104TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 104-[illegible]
Part 1

IMMIGRATION IN THE NATIONAL INTEREST ACT OF 1995

REPORT

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ON

H.R. 2202

together with

ADDITIONAL AND DISSENTING VIEWS

[Including cost estimate of the Congressional Budget Office]

MARCH 4, 1996.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1996

22-948

104TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 104–469
Part 1

IMMIGRATION IN THE NATIONAL INTEREST ACT OF 1995

MARCH 4, 1996.—Ordered to be printed

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

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2202]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

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

SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Immigration in the National Interest Act of 1995".

(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 as in effect on the date of the enactment of this Act and before any amendment made to such section or other provision elsewhere in this Act.

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

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

TITLE I—DETERRENCE OF ILLEGAL IMMIGRATION THROUGH IMPROVED BORDER ENFORCEMENT, PILOT PROGRAMS, AND INTERIOR ENFORCEMENT

Subtitle A—Improved Enforcement at 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. Prosecution of aliens repeatedly reentering the United States unlawfully.
Sec. 107. Inservice training for the border patrol.

Subtitle B—Pilot Programs

Sec. 111. Pilot program on interior repatriation.
Sec. 112. Pilot program on use of closed military bases for the detention of inadmissible or deportable aliens.
Sec. 113. Pilot program to collect records of departing passengers.

Subtitle C—Interior Enforcement

Sec. 121. Increase in personnel for interior enforcement.

TITLE II—ENHANCED ENFORCEMENT AND PENALTIES AGAINST ALIEN SMUGGLING; DOCUMENT FRAUD

Subtitle A—Enhanced Enforcement and Penalties Against Alien Smuggling

Sec. 201. Wiretap authority for alien smuggling investigations.
Sec. 202. Racketeering offenses relating to alien smuggling.
Sec. 203. Increased criminal penalties for alien smuggling.
Sec. 204. Increased number of Assistant United States Attorneys.
Sec. 205. Undercover investigation authority.

Subtitle B—Deterrence of Document Fraud

Sec. 211. Increased criminal penalties for fraudulent use of government-issued documents.
Sec. 212. New civil penalties for document fraud.
Sec. 213. New civil penalty for failure to present documents and for preparing immigration documents without authorization.
Sec. 214. New criminal penalties for failure to disclose role as preparer of false application for asylum and for preparing certain post-conviction applications.
Sec. 215. Criminal penalty for knowingly presenting document which fails to contain reasonable basis in law or fact.
Sec. 216. Criminal penalties for false claim to citizenship.

Subtitle C—Asset Forfeiture for Passport and Visa Offenses

Sec. 221. Criminal forfeiture for passport and visa related offenses.
Sec. 222. Subpoenas for bank records.
Sec. 223. Effective date.

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

Subtitle A—Revision of Procedures for Removal of Aliens

Sec. 300. Overview of changes in removal procedures.
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—Removal of Alien Terrorists

PART 1—REMOVAL PROCEDURES FOR ALIEN TERRORISTS

Sec. 321. Removal procedures for alien terrorists.

"TITLE V—SPECIAL REMOVAL PROCEDURES FOR ALIEN TERRORISTS

"Sec. 501. Definitions.
"Sec. 502. Establishment of special removal court; panel of attorneys to assist with classified information.
"Sec. 503. Application for initiation of special removal proceeding.
"Sec. 504. Consideration of application.
"Sec. 505. Special removal hearings.

"Sec. 506. Consideration of classified information.
"Sec. 507. Appeals.
"Sec. 508. Detention and custody.
Sec. 322. Funding for detention and removal of alien terrorists.

PART 2—INADMISSIBILITY AND DENIAL OF RELIEF FOR ALIEN TERRORISTS

Sec. 331. Membership in terrorist organization as ground of inadmissibility.
Sec. 332. Denial of relief for alien terrorists.

Subtitle C—Deterring Transportation of Unlawful Aliens to the United States

Sec. 341. Definition of stowaway.
Sec. 342. List of alien and citizen passengers arriving.

Subtitle D—Additional Provisions

Sec. 351. Definition of conviction.
Sec. 352. Immigration judges and compensation.
Sec. 353. Rescission of lawful permanent resident status.
Sec. 354. Civil penalties for failure to depart.
Sec. 355. Clarification of district court jurisdiction.
Sec. 356. Use of retired Federal employees for institutional hearing program.
Sec. 357. Enhanced penalties for failure to depart, illegal reentry, and passport and visa fraud.
Sec. 358. Authorization of additional funds for removal of aliens.
Sec. 359. Application of additional civil penalties to enforcement.
Sec. 360. Prisoner transfer treaties.
Sec. 361. Criminal alien identification system.
Sec. 362. Waiver of exclusion and deportation ground for certain section 274C violators.
Sec. 363. Authorizing registration of aliens on criminal probation or criminal parole.
Sec. 364. Confidentiality provision for certain alien battered spouses and children.

TITLE IV—ENFORCEMENT OF RESTRICTIONS AGAINST EMPLOYMENT

Sec. 401. Strengthened enforcement of the employer sanctions provisions.
Sec. 402. Strengthened enforcement of wage and hour laws.
Sec. 403. Changes in the employer sanctions program.
Sec. 404. Reports on earnings of aliens not authorized to work.
Sec. 405. Authorizing maintenance of certain information on aliens.
Sec. 406. Limiting liability for certain technical violations of paperwork requirements.
Sec. 407. Unfair immigration-related employment practices.

TITLE V—REFORM OF LEGAL IMMIGRATION SYSTEM

Sec. 500. Overview of new legal immigration system.

Subtitle A—Worldwide Numerical Limits

Sec. 501. Worldwide numerical limitation on family-sponsored immigrants.
Sec. 502. Worldwide numerical limitation on employment-based immigrants.
Sec. 503. Worldwide numerical limitation on diversity immigrants.
Sec. 504. Establishment of numerical limitation on humanitarian immigrants.
Sec. 505. Requiring congressional review and reauthorization of worldwide levels every 5 years.

Subtitle B—Changes in Preference System

Sec. 511. Limitation of immediate relatives to spouses and children.
Sec. 512. Change in family-sponsored classification.
Sec. 513. Change in employment-based classification.
Sec. 514. Changes in diversity immigrant program.
Sec. 515. Authorization to require periodic confirmation of classification petitions.
Sec. 516. Changes in special immigrant status.
Sec. 517. Requirements for removal of conditional status of entrepreneurs.
Sec. 518. Adult disabled children.
Sec. 519. Miscellaneous conforming amendments.

Subtitle C—Refugees, Parole, and Humanitarian Admissions

Sec. 521. Changes in refugee annual admissions.
Sec. 522. Persecution for resistance to coercive population control methods.
Sec. 523. Parole available only on a case-by-case basis for humanitarian reasons or significant public benefit.
Sec. 524. Admission of humanitarian immigrants.

Subtitle D—Asylum Reform

Sec. 531. Asylum reform.
Sec. 532. Fixing numerical adjustments for asylees at 10,000 each year.
Sec. 533. Increased resources for reducing asylum application backlogs.

Subtitle E—General Effective Date; Transition Provisions

Sec. 551. General effective date.
Sec. 552. General transition for current classification petitions.
Sec. 553. Special transition for certain backlogged spouses and children of lawful permanent resident aliens.
Sec. 554. Special treatment of certain disadvantaged family first preference immigrants.
Sec. 555. Authorization of reimbursement of petitioners for eliminated family-sponsored categories.

TITLE VI—RESTRICTIONS ON BENEFITS FOR ALIENS

Sec. 600. Statements of national policy concerning welfare and immigration.

Subtitle A—Eligibility of Illegal Aliens for Public Benefits

PART 1—PUBLIC BENEFITS GENERALLY

Sec. 601. Making illegal aliens ineligible for public assistance, contracts, and licenses.

Sec. 602. Making unauthorized aliens ineligible for unemployment benefits
Sec. 603. General exceptions.
Sec. 604. Treatment of expenses subject to emergency medical services exception.
Sec. 605. Report on disqualification of illegal aliens from housing assistance programs.
Sec. 606. Verification of student eligibility for postsecondary Federal student financial assistance.
Sec. 607. Payment of public assistance benefits.
Sec. 608. Definitions.
Sec. 609. Regulations and effective dates.

PART 2—EARNED INCOME TAX CREDIT

Sec. 611. Earned income tax credit denied to individuals not authorized to be employed in the United States.

Subtitle B—Expansion of Disqualification From Immigration Benefits on the Basis of Public Charge

Sec. 621. Ground for inadmissibility.
Sec. 622. Ground for deportability.

Subtitle C—Attribution of Income and Affidavits of Support

Sec. 631. Attribution of sponsor's income and resources to family-sponsored immigrants.
Sec. 632. Requirements for sponsor's affidavit of support.

TITLE VII—FACILITATION OF LEGAL ENTRY

Sec. 701. Additional land border inspectors; infrastructure improvements.
Sec. 702. Commuter lane pilot programs.
Sec. 703. Preinspection at foreign airports.
Sec. 704. Training of airline personnel in detection of fraudulent documents.

TITLE VIII—MISCELLANEOUS PROVISIONS

Subtitle A—Amendments to the Immigration and Nationality Act

Sec. 801. Nonimmigrant status for spouses and children of members of the Armed Services
Sec. 802. Amended definition of aggravated felony.
Sec. 803. Authority to determine visa processing procedures.
Sec. 804. Waiver authority concerning notice of denial of application for visas
Sec. 805. Treatment of Canadian landed immigrants.
Sec. 806. Changes relating to H–1B nonimmigrants.
Sec. 807. Validity of period of visas.
Sec. 808. Limitation on adjustment of status of individuals not lawfully present in the United States.
Sec. 809. Limited access to certain confidential INS files.
Sec. 810. Change of nonimmigrant classification.

Subtitle B—Other Provisions

Sec. 831. Commission report on fraud associated with birth certificates.
Sec. 832. Uniform vital statistics.
Sec. 833. Communication between State and local government agencies, and the Immigration and Naturalization Service.
Sec. 834. Criminal alien reimbursement costs.
Sec. 835. Female genital mutilation.
Sec. 836. Designation of Portugal as a visa waiver pilot program country with probationary status.

Subtitle C—Technical Corrections

Sec. 851. Miscellaneous technical corrections.

TITLE I—DETERRENCE OF ILLEGAL IMMIGRATION THROUGH IMPROVED BORDER ENFORCEMENT, PILOT PROGRAMS, AND INTERIOR ENFORCEMENT

Subtitle A—Improved Enforcement at Border

SEC. 101. BORDER PATROL AGENTS AND SUPPORT PERSONNEL.

(a) INCREASED NUMBER OF BORDER PATROL POSITIONS.—The number of border patrol agents shall be increased, for each fiscal year beginning with the fiscal year 1996 and ending with the fiscal year 2000, by 1,000 full-time equivalent positions above the number of equivalent positions as of September 30, 1994.

(b) INCREASE IN SUPPORT PERSONNEL.—The number of full-time support positions for personnel in support of border enforcement, investigation, detention and deportation, intelligence, information and records, legal proceedings, and management and administration in the Immigration and Naturalization Service shall be increased, beginning with fiscal year 1996, by 800 positions above the number of equivalent positions as of September 30, 1994.

(c) DEPLOYMENT OF NEW BORDER PATROL AGENTS.—The Attorney General shall, to the maximum extent practicable, ensure that the border patrol agents hired pursuant to subsection (a) shall—

(1) be deployed among the various Immigration and Naturalization Service sectors in proportion to the level of illegal crossing of the borders of the United States measured in each sector during the preceding fiscal year and reasonably anticipated in the next fiscal year, and

(2) be actively engaged in law enforcement activities related to such illegal crossings.

SEC. 102. IMPROVEMENT OF BARRIERS AT BORDER.

(a) IN GENERAL.—The Attorney General, in consultation with the Commissioner of the Immigration and Naturalization Service, shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States.

(b) CONSTRUCTION OF FENCING AND ROAD IMPROVEMENTS IN THE BORDER AREA NEAR SAN DIEGO, CALIFORNIA.—

(1) IN GENERAL.—In carrying out subsection (a), the Attorney General shall provide for the construction along the 14 miles of the international land border of the United States, starting at the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence, and for roads between the fences.

(2) PROMPT ACQUISITION OF NECESSARY EASEMENTS.—The Attorney General shall promptly acquire such easements as may be necessary to carry out this subsection and shall commence construction of fences immediately following such acquisition (or conclusion of portions thereof).

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection not to exceed $12,000,000. Amounts appropriated under this paragraph are authorized to remain available until expended.

(c) WAIVER.—The provisions of the Endangered Species Act of 1973 are waived to the extent the Attorney General determines necessary to assure expeditious construction of the barriers and roads under this section.

(d) FORWARD DEPLOYMENT.—

(1) IN GENERAL.—The Attorney General shall forward deploy existing border patrol agents in those areas of the border identified as areas of high illegal entry into the United States in order to provide a uniform and visible deterrent to illegal entry on a continuing basis.

(2) REPORT.—By not later than 6 months after the date of the enactment of this Act, the Attorney General shall submit to the appropriate committees of Congress a report on the progress and effectiveness of such forward deployments.

SEC. 103. IMPROVED BORDER EQUIPMENT AND TECHNOLOGY.

The Attorney General is authorized to acquire and utilize, for the purpose of detection, interdiction, and reduction of illegal immigration into the United States, any Federal equipment (including fixed wing aircraft, helicopters, four-wheel drive vehicles, sedans, night vision goggles, night vision scopes, and sensor units) determined available for transfer by any other agency of the Federal Government upon request of the Attorney General.

SEC. 104. IMPROVEMENT IN BORDER CROSSING IDENTIFICATION CARD.

(a) IN GENERAL.—Section 101(a)(6) (8 U.S.C. 1101(a)(6)) is amended by adding at the end the following: "Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.".

(b) EFFECTIVE DATES.—

(1) Clause (A) of the sentence added by the amendment made by subsection (a) shall apply to documents issued on or after 6 months after the date of the enactment of this Act.

(2) Clause (B) of such sentence shall apply to cards presented on or after 3 years after the date of the enactment of this Act.

(c) REPORT.—Not later than one year after the implementation of clause (A) of the sentence added by the amendment made by subsection (a) the Attorney General shall submit to Congress a report on the impact of such clause on border crossing activities.

"(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.".

SEC. 303. APPREHENSION AND DETENTION OF ALIENS NOT LAWFULLY IN THE UNITED STATES (REVISED SECTION 236).

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

"APPREHENSION AND DETENTION OF ALIENS NOT LAWFULLY IN THE UNITED STATES

"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) ALIENS CONVICTED OF AGGRAVATED FELONIES.—

"(1) CUSTODY.—The Attorney General shall take into custody any alien convicted of an aggravated felony 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 the alien only if—

"(A) 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;

"(B) 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; or

"(C) 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.

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 ALIENS CONVICTED OF AGGRAVATED FELONIES.—(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 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 such previously removed alien seeking to reenter the United States, and

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

(b) INCREASE IN INS DETENTION FACILITIES.—Subject to the availability of appropriations, the Attorney General shall provide for an increase in the detention facilities of the Immigration and Naturalization Service to at least 9,000 beds by fiscal year 1997.

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—

(1) by redesignating section 239 as section 234 and by moving such section to immediately follow section 233;

(2) by redesignating section 240 (8 U.S.C. 1230) as section 240C; and

(3) by inserting after section 238 the following new sections:

"INITIATION OF REMOVAL PROCEEDINGS

"SEC. 239. (a) NOTICE TO APPEAR.—

"(1) IN GENERAL.—In removal proceedings under section 240, written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

"(A) The nature of the proceedings against the alien.

"(B) The legal authority under which the proceedings are conducted.

"(C) The acts or conduct alleged to be in violation of law.

"(D) The charges against the alien and the statutory provisions alleged to have been violated.

"(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

"(F)(i) The requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 240.

"(ii) The requirement that the alien must provide the Attorney General immediately with a written record of any change of the alien's address or telephone number.

"(iii) The consequences under section 240(b)(5) of failure to provide address and telephone information pursuant to this subparagraph.

"(G)(i) The time and place at which the proceedings will be held.

(15) Section 225 of INTCA is amended—
(A) by striking "section 242(i)" and inserting "sections 242(i) and 242A", and
(B) by inserting ", 1252a" after "1252(i)".
(16) Except as otherwise provided in this subsection, the amendments made by this subsection shall take effect as if included in the enactment of INTCA.

(c) STRIKING REFERENCES TO SECTION 210A.—
(1)(A) Section 201(b)(1)(C) (8 U.S.C. 1151(b)(1)(C)) and section 274B(a)(3)(B) (8 U.S.C. 1324b(a)(3)(B)) are each amended by striking ", 210A,".
(B) Section 241(a)(1) (8 U.S.C. 1251(a)(1)), before redesignation by section 305(a)(2), is amended by striking subparagraph (F).
(2) Sections 204(c)(1)(D)(i) and 204(j)(4) of Immigration Reform and Control Act of 1986 are each amended by striking ", 210A,".

(d) MISCELLANEOUS CHANGES IN THE IMMIGRATION AND NATIONALITY ACT.—
(1) Before being amended by section 308(a), the item in the table of contents relating to section 242A is amended to read as follows:

"Sec. 242A. Expedited deportation of aliens convicted of committing aggravated felonies".

(2) Section 101(c)(1) (8 U.S.C. 1101(c)(1)) is amended by striking ", 321, and 322" and inserting "and 321".
(3) Pursuant to section 6(b) of Public Law 103-272 (108 Stat. 1378)--
(A) section 214(f)(1) (8 U.S.C. 1184(f)(1)) is amended by striking "section 101(3) of the Federal Aviation Act of 1958" and inserting "section 40102(a)(2) of title 49, United States Code"; and
(B) section 258(b)(2) (8 U.S.C. 1288(b)(2)) is amended by striking "section 105 or 106 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804, 1805)" and inserting "section 5103(b), 5104, 5106, 5107, or 5110 of title 49, United States Code".
(4) Section 286(h)(1)(A) (8 U.S.C. 1356(h)(1)(A)) is amended by inserting a period after "expended".
(5) Section 286(h)(2)(A) (8 U.S.C. 1356(h)(2)(A)) is amended--
(A) by striking "and" at the end of clause (iv),
(B) by moving clauses (v) and (vi) 2 ems to the left,
(C) by striking "; and" in clauses (v) and (vi) and inserting "and for",
(D) by striking the colons in clauses (v) and (vi), and
(E) by striking the period at the end of clause (v) and inserting "; and".
(6) Section 412(b) (8 U.S.C. 1522(b)) is amended by striking the comma after "is authorized" in paragraph (3) and after "The Secretary" in paragraph (4).

(e) MISCELLANEOUS CHANGE IN THE IMMIGRATION ACT OF 1990.—Section 161(c)(3) of the Immigration Act of 1990 is amended by striking "an an" and inserting "of an".

(f) MISCELLANEOUS CHANGES IN OTHER ACTS.—
(1) Section 506(a) of the Intelligence Authorization Act, Fiscal Year 1990 (Public Law 101–193) is amended by striking "this section" and inserting "such section".
(2) Section 140 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, as amended by section 505(2) of Public Law 103-317, is amended--
(A) by moving the indentation of subsections (f) and (g) 2 ems to the left, and
(B) in subsection (g), by striking "(g)" and all that follows through "shall" and inserting "(g) Subsections (d) and (e) shall".

EXPLANATION OF AMENDMENT

Because H.R. 2202 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

PURPOSE AND SUMMARY

TITLE I—BORDER ENFORCEMENT

The first step in asserting our national sovereignty and controlling illegal immigration is to secure our nation's land borders. This fundamental mission has been undermined in recent decades by a lack of clear policy, inadequate resources, and a defeatist attitude.

The result is a crisis at the land border, allowing hundreds of thousands of illegal aliens to cross each year, and contributing more than half of the 300,000 to 400,000 annual growth in the illegal alien population. The problem is not limited to illegal immigration from this hemisphere: alien smugglers from around the globe have set routes through Latin America and Canada to smuggle people into the United States.

More border patrol agents, enhanced training, and improved border technology are all critical to regaining control over our nation's borders. H.R. 2202 includes all of these reforms, including a 1,000 annual increase in Border Patrol agents from now until the end of the century. But H.R. 2202 does something more—it requires a focus on prevention and deterrence of illegal immigration, modeled after the successful "Operation Hold-the-Line" in El Paso, Texas. H.R. 2202 also improves the security of Border Crossing Identification Cards, so that such cards will only be used by those who have been granted the privilege of carrying them.

Finally, illegal immigration control is not simply a matter of securing the land border. Close to half of illegal immigrants enter on temporary visas and overstay. H.R. 2202 authorizes new resources for the prosecution of aliens with multiple illegal entries, and establishes pilot programs: (1) to deter multiple illegal entries into the United States through strategies such as interior repatriation or third country repatriation; (2) to use closed military facilities for detention of illegal aliens; and (3) to create a system for tracking the departures of temporary visitors.

TITLE II—ENFORCEMENT AGAINST ALIEN SMUGGLING AND DOCUMENT FRAUD

Illegal immigration is facilitated through criminal activity: alien smuggling, often carried out by organized criminal elements, and document fraud, including visa and passport fraud. Federal law enforcement should have the same tools to combat immigration crimes it does to combat other serious crimes that threaten public safety and national security. Thus, H.R. 2202 extends current wiretap and undercover investigation authority to the investigation of alien smuggling, document fraud, and other immigration-related crimes. It increases criminal penalties for alien smuggling and document fraud, establishes new civil penalties for document fraud, and extends coverage of the federal anti-racketeering statute (RICO) to organized criminal enterprises engaging in such activity.

TITLE III—REFORMING PROCEDURES FOR REMOVAL OF ILLEGAL ALIENS

Existing procedures to deny entry to and to remove illegal aliens from the United States are cumbersome and duplicative. Removal of aliens who enter the United States illegally, even those who are ordered deported after a full due process hearing, is an all-too-rare event. The asylum system has been abused by those who seek to use it as a means of "backdoor" immigration.

H.R. 2202 streamlines rules and procedures for removing illegal aliens, and establishes special procedures for removing alien terrorists. Aliens who arrive in the United States with no valid documents will be removed on an expedited basis; arriving aliens with

credible asylum claims will be allowed to pursue those claims. For illegal aliens already present in the U.S., there will be a single form of removal proceeding, with a streamlined appeal and removal process. To avoid removal, aliens must establish in such proceedings that they are entitled to be admitted or to remain in the United States. Relief from deportation will be more strictly limited. Aliens ordered removed who do not depart on time will be subject to civil penalties and excluded from certain immigration benefits.

TITLE IV—PREVENTING EMPLOYMENT OF ILLEGAL ALIENS

The magnet of jobs is a driving force behind illegal immigration. Despite federal laws prohibiting the hiring of illegal aliens, and requiring the verification of eligibility for all employees, an underground market in fraudulent documents permits illegal aliens to gain employment. Recent INS crackdowns demonstrate that illegal aliens work in a variety of industries and take jobs that could otherwise be filled by American workers. Enforcement, however, is hampered by a system that is difficult to implement and invites document fraud.

H.R. 2202 cuts from 29 to 6 the number of acceptable documents to establish eligibility to work. It also establishes pilot projects, to be operated in States with high levels of illegal immigration, for employers to verify through a simple phone call or computer message an employee's authorization to work. The system will work through existing databases, and not require creation of any new government database. The system also will assure employers that the employment eligibility information provided to them by employees is genuine. The system could not be established on a national basis without prior approval by Congress. H.R. 2202 also establishes pilot projects to improve the security of birth certificates and birth/death registries, all of which have been subject to fraudulent use by illegal immigrants for gaining work, public benefits, and even, in some cases, voting privileges.

TITLE V—LEGAL IMMIGRATION REFORM

Congress has the task to set legal immigration policy that serves the national interest. As a result of the immigration bills passed in 1965, 1986, and 1990, there has been a dramatic increase in the overall levels of legal immigration. In addition, the percentage of immigrants admitted without regard to their level of education or skills now exceeds 80 percent. Since 1981, we have admitted a total of 12.5 million legal immigrants. During this period, we have admitted at least 500,000 immigrants each year, and during the past 5 years, an average of close to 1 million per year.

Such sustained, uninterrupted growth in immigration is without precedent in American history. So is the underlying rationale of many that immigration is a right, not a privilege. The entitlement theory, which seeks to fit immigration policy to the demands of those who would like to immigrate to the United States, has made it increasingly difficult to establish a policy that selects immigrants according to their ability to advance our national interests.

A central failure of the current system is the admissions backlog for spouses and minor children of lawful permanent residents, which now numbers 1.1 million. This means that nuclear family

members can be kept separated for years. Even larger backlogs exist in categories for adult, "extended family" immigrants. These backlogs undermine the credibility of the system by forcing people who are technically eligible to immigrate to wait for years, sometimes decades, before they can legally come to the U.S. The existence of these categories thus creates expectations that cannot possibly be met within the capacity of the current system. These failed expectations encourage many waiting in line to immigrate illegally to the U.S.

The key to legal immigration reform is stating clear priorities that reflect the national interest. H.R. 2202 will better match the attributes of immigrants with the needs of the American economy, by increasing the number of visas available for highly-skilled and educated immigrants and by decreasing the proportion of immigrants admitted without regard to their level of skill and education. The bill also will put nuclear families first by giving priority to the admission of spouses and children of United States citizens, and for 5 years, doubling the number of visas for nuclear family members of legal permanent residents. The bill also preserves America's traditional role of leadership in refugee and other humanitarian immigration. While reforming legal immigration to end the "entitlement" attitude, H.R. 2202 maintains levels of legal immigration that are generous by historic standards: approximately 3.5 million immigrants would be admitted during the first 5 years.

TITLE VI—IMMIGRANTS AND PUBLIC BENEFITS

Immigrants should be self-sufficient. Yet, the most reliable studies show that immigrants receive $25 billion more in direct public benefits than they contribute in taxes—$16 billion for direct cash benefits and $9 billion for non-cash benefits such as Food Stamps and Medicaid. In addition, immigrant participation in Supplemental Security Income (SSI) has risen 580 percent during the past dozen years. H.R. 2202 reinforces prohibitions against receipt of public benefits by illegal immigrants, makes enforceable the grounds for denying entry or removing aliens who are or are likely to become a public charge, and makes those who agree to sponsor immigrants legally responsible to support them.

TITLE VII—FACILITATION OF LEGAL ENTRY

To facilitate legal entry and deter fraud, H.R. 2202 will increase the number of INS and Customs Service inspectors at border ports of entry, expand preinspection services at overseas airports, and require more training of airline personnel in detecting fraudulent documents.

TITLE VIII—TEMPORARY SKILLED WORKERS AND MISCELLANEOUS PROVISIONS

To remain competitive in world markets, American business needs access to skilled foreign workers. The nonimmigrant H-1B visa permits such persons to work in the United States for up to six years. However, American workers need protection against abuse of the H-1B program by those employers who seek to replace native workers with lower-paid foreign workers. H.R. 2202 strikes

a balance between these interests, removing excessive regulatory burdens from businesses who are not dependent on H-1B workers and who do not abuse the program, while prohibiting the use of the program to replace laid-off American workers.

BACKGROUND AND NEED FOR THE LEGISLATION

As a nation of immigrants, the United States has a singular interest that its immigration laws encourage the admission of persons who will enrich our society. President Ronald Reagan aptly observed that our nation is "an island of freedom," political and economic, toward which the world has looked as both protector and exemplar. Unlimited immigration, however, is a moral and practical impossibility. We live in an age where the nations of the world are called upon to resolve the root causes—political, economic, and humanitarian—of migration pressures. In this context, the United States must exercise its national sovereignty to control its borders and pursue an immigration policy that serves the fundamental needs of the nation. In the words of the 1981 report of the Select Commission on Immigration and Refugee Policy ("Select Commission"), "[o]ur policy—while providing opportunity for a portion of the world's population—must be guided by the basic national interests of the United States." [1]

During the ensuing 15 years, that basic message has been lost. Serious immigration reform has been frustrated by our failure to define the national interests that must be served by U.S. immigration policy. A pervasive sense exists among the public that the Federal Government lacks the will and the means to enforce existing immigration laws.

The symptoms of this failure are manifest: four million illegal aliens residing in the United States, with an annual increase in illegal immigration of more than 300,000; tens of thousands of overseas visitors each year who overstay their visas and remain in the United States illegally; a deportation process that removes only a small fraction of illegal aliens; an asylum adjudications backlog of over 400,000; a program of employer sanctions that is confusing for employers, riddled with document fraud, and ineffective in deterring both the hiring of illegal aliens and the illegal entry of aliens seeking employment; and a legal immigration system that fails to unite nuclear families promptly, encourages the "chain migration" of extended families, and admits a vast majority of immigrants without any regard to levels of education or job skills.

H.R. 2202 seeks a fundamental re-orientation of immigration policy in the direction of the national interest. The Act will curb illegal immigration and establish a legal immigration system that is generous by historic standards and serves fundamental family, economic, and humanitarian needs. The bill is comprehensive because the crisis is so deep and the challenges presented by legal and illegal immigration so closely intertwined. All aspects of immigration law must be reformed to provide clear direction and purpose to those responsible for their enforcement, and to eliminate to the

[1] "Select Commission on Immigration and Refugee Policy, U.S. Immigration Policy and the National Interest," Joint Committee Print No. 8, Committees on the Judiciary of the House of Representatives and the United States Senate, 97th Cong., 1st Sess. 3 (1981) (referred to herein-

greatest possible extent special provisions and exceptions that detract from these fundamental purposes. In short, our immigration laws should enable the prompt admission of those who are entitled to be admitted, the prompt exclusion or removal of those who are not so entitled, and the clear distinction between these categories.

To place H.R. 2202 in its proper context, a more detailed assessment of current immigration problems and past efforts and proposals for reform is appropriate.

I. ILLEGAL IMMIGRATION

The challenge of combatting illegal immigration is but one facet of the vast overall demand on the United States immigration system. As explained by the U.S. Commission on Immigration Reform in its 1994 report to Congress:

> Each year U.S. land and air borders face inspection of approximately *500 million people seeking entry.* In 1993, approximately 409 million people were inspected at U.S. land ports of entry, 55 million at airports, and 9 million at seaports. This number does not include illegal entrants or individuals apprehended while attempting to enter illegally. The Immigration and Naturalization Service (INS) estimated in 1992 that there were 3.4 million "permanent" illegal aliens in the U.S. Of this population, *roughly one-half entered legally by air and overstayed their visas and the other one-half entered without inspection by land or sea.*[2]

The INS estimates that there is a net annual increase of 300,000 in the illegal alien population. Thus, the number of "permanent" illegal aliens exceeds 4 million. To halt this increase and make actual cuts in the size of the illegal immigrant population, immigration policy must address both illegal border crossings and the phenomenon of "visa overstays."

Illegal border-crossing

Perhaps the most visible illustration of the failures of immigration enforcement is the continued high level of illegal migration across the land borders of the United States, particularly in the Southwest. Precise measurement of this migration flow is elusive. The INS traditionally has relied upon apprehension statistics for this task, but such statistics are a flawed measure of both the rate of illegal migration and the success of enforcement. As the U.S. Commission on Immigration Reform has stated, "[t]he most effective border control strategy would produce an apprehension rate of zero. So, too, would a complete failure of border control." [3] Despite these shortcomings, apprehension statistics show the growing extent of the problem.

Years	*Apprehensions*
1931–1940	147,457
1941–1950	1,377,210
1951–1960	3,598,949

[2] U.S. Commission on Immigration Reform, U.S. Immigration Policy: Restoring Credibility 47 (1994) (emphasis supplied) (referred to hereinafter as 1994 Commission Report).

Years	Apprehensions
1961–1970	1,608,356
1971–1980	8,321,498
1981–1990	11,883,328
1991–1994	4,778,333

For virtually all of this period, apprehension of aliens shortly after they have crossed the border, or at destinations further in the interior, has been the backbone of INS and Border Patrol enforcement strategy. Deterrent-based strategies had not been attempted, despite the 1981 observation of the Select Commission that "[i]t is both more humane and cost effective to deter people from entering the United States than it is to locate and remove them from the interior."[4] The choice of strategy was dictated in part by a lack of resources: the Select Commission noted that "[a]t any given hour no more than 450 Border Patrol agents are directly engaged in activities to stop persons attempting to enter the United States without inspection."[5]

Another symbol of America's past failure to take seriously the problem of illegal immigration has been the reluctance to use secure fences to prevent illegal border crossings. In general, physical barriers can assist the Border Patrol to deter illegal crossings, channel aliens to locations where they can be most easily apprehended, and reduce crime and violence at the border.

In recent years, the approach to border enforcement has changed. Chain-link fences have been replaced in certain high-traffic areas by more resistant structures. Section 542 of the Immigration Act of 1990 authorized the appropriation of funds for the "repair, maintenance, or construction on the United States border, in areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry to the United States." Just as visible has been the deployment of border patrol agents directly on or in close vicinity to the border, to create a visible deterrent to potential illegal immigrants. This approach was initiated by Chief Silvestre Reyes of the El Paso Border Patrol Sector in September 1993, when he ordered 400 of his 650 agents to be deployed on a 24-hour basis directly on the border, stationed in their vehicles at distances ranging from 50 yards to a quarter mile. Regular helicopter patrols were established. The border fence, which has numerous holes and was breachable in 125 locations, was repaired and maintained. Originally conceived as a two-week pilot program called "Operation Blockade," Chief Reyes' strategy has become a standing initiative, "Operation Hold-the-Line."

Operation Hold-the-Line represented a fundamental change in strategy for control of the border. As in other areas, illegal crossings into El Paso had been largely tolerated and enforcement efforts were directed at apprehending aliens who attempted to remain in the United States for extended periods of time. Only about 15 percent of the estimated 8,000 to 10,000 persons who crossed the border illegally each day in the El Paso Sector were apprehended. Under Operation Hold-the-Line, illegal crossings have been substantially deterred, with apprehensions of illegal aliens within El Paso dropping by as much as 75 percent. Petty street crime and

[4] 1981 Select Commission Report at 47.

property crime has been reduced, as has the occurrence of more serious property and violent crimes. The Operation also has led to the seizure of more illegal drugs and other contraband. The Operation has had overwhelming public support in El Paso, including in the Mexican American community. Complaints against the Border Patrol have been reduced because there are fewer apprehensions and pursuits of aliens. The change has been particularly noticed in schools lying close to the border, which are now considered safer for students.[6]

The success of Operation Hold-the-Line has led both the Commission on Immigration Reform and the General Accounting Office to urge adoption of similar deterrence strategies as the prevalent form of enforcement along the southern border.[7] The Commission recommended a comprehensive approach to deal with the changing crossing patterns that resulted from stepped-up enforcement in the El Paso area. The GAO concluded that the national border patrol strategy adopted by the INS shows promise for success in reducing illegal immigration and is consistent with previous recommendations for securing the border.

The INS also has recently adopted a deterrence strategy in the heavily-travelled San Diego sector. This initiative, called "Operation Gatekeeper," entails assignment of additional Border Patrol agents in the sector, deployment of agents in close proximity to the border, although not directly on the border as in El Paso, completion of new fences and roads along the border (an initiative started and substantially completed during the Bush Administration), and installation of additional lighting. The INS now also fingerprints all aliens apprehended in the sector in order to identify aliens with criminal records, track aliens who repeatedly try to cross the border illegally, and measure the effectiveness of the new border control measures.

The impact of Operation Gatekeeper has been favorable, but not as dramatic as Operation Hold-the-Line. Border Patrol agents have been concentrated in the western end of the sector, and construction of a steel fence extending into the Pacific Ocean and to a point 14 miles inland from the coast, is nearly complete. As a result, apprehensions of illegal aliens have fallen most markedly in the Imperial Beach area, adjacent to the Pacific Ocean, but illegal alien traffic has greatly increased in the eastern portion of the San Diego sector, and overall apprehensions in the sector have actually increased. The fingerprinting process has identified large numbers of repeat border-crossers, some of whom are being prosecuted.

Despite these initial successes, the challenge of securing the border over the long term will prove to be difficult. One seemingly intractable problem is repeat border-crossings. Many of these aliens eventually escape apprehension and thus add to the illegal alien

[6] Bean, et al., Illegal Mexican Migration and the United States/Mexico Border: The Effects of Operation Hold-the-Line on El Paso/Juarez (July 1994) (Report prepared for the U.S. Commission on Immigration Reform by the Population Research Center at the University of Texas at Austin); General Accounting Office, Border Control: Revised Strategy is Showing Some Positive Results (December 1994) (Report to the Subcommittee on Information, Justice, Transportation and Agriculture of the House Committee on Government Operations).

[7] 1994 Commission Report at 49; Border Control: Revised Strategy Is Showing Some Results, supra note 6. See also "Border Security: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary," 104th Cong., 1st Sess., 109-110, 111

population. All of them add to the enforcement burdens of the INS. The INS has previously attempted efforts at interior repatriation of such aliens, returning them to places hundreds of miles from the border rather than directly across the border where they are free immediately to attempt another illegal entry. This program was dropped, but should be reinstituted as part of the broader deterrence strategy. In addition, stronger bilateral efforts with the Mexican Government should be undertaken, especially in the area of cross-border crimes and alien smuggling. These are genuine issues of national security and public safety exacerbated by the U.S. government's failure to control the border.

Based on the experience in El Paso and San Diego, Congress should establish as a fundamental strategy for immigration enforcement the deterrence of illegal migration across the land borders of the United States. Such a strategy is preferable to one based on interior apprehension of illegal aliens because of the costs associated with apprehending and deporting an alien from the interior. The INS should be given the resources to carry out a deterrence strategy at all appropriate locations along the borders, as well as the necessary direction from Congress to use the resources in this fashion. A pilot program for interior repatriation should be reinstituted, along with technological measures to combat illegal border crossing.

An additional problem in border enforcement has been abuse of the Border Crossing Identification Card, used primarily by citizens of Mexico in lieu of visas for visits to the United States within 25 miles of the border for up to 72 hours. (Canadian citizens and landed immigrants from Commonwealth nations are not required to have a visa to enter the United States, and thus generally do not require a border crossing card.) Approximately 200,000 cards are issued annually. The Commission on Immigration Reform and the INS have both identified a troubling instance of fraud associated with these cards. In 1993, 24,236 cards were intercepted after issuance for counterfeiting, alteration, use by impostors, or violations of the conditions of usage, such as engaging in employment. These problems should come as little surprise. Despite the high incidence of illegal immigration across the land border with Mexico, the cards have heretofore been issued without security features. Until recently, in fact, border crossing cards were issued on a permanent basis, meaning that aliens could hold a card for years or even decades without renewal. The high demand for the cards has resulted both in backlogs of individuals waiting to receive cards and hasty adjudication of applications. In some recent cases, individuals with criminal records have been issued border crossing cards.

The INS has recently taken some steps to improve the security of these cards and to ensure that only aliens entitled to the privilege are issued cards. H.R. 2202 requires specific improvements to be made in all new and existing cards within 3 years.

Visa overstays

A "visa overstay" is an alien who has been admitted to the United States as a nonimmigrant visitor (often as a student, tourist, or businessperson) but who stays in the United States beyond the expiration of the visa and lives here as an illegal alien.[8] Despite the magnitude of this problem, it has only recently been recognized as a leading component of the illegal alien population in the U.S. Moreover, no one is certain of how many people overstay their visas, how long they do so, and how they support themselves. Methods of calculating if and when persons with temporary visas leave the U.S. are haphazard.[9]

Without a reliable system, the INS has no means to determine exactly how many people who arrive in the United States as visitors actually depart, and who they are. Currently, all foreign visitors complete an I–94 arrival/departure form prior to arrival in the United States. The arrival portion of the I–94 is turned over to the INS inspector at the port of entry. However, because the departure portion of the form is collected by the air carrier when the alien departs, and the collection process by carriers is uneven, the data is not reliable.

The INS can estimate "apparent overstays" by simply counting the number of arrival forms without matching departure forms. However, the INS has concluded that the majority of "apparent overstays" are actually the result of incomplete collection of the departure forms. After correcting for this high rate of system error, the INS calculated that the number of visa overstays in 1992 was 305,000, and the visa overstay rate is 1.5 percent. The number of overstays has increased since the mid-1980s, while the rate has decreased, owing to the overall growth in the number of visas issued to foreign visitors. The INS estimates that more than 80 percent of nonimmigrant overstays have received a B–2 (tourist) visa. Most of the remaining percentage entered on a B–1 (business visitor) visa.

Visa overstay rates vary among regions of the world. Overstay percentages from Europe are always well below the average percentage for other countries, but nevertheless account for 15–20 percent of the aggregate total. Leading countries are Italy, Poland, and, recently, the former Soviet Union. Overstay rates from Asia run slightly below the average percentage for other countries, and account for numbers roughly equal to those of Europe. The leading country from the region by far is the Philippines, with India, China, and Hong Kong also contributing significant numbers. North America (including Central America) produces both the highest rate and highest percentage of visa overstays. This is chiefly attributable to Mexico, where the estimated number of overstays rose from 25,000 in 1985 to 60,000 in 1992. The Bahamas (13,000 in 1992), Jamaica (9,000), Haiti (9,000) and Central America (22,000) also produce significant numbers, especially given their limited populations. Overstay rates from Africa are relatively high, but the

[8] Although they are "legally" admitted, nonimmigrant visa holders who intend to come to the United States and stay permanently are technically "illegal" immigrants from the time of their arrival in the United States. A person who obtains a nonimmigrant visa intending to remain in the U.S. indefinitely has committed visa fraud and is excludable under INA § 212(a)(6)(C)(i). Most aliens who intend to overstay their visas are not apprehended upon entry, and still others make the decision to overstay after they have arrived. Such aliens are subject to deportation under section 241(a)(1)(C).

[9] See generally, "Foreign Visitors Who Violate the Terms of the Their Visas by Remaining in the United States Indefinitely: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary," 104th Cong., 1st Sess. (

overall numbers are relatively low. This may be due in part to the limited number of nonimmigrant visas issued in some African nations. Both the overstay rate and overstay numbers from South America are modest.

The phenomenon of visa overstays presents specific problems for immigration enforcement. First, visa overstayers spread the illegal immigration problem to regions outside of the border states, and due to their diverse character (many visa overstayers have more advanced education and skills than typical illegal land border entrants), to various sectors of the economy. Second, visa overstayers account for a substantial portion of those waiting in the "asylum backlog"—the estimated 400,000 persons who are waiting for adjudication by the INS of their asylum claims. While some of these people have legitimate claims, many have filed the asylum claim as a means of remaining in the United States indefinitely. Third, obstacles to enforcement against this phenomenon are likely to remain (or increase) with the further globalization of the economy and rise in the number of legitimate visitors to the United States. A more lengthy or intrusive inspections process at ports of entry might identify more aliens who intend to overstay, but at the price of convenience for the vast majority of legitimate visitors. Another alternative would be more extensive processing by consular officers of requests for nonimmigrant visas. This would require a greater commitment of resources to the consular bureau within the Department of State.

Perhaps as a result of these difficulties, there have been fewer specific recommendations regarding enforcement measures against visa overstays. The Commission on Immigration Reform indicated that the solution lies in improved interior enforcement, chiefly by preventing employment of illegal aliens. (This topic is treated at greater length below.) The State Department now processes a vast majority of visas through an automated system that allows for quicker background checks, and most newly-issued visas are machine-readable, an additional security feature.[10] Stricter standards for issuing visas have been suggested. However, in many countries with a high visa overstay rate, State Department consular officers already deny a substantial percentage of visa applications.[11]

Alien smuggling

Alien smuggling contributes greatly to the overall problem of illegal immigration. Whether carried out by so-called coyotes (smugglers) along the Southwest border, or through sophisticated organized crime rings that smuggle aliens into the United States by land, sea, and air, alien smuggling both adds to the overall numbers of illegal aliens in the United States and increases the financial and other incentives for such trafficking to continue. Alien smuggling is often linked to other crimes, such as drug smuggling and trafficking, prostitution, racketeering, and severe labor law violations. Due to the inhumane living and working conditions they

[10] Hearing: Foreign Visitors Who Overstay, supra note 9, at 20 (Statement of Diane Dillard, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, Department of State).

face, many smuggled aliens are victims, more than beneficiaries, of this criminal activity.[12]

Smuggling by boat is perhaps the most visible recent manifestation of alien smuggling carried out by organized crime syndicates. The arrival of the *Golden Venture* in New York City in June 1993 brought this problem to national attention: the vessel foundered on a sand bar, and hundreds of Chinese nationals struggled to reach the shore and escape, several of them drowning in the process. The remainder were apprehended and detained for exclusion proceedings, in which most claimed political asylum. Due to procedural delays inherent in the immigration hearing process, and the difficulty of arranging return travel to the People's Republic of China, most of these aliens remained in the United States more than 2 years after their arrival.

Other smuggling boats have landed or been apprehended in United States waters, while still others have been interdicted in international waters. However, due to greater enforcement efforts, the organized smuggling by sea from Asia has decreased somewhat since the arrival of the *Golden Venture.* (Illegal immigration by sea has long been prevalent from countries in the Caribbean, and this continues to be the case.)

Notwithstanding the public visibility of alien smuggling by boat, the vast majority of smuggled aliens arrive by more conventional means. Some travel directly to the United States, using fraudulent passports and visas, and attempt entry at international airports. Many such aliens have presented passports and visas prior to embarking overseas, but destroy the documents en route or surrender them to confederates. Probably the greatest number travel through more circuitous routes, travelling to other countries in the Western Hemisphere and then arranging onward travel to the United States either by air or through surreptitious crossing of the land border.

Whether they arrive by boat, directly by air, or through more complex routes, smuggled aliens (often with the assistance of smugglers) abuse immigration procedures to extend their stay in the United States. Thousands of smuggled aliens arrive in the United States each year with no valid entry documents and declare asylum immediately upon arrival. Due to lack of detention space and overcrowded immigration court dockets, many have been released into the general population. Not surprisingly, a majority of such aliens do not return for their hearings. In recent years, however, the number of aliens arriving at airports with no valid documents has decreased in districts, particularly in New York and Los Angeles, where detention capacity has increased and most mala fide aliens can be detained. The threat of expedited exclusion, which has been considered by Congress since 1993, may also have had a deterrent effect.

Finally, many aliens successfully smuggled into the United States have filed asylum claims as a means not only to extend their stay, but, under regulations in effect until January 1995, to obtain work authorization. Due to the huge backlog in asylum cases, and the inability of the INS to detain failed asylum applicants who are

[12] See generally, "Alien Smuggling: Hearing Before the Subcomm. on International Law, Immigration, and Refugees of the House Comm. on the Judiciary," 103rd Cong., 1st Sess. (June 30,

deportable from the United States, these aliens could reasonably expect that the filing of an asylum application would allow them to remain indefinitely in the United States. Under regulations effective in January 1995, asylum applicants no longer are entitled to receive work authorization. This has led to a substantial reduction in filing of new asylum applications. (The new asylum regulations are discussed below in more detail.)

II. INSPECTION, APPREHENSION, AND REMOVAL OF CRIMINAL AND ILLEGAL ALIENS

A. Populations of Criminal and Illegal Aliens

Criminal aliens

The number of criminal aliens incarcerated in Federal and State prisons has grown dramatically in recent years, and is now estimated as 100,000.[13] The "foreign-born"[14] population in institutions operated by the Bureau of Prisons (BOP) is 27,938, or 29 percent of all inmates (95,997). An estimated 75 percent are subject to deportation.[15] Compared to FY 1980, this is an increase from approximately 1,000, or less than 4 percent of all BOP inmates (27,825). According to the BOP, the increase in the Federal alien prisoner population is due largely to drug convictions; 75 percent of alien inmates are incarcerated for such offenses, compared to 61 percent of all Federal inmates. Foreign-born prisoners serve an average of 7.7 years. More than 85 percent are from Mexico, Central America, South America, and the Caribbean. The leading individual countries of origin are, in order, Mexico, Colombia, Cuba, the Dominican Republic, Jamaica, and Nigeria.

The INS reports that there are an estimated 69,926 foreign-born inmates in State prisons, and that 80 percent of these, or 55,640, are deportable.[16] (The remainder are not deportable because they are either naturalized citizens or lawful permanent residents with protection from deportation.) More than 81 percent (56,391) of the overall foreign-born state prison population are in seven high immigration states: California, Texas, Florida, New York, Illinois, New Jersey, and Arizona.[17] The INS believes that the number of criminal aliens in Federal or State prisons who are subject to final orders of deportation is small. The INS and the Executive Office for Immigration Review (EOIR) complete deportation proceedings

[13] See "Removal of Criminal and Illegal Aliens: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary," 104th Cong., 1st Sess. 4 (Statement of T. Alexander Aleinikoff, General Counsel, Immigration and Naturalization Service) (Hearing: Criminal and Illegal Aliens).

[14] "Foreign-born" prisoners may include naturalized citizens and certainly includes both legal permanent residents and people who are in violation of their immigration status (including visa overstays) or who entered the U.S. without permission. See "Criminal Aliens: Hearing Before the Subcomm. on Immigration, Refugees, and International Law of the House Comm. on the Judiciary," February 23, 1994, at 188–189 (Testimony of INS Deputy Commissioner Chris Sale). The Director of the BOP has testified that "[a]s of January 29, 1994, our inmate data base reflects that there were 22,326 inmates in BOP custody who were non-United States citizens (24.8 percent of the population). Id. at 166–167 (Statement of Kathleen M. Hawk). The BOP confirmed to the Committee by telephone in November 1995 that the non-citizen population remains at approximately 24 percent.

[15] Id.; "Management Practices of the Immigration and Naturalization Service: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary," 104th Cong., 1st Sess. 41 (February 8, 1995) (Hearing: Management Practices).

[16] Hearing: Criminal and Illegal Aliens, supra note 13, at 8 (Statement of T. Alexander Aleinikoff).

against incarcerated criminal aliens through the Institutional Hearing Program (IHP); most IHP proceedings are completed close to the alien's scheduled release from prison.

Illegal aliens

The overall population of illegal aliens in the United States is now estimated at 4,000,000 or more, with an annual increase of 300,000 to 400,000. Only a fraction face immigration enforcement proceedings. In FY 1995, deportation proceedings resulted in orders of deportation against 82,915 aliens. An additional 22,815 aliens were ordered deported by immigration judges after being found excludable from the U.S. Finally, 19,040 aliens were granted voluntary departure after being found deportable. These deportation and exclusion figures represent substantial increases from the same figures for FY 1994, when 67,352 were ordered deported, 16,730 were found excludable, and 13,416 were granted voluntary departure. The principal reason is additional resources that have permitted the hiring of new immigration judges and INS trial counsel. The direct referral of unsuccessful asylum applicants to deportation proceedings under the new asylum regulations will lead to further increases in the number of deportation proceedings.

In FY 1995, a total of 17,464 aliens filed appeals to the Board of Immigration Appeals; the BIA affirms the vast majority of deportation and exclusion orders. A smaller number—approximately 1200 in recent years—appeal their cases to the Federal courts.

The number of aliens ordered deported, moreover, greatly exceeds the number who actually are removed from the U.S. In 1995, the INS removed 49,311 illegal aliens, 41,451 of which had received deportation hearings, and 7,860 of which had been processed through exclusion hearings. Approximately 32,000 (29,255 from deportation cases, and 2,738 from exclusion cases) of these aliens were criminals. Thus, an important subset of the annual growth in the number of illegal aliens—as many as 50,000 or more—consists of those who have been ordered deported, but are not actually removed.

A critical question, for which there is no precise answer, is how many of the aliens ordered deported but not removed are criminals. The INS claims that this figure is very low, because criminal aliens who are in INS custody and have received final orders of deportation are kept in custody and deported. However, the INS admits that some convicted criminal aliens with final orders of deportation are released. The INS explains that these are generally lawful permanent residents who are deemed unlikely to abscond. The INS also admits that some criminal aliens are released from custody prior to having their deportation proceedings completed. This is often done because of a lack of detention space. These aliens are generally released on bond; however, some of them do not appear for their deportation hearings and thus disappear into the general population of illegal aliens.[18]

[18] See generally Hearing: Criminal and Illegal Aliens, supra note 13 at 45–48; Hearing: Management Practices, supra note 15, at 49–50.

Summary

The number of aliens incarcerated in Federal and State prisons has risen dramatically in the past 15 years to close to 100,000. Approximately 45,000 criminal aliens are placed in deportation proceedings each year, and in the last fiscal year, 29,000 were removed from the country. A certain number of criminal aliens, including a small number with final orders of deportation, are released from INS detention each year.

The overall population of illegal aliens is growing much more rapidly (300,000–400,000 per year) than the number of aliens that the INS seeks to remove through deportation proceedings. More than 100,000 aliens are ordered deported or excluded each year, but only about 50,000 (32,000 of which are criminals) are actually removed from the United States. Thus, in addition to the general illegal immigrant population, there are growing numbers of aliens remaining in the United States who are not only illegally present, but who have ignored final orders of deportation to leave the U.S. (These figures do not include aliens granted voluntary departure who do not, in fact, depart from the U.S.)

B. Legal Issues Pertaining to Removal of Aliens

The vast majority of illegal aliens apprehended in the United States are those who have crossed the Mexican border and are allowed to return voluntarily without being placed in formal deportation proceedings. Other aliens may be placed in deportation proceedings under section 242 of the Immigration and Nationality Act (INA), 8 U.S.C. 1252, through issuance of an "Order to Show Cause." (OSC)[19] An OSC requires an alien to appear for hearing before an immigration judge within the Executive Office for Immigration Review.

An alien is entitled to be represented by counsel, at no expense to the Government, and to examine evidence and cross-examine witnesses at the deportation proceeding. At most hearings, the issue of deportability is conceded: the alien essentially admits that he or she is here illegally, but seeks relief from deportation under one of the provisions of the INA. The following are the most common forms of relief:

Voluntary departure

Under section 244(e) of the INA, a deportable alien may be granted the option to voluntarily depart the United States, in lieu of deportation. This option is attractive because it allows the alien to leave without bearing the consequences of having been deported, which include restrictions on subsequent legal entries to the United States. An alien may be granted voluntary departure if the alien has been a person of good moral character for the previous five years. The grant of voluntary departure gives the alien a specific amount of time to leave the U.S., after which the alien becomes subject automatically to an order of deportation.

[19] See INA § 242B.

Asylum

The alien may state a "defensive" claim for asylum (as opposed to an "affirmative" claim presented in the first instance to an INS asylum officer). The immigration judge rules on the asylum claim in accordance with section 208 of the INA, which permits the granting of asylum to any alien present in the U.S. who meets the definition of a "refugee" under section 101(a)(42) of the INA.[20]

Under new INS regulations effective in January 1995,[21] failed applicants in the "affirmative" asylum system will be directly referred to an immigration judge for deportation hearing and be able to renew their asylum claim in that proceeding. This is expected to ensure that failed asylum seekers remain under INS docket control and are ordered to leave the country.

Aggravated felons are barred from seeking asylum and are ineligible for withholding of deportation.

Suspension of deportation

Under section 244 of the INA, aliens who have been present in the United States for seven years or longer may qualify for suspension of deportation if deportation would result in extreme hardship to the alien, or to a family member who is a citizen or a lawful permanent resident. Aliens convicted of crimes (but not aggravated felons) are eligible for suspension of deportation only if they have shown 10 years of good moral character since the conviction and can show extreme and unusual hardship. A person granted suspension of deportation is permitted to become a lawful permanent resident of the United States.

Aggravated felons are ineligible for suspension of deportation.

"Section 212(c)" relief

Section 212(c) of the INA provides that a lawful permanent resident returning to an "unrelinquished domicile" in the United States of at least seven years standing may be admitted to the United States even if he or she is excludable for having committed a crime. This provision has been interpreted to apply to deportation proceedings as well, on the ground that it is unconstitutional to limit the relief to a lawful permanent resident who has departed the U.S.[22] In these cases, the immigration judge decides whether the lawful permanent resident has established sufficient "equities" (including rehabilitation and non-recidivism) to outweigh the crime committed. A person granted this relief retains lawful permanent resident status.

Aggravated felons are ineligible for this form of relief if they have been convicted of crimes for which they have served, in the aggregate, five years in prison.

[20] An asylum claim also is considered a claim for withholding of deportation under section 243(h) of the INA; but very few aliens are granted withholding of deportation because if they are eligible for that form of relief, they are probably eligible for the more permanent relief of asylum. Withholding of deportation, which conveys no right to remain in the United States permanently, must be granted when the immigration judge finds that the alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. (An asylee, by contrast, need only show a "well-founded fear" of persecution on account of one of these five grounds.)

[21] 59 Fed. Reg. 62284 (Dec. 5, 1994).

[22] *Francis* v. *INS*, 532 F.2d 268 (2d Cir. 1976); Matter of Silva, 16 I&N Dec. 26 (BIA 1976).

Each of these forms of relief may be exploited by illegal aliens to extend their stay in the United States. Voluntary departure is subject to abuse because there is very little assurance that aliens actually leave the United States, and very little incentive for them to do so. In addition, the Government often gets nothing in return for granting this form of relief. Voluntary departure could be used to "settle" deportation cases expeditiously and ensure that people actually leave the United States, but this is not frequently done under the current system.

Asylum is often claimed by persons who have not suffered persecution, but who know that delays in adjudication (particularly in the affirmative asylum system) will allow them to remain in the United States indefinitely, meanwhile accruing time so that they will be eligible for suspension of deportation if they are ever placed in deportation proceedings.

Suspension of deportation is often abused by aliens seeking to delay proceedings until 7 years have accrued. This includes aliens who failed to appear for their deportation proceedings and were ordered deported in absentia, and then seek to re-open proceedings once the requisite time has passed. Such tactics are possible because some Federal courts permit aliens to continue to accrue time toward the seven year threshold even after they have been placed in deportation proceedings. Similar delay strategies are adopted by aliens in section 212(c) cases, where persons who have been in the United States for a number of years, but have only been lawful permanent residents for a short period of time, seek and obtain this form of relief.

C. Procedural Issues Pertaining to Removal of Illegal Aliens

Illegal aliens also may frustrate removal through taking advantage of certain procedural loopholes in the current removal process.

First, aliens may request and obtain multiple continuances, in order to change the venue of their hearing, obtain an attorney, or prepare an application for relief. Due to the crowded dockets in the immigration courts, delays can stretch out over weeks and months.

Second, many aliens simply fail to appear for their deportation hearing. A 1989 study by the General Accounting Office estimated that 27 percent of deportation proceedings are closed because aliens fail to appear for their hearings. The "no-show" rate can exceed 50 percent in venues such as New York, Los Angeles, and Miami. Bonds apparently do not have a strong deterrent effect against no-shows.

Third, lapses (perceived or genuine) in the procedures for notifying aliens of deportation proceedings lead some immigration judges to decline to exercise their authority to order an alien deported in absentia. These problems are exacerbated by the fact that aliens may request a change of venue of their proceeding. Often, an alien who has changed venue will not inform the INS of a changed address (or of subsequent address changes) despite the legal obligation to do so.

Fourth, there are few consequences (other than forfeiture of bond) for aliens who fail to appear for their hearings. Failure to appear for earlier proceedings is rarely if ever cited as an example of misconduct in future hearings if the alien is applying for relief such

as suspension of deportation. Furthermore, aliens expect that the INS is unlikely to mount any serious effort to apprehend them if they fail to appear.

Fifth, although only a small percentage of aliens appeal their deportation orders to the Board of Immigration Appeals or to the Federal courts, those who do can count on significant delays in the disposition of their appeal.

Sixth, illegal aliens apprehended at worksites have, as a result of being placed in deportation proceedings, acquired the right to obtain work authorization pending the completion of their hearings. This leads to the anomalous situation in which an alien who was illegally working for an employer one week may be legally re-hired the following week after being apprehended by INS. Cases like this should be rare in the future, however, since the INS in January 1995 repealed the regulatory provision that granted work authorization to all aliens in deportation proceedings.[23] Aliens seeking certain forms of relief from deportation (though not asylum) continue to be eligible for work authorization.

D. Detention Issues Pertaining to Removal of Criminal and Illegal Aliens

A chief reason why many deportable aliens are not removed from the United States is the inability of the INS to detain such aliens through the course of their deportation proceedings. The INS plans to increase its detention space to about 8,500 beds in FY 1996, an increase of close to 50 percent.[24] This enables the INS to detain approximately 100,000 aliens per year, with an average stay of 28 days.[25] Detained cases are given priority in the immigration system, both by immigration judges and the BIA. However, relatively few deportable aliens, outside of criminals, are detained at all. In order to manage its limited resources, the INS has adopted the following detention priorities:

1. Aliens convicted of crimes or identified as alien smugglers;
2. Excludable aliens, with priority to those with criminal or terrorist histories or those attempting to enter the United States with fraudulent documents;
3. Deportable aliens who have committed fraud against the INS, such as those who have entered with fraudulent visas;
4. Deportable aliens who have failed to appear for their hearings or who have been previously ordered deported;
5. Deportable aliens apprehended while trying to enter illegally;
6. Other deportable aliens, including those working illegally;

These priorities lead to disparities of treatment among aliens who might be considered as having committed similar immigration violations. For example, an alien who is caught at a port of entry with a fraudulent document is more likely to be detained than an alien who has entered the United States on a nonimmigrant visa,

[23] 59 Fed. Reg. 62284 (Dec. 5, 1994).
[24] Hearing: Removal of Criminal and Illegal Aliens, supra note 13, at 35.
[25] The INS reported to the Committee in December 1995 that approximately 83,400 aliens were detained in 6,418 funded detention beds in FY 1995, with an average stay of 28.3 days. Increasing the available beds to 8,500 actually will enable the detention of more than 100,000 aliens, based on the same average length of stay.

overstayed, and been apprehended while working illegally. A criminal alien is likely to be detained for at least some period of time; an alien who has actually been ordered deported is unlikely to be detained at all. In fact, at the conclusion of a deportation proceeding, it is exceedingly rare that an alien is taken into custody after being ordered deported, unless the alien is already in INS detention.

Another issue related to the release of deportable aliens is the use of bonds. The INA provides that bonds can be required for those released pending their hearings. Bond amounts in immigration cases are often "absolute"—bonding companies are reluctant to underwrite the high risk of aliens failing to appear, and thus, aliens must put up the full amount of the bond. In addition, the INS is sometimes reluctant to set bonds too high because if the alien is not able to pay, the alien cannot be released, and a needed bed space is lost. In essence, in deciding to release a deportable alien, the INS is making a decision that the alien cannot be detained given its limited resources. A bond requirement under such circumstances is an empty threat. In addition, an alien may contest the amount of bond before an immigration judge.[26]

E. Recent Strategies to Expedite Removal of Criminal Aliens

The Institutional Hearing Program

The Institutional Hearing Program (IHP) is a joint effort between the INS, the Executive Office for Immigration Review (EOIR), and State and Federal correctional officials to ensure that alien inmates receive orders of deportation prior to the end of their criminal sentences. The goal is to conclude exclusion and deportation hearings against criminal aliens before they complete their prison terms, making them amenable to deportation upon release.[27] The hearings are similar in procedure to other deportation hearings.

The program began in 1986 after the passage of the Immigration Reform and Control Act. It has since expanded so that hearings can be held in a number of Federal facilities, and in every State, D.C., and Puerto Rico. The IHP expedites hearings in Federal prisons by centralizing the alien inmate populations in six facilities. In the States, IHP hearings have been expedited through similar patterns of centralizing inmates at particular facilities.

In FY 1995, a total of 9,557 criminal aliens were removed from the U.S. based on completion of IHP proceedings in federal, state, and county facilities. A larger number were interviewed and processed for a final removal order. In FY 1995, the INS and EOIR have moved to expand the IHP in 5 states with the largest criminal alien populations: California, Florida, Illinois, New York, and Texas. The expansion includes the permanent assignment of immigration judges and INS trial attorneys to IHP hearing sites. In these 5 states in FY 1995, approximately 24,000 foreign-born inmates were interviewed and approximately 15,000 removal proceedings were commenced.

[26] The procedures for setting and redetermining the amounts of bonds is one of the most complex procedural aspects of the deportation and removal process.

[27] Hearing: Removal of Criminal and Illegal Aliens, supra note 13, at 183 (Statement of Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review).

Expedited administrative deportation

Section 130004 of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322, Sept. 13, 1994) amended section 242A of the INA to provide for expedited deportation procedures for aliens convicted of aggravated felonies who are not lawfully admitted for permanent residence to the United States and are not eligible for any relief from deportation. Under these procedures, an INS District Director will be able to issue an order of deportation without the need for a hearing before an immigration judge. The alien shall be provided notice of the grounds for deportation and of his right to contest the deportation, and shall have the opportunity to inspect the evidence. The alien may not be deported for a period of 30 days, in order to have time to contest the order or seek judicial review. However, judicial review is limited to whether the alien: (1) has been correctly identified; (2) has been convicted of an aggravated felony; and (3) has been afforded the limited procedural rights under this new provision.[28]

Judicial deportation

Section 224 of the Immigration and Nationality Technical Corrections Act of 1994 (enacted October 25, 1994) amended section 242A of the INA to provide that Federal judges may, at the time of sentencing of a criminal alien, order the alien to be deported. This obviates the need for a separate deportation proceeding. A United States Attorney must file a notice upon the defendant and the INS stating his or her intention to seek judicial deportation; the INS must concur with the United States Attorney's intention to seek an order of deportation. The alien must be provided notice of the grounds for deportation and the opportunity to examine the evidence and rebut the charges.

F. Alien Terrorists

The removal of alien terrorists from the U.S., and the prevention of alien terrorists from entering the U.S. in the first place, present among the most intractable problems of immigration enforcement. The stakes in such cases are compelling: protecting the very lives and safety of U.S. residents, and preserving the national security. Yet, alien terrorists, while deportable under section 241(a)(4)(D) of the INA, are able to exploit many of the substantive and procedural provisions available to all deportable aliens in order to delay their removal from the U.S. In addition, alien terrorists, including representatives and members of terrorist organizations, often are able to enter the U.S. under a legitimate guise, despite the fact that their entry is inimical to the national interests of the U.S. In several noteworthy cases, the Department of Justice has consumed years of time and hundreds of thousands (if not millions) of dollars seeking to secure the removal of such aliens from the U.S.

Starting in the first Administration of President Reagan, the Department of Justice has sought reform of immigration law and procedures to better enable this country to protect itself against the threat of alien terrorists. The chief target of these reforms are the

[28] Final regulations to implement the administrative deportation process were issued in August 1995. 60 Fed. Reg. 43954 (Aug. 24, 1995).

statutory and administrative protections given to such aliens, many of which are not required by the due process clause of the Fifth or Fourteenth Amendment or any other provision of law, that enable alien terrorists to delay their removal from the U.S.

The need for special procedures to adjudicate deportation charges against alien terrorists is manifest. Terrorist organizations have developed sophisticated international networks that allow their members great freedom of movement and opportunity to strike, including within the United States. Several terrorist groups have established footholds within immigrant communities in the U.S.

The nature of these groups tend to shield the participants from effective counterterrorism efforts—including the most basic measure of removing them from our soil. The U.S. relies heavily upon close and continued cooperation of friendly nations who provide information on the identity of such terrorists. Such information will only be forthcoming if its sources continue to be protected. Thus, it is essential to the national security of the U.S. that procedures be established to permit the use of classified information in appropriate cases to establish the deportability of an alien terrorist.

Such procedures also must be crafted to meet constitutional requirements. The government's efforts to safeguard lives and property and to protect the national security may be contested on the grounds that they conflict with the procedural rights of aliens. The interests of the government must therefore be balanced against the legitimate rights of those privileged to be present within the United States.[29]

III. EMPLOYER SANCTIONS AND VERIFICATION

The availability of jobs in the U.S. economy is a primary magnet for illegal immigration. The employment of illegal aliens, in turn, causes deleterious effects for U.S. workers.

First, illegal immigrants by and large are attracted to America by the lure of jobs. As Vernon M. Briggs, Jr., professor of labor economics at Cornell University, stated in testimony before the Subcommittee on Immigration and Claims on April 5, 1995, "It has long been conceded that the driving force behind illegal immigration is access to the U.S. labor market."[30] The U.S. Commission on Immigration Reform stated:

> Employment opportunity is commonly viewed as the principal magnet which draws illegal aliens to the United States. Since the beginning of U.S. history, foreigners have come to the United States in search of a better life. Whatever initially motivated them to come here, they often ended up seeking and finding employment. For years, U.S. policy tacitly accepted illegal immigration, as it was viewed by some to be in the interests of certain employers and the American public to do so.[31]

This "tacit acceptance" of illegal immigration was reflected in the fact that, until the last decade, no law prohibited the employment of illegal aliens. The Select Commission on Immigration and Refugee Policy (1981) stated that "[a]s long as the possibility of employment exists, men and women seeking economic opportunities will continue to take great risks to come to the United States, and curbing illegal immigration will be extremely difficult."[32] The Select Commission concluded that economic deterrents—specifically, a law prohibiting the hiring of undocumented or illegal aliens—were necessary to curb illegal immigration.

Second, employment of illegal aliens is having a detrimental effect on low skilled American workers. Professor Briggs testified further that:

> Every study of illegal immigration of which I am aware has concluded that it is the low skilled sector of the U.S. labor force that bears the brunt of the economic burden. For illegal immigrants are overwhelmingly found in the secondary labor market of the U.S. economy. This segment of the labor market is characterized by jobs that require little in the way of skill to do them and the workers have little in the way of human capital to offer. The concentration of illegals in the secondary labor market occurs because most of the illegal immigrants themselves are unskilled, poorly educated, and non-English speaking which restricts the range of jobs . . . they can seek. . . . Although occupational definitions vary, it can be crudely estimated that about one quarter to one-third of the U.S. labor force are employed in jobs that are predominately concentrated in the secondary labor market. This high percentage certainly belies the claim that U.S. citizens and resident aliens will not work in these low skilled occupations.[33]

Dean Frank Morris of Morgan State University concluded at the same hearing that "it is time that the labor market effects, especially the labor market effects of illegal immigration on African Americans and other low income workers be addressed as a top priority."[34] More recently, a paper from the Bureau of Labor Statistics reported that immigration accounts for as much as 50 percent of the decline in real wages of high school dropouts, and for approximately 25 percent of the increase in the wage gap between low- and high-skilled workers.[35]

[29] *Fiallo* v. *Levi*, 406 F. Supp. 162 (S.D.N.Y.), aff'd, 430 U.S. 787 (1975); *Jean* v. *Nelson*, 472 U.S. 846, aff'g, 727 F.2d 957 (11th Cir. 1984); *Kleindienst* v. *Mandel*, 408 U.S. 753 (1972) (alien's presence in U.S. is privilege extended by Congress and not fundamental right.) See also *Alvarez* v. *INS*, 539 F.2d 1220 (9th Cir.), cert. denied, 430 U.S. 918 (1976) (applying rational basis test to equal protection claim for impermissible classification of aliens).

[30] "Impact of Illegal Immigration on Public Benefit Programs and the American Labor Force: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary," 104th Cong., 1st Sess. (1995) (Statement of Vernon M. Briggs, Jr.).

[31] 1994 Commission Report at 88 (1994).

[32] 1981 Select Commission Report, supra note 1, at 59.

[33] See Briggs testimony, supra note 30.

[34] "Impact of Illegal Immigration on Public Benefit Programs and the American Labor Force: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary," 104th Cong., 1st Sess. (1995) (Statement of Frank Morris).

[35] David A. Jaeger, "Skill Differences and the Effect of Immigrants on the Wages of Natives," U.S. Dep't of Labor, Bureau of Labor Statistics, Office of Employment Research and Program Development, Working Paper 273 (Dec. 1995).

Employment and Benefits. Witnesses were Honorable Barbara Jordan, Chair, Commission on Immigration Reform, accompanied by Susan Martin, Ph.D., Executive Director; Robert L. Bach, Ph.D., Executive Associate Commissioner, Policy and Planning, U.S. Immigration and Naturalization Service, accompanied by John E. Nahan, Director, Systematic Alien Verification for Entitlements (SAVE) Program; William Ludwig, Administrator, Food and Consumer Service, U.S. Department of Agriculture; Wendell E. Primus, Deputy Assistant Secretary for Human Services Policy, U.S. Department of Health and Human Services, accompanied by Sandy Crank, Associate Commissioner, Social Security Administration, and Mack Storrs, Division Director for AFDC Policy; Nelson Diaz, General Counsel, U.S. Department of Housing and Urban Development; Richard W. Velde, Esq.; Austin T. Fragomen, Jr., Chairman, American Council on International Personnel; Joseph A. Antolin, Deputy Director of Field Operations, Illinois Department of Public Aid; Esperita Johnson-Bullard, Eligibility Supervisor, Division of Social Services, Department of Human Services, City of Alexandria, Virginia.

On April 5, 1995, the Subcommittee in Immigration and Claims held an oversight hearing on the Impact of Illegal Immigration on Public Benefit Programs and the American Labor Force. Witnesses were Michael Fix, Esq., The Urban Institute, accompanied by Jeffrey Passel; Dr. Donald Huddle, Rice University; Dr. Georges Vernez, RAND; Dr. George Borjas, University of California at San Diego; Dr. Joseph Altonji, Northwestern University; Dr. B. Lindsay Lowell; Dr. Vernon Briggs, Jr., Cornell University; Dr. Frank Morris, Morgan State University; Dr. Norman Matloff, University of California at Davis; Dr. Peter Skerry, Woodrow Wilson International Center for Scholars.

On May 17, 1995, the Subcommittee on Immigration and Claims held an oversight hearing on Legal Immigration Reform Proposals. Witnesses were Susan Martin, Ph.D., Executive Director, Commission on Immigration Reform; Peter Brimelow, Author, "Alien Nation"; Peter Skerry, Wilson Center, Philip Martin, Professor of Agricultural Economics, University of California at Davis; Harris Miller, President, Information Technology Association of America; Markley Roberts, Assistant Director, Economic Research Department, AFL–CIO; Demetrios Papademetriou, Carnegie Endowment for International Peace; Mark Krikorian, Executive Director, Center for Immigration Studies; Professor John Guendelsberger, Pettit College of Law, Ohio Northern University; Michael Lempres, Esq., Akin, Gump, Strauss, Hauer, & Feld.

On April 24, 1995, the Subcommittee on Immigration and Claims held a Members' Forum on Immigration. The following Members testified. Hon. Ronald Packard; Hon. Zoe Lofgren; Hon. Brian Bilbray; Hon. Dana Rohrabacher; Hon. William Martini; Hon. Mark Foley; Hon. Porter Goss; Hon. Jay Kim; Hon. Owen Pickett; Hon. Robert Underwood; Hon. Susan Molinari; Hon. Patsy Mink; Hon. Anthony Beilenson; Hon. Andrea Seastrand; Hon. Esteban Edward Torres; Hon. Bob Filner; Hon. Tim Hutchinson; Hon. Ronald Coleman.

On June 28, 1995, the Subcommittee on Immigration and Claims held a joint hearing with the Senate Subcommittee on Immigration

to receive testimony from the Commission on Immigration Reform regarding the Commission's interim recommendations on legal immigration reform. Testifying was the Honorable Barbara Jordan, Chair, accompanied by Michael Teitelbaum, Vice Chair; Bruce Morrison, Commissioner; Robert Charles Hill, Commissioner; and Susan Martin, Executive Director.

On June 29, 1995, the Subcommittee on Immigration and Claims held a hearing on H.R. 1915, the Immigration in the National Interest Act of 1995. Witnesses were T. Alexander Aleinikoff, Executive Associate Commissioner for Programs, Immigration and Naturalization Service; Anthony C. Moscato, Director, Executive Office for Immigration Review; Diane Dillard, Acting Assistant Secretary for Consular Affairs, Department of State; John R. Fraser, Deputy Administrator, Wage and Hour Division, Department of Labor; Dr. Lawrence H. Thompson, Principal Deputy Commissioner, Social Security Administration; Robert Rector, Senior Policy Analyst, The Heritage Foundation; Dr. Vernon Briggs, Jr., School of Industrial Relations, Cornell University; Austin T. Fragomen, Jr., Chairman, American Council on International Personnel; Daryl R. Buffenstein, President, American Immigration Lawyers Association; David Simcox, Research Director, Negative Population Growth; Dr. Frank Morris, Dean, Morgan State University; Carl Hampe, Esq., Paul, Weiss, Rifkind, Wharton & Garrison; John Swenson, Executive Director, Migration and Refugee Services, U.S. Catholic Conference; Raul Yzaguirre, President, National Council of La Raza; Dr. Michael Teitelbaum, Program Officer, Alfred P. Sloan Foundation; David North, Independent Immigration Researcher; Bill Frelick, Senior Policy Analyst, U.S. Committee for Refugees; Karen K. Narasaki, Executive Director, National Asian Pacific American Legal Consortium; Dan Stein, Executive Director, The Federation for American Immigration Reform.

PROVISIONS OF H.R. 2202

The goal of H.R. 2202 is to curb illegal immigration and reform legal immigration in the national interest. H.R. 2202 mandates specific enforcement measures against illegal immigration, including the hiring of new Border Patrol agents as well as interior enforcement personnel, authorizes the acquisition of additional resources for immigration enforcement and control, and overhauls procedures to allow the prompt identification, apprehension, and removal of illegal aliens from the United States. On the legal immigration front, H.R. 2202 reorients current admission priorities to directly advance U.S. interests in the preservation of the nuclear family, the admission of highly-skilled individuals, the protection of U.S. workers from unfair competition, and the safety of refugees.

TITLE I—BORDER CONTROL

Immigration control is a fundamental aspect of national sovereignty, and protection of that sovereignty begins with securing its borders. Title I of H.R. 2202 authorizes the addition of 1,000 border patrol agents each year through FY 2000, the hiring of support personnel for border enforcement, and the procurement of advanced technologies to prevent illegal border crossings.

The Committee believes that the INS, in cooperation with other law enforcement agencies, should implement a number of approaches to make deportation more effective by reducing the likelihood that aliens physically removed from the United States will attempt re-entry. Primary effort should be given to programs for repatriating illegal aliens to the interior of the countries to which they are deported, thus making it more difficult for them to attempt illegal reentry. Repatriation to third countries, where the alien is removed to a country other than that from which the alien has arrived directly to the United States, also should be considered. For example, if a national of a third country crosses into the United States from Canada and is apprehended at the border, procedures should exist for removing that alien expeditiously to the alien's country of nationality. The Committee believes that the reforms of the removal process adopted in Title III of this bill would facilitate such efforts by the INS, and that pilot projects with a required report to Congress offer the best opportunity to identify sound approaches to this problem.

Title I also addresses interior enforcement issues which relate directly to the problem of visa overstays and criminal aliens. Section 112 requires a pilot program to determine the feasibility of using closed military bases as INS detention centers. Lack of detention space is frequently cited as a reason why the INS is able to remove only a small fraction of deportable aliens. This problem is particularly acute when the INS is unable to detain criminal aliens. Use of converted military facilities may help bridge the gap between the need for detention space and available capacity. The INS already has planned to use one closed military facility as a site for training of new immigration officers and Border Patrol agents. Other uses of such facilities to aid in immigration enforcement should be pursued.

Section 113 seeks to improve tracking of visa overstays by requiring pilot projects at 3 major international airports under which the INS would directly collect records of departure from every departing alien passenger. As previously discussed, the INS lacks the ability to accurately track whether aliens with permission to enter the United States temporarily leave within the time limit set for their departure. This makes it more difficult for the INS to assess the extent of the overstay problem, and more importantly, to determine if individual aliens are violating, or have violated, their nonimmigrant status. The United States should test the feasibility of a system of uniform departure controls for all aliens. Initial pilot projects should focus on airports with the highest volume of international travel. A pilot program should first be implemented in order to test the cost and effectiveness of a comprehensive departure control system before a decision is made to make such a program permanent. The pilot program, however, should be seen as a first step toward eventual implementation of a system that will enable INS to readily identify all aliens who violate their nonimmigrant status by overstaying.

Section 121 authorizes the appropriation of funds to increase the number of investigators and other enforcement personnel deployed in the interior of the United States.

TITLE II—ENHANCED ENFORCEMENT AND PENALTIES AGAINST ALIEN SMUGGLING AND DOCUMENT FRAUD

Sections 201 through 205 permit the INS to seek wiretap authorization under 18 U.S.C. 2516(1) in investigations of alien smuggling and document fraud; make document fraud and alien smuggling crimes indictable as racketeering offenses under the Racketeer Influenced and Corrupt Organizations Act (RICO); increase criminal penalties for alien smuggling, particularly where the smuggling is done for financial gain, involves criminal aliens, or multiple illegal entries; increase the number of U.S. attorneys available for the prosecution of immigration crimes; and expand the undercover investigations authority of the INS.

Section 211 through 216 increase civil and criminal penalties for document fraud, and establish new penalties for knowing preparation or presentation of fraudulent documents, and for making false claims to citizenship. Section 221 extends asset forfeiture authority under 18 U.S.C. 982(a) in the case of aliens convicted of passport or visa fraud, and section 222 permits the issuance of subpoenas for bank records in investigating such crimes.

TITLE III—APPREHENSION AND REMOVAL OF ILLEGAL ALIENS

Subtitle A—Reform of Removal Procedures

Subtitle A of Title III (sections 301 through 309) streamlines rules and procedures in the Immigration and Nationality Act to make it easier to deny admission to inadmissible aliens and easier to remove deportable aliens from the United States. (Due to complexity of these provisions, detailed analysis and comment of some provisions is reserved to the section-by-section analysis.)

Section 301 provides that aliens who have entered the United States without being legally admitted are now classified as "inadmissible" and, if apprehended, bear the same burden of proof as an alien seeking to be admitted at a port of entry: to establish clearly and beyond doubt that they are entitled to be legally admitted. Aliens who have been legally admitted, but who overstay their visas or otherwise violate their immigration status (such as by committing crimes), must establish by clear and convincing evidence that they are lawfully present. Aliens who have been illegally present in the U.S. for an aggregate of 12 months will, with certain exceptions, not be eligible for permanent residence or other immigration benefits for 10 years.

Section 301(e) makes inadmissible to the United States any former U.S. citizen who officially renounces United States citizenship for the purpose of avoiding taxation by the United States. The Committee intends that this section shall apply solely to those individuals who officially renounce their U.S. citizenship after the date on which this section becomes effective.

Section 302 provides that an arriving alien can be denied entry into the U.S. by an immigration officer because of misrepresentation, use of fraudulent documents, or lack of any documents. The alien may be ordered removed without a hearing before an immi-

on International Law, Immigration, and Refugees during the 103rd Congress.

This provision is necessary because thousands of aliens arrive in the U.S. at airports each year without valid documents and attempt to illegally enter the U.S. Unless such aliens claim to be U.S. nationals, or state a fear of persecution, there is no requirement under the Constitution or international treaty to do anything other than return them, as promptly as possible, to where they boarded the plane to come here. Neither international law nor the Due Process Clause of the Fifth Amendment require that such aliens be given a hearing before an immigration judge or a right to appeal.

Section 302 also requires that an alien subject to expedited removal who claims persecution or otherwise indicates a desire to apply for asylum be interviewed by an asylum officer to determine if the alien has a "credible fear" of persecution. A "credible fear" is established if the alien is more likely than not telling the truth, and if there is a reasonable probability that the alien will meet the definition of refugee and otherwise qualify for asylum. This standard, therefore, is lower than the "well-founded fear" standard needed to ultimately be granted asylum in the U.S.—the arriving alien need only show a probability that he will meet the well-founded fear standard. The credible fear standard is designed to weed out non-meritorious cases so that only applicants with a likelihood of success will proceed to the regular asylum process. If the alien meets this threshold, the alien is permitted to remain in the U.S. to receive a full adjudication of the asylum claim—the same as any other alien in the U.S.

Under this system, there should be no danger that an alien with a genuine asylum claim will be returned to persecution. The initial screening, which should take place in the form of a confidential interview, will focus on two questions: is the alien telling the truth; and does the alien have some characteristic that would qualify the alien as a refugee. As in other cases, the asylum officer should attempt to elicit all facts relevant to the applicant's claim. It is not unreasonable to expect the applicant to be truthful in such an interview. Nor is it unreasonable to expect that, in the case of a person genuinely fleeing persecution, that the interview will yield sufficient facts to determine that the alien has a reasonable likelihood of being successful in the full asylum process.

Section 302 permits the interview itself to be carried out by a full-time INS asylum officer, or by an INS inspector or other official who has received the complete training provided to full-time asylum officers and has reasonable access to country condition reports and other resources that are used by asylum officers to assess the credibility and foundation of asylum claims.

Section 304 provides that there will be a single, streamlined "removal proceeding" before an immigration judge for all inadmissible and deportable aliens. This will replace the current exclusion proceedings under section 236 of the INA, and deportation proceedings under section 242. The consolidation will end procedural disputes contesting the type of proceeding an alien should be subject to, disputes that often turn on the elusive question of whether an illegal alien has been apprehended immediately upon entry, or evaded government control for a period of time. Instead, the focus will be

upon whether the alien has or has not been lawfully admitted to the U.S.

Section 304 also will simplify procedures for initiating removal proceedings against an alien. There will be a single form of notice, stating the nature and legal authority for the proceedings, the charges against the alien, the fact that the alien may be represented by counsel at no expense to the government, and, importantly, the specific requirement that the alien immediately provide the Attorney General with an address and phone number at which the alien may be contacted, as well as any change in that address or phone number. The Committee is particularly concerned with two problems regarding lack of accurate information on alien's addresses. First, many aliens do not leave forwarding addresses, thus making delivery of notice impossible. Second, there often are protracted disputes concerning whether an alien has been provided proper notice of a proceeding. This impairs the ability of the government to secure in absentia deportation orders in cases where aliens fail to appear for their hearings; in many such cases, aliens will petition to reopen their hearings on the grounds that they never received proper notice.

Section 304 addresses these problems with a number of new requirements. First, it requires the INS to establish a central address file to accurately record address information, including changes, provided by aliens. Second, it provides that service by mail of the required notice of hearing is sufficient if there is proof of delivery to the most recent address provided by the alien. Third, it authorizes the immigration judge to enter an in absentia order if the alien fails to appear provided that there is proof of attempted delivery at this address. Fourth, it allows an alien to rescind an in absentia order only in the case of specified exceptional circumstances or if the alien demonstrates that notice was not received notwithstanding the alien's compliance with the notice of address requirements.

At the time of the service of notice of hearing, or at any time thereafter, an alien must be provided oral notice, in a language the alien understands, of the time and place of the proceedings, and the consequences of failing to appear for the hearing. An alien who has been provided such notice and who nevertheless fails to appear also shall be ineligible for various immigration benefits, including voluntary departure, cancellation of removal, adjustment of status, and registry, for a period of 10 years.

The burden of proof shall be on the alien at the hearing either to establish by clear and convincing evidence that he or she is lawfully present pursuant to a prior lawful admission or, in the case of an alien who has never been lawfully admitted, to establish beyond a doubt that he or she is entitled to be admitted. If the alien establishes that he or she has been lawfully admitted, the burden of proof shifts to the INS to establish by clear and convincing evidence that the alien is deportable. Aliens are limited to a single motion to reconsider and a single motion to reopen removal proceedings.

Section 304 also removes the requirement that the written notice of hearing be provided in Spanish as well as English. The increased administrative burdens on the INS imposed by this requirement are not justified, especially in light of the fact that many immi-

grants served such notices do not speak Spanish. Section 304 also authorizes an immigration judge to enter an order of removal stipulated to by the alien (or representative) and the INS.

Section 304 also redefines the relief available to aliens in removal proceedings. New limitations are placed on the practice of "voluntary departure," to ensure that aliens granted this form of relief actually and timely depart the United States. An alien who is removable may apply for cancellation of removal if he or she has been a lawful permanent resident for not less than 5 years and has not been sentenced for 5 years due to commission of an aggravated felony; if he or she is a battered spouse or child of a citizen or lawful permanent resident and has been physically present for 3 years; or if the alien has been physically present for and has been a person of good moral character for 7 years preceding the application. The time period for continuous physical presence terminates on the date a person is served a notice to appear for a removal proceeding or if the alien is absent from the United States for an aggregate period in excess of 180 days. There is an annual cap of 4,000 on cancellations of removal, to be effective immediately, and to include the cases of persons who are eligible for suspension of deportation because they were served a notice of hearing prior to the enactment of this bill.

Section 305 seeks to ensure that aliens with a final order of removal under the streamlined procedures established in section 304 are removed from the U.S. within a target period of 90 days from the entry of such order and, during that time, are either detained or released on conditions that ensure they will appear for removal.

These mandates represent a significant departure from current law and practice, which often permit aliens who have final orders of deportation to remain in the U.S. indefinitely. Numerous factors are cited for this failure to deport: insufficient detention space, lack of resources to apprehend aliens for deportation, and archaic procedures which provide advance notice to aliens of when they must report for deportation—a practice charitably characterized as a "run letter." H.R. 2202 specifically addresses all of these factors, by increasing detention space (including the use of closed military facilities on a pilot basis), increasing the number of interior enforcement personnel, including specifically detention and deportation officers, and, in this section, establishing procedures that will ensure that an order of removal is no longer a dead letter, but results in an actual physical removal of the alien.

Yet, perhaps the most critical factor in lax enforcement of deportation orders is what happens—or, more precisely, does not happen—when an immigration judge enters an order of deportation. Unless the alien is currently under detention (which is the exception, not the rule), the alien walks out of court scot-free: the immigration judge imposes no bond requirement, establishes no firm date for departure, and obtains no assurance that the alien will be prepared to depart when the INS is ready to remove him. With such lax procedures, it should come as no surprise that a high percentage of aliens abscond. As a result, the resources expended to identify, apprehend, and provide a hearing to a deportable alien are all too often wasted.

Under section 305, an alien must be detained during the 90-day "removal period," which commences when an order of deportation is final. Since most aliens ordered deported do not file appeals, this detention can ordinarily begin when the order is entered. (Such detention, of course, would not prevent the alien from filing an appeal, in which case the alien could be released on bond.) If detention space is not available, the alien may be released on bond and under conditions prescribed by the Attorney General in order to ensure that the alien appears for deportation. The Committee strongly recommends that the INS and immigration judges be charged with the requirement to impose conditions that will ensure the alien is available for deportation when all proceedings are complete and travel documents have been obtained. An alien under an order of deportation, moreover, may not be granted work authorization unless the alien cannot be removed because there is no country willing to accept the alien or if the Attorney General determines that deportation is contrary to the public interest.

The objective of section 305 is that the entry of an order of removal be accompanied by specific requirements to ensure that the alien will depart the U.S. No set of reforms in this legislation is more important to establishing credibility in enforcement against illegal immigration.

Section 306 preserves the right to appeal from a final administrative order of removal (first issued by an immigration judge, then reviewed by the Board of Immigration Appeals) to one of the Federal circuit courts of appeals. The bill limits rights in cases where the alien's right to relief is limited by statute: arriving aliens who clearly have no right to enter the U.S.; illegal aliens who also have committed aggravated felonies; and aliens who have failed to appear for their immigration hearings. Judicial review in such cases is limited to whether the alien has been correctly identified as being subject to expedited procedures for removal, and whether the appropriate procedures have been followed.

Section 306 also limits the authority of Federal courts other than the Supreme Court to enjoin the operation of the new removal procedures established in this legislation. These limitations do not preclude challenges to the new procedures, but the procedures will remain in force while such lawsuits are pending. In addition, courts may issue injunctive relief pertaining to the case of an individual alien, and thus protect against any immediate violation of rights. However, single district courts or courts of appeal do not have authority to enjoin procedures established by Congress to reform the process of removing illegal aliens from the U.S.

Section 307 provides that aliens who are ordered removed or granted voluntary departure and do not depart the U.S. on time are subject to civil penalties and excludes them from most immigration benefits. Members of terrorist organizations are deemed inadmissible to the U.S., and alien terrorists are ineligible for asylum or withholding of deportation. Arriving aliens who are inadmissible on terrorist grounds are subjected to an expedited removal procedure under the jurisdiction of the Attorney General.

Subtitle B—Removal and Inadmissibility of Alien Terrorists

Subtitle B of Title III (sections 321 through 332) provides that in cases where the use of normal removal proceedings would risk national security, the deportation charges against suspected alien terrorists may be adjudicated in special procedures conducted before one of five Federal district court judges specially appointed to serve in such cases by the Chief Justice of the Supreme Court. The special hearings will be open to the public but conducted to ensure the confidentiality of classified national security information. Aliens have the right to court-appointed attorneys, to confront adverse evidence, and to present evidence. The judges may consider classified evidence in camera, and provide a summary of such evidence to the alien, unless providing the summary would cause harm to the national security or to any person. Aliens may be detained in most cases throughout the proceeding and expeditiously removed after entry of an order of removal.

These special procedures are intended to address the rare circumstance when the government is not able to establish the deportability of an alien under section 241(a)(4)(D) of the INA without recourse to evidence the disclosure of which would pose a risk to the national security of the United States. They are exclusively to be used in cases where the alien is deportable under section 241(a)(4)(D). The Committee expects that these procedures will be used infrequently, and requests that the government will exercise utmost discretion in seeking to initiate proceedings under Subtitle B. Moreover, with the enactment of the provisions of Title I and Title II directed at securing the nation's borders and preventing immigration-related crimes, and the remaining provisions of Title III which streamline the administrative removal process, the numbers of cases in which these special deportation procedures must be used hopefully will be further diminished.

These special procedures are designed to protect the "fundamental requirement of due process[:] . . . the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"[86] The Supreme Court has acknowledged that "'due process is flexible and calls for such procedural protections as the particular situation demands.'"[87] The Court's decisions indicate that three factors must be weighed in determining if the procedures to which one is subjected meets the constitutional threshold.

> [T]he private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the * * * burdens that the additional or substitute procedural requirement would entail.[88]

These factors have been taken into full account in drafting section 321.

[86] *Mathews* v. *Eldridge*, 424 U.S. 319, 333 (1976) (citing *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965); *Grannis* v. *Ordean*, 234 U.S. 385, 394 (1914)).
[87] *Mathews*, 424 U.S. at 334 (quoting *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972)).
[88] *Mathews*, 424 U.S. at 335, 347.

First, section 321 recognizes that an alien present in the U.S. has a constitutional liberty interest to remain in the U.S., and that this liberty interest is most significant in the case of a lawful permanent resident alien.

> [I]t is clear that, in defining an alien's right to due process, the Supreme Court is concerned with whether he is a permanent resident. * * * A permanent resident alien [has] a stake in the United States substantial enough to command a higher level of protection under the due process clause before he may be deported. The result of such an action after all, may be to separate him from family, friends, property, and career, and to remit him to starting a new life in a new land. * * * [E]ven a manifest national security interest of the United States cannot support an argument that [a permanent resident alien] is not entitled, as a threshold matter, to protection under the due process clause. Once across that threshold, the calculus of just how much process is due involves a consideration of the Government's interests in dispensing with procedural safeguards.[89]

No alien, in particular a permanent resident alien, would be subject to deportation without an opportunity to contest that deportation. Even in the case where confidential information may be used without disclosure to the alien, section 321 provides protections adequate under the due process clause of the Fifth and Fourteenth Amendment, by permitting, in the case of a lawful permanent resident, a special attorney representing the alien to review and contest the information.

Second, the risk of an erroneous deprivation of the liberty interest is remote. The government's burden of proof, as in regular deportation proceedings, is to establish by clear and convincing evidence that the alien is deportable. This determination, moreover, is to be made in the first instance by a judge serving pursuant to Article III of the Constitution, which enhances the due process provided to an alien terrorist above that provided in regular deportation proceedings, in which the presiding immigration judge is an employee of the Department of Justice. Furthermore, the alien is entitled to be represented by counsel at government expense, a privilege that is not extended to aliens under Title II of the INA, which stipulates that the alien's representation is to be at no expense to the government. Finally, the determination is subject to appellate review. As discussed in greater detail below, the risk of error arising from in camera and ex parte consideration of classified evidence is minimized through the procedural safeguards limiting reliance on such evidence without any disclosure to the alien.

Third, there can be no gainsaying the compelling nature of the government's interest in the prompt removal of alien terrorists from U.S. soil, or in protecting the ability of the government to collect and rely upon confidential information regarding alien terror-

[89] *Rafeedie* v. *INS*, 880 F.2d 506, 522 (D.C. Cir. 1989). See also *Landon* v. *Plasencia*, 459 U.S. 21, 32 (1982) ("[O]nce an alien gains admission to our country and begins to develop the ties that go with permanent residence, his constitutional status changes accordingly."); *Mathews*, 424 U.S. at 333

ists who may be present in the U.S. Piercing this provision's limited veil of secrecy over classified evidence will clearly make it more difficult to gather evidence against suspected terrorists and to convince international sources that such information will be secure in the hands of our government, and ultimately lead to alien terrorists being able to remain in the U.S. to harm our citizens and lawful residents, while the Government waits, hoping that another ground for deportation is made available.

The most salient distinction between the procedures constructed in section 321 and those normally available under Title II of the INA is the provision for use of classified information. All of the procedures and procedural protections in section 321 flow from this fundamental policy decision: that reliable and relevant classified information should be available to be used to establish the deportability of an alien terrorist. This policy in itself causes no constitutional difficulty, and the protections against abuse of that policy by the government are more than adequate to protect the constitutional interests at stake.

The Supreme Court and lower federal courts have upheld the authority of the INS to use classified information in the cases of aliens who seek discretionary relief from deportation, without disclosing such information to the applicant.[90] Thus, the use of nondisclosed classified information to inform a court's decision whether or not to order deportation has precedent and is not unconstitutional on its face.

Furthermore, the clear intent of section 321 is that all information used to support the charge of deportability will be disclosed to the applicant. This intent is most clearly seen by considering the substantive and procedural hurdles the government must satisfy before confidential information may be considered in camera as part of the record. First, in order to even convene a special deportation proceeding, the government must present a petition personally approved by the Attorney General or the Deputy Attorney General to one of the federal district court judges serving on the special deportation court. Placing these proceedings before an Article III judge provides such aliens an enhanced measure of due process that is not accorded to other deportable aliens, whose cases are heard by administrative judges under the direction of the Attorney General.

Second, the proceeding cannot commence unless the judge finds probable cause to believe that the alien has been correctly identified, is a terrorist, and that the use of normal deportation procedures under Title II of the INA would pose a risk to national security.

Third, the Department of Justice has the burden to prove by clear and convincing evidence that the alien is deportable. Classified information may be presented in camera and ex parte. However, a summary of such evidence sufficient to inform the alien of the nature of the evidence and to permit the alien to prepare a defense must be approved by the judge and provided to the alien. If the judge does not believe the summary to be adequate, and the

[90] *Jay* v. *Boyd*, 351 U.S. 345, 358-60 (1956); *Suciu* v. *INS*, 755 F.2d 127, 128 (8th Cir. 1985)(per curiam). See also *Naji* v. *Nelson*, 113 F.R.D. 548, 551-552 (N.D. Ill. 1986).

government cannot correct the deficiencies, the proceedings will be terminated.

Fourth, the only circumstance in which the consideration of classified information in camera can proceed without providing a summary to the alien is if the judge finds that the continued presence of the alien in the U.S., or the provision of the summary, would cause serious and irreparable harm to the national security or death or serious bodily injury to any person. This is, intentionally, a strict standard, designed to emphasize the clear policy of this legislation that the alien have appropriate notice of the evidence against him and an opportunity to prepare and present a defense.

Fifth, as an additional protection, section 321 provides, in the case of an alien lawfully admitted for permanent residence, that confidential information may be disclosed to a special attorney appointed for this purpose by the judge. The attorney may not disclose such information to the alien or any other party under pain of fine and imprisonment, but may present all relevant arguments against the admissibility, relevance, credibility, or probative value of the evidence.

As noted previously, the Constitution does not forbid the use of classified information in rendering decisions on the right of an alien to remain in the United States. The procedures established in section 321 permit use of classified information in deportation proceedings, while protecting to the maximum extent possible consistent with the classified nature of such information the ability of the alien to examine, confront, and cross-examine such evidence. Any further protection of the alien's rights in this regard would eviscerate the ability of the government to rely upon such information and protect its classified nature, an objective that is grounded on national interests of the most compelling nature.

Subtitle B also makes representatives and members of organizations designated by the Secretary of State as terrorist organizations inadmissible to the U.S. and ineligible for asylum, withholding of deportation, suspension of deportation (cancellation of removal), voluntary departure, and registry.

The objective of preventing terrorist aliens from entering the U.S. is equally important to the national interest as the removal of alien terrorists. On this question, the demands of due process are negligible, and Congress is free to set criteria for admission and screening procedures that it deems to be in the national interest. "Aliens seeking admission to the United States cannot demand that their application for entry be determined in a particular manner or by use of a particular type of proceeding. For those aliens, the procedure fixed by Congress is deemed to be due process of law."[91] The Supreme Court observed in *Knauff* v. *Shaughnessy* "that an initial entrant has no liberty (or any other) interest in entering the United States, and thus has no constitutional right to any process in that context; whatever Congress by statute provides is obviously sufficient, so far as the Constitution goes."[92] "Our starting point, therefore, is that an applicant for initial entry has no constitu-

[91] *Rafeedie* v. *INS*, 880 F.2d 506, 513 (D.C. Cir. 1989) (citing *Knauff* v. *Shaughnessy*, 338 U.S. 537 (1950)) (emphasis in original).

[92] *Rafeedie*, 880 F.2d at 520.

tionally cognizable liberty interest in being permitted to enter the United States."[93]

Under these provisions, an alien will be inadmissible if the alien is a representative of a terrorist organization or a member of an organization that the alien knew or should have known was a terrorist organization. This distinction is intended to ensure that aliens who are most active as directors, officers, commanders, or spokespersons for terrorist organizations are strictly barred from entering the U.S. An alien who is merely a member of a terrorist organization will be considered under a slightly less strict standard that incorporates a scienter requirement that the alien knew or should have known that the organization is terrorist in nature. Thus, an alien innocent of involvement with or knowledge of terrorist activity on the part of an organization of which he or she was merely a member would not necessarily be inadmissible to the U.S.

An organization will be considered "terrorist" for purposes of these provisions only if it has been designated as such by the Secretary of State after consultation with the Attorney General, and after consultation with the Committees on the Judiciary of the House of Representatives and the Senate. Only foreign organizations and subsidiary foreign groups that have engaged in, or are engaging in, terrorist activity (as that term is currently defined in the INA) and whose acts pose a threat to the national security of the United States, can be so designated. The Secretary of State, in consultation with the Attorney General, may remove any such designation once made. The designation is subject to judicial review upon its being made public and, by law, may be removed by Congress.

Subtitles C and D—Miscellaneous

The remainder of title III contains a number of miscellaneous provisions, including a definition of "stowaway;" a clarification of the definition of "conviction" for immigration law purposes; a definition of "immigration judge" together with a salary schedule for the position; the establishment of an "Immigration Enforcement Account" for the deposit of civil penalties; an authorization for use of retired Federal employees in the Institutional Hearing Program; the setting of conditions for prisoner transfer treaties with foreign states; amendments to the criminal alien identification system; and provisions to protect the confidentiality of battered women and children.

TITLE IV—EMPLOYER SANCTIONS AND VERIFICATION

H.R. 2202 recognizes that the solution to the problems in employer sanctions is twofold. First, the number of employment eligibility documents employers are required to review must be reduced. Currently, employees can submit one or more of 29 different documents. Title IV reduces this to six: a passport or alien registration card or resident alien card, or a social security card in combination with a driver's license or state ID card.

More importantly, there must be an authoritative check of the veracity of the documents provided by new employees. Such a ver-

[93] Id.

ification mechanism will be instituted on a pilot basis, using existing databases of the SSA and the INS. Every person in America authorized to work receives a social security number. Aliens legally in this country (and many illegal aliens) have alien identification numbers issued by the INS. If a verification mechanism could compare the social security (and, for a noncitizen, alien number) provided by new employees against the existing databases, individuals presenting fictitious numbers and counterfeit documents, or who are not authorized to be employed, would be identified. A verification system could "prevent use of never-issued numbers, numbers restricted to nonwork purposes, and numbers belonging to deceased people."[94]

Title IV will institute pilot projects testing this verification mechanism in at least five of the seven states with the highest estimated populations of illegal aliens. All employers in such states having 4 or more employees will be involved. The pilots will terminate no later than October 1, 1999. The mechanism cannot be expanded nationwide without authorization by Congress.

The verification mechanism would work as follows: As under current law, once an applicant has accepted a job offer, he or she will present certain documents to the employer. The employer, within three days of the hire, must examine the document(s) to determine whether they reasonably appear on their face(s) to be genuine and complete an I–9 form attesting to this examination.

The employer will also have three days from the date of hire (which can be before the date the new employee actually reports to work) to make an inquiry by phone or other electronic means to the confirmation office established to run the mechanism. Additional time will be provided in the event the confirmation office cannot respond to all inquiries. If the new hire claims to be a citizen, the employer will transmit his or her name and social security number. The confirmation office will compare the name and social security number provided against information contained in the Social Security Administration database. If the new hire claims to be a noncitizen, the employer will transmit his or her name, social security number and alien identification number. The alien number is needed despite the fact that all work authorized aliens have social security numbers because (1) in some instances a social security number will not have been issued by the time of the verification attempt and (2) the SSA database does not provide information on changes in work eligibility status occurring after the number is issued. The confirmation office will compare the name and social security number provided against information contained in the SSA database and will compare the name and alien number provided against information contained in the INS database.

When the confirmation office ascertains that the new hire is eligible to work, the operator will within three days so inform the employer and provide a confirmation number. If the confirmation office cannot confirm the work eligibility of the new hire, it will within three days so inform the employer of a tentative nonconfirmation and provide a tentative nonconfirmation number.

[94] Social Security Administration, Department of Health and Human Services, A Social Security Number Validation System: Feasibility, Costs, and Privacy Considerations 2 (1988) (hereinafter cited as Social Security Number Validation System).

confirm through a toll-free telephone number (or other electronic media), the identity, Social Security number, and work eligibility of all employees within three days of hiring.

CBO's preliminary conclusion is that the total net costs of the bill's mandates on state and local governments would not exceed the $50 million annual threshold established in the Unfunded Mandates Reform Act.

9. Estimated impact on the private sector: H.R. 2202 contains several private sector mandates. Although CBO has not completed its analysis of impacts on the private sector, our preliminary analysis indicates that the expected direct costs of private sector mandates contained in H.R. 2202 would exceed $100 million a year.

Generally, speaking, the private sector mandates in H.R. 2202 lie in four areas: (1) provisions that affect aliens within the borders of the United States, (2) provisions that affect individuals who sponsor aliens and execute affidavits of support, (3) provisions that affect the transportation industry, and (4) provisions that affect employers of aliens. In addition, a few provisions would reduce existing mandates on employers and offset marginally some of the costs imposed by new mandates.

Specifially, we expect that the direct costs imposed on sponsors of aliens who execute affidavits of support to exceed $100 million a year within the first five years that the mandate is in effect. Those are costs now borne by the federal government and state and local governments for the provision of benefits under public assistance programs. We also expect that some direct costs would be imposed on aliens within U.S. borders, the transportation industry, and the employers of aliens but that those costs would not be significant.

10. Previous CBO estimate: In 1995 CBO prepared many estimates of the effects of restricting aliens' eligibility for public assistance in the context of the debate over welfare reform. Examples include CBO's estimates of H.R. 4 (the welfare reform bill) and of H.R. 2491 (the reconciliation bill), both of which were eventually vetoed. In general, however, those proposals did not draw a sharp distinction between aliens already in the country and future entrants. CBO has not previously estimated the effects of restrictions on public assistance like those in H.R. 2202 that are essentially targeted at future entrants.

11. Estimate prepared by: Federal Cost Estimate: Mark Grabowicz, Wayne Boyington, Sheila Dacey, Dorothy Rosenbaum, Robin Rudowitz, Kathy Ruffing, and Stephanie Weiner.

State and Local Government Estimate: Karen McVey and Leo Lex.

Private Sector Mandate Estimate: Matthew Eyles.

12. Estimate approved by: Paul N. Van de Water, Assistant Director, for Budget Analysis.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2202 will have no significant inflationary impact on prices and costs in the national economy.

Section by Section Analysis

TITLE I—DETERRENCE OF ILLEGAL IMMIGRATION THROUGH IMPROVED BORDER ENFORCEMENT, PILOT PROGRAMS, AND INTERIOR ENFORCEMENT

Subtitle A—Improved Enforcement at Border

Sec. 101.—Border patrol agents and support personnel

Subsection (a) provides that the number of border patrol agents shall be increased by 1000 per year from 1996 through 2000. Subsection (b) provides that the number of support personnel for border enforcement, investigations, detention and deportation, intelligence, information and records, legal proceedings, and management and administration shall be increased beginning in fiscal year 1996 by 800 positions above the number existing as of September 30, 1994. Subsection (c) requires the deployment of new border patrol agents to border sectors in proportion to the level of illegal entries in the sectors.

Sec. 102.—Improvement of barriers at border

Subsection (a) provides that the Attorney General and the Commissioner of the Immigration and Naturalization Service (INS) shall install additional physical barriers and roads to deter illegal crossings into the U.S. in areas of high illegal entry.

Subsection (b) provides that in carrying out subsection (a) in the San Diego sector, the Attorney General shall provide for multiple fencing, separated by roads, for the 14 miles eastward of the Pacific Ocean. The Attorney General shall promptly acquire necessary easements for the fencing and roads. There are authorized to be appropriated $12,000,000 for these fences and roads.

Subsection (c) provides for a waiver of the Endangered Species Act to the extent necessary to expeditiously complete construction of the roads and fences under this section.

Subsection (d) requires the Attorney General to forward deploy existing border patrol agents in those border areas with high levels of illegal entry and to submit a report within 6 months of the date of enactment regarding the progress and effectiveness of such forward deployments.

Sec. 103.—Improved border equipment and technology

This section authorizes the Attorney General to acquire Federal equipment, including aircraft, helicopters, vehicles, and night vision equipment, to improve the deterrence of illegal immigration into the U.S. Some of this material may be acquired from the Department of Defense. Where necessary for the proper utilization of such equipment, the Committee believes that it would be appropriate for military personnel to provide training to Border Patrol agents and other immigration officers. Responsibility for operation of material acquired by the Attorney General would remain in the hands of employees of the Department of Justice.

Subsection (f)(2) amends section 212(g) to make conforming amendments and to add a new paragraph (3), providing that the new exclusion ground related to vaccinations may be waived if the alien receives the required vaccination or if a civil surgeon or similar official designated in 42 CFR 34.2 certifies that the vaccination would not be medically appropriate.

The foregoing amendments shall apply to applicants for immigrant visas or adjustment of status filed after September 30, 1996. The Committee anticipates that the INS and the State Department will provide notification to persons seeking admission to the U.S. of the need to obtain the required vaccinations.

Subsection (g) conforms references in section 241(a) (grounds of deportability) to reflect the change in nomenclature in section 212(a) from "excludable" to "inadmissible." Subparagraph (B) of paragraph 241(a)(1) (entry without inspection) will be amended to state that an alien present in the United States in violation of law is deportable. The current category of persons who are deportable because they have made an entry without inspection will, under subsection (c) of this section, be considered inadmissible under new paragraph (9) of subsection 212(a).

Sec. 302.—Inspection of aliens; expedited removal of inadmissible arriving aliens; referral for hearing (revised section 235)

This section will amend section 235 of the INA, regarding the inspection of aliens arriving in the U.S.

Applicants for admission.—New section 235(a) provides that an alien present in the United States who has not been admitted to the U.S. (see Section 301(a) of this bill), who arrives at the United States, whether or not at a designated port of arrival, or who is brought to the United States after having been interdicted in international or United States waters, shall be deemed an applicant for admission.

An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. A stowaway shall not be eligible to apply for asylum in the United States unless the stowaway establishes a credible fear of persecution pursuant to the expedited review process in section 235(b)(1).

Aliens seeking admission, readmission, or transit through the United States shall be inspected by an immigration officer, who shall have the same authority to take statements and receive evidence as under current section 235 of the INA. An alien applying for admission may, at the discretion of the Attorney General, be permitted to withdraw the application for admission and depart immediately from the United States.

New section 235(b) establishes new procedures for the inspection and in some cases removal of aliens arriving in the United States.

Expedited removal of arriving aliens.—New paragraph (b)(1) provides that if an examining immigration officer determines that an alien is inadmissible under section 212(a)(6)(C) (fraud or misrepresentation) or 212(a)(7) (lack of valid documents), the officer may order the alien removed without further hearing or review, unless the alien states a fear of persecution or a desire to apply for asylum.

An alien who states a fear of persecution or a wish to apply for asylum shall be referred for interview by an asylum officer, who is an immigration officer who has had professional training in asylum law, country conditions, and interview techniques. If the officer finds that the alien has a credible fear of persecution, the alien shall be detained for further consideration of the application for asylum. If the alien does not meet this standard, and the officer's decision is upheld by a supervisory asylum officer, the alien will be ordered removed. An alien may consult with a person of his or her choosing before the interview, at no expense to the Government and without delaying the interview. A "credible fear of persecution" means that it is more probable than not that the alien is telling the truth and the alien has a reasonable possibility of establishing eligibility for asylum.

There is no administrative review of a removal order entered into under this paragraph, but an alien claiming under penalty of perjury to be lawfully admitted for permanent residence shall be entitled to administrative review of such an order. 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 reentry).

Inspection of other arriving aliens.—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 stowaway) shall be referred for a hearing before an immigration judge under new section 240.

Aliens inadmissible on national security grounds.—Subsection (c) restates the provisions of current 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)(9) because they are already present in the United States. Such aliens could be subject to the special removal procedures provided in Subtitle B of this Title.

Authority of officers.—New subsection (d) restates provisions currently in 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.

Sec. 303—Apprehension and detention of aliens not lawfully in the United States (revised section 236)

Subsection (a) of this section will amend section 236 of the INA to include provisions currently contained in sections 236 and 242. Subsection (b) authorizes an increase in INS detention facilities to 9,000 beds by FY 1997.

Section 236.—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) restates the current provisions in section 236(e) and 242(a)(2) regarding the detention of an alien convicted of an aggravated felony, and adds an additional provision enabling the release of such an alien 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.

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

Sec. 304—Removal proceedings; cancellation of removal and adjustment of status; Voluntary departure (revised and new sec. 239 to 240C)

Subsection (a) of this section redesignates current section 239 (designation of ports of entry for aliens arriving by civil aircraft) as section 234, redesignates section 240 (records of admission) as section 240C, and inserts new sections 239, 240, 240A, and 240B. Subsection (b) of this section repeals section 212(c) of the INA.

Section 239.—New section 239 ("*Initiation of removal proceedings*") restates the provisions of current subsections (a) and (b) of section 242B regarding the provision of notice ("Notice to Appear") to aliens placed in removal proceedings. These provisions are conformed to the establishment of a single removal hearing to replace the proceedings under current section 236 (exclusion) and 242 (deportation). The requirement that the Notice to Appear (formerly "Order to Show Cause") be provided in Spanish as well as English is not retained. 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.

Section 240.—New section 240 ("Removal Proceedings") restates provisions in current section 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 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, through video conference, or, with the consent of the alien in hearings on the merits, through telephone conference. 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 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). 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 be ineligible 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. In the case of an alien who has been admitted to the U.S., the Service has the burden to establish by clear and convincing evidence that the alien is deportable.

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 that was not available at the time of the initial hearing. The deadline also may be extended in the case of an in absentia order of removal if filed within 180 days and establishing that the alien's failure to appear was because of exceptional circumstances beyond the control of the alien (as defined in section 240(e)) or because the alien did not receive the notice required under section 239(a).

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, but not including less compelling circumstances. The subsection defines "removable" to mean that an alien who has not been admitted is inadmissible under section 212 and that an alien who has been admitted is deportable under section 237.

Section 240A.—New section 240A ("*Cancellation of removal; ad-*