

SEP 25 1996  
ILLEGAL IMMIGRATION REFORM AND IMMIGRANT  
RESPONSIBILITY ACT OF 1996

SEPTEMBER 24, 1996.—Ordered to be printed

Mr. HYDE, from the committee of conference,  
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2202]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2202) to amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for the eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

**SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT; APPLICATION OF DEFINITIONS OF SUCH ACT; TABLE OF CONTENTS; SEVERABILITY.**

(a) **SHORT TITLE.**—This Act may be cited as the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996”.

(b) **AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.**—Except as otherwise specifically provided—

(1) whenever in this Act an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act; and

(2) amendments to a section or other provision are to such section or other provision before any amendment made to such section or other provision elsewhere in this Act.

(c) APPLICATION OF CERTAIN DEFINITIONS.—Except as otherwise specifically provided in this Act, for purposes of titles I and VI of this Act, the terms "alien," "Attorney General," "border crossing identification card," "entry," "immigrant," "immigrant visa," "lawfully admitted for permanent residence," "national," "naturalization," "refugee," "State," and "United States" shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act.

(d) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendments to Immigration and Nationality Act; application of definitions of such Act; table of contents.

## TITLE I—IMPROVEMENTS TO BORDER CONTROL, FACILITATION OF LEGAL ENTRY, AND INTERIOR ENFORCEMENT

### Subtitle A—Improved Enforcement at the Border

- Sec. 101. Border patrol agents and support personnel.
- Sec. 102. Improvement of barriers at border.
- Sec. 103. Improved border equipment and technology.
- Sec. 104. Improvement in border crossing identification card.
- Sec. 105. Civil penalties for illegal entry.
- Sec. 106. Hiring and training standards.
- Sec. 107. Report on border strategy.
- Sec. 108. Criminal penalties for high speed flights from immigration checkpoints.
- Sec. 109. Joint study of automated data collection.
- Sec. 110. Automated entry-exit control system.
- Sec. 111. Submission of final plan on realignment of border patrol positions from interior stations.
- Sec. 112. Nationwide fingerprinting of apprehended aliens.

### Subtitle B—Facilitation of Legal Entry

- Sec. 121. Land border inspectors.
- Sec. 122. Land border inspection and automated permit pilot projects.
- Sec. 123. Preinspection at foreign airports.
- Sec. 124. Training of airline personnel in detection of fraudulent documents.
- Sec. 125. Preclearance authority.

### Subtitle C—Interior Enforcement

- Sec. 131. Authorization of appropriations for increase in number of certain investigators.
- Sec. 132. Authorization of appropriations for increase in number of investigators of visa overstays.
- Sec. 133. Assignment of State resources to carry out immigration enforcement.
- Sec. 134. Minimum State INS presence.

## TITLE II—ENHANCED IDENTIFICATION AND PENALTY FOR AGENTS AGAINST ALIEN SMUGGLING

Subtitle A—Enhanced Enforcement and Penalties Against Alien Smuggling

Sec. 201. Authority for investigation of alien smuggling in document fraud.

Sec. 202. Authority for investigation of alien smuggling in document fraud.

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- Sec. 213. New criminal penalty for failure to disclose role as preparer of false application for immigration benefits.
- Sec. 214. Criminal penalty for knowingly presenting document which fails to contain reasonable basis in law or fact.
- Sec. 215. Criminal penalty for false claim to citizenship.
- Sec. 216. Criminal penalty for voting by aliens in Federal election.
- Sec. 217. Criminal forfeiture for passport and visa related offenses.
- Sec. 218. Penalties for involuntary servitude.
- Sec. 219. Admissibility of videotaped witness testimony.
- Sec. 220. Subpoena authority in document fraud enforcement.

## TITLE III—INSPECTION, APPREHENSION, DETENTION, ADJUDICATION, AND REMOVAL OF INADMISSIBLE AND DEPORTABLE ALIENS

### Subtitle A—Revision of Procedures for Removal of Aliens

- Sec. 301. Treating persons present in the United States without authorization as not admitted.
- Sec. 302. Inspection of aliens; expedited removal of inadmissible arriving aliens; referral for hearing (revised section 235).
- Sec. 303. Apprehension and detention of aliens not lawfully in the United States (revised section 236).
- Sec. 304. Removal proceedings; cancellation of removal and adjustment of status; voluntary departure (revised and new sections 239 to 240C).
- Sec. 305. Detention and removal of aliens ordered removed (new section 241).
- Sec. 306. Appeals from orders of removal (new section 242).
- Sec. 307. Penalties relating to removal (revised section 243).
- Sec. 308. Redesignation and reorganization of other provisions; additional conforming amendments.
- Sec. 309. Effective dates; transition.

### Subtitle B—Criminal Alien Provisions

- Sec. 321. Amended definition of aggravated felony.
- Sec. 322. Definition of conviction and term of imprisonment.
- Sec. 323. Authorizing registration of aliens on criminal probation or criminal parole.
- Sec. 324. Penalty for reentry of deported aliens.
- Sec. 325. Change in filing requirement.
- Sec. 326. Criminal alien identification system.
- Sec. 327. Appropriations for criminal alien tracking center.
- Sec. 328. Provisions relating to State criminal alien assistance program.
- Sec. 329. Demonstration project for identification of illegal aliens in incarceration facility of Anaheim, California.
- Sec. 330. Prisoner transfer treaties.
- Sec. 331. Prisoner transfer treaties study.
- Sec. 332. Annual report on criminal aliens.
- Sec. 333. Penalties for conspiring with or assisting an alien to commit an offense under the Controlled Substances Import and Export Act.
- Sec. 334. Enhanced penalties for failure to depart, illegal reentry, and passport and visa fraud.

### Subtitle C—Revision of Grounds for Exclusion and Deportation

- Sec. 341. Proof of vaccination requirement for immigrants.
- Sec. 342. Incitement of terrorist activity and provision of false documentation to terrorists as a basis for exclusion from the United States.
- Sec. 343. Certification requirements for foreign health-care workers.
- Sec. 344. Removal of aliens falsely claiming United States citizenship.
- Sec. 345. Waiver of exclusion and deportation ground for certain section 274C violators.
- Sec. 346. Inadmissibility of certain student visa abusers.
- Sec. 347. Removal of aliens who have unlawfully voted.
- Sec. 348. Waivers for immigrants convicted of crimes.
- Sec. 349. Waiver of misrepresentation ground of inadmissibility for certain alien offenses of domestic violence and stalking as grounds for deportation.
- Sec. 350. Clarification of date as of which relationship required for waiver from exclusion or deportation for smuggling.
- Sec. 351.

"(3) SUBMISSION OF STATEMENT AND INFORMATION.—The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

"(d) AUTHORITY RELATING TO INSPECTIONS.—

"(1) AUTHORITY TO SEARCH CONVEYANCES.—Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

"(2) AUTHORITY TO ORDER DETENTION AND DELIVERY OF ARRIVING ALIENS.—Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States—

"(A) to detain the alien on the vessel or at the airport of arrival, and

"(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

"(3) ADMINISTRATION OF OATH AND CONSIDERATION OF EVIDENCE.—The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service.

"(4) SUBPOENA AUTHORITY.—(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States.

"(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and testify, and any failure to obey such order of the court may be punished by the court as a contempt thereof."

(b) GAO STUDY ON OPERATION OF EXPEDITED REMOVAL PROCEDURES.—

(1) STUDY.—The Comptroller General shall conduct a study on the implementation of the expedited removal procedures under section 235(b)(1) of the Immigration and Nationality Act, as amended by subsection (a). The study shall examine—

(A) the effectiveness of such procedures in deterring illegal entry,

(B) the detention and adjudication resources saved as a result of the procedures,

(C) the administrative and other costs expended to comply with the provision,

(D) the effectiveness of such procedures in processing asylum claims by undocumented aliens who assert a fear of persecution, including the accuracy of credible fear determinations, and

(E) the cooperation of other countries and air carriers in accepting and returning aliens removed under such procedures.

(2) REPORT.—By not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the study conducted under paragraph (1).

SEC. 303. APPREHENSION AND DETENTION OF ALIENS (REVISED SECTION 236).

(a) IN GENERAL.—Section 236 (8 U.S.C. 1226) is amended to read as follows:

"APPREHENSION AND DETENTION OF ALIENS

"SEC. 236. (a) ARREST, DETENTION, AND RELEASE.—On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

"(1) may continue to detain the arrested alien; and

"(2) may release the alien on—

"(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

"(B) conditional parole; but

"(3) may not provide the alien with work authorization (including an 'employment authorized' endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

"(b) REVOCATION OF BOND OR PAROLE.—The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.

"(c) DETENTION OF CRIMINAL ALIENS.—

"(1) CUSTODY.—The Attorney General shall take into custody any alien who—

"(A) is inadmissible by reason of having committed any offense covered in section 212(a)(2),

"(B) is deportable by reason of having committed any offense covered in section 237(a)(2)(A)(ii), (A)(iii), (B), (C), or (D),

"(C) is deportable under section 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentence to a term of imprisonment of at least 1 year, or

"(D) is inadmissible under section 212(a)(3)(B) or deportable under section 237(a)(4)(B),

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

"(2) **RELEASE.**—The Attorney General may release an alien described in paragraph (1) only if the Attorney General decides pursuant to section 3521 of title 18, United States Code, that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien.

"(d) **IDENTIFICATION OF CRIMINAL ALIENS.**—(1) The Attorney General shall devise and implement a system—

"(A) to make available, daily (on a 24-hour basis), to Federal, State, and local authorities the investigative resources of the Service to determine whether individuals arrested by such authorities for aggravated felonies are aliens;

"(B) to designate and train officers and employees of the Service to serve as a liaison to Federal, State, and local law enforcement and correctional agencies and courts with respect to the arrest, conviction, and release of any alien charged with an aggravated felony; and

"(C) which uses computer resources to maintain a current record of aliens who have been convicted of an aggravated felony, and indicates those who have been removed.

"(2) The record under paragraph (1)(C) shall be made available—

"(A) to inspectors at ports of entry and to border patrol agents at sector headquarters for purposes of immediate identification of any alien who was previously ordered removed and is seeking to reenter the United States, and

"(B) to officials of the Department of State for use in its automated visa lookout system.

"(3) Upon the request of the governor or chief executive officer of any State, the Service shall provide assistance to State courts in the identification of aliens unlawfully present in the United States pending criminal prosecution.

"(e) **JUDICIAL REVIEW.**—The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole."

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendment made by subsection (a) shall become effective on the title III—A effective date.

(2) **NOTIFICATION REGARDING CUSTODY.**—If the Attorney General, not later than 10 days after the date of the enactment

of this Act, notifies in writing the Committees on the Judiciary of the House of Representatives and the Senate that there is insufficient detention space and Immigration and Naturalization Service personnel available to carry out section 236(c) of the Immigration and Nationality Act, as amended by subsection (a), or the amendments made by section 440(c) of Public Law 104-132, the provisions in paragraph (3) shall be in effect for a 1-year period beginning on the date of such notification, instead of such section or such amendments. The Attorney General may extend such 1-year period for an additional year if the Attorney General provides the same notice not later than 10 days before the end of the first 1-year period. After the end of such 1-year or 2-year periods, the provisions of such section 236(c) shall apply to individuals released after such periods.

(3) **TRANSITION PERIOD CUSTODY RULES.**—

(A) **IN GENERAL.**—During the period in which this paragraph is in effect pursuant to paragraph (2), the Attorney General shall take into custody any alien who—

(i) has been convicted of an aggravated felony (as defined under section 101(a)(43) of the Immigration and Nationality Act, as amended by section 321 of this Act),

(ii) is inadmissible by reason of having committed any offense covered in section 212(a)(2) of such Act,

(iii) is deportable by reason of having committed any offense covered in section 241(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of such Act (before redesignation under this subtitle), or

(iv) is inadmissible under section 212(a)(3)(B) of such Act or deportable under section 241(a)(4)(B) of such Act (before redesignation under this subtitle),

when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

(B) **RELEASE.**—The Attorney General may release the alien only if the alien is an alien described in subparagraph (A)(ii) or (A)(iii) and—

(i) the alien was lawfully admitted to the United States and satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding, or

(ii) the alien was not lawfully admitted to the United States, cannot be removed because the designated country of removal will not accept the alien, and satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.

**SEC. 304. REMOVAL PROCEEDINGS; CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS; VOLUNTARY DEPARTURE (REVISED AND NEW SECTIONS 239 TO 240C).**

(a) **IN GENERAL.**—Chapter 4 of title II is amended—

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2202) to amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conference, and minor drafting and clerical changes.

### TITLE I—IMPROVEMENTS TO BORDER CONTROL, FACILITATION OF LEGAL ENTRY, AND INTERIOR ENFORCEMENT

#### SUBTITLE A—IMPROVED ENFORCEMENT AT THE BORDER

Section 101—House recedes to sections 101 (a) and (b) of the Senate amendment, with modifications, and the Senate recedes to House section 101(c) with modifications. This section increases the number of Border Patrol agents by 1000 per year from FY 1997 through 2001. It further provides that the Attorney General, in each fiscal year from 1997 through 2001, may increase by 300 the number of support personnel for the Border Patrol. The additional border patrol agents are to be deployed in sectors along the border in proportion to the level of illegal crossings of the border in such sectors. Border Patrol resources should be used primarily at the border to deter illegal crossings and to apprehend at the earliest possible juncture those who have made such crossings. This section also requires the forward deployment of Border Patrol agents to provide a visible deterrent to illegal immigration, and includes the requirement in Senate amendment section 109 regarding the preservation of immigration enforcement functions in interior areas. The managers intend that for purposes of this section, border sec

means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum.

There is no other administrative review of a removal order entered under this paragraph, but an alien claiming under penalty of perjury to be lawfully admitted for permanent residence, or to have been admitted as a refugee or granted asylum, shall be entitled to administrative review of such an order as the Attorney General shall provide by regulation. An alien ordered removed under this paragraph may not make a collateral attack against the order in a prosecution under section 275(a) (illegal entry) or 276 (illegal re-entry).

The availability of judicial review is described below in the explanation of section 306 of this Act.

New paragraph (b)(2) provides that an alien determined to be inadmissible by an immigration officer (other than an alien subject to removal under paragraph (b)(1), or an alien crewman or stow-away) shall be referred for a hearing before an immigration judge under new section 240.

Subsection (c) restates the provisions of current INA section 235(c) regarding the removal of aliens arriving in the United States who are inadmissible on national security grounds. This subsection is not intended to apply in the case of aliens who are inadmissible under new section 212(a)(6)(A) because they are already present in the United States without having been admitted or paroled. Such aliens could, however, be subject to the special removal procedures provided in Subtitle B of this Title.

New subsection (d) restates provisions currently in INA section 235(a) authorizing immigration officers to search conveyances, administer oaths, and receive evidence, and to issue subpoenas enforceable in a United States district court.

Section 303—Senate recedes to House section 303, with modifications. This section amends INA section 236, as described in the next paragraphs below. (The provisions in current section 236 regarding hearings on the exclusion of aliens are reflected in new section 240, as amended by section 304 of this report.)

New section 236(a) restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States. (The current authority in section 242(a) for a court in habeas corpus proceedings to review the conditions of detention or release pending the determination of the alien's inadmissibility or deportability is not retained.) The minimum bond for an alien released pending removal proceedings is raised from \$500 to \$1500. New section 236(b) restates the current provisions in section 242(a)(1) that the Attorney General may at any time revoke an alien's bond or parole.

New section 236(c) provides that the Attorney General must detain an alien who is inadmissible under section 212(a)(2) or deportable under new section 237(a)(2). This requirement does not apply to an alien deportable under section 237(a)(2)(A)(i) on the basis of an offense for which the alien has not been sentenced to at least 1 year in prison. This detention mandate applies whenever

such an alien is released from imprisonment, regardless of the circumstances of the release. This subsection also provides that such an alien may be released from the Attorney General's custody only if the Attorney General decides in accordance with 18 U.S.C. 3521 that release is necessary to provide protection to a witness, potential witness, a person cooperating with an investigation into major criminal activity, or a family member or close associate of such a witness or cooperator, and such release will not pose a danger to the safety of other persons or of property, and the alien is likely to appear for any scheduled proceeding.

New section 236(d) restates the current provisions in section 242(a)(3) regarding the identification of aliens arrested for aggravated felonies and amends those provisions to require that information on aliens convicted of aggravated felonies and deported be provided to the Department of State for inclusion in its automated visa lookout system.

New section 236(e) states that no discretionary judgment of the Attorney General made under the authority of section 236 shall be subject to judicial review, and that no court shall set aside a decision of the Attorney General regarding detention or release of an alien, or the granting or denial of bond or parole.

Section 304—Senate recedes to House section 304, with modifications. This section redesignates current INA section 239 (designation of ports of entry for aliens arriving by civil aircraft) as section 234, redesignates INA section 240 (records of admission) as section 240C, and inserts new INA sections 239, 240, 240A, and 240B.

New section 239 restates the provisions of current subsections (a) and (b) of section 242B regarding the provision of written notice to aliens placed in removal proceedings. These provisions are conforming to the establishment of a single removal hearing to replace the two current proceedings under current section 236 (exclusion) and 242 (deportation). The requirement that the written notice be provided in Spanish as well as English is not retained. The INS will determine when a language other than English should be used and when the services of a translator are necessary. The mandatory period between notice and date of hearing is reduced to 10 days. Service is sufficient if there is proof of mailing to the last address provided by the alien.

New section 240 restates provisions in current sections 236 (exclusion proceedings) and 242 and 242B (deportation proceedings). Section 240(a) provides that there shall be a single proceeding for deciding whether an alien is inadmissible under section 212(a) or deportable under section 237 (formerly section 241(a)). This subsection shall not affect proceedings under new section 235(c) (aliens inadmissible on national security grounds), new section 238 (currently section 242A) (aliens convicted of aggravated felonies), or new section 235(b)(1) (arriving aliens, or aliens present in the United States without having been admitted or paroled, who are inadmissible for fraud or lack of documents).

Section 240(b) provides that the removal proceeding under this section shall be conducted by an immigration judge in largely the same manner as currently provided in sections 242 and 242B. Under paragraph (b)(2), the proceeding may take place in person.

or through video or telephone conference. (Hearings on the merits could be conducted by telephone conference only with the consent of the alien). In addition, with the consent of the parties, the proceeding may take place in the alien's absence. Under paragraph (b)(4), an alien shall have a reasonable opportunity to examine the evidence presented against the alien, and to cross-examine Government witnesses, but not to examine national security information provided in opposition to the alien's admission to the United States, or in opposition to an alien's application for discretionary relief. Under paragraph (b)(5), an alien who fails to appear for a hearing may be ordered removed if the Service establishes by clear, unequivocal, and convincing evidence that notice under section 239 was provided and that the alien is inadmissible or deportable. There is no requirement to provide written notice if the alien has failed to provide the address required under section 239(a)(1)(F). Under paragraph (b)(5)(C), an in absentia order can only be rescinded through a motion to reopen filed within 180 days if the alien demonstrates that the failure to appear was due to exceptional circumstances (as defined in section 240(e)), or a motion to reopen filed at any other time if the alien demonstrates that the alien either did not receive notice of the hearing or was in Federal or State custody and could not appear. An alien who fails to appear shall, in the absence of exceptional circumstances, be ineligible for 10 years for any relief under new sections 240A (voluntary departure) and 240B (cancellation of removal), and sections 245, 248, and 249.

Section 240(c) provides that the immigration judge shall make a decision on removability based only upon the evidence at the hearing. An alien applicant for admission shall have the burden to establish that he or she is beyond doubt entitled to be admitted. An alien who is not an applicant for admission shall have the burden to establish by clear and convincing evidence that he or she is lawfully present in the U.S. pursuant to a prior lawful admission. If the alien meets this burden, the Service has the burden to establish by clear and convincing evidence that the alien is deportable. This subsection also clarifies the types of evidence of criminal convictions that are admissible in immigration proceedings.

An alien is limited to one motion to reconsider the decision of the immigration judge. Such motion shall be filed within 30 days of the final administrative order of removal and shall specify the errors of law or fact in the order. An alien is limited to one motion to reopen proceedings. Such motion shall be filed within 90 days of the final administrative order of removal and shall state the new facts to be proven at a hearing if the motion is granted. The deadline for a motion to reopen may be extended in the case of an application for asylum or withholding of removal that is based on new evidence of changed country conditions, evidence that was not available at the time of the initial hearing. In the case of an in absentia order of removal under section 240(b)(5), the deadline for a motion to reopen shall be as set forth in section 240(b)(5)(C).

Section 240(d) provides that the Attorney General shall provide by regulation for the entry by an immigration judge of an order of removal stipulated to by the alien and the INS. Such an order shall

be a conclusive determination of the alien's removability from the U.S.

Section 240(e) defines as "exceptional circumstances" the serious illness of the alien or the serious illness or death of the spouse, parent, or child of the alien, and other exceptional circumstances that are not less compelling. The subsection defines "removable" to mean in the case of an alien who has not been admitted, that the alien is inadmissible under section 212, and in the case of an alien who has been admitted, that the alien is deportable under redesignated section 237.

New section 240A establishes revised rules for the type of relief that is currently available to excludable and deportable aliens under section 212(c) and 244 (a)-(d). Senate amendment section 150 recedes to these House provisions, with modifications.

Section 240A(a) provides that the Attorney General may cancel removal in the case of an alien lawfully admitted for permanent residence for not less than 5 years, if the alien has resided in the United States continuously for 7 years since being lawfully admitted in any status and has not been convicted of an aggravated felony. This provision is intended to replace and modify the form of relief now granted under section 212(c) of the INA.

Section 240A(b)(1) provides that the Attorney General may cancel removal in the case of an alien who (1) has been physically present in the United States for a continuous period of at least 10 years immediately preceding the date of applying for such relief, (2) has been a person of good moral character, (3) has at no time been convicted of an offense that would render the alien inadmissible under section 212(a)(2)(A) or deportable under redesignated sections 237(a)(2) or 237(a)(3), and (4) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child who is a citizen of the United States or an alien lawfully admitted for permanent residence.

Section 240A(b)(1) replaces the relief now available under INA section 244(a) ("suspension of deportation"), but limits the categories of illegal aliens eligible for such relief and the circumstances under which it may be granted. The managers have deliberately changed the required showing of hardship from "extreme hardship" to "exceptional and extremely unusual hardship" to emphasize that the alien must provide evidence of harm to his spouse, parent, or child substantially beyond that which ordinarily would be expected to result from the alien's deportation. The "extreme hardship" standard has been weakened by recent administrative decisions holding that forced removal of an alien who has become "acclimated" to the United States would constitute a hardship sufficient to support a grant of suspension of deportation. See *Matter of O-J-O*, Int. Dec. 3280 (BIA 1996). Such a ruling would be inconsistent with the standard set forth in new section 240A(b)(1). Similarly, a showing that an alien's United States citizen child would fare less well in the alien's country of nationality than in the United States does not establish "exceptional" or "extremely unusual" hardship and thus would not support a grant of relief under this provision. Our immigration law and policy clearly provide that an alien parent may not derive immigration benefits through his or her child who is a United States citizen. The availability in truth



exceptional cases of relief under section 240A(b)(1) must not undermine this or other fundamental immigration enforcement policies.

Section 240A(b)(2) restates the provisions in current section 244(a)(3), enacted in section 40703(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994. It provides that the Attorney General may cancel removal if the inadmissible or deportable alien has been subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident; has been physically present in the United States for a continuous period of at least 3 years; has been a person of good moral character during such period; is not deportable or inadmissible on grounds related to criminal activity, national security, or marriage fraud; and establishes that removal would result in extreme hardship.

Section 240A(b)(3) states that the Attorney General may adjust to the status of an alien lawfully admitted for permanent residence an alien who meets the requirements for cancellation of removal under section 240A(b)(1) or (2). The number of such adjustments shall not exceed 4,000 in any fiscal year.

Section 240A(c) provides that the following categories of aliens shall not be eligible for cancellation of removal under subsections (a) and (b)(1): an alien who entered as a crewman after June 30, 1964; an alien who was admitted as a nonimmigrant exchange alien under 101(a)(15)(J) in order to receive graduate medical education; an alien who otherwise was admitted as a nonimmigrant exchange alien under section 101(a)(15)(J), is subject to the two-year foreign residence requirement of section 212(e), and has not fulfilled that requirement or received a waiver; an alien who is inadmissible under section 212(a)(3) or deportable under redesignated section 237(a)(4) (national security and related grounds); an alien who is a persecutor as described in new section 241(b)(3)(B)(i); or an alien who has previously been granted relief under this section, or under INA sections 212(c) or 244(a) before the effective date of this Act.

Section 240A(d) provides that the period of continuous residence or physical presence ends when an alien is served a notice to appear under section 239(a) (for the commencement of removal proceedings under section 240), or when the alien is convicted of an offense that renders the alien deportable from the United States, whichever is earliest. A period of continuous physical presence under section 240A(b) is broken if the alien has departed from the United States for any period of 90 days, or for any periods in the aggregate exceeding 180 days. The continuous physical presence requirement does not apply to an alien who has served 24 months in active-duty status in the United States armed forces, was in the United States at the time of enlistment or induction and was honorably discharged.

Section 240A(e) limits the granting of cancellation of removal and suspension of deportation under current section 244 to not more than an aggregate total of 4,000 aliens per fiscal year. This limitation shall apply regardless of when the alien applied for such relief.

New section 240B establishes new conditions for the granting of voluntary departure, currently governed by section 242(b) and

244(e) of the INA. Senate amendment section 150 recedes to these House provisions, with modifications.

Section 240B(a) provides that the Attorney General may permit an alien voluntarily to depart the United States at the alien's expense in lieu of being subject to removal proceedings under section 240 or prior to the completion of such proceedings, if the alien is not deportable because of conviction for an aggravated felony or on national security and related grounds. Permission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days and an alien may be required to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the U.S. within the time specified. No alien arriving in the United States for whom removal proceedings under section 240 are instituted at the time of arrival is eligible for voluntary departure under this section. Such an alien may withdraw his or her application for admission to the United States in accordance with section 235(a)(4).

Section 240B(b) provides that the Attorney General may permit an alien voluntarily to depart the United States at the conclusion of proceedings under section 240 if the alien has been physically present (before the notice to appear) for at least one year in the United States, the alien has been a person of good moral character for the 5 years preceding the application, the alien is not deportable because of conviction for an aggravated felony or on national security and related grounds, and the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so. The period for voluntary departure cannot exceed 60 days and a voluntary departure bond is required.

Section 240B(c) provides that an alien is not eligible for voluntary departure if the alien was previously granted voluntary departure after having been found inadmissible under section 212(a)(6)(A) (present without admission or parole).

Section 240B(d) provides that if an alien is permitted to depart voluntarily and fails to do so, the alien shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 and shall not be eligible for any further relief under this section or sections 240A, 245, 248, or 249 for a period of 10 years. The order granting voluntary departure shall inform the alien of these penalties.

Section 240B(e) provides that the Attorney General may by regulation limit eligibility for voluntary departure for any class or classes of aliens.

Section 304(c) of this Act amends INA section 242A (to be redesignated as section 238) to further streamline procedures for administrative deportation of certain criminal aliens.

Section 305—Senate recedes to House section 305, with modifications. Subsection (a) of this section strikes section 237, redesignates section 241 as section 237, and inserts a new section 241.

New section 241 restates and revises provisions in current sections 237, 242, and 243 regarding the detention and removal of aliens.

Section 241(a) provides that the Attorney General shall remove an alien within 90 days of the alien being ordered removed. This removal period shall begin when the alien's order is administrative.