

Conyers



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To: Irene Bueno/OPD/EOP
cc: "Apelbaum, Perry" <Perry.Apelbaum@mail.house.gov>
Subject: Draft Omnibus Immigration Bill

Irene,

As we discussed, attached is the draft Immigration Bill and Section by Section analysis. We look forward to discussing it with you.

Regards.

Scott Deutchman

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(Original Signature of Member)

106TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. CONYERS introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Immigration and Nationality Act to restore
fairness to immigration law, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION**
2 **AND NATIONALITY ACT; TABLE OF CON-**
3 **TENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Restoration of Fairness in Immigration Law Act of
6 2000”.

7 (b) **AMENDMENTS TO IMMIGRATION AND NATION-**
8 **ALITY ACT.**—Except as otherwise specifically provided in
9 this Act, whenever in this Act an amendment or repeal
10 is expressed as the amendment or repeal of a section or
11 other provision, the reference shall be considered to be
12 made to that section or provision in the Immigration and
13 Nationality Act.

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

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

TITLE I—DUE PROCESS IN IMMIGRATION PROCEEDINGS

Subtitle A—Due Process in Removal Proceedings

Sec. 101. Due process in admissibility and asylum cases.

Sec. 102. Using immigration judges in expedited removal proceedings.

Sec. 103. Equitable determination of “credible fear of persecution” in cases involving unique fact patterns.

Subtitle B—Judicial Review in Immigration Proceedings

Sec. 111. Judicial review of administrative remedies and habeas corpus.

Sec. 112. Judicial review of asylum determinations.

Sec. 113. Judicial review of decisions concerning apprehension and detention of aliens.

Sec. 114. Judicial review of decisions concerning document fraud waivers.

Sec. 115. Judicial review of orders issued in absentia.

Sec. 116. Judicial review of denial of request for order of voluntary departure.

Sec. 117. Transitional changes in judicial review.

Subtitle C—Fairness in Removal Proceedings

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- Sec. 121. Equitable burden of proof for admissibility.
- Sec. 122. Presumption in favor of withdrawal of application for admission.
- Sec. 123. Absences outside the control of the alien.

Subtitle D—Fairness in Detention

- Sec. 131. Restoring discretionary authority to the Attorney General in cases of individuals who pose no risk to safety or of fleeing.
- Sec. 132. Periodic review of detention determination.
- Sec. 133. Limitation on indefinite detention.
- Sec. 134. Pilot program to consider alternatives to detention for noncriminal detainees.
- Sec. 135. Elimination of mandatory detention in expedited removal proceedings.
- Sec. 136. Right to counsel.

Subtitle E—Consular Review of Visa Applications.

- Sec. 141. Establishment of a Board of Visa Appeals.
- Sec. 142. Nondiscrimination provisions.

TITLE II—FAIRNESS AND EQUITY IN CASES INVOLVING
PREVIOUS AND MINOR MISCONDUCT

Subtitle A—Increased Fairness and Equity Concerning Removal Proceedings

- Sec. 201. Equitable definition of “crime involving moral turpitude”.
- Sec. 202. Equitable application and definition of “aggravated felony”.
- Sec. 203. Equitable definitions of “conviction” and “term of imprisonment”.
- Sec. 204. Equitable definition of “crimes of moral turpitude”.
- Sec. 205. Restoration of fairness in equitable relief for long-time legal permanent residents.
- Sec. 206. Restoration of fairness in equitable relief for other noncitizens.
- Sec. 207. Eliminating unfair retroactive changes in removal rules for persons subject to pending proceedings.
- Sec. 208. Eliminating unfair retroactive changes in removal rules for persons previously removed.

Subtitle B—Increased Fairness and Equity Concerning 5-Year Bars to
Admission and Other Grounds for Exclusion

- Sec. 211. Limiting 5-year bar to admission to persons who willfully fail to attend removal proceedings.
- Sec. 212. Limiting 5-year bar to admission to persons who willfully violate student visa conditions.
- Sec. 213. Limiting ban on admissibility to persons who willfully make false claims for citizenship.
- Sec. 214. Equitable waiver of inadmissibility for minor criminal offenses.

TITLE III—ENCOURAGING FAMILY REUNIFICATION

Subtitle A—Reuniting Family Members

- Sec. 301. Visa for spouses and children of permanent residents temporarily waiting for visa numbers.
- Sec. 302. Refugee status for unmarried sons and daughters of refugees.
- Sec. 303. Asylee status for unmarried sons and daughters of asylees.
- Sec. 304. Protection against processing delays.

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Subtitle B—Limited Waiver of Grounds of Admissibility

- Sec. 311. Discretionary waiver in cases involving family members.
- Sec. 312. Discretionary waiver in document cases involving family members.
- Sec. 313. Discretionary waiver to admit persons in exceptional circumstances.

Subtitle C—Eliminating Unfairness and Waste in Section 245(i) Waivers

- Sec. 321. Permanent application of section 245(i).
- Sec. 322. Eliminating unfairness created by temporary sunset of section 245(i).

Subtitle D—Equitable Procedures Concerning Voluntary Departure

- Sec. 331. Discretionary determination of period of voluntary departure.
- Sec. 332. Discretionary determination of voluntary departure bond based on individual circumstances.
- Sec. 333. Elimination of automatic penalties for failing to depart in accordance with a voluntary departure grant.

Subtitle E—Fairness in Determination of Public Charge

- Sec. 341. Equitable procedures concerning public charge and affidavit of support.

TITLE IV—FAIRNESS IN ASYLUM AND REFUGEE PROCEEDINGS

Subtitle A—Increased Fairness in Asylum Proceedings

- Sec. 401. Elimination of arbitrary time limits on asylum applications.
- Sec. 402. Gender-based persecution.
- Sec. 403. Presumption of asylum in cases of past persecution.
- Sec. 404. Rebuttable presumption of asylum where persecution occurs with respect to a particular location in a country.
- Sec. 405. Elimination of denial of immigration benefits for erroneous asylum application.
- Sec. 406. Elimination of arbitrary cap on persons eligible to adjust status from asylees to legal permanent residents.
- Sec. 407. Restoration of eligibility for withholding of removal for persons facing loss of life or freedom.

Subtitle B—Increased Fairness and Rationality in Refugee Consultations

- Sec. 411. Timely consultation with respect to refugee admissions.

TITLE V—INCREASED FAIRNESS AND EQUITY IN
NATURALIZATION AND LEGALIZATION PROCEEDINGS

Subtitle A—Naturalization Proceedings

- Sec. 501. Increased authorization of funds for naturalization proceedings.
- Sec. 502. Exemption from English language requirement for certain aliens who served with special guerrilla units or irregular forces in Laos.
- Sec. 503. Special consideration concerning civics requirement for certain aliens who served with special guerrilla units or irregular forces in Laos.
- Sec. 504. Documentation of qualifying service.
- Sec. 505. Determination of eligibility for exemption and special consideration.
- Sec. 506. Deadline for application and payment of fees.
- Sec. 507. Limitation on number of beneficiaries.

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Subtitle B—Parity in Treatment for Refugees From Central America and Haiti

- Sec. 511. Adjustment of status for certain nationals from El Salvador, Guatemala, Honduras, and Haiti.
- Sec. 512. Applications pending under section 203 of the Nicaraguan Adjustment and Central American Relief Act.
- Sec. 513. Applications pending under the Haitian Refugee Immigration Fairness Act of 1998.
- Sec. 514. Technical amendments to the Nicaraguan Adjustment and Central American Relief Act.
- Sec. 515. Technical amendments to the Haitian Immigration Fairness Act of 1998.
- Sec. 516. Motions to reopen.

Subtitle C—Equality of Treatment for Women's Citizenship

- Sec. 521. Declaration of citizenship for certain women who lost citizenship solely by reason of marriage to an alien prior to September 22, 1922.
- Sec. 522. Equity in transmission of citizenship.

Subtitle D—Fairness in the Treatment for Refugees From Liberia

- Sec. 531. Adjustment of status of certain Liberian nationals.

Subtitle E—Fairness in Review of Previously Granted Amnesty Rights

- Sec. 541. Elimination of limitation on legalization litigation.

Subtitle F—Equality of Treatment for Asian American Visa Petitions

- Sec. 551. Immigration of certain aliens born in the Philippines or Japan and fathered by U.S. citizens.

TITLE VI—CRACKING DOWN ON DISCRIMINATION IN IMMIGRATION-RELATED EMPLOYMENT PRACTICES AND ILLEGAL SWEATSHOPS

Subtitle A—Discrimination in Immigration-Related Employment Practices

- Sec. 601. Burden of proof.
- Sec. 602. Definition of protected individual.

Subtitle B—Cracking Down on Illegal Sweatshops

- Sec. 611. Secretary of Labor subpoena authority.
- Sec. 612. Increased penalties for employer sanctions involving labor standards violations.

TITLE VII—FAIRNESS AND COMPASSION IN THE TREATMENT OF BATTERED IMMIGRANTS

- Sec. 701. Findings and purposes.
- Sec. 702. Restoring immigration protections under the Violence Against Women Act of 1994 (VAWA).
- Sec. 703. Remedying problems with implementation of the immigration provisions of VAWA.

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- Sec. 704. Waivers and exceptions to inadmissibility for otherwise qualified battered immigrants.
- Sec. 705. Calculation of physical presence in VAWA cancellation of removal and suspension of deportation.
- Sec. 706. Improved access to VAWA immigration protections for battered immigrant women.
- Sec. 707. Improved access to VAWA cancellation of removal.
- Sec. 708. Good moral character determinations.
- Sec. 709. Economic Security Act for battered immigrant women.
- Sec. 710. Access to legal representation and services for battered immigrants.
- Sec. 711. Violence Against Women Act training for INS officers, immigration judges, and civil and criminal court justice system personnel.
- Sec. 712. Protection for certain crime victims including crimes against women.
- Sec. 713. Access to Cuban Adjustment for battered immigrant spouses and children.
- Sec. 714. Access to the Nicaraguan and Central American Relief Act for battered spouses and children.
- Sec. 715. Access to the Haitian Refugee Immigration Fairness Act of 1998 for battered spouses and children.

TITLE VIII—MISCELLANEOUS PROVISIONS

- Sec. 801. Technical and conforming change concerning Board of Immigration Appeals.
- Sec. 802. Limiting forfeiture for certain assets used to violate INA where there was no commercial gain.
- Sec. 803. Elimination of ban on State and local governments from preventing communications with the INS.
- Sec. 804. Parole authority.
- Sec. 805. Enhanced border patrol recruitment and retention.
- Sec. 806. Authorization of appropriations for implementation of Act.

1 **TITLE I—DUE PROCESS IN**
2 **IMMIGRATION PROCEEDINGS**
3 **Subtitle A—Due Process in**
4 **Removal Proceedings**

5 **SEC. 101. DUE PROCESS IN ADMISSIBILITY AND ASYLUM**
6 **CASES.**

7 (a) ELIMINATE EXPEDITED REMOVAL PROCEEDINGS
8 EXCEPT IN EXTRAORDINARY MIGRATION SITUATION.—At
9 the end of section 235 (8 U.S.C. 1225), insert the fol-
10 lowing:

1 “(e) LIMITATION ON USE OF EXPEDITED PROCE-
2 DURE.—

3 “(1) EXPEDITED REMOVAL LIMITED TO EX-
4 TRAORDINARY MIGRATION SITUATIONS.—Notwith-
5 standing subsection (b)(1), unless the Attorney Gen-
6 eral determines that the numbers or circumstances
7 of aliens en route to or arriving in the United States
8 present an extraordinary migration situation, the At-
9 torney General may not apply the provisions of such
10 subsection to any such alien.

11 “(2) EXTRAORDINARY MIGRATION SITUA-
12 TION.—As used in this subsection, the term ‘extraor-
13 dinary migration situation’ means the arrival or im-
14 minent arrival at a border of the United States of
15 aliens who by their numbers or circumstances sub-
16 stantially exceed the capacity of the inspection and
17 examination of such aliens.

18 “(3) DISCRETION.—Subject to paragraph (4),
19 the determination whether there exists an extraor-
20 dinary migration situation within the meaning of
21 paragraphs (1) and (2) is committed to the sole and
22 exclusive discretion of the Attorney General.

23 “(4) PERIOD.—The provisions of this sub-
24 section may be invoked under paragraph (1) for a
25 period not to exceed 90 days, unless within such 90-

1 day period or extension thereof, the Attorney Gen-
2 eral determines, after consultation with the Commit-
3 tees on the Judiciary of the United States House of
4 Representatives and the Senate, that an extraor-
5 dinary migration situation continues to warrant such
6 procedures remaining in effect for additional 90-day
7 periods.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall take effect on the date of the enact-
10 ment of this Act.

11 **SEC. 102. USING IMMIGRATION JUDGES IN EXPEDITED RE-**
12 **MOVAL PROCEEDINGS.**

13 (a) IN GENERAL.—Section 235(b)(1)(A) (8 U.S.C.
14 1225(b)(1)(A)) is amended—

15 (1) in clause (i)—

16 (A) by striking “is inadmissible” and in-
17 serting “may be inadmissible”;

18 (B) by striking “(iii)” and inserting “(iv)”;

19 and

20 (C) by striking “shall order” and all that
21 follows through the period at the end and in-
22 serting “shall refer the alien to an immigration
23 judge for an interview.”;

24 (2) by redesignating clauses (ii) and (iii) as
25 clauses (iii) and (iv), respectively;

1 (3) by inserting after clause (i) the following:

2 “(ii) IMMIGRATION JUDGE INTER-
3 VIEW.—If an immigration judge deter-
4 mines, based on an interview, that an alien
5 described in clause (i) is inadmissible
6 under paragraph (6)(C) or (7) of section
7 212(a), the judge shall order the alien re-
8 moved from the United States without fur-
9 ther hearing or review unless the alien in-
10 dicates either an intention to apply for asy-
11 lum under section 208 or a fear of perse-
12 cution.”;

13 (4) in clause (iii) (as so redesignated)—

14 (A) by striking “immigration officer” and
15 inserting “immigration judge”;

16 (B) by striking “clause (iii)” and inserting
17 “clause (iv)”; and

18 (C) by striking “officer shall” and insert-
19 ing “judge shall”; and

20 (5) in clause (iv) (as so redesignated), by strik-
21 ing “(i) and (ii)” and inserting “(i), (ii), and (iii)”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall take effect on the date of the enact-
24 ment of this Act.

1 **SEC. 103. EQUITABLE DETERMINATION OF “CREDIBLE**
2 **FEAR OF PERSECUTION” IN CASES INVOLV-**
3 **ING UNIQUE FACT PATTERNS.**

4 (a) “CREDIBLE FEAR OF PERSECUTION” DE-
5 FINED.—Section 235(b)(1)(B)(v) (8 U.S.C.
6 1225(b)(1)(B)(v)) is amended by adding at the end
7 “Nothing in the preceding sentence shall be construed to
8 preclude an alien from satisfying the standard in such sen-
9 tence based upon a novel factual situation or a new legal
10 argument.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall take effect on the date of the enact-
13 ment of this Act.

14 **Subtitle B—Judicial Review in**
15 **Immigration Proceedings**

16 **SEC. 111. JUDICIAL REVIEW OF ADMINISTRATIVE REM-**
17 **EDIES AND HABEAS CORPUS.**

18 (a) IN GENERAL.—Section 242 (8 U.S.C. 1252) is
19 amended to read as follows:

20 “JUDICIAL REVIEW OF ORDERS OF REMOVAL

21 “SEC. 242. (a) The procedure prescribed by, and all
22 the provisions of chapter 158 of title 28, United States
23 Code, shall apply to, and shall be the sole and exclusive
24 procedure for, the judicial review of all final orders of re-
25 moval heretofore or hereafter made against aliens within
26 the United States pursuant to administrative proceedings

1 under section 240 or pursuant to section 238 of this Act
2 or comparable provisions of any prior Act, except that—

3 “(1) a petition for review may be filed not later
4 than 90 days after the date of the issuance of the
5 final removal order, or, in the case of an alien con-
6 victed of an aggravated felony (including an alien
7 described in section 238) not later than 30 days
8 after the issuance of such order;

9 “(2) the venue of any petition for review under
10 this section shall be in the judicial circuit in which
11 the administrative proceedings before an immigra-
12 tion judge were conducted in whole or in part, or in
13 the judicial circuit wherein is the residence, as de-
14 fined in this Act, of the petitioner, but not in more
15 than one circuit;

16 “(3) the action shall be brought against the Im-
17 migration and Naturalization Service, as respondent.
18 Service of the petition to review shall be made upon
19 the Attorney General of the United States and upon
20 the official of the Immigration and Naturalization
21 Service in charge of the Service district in which the
22 office of the clerk of the court is located. The service
23 of the petition for review upon such official of the
24 Service shall stay the removal of the alien pending
25 determination of the petition by the court, unless the

1 court otherwise directs or unless the alien is con-
2 victed of an aggravated felony (including an alien
3 described in section 238), in which case the Service
4 shall not stay the removal of the alien pending deter-
5 mination of the petition of the court unless the court
6 otherwise directs;

7 “(4) except as provided in clause (B) of para-
8 graph (5) of this subsection, the petition shall be de-
9 termined solely upon the administrative record upon
10 which the removal order is based and the Attorney
11 General’s findings of fact, if supported by reason-
12 able, substantial, and probative evidence on the
13 record considered as a whole, shall be conclusive;

14 “(5) whenever any petitioner, who seeks review
15 of an order under this section, claims to be a na-
16 tional of the United States and makes a showing
17 that his claim is not frivolous, the court shall (A)
18 pass upon the issues presented when it appears from
19 the pleadings and affidavits filed by the parties that
20 no genuine issue of material fact is presented; or (B)
21 where a genuine issue of material fact as to the peti-
22 tioner’s nationality is presented, transfer the pro-
23 ceedings to a United States district court for the
24 district where the petitioner has his residence for
25 hearing de novo of the nationality claim and deter-

1 mination as if such proceedings were originally initi-
2 ated in the district court under the provisions of sec-
3 tion 2201 of title 28, United States Code. Any such
4 petitioner shall not be entitled to have such issue de-
5 termined under section 360(a) of this Act or other-
6 wise;

7 “(6) whenever a petitioner seeks review of an
8 order under this section, any review sought with re-
9 spect to a motion to reopen or reconsider such an
10 order shall be consolidated with the review of the
11 order;

12 “(7) if the validity of a removal order has not
13 been judicially determined, its validity may be chal-
14 lenged in a criminal proceeding against the alien for
15 violation of subsection (a) or (b) of section 243 of
16 this Act only by separate motion for judicial review
17 before trial. Such motion shall be determined by the
18 court without a jury and before the trial of the gen-
19 eral issue. Whenever a claim to United States na-
20 tionality is made in such motion, and in the opinion
21 of the court, a genuine issue of material fact as to
22 the alien’s nationality is presented, the court shall
23 accord him a hearing de novo on the nationality
24 claim and determine that issue as if proceedings had
25 been initiated under the provisions of section 2201

1 of title 28, United States Code. Any such alien shall
2 not be entitled to have such issue determined under
3 section 360(a) of this Act or otherwise. If no such
4 hearing de novo as to nationality is conducted, the
5 determination shall be made solely upon the admin-
6 istrative record upon which the removal order is
7 based and the Attorney General's findings of fact, if
8 supported by reasonable, substantial, and probative
9 evidence on the record considered as a whole, shall
10 be conclusive. If the removal order is held invalid,
11 the court shall dismiss the indictment and the
12 United States shall have the right to appeal to the
13 court of appeals within 30 days. The procedure on
14 such appeals shall be as provided in the Federal
15 rules of criminal procedure. No petition for review
16 under this section may be filed by any alien during
17 the pendency of a criminal proceeding against such
18 alien for violation of subsection (a) or (b) of section
19 243 of this Act;

20 “(8) nothing in this section shall be construed
21 to require the Attorney General to defer removal of
22 an alien after the issuance of a removal order be-
23 cause of the right of judicial review of the order
24 granted by this section, or to relieve any alien from
25 compliance with subsections (a) and (b) of section

1 243 of this Act. Nothing contained in this section
2 shall be construed to preclude the Attorney General
3 from detaining or continuing to detain an alien or
4 from taking the alien into custody pursuant to sec-
5 tion 241 of this Act at any time after the issuance
6 of a removal order;

7 “(9) it shall not be necessary to print the
8 record or any part thereof, or the briefs, and the
9 court shall review the proceedings on a typewritten
10 record and on typewritten briefs; and

11 “(10) any alien held in custody pursuant to an
12 order of removal may obtain judicial review thereof
13 by habeas corpus proceedings.

14 “(b) Notwithstanding the provisions of any other law,
15 any alien against whom a final order of removal has been
16 made heretofore or hereafter under the provisions of sec-
17 tion 235 of this Act or comparable provisions of any prior
18 Act may obtain judicial review of such order by habeas
19 corpus proceedings and not otherwise.

20 “(c) An order of removal shall not be reviewed by any
21 court if the alien has not exhausted the administrative
22 remedies available to the alien as of right under the immi-
23 gration laws and regulations or if the alien has departed
24 from the United States after the issuance of the order.
25 Every petition for review or for habeas corpus shall state

1 whether the validity of the order has been upheld in any
2 prior judicial proceeding, and, if so, the nature and date
3 thereof, and the court in which such proceeding took place.
4 No petition for review or for habeas corpus shall be enter-
5 tained if the validity of the order has been previously de-
6 termined in any civil or criminal proceeding, unless the
7 petition presents grounds which the court finds could not
8 have been presented in such prior proceeding, or the court
9 finds that the remedy provided by such prior proceeding
10 was inadequate or ineffective to test the validity of the
11 order.

12 “(d)(1) A petition for review or for habeas corpus on
13 behalf of an alien against whom a final order of removal
14 has been issued pursuant to section 238(b) may challenge
15 only—

16 “(A) whether the alien is in fact the alien de-
17 scribed in the order;

18 “(B) whether the alien is in fact an alien de-
19 scribed in section 238(b)(2);

20 “(C) whether the alien has been convicted of an
21 aggravated felony and such conviction has become
22 final; and

23 “(D) whether the alien was afforded the proce-
24 dures required by section 238(b)(4).

1 “(2) No court shall have jurisdiction to review any
2 issue other than an issue described in paragraph (1).”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall take effect on the date of the enact-
5 ment of this Act and shall apply to determinations pending
6 on or after such date with respect to which—

7 (1) a final administrative decision has been not
8 been rendered as of such date; or

9 (2) such a decision has been rendered but the
10 period for seeking judicial review of the decision has
11 not expired.

12 **SEC. 112. JUDICIAL REVIEW OF ASYLUM DETERMINATIONS.**

13 (a) AUTHORITY TO APPLY FOR ASYLUM.—Section
14 208(a) (8 U.S.C. 1158(a)) is amended by striking para-
15 graph (3).

16 (b) CONDITIONS FOR GRANTING ASYLUM.—Section
17 208(b)(2) (8 U.S.C. 1158(b)(2)) is amended by striking
18 subparagraph (D).

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect on the date of the enactment
21 of this Act and shall apply to petitions for review of deter-
22 minations of the Attorney General made on or after such
23 date.

1 **SEC. 113. JUDICIAL REVIEW OF DECISIONS CONCERNING**
2 **APPREHENSION AND DETENTION OF ALIENS.**

3 (a) IN GENERAL.—Section 236 (8 U.S.C. 1226) is
4 amended by striking subsection (e).

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall take effect on the date of the enact-
7 ment of this Act and shall apply to aliens who are in cus-
8 tody on or after such date.

9 **SEC. 114. JUDICIAL REVIEW OF DECISIONS CONCERNING**
10 **DOCUMENT FRAUD WAIVERS.**

11 (a) INADMISSIBLE ALIENS.—Section 212(d)(12) (8
12 U.S.C. 1182(d)(12)) is amended by striking the final sen-
13 tence.

14 (b) DEPORTABLE ALIENS.—Section 237(a)(3)(C)(ii)
15 (8 U.S.C. 1227(a)(3)(C)(ii)) is amended by striking the
16 final sentence.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect on the date of the enactment
19 of this Act and shall apply to petitions for review filed
20 on or after such date.

21 **SEC. 115. JUDICIAL REVIEW OF ORDERS ISSUED IN**
22 **ABSENTIA.**

23 (a) IN GENERAL.—Section 240(b)(5) (8 U.S.C.
24 1229a(b)(5)) is amended by striking subparagraph (D)
25 and redesignating subparagraph (E) as subparagraph (D).

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect on the date of the enact-
3 ment of this Act and shall apply to petitions for review
4 filed on or after such date.

5 **SEC. 116. JUDICIAL REVIEW OF DENIAL OF REQUEST FOR**
6 **ORDER OF VOLUNTARY DEPARTURE.**

7 (a) IN GENERAL.—Section 240B (8 U.S.C. 1229c)
8 is amended by striking subsection (f).

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall take effect on the date of the enact-
11 ment of this Act and shall apply to appeals from denial
12 of a request for an order of voluntary departure, and re-
13 quests for a stay of an alien's removal pending consider-
14 ation of any claim with respect to voluntary departure,
15 filed on or after such date.

16 **SEC. 117. TRANSITIONAL CHANGES IN JUDICIAL REVIEW.**

17 (a) IN GENERAL.—Section 309(c)(4) of the Illegal
18 Immigration Reform and Immigrant Responsibility Act of
19 1996 (8 U.S.C. 1101 note) is repealed.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall take effect on the date of the enact-
22 ment of this Act and shall apply to cases in which a final
23 order of exclusion or deportation is entered on or after
24 the date of the enactment of this Act.

1 **Subtitle C—Fairness in Removal**
2 **Proceedings**

3 **SEC. 121. EQUITABLE BURDEN OF PROOF FOR ADMISSI-**
4 **BILITY.**

5 (a) IN GENERAL.—Section 240(c)(2) (8 U.S.C.
6 1229a(c)(2)) is amended—

7 (1) in the matter preceding subparagraph (A),
8 by striking “establishing—” and inserting “estab-
9 lishing, by clear and convincing evidence—”;

10 (2) in subparagraph (A), by striking “clearly
11 and beyond doubt”; and

12 (3) in subparagraph (B), by striking “by clear
13 and convincing evidence,”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall take effect on the date of the enact-
16 ment of this Act and shall apply to removal proceedings
17 pending on or after such date.

18 **SEC. 122. PRESUMPTION IN FAVOR OF WITHDRAWAL OF AP-**
19 **PLICATION FOR ADMISSION.**

20 (a) IN GENERAL.—Section 235(a)(4) (8 U.S.C.
21 1225(a)(4)) is amended to read as follows:

22 “(4) WITHDRAWAL OF APPLICATION FOR AD-
23 MISSION.—

24 “(A) PRESUMPTION IN FAVOR OF WITH-
25 DRAWAL.—The Attorney General shall permit

1 an alien applying for admission to withdraw the
2 application and depart immediately from the
3 United States at any time, unless an immigra-
4 tion judge has rendered a decision with respect
5 to the admissibility of the alien, except that the
6 Attorney General may deny permission for the
7 withdrawal when warranted by unusual cir-
8 cumstances.

9 “(B) PERMISSIVE WITHDRAWAL.—Except
10 as provided in subparagraph (A), an alien ap-
11 plying for admission may, in the discretion of
12 the Attorney General and at any time after a
13 decision described in such subparagraph has
14 been rendered, be permitted to withdraw the
15 application and depart immediately from the
16 United States.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 subsection (a) shall take effect on the date of the enact-
19 ment of this Act and shall apply to applications for admis-
20 sion pending on or after such date.

21 **SEC. 123. ABSENCES OUTSIDE THE CONTROL OF THE**
22 **ALIEN.**

23 Section 101(a)(13)(C) (8 U.S.C. 1101(a)(13)(C)) is
24 amended by amending clause (ii) to read as follows:

1 “(ii) has been absent from the United
2 States for a continuous period in excess of
3 one year unless the alien’s return was im-
4 peded by emergency or extenuating cir-
5 cumstances outside the control of the
6 alien,”.

7 **Subtitle D—Fairness in Detention**

8 **SEC. 131. RESTORING DISCRETIONARY AUTHORITY TO THE**
9 **ATTORNEY GENERAL IN CASES OF INDIVID-**
10 **UALS WHO POSE NO RISK TO SAFETY OR OF**
11 **FLEEING.**

12 Section 236(c) (8 U.S.C. 1226(c)) is amended—

13 (1) in paragraph (1), by striking “Attorney
14 General shall” and inserting “Attorney General
15 may”; and

16 (2) by amending paragraph (2) to read as fol-
17 lows:

18 “(2) RELEASE.—The Attorney General shall re-
19 lease any alien described in paragraph (1) if the
20 alien satisfies the Attorney General that the alien
21 will not pose a danger to the safety of other persons
22 or of property and is likely to appear for any sched-
23 uled proceeding. All custody, bond, and parole deter-
24 minations shall be reviewable by an immigration
25 judge and subject to administrative appeal.”.

1 **SEC. 132. PERIODIC REVIEW OF DETENTION DETERMINA-**
2 **TION.**

3 Section 241(a) (8 U.S.C. 1231(a)) is amended—

4 (1) by redesignating paragraph (6) as para-
5 graph (6)(A);

6 (2) in paragraph (6)(A) (as redesignated), by
7 inserting “for a reasonable period of time, not to ex-
8 ceed 9 months following the removal period, to allow
9 for ongoing negotiations to effect such removal”
10 after “removal period”; and

11 (3) by inserting before paragraph (7) the fol-
12 lowing:

13 “(B) Upon conclusion of the removal period
14 and every 90 days thereafter, the Attorney General
15 shall review whether the alien is required to be re-
16 leased under subsection (j).

17 “(C) Determinations under this subparagraph
18 shall be subject to de novo review by an immigration
19 judge and administrative appeal. In such review, it
20 shall be the Attorney General’s burden to prove that
21 continued detention is authorized under subsection
22 (a).”.

23 **SEC. 133. LIMITATION ON INDEFINITE DETENTION.**

24 Section 241 (8 U.S.C. 1231) is amended by adding
25 at the end the following:

1 “(j) Notwithstanding any other provision of this sec-
2 tion, including subsection (a)(2), the Attorney General
3 may not detain an alien who requests release and dem-
4 onstrates to the Attorney General that—

5 “(1) the alien is not a risk to the community
6 and is likely to comply with the order of removal;
7 and

8 “(2) removal of the alien cannot be effectuated
9 within the removal period specified in section
10 241(a)(2).

11 The determination by the Attorney General shall be sub-
12 ject to de novo review by an immigration judge and admin-
13 istrative appeal.”.

14 **SEC. 134. PILOT PROGRAM TO CONSIDER ALTERNATIVES**
15 **TO DETENTION FOR NONCRIMINAL DETAIN-**
16 **EES.**

17 (a) PILOT PROGRAM ON ALTERNATIVES TO DETEN-
18 TION IN PENAL SETTING.—The Attorney General shall es-
19 tablish a pilot program in 3 district offices of the Immi-
20 gration and Naturalization Service to determine the viabil-
21 ity of supervision of aliens who have no criminal record
22 but who are subject to detention under the Immigration
23 and Nationality Act at the discretion of the Attorney Gen-
24 eral through means other than confinement in a penal set-
25 ting.

1 (b) STUDY AND REPORT ON ALTERNATIVES TO DE-
2 TENTION IN PENAL SETTING.—In carrying out subsection
3 (a), the Attorney General shall conduct a study, and sub-
4 mit a report to the Congress not later than 6 months after
5 the date of the enactment of this Act, on alternatives to
6 detention of aliens who have no criminal record and are
7 not inadmissible or deportable by reason of having com-
8 mitted a criminal offense in detention facilities used for
9 the incarceration of persons convicted of a criminal of-
10 fense.

11 **SEC. 135. ELIMINATION OF MANDATORY DETENTION IN EX-**
12 **PEDITED REMOVAL PROCEEDINGS.**

13 (a) ASYLUM INTERVIEWS—ELIMINATE MANDATORY
14 DETENTION IN EXPEDITED PROCEEDINGS.—Section
15 235(b)(1)(B)(iii)(IV) (8 U.S.C. 1225(b)(1)(B)(iii)(IV)) is
16 amended to read as follows:

17 “(IV) DETENTION.—Aliens sub-
18 ject to the procedures under this
19 clause shall be detained in accordance
20 with section 236.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect on the date of the enact-
23 ment of this Act.

1 **SEC. 136. RIGHT TO COUNSEL.**

2 Section 292 (8 U.S.C. 1362) is amended to read as
3 follows: "In any bond, custody, detention, or removal pro-
4 ceedings before the Attorney General and in any appeal
5 proceedings before the Attorney General from any such
6 proceedings, the person concerned shall have the privilege
7 of being represented (at no expense to the government)
8 by such counsel, authorized to practice in such pro-
9 ceedings, as he shall choose. With consent of their clients,
10 counsel may enter appearances limited to bond, custody,
11 or other specific proceedings."

12 **Subtitle E—Consular Review of**
13 **Visa Applications**

14 **SEC. 141. ESTABLISHMENT OF A BOARD OF VISA APPEALS.**

15 (a) IN GENERAL.—The Immigration and Nationality
16 Act is amended by inserting after section 224 the following
17 new section:

18 "BOARD OF VISA APPEALS

19 "SEC. 225. (a) ESTABLISHMENT.—The Secretary of
20 State shall establish within the Department of State a
21 Board of Visa Appeals. The Board shall be composed of
22 5 members who shall be appointed by the Secretary. Not
23 more than 2 members of the Board may be consular offi-
24 cers. The Secretary shall designate a member who shall
25 be chairperson of the Board.

1 “(b) AUTHORITY AND FUNCTIONS.—The Board shall
2 have authority to review any discretionary decision of a
3 consular officer with respect to an alien concerning the
4 denial, revocation, or cancellation of an immigrant visa or
5 of a nonimmigrant visa or petition, or the denial of an
6 application for waiver of one or more grounds of inadmis-
7 sibility under section 212. The review of the Board shall
8 be made upon the record for decision of the consular offi-
9 cer, including all documents, notes, and memoranda filed
10 with the consular officer, supplemented by affidavits and
11 other writings if offered by the consular officer or alien.
12 Upon a conclusive showing that the decision of the con-
13 sular official is contrary to the preponderance of the evi-
14 dence, the Board shall have authority to overrule, or re-
15 mand for further consideration, the decision of such con-
16 sular officer.

17 “(c) PROCEDURE.—Proceedings before the Board
18 shall be in accordance with such regulations, not incon-
19 sistent with this Act and sections 556 and 557 of title
20 5, United States Code, as the Secretary of State shall pre-
21 scribe. Such regulations shall include requirements that
22 provide that—

23 “(1) at the time of any decision of a consular
24 officer under subsection (b), an alien, attorney of
25 record, and any interested party defined in sub-

1 section (d) shall be given notice of the availability of
2 the review process and the necessary steps to re-
3 quest such review;

4 “(2) a written record of the proceedings and de-
5 cision of the consular officer (in accordance with sec-
6 tions 556 and 557 of title 5, United States Code)
7 shall be available to the Board, and on payment of
8 lawfully prescribed costs, shall be made available to
9 the alien;

10 “(3) upon receipt of request for review under
11 this section, the Board shall, within 30 days, notify
12 the consular officer with respect to whose decision
13 review is sought, and, upon receipt of such notice,
14 such officer shall promptly (but in no event more
15 than 30 days after such receipt) forward to the
16 Board the record of proceeding as described in sub-
17 section (b);

18 “(4) the appellant shall be given notice, reason-
19 able under all the circumstances of the time and
20 place at which the Board proceedings will be held;

21 “(5) the appellant may be represented (at no
22 expense to the Government) by such counsel, author-
23 ized to practice in such proceedings, as the appellant
24 shall choose; and

1 “(6) a request for review under this section
2 must be made in writing to the Board within 60
3 days after receipt of notice of the denial, revocation,
4 or cancellation.

5 “(d) INTERESTED PARTIES.—The Board shall review
6 each decision described in subsection (b) upon request of
7 the alien or any of the following interested parties:

8 “(1) The petitioner or beneficiary of an immi-
9 grant visa petition approved under section 203(a),
10 203(b)(1), 203(b)(4), 203(b)(5), or 203(c), or the
11 petitioner of an immigrant visa petition approved
12 under section 203(b)(2) or 203(b)(3).

13 “(2) The petitioner of a nonimmigrant visa pe-
14 tition.

15 “(3) The postsecondary educational institution
16 approved for the attendance of nonimmigrant stu-
17 dents under section 101(a)(15)(F)(i) or
18 101(a)(15)(M)(i) which has provided notice of the
19 acceptance of the alien in its program.

20 “(4) A recognized international agency or orga-
21 nization approved as a program sponsor under sec-
22 tion 101(a)(15)(J) which has provided notice of the
23 acceptance of the alien in its program.

24 “(5) A treaty investor or trader individual or
25 organization in the United States that, under section

1 101(a)(15)(E), has made an offer of employment to
2 an alien to perform executive or supervisory manage-
3 ment functions.

4 “(e) LIMITATION.—A review may not be requested
5 under this section more than once in any 24-month period.

6 “(f) CONSTRUCTION.—This section may not be con-
7 strued to restrict any right to further administrative or
8 judicial review established under any other provision of
9 law.

10 “(g) FEES.—The Secretary of State shall charge, and
11 collect, an appropriate fee associated with a request to the
12 Board for a review. Such fee shall be sufficient to cover
13 the cost of the administration of this section.”.

14 (b) EFFECTIVE DATES.—

15 (1) The amendment made by subsection (a)
16 shall take effect 120 days after the date of the en-
17 actment of this Act.

18 (2) Proposed regulations with respect to the
19 amendment made by subsection (a) shall be promul-
20 gated not later than 30 days after the date of the
21 enactment of this Act.

22 (3) Members of the Board of Visa Appeals
23 under section 225 of the Immigration and Nation-
24 ality Act (as inserted by subsection (a)) shall be ap-

1 pointed not later than 120 days after the date of the
2 enactment of this Act.

3 (c) TECHNICAL AMENDMENTS.—

4 (1) Section 222(f) (8 U.S.C. 1202(f)) is
5 amended—

6 (A) by striking “except that” and all that
7 follows up to the period; and

8 (B) by adding at the end: “An interested
9 party under section 225(d) or court shall be
10 permitted to inspect the record of proceeding as
11 described in subsections (c)(2) and (c)(3) of
12 section 225.”.

13 (2) Section 104(a)(1) (8 U.S.C. 1104(a)(1)) is
14 amended by striking the “except” and inserting “in-
15 cluding”.

16 (3) The table of contents is amended by insert-
17 ing after the item relating to section 224 the fol-
18 lowing new item:

“Sec. 225. Board of Visa Appeals.”.

19 **SEC. 142. NONDISCRIMINATION PROVISIONS.**

20 (a) NONDISCRIMINATION IN ISSUANCE OF IMMI-
21 GRANT VISAS.—Section 202(a)(1) (8 U.S.C. 1152(a)(1))
22 is amended—

23 (1) in subparagraph (A), by inserting “sexual
24 orientation, disability,” after “sex,”; and

1 (2) in subparagraph (B), by striking “proc-
2 essed.” and inserting “processed, to the extent that
3 such procedures do not discriminate based on race,
4 sex, sexual orientation, disability, nationality, place
5 of birth, or place of residence in violation of sub-
6 paragraph (A).”.

7 (b) NONDISCRIMINATION IN ISSUANCE OF NON-
8 IMMIGRANT VISAS.—Section 214 (8 U.S.C. 1184) is
9 amended—

10 (1) by redesignating the subsection (l) added by
11 section 625(a) of the Illegal Immigration Reform
12 and Immigrant Responsibility Act of 1996 (Public
13 Law 104–208; 110 Stat. 3009–1820) as subsection
14 (m); and

15 (2) by adding at the end the following:

16 “(n) Except as specifically provided by law, no person
17 shall receive any preference or priority or be discriminated
18 against in the issuance of a nonimmigrant visa because
19 of the person’s race, sex, sexual orientation, disability, na-
20 tionality, place of birth, or place of residence.”.

1 **TITLE II—FAIRNESS AND EQUITY**
2 **IN CASES INVOLVING PRE-**
3 **VIOUS AND MINOR MIS-**
4 **CONDUCT**

5 **Subtitle A—Increased Fairness and**
6 **Equity Concerning Removal**
7 **Proceedings**

8 **SEC. 201. EQUITABLE DEFINITION OF “CRIME INVOLVING**
9 **MORAL TURPITUDE”.**

10 (a) **CONVICTION OF CERTAIN CRIMES.**—Section
11 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)) is amended
12 by striking “of, or who admits having committed, or who
13 admits committing acts which constitute the essential ele-
14 ments of—” and inserting “of—”.

15 (b) **EXCEPTION.**—Section 212(a)(2)(A)(ii)(II) (8
16 U.S.C. 1182(a)(2)(A)(ii)(II)) is amended—

17 (1) by striking “the maximum” and all that fol-
18 lows through “such crime,”; and

19 (2) by striking “6 months” and inserting “1
20 year”.

21 (c) **EFFECTIVE DATE.**—The amendments made by
22 this section shall take effect on the date of the enactment
23 of this Act and shall apply to applications pending on or
24 after such date with respect to which no final administra-
25 tive decision has been rendered.

1 **SEC. 202. EQUITABLE APPLICATION AND DEFINITION OF**
2 **“AGGRAVATED FELONY”.**

3 (a) **ILLICIT TRAFFICKING.**—

4 (1) **IN GENERAL.**—Section 101(a)(43)(B) (8
5 U.S.C. 1101(a)(43))(B)) is amended by striking
6 “Code);” and inserting “Code), except a single of-
7 fense of simple possession of a controlled substance
8 that is an alien’s first controlled substance offense;”.

9 (2) **EFFECTIVE DATE.**—The amendment made
10 by paragraph (1) shall apply to offenses committed
11 on or after the date of the enactment of this Act.

12 (b) **CRIMES OF VIOLENCE AND THEFT OFFENSES.**—

13 (1) **IN GENERAL.**—Sections 101(a)(43)(F) and
14 (G) (8 U.S.C. 1101(c)(43)(F) and (G)) are each
15 amended by striking “imprisonment” and all that
16 follows through the semicolon and inserting “impris-
17 onment is at least 5 years;”.

18 (2) **EFFECTIVE DATE.**—The amendments made
19 by paragraph (1) shall apply to offenses committed
20 on or after the date of the enactment of this Act.

21 (c) **ALIEN SMUGGLING.**—

22 (1) **IN GENERAL.**—Section 101(a)(43)(N) (8
23 U.S.C. 101(a)(43)(N)) is amended—

24 (A) by inserting “committed for the pur-
25 pose of commercial advantage,” after “smug-
26 gling),”; and

1 (B) by adding at the end a semicolon.

2 (2) EFFECTIVE DATE.—The amendments made
3 by paragraph (1) shall apply to offenses committed
4 on or after the date of the enactment of this Act.

5 (d) DISCRETIONARY WAIVER IN CASES OF OTHER
6 MINOR FELONIES.—

7 (1) IN GENERAL.—Section 101 (8 U.S.C. 1101)
8 is amended by adding at the end the following:

9 “(i) For purposes of this Act, and notwithstanding
10 subsection (a)(43), the Attorney General may treat any
11 conviction that did not result in incarceration for more
12 than 1 year as if such conviction were not a conviction
13 for an aggravated felony.”.

14 (2) EFFECTIVE DATE.—The amendment made
15 by paragraph (1) shall apply to convictions entered
16 on or after the date of the enactment of this Act.

17 (e) CONFORMING CHANGE CONCERNING REMOVAL
18 OF NONPERMANENT RESIDENTS.—

19 (1) IN GENERAL.—Section 238(b) (8 U.S.C.
20 1228(b)) is amended by striking paragraph (5).

21 (2) EFFECTIVE DATE.—The amendment made
22 by paragraph (1) shall take effect on the date of the
23 enactment of this Act.

1 **SEC. 203. EQUITABLE DEFINITIONS OF “CONVICTION” AND**
2 **“TERM OF IMPRISONMENT”.**

3 (a) IN GENERAL.—Section 101(a)(48) (8 U.S.C.
4 1101(a)(48)) is amended—

5 (1) in subparagraph (A), by striking “court”
6 and all that follows through the period at the end
7 and inserting “court. An adjudication or judgment
8 of guilt that has been expunged, deferred, annulled,
9 invalidated, withheld, or vacated, an order of proba-
10 tion without entry of judgment, or any similar dis-
11 position shall not be considered a conviction for pur-
12 poses of this Act.”; and

13 (2) in subparagraph (B)—

14 (A) by inserting “only” after “deemed to
15 include”; and

16 (B) by striking “court of law” and all that
17 follows through the period at the end and in-
18 serting “court of law. Any such reference shall
19 not be deemed to include any suspension of the
20 imposition or execution of that imprisonment or
21 sentence in whole or in part.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall take effect on the date of the enact-
24 ment of this Act and shall apply to convictions and sen-
25 tences entered on or after such date.

1 **SEC. 204. EQUITABLE DEFINITION OF “CRIMES OF MORAL**
2 **TURPITUDE”.**

3 (a) IN GENERAL.—Section 237(a)(2)(A)(i)(II) (8
4 U.S.C. 1227(a)(2)(A)(i)(II)) is amended to read as fol-
5 lows:

6 “(II) for which the alien has been
7 incarcerated for a period exceeding
8 one year,”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall apply to convictions entered on or
11 after the date of the enactment of this Act.

12 **SEC. 205. RESTORATION OF FAIRNESS IN EQUITABLE RE-**
13 **LIEF FOR LONG-TIME LEGAL PERMANENT**
14 **RESIDENTS.**

15 (a) CANCELLATION OF REMOVAL.—Section
16 240A(a)(3) (8 U.S.C. 1229b(a)(3)) is amended to read as
17 follows:

18 “(3) has not been convicted of an aggravated
19 felony for which the sentence imposed is five years
20 or more.”.

21 (b) REPEAL OF RULE FOR TERMINATION OF CON-
22 TINUOUS PERIOD.—

23 (1) Section 240A(d)(1) (8 U.S.C. 1229b(d)(1))
24 (8 U.S.C. 1229b(a)) is repealed.

25 (2) Section 240A(d) (8 U.S.C. 1229b) is
26 amended—

1 (A) by redesignating paragraphs (2) and
2 (3) as paragraphs (1) and (2), respectively; and
3 (B) by inserting before the period at the
4 end of paragraph (1) (as redesignated) the fol-
5 lowing: “, unless the alien’s departure from the
6 United States was due to a temporary trip
7 abroad required by emergency or extenuating
8 circumstances outside the control of the alien”.

9 **SEC. 206. RESTORATION OF FAIRNESS IN EQUITABLE RE-**
10 **LIEF FOR OTHER NONCITIZENS.**

11 (a) CANCELLATION OF REMOVAL AND ADJUSTMENT
12 FOR CERTAIN NONPERMANENT RESIDENTS.—

13 (1) IN GENERAL.—Section 240A(b)(1) (8
14 U.S.C. 1229b(b)(1)) is amended to read as follows:

15 “(1) IN GENERAL.—The Attorney General may
16 cancel removal in the case of an alien who is inad-
17 missible or deportable from the United States if the
18 alien—

19 “(A) has been physically present in the
20 United States for a continuous period of—

21 “(i) 7 years immediately preceding the
22 date of application in the case of an
23 alien—

1 “(I) who is deportable on any
2 ground other than a ground specified
3 in clause (ii)(I); and

4 “(II) whose deportation would, in
5 the opinion of the Attorney General,
6 result in extreme hardship to the alien
7 or the alien’s spouse, parent, son, or
8 daughter, who is a citizen of the
9 United States or an alien lawfully ad-
10 mitted for permanent residence; or

11 “(ii) 10 years immediately preceding
12 the date of application in the case of an
13 alien—

14 “(I) who is deportable for convic-
15 tion of an offense under section
16 212(a)(2), 237(a)(2), or 237(a)(3);
17 and

18 “(II) whose deportation would, in
19 the opinion of the Attorney General,
20 result in exceptional and extremely
21 unusual hardship to the alien or the
22 alien’s spouse, parent, son, or daugh-
23 ter, who is a citizen of the United
24 States or an alien lawfully admitted
25 for permanent residence”; and

1 “(B) has been a person of good moral
2 character during such period.”.

3 (2) EFFECTIVE DATE.—The amendment made
4 by paragraph (1) shall take effect on the date of the
5 enactment of this Act and shall apply to aliens in re-
6 moval proceedings on or after such date.

7 (b) ELIMINATION OF ANNUAL LIMITATION.—Section
8 240A (8 U.S.C. 1229b) is amended by striking subsection
9 (e).

10 **SEC. 207. ELIMINATING UNFAIR RETROACTIVE CHANGES IN**
11 **REMOVAL RULES FOR PERSONS SUBJECT TO**
12 **PENDING PROCEEDINGS.**

13 (a) APPLICATION OF AGGRAVATED FELONY DEFINI-
14 TION.—The last sentence of section 101(a)(43) (8 U.S.C.
15 1101(a)(43)) is amended to read as follows: “The term
16 shall not apply to any offense that was not covered by
17 the term on the date on which the offense occurred.”.

18 (b) GROUNDS OF DEPORTABILITY.—Section 237 (8
19 U.S.C. 1227) is amended by adding at the end the fol-
20 lowing new subsection:

21 “(d) Notwithstanding any other provision of this sec-
22 tion, an alien is not deportable by reason of committing
23 any offense that was not a ground of deportability on the
24 date the offense occurred.”.

1 (c) GROUNDS OF INADMISSIBILITY.—Section 212 (8
2 U.S.C. 1182) is amended by adding at the end the fol-
3 lowing new subsection:

4 “(p) Notwithstanding any other provision of this sec-
5 tion, an alien is not inadmissible by reason of committing
6 any offense that was not a ground of inadmissibility on
7 the date the offense occurred.”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect on the date of the enactment
10 of this Act and shall apply to aliens in removal proceedings
11 on or after such date.

12 **SEC. 208. ELIMINATING UNFAIR RETROACTIVE CHANGES IN**
13 **REMOVAL RULES FOR PERSONS PREVIOUSLY**
14 **REMOVED.**

15 (a) IN GENERAL.—Notwithstanding section
16 240(c)(6) of the Immigration and Nationality Act (8
17 U.S.C. 1229a(c)(6)) or any other limitation imposed by
18 law on motions to reopen proceedings under such Act, the
19 Attorney General shall establish a process under which an
20 alien described in this subsection may be admitted as an
21 alien lawfully admitted for permanent residence if the
22 alien applies for such admission outside the United States
23 and establishes the following:

1 (1) FORMER LPR.—The alien previously had
2 the status of an alien lawfully admitted for perma-
3 nent residence.

4 (2) STATUS TERMINATED.—During the period
5 between April 24, 1996, and the date of the enact-
6 ment of this Act, the alien was in exclusion, deporta-
7 tion, or removal proceedings under the Immigration
8 and Nationality Act and the alien's status as an
9 alien lawfully admitted for permanent residence was
10 terminated by reason of an order issued in such pro-
11 ceedings.

12 (3) CRIMINAL OFFENSE.—The alien was ex-
13 cluded, deported, or removed from the United States
14 by reason of having committed a criminal offense
15 that was not a basis for removal, exclusion, or de-
16 portation on the date on which the offense was com-
17 mitted.

18 (4) RETROACTIVITY.—The Antiterrorism and
19 Effective Death penalty Act of 1996 (Public Law
20 104–132; 110 Stat. 1214) or the Illegal Immigration
21 Reform and Immigrant Responsibility Act of 1996
22 (Public Law 104–208; 110 Stat. 3546) retroactively
23 rendered such criminal offense a basis for removal,
24 exclusion, or deportation notwithstanding that it was

1 not such a basis on the date on which the offense
2 was committed.

3 (5) NO OTHER BASIS FOR STATUS TERMI-
4 NATION.—The alien was not found to be inadmis-
5 sible or deportable on any basis other than the com-
6 mission of such criminal offense.

7 (6) DISCRETIONARY ADMISSION WARRANTED.—
8 The alien's admission as an alien lawfully admitted
9 for permanent residence is warranted as a matter of
10 discretion.

11 (b) WAIVER OF NUMERICAL LIMITATIONS AND CER-
12 TAIN GROUNDS FOR EXCLUSION.—

13 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—
14 The numerical limitations of sections 201 and 202
15 of the Immigration and Nationality Act shall not
16 apply to admissions under this section.

17 (2) GROUNDS OF EXCLUSION NOT APPLICA-
18 BLE.—Notwithstanding sections 212(a) and 237(a)
19 of the Immigration and Nationality Act, an alien
20 otherwise entitled to admission as an alien lawfully
21 admitted for permanent residence under this section
22 shall not be considered inadmissible or deportable by
23 reason of the criminal offense described in sub-
24 section (a)(3).

1 (c) PAROLE.—The Attorney General may exercise the
2 parole authority under section 212(d)(5)(A) of the Immi-
3 gration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for
4 the purpose of permitting aliens described in subsection
5 (a) to participate in the process established under sub-
6 section (a) when such action is requested by an immigra-
7 tion judge, the Board of Immigration Appeals, or a Fed-
8 eral judge for purposes of conducting a proceeding. Any
9 such parolee shall remain in the custody of the Attorney
10 General or subject to supervision under regulations pro-
11 mulgated by the Attorney General.

12 (d) AVAILABILITY OF ADMINISTRATIVE AND JUDI-
13 CIAL REVIEW.—Any determination by the Attorney Gen-
14 eral under this section shall be subject to de novo review
15 by an immigration judge and administrative appeal. A
16 final administrative decision regarding the granting or de-
17 nial of relief under this section shall be subject to judicial
18 review, and the procedures in chapter 158 of title 28,
19 United States Code, shall apply to such review.

1 **Subtitle B—Increased Fairness and**
2 **Equity Concerning 5-Year Bars**
3 **to Admission and Other**
4 **Grounds for Exclusion**

5 **SEC. 211. LIMITING 5-YEAR BAR TO ADMISSION TO PER-**
6 **SONS WHO WILLFULLY FAIL TO ATTEND RE-**
7 **MOVAL PROCEEDINGS.**

8 (a) IN GENERAL.—Section 212(a)(6)(B) (8 U.S.C.
9 1182(a)(6)(B)) is amended to read as follows:

10 “(B) FAILURE TO ATTEND REMOVAL PRO-
11 CEEDINGS.—

12 “(i) IN GENERAL.—Any alien who
13 willfully and without reasonable cause fails
14 or refuses to attend or remain in attend-
15 ance at a proceeding to determine the
16 alien’s inadmissibility or deportability and
17 who seeks admission to the United States
18 within 5 years of such alien’s subsequent
19 departure or removal is inadmissible.

20 “(ii) WAIVER AUTHORIZED.—For pro-
21 vision authorizing waiver of clause (i), see
22 subsection (d)(13).”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall take effect on the date of the enact-
25 ment of this Act and shall apply to applications pending

1 on or after such date with respect to which no final admin-
2 istrative decision has been rendered.

3 **SEC. 212. LIMITING 5-YEAR BAR TO ADMISSION TO PER-**
4 **SONS WHO WILLFULLY VIOLATE STUDENT**
5 **VISA CONDITIONS.**

6 (a) IN GENERAL.—Section 212(a)(6)(G) (8 U.S.C.
7 1182(a)(6)(G)) is amended to read as follows:

8 “(G) STUDENT VISA ABUSERS.—

9 “(i) IN GENERAL.—An alien who ob-
10 tains the status of a nonimmigrant under
11 section 101(a)(15)(F)(i) and who willfully
12 violates a term or condition of such status
13 under section 214(m) is inadmissible until
14 the alien has been outside the United
15 States for a continuous period of 5 years
16 after the date of the violation.

17 “(ii) WAIVER AUTHORIZED.—For pro-
18 vision authorizing waiver of clause (i), see
19 subsection (d)(13).”.

20 (b) TECHNICAL AMENDMENT.—Section
21 101(a)(15)(F)(i) (8 U.S.C. 1101(a)(15)(F)(i)) is amended
22 by striking “214(l)” and inserting “214(m)”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the date of the enactment
25 of this Act and shall apply to applications pending on or

1 after such date with respect to which no final administra-
2 tive decision has been rendered.

3 **SEC. 213. LIMITING BAN ON ADMISSIBILITY TO PERSONS**
4 **WHO WILLFULLY MAKE FALSE CLAIMS FOR**
5 **CITIZENSHIP.**

6 (a) CLASSES OF DEPORTABLE ALIENS.—Section
7 237(a)(3)(D) (8 U.S.C. 1227(a)(3)(D)) is amended by
8 striking “deportable.” and inserting “deportable, unless
9 the alien can establish by a preponderance of the evidence
10 that the violation was not willful.”.

11 (b) CLASSES OF INADMISSIBLE ALIENS.—Section
12 212(a)(6)(C)(ii) of the Immigration and Nationality Act
13 (8 U.S.C. 1182(a)(6)(C)(ii)) is amended by striking “in-
14 admissible.” and inserting “inadmissible, unless the alien
15 can establish by a preponderance of the evidence that the
16 violation was not willful.”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect on the date of the enactment
19 of this Act.

20 **SEC. 214. EQUITABLE WAIVER OF INADMISSIBILITY FOR**
21 **MINOR CRIMINAL OFFENSES.**

22 (a) IN GENERAL.—Section 212(h) (8 U.S.C.
23 1182(h)) is amended—

24 (1) in the matter preceding paragraph (1), by
25 striking “offense of simple possession of 30 grams or

1 less of marijuana” and inserting “controlled sub-
2 stance offense for which the alien was not incarcer-
3 ated for a period exceeding 1 year”; and

4 (2) by striking the final two sentences.

5 (b) EFFECTIVE DATE.—The amendments made by
6 subsection (a) shall take effect on the date of the enact-
7 ment of this Act and shall apply to applications pending
8 on or after such date with respect to which no final admin-
9 istrative decision has been rendered.

10 **TITLE III—ENCOURAGING**
11 **FAMILY REUNIFICATION**
12 **Subtitle A—Reuniting Family**
13 **Members**

14 **SEC. 301. VISA FOR SPOUSES AND CHILDREN OF PERMA-**
15 **NENT RESIDENTS TEMPORARILY WAITING**
16 **FOR VISA NUMBERS.**

17 (a) IN GENERAL.—Section 101(a)(15) (8 U.S.C.
18 101(a)(15)) is amended—

19 (1) in subparagraph (R), by striking “or” at
20 the end;

21 (2) in subparagraph (S), by striking the period
22 at the end and inserting “; or”; and

23 (3) by inserting after subparagraph (S) the fol-
24 lowing:

1 “(T) an alien (other than one coming for the
2 purpose of study or of performing skilled or un-
3 skilled labor or as a representative of foreign press,
4 radio, film, or other foreign information media com-
5 ing to engage in such vocation) who is the bene-
6 ficiary of a petition approved under—

7 “(i) section 204 (excluding the provisions
8 of such section referred to in clause (ii)) for
9 classification by reason of a relationship de-
10 scribed in section 203(a)(2)(A) with an alien
11 lawfully admitted for permanent residence, who
12 is awaiting the availability of an immigrant visa
13 based upon such approval, and who seeks to
14 enter the United States to achieve family unity
15 by joining the permanent resident alien in the
16 United States; or

17 “(ii) clause (iii), (iv), (v), or (vi) of section
18 204(a)(1)(A) or clause (ii), (iii), or (iv) of sec-
19 tion 204(a)(1)(B) and who is awaiting the
20 availability of an immigrant visa based upon
21 such approval.”.

22 (b) PERIOD OF AUTHORIZED STATUS.—Section
23 214(a)(2) (8 U.S.C. 1184(a)(2)) is amended by adding at
24 the end the following:

1 “(C) The period of authorized status as a non-
2 immigrant described in section 101(a)(15)(T) shall be for
3 one year. Such period may be extended for additional one-
4 year periods by the Attorney General.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect on the date of the enactment
7 of this Act and shall apply to an alien who is the bene-
8 ficiary of a classification petition filed under section 204
9 before, on, or after such date.

10 **SEC. 302. REFUGEE STATUS FOR UNMARRIED SONS AND**
11 **DAUGHTERS OF REFUGEES.**

12 (a) IN GENERAL.—Section 207(c)(2) (8 U.S.C.
13 1157(c)(2)) is amended by adding at the end the fol-
14 lowing:

15 “When warranted by unusual circumstances, the At-
16 torney General may, in the Attorney General’s dis-
17 cretion, consider an unmarried son or daughter of a
18 refugee to be a child of the refugee for purposes of
19 this paragraph.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall take effect on the date of the enact-
22 ment of this Act and shall apply to applications for admis-
23 sion as a refugee pending on or after such date.

1 **SEC. 303. ASYLEE STATUS FOR UNMARRIED SONS AND**
2 **DAUGHTERS OF ASYLEES.**

3 (a) IN GENERAL.—Section 208(b)(3) (8 U.S.C.
4 1158(b)(3)) is amended by adding at the end the fol-
5 lowing:

6 “When warranted by unusual circumstances, the At-
7 torney General may, in the Attorney General’s dis-
8 cretion, consider an unmarried son or daughter of
9 an alien who is granted asylum under this sub-
10 section to be a child of the alien for purposes of this
11 paragraph.”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall take effect on the date of the enact-
14 ment of this Act and shall apply to asylum applications
15 pending on or after such date.

16 **SEC. 304. PROTECTION AGAINST PROCESSING DELAYS.**

17 (a) IN GENERAL.—

18 (1) AMENDMENT.—Title I of the Immigration
19 and Nationality Act (8 U.S.C. 1101 et seq.) is
20 amended by adding at the end the following:

21 “PROTECTION AGAINST PROCESSING DELAYS

22 “SEC. 106. (a) IN GENERAL.—

23 “(1) TREATMENT OF INITIAL APPLICATIONS.—

24 Notwithstanding any other provision of this Act,
25 after the expiration of the 90-day period beginning
26 on the date of the filing of an application initially to

1 grant a benefit under this Act (other than an appli-
2 cation for naturalization under section 334), unless
3 the application has been approved or denied on pro-
4 cedural or substantive grounds during such period,
5 the application shall be treated for purposes of this
6 Act as if it had been approved.

7 “(2) TREATMENT OF EXTENSION APPLICA-
8 TIONS.—Notwithstanding any other provision of this
9 Act, beginning on the date of the filing of an appli-
10 cation to extend the period during which a tem-
11 porary benefit granted under this Act remains valid,
12 the application shall be treated for purposes of this
13 Act as if it had been approved, if it is filed before
14 such period of validity has expired.

15 “(b) SUBSEQUENT DENIAL.—Except as provided in
16 subsection (c), an application deemed approved under sub-
17 section (a) may subsequently be denied on any procedural
18 or substantive ground notwithstanding such subsection,
19 and such a denial shall supersede and terminate any effect
20 of the deemed approval beginning on the effective date of
21 the denial.

22 “(c) SPECIAL RULES FOR CHILDREN’S BENEFITS.—

23 “(1) IN GENERAL.—In the case of an alien
24 granted a benefit under subsection (a) that other-
25 wise would be granted only after a determination

1 that the alien is a child (such as classification as an
2 immediate relative under section 201(b)(2)(A)(i))—

3 “(A) any subsequent determination with
4 respect to the application under this Act shall
5 be made using the alien’s age on the application
6 filing date; and

7 “(B) the alien shall be considered to be a
8 child under this Act for all purposes related to
9 such application, and may maintain any immi-
10 gration status obtained by reason of such con-
11 sideration, until the earlier of—

12 “(i) the date on which such applica-
13 tion is denied on any substantive or proce-
14 dural ground; or

15 “(ii) the termination of the 1-year pe-
16 riod beginning on the date on which the
17 application is approved on its merits.

18 “(2) BENEFITS FOR SONS AND DAUGHTERS OF
19 NATURALIZED PARENTS.—In the case of an alien
20 son or daughter of a parent who is a naturalized cit-
21 izen, if the alien is applying for a benefit under this
22 Act that otherwise would be granted only after a de-
23 termination that the alien is a child—

24 “(A) the alien shall not be prejudiced with
25 respect to such determination by the failure of

1 the Attorney General to approve the parent's
2 application for naturalization during the 90-day
3 period beginning on date of the filing of the ap-
4 plication; and

5 “(B) the alien son or daughter shall be
6 considered to be a child for purposes of the ben-
7 efit application if the alien was a child on the
8 last day of such 90-day period.”.

9 (2) CLERICAL AMENDMENT.—The table of contents
10 of such Act is amended by inserting after the item relating
11 to section 105 the following:

“Sec. 106. Protection against processing delays.”.

12 (b) PREVENTING IMMIGRANTS FROM WAITING
13 LONGER FOR IMMIGRANT VISAS AS A RESULT OF RE-
14 CLASSIFICATION FROM FAMILY SECOND PREFERENCE TO
15 FAMILY FIRST PREFERENCE.—Section 203 of the Immi-
16 gration and Nationality Act (8 U.S.C. 1153) is amended
17 by adding at the end the following new subsection:

18 “(h) ENSURING IMMIGRANTS DO NOT HAVE TO
19 WAIT LONGER FOR AN IMMIGRANT VISA AS A RESULT
20 OF RECLASSIFICATION FROM FAMILY SECOND PREF-
21 ERENCE TO FAMILY FIRST PREFERENCE.—Notwith-
22 standing any other provision of law, in the case of a peti-
23 tion that has been approved to accord preference status
24 under subsection (a)(2)(A), the petition may be deemed
25 to provide continued entitlement to status under that sub-

1 section in the case of any alien petitioner who is subse-
2 quently naturalized as a United States citizen, if a visa
3 is not immediately available to the beneficiary under sub-
4 section (a)(1).”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall take effect 90 days after the date of the
7 enactment of this Act and shall apply to applications pend-
8 ing on or after such effective date.

9 **Subtitle B—Limited Waiver of**
10 **Grounds of Admissibility**

11 **SEC. 311. DISCRETIONARY WAIVER IN CASES INVOLVING**
12 **FAMILY MEMBERS.**

13 (a) IN GENERAL.—Section 212(i) (8 U.S.C. 1182(i))
14 is amended to read as follows:

15 “(i) The Attorney General may, in the discretion of
16 the Attorney General, waive the application of subpara-
17 graph (A)(i), or clause (i) or (ii) of subparagraph (C), of
18 subsection (a)(6) in the case of an immigrant who is the
19 parent, spouse, son, or daughter of a United States citizen
20 or of an alien lawfully admitted for permanent residence
21 if it is established to the satisfaction of the Attorney Gen-
22 eral that the refusal of admission to the United States
23 of such immigrant alien would result in hardship to the
24 alien or to the citizen or lawfully resident parent, spouse,
25 son, or daughter of such an alien.”.

1 (b) CONFORMING AMENDMENTS.—Section 212(a)(6)
2 (8 U.S.C. 1182(a)(6)) is amended—

3 (1) in subparagraph (A), by adding at the end
4 the following:

5 “(iii) WAIVER AUTHORIZED.—For
6 provision authorizing waiver of this sub-
7 paragraph, see subsection (i).”; and

8 (2) in subparagraph (C)(iii), by striking “clause
9 (i),” and inserting “this subparagraph”.

10 **SEC. 312. DISCRETIONARY WAIVER IN DOCUMENT CASES**
11 **INVOLVING FAMILY MEMBERS.**

12 (a) INADMISSIBLE ALIENS.—

13 (1) IN GENERAL.—Section 212(d)(12) (8
14 U.S.C. 1182(d)(12)) is amended by striking “spouse
15 or child” and inserting “spouse, child, or parent”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by paragraph (1) shall take effect on the date of the
18 enactment of this Act and shall apply to applications
19 pending on or after such date with respect to which
20 no final administrative decision has been rendered.

21 (b) DEPORTABLE ALIENS.—

22 (1) IN GENERAL.—Section 237(a)(3)(C)(ii) (8
23 U.S.C. 1227(a)(3)(C)(ii)) is amended by striking
24 “spouse or child” and inserting “spouse, child, or
25 parent”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect on the date of the
3 enactment of this Act and shall apply to proceedings
4 pending on or after such date with respect to which
5 no final administrative decision has been rendered.

6 **SEC. 313. DISCRETIONARY WAIVER TO ADMIT PERSONS IN**
7 **EXCEPTIONAL CIRCUMSTANCES.**

8 (a) NEW GENERAL WAIVER.—Section 212(d) (8
9 U.S.C. 1182(d)) is amended by adding at the end the fol-
10 lowing:

11 “(13) The Attorney General may, in the discretion
12 of the Attorney General for humanitarian purposes, to as-
13 sure family unity, or when it is otherwise in the public
14 interest, waive the application of subparagraph (B)(i) or
15 (G)(i) of subsection (a)(6), clause (i) or (ii) of subsection
16 (a)(9)(A), or subsection (a)(9)(B)(i), in exceptional cir-
17 cumstances. For purposes of the preceding sentence, an
18 instance of battering or extreme cruelty is deemed to con-
19 stitute exceptional circumstances in the case where it is
20 inflicted on an alien (or a child of an alien) by the alien’s
21 United States citizen or lawful permanent resident spouse,
22 parent, child, son, or daughter.”.

23 (b) WAIVER FOR ALIENS PREVIOUSLY REMOVED.—

1 (1) CERTAIN ALIENS PREVIOUSLY REMOVED.—
2 Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is
3 amended by adding at the end the following:

4 “(iv) WAIVER AUTHORIZED.—For
5 provision authorizing waiver of clause (i)
6 or (ii), see subsection (d)(13).”.

7 (2) ALIENS UNLAWFULLY PRESENT.—Section
8 212(a)(9)(B)(v) (8 U.S.C. 1182(a)(9)(B)(v)) is
9 amended to read as follows:

10 “(v) WAIVER AUTHORIZED.—For pro-
11 vision authorizing waiver of clause (i), see
12 subsection (d)(13).”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect on the date of the enactment
15 of this Act and shall apply to applications pending on or
16 after such date with respect to which no final administra-
17 tive decision has been rendered.

18 **Subtitle C—Eliminating Unfairness**
19 **and Waste in Section 245(i)**
20 **Waivers**

21 **SEC. 321. PERMANENT APPLICATION OF SECTION 245(i).**

22 (a) IN GENERAL.—Section 245(i)(1) (8 U.S.C.
23 1255(i)(1)) is amended by striking “(i)(1)” and all that
24 follows through “The Attorney General” and inserting the
25 following:

1 “(i)(1) Notwithstanding the provisions of subsections
2 (a) and (c) of this section, an alien physically present in
3 the United States who—

4 “(A) entered the United States without inspec-
5 tion; or

6 “(B) is within one of the classes enumerated in
7 subsection (c) of this section;
8 may apply to the Attorney General for the adjustment of
9 his or her status to that of an alien lawfully admitted for
10 permanent residence. The Attorney General”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall take effect on the date of the enact-
13 ment of this Act and shall apply to applications for adjust-
14 ment of status pending on or after such date.

15 **SEC. 322. ELIMINATING UNFAIRNESS CREATED BY TEM-**
16 **PORARY SUNSET OF SECTION 245(i).**

17 The Attorney General may waive section
18 212(a)(9)(B) of the Immigration and Nationality Act in
19 the case of an alien who—

20 (1) was ineligible for adjustment of status
21 under section 245(i) of the Immigration and Nation-
22 ality Act, as in effect on the day before the date of
23 the enactment of this Act;

24 (2) departed from the United States because of
25 such ineligibility after the date of the enactment of

1 the Departments of Commerce, Justice, and State,
2 the Judiciary, and Related Agencies Appropriations
3 Act, 1998, and before the date of the enactment of
4 this Act; and

5 (3) would be eligible for adjustment of status
6 under section 245(i) by reason of the amendment
7 made by section 321 but for such departure.

8 **Subtitle D—Equitable Procedures**
9 **Concerning Voluntary Departure**

10 **SEC. 331. DISCRETIONARY DETERMINATION OF PERIOD OF**
11 **VOLUNTARY DEPARTURE.**

12 (a) IN GENERAL.—Section 240B (8 U.S.C. 1229c)
13 is amended in subsections (a)(2) and (b)(2) by striking
14 “not be valid” and all that follows through the period and
15 inserting “be valid for a period determined by the Attor-
16 ney General to be suitable to an alien’s circumstances and
17 that permits the alien to depart without government ex-
18 pense or intervention.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall take effect on the date of the enact-
21 ment of this Act.

1 **SEC. 332. DISCRETIONARY DETERMINATION OF VOL-**
2 **UNTARY DEPARTURE BOND BASED ON IND-**
3 **IVIDUAL CIRCUMSTANCES.**

4 (a) IN GENERAL.—Section 240B(b)(3) (8 U.S.C.
5 1229c(b)(3)) is amended by striking “shall” and inserting
6 “may”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall take effect on the date of the enact-
9 ment of this Act.

10 **SEC. 333. ELIMINATION OF AUTOMATIC PENALTIES FOR**
11 **FAILING TO DEPART IN ACCORDANCE WITH A**
12 **VOLUNTARY DEPARTURE GRANT.**

13 (a) IN GENERAL.—Section 240B (8 U.S.C. 1229c)
14 is amended by striking subsection (d).

15 (b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall take effect on the date of the enact-
17 ment of this Act.

18 **Subtitle E—Fairness in**
19 **Determination of Public Charge**

20 **SEC. 341. EQUITABLE PROCEDURES CONCERNING PUBLIC**
21 **CHARGE AND AFFIDAVIT OF SUPPORT.**

22 (a) GROUNDS FOR INELIGIBILITY FOR ADMISSION.—
23 Section 212(a)(4) (8 U.S.C. 1182(a)(4)) is amended—
24 (1) by amending subparagraph (B)(ii) to read
25 as follows:

1 “(ii) If an alien submits an affidavit of
2 support described in section 213A, in addition
3 to the factors under clause (i), the consular of-
4 ficer or the Attorney General shall also consider
5 such affidavit in determining whether the alien
6 is inadmissible under this paragraph.”; and
7 (2) by striking subparagraphs (C) and (D).

8 (b) REQUIREMENTS FOR SPONSOR’S AFFIDAVIT OF
9 SUPPORT.—Section 213A (8 U.S.C. 1183a) is amended
10 in subsections (a)(1)(A), (f)(1)(E), and (f)(4)(B)(i), by
11 striking “125” and inserting “100”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the date of the enactment
14 of this Act and shall apply to applications pending on or
15 after such date with respect to which no final administra-
16 tive decision has been rendered.

17 **TITLE IV—FAIRNESS IN ASYLUM**
18 **AND REFUGEE PROCEEDINGS**
19 **Subtitle A—Increased Fairness in**
20 **Asylum Proceedings**

21 **SEC. 401. ELIMINATION OF ARBITRARY TIME LIMITS ON**
22 **ASYLUM APPLICATIONS.**

23 (a) IN GENERAL.—Section 208(a)(2) (8 U.S.C.
24 1158(a)(2)) is amended—

25 (1) by striking subparagraph (B);

1 (2) in subparagraph (C), by striking “(D)” and
2 inserting “(C)”;

3 (3) in subparagraph (D), by striking “subpara-
4 graphs (B) and (C),” and inserting “subparagraph
5 (B),”; and

6 (4) by redesignating subparagraphs (C) and
7 (D) as subparagraphs (B) and (C), respectively.

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsection (a) shall take effect on the date of the enact-
10 ment of this Act and shall apply to asylum applications
11 pending on or after such date.

12 **SEC. 402. GENDER-BASED PERSECUTION.**

13 (a) TREATMENT AS REFUGEE.—Section 101(a)(42)
14 (8 U.S.C. 1101(a)(42)) is amended by adding at the end
15 the following:

16 “For purposes of determinations under this Act, a person
17 who establishes that he or she suffered persecution in the
18 past, or has a well-founded fear of persecution, on account
19 of gender shall be considered to have suffered persecution,
20 or to have a well-founded fear of persecution, on account
21 of membership in a particular social group.”.

22 (b) RESTRICTION ON REMOVAL TO COUNTRY WHERE
23 ALIEN WOULD BE THREATENED.—Section 241(b)(3) (8
24 U.S.C. 1231(b)(3)) is amended by adding at the end the
25 following:

1 “(C) GENDER-BASED PERSECUTION.—For
2 purposes of determinations under this para-
3 graph, an alien who establishes that the alien’s
4 life or freedom would be threatened in a coun-
5 try on account of gender shall be considered to
6 have established that the alien’s life or freedom
7 would be threatened in that country on account
8 of membership in a particular social group.”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 subsections (a) and (b) shall take effect on the date of
11 the enactment of this Act and shall apply to applications
12 for asylum or admission as a refugee, and determinations
13 under section 241(b)(3) of the Immigration and Nation-
14 ality Act, pending on or after such date.

15 **SEC. 403. PRESUMPTION OF ASYLUM IN CASES OF PAST**
16 **PERSECUTION.**

17 (a) IN GENERAL.—Section 101(a)(42) (8 U.S.C.
18 1101(a)(42)) is amended by adding at the end the fol-
19 lowing:

20 “For purposes of determinations under this Act, a person
21 shall be presumed to have a well-founded fear of future
22 persecution with respect to the person’s country of nation-
23 ality or last habitual residence if he or she has established
24 that he or she was persecuted in the past in such country,
25 unless a preponderance of the evidence establishes that

1 since the time the persecution occurred conditions in such
2 country have changed to such an extent that the person
3 no longer has a well-founded fear of being persecuted if
4 he or she were to return. In a case where the presumption
5 is rebutted, the person nonetheless may be considered a
6 refugee if the person demonstrates compelling reason for
7 being unwilling to return to the person's country of na-
8 tionality or last habitual residence arising out of the sever-
9 ity of the past persecution.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall take effect on the date of the enact-
12 ment of this Act and shall apply to applications for asylum
13 or admission as a refugee pending on or after such date.

14 **SEC. 404. REBUTTABLE PRESUMPTION OF ASYLUM WHERE**
15 **PERSECUTION OCCURS WITH RESPECT TO A**
16 **PARTICULAR LOCATION IN A COUNTRY.**

17 (a) IN GENERAL.—Section 101(a)(42) (8 U.S.C.
18 1101(a)(42)) is amended by adding at the end the fol-
19 lowing:

20 “For purposes of determinations under this Act, a person
21 who establishes that he or she suffered persecution in the
22 past, or has a well-founded fear of persecution, with re-
23 spect to any location in the person's country of nationality
24 or last habitual residence shall be presumed to have a well-
25 founded fear of future persecution with respect to all loca-

1 tions in such country, unless a preponderance of the evi-
2 dence establishes that the threat of future persecution is
3 not country-wide. In a case where the presumption is re-
4 butted, the person nonetheless may be considered a ref-
5 ugee if the person demonstrates that it would be unreason-
6 able to require the person to resettle in any location in
7 such country.”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall take effect on the date of the enact-
10 ment of this Act and shall apply to applications for asylum
11 or admission as a refugee pending on or after such date.

12 **SEC. 405. ELIMINATION OF DENIAL OF IMMIGRATION BENE-**
13 **FITS FOR ERRONEOUS ASYLUM APPLICA-**
14 **TION.**

15 (a) IN GENERAL.—Section 208(d) (8 U.S.C.
16 1158(d)) is amended—

17 (1) by striking paragraph (6); and

18 (2) by redesignating paragraph (7) as para-
19 graph (6).

20 (b) EFFECTIVE DATE.—The amendments made by
21 subsection (a) shall take effect on the date of the enact-
22 ment of this Act and shall apply to asylum applications
23 made before, on, or after such date.

1 **SEC. 406. ELIMINATION OF ARBITRARY CAP ON PERSONS**
2 **ELIGIBLE TO ADJUST STATUS FROM ASYLEES**
3 **TO LEGAL PERMANENT RESIDENTS.**

4 (a) IN GENERAL.—Section 209(b) (8 U.S.C.
5 1159(b)) is amended by striking “Not more than 10,000
6 of the” and all that follows through “to adjust” and in-
7 serting “Subject to a numerical limitation determined by
8 the President before the beginning of each fiscal year, the
9 Attorney General may adjust, in the Attorney General’s
10 discretion and under such regulations as the Attorney
11 General may prescribe,”.

12 (b) EFFECTIVE DATE.—The amendment made by
13 subsection (a) shall take effect on the date of the enact-
14 ment of this Act and shall apply to applications for adjust-
15 ment of status pending on or after such date.

16 **SEC. 407. RESTORATION OF ELIGIBILITY FOR WITH-**
17 **HOLDING OF REMOVAL FOR PERSONS FAC-**
18 **ING LOSS OF LIFE OR FREEDOM.**

19 Section 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is
20 amended—

21 (1) by amending clause (ii) to read as follows:

22 “(ii) the alien—

23 “(I) has been convicted by final
24 judgment of a particularly serious
25 crime for which the sentence imposed

1 was an aggregate term of imprison-
2 ment of five years or more; and

3 “(II) is a danger to the commu-
4 nity of the United States.”; and

5 (2) by striking the second and third sentences;

6 and

7 (3) by adding at the end “Notwithstanding this
8 subparagraph, an alien may be granted relief under
9 subparagraph (A) if the Attorney General deter-
10 mines the alien should not be removed for urgent
11 humanitarian reasons.”.

12 **Subtitle B—Increased Fairness and**
13 **Rationality in Refugee Con-**
14 **sultations**

15 **SEC. 411. TIMELY CONSULTATION WITH RESPECT TO REF-**
16 **UGEE ADMISSIONS.**

17 (a) IN GENERAL.—Section 207(d)(1) (8 U.S.C.
18 1157(d)(1)) is amended by striking “the start of each fis-
19 cal year” and inserting “the submission by the President
20 to the Congress of the President’s budget for the Federal
21 Government with respect to a fiscal year,”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this subsection (a) shall take effect on the date of the en-
24 actment of this Act.

1 **TITLE V—INCREASED FAIRNESS**
2 **AND EQUITY IN NATURALIZA-**
3 **TION AND LEGALIZATION**
4 **PROCEEDINGS**

5 **Subtitle A—Naturalization**
6 **Proceedings**

7 **SEC. 501. INCREASED AUTHORIZATION OF FUNDS FOR NAT-**
8 **URALIZATION PROCEEDINGS.**

9 (a) IMMIGRATION EXAMINATIONS FEE ACCOUNT
10 MODIFICATION.—Section 286(m) of the Immigration and
11 Nationality Act (8 U.S.C. 1356(m)) is amended to read
12 as follows:

13 “(m)(1) Notwithstanding any other provision of law,
14 all adjudication fees as are designated by the Attorney
15 General in regulations shall be deposited as offsetting re-
16 cepts into a separate account entitled ‘Immigration Ex-
17 aminations Fee Account’ in the Treasury of the United
18 States (in this subsection referred to as the ‘Account’),
19 whether collected directly by the Attorney General or
20 through clerks of courts.

21 “(2)(A) All fees received by the Attorney General
22 from applicants residing in the Virgin Islands of the
23 United States and in Guam under this subsection shall
24 be paid over to the treasury of the Virgin Islands and to
25 the treasury of Guam.

1 “(B) Fees for providing adjudication and naturaliza-
2 tion services may be set at a level that—

3 “(i) will ensure recovery of the full costs of pro-
4 viding all such services, including the costs of similar
5 services provided without charge to asylum appli-
6 cants or other immigrants; and

7 “(ii) will recover any additional costs associated
8 with the administration of the fees collected.

9 “(3) Each fee collected for the provision of an adju-
10 dication or naturalization service shall be used only to
11 fund adjudication or naturalization services or, subject to
12 the availability of funds provided pursuant to paragraph
13 (6), costs of similar services provided without charge to
14 asylum and refugee applicants.

15 “(4) No such fee may be used for immigration en-
16 forcement purposes by the Attorney General or any other
17 officer or employee of the Federal Government.

18 “(5) No such fee may be used to fund adjudication-
19 related or naturalization-related audits which are not reg-
20 ularly conducted in the normal course of operation.

21 “(6) There are authorized to be appropriated such
22 sums as may be necessary to carry out the provisions of
23 sections 207 through 209. All funds appropriated to carry
24 out this paragraph shall be deposited into the Account and
25 shall remain available until expended.”.

1 (b) AUTHORIZATION OF APPROPRIATIONS FOR EXPE-
2 DITIOUS PROCESSING OF APPLICATIONS.—Section 404 of
3 the Immigration and Nationality Act (8 U.S.C. 1101,
4 note) is amended by adding at the end the following:

5 “(c) There are authorized to be appropriated for fis-
6 cal years 2000 through 2006 such sums as may be
7 necessary—

8 “(1) to reduce the backlog of applications for
9 naturalization under section 334 so that the proc-
10 essing time for such an application is not more than
11 6 months; and

12 “(2) to provide more expeditious processing of
13 other applications for a benefit under this Act (such
14 as petitions for an immigrant or nonimmigrant visa,
15 applications for adjustment of status, and applica-
16 tions for employment authorization).”.

17 **SEC. 502. EXEMPTION FROM ENGLISH LANGUAGE RE-**
18 **QUIREMENT FOR CERTAIN ALIENS WHO**
19 **SERVED WITH SPECIAL GUERRILLA UNITS OR**
20 **IRREGULAR FORCES IN LAOS.**

21 The requirement of paragraph (1) of section 312(a)
22 of the Immigration and Nationality Act (8 U.S.C.
23 1423(a)(1)) shall not apply to the naturalization of any
24 person—

25 (1) who—

1 (A) was admitted into the United States as
2 a refugee from Laos pursuant to section 207 of
3 the Immigration and Nationality Act (8 U.S.C.
4 1157); and

5 (B) served with a special guerrilla unit, or
6 irregular forces, operating from a base in Laos
7 in support of the United States military at any
8 time during the period beginning February 28,
9 1961, and ending September 18, 1978; or

10 (2) who—

11 (A) satisfies the requirement of paragraph
12 (1)(A); and

13 (B) was the spouse of a person described
14 in paragraph (1) on the day on which such de-
15 scribed person applied for admission into the
16 United States as a refugee.

17 **SEC. 503. SPECIAL CONSIDERATION CONCERNING CIVICS**
18 **REQUIREMENT FOR CERTAIN ALIENS WHO**
19 **SERVED WITH SPECIAL GUERRILLA UNITS OR**
20 **IRREGULAR FORCES IN LAOS.**

21 The Attorney General shall provide for special consid-
22 eration, as determined by the Attorney General, con-
23 cerning the requirement of paragraph (2) of section
24 312(a) of the Immigration and Nationality Act (8 U.S.C.
25 1423(a)(2)) with respect to the naturalization of any per-

1 son described in paragraph (1) or (2) of section 502 of
2 this Act.

3 **SEC. 504. DOCUMENTATION OF QUALIFYING SERVICE.**

4 A person seeking an exemption under section 502 or
5 special consideration under section 503 shall submit to the
6 Attorney General documentation of their, or their
7 spouse's, service with a special guerrilla unit, or irregular
8 forces, described in section 502(1)(B), in the form of—

9 (1) original documents;

10 (2) an affidavit of the serving person's superior
11 officer;

12 (3) 2 affidavits from other individuals who also
13 were serving with such a special guerrilla unit, or ir-
14 regular forces, and who personally knew of the per-
15 son's service; or

16 (4) other appropriate proof.

17 **SEC. 505. DETERMINATION OF ELIGIBILITY FOR EXEMP-**
18 **TION AND SPECIAL CONSIDERATION.**

19 In determining a person's eligibility for an exemption
20 under section 502 or special consideration under section
21 503, the Attorney General—

22 (1) shall review the refugee processing docu-
23 mentation for the person, or, in an appropriate case,
24 for the person and the person's spouse, to verify that

1 the requirements of section 502 relating to refugee
2 applications and admissions have been satisfied;

3 (2) shall consider the documentation submitted
4 by the person under section 504;

5 (3) shall request an advisory opinion from the
6 Secretary of Defense regarding the person's, or the
7 person's spouse's, service in a special guerrilla unit,
8 or irregular forces, described in section 502(1)(B)
9 and shall take into account that opinion; and

10 (4) may consider any certification prepared by
11 the organization known as "Lao Veterans of Amer-
12 ica, Inc.", or any similar organization maintaining
13 records with respect to Hmong veterans or their
14 families.

15 **SEC. 506. DEADLINE FOR APPLICATION AND PAYMENT OF**
16 **FEES.**

17 This subtitle shall apply to a person only if the per-
18 son's application for naturalization is filed, as provided in
19 section 334 of the Immigration and Nationality Act (8
20 U.S.C. 1445), with appropriate fees not later than 18
21 months after the date of the enactment of this Act.

22 **SEC. 507. LIMITATION ON NUMBER OF BENEFICIARIES.**

23 Notwithstanding any other provision of this subtitle,
24 the total number of aliens who may be granted an exemp-

1 tion under section 502 or special consideration under sec-
2 tion 503, or both, may not exceed 45,000.

3 **Subtitle B—Parity in Treatment for**
4 **Refugees From Central America**
5 **and Haiti**

6 **SEC. 511. ADJUSTMENT OF STATUS FOR CERTAIN NATION-**
7 **ALS FROM EL SALVADOR, GUATEMALA, HON-**
8 **DURAS, AND HAITI.**

9 (a) IN GENERAL.—Section 202 of the Nicaraguan
10 Adjustment and Central American Relief Act is
11 amended—

12 (1) in the section heading, by striking “NICA-
13 RAGUANS AND CUBANS” and inserting “NICA-
14 RAGUANS, CUBANS, SALVADORANS, GUATE-
15 MALANS, HONDURANS, and HAITIANS”;

16 (2) in subsection (a)(1)(A), by striking “2000”
17 and inserting “2003”;

18 (3) in subsection (b)(1), by striking “Nicaragua
19 or Cuba” and inserting “Nicaragua, Cuba, El Sal-
20 vador, Guatemala, Honduras, or Haiti”;

21 (4) in subsection (d)(1)(E), by striking “2000”
22 and inserting “2003”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on the date of the enactment
25 of this Act.

1 **SEC. 512. APPLICATIONS PENDING UNDER SECTION 203 OF**
2 **THE NICARAGUAN ADJUSTMENT AND CEN-**
3 **TRAL AMERICAN RELIEF ACT.**

4 An application for relief properly filed by a national
5 of Guatemala or El Salvador under section 203 of the Nic-
6 araguan Adjustment and Central American Relief Act
7 which was filed on or before the date of enactment of this
8 Act, and on which a final administrative determination has
9 not been made, may be converted by the applicant to an
10 application for adjustment of status under the provisions
11 of section 202 of the Nicaraguan Adjustment and Central
12 American Relief Act, as amended, upon the payment of
13 any fees, and in accordance with procedures, that the At-
14 torney General shall prescribe by regulation. The Attorney
15 General shall not be required to refund any fees paid in
16 connection with an application filed by a national of Gua-
17 temala or El Salvador under section 203 of the Nica-
18 raguan Adjustment and Central American Relief Act.

19 **SEC. 513. APPLICATIONS PENDING UNDER THE HAITIAN**
20 **REFUGEE IMMIGRATION FAIRNESS ACT OF**
21 **1998.**

22 An application for adjustment of status properly filed
23 by a national of Haiti under the Haitian Refugee Immi-
24 gration Fairness Act of 1998 which was filed on or before
25 the date of the enactment of this Act, and on which a
26 final administrative determination has not been made,

1 may be considered by the Attorney General, in the Attor-
2 ney General's unreviewable discretion, also to constitute
3 an application for adjustment of status under the provi-
4 sions of section 202 of the Nicaraguan Adjustment and
5 Central American Relief Act.

6 **SEC. 514. TECHNICAL AMENDMENTS TO THE NICARAGUAN**
7 **ADJUSTMENT AND CENTRAL AMERICAN RE-**
8 **LIEF ACT.**

9 (a) IN GENERAL.—Section 202 of the Nicaraguan
10 Adjustment and Central American Relief Act is
11 amended—

12 (1) in subsection (a)(1)(B), by inserting “and
13 the Attorney General may, in her unreviewable dis-
14 cretion, waive the grounds of inadmissibility speci-
15 fied in section 212(a)(1)(A)(i) and section
16 212(a)(6)(C) for humanitarian purposes, to assure
17 family unity, or when it is otherwise in the public in-
18 terest” after “apply”;

19 (2) in subsection (a), by redesignating para-
20 graph (2) as paragraph (3) and by inserting after
21 paragraph (1) the following:

22 “(2) INAPPLICABILITY OF CERTAIN PROVI-
23 SIONS.—In determining the eligibility of an alien de-
24 scribed in subsection (b) or (d) for either adjustment
25 of status under this section or other relief necessary

1 to establish eligibility for such adjustment, the provi-
2 sions of section 241(a)(5) shall not apply. In addi-
3 tion, an alien who would otherwise be inadmissible
4 pursuant to section 212(a)(9) (A) or (C) of the may
5 apply for the Attorney General's consent to reapply
6 for admission without regard to the requirement
7 that the consent be granted prior to the date of the
8 alien's reembarkation at a place outside the United
9 States or attempt to be admitted from foreign con-
10 tiguous territory, in order to qualify for the excep-
11 tion to those grounds of inadmissibility set forth in
12 sections 212(a)(9)(A)(iii) and 212(a)(9)(C)(ii).";

13 (3) in subsection (a), by striking paragraph (3)
14 (as so redesignated) and inserting the following:

15 "(3) RELATIONSHIP OF APPLICATION TO CER-
16 TAIN ORDERS.—An alien present in the United
17 States who has been ordered excluded, deported, or
18 removed, or ordered to depart voluntarily from the
19 United States under any provision may, notwith-
20 standing such order, apply for adjustment of status
21 under paragraph (1). Such an alien may not be re-
22 quired, as a condition of submitting or granting such
23 application, to file a separate motion to reopen, re-
24 consider, or vacate such order. Such an alien may be
25 required to seek a stay of such an order in accord-

1 ance with subsection (c) to prevent the execution of
2 that order pending the adjudication of the applica-
3 tion for adjustment of status. If the Attorney Gen-
4 eral denies a stay of a final order of exclusion, de-
5 portation, or removal, or if the Attorney General
6 renders a final administrative determination to deny
7 the application for adjustment of status, the order
8 shall be effective and enforceable to the same extent
9 as if the application had not been made. If the At-
10 torney General grants the application for adjustment
11 of status, the Attorney General shall cancel the
12 order.”;

13 (4) in subsection (b)(1), by adding at the end
14 the following: “However, subsection (a) shall not
15 apply to an alien lawfully admitted for permanent
16 residence, unless he or she is applying for such relief
17 in deportation or removal proceedings.”;

18 (5) in subsection (c)(1), by adding at the end
19 the following: “Nothing in this Act shall require the
20 Attorney General to stay the removal of an alien
21 who is ineligible for adjustment of status under this
22 Act.”;

23 (6) in subsection (d)—

1 (A) by amending the subsection heading to
2 read “SPOUSES, CHILDREN, AND UNMARRIED
3 SONS AND DAUGHTERS.—”;

4 (B) in paragraph (1), by amending the
5 heading to read “ADJUSTMENT OF STATUS.—”;

6 (C) by striking paragraph (1)(A), and in-
7 serting the following:

8 “(A) the alien entered the United States
9 on or before the date of the enactment of the
10 Restoration of Fairness in Immigration Law
11 Act of 2000;”;

12 (D) in paragraph (1)(B), by inserting after
13 “except that” the following: “(i) in the case of
14 such a spouse, stepchild, or unmarried stepson
15 or stepdaughter, the qualifying marriage was
16 entered into before the date of the enactment of
17 the Restoration of Fairness in Immigration
18 Law Act of 2000; and (ii)”;

19 (E) by adding a new paragraph (3) to read
20 as follows:

21 “(3) ELIGIBILITY OF CERTAIN SPOUSES AND
22 CHILDREN FOR ISSUANCE OF IMMIGRANT VISAS.—

23 “(A) In accordance with regulations to be
24 promulgated by the attorney General and the
25 Secretary of State, upon approval of an applica-

1 tion for adjustment of status to that of an alien
2 lawfully admitted for permanent residence
3 under subsection (a), an alien who is the spouse
4 or child of the alien being granted such status
5 may be issued a visa for admission to the
6 United States as an immigrant following to join
7 the principal applicant, if the spouse or child—

8 “(i) meets the requirements in sub-
9 paragraphs (B) and (D) of paragraph (1);
10 and

11 “(ii) applies for such a visa within a
12 time period to be established by regulation.

13 “(B) The Secretary of State may retain
14 fees to recover the cost of immigrant visa appli-
15 cation processing and issuance for certain
16 spouses and children of aliens whose applica-
17 tions for adjustment of status under subsection
18 (a) have been approved. Such fees—

19 “(i) shall be deposited as an offsetting
20 collection to any Department of State ap-
21 propriation to recover the cost of such
22 processing and issuance; and

23 “(ii) shall be available until expended
24 for the same purposes of such appropria-
25 tion to support consular activities.”;

1 (7) in subsection (g), by inserting after “for
2 permanent residence” the following: “or an immi-
3 grant classification”; and

4 (8) by adding at the end the following:

5 “(i) ADMISSIONS.—Nothing in this section shall be
6 construed as authorizing an alien to apply for admission
7 to, be admitted to, be paroled into, or otherwise lawfully
8 return to the United States, to apply for or to pursue an
9 application for adjustment of status under this section
10 without the express authorization of the Attorney Gen-
11 eral.”.

12 (b) EFFECTIVE DATE.—The amendments made
13 by subsections (a)(3), (a)(4), and (a)(8) shall take
14 be effect as if included in the enactment of the Nica-
15 rague Adjustment and Central American Relief
16 Act. The amendments made by subsections (a)(1),
17 (a)(2), (a)(5), (a)(6), and (a)(7) shall take effect on
18 the date of the enactment of this Act.

19 **SEC. 515. TECHNICAL AMENDMENTS TO THE HAITIAN IMMI-**
20 **GRATION FAIRNESS ACT OF 1998.**

21 (a) IN GENERAL.—Section 902 of the Haitian Ref-
22 ugee Immigration Fairness Act of 1998 is amended—

23 (1) in subsection (a)(1)(B), by inserting after
24 “apply” the following: “and the Attorney General
25 may, in the Attorney General’s unreviewable discre-

1 tion, waive the grounds of inadmissibility specified in
2 sections 212(a)(1)(A)(i) and 212(a)(6)(C) of the Im-
3 migration and Nationality Act for humanitarian pur-
4 poses, to assure family unity, or when it is otherwise
5 in the public interest”;

6 (2) in subsection (a), by redesignating para-
7 graph (2) as paragraph (3) and by inserting after
8 paragraph (1) the following:

9 “(2) INAPPLICABILITY OF CERTAIN PROVI-
10 SIONS.—In determining the eligibility of an alien de-
11 scribed in subsection (b) or (d) for either adjustment
12 of status under this section or other relief necessary
13 to establish eligibility for such adjustment, or for
14 permission to reapply for admission to the United
15 States for the purpose of adjustment of status under
16 this section, the provisions of section 241(a)(5) shall
17 not apply. In addition, an alien who would otherwise
18 be inadmissible pursuant to subparagraph (A) or (C)
19 of section 212(a)(9) of the Immigration and Nation-
20 ality Act may apply for the Attorney General’s con-
21 sent to reapply for admission without regard to the
22 requirement that the consent be granted prior to the
23 date of the alien’s reembarkation at a place outside
24 the United States or attempt to be admitted from
25 foreign contiguous territory, in order to qualify for

1 the exception to those grounds of inadmissibility set
2 forth in subparagraphs (A)(iii) and (C)(ii) of section
3 212(a)(9) of such Act.”;

4 (3) in subsection (a), by striking paragraph (3)
5 (as so redesignated) and by inserting the following:

6 “(3) RELATIONSHIP OF APPLICATION TO CER-
7 TAIN ORDERS.—An alien present in the United
8 States who has been ordered excluded, deported, or
9 removed, or ordered to depart voluntarily from the
10 United States under any provision may, notwith-
11 standing such order, apply for adjustment of status
12 under paragraph (1). Such an alien may not be re-
13 quired, as a condition of submitting or granting such
14 application, to file a separate motion to reopen, re-
15 consider, or vacate such order. Such an alien may be
16 required to seek a stay of such an order in accord-
17 ance with subsection (c) to prevent the execution of
18 that order pending the adjudication of the applica-
19 tion for adjustment of status. If the Attorney Gen-
20 eral denies a stay of a final order of exclusion, de-
21 portation, or removal, or if the Attorney General
22 renders a final administrative determination to deny
23 the application for adjustment of status, the order
24 shall be effective and enforceable to the same extent
25 as if the application had not been made. If the At-

1 torney General grants the application for adjustment
2 of status, the Attorney General shall cancel the
3 order.”;

4 (4) in subsection (b)(1), by adding at the end
5 the following: “However, subsection (a) shall not
6 apply to an alien lawfully admitted for permanent
7 residence, unless he or she is applying for such relief
8 in deportation or removal proceedings.”;

9 (5) in subsection (c)(1), by adding at the end
10 the following: “Nothing in this Act shall require the
11 Attorney General to stay the removal of an alien
12 who is ineligible for adjustment of status under this
13 Act.”;

14 (6) in subsection (d)—

15 (A) by amending the subsection heading to
16 read “SPOUSES, CHILDREN, AND UNMARRIED
17 SONS AND DAUGHTERS.—”;

18 (B) in paragraph (1), by amending the
19 heading to read “ADJUSTMENT OF STATUS.—”;

20 (C) by striking paragraph (1)(A), and in-
21 serting the following:

22 “(A) the alien entered the United States
23 on or before the date of the enactment of the
24 Restoration of Fairness in Immigration Law
25 Act of 2000;”;

1 (D) in paragraph (1)(B), by inserting after
2 “except that” the following: “(i) in the case of
3 such a spouse, stepchild, or unmarried stepson
4 or stepdaughter, the qualifying marriage was
5 entered into before the date of the enactment of
6 the Restoration of Fairness in Immigration
7 Law Act of 2000; and (ii)”;

8 (E) in paragraph (1), by adding at the end
9 the following:

10 “(E) the alien applies for such adjustment
11 before April 3, 2003.”; and

12 (F) by adding at the end the following:

13 “(3) ELIGIBILITY OF CERTAIN SPOUSES AND
14 CHILDREN FOR ISSUANCE OF IMMIGRANT VISAS.—

15 “(A) In accordance with regulations to be
16 promulgated by the Attorney General and the
17 Secretary of State, upon approval of an applica-
18 tion for adjustment of status to that of an alien
19 lawfully admitted for permanent residence
20 under subsection (a), an alien who is the spouse
21 or child of the alien being granted such status
22 may be issued a visa for admission to the
23 United States as an immigrant following to join
24 the principal applicant, if the spouse or child:

1 “(i) meets the requirements in sub-
2 paragraphs (B) and (D) of paragraph (1);
3 and

4 “(ii) applies for such a visa within a
5 time period to be established by regulation.

6 “(B) The Secretary of State may retain
7 fees to recover the cost of immigrant visa appli-
8 cation processing and issuance for certain
9 spouses and children of aliens whose applica-
10 tions for adjustment of status under subsection
11 (a) have been approved. Such fees—

12 “(i) shall be deposited as an offsetting
13 collection to any Department of State ap-
14 propriation to recover the cost of such
15 processing and issuance; and

16 “(ii) shall be available until expended
17 for the same purposes of such appropria-
18 tion to support consular activities.”;

19 (7) in subsection (g), by inserting after “for
20 permanent residence” the following: “or an immi-
21 grant classification”; and

22 (8) by redesignating subsections (i), (j), and (k)
23 as subsections (j), (k), and (l) respectively, and by
24 inserting after subsection (h) the following:

1 “(i) ADMISSIONS.—Nothing in this section shall be
2 construed as authorizing an alien to apply for admission
3 to, be admitted to, be paroled into, or otherwise lawfully
4 return to the United States, to apply for or to pursue an
5 application for adjustment of status under this section
6 without the express authorization of the Attorney Gen-
7 eral.”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsections (a)(3), (a)(4), and (a)(8) shall take effect as
10 if included in the enactment of the Haitian Refugee Immi-
11 gration Fairness Act of 1998. The amendments made by
12 subsections (a)(1), (a)(2), (a)(5), (a)(6), and (a)(7) shall
13 take effect on the date of the enactment of this Act.

14 **SEC. 516. MOTIONS TO REOPEN.**

15 (a) HAITIAN NATIONALS.—Notwithstanding any
16 time and number limitations imposed by law on motions
17 to reopen, a national of Haiti who, on the date of the en-
18 actment of this Act, has a final administrative denial of
19 an application for adjustment of status under the Haitian
20 Refugee Immigration Fairness Act of 1988, and is made
21 eligible for adjustment of status under that Act by the
22 amendments made by this subtitle, may file one motion
23 to reopen exclusion, deportation, or removal proceedings
24 to have the application considered again. All such motions
25 shall be filed within 180 days of the date of the enactment

1 of this Act. The scope of any proceeding reopened on this
2 basis shall be limited to a determination of the alien's eli-
3 gibility for adjustment of status under the Haitian Ref-
4 ugee Immigration Fairness Act of 1998.

5 (b) CUBAN AND NICARAGUAN NATIONALS.—Not-
6 withstanding any time and number limitations imposed by
7 law on motions to reopen, a national of Cuba or Nicaragua
8 who, on the date of the enactment of this Act, has a final
9 administrative denial of an application for adjustment of
10 status under the Nicaraguan Adjustment and Central
11 American Relief Act, and who is made eligible for adjust-
12 ment of status under that Act by the amendments made
13 by this Act, may file one motion to reopen exclusion, de-
14 portation, or removal proceedings to have the application
15 considered again. All such motions shall be filed within
16 180 days of the date of the enactment of this Act. The
17 scope of any proceeding reopened on this basis shall be
18 limited to a determination of the alien's eligibility for ad-
19 justment of status under the Nicaraguan Adjustment and
20 Central American Relief Act.

1 **Subtitle C—Equality of Treatment**
2 **for Women’s Citizenship**

3 **SEC. 521. DECLARATION OF CITIZENSHIP FOR CERTAIN**
4 **WOMEN WHO LOST CITIZENSHIP SOLELY BY**
5 **REASON OF MARRIAGE TO AN ALIEN PRIOR**
6 **TO SEPTEMBER 22, 1922.**

7 (a) IN GENERAL.—Notwithstanding any provision of
8 title III of the Immigration and Nationality Act (8 U.S.C.
9 1401 et seq.), any woman who was a citizen of the United
10 States, lost such citizenship solely because the woman
11 married an alien prior to September 22, 1922, and died
12 before December 24, 1952, is hereby declared to be a cit-
13 izen of the United States as of the date of the enactment
14 of this Act.

15 (b) NO RETROACTIVE EFFECT.—This subtitle may
16 not be construed to affect—

17 (1) the citizenship of any person other than a
18 woman described in subsection (a); or

19 (2) the citizenship before the date of the enact-
20 ment of this Act of a woman described in subsection
21 (a).

22 **SEC. 522. EQUITY IN TRANSMISSION OF CITIZENSHIP.**

23 Section 101 of Public Law 103–416 is amended by
24 amending subsection (d) to read as follows:

1 “(d) WAIVER OF TRANSMISSION REQUIREMENTS.—
2 The parental physical presence requirement contained in
3 section 301(g) of the Immigration and Nationality Act
4 shall not apply to any person born before the date of en-
5 actment of this Act who claims United States citizenship
6 based on such person’s descent from an individual de-
7 scribed in section 301(h) of the Immigration and Nation-
8 ality Act.”.

9 **Subtitle D—Fairness in the Treat-**
10 **ment for Refugees From Liberia**

11 **SEC. 531. ADJUSTMENT OF STATUS OF CERTAIN LIBERIAN**
12 **NATIONALS.**

13 (a) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
14 TUS.—The Attorney General shall adjust the status of an
15 alien to that of an alien lawfully admitted for permanent
16 residence, if the alien—

17 (1) is a national of Liberia;
18 (2) is eligible to remain in the United States
19 under the provisions of the Deferred Enforcement
20 Departure (DED) Order executed by President Wil-
21 liam J. Clinton, dated September 27, 1999;

22 (3) applies for adjustment before September 29,
23 2002; and

24 (4) is otherwise eligible to receive an immigrant
25 visa and is otherwise admissible to the United States

1 for permanent residence, except that, in determining
2 such admissibility, the grounds for inadmissibility
3 specified in paragraphs (4), (5), (6)(A), and (7)(A)
4 of section 212(a) of the Immigration and Nationality
5 Act shall not apply.

6 (b) ADJUSTMENT OF STATUS FOR SPOUSES AND
7 CHILDREN.—The status of an alien shall be adjusted by
8 the Attorney General to that of an alien lawfully admitted
9 for permanent residence, if the alien is the spouse or child
10 of a Liberian national whose status is adjusted to that
11 of an alien lawfully admitted for permanent residence
12 under subsection (a) and is otherwise eligible to receive
13 an immigrant visa and is otherwise admissible to the
14 United States for permanent residence, except that, in de-
15 termining such admissibility, the grounds for inadmis-
16 sibility specified in paragraphs (4), (5), (6)(A), and (7)(A)
17 of section 212(a) of the Immigration and Nationality Act
18 shall not apply.

19 (c) INELIGIBLE ALIENS.—An alien shall not be eligi-
20 ble for adjustment of status under this section if the At-
21 torney General finds that the alien has been convicted and
22 sentenced to incarceration in a Federal or State correc-
23 tional facility or penitentiary.

24 (d) RELATIONSHIP OF APPLICATION TO CERTAIN
25 ORDERS.—A Liberian national present in the United

1 States, who is qualified to remain in the United States
2 under the Deferred Enforcement Departure Order of
3 President William J. Clinton, dated September 27, 1999,
4 who has been ordered excluded, deported, removed, or or-
5 dered to depart voluntarily from the United States under
6 any provision of the Immigration and Nationality Act
7 may, notwithstanding such order, apply for adjustment of
8 status under subsection (a), if otherwise qualified under
9 that subsection. Such a Liberian national may not be re-
10 quired, as a condition on submitting or granting such ap-
11 plication, to file a separate motion to reopen, reconsider,
12 or vacate such order. If the Attorney General grants the
13 application, the Attorney General shall cancel the order.
14 If the Attorney General makes a final decision to deny
15 the application, the order shall be effective and enforceable
16 to the same extent as if the application had not been
17 made.

18 (e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—

19 The Attorney General shall provide to applicants for ad-
20 justment of status under this Act the same right to, and
21 procedures for, administrative review as are provided to—

- 22 (1) applicants for adjustment of status under
23 section 245 of the Immigration and Nationality Act;
24 or

1 (2) aliens subject to removal proceedings under
2 section 240 of such Act.

3 (f) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—
4 When an alien is granted the status of having been law-
5 fully admitted for permanent residence pursuant to this
6 section, the Secretary of State shall not be required to re-
7 duce the number of immigrant visas authorized to be
8 issued under any provision of the Immigration and Na-
9 tionality Act.

10 (g) STAY OF REMOVAL.—The Attorney General shall
11 provide by regulation for a Liberian national, qualified to
12 benefit under the provision of this Act, who is subject to
13 a final order of deportation or removal or exclusion to seek
14 a stay of such order based on the filing of an application
15 under this Act.

16 (h) DURING CERTAIN PROCEEDINGS.—Notwith-
17 standing any provision of the Immigration and Nationality
18 Act, the Attorney General shall not order a Liberian na-
19 tional to be removed from the United States if the Libe-
20 rian national is in exclusion, deportation, or removal pro-
21 ceedings under any provision of such Act and has applied
22 for adjustment of status under subsection (a), except
23 where the Attorney General has made a final determina-
24 tion to deny the application.

1 (i) WORK AUTHORIZATION.—The Attorney General
2 may authorize a Liberian national, who has applied for
3 adjustment of status under subsection (a), or who has ap-
4 plied for adjustment of status as a spouse or child under
5 this Act, to engage in employment in the United States
6 during the pendency of such application and may provide
7 the alien with an “employment authorized” endorsement
8 or other appropriate document signifying authorization of
9 employment, except that, if such application is pending for
10 a period exceeding 180 days and has not been denied, the
11 Attorney General shall authorize such employment.

12 (j) RECORD OF PERMANENT RESIDENCE.—Upon ap-
13 proval of the application of a Liberian national for adjust-
14 ment of status under subsection (a), the Attorney General
15 shall establish a record of the alien’s admission for perma-
16 nent residence as of the date of the alien’s arrival in the
17 United States.

18 **Subtitle E—Fairness in Review of**
19 **Previously Granted Amnesty**
20 **Rights**

21 **SEC. 541. ELIMINATION OF LIMITATION ON LEGALIZATION**
22 **LITIGATION.**

23 (a) IN GENERAL.—Section 245A(f)(4) (8 U.S.C.
24 1255a(f)(4)) is amended by striking subparagraph (C).

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall be effective as if included in the enact-
3 ment of section 201 of the Immigration Reform and Con-
4 trol Act of 1986 (Public Law 99–603; 100 Stat. 3394).

5 **Subtitle F—Equality of Treatment**
6 **for Asian American Visa Petitions**

7 **SEC. 551. IMMIGRATION OF CERTAIN ALIENS BORN IN THE**
8 **PHILIPPINES OR JAPAN AND FATHERED BY**
9 **U.S. CITIZENS.**

10 Section 204(f)(2)(A) (8 U.S.C. 1154(f)(2)(A)) is
11 amended—

12 (1) by inserting “(I)” after “born”; and

13 (2) by inserting after “subsection,” the fol-
14 lowing: “(II) in the Philippines after 1950 and be-
15 fore November 24, 1992, or (III) in Japan after
16 1950 and before the date of the enactment of this
17 subclause,”.

1 **TITLE VI—CRACKING DOWN ON**
2 **DISCRIMINATION IN IMMI-**
3 **GRATION-RELATED EMPLOY-**
4 **MENT PRACTICES AND ILLE-**
5 **GAL SWEATSHOPS**

6 **Subtitle A—Discrimination in Im-**
7 **migration-Related Employment**
8 **Practices**

9 **SEC. 601. BURDEN OF PROOF.**

10 (a) TREATMENT OF CERTAIN DOCUMENTARY PRAC-
11 TICES AS UNFAIR IMMIGRATION-RELATED EMPLOYMENT
12 PRACTICES.—Section 274B(a)(6) (8 U.S.C. 1324b(a)(6))
13 is amended—

14 (1) by striking “A” and inserting “For pur-
15 poses of paragraph (1), a”; and

16 (2) by striking “if made for the purpose or with
17 the intent of discriminating against an individual in
18 violation of paragraph (1)”.

19 (b) EFFECTIVE DATE.—The amendments made by
20 subsection (a) shall take effect on the date of the enact-
21 ment of this Act and shall apply to documentary practices
22 on or after the date of the enactment of this Act.

23 **SEC. 602. DEFINITION OF PROTECTED INDIVIDUAL.**

24 (a) DEFINITION OF PROTECTED INDIVIDUAL.—Sec-
25 tion 274B(a)(3)(B) (8 U.S.C. 1324b(a)(3)(B)) is amend-

1 ed by striking “208;” and all that follows through the pe-
2 riod at the end and inserting “208.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall take effect on the date of the enact-
5 ment of this Act and shall apply to discrimination occur-
6 ring on or after such date.

7 **Subtitle B—Cracking Down on**
8 **Illegal Sweatshops**

9 **SEC. 611. SECRETARY OF LABOR SUBPOENA AUTHORITY.**

10 (a) IN GENERAL.—At the end to title II, add the fol-
11 lowing:

12 “SECRETARY OF LABOR SUBPOENA AUTHORITY

13 “SEC. 295. The Secretary of Labor may issue sub-
14 poenas requiring the attendance and testimony of wit-
15 nesses or the production of any records, books, papers,
16 or documents in connection with any investigation or hear-
17 ing conducted in the enforcement of any immigration pro-
18 gram for which the Secretary of Labor has been delegated
19 enforcement authority under the Act. In such hearing, the
20 Secretary of Labor may administer oaths, examine wit-
21 nesses, and receive evidence. For the purpose of any such
22 hearing or investigation, the authority contained in sec-
23 tions 9 and 10 of the Federal Trade Commission Act (15
24 U.S.C. 49, 50), relating to the attendance of witnesses and
25 the production of books, papers, and documents, shall be
26 available to the Secretary of Labor.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 is amended by inserting after the item relating to section
3 294 the following:

“Sec. 295. Secretary of Labor subpoena authority.”.

4 **SEC. 612. INCREASED PENALTIES FOR EMPLOYER SANC-**
5 **TIONS INVOLVING LABOR STANDARDS VIOLA-**
6 **TIONS.**

7 (a) UNLAWFUL EMPLOYMENT OF ALIENS.—Section
8 274A(e) (8 U.S.C. 1324a(e)) is amended by adding at the
9 end the following:

10 “(10)(A) The administrative law judge shall
11 have the authority to require payment of a civil
12 money penalty in an amount up to treble the level
13 of the penalty prescribed by this subsection in any
14 case where the employer has been found to have
15 committed willful or repeated violations of any of the
16 following statutes:

17 “(i) The Fair Labor Standards Act (29
18 U.S.C. 201 et seq.), pursuant to a final deter-
19 mination by the Secretary of Labor or a court
20 of competent jurisdiction.

21 “(ii) The Migrant and Seasonal Agricul-
22 tural Worker Protection Act (29 U.S.C. 1801 et
23 seq.), pursuant to a final determination by the
24 Secretary of Labor or a court of competent ju-
25 risdiction.

1 “(iii) The Family and Medical Leave Act
2 (29 U.S.C. et seq.), pursuant to a final deter-
3 mination by a court of competent jurisdiction.

4 “(B) The Secretary of Labor and the Attorney
5 General shall consult regarding the administration of
6 the provisions of this paragraph.”.

7 (b) UNFAIR IMMIGRATION-RELATED EMPLOYMENT
8 PRACTICES.—Section 274B(g) (8 U.S.C. 1324b(g)) is
9 amended by adding at the end the following:

10 “(4)(A) The administrative law judge shall have
11 the authority to require payment of a civil money
12 penalty in an amount up to two times the level of
13 the penalty prescribed by this subsection in any case
14 where the employer has been found to have com-
15 mitted willful or repeated violations of any of the fol-
16 lowing statutes:

17 “(i) The Fair Labor Standards Act, (29
18 U.S.C. 201 et seq.), pursuant to a final deter-
19 mination by the Secretary of Labor or a court
20 of competent jurisdiction.

21 “(ii) The Migrant and Seasonal Agricul-
22 tural Worker Protection Act (29 U.S.C. 1801 et
23 seq.), pursuant to a final determination by the
24 Secretary of Labor or a court of competent ju-
25 risdiction.

1 “(iii) The Family and Medical Leave Act
2 (29 U.S.C. 2601 et seq.), pursuant to a final
3 determination by a court of competent jurisdic-
4 tion.

5 “(B) The Secretary of Labor and the Attorney
6 General shall consult regarding the administration of
7 the provisions of this paragraph.”.

8 (c) PENALTIES FOR DOCUMENT FRAUD.—Section
9 274C(d) (8 U.S.C. 1324c(d)) is amended by adding at the
10 end the following:

11 “(8)(A) The administrative law judge shall have
12 the authority to require payment of a civil money
13 penalty in an amount up to two times the level of
14 the penalty prescribed by this subsection in any case
15 where the employer has been found to have com-
16 mitted willful or repeated violations of any of the fol-
17 lowing statutes:

18 “(i) The Fair Labor Standards Act, (29
19 U.S.C. 201 et seq.), pursuant to a final deter-
20 mination by the Secretary of Labor or a court
21 of competent jurisdiction.

22 “(ii) The Migrant and Seasonal Agricul-
23 tural Worker Protection Act, (29 U.S.C. 1801
24 et seq.), pursuant to a final determination by

1 the Secretary of Labor or a court of competent
2 jurisdiction.

3 “(iii) The Family and Medical Leave Act
4 (29 U.S.C. 2601 et seq.), pursuant to a final
5 determination by a court of competent jurisdic-
6 tion.

7 “(B) The Secretary of Labor and the Attorney
8 General shall consult regarding the administration of
9 the provisions of this paragraph.”.

10 **TITLE VII—FAIRNESS AND COM-**
11 **PASSION IN THE TREATMENT**
12 **OF BATTERED IMMIGRANTS**

13 **SEC. 701. FINDINGS AND PURPOSES.**

14 (a) FINDINGS.—Congress finds that—

15 (1) the goal of the immigration protections for
16 battered immigrants included in the Violence
17 Against Women Act of 1994 was to remove immi-
18 gration laws as a barrier that kept battered immi-
19 grant women and children locked in abusive relation-
20 ships;

21 (2) providing battered immigrant women and
22 children who were experiencing domestic violence at
23 home with protection against deportation allows
24 them to obtain protection orders against their abus-
25 ers and frees them to cooperate with law enforce-

1 ment and prosecutors in criminal cases brought
2 against their abusers and the abusers of their chil-
3 dren; and

4 (3) there are several groups of battered immi-
5 grant women and children who do not have access
6 to the immigration protections of the Violence
7 Against Women Act of 1994 which means that their
8 abusers are virtually immune from prosecution be-
9 cause their victims can be deported and the Immi-
10 gration and Naturalization Service cannot offer
11 them protection no matter how compelling their case
12 under existing law.

13 (b) PURPOSES.—The purposes of this title are—

14 (1) to promote criminal prosecutions of all per-
15 sons who commit acts of battery or extreme cruelty
16 against immigrant women and children;

17 (2) to offer protection against domestic violence
18 occurring in family and intimate relationships that
19 are covered in State and tribal protection orders, do-
20 mestic violence, and family law statutes; and

21 (3) to correct erosions of the Violence Against
22 Women Act of 1994 immigration protections that
23 occurred as a result of the Illegal Immigration Re-
24 form and Immigrant Responsibility Act of 1996 and
25 the Balanced Budget Act of 1997.

1 **SEC. 702. RESTORING IMMIGRATION PROTECTIONS UNDER**
2 **THE VIOLENCE AGAINST WOMEN ACT OF 1994**
3 **(VAWA).**

4 (a) REMOVING BARRIERS TO ADJUSTMENT OF STA-
5 TUS FOR VICTIMS OF DOMESTIC VIOLENCE.—

6 (1) IMMIGRATION AMENDMENTS.—Section 245
7 (8 U.S.C. 1255) is amended—

8 (A) in subsection (a), by inserting “or the
9 status of any other alien having an approved
10 petition for classification under subparagraph
11 (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii),
12 or (B)(iv) of section 204(a)(1) or” after “into
13 the United States”; and

14 (B) in subsection (c), by striking “Sub-
15 section (a) shall not be applicable to” and in-
16 serting the following: “Other than an alien who
17 has an approved petition for classification under
18 subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi),
19 (B)(ii), (B)(iii), or (B)(iv) of section 204(a)(1),
20 subsection (a) shall not be applicable to”.

21 (2) EFFECTIVE DATE.—The amendments made
22 by paragraph (1) shall apply to applications for ad-
23 justment of status pending on, or made on or after,
24 January 14, 1998.

1 (b) REMOVING BARRIERS TO CANCELLATION OF RE-
2 MOVAL AND SUSPENSION OF DEPORTATION FOR VICTIMS
3 OF DOMESTIC VIOLENCE.—

4 (1) EXEMPTION FROM ANNUAL LIMITATION ON
5 CANCELLATION OF REMOVAL FOR BATTERED
6 SPOUSE OR CHILD.—

7 (A) IN GENERAL.—Section 240A(e)(3) (8
8 U.S.C. 1229b(e)(3)) is amended by adding at
9 the end the following:

10 “(C) Aliens in removal proceedings who
11 applied for cancellation of removal under sub-
12 section (b)(2).”.

13 (B) EFFECTIVE DATE.—The amendment
14 made by subparagraph (A) shall take effect as
15 if included in the enactment of section 304 of
16 the Illegal Immigration Reform and Immigrant
17 Responsibility Act of 1996 (division C of Public
18 Law 104–208, 110 Stat. 587).

19 (2) MODIFICATION OF CERTAIN TRANSITION
20 RULES FOR BATTERED SPOUSE OR CHILD.—

21 (A) IN GENERAL.—Subparagraph (C) of
22 section 309(c)(5) of the Illegal Immigration Re-
23 form and Immigrant Responsibility Act of 1996
24 (8 U.S.C. 1101 note), as amended by section
25 203(a) of Public Law 105–100, is amended—

1 (i) in the heading by inserting “AND
2 FOR BATTERED SPOUSES AND CHILDREN”
3 after “FROM DEPORTATION”; and

4 (ii) in clause (i)—

5 (I) by striking, “or” at the end
6 of subclause (IV);

7 (II) by striking the period at the
8 end of subclause (V) and inserting “;
9 or”; and

10 (III) by adding at the end the
11 following new subclause:

12 “(VI) is an alien who was issued
13 an order to show cause or was in de-
14 portation proceedings before April 1,
15 1997, and who applied for suspension
16 of deportation under section 244(a)(3)
17 of the Immigration and Nationality
18 Act (as in effect before the date of the
19 enactment of this Act).”.

20 (B) EFFECTIVE DATE.—The amendments
21 made by subparagraph (A) shall take effect as
22 if included in the enactment of section 309 of
23 the Illegal Immigration Reform and Immigrant
24 Responsibility Act of 1996 (8 U.S.C. 1101
25 note).

1 (c) ELIMINATING TIME LIMITATIONS ON MOTIONS
2 TO REOPEN REMOVAL AND DEPORTATION PROCEEDINGS
3 FOR VICTIMS OF DOMESTIC VIOLENCE.—

4 (1) REMOVAL PROCEEDINGS.—

5 (A) IN GENERAL.—Section 240(c)(6)(C) (8
6 U.S.C. 1229a(c)(6)(C)) is amended by adding
7 at the end the following:

8 “(iv) SPECIAL RULE FOR BATTERED
9 SPOUSES AND CHILDREN.—There is no
10 time limit on the filing of a motion to re-
11 open, and the deadline specified in sub-
12 section (b)(5)(C) for filing such a motion
13 does not apply—

14 “(I) if the basis for the motion is
15 to apply for relief under clause (iii),
16 (iv), (v), or (vi) of section
17 204(a)(1)(A), clause (ii), (iii), or (iv)
18 of section 204(a)(1)(B), or section
19 240A(b)(2); and

20 “(II) if the motion is accom-
21 panied by a cancellation of removal
22 application to be filed with the Attor-
23 ney General or by a copy of the self-
24 petition that has been or will be filed
25 with the Immigration and Naturaliza-

1 tion Service upon the granting of the
2 motion to reopen.”.

3 (B) EFFECTIVE DATE.—The amendment
4 made by subparagraph (A) shall take effect as
5 if included in the enactment of section 304 of
6 the Illegal Immigration Reform and Immigrant
7 Responsibility Act of 1996.

8 (2) DEPORTATION PROCEEDINGS.—

9 (A) IN GENERAL.—Notwithstanding any
10 limitation imposed by law on motions to reopen
11 or rescind deportation proceedings under the
12 Immigration and Nationality Act (as in effect
13 before the title III–A effective date in section
14 309 of the Illegal Immigration Reform and Im-
15 migrant Responsibility Act of 1996 (8 U.S.C.
16 1101 note)), there is no time limit on the filing
17 of a motion to reopen such proceedings, and the
18 deadline specified in section 242B(c)(3) of the
19 Immigration and Nationality Act (as so in ef-
20 fect) (8 U.S.C. 1252b(c)(3)) does not apply—

21 (i) if the basis of the motion is to
22 apply for relief under clause (iii), (iv), (v),
23 or (vi) of section 204(a)(1)(A) of the Im-
24 migration and Nationality Act (8 U.S.C.
25 1154(a)(1)(A)), clause (ii), (iii), or (iv) of

1 section 204(a)(1)(B) of such Act (8 U.S.C.
2 1154(a)(1)(B)), or section 244(a)(3) of
3 such Act (as so in effect) (8 U.S.C.
4 1254(a)(3)); and

5 (ii) if the motion is accompanied by a
6 suspension of deportation application to be
7 filed with the Attorney General or by a
8 copy of the self-petition that will be filed
9 with the Immigration and Naturalization
10 Service upon the granting of the motion to
11 reopen.

12 (B) APPLICABILITY.—Subparagraph (A)
13 shall apply to motions filed by aliens who—

14 (i) are, or were, in deportation pro-
15 ceedings under the Immigration and Na-
16 tionality Act (as in effect before the title
17 III–A effective date in section 309 of the
18 Illegal Immigration Reform and Immigrant
19 Responsibility Act of 1996 (8 U.S.C. 1101
20 note)); and

21 (ii) have become eligible to apply for
22 relief under clause (iii), (iv), (v), or (vi) of
23 section 204(a)(1)(A) of the Immigration
24 and Nationality Act (8 U.S.C.
25 1154(a)(1)(A)), clause (ii), (iii), or (iv) of

1 section 204(a)(1)(B) of such Act (8 U.S.C.
2 1154(a)(1)(B)), or section 244(a)(3) of
3 such Act (as in effect before the title III-
4 A effective date in section 309 of the Ille-
5 gal Immigration Reform and Immigrant
6 Responsibility Act of 1996 (8 U.S.C. 1101
7 note)) as a result of the amendments made
8 by—

9 (I) subtitle G of title IV of the
10 Violent Crime Control and Law En-
11 forcement Act of 1994 (Public Law
12 103-322; 108 Stat. 1953 et seq.); or
13 (II) this title.

14 **SEC. 703. REMEDYING PROBLEMS WITH IMPLEMENTATION**
15 **OF THE IMMIGRATION PROVISIONS OF VAWA.**

16 (a) EFFECT OF CHANGES IN ABUSERS' CITIZENSHIP
17 STATUS ON SELF-PETITION.—

18 (1) RECLASSIFICATION.—Section 204(a)(1)(A)
19 (8 U.S.C. 1154(a)(1)(A)), as amended by para-
20 graphs (4), (5), and (6) of section 706(c), is amend-
21 ed by adding after clause (vii) the following new
22 clause:

23 “(viii) For the purposes of any petition filed under
24 clause (iii), (iv), (v), or (vi), denaturalization, loss or re-
25 nunciation of citizenship, death of the abuser, or changes

1 to the abuser's citizenship status after filing of the petition
2 shall not adversely affect the approval of the petition and,
3 for approved petitions, shall not preclude the classification
4 of the eligible self-petitioning spouse, child, or son or
5 daughter as an immediate relative or affect the alien's
6 ability to adjust status under subsections (a) and (c) of
7 section 245 or obtain status as a lawful permanent resi-
8 dent based on the approved self-petition under such
9 clauses.”.

10 (2) LOSS OF STATUS.—Section 204(a)(1)(B) (8
11 U.S.C. 1154(a)(1)(B)), as amended by paragraphs
12 (4) and (5) of section 706(d), is amended by adding
13 after clause (v) the following new clause:

14 “(vi)(I) For the purposes of petitions filed or ap-
15 proved under clause (ii), (iii), or (iv), loss of lawful perma-
16 nent resident status by a spouse or parent or death of
17 a spouse or parent who was a lawful permanent resident
18 after the filing of a petition under that clause shall not
19 adversely affect approval of the petition, and, for an ap-
20 proved petition, shall not affect the alien's ability to adjust
21 status under sections 245(a) and 245(c) or obtain status
22 as a lawful permanent resident based on the approved self-
23 petition under such clause (ii), (iii), or (iv).

24 “(II) Upon the lawful permanent resident spouse or
25 parent becoming a United States citizen through natu-

1 ralization, acquisition of citizenship, or other means, any
2 petition filed with the Immigration and Naturalization
3 Service and pending or approved under clause (ii), (iii),
4 or (iv) on behalf of an alien who has been battered or sub-
5 jected to extreme cruelty shall be deemed reclassified as
6 a petition filed under subparagraph (A) even if the acqui-
7 sition of citizenship occurs after divorce or termination of
8 parental rights.”.

9 (3) DEFINITION OF IMMEDIATE RELATIVE.—

10 Section 201(b)(2)(A)(i) (8 U.S.C. 1154(b)(2)(A)(i))
11 is amended by adding at the end the following new
12 sentence: “For purposes of this clause, an alien who
13 has filed a petition under clause (iii), (iv), (v), or
14 (vi) of section 204(a)(1)(A) remains an immediate
15 relative in the event that the United States citizen
16 spouse, parent, son, or daughter loses United States
17 citizenship or dies after the filing of the petition.”.

18 (b) EXEMPTION FOR BATTERED IMMIGRANT WOMEN
19 WHO ENTERED THE UNITED STATES ON FIANCÉ VISAS
20 FROM CONDITIONAL RESIDENCY STATUS REQUIRE-
21 MENT.—Section 245(d) (8 U.S.C. 1255(d)) is amended by
22 adding at the end the following: “This subsection shall not
23 apply to aliens who seek adjustment of status on the basis
24 of an approved self-petition for classification under clause
25 (iii), (iv), (v), or (vi) of section 204(a)(1)(A) or classifica-

1 tion under clause (ii), (iii), or (iv) of section
2 204(a)(1)(B).”.

3 (c) REDUCING AN ABUSER’S CONTROL OVER A BAT-
4 TERED IMMIGRANT’S IMMIGRATION CASE.—Section 205
5 (8 U.S.C. 1155) is amended by adding at the end the fol-
6 lowing: “Whenever a beneficiary of a petition filed under
7 section 204 provides the Attorney General with credible
8 evidence of battery or extreme cruelty as described in sec-
9 tion 216(c)(4)(C), 204(a)(1)(A), or 204(a)(1)(B), the At-
10 torney General shall adjudicate the petition filed under
11 section 204 notwithstanding—

12 “(1) the withdrawal by the petitioner of the pe-
13 tition;

14 “(2) the failure of the petitioner to appear at
15 the interview;

16 “(3) the failure of the petitioner to file an affi-
17 davit of support; or

18 “(4) a prior revocation or denial based on with-
19 drawal of, or failure to prosecute, the petition or any
20 other determination based on the petitioner’s actions
21 that could result or have resulted in the denial or
22 revocation of the petition (but for this section).”.

23 (d) REQUIRING PROSECUTOR COOPERATION WITH
24 BATTERED IMMIGRANT VAWA APPLICANTS.—Section

1 2101(e) of the Omnibus Crime Control and Safe Streets
2 Act of 1968 (42 U.S.C. 3796hh(e)) is amended—

3 (1) by striking “and” at the end of paragraph
4 (4);

5 (2) by striking the period at the end of para-
6 graph (4) and inserting “; and”; and

7 (3) by adding at the end the following:

8 “(5) certify that their laws, policies, and prac-
9 tices do not discourage or prohibit prosecutors and
10 law enforcement officers from granting access to in-
11 formation about the citizenship or lawful permanent
12 residency status of a domestic violence perpetrator
13 to the victim, the child, son, or daughter or their ad-
14 vocate so long as release of the information does not
15 jeopardize ongoing prosecution of the abuser.”.

16 (e) ALLOWING REMARRIAGE OF BATTERED IMMI-
17 GRANTS.—Section 204(h) (8 U.S.C. 1154(h)) is amended
18 by adding at the end the following new sentence: “Remar-
19 riage of an alien whose petition was approved under sub-
20 section (a)(1)(B)(ii) or (a)(1)(A)(iii) or marriage of an
21 alien described in subsection (a)(1)(A)(iv), (a)(1)(A)(vi),
22 (a)(1)(B)(iii), or (a)(1)(B)(iv) shall not be the basis for
23 revocation under section 205.”.

1 **SEC. 704. WAIVERS AND EXCEPTIONS TO INADMISSIBILITY**
2 **FOR OTHERWISE QUALIFIED BATTERED IM-**
3 **MIGRANTS.**

4 (a) DISCRETIONARY WAIVERS FOR CERTAIN INAD-
5 MISSIBILITY AND REMOVAL GROUNDS.—

6 (1) INADMISSIBILITY GROUNDS.—Section 212
7 (8 U.S.C. 1182) is amended by adding at the end
8 the following:

9 “(r) DISCRETIONARY WAIVER AUTHORITY.—The At-
10 torney General, in the Attorney General’s discretion, may
11 waive any provision of this section (other than paragraphs
12 (3), (10)(A), (10)(D), and (10)(E) of subsection (a)) for
13 humanitarian purposes, to assure family unity, or when
14 it is otherwise in the public interest if the alien dem-
15 onstrates a connection between the crime or disqualifying
16 act and battery or extreme cruelty for any alien who quali-
17 fies for—

18 “(1) classification under clause (iii), (iv), (v), or
19 (vi) of section 204(a)(1)(A) or classification under
20 clause (ii), (iii), or (iv) of section 204(a)(1)(B); or

21 “(2) relief under section 240A(b)(2) or under
22 section 244(a)(3) (as in effect before the enactment
23 of the Illegal Immigration Reform and Immigrant
24 Responsibility Act of 1996).”.

1 (2) REMOVAL GROUNDS.—Section 237 (8
2 U.S.C. 1227) is amended by adding at the end the
3 following:

4 “(d) DISCRETIONARY WAIVER AUTHORITY.—The At-
5 torney General, in the discretion of the Attorney General,
6 may waive any provision of this section (other than sub-
7 sections (a)(2)(D)(i), (a)(4), or (a)(5)) for humanitarian
8 purposes, to assure family unity, or when it is otherwise
9 in the public interest in the case of an alien who dem-
10 onstrates a connection between the crime or disqualifying
11 act and battery or extreme cruelty for any alien who quali-
12 fies for—

13 “(1) classification under clause (iii), (iv), (v), or
14 (vi) of section 204(a)(1)(A) or classification under
15 clause (ii), (iii), or (iv) of section 204(a)(1)(B); or

16 “(2) relief under section 240A(b)(2) or under
17 section 244(a)(3) (as in effect before the enactment
18 of the Illegal Immigration Reform and Immigrant
19 Responsibility Act of 1996).”.

20 (b) OFFERING EQUAL ACCESS TO VAWA IMMIGRA-
21 TION PROTECTIONS FOR ALL QUALIFIED BATTERED IM-
22 MIGRANT SELF-PETITIONERS.—

23 (1) ELIMINATING CONNECTION BETWEEN BAT-
24 TERY AND UNLAWFUL ENTRY.—Section
25 212(a)(6)(A)(ii) (8 U.S.C. 1182) is amended—

1 (A) by amending subclause (I) to read as
2 follows:

3 “(I) the alien qualifies for classi-
4 fication under subparagraph (A)(iii),
5 (A)(iv), (A)(v), (A)(vi), (B)(ii),
6 (B)(iii), or (B)(iv) of section
7 204(a)(1), and”;

8 (B) by striking “, and” in subclause (II)
9 and inserting a period; and

10 (C) by striking subclause (III).

11 (2) BATTERED IMMIGRANT EXCEPTION.—Sec-
12 tion 212(a)(9)(A)(iii) (8 U.S.C. 1182(a)(9)(A)(iii))
13 is amended by adding at the end the following:
14 “Clauses (i) and (ii) also shall not apply to aliens to
15 whom the Attorney General has granted classifica-
16 tion under clause (iii), (iv), (v), or (vi) of section
17 204(a)(1)(A) or classification under clause (ii), (iii),
18 or (iv) of section 204(a)(1)(B).”.

19 (3) ELIMINATING CONNECTION BETWEEN BAT-
20 TERY AND VIOLATION OF THE TERMS OF AN IMMI-
21 GRANT VISA.—Section 212(a)(9)(B)(iii)(IV) (8
22 U.S.C. 1182(a)(9)(B)(iii)(IV)) is amended by strik-
23 ing “who would be described in paragraph
24 (6)(A)(ii)” and all that follows and inserting “who
25 is described in paragraph (6)(A)(ii).”.

1 (4) BATTERED IMMIGRANT EXCEPTION.—Sec-
2 tion 212(a)(9)(C)(ii) (8 U.S.C. 1182(a)(9)(C)(ii)) is
3 amended by adding at the end the following: “Clause
4 (i) shall also not apply to aliens to whom the Attor-
5 ney General has granted classification under clause
6 (iii), (iv), (v), or (vi) of section 204(a)(1)(A) or clas-
7 sification under clause (ii), (iii), or (iv) of section
8 204(a)(1)(B).”.

9 (5) WAIVER OF CERTAIN REMOVAL GROUNDS.—
10 Section 237 (8 U.S.C. 1227), as amended by sub-
11 section (a)(2), is further amended by adding at the
12 end the following:

13 “(e) WAIVER FOR VICTIMS OF DOMESTIC VIO-
14 LENCE.—The Attorney General is not limited by the
15 criminal court record and may waive the application of
16 subsections (a)(2)(E)(i), (a)(2)(E)(ii), (a)(2)(A)(i), and
17 (a)(2)(A)(iii) in the case of an alien who has been battered
18 or subjected to extreme cruelty and who is not and was
19 not the primary perpetrator of violence in the
20 relationship—

21 “(1) upon determination that—

22 “(A) the alien was acting in self-defense;

23 “(B) the alien was found to have violated
24 a protection order intended to protect the alien;

25 or

1 “(C) the alien committed, was arrested for,
2 was convicted of, or pled guilty to committing
3 a crime where there was a connection between
4 the crime and having been battered or subjected
5 to extreme cruelty; or

6 “(2) for humanitarian purposes, to assure fam-
7 ily unity, or when it is otherwise in the public inter-
8 est.”.

9 (6) MISREPRESENTATION WAIVERS FOR BAT-
10 TERED SPOUSES OF UNITED STATES CITIZENS AND
11 LAWFUL PERMANENT RESIDENTS.—

12 (A) WAIVER OF INADMISSIBILITY.—Sec-
13 tion 212(i)(1) (8 U.S.C. 1182(i)(1)) is amended
14 by inserting before the period at the end the
15 following: “or, in the case of an alien granted
16 classification under clause (iii), (iv), (v), or (vi)
17 of section 204(a)(1)(A) or clause (ii), (iii), or
18 (iv) of section 204(a)(1)(B), or who qualifies
19 for relief under section 240A(b)(2) or under
20 section 244(a)(3) (as in effect before the date
21 of enactment of the Illegal Immigration Reform
22 and Immigrant Responsibility Act of 1996), the
23 alien demonstrates extreme hardship to the
24 alien or the alien’s United States citizen, lawful

1 permanent resident or qualified alien parent,
2 child, son, or daughter”.

3 (B) WAIVER OF DEPORTABILITY.—Section
4 237(a)(1)(H) (8 U.S.C. 1227(a)(1)(H)) is
5 amended—

6 (i) in clause (i), by inserting “(I)”
7 after “(i)”;

8 (ii) by redesignating clause (ii) as
9 subclause (II); and

10 (iii) by inserting after clause (i) the
11 following new clause:

12 “(ii) is an alien who qualifies for clas-
13 sification under clause (iii), (iv), (v), or (vi)
14 of section 204(a)(1)(A) or clause (ii), (iii),
15 or (iv) of section 204(a)(1)(B), or who
16 qualifies for relief under section
17 240A(b)(2) or under section 244(a)(3) (as
18 in effect before the date of enactment of
19 the Illegal Immigration Reform and Immig-
20 rant Responsibility Act of 1996).”.

21 **SEC. 705. CALCULATION OF PHYSICAL PRESENCE IN VAWA**
22 **CANCELLATION OF REMOVAL AND SUSPEN-**
23 **SION OF DEPORTATION.**

24 (a) CANCELLATION OF REMOVAL PROCEEDINGS.—
25 Section 240A(d)(1) (8 U.S.C. 1229b(d)(1)), as amended

1 by section 205, is further amended by adding at the end
2 the following: “In the case of an alien applying for can-
3 cellation of removal under subsection (b)(2), the Attorney
4 General may waive the provisions of this subsection for
5 humanitarian purposes, to assure family unity, or when
6 it is otherwise in the public interest, if the alien dem-
7 onstrates that the absences were connected to the battery
8 or extreme cruelty forming the basis of the application for
9 cancellation of removal under such subsection.”.

10 (b) SUSPENSION OF DEPORTATION PROCEEDINGS.—
11 With respect to applications filed under section 244(a)(3)
12 of the Immigration and Nationality Act (as in effect before
13 the title III-A effective date, as defined in section 309(a)
14 of the Illegal Immigration Reform and Immigrant Respon-
15 sibility Act of 1996 (division C of Public Law 104–208;
16 110 Stat. 3009–625)) (8 U.S.C. 1254(a)(3)), the Attorney
17 General may waive the physical presence requirement for
18 humanitarian purposes, to assure family unity, or when
19 it is otherwise in the public interest if the alien dem-
20 onstrates that the absences were connected to the battery
21 or extreme cruelty forming the basis of the application for
22 suspension of deportation.

1 **SEC. 706. IMPROVED ACCESS TO VAWA IMMIGRATION PRO-**
2 **TECTIONS FOR BATTERED IMMIGRANT**
3 **WOMEN.**

4 (a) INTENDED SPOUSE DEFINED.—Section 101(a)
5 (8 U.S.C. 1101(a)) is amended by adding at the end the
6 following new paragraph:

7 “(50) The term ‘intended spouse’ means any alien
8 who meets the criteria set forth in section 204(j)(1)(B)
9 or 204(k)(1)(B).”.

10 (b) ENSURING PROTECTION FOR ABUSED CHILDREN
11 AND CHILDREN OF BATTERED IMMIGRANTS.—Section
12 101(b) (8 U.S.C. 1101(b)) is amended—

13 (1) in paragraph (1), by striking “The term”
14 and inserting “Subject to paragraph (6), the term”,
15 and

16 (2) by adding at the end the following new
17 paragraph:

18 “(6) For the purposes of clauses (iii) and (iv) of sec-
19 tion 204(a)(1)(A), clauses (ii) and (iii) of section
20 204(a)(1)(B), section 240A(b)(2), and section 244(a)(3)
21 (as in effect before the date of the enactment of the Illegal
22 Immigration Reform and Immigrant Responsibility Act of
23 1996) and for the purposes of attaining lawful permanent
24 residency under those sections either under section 245
25 or by obtaining an immigrant visa under section 203, an
26 individual who turns 21 years old remains a child under

1 paragraph (1) if, on the date a petition or application was
2 filed by the individual or their parent under any of these
3 sections the individual—

4 “(A) met the definition of child in one of sub-
5 paragraphs (A) through (F) of paragraph (1); and

6 “(B) was under the age of 21 on the date the
7 application or petition was filed.”.

8 (c) IMMEDIATE RELATIVE STATUS FOR SELF-PETI-
9 TIONERS MARRIED TO U.S. CITIZENS.—

10 (1) SELF-PETITIONING SPOUSES.—

11 (A) BATTERY OR CRUELTY TO ALIEN OR
12 ALIEN’S CHILD.—Section 204(a)(1)(A)(iii) (8
13 U.S.C. 1154(a)(1)(A)(iii)) is amended to read
14 as follows:

15 “(iii) An alien who is described in subsection (j) may
16 file a petition with the Attorney General under this clause
17 for classification of the alien (and any child of the alien
18 as defined in paragraph (1) or (6) of section 101(b) if
19 the alien demonstrates to the Attorney General that—

20 “(I) the marriage or the intent to marry the
21 United States citizen was entered into in good faith
22 by the alien; and

23 “(II) during the marriage or relationship in-
24 tended by the alien to be legally a marriage, the
25 alien or a child of the alien has been battered or has

1 been the subject of extreme cruelty perpetrated by
2 the alien's spouse or intended spouse.”.

3 (B) DESCRIPTION OF PROTECTED SPOUSE
4 OR INTENDED SPOUSE.—Section 204 (8 U.S.C.
5 1154) is amended by adding at the end the fol-
6 lowing:

7 “(j) DESCRIPTION OF PROTECTED SPOUSE OR IN-
8 TENDED SPOUSE.—For purposes of subsection
9 (a)(1)(A)(iii), an alien described in this subsection is an
10 alien—

11 “(1)(A) who is the spouse of a citizen of the
12 United States; or

13 “(B)(i) who believed that he or she had married
14 a citizen of the United States and with whom a mar-
15 riage ceremony was actually performed; and

16 “(ii) who otherwise meets any applicable re-
17 quirements under this Act to establish the existence
18 of and bona fides of a marriage, but whose marriage
19 is not legitimate solely because of the bigamy of
20 such citizen of the United States; or

21 “(C) who was a bona fide spouse of a United
22 States citizen within the past two years and whose
23 spouse died within the past two years, or whose
24 spouse lost immigration status within the past two
25 years due to an incident of domestic violence, or who

1 demonstrates a connection between the legal termi-
2 nation of the marriage within the past two years and
3 battering or extreme cruelty by the United States
4 citizen spouse;

5 “(2) who is a person of good moral character;

6 “(3) who is eligible to be classified as an imme-
7 diate relative under section 201(b)(2)(A)(i) or who
8 would have been so classified but for the bigamy of
9 the citizen of the United States that the alien in-
10 tended to marry; and

11 “(4) who has resided with the alien’s spouse or
12 intended spouse.”.

13 (2) GUARANTEEING ACCESS TO VAWA RELIEF
14 FOR BATTERED IMMIGRANTS BROUGHT INTO THE
15 UNITED STATES ON FIANCÉ VISAS.—Section
16 204(a)(1)(C), as inserted by subsection (d)(6), is
17 amended by adding at the end the following new
18 clause:

19 “(iii) For aliens who entered the country on fiancé
20 visas, failure to marry the sponsor or failure to marry the
21 sponsor within 90 days as required under section
22 101(a)(15)(K) shall not bar access to relief under clause
23 (iii), (iv), (v), or (vi) of subsection (a)(1)(A), under clause
24 (ii), (iii), or (iv) of subsection (a)(1)(B), under section
25 240A(b)(2), or under section 244(a)(3) (as in effect before

1 the enactment of the Illegal Immigration Reform and Im-
2 migrant Responsibility Act of 1996) to aliens who other-
3 wise qualify.”.

4 (3) SELF-PETITIONING CHILDREN.—Section
5 204(a)(1)(A)(iv) (8 U.S.C. 1154(a)(1)(A)(iv)) is
6 amended to read as follows:

7 “(iv) An alien who is the child of a citizen of the
8 United States (as defined in paragraph (1) or (6) of sec-
9 tion 101(b)) or who was a child of United States citizen
10 parent who died within the past two years or lost immigra-
11 tion status due to an incident of domestic violence within
12 the past two years, and who is a person of good moral
13 character, who is eligible to be classified as an immediate
14 relative under section 201(b)(2)(A)(i), and who resides or
15 has resided in the past with the citizen parent may file
16 a petition with the Attorney General under this subpara-
17 graph for classification of the alien (and any child of the
18 alien) under such section if the alien demonstrates to the
19 Attorney General that the alien has been battered by or
20 has been the subject of extreme cruelty perpetrated by the
21 alien’s citizen parent. For purposes of this clause, resi-
22 dence includes any period of visitation.”.

23 (4) SELF-PETITIONING PARENTS.—Section
24 204(a)(1)(A) (8 U.S.C. 1154(a)(1)(A)) is amended
25 by adding after clause (iv) the following new clause:

1 “(v) An alien who is the parent of a citizen of the
2 United States or who was a parent of United States cit-
3 izen who died within the past two years or lost immigra-
4 tion status due to an incident of domestic violence within
5 the past two years, and who is a person of good moral
6 character, who is eligible to be classified as an immediate
7 relative under section 201(b)(2)(A)(i), and who has re-
8 sided with the citizen daughter or son may file a petition
9 with the Attorney General under this subparagraph for
10 classification of the alien under such section if the alien
11 demonstrates to the Attorney General that the alien has
12 been battered by or has been the subject of extreme cru-
13 elty perpetrated by the alien’s citizen son or daughter.”.

14 (5) SELF-PETITIONING SON OR DAUGHTER.—

15 Section 204(a)(1)(A) (8 U.S.C. 1154(a)(1)(A)), as
16 amended by paragraph (4), is amended by adding
17 after clause (v) the following new clause:

18 “(vi) An alien who is the son or daughter of a citizen
19 of the United States or who was the son or daughter of
20 United States citizen parent who died within the past two
21 years or lost immigration status due to an incident of do-
22 mestic violence within the past two years, and who is a
23 person of good moral character, who is eligible for classi-
24 fication by reason of a relationship described in paragraph
25 (1) of section 203(a), and who resides or has resided in

1 the past with the citizen parent may file a petition with
2 the Attorney General under this clause for classification
3 of the alien (and any child of the alien) under such section
4 if the alien demonstrates to the Attorney General that the
5 alien has been battered by, or has been the subject of ex-
6 treme cruelty perpetrated by, the alien's citizen parent and
7 1 or more incidents of battery or extreme cruelty occurred
8 before the son or daughter reached the age of 21. For
9 purposes of this clause, residence includes any period of
10 visitation.”.

11 (6) FILING OF PETITIONS.—Section
12 204(a)(1)(A) (8 U.S.C. 1154 (a)(1)(A)(iv)), as
13 amended by paragraphs (4) and (5), is amended by
14 adding after clause (vi) the following new clause:

15 “(vii) An alien who is the spouse, intended spouse,
16 child, parent, son, or daughter of a United States citizen
17 living abroad and who is eligible to file a petition under
18 clause (iii), (iv), (v), or (vi) shall file such petition with
19 the Attorney General under the procedures that apply to
20 self-petitioners under such clauses.”.

21 (d) SECOND PREFERENCE IMMIGRATION STATUS
22 FOR SELF-PETITIONERS MARRIED TO LAWFUL PERMA-
23 NENT RESIDENTS.—