) at a local office of the Immigration and Naturalization Service  
19 the Attorney General designates that is convenient to the parties in-  
20 volved.

21 (2) The Attorney General may waive the interview or the deadline for the  
22 interview when appropriate.

23 (b) DECISIONS ON TRUTHFULNESS OF STATEMENTS.—Within 90 days  
24 after an interview is conducted as required by section 4503(2) of this title,  
25 the Attorney General shall decide whether the information in the petition  
26 and required by section 4504(b) of this title about the qualifying marriage  
27 is true.

28 **§ 4506. Favorable decisions on removing the conditional**  
29 **basis**

30 (a) FAVORABLE DECISIONS.—If the Attorney General decides the infor-  
31 mation required by section 4504(b) of this title is true, the Attorney Gen-  
32 eral shall notify the parties involved and shall remove the conditional basis  
33 of the status of the parties effective on the 2d anniversary that the alien  
34 acquired the status of an alien lawfully admitted for permanent residence.

35 (b) HARDSHIP WAIVERS.—(1) The Attorney General may remove the  
36 conditional basis of an alien spouse or alien son or daughter when the alien  
37 spouse does not comply with section 4503 of this title if the alien spouse  
38 or alien son or daughter shows that—

39 (A) extreme hardship would result if the alien spouse or alien son  
40 or daughter is deported;

1 (B) the qualifying marriage was entered into in good faith by the  
2 alien spouse, but the marriage has been ended (except through the  
3 death of the spouse), and the alien spouse was not at fault in not com-  
4 plying with section 4503 of this title; or

5 (C) the qualifying marriage was entered into in good faith by the  
6 alien spouse and during the marriage the alien spouse or alien son or  
7 daughter was battered by, or was the subject of extreme cruelty com-  
8 mitted by, the spouse of the alien spouse or the citizen or permanent  
9 resident parent of the alien son or daughter, and the alien spouse was  
10 not at fault in not complying with section 4503 of this title.

11 (2) When deciding whether extreme hardship would result, the Attorney  
12 General shall consider circumstances occurring only during the period the  
13 alien was lawfully admitted for permanent residence on a conditional basis.

14 (3) The Attorney General shall establish by regulation ways to protect the  
15 confidentiality of information about an abused alien spouse or alien son or  
16 daughter, including information on the location of the spouse, son, or  
17 daughter.

18 **§ 4507. Unfavorable decisions on removing the conditional**  
19 **basis**

20 (a) IMPROPER QUALIFYING MARRIAGES.—The Attorney General shall  
21 end, as of the date the Attorney General makes a decision under this sub-  
22 section, the status of an alien spouse or alien son or daughter as an alien  
23 lawfully admitted for permanent residence and shall so notify the parties in-  
24 volved if, before the 2d anniversary of the date the alien acquired the status,  
25 the Attorney General decides that—

26 (1) the qualifying marriage—

27 (A) was entered into to procure an alien's entry as an immi-  
28 grant; or

29 (B) has been annulled judicially or ended, except through the  
30 death of a spouse; or

31 (2) consideration was given, except to an attorney for assistance in  
32 preparing the petition, for filing a petition for the alien under section  
33 2309(b) or 4301(a) or (b) of this title.

34 (b) UNTRUE PETITION INFORMATION.—If the Attorney General decides  
35 any information required by section 4504(b) of this title is not true, the At-  
36 torney General shall end, as of the date of the decision, the status of an  
37 alien spouse or alien son or daughter as an alien lawfully admitted for per-  
38 manent residence and notify the parties involved.

39 (c) FAILURE TO FILE PETITIONS OR HAVE PERSONAL INTERVIEWS.—  
40 The Attorney General shall end, as of the 2d anniversary of the alien's law-

1 ful admission for permanent residence, the status of an alien spouse or alien  
2 son or daughter as an alien lawfully admitted for permanent residence if—

3 (1) a petition is not submitted as required by section 4503(1) of this  
4 title; or

5 (2) unless good cause is shown, the alien spouse and petitioning  
6 spouse do not appear at the interview required by section 4503(2) of  
7 this title.

8 (d) REVIEW OF DECISIONS.—(1) An alien whose permanent resident sta-  
9 tus is ended under subsection (a) or (b) of this section may request a review  
10 of the decision in a proceeding to deport the alien. The burden of proof is  
11 on the Attorney General to establish by a preponderance of the evidence  
12 that—

13 (A) if ended under subsection (a) of this section, a ground described  
14 by subsection (a) is met; or

15 (B) if ended under subsection (b) of this section, any information re-  
16 quired by section 4504(b) of this title about the qualifying marriage  
17 is not true.

18 (2) An alien whose permanent resident status is ended under subsection  
19 (c) of this section has the burden of proof in a deportation proceeding of  
20 establishing compliance with section 4503 of this title.

21 **§ 4508. Treatment of conditional basis period for naturaliza-**  
22 **tion purposes**

23 In carrying out subtitle V of this title, an alien who is in the United  
24 States as an alien lawfully admitted for permanent residence on a condi-  
25 tional basis under this subchapter is deemed to have been admitted and to  
26 be in the United States as an alien lawfully admitted for permanent resi-  
27 dence.

28 **§ 4509. Ending waivers**

29 A waiver under section 6301(b) or 6307(b) of this title obtained by an  
30 alien to acquire the status of an alien lawfully admitted for permanent resi-  
31 dence on a conditional basis under this subchapter ends when the status  
32 ends under this subchapter.

33 SUBCHAPTER II—CERTAIN ALIEN ENTREPRENEURS, SPOUSES,  
34 AND CHILDREN

35 **§ 4521. Definitions**

36 In this subchapter—

37 (1) “alien child” means an alien who acquires the status of an alien  
38 lawfully admitted for permanent residence because the alien is the child  
39 of an alien entrepreneur.

1 (2) “alien entrepreneur” means an alien who acquires the status of  
2 an alien lawfully admitted for permanent residence under section  
3 4104(f) of this title.

4 (3) “alien spouse” means an alien who acquires the status of an  
5 alien lawfully admitted for permanent residence because the alien is the  
6 spouse of an alien entrepreneur.

7 **§ 4522. Conditional basis of status**

8 (a) GENERAL.—An alien entrepreneur, alien spouse, or alien child, when  
9 acquiring the status of an alien lawfully admitted for permanent residence,  
10 acquires that status on a conditional basis as provided by this subchapter.

11 (b) NOTICE REQUIREMENTS.—When an alien entrepreneur, alien spouse,  
12 or alien child acquires the status of an alien lawfully admitted for perma-  
13 nent residence on a conditional basis under subsection (a) of this section,  
14 the Attorney General shall notify the entrepreneur, spouse, or child about  
15 this subchapter and the requirements of section 4523 of this title to have  
16 the conditional basis of the status removed. However, the failure of the At-  
17 torney General to provide notice does not affect the enforcement of this sub-  
18 chapter against the entrepreneur, spouse, or child.

19 **§ 4523. General requirements to remove conditional basis**

20 To remove the conditional basis established under section 4522(a) of this  
21 title, the alien entrepreneur must—

22 (1) submit to the Attorney General a petition requesting the removal  
23 of the conditional basis and containing, under penalty of perjury, the  
24 information described by section 4524(b) of this section; and

25 (2) appear before the Attorney General for a personal interview  
26 about the information required by section 4524(b).

27 **§ 4524. Petitions**

28 (a) TIME FOR SUBMISSION.—(1) Except as provided by paragraph (2) of  
29 this subsection, the petition required by section 4523(1) of this title must  
30 be submitted during the 90-day period immediately before the 2d annivers-  
31 ary that the alien acquired the status of an alien lawfully admitted for per-  
32 manent residence.

33 (2) A petition submitted after the 90-day period may be considered only  
34 if the alien satisfies the Attorney General that good cause and extenuating  
35 circumstances exist for not submitting the petition during that period.

36 (3) The Attorney General may stay a deportation proceeding against an  
37 alien who did not submit a petition within the 90-day period required under  
38 paragraph (1) of this subsection pending the submission of the petition  
39 under paragraph (2) of this subsection.

40 (4) At or about the beginning of the 90-day period, the Attorney General  
41 shall try to notify the alien entrepreneur, alien spouse, or alien child of the

1 requirements of section 4523 of this title. However, the failure of the Attor-  
2 ney General to provide notice does not affect the enforcement of this chap-  
3 ter against the entrepreneur, spouse, or child.

4 (b) CONTENTS.—Each petition shall contain information demonstrating  
5 that the alien—

6 (1) established a commercial enterprise;

7 (2) invested or was actively in the process of investing the required  
8 capital; and

9 (3) conducted the actions described by clauses (1) and (2) of this  
10 subsection during the entire period of the alien's residence in the  
11 United States.

### 12 **§ 4525. Personal interviews**

13 (a) TIME AND LOCATION REQUIREMENTS.—(1) The personal interview  
14 required by section 4523(2) of this title shall be conducted—

15 (A) within 90 days after the date a petition is submitted as required  
16 by section 4523(1) of this title; and

17 (B) at a local office of the Immigration and Naturalization Service  
18 the Attorney General designates that is convenient to the parties in-  
19 volved.

20 (2) The Attorney General may waive the interview or the deadline for the  
21 interview when appropriate.

22 (b) DECISIONS ON TRUTHFULNESS OF STATEMENTS.—Within 90 days  
23 after an interview is conducted under section 4523(2) of this title, the At-  
24 torney General shall decide whether the information in the petition and re-  
25 quired by section 4524(b) of this title about the qualifying commercial en-  
26 terprise is true.

### 27 **§ 4526. Favorable decisions on removing the conditional** 28 **basis**

29 If the Attorney General decides the information required by section  
30 4524(b) of this title is true, the Attorney General shall notify the alien in-  
31 volved and shall remove the conditional basis of the status of the alien effec-  
32 tive on the 2d anniversary that the alien acquired the status of an alien  
33 lawfully admitted for permanent residence.

### 34 **§ 4527. Unfavorable decisions on removing the conditional** 35 **basis**

36 (a) IMPROPER QUALIFYING ENTREPRENEURSHIPS.—The Attorney Gen-  
37 eral shall end, as of the date the Attorney General makes a decision under  
38 this subsection, the status of an alien entrepreneur, alien spouse, and alien  
39 child as aliens lawfully admitted for permanent residence and shall so notify  
40 the alien entrepreneur if, before the 2d anniversary of the date the alien

1 entrepreneur acquired the status, the Attorney General decides the alien en-  
2 trepreneur—

3 (1) established the commercial enterprise only to evade the immigra-  
4 tion laws of the United States;

5 (2)(A) did not establish a commercial enterprise;

6 (B) did not invest or was not actively in the process of investing the  
7 required capital; or

8 (C) was not conducting the actions described by subclauses (A) and  
9 (B) of this clause during the entire period of the alien's residence in  
10 the United States; or

11 (3) otherwise was not complying with the requirements of section  
12 4104(f) of this title.

13 (b) UNTRUE PETITION INFORMATION.—If the Attorney General decides  
14 any information required by section 4524(b) of this title is not true, the At-  
15 torney General shall end, as of the date of the decision, the status of an  
16 alien entrepreneur, alien spouse, or alien child as an alien lawfully admitted  
17 for permanent residence and notify the alien involved.

18 (c) FAILURE TO FILE PETITIONS OR HAVE PERSONAL INTERVIEWS.—  
19 The Attorney General shall end, as of the 2d anniversary of the alien's law-  
20 ful admission for permanent residence, the status of an alien entrepreneur  
21 as an alien lawfully admitted for permanent residence (and the status of the  
22 entrepreneur's spouse or child if acquired under section 4502(a) or 4522(a)  
23 of this title) if—

24 (1) a petition is not submitted as required by section 4523(1) of this  
25 title; or

26 (2) unless good cause is shown, the alien entrepreneur does not ap-  
27 pear at the interview required by section 4523(2) of this title.

28 (d) REVIEW OF DECISIONS.—(1) An alien whose permanent residence  
29 status is ended under subsection (a) or (b) of this section may request a  
30 review of the decision in a proceeding to deport the alien. The burden of  
31 proof is on the Attorney General to establish by a preponderance of the evi-  
32 dence that—

33 (A) if ended under subsection (a) of this section, a ground described  
34 by subsection (a) is met; or

35 (B) if ended under subsection (b) of this section, the information re-  
36 quired by section 4524(b) of this title about the qualifying commercial  
37 enterprise is not true.

38 (2) An alien whose permanent residence status is ended under subsection  
39 (c) of this section has the burden of proof in a deportation proceeding of  
40 establishing compliance with section 4523 of this title.

1 **§ 4528. Treatment of conditional basis period for naturaliza-**  
 2 **tion purposes**

3 In carrying out subtitle V of this title, an alien who is in the United  
 4 States as an alien lawfully admitted for permanent residence on a condi-  
 5 tional basis under this subchapter is deemed to have been admitted and to  
 6 be in the United States as an alien lawfully admitted for permanent resi-  
 7 dence.

8 **PART C—REFUGEES**  
 9 **CHAPTER 51—ADMISSIONS**

Sec.

- 5101. Definition.
- 5102. Annual worldwide numerical limitations.
- 5103. Additional emergency numerical limitations.
- 5104. Congressional consultation and hearings.
- 5105. Admissions.
- 5106. Asylum.
- 5107. Change of status.

10 **§ 5101. Definition**

11 (a) APPROPRIATE CONSULTATION.—In this chapter, “appropriate con-  
 12 sultation” means discussions in person between Cabinet-level representatives  
 13 of the President and members of the Committees on the Judiciary of the  
 14 Senate and House of Representatives on refugee admissions and the alloca-  
 15 tion of refugee admissions that—

16 (1) review the worldwide refugee situation or an unforeseen emer-  
 17 gency refugee situation and estimate possible United States participa-  
 18 tion in the situation;

19 (2) consider the reasons for believing that the proposed admissions  
 20 are justified by humanitarian concerns or grave humanitarian concerns  
 21 or otherwise are in the interest of the United States; and

22 (3) provide the members with—

23 (A) a description of the nature of the refugee situation;

24 (B) a description of the number and allocation of the refugees  
 25 to be admitted and an analysis of conditions in the foreign coun-  
 26 tries from which they came;

27 (C) a description of the proposed plans and estimated cost of  
 28 moving and resettling the refugees;

29 (D) an analysis of the anticipated social, economic, and demo-  
 30 graphic impact of the refugee admissions on the United States;

31 (E) a description of the extent to which other foreign countries  
 32 will admit and assist in resettling the refugees;

33 (F) an analysis of the impact of United States participation in  
 34 the resettlement of the refugees on the foreign policy interests of  
 35 the United States; and

1 (G) additional information that may be appropriate or requested  
2 by the members.

3 (b) PROVIDING INFORMATION IN ADVANCE.—To the extent possible, in-  
4 formation described by subsection (a)(3) of this section shall be provided at  
5 least 2 weeks before the discussions in person between the representatives  
6 of the President and the members.

7 **§ 5102. Annual worldwide numerical limitations**

8 Before the beginning of each fiscal year and after appropriate consulta-  
9 tion, the President shall establish for the fiscal year the number of refugee  
10 admissions to the United States justified by humanitarian concerns or oth-  
11 erwise in the interest of the United States and state, of the number estab-  
12 lished for the prior fiscal year, the number of aliens granted asylum. After  
13 appropriate consultation, the President shall allocate admissions among ref-  
14 ugees of special humanitarian concern to the United States.

15 **§ 5103. Additional emergency numerical limitations**

16 (a) ESTABLISHMENT OF NUMBER.—As provided by this section, the  
17 President may establish an additional number of refugee admissions to the  
18 United States for a succeeding period of not more than 12 months. The  
19 President may establish the additional number when the President decides,  
20 before the beginning of the period and after appropriate consultation,  
21 that—

- 22 (1) an unforeseen emergency refugee situation exists;  
23 (2) the admission of certain refugees in response to the situation is  
24 justified by grave humanitarian concerns or otherwise is in the interest  
25 of the United States; and  
26 (3) the admission of the refugees cannot be carried out under section  
27 5102 of this title.

28 (b) ALLOCATION.—After appropriate consultation, the President shall al-  
29 locate the admissions under subsection (a) of this section among refugees  
30 of special humanitarian concern to the United States.

31 **§ 5104. Congressional consultation and hearings**

32 (a) PRESIDENTIAL REPORTS AND DISCUSSIONS.—Before the beginning of  
33 each fiscal year, the President shall report to the Committees on the Judici-  
34 ary of the Senate and House of Representatives on the foreseeable number  
35 of refugees who will need resettlement during the fiscal year and the antici-  
36 pated allocation of refugee admissions during that year. The President shall  
37 provide for periodic discussions between representatives of the President and  
38 members of the Committees on—

- 39 (1) changes in the worldwide refugee situation;  
40 (2) the progress of refugee admissions; and

1 (3) the possible need for changes in the allocation of admissions  
2 among refugees.

3 (b) PRINTING IN CONGRESSIONAL RECORD.—As soon as possible after  
4 representatives of the President initiate appropriate consultation on the  
5 number of refugee admissions under section 5102 or 5103 of this title, the  
6 Committees shall have the substance of the consultations printed in the  
7 Congressional Record.

8 (c) COMMITTEE HEARINGS.—After the President begins appropriate con-  
9 sultation before acting under section 5102 or 5103 of this title, each Com-  
10 mittee shall hold a hearing to review the proposed action unless—

11 (1) public disclosure of the details of the action would jeopardize the  
12 lives or safety of individuals; and

13 (2) if an action under section 5103, the time and nature of the emer-  
14 gency refugee situation do not permit hearings.

15 **§ 5105. Admissions**

16 (a) AUTHORITY OF THE ATTORNEY GENERAL.—The Attorney General  
17 may admit a refugee under regulations the Attorney General prescribes and  
18 subject to the numerical limitations of sections 5102 and 5103 of this title.  
19 The Attorney General may admit the refugee when the refugee—

20 (1) is not resettled firmly in a foreign country;

21 (2) is admissible (except as otherwise provided under subsections (d)  
22 and (e) of this section) as an immigrant under this title; and

23 (3) is of special humanitarian concern to the United States.

24 (b) BURDEN OF PROOF.—An alien claiming refugee status has the bur-  
25 den of proving that the alien is entitled to that status.

26 (c) ADMISSION OF SPOUSES AND CHILDREN.—(1) The spouse or child  
27 (as defined by section 110(a)(1)–(5) of this title) of a refugee qualifying for  
28 admission under subsection (a) of this section is entitled to be admitted the  
29 same as the refugee if the spouse or child is—

30 (A) accompanying or following to join the refugee;

31 (B) not an individual referred to in section 135(2) of this title; and

32 (C) not admissible (except as otherwise provided under subsections  
33 (d) and (e) of this section) under subsection (a) of this section.

34 (2) The admission of the spouse or child shall be charged against the nu-  
35 merical limitation under which the refugee's admission is charged.

36 (d) NONAPPLICATION.—Sections 4104(c)(2), (d)(3), and (g)(1) and (2),  
37 4311(a), 6304(a), and 6313 of this title do not apply to an alien applying  
38 for admission under this section.

39 (e) WAIVERS.—(1) The Attorney General may waive section 2121(a) and  
40 subchapter I of chapter 63 of this title (except sections 6307(a)(3),  
41 6308(a)–(c), and 6309) for the alien—

- 1 (A) for humanitarian purposes;  
2 (B) to ensure family unity; or  
3 (C) when otherwise in the public interest.

4 (2) A waiver under paragraph (1) of this subsection shall be in writing  
5 and granted only after an investigation of the alien. The Attorney General  
6 shall report to Congress after the end of each fiscal year on the number  
7 of waivers granted in that fiscal year and a summary of the reasons for  
8 granting the waivers.

9 (f) CERTAIN CUBAN POLITICAL PRISONERS.—(1) In this subsection,  
10 “process” means accepting and reviewing an application and preparing nec-  
11 essary documents and making appropriate decisions related to the applica-  
12 tion.

13 (2) Consistent with the procedure applicable to similar cases in other for-  
14 eign countries, and except as necessary to ensure the orderly process of  
15 available applicants, consular officers and the Attorney General shall proc-  
16 ess an application from a Cuban national imprisoned for any period of time  
17 after December 31, 1958, as an application for admission to the United  
18 States as a refugee.

19 (g) ENDING REFUGEE STATUS.—Under regulations the Attorney General  
20 prescribes, the Attorney General may end the refugee status of an alien and  
21 the spouse and child of the alien on finding that the alien was not a refugee  
22 at the time of the alien’s admission.

23 **§ 5106. Asylum**

24 (a) APPLICATIONS FOR, AND GRANTING, ASYLUM.—The Attorney Gen-  
25 eral shall prescribe a procedure for an alien physically present in the United  
26 States or at a land border or port of entry, regardless of the alien’s status,  
27 to apply for asylum. If the Attorney General decides that the alien is a refu-  
28 gee (as defined by section 135(1)(A) of this title), the Attorney General may  
29 grant asylum to the alien. However, an alien convicted of an aggravated fel-  
30 ony may not apply for, or be granted, asylum.

31 (b) ENDING ASYLUM.—Under regulations the Attorney General pre-  
32 scribes, the Attorney General may end asylum granted under subsection (a)  
33 of this section if the Attorney General decides that the alien is no longer  
34 a refugee (as defined by section 135(1)(A) of this title) because of a change  
35 in circumstances—

36 (1) in the alien’s country of nationality; or

37 (2) if the alien has no nationality, in the country in which the alien  
38 last habitually resided.

39 (c) GRANTING ASYLUM TO SPOUSES AND CHILDREN.—The spouse or  
40 child (as defined by section 110(a)(1)–(5) of this title) of an alien granted

1 asylum under subsection (a) of this section may be granted asylum under  
2 subsection (a) if the spouse or child—

3 (1) is accompanying or following to join the alien; and

4 (2) may not be granted asylum otherwise under subsection (a) of this  
5 section.

6 **§ 5107. Change of status**

7 (a) INSPECTION AND EXAMINATION OF REFUGEES FOR ADMISSION AS  
8 IMMIGRANTS.—(1) An alien admitted as a refugee under section 5105 of  
9 this title and physically present in the United States for at least one year  
10 shall return or be returned to the custody of the Attorney General at the  
11 end of the year for inspection and examination for admission as an immi-  
12 grant under sections 6103, 6331(a)–(d) and (f)–(h), and 6332 of this title  
13 if—

14 (A) the refugee's status as a refugee has not been ended by the At-  
15 torney General; and

16 (B) the refugee has not been lawfully admitted for permanent resi-  
17 dence.

18 (2) A refugee found to be admissible (except as otherwise provided under  
19 subsections (d)(2) and (e) of this section) as an immigrant under this title  
20 at the time of the refugee's inspection and examination under paragraph (1)  
21 of this subsection shall be lawfully admitted for permanent residence as of  
22 the date of the refugee's arrival in the United States. Admission is without  
23 regard to the numerical limitations of this title.

24 (b) ALIENS GRANTED ASYLUM.—(1) Under regulations the Attorney  
25 General prescribes, not more than 10,000 of the refugee admissions author-  
26 ized in a fiscal year under section 5102 of this title may be allocated to  
27 the Attorney General to change the status of aliens granted asylum under  
28 section 5106 of this title to that of aliens lawfully admitted for permanent  
29 residence. The status of an alien may be changed when the alien—

30 (A) applies for the change;

31 (B) has been physically present in the United States for at least one  
32 year after being granted asylum;

33 (C) continues to be a refugee as required by section 5106 of this title  
34 or a spouse or child of the refugee;

35 (D) is not resettled firmly in a foreign country; and

36 (E) is admissible (except as otherwise provided under subsections  
37 (d)(2) and (e) of this section) as an immigrant under this title at the  
38 time of examination for the change.

39 (2) On approval of an application under paragraph (1) of this subsection,  
40 the Attorney General shall record the lawful admission for permanent resi-  
41 dence of the alien as of the date one year before the date of approval.

1 (c) CERTAIN FORMER ASYLEES.—(1) Except as provided by paragraph  
 2 (2) of this subsection and subsection (d)(1) of this section, subsection (b)  
 3 of this section applies to an alien granted asylum before November 29, 1990  
 4 (even if asylum had been ended under section 5106(b) of this title) who—

5 (A) is no longer a refugee because of a change in circumstances in  
 6 a foreign country; and

7 (B) was or would be qualified for a change of status under sub-  
 8 section (b) on November 29, 1990, except for subsection (b)(1)(B) and  
 9 (C) and the numerical limitation under subsection (b).

10 (2) The number of aliens who are natives of a foreign country who may  
 11 change their status under paragraph (1) of this subsection in a fiscal year  
 12 may not be more than the difference between the foreign country limitation  
 13 established under 4111(a) of this title and the number of aliens chargeable  
 14 to the country in the fiscal year under section 4112 of this title.

15 (d) NONAPPLICATION.—(1) The numerical limitation of subsection (b) of  
 16 this section does not apply to an alien described by subsection (c) of this  
 17 section or to an alien who applied for a change of status under subsection  
 18 (b) before June 2, 1990.

19 (2) Sections 4311(a), 6304(a), 6313, and 9106 of this title do not apply  
 20 to an alien whose status is being changed under this section.

21 (e) WAIVER.—The Attorney General may waive section 2121(a) and sub-  
 22 chapter I of chapter 63 of this title (except sections 6307(a)(3), 6308(a)-  
 23 (c), and 6309) for an alien—

24 (1) for humanitarian purposes;

25 (2) to ensure family unity; or

26 (3) when otherwise in the public interest.

27 **PART D—ENTRY, EXCLUSION, AND DEPORTATION**

28 **CHAPTER 61—ARRIVAL, INSPECTION, AND ADMISSION**

SUBCHAPTER I—GENERAL

Sec.

6101. Time and place of entry.

6102. Presentation of documentation.

6103. Inspection of arriving individuals.

6104. Physical and mental examinations of arriving aliens.

6105. Custody pending decisions on excluding aliens convicted of aggravated felonies.

6106. Presidential authority to suspend entry of aliens.

6107. Denial of admission of United Nations representatives because of espionage.

SUBCHAPTER II—ADMISSION OF CERTAIN ALIENS

6121. Lawfully admitted aliens returning after temporary absence.

6122. Temporary admission of excludable nonimmigrants.

6123. Temporary parole.

6124. Accredited officials of foreign governments.

29 SUBCHAPTER I—GENERAL

30 **§ 6101. Time and place of entry**

31 An alien may enter the United States only at the time and place des-  
 32 ignated by an immigration officer.

**§ 6102. Presentation of documentation**

(a) IMMIGRANT ARRIVALS.—An alien arriving in the United States as an immigrant shall surrender the alien’s immigrant visa to the immigration officer at the port of entry. The immigration officer shall endorse on the visa—

(1) the date and the port of arrival;

(2) the identity of the vessel, aircraft, or other means of transportation; and

(3) other information required by regulation.

(b) NONIMMIGRANT ARRIVALS.—(1) Except as provided by paragraph (2) of this subsection, an alien arriving in the United States as a nonimmigrant shall present or surrender to the immigration officer at the port of entry documentation required by regulation.

(2) An alien arriving in the United States as a nonimmigrant crewmember with a passport and no other documentation may be admitted until it is practicable to grant documentation to the alien if—

(A) the name of the crewmember is on the crew list of the vessel or aircraft on which the crewmember arrives;

(B) a consular officer visas the crew list (but the consular officer may exclude a crewmember from the crew list visa); and

(C) the alien is otherwise admissible.

(c) RECORDS OF ADMISSION.—The Attorney General shall file—

(1) as a record of an alien’s admission, an immigrant visa surrendered by the alien under subsection (a) of this section; and

(2) a record of entry into the United States that the Attorney General considers necessary to enforce the immigration laws, on the admission of—

(A) a returning resident immigrant under section 4311(b) of this title; and

(B) a nonimmigrant.

**§ 6103. Inspection of arriving individuals**

(a) GENERAL AUTHORITY.—An immigration officer may inspect an individual arriving in the United States to decide whether the individual is admissible.

(b) STATEMENTS UNDER OATH.—An individual arriving in the United States may be required to state under oath—

(1) the individual’s purpose in coming to the United States;

(2) the period the individual intends to remain in the United States;

(3) whether, if an alien, the individual intends to become a citizen of the United States; and

1 (4) additional information to assist the immigration officer in decid-  
2 ing whether the individual is a national of the United States or an  
3 alien, and if an alien, whether the individual is excludable.

4 (c) DETENTION AND INSPECTION OF ALIENS.—(1) To decide whether an  
5 alien arriving in the United States is admissible, an immigration officer  
6 shall detain the alien for a sufficient time—

7 (A) to inspect the alien; and

8 (B) to have the alien undergo a physical and mental examination  
9 under section 6104 of this title.

10 (2) Except as provided by paragraph (3) of this subsection, the alien shall  
11 be detained for further inquiry before a special inquiry officer under section  
12 6331 of this title if—

13 (A) the immigration officer has any doubt about the alien's admissi-  
14 bility; or

15 (B) another immigration officer challenges the first immigration offi-  
16 cer's decision to admit the alien.

17 (3) Paragraph (2) of this subsection does not apply to an alien who is—

18 (A) a crewmember;

19 (B) a stowaway; or

20 (C) excluded from admission under subsection (d) of this section.

21 (d) ALIENS DANGEROUS TO NATIONAL SECURITY.—(1) If an immigra-  
22 tion officer or a special inquiry officer suspects that an alien may be exclud-  
23 able under section 6308(a)(1) or (3), (b), or (c) of this title, the officer shall  
24 exclude the alien temporarily from admission and report the exclusion to the  
25 Attorney General. No further inquiry may be conducted until ordered by the  
26 Attorney General. The alien or the alien's representative may submit a writ-  
27 ten statement and additional information for consideration by the Attorney  
28 General.

29 (2) The Attorney General may order the alien excluded and deported  
30 without further inquiry by a special inquiry officer if the Attorney Gen-  
31 eral—

32 (A) is satisfied on the basis of confidential information that the alien  
33 is excludable under section 6308(a)(1) or (3), (b), or (c) of this title;  
34 and

35 (B) after consulting with appropriate security agencies of the United  
36 States Government, concludes that disclosure of the information would  
37 be prejudicial to the public interest, safety, or security.

38 **§ 6104. Physical and mental examinations of arriving aliens**

39 (a) EXAMINATIONS BY MEDICAL OFFICERS.—Except as provided by sub-  
40 section (c) of this section, a medical officer of the Public Health Service  
41 shall—

1 (1) conduct a physical and mental examination of an alien arriving  
2 in the United States; and

3 (2) certify any observation by the officer that—

4 (A) the alien has a condition described by section 6302(a) of  
5 this title; or

6 (B) an alien ordered excluded and deported is helpless because  
7 of sickness, disability, or infancy.

8 (b) OFFICERS TRAINED IN MENTAL EXAMINATIONS.—Medical officers of  
9 the Service, specially trained in diagnosing mental defects, shall be assigned  
10 to ports of entry designated by the Attorney General. The Attorney General  
11 shall provide those medical officers with interpreters and suitable facilities  
12 for detaining and examining arriving aliens suspected of being excludable  
13 under section 6302(a) of this title.

14 (c) USE OF PRIVATE AND MILITARY PHYSICIANS.—If a medical officer  
15 of the Service is not available to conduct an examination under subsection  
16 (a) of this section, the Attorney General may obtain, on terms the Attorney  
17 General prescribes, the services of—

18 (1) a private physician with at least 4 years of professional experi-  
19 ence; or

20 (2) if the alien to be examined is a special immigrant as defined by  
21 section 137(a)(13) of this title, a physician of the armed forces of the  
22 United States with at least 4 years of professional experience.

23 (d) EXAMINATIONS CONDUCTED UNDER REGULATIONS.—Examinations  
24 under this section shall be conducted under administrative regulations pre-  
25 scribed by the Attorney General and medical regulations prescribed by the  
26 Secretary of Health and Human Services.

27 (e) APPEAL OF CERTIFICATION.—An alien certified under this section as  
28 having a condition described by section 6302(a) of this title may appeal the  
29 certification to a board of medical officers of the Service convened by the  
30 Secretary. The alien may present before the board, at the alien's expense,  
31 one expert medical witness.

32 **§6105. Custody pending decisions on excluding aliens con-**  
33 **victed of aggravated felonies**

34 (a) CUSTODY.—Pending a decision on excludability, the Attorney General  
35 shall take into custody an alien convicted of an aggravated felony when the  
36 alien is released (whether the alien is released on parole, supervised release,  
37 or probation or may be arrested or imprisoned again for the same offense).

38 (b) RELEASE FROM CUSTODY.—The Attorney General may release an  
39 alien taken into custody under subsection (a) of this section only if—

1 (1) the Attorney General decides that the alien may not be deported  
2 because the condition described by section 4313(f) of this title exists;  
3 and

4 (2)(A) a procedure has been established for reviewing each request  
5 for release under this subsection;

6 (B) the procedure includes consideration of the severity of the felony  
7 committed; and

8 (C) the review concludes that the alien will not pose a danger to the  
9 safety of other individuals or to property.

#### 10 **§ 6106. Presidential authority to suspend entry of aliens**

11 When the President finds that the entry of aliens or a class of aliens into  
12 the United States would be detrimental to the interests of the United  
13 States, the President, by proclamation, may suspend the entry of all aliens  
14 or a class of aliens or impose restrictions on their entry, for any period the  
15 President considers necessary.

#### 16 **§ 6107. Denial of admission of United Nations representa-** 17 **tives because of espionage**

18 The President shall use the authority of the President, including the au-  
19 thority contained in section 6 of the Joint Resolution of August 4, 1947  
20 (ch. 482, 61 Stat. 767) (known as the United Nations Headquarters Agree-  
21 ment Act), to deny admission of an individual to the United States as a  
22 representative to the United Nations if the President decides that the indi-  
23 vidual has been found to have been engaged in espionage activities directed  
24 against the United States or its allies and may pose a threat to the security  
25 interests of the United States. The President may waive this section if the  
26 President decides, and notifies Congress, that the waiver is in the security  
27 interests of the United States.

#### 28 SUBCHAPTER II—ADMISSION OF CERTAIN ALIENS

#### 29 **§ 6121. Lawfully admitted aliens returning after temporary** 30 **absence**

31 (a) GENERAL.—The Attorney General may admit an alien who is lawfully  
32 admitted for permanent residence and returning after a temporary absence,  
33 without regard to section 4311(a) or subchapter I of chapter 63 of this title  
34 (except sections 6308, 6309, and 6312), if the alien—

35 (1) left the United States voluntarily and not under an order of de-  
36 portation; and

37 (2) is returning to a lawful unrelinquished domicile of 7 consecutive  
38 years.

39 (b) OTHER AUTHORITY NOT LIMITED.—Subsection (a) of this section  
40 does not limit the authority of the Attorney General under section 4311(b)  
41 of this title.

1 (c) NONAPPLICATION TO CERTAIN FELONS.—Subsection (a) of this sec-  
2 tion does not apply to an alien who has been convicted of, and has served  
3 a total term of imprisonment of at least 5 years for, one or more aggravated  
4 felonies.

5 **§ 6122. Temporary admission of excludable nonimmigrants**

6 (a) GRANTING NONIMMIGRANT VISAS.—An alien applying for a non-  
7 immigrant visa who a consular officer believes is ineligible for the visa under  
8 section 2121(a) of this title or excludable under subchapter I of chapter 63  
9 of this title (except sections 6308(a)(1)(A), (2), and (3), and (c), and 6309)  
10 may be granted a nonimmigrant visa and admitted temporarily as a non-  
11 immigrant if the Attorney General approves a recommendation by the offi-  
12 cer or the Secretary of State that the alien be admitted temporarily despite  
13 the alien's inadmissibility.

14 (b) ADMISSIONS.—An alien inadmissible under section 2121(a) of this  
15 title or excludable under subchapter I of chapter 63 of this title (except sec-  
16 tions 6308(a)(1)(A), (2), and (3), and (c), and 6309) may be admitted tem-  
17 porarily as a nonimmigrant if the alien—

18 (1) has the appropriate documentation; or

19 (2) is granted a waiver of the documentation requirements.

20 (c) CONDITIONS TO CONTROL ADMISSION AND RETURN.—The Attorney  
21 General shall prescribe conditions, including filing a bond as necessary, to  
22 control the admission and return of aliens applying for admission under this  
23 section.

24 **§ 6123. Temporary parole**

25 (a) GENERAL.—Except as provided by section 2305(c) of this title, the  
26 Attorney General, for an emergency or other reasons strictly in the public  
27 interest, may parole temporarily into the United States an alien applying  
28 for admission. However, if the alien is a refugee, the Attorney General may  
29 parole the alien only if the Attorney General finds compelling reasons in the  
30 public interest requiring the alien to be paroled instead of admitted as a  
31 refugee. Parole of an alien under this section—

32 (1) is subject to conditions the Attorney General may prescribe; and

33 (2) is not an admission to the United States.

34 (b) END OF PAROLE.—When the Attorney General is of the opinion that  
35 the purposes of the parole have been served, the alien immediately shall re-  
36 turn or be returned to the custody from which the alien was paroled. There-  
37 after, the alien's application for admission shall continue to be considered  
38 in the same way as the application of any other alien for admission.

39 **§ 6124. Accredited officials of foreign governments**

40 On a reciprocal basis, an accredited official of a government of a foreign  
41 country, and the official's immediate family, attendants, servants, and per-

1 sonal employees, may be admitted for immediate and continuous travel  
 2 through the United States without regard to subchapter I of chapter 63 of  
 3 this title (except section 6308(a)–(c)).

#### 4 **CHAPTER 63—EXCLUSION**

##### SUBCHAPTER I—GROUNDS FOR EXCLUSION

Sec.

- 6301. Fraud and misrepresentation.
- 6302. Health.
- 6303. Protection and guardianship of aliens excluded for health or infancy.
- 6304. Public charges.
- 6305. Stowing away.
- 6306. Encouraging others to enter illegally.
- 6307. Criminal and immoral acts.
- 6308. National security.
- 6309. Participation in Nazi persecution or genocide.
- 6310. Prior deportation or removal.
- 6311. Ineligibility for citizenship and evasion of military service.
- 6312. International child abduction.
- 6313. Noncompliance with documentation requirements.
- 6314. Application of exclusions to aliens leaving Guam, Puerto Rico, or the Virgin Islands.

##### SUBCHAPTER II—PROCEDURE

- 6331. Exclusion proceedings.
- 6332. Administrative appeals.
- 6333. Right to counsel.
- 6334. Judicial review.
- 6335. Deportation of excluded aliens.
- 6336. Costs of deporting excluded aliens.

##### 5 SUBCHAPTER I—GROUNDS FOR EXCLUSION

#### 6 **§ 6301. Fraud and misrepresentation**

7 (a) GENERAL.—An alien shall be excluded from admission to the United  
 8 States if the alien—

9 (1) by fraud or willful misrepresentation of a material fact obtained,  
 10 or attempted or attempts to obtain, a visa, other documentation, entry  
 11 into the United States, or another benefit under this title (except sub-  
 12 chapter I of chapter 5, subchapters III and IV of chapter 131, and  
 13 chapters 133–137); or

14 (2) is the subject of a final order for violation of section 10125(b)  
 15 of this title.

16 (b) WAIVERS.—The Attorney General may waive subsection (a)(1) of this  
 17 section for an immigrant if—

18 (1) the immigrant is the spouse, parent, son, or daughter of a citizen  
 19 of the United States or of an immigrant lawfully admitted for perma-  
 20 nent residence; or

21 (2) the fraud or misrepresentation occurred at least 10 years before  
 22 the date of the immigrant's application for a visa, entry, or change of  
 23 status and the Attorney General is satisfied that the immigrant's ad-  
 24 mission would not be contrary to the welfare, safety, or security of the  
 25 United States.

1 **§ 6302. Health**

2 (a) GENERAL.—An alien shall be excluded from admission to the United  
3 States if the alien is found—

4 (1) under regulations prescribed by the Secretary of Health and  
5 Human Services, to have a communicable disease of public health sig-  
6 nificance (including infection with the etiologic agent for acquired im-  
7 mune deficiency syndrome);

8 (2) under regulations prescribed by the Secretary in consultation  
9 with the Attorney General—

10 (A) to have a physical or mental disorder and behavior associ-  
11 ated with the disorder that may pose, or has posed, a threat to  
12 the property, safety, or welfare of the alien or others; or

13 (B) to have had a physical or mental disorder and a history of  
14 behavior associated with the disorder that has posed a threat to  
15 the property, safety, or welfare of the alien or others and is likely  
16 to recur or to lead to other harmful behavior; or

17 (3) under regulations prescribed by the Secretary, to be a drug  
18 abuser or addict.

19 (b) WAIVERS.—(1) The Attorney General may waive—

20 (A) subsection (a)(1) of this section for an alien who—

21 (i) is the spouse, unmarried son, unmarried daughter, or adopt-  
22 ed child of a citizen of the United States, of an alien lawfully ad-  
23 mitted for permanent residence, or of an alien who has been  
24 granted an immigrant visa; or

25 (ii) has a son or daughter who is a citizen of the United States,  
26 an alien lawfully admitted for permanent residence, or an alien  
27 who has been granted an immigrant visa; or

28 (B) subsection (a)(2) of this section for any alien.

29 (2) A waiver under this subsection is subject to any conditions, including  
30 filing a bond, that the Attorney General may prescribe by regulation after  
31 consultation with the Secretary.

32 **§ 6303. Protection and guardianship of aliens excluded for**  
33 **health or infancy**

34 An alien shall be excluded from admission to the United States if—

35 (1) the alien is accompanying another alien ordered excluded and de-  
36 ported and certified to be helpless because of sickness, disability, or in-  
37 fancy under section 6104(a)(2)(B) of this title; and

38 (2) the alien's protection or guardianship is required by the alien or-  
39 dered excluded and deported.

**§ 6304. Public charges**

(a) GENERAL.—An alien shall be excluded from admission to the United States if the consular officer believes, at the time of the application for a visa, or the Attorney General believes, at the time of the application for admission or change of status, that the alien is likely at any time to become a public charge.

(b) ADMISSION ON BOND.—(1) The Attorney General may admit an alien excludable under subsection (a) of this section if the alien is otherwise admissible and files a bond approved by the Attorney General. The bond shall—

(A) be in an amount and contain conditions the Attorney General prescribes; and

(B) be for the benefit of the United States, States, territories and possessions of the United States, political subdivisions of States, and districts of States, territories, possessions, and political subdivisions of States, holding them harmless against the alien's becoming a public charge.

(2) When the alien permanently leaves the United States, is naturalized, or dies, the bond ends and the security held to secure performance, except to the extent forfeited for a violation of the bond, shall be returned to the person providing it or to the person's legal representative.

(3) The Attorney General may bring a civil action on the bond in the name of the United States for the benefit of the United States or of a State, territory, possession, political subdivision, or district in which the alien is a public charge, regardless of whether a demand for payment of public expenses has been made.

**§ 6305. Stowing Away**

An alien shall be excluded from admission to the United States if the alien is a stowaway.

**§ 6306. Encouraging others to enter illegally**

(a) GENERAL.—An alien shall be excluded from admission to the United States if the alien at any time knowingly encouraged, induced, or assisted another alien to enter or attempt to enter the United States in violation of law.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to an alien who—

(1) is an eligible immigrant (as defined by section 301(b) of the Immigration Act of 1990 (Public Law 101-649, 104 Stat. 5029));

(2) was physically present in the United States on May 5, 1988;

(3) is seeking—

(A) admission as an immediate relative;

1 (B) admission under section 4103(c) of this title (including  
2 under section 112 of the Immigration Act of 1990 (Public Law  
3 101-649, 104 Stat. 4987)); or

4 (C) benefits under section 301(a) of that Act (104 Stat. 5029);  
5 and

6 (4) before May 5, 1988, encouraged, induced, or assisted only the  
7 alien's spouse, parent, son, or daughter (and no other individual) to  
8 enter the United States in violation of law.

9 (c) WAIVERS.—The Attorney General may waive subsection (a) of this  
10 section for humanitarian purposes, to ensure family unity, or when it is oth-  
11 erwise in the public interest, for an alien who—

12 (1)(A) is lawfully admitted for permanent residence, temporarily left  
13 the United States voluntarily and not under an order of deportation,  
14 and is otherwise admissible as a returning resident under section  
15 4311(b) of this title; or

16 (B) is seeking admission or change of status as an immediate rel-  
17 ative or immigrant under section 4103(b), (c), or (d) of this title; and

18 (2) has encouraged, induced, or assisted only the alien's spouse, par-  
19 ent, son, or daughter (and no other individual) to enter the United  
20 States in violation of law.

21 **§ 6307. Criminal and immoral acts**

22 (a) GENERAL.—Each of the following aliens shall be excluded from ad-  
23 mission to the United States:

24 (1) an alien who has been convicted of, admits having committed, or  
25 admits having committed acts that are the essential elements of, an of-  
26 fense involving moral turpitude (except a purely political offense), but  
27 this clause does not apply to an alien who has committed only one of-  
28 fense if—

29 (A) the alien committed the offense when less than 18 years of  
30 age, and committed the offense and was released from any con-  
31 finement imposed for the offense more than 5 years before apply-  
32 ing for a visa or other documentation and for admission; or

33 (B) the maximum imprisonment for the offense was not more  
34 than one year and the alien was not sentenced to more than 6  
35 months, regardless of the extent to which the sentence was finally  
36 executed.

37 (2) an alien who has been convicted of, admits having committed, or  
38 admits having committed acts that are the essential elements of, a vio-  
39 lation of, or a conspiracy to violate, a law or regulation of a State, the  
40 United States, or a foreign country related to a controlled substance

1 (as defined by section 102 of the Comprehensive Drug Abuse Preven-  
2 tion and Control Act of 1970 (21 U.S.C. 802)).

3 (3) an alien who a consular officer or an immigration officer knows  
4 or reasonably believes is or has been—

5 (A) unlawfully trafficking in a controlled substance (as defined  
6 by section 102 of the Comprehensive Drug Abuse Prevention and  
7 Control Act of 1970 (21 U.S.C. 802)); or

8 (B) knowingly assisting, abetting, conspiring, or colluding with  
9 others in unlawfully trafficking in such a controlled substance.

10 (4) an alien who has been convicted of at least 2 offenses (except  
11 purely political offenses) for which the sentences to confinement actu-  
12 ally imposed total at least 5 years, regardless of whether—

13 (A) the convictions were in a single trial;

14 (B) the offenses arose from a single scheme of misconduct; or

15 (C) the offenses involved moral turpitude.

16 (5) an alien who—

17 (A) is coming to the United States only, principally, or inciden-  
18 tally to engage in prostitution, or has engaged in prostitution  
19 within 10 years of the date of applying for a visa, admission, or  
20 change of status;

21 (B)(i) procures or attempts to procure individuals for prostitu-  
22 tion;

23 (ii) within that 10-year period, procured or attempted to pro-  
24 cure or to import individuals for prostitution; or

25 (iii) receives or, within that 10-year period, received any part of  
26 the proceeds of prostitution; or

27 (C) is coming to the United States to engage in any other un-  
28 lawful commercialized vice, whether or not related to prostitution.

29 (6) an alien who is coming to the United States to practice polyg-  
30 amy.

31 (7) an alien—

32 (A) who has committed in the United States at any time—

33 (i) a felony;

34 (ii) a crime of violence (as defined by section 16 of title  
35 18); or

36 (iii) an offense of reckless driving or driving when intoxi-  
37 cated or under the influence of alcohol or a prohibited sub-  
38 stance if the offense involved personal injury to another;

39 (B) for whom immunity from criminal jurisdiction was exercised  
40 for that offense;

1 (C) who as a consequence of the offense and exercise of immu-  
2 nity has left the United States; and

3 (D) who subsequently has not submitted completely to the juris-  
4 diction of the court in the United States having jurisdiction of  
5 that offense.

6 (b) WAIVERS.—The Attorney General may waive subsection (a)(1), (4),  
7 (5), or (7) of this section, or subsection (a)(2) of this section for a single  
8 offense of simple possession of not more than 30 grams of marijuana, for  
9 an immigrant if—

10 (1)(A) the Attorney General is satisfied that—

11 (i) the immigrant is excludable only under subsection (a)(5)(A)  
12 or (B) of this section or the activities for which the immigrant is  
13 excludable occurred more than 15 years before the date of the im-  
14 migrant's application for a visa, admission, or change of status;

15 (ii) the immigrant's admission would not be contrary to the wel-  
16 fare, safety, or security of the United States; and

17 (iii) the immigrant has been rehabilitated; or

18 (B) the immigrant is the spouse, parent, son, or daughter of a citi-  
19 zen of the United States or of an alien lawfully admitted for permanent  
20 residence and the Attorney General is satisfied that the immigrant's ex-  
21 clusion would result in extreme hardship to the citizen or to the alien  
22 lawfully admitted for permanent residence;

23 (2) the Attorney General consents (subject to conditions and proce-  
24 dures the Attorney General may prescribe by regulation) to the immi-  
25 grant's applying or reapplying for a visa, admission, or change of sta-  
26 tus; and

27 (3) the immigrant has not been convicted of, or admitted committing  
28 acts that constitute, murder or a criminal act involving torture.

29 **§ 6308. National security**

30 (a) GENERAL.—An alien shall be excluded from admission to the United  
31 States if a consular officer or the Attorney General knows or reasonably be-  
32 lieves that the alien seeks to enter the United States to engage only, prin-  
33 cipally, or incidentally in—

34 (1) an activity to violate—

35 (A) a law of the United States related to espionage or sabotage;

36 or

37 (B) a law prohibiting the export from the United States of  
38 goods, technology, or sensitive information;

39 (2) any other unlawful activity; or

1           (3) an activity a purpose of which is to oppose, control, or overthrow  
2           the United States Government by force, violence, or other unlawful  
3           means.

4           (b) TERRORIST ACTIVITIES.—(1) In this subsection—

5           (A) “terrorist activity” means an activity that is unlawful under the  
6           laws of the place where the activity is committed or that, if committed  
7           in the United States, would be unlawful under the laws of the United  
8           States or any State, and that involves—

9           (i) hijacking or sabotaging a vessel, aircraft, vehicle, or other  
10           conveyance;

11           (ii) seizing or detaining, and threatening to kill, injure, or con-  
12           tinue to detain, another individual to compel a third person (in-  
13           cluding a governmental entity) to do or abstain from doing an act  
14           as an explicit or implicit condition for the release of the individual  
15           seized or detained;

16           (iii) a violent attack on an internationally protected person (as  
17           defined by section 1116(b)(4) of title 18) or on the liberty of such  
18           a person;

19           (iv) an assassination;

20           (v) the use, with intent to endanger the safety of an individual  
21           or to cause substantial damage to property, of a biological agent,  
22           chemical agent, or nuclear weapon or device, or an explosive or  
23           firearm (except only for personal monetary gain); or

24           (vi) a threat, attempt, or conspiracy to do an activity described  
25           by subclauses (i)–(v) of this clause.

26           (B) “engage in terrorist activity” means to commit, in an individual  
27           capacity or as a member of an organization, a terrorist activity or an  
28           act that the actor knows or reasonably should know gives material sup-  
29           port to an individual, organization, or government in conducting a ter-  
30           rorist activity at any time, including—

31           (i) preparing or planning a terrorist activity;

32           (ii) gathering information on potential targets for terrorist ac-  
33           tivity;

34           (iii) providing any type of material support, including a safe  
35           house, transportation, communication, money, false identification,  
36           weapon, explosive, or training, to an individual the actor knows or  
37           reasonably should know has committed or plans to commit a ter-  
38           rorist activity;

39           (iv) soliciting money or another thing of value for a terrorist ac-  
40           tivity or a terrorist organization; and

1 (v) soliciting an individual for membership in a terrorist organi-  
2 zation or terrorist government or to engage in a terrorist activity.

3 (C) an alien who is an officer, official, representative, or spokes-  
4 person of the Palestine Liberation Organization is deemed under sub-  
5 paragraph (B) of this paragraph to be engaged in a terrorist activity.

6 (2) An alien shall be excluded from admission to the United States if—

7 (A) the alien has engaged in a terrorist activity; or

8 (B) a consular officer or the Attorney General knows or reasonably  
9 believes that the alien is likely to engage in a terrorist activity after  
10 entry.

11 (c) FOREIGN POLICY.—(1) An alien shall be excluded from admission to  
12 the United States if the Secretary of State reasonably believes that the  
13 alien's entry or proposed activities in the United States would have poten-  
14 tially serious adverse foreign policy consequences for the United States.

15 (2) An alien who is an official of a government of a foreign country or  
16 a purported government, or who is a candidate for election to a government  
17 office of a foreign country during the period immediately before the election  
18 for that office, may not be excluded or subject to restrictions or conditions  
19 on entry under paragraph (1) of this subsection only because of the alien's  
20 past, current, or expected beliefs, statements, or associations, if the beliefs,  
21 statements, or associations would be lawful in the United States.

22 (3) An alien not described by paragraph (2) of this subsection may not  
23 be excluded or subject to restrictions or conditions on entry under para-  
24 graph (1) of this subsection because of the alien's past, current, or expected  
25 beliefs, statements, or associations, if the beliefs, statements, or associations  
26 would be lawful in the United States, unless the Secretary of State person-  
27 ally decides that the alien's admission would compromise a compelling for-  
28 eign policy interest of the United States.

29 (4) If the Secretary decides under paragraph (3) of this subsection that  
30 an alien's admission would compromise a compelling foreign policy interest  
31 of the United States, the Secretary shall give timely notice of the alien's  
32 identity and the reasons for the decision to the chairmen of the Committees  
33 on the Judiciary and Foreign Affairs of the House of Representatives and  
34 the Committees on the Judiciary and Foreign Relations of the Senate.

35 (d) MEMBERSHIP IN TOTALITARIAN PARTY.—(1) An immigrant shall be  
36 excluded from admission to the United States if the immigrant is or has  
37 been a member of or affiliated with the Communist or any other domestic  
38 or foreign totalitarian party, including a subdivision or affiliate of that  
39 party.

40 (2) Paragraph (1) of this subsection does not apply to an immigrant be-  
41 cause of membership or affiliation if the immigrant satisfies the consular

1 officer when applying for a visa, or the Attorney General when applying for  
2 admission, that the membership or affiliation is or was—

3 (A) involuntary;

4 (B) only before the alien's 16th birthday;

5 (C) only by operation of law; or

6 (D) only to obtain employment, food rations, or other essentials of  
7 living and the membership or affiliation is or was necessary to obtain  
8 the employment, rations, or essentials.

9 (3) Paragraph (1) of this subsection does not apply to an immigrant be-  
10 cause of membership or affiliation if the immigrant satisfies the consular  
11 officer when applying for a visa, or the Attorney General when applying for  
12 admission, that—

13 (A) the membership or affiliation ended at least—

14 (i) 2 years before the date of applying; or

15 (ii) 5 years before the date of applying, if the membership or  
16 affiliation was with the party controlling the government of a for-  
17 eign country that is a totalitarian dictatorship as of that date; and

18 (B) the immigrant is not a threat to the security of the United  
19 States.

20 (4) The Attorney General may waive paragraph (1) of this subsection for  
21 an immigrant for humanitarian purposes, to ensure family unity, or when  
22 it is otherwise in the public interest, if the immigrant—

23 (A) is the parent, spouse, son, daughter, brother, or sister of a citi-  
24 zen of the United States or the spouse, son, or daughter of an alien  
25 lawfully admitted for permanent residence; and

26 (B) is not a threat to the security of the United States.

27 **§ 6309. Participation in Nazi persecution or genocide**

28 An alien shall be excluded from admission to the United States if the  
29 alien—

30 (1) at any time during the period from March 23, 1933, through  
31 May 8, 1945, ordered, incited, assisted, or otherwise participated in the  
32 persecution of any person because of race, religion, national origin, or  
33 political opinion, under the direction of, or in association with—

34 (A) the Nazi government of Germany;

35 (B) any government in an area occupied by the military forces  
36 of the Nazi government of Germany;

37 (C) any government established with the assistance or coopera-  
38 tion of the Nazi government of Germany; or

39 (D) any government that was an ally of the Nazi government  
40 of Germany; or

1 (2) engaged in conduct that is defined as genocide under the Inter-  
2 national Convention on the Prevention and Punishment of Genocide.

3 **§ 6310. Prior deportation or removal**

4 (a) PRIOR EXCLUSION AND DEPORTATION.—An alien shall be excluded  
5 from admission to the United States if the alien has been excluded and de-  
6 ported and is seeking admission within one year after the date of deporta-  
7 tion.

8 (b) OTHER PRIOR DEPORTATION OR REMOVAL.—Each of the following  
9 aliens shall be excluded from admission to the United States if the alien  
10 is seeking admission within 5 years (or, if convicted of an aggravated felony,  
11 within 20 years) after the date of the deportation or removal:

12 (1) an alien who has been arrested and deported.

13 (2) an alien who has fallen into distress and been removed under this  
14 title or a prior law.

15 (3) an alien who has been removed as an alien enemy.

16 (4) an alien who has been removed at the expense of the United  
17 States Government under section 6539(e)(1) of this title instead of  
18 being deported.

19 (c) NONAPPLICATION.—Subsections (a) and (b) of this section do not  
20 apply to an alien if the Attorney General consents, before the alien begins  
21 to travel to the United States from a place outside the United States or  
22 attempts to be admitted from foreign contiguous territory, to the alien's ap-  
23 plying or reapplying for admission.

24 **§ 6311. Ineligibility for citizenship and evasion of military**  
25 **service**

26 An alien shall be excluded from admission to the United States if the  
27 alien—

28 (1) is permanently ineligible for citizenship; or

29 (2) left or remained outside the United States to avoid or evade  
30 training or service in the armed forces of the United States during war  
31 or a period declared by the President to be a national emergency, un-  
32 less the alien was a nonimmigrant at the time of leaving the United  
33 States and is seeking to reenter the United States as a nonimmigrant.

34 **§ 6312. International child abduction**

35 (a) GENERAL.—If, after a court in the United States has granted to an  
36 individual the custody of a child who is a citizen of the United States, an  
37 alien detains or withholds custody of the child outside the United States  
38 from the individual granted custody by the court, the alien shall be excluded  
39 from admission to the United States until the child is surrendered to the  
40 individual granted custody by the court.

1 (b) NONAPPLICATION.—Subsection (a) of this section does not apply as  
 2 long as the child is located in a foreign country whose government is a party  
 3 to the Hague Convention on the Civil Aspects of International Child Abduc-  
 4 tion.

5 **§ 6313. Noncompliance with documentation requirements**

6 (a) GENERAL DOCUMENTATION REQUIREMENTS.—An alien shall be ex-  
 7 cluded from admission to the United States if the alien is seeking admission  
 8 as—

9 (1) a nonimmigrant and does not satisfy the documentation require-  
 10 ments of section 2121 of this title; or

11 (2) an immigrant and does not satisfy the documentation require-  
 12 ments of section 4311 of this title or the alien's immigrant visa was  
 13 issued without being in compliance with sections 4103–4106 of this  
 14 title.

15 (b) REQUIREMENTS OF GRADUATES OF NON-ACCREDITED MEDICAL  
 16 SCHOOLS.—An alien shall be excluded from admission to the United States  
 17 if the alien—

18 (1) is seeking admission as an immigrant principally to perform serv-  
 19 ices as a member of the medical profession;

20 (2) is a graduate of a medical school not accredited by an entity ap-  
 21 proved by the Secretary of Education; and

22 (3) has not satisfied the requirements of section 4104(g)(1) of this  
 23 title.

24 (c) LABOR CERTIFICATIONS.—An alien shall be excluded from admission  
 25 to the United States if the alien is seeking admission as an immigrant to  
 26 perform skilled or unskilled labor and the Secretary of Labor has not made  
 27 the certification required by section 4104(g)(2) of this title.

28 **§ 6314. Application of exclusions to aliens leaving Guam,  
 29 Puerto Rico, or the Virgin Islands**

30 An alien who leaves Guam, Puerto Rico, or the Virgin Islands and tries  
 31 to enter the continental United States or another place under the jurisdic-  
 32 tion of the United States is subject to this subchapter and section 4104(g)  
 33 of this title. Such an alien who is excluded from admission to the United  
 34 States shall be deported immediately in the way provided by section 6335  
 35 of this title.

36 SUBCHAPTER II—PROCEDURE

37 **§ 6331. Exclusion proceedings**

38 (a) PROCEEDING REQUIREMENTS.—(1) When an arriving alien is de-  
 39 tained under section 6103(c)(2) of this title for further inquiry about the  
 40 alien's admissibility, a special inquiry officer shall conduct a proceeding

1 under this section to decide whether the alien is to be admitted or excluded  
2 and deported.

3 (2) Sections 303 (a) and (b) and 6103(d) of this title apply to a proceed-  
4 ing under this section.

5 (3) The Attorney General may prescribe regulations for conducting pro-  
6 ceedings under this section.

7 (4) The procedure provided by this section and regulations prescribed  
8 under this section is the only procedure for deciding on the admissibility of  
9 an alien under this section.

10 (b) OFFICER NOT TO HAVE PARTICIPATED IN INVESTIGATION OR PROS-  
11 ECUTION.—A proceeding under this section shall be conducted by a special  
12 inquiry officer who did not participate in investigating or (except as pro-  
13 vided by this section) prosecuting the case against the alien.

14 (c) CLOSED PROCEEDINGS.—A proceeding under this section shall be  
15 closed to the public. However, the alien is entitled—

16 (1) to have one friend or relative present under conditions prescribed  
17 by the Attorney General; and

18 (2) to be represented by counsel as provided by section 6333 of this  
19 title.

20 (d) PRESENTATION OF EVIDENCE.—The special inquiry officer shall ad-  
21 minister oaths, present and receive evidence, and interrogate, examine, and  
22 cross-examine the alien and witnesses.

23 (e) BURDEN OF PROOF.—An individual seeking to enter the United  
24 States has the burden of proving that the individual is not subject to exclu-  
25 sion.

26 (f) RECORD OF PROCEEDING.—A complete record of the proceeding, in-  
27 cluding the testimony and evidence produced at the proceeding, shall be  
28 kept.

29 (g) DECISIONS.—(1) The decision of a special inquiry officer in a pro-  
30 ceeding under this section shall be based only on the evidence produced at  
31 the proceeding. If a medical officer, private physician, or board of medical  
32 officers has certified under section 6104 of this title that the alien has a  
33 condition described by section 6302(a) of this title, the decision of the spe-  
34 cial inquiry officer shall be based only on the certification.

35 (2) A decision of a special inquiry officer on whether to exclude an alien  
36 is final unless reversed on appeal to the Attorney General under section  
37 6332 of this title. An alien who has a right to appeal under section 6332  
38 shall be informed of that right.

**§ 6332. Administrative appeals**

(a) APPEALS BY ALIENS.—An alien may appeal to the Attorney General an order of a special inquiry officer excluding the alien, except when the alien is—

(1) a stowaway;

(2) excluded temporarily under section 6103(d) of this title; or

(3) excluded based on a certification under section 6104 of this title.

(b) APPEALS BY IMMIGRATION OFFICERS.—The immigration officer in charge of the port at which a proceeding under section 6331 of this title is conducted may appeal to the Attorney General an order of a special inquiry officer admitting an alien.

(c) TIME FOR APPEALING AND STAYING ACTIONS.—An appeal under this section must be timely. The appeal stays final action in the proceeding until the Attorney General makes a final decision.

(d) DECISIONS.—Except as provided by section 6103(d) of this title, the Attorney General shall decide the appeal based only on the evidence in the proceeding before the special inquiry officer.

**§ 6333. Right to counsel**

In an exclusion proceeding before a special inquiry officer and in an appeal before the Attorney General from an exclusion proceeding, an alien is entitled to be represented, at no cost to the United States Government, by the alien's choice of counsel authorized to practice in the proceeding or appeal.

**§ 6334. Judicial review**

(a) JUDICIAL REVIEW.—An alien may obtain judicial review of a final order of exclusion only by a habeas corpus proceeding and only if—

(1) the alien has exhausted all administrative remedies available to the alien as of right under the immigration laws and regulations;

(2) the alien has remained in the United States after the order was issued; and

(3) the validity of the order has not been decided in a prior judicial proceeding, unless the reviewing court finds that the petition for habeas corpus presents grounds that could not have been presented in the prior proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

(b) CONTENTS OF PETITIONS.—A petition for habeas corpus shall state whether the validity of the order of exclusion has been upheld in a prior judicial proceeding, and, if so, shall state the name of the court, the date of the court's ruling, and the nature of the proceeding.

1 **§ 6335. Deportation of excluded aliens**

2 (a) IMMEDIATE DEPORTATION.—Except as provided by subsection (d) of  
3 this section, an alien (except an alien crewmember) arriving in the United  
4 States who is excluded under this title shall be immediately deported.

5 (b) PLACE OF DEPORTATION.—(1) Except as provided by paragraphs (2)  
6 and (3) of this subsection, deportation under this section shall be to the  
7 country in which the alien boarded the vessel or aircraft on which the alien  
8 arrived in the United States.

9 (2) If the alien boarded the vessel or aircraft on which the alien arrived  
10 in the United States in a foreign territory contiguous to the United States,  
11 an island adjacent to the United States, or an island adjacent to a foreign  
12 territory contiguous to the United States, and the alien is not a native, citi-  
13 zen, subject, or national of, or does not reside in, the territory or island,  
14 deportation shall be to the country in which the alien boarded the vessel  
15 or aircraft that transported the alien to the territory or island.

16 (3) If the government of the country designated in paragraph (1) or (2)  
17 of this subsection is unwilling to accept the alien into that country's terri-  
18 tory, deportation shall be to any of the following countries, as directed by  
19 the Attorney General:

20 (A) the country of which the alien is a citizen, subject, or national.

21 (B) the country in which the alien was born.

22 (C) the country in which the alien has a residence.

23 (D) a country with a government that will accept the alien into the  
24 country's territory if deportation to a country described by clauses (A)–  
25 (C) of this paragraph is impracticable, inadvisable, or impossible.

26 (c) DEPORTATION VESSELS, AIRCRAFT, AND ACCOMMODATIONS.—(1)  
27 Deportation under this section shall be on a vessel or aircraft owned by the  
28 owner of the vessel or aircraft on which the alien arrived in the United  
29 States, unless it is impracticable to deport the alien on one of those vessels  
30 or aircraft within a reasonable time.

31 (2) The alien shall be deported in accommodations of the same class in  
32 which the alien arrived.

33 (d) STAY OF DEPORTATION.—(1) The Attorney General may stay the de-  
34 portation of an alien under this section if the Attorney General decides  
35 that—

36 (A) immediate deportation is not practicable or proper; or

37 (B) the alien is needed to testify for the United States Government  
38 in the prosecution of a person for a violation of a law of the United  
39 States.

40 (2) During the period an alien is detained because of a stay of deporta-  
41 tion under paragraph (1)(B) of this subsection, the Attorney General may

1 pay from the appropriation “Immigration and Naturalization Service—Salaries and Expenses”—

2 (A) the cost of maintenance of the alien; and

3 (B) a witness fee of \$1 a day.

4 (3) The Attorney General may release an alien, whose deportation is stayed under paragraph (1)(B) of this subsection, on—

5 (A) the alien’s filing a bond of at least \$500 with security approved by the Attorney General;

6 (B) condition that the alien appear when required as a witness and for deportation; and

7 (C) other conditions the Attorney General may prescribe.

8 **§ 6336. Costs of deporting excluded aliens**

9 When an alien is ordered excluded and deported, the owner of the vessel or aircraft on which the alien arrived in the United States shall pay the transportation cost of deporting the alien. If deportation is on a vessel or aircraft not owned by the owner of the vessel or aircraft on which the alien arrived in the United States, the Attorney General may—

10 (1) pay the cost from the appropriation “Immigration and Naturalization Service—Salaries and Expenses”; and

11 (2) recover the amount of the cost in a civil action from the owner, agent, or consignee of the vessel or aircraft on which the alien arrived in the United States.

12 **CHAPTER 65—DEPORTATION OF ALIENS IN THE UNITED STATES**

13 SUBCHAPTER I—GROUNDS FOR DEPORTATION

14 Sec.

15 6501. Excludable at time of entry or change of status or in the United States illegally.

16 6502. Marriage fraud and failure to marry timely.

17 6503. Public charges.

18 6504. Failure to maintain classification or status or satisfy entry conditions.

19 6505. Encouraging others to enter illegally.

20 6506. Criminal offenses.

21 6507. Failure to register and falsification of documents.

22 6508. National security.

23 6509. Participation in Nazi persecution or genocide.

24 6510. Nonapplication of certain grounds to special immigrants dependent on juvenile court.

SUBCHAPTER II—PROCEDURE

6531. Arrest and detention pending decision on deportation.

6532. Deportation proceedings.

6533. Expeditious proceedings for convicted aliens.

6534. Right to counsel.

6535. Judicial review.

6536. Detention, release, and deportation of aliens ordered deported.

6537. Countries to which aliens may be deported.

6538. Suspension of deportation.

6539. Voluntary departure and removal.

6540. Ineligibility for discretionary relief for failure to appear.

6541. Duties of private parties and costs of deportation.

## SUBCHAPTER I—GROUNDS FOR DEPORTATION

**§ 6501. Excludable at time of entry or change of status or in the United States illegally**

(a) GENERAL.—An alien shall be deported if the alien—

(1) was excludable at the time of entry or change of status under a law in effect at that time;

(2) entered the United States—

(A) without being inspected; or

(B) at a time or place not designated by an immigration officer;

or

(3) is in the United States in violation of a law of the United States.

(b) WAIVERS FOR CERTAIN MISREPRESENTATIONS.—(1) The Attorney General may waive subsection (a)(1) of this section for an alien (except an alien deportable under section 6509 of this title) who was excludable under section 6301(a)(1) of this title at the time of entry if the alien—

(A) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted for permanent residence;

(B) had an immigrant visa or equivalent documentation at the time of entry; and

(C) was otherwise admissible at the time of entry, except under section 4104(g)(2) or 4311(a)(1) of this title as a direct result of the fraud or misrepresentation.

(2) A waiver of deportation under paragraph (1) of this subsection for fraud or misrepresentation is also a waiver of deportation based on other grounds of inadmissibility at the time of entry directly resulting from the fraud or misrepresentation.

**§ 6502. Marriage fraud and failure to marry timely**

(a) MARRIAGE FRAUD.—(1) An alien shall be deported if—

(A) the alien obtained entry into the United States with an immigrant visa or other documentation obtained because of a marriage entered into less than 2 years before the alien's entry that was judicially annulled or terminated within 2 years after the alien's entry; or

(B) the Attorney General is satisfied that the alien failed to fulfill the alien's marital agreement that, in the opinion of the Attorney General, was made to obtain entry into the United States as an immigrant.

(2) Paragraph (1)(A) of this subsection does not apply to an alien who satisfies the Attorney General that the marriage was not made to evade the immigration laws.

(b) FAILURE TO MARRY WITHIN 90 DAYS.—An alien who enters the United States as a nonimmigrant under section 2309(a) of this title, and a minor child of the alien accompanying or following to join the alien, shall

1 leave the United States if, with 90 days after entry, the alien does not  
2 marry the citizen who filed the petition for the alien under section 2309(b)  
3 of this title. If they do not leave, they shall be deported.

4 **§ 6503. Public charges**

5 An alien shall be deported if the alien, within 5 years after entry, has  
6 become a public charge from causes not affirmatively shown to have arisen  
7 since entry.

8 **§ 6504. Failure to maintain classification or status or satisfy**  
9 **entry conditions**

10 (a) NONIMMIGRANT CLASSIFICATION NOT MAINTAINED.—(1) Subject to  
11 paragraph (2) of this subsection, an alien admitted to the United States as  
12 a nonimmigrant shall be deported if the alien does not—

13 (A) maintain the nonimmigrant classification under which the alien  
14 was admitted or to which the classification was changed under section  
15 9108 of this title; or

16 (B) comply with a condition of the nonimmigrant classification.

17 (2) An alien admitted as a nonimmigrant under section 2301(1) or  
18 2302(1) of this title and not maintaining the nonimmigrant classification  
19 under which the alien was admitted may be deported only if—

20 (A) the Secretary of State approves; or

21 (B) the alien is deportable under section 6508 or 6509 of this title.

22 (b) NONCOMPLIANCE WITH HEALTH WAIVER CONDITIONS.—An alien  
23 admitted to the United States as a result of a waiver under section 6302(b)  
24 of this title shall be deported if the Secretary of Health and Human Serv-  
25 ices certifies that the alien has not complied with a condition of the waiver.

26 (c) SPECIAL AGRICULTURAL WORKERS.—An alien lawfully admitted for  
27 temporary residence under section 210A of the Immigration and Nationality  
28 Act shall be deported if the alien does not meet the requirement of section  
29 210A(d)(5)(A) of that Act by the end of the applicable period.

30 (d) TERMINATION OF CONDITIONAL PERMANENT RESIDENT STATUS.—  
31 An alien lawfully admitted for permanent residence on a conditional basis  
32 under chapter 45 of this title shall be deported if the status is terminated.  
33 However, this subsection does not apply if a waiver is granted under section  
34 4506(b) of this title.

35 **§ 6505. Encouraging others to enter illegally**

36 (a) GENERAL.—An alien shall be deported if the alien, before or within  
37 5 years after entry, knowingly has encouraged, induced, or assisted another  
38 alien to enter or attempt to enter the United States in violation of law.

39 (b) NONAPPLICATION.—Subsection (a) of this section does not apply to  
40 an alien who—

1 (1) is an eligible immigrant (as defined by section 301(b) of the Im-  
2 migration Act of 1990 (Public Law 101-649, 104 Stat. 5029));

3 (2) was physically present in the United States on May 5, 1988;

4 (3) is seeking—

5 (A) admission as an immediate relative;

6 (B) admission under section 4103(c) of this title (including  
7 under section 112 of the Immigration Act of 1990 (Public Law  
8 101-649, 104 Stat. 4987)); or

9 (C) benefits under section 301(a) of that Act (104 Stat. 5029);

10 and

11 (4) before May 5, 1988, encouraged, induced, or assisted only the  
12 alien's spouse, parent, son, or daughter (and no other individual) to  
13 enter the United States in violation of law.

14 (c) WAIVERS.—The Attorney General may waive subsection (a) of this  
15 section for humanitarian purposes, to ensure family unity, or when it is oth-  
16 erwise in the public interest, for an alien who—

17 (1) is lawfully admitted for permanent residence; and

18 (2) has encouraged, induced, or assisted only the alien's spouse, par-  
19 ent, son, or daughter (and no other individual) to enter the United  
20 States in violation of law.

21 **§ 6506. Criminal offenses**

22 (a) MORAL TURPITUDE AND AGGRAVATED FELONIES.—(1) An alien shall  
23 be deported if the alien is convicted—

24 (A) of an offense involving moral turpitude committed within 5 years  
25 after entry and is sentenced to confinement or is confined for the of-  
26 fense in a prison or correctional institution for at least one year;

27 (B) after entry, of at least 2 offenses involving moral turpitude not  
28 arising out of a single scheme of misconduct, regardless of whether the  
29 convictions were in a single trial or the alien was confined for the of-  
30 fenses; or

31 (C) after entry, of an aggravated felony.

32 (2) Paragraph (1) of this subsection does not apply to a conviction of an  
33 alien if the President or the chief executive officer of a State has granted  
34 the alien a full and unconditional pardon.

35 (b) CONTROLLED SUBSTANCES.—An alien shall be deported if the alien—

36 (1) is convicted, after entry, of violating, or conspiring or attempting  
37 to violate, a law or regulation of a State, the United States, or a for-  
38 eign country related to a controlled substance (as defined by section  
39 102 of the Comprehensive Drug Abuse Prevention and Control Act of  
40 1970 (21 U.S.C. 802)), except a single offense of possession for one's  
41 own use of not more than 30 grams of marijuana; or

1 (2) is, or at any time after entry has been, a drug abuser or addict.

2 (c) FIREARMS.—An alien shall be deported if the alien, after entry, is  
3 convicted under any law of purchasing, selling, offering for sale, exchanging,  
4 using, owning, possessing, or carrying in violation of law any weapon, part,  
5 or accessory that is a firearm or destructive device (as defined by section  
6 921(a) of title 18).

7 (d) MISCELLANEOUS.—An alien shall be deported if the alien has been  
8 convicted at any time (and the judgment has become final) of violating or  
9 conspiring or attempting to violate—

10 (1) section 501 or 10151 of this title;

11 (2) chapter 37, 105, or 115 of title 18 if a term of imprisonment  
12 of at least 5 years may be imposed;

13 (3) section 871 or 960 of title 18;

14 (4) the Trading with the Enemy Act (50 App. U.S.C. 1 et seq.); or

15 (5) the Military Selective Service Act (50 App. U.S.C. 451 et seq.);

16 **§ 6507. Failure to register and falsification of documents**

17 (a) ADDRESS NOTIFICATION.—An alien shall be deported if the alien has  
18 not complied with section 8104 of this title, unless the Attorney General is  
19 satisfied that the noncompliance was reasonably excusable or not willful.

20 (b) FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.—An  
21 alien shall be deported if the alien has been convicted at any time of—

22 (1) violating section 10145 of this title;

23 (2) violating section 36(c) of the Alien Registration Act, 1940;

24 (3) violating or conspiring to violate the Foreign Agents Registration  
25 Act of 1938, as amended (22 U.S.C. 611 et seq.);

26 (4) violating the Act of August 1, 1956 (50 U.S.C. 851 et seq.) or  
27 a regulation under that Act; or

28 (5) violating or conspiring to violate section 1546 of title 18.

29 (c) DOCUMENT FRAUD.—An alien shall be deported if the alien is the  
30 subject of a final order for violating section 10125 of this title.

31 **§ 6508. National security**

32 (a) GENERAL.—An alien shall be deported if the alien has engaged or en-  
33 engages in—

34 (1) an activity to violate—

35 (A) a law of the United States related to espionage or sabotage;

36 or

37 (B) a law prohibiting the export from the United States of  
38 goods, technology, or sensitive information;

39 (2) any other criminal activity that endangers public safety or the  
40 security of the United States; or

1 (3) an activity a purpose of which is to oppose, control, or overthrow  
2 the United States Government by force, violence, or other unlawful  
3 means.

4 (b) TERRORIST ACTIVITIES.—An alien shall be deported if the alien has  
5 engaged or engages in a terrorist activity as defined by section 6308(b) of  
6 this title.

7 (c) FOREIGN POLICY.—(1) An alien shall be deported if the Secretary of  
8 State has reason to believe that the alien's presence or activities in the Unit-  
9 ed States would have potentially serious adverse foreign policy consequences  
10 for the United States.

11 (2) The exceptions described by section 6308(c)(2) and (3) of this title  
12 apply to deportability under this subsection in the same way that they apply  
13 to excludability under section 6308(c)(1).

14 **§ 6509. Participation in Nazi persecution or genocide**

15 An alien described by section 6309 of this title shall be deported.

16 **§ 6510. Nonapplication of certain grounds to special immi-**  
17 **grants dependent on juvenile court**

18 The following sections do not apply to a special immigrant as defined by  
19 section 137(a)(12) of this title, based on circumstances that existed before  
20 the date the alien acquired the special immigrant status:

21 (1) sections 6501(a) and 6504(a), (b), and (d) of this title, except  
22 to the extent related to a ground of exclusion described by sections  
23 6307(a)(1)–(5) or (7), 6308, or 6309 of this title.

24 (2) section 6507(a) of this title.

25 SUBCHAPTER II—DEPORTATION PROCEDURE

26 **§ 6531. Arrest and detention pending decision on deporta-**  
27 **tion**

28 (a) ARREST, DETENTION, AND RELEASE.—On a warrant issued by the  
29 Attorney General, an alien may be arrested and detained pending a decision  
30 on deportation. Except as provided by subsection (c) of this section, the At-  
31 torney General, pending a decision on deportation, may—

32 (1) continue to detain the arrested alien; or

33 (2) release the alien on—

34 (A) a bond of at least \$500 with security approved by, and con-  
35 taining conditions prescribed by, the Attorney General; or

36 (B) conditional parole.

37 (b) REVOCATION OF BOND OR PAROLE.—The Attorney General may re-  
38 voke at any time a bond or parole authorized under subsection (a) of this  
39 section, rearrest the alien under the original warrant, and detain the alien  
40 pending a decision on deportation.

1 (c) ALIENS CONVICTED OF AGGRAVATED FELONIES.—(1) The Attorney  
2 General shall take into custody an alien convicted after November 17, 1988,  
3 of an aggravated felony when the alien is released, whether the alien is re-  
4 leased on parole, supervised release, or probation or may be arrested or im-  
5 prisoned again for the same offense.

6 (2) To the maximum extent practicable, the Attorney General shall detain  
7 at one facility aliens convicted after November 17, 1988, of aggravated felo-  
8 nies and taken into custody under paragraph (1) of this subsection. In se-  
9 lecting the facility, the Attorney General shall make a reasonable effort to  
10 ensure that an alien's right to counsel under section 6534 of this title is  
11 not impaired.

12 (3) The Attorney General may release the alien only if the alien—

13 (A) was lawfully admitted to the United States; and

14 (B) satisfies the Attorney General that the alien is not a threat to  
15 the community and is likely to appear for any scheduled proceeding.

16 (4) The Attorney General shall carry out a system—

17 (A) to make the investigative resources of the Immigration and Nat-  
18 uralization Service available, daily and on a 24-hour basis, to officers  
19 and employees of the United States Government, States, and localities  
20 to decide whether an individual arrested by any of those officers or em-  
21 ployees for an aggravated felony is an alien;

22 (B) to designate and train officers and employees of the Service in  
23 each district to serve as liaison to law enforcement and correctional  
24 agencies and courts of the Government, States, and localities in mat-  
25 ters involving the arrest, conviction, and release of aliens charged with  
26 aggravated felonies; and

27 (C) to maintain a current record, using computer resources, of aliens  
28 who have been convicted after November 17, 1988, of aggravated felo-  
29 nies and deported.

30 (5) The record referred to in paragraph (4)(C) of this subsection shall  
31 be made available to inspectors at ports of entry and to border patrol agents  
32 at sector headquarters to help identify aliens who have been convicted after  
33 November 17, 1988, of aggravated felonies and deported and who are at-  
34 tempting to reenter the United States.

35 (d) HABEAS CORPUS.—In a habeas corpus proceeding, a court of com-  
36 petent jurisdiction may review or revise a decision of the Attorney General  
37 about an alien's detention or release on bond or parole pending a decision  
38 on deportation, if the alien shows conclusively that the Attorney General is  
39 not proceeding with reasonable dispatch under the particular circumstances  
40 to decide whether the alien is to be deported.

1 **§ 6532. Deportation proceedings**

2 (a) DEFINITION.—In this section, “exceptional circumstances” means ex-  
3 ceptional circumstances beyond the control of the alien, such as serious ill-  
4 ness of the alien or death of an immediate relative but not including less  
5 compelling circumstances.

6 (b) PROCEEDING REQUIREMENT.—A special inquiry officer shall conduct  
7 a proceeding under this section to decide whether an alien is to be deported.

8 (c) OFFICER NOT TO HAVE PARTICIPATED IN INVESTIGATION OR PROS-  
9 ECUTION.—A proceeding under this section shall be conducted by a special  
10 inquiry officer who did not participate in investigating or (except as pro-  
11 vided by this section) prosecuting the case against the alien.

12 (d) ORDERS TO SHOW CAUSE AND PROCEEDING NOTICES.—(1) In a de-  
13 portation proceeding under this section, an order to show cause shall be  
14 served—

15 (A) by personal delivery on the alien; or

16 (B) if personal delivery is not practicable, by certified mail, return  
17 receipt requested, to the alien or any counsel of record of the alien.

18 (2) The order shall include notice of—

19 (A) the nature of the proceeding against the alien;

20 (B) the legal authority under which the proceeding is conducted;

21 (C) each act or conduct alleged to be in violation of law;

22 (D) each charge against the alien and the law alleged to have been  
23 violated;

24 (E) the alien’s right to be represented (at no expense to the United  
25 States Government) by counsel authorized to practice in a deportation  
26 proceeding and to be provided a list of counsel prepared under sub-  
27 section (e)(2) of this section;

28 (F) the requirements that the alien immediately must provide the At-  
29 torney General a written record of—

30 (i) an address and telephone number (if any) at which the alien  
31 may be contacted about the proceeding unless the alien has al-  
32 ready provided this information to the Attorney General; and

33 (ii) any change of address or telephone number; and

34 (G) the consequences under subsection (j)(2) of this section of failing  
35 to provide the address and telephone information.

36 (3) In the order to show cause or in a separate written notice served in  
37 the same way as specified by paragraph (1) of this subsection, the alien  
38 shall be notified of—

39 (A) the time and place of the proceeding;

40 (B) the consequences under subsection (j) of this section of failing  
41 (except under exceptional circumstances) to attend the proceeding; and

1 (C) the right to be represented by counsel at the proceeding and to  
2 be provided a period of time, as specified by subsection (e)(1) of this  
3 section, to retain counsel and to be provided a current list of counsel  
4 prepared under subsection (e)(2) of this section.

5 (4) If the time or place of the proceeding is changed, a new written notice  
6 shall be served in the same way as specified by paragraph (1) of this sub-  
7 section. The notice shall include the new time or place of the proceeding  
8 and the matters specified by paragraph (3)(B) and (C) of this subsection.

9 (5) Notice under paragraphs (3) and (4) of this subsection is not required  
10 for an alien not in detention if the alien has not provided an address as  
11 required by paragraph (2)(F) of this subsection.

12 (6) Each order to show cause and written notice under this subsection  
13 shall be in English and Spanish.

14 (7) The Attorney General shall maintain a system to record and preserve  
15 on a timely basis notices of addresses and telephone numbers and changes  
16 provided by aliens under paragraph (2)(F) of this subsection.

17 (e) DATE OF FIRST HEARING AND ASSISTANCE OF COUNSEL.—(1) To  
18 give an alien an opportunity to retain counsel, the first date that a proceed-  
19 ing for the alien under this section may be scheduled shall be at least 14  
20 days after service of the order to show cause, unless the alien requests in  
21 writing an earlier date.

22 (2) The Attorney General shall provide lists (updated at least quarterly)  
23 of individuals who have indicated their availability to represent aliens with-  
24 out charge in proceedings under this section. The lists shall be provided as  
25 required by subsection (d)(2)(E) of this section and also shall be made gen-  
26 erally available.

27 (f) ATTENDANCE OF ALIEN.—(1) An alien shall have a reasonable oppor-  
28 tunity to attend the proceeding for the alien under this section. If it is im-  
29 practicable for the alien to attend because of mental incompetence, the pro-  
30 ceeding may be conducted without the alien. The Attorney General shall  
31 prescribe safeguards for the rights and privileges of an alien who does not  
32 attend because of mental incompetence.

33 (2) If an alien has been given a reasonable opportunity to attend, and  
34 without reasonable cause does not attend or remain in attendance, the spe-  
35 cial inquiry officer may conduct the proceeding and decide on the alien's de-  
36 portation as if the alien had attended.

37 (g) CONDUCTING PROCEEDINGS.—(1) The special inquiry officer conduct-  
38 ing a proceeding shall administer oaths, present and receive evidence, and  
39 interrogate, examine, and cross-examine the alien and witnesses. If the At-  
40 torney General believes it will aid in making a decision, the Attorney Gen-  
41 eral may require, specifically or by regulation, in a case or class of cases,

1 that an additional immigration officer be assigned to present the evidence  
2 for the Government. The additional immigration officer may present evi-  
3 dence and interrogate, examine, and cross-examine the alien and witnesses.  
4 The assignment of an additional immigration officer does not affect the au-  
5 thority of the special inquiry officer conducting the proceeding.

6 (2) The alien shall have a reasonable opportunity to examine the evidence  
7 against the alien, present evidence, and cross-examine witnesses presented  
8 by the Government.

9 (h) BURDEN OF PROOF.—The alien has the burden of proof of establish-  
10 ing the alien’s time, place, and manner of entry into the United States. In  
11 presenting the proof, the alien is entitled to the production of the alien’s  
12 visa or other entry document and, unless considered confidential by the At-  
13 torney General, any other relevant record in the custody of the Attorney  
14 General. An alien who fails to sustain the burden of proof is presumed to  
15 be in the United States in violation of law.

16 (i) DECISIONS AND ORDERS.—If authorized by the Attorney General, the  
17 special inquiry officer shall make decisions on the deportability of aliens and  
18 issue orders of deportation. A decision that an alien is deportable may be  
19 made only on a record made in a proceeding before a special inquiry officer,  
20 and is valid only if based on reasonable, substantial, and probative evidence.  
21 If an alien is ordered deported under any law or treaty, the decision of the  
22 Attorney General is final.

23 (j) DEPORTATION ORDERED IN ABSENTIA.—(1) An alien who does not  
24 attend the alien’s proceeding under this section shall be ordered deported  
25 in absentia, if the Attorney General establishes by clear, unequivocal, and  
26 convincing evidence that—

27 (A) the notice required by subsection (d)(3) and (4) of this section  
28 was provided; and

29 (B) the alien is deportable.

30 (2) The notice referred to in paragraph (1)(A) of this subsection is suffi-  
31 cient if provided at the most recent address provided under subsection  
32 (d)(2)(F) of this section. No notice is required if the alien has not provided  
33 the address required by subsection (d)(2)(F).

34 (3)(A) A deportation order issued under this subsection may be rescinded  
35 only on a motion to reopen—

36 (i) filed not later than 180 days after the date of the order if the  
37 alien demonstrates that the failure to attend was because of exceptional  
38 circumstances; or

39 (ii) filed at any time if the alien demonstrates that the alien did not  
40 receive the notice required by subsection (d)(3) and (4) of this section

1 or that the alien was in the custody of a State or the Government and  
2 did not attend through no fault of the alien.

3 (B) A motion filed under this paragraph stays the deportation of the alien  
4 pending disposition of the motion.

5 (4) Notwithstanding section 6535 of this title, a petition for review under  
6 section 6535 of a deportation order issued in absentia under this sub-  
7 section—

8 (A) must be filed not later than 60 days (or 30 days if the alien  
9 has been convicted of an aggravated felony) after the date of the final  
10 order of deportation; and

11 (B) except as provided by section 6535(b)(5) of this title, shall be  
12 limited to the issues of—

13 (i) the validity of the notice provided to the alien;

14 (ii) the reasons for the alien's failure to attend; and

15 (iii) whether clear, unequivocal, and convincing evidence of de-  
16 portability has been established.

17 (k) FINGERPRINTS AND PHOTOGRAPHS.—The Attorney General shall pre-  
18 scribe regulations providing for the fingerprinting and photographing of  
19 each alien at least 14 years of age against whom a deportation proceeding  
20 is begun. The fingerprints and photographs shall be made available, on re-  
21 quest, to law enforcement agencies of the Government, States, and localities.

22 (l) ADDITIONAL REGULATIONS AND EXCLUSIVITY OF PROCEDURE.—(1)  
23 A proceeding under this section shall be conducted under regulations the At-  
24 torney General shall prescribe that are consistent with this section.

25 (2) The procedure provided by this section and regulations prescribed  
26 under this section is the only procedure for deciding on the deportability of  
27 an alien under this section.

28 (m) REGULATIONS ON MOTIONS TO REOPEN AND TO RECONSIDER AND  
29 ON ADMINISTRATIVE APPEALS.—Not later than May 29, 1991, the Attor-  
30 ney General shall prescribe regulations on—

31 (1) the number of motions to reopen and to reconsider that may be  
32 filed in a deportation proceeding and the time during which they may  
33 be filed;

34 (2) the number of administrative appeals that may be filed in a de-  
35 portation proceeding, the items to be included in notices of appeal, and  
36 the time during which the appeals and the appellate and reply briefs  
37 may be filed; and

38 (3) the consolidation of motions to reopen and to reconsider with the  
39 appeal of the order of deportation.

1 **§ 6533. Expeditious proceedings for convicted aliens**

2 (a) GENERAL.—If an alien is convicted of an offense that makes the alien  
3 deportable, the Attorney General shall begin a deportation proceeding  
4 against the alien as expeditiously as possible after the date of the conviction.

5 (b) ALIENS CONVICTED OF AGGRAVATED FELONIES.—The Attorney Gen-  
6 eral shall provide for the availability of special deportation proceedings at  
7 certain correctional facilities of the United States Government, States, and  
8 localities for aliens convicted after November 17, 1988, of aggravated felo-  
9 nies. Each proceeding shall be conducted—

10 (1) under section 6532 of this title, except as otherwise provided by  
11 this section;

12 (2) in a way that eliminates the need for additional detention at a  
13 processing center of the Immigration and Naturalization Service; and

14 (3) in a way that ensures expeditious deportation, if warranted, after  
15 the alien is released from imprisonment for the felony.

16 (c) PRESUMPTION OF DEPORTABILITY.—An alien convicted after Novem-  
17 ber 17, 1988, of an aggravated felony is conclusively presumed to be deport-  
18 able from the United States.

19 (d) COMPLETING PROCEEDINGS BEFORE RELEASE FROM IMPRISON-  
20 MENT.—The Attorney General shall provide for beginning and, to the extent  
21 possible, completing a deportation proceeding against an alien convicted  
22 after November 17, 1988, of an aggravated felony, and any administrative  
23 appeals from that proceeding, before the alien is released from imprison-  
24 ment for the felony.

25 (e) DEPORTATION DURING IMPRISONMENT.—This section does not re-  
26 quire the Attorney General to deport an alien sentenced to imprisonment  
27 before the alien is released from imprisonment.

28 **§ 6534. Right to counsel**

29 In a deportation proceeding before a special inquiry officer and in an ap-  
30 peal before the Attorney General from a deportation proceeding, an alien  
31 is entitled to be represented, at no cost to the United States Government,  
32 by the alien's choice of counsel authorized to practice in the proceeding or  
33 appeal.

34 **§ 6535. Judicial review**

35 (a) APPLICABLE PROVISIONS.—Judicial review of a final order of depor-  
36 tation is governed only by chapter 158 of title 28, except as provided by  
37 this section.

38 (b) REQUIREMENTS.—(1) A petition for review must be filed—

39 (A) if the alien has been convicted after November 17, 1988, of an  
40 aggravated felony, not later than 30 days after the date of the final  
41 order of deportation; and

1 (B) for any other alien, not later than 90 days after the date of the  
2 final order of deportation.

3 (2) A petition for review shall be filed with the court of appeals of the  
4 United States for the circuit in which the petitioner resides or for the circuit  
5 in which any part of the proceeding before a special inquiry officer was held,  
6 but not more than one circuit.

7 (3) The respondent is the Attorney General. The petition shall be served  
8 on the Attorney General and on the officer or employee of the Immigration  
9 and Naturalization Service in charge of the Service district in which the of-  
10 fice of the clerk of the court is located. Service of the petition on the officer  
11 or employee stays the deportation of the alien pending the court's decision  
12 on the petition, unless the court orders otherwise. However, if the alien has  
13 been convicted of an aggravated felony, service of the petition does not stay  
14 the deportation unless the court orders otherwise.

15 (4) Except as provided by paragraph (5)(B) of this subsection—

16 (A) the court of appeals shall decide the petition only on the admin-  
17 istrative record on which the deportation order is based; and

18 (B) the administrative findings of fact are conclusive if supported by  
19 reasonable, substantial, and probative evidence on the record considered  
20 as a whole.

21 (5)(A) If the petitioner claims to be a national of the United States and  
22 the court of appeals finds from the pleadings and affidavits that no genuine  
23 issue of material fact about the petitioner's nationality is presented, the  
24 court shall decide the nationality claim.

25 (B) If the petitioner claims to be a national of the United States and the  
26 court of appeals finds that a genuine issue of material fact about the peti-  
27 tioner's nationality is presented, the court shall transfer the proceeding to  
28 the district court of the United States for the judicial district in which the  
29 petitioner resides for a new hearing on the nationality claim and a decision  
30 on that claim as if an action had been brought in the district court under  
31 section 2201 of title 28.

32 (C) The petitioner may have the nationality claim decided only as pro-  
33 vided by this section.

34 (6) When a petitioner seeks review of an order under this section, any  
35 review sought of a motion to reopen or reconsider the order shall be consoli-  
36 dated with the review of the order.

37 (7)(A) If the validity of a deportation order has not been judicially de-  
38 cided, a defendant in a criminal proceeding charged with violating section  
39 6536(d) or 10153(a) of this title may challenge the validity of the order in  
40 the criminal proceeding only by filing a separate motion before trial. The  
41 district court, without a jury, shall decide the motion before trial.

1 (B) If the defendant claims in the motion to be a national of the United  
2 States and the district court finds that no genuine issue of material fact  
3 about the defendant's nationality is presented, the court shall decide the  
4 motion only on the administrative record on which the deportation order is  
5 based. The administrative findings of fact are conclusive if supported by  
6 reasonable, substantial, and probative evidence on the record considered as  
7 a whole.

8 (C) If the defendant claims in the motion to be a national of the United  
9 States and the district court finds that a genuine issue of material fact  
10 about the defendant's nationality is presented, the court shall hold a new  
11 hearing on the nationality claim and decide that claim as if an action had  
12 been brought under section 2201 of title 28.

13 (D) If the district court rules that the deportation order is invalid, the  
14 court shall dismiss the indictment. The United States Government may ap-  
15 peal the dismissal to the court of appeals for the appropriate circuit within  
16 30 days. The defendant may not file a petition for review under this section  
17 during the criminal proceeding. The defendant may have the nationality  
18 claim decided only as provided by this section.

19 (8) This subsection—

20 (A) does not prevent the Attorney General, after a final order of de-  
21 portation has been issued, from detaining the alien under section  
22 6536(b) of this title;

23 (B) does not relieve the alien from complying with sections 6536(d)  
24 and 10153(a) of this title; and

25 (C) except as provided by paragraph (3) of this subsection, does not  
26 require the Attorney General to defer deportation of the alien.

27 (9) The record and briefs do not have to be printed. The court of appeals  
28 shall review the proceeding on a typewritten record and on typewritten  
29 briefs.

30 (10) An alien held in custody under an order of deportation may obtain  
31 judicial review of the order by a habeas corpus proceeding.

32 (c) REVIEW OF FINAL ORDERS.—A court may review a final order of de-  
33 portation only if—

34 (1) the alien has exhausted all administrative remedies available to  
35 the alien as of right;

36 (2) the alien has remained in the United States after the order was  
37 issued; and

38 (3) another court has not decided the validity of the order, unless  
39 the reviewing court finds that the petition presents grounds that could  
40 not have been presented in the prior judicial proceeding or that the

1 remedy provided by the prior proceeding was inadequate or ineffective  
2 to test the validity of the order.

3 (d) REQUIREMENTS FOR PETITION.—A petition for review or for habeas  
4 corpus of an order of deportation shall state whether a court has upheld  
5 the validity of the order, and, if so, shall state the name of the court, the  
6 date of the court’s ruling, and the kind of proceeding.

7 **§ 6536. Detention, release, and deportation of aliens ordered**  
8 **deported**

9 (a) DEPORTATION PERIOD.—Except as otherwise provided by this sec-  
10 tion, when an alien is ordered deported, the Attorney General has 6 months  
11 to deport the alien from the United States. The 6-month period begins on  
12 the latest of the following:

13 (1) the date the deportation order becomes administratively final.

14 (2) if the deportation order is judicially reviewed, the date of the  
15 court’s final order.

16 (3) if the alien is detained or confined (except under an immigration  
17 process), the date the alien is released from detention or confinement.

18 (b) DETENTION AND RELEASE BY THE ATTORNEY GENERAL.—During  
19 the 6-month period, the Attorney General may—

20 (1) detain the alien;

21 (2) release the alien on a bond containing conditions the Attorney  
22 General may prescribe; or

23 (3) release the alien on other conditions the Attorney General may  
24 prescribe.

25 (c) HABEAS CORPUS.—In a habeas corpus proceeding, a court of com-  
26 petent jurisdiction may review or revise a decision of the Attorney General  
27 under subsection (b) of this section if the alien shows conclusively that the  
28 Attorney General is not proceeding with reasonable dispatch under the par-  
29 ticular circumstances to deport the alien within the 6-month period.

30 (d) SUPERVISION AFTER 6-MONTH PERIOD.—If the alien does not leave  
31 or is not deported within the 6-month period, the alien, pending deportation,  
32 shall be subject to supervision under regulations prescribed by the Attorney  
33 General. The regulations shall include provisions requiring the alien—

34 (1) to appear before an immigration officer periodically for identi-  
35 fication;

36 (2) to submit, if necessary, to a medical and psychiatric examination  
37 at the expense of the United States Government;

38 (3) to give information under oath about the alien’s nationality, cir-  
39 cumstances, habits, associations, and activities, and other information  
40 the Attorney General considers appropriate; and

1 (4) to obey reasonable written restrictions on the alien's conduct or  
2 activities that the Attorney General prescribes for the alien.

3 (e) ALIENS IMPRISONED, ARRESTED, OR ON PAROLE, SUPERVISED RE-  
4 LEASE, OR PROBATION.—Except as provided by section 343(a) of the Public  
5 Health Service Act (42 U.S.C. 259(a)), the Attorney General may not de-  
6 port an alien who is sentenced to imprisonment until the alien is released  
7 from imprisonment. Parole, supervised release, probation, or possibility of  
8 rearrest or further imprisonment is not a reason to defer deportation.

9 (f) REINSTATEMENT OF DEPORTATION ORDERS AGAINST ALIENS ILLE-  
10 GALLY REENTERING.—If the Attorney General finds that an alien has reen-  
11 tered the United States illegally after having been deported or having de-  
12 parted voluntarily, under an order of deportation on any ground described  
13 by sections 6506–6509 of this title, the prior order of deportation is rein-  
14 stated from its original date and the alien shall be deported under the prior  
15 order at any time after the reentry.

16 **§ 6537. Countries to which aliens may be deported**

17 (a) DESIGNATION BY ALIEN.—(1) An alien in the United States who has  
18 been ordered deported may designate one country to which the alien wants  
19 to be deported. However, the alien may designate a foreign territory contig-  
20 uous to the United States, an adjacent island, or an island adjacent to a  
21 foreign territory contiguous to the United States as the place to which the  
22 alien is to be deported only if the alien is a native, citizen, subject, or na-  
23 tional of, or has resided in, that designated territory or island. Except as  
24 otherwise provided by this section, the Attorney General shall deport the  
25 alien to the country the alien designates.

26 (2) The Attorney General may disregard a designation under paragraph  
27 (1) of this subsection if—

28 (A) the alien fails to designate a country promptly;

29 (B) the government of the country does not inform the Attorney  
30 General finally, within 3 months after the Attorney General first in-  
31 quires, whether the government will accept the alien into the country;

32 (C) the government of the country is not willing to accept the alien  
33 into the country; or

34 (D) the Attorney General decides that deporting the alien to the  
35 country is prejudicial to the United States.

36 (b) ALTERNATIVE DEPORTATION COUNTRY.—If an alien is not deported  
37 to a country under subsection (a) of this section, the Attorney General shall  
38 deport the alien to a country of which the alien is a subject, national, or  
39 citizen unless the government of the country—

40 (1) does not inform the Attorney General or the alien finally, within  
41 3 months after the Attorney General first inquires or within another

1 period of time the Attorney General decides is reasonable, whether the  
2 government will accept the alien into the country; or

3 (2) is not willing to accept the alien into the country.

4 (c) ADDITIONAL DEPORTATION COUNTRIES.—If an alien is not deported  
5 to a country under subsection (a) or (b) of this section, the Attorney Gen-  
6 eral shall deport the alien to any of the following countries:

7 (1) the country from which the alien last entered the United States.

8 (2) the country in which is located the foreign port from which the  
9 alien left for the United States or for a foreign territory contiguous to  
10 the United States.

11 (3) a country in which the alien resided before the alien entered the  
12 country from which the alien entered the United States.

13 (4) the country in which the alien was born.

14 (5) the country that had sovereignty over the alien's birthplace when  
15 the alien was born.

16 (6) the country in which the alien's birthplace is located when the  
17 alien is ordered deported.

18 (7) if impracticable, inadvisable, or impossible to deport the alien to  
19 a country described by clauses (1)–(6) of this subsection, another coun-  
20 try whose government will accept the alien into that country.

21 (d) DEPORTATION COUNTRY WHEN UNITED STATES IS AT WAR.—When  
22 the United States is at war and the Attorney General decides that it is im-  
23 practicable, inadvisable, inconvenient, or impossible to deport an alien under  
24 subsections (a)–(c) of this section because of the war, the Attorney General  
25 may deport the alien—

26 (1) to the country that is host to a government in exile of the coun-  
27 try of which the alien is a citizen or subject if the government of the  
28 host country will permit the alien's entry; or

29 (2) if the recognized government of the country of which the alien  
30 is a citizen or subject is not in exile, to a country, or a political or  
31 territorial subdivision of a country, that is very near the country of  
32 which the alien is a citizen or subject, or, with the consent of the gov-  
33 ernment of the country of which the alien is a citizen or subject, to  
34 another country.

35 (e) RESTRICTION WHEN ALIEN'S LIFE OR FREEDOM WOULD BE  
36 THREATENED.—(1) Notwithstanding subsections (a)–(d) of this section, the  
37 Attorney General may not deport or return an alien to a country if the At-  
38 torney General decides that the alien's life or freedom would be threatened  
39 in that country because of the alien's race, religion, nationality, membership  
40 in a social group, or political opinion.

1 (2) Paragraph (1) of this subsection does not apply to an alien deportable  
2 under section 6509 of this title or if the Attorney General decides—

3 (A) that the alien ordered, incited, assisted, or otherwise participated  
4 in the persecution of an individual because of the individual's race, reli-  
5 gion, nationality, membership in a social group, or political opinion;

6 (B) after the alien's conviction of a particularly serious crime (in-  
7 cluding any aggravated felony) has become final, that the alien is a  
8 danger to the community of the United States;

9 (C) that there are serious reasons to believe that the alien committed  
10 a serious nonpolitical crime outside the United States before the alien  
11 arrived in the United States; or

12 (D) that there are reasonable grounds to believe that the alien is a  
13 danger to the security of the United States.

14 **§ 6538. Suspension of deportation**

15 (a) GROUNDS FOR SUSPENSION.—On application of an alien to the Attor-  
16 ney General, the Attorney General may suspend the deportation of the alien  
17 and change the status of the alien under section 9103 of this title to that  
18 of an alien lawfully admitted for permanent residence if—

19 (1)(A) the alien is deportable under a law of the United States, ex-  
20 cept sections 6506–6508 of this title;

21 (B) for at least 7 continuous years immediately before applying, the  
22 alien has been—

23 (i) physically present in the United States; and

24 (ii) of good moral character;

25 (C) the alien is of good moral character; and

26 (D) the Attorney General believes that deporting the alien would  
27 cause extreme hardship to the alien or to the alien's spouse, parent,  
28 or child if the spouse, parent, or child is a citizen of the United States  
29 or an alien lawfully admitted for permanent residence; or

30 (2)(A) the alien is deportable under any of sections 6506–6508 of  
31 this title;

32 (B) for at least 10 continuous years immediately after the alien com-  
33 mitted an act or acquired a status that is a ground for deportation,  
34 the alien has been—

35 (i) physically present in the United States; and

36 (ii) of good moral character;

37 (C) the alien is of good moral character; and

38 (D) the Attorney General believes that deporting the alien would  
39 cause exceptional and extremely unusual hardship to the alien or to the  
40 alien's spouse, parent, or child if the spouse, parent, or child is a citi-

1           zen of the United States or an alien lawfully admitted for permanent  
2           residence.

3           (b) BRIEF INTERRUPTION OF PHYSICAL PRESENCE.—An alien tempo-  
4           rarily absent from the United States is deemed to have maintained continu-  
5           ous physical presence under subsection (a)(1)(B)(i) and (2)(B)(i) of this  
6           section if the absence was brief, casual, and innocent and did not meaning-  
7           fully interrupt the continuous physical presence. This subsection does not  
8           apply to an alien removed from the United States before November 6, 1986.

9           (c) INTERRUPTION OF PHYSICAL PRESENCE BECAUSE OF SERVICE IN  
10          THE ARMED FORCES.—The requirements of subsection (a)(1)(B)(i) and  
11          (2)(B)(i) of this section do not apply to an alien who—

12           (1) enlisted or was inducted into the armed forces of the United  
13          States when the alien was in the United States;

14           (2) served on active duty in the armed forces for at least 24 months;  
15          and

16           (3) if separated from the armed forces, was separated under honor-  
17          able conditions.

18          (d) NONAPPLICATION.—This section does not apply to an alien who—

19           (1) enters the United States as a crewmember after June 30, 1964;

20           (2) is admitted to the United States as a nonimmigrant under sec-  
21          tion 2312 of this title or acquires the status of a nonimmigrant under  
22          section 2312 after admission—

23           (A) to receive graduate medical education or training, regardless  
24          of whether the alien is subject to the 2-year foreign residence re-  
25          quirement of section 8303 of this title; or

26           (B) not to receive graduate medical education or training, but  
27          who is subject to the 2-year foreign residence requirement of sec-  
28          tion 8303 of this title and does not fulfill or receive a waiver of  
29          that requirement; or

30           (3) is deportable under section 6509 of this title.

### 31          **§ 6539. Voluntary departure and removal**

32          (a) DEPARTURE BEFORE DEPORTATION PROCEEDINGS.—(1) Before a  
33          deportation proceeding is begun against an alien, the Attorney General may  
34          allow the alien to depart voluntarily from the United States if the alien—

35           (A) admits to being deportable under subchapter I of this chapter;  
36          and

37           (B) departs voluntarily at the alien's expense or is removed at the  
38          United States Government's expense under subsection (e) of this sec-  
39          tion.

1 (2) Paragraph (1) of this subsection does not apply to an alien if the At-  
2 torney General has reason to believe the alien is deportable under any of  
3 sections 6506–6509 of this title.

4 (b) DEPARTURE DURING DEPORTATION PROCEEDINGS.—(1) During a  
5 deportation proceeding against an alien, the Attorney General may allow the  
6 alien to depart voluntarily from the United States at the alien’s expense if  
7 the alien satisfies the Attorney General that the alien is, and for at least  
8 5 years immediately before applying for voluntary departure under this sub-  
9 section has been, of good moral character.

10 (2) Paragraph (1) of this subsection does not apply to an alien—

11 (A) deportable under any of sections 6506–6509 of this title, except  
12 such an alien whose deportation may be suspended under section  
13 6538(a)(2) of this title; or

14 (B) deportable because of a conviction, after November 17, 1988, of  
15 an aggravated felony.

16 (c) DEPARTURE AFTER ORDER OF DEPORTATION.—After an alien is or-  
17 dered deported, the Attorney General may allow the alien to depart volun-  
18 tarily. An alien departing voluntarily after being ordered deported is deemed  
19 to have been deported.

20 (d) REMOVAL OF ALIEN IN DISTRESS OR IN NEED OF ASSISTANCE.—

21 (1) If an alien falls into distress or needs public assistance from a cause  
22 that arises after the alien enters the United States, and the alien wants to  
23 be removed from the United States, the Attorney General may remove the  
24 alien to—

25 (A) the alien’s native country;

26 (B) the country from which the alien came to the United States;

27 (C) the country of which the alien is a subject or citizen; or

28 (D) another country the alien designates if the government of that  
29 country is willing to accept the alien in that country.

30 (2) An alien removed under paragraph (1) of this subsection may not  
31 apply for or be granted a visa or other entry documentation or admission  
32 to the United States without the Attorney General’s prior approval.

33 (e) COSTS PAYABLE BY GOVERNMENT.—The Attorney General may pay  
34 from the appropriation “Immigration and Naturalization Service—Salaries  
35 and Expenses” the costs of removing an alien from the United States  
36 under—

37 (1) subsection (a) of this section if—

38 (A) the alien is unable to pay; and

39 (B) the Attorney General believes the alien’s removal is in the  
40 best interest of the United States;

41 (2) subsection (c) of this section if—

- 1 (A) the alien is unable to pay; and  
2 (B) payment is not otherwise provided for under this title; and  
3 (3) subsection (d) of this section.

4 **§ 6540. Ineligibility for discretionary relief for failure to ap-**  
5 **pear**

6 (a) DEFINITION.—In this section, “exceptional circumstances” has the  
7 same meaning given that term by section 6532(a) of this title.

8 (b) RELIEF COVERED.—An alien is ineligible for the following relief to  
9 the extent provided by subsections (c)–(f) of this section:

- 10 (1) suspension of deportation under section 6538 of this title.  
11 (2) voluntary departure under section 6539(a) or (b) of this title.  
12 (3) change of status under section 9101, 9104, or 9108 of this title.

13 (c) FAILURE TO APPEAR AT DEPORTATION PROCEEDING.—An alien  
14 against whom a final order of deportation is entered in absentia under sec-  
15 tion 6532 of this title is ineligible for the relief specified by subsection (b)  
16 of this section for 5 years after entry of the final order if, at the time the  
17 notice was required to be given under section 6532(d)(3) and (4), the alien  
18 was given oral notice, in the alien’s native language or another language the  
19 alien understands, of the time and place of the proceeding and the con-  
20 sequences of failing (except for exceptional circumstances) to attend.

21 (d) FAILURE TO APPEAR FOR VOLUNTARY DEPARTURE.—(1) Subject to  
22 paragraph (2) of this subsection, an alien is ineligible for the relief specified  
23 by subsection (b) of this section for 5 years after the scheduled date of de-  
24 parture or the date of unlawful reentry if the alien—

25 (A) is allowed to depart voluntarily under section 6539(a) or (b) of  
26 this title; and

27 (B) remains in the United States after the scheduled date of depart-  
28 ture (except for exceptional circumstances).

29 (2) Paragraph (1) of this subsection applies to an alien allowed to depart  
30 voluntarily only if, before the departure, the Attorney General has provided  
31 written notice to the alien in English and Spanish, and oral notice, in the  
32 alien’s native language or another language the alien understands, of the  
33 consequences under paragraph (1) of remaining in the United States after  
34 the scheduled date of departure (except for exceptional circumstances).

35 (e) FAILURE TO APPEAR FOR DEPORTATION.—(1) Subject to paragraph  
36 (2) of this subsection, an alien against whom a final order of deportation  
37 is entered under section 6532 of this title who fails (except for exceptional  
38 circumstances) to appear for deportation at the time and place ordered is  
39 ineligible for the relief specified by subsection (b) of this section for 5 years  
40 after the scheduled date of deportation.

1 (2) Paragraph (1) of this subsection applies only if the Attorney General  
 2 has provided notice in the final order of deportation, and orally in the  
 3 alien's native language or another language the alien understands, of the  
 4 consequences under paragraph (1) of failing (except for exceptional cir-  
 5 cumstances) to appear for deportation at the time and place ordered.

6 (f) FAILURE TO APPEAR FOR ASYLUM HEARING.—(1) Subject to para-  
 7 graph (2) of this subsection, an alien whose period of any authorized stay  
 8 has expired, who has filed an application for asylum, and who fails (except  
 9 for exceptional circumstances) to appear at the time and place scheduled for  
 10 the asylum hearing, is ineligible for the relief specified by subsection (b) of  
 11 this section for 5 years after the date of the asylum hearing.

12 (2) Paragraph (1) of this subsection applies only if the alien was given  
 13 written notice in English and Spanish, and oral notice in the alien's native  
 14 language or another language the alien understands, of—

15 (A) the time and place of the asylum hearing and any change in the  
 16 time or place; and

17 (B) the consequences under paragraph (1) of this subsection of fail-  
 18 ing (except for exceptional circumstances) to appear.

19 **§ 6541. Duties of private parties and costs of deportation**

20 (a) DUTY TO CARRY OUT DEPORTATION ORDERS.—When ordered by the  
 21 Attorney General, the owner, agent, master, commanding officer, charterer,  
 22 or consignee of a vessel, aircraft, or vehicle bringing an alien to the United  
 23 States shall—

24 (1) take on board, guard safely, and transport to the destination  
 25 specified by the Attorney General, the alien if ordered deported; and

26 (2) pay the costs of deporting the alien as provided by subsection  
 27 (b) of this section.

28 (b) COSTS PAYABLE BY PRIVATE PARTIES.—(1) Except as provided by  
 29 paragraph (2) of this subsection, when an alien in the United States is or-  
 30 dered deported, the owner, agent, master, commanding officer, charterer, or  
 31 consignee of the vessel, aircraft, or vehicle on which the alien arrived in the  
 32 United States shall pay the costs of deporting the alien from the port of  
 33 deportation if—

34 (A) the alien is being deported on a ground that existed before or  
 35 at the time of entry and deportation proceedings are begun not later  
 36 than 5 years after entry; or

37 (B) the alien is a crewmember and deportation proceedings are  
 38 begun not later than 5 years after the last conditional permit is grant-  
 39 ed to the alien to land temporarily under section 2703 of this title.

40 (2) Paragraph (1) of this subsection does not apply if—

1 (A) the Attorney General decides it is not practicable to require pay-  
2 ment; or

3 (B) the alien had an immigrant visa on arrival in the United States  
4 and was inspected and admitted for permanent residence.

5 (c) COSTS PAYABLE BY GOVERNMENT.—When an alien in the United  
6 States is ordered deported, the Attorney General shall pay from the appro-  
7 priation “Immigration and Naturalization Service—Salaries and Expenses”  
8 the costs of—

9 (1) transporting the alien to the port of deportation in the United  
10 States; and

11 (2) deporting the alien if—

12 (A) deportation proceedings are begun more than 5 years after  
13 the alien’s entry, or, if the alien is a crewmember, more than 5  
14 years after the last conditional permit is granted to the alien to  
15 land temporarily; or

16 (B) the owner of the vessel, aircraft, or vehicle is not required  
17 to pay the costs because of subsection (b)(2) of this section.

18 (d) ALIENS REQUIRING PERSONAL CARE DURING DEPORTATION.—If the  
19 Attorney General believes that an alien being deported requires personal  
20 care because of the alien’s mental or physical condition, the Attorney Gen-  
21 eral shall employ a suitable individual to accompany and care for the alien  
22 until the alien arrives at the final destination. The person required under  
23 this section to pay the costs of deporting the alien shall pay the costs of  
24 this service.

25 (e) COSTS PAYABLE BY EMPLOYERS OF CERTAIN NONIMMIGRANTS.—(1)  
26 If the employer of an alien classified as a nonimmigrant under section  
27 2313(a)(1) or (2) or 2315(a)(1) of this title dismisses the alien from em-  
28 ployment before the end of the period of authorized admission, the employer  
29 is liable for the reasonable costs of return transportation of the alien.

30 (2) If the employment of an alien who entered the United States as a  
31 nonimmigrant under section 2318 or 2319 of this title ends for reasons  
32 other than voluntary resignation, the employer whose offer of employment  
33 provided the basis of the nonimmigrant status of the alien and the peti-  
34 tioner are jointly and severally liable for the reasonable costs of return  
35 transportation of the alien. The petitioner shall provide satisfactory assur-  
36 ance to the Attorney General that the reasonable costs of that transpor-  
37 tation will be provided.

38 **CHAPTER 67—TEMPORARY PROTECTED STATUS**

Sec.

6701. General

6702. Granting the status.

6703. Designation of foreign countries.

6704. Information and notices about status.

- 6705. Temporary documentation and work authorization.
- 6706. Registration fees.
- 6707. Withdrawal of status.
- 6708. Relationship to deportation.
- 6709. Relationship to immigration status.
- 6710. Immigration status and continuous physical presence not affected by temporary travel outside the United States.
- 6711. Exclusive remedy.
- 6712. Limitation on Senate consideration of legislation adjusting status.
- 6713. Annual reports.

1     **§ 6701. General**

2     The Attorney General may grant an alien temporary protected status in  
3     the United States as provided by this chapter. During the period that the  
4     status is in effect for the alien—

5             (1) the Attorney General may not detain the alien on the basis of  
6             the alien's immigration status in the United States;

7             (2) the Attorney General may not deport the alien;

8             (3) the Attorney General shall authorize the alien to work in the  
9             United States;

10            (4) the alien is not residing permanently in the United States under  
11            color of law;

12            (5) a State or political subdivision of a State that provides public  
13            assistance may find the alien ineligible for the assistance;

14            (6) the alien may travel outside the United States with the prior con-  
15            sent of the Attorney General; and

16            (7) the alien is deemed to be maintaining lawful status as a non-  
17            immigrant for purposes of sections 9101(e)(3) and 9108 of this title.

18     **§ 6702. Granting the status**

19            (a) GENERAL REQUIREMENTS FOR GRANTING.—The Attorney General  
20     may grant temporary protected status in the United States to an alien  
21     who—

22            (1) is a national of, or has no nationality but last habitually resided  
23            in, a foreign country designated, or designated in part, under section  
24            6703 of this title;

25            (2) has been physically present in the United States continuously  
26            since the effective date of the most recent designation of that country  
27            or part of that country under section 6703 of this title;

28            (3) has resided in the United States continuously since a date the  
29            Attorney General may specify;

30            (4) is admissible as an immigrant, except that for purposes of this  
31            clause—

32                    (A) sections 4104(c)(2), (d)(3), and (g)(1) and (2), 4311(a),  
33                    and 6313 of this title do not apply;

34                    (B) the Attorney General may waive subchapter I of chapter 63  
35                    of this title (except as provided by subclause (C) of this clause)

1 for an individual alien for humanitarian purposes, to ensure family  
2 unity, or when it is otherwise in the public interest; and

3 (C) the Attorney General may not waive section 6307(a)(1)–(4),  
4 6308(a)–(c), or 6309 of this title, except as section 6307(a)(3) is  
5 related to a single offense of simple possession of not more than  
6 30 grams of marijuana; and

7 (5) registers for the temporary protected status during a registration  
8 period of at least 180 days, to the extent and in the way the Attorney  
9 General establishes.

10 (b) PROHIBITIONS ON GRANTING.—Notwithstanding subsection (a) of  
11 this section, the Attorney General may not grant temporary protected status  
12 to an alien if the Attorney General finds that the alien—

13 (1) has been convicted of a felony or more than one misdemeanor  
14 committed in the United States; or

15 (2) is described by section 6537(e)(2) of this title.

16 (c) BRIEF, CASUAL, AND INNOCENT ABSENCES.—(1) An alien does not  
17 fail to maintain continuous physical presence in the United States under  
18 subsection (a)(2) of this section because of a brief, casual, and innocent ab-  
19 sence from the United States, whether or not authorized by the Attorney  
20 General.

21 (2) An alien does not fail to maintain continuous residence in the United  
22 States under subsection (a)(3) of this section because of a brief, casual, and  
23 innocent absence from the United States, whether or not authorized by the  
24 Attorney General, or because of a brief temporary trip outside the United  
25 States required by emergency or extenuating circumstances beyond the con-  
26 trol of the alien.

27 (d) STATUS PENDING REGISTRATION OR FINAL DECISION.—(1) If an  
28 alien can establish a prima facie case of eligibility for temporary protected  
29 status under this chapter except that the period of registration under sub-  
30 section (a)(5) of this section has not begun, the Attorney General shall pro-  
31 vide the alien with the benefits of the status until the alien has had a rea-  
32 sonable opportunity to register during the first 30 days of the registration  
33 period.

34 (2) If an alien establishes a prima facie case of eligibility for temporary  
35 protected status under this chapter, the Attorney General shall provide the  
36 alien with the benefits of the status until a final decision is made on the  
37 alien's eligibility.

38 (e) CONFIDENTIALITY.—The Attorney General shall establish procedures  
39 to protect the confidentiality of information provided by an alien under this  
40 chapter.

1 (f) NO AUTHORIZATION TO APPLY FOR ADMISSION OR TO BE ADMIT-  
2 TED.—This chapter does not authorize an alien to apply for admission, or  
3 to be admitted, to the United States to apply for temporary protected status  
4 under this chapter.

5 **§ 6703. Designation of foreign countries**

6 (a) GENERAL.—After consultation with appropriate agencies, the Attor-  
7 ney General may designate a foreign country or part of a foreign country  
8 under this section if the Attorney General finds that—

9 (1) there is an armed conflict in the country that would pose a seri-  
10 ous threat to the personal safety of nationals of that country if they  
11 were required to return to that country or part of that country;

12 (2)(A) there has been an earthquake, flood, drought, epidemic, or  
13 other environmental disaster in the country resulting in a substantial,  
14 but temporary, disruption of living conditions in the area affected by  
15 the disaster;

16 (B) the country temporarily is unable to handle returning nationals  
17 adequately; and

18 (C) the government of the country officially has requested designa-  
19 tion under this clause (2); or

20 (3) extraordinary and temporary conditions exist in the country that  
21 prevent nationals from returning to that country in safety, unless the  
22 Attorney General finds that permitting the aliens to remain temporarily  
23 in the United States is contrary to the interest of the United States.

24 (b) PUBLICATION OF DESIGNATIONS.—A designation under subsection  
25 (a) of this section is effective only if notice of the designation (including a  
26 statement of the findings under subsection (a) and the effective date of the  
27 designation) is published in the Federal Register. The Attorney General  
28 shall include in the notice an estimate of the number of nationals of the  
29 designated country who are, or within the effective period of the designation  
30 are likely to become, eligible for temporary protected status under this chap-  
31 ter and their immigration status in the United States.

32 (c) EFFECTIVE PERIOD OF DESIGNATIONS.—A designation under this  
33 section—

34 (1) takes effect on the date the notice is published under subsection  
35 (b) of this section or a later date the Attorney General specifies in the  
36 notice; and

37 (2) remains in effect until terminated under subsection (d) of this  
38 section.

39 (d) PERIODIC REVIEWS, EXTENSIONS, AND TERMINATIONS.—(1) The  
40 first period of designation of a foreign country or part of a foreign country

1 is the period specified by the Attorney General. The period shall be at least  
2 6 months but not more than 18 months.

3 (2) At least 60 days before the end of the first period of designation and  
4 each extended period of designation, the Attorney General, after consulta-  
5 tion with appropriate agencies, shall review the conditions in the designated  
6 country or part of the country and decide whether the conditions for the  
7 designation continue to be met.

8 (3)(A) If the Attorney General does not decide that the designated coun-  
9 try or part of the country no longer meets the conditions for designation,  
10 the designation is extended for 6 months or, in the discretion of the Attor-  
11 ney General, for 12 or 18 months.

12 (B) If the Attorney General decides that the designated country or part  
13 of the country no longer meets the conditions for designation, the Attorney  
14 General shall terminate the designation. A termination is effective 60 days  
15 after notice of the termination is published in the Federal Register or when  
16 the most recent extension expires, whichever is later.

17 (4) The Attorney General shall publish in the Federal Register, on a  
18 timely basis, notice of each decision under this subsection, including the  
19 basis for the decision, and the period of any extension.

20 (e) INFORMATION ON PROTECTED STATUS AT TIME OF DESIGNATION.—  
21 When the Attorney General designates a foreign country or part of a foreign  
22 country under subsection (a) of this section, the Attorney General shall  
23 make available to nationals of that country information on the temporary  
24 protected status available under this chapter.

25 (f) ADMINISTRATIVE AND JUDICIAL REVIEW.—(1) The Attorney General  
26 shall establish an administrative procedure to review a denial of benefits to  
27 an alien under this section. The procedure may not prevent an alien from  
28 asserting protection under this chapter in a deportation proceeding if the  
29 alien demonstrates that the alien is a national of a foreign country des-  
30 ignated, or designated in part, under this section.

31 (2) A designation, extension, or termination under this section is not sub-  
32 ject to judicial review.

33 **§ 6704. Information and notices about status**

34 (a) INFORMATION ABOUT STATUS.—On granting temporary protected  
35 status to an alien under this chapter, the Attorney General shall provide  
36 the alien with information about the status.

37 (b) NOTICES OF AVAILABILITY AT DEPORTATION PROCEEDINGS.—The  
38 Attorney General promptly shall notify an alien of the temporary protected  
39 status that may be available under this chapter—

1 (1) if, when a deportation proceeding is begun against the alien, the  
2 foreign country of which the alien is a national has been designated,  
3 or designated in part, under section 6703 of this title; or

4 (2) if, during a deportation proceeding pending against the alien, the  
5 country of which the alien is a national is designated, or designated  
6 in part, under section 6703 of this title.

7 (c) FORM AND LANGUAGE.—Information and notices under this section  
8 shall be in a form and language the alien can understand.

9 **§ 6705. Temporary documentation and work authorization**

10 (a) GENERAL.—On granting temporary protected status to an alien under  
11 this chapter, the Attorney General shall provide for the issuance of tem-  
12 porary documentation and work authorization necessary to carry out this  
13 chapter. The work authorization shall be an “employment authorized” en-  
14 dorsement or other appropriate work permit.

15 (b) PERIOD OF VALIDITY.—Subject to subsection (c) of this section, the  
16 documentation and authorization are valid for the first period of designation  
17 of the foreign country or part of the foreign country involved and any exten-  
18 sion of that period. The Attorney General may stagger the periods of valid-  
19 ity of the documentation and authorization to provide for an orderly renewal  
20 of the documentation and authorization and for an orderly transition under  
21 subsection (c) when a designation is terminated.

22 (c) EFFECTIVE DATE OF TERMINATIONS.—A termination of a designa-  
23 tion under section 6703(d)(3)(B) of this title applies only to documentation  
24 and authorization issued or renewed after—

25 (1) the effective date of the termination; or

26 (2) a later date the Attorney General decides is appropriate to pro-  
27 vide for an orderly transition.

28 **§ 6706. Registration fees**

29 (a) ALLOWABLE FEES.—The Attorney General may require payment of  
30 a reasonable fee of not more than \$50 as a condition for registering an alien  
31 under section 6702(a)(5) of this title, including providing a work authoriza-  
32 tion. If the alien is registered because of a designation made after July 17,  
33 1991, the Attorney General may require payment of an additional fee for  
34 providing the work authorization.

35 (b) CREDITING APPROPRIATION.—All fees collected under this section  
36 shall be credited to the appropriation to be used to carry out this chapter.

37 **§ 6707. Withdrawal of status**

38 The Attorney General shall withdraw temporary protected status granted  
39 to an alien under this chapter if—

40 (1) the Attorney General finds that the alien was not eligible for the  
41 status;

1 (2) except as provided by sections 6701(6) and 6702(c) of this title,  
2 the alien has not remained continuously physically present in the Unit-  
3 ed States from the date the alien first was granted the status; or

4 (3) the alien, without good cause, does not register with the Attorney  
5 General annually, at the end of each 12-month period after the status  
6 is granted, in the form and way the Attorney General prescribes.

7 **§ 6708. Relationship to deportation**

8 Under section 6538(a) of this title, the period during which temporary  
9 protected status is in effect for an alien—

10 (1) is not counted as a period of physical presence in the United  
11 States unless the Attorney General decides that extreme hardship ex-  
12 ists; and

13 (2) does not cause a break in the continuity of residence before and  
14 after the period during which the alien has that status.

15 **§ 6709. Relationship to immigration status**

16 (a) GENERAL.—This chapter does not authorize the Attorney General to  
17 deny temporary protected status to an alien based on the alien’s immigra-  
18 tion status or to require an alien, as a condition of being granted temporary  
19 protected status, to relinquish another status the alien may have or to waive  
20 any right under this title (except subchapter I of chapter 5, subchapters III  
21 and IV of chapter 131, and chapters 133–137).

22 (b) TEMPORARY PROTECTED STATUS NOT INCONSISTENT WITH NON-  
23 IMMIGRANT STATUS.—Granting temporary protected status under this  
24 chapter is not inconsistent with granting nonimmigrant status under this  
25 title.

26 **§ 6710. Immigration status and continuous physical pres-  
27 ence not affected by temporary travel outside the  
28 United States**

29 An alien granted temporary protected status under this chapter whom the  
30 Attorney General authorizes to travel outside the United States temporarily  
31 and who returns to the United States according to the authorization—

32 (1) shall be inspected and admitted in the same immigration status  
33 the alien had at the time of departure if the alien is found not to be  
34 excludable on a ground referred to in section 6702(a)(4)(C) of this  
35 title; and

36 (2) has not failed to maintain continuous physical presence in the  
37 United States under section 6538(a) of this title because of the depar-  
38 ture if the absence meets the requirements of section 6538(b) of this  
39 title.

1 **§ 6711. Exclusive remedy**

2 Except as otherwise specifically provided, this chapter is the exclusive au-  
3 thority of the Attorney General under law to allow an alien who is or may  
4 become otherwise deportable or who has been paroled into the United States  
5 to remain in the United States temporarily because of the alien's nationality  
6 or region of foreign country of nationality.

7 **§ 6712. Limitation on Senate consideration of legislation ad-**  
8 **justing status**

9 (a) GENERAL.—Except as provided by subsection (b) of this section, it  
10 is not in order in the Senate to consider a bill, resolution, or amendment  
11 that—

12 (1) provides for the adjustment to lawful temporary or permanent  
13 resident alien status for an alien receiving temporary protected status  
14 under this chapter; or

15 (2) has the effect of amending or limiting the application of this sec-  
16 tion.

17 (b) SUPERMAJORITY REQUIREMENT.—An affirmative vote of three-fifths  
18 of the members of the Senate chosen and sworn is required—

19 (1) to waive or suspend subsection (a) of this section; or

20 (2) to sustain an appeal of the ruling of the Chair on a point of  
21 order raised under subsection (a) of this section.

22 (c) SENATE RULEMAKING POWER.—This section—

23 (1) is enacted as an exercise of the rulemaking power of the Senate;

24 (2) is deemed to be a part of the rules of the Senate on matters de-  
25 scribed by subsection (a) of this section;

26 (3) supersedes other rules of the Senate only to the extent inconsis-  
27 tent with this section; and

28 (4) is enacted with complete recognition of the constitutional right  
29 of the Senate to change those rules at any time in the same way as  
30 any other rule of the Senate.

31 **§ 6713. Annual reports**

32 (a) ATTORNEY GENERAL.—Not later than March 1 of each year, the At-  
33 torney General, after consultation with appropriate agencies, shall submit to  
34 the Committees on the Judiciary of the House of Representatives and the  
35 Senate a report on the operation of this chapter during the prior year. The  
36 report shall include—

37 (1) a listing of foreign countries and parts of foreign countries des-  
38 ignated under section 6703 of this title;

39 (2) the number of nationals of each country granted temporary pro-  
40 tected status under this chapter and their immigration status before  
41 being granted temporary protected status; and

1 (3) an explanation of why each foreign country or part of a foreign  
2 country was designated under section 6703 of this title and why a des-  
3 ignation was extended or terminated.

4 (b) COMMITTEE REPORTS.—Not later than 180 days after receiving a re-  
5 port under subsection (a) of this section, the Committees on the Judiciary  
6 of the House of Representatives and the Senate shall report to the House  
7 and Senate, respectively, on oversight findings and legislation the applicable  
8 Committee finds appropriate.

9 **CHAPTER 69—REGULATION OF PERSONS PROVIDING**  
10 **TRANSPORTATION**

Sec.

6901. Ports of entry for aircraft and civil air navigation regulation.

6902. Lists of passengers.

6903. Payment contingent on landing prohibited.

6904. Duty to prevent unauthorized landing.

6905. Carriers transporting aliens from foreign contiguous territory or adjacent islands.

6906. Prohibitions on bringing certain aliens to the United States.

6907. Requirements to detain, deliver, receive, and deport aliens.

6908. Costs of detention.

6909. Fees for inspecting passengers.

11 **§ 6901. Ports of entry for aircraft and civil air navigation**  
12 **regulation**

13 The Attorney General by regulation may—

14 (1) designate as ports of entry for aliens arriving by aircraft in the  
15 United States any of the ports of entry designated for civil aircraft  
16 under section 1109(b) of the Federal Aviation Act of 1958 (49 App.  
17 U.S.C. 1509(b));

18 (2) require aircraft in civil air navigation to give notice of landing  
19 or intention to land as necessary to carry out this title; and

20 (3) apply this title to civil air navigation to the extent the Attorney  
21 General considers necessary.

22 **§ 6902. Lists of passengers**

23 (a) ARRIVING PASSENGERS.—An owner, agent, master, commanding offi-  
24 cer, or consignee of a vessel or aircraft arriving in the United States from  
25 a place outside the United States shall give an immigration officer at the  
26 port of arrival a list of the passengers on the vessel or aircraft. The list  
27 shall be prepared at the time, be in the form, and contain the information  
28 the Attorney General prescribes by regulation as necessary to identify the  
29 passengers and enforce the immigration laws.

30 (b) DEPARTING PASSENGERS.—(1) A master, commanding officer, or  
31 agent of a vessel or aircraft taking on passengers in the United States who  
32 are destined to a place outside the United States shall give an immigration  
33 officer at the port a list of those passengers before departing. The list shall  
34 be in the form, contain the information, and be accompanied by other docu-  
35 mentation the Attorney General prescribes by regulation as necessary to

1 identify the passengers and enforce the immigration laws. The master, com-  
2 manding officer, or agent shall state under oath that the list and accom-  
3 panying documentation contain all of the required information.

4 (2) The vessel or aircraft may be cleared only after the master, command-  
5 ing officer, or agent complies with paragraph (1) of this subsection. How-  
6 ever, if the Attorney General decides that the vessel or aircraft is making  
7 regular trips to ports of the United States, the Attorney General, when it  
8 is expedient, may allow the master, commanding officer, or agent to give  
9 the list and documentation at a later date.

10 (c) EXCEPTIONS.—Subsections (a) and (b) of this section do not require  
11 that a list include—

12 (1) an alien crewmember; or

13 (2) except as required by regulations prescribed under section 6901  
14 of this title, a passenger—

15 (A) arriving by air on a trip originating in foreign territory con-  
16 tiguous to the United States; or

17 (B) leaving by air on a trip originating in the United States for  
18 foreign territory contiguous to the United States.

19 (d) WAIVER.—The Attorney General may prescribe conditions under  
20 which the requirements of this section may be waived.

### 21 **§ 6903. Payment contingent on landing prohibited**

22 An owner, agent, master, commanding officer, person in charge, purser,  
23 or consignee of a vessel or aircraft may not take any consideration to be  
24 kept or returned contingent on whether an alien is landed in or excluded  
25 from the United States.

### 26 **§ 6904. Duty to prevent unauthorized landing**

27 (a) DUTY TO PREVENT UNAUTHORIZED LANDING.—(1) A person bring-  
28 ing an alien to, or providing a means for an alien to travel to, the United  
29 States (including an alien crewmember not covered by section 2704(a) of  
30 this title) shall prevent the alien from landing in the United States at—

31 (A) a port of entry not designated by the Attorney General; or

32 (B) a time or place not designated by an immigration officer.

33 (2) Proof that an alien did not appear at the time and place designated  
34 by the immigration officer is prima facie evidence that the alien landed in  
35 the United States at a time or place not designated by the immigration offi-  
36 cer.

37 (3) This subsection does not apply to a carrier that has made a contract  
38 as provided by section 6905(b) of this title.

39 (b) DILIGENCE DEFENSE.—(1) An owner or operator of a rail carrier,  
40 international bridge, or toll road that satisfies the Attorney General that the  
41 owner or operator has acted diligently and reasonably to comply with sub-

1 section (a)(1) of this section is not liable for a penalty under section 10122  
2 of this title for not complying with subsection (a)(1).

3 (2) On request of an owner or operator referred to in paragraph (1) of  
4 this subsection, the Attorney General shall inspect a facility established, or  
5 method used, by the owner or operator at a place of entry into the United  
6 States to comply with subsection (a)(1) of this section. The Attorney Gen-  
7 eral shall approve, for as long as the Attorney General prescribes, a facility  
8 or method the Attorney General decides is satisfactory to achieve compli-  
9 ance.

10 (3) Proof that an owner or operator referred to in paragraph (1) of this  
11 subsection diligently has maintained a facility, or used a method, approved  
12 by the Attorney General under paragraph (2) of this subsection is prima  
13 facie evidence that the owner or operator acted diligently and reasonably to  
14 comply with subsection (a)(1) of this section.

15 **§ 6905. Carriers transporting aliens from foreign contiguous**  
16 **territory or adjacent islands**

17 (a) DEFINITION.—In this section, “carrier” includes the owner, agent,  
18 charterer, or consignee operating a vessel or aircraft bringing an alien to  
19 the United States, to a foreign territory contiguous to the United States,  
20 or to an adjacent island.

21 (b) CARRIER CONTRACTS.—(1) The Attorney General may make a con-  
22 tract with a carrier for—

23 (A) the entry and inspection of aliens coming to the United States  
24 from a foreign territory contiguous to the United States or from an  
25 adjacent island; and

26 (B) a guarantee of passage through the United States in immediate  
27 and continuous travel of aliens destined for a foreign country.

28 (2) A carrier may allow an alien from a foreign territory contiguous to  
29 the United States or from an adjacent island to land in the United States  
30 only if the carrier has made a contract required by the Attorney General  
31 under paragraph (1)(A) of this subsection.

32 (c) LANDING STATIONS.—A carrier transporting an alien passenger for  
33 compensation from a foreign territory contiguous to the United States or  
34 from an adjacent island to the United States—

35 (1) shall provide and maintain at its expense a suitable landing sta-  
36 tion conveniently located at the place of entry in the United States; and

37 (2) may land any such alien passenger in the United States only if  
38 the Attorney General approves the landing station and the maintenance  
39 of the station.

1     **§ 6906. Prohibitions on bringing certain aliens to the United**  
2                     **States**

3             (a) ALIENS NOT HAVING PASSPORTS AND VISAS.—A person may not  
4 bring to the United States (except from a foreign territory contiguous to  
5 the United States) an alien who does not have a passport and a visa, if a  
6 visa is required by this title or regulations prescribed under this title.

7             (b) ALIENS EXCLUDABLE BECAUSE OF HEALTH.—(1) An owner, agent,  
8 master, commanding officer, charterer, or consignee of a vessel or aircraft  
9 may not bring to the United States an alien who is excludable under section  
10 6302 of this title.

11             (2) Paragraph (1) of this subsection does not apply if—

12                 (A) the alien is a crewmember;

13                 (B) the alien is allowed to land in the United States;

14                 (C) the alien has an immigrant visa;

15                 (D) the alien has a nonimmigrant visa or other documentation au-  
16 thorizing the alien to apply for temporary admission to the United  
17 States and applies for admission not later than 120 days after the date  
18 the visa or documentation was granted;

19                 (E) the alien has a reentry permit and applies for admission not  
20 later than 120 days after the date of the alien's last inspection and  
21 admission;

22                 (F)(i) the alien has a nonimmigrant visa or other documentation au-  
23 thorizing the alien to apply for temporary admission to the United  
24 States or a reentry permit;

25                 (ii) the alien applies for admission more than 120 days after the date  
26 the visa or documentation was granted or after the date of the last in-  
27 spection and admission under the reentry permit; and

28                 (iii) the owner, agent, master, commanding officer, charterer, or con-  
29 signee of the vessel or aircraft satisfies the Attorney General that the  
30 existence of the excluding condition could not have been discovered by  
31 exercising reasonable care before the alien boarded the vessel or air-  
32 craft; or

33                 (G) the alien is entitled by law to exemption from the grounds of  
34 exclusion in subchapter I of chapter 63 of this title.

35             (c) ALIENS EXCLUDED OR DEPORTED.—(1) An owner, agent, master,  
36 commanding officer, person in charge, purser, or consignee of a vessel or  
37 aircraft may not knowingly bring to the United States an alien who has  
38 been—

39                 (A) excluded from admission; or

40                 (B) arrested and deported under law.

1 (2) Paragraph (1) of this subsection does not apply if the alien is a crew-  
2 member or is entitled to reapply for admission to the United States.

3 **§ 6907. Requirements to detain, deliver, receive, and deport**  
4 **aliens**

5 (a) GENERAL REQUIREMENTS.—An owner, agent, master, commanding  
6 officer, person in charge, purser, or consignee of a vessel or aircraft bring-  
7 ing an alien (except an alien crewmember) to the United States shall—

8 (1) detain the alien on the vessel or at the airport of arrival as re-  
9 quired by this title or as ordered by an immigration officer;

10 (2) deliver the alien to an immigration officer for inspection or to  
11 a medical officer for examination when ordered by an immigration offi-  
12 cer;

13 (3) receive the alien back on the vessel or aircraft or another vessel  
14 or aircraft owned or operated by the same interests if the alien is or-  
15 dered deported under section 6335 of this title; and

16 (4) take the alien to the foreign country to which the alien is ordered  
17 deported.

18 (b) ALIEN STOWAWAYS.—An owner, agent, master, commanding officer,  
19 charterer, or consignee of a vessel or aircraft arriving in the United States  
20 with an alien stowaway shall—

21 (1) not permit the stowaway to land in the United States, except—

22 (A) temporarily for medical treatment; or

23 (B) under regulations prescribed by the Attorney General for  
24 the departure, removal, or deportation of alien stowaways from the  
25 United States;

26 (2) detain the stowaway on the vessel or aircraft or at another place  
27 designated by an immigration officer until the stowaway is inspected  
28 by an immigration officer and, if ordered by an immigration officer,  
29 after the inspection; and

30 (3) if ordered by an immigration officer, deport the stowaway on the  
31 vessel or aircraft or on another vessel or aircraft.

32 **§ 6908. Costs of detention**

33 (a) GENERAL.—Except as provided by subsection (b) of this section and  
34 section 6335(d)(2) of this title, an owner of a vessel or aircraft bringing  
35 an alien to the United States shall pay the costs of detaining and maintain-  
36 ing the alien while the alien is detained under section 6907(a)(1) of this  
37 title.

38 (b) NONAPPLICATION.—Subsection (a) of this section does not apply if—

39 (1) the alien is a crewmember;

40 (2) the alien has an immigrant visa;

1 (3) the alien has a nonimmigrant visa or other documentation au-  
2 thORIZING the alien to apply for temporary admission to the United  
3 States and applies for admission not later than 120 days after the date  
4 the visa or documentation was granted;

5 (4) the alien has a reentry permit and applies for admission not later  
6 than 120 days after the date of the alien's last inspection and admis-  
7 sion;

8 (5)(A) the alien has an nonimmigrant visa or other documentation  
9 authorizing the alien to apply for temporary admission to the United  
10 States or a reentry permit;

11 (B) the alien applies for admission more than 120 days after the  
12 date the visa or documentation was granted or after the date of the  
13 last inspection and admission under the reentry permit; and

14 (C) the owner of the vessel or aircraft satisfies the Attorney General  
15 that the existence of the excluding condition could not have been dis-  
16 covered by exercising reasonable care before the alien boarded the ves-  
17 sel or aircraft; or

18 (6) the individual claims to be a national of the United States and  
19 has a United States passport.

20 **§ 6909. Fees for inspecting passengers**

21 (a) FEES.—In addition to any other fee authorized by law, the Attorney  
22 General shall charge and collect \$6 for the immigration inspection of each  
23 passenger arriving at a port of entry in the United States, or for the  
24 preinspection of each passenger in a place outside the United States before  
25 arrival, on a commercial vessel or aircraft. However, that fee may not be  
26 charged and collected for—

27 (1) a passenger on a commercial vessel if the passenger's journey  
28 originated in Canada, Mexico, a territory or possession of the United  
29 States, or an adjacent island; or

30 (2) a passenger traveling to a destination outside the United States  
31 and for whom immigration inspection services are not provided.

32 (b) COLLECTION.—(1) A person issuing a document or ticket to an indi-  
33 vidual for transportation on a commercial vessel or aircraft to the United  
34 States shall—

35 (A) collect from the individual the fee charged under subsection (a)  
36 of this section when the document or ticket is issued; and

37 (B) identify on that document or ticket the fee charged under sub-  
38 section (a) of this section as a United States Government inspection  
39 fee.

40 (2) If a document or ticket for transportation of a passenger to the  
41 United States is issued in a foreign country and the fee charged under sub-

1 section (a) of this section is not collected when the document or ticket is  
 2 issued, the person providing the transportation shall collect the fee when the  
 3 passenger departs from the United States and give the passenger a receipt  
 4 for payment of the fee.

5 (3) The person collecting a fee under this section shall pay the fee to the  
 6 Attorney General before the 31st day after the end of the calendar quarter  
 7 in which the fee is collected, except that—

8 (A) the 4th quarter payment for fees collected from passengers on  
 9 commercial aircraft shall be paid on the 10th day before the end of  
 10 the fiscal year; and

11 (B) the first quarter payment shall include any collections made in  
 12 the prior quarter that were not paid with the prior payment.

13 (4) Fees collected under this section shall be deposited in the Treasury  
 14 in the Immigration User Fee Account established under section 317 of this  
 15 title.

16 (c) REGULATIONS.—Regulations prescribed by the Attorney General for  
 17 the collection of fees and payment of those fees under this section shall be  
 18 consistent with regulations prescribed by the Secretary of the Treasury for  
 19 the collection and remittance of taxes imposed by subchapter C of chapter  
 20 33 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 33, subch. C), but  
 21 only to the extent the latter regulations are not inconsistent with this sec-  
 22 tion.

## 23 PART E—ADDITIONAL REQUIREMENTS AND 24 LIMITATIONS

### 25 CHAPTER 81—REGISTRATION AND FINGERPRINTING

Sec.

8101. Registration and fingerprinting requirements.

8102. Forms and oath.

8103. Certificates of alien registration and alien registration receipt cards.

8104. Address notification.

8105. Confidentiality of records.

8106. Cancellation of registration.

#### 26 § 8101. Registration and fingerprinting requirements

27 (a) GENERAL REQUIREMENTS.—Except as provided by subsection (c) of  
 28 this section—

29 (1) an alien applying for a visa shall be registered as provided by  
 30 this chapter and shall provide signed copies of a photograph of the  
 31 alien to be used as prescribed by regulation;

32 (2) an alien at least 14 years of age who remains in the United  
 33 States for at least 30 days and has not been registered and  
 34 fingerprinted under clause (1) of this subsection or section 30 or 31  
 35 of the Alien Registration Act, 1940, shall apply for registration and  
 36 fingerprinting within those 30 days;

1 (3) if an alien less than 14 years of age remains in the United States  
2 for at least 30 days and has not been registered under clause (1) of  
3 this subsection, the parent or legal guardian of the alien shall apply  
4 for registration of the alien within those 30 days; and

5 (4) an alien who becomes 14 years of age in the United States shall  
6 apply for registration and fingerprinting within 30 days after becoming  
7 14 years of age.

8 (b) SPECIAL REQUIREMENTS FOR CERTAIN ALIENS.—The Attorney Gen-  
9 eral may prescribe special regulations and forms for registering and  
10 fingerprinting—

11 (1) alien crewmembers;

12 (2) holders of border crossing identification cards;

13 (3) aliens confined in institutions in the United States;

14 (4) aliens under order of deportation; and

15 (5) aliens not lawfully admitted for permanent residence.

16 (c) WAIVERS AND NONAPPLICATION.—(1) On a reciprocal basis, the At-  
17 torney General may waive the fingerprinting requirement of subsection (a)  
18 of this section for a nonimmigrant.

19 (2) The Secretary of State may waive subsection (a)(1) of this section  
20 for a nonimmigrant described by section 2301 or 2302 of this title or an  
21 alien granted a diplomatic visa on a diplomatic passport or on equivalent  
22 documentation.

23 (3) Subsections (a)(2)–(4) and (b) of this section do not apply to a non-  
24 immigrant described by section 2301 or 2302 of this title.

### 25 **§ 8102. Forms and oath**

26 (a) FORMS.—The Attorney General and Secretary of State jointly shall  
27 prepare forms for registering aliens under section 8101(a)(1) of this title.  
28 The Attorney General shall prepare forms for registering and fingerprinting  
29 aliens under section 8101(a)(2)–(4) of this title. The forms shall request in-  
30 formation on—

31 (1) the date and place of entry of the alien into the United States;

32 (2) activities and intended activities of the alien;

33 (3) the period of time the alien expects to remain in the United  
34 States;

35 (4) any police and criminal records of the alien; and

36 (5) additional information as prescribed.

37 (b) OATH.—Information required for registration under this chapter shall  
38 be given under oath. An individual authorized by regulations prescribed by  
39 the Attorney General to register aliens under this chapter may administer  
40 the oath.

1 **§ 8103. Certificates of alien registration and alien registra-**  
 2 **tion receipt cards**

3 (a) ISSUANCE.—An alien registered and fingerprinted under this chapter  
 4 or the Alien Registration Act, 1940, shall be issued a certificate of alien  
 5 registration or an alien registration receipt card in the form and way, and  
 6 at the time, the Attorney General prescribes by regulation.

7 (b) CARD TO BE CARRIED.—An alien at least 18 years of age shall carry  
 8 at all times the certificate of alien registration or alien registration receipt  
 9 card issued to the alien under this section.

10 **§ 8104. Address notification**

11 (a) NOTICE OF CHANGE OF ADDRESS.—Each alien in the United States  
 12 who is required to register under this chapter shall—

13 (1) notify the Attorney General in writing of each new address of  
 14 the alien within 10 days after the date of a change of address; and

15 (2) provide with the notice additional information the Attorney Gen-  
 16 eral may require by regulation.

17 (b) NOTICE OF NATIVES' CURRENT ADDRESSES.—The Attorney General  
 18 may require, on 10 days' notice, the natives of a foreign country or a class  
 19 or group of natives of a foreign country who are in the United States and  
 20 required to register under this chapter to notify the Attorney General of  
 21 their current addresses and to provide the Attorney General additional in-  
 22 formation the Attorney General may require.

23 (c) NOTICE FOR ALIENS LESS THAN 14 YEARS OF AGE.—A parent or  
 24 legal guardian of an alien less than 14 years of age who is required to reg-  
 25 ister shall be given the notice required by this section.

26 **§ 8105. Confidentiality of records**

27 A registration or fingerprinting record made under this chapter is con-  
 28 fidential and may be made available only to—

29 (1) law enforcement agencies of the United States Government,  
 30 States, and localities; and

31 (2) persons and agencies the Attorney General designates.

32 **§ 8106. Cancellation of registration**

33 The Secretary of State shall cancel the registration of an alien who does  
 34 not apply for an immigrant visa within one year after being notified that  
 35 a visa is available. However, the Secretary shall reinstate the registration  
 36 if the alien establishes within 2 years after notification that the failure to  
 37 apply was due to circumstances beyond the control of the alien.

38 **CHAPTER 83—MISCELLANEOUS**

Sec.

8301. Notice of denial of visa, admission, or change of status.

8302. Restriction on immigration of officers and employees of foreign governments and inter-  
 national organizations.

8303. Ineligibility of section 2312 nonimmigrants for certain benefits.

8304. Sanctions for frivolous legal actions.

1 **§ 8301. Notice of denial of visa, admission, or change of sta-**  
2 **tus**

3 If a consular officer or an immigration officer denies an alien's applica-  
4 tion for a visa, admission to the United States, or change of status because  
5 the officer finds the alien to be ineligible under section 2121(a), 4104  
6 (c)(2), (d)(3), or (g)(1) or (2), 4311(a), or 9106 of this title or excludable  
7 under subchapter I of chapter 63 of this title, the officer shall provide the  
8 alien with a timely written notice of the denial. The notice shall state the  
9 decision and list the specific provisions of law on which the denial is based.

10 **§ 8302. Restriction on immigration of officers and employees**  
11 **of foreign governments and international organi-**  
12 **zations**

13 An officer or employee of a government of a foreign country or an inter-  
14 national organization, and an attendant, servant, employee, or member of  
15 the immediate family of the officer or employee, may apply for and be  
16 granted an immigrant visa and be admitted to the United States as an im-  
17 migrant only after executing the same waiver as provided by section 9105(c)  
18 of this title.

19 **§ 8303. Ineligibility of section 2312 nonimmigrants for cer-**  
20 **tain benefits**

21 (a) INELIGIBILITY.—An alien admitted to the United States as a non-  
22 immigrant under section 2312 of this title, or classified as a nonimmigrant  
23 under section 2312 after admission, is ineligible to apply for an immigrant  
24 visa, permanent residence, or a nonimmigrant visa under section 2313–2317  
25 or 2325 of this title until the alien has resided and been physically present  
26 in the foreign country of the alien's nationality or last residence for a total  
27 of at least 2 years after leaving the United States, if—

28 (1) the alien's participation in the program for which the alien came  
29 to the United States was financed in any part by the United States  
30 Government or by the government of the foreign country of the alien's  
31 nationality or last residence;

32 (2) the alien, at the time of admission or classification as a non-  
33 immigrant under section 2312 of this title, was a national or resident  
34 of a foreign country that the Director of the United States Information  
35 Agency (under regulations the Director prescribed) designated as clear-  
36 ly requiring the services of individuals engaged in the alien's field of  
37 specialized knowledge or skill; or

38 (3) the alien came to the United States or was classified as a non-  
39 immigrant under section 2312 of this title to receive graduate medical  
40 education or training.

1 (b) WAIVERS.—The Attorney General may waive the 2-year residence re-  
 2 quirement of subsection (a) of this section if the Attorney General finds that  
 3 admitting the alien would be in the public interest, after receiving a favor-  
 4 able recommendation from—

5 (1) the Director—

6 (A) because of a request from an interested agency; or

7 (B) if the foreign country of the alien's nationality or last resi-  
 8 dence provides the Director with a written statement that it does  
 9 not object to the waiver, except that this subclause does not apply  
 10 to an alien described by subsection (a)(3) of this section; or

11 (2) the Commissioner of Immigration and Naturalization if the Com-  
 12 missioner finds that—

13 (A) departure from the United States would impose exceptional  
 14 hardship on the alien's spouse or child when the spouse or child  
 15 is a citizen of the United States or lawfully admitted for perma-  
 16 nent residence; or

17 (B) the alien would be subject to persecution because of race,  
 18 religion, or political opinion if the alien returned to the foreign  
 19 country of the alien's nationality or last residence.

20 **§ 8304. Sanctions for frivolous legal actions**

21 (a) REGULATIONS.—The Attorney General by regulation shall—

22 (1) define frivolous behavior for which attorneys may be sanctioned  
 23 in a proceeding before a special inquiry officer or an appellate adminis-  
 24 trative body under this subtitle;

25 (2) specify the circumstances under which an administrative appeal  
 26 of a decision or ruling will be considered frivolous and summarily dis-  
 27 missed; and

28 (3) impose appropriate sanctions (that may include suspension and  
 29 disbarment) for frivolous behavior.

30 (b) NONLIMITATION OF AUTHORITY.—This section does not limit the au-  
 31 thority of the Attorney General to take action for inappropriate behavior.

32 **PART F—CHANGE OF STATUS AND CLASSIFICATION**

33 **CHAPTER 91—CHANGE OF STATUS AND**

34 **CLASSIFICATION**

Sec.

9101. Aliens inspected and admitted or paroled into the United States.

9102. Aliens admitted as foreign government officials and their families.

9103. Aliens whose deportation is suspended.

9104. Aliens entering the United States before January 1, 1972.

9105. Aliens lawfully admitted for permanent residence.

9106. Additional requirements for aliens changing to certain employment-based immigrant  
 status.

9107. Rescission of change of status to alien lawfully admitted for permanent residence.

9108. Change of nonimmigrant classification.

1     **§9101. Aliens inspected and admitted or paroled into the**  
2                     **United States**

3             (a) REQUIREMENTS.—Except as provided by subsections (e) and (f) of  
4 this section, the Attorney General may change the status of an alien in-  
5 spected and admitted or paroled into the United States to that of an alien  
6 lawfully admitted for permanent residence if—

7                 (1) the alien applies for the change, is eligible to receive an immi-  
8 grant visa, and is admissible to the United States for permanent resi-  
9 dence; and

10                (2) an immigrant visa is immediately available to the alien when the  
11 alien applies for the change.

12             (b) RECORDATION OF CHANGE.—On approving an application for a  
13 change of status under subsection (a) of this section, the Attorney General  
14 shall record the lawful admission of the alien for permanent residence as  
15 of the date the Attorney General changes the alien’s status.

16             (c) REDUCTION IN NUMBER OF AUTHORIZED IMMIGRANT VISAS.—For  
17 each alien lawfully admitted for permanent residence under this section, the  
18 Secretary of State shall reduce by one the number of immigrant visas that  
19 may be granted under sections 4103–4106 and 4111 of this title within the  
20 class to which the alien is chargeable for the current fiscal year.

21             (d) APPLICATION TO CERTAIN SPECIAL IMMIGRANTS.—(1) In applying  
22 this section to a special immigrant as defined by section 137(a)(12) of this  
23 title—

24                 (A) the alien is deemed to have been paroled into the United States;

25                 (B) when the Attorney General is deciding on the alien’s admissibil-  
26 ity as an immigrant—

27                     (i) sections 4104 (c)(2), (d)(3), and (g)(2), 4311(a), 6304(a),  
28 6313 (a)(2) and (c), and 9106 of this title do not apply;

29                     (ii) the Attorney General may waive section 4104(g)(1) and sub-  
30 chapter I of chapter 63 of this title (except as provided by  
31 subclause (iii) of this clause) for an alien for humanitarian pur-  
32 poses, to ensure family unity, or when it is otherwise in the public  
33 interest; and

34                     (iii) the Attorney General may not waive section 6307(a)(1)–(4),  
35 6308(a)–(c), or 6309 of this title, except as section 6307(a)(3) is  
36 related to a single offense of simple possession of not more than  
37 30 grams of marijuana;

38                 (C) the relationship between an alien and the alien’s natural parents  
39 or prior adoptive parents is not a factor in making a waiver under  
40 clause (B)(ii) of this paragraph; and

1 (D) this paragraph and section 137(a)(12) of this title do not au-  
2 thorize an alien to apply for admission or be admitted to the United  
3 States to obtain the special immigrant status as defined by section  
4 137(a)(12).

5 (2) In applying this section to a special immigrant as defined by section  
6 137(a)(13) of this title, the alien is deemed to have been paroled into the  
7 United States.

8 (e) NONAPPLICATION.—Subsection (a) of this section does not apply to—

9 (1) an alien crewmember;

10 (2) an alien admitted in immediate and continuous travel without a  
11 visa under section 2121(b)(3) of this title;

12 (3) an alien (except an immediate relative and a special immigrant  
13 as defined by section 137(a)(8)–(13) of this title) who—

14 (A) after January 1, 1977, and before applying for a change of  
15 status, engages in or accepts unauthorized employment;

16 (B) has an unlawful immigration status on the date of filing the  
17 application for a change of status; or

18 (C) except through no fault of the alien or for technical reasons,  
19 has not maintained continuously a lawful status since entering the  
20 United States; or

21 (4) an alien (except an immediate relative) admitted as a non-  
22 immigrant visitor without a visa under section 2121(c) or 2127 of this  
23 title.

24 (f) ALIENS WHOSE STATUS MAY NOT BE CHANGED.—(1) The Attorney  
25 General may not change, under subsection (a) of this section, the status  
26 of—

27 (A) an alien lawfully admitted for permanent residence on a condi-  
28 tional basis under subchapter I of chapter 45 of this title;

29 (B) a nonimmigrant classified under section 2309(a) of this title, ex-  
30 cept to that of an alien lawfully admitted for permanent residence on  
31 a conditional basis under subchapter I of chapter 45 of this title, be-  
32 cause of the marriage of the nonimmigrant (or, if a child, the parent)  
33 to the citizen who filed the petition under section 2309(b) of this title;  
34 or

35 (C) an alien seeking an immigrant visa because of a marriage en-  
36 tered into during the period an administrative or judicial proceeding on  
37 the alien's right to enter or remain in the United States is pending.

38 (2)(A) Paragraph (1)(C) of this subsection does not apply to a marriage  
39 if the alien establishes by clear and convincing evidence satisfactory to the  
40 Attorney General that—

1 (i) the marriage was entered into in good faith and under the laws  
2 of the place where the marriage took place;

3 (ii) the marriage was not entered into to procure the alien's entry  
4 as an immigrant; and

5 (iii) no consideration was given, except to an attorney for assistance  
6 in preparing a petition, for filing a petition under section 2309(b) or  
7 4301 (a) or (b) of this title for an alien spouse or alien son or daugh-  
8 ter.

9 (B) Under regulations of the Attorney General, the Attorney General  
10 shall allow only one level of administrative appellate review for each alien  
11 under this paragraph.

12 **§9102. Aliens admitted as foreign government officials and**  
13 **their families**

14 (a) REQUIREMENTS.—An alien admitted to the United States as a non-  
15 immigrant classified under section 2301 (1) or (2) or 2302(1)–(3) of this  
16 title, who does not remain a member of any of those nonimmigrant classes,  
17 may apply to the Attorney General to change the status of the alien to that  
18 of an alien lawfully admitted for permanent residence. After consulting with  
19 the Secretary of State, the Attorney General may change the status of the  
20 alien if the Attorney General is satisfied that—

21 (1) the alien has demonstrated compelling reasons why the alien can-  
22 not return to the country represented by the government that accred-  
23 ited the alien or a member of the alien's immediate family and that  
24 changing the status of the alien is in the interest of the United States;

25 (2) the alien is of good moral character;

26 (3) the alien is admissible for permanent residence under this title;  
27 and

28 (4) changing the alien's status under this subsection would not be  
29 contrary to the welfare, safety, or security of the United States.

30 (b) RECORDATION OF CHANGE AND REPORT TO CONGRESS.—If the At-  
31 torney General changes the status of an alien under subsection (a) of this  
32 section, the Attorney General—

33 (1) may record the lawful admission of the alien for permanent resi-  
34 dence as of the date of the change; and

35 (2) shall submit to Congress, on the first day of the next month in  
36 which Congress is in session—

37 (A) a complete and detailed report of the facts and law in the  
38 alien's case; and

39 (B) the Attorney General's reasons for the change.

40 (c) CONGRESSIONAL DISAPPROVAL OF CHANGE.—If before the end of the  
41 session of Congress after the session in which the report is submitted, either

1 House of Congress passes a resolution disapproving the change of the  
2 alien's status, the Attorney General shall require the alien to leave the Unit-  
3 ed States as provided by law.

4 (d) REDUCTION IN NUMBER OF IMMIGRANT VISAS.—(1) For each alien  
5 lawfully admitted for permanent residence under this section, the Secretary  
6 of State shall reduce by one the number of immigrant visas for the foreign  
7 country to which the alien is chargeable under section 4112 of this title for  
8 the current fiscal year or the next fiscal year in which a visa is available  
9 if—

10 (A) neither House of Congress passes a resolution under subsection  
11 (c) of this section disapproving the change of the alien's status; and

12 (B) the alien was classifiable as an immigrant subject to the numeri-  
13 cal limitations of sections 4102–4106 and 4111 of this title when the  
14 alien entered the United States.

15 (2) The Secretary may not reduce the numerical limitations for the for-  
16 eign country under this section by more than 50 percent in a fiscal year.

17 (e) NUMERICAL LIMITATION.—The Attorney General may admit as aliens  
18 lawfully admitted for permanent residence under this section not more than  
19 50 aliens in a fiscal year.

20 **§9103. Aliens whose deportation is suspended**

21 The Attorney General shall—

22 (1) change the status of an alien whose deportation the Attorney  
23 General suspends under section 6538(a) of this title to that of an alien  
24 lawfully admitted for permanent residence; and

25 (2) record the lawful admission of the alien for permanent residence  
26 as of the date the Attorney General suspends the deportation.

27 **§9104. Aliens entering the United States before January 1,  
28 1972**

29 (a) REQUIREMENTS.—On approval of an application of an alien, the At-  
30 torney General may change the status of the alien to that of an alien law-  
31 fully admitted for permanent residence if—

32 (1) a record of the lawful admission of the alien for permanent resi-  
33 dence is not available; and

34 (2) the alien satisfies the Attorney General that the alien—

35 (A) entered the United States before January 1, 1972, and has  
36 resided in the United States continuously since the alien's entry;

37 (B) is of good moral character;

38 (C) is eligible to be naturalized as a citizen of the United  
39 States; and

40 (D) is not excludable under—

41 (i) section 6309 of this title; or

1 (ii) a provision of subchapter I of chapter 63 of this title  
2 related to criminals, immoral individuals, violators of narcotic  
3 laws, smugglers of aliens, or aliens associated with undemo-  
4 cratic ideals.

5 (b) RECORDATION OF CHANGE.—If the Attorney General changes the  
6 status of an alien under subsection (a) of this section, the Attorney General  
7 shall record the lawful admission of the alien for permanent residence as  
8 of the date—

9 (1) the alien entered the United States if the alien entered before  
10 July 1, 1924; or

11 (2) the Attorney General approves the alien's application for a  
12 change of status under this section.

13 (c) PHOTOGRAPHS.—An alien applying for a change of status under this  
14 section must provide the Attorney General with 3 identical photographs of  
15 the alien.

16 (d) NONAPPLICATION OF NUMERICAL LIMITATIONS.—The numerical lim-  
17 itations of sections 4102 and 4111 of this title do not apply to an alien  
18 whose status is changed under this section.

19 **§ 9105. Aliens lawfully admitted for permanent residence**

20 (a) CHANGE TO NONIMMIGRANT STATUS.—Except as provided by sub-  
21 section (c) of this section, the Attorney General shall change the status of  
22 an alien lawfully admitted for permanent residence to that of a non-  
23 immigrant classified under section 2301, 2302, or 2306(b)(1) of this title  
24 if at the time of entry or after the alien enters the United States the alien  
25 engages in an occupation that would qualify the alien to be classified as a  
26 nonimmigrant under section 2301, 2302, or 2306(b)(1) if the alien were  
27 seeking to be admitted to the United States.

28 (b) RECORD OF ADMISSION FOR PERMANENT RESIDENCE CANCELED.—  
29 The Attorney General shall cancel the record of the admission of the alien  
30 for lawful permanent residence as of the date the Attorney General changes  
31 the alien's status.

32 (c) NONAPPLICATION.—This section does not apply to an alien who—

33 (1) requests the Attorney General not to change the alien's status  
34 under this section; and

35 (2) files with the Attorney General a written waiver of the rights,  
36 privileges, exemptions, and immunities that the alien otherwise would  
37 be entitled to under a law or executive order because the alien is engag-  
38 ing in an occupation that qualifies the alien to be classified as a non-  
39 immigrant under section 2301, 2302, or 2306(b)(1) of this title.

1 **§9106. Additional requirements for aliens changing to cer-**  
2 **tain employment-based immigrant status**

3 Section 4104(g) of this title applies to aliens applying for a change of  
4 status to that of an immigrant under section 4104 (c) or (d) of this title.

5 **§9107. Rescission of change of status to alien lawfully ad-**  
6 **mitted for permanent residence**

7 (a) GENERAL.—(1) If, within 5 years after the Attorney General changes  
8 the status of an alien under any provision of law (except under section 9103  
9 of this title) to that of an alien lawfully admitted for permanent residence,  
10 the Attorney General is satisfied that the alien was not eligible for the  
11 change, the Attorney General shall rescind—

12 (A) the change of the alien's status; and

13 (B) the suspension of the alien's deportation if the Attorney General  
14 suspended the deportation.

15 (2) When the Attorney General rescinds a change under paragraph (1)  
16 of this subsection, the alien becomes subject to this title as if the Attorney  
17 General had not changed the alien's status.

18 (b) ALIEN WHOSE DEPORTATION IS SUSPENDED.—(1) If, within 5 years  
19 after the Attorney General changes the status of an alien under section  
20 9103 of this title to that of an alien lawfully admitted for permanent resi-  
21 dence, the Attorney General is satisfied that the alien was not eligible for  
22 the change, the Attorney General shall submit to Congress, on the first or  
23 15th day of the next month in which Congress is in session, a complete and  
24 detailed report of the facts and law in the alien's case.

25 (2) If, before the end of the session of Congress after the session in which  
26 the report is submitted, Congress passes a concurrent resolution withdraw-  
27 ing the suspension of the alien's deportation, the alien becomes subject to  
28 this title as if the Attorney General had not changed the alien's status.

29 **§9108. Change of nonimmigrant classification**

30 (a) PREREQUISITES.—Except as provided by subsection (b) of this sec-  
31 tion, the Attorney General may change the classification of an alien from  
32 one nonimmigrant classification to another nonimmigrant classification  
33 under conditions prescribed by the Attorney General if the alien—

34 (1) is lawfully admitted to the United States as a nonimmigrant; and

35 (2) continues to qualify as a nonimmigrant.

36 (b) NONAPPLICATION.—The Attorney General may not change the classi-  
37 fication of an alien under subsection (a) of this section if the alien—

38 (1) is admitted to the United States for passage through the United  
39 States in immediate and continuous travel to a foreign country;

40 (2) is classified as a nonimmigrant described by section 2304, 2305,  
41 or 2309 of this title;

1 (3) is classified as a nonimmigrant described by section 2312(a) of  
 2 this title and came to the United States or acquired the classification  
 3 to receive graduate medical education or training;

4 (4) except an alien referred to in clause (3) of this subsection, is  
 5 classified as a nonimmigrant described by section 2312(a) of this title  
 6 and is subject to, and has not received a waiver of, the 2-year foreign  
 7 residence requirement of section 8303(a) of this title, unless the alien  
 8 applies to have the alien's classification changed from a classification  
 9 as a nonimmigrant described by section 2312(a) to a classification as  
 10 a nonimmigrant described by section 2301 or 2302 of this title; or

11 (5) is admitted as a nonimmigrant visitor without a visa under sec-  
 12 tion 2121(c) or 2127 of this title.

13 **CHAPTER 93—CHANGE OF STATUS FOR CERTAIN**  
 14 **ALIENS WHO ENTERED THE UNITED STATES BEFORE**  
 15 **1982**

Sec.

- 9301. Numerical limitations and admissions.
- 9302. Change of status to alien lawfully admitted for temporary residence.
- 9303. Applications for change of status to alien lawfully admitted for temporary residence.
- 9304. Change of status from temporary residence to permanent residence.
- 9305. Medical examination.
- 9306. Nonapplication and waiver of certain provisions of law.
- 9307. Fees.
- 9308. Confidentiality of information.
- 9309. Temporary stay of deportation.
- 9310. Temporary ineligibility to receive certain assistance.
- 9311. Unfavorable ending of temporary residence status.
- 9312. Administrative and judicial review.
- 9313. Administrative.

16 **§ 9301. Numerical limitations and admissions**

17 (a) NUMERICAL LIMITATIONS.—The numerical limitations of sections  
 18 4102 and 4111 of this title do not apply to a change of status of an alien  
 19 to that of an alien lawfully admitted for permanent residence under this  
 20 chapter.

21 (b) ADMISSIONS.—This chapter does not authorize an alien to apply for  
 22 admission to, or be admitted to, the United States so that the alien may  
 23 apply for a change of status under section 9302 of this title.

24 **§ 9302. Change of status to alien lawfully admitted for tem-**  
 25 **porary residence**

26 (a) REQUIREMENTS.—The Attorney General shall change the status of an  
 27 alien to that of an alien lawfully admitted for temporary residence if the  
 28 alien meets the following requirements:

- 29 (1) The alien applied for the change as provided by section 9303 of  
 30 this title after May 4, 1987, and before May 5, 1988.
- 31 (2) The alien entered the United States before January 1, 1982.

1 (3) The alien resided continuously in the United States in an unlaw-  
2 ful status from January 1, 1982, through the date the application for  
3 the change was filed under this section.

4 (4) If the alien—

5 (A) entered the United States as a nonimmigrant before Janu-  
6 ary 1, 1982, the alien's period of authorized stay as a non-  
7 immigrant expired before January 1, 1982, or the United States  
8 Government by January 1, 1982, knew of the unlawful status of  
9 the alien; or

10 (B) was a nonimmigrant exchange alien described by section  
11 2312(a) of this title, the alien was not subject to the 2-year for-  
12 eign residence requirement of section 8303(a) of this title, fulfilled  
13 the requirement, or received a waiver.

14 (5) The alien has been physically present continuously in the United  
15 States, except for any brief, casual, and innocent absence, since No-  
16 vember 6, 1986.

17 (6) The alien is admissible to the United States as an immigrant,  
18 except as provided by sections 9305 and 9306 of this title.

19 (7) The alien has not been convicted of a felony or of not more than  
20 2 misdemeanors committed in the United States.

21 (8) The alien has not assisted in the persecution of a person because  
22 of race, religion, nationality, membership in a social group, or political  
23 opinion.

24 (9) The alien is registered or registering under the Military Selective  
25 Service Act (50 App. U.S.C. 451 et seq.) if the Act requires the alien  
26 to register.

27 (b) AUTHORIZED TRAVEL.—During the time an alien is an alien lawfully  
28 admitted for temporary residence under subsection (a) of this section, the  
29 Attorney General shall allow the alien to return to the United States after—

30 (1) any brief and casual trip outside the United States that reflects  
31 the alien's intent to have the alien's status changed under section 9304  
32 of this title to that of an alien lawfully admitted for permanent resi-  
33 dence; and

34 (2) any brief temporary trip outside the United States because of a  
35 family obligation involving the illness or death of a close relative or an-  
36 other family need.

37 (c) AUTHORIZED EMPLOYMENT.—During the time an alien is an alien  
38 lawfully admitted for temporary residence under subsection (a) of this sec-  
39 tion, the Attorney General shall grant the alien authorization to work in the  
40 United States and provide to the alien an “employment authorized” en-  
41 dorsement or other appropriate work permit.

1 (d) CUBAN OR HAITIAN ENTRANT.—In applying this section, a Cuban or  
2 Haitian entrant described by section 13151(1) or (2)(A) of this title is  
3 deemed to have entered the United States and to be in an unlawful status  
4 in the United States.

5 **§9303. Applications for change of status to alien lawfully**  
6 **admitted for temporary residence**

7 (a) CONTENTS.—An application for a change of status under section  
8 9302(a) of this title shall contain information the Attorney General re-  
9 quires, including information on each living relative of the applicant with  
10 respect to whom the applicant may file a petition at a later date under sec-  
11 tion 4301 (a) or (b) of this title.

12 (b) WHO MAY RECEIVE APPLICATIONS.—The Attorney General shall pro-  
13 vide that an application for a change of status under section 9302(a) of this  
14 title may be filed with the Attorney General or with an entity designated  
15 under subsection (c) of this section if the applicant consents to having the  
16 application forwarded to the Attorney General.

17 (c) DESIGNATING ENTITIES TO RECEIVE APPLICATIONS.—To assist in  
18 the legalization program under this chapter, the Attorney General—

19 (1) shall designate qualified voluntary organizations and other quali-  
20 fied State, local, and community organizations; and

21 (2) may designate other persons the Attorney General decides are  
22 qualified and have substantial experience, demonstrated competence,  
23 and traditional long-term involvement in preparing and submitting ap-  
24 plications for a change of status under section 5107 or 9101 of this  
25 title, the Act of November 2, 1966 (Public Law 89-732, 80 Stat.  
26 1161), or the Act of October 28, 1977 (Public Law 95-145, 91 Stat.  
27 1223).

28 (d) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—An en-  
29 tity designated under subsection (c) of this section must agree to forward  
30 to the Attorney General only those applications filed with it under sub-  
31 section (b) of this section that the applicants consent to being forwarded.  
32 An entity may not make a decision under this chapter required to be made  
33 by the Attorney General.

34 **§9304. Change of status from temporary residence to per-**  
35 **manent residence**

36 (a) REQUIREMENTS.—The Attorney General shall change the status of an  
37 alien lawfully admitted for temporary residence under section 9302 of this  
38 title to that of an alien lawfully admitted for permanent residence if the  
39 alien—

1 (1) applies for the change during the 2-year period beginning with  
2 the 19th month that begins after the alien acquired the status of an  
3 alien lawfully admitted for temporary residence;

4 (2) has resided continuously in the United States since the alien ac-  
5 quired the status of an alien lawfully admitted for temporary residence;

6 (3) is admissible as an immigrant, except as provided by sections  
7 9305 and 9306 of this title;

8 (4) has not been convicted of a felony or of not more than 2 mis-  
9 demeanors committed in the United States; and

10 (5)(A) meets the requirements of section 20301(a) (7) and (8) of  
11 this title; or

12 (B) is pursuing satisfactorily a course of study, recognized by the At-  
13 torney General, to meet the requirements of section 20301(a) (7) and  
14 (8) of this title.

15 (b) EXCEPTIONS.—(1) An alien does not violate the continuous residence  
16 requirement of subsection (a)(2) of this section because of an absence from  
17 the United States allowed under section 9302(b) of this title.

18 (2) The Attorney General may waive any part of the requirements of sub-  
19 section (a)(5) of this section for an alien who is at least 65 years of age  
20 or developmentally disabled.

21 (c) RELATION TO NATURALIZATION EXAMINATION.—An alien dem-  
22 onstrating under subsection (a)(5)(A) of this section that the alien meets  
23 the requirements of section 20301(a) (7) and (8) of this title may be  
24 deemed to have satisfied those requirements for becoming naturalized as a  
25 citizen of the United States under subtitle V of this title.

### 26 **§ 9305. Medical examination**

27 An alien must undergo, at the alien's expense, an appropriate medical ex-  
28 amination (including establishing the alien's immunization status) that com-  
29 plies with generally accepted professional standards of medical practice be-  
30 fore a decision on the alien's admissibility under sections 9302(a)(6),  
31 9304(a)(3), and 9311(2) of this title may be made.

### 32 **§ 9306. Nonapplication and waiver of certain provisions of** 33 **law**

34 (a) GROUNDS OF EXCLUSION THAT DO NOT APPLY OR THAT MAY BE  
35 WAIVED.—When the Attorney General is deciding on an alien's admissibility  
36 under sections 9302(a)(6), 9304(a)(3), and 9311(2) of this title—

37 (1) sections 4104(c)(2), (d)(3), and (g) (1) and (2), 4311(a), 6313,  
38 and 9106 of this title do not apply; and

39 (2) except as provided by subsection (b) of this section, the Attorney  
40 General may waive section 2121(a) and subchapter I of chapter 63 of  
41 this title for an individual alien—

1 (A) for humanitarian purposes;

2 (B) to ensure family unity; or

3 (C) when otherwise in the public interest.

4 (b) GROUNDS THAT MAY NOT BE WAIVED.—Notwithstanding subsection  
5 (a)(2) of this section, the Attorney General may not waive—

6 (1) section 6304(a) of this title to the extent it is related to an appli-  
7 cation for a change of status to an alien lawfully admitted for perma-  
8 nent residence, except that section 6304(a) may be waived for an alien  
9 who is or was an aged, blind, or disabled individual (as defined by sec-  
10 tion 1614(a)(1) of the Social Security Act (42 U.S.C. 1382c(a)(1)));

11 (2) section 6307(a)(1)–(4) of this title, except as section 6307(a)(3)  
12 is related to a single offense of simple possession of not more than 30  
13 grams of marijuana; or

14 (3) section 6308 or 6309 of this title.

15 (c) SPECIAL RULE FOR DECIDING WHETHER ALIENS ARE PUBLIC  
16 CHARGES.—An alien is not ineligible for a change of status under this chap-  
17 ter because of inadmissibility under section 6304(a) of this title if the alien  
18 demonstrates a history of employment in the United States showing self-  
19 support without reliance on public cash assistance.

20 **§ 9307. Fees**

21 (a) FEE SCHEDULE.—The Attorney General shall establish a schedule of  
22 fees for applying for a change of status under section 9302 or 9304 of this  
23 title. The Attorney General shall provide for an additional fee for applying  
24 for a change of status under section 9304 of this title after the end of the  
25 first year of the 2-year period described by section 9304(a)(1) of this title.

26 (b) USE OF FEES.—The Attorney General shall deposit amounts received  
27 under subsection (a) of this section in a separate account. The amounts may  
28 be used, without fiscal year limitation, for expenses related to reviewing ap-  
29 plications filed under section 9302 or 9304 of this title. Capital assets ac-  
30 quired with amounts in the account are available for the general use of the  
31 Immigration and Naturalization Service when the assets are not needed for  
32 activities related to reviewing those applications.

33 **§ 9308. Confidentiality of information**

34 (a) LIMITATION ON ACCESS.—A record of an entity designated under sec-  
35 tion 9303(c) of this title, related to an alien seeking assistance or informa-  
36 tion about filing an application under this chapter, is confidential. The At-  
37 torney General may have access to the record only with the consent of the  
38 alien.

39 (b) LIMITATIONS ON USE.—The Attorney General or an officer or em-  
40 ployee of the Department of Justice—

1 (1) may use information provided by making an application under  
2 this chapter only—

3 (A) to make a decision on the application; or

4 (B) to enforce section 10155 of this title;

5 (2) may disclose information provided under this chapter in the same  
6 way that census information may be disclosed under section 8 of title  
7 13;

8 (3) may not make a publication that allows the information provided  
9 by a particular individual to be identified; and

10 (4) may allow only a sworn officer or employee of the Department  
11 or of an entity designated under section 9303(c) of this title (for an  
12 application filed with the entity) to examine an application.

13 **§ 9309. Temporary stay of deportation**

14 (a) If an alien was apprehended before May 5, 1987, and could have es-  
15 tablished a prima facie case of eligibility for a change of status under sec-  
16 tion 9302 of this title, except that the alien could not apply for the adjust-  
17 ment before May 5, 1987, the Attorney General shall provide that, unless  
18 the alien had an opportunity after May 4, 1987, and before June 4, 1987,  
19 to complete the filing of an application for a change of status, the alien—

20 (1) may not be deported;

21 (2) may work in the United States; and

22 (3) shall be provided an “employment authorized” endorsement or  
23 other appropriate work permit.

24 (b) If an alien presented a prima facie application for a change of status  
25 under section 9302 of this title after May 4, 1987, and before May 5, 1988,  
26 the Attorney General shall provide that, until a final decision has been made  
27 on the application, the alien—

28 (1) may not be deported;

29 (2) may work in the United States; and

30 (3) shall be provided an “employment authorized” endorsement or  
31 other appropriate work permit.

32 **§ 9310. Temporary ineligibility to receive certain assistance**

33 (a) PERIOD OF INELIGIBILITY.—(1) Except as provided by paragraphs  
34 (3) and (4) of this subsection and subsection (b) of this section, an alien  
35 who acquires the status of an alien lawfully admitted for temporary resi-  
36 dence under section 9302 of this title is not eligible for the following, during  
37 the 5-year period beginning on the date the alien was granted the status:

38 (A) financial assistance under the program of aid to families with  
39 dependent children under part A of title IV of the Social Security Act  
40 (42 U.S.C. 601 et seq.).

41 (B) any other program of financial assistance—

1 (i) provided under a law of the United States on a financial-  
2 need basis; and

3 (ii) identified by the Attorney General in consultation with the  
4 heads of other agencies.

5 (C) medical assistance under a State plan approved under title XIX  
6 of the Social Security Act (42 U.S.C. 1396 et seq.).

7 (D) assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011  
8 et seq.).

9 (2) To the extent consistent with this subsection and subsection (b) of  
10 this section, a State or political subdivision of a State may provide that the  
11 alien is not eligible for financial assistance referred to in paragraph (1) (A)  
12 and (B) of this subsection or for medical assistance referred to in paragraph  
13 (1)(C) of this subsection provided under a law of the State or political sub-  
14 division.

15 (3) Paragraph (1) of this subsection does not apply to—

16 (A) a Cuban or Haitian entrant (as defined by section 501(e)(1) or  
17 (2)(A) of the Refugee Education Assistance Act of 1980 (Public Law  
18 96-422, 94 Stat. 1810) as in effect on April 1, 1983); or

19 (B) assistance (except aid to families with dependent children) pro-  
20 vided an alien who is an aged, blind, or disabled individual (as defined  
21 by section 1614(a)(1) of the Social Security Act (42 U.S.C.  
22 1382c(a)(1)).

23 (4) Assistance provided under the following laws is not financial assist-  
24 ance referred to in paragraph (1)(B) of this subsection:

25 (A) title IV of the Higher Education Act of 1965 (20 U.S.C. 1070  
26 et seq. and 42 U.S.C. 2751 et seq.).

27 (B) the Carl D. Perkins Vocational and Applied Technology Edu-  
28 cation Act (20 U.S.C. 2301 et seq.).

29 (C) the Job Training Partnership Act (29 U.S.C. 1501 et seq.).

30 (D) the Public Health Service Act (42 U.S.C. 201 et seq.).

31 (E) titles I, X, XIV, and XVI of the Social Security Act (42 U.S.C.  
32 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.) as in effect with-  
33 out regard to the amendment made by section 301 of the Social Secu-  
34 rity Amendments of 1972 (Public Law 92-603, 86 Stat. 1465).

35 (F) parts B, D, and E of title IV and titles V, XVI, and XX of the  
36 Social Security Act (42 U.S.C. 620 et seq., 651 et seq., 670 et seq.,  
37 701 et seq., 1381 et seq., 1397 et seq.).

38 (G) the National School Lunch Act (42 U.S.C. 1751 et seq.).

39 (H) the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

40 (b) RESTRICTED MEDICAL ASSISTANCE.—(1) In this subsection—

1 (A) “medical assistance” means medical assistance under a State  
2 plan approved under title XIX of the Social Security Act (42 U.S.C.  
3 1396 et seq.); and

4 (B) an alien lawfully admitted for temporary residence under section  
5 9302 of this title is deemed to be residing permanently in the United  
6 States under color of law as long as the alien’s temporary residence  
7 status is not changed.

8 (2) Except as provided by paragraph (3) of this subsection and notwith-  
9 standing title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), an  
10 alien lawfully admitted for temporary residence under section 9302 of this  
11 title is eligible for only the following medical assistance during the 5-year  
12 period beginning on the date the alien is granted temporary residence sta-  
13 tus:

14 (A) emergency services as provided under section 1916(a)(2)(D) of  
15 the Social Security Act (42 U.S.C. 1396o(a)(2)(D)).

16 (B) services for pregnant women as described by section  
17 1916(a)(2)(B) of the Social Security Act (42 U.S.C. 1396o(a)(2)(B)).

18 (3) An alien lawfully admitted for temporary residence under section  
19 9302 of this title is eligible for any medical assistance during the 5-year  
20 period beginning on the date the alien is granted temporary residence status  
21 if the alien is—

22 (A) an alien described by subsection (a)(3) of this section; or

23 (B) less than 18 years of age.

24 (c) CHANGE IN STATUS NOT AFFECTING CERTAIN BENEFITS.—Assist-  
25 ance under subchapter IV of chapter 131 of this title shall be continued  
26 without regard to a change of the alien’s status under this chapter.

27 (d) ALIEN NOT RESIDING PERMANENTLY IN THE UNITED STATES.—Un-  
28 less otherwise specifically provided, an alien lawfully admitted for temporary  
29 residence under section 9302 of this title is not residing permanently in the  
30 United States under color of law for purposes of a law of a State or political  
31 subdivision of a State providing for a program of financial assistance.

32 **§ 9311. Unfavorable ending of temporary residence status**

33 The Attorney General shall end the temporary residence status granted  
34 an alien under section 9302 of this title—

35 (1) if the Attorney General believes the alien was not eligible for that  
36 status;

37 (2) if the alien—

38 (A) commits an act that makes the alien inadmissible to the  
39 United States as an immigrant, except as provided by sections  
40 9305 and 9306 of this title; or

1 (B) is convicted of a felony or of at least 3 misdemeanors com-  
2 mitted in the United States; or

3 (3) at the end of the 43d month after the alien is granted the status,  
4 unless the alien has applied under section 9304 of this title for a  
5 change of status to that of an alien lawfully admitted for permanent  
6 residence and the application has not been denied.

7 **§ 9312. Administrative and judicial review**

8 (a) EXCLUSIVENESS OF REVIEW.—The only administrative and judicial  
9 reviews of a decision made under this chapter about an application for a  
10 change of status of an alien shall be the reviews provided by this section.

11 (b) ADMINISTRATIVE REVIEW.—Except as provided by subsection (d) of  
12 this section, the Attorney General shall maintain an appellate authority to  
13 provide for a single level of administrative appellate review of a decision de-  
14 scribed by subsection (a) of this section. The review shall be based only on  
15 the administrative record established at the time of the decision and on ad-  
16 ditional or newly discovered evidence not available at the time the decision  
17 was made.

18 (c) JUDICIAL REVIEW.—Except as provided by subsection (d) of this sec-  
19 tion, a decision made under this chapter denying a change of status of an  
20 alien may be reviewed judicially only by judicial review of an order of depor-  
21 tation under section 6535 of this title. The review shall be based only on  
22 the administrative record established at the time of the review by the appel-  
23 late authority. The findings of fact and decisions contained in the record  
24 of the authority are conclusive unless the applicant establishes abuse of dis-  
25 cretion or that the findings are directly contrary to clear and convincing  
26 facts contained in the record considered as a whole.

27 (d) NO REVIEW FOR LATE FILING.—A denial of a change of status  
28 under this chapter because an application for the change was filed late may  
29 not be reviewed in an administrative proceeding of the United States Gov-  
30 ernment or by a court of the United States or a State.

31 **§ 9313. Administrative**

32 (a) REGULATIONS.—After consulting with the Committees on the Judici-  
33 ary of the House of Representatives and the Senate, the Attorney General  
34 shall prescribe—

35 (1) regulations establishing a definition of “resided continuously” for  
36 this chapter and evidence needed to establish that an alien has resided  
37 continuously in the United States under this chapter; and

38 (2) other regulations necessary to carry out this chapter.

39 (b) CONSIDERATIONS.—In prescribing regulations under subsection (a)(1)  
40 of this section, the Attorney General—

1 (1) shall specify individual and total periods of absence from the  
 2 United States that will break a period of continuous residence in the  
 3 United States and shall consider any absence that is only a brief and  
 4 casual trip outside the United States;

5 (2) shall provide that—

6 (A) an alien has not resided continuously in the United States  
 7 if the alien was outside the United States, during a period for  
 8 which continuous residence is required, because of a deportation  
 9 order; and

10 (B) time during which an alien is outside the United States  
 11 under the advance parole procedures of the Attorney General is  
 12 not part of the time during which an alien is outside the United  
 13 States under this chapter;

14 (3) may provide for a waiver of the periods specified in clause (1)  
 15 of this subsection if the absence is a brief temporary trip outside the  
 16 United States required by an emergency or extenuating circumstance  
 17 outside the control of the alien; and

18 (4) shall require that continuous residence and physical presence in  
 19 the United States be established by documents (employment-related if  
 20 available) and independent corroboration of the information the docu-  
 21 ments contain.

## 22 PART G—PENALTIES

### 23 CHAPTER 101—PENALTIES

#### SUBCHAPTER I—GENERAL

Sec.

10101. Settlement, compromise, and discontinuance of certain proceedings.

#### SUBCHAPTER II—CIVIL PENALTIES

- 10111. Violating regulations related to ports of entry for aliens arriving by aircraft.
- 10112. Failure to deliver lists of passengers.
- 10113. Failure to provide lists and reports about alien crewmembers.
- 10114. Failure to control alien crewmembers.
- 10115. Improper discharge of alien crewmembers.
- 10116. Employing alien crewmembers having disabilities and diseases.
- 10117. Employing alien crewmembers for certain longshore work.
- 10118. Violations involving certifications for longshore work by alien crewmembers.
- 10119. Bringing in aliens excludable because of health.
- 10120. Bringing in aliens not having passports and visas.
- 10121. Assisting unlawful entry as alien crewmembers.
- 10122. Failure to prevent unauthorized landings.
- 10123. Failure to detain and deport alien stowaways.
- 10124. Failure to carry out orders related to detained aliens and bringing in deported aliens.
- 10125. Document fraud.
- 10126. Clearing vessels and aircraft.

#### SUBCHAPTER III—CRIMINAL PENALTIES

- 10141. Violating period of conditional landing permit.
- 10142. Failure to register and be fingerprinted.
- 10143. Failure to carry a certificate of alien registration or alien registration receipt card.
- 10144. Failure to provide addresses.
- 10145. False and fraudulent registration.
- 10146. Counterfeiting alien registration documents.
- 10147. Bringing in and harboring aliens.

- 10148. Improper entry of aliens.
- 10149. Reentry of deported aliens.
- 10150. Assisting certain excludable aliens to enter the United States.
- 10151. Importing aliens for immoral purposes.
- 10152. Violation of supervision pending deportation.
- 10153. Willful failure to leave the United States.
- 10154. Marriage to evade immigration laws.
- 10155. Misrepresentations in applications for change of status.
- 10156. Disclosing confidential information in applications.
- 10157. Establishing a commercial enterprise to evade immigration laws.

SUBCHAPTER I—GENERAL

**§ 10101. Settlement, compromise, and discontinuance of certain proceedings**

A judicial proceeding for violating this title (except subchapter I of chapter 5, subchapters I, III, and IV of chapter 131, chapters 133–137, and section 13902) may be settled, compromised, or discontinued only with the consent of the court. A settlement, compromise, or discontinuance, and the reasons for it, shall be entered on the record.

SUBCHAPTER II—CIVIL PENALTIES

**§ 10111. Violating regulations related to ports of entry for aliens arriving by aircraft**

(a) CIVIL PENALTY AND COMPROMISE.—A person violating a regulation prescribed under section 6901 of this title is liable to the United States Government for a civil penalty of \$2,000. The Attorney General may compromise the amount of the penalty. A decision on a penalty or compromise under this section is final.

(b) LIEN ON AIRCRAFT.—When the owner or individual in command of an aircraft violates a regulation referred to in subsection (a) of this section, the aircraft is subject to a lien for the civil penalty. The aircraft may be seized summarily by, and placed in the custody of, a person authorized under regulations prescribed by the Attorney General.

(c) RELEASE OF AIRCRAFT.—An aircraft seized under this section may be released from custody—

(1) on deposit of—

(A) an amount (but not more than \$2,000) prescribed by the Attorney General; or

(B) a bond in an amount and with an insurer prescribed by the Attorney General; and

(2) conditioned on payment of the penalty decided on by the Attorney General.

(d) COLLECTION OF PENALTY.—A civil action in rem may be brought against the aircraft to collect the civil penalty. The action shall conform as nearly as practicable to civil actions in admiralty.

1 **§ 10112. Failure to deliver lists of passengers**

2 (a) CIVIL PENALTY.—If the Attorney General is satisfied that a person  
3 has not delivered an accurate list of passengers as required under section  
4 6902 of this title, the person is liable to the United States Government for  
5 a civil penalty of \$300 for each passenger for whom the list is not sworn  
6 and delivered as required.

7 (b) PROHIBITION ON COMPROMISE.—The Attorney General may not com-  
8 promise the amount of a civil penalty under this section.

9 **§ 10113. Failure to provide lists and reports about alien**  
10 **crewmembers**

11 (a) CIVIL PENALTY.—A person not delivering a list or report required by  
12 section 2701 or 2702 of this title is liable to the United States Government  
13 for a civil penalty of \$200 for each alien crewmember not listed or reported  
14 as required.

15 (b) PROHIBITION ON COMPROMISE.—The Attorney General may not com-  
16 promise the amount of a civil penalty under this section.

17 **§ 10114. Failure to control alien crewmembers**

18 (a) CIVIL PENALTY.—A person not detaining or deporting an alien crew-  
19 member as required by section 2704 of this title is liable to the United  
20 States Government for a civil penalty of \$3,000 for each alien crewmember  
21 not detained or deported.

22 (b) COMPROMISE.—The Attorney General may compromise the amount of  
23 a civil penalty under this section to not less than \$200 for each alien crew-  
24 member involved.

25 **§ 10115. Improper discharge of alien crewmembers**

26 (a) CIVIL PENALTY.—If the Attorney General is satisfied that a person  
27 has violated section 2706 of this title, the person is liable to the United  
28 States Government for a civil penalty of \$3,000 for each violation.

29 (b) COMPROMISE.—The Attorney General may compromise the amount of  
30 a civil penalty under this section to not less than \$1,500 for each violation.

31 **§ 10116. Employing alien crewmembers having disabilities**  
32 **and diseases**

33 (a) CIVIL PENALTY.—The owner, agent, master, commanding officer, or  
34 consignee of a vessel or aircraft is liable to the United States Government  
35 for a civil penalty of \$1,000 for each alien crewmember employed in viola-  
36 tion of section 2705(a) of this title if the Attorney General is satisfied, from  
37 an examination certified by a medical officer of the Public Health Service,  
38 that—

- 39 (1) the crewmember was afflicted with a disability or disease referred  
40 to in section 2705(a) of this title when the crewmember was taken on  
41 board the vessel or aircraft; and

1           (2) the disability or disease could have been detected by a competent  
2           medical examination.

3           (b) COMPROMISE.—The Attorney General may compromise the amount of  
4           a civil penalty under this section.

5           **§ 10117. Employing alien crewmembers for certain longshore**  
6           **work**

7           (a) CIVIL PENALTY.—An owner, agent, master, commanding officer, or  
8           consignee of a vessel that hires an alien crewmember classified as a non-  
9           immigrant under section 2305 of this title to perform longshore work not  
10          included in the normal operation and service on a vessel under section 2723,  
11          2724, or 2725 of this title is liable to the United States Government for  
12          a civil penalty of \$5,000.

13          (b) LIEN ON VESSEL.—A vessel referred to in subsection (a) of this sec-  
14          tion is subject to a lien for the amount of the civil penalty.

15          (c) PROHIBITION ON COMPROMISE.—The Attorney General may not com-  
16          promise the amount of a civil penalty under this section.

17          **§ 10118. Violations involving certifications for longshore**  
18          **work by alien crewmembers**

19          If the Secretary of Labor finds under section 2723(f) of this title that  
20          an employer has failed to meet a condition, or misrepresented a material  
21          fact, in its attestation under section 2723(a) of this title, the Secretary may  
22          impose a civil penalty of not more than \$5,000 for each alien crewmember  
23          the employer employs to perform unauthorized longshore work.

24          **§ 10119. Bringing in aliens excludable because of health**

25          (a) CIVIL PENALTY.—A person is liable to the United States Government  
26          for a civil penalty of \$3,000 for each alien the person brings to the United  
27          States in violation of section 6906(b) of this title.

28          (b) PROHIBITION ON COMPROMISE.—The Attorney General may not com-  
29          promise the amount of a civil penalty under this section.

30          **§ 10120. Bringing in aliens not having passports and visas**

31          (a) CIVIL PENALTY.—If the Attorney General is satisfied that a person  
32          has brought an alien to the United States in violation of section 6906(a)  
33          of this title, the person is liable to the United States Government for a civil  
34          penalty of—

35                  (1) \$3,000 for each such alien; plus

36                  (2) except for an alien admitted or allowed to land temporarily, an  
37          amount equal to the amount the alien paid to be transported from the  
38          initial port of departure, as shown on the alien's ticket, to the port of  
39          arrival.

1 (b) RETURN OF AMOUNT TO ALIEN.—The amount paid under subsection  
2 (a)(2) of this section shall be paid to the alien brought in violation of sec-  
3 tion 6906(a) of this title.

4 (c) COMPROMISE.—The Attorney General may compromise the amount of  
5 a civil penalty under this section only if the Attorney General is satisfied  
6 that the person, before the vessel or aircraft carrying the alien left the last  
7 port outside the United States, did not know and could not have learned  
8 by reasonable diligence that the individual transported was an alien required  
9 to have a passport and visa.

10 (d) NONAPPLICATION.—This section does not apply to a carrier or an  
11 owner, agent, master, commanding officer, charterer, or consignee of a ves-  
12 sel or aircraft relying on a visa or other documentation that has been re-  
13 voked unless reasonable notice of the revocation is received before the alien  
14 leaves.

15 **§ 10121. Assisting unlawful entry as alien crewmembers**

16 (a) CIVIL PENALTY.—A person, including the owner, agent, master, com-  
17 manding officer, or consignee of a vessel or aircraft arriving in the United  
18 States, is liable to the United States Government for a civil penalty of not  
19 more than \$10,000 for each alien whom the person—

20 (1) knowingly signs on the articles of the vessel, or brings to the  
21 United States as a crewmember of the vessel or aircraft, with intent  
22 to allow or assist the alien to enter or land in the United States unlaw-  
23 fully; or

24 (2) knowingly and falsely represents to a consular officer when the  
25 alien applies for a visa, or to an immigration officer at the port of ar-  
26 rival in the United States, that the alien is a crewmember.

27 (b) LIEN ON VESSEL OR AIRCRAFT.—A vessel or aircraft referred to in  
28 subsection (a) of this section is subject to a lien for the civil penalty and  
29 may be seized. A civil action in rem may be brought against the vessel or  
30 aircraft to collect the penalty.

31 **§ 10122. Failure to prevent unauthorized landings**

32 (a) CIVIL PENALTY.—A person violating section 6904(a) of this title is  
33 liable to the United States Government for a civil penalty of \$3,000 for each  
34 violation, to be imposed by the Attorney General.

35 (b) LIEN ON VESSEL OR AIRCRAFT.—The vessel or aircraft used in  
36 transporting an alien landed in violation of this section is subject to a lien  
37 for the civil penalty. A civil action in rem may be brought against the vessel  
38 or aircraft to collect the penalty.

39 (c) COMPROMISE.—The Attorney General may compromise the amount of  
40 a civil penalty under this section.

1 **§ 10123. Failure to detain and deport alien stowaways**

2 A person not detaining or deporting an alien stowaway as required by sec-  
3 tion 6907(b) (2) or (3) of this title is liable to the United States Govern-  
4 ment for a civil penalty of \$3,000 for each alien stowaway not detained or  
5 deported.

6 **§ 10124. Failure to carry out orders related to detained**  
7 **aliens and bringing in deported aliens**

8 (a) CIVIL PENALTY.—If the Attorney General is satisfied that a person  
9 has violated section 6903, 6906(c), 6907(a), or 6908 of this title or an  
10 order of the Attorney General under one of those sections, the person is lia-  
11 ble to the United States Government for a civil penalty of \$2,000 for each  
12 violation.

13 (b) PROHIBITION ON COMPROMISE.—The Attorney General may not com-  
14 promise the amount of a civil penalty under this section.

15 **§ 10125. Document fraud**

16 (a) DEFINITION.—In this section, “person”, in addition to its meaning  
17 under section 1 of title 1, includes a governmental authority.

18 (b) VIOLATIONS.—(1) A person may not knowingly—

19 (A) forge, counterfeit, alter, or falsely make a document to satisfy  
20 a requirement of this title;

21 (B) use, attempt to use, possess, obtain, accept, receive, or provide  
22 a forged, counterfeit, altered, or falsely made document to satisfy a re-  
23 quirement of this title;

24 (C) use, provide, or attempt to use or provide, a document lawfully  
25 issued to a person other than the possessor (including a deceased indi-  
26 vidual), to satisfy a requirement of this title; or

27 (D) accept, receive, or provide a document lawfully issued to a per-  
28 son other than the possessor (including a deceased individual), to com-  
29 ply with section 11103 of this title.

30 (2) This subsection does not apply to subchapter I of chapter 5, sub-  
31 chapters I, III, and IV of chapter 131, chapters 133–137, and section  
32 13902 of this title.

33 (c) AUTHORITY IN CONDUCTING INVESTIGATIONS AND HEARINGS.—(1)  
34 In conducting an investigation or hearing under this section—

35 (A) an immigration officer or administrative law judge shall have  
36 reasonable access to examine evidence of a person being investigated;  
37 and

38 (B) an administrative law judge may subpoena, if necessary, the at-  
39 tendance of witnesses and the production of evidence at any designated  
40 place.

1 (2) If a person disobeys a subpoena issued under this subsection, an ap-  
2 propriate district court of the United States, on application by the Attorney  
3 General, may issue an order to comply with the subpoena. The court may  
4 punish a failure to comply with the order of the court as a contempt of  
5 court.

6 (d) HEARINGS.—(1) The Attorney General may issue an order referred  
7 to in subsection (e) of this section against a person for violating subsection  
8 (b) of this section only after notice and an opportunity for a hearing. A  
9 hearing must be requested within a reasonable time (established by the At-  
10 torney General, but at least 30 days) after the date of the notice.

11 (2) If a timely request for a hearing is not made, the Attorney General  
12 may issue an order referred to in subsection (e) of this section without a  
13 hearing.

14 (3) If a timely request for a hearing is made, the hearing shall be con-  
15 ducted by an administrative law judge as provided by section 554 of title  
16 5 at the nearest practicable place to the place where the person resides or  
17 the alleged violation occurred. If the judge finds by a preponderance of the  
18 evidence that the person has violated subsection (b) of this section, the  
19 judge shall—

20 (A) state findings of fact; and

21 (B) issue and have served on the person an order referred to in sub-  
22 section (e) of this section.

23 (e) CEASE AND DESIST ORDERS.—(1) For a violation of subsection (b)  
24 of this section, an order issued under this section shall require the person  
25 to cease and desist from the violation and to pay a civil penalty of—

26 (A) at least \$250, but not more than \$2,000, for each document  
27 used, accepted, or created and each time a document is used, accepted,  
28 or created; or

29 (B) at least \$2,000, but not more than \$5,000, for each document  
30 used, accepted, or created and each time a document is used, accepted,  
31 or created, if the person previously was subject to an order under this  
32 subsection.

33 (2) In applying this subsection, if an entity is composed of distinct, phys-  
34 ically separate subdivisions each of which provides separately for the hiring,  
35 recruiting, or referring for employment, without reference to the practices  
36 of, and not under control of or common control with, another subdivision,  
37 each subdivision is deemed a separate entity.

38 (f) FINALITY OF DECISIONS AND ORDERS.—The decision and order of an  
39 administrative law judge under this section becomes the final decision and  
40 order of the Attorney General unless the Attorney General changes or va-

1 cates the decision and order within 30 days after the date of the decision  
2 and order.

3 (g) JUDICIAL REVIEW.—(1) Except as provided by paragraph (2) of this  
4 subsection, a person adversely affected by a final order under this section  
5 may file a petition for review of the order in the court of appeals for the  
6 appropriate circuit within 45 days after the date the final order is issued.

7 (2) An order of the Attorney General issued without a hearing as pro-  
8 vided by subsection (d)(2) of this section is not appealable.

9 (h) ENFORCEMENT OF ORDER.—If a person does not comply with a final  
10 order issued under this section, the Attorney General shall bring a civil ac-  
11 tion in an appropriate district court of the United States to seek compliance  
12 with the order. The validity and appropriateness of the order may not be  
13 reviewed in the action.

14 (i) INVESTIGATIVE, PROTECTIVE, AND INTELLIGENCE ACTIVITIES NOT  
15 PROHIBITED.—This section does not prohibit—

16 (1) any lawfully authorized investigative, protective, or intelligence  
17 activity of a law enforcement agency of the United States, a State, or  
18 a subdivision of a State or of an intelligence agency of the United  
19 States; or

20 (2) any activity authorized under chapter 224 of title 18.

21 (j) CONSTRUCTION.—This section does not affect a penalty that may be  
22 imposed for an activity prohibited under both this section and title 18.

### 23 **§ 10126. Clearing vessels and aircraft**

24 (a) CLEARANCE BEFORE DECISION ON LIABILITY.—A vessel or aircraft  
25 may be granted clearance before a decision on liability is made under sec-  
26 tion 10112–10117, 10119, 10120, 10123, or 10124 of this title only if a  
27 bond approved by the Attorney General or an amount sufficient to pay the  
28 civil penalty is deposited.

29 (b) PROHIBITION ON CLEARANCE WHEN PENALTY UNPAID.—A vessel or  
30 aircraft may not be granted clearance if a civil penalty imposed under sec-  
31 tion 10112–10117, 10119, 10120, 10123, or 10124 of this title is not paid.

## 32 SUBCHAPTER III—CRIMINAL PENALTIES

### 33 **§ 10141. Violating period of conditional landing permit**

34 An alien crewmember willfully remaining in the United States after the  
35 period allowed by a conditional permit granted under section 2703(b) of this  
36 title shall be fined under title 18, imprisoned for not more than 6 months,  
37 or both.

### 38 **§ 10142. Failure to register and be fingerprinted**

39 An alien required to apply for registration and to be fingerprinted in the  
40 United States and willfully failing to apply or to be fingerprinted, and a  
41 parent or legal guardian required to apply for the registration of an alien

1 and willfully failing to apply, shall be fined under title 18, imprisoned for  
2 not more than 6 months, or both.

3 **§ 10143. Failure to carry a certificate of alien registration or**  
4 **alien registration receipt card**

5 An alien violating section 8103(b) of this title shall be fined under title  
6 18, imprisoned for not more than 30 days, or both.

7 **§ 10144. Failure to provide addresses**

8 An individual violating section 8104 of this title shall be fined under title  
9 18, imprisoned for not more than 30 days, or both.

10 **§ 10145. False and fraudulent registration**

11 An alien, or a parent or legal guardian of an alien, who files an applica-  
12 tion for registration knowing that the application contains a false statement,  
13 or who registers or attempts to register himself, herself, or another individ-  
14 ual through fraud, shall be fined under title 18, imprisoned for not more  
15 than 6 months, or both.

16 **§ 10146. Counterfeiting alien registration documents**

17 A person that with unlawful intent makes an engraving, photograph,  
18 print, impression, or imitation of a certificate of alien registration or an  
19 alien registration receipt card, except when authorized under regulations  
20 prescribed by the Attorney General, shall be fined under title 18, imprisoned  
21 for not more than 5 years, or both.

22 **§ 10147. Bringing in and harboring aliens**

23 (a) CRIMINAL PENALTIES.—(1)(A) A person shall be fined under title 18,  
24 imprisoned for not more than 5 years, or both, if the person—

25 (i) knowing an individual is an alien, brings or attempts to bring the  
26 individual to the United States at a place not designated as a port of  
27 entry or not designated by the Attorney General, even if the alien has  
28 received prior authorization to come to, enter, or reside in the United  
29 States, and regardless of any future official action that may be taken  
30 with respect to the alien;

31 (ii) knowing, or in reckless disregard of whether, an alien has come  
32 to, has entered, or remains in the United States in violation of law,  
33 transports or moves, or attempts to transport or move, the alien within  
34 the United States in furtherance of that violation;

35 (iii) knowing, or in reckless disregard of whether, an alien has come  
36 to, has entered, or remains in the United States in violation of law,  
37 conceals, harbors, or shields from detection, or attempts to conceal,  
38 harbor, or shield from detection, the alien; or

39 (iv) encourages or induces an alien to come to, enter, or reside in  
40 the United States, knowing, or in reckless disregard of whether, the  
41 coming, entering, or residing is unlawful.

1 (B) A separate violation occurs under paragraph (1) of this subsection  
2 for each alien involved in a violation.

3 (2) A person that, knowing, or in reckless disregard of whether, an alien  
4 has not received prior authorization to come to, enter, or reside in the Unit-  
5 ed States (regardless of any future official action that may be taken with  
6 respect to the alien), brings or attempts to bring the alien to the United  
7 States shall be fined under title 18, imprisoned for not more than one year,  
8 or both, for each transaction violating this paragraph without regard to the  
9 number of aliens involved. However, the person shall be fined under title  
10 18, imprisoned for not more than 5 years, or both, if the violation is—

11 (A) a subsequent violation;

12 (B) done for commercial advantage or private financial gain; or

13 (C) one in which the alien is not brought and presented to an immi-  
14 gration officer at a designated port of entry immediately on arrival.

15 (b) SEIZURE AND FORFEITURE OF CONVEYANCE.—(1) A conveyance  
16 used in violating subsection (a) of this section shall be seized and may be  
17 forfeited. However, a conveyance—

18 (A) used by a person as a common carrier in carrying out common  
19 carrier business may be forfeited only if the owner or person in charge  
20 of the conveyance consented to, or was privy to, the violation; and

21 (B) may not be forfeited if the owner establishes that another person  
22 committed the violation when the conveyance was in the possession of  
23 another person in violation of the criminal laws of the United States  
24 or of a State.

25 (2) A conveyance may be seized under this section without a warrant if  
26 there is probable cause to believe it has been or is being used in violating  
27 subsection (a) of this section and circumstances exist in which a warrant  
28 is not required constitutionally.

29 (c) DISPOSITION OF FORFEITED CONVEYANCE.—When a conveyance is  
30 forfeited under this section, the Attorney General may—

31 (1) keep the conveyance for official use;

32 (2) sell the conveyance and shall use the proceeds to pay the ex-  
33 penses of the proceedings for forfeiture and sale, including seizure,  
34 maintenance of custody, advertising, and court costs;

35 (3) require the Administrator of General Services, or the Adminis-  
36 trator of the Maritime Administration if appropriate under section  
37 203(i) of the Federal Property and Administrative Services Act of  
38 1949 (40 U.S.C. 484(i)), to take custody of the conveyance and dispose  
39 of it under law; or

40 (4) dispose of the conveyance under a compromise made by the At-  
41 torney General.

1 (d) PROOF IN FORFEITURE ACTION.—In a civil action brought to forfeit  
2 a conveyance seized under this section, a person claiming the conveyance  
3 has the burden of proof. However, the Attorney General first must show  
4 probable cause in bringing the action. In deciding whether probable cause  
5 exists, each of the following is prima facie evidence that an alien involved  
6 in an alleged violation had not received prior authorization to come to,  
7 enter, or reside in the United States or had come to, entered, or remained  
8 in the United States unlawfully:

9 (1) a record of a judicial or administrative proceeding in which the  
10 alien's status was an issue and in which it was decided that the alien  
11 had not received prior authorization to come to, enter, or reside in the  
12 United States or had come to, entered, or remained in the United  
13 States unlawfully.

14 (2) official records of the Immigration and Naturalization Service or  
15 the Department of State showing that the alien had not received prior  
16 authorization to come to, enter, or reside in the United States or had  
17 come to, entered, or remained in the United States unlawfully.

18 (3) testimony by an immigration officer, having personal knowledge  
19 about the alien's status, that the alien had not received prior authoriza-  
20 tion to come to, enter, or reside in the United States or had come to,  
21 entered, or remained in the United States unlawfully.

22 (e) APPLICATION OF LAWS RELATED TO SEIZURES AND FORFEITURES  
23 FOR VIOLATING CUSTOMS LAWS.—Laws related to the seizure, forfeiture,  
24 and condemnation of property for violating the customs laws, disposition of  
25 the property or the proceeds of sale of the property, compromise of the for-  
26 feiture or a related claim, and award of compensation to an informer be-  
27 cause of the forfeiture apply to a seizure or forfeiture under this section  
28 if not inconsistent with this section. However, duties and powers of persons  
29 in seizing and forfeiting property under the customs laws shall be carried  
30 out by persons the Attorney General authorizes to conduct a seizure or for-  
31 feiture under this section.

32 (f) INDIVIDUALS AUTHORIZED TO MAKE ARRESTS.—Only officers and  
33 employees of the Service designated by the Attorney General, individually  
34 or by class, and other officers and employees who enforce criminal laws,  
35 may make arrests for a violation of this section.

36 **§ 10148. Improper entry of aliens**

37 (a) CRIMINAL OFFENSES.—An alien shall be punished as provided by  
38 subsection (b) of this section if the alien—

39 (1) enters or attempts to enter the United States—

40 (A) at a time or place not designated by an immigration officer;

41 or

1 (B) by a willfully false or misleading representation or the will-  
2 ful concealment of a material fact; or

3 (2) eludes inspection or examination by an immigration officer.

4 (b) CRIMINAL PENALTIES.—An alien violating subsection (a) of this sec-  
5 tion shall be—

6 (1) fined under title 18, imprisoned for not more than 6 months, or  
7 both, for a first violation; and

8 (2) fined under title 18, imprisoned for not more than 2 years, or  
9 both, for a subsequent violation.

10 (c) VENUE.—A proceeding under this section may be brought in any judi-  
11 cial district in which the violation occurs or in which the alien is appre-  
12 hended.

13 **§ 10149. Reentry of deported aliens**

14 (a) CRIMINAL PENALTY.—(1) Except as otherwise provided by this sec-  
15 tion, an alien who has been arrested and deported or excluded and deported  
16 and then enters, attempts to enter, or is found in the United States shall  
17 be fined under title 18, imprisoned for not more than 2 years, or both.

18 (2) If the alien's deportation followed conviction of a felony (except an  
19 aggravated felony) and the alien enters, attempts to enter, or is found in  
20 the United States after November 17, 1988, the alien shall be fined under  
21 title 18, imprisoned for not more than 5 years, or both.

22 (3) If the alien's deportation followed conviction of an aggravated felony  
23 and the alien enters, attempts to enter, or is found in the United States  
24 after November 17, 1988, the alien shall be fined under title 18, imprisoned  
25 for not more than 15 years, or both.

26 (b) NONAPPLICATION.—Subsection (a) of this section does not apply to  
27 an alien—

28 (1) when the Attorney General specifically consents to the alien's  
29 reapplying for admission before the alien—

30 (A) reboards at a place outside the United States; or

31 (B) applies for admission from a foreign territory contiguous to  
32 the United States; or

33 (2) previously excluded and deported who establishes that prior con-  
34 sent by the Attorney General is not required under this title or other  
35 prior law.

36 (c) VENUE.—A proceeding under this section may be brought in any judi-  
37 cial district in which the violation occurs or in which the alien is appre-  
38 hended.

1 **§ 10150. Assisting certain excludable aliens to enter the**  
2 **United States**

3 A person knowingly assisting or conspiring to assist an alien to enter the  
4 United States shall be fined under title 18, imprisoned for not more than  
5 10 years, or both, if—

- 6 (1)(A) the alien is excludable under section 6307(a)(1)–(5) and (7)  
7 of this title because of an aggravated felony; and  
8 (B) the assistance occurred after November 17, 1988; or  
9 (2) the alien is excludable under section 6308 of this title.

10 **§ 10151. Importing aliens for immoral purposes**

11 (a) CRIMINAL PENALTY.—A person shall be fined under title 18, impris-  
12 oned for not more than 10 years, or both, if the person—

- 13 (1) imports or attempts to import an alien into the United States  
14 for prostitution or another immoral purpose; or  
15 (2) holds, attempts to hold, maintains, controls, supports, employs,  
16 or harbors an alien in furthering an importation violating clause (1)  
17 of this subsection.

18 (b) VENUE.—A proceeding under this section may be brought in any judi-  
19 cial district into which the alien is brought in violation of this section or  
20 in which a violation of this section occurs.

21 (c) TESTIMONY OF SPOUSE.—Testimony of a spouse is admissible and is  
22 competent evidence in a proceeding under this section.

23 **§ 10152. Violation of supervision pending deportation**

24 An alien willfully violating a requirement imposed under section 6536(d)  
25 of this title, including giving false information in response to such a require-  
26 ment, shall be fined under title 18, imprisoned for not more than one year,  
27 or both.

28 **§ 10153. Willful failure to leave the United States**

29 (a) CRIMINAL PENALTY.—An alien against whom the Attorney General  
30 has issued a final order of deportation because of any ground described by  
31 sections 6506–6509 of this title shall be fined under title 18, imprisoned  
32 for not more than 10 years, or both, if the alien—

- 33 (1) willfully does not—  
34 (A) leave the United States within the 6-month period that be-  
35 gins on the latest of—  
36 (i) the date of the Attorney General’s final order;  
37 (ii) if judicial review occurs, the date of the court’s final  
38 order; or  
39 (iii) if section 6536(f) of this title applies, the date on  
40 which the Attorney General decides that the alien has reen-  
41 tered the United States unlawfully;

1 (B) apply timely in good faith for a document the alien needs  
2 to leave the United States; or

3 (C) appear for deportation at the time and place the Attorney  
4 General requires under the order of deportation; or

5 (2) takes an action to prevent or hamper, or conspire to prevent or  
6 hamper, the alien from leaving the United States under the deportation  
7 order.

8 (b) ATTEMPTED RELIEF NOT PROHIBITED.—Subsection (a) of this sec-  
9 tion does not prohibit an alien from trying to obtain—

10 (1) a cancellation of the deportation order;

11 (2) an exemption from the deportation order; or

12 (3) a release from incarceration or custody.

13 (c) SUSPENSION OF SENTENCE AND RELEASE.—(1) For good cause, the  
14 court sentencing an alien convicted of violating subsection (a) of this section  
15 may suspend the sentence and order the alien released on conditions the  
16 court prescribes.

17 (2) In deciding whether good cause exists for releasing an alien under  
18 paragraph (1) of this subsection, the court shall consider factors such as—

19 (A) the age, health, and period of detention of the alien;

20 (B) the effect of the alien's release on the security of the United  
21 States and public peace or safety;

22 (C) the likelihood that the alien will resume or follow a course of  
23 conduct that made or would make the alien deportable;

24 (D) efforts the alien or a representative of a country to which the  
25 alien is ordered deported makes to expedite the alien's leaving the  
26 United States;

27 (E) the reason why the United States Government cannot obtain a  
28 passport or other travel document or deportation facilities from a coun-  
29 try to which the alien is ordered deported; and

30 (F) the eligibility of the alien for discretionary release under the im-  
31 migration laws.

32 **§ 10154. Marriage to evade immigration laws**

33 (a) CRIMINAL PENALTY.—An individual who knowingly marries to evade  
34 the immigration laws shall be fined under title 18, imprisoned for not more  
35 than 5 years, or both.

36 (b) VENUE.—A proceeding under this section may be brought in any judi-  
37 cial district in which the violation occurs or in which the individual is appre-  
38 hended.

1 **§ 10155. Misrepresentations in applications for change of**  
 2 **status**

3 An individual knowingly and willfully making a material misrepresenta-  
 4 tion in an application or supporting document filed under section 9303 of  
 5 this title, or making or using a false document in connection with the appli-  
 6 cation, shall be fined under title 18, imprisoned for not more than 5 years,  
 7 or both.

8 **§ 10156. Disclosing confidential information in applications**

9 An individual violating section 9308(b) of this title shall be fined under  
 10 title 18, imprisoned for not more than 5 years, or both.

11 **§ 10157. Establishing a commercial enterprise to evade im-**  
 12 **migration laws**

13 (a) CRIMINAL PENALTY.—An individual who knowingly establishes a  
 14 commercial enterprise to evade the immigration laws shall be fined under  
 15 title 18, imprisoned for not more than 5 years, or both.

16 (b) VENUE.—A proceeding under this section may be brought in any judi-  
 17 cial district in which the violation occurs or in which the individual is appre-  
 18 hended.

19 **SUBTITLE III—UNLAWFUL EMPLOYMENT**  
 20 **PRACTICES**

CHAPTER	Sec.
111. UNLAWFUL EMPLOYMENT OF ALIENS .....	11101
113. IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES .....	11301

21 **CHAPTER 111—UNLAWFUL EMPLOYMENT OF ALIENS**

Sec.
11101. Definitions.
11102. Employment of unauthorized aliens.
11103. Employment verification system.
11104. Evaluating and changing employment verification system.
11105. Compliance.
11106. Criminal penalties and civil actions for pattern or practice violations.
11107. Indemnity prohibition.
11108. Conspicuous statement requirement.
11109. Preemption of State and local law.

22 **§ 11101. Definitions**

23 In this chapter—

24 (1) “person”, in addition to its meaning under section 1 of title 1,  
 25 includes a governmental authority.

26 (2) “unauthorized alien” means, with respect to employment at a  
 27 particular time, an alien who is not at that time—

28 (A) lawfully admitted for permanent residence; or

29 (B) authorized to be employed in that employment by this title  
 30 or by the Attorney General.

31 **§ 11102. Employment of unauthorized aliens**

32 (a) PROHIBITIONS.—(1) A person—

1 (A) may not hire, or recruit or refer for a fee, for employment in  
2 the United States an alien knowing the alien is an unauthorized alien;

3 (B) may not hire for employment in the United States an individual  
4 without complying with section 11103 of this title; or

5 (C) if the person is an agricultural association, agricultural em-  
6 ployer, or farm labor contractor (as defined by section 3 of the Migrant  
7 and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802)),  
8 may not recruit or refer for a fee for employment in the United States  
9 an individual without complying with section 11103 of this title.

10 (2) A person may not continue to employ in the United States an alien  
11 knowing the alien is an unauthorized alien.

12 (b) USE OF LABOR THROUGH CONTRACT.—A person violates subsection  
13 (a)(1)(A) of this section if the person uses a contract or exchange that is  
14 made, renegotiated, or extended after November 6, 1986, to obtain the labor  
15 of an alien in the United States, knowing the alien is an unauthorized alien.

16 (c) DEFENSE.—Good faith compliance with section 11103 of this title is  
17 an affirmative defense under subsection (a)(1)(A) of this section.

18 (d) STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of  
19 subsections (a)(1)(B) and (C) and (c) of this section, a person hiring an  
20 individual referred by a State employment agency (as defined by the Attor-  
21 ney General) is deemed to have complied with section 11103 of this title  
22 if the person has and retains (for the period and in the way described by  
23 section 11103(c)) appropriate documentation of the referral certifying that  
24 the agency complied with section 11103 for that individual.

25 (e) NONAPPLICATION.—(1) Subsection (a)(1) of this section does not  
26 apply to hiring, recruiting, or referring that occurred before November 6,  
27 1986.

28 (2) Subsection (a)(2) of this section does not apply to continuing employ-  
29 ment of an alien hired before November 6, 1986.

30 (f) TEMPORARY PROVISIONS.—(1) The Attorney General may not con-  
31 duct a proceeding or issue an order under this chapter for a violation al-  
32 leged to have occurred during the period from December 1, 1986, through  
33 May 31, 1987.

34 (2) If the Attorney General has reason to believe that a person has com-  
35 mitted a first violation of this section during the period from June 1, 1987,  
36 through May 31, 1988, the Attorney General—

37 (A) shall issue a citation to the person; and

38 (B) may not conduct a proceeding or issue an order for the violation.

39 (3) In applying paragraphs (1) and (2) of this subsection when an alien  
40 is deemed to be employed in the United States under this chapter as pro-  
41 vided by section 8704 of title 46—

1 (A) in paragraph (1), substitute “August 1, 1988, through January  
2 31, 1989” for “December 1, 1986, through May 31, 1987”; and

3 (B) in paragraph (2), substitute “February 1, 1989, through Janu-  
4 ary 31, 1990” for “June 1, 1987, through May 31, 1988”.

5 **§ 11103. Employment verification system**

6 (a) ATTESTATION AFTER EXAMINING DOCUMENTS.—(1) A person hiring,  
7 or recruiting or referring for a fee, an individual for employment in the  
8 United States must attest, under penalty of perjury and on a form pre-  
9 scribed by the Attorney General, that the person has verified that the indi-  
10 vidual is not an unauthorized alien by examining—

11 (A) a document specified in paragraph (3) of this subsection; or

12 (B)(i) a document specified in paragraph (4) of this subsection; and

13 (ii) a document specified in paragraph (5) of this subsection.

14 (2) A person has examined a document as required by paragraph (1) of  
15 this subsection if the person has found that the document reasonably ap-  
16 pears on its face to be genuine. The person is not required to request, and  
17 the individual is not required to provide, another document if the individual  
18 has provided a document or combination of documents complying with para-  
19 graph (1) that reasonably appear on their face to be genuine.

20 (3) A document required under paragraph (1)(A) of this subsection is an  
21 individual’s—

22 (A) United States passport;

23 (B) certificate of United States citizenship;

24 (C) certificate of naturalization;

25 (D) unexpired foreign passport, if the passport has an appropriate,  
26 unexpired endorsement of the Attorney General authorizing the individ-  
27 ual’s employment in the United States; or

28 (E) resident alien card or other alien registration card, if the card—

29 (i) contains the individual’s photograph or other identifying in-  
30 formation the Attorney General prescribes by regulation as accept-  
31 able; and

32 (ii) is evidence of authorization of employment in the United  
33 States.

34 (4) A document required under paragraph (1)(B)(i) of this subsection is  
35 an individual’s—

36 (A) social security account number card (unless it states on its face  
37 that issuance of the card does not authorize employment in the United  
38 States);

39 (B) certificate of birth in the United States or establishing United  
40 States nationality at birth, if the certificate is acceptable under regula-  
41 tions prescribed by the Attorney General; or

1 (C) other documentation providing authorization of employment in  
2 the United States that the Attorney General prescribes by regulation  
3 as acceptable.

4 (5) A document required under paragraph (1)(B)(ii) of this subsection is  
5 an individual's—

6 (A) driver's license or similar document issued for identification by  
7 a State, if it contains the individual's photograph or other identifying  
8 information the Attorney General prescribes by regulation as accept-  
9 able; or

10 (B) for an individual less than 16 years of age or in a State that  
11 does not issue an identification document other than a driver's license,  
12 documentation of personal identity that the Attorney General pre-  
13 scribes by regulation as providing a reliable means of identification.

14 (b) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The  
15 individual must attest, under penalty of perjury and on the form prescribed  
16 under subsection (a) of this section, that the individual is—

17 (1) a national of the United States;

18 (2) an alien lawfully admitted for permanent residence; or

19 (3) an alien authorized by this title or by the Attorney General to  
20 be hired, recruited, or referred for the employment.

21 (c) RETENTION OF VERIFICATION FORM.—After the form is completed  
22 as provided by subsections (a) and (b) of this section, the person must re-  
23 tain the form and make it available for inspection by officers and employees  
24 of the Immigration and Naturalization Service, the Special Counsel for Im-  
25 migration-Related Unfair Employment Practices, and the Secretary of  
26 Labor during a period beginning on the date of the hiring, recruiting, or  
27 referral and ending—

28 (1) if the individual is recruited or referred for a fee but not hired,  
29 3 years after the date of the recruiting or referral; or

30 (2) if the individual is hired, 3 years after the date of hire or one  
31 year after the date the employment ends, whichever is later.

32 (d) COPYING DOCUMENTATION.—A person may copy a document pre-  
33 sented by an individual under this section and retain the copy, but only (ex-  
34 cept as otherwise permitted by law) to comply with this section.

35 (e) LIMITATION ON USE OF FORMS.—A form completed under this sec-  
36 tion, and information contained in or appended to the form, may be used  
37 only to enforce this title and sections 1001, 1028, 1546, and 1621 of title  
38 18.

39 (f) NATIONAL IDENTIFICATION CARD NOT AUTHORIZED.—This chapter  
40 does not authorize the establishment, issuance, or use of a national identi-  
41 fication card.

1 **§ 11104. Evaluating and changing employment verification**  
2 **system**

3 (a) DEFINITION.—In this section, “major change” means a change that  
4 would—

5 (1) require an individual to present a new card or other document  
6 (designed specifically to verify employment eligibility) at the time of  
7 hiring, recruitment, or referral;

8 (2) provide for a telephone verification system under which—

9 (A) an employer, recruiter, or referrer must give an officer or  
10 employee of the United States Government information about the  
11 immigration status of a prospective employee; and

12 (B) the officer or employee of the Government gives the em-  
13 ployer, recruiter, or referrer a verification code that the employer,  
14 recruiter, or referrer must record; or

15 (3) require a change in a card used for accounting under the Social  
16 Security Act (42 U.S.C. 301 et seq.), including a change requiring that  
17 the only social security account number card that may be presented to  
18 comply with section 11103(a)(4)(A) of this title is a card in a counter-  
19 feit-resistant form consistent with section 205(c)(2)(F) (last sentence)  
20 of the Social Security Act (42 U.S.C. 405(c)(2)(F) (last sentence)).

21 (b) PRESIDENTIAL MONITORING AND IMPROVEMENTS.—(1) The Presi-  
22 dent shall—

23 (A) provide for monitoring and evaluating the degree to which the  
24 employment verification system under section 11103 of this title pro-  
25 vides a secure system to verify employment eligibility in the United  
26 States; and

27 (B) examine the suitability of using existing Government and State  
28 identification systems to verify employment eligibility in the United  
29 States.

30 (2) To the extent the President finds the system is not a secure system  
31 to verify employment eligibility in the United States, the President shall  
32 make changes in and additions to the system necessary to establish a secure  
33 system to verify employment eligibility in the United States—

34 (A) subject to subsections (c)–(f) of this section; and

35 (B) after considering the results of any demonstration project con-  
36 ducted under subsection (g) of this section.

37 (c) CHANGE REQUIREMENTS.—A change proposed by the President  
38 under subsection (b) of this section must be designed so that the system,  
39 as changed, will meet the following requirements:

40 (1) The system must be able to verify reliably whether—

1 (A) an individual with the identity claimed by an employee or  
2 prospective employee is eligible to work; and

3 (B) the employee or prospective employee is claiming the iden-  
4 tity of another individual.

5 (2) If the system requires that a document be presented to or exam-  
6 ined by an employer, the document must be in a form resistant to  
7 counterfeiting and tampering.

8 (3) Personal information used by the system may be made available  
9 only to the extent necessary to verify that an individual is not an unau-  
10 thorized alien.

11 (4) The system must protect the privacy and security of personal in-  
12 formation and identifiers used in the system.

13 (5) A verification that an individual is eligible to be employed in the  
14 United States may be withheld or revoked only if the individual is an  
15 unauthorized alien.

16 (6) The system may not be used for law enforcement, except to en-  
17 force this title and sections 1001, 1028, 1546, and 1621 of title 18.

18 (7) If the system requires an individual to present a new card or  
19 other document (designed specifically to verify employment eligibility)  
20 at the time of hiring, recruitment, or referral, the document may not  
21 be required to be presented for another purpose (except under this title  
22 or for enforcement of sections 1001, 1028, 1546, and 1621 of title 18)  
23 or to be carried on the individual.

24 (d) NOTICES TO CONGRESS BEFORE MAKING CHANGES.—(1) Before car-  
25 rying out a change, the President must submit a written report of the pro-  
26 posed change to the Committees on the Judiciary of the Senate and the  
27 House of Representatives. If the President proposes a change affecting so-  
28 cial security account number cards, the President also shall submit the re-  
29 port to the Committee on Finance of the Senate and the Committee on  
30 Ways and Means of the House of Representatives. A report under this para-  
31 graph shall include recommendations for civil and criminal penalties for un-  
32 authorized use or disclosure of the information or identifiers used in the sys-  
33 tem. The report shall be submitted at least—

34 (A) 60 days before the date the change is to be carried out if the  
35 change is not a major change;

36 (B) one year before the date the change is to be carried out if the  
37 change is a major change as defined by subsection (a)(3) of this sec-  
38 tion; or

39 (C) 2 years before the date the change is to be carried out if the  
40 change is a major change as defined by subsection (a)(1) or (2) of this  
41 section.

1 (2) The President shall publish promptly in the Federal Register the sub-  
2 stance of a major change reported to Congress under this subsection.

3 (e) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—(1) The Committees  
4 on the Judiciary of the Senate and the House of Representatives shall—

5 (A) publish in the Congressional Record the substance of a major  
6 change submitted by the President under subsection (d) of this section;

7 (B) hold hearings on the feasibility and desirability of the change;  
8 and

9 (C) within the 2-year period before the change is to be carried out,  
10 report to their respective Houses findings on whether the change  
11 should be made.

12 (2) A major change may be carried out only if an amount is appropriated  
13 by law specifically to carry out the change.

14 (f) PAYMENT OF COSTS.—Costs incurred under this section in developing  
15 and carrying out a change described by subsection (a)(3) of this section may  
16 not be paid out of a trust fund established under the Social Security Act  
17 (42 U.S.C. 301 et seq.).

18 (g) DEMONSTRATION PROJECTS.—The President may undertake dem-  
19 onstration projects consistent with subsection (c) of this section of different  
20 changes in the system. A project may not be for more than 3 years. The  
21 President shall report to Congress on the results of each project conducted  
22 under this subsection.

### 23 **§ 11105. Compliance**

24 (a) COMPLAINTS AND INVESTIGATIONS.—The Attorney General shall es-  
25 tablish procedures for—

26 (1) a person to file a written, signed complaint of a violation of sec-  
27 tion 11102 or 11107(a) of this title;

28 (2) investigating a complaint that, on its face, has a substantial  
29 probability of validity;

30 (3) investigating other violations of section 11102 or 11107(a) of  
31 this title that the Attorney General considers appropriate; and

32 (4) designating a unit in the Immigration and Naturalization Service  
33 that has, as its primary duty, the prosecution under this section of vio-  
34 lations of section 11102 or 11107(a) of this title.

35 (b) AUTHORITY IN CONDUCTING INVESTIGATIONS AND HEARINGS.—(1)  
36 In conducting an investigation or hearing under this section—

37 (A) the immigration officer or administrative law judge conducting  
38 the investigation or hearing shall have reasonable access to examine  
39 evidence of a person being investigated; and

1 (B) the administrative law judge may subpoena, if necessary, the at-  
2 tendance of witnesses and the production of evidence at any designated  
3 place.

4 (2) If a person disobeys a subpoena issued under this subsection, an ap-  
5 propriate district court of the United States, on application by the Attorney  
6 General, may issue an order to comply with the subpoena. The court may  
7 punish a failure to comply with the order of the court as a contempt of  
8 court.

9 (c) HEARINGS.—(1) The Attorney General may issue an order referred  
10 to in subsections (d)–(f) of this section against a person for violating section  
11 11102 or 11107(a) of this title only after notice and an opportunity for a  
12 hearing. A hearing must be requested within a reasonable time (established  
13 by the Attorney General, but at least 30 days) after the date of the notice.

14 (2) If a timely request for a hearing is not made, the Attorney General  
15 may issue an order referred to in subsections (d)–(f) of this section without  
16 a hearing.

17 (3) If a timely request for a hearing is made, the hearing shall be con-  
18 ducted by an administrative law judge as provided by section 554 of title  
19 5 at the nearest practicable place to the place where the person resides or  
20 the alleged violation occurred. If the judge finds by a preponderance of the  
21 evidence that the person has violated section 11102 or 11107(a) of this title,  
22 the judge shall—

23 (A) state findings of fact; and

24 (B) issue and have served on the person an order referred to in sub-  
25 sections (d)–(f) of this section.

26 (d) ORDERS INVOLVING HIRING, RECRUITING, AND REFERRAL VIOLA-  
27 TIONS.—(1) For a violation of section 11102(a)(1)(A) or (2) of this title,  
28 an order issued under this section—

29 (A) shall require the person to cease and desist from the violation  
30 and to pay a civil penalty of—

31 (i) at least \$250, but not more than \$2,000, for each unauthor-  
32 ized alien involved in the violation;

33 (ii) at least \$2,000, but not more than \$5,000, for each unau-  
34 thorized alien involved in the violation if the person previously was  
35 subject to one order under this subsection; or

36 (iii) at least \$3,000, but not more than \$10,000, for each unau-  
37 thorized alien involved in the violation if the person previously was  
38 subject to more than one order under this subsection; and

39 (B) may require the person—

1 (i) to comply for not more than 3 years with section 11103 of  
2 this title or, if applicable, with section 11104 of this title, for indi-  
3 viduals hired or recruited or referred for a fee; and

4 (ii) to take other appropriate remedial action.

5 (2) In applying this subsection, if an entity is composed of distinct, phys-  
6 ically separate subdivisions each of which provides separately for the hiring,  
7 recruiting, or referring for employment, without reference to the practices  
8 of, and not under control of or common control with, another subdivision,  
9 each subdivision is deemed a separate entity.

10 (e) ORDERS INVOLVING PAPERWORK VIOLATIONS.—For a violation of  
11 section 11102(a)(1)(B) or (C) of this title, an order issued under this sec-  
12 tion shall require the person to pay a civil penalty of at least \$100, but not  
13 more than \$1,000, for each individual about whom the violation occurred.  
14 In deciding on the amount of the penalty, consideration shall be given to—

15 (1) the size of the business of the person;

16 (2) the good faith of the person;

17 (3) the seriousness of the violation;

18 (4) whether the individual was an unauthorized alien; and

19 (5) any history of prior violations.

20 (f) ORDERS INVOLVING INDEMNITY VIOLATIONS.—For a violation of sec-  
21 tion 11107(a) of this title, an order issued under this section may provide  
22 for the penalty described by section 11107(b) of this title.

23 (g) FINALITY OF DECISIONS AND ORDERS.—The decision and order of  
24 an administrative law judge under this section become the final decision and  
25 order of the Attorney General unless the Attorney General changes or va-  
26 cates the decision and order within 30 days after the date of the decision  
27 and order. The Attorney General may not delegate the Attorney General's  
28 authority under this subsection to a person having review authority over im-  
29 migration-related matters.

30 (h) JUDICIAL REVIEW.—(1) Except as provided by paragraph (2) of this  
31 subsection, a person adversely affected by a final order imposing a civil pen-  
32 alty under this section may file a petition for review of the order in the  
33 court of appeals for the appropriate circuit within 45 days after the date  
34 the final order is issued.

35 (2) An order of the Attorney General issued without a hearing as pro-  
36 vided by subsection (c)(2) of this section is not appealable.

37 (i) ENFORCEMENT OF ORDERS.—If a person does not comply with a final  
38 order issued under this section, the Attorney General shall bring a civil ac-  
39 tion in an appropriate district court of the United States to seek compliance  
40 with the order. The validity and appropriateness of the order may not be  
41 reviewed in the action.

1 **§ 11106. Criminal penalties and civil actions for pattern or**  
 2 **practice violations**

3 (a) CRIMINAL PENALTY.—A person engaging in a pattern or practice of  
 4 violations of section 11102(a)(1)(A) or (2) of this title shall be fined not  
 5 more than \$3,000 for each unauthorized alien involved in a violation (not-  
 6 withstanding the provisions of title 18 on the amount of fines), imprisoned  
 7 for not more than 6 months for the entire pattern or practice, or both.

8 (b) CIVIL ACTIONS.—If the Attorney General has reason to believe that  
 9 a person is engaged in a pattern or practice of employment, recruitment,  
 10 or referral in violation of section 11102(a)(1)(A) or (2) of this title, the At-  
 11 torney General may bring a civil action in the appropriate district court of  
 12 the United States for relief the Attorney General considers necessary.

13 **§ 11107. Indemnity prohibition**

14 (a) GENERAL.—A person hiring, recruiting, or referring an individual for  
 15 employment may not require the individual to post a bond or security, to  
 16 pay or agree to pay an amount, or to give another financial guarantee or  
 17 indemnity, against potential liability arising under this chapter related to  
 18 the hiring, recruiting, or referral.

19 (b) CIVIL PENALTY.—After notice and an opportunity for a hearing  
 20 under section 11105 of this title, a person found to have violated subsection  
 21 (a) of this section—

22 (1) is liable to the United States Government for a civil penalty of  
 23 \$1,000; and

24 (2) may be ordered administratively to return any amount received  
 25 in violation of subsection (a) of this section to the individual or, if the  
 26 individual cannot be located, to pay that amount to the general fund  
 27 of the Treasury.

28 **§ 11108. Conspicuous statement requirement**

29 In providing for the documentation or endorsement of authorization for  
 30 employment in the United States for an alien (except an alien lawfully ad-  
 31 mitted for permanent residence), the Attorney General shall provide that a  
 32 limitation on the period or type of employment or employer be stated con-  
 33 spicuously on the documentation or endorsement.

34 **§ 11109. Preemption of State and local law**

35 This chapter preempts State and local law imposing a civil or criminal  
 36 penalty (except through licensing and similar laws) on a person employing,  
 37 or recruiting or referring for a fee for employment, an unauthorized alien.

38 **CHAPTER 113—IMMIGRATION-RELATED UNFAIR**  
 39 **EMPLOYMENT PRACTICES**

Sec.

11301. Definitions.

11302. Immigration-related unfair employment practices.

- 11303. Special Counsel for Immigration-Related Unfair Employment Practices.
- 11304. Filing charges of unfair practices.
- 11305. Investigating charges and filing complaints.
- 11306. Hearings on complaints.
- 11307. Authority in conducting investigations and hearings.
- 11308. Orders of administrative law judges.
- 11309. Judicial review of final orders.
- 11310. Judicial enforcement of administrative orders.
- 11311. Attorney fees.
- 11312. Certain agency authority not affected.

1 **§ 11301. Definitions**

2 In this chapter—

3 (1) “protected individual”—

4 (A) means an individual who is—

5 (i) a national of the United States; or

6 (ii) an alien lawfully admitted for permanent residence,  
7 lawfully admitted for temporary residence under section 9302  
8 of this title or section 210(a) or 210A(a) of the Immigration  
9 and Nationality Act (66 Stat. 163), admitted as a refugee  
10 under section 5105 of this title, or granted asylum under sec-  
11 tion 5106 of this title; but

12 (B) does not include an alien who—

13 (i) did not apply for naturalization within 6 months after  
14 first becoming eligible (because of a period of lawful perma-  
15 nent residence) to apply, or, if later, before May 7, 1987; or

16 (ii) timely applied but was not naturalized within 2 years  
17 after applying (excluding time taken by the Immigration and  
18 Naturalization Service in processing the application), unless  
19 the alien establishes that the alien is actively pursuing natu-  
20 ralization.

21 (2) “person”, in addition to its meaning under section 1 of title 1,  
22 includes a governmental authority.

23 **§ 11302. Immigration-related unfair employment practices**

24 (a) IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES.—It is an  
25 immigration-related unfair employment practice for a person—

26 (1) to discriminate against an individual (except an unauthorized  
27 alien as defined by section 11101(2) of this title) in hiring, or recruit-  
28 ing or referring for employment for a fee, the individual or discharging  
29 the individual from employment because of the individual’s national ori-  
30 gin or, if the individual is a protected individual, because of the individ-  
31 ual’s citizenship status; or

32 (2) after November 28, 1990, to intimidate, threaten, coerce, or re-  
33 taliate against an individual—

34 (A) for the purpose of interfering with a right or privilege under  
35 this chapter; or

1 (B) because the individual intends to file or has filed a charge  
 2 or complaint or assisted or participated in an investigation or pro-  
 3 ceeding under this chapter.

4 (b) CERTAIN DOCUMENT PRACTICES AS BEING UNFAIR.—After Novem-  
 5 ber 28, 1990, it is deemed to be an immigration-related unfair employment  
 6 practice under subsection (a)(1) of this section related to the hiring of an  
 7 individual, for a person to request, to satisfy the requirements of section  
 8 11103 of this title, more or different documents than are required under  
 9 section 11103 or to refuse to honor a document that on its face reasonably  
 10 appears to be genuine.

11 (c) NONAPPLICATION.—Subsection (a)(1) of this section does not apply  
 12 to—

13 (1) a person employing fewer than 4 employees;  
 14 (2) discrimination by a person because of an individual's national or-  
 15 igin if the discrimination by that person against that individual is cov-  
 16 ered by section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-  
 17 2); or

18 (3) discrimination because of citizenship status that is—

19 (A) required to comply with a law, a regulation, or an executive  
 20 order;

21 (B) required by a contract of the United States Government or  
 22 a State or local government; or

23 (C) found by the Attorney General to be essential for an em-  
 24 ployer to do business with an agency of the Government or a State  
 25 or local government.

26 (d) PREFERENCE FOR EQUALLY QUALIFIED NATIONALS.—It is not an  
 27 immigration-related unfair employment practice for a person to hire, recruit,  
 28 or refer an individual who is a national of the United States instead of an  
 29 individual who is an alien if both individuals are equally qualified.

30 **§ 11303. Special Counsel for Immigration-Related Unfair**  
 31 **Employment Practices**

32 (a) APPOINTMENT.—The President shall appoint, by and with the advice  
 33 and consent of the Senate, a Special Counsel for Immigration-Related Un-  
 34 fair Employment Practices. The Special Counsel serves in the Department  
 35 of Justice for a term of 4 years. When the position is vacant, the President  
 36 may designate an officer or employee of the United States Government to  
 37 act as Special Counsel during the vacancy.

38 (b) DUTIES AND POWERS.—The Special Counsel shall carry out the du-  
 39 ties and powers given the Special Counsel under this chapter.

40 (c) DISSEMINATION OF INFORMATION.—(1) In cooperation with the  
 41 Chairman of the Equal Employment Opportunity Commission, the Secretary

1 of Labor, and the Administrator of the Small Business Administration, the  
2 Special Counsel shall conduct a campaign—

3 (A) to disseminate information on the rights and remedies prescribed  
4 under this chapter and title VII of the Civil Rights Act of 1964 (42  
5 U.S.C. 2000e et seq.) related to immigration-related unfair employment  
6 practices; and

7 (B) to increase the knowledge of employers, employees, and the pub-  
8 lic about employer and employee rights, responsibilities, and remedies  
9 under this chapter and title VII.

10 (2) To carry out this subsection, the Special Counsel—

11 (A) to the extent considered appropriate and subject to the availabil-  
12 ity of appropriations, may make contracts with public and private orga-  
13 nizations for outreach activities under the campaign; and

14 (B) shall consult with the Chairman, the Secretary, and the heads  
15 of other appropriate departments, agencies, and instrumentalities of  
16 the United States Government.

17 (3) Not more than \$10,000,000 may be appropriated for each fiscal year  
18 to carry out this subsection.

19 (d) COMPENSATION.—The Special Counsel is entitled to a rate of pay  
20 that is not more than the rate for GS-17.

21 (e) REGIONAL OFFICES.—Under regulations prescribed by the Attorney  
22 General, the Special Counsel shall establish regional offices necessary to  
23 carry out the duties and powers of the Special Counsel.

24 **§ 11304. Filing charges of unfair practices**

25 (a) FILING CHARGES.—(1) Except as provided by subsection (c) of this  
26 section, a charge of an immigration-related unfair employment practice may  
27 be filed with the Special Counsel for Immigration-Related Unfair Employ-  
28 ment Practices by—

29 (A) a person alleging to be adversely affected directly by the practice,  
30 or by another person for that person; or

31 (B) an officer of the Immigration and Naturalization Service alleging  
32 that the practice has occurred or is occurring.

33 (2) A charge filed under this subsection must be in writing and under  
34 oath and contain information the Attorney General requires.

35 (b) SERVICE OF NOTICE OF CHARGES.—The Special Counsel shall serve  
36 a notice of a charge filed under subsection (a) of this section (including the  
37 date, place, and circumstances of the alleged practice) on the person alleged  
38 to have committed the practice. The notice shall be served by certified mail  
39 not later than 10 days after the charge is filed.

40 (c) LIMITATIONS ON FILING CHARGES.—A charge of an immigration-re-  
41 lated unfair employment practice involving discrimination because of na-

1 tional origin may not be filed under this section if a charge of that practice  
2 based on the same set of facts has been filed with the Equal Employment  
3 Opportunity Commission under title VII of the Civil Rights Act of 1964 (42  
4 U.S.C. 2000e et seq.), unless the charge is dismissed as being outside the  
5 scope of title VII. A charge about an employment practice may not be filed  
6 with the Equal Employment Opportunity Commission under title VII if a  
7 charge about that practice based on the same set of facts has been filed  
8 under this section, unless the charge is dismissed as being outside the scope  
9 of this chapter.

10 **§ 11305. Investigating charges and filing complaints**

11 (a) SPECIAL COUNSEL.—(1) The Special Counsel for Immigration-Relat-  
12 ed Unfair Employment Practices shall investigate each charge filed under  
13 section 11304 of this title. Not later than 120 days after the charge has  
14 been filed, the Special Counsel shall decide whether there is reasonable  
15 cause to believe the charge is true and whether to file a complaint about  
16 the charge with an administrative law judge.

17 (2) On the Special Counsel's own initiative, the Special Counsel may in-  
18 vestigate an immigration-related unfair employment practice and, subject to  
19 subsection (c) of this section, file a complaint about the practice with an  
20 administrative law judge.

21 (3) Failure to file a complaint within the 120-day period does not prevent  
22 the Special Counsel from investigating the charge or filing a complaint with  
23 an administrative law judge during the 90-day period referred to in sub-  
24 section (b) of this section.

25 (b) PRIVATE ACTIONS.—Subject to subsection (c) of this section, if a  
26 charge alleges knowing and intentional discriminatory activity or a pattern  
27 or practice of discriminatory activity, and the Special Counsel does not file  
28 a complaint with an administrative law judge within 120 days after the  
29 charge is filed with the Special Counsel under subsection (a)(1) of this sec-  
30 tion, the Special Counsel shall notify the person that filed the charge during  
31 the 120-day period of the decision not to file a complaint. The person may  
32 file a complaint directly with an administrative law judge not later than 90  
33 days after receiving the notice.

34 (c) TIME LIMITATION.—A complaint about an immigration-related unfair  
35 employment practice may not be filed with an administrative law judge if  
36 the practice occurred more than 180 days before the charge about that  
37 practice was filed with the Special Counsel. This subsection does not prevent  
38 subsequently amending a charge or complaint under section 11306(c)(1) of  
39 this title.

40 (d) DISCRIMINATION DEEMED TO HAVE OCCURRED.—An individual in-  
41 timidated, threatened, coerced, or retaliated against in violation of section

1 11302(a)(2) of this title is deemed to have been discriminated against under  
2 this section.

3 **§ 11306. Hearings on complaints**

4 (a) DESIGNATING ADMINISTRATIVE LAW JUDGES.—A hearing on a com-  
5 plaint alleging an immigration-related unfair employment practice shall be  
6 conducted by an administrative law judge who—

7 (1) is specially designated by the Attorney General as having special  
8 training in employment discrimination; and

9 (2) to the extent possible, conducts hearings only on complaints in-  
10 volving immigration-related unfair employment practices under this  
11 chapter.

12 (b) NOTICE OF HEARINGS.—When a complaint alleging an immigration-  
13 related unfair employment practice is filed with an administrative law judge,  
14 the judge shall issue and have served on the person named in the complaint  
15 a copy of the complaint and a notice of the hearing. The date of the hearing  
16 shall be at least 5 days after the complaint is served.

17 (c) PLEADINGS, APPEARANCES, AND PARTIES.—(1) On motion of the  
18 party that filed the complaint, the judge may amend the complaint at any  
19 time before issuing an order based on the complaint.

20 (2) The person named in the complaint may file an answer to the original  
21 or amended complaint, appear in person or otherwise, and present testi-  
22 mony.

23 (3) The person that filed the charge with the Special Counsel for Immi-  
24 gration-Related Unfair Employment Practices is a party to the proceeding  
25 before the judge and in any appeal from that proceeding.

26 (4) The judge conducting the hearing may allow any other person to in-  
27 tervene and to present testimony.

28 (d) TRANSCRIPT AND ADDITIONAL TESTIMONY OR ARGUMENT.—A tran-  
29 script shall be prepared of the testimony in the hearing. After the transcript  
30 is prepared, the judge, by notice, may provide for further testimony or hear-  
31 argument.

32 **§ 11307. Authority in conducting investigations and hear-**  
33 **ings**

34 (a) GENERAL.—In conducting an investigation or hearing under this  
35 chapter—

36 (1) the Special Counsel for Immigration-Related Unfair Employment  
37 Practices and the administrative law judge conducting the investigation  
38 or hearing, under regulations prescribed by the Attorney General, shall  
39 have reasonable access to examine evidence of a person being inves-  
40 tigated; and

1           (2) the administrative law judge may subpoena the attendance of wit-  
2           nesses and the production of evidence at any designated place.

3           (b) JUDICIAL ENFORCEMENT OF SUBPENAS.—If a person disobeys a sub-  
4           pena issued under subsection (a)(2) of this section, an appropriate district  
5           court of the United States, on application by the administrative law judge,  
6           may issue an order to comply with the subpoena. The court may punish a  
7           failure to comply with the order of the court as a contempt of court.

8           **§ 11308. Orders of administrative law judges**

9           (a) GENERAL.—In a proceeding by an administrative law judge under  
10          this chapter, the judge shall issue an order and have the order served on  
11          the parties to the proceeding. The order is final unless a petition for review  
12          is filed under section 11309 of this title.

13          (b) ORDERS FINDING UNFAIR PRACTICES.—(1) If the administrative law  
14          judge finds by a preponderance of the evidence that the person named in  
15          the complaint has engaged, or is engaging, in an immigration-related unfair  
16          employment practice, the judge shall state findings of fact about the prac-  
17          tice and issue and have served on the person an order requiring the person  
18          to cease and desist from the practice.

19          (2) The order also may require the person—

20                (A) to comply with section 11103 of this title for not more than 3  
21                years;

22                (B) to retain for not more than 3 years, and only for use as provided  
23                under section 11103(e) of this title, the name and address of each indi-  
24                vidual applying (whether in person or in writing) for an existing posi-  
25                tion, or for recruitment or referral for a fee, for employment in the  
26                United States;

27                (C) to hire an individual directly and adversely affected, with or  
28                without back pay;

29                (D) to pay to the United States Government a civil penalty of—

30                    (i) at least \$250, but not more than \$2,000, for each individual  
31                    discriminated against;

32                    (ii) at least \$2,000, but not more than \$5,000, for each individ-  
33                    ual discriminated against if the person previously was subject to  
34                    an order under this subsection;

35                    (iii) at least \$3,000, but not more than \$10,000, for each indi-  
36                    vidual discriminated against if the person previously was subject  
37                    to more than one order under this subsection; or

38                    (iv) at least \$100, but not more than \$1,000, for each individ-  
39                    ual discriminated against, for an immigration-related unfair em-  
40                    ployment practice described by section 11302(b) of this title;

1 (E) to post notices to employees about their rights under this chap-  
2 ter and the obligations of employers under chapter 111 of this title;

3 (F) to educate all personnel involved in hiring or complying with this  
4 chapter and chapter 111 of this title about the requirements of this  
5 chapter and chapter 111;

6 (G) to remove, as appropriate, a false performance review or false  
7 warning from an employee's personnel file; and

8 (H) to lift, as appropriate, a restriction on an employee's assign-  
9 ments, work shifts, or movements.

10 (3) An order of back pay under paragraph (2)(C) of this subsection may  
11 not require back pay for more than the 2-year period occurring before the  
12 charge was filed with the Special Counsel for Immigration-Related Unfair  
13 Employment Practices. Back pay otherwise allowable shall be reduced by  
14 amounts earned, or earnable with reasonable diligence, during the period  
15 covered by the back pay order. An order may require hiring an individual  
16 or paying back pay to an individual only if the individual was refused em-  
17 ployment for discrimination because of national origin or citizenship status.

18 (4) In applying this section, if an entity is composed of distinct, physically  
19 separate subdivisions each of which provides separately for the hiring, re-  
20 cruiting, or referring for employment, without reference to the practices of,  
21 and not under control of or common control with, another subdivision, each  
22 subdivision is deemed a separate entity.

23 (c) DISCRIMINATION DEEMED TO HAVE OCCURRED.—An individual in-  
24 timidated, threatened, coerced, or retaliated against in violation of section  
25 11302(a)(2) of this title is deemed to have been discriminated against under  
26 this section.

27 (d) ORDERS FINDING NO UNFAIR PRACTICES.—If the administrative law  
28 judge finds by a preponderance of the evidence that the person named in  
29 the complaint has not engaged, and is not engaging, in an immigration-re-  
30 lated unfair employment practice, the judge shall state findings of fact  
31 about such a practice not existing and issue an order dismissing the com-  
32 plaint.

33 **§ 11309. Judicial review of final orders**

34 (a) GENERAL.—A person adversely affected by a final order issued by an  
35 administrative law judge under section 11308 of this title may file a petition  
36 for review of the order in the court of appeals of the United States for the  
37 circuit in which the alleged unfair practice occurred or in which the em-  
38 ployer resides or does business. The petition must be filed within 60 days  
39 after the date the final order is issued.

40 (b) EXCLUSIVE JURISDICTION.—When the record of the proceedings is  
41 filed with the court, the court has exclusive jurisdiction to review the order.

**§ 11310. Judicial enforcement of administrative orders**

(a) CIVIL ACTIONS FOR ENFORCEMENT.—If a petition for review of an order of an administrative law judge under section 11308 of this title is not filed under section 11309 of this title, the Special Counsel for Immigration-Related Unfair Employment Practices or, if the Special Counsel does not act, the person that filed the charge with the Special Counsel, may bring a civil action to enforce the order. The action must be brought in the district court of the United States for the judicial district in which a violation of the order is alleged to have occurred or in which the person against whom the order is directed resides or does business. The order of the administrative law judge may not be reviewed in the action.

(b) ENFORCEMENT BY COURT OF APPEALS IN ORIGINAL REVIEW.—If the court of appeals does not reverse an order of an administrative law judge reviewed under section 11309 of this title, the court may issue an order enforcing the order of the judge.

**§ 11311. Attorney fees**

In a proceeding before an administrative law judge under this chapter, or in a judicial proceeding for review or enforcement of an order of an administrative law judge under section 11308 of this chapter, the prevailing party (except the United States Government) may be awarded reasonable attorney fees if the losing party’s argument is without reasonable foundation in law and fact.

**§ 11312. Certain agency authority not affected**

Except as specifically provided by this chapter, this chapter does not affect the authority of the Equal Employment Opportunity Commission to investigate allegations of unlawful employment practices.

**SUBTITLE IV—REFUGEE AND IMMIGRANT PROGRAMS**

CHAPTER	Sec.
131. REFUGEE COORDINATION AND ASSISTANCE .....	13101
133. INTERNATIONAL PARTICIPATION AND EMERGENCY ASSISTANCE.	13301
135. IMMIGRANT EDUCATION ASSISTANCE .....	13501
137. STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS .....	13701
139. REIMBURSEMENT FOR COSTS OF IMPRISONING CUBAN NATIONALS AND ILLEGAL ALIENS.	13901

**CHAPTER 131—REFUGEE COORDINATION AND ASSISTANCE**

SUBCHAPTER I—POLICY COORDINATION

Sec.
13101. United States Coordinator for Refugee Affairs.
13102. Duties of the United States Coordinator for Refugee Affairs.

SUBCHAPTER II—RESETTLEMENT ASSISTANCE

13111. Congressional intent.
13112. Definition.
13113. Office of Refugee Resettlement.

- 13114. Initial resettlement assistance programs.
- 13115. Initial resettlement assistance grants and contracts.
- 13116. Project grants and contracts for services.
- 13117. Assistance for refugee children.
- 13118. Cash and medical assistance.
- 13119. Administrative.
- 13120. Annual reports.
- 13121. Limitations.
- 13122. Authorization of appropriations.

SUBCHAPTER III—EDUCATION ASSISTANCE

- 13131. Definitions.
- 13132. Basic educational services grants.
- 13133. Supplementary educational services grants.
- 13134. Adult education program grants.
- 13135. Applications.
- 13136. Use of estimated information and consultation with other agencies.
- 13137. State administrative costs.
- 13138. Withholding payments.
- 13139. Authorization of appropriations and allocation of total amount appropriated.

SUBCHAPTER IV—CUBAN AND HAITIAN ENTRANTS

- 13151. Definition.
- 13152. Presidential authority.
- 13153. General assistance.

SUBCHAPTER I—POLICY COORDINATION

**§ 13101. United States Coordinator for Refugee Affairs**

The President shall appoint, by and with the advice and consent of the Senate, a United States Coordinator for Refugee Affairs. The Coordinator has the rank of ambassador at large.

**§ 13102. Duties of the United States Coordinator for Refugee Affairs**

(a) GENERAL AUTHORITY.—The United States Coordinator for Refugee Affairs is responsible—

(1) to the President in carrying out this section;

(2) for developing overall United States refugee admission and resettlement policy;

(3) for coordinating all United States domestic and international refugee admission and resettlement programs in a way that ensures that policy objectives are met timely;

(4) for designing an overall budget strategy to provide individual agencies with policy guidance on refugee matters in preparing their budget requests, and to provide the Director of the Office of Management and Budget with an overview of all refugee-related budget requests;

(5) for presenting to Congress the President's overall refugee policy and the relationship of individual agency refugee budgets to the overall policy;

(6) for advising the President, the Secretary of State, the Attorney General, and the Secretary of Health and Human Services on the rela-

1 tionship of overall United States refugee policy to the admission and  
2 resettlement of refugees in the United States;

3 (7) for representing the United States Government, under the direc-  
4 tion of the Secretary of State, in discussions and negotiations with gov-  
5 ernments of foreign countries and international organizations on refu-  
6 gee matters and, when appropriate, submitting refugee issues for inclu-  
7 sion in other international negotiations;

8 (8) for developing an effective and responsive liaison between the  
9 Government and voluntary organizations, Governors, mayors, and oth-  
10 ers involved in refugee relief and resettlement work to reflect overall  
11 Government policy;

12 (9) for recommending to the President and to Congress policies, ob-  
13 jectives, and priorities on Government duties and powers related to ref-  
14 ugee admission and resettlement in the United States; and

15 (10) for reviewing regulations, guidelines, requirements, criteria, and  
16 procedures of agencies on carrying out duties and powers related to ref-  
17 ugee admission and resettlement in the United States.

18 (b) CONSULTATION.—In carrying out subsection (a) of this section, the  
19 Coordinator shall consult regularly with State governments, political subdivi-  
20 sions, and private nonprofit voluntary organizations on the sponsorship  
21 process and the intended distribution of refugees.

22 (c) REPORTS BY SECRETARIES.—The Secretaries of Labor and Education  
23 shall provide the Coordinator with regular reports describing the efforts of  
24 their respective departments in increasing refugee access to programs within  
25 their jurisdictions. The Coordinator shall include information on these pro-  
26 grams in reports submitted under section 13120 of this title.

#### 27 SUBCHAPTER II—RESETTLEMENT ASSISTANCE

### 28 **§ 13111. Congressional intent**

29 It is the intent of Congress that in providing refugee assistance under  
30 this subchapter—

31 (1) employable refugees should be placed in jobs as soon as possible  
32 after the refugees arrive in the United States;

33 (2) social service expenditures should be focused on employment-re-  
34 lated services, instruction in English-as-a-second-language (in non-work  
35 hours when possible), and case-management services; and

36 (3) local voluntary organization activities should be carried out in  
37 close cooperation and advance consultation with State and local govern-  
38 ments.

### 39 **§ 13112. Definition**

40 In this subchapter, “refugee” includes a spouse or child described by sec-  
41 tion 5105(c) of this title.

1 **§ 13113. Office of Refugee Resettlement**

2 (a) OFFICE OF REFUGEE RESETTLEMENT.—The Office of Refugee Re-  
3 settlement is an office in the Department of Health and Human Services.

4 (b) DIRECTOR.—The head of the Office is a Director appointed by the  
5 Secretary of Health and Human Services.

6 (c) AUTHORITY OF THE DIRECTOR.—In consultation with, and under the  
7 general policy guidance of, the United States Coordinator for Refugee Af-  
8 fairs, the Director shall carry out this subchapter (directly or through ar-  
9 rangements with other agencies) except—

10 (1) that the Secretaries of Education, Health and Human Services,  
11 and State and the Attorney General may prescribe regulations that  
12 each Secretary or the Attorney General considers appropriate to carry  
13 out this subchapter; and

14 (2) as otherwise provided by this subchapter.

15 **§ 13114. Initial resettlement assistance programs**

16 (a) EDUCATION AND TRAINING PROGRAMS.—The Director of the Office  
17 of Refugee Resettlement may develop programs of orientation, instruction  
18 in English, job training, and other education and training of refugees that  
19 will assist in their resettlement in the United States. The programs may be  
20 carried out by—

21 (1) the Director consistent with this subchapter, for refugees in the  
22 United States; and

23 (2) the Secretary of State, for refugees waiting to enter the United  
24 States.

25 (b) TEMPORARY CARE PROGRAMS.—In consultation with the United  
26 States Coordinator for Refugee Affairs, the Secretary of Health and Human  
27 Services may make arrangements (including cooperative arrangements with  
28 other agencies) for the temporary care of refugees in the United States in  
29 emergency circumstances, including establishing necessary processing cen-  
30 ters. In carrying out this subsection, the Secretary may waive provisions of  
31 law (except section 13121(b) of this title) on making, carrying out, and  
32 changing contracts and on United States Government expenditures.

33 (c) MEDICAL PROGRAMS.—(1) In consultation with the Coordinator, the  
34 Secretary of Health and Human Services shall—

35 (A) ensure that an adequate number of trained personnel are avail-  
36 able at a location at which refugees enter the United States so that  
37 all necessary medical records are available and in order;

38 (B) provide for identifying refugees with medical conditions affecting  
39 the public health and requiring treatment;

1 (C) ensure that State and local health officials at a resettlement des-  
2 tination in the United States are notified promptly of the arrival of  
3 each refugee and are provided with all applicable medical records; and

4 (D) provide for monitoring refugees referred to in clause (B) of this  
5 paragraph to ensure that the refugees receive appropriate and timely  
6 treatment.

7 (2) The Secretary of Health and Human Services shall develop and carry  
8 out ways to monitor and assess the quality of medical screening and related  
9 health services provided to refugees waiting to be resettled in the United  
10 States.

11 **§ 13115. Initial resettlement assistance grants and contracts**

12 (a) GENERAL AUTHORITY.—(1) The Director of the Office of Refugee  
13 Resettlement (or other officer if the President decides the Director should  
14 not administer this subsection) may make grants to, and contracts with,  
15 public agencies and private nonprofit voluntary organizations for the initial  
16 resettlement (including the initial reception and placement with sponsors)  
17 of refugees in the United States. A grant to, or contract with, a private non-  
18 profit voluntary organization shall be consistent with this subchapter, con-  
19 sidering the different resettlement approaches and practices of that organi-  
20 zation. Assistance under this subsection shall be provided in coordination  
21 with other assistance provided under this subchapter. The administering  
22 agency shall use the criteria described by subsection (c) of this section in  
23 awarding or renewing a grant or contract under this section.

24 (2) An amount provided to an agency or organization under a grant or  
25 contract may be obligated or expended only during the fiscal year in which  
26 the amount is provided, or a subsequent fiscal period approved by the ad-  
27 ministering agency or officer making the contract, to carry out this section.

28 (b) REQUIREMENTS.—(1) Each grant and contract to an agency or orga-  
29 nization under subsection (a) of this section shall require that the agency  
30 or organization—

31 (A) provide quarterly performance and financial status reports to the  
32 administering agency;

33 (B) provide notice—

34 (i) to the appropriate local welfare office or its local affiliate  
35 when the agency or organization receiving the grant or contract  
36 becomes aware that a refugee is offered employment; and

37 (ii) to the refugee that notice to the local welfare office or affili-  
38 ate has been given;

39 (C) when requested by a local welfare office to which a refugee has  
40 applied for cash assistance, provide documentation to that office about  
41 cash or other resources provided directly by the agency or organization

1 receiving the grant or contract to the refugee under this section and  
2 section 13114 of this title;

3 (D) ensure that a refugee, that the agency or organization receiving  
4 the grant or contract knows has been identified under section  
5 13114(c)(1)(B) of this title as having a medical condition affecting the  
6 public health and requiring treatment, reports to the appropriate health  
7 agency when the refugee resettles in an area;

8 (E) fulfill its responsibility to provide for the basic needs (including  
9 food, clothing, shelter, and transportation for job interviews and train-  
10 ing) of each refugee resettled, to develop and carry out a resettlement  
11 plan (including the early employment of each refugee resettled), and to  
12 monitor how the plan is being carried out; and

13 (F) submit to the administering agency an annual report on—

14 (i) the number of refugees placed (by county of placement) and  
15 the expenditures made during the year covered by the report  
16 under the grant or contract, including the proportion of the ex-  
17 penditures used for administrative purposes and for providing  
18 services;

19 (ii) the proportion of refugees that the agency or organization  
20 receiving the grant or contract has placed in the prior year who  
21 are receiving cash or medical assistance described by section  
22 13118 of this title;

23 (iii) the efforts made by the agency or organization receiving the  
24 grant or contract to monitor placement of refugees and the activi-  
25 ties of local affiliates of the agency or organization;

26 (iv) the extent to which the agency or organization receiving the  
27 grant or contract has coordinated its activities with local social  
28 service providers in a way that avoids duplication of activities, has  
29 provided notice to the local welfare offices, and has reported medi-  
30 cal conditions of certain aliens to local health departments as re-  
31 quired under clause (D) of this paragraph; and

32 (v) other information the administering agency considers is ap-  
33 propriate in monitoring the effectiveness of the agency or organi-  
34 zation receiving the grant or contract in carrying out its functions  
35 under the grant or contract.

36 (2) The administering agency shall submit promptly to the Committees  
37 on the Judiciary of the House of Representatives and the Senate a copy  
38 of each report submitted under paragraph (1)(F) of this subsection.

39 (3) Paragraph (1)(A), (C), and (F) of this subsection applies to a grant  
40 or contract made or renewed after December 5, 1986. Paragraph (1)(E) of

1 this subsection applies to a grant or contract made or renewed after May  
2 5, 1987.

3 (c) PERFORMANCE CRITERIA.—The administering agency shall prescribe  
4 criteria for the performance of each agency or organization receiving a grant  
5 or contract under subsection (a) of this section. The prescribed criteria shall  
6 include criteria related to that agency's or organization's—

7 (1) efforts to reduce welfare dependency among refugees resettled by  
8 the agency or organization;

9 (2) collection of travel loans made to refugees resettled by the agency  
10 or organization for travel to the United States;

11 (3) arrangements for effective local sponsorship and other nonpublic  
12 assistance for refugees resettled by the agency or organization;

13 (4) cooperation with refugee mutual assistance associations, local so-  
14 cial service providers, health agencies, and welfare offices;

15 (5) compliance with guidelines established by the Director of the Of-  
16 fice of Refugee Resettlement for placing and resettling refugees in the  
17 United States; and

18 (6) compliance with other requirements contained in the grant or  
19 contract, including requirements under subsection (b) of this section.

20 (d) MEDICAL SCREENING AND TREATMENT.—The Director may make a  
21 grant to, or contract with, a State or local health agency for payments to  
22 meet the agency's costs of providing medical screening and initial medical  
23 treatment to refugees.

24 **§ 13116. Project grants and contracts for services**

25 (a) SERVICE PROJECTS.—(1) The Director of the Office of Refugee Re-  
26 settlement may make grants to, and contracts with, public agencies and pri-  
27 vate nonprofit voluntary organizations for projects specifically designed—

28 (A) to assist refugees in obtaining skills necessary for economic self-  
29 sufficiency, including projects for job training, employment services,  
30 day care, and professional refresher training and other recertification  
31 services;

32 (B) to provide instruction in English when necessary even when refu-  
33 gees are employed or are receiving assistance; and

34 (C) to provide health (including mental health) services, social serv-  
35 ices, and educational and other services when specific needs have been  
36 shown and recognized by the Director.

37 (2) Amounts available in a fiscal year for grants and contracts under this  
38 subsection shall be allocated among the States based on the total number  
39 of refugees who—

40 (A) arrived in the United States within the 36 months before the be-  
41 ginning of the fiscal year; and

1 (B) actually are residing in each State (taking into account second-  
2 ary migration) at the beginning of the fiscal year.

3 (3) A limitation that the Director establishes on that part of amounts al-  
4 located to a State under this subsection that the State may use for services  
5 (except those services described by section 13111(2) of this title) does not  
6 apply if the Director—

7 (A) receives a plan that has been established by or with the consulta-  
8 tion of political subdivisions; and

9 (B) decides that the plan provides for the maximum appropriate em-  
10 ployment services for, and the maximum placement of, employable refu-  
11 gees consistent with the performance standards established under sec-  
12 tion 106 of the Job Training Partnership Act (29 U.S.C. 1516).

13 (b) TARGETED ASSISTANCE PROJECT GRANTS.—(1) The Director may  
14 make a grant to a State for assistance to a political subdivision in the State  
15 that has a demonstrated specific need for additional available resources for  
16 providing services to refugees because of factors such as—

17 (A) an unusually large refugee population (including secondary mi-  
18 gration);

19 (B) high refugee concentrations; and

20 (C) high use of public assistance by refugees.

21 (2) The Director shall make a grant under this subsection—

22 (A) primarily to facilitate refugee employment and self-sufficiency;  
23 and

24 (B) in a way that does not supplant amounts available under other  
25 refugee programs and ensures that at least 95 percent of the amount  
26 of the grant is made available to the political subdivision.

27 (c) MAINTAINING LEVEL OF SERVICE PROJECTS.—To the extent of avail-  
28 able appropriations, the Director may not—

29 (1) reduce the maximum average contribution level of the United  
30 States Government for each refugee in the voluntary agency program,  
31 known as the matching grant program and financed under subsection  
32 (a) of this section, below the level in effect under the program for  
33 grants in the fiscal year that ended September 30, 1985; or

34 (2) increase the percentage grantee matching requirement under the  
35 program above the percentage in effect under the program for grants  
36 in the fiscal year that ended September 30, 1985.

37 **§ 13117. Assistance for refugee children**

38 (a) SPECIAL EDUCATIONAL SERVICES.—Where a need is shown, the Sec-  
39 retary of Education may make grants and contracts for projects to provide  
40 special educational services (including instruction in English) to refugee  
41 children in elementary and secondary schools.

1 (b) CHILD WELFARE SERVICES.—The Director of the Office of Refugee  
2 Resettlement may provide assistance, reimburse States, and make grants to,  
3 and contracts with, public agencies and private voluntary nonprofit organi-  
4 zations to provide child welfare services (including foster care maintenance  
5 payments and services and health care) to a refugee child during the 36-  
6 month period that begins with the first month the child is in the United  
7 States. If a refugee child is unaccompanied by a parent or other close adult  
8 relative (as defined by the Director), those services may be provided until  
9 the month after the child becomes 18 years of age (or a later age prescribed  
10 in the State’s child welfare services plan under part B of title IV of the  
11 Social Security Act (42 U.S.C. 620 et seq.) for the availability of those serv-  
12 ices to another child in the State).

13 (c) PLACING UNACCOMPANIED CHILDREN.—(1) The Director shall try to  
14 arrange, under the laws of the States, to place an unaccompanied refugee  
15 child referred to in subsection (b) of this section who has been accepted for  
16 admission to the United States. The Director shall make the arrangements  
17 before or as soon as possible after the child arrives in the United States.  
18 If necessary, the Director shall assume legal and financial responsibility for  
19 the child during the period before the child is placed when the child is in  
20 the United States or is traveling to the United States. The Director may  
21 make necessary decisions to provide for the child’s immediate care.

22 (2) In carrying out this subsection, the Director may make contracts with  
23 appropriate public agencies and private nonprofit voluntary organizations  
24 under conditions the Director considers appropriate.

25 (3) The Director shall maintain a list of—

26 (A) all unaccompanied refugee children who have entered the United  
27 States after April 1, 1975;

28 (B) the name and last known residence of each living parent of each  
29 of those children at the child’s time of arrival; and

30 (C) the locations, status, and progress of the children.

31 **§ 13118. Cash and medical assistance**

32 (a) GENERAL AUTHORITY.—The Director of the Office of Refugee Reset-  
33 tlement may provide assistance, reimburse States, and make grants to, and  
34 contracts with, public agencies and private nonprofit voluntary organizations  
35 for 100 percent of the cash and medical assistance provided to a refugee  
36 during the 36-month period that begins with the first month the refugee  
37 enters the United States. The Director also may pay for the identifiable and  
38 reasonable administrative costs of providing the assistance.

39 (b) CONDITIONS AND LIMITATION.—(1) Except for good cause shown,  
40 cash assistance may be provided to an employable refugee under this section  
41 only if the refugee—

1 (A) registers with an appropriate public agency or private nonprofit  
2 voluntary organization providing employment services described by sec-  
3 tion 13116(a)(1)(A) of this title, or, if such an agency or organization  
4 is not available, with an appropriate State or local employment service;

5 (B) participates in an available and appropriate service or targeted  
6 assistance project grant financed under section 13116 of this title pro-  
7 viding job or language training in the area in which the refugee resides;  
8 and

9 (C) accepts an appropriate offer of employment.

10 (2)(A) Cash assistance provided under this section shall be suspended for  
11 any alien entering the United States as a refugee after March 31, 1987,  
12 who refuses—

13 (i) an offer of employment that the public agency or private non-  
14 profit voluntary organization providing initial resettlement assistance  
15 under section 13115(a) of this title or the appropriate State or local  
16 employment service decides is appropriate;

17 (ii) to go to a job interview that has been arranged through the  
18 agency, organization, or employment service; or

19 (iii) to participate in a service or targeted assistance project grant  
20 referred to in paragraph (1)(B) of this subsection that the agency, or-  
21 ganization, or employment service decides is available and appropriate.

22 (B) The assistance shall be suspended for 3 months for the first refusal  
23 and for 6 months for any subsequent refusal. The refugee shall be given  
24 an opportunity for a proceeding before cash assistance is suspended.

25 (3) A refugee who is a full-time student in an institution of higher edu-  
26 cation, as defined by the Director after consultation with the Secretary of  
27 Education, may not receive cash assistance.

28 (c) INSTRUCTION AND TRAINING FOR REFUGEES RECEIVING ASSIST-  
29 ANCE.—The Director shall develop plans to provide instruction in English  
30 and other appropriate services and training to a refugee receiving cash as-  
31 sistance.

32 (d) LIMITATION ON USE OF AMOUNTS.—If a refugee is eligible for aid  
33 or assistance under a State plan approved under part A of title IV or under  
34 title XIX of the Social Security Act (42 U.S.C. 601 et seq., 1396 et seq.)  
35 or for supplemental security income benefits (including State supplementary  
36 payments) under the program established under title XVI of that Act (42  
37 U.S.C. 1381 et seq.), amounts to carry out this section may be used only  
38 to pay the part of the aid or assistance not paid by the United States Gov-  
39 ernment under part A of title IV or under title XIX for cash and medical  
40 assistance provided the refugee, and for State supplementary payments.

1 (e) MEDICAL ASSISTANCE FOR REFUGEES OTHERWISE INELIGIBLE.—  
2 During the one-year period after a refugee enters the United States, the Di-  
3 rector may authorize medical assistance of the kind provided under sub-  
4 section (a) of this section to a refugee if—

5 (1) the refugee does not qualify for assistance under a State plan  
6 approved under title XIX of that Act (42 U.S.C. 1396 et seq.) because  
7 of financial resources or income requirements of the plan; and

8 (2) the Director decides that—

9 (A) providing the medical services will encourage economic self-  
10 sufficiency or avoid a significant burden on State and local govern-  
11 ments; and

12 (B) the refugee meets alternative financial resources and income  
13 requirements the Director establishes.

14 (f) ALTERNATIVE ASSISTANCE PROJECTS.—(1) The Secretary of Health  
15 and Human Services shall develop and carry out alternative projects for re-  
16 fugees who have been in the United States less than 36 months. The projects  
17 shall provide refugees with interim support, medical services, support serv-  
18 ices, and case-management services, as needed, in a way that encourages  
19 self-sufficiency, reduces welfare dependency, and fosters greater coordina-  
20 tion among public agencies, private nonprofit voluntary organizations pro-  
21 viding resettlement assistance, and service providers. The Secretary may  
22 provide an alternative project to cover a specific group of refugees who have  
23 been in the United States at least 36 months if the Secretary decides that—

24 (A) refugees in the group have been significantly and disproportion-  
25 ately dependent on welfare;

26 (B) those refugees need the services provided under the project to  
27 become self-sufficient; and

28 (C) including those refugees under the project would be cost-effec-  
29 tive.

30 (2) A refugee in an alternative project may not receive cash or medical  
31 assistance under another subsection of this section or under part A of title  
32 IV or under title XIX of that Act (42 U.S.C. 601 et seq., 1396 et seq.).

33 (3) Amounts appropriated to carry out this subchapter, section 13901 of  
34 this title, or part A of title IV or title XIX of that Act (42 U.S.C. 601 et  
35 seq., 1396 et seq.) may be used to carry out and evaluate alternative  
36 projects under this subsection, to the extent the use of those amounts is  
37 consistent with the purposes of this subchapter, section 13901, part A of  
38 title IV, and title XIX.

39 (g) NOTIFICATION OF APPLICATION BY REFUGEE FOR ASSISTANCE.—As  
40 a condition for receiving assistance, reimbursement, or a contract under this  
41 section, a State, public agency, or private nonprofit voluntary organization

1 must ensure that when a refugee applies for cash or medical assistance for  
2 which assistance or reimbursement is provided under this section, the State,  
3 agency, or organization will notify promptly the agency or organization (or  
4 local affiliate of the organization) that provided for the initial resettlement  
5 of the refugee under section 13115(a) of this title that the refugee has ap-  
6 plied for the assistance.

7 **§ 13119. Administrative**

8 (a) AUTHORITY OF THE DIRECTOR.—In providing assistance under this  
9 subchapter, the Director of the Office of Refugee Resettlement, to the ex-  
10 tent of available appropriations—

11 (1) shall make available sufficient resources for employment training  
12 and placement to permit refugees to achieve economic self-sufficiency  
13 as soon as possible;

14 (2) shall provide refugees with the opportunity to acquire sufficient  
15 instruction in English to enable them to become resettled effectively as  
16 quickly as possible;

17 (3) shall ensure that cash assistance is made available to refugees  
18 as provided under section 13118(b) of this title in a way that will not  
19 discourage economic self-sufficiency;

20 (4) shall ensure that women have the same opportunities as men to  
21 participate in training and instruction;

22 (5) shall make a periodic assessment, based on refugee population  
23 and other relevant factors, of the relative needs of refugees for assist-  
24 ance and services under this subchapter and the resources available to  
25 meet those needs;

26 (6) in allocating resources, shall avoid duplicating services and pro-  
27 vide for maximum coordination among agencies and organizations pro-  
28 viding related services; and

29 (7) shall compile and maintain information on—

30 (A) the secondary migration of refugees in the United States;

31 and

32 (B) the proportion of refugees, by State of residence and nation-  
33 ality, receiving cash or medical assistance described by section  
34 13118 of this title.

35 (b) LIMITATION ON DELEGATION.—The Director may not delegate to a  
36 State government or political subdivision authority to review or approve a  
37 grant or contract under this subchapter or the terms under which a grant  
38 or contract is made.

39 (c) NONDISCRIMINATION.—Assistance and services under this subchapter  
40 shall be provided to refugees without regard to race, religion, nationality,  
41 sex, or political opinion.

1 (d) CONSULTATION WITH STATE AND LOCAL GOVERNMENTS AND ORGA-  
2 NIZATIONS.—(1) The Director and the administering agency under section  
3 13115(a) of this title, together with the United States Coordinator for Refu-  
4 gree Affairs, shall consult at least quarterly with State governments, political  
5 subdivisions, and private nonprofit voluntary organizations on the sponsor-  
6 ship process and the intended distribution of refugees among the States and  
7 political subdivisions before placing refugees in each of the States and politi-  
8 cal subdivisions.

9 (2) In consultation with representatives of private nonprofit voluntary or-  
10 ganizations, State governments, and political subdivisions, the Director shall  
11 develop and carry out policies and strategies for placing and resettling refu-  
12 gees in the United States. To the extent practicable and except under un-  
13 usual circumstances the Director may recognize, the policies and strategies  
14 shall—

15 (A) ensure that a refugee is not placed or resettled initially in an  
16 area highly impacted (as decided under regulations prescribed by the  
17 Director after consultation with private nonprofit voluntary organiza-  
18 tions, State governments, and political subdivisions) by the presence of  
19 refugees or comparable populations unless the refugee has a spouse,  
20 parent, sibling, or child residing in that area;

21 (B) provide for a mechanism for representatives of local affiliates of  
22 private nonprofit voluntary organizations to meet at least quarterly  
23 with representatives of State governments and political subdivisions to  
24 plan and coordinate, in advance of the arrival of the refugees, the ap-  
25 propriate placement of the refugees among the States and political sub-  
26 divisions; and

27 (C) consider—

28 (i) the proportion of refugees and comparable entrants in the  
29 population in the area;

30 (ii) the availability of employment opportunities, affordable  
31 housing, and public and private resources for refugees in the area,  
32 including educational, health care, and mental health services;

33 (iii) the likelihood of refugees placed in the area becoming self-  
34 sufficient and free from long-term dependence on public assist-  
35 ance; and

36 (iv) the secondary migration of refugees to and from the area  
37 that is likely to occur.

38 (3) To the maximum extent possible and consistent with the policies and  
39 strategies developed under paragraph (2) of this subsection, the administer-  
40 ing agency under section 13115(a) of this title shall consider the rec-

1 ommendations of the State in deciding where to place refugees in that  
2 State.

3 (4) In providing assistance to refugees, a State government or political  
4 subdivision shall consider the recommendations of, and assistance provided  
5 by, a public agency or private nonprofit voluntary organization receiving a  
6 grant or contract under section 13115(a) of this title.

7 (e) REQUIREMENTS FOR GRANTS AND CONTRACTS.—A grant or contract  
8 may be made under this subchapter only when an appropriate proposal and  
9 application (that includes a description of the ability of a public agency or  
10 private nonprofit voluntary organization to provide the services specified in  
11 the proposal) are submitted to and approved by the appropriate administer-  
12 ing official. A grant shall be made to, or a contract shall be made with,  
13 a public agency or private nonprofit voluntary organization that the admin-  
14 istering official decides can best provide the services. Payment under the  
15 grant or contract may be made in advance or by reimbursement.

16 (f) GRANT AND CONTRACT PROPOSALS AND APPLICATIONS.—To receive  
17 assistance under this subchapter, a State—

18 (1) must submit to the Director a plan that—

19 (A) describes how the State plans to encourage effective refugee  
20 resettlement and to promote economic self-sufficiency as quickly as  
21 possible;

22 (B) describes how the State will ensure that instruction in Eng-  
23 lish and employment services are made available to refugees re-  
24 ceiving cash assistance;

25 (C) provides for the designation of a State officer or employee  
26 to be responsible for ensuring coordination of public and private  
27 resources in refugee resettlement;

28 (D) provides for the care and supervision of, and legal respon-  
29 sibility for, unaccompanied refugee children in the State; and

30 (E) provides for identifying refugees who at the time of resettle-  
31 ment in the State have medical conditions requiring, or medical  
32 histories indicating a need for, treatment or observation and pro-  
33 vides necessary monitoring of the treatment or observation;

34 (2) must meet standards, goals, and priorities developed by the Di-  
35 rector that—

36 (A) ensure effective resettlement of refugees;

37 (B) promote economic self-sufficiency of refugees as quickly as  
38 possible; and

39 (C) provide that services are provided efficiently; and

1           (3) within a reasonable time after the end of each fiscal year, must  
2           submit to the Director a report on the uses of amounts provided under  
3           this subchapter for which the State is responsible for administering.

4           (g) AUTHORITY TO MAKE LOANS AND ACCEPT GIFTS.—In carrying out  
5           this subchapter, each appropriate administering official may—

6           (1) make loans; and

7           (2) accept and use money, property, and services made available by  
8           gift, devise, bequest, grant, or otherwise to carry out this subchapter.

9           (h) SYSTEM TO MONITOR ASSISTANCE.—The Secretary of Health and  
10          Human Services, and the Secretary of State in carrying out sections 13114  
11          and 13115 of this title, shall maintain a system of monitoring assistance  
12          provided under this subchapter. The system shall include—

13          (1) evaluations of the effectiveness of the programs and projects car-  
14          ried out under this subchapter and the performance of States, grantees,  
15          and contractors;

16          (2) financial audits and other appropriate monitoring to detect  
17          fraud, abuse, and mismanagement in operating the programs and  
18          projects; and

19          (3) information collection on services provided and results achieved.

20          (i) INFORMATION PROVIDED BY REFUGEES.—The Attorney General shall  
21          provide the Director with information provided by refugees with their appli-  
22          cations for a change in status. The Director shall compile, summarize, and  
23          evaluate the information.

24          **§ 13120. Annual reports**

25          In consultation with the United States Coordinator for Refugee Affairs,  
26          the Secretary of Health and Human Services shall submit a report to the  
27          Committees on the Judiciary of the House of Representatives and the Sen-  
28          ate not later than each January 31 on activities under this subchapter for  
29          the prior fiscal year. Each report shall include—

30          (1) a current profile of the employment and labor force statistics for  
31          refugees who entered the United States under this title—

32                  (A) during the 5 fiscal years immediately before the fiscal year  
33                  in which the report is submitted; and

34                  (B) before that 5-year period and who have been significantly  
35                  and disproportionately dependent on welfare;

36          (2) a description of the extent to which refugees received each kind  
37          of assistance and service under this subchapter during the 5 fiscal  
38          years immediately before the fiscal year in which the report is submit-  
39          ted;

40          (3) a description of the geographic locations of refugees;

1 (4) a summary of the results of the monitoring conducted under sec-  
2 tion 13119(h) of this title for the fiscal year;

3 (5) a description of—

4 (A) the activities, expenditures, and policies of the Office of Ref-  
5 ugee Resettlement under this subchapter;

6 (B) the activities of States, voluntary organizations, and spon-  
7 sors of refugees under this subchapter; and

8 (C) plans of the Director of the Office of Refugee Resettlement  
9 for improving refugee resettlement;

10 (6) evaluations of the extent to which—

11 (A) services provided under this subchapter are assisting refu-  
12 gees in achieving economic self-sufficiency, ability in English, and  
13 employment commensurate with their skills and abilities; and

14 (B) fraud, abuse, and mismanagement have been reported in  
15 providing assistance or services;

16 (7) a description of the assistance provided under section 13118(e)  
17 of this title;

18 (8) a summary of the locations and status of unaccompanied refugee  
19 children admitted to the United States; and

20 (9) a summary of the information compiled and evaluated under sec-  
21 tion 13119(i) of this title.

22 **§ 13121. Limitations**

23 (a) CONSOLIDATED GRANTS PROHIBITED.—Amounts made available to a  
24 State or political subdivision to carry out this subchapter (except section  
25 13115(a) of this title) may not be in the form of a block grant, per capita  
26 grant, or similar consolidated grant. Amounts shall be made available under  
27 separate grants or contracts for—

28 (1) medical screening and initial medical treatment for refugees  
29 under section 13115(d) of this title;

30 (2) social services to refugees under section 13116(a) of this title;

31 (3) targeted assistance project grants under section 13116(b) of this  
32 title; and

33 (4) assistance for refugee children under section 13117(b) and (c)  
34 of this title.

35 (b) CONTRACTS.—A contract made under this subchapter is effective only  
36 to the extent and in the amount provided in advance by an appropriation  
37 law.

38 **§ 13122. Authorization of appropriations**

39 Amounts necessary to carry out this subchapter and section 13901 of this  
40 title may be appropriated for the fiscal year ending September 30, 1994.

## SUBCHAPTER III—EDUCATION ASSISTANCE

**§ 13131. Definitions**

In this subchapter—

(1) “elementary school”, “local educational agency”, “secondary school”, “State”, and “State educational agency” have the same meanings given those terms in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891).

(2) “elementary or secondary nonpublic school” means a school—

(A) complying with the compulsory education laws of the State in which it is located; and

(B) exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

(3) “eligible participant” means an alien—

(A) during the 36-month period that begins with the first month the alien entered the United States, who—

(i) has been admitted to the United States as a refugee under section 5105 of this title;

(ii) has been paroled into the United States as a refugee under section 6123 of this title; or

(iii) has fled from the alien’s country of origin and, under an executive order, has been allowed to enter and remain in the United States indefinitely for humanitarian reasons;

(B) during the 36-month period that begins with the month the alien began applying for asylum, who is applying for, or has been granted, asylum in the United States; or

(C) during the 36-month period that begins with the first month the alien entered the United States as a Cuban-Haitian entrant or otherwise became a Cuban-Haitian entrant, who entered the United States after October 31, 1979, and is in the United States classified as a Cuban-Haitian entrant.

**§ 13132. Basic educational services grants**

(a) GRANTS.—The Secretary of Education shall make a grant to each State educational agency for each fiscal year to assist local educational agencies of the State in providing basic educational services for eligible participants enrolled in the elementary and secondary public schools under the jurisdiction of the local educational agencies of the State. The State educational agency may use the grant only as provided in its application approved under section 13135(b) of this title.

(b) APPLICATIONS.—To receive a grant under this section, the State educational agency must submit an application to the Secretary. In the application, the State educational agency must—

1 (1) agree that payments under the grant will be used as provided  
2 by subsection (a) of this section;

3 (2) agree to ensure that those payments will be allocated among the  
4 local educational agencies in the State using the same formula and re-  
5 ductions for the local educational agencies as the Secretary is required  
6 to use in making allocations to State educational agencies under sub-  
7 section (d) of this section;

8 (3) specify the amounts referred to in subsection (d) of this section  
9 that are made available under other laws of the United States for ex-  
10 penditure in the State for the same purpose for which an amount is  
11 made available under this section and the local educational agencies to  
12 which those amounts are available; and

13 (4) comply with section 13135(a) of this title.

14 (c) PRESCRIBING GRANT FORMULA.—As soon as possible, the Secretary  
15 shall prescribe a formula to be used in determining the amount of the grant  
16 to which each State educational agency (except the agencies for American  
17 Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the  
18 Pacific Islands, and the Virgin Islands) is entitled under this section for a  
19 fiscal year. The formula shall be based on the full amount authorized under  
20 section 13139(b) of this title. In prescribing the formula, the Secretary—

21 (1) shall consider—

22 (A) the number of years each eligible participant assisted under  
23 this section has resided in the United States; and

24 (B) the relative costs, by grade level, of educating elementary  
25 and secondary school children; and

26 (2) shall provide that amounts be allocated without regard to dif-  
27 ferences in educational costs among different geographical areas.

28 (d) ALLOCATIONS.—The Secretary shall allocate the amount appropriated  
29 to carry out this section for a fiscal year among the State educational agen-  
30 cies (except the agencies for American Samoa, Guam, the Northern Mariana  
31 Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands).  
32 Except as provided by section 13136 of this title, the amount of the grant  
33 to which an agency is entitled under this section for a fiscal year is equal  
34 to the amount allocated to it under the formula, reduced by the amounts  
35 available for that fiscal year under other laws of the United States for ex-  
36 penditure in the State for the same purpose for which an amount is made  
37 available under this section. However, the reduction shall be made only to  
38 the extent the amounts are available under the other laws—

39 (1) for that purpose specifically because the individuals served by the  
40 amounts have refugee, parolee, or asylum status; and

41 (2) to assist individuals eligible for services under this section.

1 (e) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The  
 2 amounts of the grants to which the State educational agencies of American  
 3 Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the  
 4 Pacific Islands, and the Virgin Islands are entitled under this section are  
 5 the amounts the Secretary determines they need based on criteria the Sec-  
 6 retary prescribes. The total amount of those grants for a period may not  
 7 be more than one percent of the amount authorized to be appropriated to  
 8 carry out this section during the period. If the total of the amounts the Sec-  
 9 retary determines those agencies need is more than one percent, the amount  
 10 of the grant to each of those agencies is reduced proportionately so that the  
 11 total is not more than one percent.

12 **§ 13133. Supplementary educational services grants**

13 (a) DEFINITIONS.—In this section—

14 (1) “enrolled eligible participant in the State” means an eligible par-  
 15 ticipant enrolled in an elementary or secondary public school under the  
 16 jurisdiction of a qualified local educational agency in the State or in  
 17 an elementary or secondary nonpublic school in the district served by  
 18 a qualified local educational agency in the State.

19 (2) “qualified local educational agency” means a local educational  
 20 agency that—

21 (A) during the fiscal year for which a grant is to be made under  
 22 this section, has enrolled in the elementary and secondary public  
 23 schools under its jurisdiction and in the elementary and secondary  
 24 nonpublic schools in the district it serves a number of eligible par-  
 25 ticipants receiving supplementary educational services during the  
 26 fiscal year at least equal to the lesser of—

27 (i) 500; or

28 (ii) 5 percent of the total number of students enrolled in  
 29 those public or nonpublic schools during that fiscal year; or

30 (B) is eligible to receive assistance because of section 3(b)(last  
 31 sentence) and (c)(2)(B) of the Act of September 30, 1950 (20  
 32 U.S.C. 238(b)(last sentence) and (c)(2)(B)).

33 (b) GENERAL AUTHORITY.—(1) The Secretary of Education shall make  
 34 a grant, as provided by this subchapter, to each State educational agency  
 35 for each fiscal year to provide supplementary educational services for en-  
 36 rolled eligible participants in the State. Those services include—

37 (A) services necessary to enable eligible participants to perform satis-  
 38 factorily, including—

39 (i) instruction in English;

40 (ii) other bilingual educational services; and

41 (iii) special materials and supplies;

1 (B) additional basic instructional services directly attributable to the  
2 presence of eligible participants in the school districts, including—

- 3 (i) additional classroom supplies;  
4 (ii) overhead;  
5 (iii) construction;  
6 (iv) acquiring or renting space; and  
7 (v) transportation; and

8 (C) special inservice training of personnel who will provide the in-  
9 structional services described by clauses (A) and (B) of this paragraph.

10 (2) The State educational agency may use the grant only as provided in  
11 its application as approved under section 13135(b) of this title.

12 (c) APPLICATIONS.—To receive a grant under this section, a State edu-  
13 cational agency must submit an application to the Secretary. In the applica-  
14 tion, the State educational agency must—

15 (1) agree to administer, or supervise the administration of, the edu-  
16 cational programs, services, and activities paid for under this section;

17 (2) agree to ensure that payments under the grant will be used as  
18 provided by subsection (b) of this section;

19 (3) agree to ensure that those payments will be allocated among the  
20 local educational agencies in the State using the same formula and re-  
21 ductions for the local educational agencies as the Secretary is required  
22 to use in making allocations to State educational agencies under sub-  
23 section (d) of this section;

24 (4) specify the amounts referred to in subsection (d)(2) of this sec-  
25 tion that are made available under other laws of the United States to  
26 agencies or other entities for educational or education-related services  
27 or activities in the State because of a significant concentration of eligi-  
28 ble participants and the local educational agencies that have jurisdic-  
29 tion over elementary and secondary public schools, or that serve ele-  
30 mentary and secondary nonpublic schools, in which are enrolled eligible  
31 participants who receive services paid for by those amounts;

32 (5) agree to ensure the Secretary that—

33 (A) to the extent consistent with the number of eligible partici-  
34 pants enrolled in elementary and secondary nonpublic schools in  
35 the district served by a local educational agency, the local edu-  
36 cational agency, after consulting with the appropriate officials of  
37 the schools, will provide secular, neutral, and nonideological mate-  
38 rials, equipment, and services necessary to educate those eligible  
39 participants;

40 (B) a public agency will—

1 (i) administer the amounts provided under this section for  
2 the materials, equipment, and services referred to in  
3 subclause (A) of this clause; and

4 (ii) own and administer property that is repaired, remod-  
5 eled, or constructed with those amounts;

6 (C) those amounts will not be commingled with State or local  
7 money; and

8 (D) a public agency will provide to each of those elementary or  
9 secondary nonpublic schools the services referred to in subclause  
10 (A) of this clause through—

11 (i) officers and employees under the control of the agency;  
12 or

13 (ii) a contract with a person or agency that is under the  
14 control of the public agency and, when providing the services,  
15 is independent of the school and of any religious organization;  
16 and

17 (6) comply with section 13135(a) of this title.

18 (d) ALLOCATIONS.—(1) The Secretary shall allocate the amount appro-  
19 priated to carry out this section for a fiscal year among the State edu-  
20 cational agencies (except the agencies for American Samoa, Guam, the  
21 Northern Mariana Islands, the Trust Territory of the Pacific Islands, and  
22 the Virgin Islands). Except as provided by this section and section 13136  
23 of this title, the amount of the grant to which an agency is entitled under  
24 this section for a fiscal year is equal to the sum of—

25 (A) the product of—

26 (i) the number of aliens who are enrolled eligible participants  
27 in the State, during the period for which the determination of that  
28 number is made, and who have been eligible participants less than  
29 one year; multiplied by

30 (ii) \$700;

31 (B) the product of—

32 (i) the number of aliens who are enrolled eligible participants  
33 in the State, during the period for which the determination is  
34 made, and who have been eligible participants at least one year  
35 but not more than 2 years; multiplied by

36 (ii) \$500; and

37 (C) the product of—

38 (i) the number of aliens who are enrolled eligible participants  
39 in the State, during the period for which the determination is  
40 made, and who have been eligible participants more than 2 years  
41 but not more than 3 years; multiplied by

1 (ii) §300.

2 (2) If amounts are available for a fiscal year under other laws of the  
3 United States to agencies or other entities for educational or education-re-  
4 lated services or activities in the State because of a significant concentration  
5 of eligible participants, the amount of the grant under paragraph (1) of this  
6 subsection for that fiscal year is reduced by those amounts.

7 (e) REALLOCATION OF UNUSED AMOUNTS.—When the Secretary deter-  
8 mines that a part of a payment made to a State educational agency under  
9 this section for a fiscal year will not be used by the agency to carry out  
10 the purpose for which the payment was made, the Secretary shall make that  
11 part available to another State educational agency to the extent the Sec-  
12 retary decides the other agency can use the additional amount to carry out  
13 the purpose. An amount made available under this subsection to a State  
14 educational agency from an appropriation for a fiscal year is deemed in this  
15 section to be a part of the grant (as determined under subsection (d) of  
16 this section) to that agency for that fiscal year, and remains available until  
17 the end of the next fiscal year.

18 (f) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The  
19 amounts of the grants to which the State educational agencies of American  
20 Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the  
21 Pacific Islands, and the Virgin Islands are entitled under this section are  
22 the amounts the Secretary determines they need based on criteria the Sec-  
23 retary prescribes. The total amount of those grants for a period may not  
24 be more than one percent of the amount authorized to be appropriated to  
25 carry out this section during the period. If the total of the amounts the Sec-  
26 retary determines those agencies need is more than one percent, the amount  
27 of the grant to each of those agencies is reduced proportionately so that the  
28 total is not more than one percent.

29 (g) PROVIDING ASSISTANCE TO NONPUBLIC SCHOOLS WHEN STATE  
30 DOES NOT.—If a State is prohibited by law from providing materials,  
31 equipment, and services for children enrolled in elementary and secondary  
32 nonpublic schools as required by subsection (c)(5) of this section, or if the  
33 Secretary decides that a local educational agency has failed substantially to  
34 or will not provide for the participation on an equitable basis of eligible par-  
35 ticipants enrolled in those schools, the Secretary—

36 (1) may waive the requirements of subsection (c)(5) of this section;

37 and

38 (2) subject to the other requirements of this subchapter, shall ar-  
39 range that materials, equipment, and services be provided for those eli-  
40 gible participants.

1 **§ 13134. Adult education program grants**

2 (a) GENERAL AUTHORITY.—(1) The Secretary of Education shall make  
3 a grant, as provided by this subchapter, to each State educational agency  
4 for each fiscal year to be used to provide adult education programs to eligi-  
5 ble participants at least 16 years of age in need of the services and not en-  
6 rolled in an elementary or secondary public school under the jurisdiction of  
7 a local educational agency. The grant may be used for—

8 (A) programs of instruction—

9 (i) to teach the eligible participants basic reading and mathe-  
10 matics;

11 (ii) to develop and enhance skills needed by the eligible partici-  
12 pants; and

13 (iii) to promote literacy among the eligible participants;

14 (B) administrative costs of planning and operating the programs re-  
15 ferred to in clause (A) of this paragraph;

16 (C) educational support services needed by the eligible participants,  
17 including services to guide and counsel the eligible participants about  
18 educational, career, and employment opportunities; and

19 (D) special projects designed to operate with existing programs and  
20 activities that develop occupational and related skills, particularly pro-  
21 grams authorized under the Job Training Partnership Act (29 U.S.C.  
22 1501 et seq.) or the Carl D. Perkins Vocational Education Act (20  
23 U.S.C. 2301 et seq.).

24 (2) The State educational agency may use the grant only as provided in  
25 its application as approved under section 13135(b) of this title.

26 (b) APPLICATIONS.—To receive a grant under this section, the State edu-  
27 cational agency must submit an application to the Secretary. In the applica-  
28 tion, the State educational agency must—

29 (1) agree that payments under the grant will be used as provided  
30 by subsection (a) of this section;

31 (2) agree to make periodic reports to the Secretary evaluating the  
32 effectiveness of those payments;

33 (3) specify the amounts referred to in subsection (c)(2) of this sec-  
34 tion that are made available under other laws of the United States for  
35 expenditure in the State for the same purpose for which an amount is  
36 made available under this section; and

37 (4) comply with section 13135(a) of this title.

38 (c) ALLOCATIONS.—(1) The Secretary shall allocate the amount appro-  
39 priated to carry out this section for a fiscal year among the State edu-  
40 cational agencies (except the agencies for American Samoa, Guam, the  
41 Northern Mariana Islands, the Trust Territory of the Pacific Islands, and

1 the Virgin Islands). Except as provided by paragraph (2) of this subsection  
2 and section 13136 of this title, the amount of the grant to which an agency  
3 is entitled under this section for a fiscal year is equal to the product of—

4 (A) the number of eligible participants at least 16 years of age who,  
5 during the period for which the determination of that number is made,  
6 are enrolled in programs of instruction described by subsection  
7 (a)(1)(A) of this section and offered in the State, but who are not en-  
8 rolled in elementary and secondary public schools under the jurisdiction  
9 of local educational agencies; multiplied by

10 (B) \$300.

11 (2) If amounts are available for a fiscal year under other laws of the  
12 United States for expenditure in the State for the same purpose for which  
13 an amount is made available under this section, the amount of the grant  
14 under paragraph (1) of this subsection for that fiscal year is reduced by  
15 those amounts. However, the reduction is made only to the extent the  
16 amounts are available under the other laws—

17 (A) for that purpose specifically because the individuals served by the  
18 amounts have refugee, parolee, or asylum status; and

19 (B) to assist individuals eligible for services under this section.

20 (d) METHODS OF PROVIDING PROGRAMS.—(1) A State educational agency  
21 may provide adult education programs directly or may make grants to,  
22 or contracts with, local educational agencies, public agencies, and private  
23 nonprofit voluntary organizations to provide the programs. The State edu-  
24 cational agency shall review an application for a grant or contract under  
25 this subsection in a way that is consistent with the purposes of section  
26 306(b)(12) and (13) of the Adult Education Act.

27 (2) The State educational agency shall use the grant it receives under  
28 this section in a way that enables the maximum number of eligible partici-  
29 pants at least 16 years of age residing in the State to receive education  
30 under the programs of instruction described by subsection (a)(1)(A) of this  
31 section.

32 (e) GRANT AMOUNTS FOR TERRITORIES AND POSSESSIONS.—The  
33 amounts of the grants to which the State educational agencies of American  
34 Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the  
35 Pacific Islands, and the Virgin Islands are entitled under this section are  
36 the amounts the Secretary determines they need based on criteria the Sec-  
37 retary prescribes. The total amount of those grants for a period may not  
38 be more than one percent of the amount authorized to be appropriated to  
39 carry out this section during the period. If the total of the amounts the Sec-  
40 retary determines those agencies need is more than one percent, the amount

1 of the grant to each of those agencies is reduced proportionately so that the  
2 total is not more than one percent.

3 **§ 13135. Applications**

4 (a) REQUIREMENTS.—(1) In its application for a grant under this sub-  
5 chapter, a State educational agency must agree—

6 (A) to ensure that it will not disapprove finally any part of a local  
7 educational agency's application for an amount of a grant to the State  
8 educational agency under section 13132, 13133, or 13134 of this title  
9 without giving the local educational agency reasonable notice and op-  
10 portunity for a proceeding; and

11 (B) to make reports the Secretary of Education reasonably requires  
12 to carry out this subchapter.

13 (2) The State educational agency must submit an application at the time,  
14 in the way, and containing or accompanied by information, the Secretary  
15 requires.

16 (b) APPROVAL.—The Secretary shall approve an application meeting the  
17 requirements of this section and section 13132, 13133, or 13134 of this  
18 title, as the case may be. The Secretary may not disapprove finally an appli-  
19 cation without giving the applicant reasonable notice and opportunity for a  
20 hearing on the record.

21 **§ 13136. Use of estimated information and consultation with**  
22 **other agencies**

23 (a) USE OF ESTIMATES.—When actual satisfactory information is not  
24 available, the Secretary of Education shall use estimates to determine for  
25 any period the number of eligible participants and the amount of a reduc-  
26 tion required under section 13132(d), 13133(d)(2), or 13134(c)(2) of this  
27 title. A determination based on an overestimate or underestimate may not  
28 deprive a State educational agency of any part of the amount the agency  
29 would be entitled to receive under this subchapter if the determination were  
30 based on accurate information.

31 (b) CONSULTATION WITH OTHER AGENCIES.—To the extent it will make  
32 it easier to determine the amount of a reduction required under section  
33 13132(d), 13133(d)(2), or 13134(c)(2) of this title, the Secretary shall con-  
34 sult with the heads of other agencies providing assistance to eligible partici-  
35 pants—

36 (1) to obtain information about the amounts those agencies disburse  
37 for educational purposes under programs the agency heads administer;  
38 and

39 (2) when feasible, to coordinate the programs those agency heads ad-  
40 minister and the programs under this subchapter.

1 **§ 13137. State administrative costs**

2 The Secretary of Education may pay each State educational agency an  
3 amount equal to the amount the agency expends in carrying out its duties  
4 and powers properly and efficiently under this subchapter. However, the  
5 total payments for a period may not be more than 2 percent of the amount  
6 the agency receives for the period under this subchapter.

7 **§ 13138. Withholding payments**

8 (a) AUTHORITY TO WITHHOLD.—When the Secretary of Education de-  
9 cides that a State educational agency receiving payments under section  
10 13132, 13133, or 13134 of this title, or a local educational agency or other  
11 entity receiving payments from the State educational agency under section  
12 13134, is not complying with a requirement of this subchapter that applies  
13 to the section, the Secretary, until satisfied that there is no longer a failure  
14 to comply, shall—

15 (1) stop making payments to the State educational agency under sec-  
16 tion 13132, 13133, or 13134 of this title; or

17 (2) prohibit the State educational agency from making payments  
18 under section 13134 to the local educational agency or other entity that  
19 is causing, or involved in, the failure.

20 (b) NOTICE AND OPPORTUNITY FOR PROCEEDING.—The Secretary—

21 (1) may act under subsection (a) of this section only after giving the  
22 State educational agency reasonable notice and opportunity for a pro-  
23 ceeding; and

24 (2) shall notify the State educational agency of the action the Sec-  
25 retary is taking under subsection (a) of this section.

26 **§ 13139. Authorization of appropriations and allocation of**  
27 **total amount appropriated**

28 (a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary  
29 to make grants to each State educational agency under this subchapter and  
30 to pay for administrative costs under section 13137 of this title may be ap-  
31 propriated for the fiscal year ending September 30, 19\_\_\_. The amounts  
32 shall be appropriated in a lump sum for all programs under this subchapter.

33 (b) AUTHORIZATION OF APPROPRIATIONS FOR BASIC PUBLIC EDU-  
34 CATIONAL SERVICES GRANTS.—To make grants to State educational agen-  
35 cies in the way provided under this section, an amount may be appropriated  
36 under subsection (a) of this section for each fiscal year equal to the product  
37 of—

38 (1) the number of eligible participants enrolled in elementary or sec-  
39 ondary public schools under the jurisdiction of local educational agen-  
40 cies in all States (except American Samoa, Guam, the Northern Mari-  
41 ana Islands, the Trust Territory of the Pacific Islands, and the Virgin

1 Islands) during the fiscal year for which the determination of that  
2 number is made; multiplied by

3 (2) \$400.

4 (c) ALLOCATIONS OF APPROPRIATIONS.—(1) If the amounts appropriated  
5 for a fiscal year to make grants under this subchapter are not enough to  
6 pay the total amount of the grants to which State educational agencies are  
7 entitled under sections 13132–13134 of this title for the fiscal year, the al-  
8 location to each agency under each of those sections shall be ratably reduced  
9 so that the total of the allocations is not more than the amounts appro-  
10 priated.

11 (2) Allocations reduced under paragraph (1) of this subsection shall be  
12 increased on the same basis that they were reduced if amounts later become  
13 available to make grants under this subchapter for the period.

#### 14 SUBCHAPTER IV—CUBAN AND HAITIAN ENTRANTS

##### 15 **§ 13151. Definition**

16 In this subchapter, “Cuban or Haitian entrant” means—

17 (1) an alien granted parole status as a Cuban/Haitian Entrant (Sta-  
18 tus Pending) or granted another special status later established under  
19 law for nationals of Cuba or Haiti, without regard to the status of the  
20 alien when assistance is provided under this subchapter; and

21 (2) any other national of Cuba or Haiti—

22 (A)(i) paroled into the United States who has not acquired an-  
23 other status under this title;

24 (ii) who is the subject of exclusion or deportation proceedings  
25 under this title; or

26 (iii) having an application for asylum pending before the Attor-  
27 ney General; and

28 (B) about whom a final, nonappealable, and legally enforceable  
29 exclusion or deportation order has not been entered.

##### 30 **§ 13152. Presidential authority**

31 The President has the same duties and powers related to a Cuban or Hai-  
32 tian entrant as the duties and powers vested under subchapter II of this  
33 chapter. Those duties and powers apply to assistance and services provided  
34 to a Cuban or Haitian entrant at any time after the entrant’s arrival in  
35 the United States, including periods before October 10, 1980. The President  
36 may provide by regulation that benefits granted under a law of the United  
37 States (except this title) to an individual admitted to the United States  
38 under section 4305 of this title shall be provided in the same way and to  
39 the same extent to a Cuban or Haitian entrant.

1 **§ 13153. General assistance**

2 (a) TYPES OF ASSISTANCE.—Under the direction of the President, any  
3 agency may provide assistance (including materials, supplies, equipment,  
4 work, services, or facilities) for the processing, care, security, transportation,  
5 and initial reception and placement in the United States of a Cuban or Hai-  
6 tian entrant on terms the President prescribes. The President may direct  
7 the head of one agency to detail personnel (on a reimbursable or  
8 nonreimbursable basis) for temporary duty with another agency that the  
9 President has directed to supervise or manage assistance under this section.

10 (b) REIMBURSEMENT.—Amounts to carry out this section—

11 (1) shall be used to reimburse State governments and political sub-  
12 divisions for expenses incurred in providing assistance under subsection

13 (a) of this section; and

14 (2) may be used to reimburse an agency providing assistance under  
15 subsection (a) of this section.

16 (c) APPLICATION OF NATIONAL ENVIRONMENTAL POLICY ACT OF  
17 1969.—The carrying out of a duty or power under this section is not a  
18 major action of the United States Government significantly affecting the  
19 quality of the human environment under the National Environmental Policy  
20 Act of 1969 (42 U.S.C. 4321 et seq.).

21 (d) AVAILABILITY OF APPROPRIATIONS.—Amounts—

22 (1) appropriated under section 13122 of this title are available to  
23 carry out this subchapter; and

24 (2) available to carry out this subchapter remain available until ex-  
25 pended.

26 **CHAPTER 133—INTERNATIONAL PARTICIPATION AND**  
27 **EMERGENCY ASSISTANCE**

Sec.

13301. Participation in International Organization for Migration.

13302. Contributions to international organizations.

13303. Assistance to further foreign policy interests.

13304. Assistance for unexpected urgent needs.

13305. Allocation, transfer, availability, and accounting of amounts.

13306. Audits.

13307. Administrative.

28 **§ 13301. Participation in International Organization for Mi-**  
29 **gration**

30 The President may continue United States membership in the Inter-  
31 national Organization for Migration. To assist in the movement of refugees  
32 and migrants and to enhance the economic progress of the developing coun-  
33 tries by providing for a coordinated supply of a selected labor force,  
34 amounts necessary to pay for the United States Government's contribution  
35 to the Organization and necessary pay and expenses incident to the Govern-  
36 ment's participation in the Organization may be appropriated.

1 **§ 13302. Contributions to international organizations**

2 The President may make contributions to—

3 (1) the activities of the United Nations High Commissioner for Refu-  
4 gees for assistance to or for refugees and other persons assisted by the  
5 Commissioner;

6 (2) the International Organization for Migration;

7 (3) the International Committee of the Red Cross for assistance to  
8 or for refugees; and

9 (4) other international organizations for assistance to or for refu-  
10 gees.

11 **§ 13303. Assistance to further foreign policy interests**

12 The President may provide assistance to or for refugees outside the Unit-  
13 ed States designated by the President when the President decides that the  
14 assistance will contribute to the foreign policy interests of the United  
15 States. The President shall designate the refugees by class, group, countries  
16 of origin, or areas of residence.

17 **§ 13304. Assistance for unexpected urgent needs**

18 (a) GENERAL AUTHORITY.—The President may provide assistance to  
19 meet unexpected urgent refugee and migration needs on terms the President  
20 prescribes when the President decides the assistance is important to the in-  
21 terests of the United States.

22 (b) UNITED STATES EMERGENCY REFUGEE AND MIGRATION ASSIST-  
23 ANCE FUND.—There is a United States Emergency Refugee and Migration  
24 Assistance Fund to carry out this section. Amounts necessary for the Fund  
25 may be appropriated to the President. However, an amount may not be ap-  
26 propriated that, when added to amounts previously appropriated and not ob-  
27 ligated, would cause the total amount in the Fund to be more than  
28 \$50,000,000. Amounts appropriated remain available until expended.

29 (c) JUSTIFICATION OF APPROPRIATIONS.—When the President requests  
30 an appropriation under this section, the President shall justify the request  
31 to the Committee on Foreign Relations of the Senate, the Speaker of the  
32 House of Representatives, and the Committees on Appropriations of the  
33 Senate and House of Representatives.

34 **§ 13305. Allocation, transfer, availability, and accounting of**  
35 **amounts**

36 (a) ALLOCATION AND TRANSFER.—The President may allocate or trans-  
37 fer to an agency an amount available to carry out this chapter. The amount  
38 is available for obligation and expenditure for the purpose for which the  
39 amount originally was made available under this chapter or under authority  
40 governing the activities of the agency to which the amount was allocated

1 or transferred. An amount allocated or transferred may be carried in a sep-  
2 arate appropriation account of the Treasury.

3 (b) PURPOSES FOR WHICH AMOUNTS ARE AVAILABLE.—(1) An amount  
4 made available under this chapter may be used for—

5 (A) pay, allowances, and travel of personnel, including members of  
6 the Foreign Service whose services are used primarily in carrying out  
7 this chapter, without regard to another law, that may be necessary to  
8 carry out this chapter;

9 (B) printing and binding, expenditure outside the United States for  
10 supplies and services, and administrative and operating purposes except  
11 pay, without regard to a law or regulation governing the obligation and  
12 expenditure of amounts of the United States Government, that may be  
13 necessary to carry out this chapter;

14 (C) employment and assignment of members of the Foreign Service  
15 serving under limited appointments when carrying out this chapter;

16 (D) the exchange of amounts without regard to loss by exchanges;

17 (E) making contracts for personal services outside the United States;

18 (F) expenses authorized by the Foreign Service Act of 1980 (22  
19 U.S.C. 3901 et seq.) not otherwise provided for;

20 (G) expenses authorized by the State Department Basic Authorities  
21 Act of 1956 (22 U.S.C. 2662, 2669 et seq.); and

22 (H) other expenses the President decides are necessary to carry out  
23 this chapter.

24 (2) An individual employed by contract with amounts made available  
25 under paragraph (1)(E) of this subsection is not an employee of the Govern-  
26 ment under any law carried out by the Director of the Office of Personnel  
27 Management. However, the Secretary of State may apply to that individ-  
28 ual—

29 (A) section 2(f) of the State Department Basic Authorities Act of  
30 1956 (22 U.S.C. 2669(f)); and

31 (B) any other law carried out by the Secretary as that law is related  
32 to employment of individuals by contract to perform personal services  
33 outside the United States.

### 34 **§ 13306. Audits**

35 (a) PROGRAM AUDITS.—Amounts may be made available under this chap-  
36 ter or another law to the United Nations High Commissioner for Refugees  
37 only if—

38 (1) an annual program audit will be conducted to determine the use  
39 of those amounts, including the use by implementing partners; and

40 (2) the audit will be made available through the Secretary of State  
41 for inspection by the Comptroller General.

1 (b) INSPECTIONS AND REPORTS BY COMPTROLLER GENERAL.—The  
 2 Comptroller General shall inspect each audit and submit to Congress a re-  
 3 port on the inspection.

4 **§ 13307. Administrative**

5 (a) AUTHORITY OF THE PRESIDENT.—To carry out this chapter, the  
 6 President may—

7 (1) make loans, advances, and grants to, and agreements with, a  
 8 person, government or government agency in or outside the United  
 9 States, and international and intergovernmental organizations;

10 (2) accept and use money, property, and services made available to  
 11 carry out this chapter; and

12 (3) provide assistance and make contributions, notwithstanding an-  
 13 other provision of law that restricts assistance to foreign countries.

14 (b) WAIVER.—If the President decides that it carries out this chapter, the  
 15 President may waive a provision of law on making, carrying out, and chang-  
 16 ing contracts and on United States Government expenditures.

17 (c) DELEGATION OF DUTIES AND POWERS.—If the President delegates  
 18 to an officer under section 301 of title 3 a duty or power of the President  
 19 under this chapter, the President also may authorize the officer to  
 20 redelegate the duty or power to a subordinate officer or employee of the offi-  
 21 cer. However, the President may not authorize the redelegation of the waiv-  
 22 er authority under subsection (b) of this section.

23 (d) INFORMING CONGRESSIONAL COMMITTEES.—The President shall  
 24 keep appropriate committees of Congress currently informed on the use of  
 25 expenditures and the exercise of duties and powers under this chapter.

26 **CHAPTER 135—IMMIGRANT EDUCATION ASSISTANCE**

Sec.

13501. Definitions and application.

13502. Supplementary educational service.

13503. Applications.

13504. State entitlements.

13505. Providing assistance to nonpublic schools when local agency does not.

13506. State administrative costs.

13507. Withholding payments.

13508. Reports.

13509. Authorization and allocation of appropriations.

27 **§ 13501. Definitions and application**

28 (a) DEFINITIONS.—In this chapter—

29 (1) the definitions in section 1471 of the Elementary and Secondary  
 30 Education Act of 1965 (20 U.S.C. 2891) apply, except “local edu-  
 31 cational agency” and “Secretary”.

32 (2) “elementary or secondary nonpublic school” means a school—

33 (A) complying with the compulsory attendance laws of the State  
 34 in which it is located; and

1 (B) exempt from taxation under section 501(c)(3) of the Inter-  
2 nal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

3 (3) “immigrant children” means children born outside any State who  
4 have been attending school in at least one State for less than 3 com-  
5 plete academic years.

6 (4) “local educational agency” has the same meaning given that  
7 term in section 1471 of the Elementary and Secondary Education Act  
8 of 1965 (20 U.S.C. 2891), except that it includes only an agency for  
9 which the number of immigrant children enrolled in elementary and  
10 secondary public schools under its jurisdiction and in elementary and  
11 secondary nonpublic schools in the district it serves, during the fiscal  
12 year for which a grant is to be made under this chapter, is at least  
13 equal to the lesser of—

14 (A) 500; or

15 (B) 3 percent of the total number of students enrolled in those  
16 public or nonpublic schools during that fiscal year.

17 (b) APPLICATION.—Sections 8002–8005 of the Elementary and Second-  
18 ary Education Act of 1965 (20 U.S.C. 3382–3384, 3386) apply to this  
19 chapter.

20 **§ 13502. Supplementary educational service**

21 (a) GENERAL AUTHORITY.—The Secretary of Education shall make a  
22 grant, as provided by this chapter, to each State educational agency for the  
23 fiscal year ending September 30, 19\_\_, for supplementary educational serv-  
24 ices for immigrant children enrolled in—

25 (1) elementary and secondary public schools under the jurisdiction  
26 of the local educational agencies of the State; and

27 (2) elementary and secondary nonpublic schools in the districts  
28 served by those agencies.

29 (b) SERVICES INCLUDED.—The supplementary services referred to in  
30 subsection (a) of this section include—

31 (1) services necessary to enable the immigrant children to perform  
32 satisfactorily, including—

33 (A) instruction in English;

34 (B) other bilingual educational services; and

35 (C) special materials and supplies;

36 (2) additional basic instructional services directly attributable to the  
37 presence of immigrant children in the school districts, including—

38 (A) additional classroom supplies;

39 (B) overhead;

40 (C) construction;

41 (D) acquiring or renting space; and

- 1 (E) transportation; and  
2 (3) essential inservice training of personnel who will provide the in-  
3 structional services described by clauses (1) and (2) of this subsection.  
4 (c) GRANT USE.—The State educational agency may use the grant only  
5 as provided in its application as approved under section 13503(b) of this  
6 title.

7 **§ 13503. Applications**

8 (a) REQUIREMENTS.—To receive a grant under this chapter, a State edu-  
9 cational agency must submit an application to the Secretary of Education  
10 at the time, in the way, and containing or accompanied by information the  
11 Secretary requires. In the application, the State educational agency must  
12 agree—

- 13 (1) to administer, or supervise the administration of, the educational  
14 programs, services, and activities paid for under this chapter;  
15 (2) to ensure that payments under the grant will be used as provided  
16 by section 13502 of this title;  
17 (3) to ensure that those payments will be allocated among the local  
18 educational agencies in the State so that each agency receives an  
19 amount—

20 (A) based on the number of immigrant children counted for that  
21 agency under section 13504(a)(1) of this title; and

22 (B) reduced by an amount under section 13504(a)(2) of this  
23 title attributable to that agency;

24 (4) to ensure that it will not disapprove finally any part of a local  
25 educational agency's application for an amount under this chapter  
26 without giving the local educational agency reasonable notice and op-  
27 portunity for a proceeding;

28 (5) to make reports the Secretary requires to carry out this chapter;  
29 and

30 (6) to ensure that—

31 (A) to the extent consistent with the number of immigrant chil-  
32 dren enrolled in elementary and secondary nonpublic schools in the  
33 district served by a local educational agency, the local educational  
34 agency, after consulting with the appropriate officials of the  
35 schools, will provide secular, neutral, and nonideological materials,  
36 equipment, and services necessary to educate those children;

37 (B) a public agency will—

38 (i) administer the amounts provided under this section for  
39 the materials, equipment, and services referred to in  
40 subclause (A) of this clause; and

1 (ii) own and administer property that is repaired, remod-  
2 eled, or constructed with those amounts;

3 (C) those amounts will not be commingled with State or local  
4 money; and

5 (D) a public agency will provide to each of those elementary or  
6 secondary nonpublic schools the services referred to in subclause

7 (A) of this clause through—

8 (i) officers and employees under the control of the agency;

9 or

10 (ii) a contract with a person or agency that is under the  
11 control of the public agency and, when providing the services,  
12 is independent of the school and of any religious organization.

13 (b) APPROVAL.—The Secretary shall approve an application meeting the  
14 requirements of subsection (a) of this section. The Secretary may not dis-  
15 approve finally an application without giving the applicant reasonable notice  
16 and opportunity for a hearing on the record.

17 **§ 13504. State entitlements**

18 (a) ALLOCATIONS.—(1) The Secretary of Education shall allocate the  
19 amount appropriated to carry out this chapter for a fiscal year among the  
20 State educational agencies. Except as provided by this section, the amount  
21 of the grant to which an agency is entitled under this chapter for a fiscal  
22 year is equal to the product of—

23 (A) the number of immigrant children enrolled during the fiscal year  
24 in elementary and secondary public schools under the jurisdiction of the  
25 local educational agencies of the State and in elementary and secondary  
26 nonpublic schools in the districts served by the local educational agen-  
27 cies of the State; multiplied by

28 (B) \$500.

29 (2)(A) If amounts are available for a fiscal year under other laws of the  
30 United States for expenditure in a State for the same purpose for which  
31 an amount is made available under this chapter, the amount of the grant  
32 under paragraph (1) of this subsection for that fiscal year is reduced by  
33 those amounts. However, the reduction shall be made only to the extent the  
34 amounts are available under the other laws—

35 (i) for that purpose specifically because the individuals served by the  
36 amounts have refugee, parolee, immigrant, or asylum status; and

37 (ii) to assist individuals eligible for services under this chapter.

38 (B) Subparagraph (A) of this paragraph does not apply to the extent a  
39 reduction is made under a comparable provision of another law of the Unit-  
40 ed States in the amount available under that law for a fiscal year for ex-

1     penditure in the State based on the amount assumed to be available under  
2     this chapter.

3     (b) DETERMINING NUMBER OF IMMIGRANT CHILDREN.—(1) The Sec-  
4     retary shall determine the number of immigrant children for a State edu-  
5     cational agency under this section based on information or estimates pro-  
6     vided by the agency under criteria prescribed by the Secretary. However,  
7     after notice and opportunity for a proceeding, the Secretary may disregard  
8     information or estimates that the Secretary decides are clearly erroneous.

9     (2) A determination under this subsection based on an overestimate or  
10     underestimate may not deprive a State educational agency of any part of  
11     the amount the agency would be entitled to receive under this chapter if  
12     the determination were based on accurate information.

13     (c) REALLOCATION OF UNUSED AMOUNTS.—When the Secretary deter-  
14     mines that a part of a payment made to a State educational agency under  
15     this chapter for a fiscal year will not be used by the agency to carry out  
16     the purpose for which the payment was made, the Secretary shall make that  
17     part available to another State educational agency to the extent the Sec-  
18     retary decides the other agency can use the additional amount to carry out  
19     the purpose. An amount made available under this subsection to a State  
20     educational agency from an appropriation for a fiscal year is deemed in this  
21     chapter to be a part of the grant (as determined under subsection (a) of  
22     this section) to that agency for that fiscal year, and remains available until  
23     the end of the next fiscal year.

24     **§ 13505. Providing assistance to nonpublic schools when**  
25     **local agency does not**

26     (a) GENERAL AUTHORITY.—If a local educational agency is prohibited by  
27     law from providing materials, equipment, and services for children enrolled  
28     in elementary and secondary nonpublic schools as required by section  
29     13503(a)(6) of this title, or if the Secretary of Education decides that a  
30     local educational agency has failed substantially or will not provide for the  
31     participation on an equitable basis of children enrolled in those schools, the  
32     Secretary—

33         (1) may waive the requirements of section 13503(a)(6) of this title;

34         and

35         (2) subject to the other requirements of this chapter, shall arrange  
36         for materials, equipment, and services to be provided for those children.

37     (b) WAIVER REQUIREMENTS.—A waiver under this section is subject to  
38     consultation, withholding, notice, and judicial review requirements as pro-  
39     vided by chapter 1 of title I of the Elementary and Secondary Education  
40     Act of 1965 (20 U.S.C. 2701 et seq.).

1 **§ 13506. State administrative costs**

2 The Secretary of Education may pay each State educational agency an  
3 amount equal to the amount the agency expends in carrying out its duties  
4 and powers properly and efficiently under this chapter. However, the total  
5 payments for a period may not be more than 1.5 percent of the amount  
6 the agency is entitled to receive for the period under this chapter.

7 **§ 13507. Withholding payments**

8 (a) AUTHORITY TO WITHHOLD.—When the Secretary of Education de-  
9 cides that a State educational agency receiving payments under this chapter,  
10 or a local educational agency receiving payments from the State educational  
11 agency, is not complying with a requirement of this chapter, the Secretary,  
12 until satisfied that there is no longer a failure to comply, shall—

13 (1) stop making payments to the State educational agency under this  
14 chapter; or

15 (2) prohibit the State educational agency from making payments  
16 under this chapter to the local educational agency that is causing, or  
17 involved in, the failure.

18 (b) NOTICE AND OPPORTUNITY FOR PROCEEDING.—The Secretary—

19 (1) may act under subsection (a) of this section only after giving the  
20 State educational agency reasonable notice and opportunity for a pro-  
21 ceeding; and

22 (2) shall notify the State educational agency of the action the Sec-  
23 retary is taking under subsection (a) of this section.

24 **§ 13508. Reports**

25 (a) REPORTS BY STATE EDUCATIONAL AGENCIES.—Each State edu-  
26 cational agency receiving amounts under this chapter shall submit a report  
27 each year to the Secretary of Education on the expenditure of amounts by  
28 local educational agencies of the States under this chapter. Each local edu-  
29 cational agency of a State receiving amounts under this chapter shall submit  
30 to the State educational agency information necessary for the report.

31 (b) REPORTS BY THE SECRETARY.—The Secretary shall submit a report  
32 twice a year to the appropriate committees of Congress about programs  
33 under this chapter.

34 **§ 13509. Authorization and allocation of appropriations**

35 (a) AUTHORIZATION OF APPROPRIATIONS.—Necessary amounts may be  
36 appropriated for the fiscal year ending September 30, 19\_\_, to make grants  
37 under this chapter and to pay for administrative costs under section 13506  
38 of this title.

39 (b) ALLOCATIONS OF APPROPRIATIONS.—(1) If the amounts appropriated  
40 for a fiscal year to make grants under this chapter are not enough to pay  
41 the total amount of the grants to which State educational agencies are enti-

1 tled under this chapter for the fiscal year, the allocation to each agency  
 2 shall be ratably reduced so that the total of the allocations is not more than  
 3 the amounts appropriated.

4 (2) Allocations reduced under paragraph (1) of this subsection shall be  
 5 increased on the same basis that they were reduced if amounts later become  
 6 available to make grants under this chapter for the period.

7 **CHAPTER 137—STATE LEGALIZATION IMPACT-**  
 8 **ASSISTANCE GRANTS**

Sec.

- 13701. Definitions.
- 13702. Allotments and allotment uses.
- 13703. Applications and statements about allotments.
- 13704. Determining and paying allotments.
- 13705. Nondiscrimination.
- 13706. Consultation with State and local officials.
- 13707. Reports and audits.
- 13708. Criminal penalties.
- 13709. Appropriations.

9 **§ 13701. Definitions**

10 In this chapter—

11 (1) “eligible legalized alien” means an alien having the status of an  
 12 alien lawfully admitted for temporary residence under chapter 93 of  
 13 this title, but only until the end of the 5-year period beginning on the  
 14 date the alien first acquired the status.

15 (2) “program of public assistance” means a program in a State or  
 16 political subdivision of a State that—

17 (A) provides for cash, medical, or other assistance (as defined  
 18 by the Secretary of Health and Human Services) designed to meet  
 19 the basic subsistence or health needs of individuals;

20 (B) is available generally to needy individuals residing in the  
 21 State or political subdivision; and

22 (C) receives financing from the State government or political  
 23 subdivision.

24 (3) “program of public health assistance” means a program in a  
 25 State or political subdivision that—

26 (A) provides public health services, including immunizations for  
 27 immunizable diseases, testing and treatment for tuberculosis and  
 28 sexually-transmitted diseases, and family planning services;

29 (B) is available generally to needy individuals residing in the  
 30 State or political subdivision; and

31 (C) receives financing from the State government or political  
 32 subdivision.

1 **§ 13702. Allotments and allotment uses**

2 (a) GENERAL AUTHORITY.—A State may be paid an allotment as pro-  
3 vided under this chapter. The State may use amounts allotted to the State  
4 only—

5 (1) to reimburse the costs of programs of public assistance provided  
6 for eligible legalized aliens not disqualified under section 9310 of this  
7 title when the assistance is provided;

8 (2) to reimburse the costs of programs of public health assistance  
9 provided to any alien who is, or who applied before May 5, 1988, to  
10 become, an eligible legalized alien;

11 (3) to pay a State educational agency for assisting a local edu-  
12 cational agency in providing educational services for eligible legalized  
13 aliens;

14 (4) to pay for public education and outreach (including providing in-  
15 formation to individual applicants, but not including client counseling  
16 or another service that would assume responsibility for an alien's appli-  
17 cation for change of status) to inform aliens lawfully admitted for tem-  
18 porary residence about—

19 (A) the requirements of chapter 93 of this title related to a  
20 change of status;

21 (B) sources of assistance for aliens obtaining a change of status,  
22 including educational, informational, and referral services, and in-  
23 formation about the rights and responsibilities of those aliens and  
24 aliens lawfully admitted for permanent residence;

25 (C) the identification of health, employment, and social services;  
26 and

27 (D) the importance of identifying oneself to service providers as  
28 an alien lawfully admitted for temporary residence; and

29 (5) to pay for education and outreach efforts by State agencies about  
30 unfair discrimination in employment practices because of national ori-  
31 gin or citizenship status, except that State agencies may initiate these  
32 efforts only after consulting with the Special Counsel for Immigration-  
33 Related Unfair Employment Practices to ensure, to the maximum ex-  
34 tent possible, a uniform program.

35 (b) DISCRETION TO DISTRIBUTE AMONG USES.—Except as provided by  
36 subsection (c) of this section, a State may decide on the distribution of  
37 amounts among the uses described by subsection (a) of this section.

38 (c) REQUIRED USE PERCENTAGES.—(1) Except as provided by para-  
39 graphs (2) and (3) of this subsection, of the amounts allotted to a State  
40 under this chapter in a fiscal year—

1 (A) 10 percent shall be used by the State for reimbursement under  
2 subsection (a)(1) of this section;

3 (B) 10 percent shall be used by the State for reimbursement under  
4 subsection (a)(2) of this section; and

5 (C) 10 percent shall be used by the State for payments under sub-  
6 section (a)(3) of this section.

7 (2) Subject to paragraph (3) of this subsection, a State not requiring all  
8 of the 10 percent of an allotted amount for a use described by subsection  
9 (a)(1), (2), or (3) of this section for a fiscal year shall distribute the unused  
10 amount equally between the other 2 uses described by subsection (a)(1)–(3).

11 (3) Amounts provided under this chapter may not be used to provide re-  
12 imbursement for more than 100 percent of the costs described by subsection  
13 (a)(1) or (2) of this section.

14 (4) Of the amounts allotted to a State under this chapter in a fiscal year,  
15 the State may not use more than the greater of—

16 (A) one percent or \$100,000, for payments under subsection (a)(4)  
17 of this section; and

18 (B) one percent or \$100,000, for payments under subsection (a)(5)  
19 of this section.

20 (d) LIMITATION ON PAYMENTS.—A payment under this chapter—

21 (1) may be made to a State only for costs for assistance of a pro-  
22 gram of public assistance or public health assistance to the extent the  
23 assistance otherwise generally is available under the program to citizens  
24 residing in the State; and

25 (2) may not be made for costs to the extent the costs otherwise are  
26 reimbursed or paid for under another United States Government pro-  
27 gram.

28 (e) APPLICATION OF CHAPTER 135.—Chapter 135 of this title applies to  
29 a payment under subsection (a)(3) of this section except that—

30 (1) a reference in chapter 135 to “immigrant children” is deemed  
31 to be a reference to “eligible legalized aliens” (including aliens over 16  
32 years of age) during the 5-year period beginning with the first month  
33 in which such an alien acquires the status of an alien lawfully admitted  
34 for temporary residence under this title;

35 (2) in determining a payment for an eligible legalized alien over 16  
36 years of age, the exception in section 13501(4) of this title does not  
37 apply;

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

1 (4) the services may include instruction in English and other pro-  
2 grams designed to enable aliens to acquire the citizenship skills de-  
3 scribed by section 20301(a)(7) and (8) of this title.

4 **§ 13703. Applications and statements about allotments**

5 (a) GENERAL REQUIREMENTS.—A State is eligible for payment of an  
6 amount allotted under section 13704 of this title only if the State—

7 (1) has filed with the Secretary of Health and Human Services an  
8 application containing information, and criteria for and administrative  
9 methods of distributing amounts received under this chapter, the Sec-  
10 retary decides is necessary to carry out this chapter;

11 (2) has its application approved by the Secretary; and

12 (3) submits to the Secretary a statement certifying that—

13 (A) amounts allotted to the State under this chapter will be  
14 used only as provided under section 13702(a) of this title;

15 (B) the State will decide on, and provide a fair method for, allo-  
16 cating amounts among State and local authorities consistent with  
17 subsection (b) of this section and section 13702(c) of this title;  
18 and

19 (C) fiscal control and accounting procedures will be established  
20 that are adequate to meet the requirements of subsection (b) of  
21 this section and sections 13702(d) and 13707 of this title.

22 (b) APPLICATION INFORMATION REQUIREMENTS.—The application of  
23 each State under this section for each fiscal year must include detailed in-  
24 formation on—

25 (1) the number of eligible legalized aliens residing in the State; and

26 (2) the costs (excluding costs otherwise paid by the United States  
27 Government) that the State and each political subdivision is likely to  
28 incur for the purposes described by section 13702(a) of this title.

29 **§ 13704. Determining and paying allotments**

30 (a) PRESCRIBING ALLOTMENT FORMULA.—From amounts appropriated  
31 under section 13709(a) of this title for a fiscal year (less the amount re-  
32 served for United States Government administrative costs), the Secretary of  
33 Health and Human Services shall allot to each State with an application  
34 approved under section 13703(a) of this title an amount determined by a  
35 formula, prescribed by the Secretary by regulation, that considers—

36 (1) the number of eligible legalized aliens residing in the State in  
37 that fiscal year;

38 (2) the ratio of eligible legalized aliens in the State to—

39 (A) the total number of residents of the State; and

40 (B) the total number of eligible legalized aliens in all States in  
41 that fiscal year;

1 (3) the expenditures the State is likely to incur in that fiscal year  
2 in providing assistance for eligible legalized aliens for which reimburse-  
3 ment or payment may be made under this chapter;

4 (4) the ratio of expenditures in the State to expenditures in all  
5 States;

6 (5) changes for the difference in prior years between the State's ac-  
7 tual expenditures incurred in providing assistance for eligible legalized  
8 aliens for which reimbursement or payment may be made under this  
9 chapter and the allotment provided the State under this chapter for  
10 those years; and

11 (6) other factors the Secretary considers appropriate to provide for  
12 an equitable distribution of the amounts.

13 (b) ESTIMATING THE NUMBER OF ELIGIBLE LEGALIZED ALIENS.—In  
14 determining the number of eligible legalized aliens under subsection (a) of  
15 this section, the Secretary may estimate the number of those aliens on the  
16 basis of information the Secretary considers appropriate.

17 (c) ADDITIONAL ALLOTMENTS OF UNALLOTTED AMOUNTS.—If all States  
18 have not qualified for allotments under this chapter for the fiscal year, or  
19 if at least one State has indicated in its description of activities that it does  
20 not intend to use, in that fiscal year or in any subsequent fiscal year begin-  
21 ning before October 1, 1994, the complete allotment, amounts appropriated  
22 under this chapter for a fiscal year and not allotted to those States shall  
23 be allotted among the remaining States in proportion to the amount other-  
24 wise allotted to the remaining States for the fiscal year.

25 (d) MAKING PAYMENTS.—For each fiscal year, the Secretary shall make  
26 payments, as provided by section 6503 of title 31, to each State from its  
27 allotment under this section. An amount paid to a State for a fiscal year  
28 and remaining unobligated at the end of the year remains available to the  
29 State in subsequent fiscal years for the purposes for which it was made.  
30 However, the amount is not available after September 30, 1994.

31 (e) REALLOTMENT OF UNEXPENDED AMOUNTS.—The Secretary shall  
32 reallocate amounts not expended by the States before December 31, 1994, to  
33 States that expended their complete allotment. Reallotment shall be based  
34 on each State's proportionate share of the total unreimbursed legalized alien  
35 costs in all States. Reallotted amounts are not available after June 30,  
36 1995.

### 37 **§ 13705. Nondiscrimination**

38 (a) PROHIBITIONS.—(1) A program or activity receiving financial assist-  
39 ance made available under this chapter is a program or activity receiving  
40 financial assistance from the United States Government in applying—

41 (A) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

- 1 (B) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);  
2 (C) title IX of the Education Amendments of 1972 (20 U.S.C. 1681  
3 et seq.); or  
4 (D) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et  
5 seq.).

6 (2) A person may not be excluded, because of sex or religion, from par-  
7 ticipating in, denied a benefit of, or discriminated against under, a program  
8 or activity receiving financial assistance made available under this chapter.

9 (b) VIOLATION NOTICES AND COMPLIANCE REQUESTS.—When the Sec-  
10 retary of Health and Human Services finds that a State or political subdivi-  
11 sion receiving a payment from an allotment under this chapter is not com-  
12 plying with a law referred to in subsection (a)(1) of this section, with sub-  
13 section (a)(2) of this section, or with an applicable regulation (including a  
14 regulation prescribed to carry out subsection (a)(2)), the Secretary shall no-  
15 tify the chief executive officer of the State and shall request the chief execu-  
16 tive officer to secure compliance by the State or political subdivision.

17 (c) ADMINISTRATIVE ACTIONS.—If within a reasonable time (but not  
18 more than 60 days after providing notice under subsection (b) of this sec-  
19 tion) the chief executive officer does not secure compliance, the Secretary  
20 may—

21 (1) refer the matter to the Attorney General with a recommendation  
22 that a civil action be brought;

23 (2) act under the Age Discrimination Act of 1975 (42 U.S.C. 6101  
24 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794),  
25 or title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.),  
26 as the case may be; or

27 (3) take other action provided by law.

28 (d) CIVIL ACTIONS.—The Attorney General may bring a civil action in  
29 an appropriate district court of the United States for appropriate relief  
30 when—

31 (1) a matter is referred to the Attorney General under subsection  
32 (c)(1) of this section; or

33 (2) the Attorney General believes the program or activity receiving  
34 financial assistance made available under this chapter is engaged in a  
35 pattern or practice in violation of—

36 (A) a law referred to in subsection (a)(1) of this section; or

37 (B) subsection (a)(2) of this section.

### 38 **§ 13706. Consultation with State and local officials**

39 In establishing regulations and guidelines to carry out this chapter, the  
40 Secretary of Health and Human Services shall consult with representatives  
41 of State governments and political subdivisions.

1 **§ 13707. Reports and audits**

2 (a) STATE ANNUAL REPORTS.—Each State shall submit to the Secretary  
3 of Health and Human Services an annual report on its activities under this  
4 chapter. To evaluate properly and compare the performance of different  
5 States provided assistance under this chapter and to ensure the proper ex-  
6 penditure of amounts under this chapter, the report shall be in the form  
7 and contain information the Secretary decides (after consulting with the  
8 States and the Comptroller General) is necessary—

9 (1) to provide an accurate description of the activities;

10 (2) to provide a complete record of the purposes for which amounts  
11 were expended and of the recipients of the amounts; and

12 (3) to establish the extent to which amounts were expended consist-  
13 ent with this chapter.

14 (b) ANNUAL REPORTS BY SECRETARY.—The Secretary—

15 (1) shall report annually to Congress on activities for which amounts  
16 are provided under this chapter; and

17 (2) shall submit a copy of the report to each State.

18 (c) AUDITS.—(1) Audits shall be conducted as provided under chapter 75  
19 of title 31.

20 (2) Amounts allotted to a State but not expended consistent with this  
21 chapter—

22 (A) shall be repaid by the State to the United States Government;  
23 or

24 (B) may be offset by the Secretary against any other amount to  
25 which the State is or may become entitled under this chapter.

26 (3) After notice and an opportunity for a proceeding, the Secretary may  
27 withhold payment of amounts to a State not using its allotment as provided  
28 under this chapter. The Secretary may withhold the amounts until the Sec-  
29 retary finds that the reason for withholding no longer exists and there is  
30 reasonable assurance that it will not recur.

31 (d) RECORDS.—(1) To evaluate and review assistance provided under this  
32 chapter, a record related to the assistance that is in the possession, custody,  
33 or control of a State, a political subdivision of a State, or a grantee of a  
34 State or political subdivision shall be made available to the Secretary and  
35 the Comptroller General.

36 (2) A State, political subdivision, or grantee is not required to create or  
37 prepare new records to comply with paragraph (1) of this subsection.

38 (e) AVAILABILITY OF REPORTS AND AUDITS.—(1) A State shall make  
39 copies of each report and audit required under this section available for  
40 public inspection within the State.

1 (2) On request, a copy of the annual report required by subsection (a)  
 2 of this section shall be provided to any interested public agency. Each agen-  
 3 cy may submit its views on the report to Congress.

4 **§ 13708. Criminal penalties**

5 A person shall be fined under title 18, imprisoned for not more than 5  
 6 years, or both, if the person—

7 (1) knowingly and willfully makes or causes to be made a false state-  
 8 ment or misrepresentation of a material fact related to providing assist-  
 9 ance or services for which payment may be made by a State from  
 10 amounts allotted to the State under this chapter; or

11 (2) knowing of the occurrence of an event affecting the initial or con-  
 12 tinued right to a payment, conceals or does not disclose the event with  
 13 an intent to receive payment fraudulently—

14 (A) in a greater amount than is due; or

15 (B) when no payment is authorized.

16 **§ 13709. Appropriations**

17 (a) ANNUAL APPROPRIATION.—For the fiscal year ending September 30,  
 18 1994, there is appropriated \$812,000,000 to carry out this chapter for costs  
 19 incurred after September 30, 1989, including United States Government,  
 20 State government, and political subdivision administrative costs.

21 (b) CHANGES IN APPROPRIATED AMOUNTS.—(1) Except as provided by  
 22 paragraphs (2) and (3) of this subsection, the amount appropriated for a  
 23 fiscal year is decreased by the amount estimated to be expended by the Gov-  
 24 ernment in that year (as contained in the annual budget submitted by the  
 25 President to Congress for that year) for programs of financial assistance,  
 26 medical assistance, and assistance under the Food Stamp Act of 1977 (7  
 27 U.S.C. 2011 et seq.) for aliens eligible for assistance under section  
 28 9310(a)(1) of this title only because of section 9310(a)(3) and (b) of this  
 29 title.

30 (2) The amount estimated under paragraph (1) of this section shall ex-  
 31 clude an amount attributable to supplemental security benefits paid under  
 32 title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) or medical  
 33 assistance provided under a State plan approved under title XIX of the So-  
 34 cial Security Act (42 U.S.C. 1396 et seq.) for—

35 (A) an alien who the Secretary of Health and Human Services de-  
 36 cides, based on an application filed before May 5, 1988, for benefits  
 37 under section 212 of the Act of July 9, 1973 (42 U.S.C. 1382 (note))  
 38 or title XVI, is—

39 (i) residing permanently in the United States under color of law  
 40 as provided by section 1614(a)(1)(B)(ii) of the Social Security Act  
 41 (42 U.S.C. 1382c(a)(1)(B)(ii)); and

1 (ii) eligible to receive the benefits under section 212 or title XVI  
2 for April, 1988; and

3 (B) as long as the alien continues without interruption to be eligible  
4 to receive the benefits under section 212 or title XVI.

5 (3) If expenditures by the Government (as described by paragraph (1) of  
6 this subsection) for a fiscal year are more than, or less than, the amount  
7 estimated to be expended for that year under paragraph (1) (considering  
8 any change under this paragraph), the amount described by this section for  
9 the next fiscal year shall be decreased or increased, respectively, by the  
10 amount of the excess or deficit for the prior fiscal year.

11 **CHAPTER 139—REIMBURSEMENT FOR COSTS OF**  
12 **IMPRISONING CUBAN NATIONALS AND ILLEGAL ALIENS**

Sec.

13901. Payment of costs of imprisoning certain Cuban nationals.

13902. Reimbursement of costs of imprisoning certain Cuban nationals and illegal aliens.

13903. Limitation.

13 **§ 13901. Payment of costs of imprisoning certain Cuban na-**  
14 **tionals**

15 (a) PAYMENTS TO STATES AND COUNTIES.—The Attorney General shall  
16 pay a State or county for costs incurred by the State or county in imprison-  
17 ing, during the fiscal year for which payment is made, a Cuban national  
18 who—

19 (1) was paroled into the United States in 1980 by the Attorney Gen-  
20 eral;

21 (2) after being paroled, violated a State or county law for which a  
22 term of imprisonment was imposed; and

23 (3) at the time of the parole and violation, was not lawfully admitted  
24 for permanent residence or not admitted under an immigrant or non-  
25 immigrant visa issued under this title.

26 (b) APPLICATIONS FOR PAYMENTS.—For a State or county to be paid  
27 under this section, the chief executive officer of the State or county shall  
28 submit an application to the Attorney General, under regulations prescribed  
29 by the Attorney General. The application shall contain—

30 (1) the number and names of Cuban nationals for whose imprison-  
31 ment the State or county is entitled to be paid; and

32 (2) other information the Attorney General requires.

33 (c) REDUCTION IF APPROPRIATIONS INSUFFICIENT.—For each fiscal  
34 year, the Attorney General shall make payment under this section to States  
35 and counties the Attorney General decides are eligible under this section.  
36 However, if amounts appropriated for the fiscal year to carry out this sec-  
37 tion are not sufficient to make all payments, each payment shall be ratably  
38 reduced so that the total of the payments equals the amount appropriated.

(d) POLICY ON RETURN OF CUBAN NATIONALS.—It is the policy of the United States Government that the President, in consultation with the Attorney General, other appropriate officials of the United States Government, and appropriate State and county chief executive officers referred to in subsection (b) of this section, shall place top priority on seeking the expeditious removal from the United States and return by any responsible means to Cuba of Cuban nationals described by subsection (a) of this section.

**§ 13902. Reimbursement of costs of imprisoning certain Cuban nationals and illegal aliens**

The Attorney General shall reimburse a State for costs incurred by the State in imprisoning any of the following Cuban nationals and illegal aliens convicted by the State of a felony:

(1) a Cuban national who—

(A) was paroled into the United States in 1980 by the Attorney General;

(B) after being paroled, violated a State or local law for which a term of imprisonment was imposed; and

(C) at the time of parole and violation, was not lawfully admitted for permanent or temporary residence or not admitted under an immigrant or nonimmigrant visa issued under this title.

(2) an illegal alien who is in the United States unlawfully and—

(A) whose most recent entry into the United States was without inspection; or

(B) who was admitted to the United States as a nonimmigrant and whose—

(i) period of authorized stay as a nonimmigrant expired before the date of committing the crime for which the illegal alien was convicted; or

(ii) unlawful status was known to the United States Government before the date of committing the crime for which the alien was convicted.

**§ 13903. Limitation**

The Attorney General may expend amounts under this chapter in a fiscal year only to the extent and in the amount provided in advance by an appropriation law.

**SUBTITLE V—CITIZENSHIP AND NATIONALITY**

CHAPTER	Sec.
201. CITIZENSHIP AND NATIONALITY AT BIRTH AND COLLECTIVE NATURALIZATION.	20101
203. NATURALIZATION ELIGIBILITY .....	20301
205. NATURALIZATION PROCEDURE .....	20501
207. LOSS OF NATIONALITY .....	20701
209. NATIONALITY DOCUMENTS .....	20901
211. MISCELLANEOUS .....	21101

**CHAPTER 201—CITIZENSHIP AND NATIONALITY AT  
BIRTH AND COLLECTIVE NATURALIZATION**

Sec.

20101. Individuals born in the United States.  
 20102. Individuals born in American Samoa.  
 20103. Individuals found in the United States or American Samoa.  
 20104. Individuals born outside the United States and American Samoa.  
 20105. Individuals born out of wedlock.  
 20106. Individuals born in the Republic of Panama or the Canal Zone.  
 20107. Noncitizen Indians born in Alaska after March 29, 1867, and before June 2, 1924.  
 20108. Citizens of the Republic of Hawaii and individuals born in Hawaii after August 11, 1898, and before April 30, 1900.  
 20109. Individuals residing in or born in Guam after April 10, 1899, and before August 1, 1950.  
 20110. Individuals born in Puerto Rico after April 10, 1899, and before January 13, 1941.  
 20111. Individuals born in or residing in the Virgin Islands after January 17, 1917, and before June 28, 1932.

**§ 20101. Individuals born in the United States**

(a) CITIZEN AT BIRTH.—The following individuals are citizens of the United States at birth:

- (1) an individual born in, and subject to the jurisdiction of, the United States.
- (2) an individual born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe.

(b) PROPERTY RIGHTS NOT AFFECTED.—Subsection (a)(2) of this section does not affect property rights.

**§ 20102. Individuals born in American Samoa**

(a) CITIZEN AT BIRTH.—An individual born in American Samoa is a citizen of the United States at birth if one of the individual's parents is a citizen of the United States who was physically present in the United States or American Samoa for at least one continuous year before the individual's birth.

(b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—An individual born in American Samoa who is not a citizen of the United States at birth under subsection (a) of this section is a national, but not a citizen, of the United States at birth.

**§ 20103. Individuals found in the United States or American Samoa**

(a) CITIZEN AT BIRTH.—An individual of unknown parents found in the United States before becoming 5 years of age is a citizen of the United States at birth unless shown, before the individual becomes 21 years of age, that the individual was not born in the United States.

(b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—An individual of unknown parents found in American Samoa before becoming 5 years of age is a national, but not a citizen, of the United States at birth unless shown, before the individual becomes 21 years of age, that the individual was not born in American Samoa.

1 **§20104. Individuals born outside the United States and**  
2 **American Samoa**

3 (a) CITIZEN AT BIRTH.—An individual born outside the United States  
4 and American Samoa is a citizen of the United States at birth if—

5 (1) both parents are citizens of the United States and at least one  
6 parent had a residence in the United States or American Samoa before  
7 the individual's birth;

8 (2) one parent is a national, but not a citizen, of the United States  
9 and the other parent is a citizen of the United States who was phys-  
10 ically present in the United States or American Samoa for at least one  
11 continuous year before the individual's birth; or

12 (3) one parent is an alien and the other parent is a citizen of the  
13 United States who, before the individual's birth, was physically present  
14 in the United States or American Samoa for at least 5 years, at least  
15 2 of which were after the citizen parent became 14 years of age.

16 (b) NATIONAL, BUT NOT CITIZEN, AT BIRTH.—(1) An individual born  
17 outside the United States and American Samoa is a national, but not a citi-  
18 zen, of the United States at birth if—

19 (A) both parents are nationals, but not citizens, of the United States  
20 who had a residence in the United States or American Samoa before  
21 the individual's birth; or

22 (B) one parent is an alien and the other parent is a national, but  
23 not a citizen, of the United States who, before the individual's birth,  
24 was physically present in the United States or American Samoa for at  
25 least 7 years in any continuous 10-year period—

26 (i) during which the national parent was not outside the United  
27 States and American Samoa for more than one continuous year;  
28 and

29 (ii) at least 5 years of which were after the national parent be-  
30 came 14 years of age.

31 (2) An individual born before August 27, 1986, is a national, but not a  
32 citizen, of the United States under paragraph (1)(B) of this subsection only  
33 as of the date the individual satisfies the Secretary of State that the individ-  
34 ual meets the requirements of paragraph (1)(B).

35 (c) TIME OUTSIDE THE UNITED STATES INCLUDED IN PERIOD OF PRES-  
36 ENCE.—In subsections (a)(3) and (b)(1)(B) of this section, the period of  
37 physical presence includes, for an individual born after December 23, 1952,  
38 any period the citizen parent or national parent spent outside the United  
39 States and American Samoa—

1 (1) honorably serving in the armed forces of the United States or  
2 employed by the United States Government or an international organi-  
3 zation; or

4 (2) as a dependent unmarried son or daughter and member of the  
5 household of an individual honorably serving in the armed forces or em-  
6 ployed by the Government or an international organization.

7 (d) INDIVIDUAL BORN BETWEEN 1941 AND 1952.—Subsection (a)(3) of  
8 this section also applies to an individual if—

9 (1) the individual was born outside the United States and American  
10 Samoa after January 12, 1941, and before December 24, 1952;

11 (2) one of the individual's parents is a citizen of the United States  
12 who served in the armed forces of the United States after December  
13 31, 1946, and before December 24, 1952; and

14 (3) the individual did not become a citizen under section 201(g) or  
15 (i) of the Nationality Act of 1940.

#### 16 **§ 20105. Individuals born out of wedlock**

17 (a) NATIONALITY AT BIRTH THROUGH MOTHER.—An individual born out  
18 of wedlock outside the United States after December 23, 1952, is—

19 (1) a citizen of the United States at birth if the mother is a citizen  
20 of the United States who was physically present in the United States  
21 or American Samoa for at least one continuous year before the individ-  
22 ual's birth; or

23 (2) a national, but not a citizen, of the United States at birth if the  
24 mother is a national, but not a citizen, of the United States who was  
25 physically present in the United States or American Samoa for at least  
26 one continuous year before the individual's birth.

27 (b) NATIONALITY AT BIRTH THROUGH FATHER.—(1) Sections 20102(a)  
28 and 20104(a) and (b)(1)(A) of this title apply to an individual born out of  
29 wedlock after December 23, 1952, if—

30 (A) a blood relationship between the individual and the father is es-  
31 tablished by clear and convincing evidence;

32 (B) the father—

33 (i) is a citizen of the United States or a national, but not a citi-  
34 zen, of the United States when the individual is born; and

35 (ii) if alive when the individual is born, agrees in writing to pro-  
36 vide financial support for the individual until the individual is 18  
37 years of age; and

38 (C) before the individual becomes 18 years of age—

39 (i) the individual is legitimated under the law of the individual's  
40 residence or domicile;

41 (ii) the father acknowledges paternity in writing under oath; or

1 (iii) a court of competent jurisdiction establishes paternity.

2 (2) Section 20104(a)(3) of this title applies to an individual born out of  
3 wedlock after January 12, 1941, and before December 24, 1952, if pater-  
4 nity is established and the individual is legitimated before becoming 21  
5 years of age.

6 **§20106. Individuals born in the Republic of Panama or the**  
7 **Canal Zone**

8 (a) INDIVIDUAL BORN IN REPUBLIC OF PANAMA.—An individual born in  
9 the Republic of Panama—

10 (1) after February 25, 1904, and before August 4, 1937, is a citizen  
11 of the United States as of August 4, 1937, if one parent was a citizen  
12 of the United States employed by the United States Government or the  
13 Panama Canal Commission when the individual was born; or

14 (2) after August 3, 1937, is a citizen of the United States at birth  
15 if one parent is a citizen of the United States employed by the Govern-  
16 ment or the Panama Canal Commission or its successor when the indi-  
17 vidual is born.

18 (b) INDIVIDUAL BORN IN CANAL ZONE.—An individual born in the Canal  
19 Zone—

20 (1) after February 25, 1904, and before August 4, 1937, is a citizen  
21 of the United States as of August 4, 1937, if one parent was a citizen  
22 of the United States when the individual was born; or

23 (2) after August 3, 1937, and before October 1, 1979, is a citizen  
24 of the United States at birth if one parent was a citizen of the United  
25 States when the individual was born.

26 **§20107. Noncitizen Indians born in Alaska after March 29,**  
27 **1867, and before June 2, 1924**

28 A noncitizen Indian born in Alaska after March 29, 1867, and before  
29 June 2, 1924, is a citizen of the United States as of June 2, 1924.

30 **§20108. Citizens of the Republic of Hawaii and individuals**  
31 **born in Hawaii after August 11, 1898, and before**  
32 **April 30, 1900**

33 The following individuals are citizens of the United States as of April 30,  
34 1900:

35 (1) a citizen of the Republic of Hawaii on August 12, 1898.

36 (2) an individual born in Hawaii after August 11, 1898, and before  
37 April 30, 1900.

38 **§20109. Individuals residing in or born in Guam after April**  
39 **10, 1899, and before August 1, 1950**

40 (a) CITIZENSHIP.—Except as provided by this section, the following indi-  
41 viduals are citizens of the United States as of August 1, 1950:

1 (1) a Spanish subject or an individual born in Guam who resided in  
 2 Guam on April 11, 1899, and continued to reside in the United States  
 3 or a territory or possession of the United States through August 1,  
 4 1950.

5 (2) an individual born after April 11, 1899, and before August 1,  
 6 1950, of parents who are citizens under clause (1) of this subsection.

7 (3) an individual born in Guam after April 10, 1899, and before Au-  
 8 gust 1, 1950, and subject to the jurisdiction of the United States.

9 (b) INDIVIDUAL WHO TOOK AFFIRMATIVE STEP TO PRESERVE OR AC-  
 10 QUIRE NATIONALITY OF A FOREIGN COUNTRY.—Subsection (a) of this sec-  
 11 tion does not apply to an individual who took an affirmative step to preserve  
 12 or acquire the nationality of a foreign country before August 1, 1950.

13 (c) INDIVIDUAL WHO DECLARED DESIRE TO REMAIN A NATIONAL OF  
 14 A FOREIGN COUNTRY.—An individual under this section who was a national  
 15 of a foreign country before August 1, 1950, and who declared under oath  
 16 before August 1, 1952, in a way prescribed by the Attorney General, a de-  
 17 sire to remain a national of the foreign country is not a national of the  
 18 United States as of the date the declaration is made.

19 **§20110. Individuals born in Puerto Rico after April 10, 1899,**  
 20 **and before January 13, 1941**

21 An individual is a citizen of the United States as of January 13, 1941,  
 22 if the individual was—

23 (1) born in Puerto Rico after April 10, 1899, and before January  
 24 13, 1941;

25 (2) subject to the jurisdiction of the United States; and

26 (3) residing in the United States or a territory or possession of the  
 27 United States on January 13, 1941.

28 **§20111. Individuals born in or residing in the Virgin Islands**  
 29 **after January 17, 1917, and before June 28, 1932**

30 The following individuals are citizens of the United States as of February  
 31 25, 1927:

32 (1) an individual born in the Virgin Islands who—

33 (A) resided in the Virgin Islands on January 17, 1917, resided  
 34 in the United States on February 25, 1927, and was not a citizen  
 35 or subject of a foreign country on February 25, 1927;

36 (B) resided in the United States on January 17, 1917, resided  
 37 in the Virgin Islands on February 25, 1927, and was not a citizen  
 38 or subject of a foreign country on February 25, 1927;

39 (C) resided in the continental United States or a territory or  
 40 possession of the United States on June 28, 1932, and was not  
 41 a citizen or subject of a foreign country on June 28, 1932; or

1 (D) after January 16, 1917, and before February 25, 1927, was  
2 subject to the jurisdiction of the United States.

3 (2) a citizen of Denmark who—

4 (A) resided in the Virgin Islands on January 17, 1917;

5 (B) resided in the United States on February 25, 1927; and

6 (C) did not make the declaration to preserve Danish citizenship  
7 under article 6 of the treaty of August 4, 1916, between the  
8 United States and Denmark, or made the declaration and re-  
9 nounced it, or renounces it by a declaration before a court of  
10 record.

11 (3) an individual born after January 17, 1917, and before February  
12 25, 1927, of parents who are citizens of the United States under clause  
13 (1) or (2) of this section.

## 14 **CHAPTER 203—NATURALIZATION ELIGIBILITY**

### SUBCHAPTER I—ELIGIBILITY

Sec.

20301. General requirements.

20302. Temporary absences for certain employment.

20303. Temporary absences to perform religious functions.

20304. Individuals married to citizens of the United States.

20305. Children born of an alien parent and a citizen parent.

20306. Children born of alien parents or a parent who lost citizenship.

20307. Children having a citizen parent at time of application.

20308. Children adopted before becoming 16 years of age by a citizen parent.

20309. Individuals employed by United States nonprofit organizations disseminating informa-  
tion.

20310. Individuals making extraordinary contributions to the security of the United States.

20311. Individuals with service on American vessels.

20312. Individuals with 3 years of service in the armed forces.

20313. Individuals with service in the armed forces during war or military hostilities.

20314. Posthumous naturalization of individuals who die during service in the armed forces  
during war or military hostilities.

20315. Individuals who lost citizenship by entering the armed forces of a foreign country.

20316. Alien enemies.

20317. Women who lost citizenship through marriage.

20318. Nationals residing in American Samoa.

20319. Philippine citizens who entered before May 1, 1934.

### SUBCHAPTER II—INELIGIBILITY

20331. Individuals dangerous to the welfare, safety, and security of the United States.

20332. Deserters and draft evaders.

20333. Aliens exempted or discharged from the armed forces or the National Security Train-  
ing Corps.

### 15 SUBCHAPTER I—ELIGIBILITY

#### 16 **§ 20301. General requirements**

17 (a) NATURALIZATION REQUIREMENTS.—Except as otherwise provided, an  
18 individual may be naturalized as a citizen of the United States only if the  
19 individual satisfies the following requirements:

20 (1) The individual must be at least 18 years of age when filing an  
21 application for naturalization.

22 (2) The individual must be lawfully admitted for permanent resi-  
23 dence.

1 (3) The individual must have resided in the United States, after  
2 being lawfully admitted for permanent residence, continuously for at  
3 least 5 years immediately before filing the application.

4 (4) The individual must have been physically present in the United  
5 States for at least half of the 5 years immediately before filing the ap-  
6 plication.

7 (5) The individual must have resided in the State or district of the  
8 Immigration and Naturalization Service in the United States in which  
9 the application is filed for at least 3 months immediately before filing  
10 the application.

11 (6) The individual must reside in the United States continuously  
12 from the date of filing the application through the time the individual  
13 is naturalized.

14 (7) The individual must be able to demonstrate an understanding of  
15 the English language, including the ability to speak words in ordinary  
16 usage and the ability to read and write simple words and phrases in  
17 ordinary usage, without extraordinary or unreasonable conditions being  
18 required. This paragraph does not apply to an individual who—

19 (A) is physically unable to satisfy this paragraph; or

20 (B) on the date the application is filed—

21 (i) is at least 50 years of age and has lived in the United  
22 States for at least 20 years after being lawfully admitted for  
23 permanent residence; or

24 (ii) is at least 55 years of age and has lived in the United  
25 States for at least 15 years after being lawfully admitted for  
26 permanent residence.

27 (8) The individual must be able to demonstrate knowledge and un-  
28 derstanding of the fundamentals of the history, and of the principles  
29 and form of government, of the United States.

30 (9) The individual must have been of good moral character, attached  
31 to the principles of the Constitution, and well disposed to the good  
32 order and happiness of the United States for at least 5 years im-  
33 mediately before filing the application, and remain so from the date of fil-  
34 ing the application through the time the individual is naturalized.

35 (b) CONDUCT MORE THAN 5 YEARS BEFORE APPLICATION FILED.—  
36 Conduct more than 5 years before an application is filed may be considered  
37 in deciding whether an individual satisfies the requirements of subsection  
38 (a)(9) of this section.

39 (c) TEMPORARY ABSENCES.—(1) An absence from the United States of  
40 not more than 6 months does not break the continuity of residence required  
41 under subsection (a) of this section.

1 (2) An absence of more than 6 months but less than one year breaks the  
2 continuity of residence, unless the individual satisfies the Attorney General  
3 that the individual did not abandon residence in the United States during  
4 the absence.

5 (3) Except as otherwise provided, an absence of one year breaks the con-  
6 tinuity of residence.

7 (d) PROHIBITION ON DISCRIMINATION.—The right of an individual to be  
8 naturalized as a citizen of the United States may not be denied or abridged  
9 because of race or sex or because the individual is married.

10 **§ 20302. Temporary absences for certain employment**

11 (a) RESIDENCE.—An individual temporarily absent from the United  
12 States (even though for a year or more) is deemed to be residing in the  
13 United States under section 20301(a)(3) and (6) of this title during the ab-  
14 sence if—

15 (1) the individual has resided and been physically present in the  
16 United States, after being lawfully admitted for permanent residence,  
17 continuously for at least one year;

18 (2) after the one-year period described by clause (1) of this sub-  
19 section—

20 (A) the individual is employed by or under a contract with the  
21 United States Government;

22 (B) the individual is employed by or under a contract with, and  
23 carrying out scientific research for, a United States research insti-  
24 tution recognized by the Attorney General;

25 (C)(i) the individual is employed by a United States firm or cor-  
26 poration developing foreign trade and commerce of the United  
27 States, or by a subsidiary of the firm or corporation more than  
28 50 percent of the stock of which is owned by the firm or corpora-  
29 tion; and

30 (ii) the individual is developing foreign trade and commerce of  
31 the United States or the individual's residence outside the United  
32 States is necessary to protect the property rights of the firm or  
33 corporation in a foreign country; or

34 (D) the individual—

35 (i) is employed by a public international organization of  
36 which the United States is a member by treaty or law; and

37 (ii) was not employed by the organization until after being  
38 lawfully admitted for permanent residence;

39 (3) before beginning the employment and before the end of one year  
40 of continuous absence from the United States, the individual satisfies

1 the Attorney General that the absence will be for a purpose described  
2 by clause (2) of this subsection; and

3 (4) the individual satisfies the Attorney General that the absence  
4 was for the purpose for which the absence was approved.

5 (b) PHYSICAL PRESENCE.—(1) Except as provided by paragraph (2) of  
6 this subsection, an individual satisfying subsection (a) of this section still  
7 must satisfy the physical presence requirement of section 20301(a)(4) of  
8 this title.

9 (2) An individual employed by or under a contract with the Government  
10 and satisfying subsection (a) of this section does not have to satisfy the  
11 physical presence requirement of section 20301(a)(4) of this title.

12 (3) An individual employed by or under a contract with the Central Intel-  
13 ligence Agency may satisfy the physical presence requirement of subsection  
14 (a)(1) of this section by physical presence at any time before filing the ap-  
15 plication for naturalization.

16 (c) SPOUSES, UNMARRIED SONS, AND UNMARRIED DAUGHTERS.—A  
17 spouse, unmarried son, or unmarried daughter of an individual satisfying  
18 subsection (a) of this section is entitled to the same benefits under sub-  
19 section (a) as the individual during the period the spouse, son, or daughter  
20 resided outside the United States as a dependent member of the household  
21 of the individual.

### 22 **§ 20303. Temporary absences to perform religious functions**

23 An individual temporarily absent from the United States is deemed to be  
24 residing and physically present in the United States under section  
25 20301(a)(3), (4), and (6) of this title during the absence if the individual—

26 (1) has resided and been physically present in the United States,  
27 after being lawfully admitted for permanent residence, continuously for  
28 at least one year before filing the application for naturalization;

29 (2)(A) is authorized to perform the ministerial or priestly functions  
30 of a religious denomination having an organization in the United  
31 States; or

32 (B) is serving only as a missionary, brother, nun, or sister of a reli-  
33 gious denomination or an interdenominational mission organization  
34 having an organization in the United States; and

35 (3) satisfies the Attorney General that the absence was only to per-  
36 form the functions or service described by clause (2) of this section.

### 37 **§ 20304. Individuals married to citizens of the United States**

38 (a) GENERAL.—An individual married to a citizen of the United States  
39 may be naturalized without regard to section 20301(a)(3) or (4) of this title  
40 if the individual—

1 (1) resided in the United States, after being lawfully admitted for  
2 permanent residence, continuously for at least 3 years immediately be-  
3 fore filing the application for naturalization;

4 (2) lived in marriage with the citizen spouse for the 3-year period,  
5 with the spouse being a citizen during all of that period; and

6 (3) was physically present in the United States for at least half of  
7 the 3-year period.

8 (b) CITIZEN SPOUSES EMPLOYED OUTSIDE UNITED STATES.—An indi-  
9 vidual married to a citizen of the United States may be naturalized without  
10 regard to section 20301(a)(3)–(6) of this title if—

11 (1) the citizen spouse is—

12 (A) employed by the United States Government;

13 (B) employed by a United States research institution recognized  
14 by the Attorney General;

15 (C) employed by a United States firm or corporation developing  
16 foreign trade and commerce of the United States or by a subsidi-  
17 ary of the firm or corporation;

18 (D) employed by a public international organization of which  
19 the United States is a member by treaty or law;

20 (E) authorized to perform the ministerial or priestly functions  
21 of a religious denomination having an organization in the United  
22 States; or

23 (F) serving only as a missionary of a religious denomination or  
24 an interdenominational mission organization having an organiza-  
25 tion in the United States;

26 (2) the citizen spouse is regularly stationed outside the United States  
27 in the employment or activity described by clause (1) of this subsection;

28 (3) the individual declares in good faith to the Attorney General an  
29 intention to reside in the United States immediately after the employ-  
30 ment or activity of the citizen spouse outside the United States ends;  
31 and

32 (4) the individual is in the United States at the time of naturaliza-  
33 tion.

34 (c) SURVIVING SPOUSES OF CITIZENS IN ARMED FORCES.—(1) An indi-  
35 vidual may be naturalized without regard to section 20301(a)(3)–(6) of this  
36 title if—

37 (A) the individual is the surviving spouse of a citizen of the United  
38 States who died when serving honorably on active duty in the armed  
39 forces of the United States; and

40 (B) the individual and the citizen spouse were living in marriage at  
41 the time of the death.

1 (2) This subsection does not apply to an individual who is the surviving  
2 spouse of a citizen granted citizenship posthumously under section 20314  
3 of this title.

4 **§ 20305. Children born of an alien parent and a citizen par-**  
5 **ent**

6 (a) GENERAL.—A child born outside the United States, one of whose par-  
7 ents at the time of the child’s birth was an alien and the other of whose  
8 parents at the time of the child’s birth was a citizen of the United States  
9 and remains a citizen, is naturalized as a citizen of the United States when  
10 the following events occur, if they occur before the child becomes 18 years  
11 of age:

12 (1) the alien parent is naturalized.

13 (2) the child begins residing in the United States after being lawfully  
14 admitted for permanent residence.

15 (b) ADOPTED CHILD.—Subsection (a) of this section applies to an adopt-  
16 ed child only if the child, at the time of the naturalization of the alien par-  
17 ent, is—

18 (1) in the custody of the adoptive parents; and

19 (2) residing in the United States after being lawfully admitted for  
20 permanent residence.

21 **§ 20306. Children born of alien parents or a parent who lost**  
22 **citizenship**

23 (a) GENERAL.—A child born outside the United States of alien parents,  
24 or of one alien parent and one parent who was a citizen of the United  
25 States at the time of the child’s birth but later lost citizenship, is natural-  
26 ized as a citizen of the United States when the following events occur, if  
27 they before the child becomes 18 years of age:

28 (1)(A) both parents are naturalized;

29 (B) the surviving parent is naturalized if one parent is deceased;

30 (C) the parent with legal custody is naturalized if the parents are  
31 legally separated; or

32 (D) the mother is naturalized if the child was born out of wedlock  
33 and paternity is not established by legitimation.

34 (2) the child begins residing in the United States after being lawfully  
35 admitted for permanent residence.

36 (b) ADOPTED CHILD.—Subsection (a) of this section applies to an adopt-  
37 ed child only if the child, at the time of the naturalization of the alien par-  
38 ent or parents, is—

39 (1) in the custody of the adoptive parents; and

40 (2) residing in the United States after being lawfully admitted for  
41 permanent residence.

1 **§ 20307. Children having a citizen parent at time of applica-**  
2 **tion**

3 (a) GENERAL.—A child born outside the United States, one or both of  
4 whose parents is a citizen of the United States at the time the citizen par-  
5 ent files an application for naturalization of the child, may be naturalized  
6 without regard to section 20301(a)(3), (4), or (6)–(8) of this title if the  
7 child is—

8 (1) less than 18 years of age; and

9 (2) residing in the United States with that citizen parent after being  
10 lawfully admitted for permanent residence.

11 (b) CHILD OF TENDER YEARS.—A child of tender years for whom an ap-  
12 plication is filed under subsection (a) of this section is deemed to satisfy  
13 section 20301(a)(9) of this title.

14 (c) ADOPTED CHILD.—(1) This section applies to an adopted child only  
15 if the child is also in the custody of the adoptive parent or parents.

16 (2) An adopted child whose parent applies for naturalization of the child  
17 under this section may be naturalized without regard to section 20301(a)(5)  
18 of this title if—

19 (A) the adoptive citizen parent—

20 (i) is regularly stationed outside the United States in an em-  
21 ployment or activity described by section 20304(b)(1) of this title;  
22 and

23 (ii) declares in good faith to the Attorney General an intention  
24 to reside in the United States immediately after the employment  
25 or activity ends; and

26 (B) the child is in the United States at the time of naturalization.

27 **§ 20308. Children adopted before becoming 16 years of age**  
28 **by a citizen parent**

29 A child born outside the United States and adopted by a citizen of the  
30 United States may be naturalized without regard to section 20301(a) of this  
31 title, on application by the adoptive citizen parent, if the Attorney General  
32 is satisfied that—

33 (1) the applicant is a citizen of the United States, and if the appli-  
34 cant is married, the applicant's spouse is a citizen of the United States;

35 (2) the child was adopted before becoming 16 years of age by a citi-  
36 zen parent;

37 (3) the child is less than 18 years of age;

38 (4) the child is in the custody of the applicant;

39 (5) the child is residing in the United States after being lawfully ad-  
40 mitted for permanent residence; and

41 (6) the child is in the United States at the time of naturalization.

1 **§ 20309. Individuals employed by United States nonprofit or-**  
2 **ganizations disseminating information**

3 An individual may be naturalized without regard to section 20301(a)(3)-  
4 (6) of this title if the individual—

5 (1) is employed by a nonprofit organization incorporated in the Unit-  
6 ed States that is principally engaged outside the United States in dis-  
7 seminating, through communication media, information significantly  
8 promoting United States interests outside the United States and that  
9 is recognized by the Attorney General;

10 (2) has been employed by the organization continuously for at least  
11 5 years after being lawfully admitted for permanent residence;

12 (3) files the application for naturalization when employed by the or-  
13 ganization or within 6 months after ending the employment;

14 (4) is in the United States at the time of naturalization; and

15 (5) declares in good faith to the Attorney General an intention to  
16 reside in the United States immediately after the employment ends.

17 **§ 20310. Individuals making extraordinary contributions to**  
18 **the security of the United States**

19 (a) RESIDENCE AND PHYSICAL PRESENCE.—(1) An individual may be  
20 naturalized without regard to section 20301(a)(3)–(6) of this title if—

21 (A) the Director of Central Intelligence, the Attorney General, and  
22 the Commissioner of Immigration and Naturalization decide that the  
23 individual has made an extraordinary contribution to the security of the  
24 United States or to the conduct of United States intelligence activities;  
25 and

26 (B) the individual resides in the United States continuously for at  
27 least one year before being naturalized.

28 (2) This section does not apply to an individual described by section  
29 6537(e)(2) of this title.

30 (b) NONAPPLICATION OF CERTAIN GROUNDS OF INELIGIBILITY.—Section  
31 20331 of this title does not apply to an individual described by subsection  
32 (a) of this section.

33 (c) PROCEDURE.—A proceeding under this section shall be conducted in  
34 a way consistent with the protection of intelligence sources, methods, and  
35 activities.

36 (d) NUMERICAL LIMIT.—Not more than 5 individuals may be naturalized  
37 in a fiscal year under this section.

38 (e) NOTICE TO CONGRESSIONAL COMMITTEES.—The Director shall in-  
39 form the Select Committee on Intelligence and the Committee on the Judici-  
40 ary of the Senate and the Permanent Select Committee on Intelligence and

1 the Committee on the Judiciary of the House of Representatives within a  
2 reasonable time before an application is filed under this section.

3 **§ 20311. Individuals with service on American vessels**

4 (a) DEFINITION.—In this section, “American vessel” means a vessel  
5 that—

6 (1) is owned and operated by the United States Government; or

7 (2)(A) has its home port in the United States; and

8 (B)(i) is documented under chapter 121 of title 46; or

9 (ii) is owned by a citizen of the United States or a corporation orga-  
10 nized under the laws of a State.

11 (b) RESIDENCE AND PHYSICAL PRESENCE.—An individual serving honor-  
12 ably or with good conduct in any capacity (except as a member of the armed  
13 forces of the United States) on an American vessel is deemed to be residing  
14 and physically present in the United States under section 20301(a)(3), (4),  
15 and (6) of this title during the period of service if the service is—

16 (1) after the individual has been lawfully admitted for permanent  
17 residence; and

18 (2) within 5 years immediately before the date the individual files  
19 an application for naturalization.

20 (c) PROOF OF SERVICE ON VESSEL.—Service on a vessel described by  
21 subsection (a)(1) of this section shall be proved by a certificate from the  
22 executive agency having custody of the records of the service. Service on a  
23 vessel described by subsection (a)(2) of this section may be proved by a cer-  
24 tificate from the master of the vessel.

25 **§ 20312. Individuals with 3 years of service in the armed**  
26 **forces**

27 (a) RESIDENCE AND PHYSICAL PRESENCE.—(1) Except as provided by  
28 paragraph (2) of this subsection, an individual may be naturalized without  
29 regard to section 20301(a)(3)–(5) of this title if the individual—

30 (A) has served honorably in the armed forces of the United States  
31 for periods totaling at least 3 years;

32 (B) has never been discharged from the service except honorably;  
33 and

34 (C) files an application for naturalization when still in the service or  
35 within 6 months after being discharged from the service.

36 (2) If the service was not continuous, the individual must establish the  
37 individual’s residence in the United States and the State or district of the  
38 Immigration and Naturalization Service in the United States in which the  
39 application is filed for—

40 (A) any period between periods of service during the 5 years imme-  
41 diately before filing the application; and

1 (B) any period between the end of the individual's service and the  
2 filing of the application.

3 (b) PROOF OF HONORABLE SERVICE.—(1) Before a hearing on the indi-  
4 vidual's application, the individual shall provide the Attorney General with  
5 a certificate from the appropriate executive agency showing that—

6 (A) the individual served honorably during all periods on which the  
7 individual relies for naturalization under this section; and

8 (B) the individual has never been discharged from the service except  
9 honorably.

10 (2) A certificate under paragraph (1) of this subsection is conclusive evi-  
11 dence of the service and discharge.

12 (c) PROOF OF GOOD MORAL CHARACTER, ATTACHMENT TO PRINCIPLES,  
13 AND FAVORABLE DISPOSITION.—Proof of honorable service under this sec-  
14 tion is proof that the individual was of good moral character, attached to  
15 the principles of the Constitution of the United States, and well disposed  
16 to the good order and happiness of the United States during the period of  
17 the service.

18 (d) EFFECT OF FINDING OF DEPORTABILITY.—Notwithstanding section  
19 20504(b) of this title, an individual may be naturalized immediately under  
20 this section if the individual is in the armed forces when being naturalized  
21 and was examined by a representative of the Immigration and Naturaliza-  
22 tion Service before filing an application for naturalization.

23 (e) APPLICATIONS FILED MORE THAN 6 MONTHS AFTER DISCHARGE.—  
24 An individual who satisfies subsection (a)(1) (A) and (B) of this section,  
25 but files an application for naturalization more than 6 months after being  
26 discharged, is deemed to be residing and physically present in the United  
27 States during any periods of service within 5 years immediately before filing  
28 the application.

29 **§ 20313. Individuals with service in the armed forces during**  
30 **war or military hostilities**

31 (a) GENERAL.—Notwithstanding sections 20316 and 20504(b) of this  
32 title, an individual may be naturalized without regard to section  
33 20301(a)(1)–(6) of this title if—

34 (1) the individual served honorably on active duty in the armed  
35 forces of the United States as an alien or as a national, but not a citi-  
36 zen, of the United States at any time during a period—

37 (A) from April 6, 1917, through November 11, 1918;

38 (B) from September 1, 1939, through December 31, 1946;

39 (C) from June 25, 1950, through July 1, 1955;

40 (D) from February 28, 1961, through October 15, 1978; or

1 (E) the President designates by executive order as a period in  
2 which the armed forces are engaged in military operations involv-  
3 ing armed conflict with a hostile foreign force;

4 (2) the individual was—

5 (A) in the United States or American Samoa at the time of en-  
6 listment or induction into the armed forces;

7 (B) in the Canal Zone at the time of enlistment or induction  
8 if the enlistment or induction was before October 1, 1979; or

9 (C) lawfully admitted for permanent residence after the enlist-  
10 ment or induction; and

11 (3) the individual, if discharged from the armed forces, was dis-  
12 charged honorably.

13 (b) SERVICE IN REGULAR ARMY UNDER THE ACT OF JUNE 30, 1950.—

14 (1) Notwithstanding sections 20316 and 20504(b) of this title, an individual  
15 may be naturalized without regard to section 20301(a)(1) or (3)–(6) of this  
16 title if the individual—

17 (A) enlisted or re-enlisted as an alien in the Regular Army under  
18 the Act of June 30, 1950 (ch. 443, 64 Stat. 316);

19 (B) served at least 5 years in the Regular Army; and

20 (C) was discharged honorably from the Regular Army.

21 (2) An individual described by paragraph (1) of this subsection is deemed  
22 to have been lawfully admitted for permanent residence if the individual—

23 (A) entered the United States, American Samoa, or the Canal Zone  
24 under military orders after enlistment; and

25 (B) is otherwise eligible to be naturalized.

26 (c) PERIOD OF SERVICE AVAILABLE ONLY ONCE.—A period of service  
27 in the armed forces may not be used as the basis for naturalization under  
28 this section if the individual has been naturalized previously because of the  
29 same period of service.

30 (d) PROOF OF HONORABLE SERVICE AND DISCHARGE.—Service required  
31 by this section shall be proved by a certificate from the executive agency  
32 under which the individual served. The head of the executive agency shall  
33 decide, and the certificate shall state, whether the individual served honor-  
34 ably on active duty during a period specified in this section and was dis-  
35 charged honorably. An individual's service and discharge are not honorable  
36 under this section if the individual was discharged from the armed forces  
37 because of alienage or was a conscientious objector who performed no active  
38 duty or refused to wear the uniform.

1 **§ 20314. Posthumous naturalization of individuals who die**  
2 **during service in the armed forces during war or**  
3 **military hostilities**

4 (a) GRANTING CITIZENSHIP.—The Attorney General shall grant post-  
5 humous citizenship, as of the time of death, to an eligible individual under  
6 subsection (b) of this section if the Attorney General approves a request for  
7 posthumous citizenship for the individual under subsection (c) of this sec-  
8 tion.

9 (b) ELIGIBILITY.—(1) An individual is eligible for posthumous citizenship  
10 under this section if the individual—

11 (A) served honorably on active duty in the armed forces of the Unit-  
12 ed States as an alien or as a national, but not a citizen, of the United  
13 States during any period described by section 20313(a)(1) of this title;

14 (B) died as a result of injury or disease incurred in or aggravated  
15 by that service; and

16 (C) satisfied the requirements of section 20313(a)(2) of this title.

17 (2) The head of the executive agency under which the individual served  
18 shall decide whether the individual satisfied the requirements of paragraph  
19 (1) (A) and (B) of this subsection.

20 (c) REQUESTS.—A request to grant posthumous citizenship to an individ-  
21 ual under this section may be filed only by an individual who is, as defined  
22 by the Attorney General, the next of kin or another representative. The At-  
23 torney General shall approve the request if—

24 (1) the request is filed not later than 2 years after the date of the  
25 individual's death;

26 (2) the request includes a certificate from the executive agency under  
27 which the individual served stating that the individual satisfied the re-  
28 quirements of subsection (b) (1) (A) and (B) of this section; and

29 (3) the Attorney General finds that the individual satisfied the re-  
30 quirements of subsection (b)(1)(C) of this section.

31 (d) DOCUMENTATION.—If the Attorney General approves a request under  
32 this section, the Attorney General shall provide the individual who filed the  
33 request with a document stating that the United States Government consid-  
34 ers the individual for whom the request was filed to have been a citizen of  
35 the United States at the time of the individual's death.

36 (e) NO BENEFITS TO SURVIVORS.—The granting of posthumous citizen-  
37 ship to an individual under this section does not provide any benefits under  
38 this title for any relative of the individual.

1 **§ 20315. Individuals who lost citizenship by entering the**  
2 **armed forces of a foreign country**

3 (a) GENERAL.—An individual may be naturalized without regard to sec-  
4 tion 20301(a)(3)–(6) or (9) of this title if—

5 (1) the individual, when a citizen of the United States, served in the  
6 armed forces of a foreign country at any time during the period from  
7 September 1, 1939, through September 2, 1945;

8 (2) that foreign country was at war with a foreign country with  
9 which the United States was at war after December 7, 1941, and be-  
10 fore September 2, 1945;

11 (3) the individual lost citizenship of the United States by entering,  
12 serving in, or taking an oath or obligation to enter or serve in, those  
13 armed forces;

14 (4) the individual intends to reside permanently in the United  
15 States; and

16 (5) the individual has been of good moral character, attached to the  
17 principles of the Constitution, and well disposed to the good order and  
18 happiness of the United States for at least 5 years immediately before  
19 taking the oath required for naturalization.

20 (b) PREVIOUS STATUS REACQUIRED.—An individual naturalized under  
21 this section or section 323 of the Nationality Act of 1940 has, from the date  
22 of naturalization, the same status as a citizen at birth or a naturalized citi-  
23 zen that the individual had before losing citizenship. Naturalization of the  
24 individual does not confer citizenship retroactively on the individual for the  
25 period that the individual was not a citizen of the United States.

26 (c) NONAPPLICATION TO CERTAIN INDIVIDUALS.—This section does not  
27 apply to an individual who served in the armed forces of a foreign country  
28 at any time during the period from September 1, 1939, through September  
29 2, 1945, when that country was at war with the United States.

30 **§ 20316. Alien enemies**

31 (a) WHEN INDIVIDUAL IS ALIEN ENEMY.—In this section, an alien  
32 enemy is an individual who is a native, citizen, subject, or denizen of a  
33 country or sovereignty at war with the United States. That individual ceases  
34 to be an alien enemy when the hostilities between the United States and  
35 the individual's country or sovereignty are declared ended by proclamation  
36 of the President or concurrent resolution of Congress.

37 (b) SPECIFIC CONDITIONS FOR NATURALIZATION.—An alien enemy may  
38 be naturalized as a citizen of the United States only if—

39 (1) the alien enemy's application for naturalization was filed before  
40 the war began, except that the Attorney General may waive this re-  
41 quirement;

1 (2) the alien enemy's loyalty is established on investigation by the  
2 Attorney General; and

3 (3) the alien enemy is otherwise eligible to be naturalized.

4 (c) NOTICE AND CONTINUANCE.—An examination or hearing on an alien  
5 enemy's application for naturalization may be held only after 90 days' notice  
6 to the Attorney General. If the Attorney General objects to consideration  
7 of the application, the application shall be continued for as long as the At-  
8 torney General requires.

9 (d) LAWFUL APPREHENSION AND REMOVAL ALLOWED.—This section  
10 does not prevent the lawful apprehension and removal of an alien enemy.

11 **§ 20317. Women who lost citizenship through marriage**

12 (a) GENERAL.—(1) A woman may be naturalized without regard to sec-  
13 tion 20301(a)(3)–(6) of this title if she—

14 (A) lost citizenship of the United States—

15 (i) by marrying an alien before September 22, 1922;

16 (ii) by marrying after September 21, 1922, an alien who was  
17 ineligible to become a citizen of the United States; or

18 (iii) through her husband's loss of citizenship of the United  
19 States before September 22, 1922; and

20 (B) has taken no affirmative action to acquire the nationality of an-  
21 other country except by marriage.

22 (2) A woman described by subsection (a) of this section may be natural-  
23 ized without regard to section 20301(a)(2) of this title if she has resided  
24 in the United States continuously since the date of her marriage.

25 (b) NATURALIZATION ON TAKING OATH FOR CERTAIN WOMEN.—(1) A  
26 woman may be naturalized without filing an application for naturalization  
27 or complying with any other requirement for naturalization, by taking the  
28 oath required for naturalization, if—

29 (A) she was a citizen of the United States at birth;

30 (B) she lost that citizenship by marrying—

31 (i) an alien before September 22, 1922; or

32 (ii) after September 21, 1922, an alien who was ineligible to be-  
33 come a citizen of the United States;

34 (C) her marriage to that alien ended after January 12, 1941;

35 (D) she has taken no affirmative action to acquire the nationality  
36 of another country except by marriage; and

37 (E) she is not ineligible to be naturalized under section 20331 of this  
38 title.

39 (2) A woman satisfying paragraph (1) of this subsection may take the  
40 oath—

1 (A) in the United States before the Attorney General or a judge or  
2 a clerk of a court described by section 20511 of this title; or

3 (B) outside the United States before a diplomatic or consular officer.

4 (3) The Attorney General, court, embassy, legation, or consulate, as ap-  
5 propriate, shall—

6 (A) enter the oath in the records of the Attorney General, court, em-  
7 bassy, legation, or consulate; and

8 (B) deliver to the woman, on her request, a certified copy of the pro-  
9 ceedings and oath, under seal of Department of Justice, court, em-  
10 bassy, legation, or consulate, at a cost of not more than \$5.

11 (4) A certified copy of the proceedings and the oath delivered under para-  
12 graph (3) of this subsection is evidence of the facts stated in the copy in  
13 any court of record, judicial tribunal, or agency.

14 (c) PREVIOUS STATUS REACQUIRED.—A woman naturalized under this  
15 section or section 317(a) or (b) of the Nationality Act of 1940 has, from  
16 the date of naturalization, the same status as a citizen at birth or a natural-  
17 ized citizen that she had before losing citizenship. Naturalization of the  
18 woman does not confer citizenship on the woman retroactively for any pe-  
19 riod that she was not a citizen of the United States.

20 **§ 20318. Nationals residing in American Samoa**

21 Residence and physical presence in American Samoa are deemed to be  
22 residence and physical presence in the United States under section  
23 20301(a)(3), (4), and (6) of this title for an individual who—

24 (1) is a national, but not a citizen, of the United States; and

25 (2) becomes a resident of a State.

26 **§ 20319. Philippine citizens who entered before May 1, 1934**

27 An individual who was a citizen of the Commonwealth of the Philippines  
28 on July 2, 1946, entered the United States before May 1, 1934, and has  
29 resided in the United States continuously since entry, is deemed to have  
30 been lawfully admitted for permanent residence.

31 SUBCHAPTER II—INELIGIBILITY

32 **§ 20331. Individuals dangerous to the welfare, safety, and se-  
33 curity of the United States**

34 (a) GROUNDS FOR DISALLOWING NATURALIZATION.—An individual may  
35 not be naturalized as a citizen of the United States if, at any time during  
36 the 10 years before filing the application for naturalization or from the fil-  
37 ing of the application through the time the individual is naturalized, the in-  
38 dividual—

39 (1) advocates establishing—

40 (A) a totalitarian communist dictatorship in a country through  
41 an internationally coordinated communist movement; or

- 1 (B) a totalitarian dictatorship in the United States;
- 2 (2) advocates or teaches—
- 3 (A) opposition to all organized government;
- 4 (B) the overthrow by unconstitutional means of the United
- 5 States Government or of all forms of law;
- 6 (C) the duty, necessity, or propriety of unlawfully assaulting or
- 7 killing a particular officer or officers generally of an organized
- 8 government because of the official position of the officer or offi-
- 9 cers;
- 10 (D) unlawfully damaging or destroying property; or
- 11 (E) sabotage;
- 12 (3) writes, publishes, causes to be written or published, knowingly
- 13 distributes, prints, displays, or causes to be distributed, printed, pub-
- 14 lished, or displayed, or knowingly possesses to publish, distribute, or
- 15 display, written material—
- 16 (A) advocating or teaching opposition to all organized govern-
- 17 ment; or
- 18 (B) advocating—
- 19 (i) the overthrow by unconstitutional means of the United
- 20 States Government or of all forms of law;
- 21 (ii) the duty, necessity, or propriety of unlawfully assault-
- 22 ing or killing of a particular officer or officers generally of an
- 23 organized government because of the official position of the
- 24 officer or officers;
- 25 (iii) unlawfully damaging or destroying property;
- 26 (iv) sabotage;
- 27 (v) establishing a totalitarian communist dictatorship in a
- 28 country through an internationally coordinated communist
- 29 movement; or
- 30 (vi) establishing a totalitarian dictatorship in the United
- 31 States; or
- 32 (4) is a member of or affiliated with—
- 33 (A) the Communist Party of the United States;
- 34 (B) another totalitarian party of the United States;
- 35 (C) the Communist Political Association;
- 36 (D) the Communist or another totalitarian party of a State, a
- 37 foreign country, or a political or geographical subdivision of a for-
- 38 eign country;
- 39 (E) a section, subsidiary, branch, affiliate, or subdivision of an
- 40 organization described by subclauses (A)–(D) of this clause (4);

1 (F) the direct predecessor or successor of an organization de-  
 2 scribed by subclauses (A)–(D) of this clause (4), regardless of the  
 3 name the organization uses or used;

4 (G) an organization advocating establishing a totalitarian com-  
 5 munist dictatorship in a country through an internationally coordi-  
 6 nated communist movement, or establishing a totalitarian dictat-  
 7 orship in the United States, through—

8 (i) the organization’s statements; or

9 (ii) written material issued or published under the author-  
 10 ity of or with the consent of the organization, or paid for by  
 11 money provided by the organization;

12 (H) an organization advocating or teaching—

13 (i) opposition to all organized government;

14 (ii) the overthrow by unconstitutional means of the United  
 15 States Government or of all forms of law;

16 (iii) the duty, necessity, or propriety of unlawfully assault-  
 17 ing or killing a particular officer or officers generally of an  
 18 organized government because of the official position of the  
 19 officer or officers;

20 (iv) unlawfully damaging or destroying property; or

21 (v) sabotage; or

22 (I) an organization writing, distributing, printing, publishing,  
 23 displaying, causing to be written, distributed, printed, published,  
 24 or displayed, or possessing to distribute, publish, issue, or display,  
 25 written material described by clause (3) of this subsection.

26 (b) NONAPPLICATION.—Subsection (a) of this section does not apply to  
 27 an individual who satisfies the Attorney General that the individual’s mem-  
 28 bership or affiliation with an organization described by subsection (a)—

29 (1) is or was involuntary;

30 (2) ended before the individual’s 16th birthday;

31 (3) is or was by operation of law; or

32 (4) was for the purpose of, and necessary for, obtaining employment,  
 33 food rations, or other essentials of living.

34 **§ 20332. Deserters and draft evaders**

35 An individual convicted of desertion under section 885 of title 10 or of  
 36 draft evasion under section 12(h) of the Military Selective Service Act (50  
 37 App. U.S.C. 462(h)) is ineligible to become a citizen of the United States.

38 **§ 20333. Aliens exempted or discharged from the armed  
 39 forces or the National Security Training Corps**

40 (a) GENERAL.—Except as provided by subsection (b) of this section, an  
 41 alien who applies for and is granted an exemption or discharge from serving

1 or training in the armed forces of the United States or the National Security  
2 Training Corps because of alienage is ineligible to become a citizen of  
3 the United States. Records of the Selective Service System and the Department  
4 of Defense are conclusive about whether the alien was granted an exemption  
5 or discharge because of alienage.

6 (b) EXEMPTION PROVIDED UNDER TREATY.—An alien exercising a right  
7 under a treaty to be exempted from serving or training in the armed forces  
8 of the United States is not ineligible under this section or any other law  
9 to become a citizen of the United States if, before exercising the right, the  
10 alien served in the armed forces of a foreign country of which the alien was  
11 a national.

12 **CHAPTER 205—NATURALIZATION PROCEDURE**

Sec.

- 20501. Authority to naturalize.
- 20502. Declarations of intention.
- 20503. Applications for naturalization.
- 20504. Proof of lawful entry and effect of deportation proceedings.
- 20505. Investigations.
- 20506. Examinations.
- 20507. Hearings before immigration officers.
- 20508. Judicial review.
- 20509. Oath requirement.
- 20510. Methods of oath administration.
- 20511. Court authority to administer oaths.
- 20512. Duties of Attorney General when court is to administer oath.
- 20513. Forms and records.
- 20514. Fees.

13 **§ 20501. Authority to naturalize**

14 (a) AUTHORITY OF ATTORNEY GENERAL.—Only the Attorney General  
15 has authority to naturalize an individual as a citizen of the United States.

16 (b) ONLY PROCEDURE.—An individual may be naturalized as a citizen of  
17 the United States only as provided by this subtitle.

18 **§ 20502. Declarations of intention**

19 (a) GENERAL.—An individual at least 18 years of age who is residing in  
20 the United States as an alien lawfully admitted for permanent residence  
21 may make a declaration of intention to be naturalized as a citizen of the  
22 United States. However, a declaration is not required for naturalization,  
23 does not confer nationality or the right to nationality on an alien, and is  
24 not evidence of lawful admission for permanent residence.

25 (b) PROCEDURE.—(1) The alien must file with the Attorney General a  
26 declaration in duplicate, accompanied by an application for a declaration.  
27 The application must be approved by the Attorney General.

28 (2) The application must include 3 identical photographs of the alien.  
29 One photograph shall be attached to the declaration issued by the Attorney  
30 General and the others to the copies of the declaration retained by the At-  
31 torney General.

1 (c) REPLACEMENT DECLARATION.—The Attorney General shall issue a  
2 new declaration to an alien applying to replace a declaration that the Attor-  
3 ney General finds is lost, destroyed, or mutilated, and if mutilated, is sur-  
4 rendered to the Attorney General. A person coming into possession of a dec-  
5 laration that was lost shall surrender the declaration to the Attorney Gen-  
6 eral.

7 **§ 20503. Applications for naturalization**

8 (a) GENERAL.—An application for naturalization must be filed—

9 (1) with the Attorney General, in the office of the Immigration and  
10 Naturalization Service for the district in which the individual resides;  
11 and

12 (2) in person, except when the Attorney General decides the individ-  
13 ual has an illness or other disability sufficiently incapacitating to pre-  
14 vent the individual from filing in person.

15 (b) FORM AND CONTENTS.—The application for naturalization must—

16 (1) include a statement that the individual has been lawfully admit-  
17 ted for permanent residence;

18 (2) include a statement of facts the Attorney General believes may  
19 be material to the individual's naturalization and required to be proved  
20 under this subtitle;

21 (3) include 3 identical photographs of the individual signed by the  
22 individual;

23 (4) be sworn to by the individual; and

24 (5) be signed by the individual if physically able to write.

25 (c) EARLY FILING FOR INDIVIDUALS SUBJECT TO CONTINUOUS RESI-  
26 DENCE REQUIREMENT.—An individual subject to a continuous residence re-  
27 quirement under chapter 203 of this title may file an application for natu-  
28 ralization not more than 3 months before the date the individual would first  
29 satisfy that requirement.

30 (d) TRANSFER TO ANOTHER DISTRICT.—If an individual applying for  
31 naturalization moves from the district of the Service in the United States  
32 in which the application is pending, the individual may request the Attorney  
33 General to transfer the application to another district. If the Attorney Gen-  
34 eral transfers the application, the proceedings on the application shall con-  
35 tinue as though the application had been filed originally in the district to  
36 which it is transferred.

37 (e) WITHDRAWAL AND LACK OF PROSECUTION.—An application for natu-  
38 ralization may be withdrawn only with the consent of the Attorney Gen-  
39 eral. If the Attorney General does not consent to the withdrawal, the appli-  
40 cation shall be decided on its merits. If the applicant does not prosecute  
41 the application, the Attorney General may dismiss it for lack of prosecution.

1 If the Attorney General does not dismiss the application for lack of prosecution,  
2 it shall be decided on its merits.

3 **§ 20504. Proof of lawful entry and effect of deportation proceedings**  
4

5 (a) PROOF OF LAWFUL ENTRY.—An applicant for naturalization has the  
6 burden of proving that the applicant entered the United States lawfully. To  
7 prove a lawful entry, the applicant is entitled to the production of—

8 (1) the applicant’s immigrant visa or other entry document; and

9 (2) any other record in the custody of the Attorney General related  
10 to the applicant’s entry that the Attorney General does not consider  
11 confidential.

12 (b) EFFECT OF DEPORTATION PROCEEDINGS.—(1) Except as provided  
13 by sections 20312 and 20313 of this title—

14 (A) an application for naturalization may not be considered if a de-  
15 portation proceeding is pending under an arrest warrant; and

16 (B) an individual may not be naturalized as a citizen of the United  
17 States if a final finding of deportability is outstanding under an arrest  
18 warrant.

19 (2) The Attorney General’s findings in ending deportation proceedings or  
20 suspending deportation are not binding in deciding whether an individual  
21 satisfies the eligibility requirements for naturalization.

22 **§ 20505. Investigations**

23 The Attorney General shall conduct a personal investigation of an appli-  
24 cant for naturalization in each vicinity in which the applicant has lived or  
25 worked during at least the 5-year period immediately before the application  
26 was filed. However, the Attorney General may waive the investigation in a  
27 particular case or class of cases.

28 **§ 20506. Examinations**

29 (a) GENERAL.—The Attorney General shall designate officers and em-  
30 ployees of the Immigration and Naturalization Service to conduct examina-  
31 tions of applicants for naturalization. Examinations shall be uniform  
32 throughout the United States and be limited to inquiring about whether the  
33 applicant meets the eligibility requirements for naturalization. At the time  
34 of the examination, the officer or employee conducting the examination shall  
35 inform the applicant of the remedies available to the applicant under sec-  
36 tions 20507(a) and (b) and 20508(a) of this title.

37 (b) DECISIONS.—The officer or employee conducting the examination  
38 shall decide whether the application for naturalization should be granted or  
39 denied and give the reasons.

40 (c) DECISIONS AND RECORDS TO ATTORNEY GENERAL.—The officer or  
41 employee conducting the examination shall submit the decision about the

1 application to the Attorney General and, if the Attorney General requests,  
2 the record of the examination.

3 **§ 20507. Hearings before immigration officers**

4 (a) GENERAL.—An individual whose application for naturalization is de-  
5 nied after an examination under section 20506 of this title may request a  
6 hearing before an immigration officer. Hearings under this subsection shall  
7 be held at regular intervals specified by the Attorney General.

8 (b) SUBPENAS.—(1) On the applicant's request at the time of requesting  
9 a hearing, the immigration officer shall subpoena witnesses named by the ap-  
10 plicant to appear at the hearing. If a witness cannot be produced at the  
11 hearing, other witnesses may be subpoenaed after notice to the Attorney  
12 General, in the way and at the time prescribed by the Attorney General by  
13 regulation.

14 (2) A subpoena issued under this subsection may be enforced as provided  
15 by section 303(b) of this title.

16 (3) A witness willfully disobeying a subpoena to appear and testify at a  
17 hearing under this section shall be fined under title 18, imprisoned for not  
18 more than 5 years, or both.

19 (c) APPEARANCE OF ATTORNEY GENERAL.—At a hearing under this sec-  
20 tion, the Attorney General may call, examine, and cross-examine witnesses,  
21 including the applicant, produce other evidence, and argue for or against  
22 granting the application for naturalization.

23 (d) ADMISSIBILITY OF RECORDS OF EXAMINATION.—The record of the  
24 examination conducted under section 20506 of this title is admissible as evi-  
25 dence in a hearing conducted under this section.

26 **§ 20508. Judicial review**

27 (a) FAILURE TO MAKE TIMELY DECISIONS AFTER EXAMINATIONS.—If  
28 the officer or employee conducting an examination under section 20506 of  
29 this title does not make a decision on an application for naturalization with-  
30 in 120 days after the date of the examination, the applicant may request  
31 the district court of the United States for the district in which the applicant  
32 resides to hold a hearing on the matter. The court may—

33 (1) order the application granted or denied; or

34 (2) remand the matter, with appropriate instructions, to the officer  
35 or employee conducting the examination.

36 (b) DENIALS AFTER HEARINGS.—An individual whose application for  
37 naturalization is denied after a hearing under section 20507 of this title  
38 may obtain review of the denial in the United States district court for the  
39 district in which the individual resides. At the individual's request, the court  
40 shall hold a new hearing. Regardless of whether the court holds a new hear-  
41 ing, the court shall make its own findings of fact and conclusions of law.

**§ 20509. Oath requirement**

(a) OATH OF ALLEGIANCE.—To be naturalized as a citizen of the United States, an individual must take an oath, in substance—

(1) to support the Constitution;

(2) to support and defend the Constitution and laws of the United States against all enemies foreign and domestic;

(3) to bear true faith and allegiance to the Constitution and laws of the United States;

(4) to renounce all allegiance to any foreign prince, potentate, country, or sovereignty of which the individual was a citizen or subject; and

(5) to comply with a requirement of law—

(A) to bear arms for the United States;

(B) to perform noncombatant service in the armed forces of the United States when wearing the uniform of a branch of the armed forces and subject to military discipline and court martial; or

(C) to perform work of national importance under civilian direction.

(b) OMISSIONS FROM OATH BECAUSE OF RELIGIOUS BELIEF.—(1) In this subsection, “religious belief” means belief in a relation to a Supreme Being involving duties superior to those arising from a human relation, but does not include essentially political, sociological, or philosophical views or a personal moral code.

(2) If an individual satisfies the Attorney General by clear and convincing evidence that, because of religious belief, the individual opposes—

(A) bearing arms in the armed forces of the United States, the individual may omit from the oath the substance of subsection (a)(5)(A) of this section; or

(B) any kind of service in the armed forces of the United States, the individual may omit from the oath the substance of subsection (a)(5)(A) and (B) of this section.

(c) WAIVER FOR YOUNG CHILD.—If the Attorney General believes that a child is unable to understand the meaning of the oath, the Attorney General may waive the requirement that the child take the oath.

(d) OATH RENOUNCING HEREDITARY TITLES AND ORDERS.—In addition to taking the oath under subsection (a) of this section, an individual who has a hereditary title or belongs to an order of nobility must take an oath expressly renouncing the title or order. The oath under this subsection must be taken in the same public ceremony as the oath under subsection (a) and shall be recorded as a part of the proceeding.

**§ 20510. Methods of oath administration**

(a) PUBLIC CEREMONY.—To be naturalized as a citizen of the United States, an individual must take the oath required for naturalization in a public ceremony. However, the Attorney General may waive the public ceremony requirement if the Attorney General decides the individual has an illness or other disability sufficiently incapacitating to prevent the individual's personal appearance.

(b) RIGHT TO CHOOSE.—(1) The individual may choose to take the oath before the Attorney General or a court authorized by section 20511 of this title, except when—

(A) a court has exclusive authority under section 20511(c) of this title; or

(B) a court has referred the applicant to the Attorney General for an expedited oath administration under subsection (c)(3) of this section.

(2) The individual shall notify the Attorney General of the choice to take the oath before a court.

(c) EXPEDITED OATH ADMINISTRATION.—(1) On demonstrating sufficient cause, an individual may be granted an expedited oath administration by the Attorney General or a court.

(2) When a court is deciding whether to grant an expedited oath administration, the court shall consider—

(A) special circumstances such as serious illness of the applicant or a member of the applicant's immediate family, permanent disability sufficiently incapacitating to prevent the applicant's personal appearance at the scheduled ceremony, developmental disability, or advanced age; and

(B) exigent circumstances related to travel or employment.

(3) If an expedited oath administration by a court is impracticable, the court shall refer the individual to the Attorney General. The Attorney General then may provide for immediate administration of the oath.

(d) PUBLIC CEREMONIES CONDUCTED BY ATTORNEY GENERAL.—The Attorney General shall prescribe regulations to ensure that oath administration ceremonies conducted by the Attorney General are public, dignified, and conducted frequently and at regular intervals.

**§ 20511. Court authority to administer oaths**

(a) DEFINITION.—In this section, “eligible court” means—

(1) a district court of the United States in any State; and

(2) any other court of record in a State if the court has a seal, a clerk, and jurisdiction in actions at law, equity, or both, in which the amount in controversy is unlimited.

1 (b) GENERAL AUTHORITY.—(1) An eligible court may administer the  
2 oath required for naturalization to individuals residing within the jurisdic-  
3 tion of the court.

4 (2) Any district court of the United States may administer the oath to  
5 an individual described by section 20310 of this title without regard to the  
6 residence of the individual.

7 (c) EXCLUSIVE AUTHORITY.—(1) Subject to paragraphs (2) and (4) of  
8 this subsection, an eligible court that wishes to have exclusive authority to  
9 administer the oath to individuals residing within the jurisdiction of the  
10 court has that authority on notifying the Attorney General.

11 (2) The exclusive authority of a court to administer the oath applies to  
12 an individual—

13 (A) only during the 45-day period beginning on the date the Attor-  
14 ney General certifies to the court that the individual is eligible to be  
15 naturalized; and

16 (B) only if, before the date of that certification, the court has noti-  
17 fied the Attorney General of the dates during that 45-day period when  
18 oath administration ceremonies by the court are scheduled.

19 (3) Subject to paragraph (4) of this subsection, the Attorney General may  
20 not administer the oath to an individual during the period of a court's ex-  
21 clusive authority under paragraph (2) of this subsection.

22 (4) A court may waive the exclusive authority to administer the oath to  
23 an individual if the Attorney General has not provided the court the certifi-  
24 cate of eligibility for that individual within a reasonable time before the day  
25 scheduled by the court for the oath administration ceremony. When notified  
26 of a court's waiver, the Attorney General promptly shall notify the appli-  
27 cant.

28 (d) NAME CHANGES.—On petition of an individual applying for natu-  
29 ralization, the court may order a change in the name of the individual as  
30 part of the administration of the oath by the court. The certificate of natu-  
31 ralization shall be issued with the new name.

32 **§ 20512. Duties of Attorney General when court is to admin-**  
33 **ister oath**

34 (a) GENERAL.—When a court is to administer the oath to an individual  
35 applying for naturalization, the Attorney General shall—

36 (1) provide the court with information necessary to administer the  
37 oath to the individual, and if the court has exclusive authority under  
38 section 20511(c) of this title, provide the information not later than 10  
39 days after approving the application for naturalization; and

40 (2) promptly provide the court a certificate of naturalization pre-  
41 pared by the Attorney General for the individual.

1 (b) NOTICE TO APPLICANTS OF COURT'S EXCLUSIVE AUTHORITY.—(1)  
2 If a court has exclusive authority to administer the oath, the Attorney Gen-  
3 eral shall inform the applicant, at the time of approval of the application  
4 for naturalization, of—

5 (A) the court's exclusive authority to administer the oath during the  
6 period specified in section 20511(c)(2)(A) of this title; and

7 (B) the dates when oath administration ceremonies by the court are  
8 scheduled.

9 (2) If more than one court in an area has exclusive authority to admin-  
10 ister the oath, the Attorney General shall allow the applicant, at the time  
11 of approval, to choose the court to administer the oath.

12 **§ 20513. Forms and records**

13 (a) FORMS.—The Attorney General shall prescribe and provide forms to  
14 carry out this chapter and sections 20901 and 20902 of this title. Only  
15 those forms are lawful. Certificates of naturalization and certificates of citi-  
16 zenship shall be printed on safety paper and numbered consecutively in sep-  
17 arate series.

18 (b) RECORDS OF THE ATTORNEY GENERAL.—The Attorney General shall  
19 maintain as a permanent record all declarations of intention and applica-  
20 tions for naturalization, in chronological order, consecutively numbered, and  
21 indexed.

22 (c) DUTIES OF CLERKS OF COURTS.—The clerk of a court administering  
23 oaths to applicants for naturalization shall—

24 (1) take responsibility for all blank certificates of naturalization re-  
25 ceived from the Attorney General;

26 (2) return to the Attorney General any certificate of naturalization  
27 that is unusable because damaged;

28 (3) account to the Attorney General for blank certificates of natu-  
29 ralization when required by the Attorney General;

30 (4) give a certificate of naturalization prepared by the Attorney Gen-  
31 eral under section 20512 of this title to each individual administered  
32 the oath by the court;

33 (5) provide the Attorney General with a list of individuals taking the  
34 oath at each scheduled ceremony not later than 30 days after the end  
35 of the month in which the oath was administered; and

36 (6) provide the Attorney General with a certified copy of other pro-  
37 ceedings in, and orders by, the court related to the naturalization of  
38 individuals, when required by the Attorney General.

39 (d) COPIES OF OATHS OF INDIVIDUALS WHO LOST CITIZENSHIP BY EN-  
40 TERING ARMED FORCES OF FOREIGN COUNTRIES.—When an individual de-

1 scribed by section 20315 of this title is naturalized, a certified copy of the  
2 oath taken by the individual shall be provided by—

3 (1) the Attorney General to the Secretary of State if the oath was  
4 administered by the Attorney General; and

5 (2) the clerk of the court to the Attorney General and the Secretary  
6 of State if the oath was administered by a court.

7 **§ 20514. Fees**

8 (a) GENERAL.—The Attorney General shall charge, collect, and account  
9 for fees prescribed by the Attorney General under section 9701 of title 31  
10 for—

11 (1) filing a declaration of intention and issuing a duplicate declara-  
12 tion; and

13 (2) filing an application for naturalization, holding a hearing on the  
14 application, and issuing a certificate of naturalization.

15 (b) SUBPENA AND WITNESS FEES.—When filing an application for natu-  
16 ralization, an individual requesting the issuance of a subpoena under section  
17 20507(b) of this title shall deposit with the Attorney General an amount  
18 sufficient to cover the cost of subpoenaing each witness and paying the wit-  
19 ness the usual witness fee. On final discharge of the witness and demand  
20 for payment, the Attorney General shall pay the witness the usual witness  
21 fee from the amount deposited. The Attorney General shall return any re-  
22 maining amount to the individual.

23 (c) EXEMPTION FOR INDIVIDUALS SERVING IN ARMED FORCES DURING  
24 WAR OR MILITARY OPERATIONS.—(1) Except as provided by paragraph (2)  
25 of this subsection, an individual serving in the armed forces of the United  
26 States may not be charged a fee for filing an application for naturalization  
27 or for issuance of a certificate of naturalization when the United States is  
28 at war or engaged in military operations involving armed conflict with a  
29 hostile foreign force as designated by the President by executive order.

30 (2) If a State law requires a fee to be charged, the clerk of a State court  
31 may charge that part of the fee required to be paid to the State.

32 (3) The clerk of a court shall report all transactions made under this sub-  
33 section to the Attorney General not later than 30 days after the end of the  
34 month in which the transaction was made.

35 (d) EXEMPTION FROM REPLACEMENT FEES FOR INDIVIDUALS WHO  
36 SERVED IN ARMED FORCES.—An individual may not be charged a fee for  
37 filing an application to replace a declaration of intention or a certificate of  
38 naturalization that is lost, destroyed, or mutilated if the individual served  
39 in the armed forces of the United States after September 16, 1940, and  
40 was not—

41 (1) discharged other than honorably;

- 1 (2) discharged because of alienage; or  
 2 (3) a conscientious objector who performed no military duty or re-  
 3 fused to wear the uniform.
- 4 (e) DISPOSITION OF FEES.—(1) Except as otherwise provided by this  
 5 subsection, the Attorney General shall deposit all fees collected by the Attor-  
 6 ney General under this subtitle in the “Immigration Examinations Fee Ac-  
 7 count” established under section 317 of this title.
- 8 (2) Fees collected by the Attorney General under this subtitle from resi-  
 9 dents of the Virgin Islands or Guam shall be paid to the treasury of the  
 10 Virgin Islands or Guam, respectively.
- 11 (3) A percentage of the fees described by subsection (a)(1) of this section  
 12 collected by the Attorney General shall be paid to courts administering  
 13 oaths under this chapter. In consultation with the courts, the Attorney Gen-  
 14 eral shall determine the percentage each year based on—
- 15 (A) the costs incurred by the courts for essential services directly re-  
 16 lated to the naturalization process; divided by  
 17 (B) the total of those costs incurred by the courts and the Immigra-  
 18 tion and Naturalization Service.
- 19 (f) REPORTS AND CONSULTATIONS.—The Attorney General shall—
- 20 (1) provide an annual report to the Committees on the Judiciary of  
 21 the Senate and House of Representatives on the use of the fees de-  
 22 scribed by subsection (e)(3) of this section; and  
 23 (2) consult with those committees before increasing those fees.

## 24 **CHAPTER 207—LOSS OF NATIONALITY**

### SUBCHAPTER I—BY VOLUNTARY ACTS

Sec.

20701. Acts resulting in loss of nationality.  
 20702. Acts not resulting in loss of nationality.  
 20703. Presumption that act is done voluntarily.

### SUBCHAPTER II—REVOCATION OF NATURALIZATION

20711. Application.  
 20712. Grounds.  
 20713. Procedure.  
 20714. Effect on automatic naturalization.  
 20715. Cancellation of certificate of naturalization.  
 20716. Authority not affected.

### SUBCHAPTER III—MISCELLANEOUS

20731. Burden of proof.

### SUBCHAPTER I—BY VOLUNTARY ACTS

#### 25 **§ 20701. Acts resulting in loss of nationality**

26 Except as provided by section 20702 of this title, a national of the United  
 27 States loses nationality of the United States under this subchapter only by  
 28 voluntarily performing any of the following acts with the intention of relin-  
 29 quishing nationality of the United States:  
 30

- 1           (1) becoming a national of a foreign country, after becoming 18  
2 years of age—
- 3               (A) on application of the national; or  
4               (B) on application for the national filed by an agent of the na-  
5 tional.
- 6           (2) taking an oath or making a declaration of allegiance to a foreign  
7 country or a political subdivision of a foreign country after becoming  
8 18 years of age.
- 9           (3) entering or serving in the armed forces of a foreign country if—
- 10               (A) the armed forces are engaged in hostilities against the  
11 United States; or  
12               (B) the individual serves as a commissioned or noncommissioned  
13 officer.
- 14           (4) accepting, serving in, or carrying out the duties and powers of  
15 an office, a post, or employment under the government of a foreign  
16 country or a political subdivision of a foreign country, after becoming  
17 18 years of age, if—
- 18               (A) the individual is or becomes a national of the foreign coun-  
19 try; or  
20               (B) the office, post, or employment requires an oath or declara-  
21 tion of allegiance.
- 22           (5) making a formal renunciation of nationality in a foreign country  
23 before a diplomatic or consular officer in the way the Secretary of  
24 State prescribes.
- 25           (6) making a formal written renunciation of nationality in the Unit-  
26 ed States in the way the Attorney General prescribes before an officer  
27 or employee the Attorney General designates when the United States  
28 is in a state of war and the Attorney General approves the renunciation  
29 as not against the defense interests of the United States.
- 30           (7) committing any of the following offenses for which the individual  
31 is convicted by a court or court martial:
- 32               (A) treason against the United States Government.  
33               (B) attempting by force to overthrow the Government.  
34               (C) bearing arms against the Government.  
35               (D) violating or conspiring to violate section 2383 of title 18.  
36               (E) violating section 2384 of title 18 by conspiring to over-  
37 throw, put down, or destroy by force the Government or to carry  
38 on war against the Government.  
39               (F) willfully violating section 2385 of title 18.

1 **§ 20702. Acts not resulting in loss of nationality**

2 (a) WHEN NATIONAL IN THE UNITED STATES OR AMERICAN SAMOA.—  
 3 A national of the United States does not lose nationality under section  
 4 20701(1)–(4) of this title when the national is in the United States or  
 5 American Samoa. However, an act specified in section 20701(1)–(4) and  
 6 carried out in the United States or American Samoa results in the loss of  
 7 nationality when the national establishes a residence outside the United  
 8 States and American Samoa.

9 (b) WHEN ENTERING OR SERVING IN ARMED FORCES OF A FOREIGN  
 10 COUNTRY OR RENOUNCING NATIONALITY AS A MINOR.—A national of the  
 11 United States does not lose nationality under section 20701(3) or (5) of this  
 12 title when less than 18 years of age if the national claims the nationality  
 13 within 6 months after becoming 18 years of age. The claim shall be made  
 14 in the way the Secretary of State prescribes by regulation.

15 (c) WHEN MARRYING A MALE ALIEN.—Notwithstanding a treaty ratified  
 16 by the Senate before December 25, 1952, a woman who was—

17 (1) a national of the United States did not lose nationality only be-  
 18 cause of marriage after—

19 (A) September 21, 1922, to an alien; or

20 (B) March 2, 1931, to an alien who was ineligible to become  
 21 a citizen of the United States because of race; or

22 (2) a citizen of the United States at birth did not lose nationality  
 23 because of residence outside the United States after a marriage re-  
 24 ferred to in clause (1) of this subsection.

25 **§ 20703. Presumption that act is done voluntarily**

26 An individual carrying out an act resulting in the loss of nationality  
 27 under this subchapter or another law is presumed to have carried out the  
 28 act voluntarily. The presumption may be rebutted on a showing by a pre-  
 29 ponderance of the evidence that the act was not carried out voluntarily.

30 SUBCHAPTER II—REVOCATION OF NATURALIZATION

31 **§ 20711. Application**

32 This subchapter applies to any naturalization and certificate of natu-  
 33 ralization issued under this title or another law.

34 **§ 20712. Grounds**

35 (a) GENERAL.—A court in which a civil action is brought under section  
 36 20713 of this title shall revoke the order of naturalization of an individual  
 37 as a citizen of the United States and cancel the individual's certificate of  
 38 naturalization if the court decides—

39 (1) the order and certificate were obtained unlawfully, by conceal-  
 40 ment of a material fact, or by willful misrepresentation; or

1           (2) for an individual naturalized under section 20313 of this title,  
2           the individual was discharged from the armed forces of the United  
3           States other than honorably.

4           (b) REFUSAL TO TESTIFY BEFORE CONGRESSIONAL COMMITTEE.—The  
5           refusal of an individual within 10 years after naturalization of the individual  
6           to testify as a witness before a congressional committee about subversive ac-  
7           tivities of the individual is concealment of a material fact or willful mis-  
8           representation under subsection (a)(1) of this section if the individual is  
9           convicted of contempt for the refusal.

10          (c) MEMBERSHIP IN, OR AFFILIATION WITH, CERTAIN ORGANIZA-  
11          TIONS.—If an individual naturalized after December 24, 1952, became a  
12          member of or affiliated with an organization within 5 years after naturaliza-  
13          tion and the membership or affiliation at the time of naturalization would  
14          have prevented the individual from being naturalized under section 20331  
15          of this title, the membership or affiliation is prima facie evidence that the  
16          individual was not attached to the principles of the Constitution and was  
17          not well disposed to the good order and happiness of the United States at  
18          the time of naturalization. If there is no contrary evidence, a court may act  
19          under subsection (a)(1) of this section because the naturalization was ob-  
20          tained by concealment of a material fact or by willful misrepresentation.

21          (d) PERMANENT RESIDENCE IN FOREIGN COUNTRY.—If an individual is  
22          naturalized and then establishes permanent residence in a foreign country  
23          within one year after naturalization, the permanent residence is prima facie  
24          evidence that the individual did not intend to reside permanently in the  
25          United States at the time the individual filed the application for naturaliza-  
26          tion. If there is no contrary evidence, a court may act under subsection  
27          (a)(1) of this section because the naturalization was obtained by conceal-  
28          ment of a material fact or by willful misrepresentation.

29          (e) CHANGE OF STATUS.—An individual is deemed to have obtained natu-  
30          ralization by concealment of a material fact or by willful misrepresentation  
31          if—

32                (1) the individual was naturalized as a citizen of the United States  
33                based on a record of lawful admission for permanent residence made  
34                as a result of a change of the individual's status;

35                (2) the individual was not eligible for the change of status; and

36                (3) the Attorney General rescinds the change of status under section  
37                9107(a) of this title.

38          (f) PROOF OF CERTAIN GROUNDS FOR REVOCATION.—(1) Discharge  
39          from the armed forces of the United States other than honorably shall be  
40          proved by a certification from the head of the executive agency under which  
41          the individual served.

1 (2) A diplomatic or consular officer in a foreign country shall give the  
2 Attorney General, through the Secretary of State, a list of individuals within  
3 the jurisdiction of the officer who establish permanent residence in a foreign  
4 country within one year after being naturalized as a citizen. A certified list  
5 is admissible in a civil action brought under section 20713 of this title.

6 (g) COURTS TO REVOKE NATURALIZATION ORDERS WHEN NATURALIZA-  
7 TION CONVICTIONS INVOLVED.—A court having jurisdiction to try a viola-  
8 tion of section 1425 of title 18 has jurisdiction to revoke orders of natu-  
9 ralization and cancel certificates of naturalization. A court in which an indi-  
10 vidual is convicted of knowingly obtaining naturalization in violation of sec-  
11 tion 1425 shall revoke the order of naturalization of the individual as a citi-  
12 zen and cancel the certificate of naturalization of the individual.

13 **§ 20713. Procedure**

14 (a) BRINGING CIVIL ACTIONS TO REVOKE.—If grounds exist under sec-  
15 tion 20712 of this title, the Attorney General shall bring a civil action to  
16 revoke the order of naturalization of an individual as a citizen of the United  
17 States and to cancel the certificate of naturalization. When bringing the ac-  
18 tion, the Attorney General shall file an affidavit showing good cause.

19 (b) VENUE.—An action under this section shall be brought in a district  
20 court of the United States for the judicial district in which the individual  
21 resides. If the individual does not reside in a judicial district in the United  
22 States, the action may be brought in the United States District Court for  
23 the District of Columbia or the district in which the individual last resided.

24 (c) NOTICE AND ANSWER.—The individual shall be given personal notice  
25 and, unless waived, 60 days to answer in an action brought under this sec-  
26 tion. If the individual is absent from the United States or the judicial dis-  
27 trict in which the individual last resided, notice shall be given by personal  
28 service or by publication in the way provided for service by publication or  
29 on absentees by the law of the State or place in which the action is brought.

30 (d) EFFECTIVE DATE OF REVOCATION AND CANCELLATION.—Revocation  
31 and cancellation under this subchapter are effective from the date of the  
32 naturalization order and certificate of naturalization.

33 **§ 20714. Effect on automatic naturalization**

34 An individual claiming citizenship of the United States through the natu-  
35 ralization of a parent or spouse loses that citizenship when the order of natu-  
36 ralization of the parent or spouse as a citizen is revoked and the certificate  
37 of naturalization is canceled under—

38 (1) section 20712(a)(1) of this title because the order and certificate  
39 were obtained by concealment of a material fact or by willful misrepre-  
40 sentation;

1 (2) section 20712(a)(2) of this title on a ground other than that the  
 2 order and certificate were obtained by concealment of a material fact  
 3 or by willful misrepresentation, if the individual does not reside in the  
 4 United States when the order is revoked and the certificate is canceled;  
 5 or

6 (3) section 20712(c) or (d) of this title, if the individual does not  
 7 reside in the United States when the order is revoked and the certifi-  
 8 cate is canceled.

9 **§ 20715. Cancellation of certificate of naturalization**

10 (a) DUTIES OF COURT.—A court revoking an order of naturalization as  
 11 a citizen of the United States or canceling a certificate of naturalization,  
 12 or both, under this subchapter shall prepare an order canceling the certifi-  
 13 cate and send a certified copy to the Attorney General.

14 (b) SURRENDER OF CANCELED CERTIFICATE.—On notice by the court  
 15 canceling a certificate of naturalization or by the Attorney General, an indi-  
 16 vidual holding a canceled certificate of naturalization shall surrender it to  
 17 the Attorney General.

18 **§ 20716. Authority not affected**

19 This subchapter does not affect the authority of the Attorney General to  
 20 reopen, change, or vacate an order of naturalization of an individual as a  
 21 citizen of the United States.

22 SUBCHAPTER III—MISCELLANEOUS

23 **§ 20731. Burden of proof**

24 A person claiming that an individual has lost nationality of the United  
 25 States under this chapter or another law has the burden of proving, by a  
 26 preponderance of the evidence, that the loss occurred.

27 **CHAPTER 209—NATIONALITY DOCUMENTS**

Sec.

- 20901. Certificates of naturalization.
- 20902. Certificates of citizenship.
- 20903. Certificates of nationality.
- 20904. Other documents to prove citizenship.
- 20905. Cancellation of nationality records.
- 20906. Certificates of loss of nationality.
- 20907. Certifications of records.

28 **§ 20901. Certificates of naturalization**

29 (a) ISSUANCE AND CONTENT.—The Attorney General shall issue a certifi-  
 30 cate of naturalization to an individual when the individual is naturalized as  
 31 a citizen of the United States. The certificate shall contain—

32 (1) the number of the individual's application for naturalization;

33 (2) the number of the certificate;

34 (3) the individual's name (as changed if a change of name is granted  
 35 by a court as part of the administration of the oath required for natu-  
 36 ralization);

- 1 (4) the individual's signature;
- 2 (5) the individual's place of residence;
- 3 (6) a signed photograph of the individual;
- 4 (7) a personal description of the individual, including age, sex, and
- 5 marital status;
- 6 (8) the individual's prior nationality;
- 7 (9) a statement that the Attorney General, having decided that the
- 8 individual has satisfied the applicable provisions of this title, ordered
- 9 the individual naturalized as a citizen;
- 10 (10) the date of the naturalization; and
- 11 (11) the location of the district office of the Immigration and Natu-
- 12 ralization Service in which the application was filed;
- 13 (12) the title, authority, and location of the official or court admin-
- 14 istering the oath required for naturalization; and
- 15 (13) the attestation of an immigration officer and the seal of the De-
- 16 partment of Justice.

17 (b) REPLACEMENT CERTIFICATES.—(1) On application to the Attorney  
18 General, the Attorney General shall issue to a naturalized citizen—

19 (A) a new certificate of naturalization to replace a certificate that  
20 the Attorney General finds is lost, destroyed, or mutilated, and if muti-  
21 lated, is surrendered to the Attorney General; or

22 (B) a new certificate of naturalization with the citizen's new name  
23 when the Attorney General finds that the citizen's name has been  
24 changed by marriage or order of a court of competent jurisdiction after  
25 naturalization.

26 (2) The Attorney General shall notify the court that naturalized the citi-  
27 zen of the issuance of a new certificate under paragraph (1)(B) of this sub-  
28 section.

29 (c) SPECIAL CERTIFICATES TO OBTAIN RECOGNITION BY FOREIGN  
30 COUNTRIES.—On application by a naturalized citizen to the Attorney Gen-  
31 eral, the Attorney General shall issue for the citizen a special certificate of  
32 naturalization to be used only to obtain recognition as a citizen of the  
33 United States by the government of a foreign country. The certificate shall  
34 be submitted to the Secretary of State for submission to the proper author-  
35 ity of the government of the foreign country.

36 (d) PHOTOGRAPHS.—An application to the Attorney General for a certifi-  
37 cate of naturalization or a special certificate of naturalization shall include  
38 3 identical photographs of the individual applying. One photograph shall be  
39 attached to the certificate and the others to the copies of the certificate re-  
40 tained by the Attorney General.

1 (e) SURRENDER OF FOUND CERTIFICATES.—A person coming into pos-  
2 session of a certificate of naturalization that was lost shall surrender the  
3 certificate to the Attorney General.

4 **§ 20902. Certificates of citizenship**

5 (a) APPLICATIONS.—An individual may apply to the Attorney General for  
6 a certificate of citizenship if the individual claims to be a citizen of the  
7 United States because of—

8 (1) the naturalization of a parent of the individual;

9 (2) the naturalization or citizenship of the individual's husband;

10 (3) section 1993 of the Revised Statutes;

11 (4) the Act of May 7, 1934 (ch. 221, 48 Stat. 667);

12 (5) the Act of August 4, 1937 (ch. 563, 50 Stat. 558);

13 (6) section 201(c)–(e), (g), or (i), 203, or 205 of the Nationality Act  
14 of 1940; or

15 (7) section 20102(a), 20104(a), or 20106 of this title.

16 (b) PHOTOGRAPHS.—An application under subsection (a) of this section  
17 shall include 3 identical photographs of the individual applying. One photo-  
18 graph shall be attached to the certificate and the others to the copies of  
19 the certificate retained by the Attorney General.

20 (c) ISSUANCE.—The Attorney General shall issue a certificate of citizen-  
21 ship to an individual if—

22 (1) the Attorney General is satisfied that the individual is a citizen  
23 as claimed under subsection (a) of this section;

24 (2) the individual takes, and signs, in front of an immigration officer  
25 the oath required for naturalization; and

26 (3) the individual is in the United States when the oath is taken and  
27 the certificate is issued.

28 (d) REPLACEMENT CERTIFICATES.—The Attorney General shall issue a  
29 new certificate of citizenship to a citizen applying to replace a certificate  
30 that the Attorney General finds is lost, destroyed, or mutilated, and if muti-  
31 lated, is surrendered to the Attorney General. A person coming into posses-  
32 sion of a certificate that was lost shall surrender the certificate to the Attor-  
33 ney General.

34 **§ 20903. Certificates of nationality**

35 (a) CERTIFICATES FOR USE IN FOREIGN COUNTRY PROCEEDINGS.—  
36 Under regulations the Secretary of State prescribes, the Secretary may issue  
37 a certificate of nationality for an individual if the Secretary is satisfied that  
38 the individual is a national of the United States at birth and that the cer-  
39 tificate is needed for an administrative or judicial proceeding of a foreign  
40 country. The certificate is only for use in the proceeding for which it is is-

1 sued. The Secretary shall submit the certificate to the appropriate foreign  
2 administrative or judicial officer.

3 (b) CERTIFICATES ISSUED TO INDIVIDUALS.—An individual claiming to  
4 be a national, but not a citizen, of the United States may apply to the Sec-  
5 retary of State for a certificate of non-citizen national status. The Secretary  
6 shall issue the certificate if—

7 (1) the Secretary is satisfied that the individual is a national, but  
8 not a citizen, of the United States;

9 (2) for an individual born outside the United States or American  
10 Samoa, the individual takes, and signs, in front of an immigration offi-  
11 cer in the United States or American Samoa, the oath required for nat-  
12 uralization; and

13 (3) the individual is in the United States or American Samoa when  
14 the certificate is issued.

#### 15 **§ 20904. Other documents to prove citizenship**

16 The following documents have the same effect that a certificate of natu-  
17 ralization or a certificate of citizenship has to prove that an individual is  
18 a citizen of the United States:

19 (1) a passport granted by the Secretary of State to a citizen of the  
20 United States during its period of validity if the period is the maximum  
21 allowed by law.

22 (2) a “Report of Birth Abroad of a Citizen of the United States”  
23 issued by a consular officer to document a citizen born outside the  
24 United States.

#### 25 **§ 20905. Cancellation of nationality records**

26 (a) AUTHORITY TO CANCEL.—The Attorney General may cancel a na-  
27 tionality record the Attorney General has issued if satisfied that the record  
28 was obtained fraudulently or unlawfully.

29 (b) NOTICE OF INTENTION TO CANCEL.—The Attorney General shall  
30 send written notice of an intention to cancel a record and the reason for  
31 the cancellation to the individual named in the record at the individual’s last  
32 known address. The Attorney General shall give the individual at least 60  
33 days to show cause why the record should not be canceled.

34 (c) EFFECT OF CANCELLATION.—Cancellation of a record showing the  
35 citizenship status of an individual under this section affects only the record  
36 and not the citizenship status of the individual.

#### 37 **§ 20906. Certificates of loss of nationality**

38 When a diplomatic or consular officer believes that an individual in a for-  
39 eign country has lost the nationality of the United States under section  
40 20701 of this title or chapter IV of the Nationality Act of 1940, the officer  
41 shall certify in writing to the Secretary of State, under regulations the Sec-

1     retary prescribes, the facts on which the officer's belief is based. If the Sec-  
 2     retary approves the certificate, the Secretary shall provide a copy to the At-  
 3     torney General and direct the officer to provide a copy to the individual.

4     **§ 20907. Certifications of records**

5     The Attorney General may make a certification of any part of a natu-  
 6     ralization record of a court, a certificate of naturalization, or a certificate  
 7     of citizenship, for use in complying with a law or in a judicial proceeding.  
 8     The clerk of a court may make such a certification only on order of the  
 9     court.

10                   **CHAPTER 211—MISCELLANEOUS**

Sec.

21101. Procedure if denied a right or privilege as a national.

21102. Information about citizenship.

11     **§ 21101. Procedure if denied a right or privilege as a na-**  
 12                   **tional**

13     (a) INDIVIDUALS IN THE UNITED STATES.—(1) Except as provided by  
 14     paragraph (4) of this subsection, an individual in the United States may  
 15     bring a civil action under section 2201 of title 28 against the head of an  
 16     agency for a judgment declaring that the individual is a national of the  
 17     United States if—

18             (A) the individual claims a right or privilege as a national of the  
 19             United States; and

20             (B) the head of the agency denies the claim because the individual  
 21             is not a national of the United States.

22     (2) The action must be brought—

23             (A) in the district court of the United States for the judicial district  
 24             in which the individual resides or claims to reside; and

25             (B) within 5 years after the final administrative denial of the right  
 26             or privilege.

27     (3) A court referred to in paragraph (2) of this subsection has jurisdic-  
 28     tion over the head of the agency in that action.

29     (4) An individual may not bring an action under this subsection if the  
 30     issue of the individual's nationality arose because of a deportation or exclu-  
 31     sion proceeding.

32     (b) INDIVIDUALS NOT IN THE UNITED STATES.—(1) An individual not  
 33     in the United States may apply to a consular officer or diplomatic officer  
 34     of the United States in the country in which the individual resides for a  
 35     certificate of identity to travel to the United States and apply for admission  
 36     if—

37             (A) the individual claims a right or privilege as a national of the  
 38             United States;

1 (B) the head of an agency denies the claim because the individual  
2 is not a national of the United States; and

3 (C) the individual had been in the United States before applying for  
4 the certificate, or the individual is less than 16 years of age and was  
5 born outside the United States to a parent who is a citizen of the  
6 United States.

7 (2) The diplomatic or consular officer shall grant the certificate if satis-  
8 fied that the application is made in good faith and has a substantial basis.  
9 If the officer denies the application, the individual may appeal to the Sec-  
10 retary of State. If the Secretary approves the denial, the Secretary shall  
11 state the reasons in writing.

12 (3) The individual may use the certificate to travel to a port of entry and  
13 apply for admission to the United States. The individual is subject to the  
14 provisions of this title applicable to proceedings for aliens seeking admission  
15 to the United States.

16 (4) The Secretary shall prescribe regulations for granting certificates  
17 under this subsection.

18 (c) APPLICATION OF LAWS ON ADMISSION OF ALIENS.—An individual de-  
19 scribed by this section who is finally excluded from admission to the United  
20 States is subject to all the provisions of this title applicable to aliens seeking  
21 admission to the United States.

## 22 **§ 21102. Information about citizenship**

23 (a) PROMOTING UNITED STATES CITIZENSHIP.—To promote the oppor-  
24 tunities and responsibilities of citizenship of the United States, the Attorney  
25 General shall distribute broadly information about the benefits individuals  
26 may receive under this subtitle and the requirements to obtain those bene-  
27 fits. In carrying out this subsection, the Attorney General shall seek the as-  
28 sistance of appropriate community groups, private voluntary agencies, and  
29 other relevant organizations.

30 (b) INSTRUCTION IN CITIZENSHIP RESPONSIBILITIES.—The Attorney  
31 General may promote instruction and training in citizenship responsibilities  
32 of applicants for naturalization, including—

33 (1) giving names of applicants for naturalization to public schools;

34 (2) preparing citizenship textbooks and distributing the textbooks  
35 without charge to applicants receiving instruction in citizenship respon-  
36 sibilities under the supervision of public schools;

37 (3) preparing and distributing a monthly immigration and natu-  
38 ralization bulletin; and

39 (4) seeking the cooperation of official State and national organiza-  
40 tions, including organizations concerned with vocational education.

1 (c) REIMBURSEMENT.—Based on a statement by the Attorney General  
 2 that the citizenship textbooks have been prepared and distributed as pro-  
 3 vided by subsection (b)(2) of this section, naturalization fees deposited in  
 4 the Treasury by the Attorney General may be used to reimburse the appro-  
 5 priation of the Department of Justice for the cost of preparing and distrib-  
 6 uting the textbooks.

7 **SEC. 2. CONFORMING PROVISIONS.**

8 (a) TITLE 10.—Section 885 of title 10, United States Code, is amended  
 9 by adding at the end the following new subsection:

10 “(d) Any person found guilty of desertion in time of war may not—

11 “(1) hold an office of trust or profit under the United States; or

12 “(2) exercise the rights of a citizen of the United States.”.

13 (b) MILITARY SELECTIVE SERVICE ACT.—Section 12 of the Military Se-  
 14 lective Service Act (50 App. U.S.C. 462) is amended by adding at the end  
 15 the following new subsection:

16 “(h) On conviction by a court of competent jurisdiction, a person reg-  
 17 istered under this Act who leaves the district in which registered, or a per-  
 18 son (whether or not registered under this Act) who leaves the United States,  
 19 with the intent to evade a lawfully ordered draft while the United States  
 20 is at war, may not—

21 “(1) hold an office of trust or profit under the United States; or

22 “(2) exercise the rights of a citizen of the United States.”.

23 (c) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—In the  
 24 table of contents of the Elementary and Secondary Education Act of 1965  
 25 (20 U.S.C. 2701 et seq.), strike the analysis for part D of title IV.

26 (d) ACT OF AUGUST 1, 1956.—Section 6(a) of the Act of August 1, 1956  
 27 (50 U.S.C. 855(a)), is amended by—

28 (1) striking the subsection designation “(a)”; and

29 (2) striking “make” and substituting “makes”.

30 **SEC. 3. CONFORMING CROSS-REFERENCES.**

31 (a) TITLE 5.—Section 5549(2) of title 5, United States Code, is amended  
 32 by striking “sections 1353a and 1353b” and substituting “section 308”.

33 (b) TITLE 10.—Title 10, United States Code, is amended as follows:

34 (1) In section 374(b)(4)(A)(ii), strike “Any of sections 274 through  
 35 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328)”  
 36 and substitute “Sections 10147–10151 of title 8”.

37 (2) In sections 510(b)(1) and 591(b)(1), strike “the Immigration  
 38 and Nationality Act (8 U.S.C. 1101 et seq.)” and substitute “title 8”.

39 (3) In section 2864(a), strike “section 101(a)(15)(H)(ii) of the Im-  
 40 migration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))” and sub-  
 41 stitute “section 2314 or 2315 of title 8”.

1 (4) In sections 3253 and 8253, strike “the Immigration and Nation-  
2 ality Act (8 U.S.C. 1101 et seq.)” and substitute “title 8”.

3 (c) TITLE 18.—Title 18, United States Code, is amended as follows:

4 (1) In sections 831(c)(2) and 1091(d)(2), strike “section 101 of the  
5 Immigration and Nationality Act (8 U.S.C. 1101)” and substitute  
6 “section 129 of title 8”.

7 (2) In section 1203(c), strike “section 101(a)(22) of the Immigration  
8 and Nationality Act (8 U.S.C. 1101(a)(22))” and substitute “section  
9 129 of title 8”.

10 (3) In section 1546(b), strike “section 274A(b) of the Immigration  
11 and Nationality Act” and substitute “section 11103 of title 8”.

12 (4) In section 2331(2), strike “section 101(a)(22) of the Immigra-  
13 tion and Nationality Act” and substitute “section 129 of title 8”.

14 (5) In section 3077(2)—

15 (A) in clause (A), strike “section 101(a)(22) of the Immigration  
16 and Nationality Act (8 U.S.C. 1101(a)(22))” and substitute “sec-  
17 tion 129 of title 8”; and

18 (B) in clause (B), strike “section 101(a)(20) of the Immigration  
19 and Nationality Act (8 U.S.C. 1101(a)(20))” and substitute “sec-  
20 tion 126 of title 8”.

21 (6) In section 3142(d)(1)(B), strike “section 101(a)(20) of the Im-  
22 migration and Nationality Act (8 U.S.C. 1101(a)(20))” and substitute  
23 “section 126 of title 8”.

24 (7) In section 4113—

25 (A) in subsection (a), strike “section 1252(b) or section 1254(e)  
26 of title 8, United States Code,” and substitute “section 6539(a)  
27 or (b) of title 8”;

28 (B) in subsection (b), strike “section 1252 of title 8, United  
29 States Code,” and substitute “subchapter II of chapter 65 of title  
30 8 and”; and

31 (C) in subsection (c), strike “section 1226 of title 8, United  
32 States Code,” and substitute “subchapter II of chapter 63 of title  
33 8 and”.

34 (d) INTERNAL REVENUE CODE OF 1986.—The Internal Revenue Code of  
35 1986 (26 U.S.C. 1 et seq.) is amended as follows:

36 (1) In section 871(c), strike “subparagraph (F), (J), or (M) of sec-  
37 tion 101(a)(15) of the Immigration and Nationality Act, as amended  
38 (8 U.S.C. 1101(a)(15)(F), (J), or (M))” and substitute “section 2310,  
39 2311, or 2312 of title 8, United States Code”.

1           (2) In sections 872(b)(3), strike “subparagraph (F) or (J) of section  
2 101(a)(15) of the Immigration and Nationality Act, as amended” and  
3 substitute “section 2310 or 2312 of title 8, United States Code”.

4           (3) In sections 877(d), 2107(d), and 2501(a)(3)(A), strike “, as  
5 amended (8 U.S.C. 1401(b), 1482, or 1487)” and substitute “as those  
6 sections were in effect on October 9, 1978”.

7           (4) In section 1441(b), strike “subparagraph (F), (J), or (M) of sec-  
8 tion 101(a)(15) of the Immigration and Nationality Act” and sub-  
9 stitute “section 2310, 2311, or 2312 of title 8, United States Code,”.

10          (5) In section 3121(b)—

11           (A) in clause (18), strike “section 101(a)(15)(H)(ii) of the Im-  
12 migration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))” and  
13 substitute “section 2314 or 2315 of title 8, United States Code”;  
14 and

15           (B) in clause (19), strike “subparagraph (F), (J), or (M) of sec-  
16 tion 101(a)(15) of the Immigration and Nationality Act, as  
17 amended” and “in subparagraph (F), (J), or (M)” and substitute  
18 “section 2310, 2311, or 2312 of title 8, United States Code” and  
19 “in section 2310, 2311, or 2312”, respectively.

20          (6) In section 3231(e)(1), strike “subparagraph (F), (J), or (M) of  
21 section 101(a)(15) of the Immigration and Nationality Act, as amend-  
22 ed” and “in subparagraph (F), (J), or (M)” and substitute “section  
23 2310, 2311, or 2312 of title 8, United States Code” and “in section  
24 2310, 2311, or 2312”, respectively.

25          (7) In section 3304(a)(14)(A), strike “section 212(d)(5) of the Im-  
26 migration and Nationality Act” and substitute “section 6123 of title  
27 8, United States Code”.

28          (8) In section 3306(c)—

29           (A) in clause (1)(B), strike “sections 214(c) and 101(a)(15)(H)  
30 of the Immigration and Nationality Act” and substitute “section  
31 2314 of title 8, United States Code”; and

32           (B) in clause (19), strike “subparagraph (F), (J), or (M) of sec-  
33 tion 101(a)(15) of the Immigration and Nationality Act, as  
34 amended (8 U.S.C. 1101(a)(15)(F), (J), or (M))” and “in sub-  
35 paragraph (F), (J), or (M)” and substitute “section 2310, 2311,  
36 or 2312 of title 8, United States Code” and “in section 2310,  
37 2311, or 2312”, respectively.

38          (9) In section 6103(m)(4)(A)(ii)(II), strike “section 3(a)(1) of the  
39 Migration and Refugee Assistance Act of 1962” and substitute “section  
40 13307(a)(1) of title 8, United States Code,”.

41          (10) In section 7701(b)(5)—

1 (A) in paragraph (C)(i), strike “subparagraph (J) of section  
2 101(15) of the Immigration and Nationality Act” and substitute  
3 “section 2312 of title 8, United States Code”;

4 (B) in paragraph (D)(i)(I), strike “subparagraph (F) or (M) of  
5 section 101(a)(15) of the Immigration and Nationality Act” and  
6 substitute “section 2310 or 2311 of title 8, United States Code”;  
7 and

8 (C) in paragraph (D)(i)(II), strike “subparagraph (J) of such  
9 section 101(15)” and substitute “section 2312 of title 8, United  
10 States Code”.

11 (e) TITLE 28.—Title 28, United States Code, is amended as follows:

12 (1) In section 751(e), strike “naturalization fees listed in section 742  
13 of Title 8 and”.

14 (2) In section 1821(e), strike “section 212(d)(5) of the Immigration  
15 and Nationality Act (8 U.S.C. 1182(d)(5))” and “section 242(b) of  
16 such Act (8 U.S.C. 1252(b))” and substitute “section 6123 of title 8”  
17 and “section 6532 of title 8”, respectively.

18 (f) TITLE 46.—Title 46, United States Code, is amended as follows:

19 (1) In section 2101(3a), strike “section 101(a)(22) of the Immigra-  
20 tion and Nationality Act (8 U.S.C. 1101(a)(22))” and substitute “sec-  
21 tion 129 of title 8”.

22 (2) In section 8103(i)(1)(C), strike “the Immigration and National-  
23 ity Act (8 U.S.C. 1101 et seq.)” and substitute “title 8”.

24 (3) In section 8704, strike “section 274A of the Immigration and  
25 Nationality Act (8 U.S.C. 1324a)” and substitute “chapter 111 of title  
26 8”.

#### 27 **SEC. 4. LEGISLATIVE PURPOSE AND CONSTRUCTION.**

28 (a) NO SUBSTANTIVE CHANGE.—Sections 1 and 2 of this Act restate,  
29 without substantive change, laws enacted before February 1, 1994, that  
30 were replaced by those sections. Those sections may not be construed as  
31 making a substantive change in the laws replaced. Laws enacted after Janu-  
32 ary 31, 1994, that are inconsistent with this Act supersede this Act to the  
33 extent of the inconsistency.

34 (b) REFERENCES.—A reference to a law replaced by section 1 or 2 of  
35 this Act, including a reference in a regulation, order, or other law, is  
36 deemed to refer to the corresponding provision enacted by this Act.

37 (c) CONTINUING EFFECT.—An order, rule, or regulation in effect under  
38 a law replaced by section 1 or 2 of this Act continues in effect under the  
39 corresponding provision enacted by this Act until repealed, amended, or su-  
40 perseded.

1 (d) ACTIONS AND OFFENSES UNDER PRIOR LAW.—An action taken or  
 2 an offense committed under a law replaced by section 1 or 2 of this Act  
 3 is deemed to have been taken or committed under the corresponding provi-  
 4 sion enacted by this Act.

5 (e) INFERENCES.—An inference of a legislative construction is not to be  
 6 drawn by reason of the location in the United States Code of a provision  
 7 enacted by this Act or by reason of a caption or catch line of the provision.

8 (f) SEVERABILITY.—If a provision enacted by this Act is held invalid, all  
 9 valid provisions that are severable from the invalid provision remain in ef-  
 10 fect. If a provision enacted by this Act is held invalid in any of its applica-  
 11 tions, the provision remains valid for all valid applications that are severable  
 12 from any of the invalid applications.

### 13 **SEC. 5. REPEALS.**

14 (a) INFERENCES OF REPEAL.—The repeal of a law by this Act may not  
 15 be construed as a legislative inference that the provision was or was not in  
 16 effect before its repeal.

17 (b) REPEALER SCHEDULE.—The laws specified in the following schedule  
 18 are repealed, except for rights and duties that matured, penalties that were  
 19 incurred, and proceedings that were begun before the date of enactment of  
 20 this Act:

#### Schedule of Laws Repealed Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Vol- ume	Page	Title	Section
1875 Feb. 18	80 .....	1(14th par. on p. 318) .....	18	318 .....	8	359
1879 Mar. 3	182 .....	2 .....	20	402 .....	8	63
1887 Feb. 8	119 .....	6(2d sentence less provisos) .....	24	390 .....	.....	.....
Mar. 3	340 .....	1(related to the District of Columbia), 2(related to the District of Colum- bia), 4(related to the District of Co- lumbia).	24	476 .....	8	79-81
1888 Feb. 1	4 .....	1(last par. under heading "Pay De- partment").	25	9 .....	8	63
1891 Mar. 3	551 .....	.....	26	1084 .....	8	1552
1893 Mar. 3	206 .....	.....	27	569 .....	.....	.....
1894 Aug. 18	301 .....	1(last par. on p. 390) .....	28	390 .....	8	174
1895 Mar. 2	177 .....	1(last par. beginning on p. 780) .....	28	780 .....	8	103, 1552, 1554
1898 July 1	546 .....	1(2d par. under heading "Back Pay and Bounty").	30	640 .....	.....	.....
1900 Apr. 30	339 .....	4 .....	31	141 .....	8	4

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
1901 Mar. 3	853 .....	1(next-to-last par. before heading "Quarantine Service").	31	1155 .....	8	112
	868 .....	.....	31	1447 .....	.....	.....
1902 June 14	1088 .....	.....	32	386 .....	22	211, 212
July 1	1351 .....	(3d complete par. on p. 556) .....	32	556 .....	8	64
1903 Feb. 14	552 .....	4(related to immigration), 7(related to immigration).	32	826, 828 .....	8	131, 261, 1551
1904 Apr. 28	1762 .....	1(par. under heading "Enforcement of the Chinese-Exclusion Act").	33	478 .....	8	298
	P.R. 33 .....	.....	33	591 .....	8	1552
1906 May 8	2348 .....	"Sec. 6(2d sentence less provisos)" .....	34	182 .....	.....	.....
June 29	3592 .....	.....	34	596 .....	.....	.....
	3624 .....	.....	34	630 .....	8	407
1910 May 27	258 .....	9 .....	36	448 .....	8	385
June 25	395 .....	6(1st par.) .....	36	826 .....	8	1557
	401 .....	.....	36	829 .....	8	402
1913 Mar. 4	141 .....	3(related to Commissioner of Naturalization and "known as the Commissioner General of Immigration, the Commissioners of Immigration, the Bureau of Immigration and Naturalization, the Division of Information, the Division of Naturalization, and the Immigration Service at Large" in 1st-3d sentences).	37	737 .....	8	1551, 1552
1915 Mar. 4	147 .....	1(par. under heading "Immigration Service").	38	1151 .....	8	112
1917 Mar. 2	145 .....	5, 5a(provisos) .....	39	953 .....	8	5, 5a
Mar. 3	163 .....	1(pars. under headings "Bureau of Immigration" and "Bureau of Naturalization").	39	1118 .....	8	1552
June 12	27 .....	1(1st proviso on p. 171) .....	40	171 .....	8	402
June 15	30 .....	1 of title IX .....	40	227 .....	22	213
1918 May 9	69 .....	.....	40	542 .....	8	359, 406, 416
1919 Aug. 15	50 .....	.....	41	280 .....	8	114
1920 June 4	223 .....	1-5 .....	41	750 .....	22	214, 215, 216
June 5	235 .....	1(2d complete par. on p. 936) .....	41	936 .....	8	107
	243 .....	.....	41	981 .....	8	136
	251 .....	.....	41	1008 .....	8	137
1921 Mar. 3	120 .....	3(1st sentence 1st-29th words) .....	41	1250 .....	.....	.....
Mar. 4	161 .....	1(2d par. under heading "Immigration Service").	41	1424 .....	8	1353c
1922 Mar. 28	117 .....	(pars. under headings "Bureau of Immigration", "Immigration Stations", and "Bureau of Naturalization").	42	486 .....	8	1552
Sept. 22	411 .....	.....	42	1021 .....	8	10
1923 Jan. 5	24 .....	(pars. under headings "Bureau of Immigration", "Immigration Stations", and "Bureau of Naturalization").	42	1127 .....	8	1552
1924 June 2	233 .....	.....	43	253 .....	8	3, 173, 224
June 7	379 .....	.....	43	669 .....	8	228

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
1926						
May 25	388 .....	.....	44	652 .....	8	374
July 3	738 .....	.....	44	812 .....	8	204
	772 .....	.....	44	887 .....	22	211, 211a, 214a, 217, 217a
1927						
Feb. 25	192 .....	1-3 .....	44	1234 .....	8	5b, 5c, 377a
Mar. 4	503 .....	2 "Sec. 5a(provisos)" .....	44	1418 .....	8	5a
	514 .....	.....	44	1455 .....	8	211
1928						
Mar. 31	306 .....	.....	45	400 .....	8	211
May 29	864 .....	.....	45	954 .....	8	109
	914 .....	.....	45	1009 .....	8	204, 206
1929						
Mar. 2	536 .....	.....	45	1512 .....	8	361, 402a
Mar. 4	683 .....	.....	45	1545 .....	8	392a
June 24	40 .....	.....	46	41 .....	8	180
1930						
Apr. 18	184 .....	1(last par. 2d proviso under heading "Bureau of Immigration").	46	216 .....	8	118
June 13	476 .....	.....	46	581 .....	8	213
June 19	544 .....	.....	46	787 .....	8	3a
July 1	782 .....	.....	46	839 .....	22	217a
July 3	826 .....	.....	46	849 .....	8	137a
	835 .....	.....	46	854 .....	8	9, 204
1931						
Feb. 21	270 .....	.....	46	1205 .....	8	109
Mar. 2	368 .....	.....	46	1467 .....	8	1353a, 1353b
Mar. 3	442 .....	.....	46	1511 .....	8	370
1932						
May 2	156 .....	.....	47	145 .....	8	109
May 16	187 .....	.....	47	157 .....	22	217a
May 25	203 .....	.....	47	165 .....	8	392b-392d, 399c
June 28	283 .....	.....	47	336 .....	8	5b, 204a-204d
July 1	363 .....	.....	47	524 .....	8	215
July 6	434 .....	.....	47	607 .....	8	203
July 11	471 .....	.....	47	656 .....	8	204, 206
1934						
Mar. 15	70 .....	1(1st proviso on p. 435 words after semicolon).	48	435 .....	8	176
May 7	221 .....	.....	48	667 .....	8	3b, 3c
May 24	344 .....	.....	48	797 .....	8	137a, 371, 375
June 8	429 .....	.....	48	926 .....	8	106a
1935						
June 15	255 .....	.....	49	376 .....	8	376
1937						
May 14	181 .....	.....	50	164 .....	8	102
	182 .....	.....	50	164 .....	8	209, 213
Aug. 23	735 .....	.....	50	743 .....	8	392b-392d
1939						
June 21	234 .....	.....	53	851 .....	8	392b-392d
Aug. 7	517 .....	.....	53	1243 .....	8	106a
1940						
June 28	439 .....	20-23, 40, 41 .....	54	671, 676 .....	8	137, 137-1, 155, 156a
July 1	495 .....	.....	54	707 .....	8	368b
	502 .....	.....	54	711 .....	8	203, 215
July 2	509 .....	.....	54	715 .....	8	9a
Aug. 22	688 .....	.....	54	858 .....	8	1353d
1941						
June 21	210 .....	.....	55	252 .....	22	223, 225- 226b
Oct. 13	432 .....	.....	55	736 .....	8	457
Oct. 16	446 .....	.....	55	743 .....	8	809
1942						
Mar. 27	199 .....	1001 .....	56	182 .....	8	1001-1005
Apr. 2	208 .....	.....	56	198 .....	8	723
June 20	426 .....	.....	56	372 .....	8	109
Oct. 9	585 .....	.....	56	779 .....	8	809

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
Dec. 7	690 .....	.....	56	1041 .....	8	723a
Dec. 8	696 .....	.....	56	1043 .....	8	806
	697 .....	.....	56	1044 .....	8	155
Dec. 24	819 .....	.....	56	1085 .....	8	806
1943						
July 12	221 .....	1(1st proviso on p. 507 words before semicolon).	57	507 .....	8	117
July 13	230 .....	.....	57	553 .....	8	156
Dec. 17	344 .....	.....	57	600 .....	8	703
1944						
Jan. 20	2 .....	1, 3 .....	58	4 .....	8	739, 742, 801
June 28	302 .....	201(1st proviso on p. 558) .....	58	558 .....	8	117
July 1	368 .....	.....	58	677 .....	8	801, 803
	373 .....	713(12th par. on p. 716) .....	58	716 .....	8	152
Sept. 27	415 .....	.....	58	745 .....	8	742
	418 .....	.....	58	746 .....	8	136, 801
	419 .....	.....	58	747 .....	8	809
Sept. 28	446 .....	.....	58	755 .....	8	742
Dec. 19	608 .....	.....	58	816 .....	8	151, 154, 167, 216
Dec. 22	662 .....	.....	58	886 .....	8	1001, 1002
1945						
Oct. 11	410 .....	.....	59	544 .....	8	809
Oct. 29	437 .....	.....	59	551 .....	8	224
	438 .....	.....	59	551 .....	8	102
Nov. 21	490 .....	.....	59	585 .....	8	742
Dec. 28	590 .....	1(c) .....	59	658 .....	8	1001, 1006
	591 .....	1, 2, 4-6 .....	59	659 .....	8	232-237
Dec. 29	652 .....	7(c), (d) .....	59	672 .....	8	203, 215
1946						
July 2	534 .....	.....	60	416 .....	8	703, 721a, 724
July 31	708 .....	.....	60	721 .....	8	601
Aug. 7	768 .....	.....	60	865 .....	8	110
Aug. 9	945 .....	.....	60	975 .....	8	212a, 213
Aug. 13	958 .....	5(related to §611) .....	60	1049 .....	8	152
1947						
May 16	72 .....	.....	61	97 .....	8	727
May 31	87 .....	.....	61	121 .....	8	731, 732, 734, 735
July 1	194 .....	.....	61	240 .....	8	742
July 9	211 .....	1(2d proviso beginning on p. 292 words before semicolon).	61	292 .....	8	103a
July 22	289 .....	.....	61	401 .....	8	237
July 23	304 .....	.....	61	414 .....	8	3b, 739
July 30	384 .....	.....	61	630 .....	8	148
1948						
Feb. 28	83 .....	9(b)(related to §711) .....	62	47 .....	8	152
May 19	311 .....	.....	62	241 .....	8	204, 206
May 25	338 .....	.....	62	268 .....	8	137
June 1	360 .....	.....	62	281 .....	8	724a
June 3	403 .....	.....	62	335 .....	8	210
June 25	656 .....	.....	62	1026 .....	8	732
July 1	783 .....	.....	62	1206 .....	8	155
1949						
June 29	274 .....	.....	63	282 .....	8	724a
Oct. 15	695 .....	5(a)(related to Commissioner of Immigration and Naturalization).	63	880 .....	8	102
1950						
June 30	423 .....	.....	64	306 .....	8	1184(note)
	443 .....	.....	64	316 .....	8	1440(note)
July 28	503 .....	6 .....	64	380 .....	8	1555
Aug. 1	512 .....	4 .....	64	384 .....	8	703
Aug. 19	759 .....	.....	64	464 .....	8	1421/
Sept. 23	1024 .....	22-30 .....	64	1006 .....	8	239
						137-137-8, 156, 456, 457, 704, 705, 725, 729, 733-735
1951						
Mar. 19	9 .....	.....	65	5 .....	8	239
June 19	144 .....	21 .....	65	89 .....	8	723,
Aug. 16	321 .....	.....	65	191 .....	8	1435(note)
1952						
Feb. 29	49 .....	3 .....	66	10 .....	8	398a, 727a

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
Mar. 20	108 .....	.....	66	26 .....	8	110, 144
Apr. 9	171 .....	.....	66	50 .....	8	1184(note)
June 18	442 .....	.....	66	138 .....	8	156
June 27	477 .....	(less 402(a)-(d)) .....	66	163 .....	8	1101, 1101(note), 1102-1105, 1151-1182, 1183, 1184, 1185, 1186, 1186a, 1187, 1201, 1202- 1222, 1224- 1255, 1255a, 1256-1259, 1281-1324a, 1324b, 1325- 1353, 1354- 1401, 1402- 1408, 1409- 1435, 1435(note), 1436-1440, 1440(note), 1440-1, 1441-1455, 1457-1481, 1483, 1488- 1522, 1523, 1524, 1552
					22	1446
					48	1421/
					49	177
					App.	
					50	1952-1955,
					App.	1961
1953						
June 30	162 .....	.....	67	108 .....	8	1440a-1440d
1954						
June 18	323 .....	.....	68	264 .....	8	1184a
July 20	553 .....	.....	68	495 .....	8	1435(note)
Sept. 3	1254 .....	.....	68	1145 .....	8	1154(note)
	1256 .....	.....	68	1146 .....	8	1481, 1481(note)
	1263 .....	6, 17, 18 .....	68	1227, 1232 ..	8	1252, 1353c, 1451
1956						
Feb. 10	31 .....	.....	70	11 .....	22	214
Mar. 16	85 .....	.....	70	50 .....	8	1401a
June 20	414 .....	201(1st proviso on p. 307) .....	70	307 .....	8	1553
July 18	629 .....	301 .....	70	575 .....	8	1182, 1251
Aug. 1	841 .....	33 .....	70	890 .....	22	2705
	849 .....	6(b) .....	70	900 .....	50	855
1957						
Sept. 11	85-316 .....	.....	71	639 .....	8	1101, 1151(note), 1153, 1153(note), 1201a(note), 1255b, 1434
1958						
July 7	85-508 .....	21-26 .....	72	351 .....	8	1101, 1182, 1404(note), 1421, 1455
July 18	85-531 .....	.....	72	375 .....	8	1184(note)
July 25	85-559 .....	.....	72	419 .....	8	1182(note)
Aug. 8	85-616 .....	.....	72	546 .....	8	1259
Aug. 20	85-697 .....	.....	72	687 .....	8	1430, 1434
Aug. 21	85-700 .....	.....	72	699 .....	8	1153(note), 1255
Sept. 2	85-892 .....	.....	72	1712 .....	.....	.....
1959						
Mar. 18	86-3 .....	20 .....	73	13 .....	8	1101, 1182, 1405(note), 1421
Aug. 4	86-129 .....	.....	73	274 .....	8	1485, 1486
Sept. 9	86-253 .....	.....	73	490 .....	8	1182c, 1205
Sept. 14	86-267 .....	.....	73	552 .....	22	217a

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
Sept. 22	86-363 .....	.....	73	644 .....	8	1153, 1153(note), 1155
1960 July 14	86-648 .....	.....	74	504 .....	8	1182, 1182(note), 1205, 1251, 1255
1961 Sept. 21	87-256 .....	109 .....	75	534 .....	8	1101, 1182, 1258
Sept. 26	87-301 .....	.....	75	650 .....	8	1101, 1105a, 1105a(note), 1152, 1153(note), 1155, 1182- 1182c, 1201, 1202, 1205, 1251, 1251a, 1255a(note), 1421, 1440, 1451, 1481, 1486
1962 June 28	87-510 .....	.....	76	121 .....	8 22	1104, 1182(note) 1925, 1951, 2601, 2601(note), 2602-2605 1153(note), 1154, 1254
Oct. 24	87-885 .....	.....	76	1247 .....	8	
1964 Aug. 14	88-426 .....	305(43) .....	78	428 .....	8	1104
Oct. 7	88-634 .....	201(proviso under heading "assistance to refugees in the United States").	78	1021 .....	22	2601
1965 Apr. 11	89-10 .....	4401-4410 .....	.....	.....	20	3121-3130
Oct. 3	89-236 .....	.....	79	911 .....	8	1101, 1151, 1151(note), 1152-1156, 1181, 1182, 1182(note), 1201, 1202, 1204, 1251, 1253-1255, 1255(note), 1259, 1322, 1351
1966 Nov. 2	89-710 .....	.....	80	1104 .....	8	1101
	89-732 .....	3 .....	80	1161 .....	8	1255(note)
Nov. 6	89-770 .....	.....	80	1322 .....	8	1401
1967 Dec. 18	90-215 .....	.....	81	661 .....	8	1430
1968 June 29	90-369 .....	.....	82	279 .....	8	1430
July 26	90-428 .....	.....	82	446 .....	22	213, 214, 217a, 217a(note)
Oct. 21	90-609 .....	.....	82	1199 .....	8	1351, 1455
Oct. 24	90-633 .....	.....	82	1343 .....	8	1429, 1439, 1440, 1440e
1969 Dec. 5	91-136 .....	.....	83	283 .....	8	1447
1970 Apr. 7	91-225 .....	.....	84	116 .....	8	1101, 1182, 1184
July 10	91-313 .....	.....	84	413 .....	8	1183, 1363
Oct. 26	91-510 .....	421, 422 .....	84	1189 .....	8	1106, 1106(note)
1971 May 14	92-14 .....	.....	85	38 .....	22	214, 214(note)

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
1972 Oct. 27	92-584 .....	.....	86	1289 .....	8	1401, 1401b
1974 Sept. 17	93-417 .....	.....	88	1151 .....	22	214
Oct. 20	93-461 .....	.....	88	1387 .....	8	331-339
1975 Nov. 29	94-141 .....	501(a) .....	89	771 .....	22	2601
Dec. 16	94-155 .....	.....	89	824 .....	8	1101
1976 Apr. 21	94-274 .....	118 .....	90	389 .....	8	1151(note), 1151a(note)
Sept. 14	94-412 .....	501(a) .....	90	1258 .....	8	1481
Oct. 12	94-484 .....	601, 602, 906 .....	90	2300, 2325 ..	8	1101, 1101(note), 1182, 1182(note)
Oct. 18	94-550 .....	7 .....	90	2535 .....	8	1357
Oct. 20	94-571 .....	1-7, 9, 10 .....	90	2703, 2707 ..	8	1101, 1101(note), 1151-1153, 1153(note), 1154, 1181, 1182, 1251, 1254, 1255
1977 Aug. 1	95-83 .....	307(q) .....	91	394 .....	8	1101, 1101(note), 1182, 1182(note)
Aug. 17	95-105 .....	109(b) .....	91	847 .....	8	1101, 1104, 1104(note), 1105
Oct. 28	95-145 .....	.....	91	1223 .....	8 22	1255(note) 2601(note)
1978 Sept. 17	95-370 .....	401 .....	92	627 .....	8	1182(note)
Oct. 5	95-412 .....	.....	92	907 .....	8	1151, 1151(note), 1152, 1153, 1182(note)
Oct. 7	95-426 .....	124, 126, 707 .....	92	917 .....	8 22	1153, 1154, 1431-1434 1185 211a, 2691(note)
Oct. 10	95-431 .....	605 .....	92	1045 .....	8	1182(note)
	95-432 .....	.....	92	1046 .....	8	1401, 1401(note), 1481, 1482, 1484-1487
Oct. 30	95-549 .....	.....	92	2065 .....	8	1182, 1251, 1253, 1254 2601(note)
Nov. 2	95-579 .....	3 .....	92	2474 .....	8	1423
	95-582 .....	2 .....	92	2479 .....	8	1324
1979 Sept. 27	96-70 .....	3201 .....	93	496 .....	8	1101, 1101(note), 1182, 1182(note)
Nov. 30	96-132 .....	23 .....	93	1050 .....	8	1151(note)

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
1980 Mar. 17	96-212 .....	(less §§ 101, 203(i) (related to the first section of Pub. L. 89-732), 313(c)(2), 401).	94	102 .....	8	1101, 1101(note), 1151-1153, 1153(note), 1157, 1157(note), 1158, 1158(note), 1159, 1181, 1182, 1182(note), 1253, 1254, 1255(note), 1521, 1521(note), 1522, 1522(note), 1523-1525 2601, 2601(note) 1522(note)
Oct. 10	96-422 .....	.....	94	1799 .....	8	1522(note)
	96-424 .....	.....	94	1820 .....	8	1522(note)
Oct. 17	96-465 .....	2206(a)(10) .....	94	2162 .....	22	2605
Oct. 19	96-470 .....	207 .....	94	2245 .....	8	1154
Dec. 17	96-538 .....	404 .....	94	3192 .....	8	1182
1981 Aug. 13	97-35 .....	525, 526, 541-547, 1502 .....	95	450, 458, 459, 750.	8	1522(note), 1524(note) 239a
Dec. 29	97-113 .....	714 .....	95	1548 .....	8	1152(note)
	97-116 .....	.....	95	1611 .....	8	1101, 1101(note), 1105a, 1151, 1151(note), 1152, 1154, 1182, 1182(note), 1201, 1203, 1221, 1227, 1251-1255, 1255b, 1258, 1305, 1324, 1356, 1361, 1401a, 1409, 1427, 1431- 1433, 1439, 1440, 1445- 1448, 1452, 1455, 1481, 1483 1429
1982 Aug. 24	97-241 .....	116, 117 "Sec. 33" .....	96	279 .....	22	214, 217a, 217a(note), 2705
Sept. 30	97-271 .....	.....	96	1157 .....	8	1255(note)
Oct. 22	97-359 .....	.....	96	1716 .....	8	1154
Oct. 25	97-363 .....	.....	96	1734 .....	8	1101(note), 1522, 1522(note), 1523, 1524
1983 Nov. 22	98-164 .....	1011(a)(1), (b) .....	97	1061 .....	8 22	1522 2691(note)
1984 Oct. 5	98-454 .....	602 .....	98	1737 .....	8	1182, 1184
Oct. 12	98-473 .....	101(d)(last par.), 220 .....	98	1877, 2027 ..	8	1182, 1252, 1522, 1522(note) 1101
Oct. 30	Priv. L. 98-47.	3 .....	98	3435 .....	8	1101
	Priv. L. 98-53.	.....	98	3437 .....	8	1101(note)
1985 Aug. 16	99-93 .....	111-113, 132 .....	99	410, 420 .....	8 22	1182(note) 2601, 2605, 2605(note), 2606 1427
Dec. 4	99-169 .....	601 .....	99	1007 .....	8	1427

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
1986 Aug. 27	99-396 .....	15, 16 .....	100	842 .....	8	1182, 1408, 1408(note), 1452, 1452(note)
Oct. 18	99-500 .....	205, 206 .....	100	1783-53 .....	8	1222, 1223, 1356
Oct. 21	99-505 .....	.....	100	1806 .....	8	1101, 1101(note)
Oct. 27	99-570 .....	1751(a)-(d) .....	100	3207-47 .....	8	1182, 1182(note), 1251, 1357
Oct. 30	99-591 .....	205, 206 .....	100	3341-53 .....	8	1222, 1223, 1356
Nov. 6	99-603 .....	101(a), (c)-(f), 102, 111(b), (c), 112-114, 116, 117, 201(a), 202-204, 301(a)-(e), (g), 302(a), 303(a)-(c), 304, 311-314, 315(a), (b), (d), (e), 401, 403, 406-501, 701, 702.	100	3360, 3373, 3374, 3381, 3384, 3394, 3404, 3411, 3417, 3422, 3431, 3434, 3440, 3441, 3443, 3445.	8	1101, 1101(note), 1152, 1152(note), 1153(note), 1160, 1160(note), 1161, 1184, 1186, 1186(note), 1187, 1251, 1252, 1254, 1255, 1255a, 1255a(note), 1258, 1259, 1259(note), 1321, 1324, 1324a, 1324a(note), 1324b, 1324b(note), 1357, 1364, 405(note)
	99-605 .....	.....	100	3449 .....	42 8	1101(note), 1522, 1522(note), 1523, 1524
Nov. 10	99-639 .....	.....	100	3537 .....	8	1101(note), 1154, 1154(note), 1182, 1182(note), 1184, 1184(note), 1186a, 1251, 1255, 1325
Nov. 14	99-653 .....	1-20, 22 .....	100	3655, 3658 ..	8	1101, 1101(note), 1152, 1153(note), 1182, 1201, 1201a, 1202, 1228, 1251, 1301, 1302, 1304, 1401, 1409, 1431-1433, 1451, 1452, 1481, 1483
1987 July 11	100-71 .....	(par. under heading "General Provisions—Department of Justice").	101	394 .....	8	1356
Dec. 22	100-202 ....	211, 702, 622(b) .....	101	1329-18, 1329-39, 1329-428.	8	1160, 1201(note)
	100-204 ....	745, 806(c), 903 .....	101	1396, 1399, 1401.	22 8 22	211a(note), 1182, 1201(note), 2601(note)
1988 Jan. 11	100-239 ....	5(f)(3) .....	101	1781 .....	46	8704(note)
Apr. 28	100-297 ....	1001, 6209 .....	102	242, 427 .....	20	3121-3130, 3130(note)
Sept. 28	100-449 ....	307 .....	102	1876 .....	8	1184
Oct. 1	100-459 ....	209, 210 .....	102	2203 .....	19 8	2112(note), 1101, 1101(note), 1356, 1455

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
Oct. 24	100-525 ....	2(a)(1), (b), (d)-(f)(1), (h)(1), (i)-(j)(3), (4)(less related to § 301(f)), (5), (m)-(q), 3-8(o), (q), 9.	102	2609, 2610, 2611, 2612, 2614, 2618, 2619.	8	1101, 1101(note), 1102-1104, 1105a, 1152, 1153(note), 1154, 1157, 1160, 1161, 1182, 1182(note), 1184, 1186, 1186a, 1187, 1188, 1188(note), 1201, 1201a, 1202, 1222-1224, 1227, 1227(note), 1251, 1252, 1254, 1254(note), 1255, 1255a, 1255a(note), 1255b, 1259, 1301, 1302, 1304, 1305, 1324, 1324a, 1324b, 1353, 1356, 1356(note), 1357, 1360, 1408, 1409, 1421, 1422, 1424, 1426, 1431-1433, 1435, 1440, 1441, 1446, 1447, 1451, 1452, 1454, 1455, 1459, 1481, 1483, 1489, 1522, 1522(note), 1523, 1524
Nov. 15	100-658 ....	.....	102	3908 .....	8	1101(note), 1153(note)
Nov. 18	100-690 ....	7341-7350 .....	102	4469 .....	8	1101, 1103(note), 1105a, 1182, 1182(note), 1251, 1251(note), 1252, 1252(note), 1252a, 1252a(note), 1254, 1326, 1326(note), 1327, 1327(note)
1989 Nov. 21	101-162 ....	(2d, 3d provisos beginning on p. 1000), 611.	103	1000, 1038 ..	8	1101, 1101(note), 1255a(note), 1356
	101-166 ....	(par. under heading "Interim Assistance to States for Legalization").	103	1174 .....	8	1255a(note)
Dec. 18	101-238 ....	3, 4, 6 .....	103	2100, 2104 ..	8	1101, 1160, 1182(note), 1255a(note)
1990 Feb. 16	101-246 ....	131, 407, 701 .....	104	31, 67, 74 ....	8	1101, 1102(note), 1182
Mar. 6	101-249 ....	.....	104	94 .....	8	2606, 1101(note), 1440-1
Nov. 5	101-515 ....	210(a), (d) .....	104	2120, 2121 ..	8	1356
	101-517 ....	(par. under heading "Interim Assistance to States for Legalization").	104	2206 .....	8	1255a(note)
	101-604 ....	203(d) .....	104	3083 .....	8	1380(note)

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
Nov. 29	101-649 ....	101(a), (b), 102-104, 111, 121-124, 131, 133, 134, 142, 151, 153, 155, 161, 162(a)-(e)(3), (6), (f)(2), (3), 201-207(b), 208, 209, 222, 223, 231, 302(a), (b), 303, 401-404, 406, 407, 501-506, 508-511, 513-515, 521, 531-539, 541-545, 601(a), (b), (d), (e), 602(a), (b), (d), 603(a)(1)-(19), (21), (24), (b)(1)-(4), 701-705.	104	4980, 4987, 5000, 5005, 5007, 5011, 5012, 5026, 5028, 5030, 5036, 5040, 5048, 5051, 5052, 5075, 5082, 5084, 5085.	8	1101, 1101 (notes), 1102, 1103, 1105a, 1105a(notes), 1151, 1152, 1152(note), 1153, 1153(notes), 1154, 1154(note), 1157, 1158, 1158(note), 1159, 1159(notes), 1160, 1160(note), 1161, 1161 (note), 1181, 1182, 1182(notes), 1183, 1184, 1186a, 1186a(note), 1186b, 1187, 1187 (note), 1201, 1221, 1221 (note), 1224-1227, 1229, 1251, 1251 (notes), 1252, 1252 (notes), 1252a, 1252a (note), 1252b, 1252b (note), 1253-1254a, 1254a (note), 1255, 1255 (note), 1255a, 1259, 1281, 1282, 1284-1288, 1288 (note), 1304, 1321-1323, 1324a, 1324a (notes), 1324b, 1324b (notes), 1324c, 1325-1328, 1330, 1330 (note), 1357, 1421, 1423, 1424, 1426-1430, 1433, 1435-1440, 1441-1451, 1455, 1459, 1429, 2691
1991					18	
July 2	102-65 .....	.....	105	322 .....	8	1254a(note)
Oct. 1	102-110 .....	.....	105	555 .....	8	1101, 1101 (notes), 1153, 1255
Nov. 26	102-170 ....	(pars. under heading "Interim Assistance to States for Legalization").	105	1124 .....	8	1255a(note)

Schedule of Laws Repealed—Continued  
Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
Dec. 12	102-232 ....	101, 102, 201, 202(a), 203-208, 302(a)(1), (3), (b)(2)-(5), (7), (d)(2), (3), (5), (e)(1)-(9), 303(a)(1)-(12), (14), (b)(3), (4), 304(b), (c)(related to aliens described in par. (2)(B)), 305(a)-(m), 306(a)(1)-(5), (7)-(13), (b), (c), 307(a)-(l)(7), (m), 308-310.	105	1733, 1742, 1743, 1744, 1745, 1746, 1748, 1749, 1751, 1757.	8	1101, 1101 (notes), 1102, 1105a, 1105a(note), 1151-1153, 1153(notes), 1154, 1157, 1157(note), 1158(note), 1159, 1160, 1160(note), 1161, 1182, 1182(note), 1184, 1184 (note), 1186a, 1186b, 1187, 1188, 1201, 1221, 1226, 1227, 1229, 1251, 1251 (notes), 1252, 1252 (note), 1252a, 1252b, 1254, 1254a, 1254a (note), 1255, 1255 (note), 1255a, 1281, 1282, 1284, 1288, 1322, 1323, 1324a-1324c, 1325, 1356, 1356 (note), 1357, 1421, 1421 (note), 1423, 1424, 1433, 1439, 1440, 1441, 1443, 1445-1452, 1455
1992 Oct. 6	102-394 ....	(pars under heading "Interim Assistance to States for Legalization").	106	1808 .....	8	1255a(note)
	102-395 ....	112, 610 .....	106	1843, 1874 ..	8	1153(note), 1356
Oct. 23	102-484 ....	1079 .....	106	2514 .....	8	1224(note)
1993 June 8	103-37 .....	.....	107	107 .....	8	1524
June 10	103-43 .....	2007 .....	107	210 .....	8	1182, 1182 (note)
Oct. 27	103-121 ....	(words on p. 1161 before heading "Immigration Emergency Fund").	107	1161 .....	8	1356, 1356 (note)
Dec. 8	103-182 ....	341, 342 .....	107	2116 .....	8	1184
Dec. 17	103-198 ....	8(a)-(c)(1) .....	107	2313 .....	19	3401
Dec. 20	103-206 ....	323(a)-(c)(1) .....	107	2428 .....	8	1288

Revised Statutes

Revised Statutes Section	United States Code	
	Title	Section
1995 .....	8	2
1999 .....	8	15
2032, 2033 .....	8	61, 62
2037 .....	8	65
2169 .....	8	359
4076, 4077 .....	22	212, 218

United States Code

Title	Section
18 .....	1429
18 .....	item 1429 in analysis of ch. 69

Reorganization Plans

Year	Plan No.	Section	Statutes at Large	
			Volume	Page
1940 .....	5	.....	54	1238
1977 .....	2	7(a)(8) .....	91	1637

Executive Orders

Date	Order No.	Section
1933 June 10 .	6166	14

1 (c) ACT OF FEBRUARY 14, 1917.—The Act of February 14, 1917 (ch.  
 2 64, 39 Stat. 919), is repealed. An action taken or offense committed under  
 3 that Act is deemed to have been taken or committed under section 871 of  
 4 title 18, United States Code.



- HR 3809 IH—2
- HR 3809 IH—3
- HR 3809 IH—4
- HR 3809 IH—5
- HR 3809 IH—6
- HR 3809 IH—7
- HR 3809 IH—8
- HR 3809 IH—9
- HR 3809 IH—10
- HR 3809 IH—11
- HR 3809 IH—12
- HR 3809 IH—13
- HR 3809 IH—14
- HR 3809 IH—15
- HR 3809 IH—16
- HR 3809 IH—17

HR 3809 IH—18

HR 3809 IH—19

HR 3809 IH—20

HR 3809 IH—21

HR 3809 IH—22

HR 3809 IH—23