

1 (1) SELF-PETITIONING SPOUSES.—Section
2 204(a)(1)(B)(ii) (8 U.S.C. 1154(a)(1)(B)(ii)) is
3 amended to read as follows:

4 “(ii) An alien who is described in subsection (k) may
5 file a petition with the Attorney General under this clause
6 for classification of the alien (and any child of the alien
7 as defined in paragraph (1) or (6) of section 101(b)) if
8 such a child has not been classified under clause (iii) of
9 section 203(a)(2)(A) and if the alien demonstrates to the
10 Attorney General that—

11 “(I) the marriage or the intent to marry the
12 lawful permanent resident was entered into in good
13 faith by the alien; and

14 “(II) during the marriage or relationship in-
15 tended by the alien to be legally a marriage, the
16 alien or a child of the alien has been battered or has
17 been the subject of extreme cruelty perpetrated by
18 the alien’s spouse or intended spouse.”.

19 (2) DESCRIPTION OF PROTECTED SPOUSE OR
20 INTENDED SPOUSE.—Section 204 (8 U.S.C. 1154),
21 as amended by subsection (c)(1)(B), is further
22 amended by adding at the end the following:

23 “(k) DESCRIPTION OF PROTECTED SPOUSE OR IN-
24 TENDED SPOUSE.—For purposes of subsection

1 (a)(1)(B)(ii), an alien described in this subsection is an
2 alien—

3 “(1)(A) who is the spouse of a lawful perma-
4 nent resident of the United States; or

5 “(B)(i) who believed that he or she had married
6 a lawful permanent resident of the United States
7 and with whom a marriage ceremony was actually
8 performed; and

9 “(ii) who otherwise meets any applicable re-
10 quirements under this Act to establish the existence
11 of and bona fides of a marriage, but whose marriage
12 is not legitimate solely because of the bigamy of
13 such lawful permanent resident of the United States;
14 or

15 “(iii) who was a bona fide spouse of a lawful
16 permanent resident within the past two years and
17 whose spouse died within the past two years, or
18 whose spouse lost status within the past two years
19 due to an incident of domestic violence, or who dem-
20 onstrates a connection between the legal termination
21 of the marriage within the past two years and bat-
22 tering or extreme cruelty by the United States cit-
23 izen spouse;

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

1 “(3) who is eligible to be classified as a spouse
2 of an alien lawfully admitted for permanent resi-
3 dence under section 203(a)(2)(A) or who would have
4 been so classified but for the bigamy of the lawful
5 permanent resident of the United States that the
6 alien intended to marry; and

7 “(4) who has resided in the United States with
8 the alien’s spouse or intended spouse.”.

9 (3) SELF-PETITIONING CHILDREN.—Section
10 204(a)(1)(B)(iii) (8 U.S.C. 1154(a)(1)(B)(iii)) is
11 amended to read as follows:

12 “(iii) An alien who is the child of an alien lawfully
13 admitted for permanent residence as defined in paragraph
14 (1) or (6) of section 101(b) or who was a child of a lawful
15 permanent resident parent who died within the past two
16 years or lost immigration status due to an incident of do-
17 mestic violence within the past two years, and who is a
18 person of good moral character, who is eligible for classi-
19 fication under section 203(a)(2)(A), and who resides or
20 has resided in the past with the alien’s permanent resident
21 alien parent may file a petition with the Attorney General
22 under this subparagraph for classification of the alien
23 (and any child of the alien) under such section if the alien
24 demonstrates to the Attorney General that the alien has
25 been battered by or has been the subject of extreme cru-

1 elty perpetrated by the alien's permanent resident parent.
2 For purposes of this clause, residence includes any period
3 of visitation.”.

4 (4) SELF-PETITIONING SON OR DAUGHTER.—

5 Section 204(a)(1)(B) (8 U.S.C. 1154(a)(1)(B)), as
6 amended by section 703(a)(2), is further amended
7 by adding at the end the following:

8 “(iv) An alien who is the son or daughter of an alien
9 lawfully admitted for permanent residence or who was a
10 son or daughter of a lawful permanent resident parent
11 who died within the past two years or lost immigration
12 status due to an incident of domestic violence within the
13 past two years and who is a person of good moral char-
14 acter, who is eligible for classification by reason of a rela-
15 tionship described in paragraph (2) of section 203(a), and
16 who resides or has resided in the past with the alien's legal
17 permanent resident parent may file a petition with the At-
18 torney General under this clause for classification of the
19 alien (and any child of the alien) under such section if
20 the alien demonstrates to the Attorney General that the
21 alien has been battered by, or has been the subject of ex-
22 treme cruelty perpetrated by, the alien's legal permanent
23 resident parent and 1 or more incidents of battery or ex-
24 treme cruelty occurred before the son or daughter reached

1 the age of 21. For purposes of this clause, residence in-
2 cludes any period of visitation.”.

3 (5) FILING OF PETITIONS.—Section
4 204(a)(1)(B) (8 U.S.C. 1154(a)(1)(B)), as amended
5 by paragraph (4), is further amended by adding
6 after clause (iv) the following new clause:

7 “(v) An alien who is the spouse, intended spouse,
8 child, son, or daughter of a lawful permanent resident liv-
9 ing abroad is eligible to file a petition under clause (ii),
10 (iii), or (iv) shall file such petition with the Attorney Gen-
11 eral under the procedures that apply to self-petitioners
12 under such clauses.”.

13 (6) TREATMENT OF PETITIONS INCLUDING DE-
14 RIVATIVE CHILDREN TURNING 21 YEARS OF AGE.—
15 Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is
16 amended—

17 (A) by redesignating subparagraphs (C)
18 through (H) as subparagraphs (D) through (I),
19 respectively; and

20 (B) by inserting after subparagraph (B)
21 the following:

22 “(C)(i)(I) Any derivative child who attains 21 years
23 of age and who is included in a petition described in clause
24 (ii) that was filed or approved before the date on which
25 the child attained 21 years of age shall be considered (if

1 no visa has been issued to the child by such date) a peti-
2 tioner for preference status under paragraph (1), (2), or
3 (3) of section 203(a), whichever paragraph is applicable,
4 with the same priority date as that assigned to the petition
5 in any petition described in clause (ii).

6 “(II) Any individual described in subclause (I) and
7 any derivative child of a petition described in clause (ii)
8 is eligible for deferred action and work authorization.

9 “(ii) The petition referred to in clause (i) is a petition
10 filed by an alien under subparagraph (A)(iii), (A)(iv),
11 (A)(vi), (B)(ii), (B)(iii), or (B)(iv) in which the child is
12 included as a derivative.”.

13 (e) ACCESS TO NATURALIZATION FOR DIVORCED
14 VICTIMS OF ABUSE.—Section 319(a) (8 U.S.C. 1430(a))
15 is amended—

16 (1) by inserting “, and any person who obtained
17 status as a lawful permanent resident by reason of
18 his or her status as a spouse or child of a United
19 States citizen who battered him or her or subjected
20 him or her to extreme cruelty,” after “United
21 States” the first place it appears; and

22 (2) by inserting “(except in the case of a person
23 who has been battered or subjected to extreme cru-
24 elty by a United States citizen spouse or parent)”

1 after “has been living in marital union with the cit-
2 izen spouse”.

3 **SEC. 707. IMPROVED ACCESS TO VAWA CANCELLATION OF**
4 **REMOVAL.**

5 (a) CANCELLATION OF REMOVAL AND ADJUSTMENT
6 OF STATUS FOR CERTAIN NONPERMANENT RESI-
7 DENTS.—Section 240A(b)(2) (8 U.S.C. 1229b(b)(2)) is
8 amended to read as follows:

9 “(2) SPECIAL RULE FOR BATTERED SPOUSE,
10 PARENT, CHILD, SON, OR DAUGHTER.—

11 “(A) IN GENERAL.—The Attorney General
12 may cancel removal of, and adjust to the status
13 of an alien lawfully admitted for permanent res-
14 idence, an alien who is inadmissible or deport-
15 able from the United States if the alien dem-
16 onstrates that—

17 “(i)(I) the alien has been battered or
18 subjected to extreme cruelty in the United
19 States by a spouse, parent, son, or daugh-
20 ter who is or was a United States citizen
21 (or is the parent of a child of a United
22 States citizen and the child has been bat-
23 tered or subjected to extreme cruelty in the
24 United States by such citizen parent);

1 “(II) the alien has been battered or
2 subjected to extreme cruelty by a spouse or
3 parent who is or was a lawful permanent
4 resident (or is the parent of a child of an
5 alien who is or was a lawful permanent
6 resident and the child has been battered or
7 subjected to extreme cruelty in the United
8 States by such permanent resident parent),
9 or

10 “(III) the alien has been battered or
11 subjected to extreme cruelty by a United
12 States citizen or lawful permanent resident
13 whom the alien intended to marry, but
14 whose marriage is not legitimate because
15 of that United States citizen’s or lawful
16 permanent resident’s bigamy;

17 “(ii) the alien has been physically
18 present in the United States for a contin-
19 uous period of not less than 3 years imme-
20 diately preceding the date of such applica-
21 tion (and the issuance of a charging docu-
22 ment for removal proceedings shall not toll
23 the 3-year period of continuous physical
24 presence in the United States);

1 “(iii) the alien has been a person of
2 good moral character during such period;

3 “(iv) the alien is not inadmissible
4 under paragraph (2) or (3) of section
5 212(a), is not deportable under paragraphs
6 (1)(G) or (2) through (4) of section
7 237(a), and has not been convicted of an
8 aggravated felony, unless the Attorney
9 General waives application of this clause
10 pursuant to section 237(d) or for humani-
11 tarian purposes, to assure family unity, or
12 when it is otherwise in the public interest;
13 and

14 “(v) the removal would result in ex-
15 treme hardship to the alien, the alien’s
16 child, or the alien’s parent.

17 In acting on applications under this paragraph,
18 the Attorney General shall consider any credible
19 evidence relevant to the application. The deter-
20 mination of what evidence is credible and the
21 weight to be given that evidence shall be within
22 the sole discretion of the Attorney General. For
23 aliens who entered the country on fiancé visas,
24 failure to marry the sponsor, or failure to
25 marry the sponsor within 90 days as required

1 under section 101(a)(15)(K), shall not bar ac-
2 cess to relief under this paragraph to aliens
3 who otherwise qualify.

4 “(B) INCLUSION OF OTHER ALIENS IN
5 CANCELLATION OF REMOVAL APPLICATIONS.—
6 An alien applying for relief under this para-
7 graph may include—

8 “(i) the alien’s children, sons, or
9 daughters in the alien’s application and, if
10 the alien is found eligible for cancellation,
11 the Attorney General may adjust the sta-
12 tus of the alien’s children, sons, daughters;
13 or

14 “(ii) the alien’s parent or child in the
15 alien child’s (as defined in paragraph (1)
16 or (6) of section 101(b)) application in the
17 case of an application filed by an alien who
18 was abused by a citizen or lawful perma-
19 nent resident parent and, if the alien child
20 is found eligible for cancellation, the Attor-
21 ney General may adjust the status of the
22 alien child applicant and the alien child’s
23 parent and child.

24 “(C) INCLUSION OF OTHER ALIENS IN
25 SUSPENSION OF DEPORTATION APPLICA-

1 TIONS.—An alien applying for relief under sec-
2 tion 244(a)(3) (as in effect before the date of
3 the enactment of Illegal Immigration Reform
4 and Immigrant Responsibility Act of 1996) may
5 include—

6 “(i) the alien’s children, sons, or
7 daughters in the alien’s application and, if
8 the alien is found eligible for suspension,
9 the Attorney General may adjust the sta-
10 tus of the alien’s children, sons, or daugh-
11 ters; or

12 “(ii) the alien’s parent or child in the
13 alien child’s (as defined in paragraph (1)
14 or (6) of section 101(b)) application in the
15 case of an application filed by an alien who
16 was abused by a citizen or lawful perma-
17 nent resident parent and, if the alien child
18 is found eligible for suspension, the Attor-
19 ney General may adjust the status of the
20 alien child applicant and the alien child’s
21 parent and child.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall take effect as if included in the enact-
24 ment of section 304 of the Illegal Immigration Reform and

1 Immigrant Responsibility Act of 1996 (division C of Pub-
2 lic Law 104–208; 110 Stat. 587).

3 (c) TREATMENT OF FAMILY MEMBERS.—

4 (1) IN GENERAL.—Section 203(d) (8 U.S.C.
5 1153(d)) is amended—

6 (A) by inserting “(1)” before “A spouse or
7 child”; and

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

9 “(2) A spouse, parent, or child as defined in para-
10 graph (1) or (6) of section 101(b) if not otherwise entitled
11 to an immigrant status and immediate issuance of a visa
12 shall be entitled to attain lawful permanent resident status
13 if their spouse, parent, or child was granted such status
14 pursuant to section 240A(b)(2) or section 244(a)(3) (as
15 in effect before the date of the enactment of Illegal Immi-
16 gration Reform and Immigrant Responsibility Act of
17 1996) by accompanying or following to join the spouse,
18 child, or parent.”.

19 (2) EFFECTIVE DATE.—The amendments made
20 by paragraph (1) shall take effect as if included in
21 the enactment of subtitle G of title IV of the Violent
22 Crime Control and Law Enforcement Act of 1994
23 (Public Law 103–322; 108 Stat. 1953 et seq.).

1 **SEC. 708. GOOD MORAL CHARACTER DETERMINATIONS.**

2 (a) DETERMINATIONS OF GOOD MORAL CHARACTER
3 FOR SELF-PETITIONING IMMEDIATE RELATIVES.—Sec-
4 tion 204(a)(1)(A) (8 U.S.C. 1154(a)(1)(A)), as amended
5 by sections 706(c) and 703(a)(1), is further amended by
6 adding after clause (viii) at the end the following new
7 clause:

8 “(ix) For the purposes of making good moral char-
9 acter determinations under this subparagraph, the Attor-
10 ney General is not limited by the criminal court record
11 and may make a finding of good moral character notwith-
12 standing the existence of a disqualifying act or criminal
13 conviction in the case of an alien who otherwise qualifies
14 for relief under clause (iii), (iv), (v), or (vi), but who com-
15 mitted, was arrested for, has been convicted of, or who
16 pled guilty to—

17 “(I) violating a court order issued to protect the
18 alien;

19 “(II) prostitution if the alien was forced into
20 prostitution by an abuser;

21 “(III) a domestic violence-related crime, if the
22 Attorney General determines that the alien acted in
23 self-defense; or

24 “(IV) a crime where there was a connection be-
25 tween the commission of the crime and having been
26 battered or subjected to extreme cruelty.”.

1 (b) DETERMINATIONS OF GOOD MORAL CHARACTER
2 FOR SELF-PETITIONERS SEEKING SECOND PREFERENCE
3 IMMIGRATION STATUS.—Section 204(a)(1)(B) (8 U.S.C.
4 1154(a)(1)(B)), as amended by sections 706(d) and
5 704(a)(2), is further amended by adding after clause (vi)
6 the following new clause:

7 “(vii) For the purposes of making good moral char-
8 acter determinations under this subparagraph, the Attor-
9 ney General is not limited by the criminal court record
10 and may make a finding of good moral character notwith-
11 standing the existence of a disqualifying act or criminal
12 conviction in the case of an alien who otherwise qualifies
13 for relief under clause (ii), (iii), or (iv), but who com-
14 mitted, was arrested for, has been convicted of, or who
15 pled guilty to—

16 “(I) violating a court order issued to protect the
17 alien;

18 “(II) prostitution if the alien was forced into
19 prostitution by an abuser;

20 “(III) a domestic violence-related crime, if the
21 Attorney General determines that the alien acted in
22 self-defense; or

23 “(IV) a crime where there was a connection be-
24 tween the commission of the crime and having been
25 battered or subjected to extreme cruelty.”.

1 (c) DETERMINATIONS OF GOOD MORAL CHARACTER
2 IN VAWA CANCELLATION OF REMOVAL PROCEEDINGS.—
3 Section 240A(b)(2) (8 U.S.C. 1229b(b)(2)), as amended
4 by section 707(a), is further amended by adding at the
5 end the following new subparagraph:

6 “(D) GOOD MORAL CHARACTER DETER-
7 MINATIONS.—For the purposes of making good
8 moral character determinations under this sub-
9 section, the Attorney General is not limited by
10 the criminal court record and may make a find-
11 ing of good moral character notwithstanding
12 the existence of a disqualifying act or criminal
13 conviction in the case of an alien who has been
14 battered or subjected to extreme cruelty but
15 who committed, was arrested for, has been con-
16 victed of, or who pled guilty to—

17 “(i) violating a court order is sued to
18 protect the alien;

19 “(ii) prostitution if the alien was
20 forced into prostitution by an abuser;

21 “(iii) a domestic violence-related crime
22 if the Attorney General determines that
23 the alien acted in self-defense; or

24 “(iv) committing a crime where there
25 was a connection between the commission

1 of the crime and having been battered or
2 subjected to extreme cruelty.”.

3 (d) DETERMINATIONS UNDER SUSPENSION OF DE-
4 PORTATION.—For the purposes of making good moral
5 character determinations under section 244(a)(3) of the
6 Immigration and Nationality Act (as in effect before the
7 enactment of the Illegal Immigration Reform and Immi-
8 grant Responsibility Act of 1996) (8 U.S.C. 1254(a)(3)),
9 the Attorney General is not limited by the criminal court
10 record and may make a finding of good moral character
11 notwithstanding the existence of a disqualifying act or
12 criminal conviction in the case of an alien who has been
13 battered or subjected to extreme cruelty but who com-
14 mitted, was arrested for, has been convicted of, or who
15 pled guilty to—

16 (1) violating a court order issued to protect the
17 alien;

18 (2) prostitution if the alien was forced into
19 prostitution by an abuser;

20 (3) a domestic violence-related crime if the At-
21 torney General determines that the alien acted in
22 self-defense; or

23 (4) committing a crime where there was a con-
24 nection between the commission of the crime and

1 having been battered or subjected to extreme cru-
2 elty.

3 **SEC. 709. ECONOMIC SECURITY ACT FOR BATTERED IMMI-**
4 **GRANT WOMEN.**

5 (a) NONAPPLICABILITY OF SPECIAL RULES RELAT-
6 ING TO THE TREATMENT OF NON-213A ALIENS.—Section
7 408(f)(6) of the Social Security Act (42 U.S.C. 608(f)(6))
8 is amended—

9 (1) in subparagraph (B), by striking “or” at
10 the end;

11 (2) in subparagraph (C), by striking the period
12 and inserting “; or”; and

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

14 “(D) described in section 421(f) of the
15 Personal Responsibility and Work Opportunity
16 Reconciliation Act of 1996 (8 U.S.C. 1631(f))
17 but for the fact that the individual is a non-
18 213A alien.”.

19 (b) PUBLIC CHARGE.—Section 212(a)(4) (8 U.S.C.
20 1182(a)(4)), as amended by section 341, is further amend-
21 ed by adding at the end the following new subparagraph:

22 “(C) EXCEPTION.—The following aliens
23 are not subject to public charge determinations
24 under this paragraph:

1 “(i) An alien who qualifies for classi-
2 fication as a spouse, parent, child, son, or
3 daughter of a United States citizen or law-
4 ful permanent resident under clause (iii),
5 (iv), (v), or (vi) of section 204(a)(1)(A) or
6 clause (ii), (iii), or (iv) of section
7 204(a)(1)(B).

8 “(ii) An alien who qualifies for classi-
9 fication under clause (i) or (ii) of section
10 204(a)(1)(A) or section 204(a)(1)(B)(i)
11 and who presents credible evidence of hav-
12 ing been battered or subjected to extreme
13 cruelty by their United States citizen or
14 lawful permanent resident spouse, parent,
15 son, or daughter. In the case of alien sons
16 or daughters, one or more incidents of bat-
17 tering or extreme cruelty must have oc-
18 curred before the alien turned 21 years of
19 age. This clause shall apply whether or not
20 an affidavit of support has been filed on
21 the alien’s behalf.

22 “(iii) An alien who qualifies for status
23 as a spouse, parent, child, son, or daughter
24 of a United States citizen or lawful perma-
25 nent resident, or as a parent of a child of

1 a United States citizen or lawful perma-
2 nent resident, pursuant to section
3 240A(b)(2) or section 244(a)(3) (as in ef-
4 fect before the date of enactment of the Il-
5 legal Immigration Reform and Immigrant
6 Responsibility Act of 1996).

7 “(iv) Any child (as defined in para-
8 graph (1) or (6) of section 101(b)) in-
9 cluded in the application of an alien de-
10 scribed in clause (i), (ii), or (iii).”.

11 (c) WAIVER OF FILING FEES.—

12 (1) PETITIONS FOR CLASSIFICATION.—Section
13 204(a)(1) (8 U.S.C. 1154(a)(1)), as amended by
14 section 706(c), is further amended by adding at the
15 end the following new subparagraph:

16 “(I) No fee shall be charged for the filing or proc-
17 essing of any application under clause (iii), (iv), (v), or
18 (vi) of subparagraph (A) or clause (ii), (iii), or (iv) of sub-
19 paragraph (B), or the first application for work authoriza-
20 tion filed by an applicant under such a clause.”.

21 (2) CANCELLATIONS OF REMOVAL.—Section
22 240A(b)(2) (8 U.S.C. 1229b), as amended by sec-
23 tion 708(c), is amended by adding at the end the
24 following new subparagraph:

1 “(E) PROHIBITION OF CHARGING FEES.—

2 No fee shall be charged for the filing or proc-
3 essing of any application under this paragraph
4 or the first application for work authorization
5 filed by applicants under this paragraph.”.

6 (3) SUSPENSION OF DEPORTATION.—No fee
7 shall be charged for the filing or processing of any
8 application under section 244(a)(3) of the Immigra-
9 tion and Nationality Act (as in effect before the date
10 of enactment of the Illegal Immigration Reform and
11 Immigrant Responsibility Act of 1996) (8 U.S.C.
12 1254(a)(3)), or the first application for work author-
13 ization filed by applicants under such section.

14 (d) ACCESS TO FOOD STAMPS AND SSI FOR QUALI-
15 FIED BATTERED ALIENS.—Section 402(a)(2) of the Per-
16 sonal Responsibility and Work Opportunity Reconciliation
17 Act of 1996 (8 U.S.C. 1612(a)(2)) is amended by adding
18 at the end the following:

19 “(L) EXCEPTION FOR CERTAIN BATTERED
20 ALIENS.—With respect to eligibility for benefits
21 for the specified Federal program (as defined in
22 paragraph (3)), paragraph (1) shall not apply
23 to any individual described in section 431(c).”.

24 (e) EXEMPTION FROM 5-YEAR BAN.—Section 403(b)
25 of the Personal Responsibility and Work Opportunity Act

1 of 1996 (8 U.S.C. 1613(b)) is amended by adding at the
2 end the following:

3 “(3) BATTERED IMMIGRANTS.—An alien de-
4 scribed in section 431(c).”.

5 (f) ACCESS TO HOUSING FOR BATTERED WOMEN
6 AND QUALIFIED IMMIGRANTS.—(1) Section 214 of the
7 Housing and Community Development Act of 1980 (42
8 U.S.C. 1436a) is amended—

9 (A) in subsection (a), in the matter before para-
10 graph (1), by striking “a resident of the United
11 States and is”;

12 (B) in paragraphs (1) through (6) of subsection
13 (a), by inserting “a resident of the United States
14 and is” before “an alien” each place it appears;

15 (C) in subsection (a)(5), by striking “or” at the
16 end;

17 (D) in subsection (a)(6), by striking the period
18 and inserting “; or”;

19 (E) by adding at the end of subsection (a) the
20 following new paragraph:

21 “(7) a qualified alien as described in section
22 431 of the Personal Responsibility and Work Oppor-
23 tunity Reconciliation Act of 1996 (8 U.S.C. 1641).”;

24 (F) in subsection (b)(2), by adding at the end
25 the following: “Proration shall not apply in the case

1 of a qualified alien as described in section 431 of the
2 Personal Responsibility and Work Opportunity Rec-
3 onciliation Act of 1996 (8 U.S.C. 1641).”;

4 (G) in subsection (c)(1)(A), by adding at the
5 end the following: “Proration shall not apply in the
6 case of a qualified alien as described in section 431
7 of the Personal Responsibility and Work Oppor-
8 tunity Reconciliation Act of 1996 (8 U.S.C. 1641).”;

9 (H) in subsection (c)(1)(A), by striking “para-
10 graphs (1) through (6)” and inserting “paragraphs
11 (1) through (7)”;

12 (I) in subsection (c)(2)(A), by inserting “(other
13 than a qualified alien as described in section 431(c)
14 of the Personal Responsibility and Work Oppor-
15 tunity Reconciliation Act of 1996 (8 U.S.C.
16 1641(c)))” after “any alien”; and

17 (J) in subsection (d)(1)(B), by inserting before
18 the period “, including a qualified alien as described
19 in section 431 of the Personal Responsibility and
20 Work Opportunity Reconciliation Act of 1996 (8
21 U.S.C. 1641)”.

22 (2) Section 401 of the Personal Responsibility and
23 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.
24 1611) is amended by adding at the end the following new
25 subsection:

1 “(d) ACCESS TO SHELTER AND SERVICES FOR BAT-
2 TERED IMMIGRANTS.—Notwithstanding any other provi-
3 sion of law, no private, government, or nonprofit organiza-
4 tion providing shelter or services to battered women,
5 abused children, or providing any other services listed in
6 subsection (b) that receives any Federal funds shall deny,
7 restrict, or condition assistance to any applicant based on
8 alienage.”.

9 (g) CLARIFYING WELFARE REPORTING REQUIRE-
10 MENTS FOR BENEFIT APPLICANTS.—The Social Security
11 Act (42 U.S.C. 301 et seq.) is amended—

12 (1) in section 411(a)(1) (42 U.S.C. 611(a)(1)),
13 by adding at the end the following new subpara-
14 graph:

15 “(C) INFORMATION ON IMMIGRATION STA-
16 TUS.—Collection of information about, and in-
17 quiries into, the immigration status of an indi-
18 vidual who is a parent applying on behalf of his
19 or her child who is a United States citizen or
20 a qualified alien (as defined in section 431 of
21 the Personal Responsibility and Work Oppor-
22 tunity Reconciliation Act of 1996) for assist-
23 ance under the State program funded under
24 this part, shall not be made if the individual is
25 not applying for benefits for themselves, wheth-

1 er or not the individual is determined, under
2 Federal or State law, to be part of a family unit
3 receiving assistance under that program.”; and
4 (2) in section 1631(e)(9) (42 U.S.C.
5 1383(e)(9)), by adding at the end the following:
6 “Collection of information about, and inquiries into,
7 the immigration status of an individual who is a par-
8 ent applying on behalf of his or her child who is a
9 United States citizen or a qualified alien (as defined
10 in section 431 of the Personal Responsibility and
11 Work Opportunity Reconciliation Act of 1996) for
12 benefits under this title (or for benefits supple-
13 mented by a State with an agreement under section
14 1616), shall not be made if the individual is not ap-
15 plying for benefits for themselves, whether or not the
16 individual is determined, under Federal or State law,
17 to be part of a family unit receiving such benefits.”.

18 (h) CONFORMING DEFINITION OF “FAMILY” USED
19 IN LAWS GRANTING WELFARE ACCESS FOR BATTERED
20 IMMIGRANTS TO STATE FAMILY LAW.—Section 431(c) of
21 the Personal Responsibility and Work Opportunity Rec-
22 onciliation Act of 1996 (8 U.S.C. 1641(c)) is amended—

23 (1) in paragraph (1)(A), by striking “by a
24 spouse or a parent, or by a member of the spouse
25 or parent’s family residing in the same household as

1 the alien and the spouse or parent consented to, or
2 acquiesced in, such battery or cruelty,” and insert-
3 ing “by a spouse or parent, or by any individual hav-
4 ing a relationship with the alien covered by the civil
5 or criminal domestic violence statutes of the State or
6 Indian country where the alien resides, or the State
7 or Indian country in which the alien, the alien’s
8 child, or the alien child’s parents received a protec-
9 tion order, or by any individual against whom the
10 alien could obtain a protection order,”; and

11 (2) in paragraph (2)(A), by striking “by a
12 spouse or parent of the alien (without the active par-
13 ticipation of the alien in the battery or cruelty), or
14 by a member of the spouse or parent’s family resid-
15 ing in the same household as the alien and the
16 spouse or parent consented or acquiesced to such
17 battery or cruelty,” and inserting “by a spouse or
18 parent of the alien (without the active participation
19 of the alien in the battery or cruelty) or by any per-
20 son having a relationship with the alien covered by
21 the civil or criminal domestic violence statutes of the
22 State or Indian country where the alien resides, or
23 the State or Indian country in which the alien, the
24 alien’s child or the alien child’s parent received a

1 protection order, or by any individual against whom
2 the alien could obtain a protection order,”.

3 (i) EXPANSION OF DEFINITION OF BATTERED IMMI-
4 GRANTS.—

5 (1) IN GENERAL.—Section 431(c) of the Per-
6 sonal Responsibility and Work Opportunity Rec-
7 onciliation Act of 1996 (8 U.S.C. 1641(c)) is
8 amended—

9 (A) in paragraphs (1)(A), (2)(A), and
10 (3)(A) by inserting “or the benefits to be pro-
11 vided would alleviate the harm from such bat-
12 tery or cruelty or would enable the alien to
13 avoid such battery or cruelty in the future” be-
14 fore the semicolon; and

15 (B) in the matter following paragraph (3),
16 by inserting “and for determining whether the
17 benefits to be provided under a specific Federal,
18 State, or local program would alleviate the
19 harm from such battery or extreme cruelty or
20 would enable the alien to avoid such battery or
21 extreme cruelty in the future” before the pe-
22 riod.

23 (2) CONFORMING AMENDMENT REGARDING
24 SPONSOR DEEMING.—Section 421(f) of such Act (8
25 U.S.C. 1631(f)(1)) is amended—

1 (A) in subparagraph (A), by inserting “or
2 would alleviate the harm from such battery or
3 extreme cruelty, or would enable the alien to
4 avoid such battery or extreme cruelty in the fu-
5 ture” before the semicolon; and

6 (B) in subparagraph (B), by inserting “or
7 would alleviate the harm from such battery or
8 extreme cruelty, or would enable the alien to
9 avoid such battery or extreme cruelty in the fu-
10 ture” before the period.

11 (j) ENSURING THAT BATTERED IMMIGRANTS HAVE
12 ACCESS TO FOOD STAMPS AND SSI.—

13 (1) QUALIFYING QUARTERS.—Section 435(2) of
14 the Personal Responsibility and Work Opportunity
15 Reconciliation Act of 1996 (8 U.S.C. 1645(2)) is
16 amended by striking “and the alien remains married
17 to such spouse or such spouse is deceased” and in-
18 serting “if such spouse is deceased or if the alien re-
19 mains married to such spouse (except that qualified
20 aliens covered by section 431(c) may continue after
21 divorce to count the qualifying quarters worked by
22 their spouse during the marriage)”.

23 (2) FOOD STAMPS ACCESS FOR BATTERED IM-
24 MIGRANT QUALIFIED ALIENS AND THEIR CHIL-
25 DREN.—Section 7 of the Food Stamp Act of 1977

1 (7 U.S.C. 2016) is amended by adding at the end
2 the following:

3 “(k) BATTERED IMMIGRANT QUALIFIED ALIEN ELI-
4 GIBILITY FOR FOOD STAMPS.—Qualified alien battered
5 immigrants under section 431(c) of the Personal Respon-
6 sibility and Work Opportunity Reconciliation Act of 1996
7 and their children are eligible to receive food stamps.”.

8 (k) TECHNICAL CORRECTIONS TO QUALIFIED ALIEN
9 DEFINITION FOR BATTERED IMMIGRANTS.—Section
10 431(c)(1)(B) of the Personal Responsibility and Work Op-
11 portunity Reconciliation Act of 1996 (8 U.S.C.
12 1641(c)(1)(B)) is amended—

13 (1) in clause (i), by striking “clause (ii), (iii),
14 or (iv)” and inserting “clause (ii), (iii), (iv), (v), or
15 (vi)”;

16 (2) in clause (ii), by striking “clause (ii) or
17 (iii)” and inserting “clause (i), (ii), (iii), or (iv)”;
18 and

19 (3) by amending clause (iii) to read as follows:

20 “(iii) suspension of deportation under
21 section 244(a)(3) of the Immigration and
22 Nationality Act (as in effect before the
23 date of the enactment of the Illegal Immi-
24 gration Reform and Immigrant Responsi-
25 bility Act of 1996).”.

1 **SEC. 710. ACCESS TO LEGAL REPRESENTATION AND SERV-**
2 **ICES FOR BATTERED IMMIGRANTS.**

3 (a) CONSTRUCTION.—Section 502 of the Depart-
4 ments of Commerce, Justice, and State, the Judiciary and
5 Related Agencies Appropriations Act, 1998 (Public Law
6 105–119; 111 Stat. 2511) is amended by adding at the
7 end the following:

8 “(c) CONSTRUCTION.—This section shall not be con-
9 strued to prohibit a recipient from—

10 “(1) using funds derived from a source other
11 than the Legal Services Corporation to provide re-
12 lated legal assistance (as that term is defined in sub-
13 section (b)(2)) to any alien who has been battered
14 or subjected to extreme cruelty by a person with
15 whom the alien has a relationship covered by the do-
16 mestic violence laws of the State in which the alien
17 resides or in which an incidence of violence occurred;

18 “(2) using Legal Services Corporation funds to
19 provide related legal assistance to any alien who has
20 been battered or subjected to extreme cruelty who
21 qualifies for classification under clause (iii), (iv), (v),
22 or (vi) of section 204(a)(1)(A) of the Immigration
23 and Nationality Act (8 U.S.C. 1154(a)(1)(A)),
24 clause (ii), (iii), or (iv) of section 204(a)(1)(B) of
25 such Act (8 U.S.C. 1154(a)(1)(B)), or subsection
26 (b)(2) of section 240A of such Act (8 U.S.C. 1229b)

1 or section 244(a)(3) of the Immigration and Nation-
2 ality Act (as in effect before the title III–A effective
3 date in section 309 of the Illegal Immigration Re-
4 form and Immigrant Responsibility Act of 1996 (8
5 U.S.C. 1101 note)).”.

6 (b) LAW ENFORCEMENT AND PROSECUTION
7 GRANTS.—

8 (1) Section 2001(b)(5) of the Omnibus Crime
9 Control and Safe Streets Act of 1968 (42 U.S.C.
10 3796bb(b)(5)) is amended—

11 (A) by striking “to racial, cultural, ethnic,
12 and language minorities” and inserting “to un-
13 derserved populations”; and

14 (B) by inserting “providing immigration
15 assistance to victims of domestic violence,”
16 after “protection orders are granted,”.

17 (2) Section 2002 of such Act (42 U.S.C.
18 3796gg) is amended—

19 (A) in subsection (h)(1), by inserting be-
20 fore the period the following: “, the demo-
21 graphics of underserved populations in the
22 State and details about the percentage of fund-
23 ing that went to serve which underserved popu-
24 lations, the programs that received such fund-
25 ing, and the involvement of programs serving

1 underserved populations in the development of
2 the State plan under subsection (c)(2)”;

3 (B) in subsection (d)(1)(D), by striking
4 “age, marital status, disability, race, ethnicity
5 and language background” and inserting “mar-
6 ital status and characteristics of any under-
7 served populations”;

8 (C) in subsection (d)—

9 (i) by striking “and” at the end of
10 paragraph (2),

11 (ii) by striking the period at the end
12 of paragraph (3) and inserting “; and”,
13 and

14 (iii) by adding at the end the fol-
15 lowing:

16 “(4) in the case of a State, Indian tribal gov-
17 ernment, or unit of local governments applying as
18 subgrantee for a grant under this section, a certifi-
19 cation that its laws or official policies comply with
20 each of the provisions of section 2101(c).

21 The requirements of paragraph (4) do not apply to a non-
22 profit, nongovernmental entity that is applying for grants
23 under this section.”; and

24 (D) by adding at the end the following new
25 subsection:

1 “(i) REPORT ON SERVICES FOR UNDERSERVED POP-
2 ULATIONS.—The Violence Against Women Grants Office
3 in the Department of Justice shall submit to Congress,
4 not later than 1 year after the date of the enactment of
5 this subsection, a report that contains the following infor-
6 mation:

7 “(1) The quantity and percentage of funding
8 awarded to serve underserved populations by each
9 State under each of the following:

10 “(A) Grants to combat violence crimes
11 against women under section 2001.

12 “(B) Grants to encourage arrest under sec-
13 tion 2101.

14 “(C) Rural domestic violence and child
15 abuse enforcement assistance grants under sec-
16 tion 40295(a)(2) of the Violent Crime Control
17 and Law Enforcement Act of 1994 (Public Law
18 103–322, 42 U.S.C. 13971(a)(2)).

19 “(D) Civil legal assistance grants under
20 title I of the Department of Justice Appropria-
21 tions Act, 1999.

22 “(E) Campus domestic violence grants
23 under section 826 of the Higher Education
24 Amendment Act of 1998 (Public Law 105–244;
25 20 U.S.C. 1152).

1 “(2) The percentage of each underserved popu-
2 lation in the demographic make up of each State
3 compared to the amount of funding aimed at ad-
4 dressing the needs of that underserved population.

5 “(3) The extent to which grants to provide
6 services to underserved populations are awarded to
7 programs with experience and history working with
8 underserved populations of battered women or sexual
9 assault victims, to programs that have bilingual or
10 bicultural staff, and to collaborations between do-
11 mestic violence or sexual assault programs and pro-
12 grams experienced in serving particular underserved
13 populations and to other grantees.

14 “(4) The extent to which nonprofit, nongovern-
15 mental victim service organizations with experience
16 serving various underserved populations of battered
17 women and sexual assault or stalking victims were
18 consulted in the development of the State plan under
19 section 2001(c)(2), the application under section
20 2102(a)(4), or the community cooperation referred
21 to in section 40295(a)(3) of the Violent Crime Con-
22 trol and Law Enforcement Act of 1994 (Public Law
23 103-322, 42 U.S.C. 13971(a)(3)).”.

24 (3) Section 2003(7) of such Act (42 U.S.C.
25 3796gg-2(7)) is amended to read as follows:

1 “(7) the term ‘underserved populations’ in-
2 cludes populations underserved because of race, eth-
3 nicity, age, disability, sexual orientation, religion,
4 alienage status, geographic location (including rural
5 isolation), language barriers, and any other popu-
6 lations determined to be underserved in the State
7 planning process; and”.

8 (4) Section 2004(b)(3) of such Act (42 U.S.C.
9 3796gg-3(b)(3)) is amended by striking all that fol-
10 lows “relationship of victim to the offender” and in-
11 serting “and the membership of persons served in
12 any underserved populations; and”.

13 (c) GRANTS TO ENCOURAGE ARRESTS.—

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

17 (A) in subsection (b)(5), by inserting be-
18 fore the period the following: “, including
19 strengthening legal advocacy for domestic vio-
20 lence victims in immigration cases”;

21 (B) in subsection (c)—

22 (i) by striking “and” at the end of
23 paragraph (3);

1 (ii) by striking the period at the end
2 of paragraph (4) and inserting a semi-
3 colon; and

4 (iii) by adding at the end the fol-
5 lowing new paragraphs:

6 “(5) certify that their laws, policies, and prac-
7 tices require issuance of protection orders that are
8 jurisdictionally sound and that all protection orders
9 are issued after a finding, after an admission by the
10 abuser, or based on the facts in the victim’s petition
11 that are uncontested by the abuser; and

12 “(6) certify that their laws, policies, and
13 practices—

14 “(A) keep locational information and serv-
15 ices provided to victims of domestic violence
16 confidential and comply with all State and Fed-
17 eral laws and rules of professional practice re-
18 garding confidentiality;

19 “(B) guarantee that information is not re-
20 leased to any person without the express per-
21 mission of the abuse victim, except when such
22 information is required for a legitimate law en-
23 forcement purpose unrelated to the victim’s
24 abuser; and

1 “(C) assure that locational information
2 about a victim or the services obtained by a vic-
3 tim are not considered a matter of public
4 record.”; and

5 (C) by adding at the end the following new
6 subsection:

7 “(d) ADDITIONAL PROVISIONS.—(1) The require-
8 ments of subsection (c) do not apply to nonprofit, non-
9 governmental entities applying for grants under this sec-
10 tion.

11 “(2) All grantees and subgrantees of grants in effect
12 on the date of the enactment of this subsection or submit-
13 ting new applications for funding after such date that are
14 States, Indian tribal governments, or units of local govern-
15 ment shall submit a certification by the chief executive of-
16 ficer of the State, tribal government, or local government
17 entity that the conditions of subsections (c)(5) and (c)(6)
18 are met (or will be met) not later than the date on which
19 the next session of the State or Indian tribal legislature
20 ends, but in no case later than 2 years after such date
21 of enactment.

22 “(3) Failure by a grantee to comply with the certifi-
23 cations contained in paragraphs (1) thorough (6) of sub-
24 section (c) may result in suspension or revocation of fund-
25 ing. Once a grantee or subgrantee has been notified that

1 its funding will be revoked, they shall be granted 6 months
2 to bring their laws, policies, or practices into compliance
3 before the revocation takes effect. Any funds that are not
4 distributed to grantees or are removed from grantees
5 under this paragraph shall be distributed to other eligible
6 entities within the State. For grants under section 2002,
7 the funds are to be redistributed first to entities within
8 the same formula category and then, if there are no eligi-
9 ble entities within the same formula category, to other eli-
10 gible entities without regard to the formula.”.

11 (2) Section 2103 of such Act (42 U.S.C.
12 3796hh-2) is amended by adding at the end the fol-
13 lowing: “Each report shall include information about
14 the demographics of underserved populations in the
15 State and details about the percentage of funding
16 that went to serve which underserved populations,
17 the programs that received such funding, and the in-
18 volvement of programs serving underserved popu-
19 lations in the community participation described in
20 section 2102(a)(4).”.

21 (d) RURAL DOMESTIC VIOLENCE AND CHILD ABUSE
22 ENFORCEMENT GRANTS.—Section 40295 of the Violent
23 Crime Control and Law Enforcement Act of 1994 (Public
24 Law 103-322, 108 Stat. 1953, 42 U.S.C. 13971(aa)(2))
25 is amended—

1 (1) by amending subsection (a)(2) to read as
2 follows:

3 “(2) to provide treatment, counseling, and legal
4 assistance to victims of domestic violence and child
5 abuse, including assistance to victims in immigration
6 matters; and”; and

7 (2) by adding at the end the following new sub-
8 sections:

9 “(d) APPLICATION REQUIREMENTS.—States, Indian
10 tribal governments, and units of local government apply-
11 ing for grants under this section must certify that their
12 laws, policies, and practices comply with each of the provi-
13 sions of section 2101(c) of the Omnibus Crime Control
14 and Safe Streets Act of 1968 (42 U.S.C. 3796hh(c)).

15 “(e) GRANTEE REPORTING.—Upon completion of the
16 grant period under this part, a State or Indian tribal
17 grantee shall file a performance report with the Attorney
18 General. The report shall explain the activities carried out
19 and shall evaluate the effectiveness of projects developed
20 with the funds provided under the grant. The report shall
21 include information about the demographics of under-
22 served populations in the State and details about the per-
23 centage of funding that went to serve which underserved
24 populations, the programs that received such funding, and
25 the involvement of programs serving underserved popu-

1 lations in the community cooperation in subsection
2 (a)(3).”,

3 (e) FAMILY VIOLENCE PREVENTION AND SERVICES
4 ACT.—

5 (1) Section 303(a)(2)(C) of the Family Violence
6 Prevention and Services Act (42 U.S.C.
7 10402(c)(2)(C)) is amended by striking “populations
8 underserved because of ethnic, racial, cultural, lan-
9 guage diversity or geographic isolation” and insert-
10 ing “populations underserved because of race, eth-
11 nicity, age, disability, sexual orientation, religion,
12 alienage status, geographic location (including rural
13 isolation), language barriers, and any other popu-
14 lations determined to be underserved”.

15 (2) Section 311(a)(4) of such Act (42 U.S.C.
16 10410(a)(4)) is amended by striking “underserved
17 racial, ethnic or language-minority populations” and
18 inserting “underserved populations as the term is
19 used in section 303(a)(2)(C)”.

20 (3) Section 303(a)(4) of such Act (42 U.S.C.
21 10402(a)(4)) is amended by inserting after the first
22 sentence the following: “This performance report
23 shall include information about the demographics of
24 underserved populations in the State and details
25 about the percentage of funding that went to serve

1 which underserved populations, the programs that
2 received such funding, and the involvement of pro-
3 grams serving underserved populations in the proce-
4 dures described in subsection (a)(2)(C).”.

5 (4) Section 303 of such Act (42 U.S.C. 10402)
6 is further amended by adding at the end the fol-
7 lowing new subsection:

8 “(g) The Secretary shall submit to Congress, not
9 later than 1 year after the date of the enactment of this
10 subsection, a report that contains the following informa-
11 tion:

12 “(1) The quantity and percentage of funding
13 awarded to serve underserved populations by each
14 State under programs funded under this Act.

15 “(2) The percentage of each underserved popu-
16 lation in the demographic make up of each State
17 compared to the amount of funding aimed at ad-
18 dressing the needs of that underserved population.

19 “(3) The extent to which grants to provide
20 services to underserved populations are awarded to
21 programs with experience and history working with
22 underserved populations of battered women or sexual
23 assault victims, to programs that have bilingual or
24 bicultural staff, and to collaborations between do-
25 mestic violence or sexual assault programs and pro-

1 grams experienced in serving particular underserved
2 populations and to other grantees.

3 “(4) The extent to which nonprofit, nongovern-
4 mental victim service organizations with experience
5 serving various underserved populations of battered
6 women and sexual assault or stalking victims were
7 involved in the procedures described in subsection
8 (a)(2)(C).”.

9 (f) CIVIL LEGAL ASSISTANCE.—Title I of the De-
10 partment of Justice Appropriations Act, 1999 (contained
11 within the Omnibus Consolidated and Emergency Supple-
12 mental Appropriations Act of 1999 (Public Law 105-
13 277)) is amended, under the heading of “Office of Justice
14 Programs, State and Local Law Enforcement Assistance”,
15 by striking the period at the end and inserting the fol-
16 lowing: “, of which \$\$206,750,000 shall be available for
17 Grants to Combat Violence Against Women, to States,
18 units of local government, and Indian tribal governments,
19 as authorized by section 1001(a)(18) of said Act, includ-
20 ing \$23,000,000 which shall be used exclusively for the
21 purpose of strengthening civil legal assistance programs
22 for victims of domestic violence. Civil legal assistance
23 under this heading includes (but is not limited to) legal
24 assistance to victims of domestic violence, stalking or sex-
25 ual assault in divorce, custody, child support, protection

1 orders, immigration, public benefits, housing, consumer
2 law and any other legal matter that will further the health,
3 safety, and economic well-being of victims of domestic vio-
4 lence, stalking, or sexual assault.”.

5 (g) CAMPUS DOMESTIC VIOLENCE GRANTS.—Section
6 826 of the Higher Education Amendments of 1998 (Pub-
7 lic Law 105–244; 20 U.S.C. 1152) is amended—

8 (1) in subsection (b)(5), by inserting before the
9 period at the end the following: “, including legal as-
10 sistance to victims in civil, criminal, administrative,
11 immigration, or disciplinary matters”; and

12 (2) in subsection (c)(2)(C), by striking “and
13 number of students” and inserting “number of stu-
14 dents, and services being offered to various under-
15 served populations (as such term is defined in sec-
16 tion 2003(7) of the Omnibus Crime Control and
17 Safe Streets Act of 1968);”.

18 (h) STATE JUSTICE INSTITUTE GRANTS.—Section
19 206(c) of the State Justice Institute Act of 1984 (42
20 U.S.C. 10705(c)) is amended—

21 (1) by redesignating paragraph (15) as para-
22 graph (16); and

23 (2) by inserting after paragraph (14) the fol-
24 lowing new paragraph:

1 “(15) to support studies and investigate and
2 carry out research on issues of battering and ex-
3 treme cruelty against non-citizens, including the
4 ramifications of the immigration provisions of the
5 Violence Against Women Act of 1994 and subse-
6 quent immigration law reforms on the ability of vic-
7 tims to access civil, family, and criminal courts and
8 the immigration consequences of civil, family, and
9 criminal court actions; and”.

10 **SEC. 711. VIOLENCE AGAINST WOMEN ACT TRAINING FOR**
11 **INS OFFICERS, IMMIGRATION JUDGES, AND**
12 **CIVIL AND CRIMINAL COURT JUSTICE SYS-**
13 **TEM PERSONNEL.**

14 (a) VIOLENCE AGAINST WOMEN.—

15 (1) MILITARY TRAINING CONCERNING DOMES-
16 TIC VIOLENCE.—The Omnibus Crime Control and
17 Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.)
18 is amended by inserting after section 2006 (42
19 U.S.C. 3796gg–5) the following new section:

20 **“SEC. 2007. MILITARY TRAINING CONCERNING DOMESTIC**
21 **VIOLENCE.**

22 “Each branch of the United States military is re-
23 quired to train its supervisory military officers on domestic
24 violence, the dynamics of domestic violence in military
25 families, the types of protection available for battered im-

1 migrant women and children abused by their United
2 States citizen or lawful permanent resident spouse or par-
3 ent under the Violence Against Women Act of 1994, and
4 the problems of domestic violence in families in which a
5 United States citizen or lawful permanent resident mem-
6 ber of the military is married to a non-United States cit-
7 izen.”.

8 (2) INS TRAINING.—Section 2001 of the Omni-
9 bus Crime Control and Safe Streets Act of 1968 (42
10 U.S.C. 3795gg) is amended—

11 (A) in subsection (a), by inserting “the Im-
12 migration and Naturalization Service and the
13 Executive Office of Immigration Review,” after
14 “Indian tribal governments,”;

15 (B) in subsection (b)(1), by inserting “,
16 immigration and asylum officers, immigration
17 judges,” after “law enforcement officers”; and

18 (C) in subsection (b)—

19 (i) by striking “and” at the end of
20 paragraph (6),

21 (ii) by striking the period at the end
22 of paragraph (7) and inserting “; and”,
23 and

24 (iii) by adding at the end the fol-
25 lowing new paragraph:

1 “(8) training justice system personnel on the
2 immigration provisions of the Violence Against
3 Women Act of 1994 and their ramifications for vic-
4 tims of domestic violence appearing in civil and
5 criminal court proceedings and potential immigra-
6 tion consequences for the perpetrators of domestic
7 violence.”.

8 (b) EFFECT ON OTHER GOALS.—Section 287(g) (8
9 U.S.C. 1357(g)) is amended by adding at the end the fol-
10 lowing:

11 “(11) Congress finds that public policy favors encour-
12 aging the prosecution of criminals; and therefore, nothing
13 in this section may be construed to discourage crime vic-
14 tims, including domestic violence victims, from cooper-
15 ating with law enforcement officials and prosecutors, in-
16 cluding reporting of crimes committed against them to po-
17 lice, from cooperating in criminal prosecutions, or from
18 seeking from courts protection orders or other legal relief
19 available under State or Federal laws needed to protect
20 crime victims from ongoing violence.”.

21 (c) REPORT.—Not later than 6 months after the date
22 of the enactment of this Act, the Attorney General shall
23 submit a report to the Committees on the Judiciary of
24 the Senate and House of Representatives on—

1 (1) the number of and processing times for pe-
2 titions under clauses (iii) and (iv) of section
3 204(a)(1)(A) of the Immigration and Nationality
4 Act (8 U.S.C. 1154(a)(1)(A)) and under clauses (ii)
5 and (iii) of section 204(a)(1)(B) of such Act (8
6 U.S.C. 1154(a)(1)(B)) at district offices of the Im-
7 migration and Naturalization Service and at the re-
8 gional office of the Service in St. Albans, Vermont;

9 (2) the policy and procedures of the Immigra-
10 tion and Naturalization Service by which an alien
11 who has been battered or subjected to extreme cru-
12 elty who is eligible for suspension of deportation or
13 cancellation of removal can place such alien in de-
14 portation or removal proceedings so that such alien
15 may apply for suspension of deportation or cancella-
16 tion of removal, the number of requests filed at each
17 district office under this policy, and the number of
18 these requests granted, reported separately for each
19 district; and

20 (3) the average length of time at each Immigra-
21 tion and Naturalization office between the date that
22 an alien who has been subject to battering or ex-
23 treme cruelty eligible for suspension of deportation
24 or cancellation of removal requests to be placed in
25 deportation or removal proceedings and the date

1 that immigrant appears before an immigration judge
2 to file an application for suspension of deportation
3 or cancellation of removal.

4 **SEC. 712. PROTECTION FOR CERTAIN CRIME VICTIMS IN-**
5 **CLUDING CRIMES AGAINST WOMEN.**

6 (a) FINDINGS AND PURPOSE.—

7 (1) FINDINGS.—

8 (A) Trafficking of humans, particularly
9 women and children, is denounced by the inter-
10 national community as an egregious human
11 rights violation perpetuated increasing by orga-
12 nized and sophisticated criminal enterprises.

13 (B) Trafficking to place persons in forced
14 labor, servitude, or in slavery-like conditions
15 has been identified as a multinational crime
16 problem of growing severity with increasing ties
17 to internal organized crime. Traffickers recruit
18 and transport persons, especially women and
19 children, to the United States in order to ex-
20 ploit them under horrific conditions through the
21 use of force, violence, debt bondage, or other co-
22 ercive tactics.

23 (C) Similarly, immigrant women and chil-
24 dren are often targeted to be victims of crimes
25 committed against them in the United States,

1 including rape, torture, incest, battery or ex-
2 treme cruelty, sexual assault, female genital
3 mutilation, forced prostitution, being held hos-
4 tage or other violent crimes. All women and
5 children who are victims of trafficking, domestic
6 violence, sexual assault, being held hostage, and
7 other human rights violations committed
8 against them in the United States must be able
9 to report these crimes to law enforcement and
10 fully participate in the criminal prosecution of
11 their abusers.

12 (2) PURPOSE.—

13 (A) The purpose of this section is to create
14 a new nonimmigrant visa classification that will
15 strengthen the ability of law enforcement agen-
16 cies to detect, investigate, and prosecute cases
17 of trafficking of aliens, while offering protection
18 to victims of such offenses in keeping with the
19 humanitarian interests of the United States.

20 (B) Creating a new nonimmigrant visa
21 classification will facilitate the reporting of vio-
22 lations to law enforcement officials by exploited
23 aliens who are not in a lawful immigration sta-
24 tus. It also gives law enforcement officials a
25 means to regularize the status of cooperating

1 individuals during investigations, prosecutions,
2 and civil law enforcement proceedings. By pro-
3 viding temporary legal status to aliens who have
4 been severely victimized by trafficking or simi-
5 lar egregious offenses, it also reflects the hu-
6 manitarian interests of the United States.

7 (C) Finally, this section gives the Attorney
8 General discretion to convert such non-
9 immigrants to permanent resident status when
10 it is justified on humanitarian grounds, to as-
11 sure family unity, or when it is otherwise in the
12 public interest.

13 (b) ESTABLISHMENT OF HUMANITARIAN/MATERIAL
14 WITNESS NONIMMIGRANT CLASSIFICATION.—Section
15 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by section
16 301(a), is further amended—

17 (1) by striking “or” at the end of subparagraph
18 (S);

19 (2) by striking the period at the end of sub-
20 paragraph (T) and inserting “; or”; and

21 (3) by adding at the end the following new sub-
22 paragraph:

23 “(U) subject to section 214(o), an alien (and
24 the spouse, children, and parents of the alien if ac-
25 companying or following to join the alien) who files

1 an application for status under this subparagraph, if
2 the Attorney General determines that—

3 “(i) the alien possesses material informa-
4 tion concerning criminal or other unlawful ac-
5 tivity;

6 “(ii) the alien is willing to supply or has
7 supplied such information to Federal or State
8 law enforcement officials or a Federal or State
9 administrative agency investigating or bringing
10 an enforcement action;

11 “(iii) the alien would be helpful, were the
12 alien to remain in the United States, to a Fed-
13 eral or State investigation or prosecution of
14 criminal or other unlawful activity; and

15 “(iv) the alien (or a child of the alien) has
16 suffered substantial physical or mental abuse as
17 a result of the criminal or other unlawful activ-
18 ity.”.

19 (c) CONDITIONS FOR ADMISSION.—

20 (1) NUMERICAL LIMITATIONS, PERIOD OF AD-
21 MISSION, ETC.—Section 214 (8 U.S.C. 1184), as
22 amended by section 142, is further amended by add-
23 ing at the end the following new subsection:

1 “(o)(1) The number of aliens who may be provided
2 a visa as nonimmigrants under section 101(a)(15)(U) in
3 any fiscal year may not exceed 2,000.

4 “(2) The period of admission of an alien as such a
5 nonimmigrant may not exceed 3 years and such period
6 may not be extended.

7 “(3) As a condition for the admission (or the provi-
8 sion of status), and continued stay in lawful status, of an
9 alien as such a nonimmigrant, the alien—

10 “(A) may not be convicted of any criminal of-
11 fense punishable by a term of imprisonment of 1
12 year or more after the date of such admission (or
13 obtaining such status); and

14 “(B) shall abide by any other condition, limita-
15 tion, or restriction imposed by the Attorney General.

16 “(4) The provisions of section 204(a)(1)(H) shall
17 apply to applications to obtain nonimmigrant status under
18 section 101(a)(15)(U). Credible evidence to meet the con-
19 ditions described in clauses (i), (ii), or (iii) of section
20 101(a)(15)(U) may include certification from a Federal
21 or State law enforcement officer or prosecutor or a Fed-
22 eral or State official responsible for bringing enforcement
23 actions that the alien is willing to cooperate or has cooper-
24 ated in a criminal or civil court action or investigation or

1 Federal or State administrative agency enforcement action
2 or investigation.”.

3 (2) PROHIBITION OF CHANGE OF NON-
4 IMMIGRANT CLASSIFICATION.—Section 248(1) (8
5 U.S.C. 1258(1)) is amended by striking “or (S)”
6 and inserting “(S), or (U)”.

7 (d) ADJUSTMENT TO PERMANENT RESIDENT STA-
8 TUS.—

9 (1) IN GENERAL.—Section 245 (8 U.S.C. 1255)
10 is amended by adding at the end the following new
11 subsection:

12 “(l)(1) The Attorney General may adjust the status
13 of an alien admitted into the United States (or otherwise
14 provided nonimmigrant status) under section
15 101(a)(15)(U) (and a spouse, child, or parents admitted
16 under such section) to that of an alien lawfully admitted
17 for permanent residence if—

18 “(A) in the opinion of the Attorney General, the
19 alien’s continued presence in the United States is
20 justified on humanitarian grounds, to assure family
21 unity, or is otherwise in the public interest; and

22 “(B) the alien is not described in subparagraph
23 (A)(i)(I), (A)(ii), (A)(iii), (C), or (E) of section
24 212(a)(3).

1 “(2) Upon the approval of adjustment of status under
2 paragraph (1), the Attorney General shall record the
3 alien’s lawful admission for permanent residence as of the
4 date of such approval and the Secretary of State shall re-
5 duce by one the number of visas authorized to be issued
6 under sections 201(d) and 203(b)(4) for the fiscal year
7 then current.”.

8 (2) EXCLUSIVE MEANS OF ADJUSTMENT.—Sec-
9 tion 245(c)(5) (8 U.S.C. 1255(c)(5)) is amended by
10 striking “sections 101(a)(15)(S),” and inserting
11 “subparagraph (S) or (U) of section 101(a)(15)”.

12 **SEC. 713. ACCESS TO CUBAN ADJUSTMENT FOR BATTERED**
13 **IMMIGRANT SPOUSES AND CHILDREN.**

14 (a) IN GENERAL.—The last sentence of the first sec-
15 tion of Public Law 89–732 (November 2, 1966; 8 U.S.C.
16 1255 note) is amended by striking the period at the end
17 the following: “, except that such spouse or child who has
18 been battered or subjected to extreme cruelty may adjust
19 to permanent resident status under this Act without dem-
20 onstrating that he or she is residing with the Cuban
21 spouse or parent in the United States. In acting on appli-
22 cations under this section with respect to spouses or chil-
23 dren who have been battered or subjected to extreme cru-
24 elty, the Attorney General shall apply the provisions of

1 section 204(a)(1)(H) of the Immigration and Nationality
2 Act.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall be effective as if included in subtitle
5 G of title IV of the Violent Crime Control and Law En-
6 forcement Act of 1994 (Public Law 103–322; 108 Stat.
7 1953 et seq.).

8 **SEC. 714. ACCESS TO THE NICARAGUAN AND CENTRAL**
9 **AMERICAN RELIEF ACT FOR BATTERED**
10 **SPOUSES AND CHILDREN.**

11 Section 309(c)(5)(C)(i) of the Illegal Immigration
12 Reform and Immigrant Responsibility Act of 1996, as
13 amended by section 203(a)(1) of the Nicaraguan Adjust-
14 ment and Central American Relief Act (title II of Public
15 Law 105–100, 111 Stat. 2196), is amended—

16 (1) by striking “or” at the end of subclause
17 (IV);

18 (2) by striking the period at the end of sub-
19 clause (V) and inserting a semicolon; and

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

21 “(VI) is, at the time of filing of
22 an application under subclause (I),
23 (II), (V), or (VI) of this clause, the
24 spouse or child (as defined in para-
25 graph (1) or (6) of section 101(b) of

1 the Immigration and Nationality Act,
2 8 U.S.C. 1101(b)) of an individual de-
3 scribed in subclause (I), (II) or (V) of
4 this clause and the spouse, child, or
5 child of the spouse has been battered
6 or subjected to extreme cruelty by the
7 individual described in subclause (I),
8 (II), or (V); or

9 “(VII) is. at the time of filing of
10 an application under subclause (I),
11 (II), (V), or (VII) of this clause. the
12 unmarried son or daughter of an indi-
13 vidual described in subclause (I), (II)
14 or (V) of this clause who has been
15 battered or subjected to extreme cru-
16 elty by the parent described in sub-
17 clause (I), (II), or (V) and, in the case
18 of a son or daughter who is 21 years
19 of age or older at the time the deci-
20 sion is rendered to suspend the depor-
21 tation or cancel the removal of the son
22 or daughter, the son or daughter must
23 have entered the United States on or
24 before October 1, 1990.

1 In acting on a petition filed under sub-
2 clause (VI) or (VII), the provisions set
3 forth in section 204(a)(1)(H) of the Immi-
4 gration and Nationality Act (8 U.S.C.
5 1154(a)(1)(H)) shall apply.”.

6 **SEC. 715. ACCESS TO THE HAITIAN REFUGEE IMMIGRATION**
7 **FAIRNESS ACT OF 1998 FOR BATTERED**
8 **SPOUSES AND CHILDREN.**

9 Section 902(d)(1) of the Haitian Refugee Immigra-
10 tion Fairness Act of 1998 (title IX of the Treasury and
11 General Government Appropriations Act, 1999, contained
12 in Public Law 105–277) is amended—

13 (1) by amending subparagraph (B) to read as
14 follows:

15 “(B)(i)(I) the alien is the spouse, child, or
16 unmarried son or daughter, of an alien whose
17 status is adjusted to that of an alien lawfully
18 admitted for permanent residence under sub-
19 section (a), or (II) at the time of filing of the
20 application for adjustment of status under sub-
21 section (a) or this subsection the alien is the
22 spouse, child, or unmarried son or daughter of
23 an alien whose status is adjusted to that of an
24 alien lawfully admitted for permanent residence
25 under subsection (a) and the spouse, child, son,

1 daughter or child of the spouse has been bat-
2 tered or subjected to extreme cruelty by the in-
3 dividual described in subsection (a); and

4 “(ii) in the case of such an unmarried son
5 or daughter, the son or daughter shall be re-
6 quired to establish that he or she has been
7 physically present in the United States for a
8 continuous period beginning not later than De-
9 cember 31, 1995, and ending not earlier than
10 the date the application for such adjustment is
11 filed;”; and

12 (2) by adding after and below subparagraph
13 (D) the following:

14 “In acting on an application filed under this section
15 for an individual described in subparagraph
16 (B)(i)(II), the provisions set forth in section
17 204(a)(1)(H) of the Immigration and Nationality
18 Act (8 U.S.C. 1154(a)(1)(H)) shall apply.”.

19 **TITLE VIII—MISCELLANEOUS**
20 **PROVISIONS**

21 **SEC. 801. TECHNICAL AND CONFORMING CHANGE CON-**
22 **CERNING BOARD OF IMMIGRATION APPEALS.**

23 (a) DELEGATION OF POWERS AND DUTIES OF AT-
24 TORNEY GENERAL TO BOARD.—Section 103(a) (8 U.S.C.
25 1103(a)) is amended—

1 (1) by redesignating the second paragraph (8)
2 and paragraph (9) as paragraphs (9) and (10), re-
3 spectively; and

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

5 “(11) The United States Board of Immigration Ap-
6 peals of the Department of Justice shall be charged with
7 any and all responsibilities and authority in the adminis-
8 tration of this title or title II which are conferred upon
9 the Attorney General as may be delegated to the Board
10 by the Attorney General or which may be prescribed by
11 the Attorney General.”.

12 (b) DEFINITIONS.—Section 101(b)(4) (8 U.S.C.
13 1101(b)(4)) is amended—

14 (1) by inserting “(A)” after “(4)”; and

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

16 “(B) The term ‘United States appellate immigration
17 judge’ means an attorney whom the Attorney General ap-
18 points as a member of the United States Board of Immi-
19 gration Appeals within the Executive Office for Immigra-
20 tion Review, qualified to conduct specified classes of appel-
21 late proceedings. A United States appellate immigration
22 judge shall be subject to such supervision and shall per-
23 form such duties as the Attorney General shall prescribe,
24 but shall not be employed by the Immigration and Natu-
25 ralization Service.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act.

4 **SEC. 802. LIMITING FORFEITURE FOR CERTAIN ASSETS**
5 **USED TO VIOLATE INA WHERE THERE WAS**
6 **NO COMMERCIAL GAIN.**

7 (a) IN GENERAL.—Section 274(b)(1) (8 U.S.C.
8 1324(b)(1)) is amended by inserting “for the purpose of
9 commercial advantage or private financial gain” after
10 “subsection (a)”.

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 **SEC. 803. ELIMINATION OF BAN ON STATE AND LOCAL GOV-**
15 **ERNMENTS FROM PREVENTING COMMUNICA-**
16 **TIONS WITH THE INS.**

17 (a) IN GENERAL.—Section 642 of the Illegal Immi-
18 gration Reform and Immigrant Responsibility Act of 1996
19 (8 U.S.C. 1373) is repealed.

20 (b) VERIFICATION OF ELIGIBILITY FOR FEDERAL
21 PUBLIC BENEFITS.—Section 432 of the Personal Respon-
22 sibility and Work Opportunity Reconciliation Act of 1996
23 (8 U.S.C. 1642) is repealed.

24 (c) EFFECTIVE DATE.—Subsections (a) and (b) shall
25 take effect on the date of the enactment of this Act.

1 **SEC. 804. PAROLE AUTHORITY.**

2 (a) IN GENERAL.—Section 212(d)(5)(A) (8 U.S.C.
3 1182(d)(5)(A)) is amended by striking “only on a case-
4 by-case basis for urgent humanitarian reasons or signifi-
5 cant public benefit” and inserting “for emergent reasons
6 or for reasons deemed strictly in the public interest”.

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. 805. ENHANCED BORDER PATROL RECRUITMENT AND**
11 **RETENTION.**

12 (a) IN GENERAL.—

13 (1) GS-11 CLASSIFICATION.—Any Border Pa-
14 trol agent classified as a GS-1896 position who
15 completes a 1-year period of service at a GS-9 grade
16 and whose current rating of record is fully successful
17 or higher shall be classified at a GS-11 grade and
18 receive pay at the minimum rate of basic pay for a
19 GS-11 position.

20 (1) NONREDUCTION.—Paragraph (1) shall not
21 be construed to—

22 (A) limit or reduce the rate of pay of any
23 Border Patrol agent; or

24 (B) reclassify a Border Patrol agent at a
25 lower classification of position.

1 (2) EFFECTIVE DATE.—This subsection shall
2 take effect on the first day of the first applicable pay
3 period beginning on or after the date that is 120
4 days after the date of the enactment of this Act.

5 (b) OFFICE OF BORDER PATROL RECRUITMENT AND
6 RETENTION.—

7 (1) ESTABLISHMENT.—Not later than 90 days
8 after the date of enactment of this Act, the Commis-
9 sioner of the Immigration and Naturalization Serv-
10 ice shall establish an Office of Border Patrol Re-
11 cruitment and Retention within the Immigration and
12 Naturalization Service.

13 (2) FUNCTIONS.—The Office of Border Patrol
14 Recruitment and Retention shall—

15 (A) develop outreach programs to identify
16 and recruit prospective Border Patrol agents;

17 (B) develop programs to retain Border Pa-
18 trol agents; and

19 (C) submit recommendations to the Com-
20 missioner of the Immigration and Naturaliza-
21 tion Service relating to pay and benefits of Bor-
22 der Patrol agents.

23 (3) REPORT TO CONGRESS.—Not later than
24 150 days after the date of enactment of this Act, the
25 Commissioner of the Immigration and Naturaliza-

1 tion Service shall submit a report to the Congress on
2 the establishment and activities of the Office of Bor-
3 der Patrol Recruitment and Retention.

4 (c) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated \$50,000,000 for fiscal
6 year 2000 and such sums as may be necessary for each
7 fiscal year thereafter to carry out this section.

8 **SEC. 806. AUTHORIZATION OF APPROPRIATIONS FOR IM-**
9 **PLEMENTATION OF ACT.**

10 There are authorized to be appropriated for fiscal
11 years 2000 through 2006 such sums as may be necessary
12 to implement this Act.

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: By DATE: 9/18/2017
2017-1120-F

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TITLE I – DUE PROCESS IN IMMIGRATION PROCEEDINGS

Subtitle A – Due Process in Expedited Removal Proceedings

Sec. 101. Due Process in Admissibility and Asylum Cases. – Restores the right of persons seeking admission to the United States to have a due process hearing on admissibility before an immigration judge and, if the person is an asylum seeker, on the merits of an asylum application. The decisions of the immigration judge can be appealed to the Board of Immigration Appeals and to the federal courts.

This due process right may be suspended only in the event of an “extraordinary migration situation,” namely, the arrival or imminent arrival of persons in such large numbers or under such unusual circumstances that the Attorney General finds it necessary to suspend the normal inspection and examination process temporarily. In such extraordinary circumstances, the Attorney General would be authorized to employ expedited removal proceedings for 90 days, and would be required to consult the Judiciary Committees of the House and Senate before employing expedited removal

proceedings for additional 90-day periods.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996¹ ("IIRIRA") virtually eliminated essential due process safeguards in cases where an immigration officer believes that the person seeking admission is inadmissible because of alleged fraud or misrepresentation or in the absence of appropriate documents.² In these cases, known as "expedited proceedings," the immigration officer's decision is subject only to review by a non-lawyer supervisor, and if the supervisor agrees with the decision, the alien is removed from the United States summarily.³ (The only exception is where the individual is placed in an expedited asylum proceeding to determine whether he or she has a "credible" fear of persecution.⁴) Moreover, under IIRIRA, individuals excluded in this manner are subsequently inadmissible for a period of at least five years.⁵

IIRIRA's elimination of due process rights for asylee candidates struck at the very heart of our system of justice and abrogated our nation's historic commitment to granting asylum candidates a meaningful opportunity to establish that they have been persecuted by oppressive foreign governments. Rather than fostering greater "efficiency," IIRIRA merely served to prevent persecuted individuals from effectively asserting their rights under U.S. law.

Do J - Ex Removal

Sec. 102. Using Immigration Judges in Expedited Removal Proceedings. -- Provides that immigration judges will make decisions on admissibility if an "extraordinary migration situation" occurs and expedited removal proceedings are necessary for a 90-day period.

This change is needed to ensure that decisions made during periods in which expedited proceedings are employed will be made by qualified adjudicators. Under IIRIRA, such decisions are made by immigration officers who are not trained as judges or even as lawyers.

Sec. 103. Equitable Determination of "Credible Fear of Persecution" in Cases Involving Unique Fact Patterns. -- Provides that a person involved in an expedited asylum proceeding during an extraordinary migration situation will be able to establish that a full asylum

*State - mass immig
don't want to bring
people to prison.
DoS concern*

¹Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996), as amended by Pub. L. 104-302, 110 Stat. 3656 (October 11, 1996). The bill also applies to largely overlapping provisions included in the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, 110 Stat. 1214 (1996),

²Section 302(a) of IIRIRA.

³Section 235(b)(1)(A) of the INA, 8 U.S.C. § 1225(b)(1)(A)

⁴The term "credible fear of persecution" means that "there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum." Section 235(b)(1)(B)(v) of the INA, 8 U.S.C. § 1225 (b)(1)(B)(v).

⁵Section 212(a)(9) of the INA, 8 U.S.C. § 1182(a)(9).

hearing is warranted on the basis of a novel factual situation or a new legal argument.

Under IIRIRA, persons involved in expedited removal proceedings seeking a hearing on an asylum application must show a “significant possibility” of being able to succeed.⁶ This can be highly problematic for individuals basing their persecution claim on a novel factual situation or a new legal argument. It can be very difficult to determine whether the person has a “significant possibility” of prevailing on a claim or argument that has never been considered before. This section prevents such claims from being rejected simply because they have not previously been accepted.

To illustrate, in 1994, when Fauziya Kasinga was 19 years old, she fled from Togo to avoid becoming a victim of female genital mutilation. At that time, there was no precedent for granting asylum on that basis. Fortunately for Ms. Kasinga, however, IIRIRA had not been enacted yet. She was able to pursue her asylum application on its merits in administrative proceedings and ultimately received asylum.⁷ Under IIRIRA, Kasinga’s claim almost certainly would have been rejected out of hand because it would have been extremely difficult in expedited proceedings for her to have established a “significant possibility” of prevailing on the basis of such an unusual claim.

DOJ - not necessarily already the std . . .

Subtitle B – Judicial Review in Immigration Proceedings

Sections 111 – 117. This subtitle overturns provisions in IIRIRA which strip the courts of jurisdiction over certain immigration-related matters. In particular, IIRIRA eliminated court appeal rights relative to judicial review of asylum determinations, decisions on apprehension and detention of aliens, document fraud waivers, orders issued in absentia, and denial of requests for voluntary departure.⁸ Judicial review is not a luxury or a gift; it is the very foundation of our system of government and justice. Moreover, judicial review is not just a tool of fairness and equity, it also is an efficiency tool that makes national uniformity possible and is an essential component of our constitutional system of government.

The changes made by IIRIRA have created so many logistical and constitutional problems that many judges have found other ways of hearing at least some of these cases. For instance, the First,⁹ Second,¹⁰ and Ninth,¹¹ Circuits have upheld the right to judicial review of certain habeas corpus deportation orders. Although these cases may help individual aliens, they do not effectively

⁶Section 208 of the INA, 8 U.S.C. § 1158.

⁷*Matter of Kasinga*, Interim Decision 3278 (BIA 1996).

⁸Section 242 of the INA, 8 U.S.C. § 1252.

⁹*Goncalves v. Reno*, 144 F.3d 110 (1st Cir. 1998).

¹⁰*Henderson v. Reno*, Nos. 97-2599, 97-2600, 97-2629, 97-4050, 97-4070 (2d Cir. Sept. 18, 1998).

¹¹*Magana-Pizano v. INS*, 152 F.3d 1213 (9th Cir. 1998).

address the broader problem of uniformity or justice. The decision of a district court in habeas corpus proceedings does not necessarily bind the Board or the INS in other cases.¹² This subtitle strikes the court-stripping provisions of IIRIRA and substitutes the pre-IIRIRA provisions as the procedures for the judicial review.

Sec. 111. Judicial Review of Administrative Remedies and Habeas Corpus. -- Restores pre-IIRIRA provisions providing for judicial review in habeas corpus proceedings of final orders of removal. Prohibits review of an order of removal if the petitioner has not exhausted his or her administrative remedies under the INA and its regulations or if the person has departed from the United States after the issuance of the order.

Sec. 112. Judicial Review of Asylum Determinations. -- Restores pre-IIRIRA provisions concerning judicial review of exceptions to asylum eligibility.

Sec. 113. Judicial Review of Decisions Concerning Apprehension and Detention of Aliens. -- Restores pre-IIRIRA provisions authorizing judicial review of decisions on the apprehension and detention of aliens.

Sec. 114. Judicial Review of Decisions Concerning Document Fraud Waivers. -- Restores pre-IIRIRA provisions concerning judicial review of waiver for inadmissibility on the basis of a final order for a document fraud violation.

Sec. 115. Judicial Review of Orders Issued in Absentia. -- Restores pre-IIRIRA provisions concerning judicial review of removal orders issued in absentia with regard to (i) the validity of the notice provided to the alien, (ii) the reason for the alien's not attending the proceedings, and (iii) whether or not the alien is removable.

Sec. 116. Judicial Review of Denial of Request for Order of Voluntary Departure. -- Restores pre-IIRIRA provisions concerning court jurisdiction over an appeal from a denial of a request for the privilege of voluntary departure in lieu of deportation.

Voluntary departure permits someone who has been found deportable to leave the United States on his own instead of being escorted out of the country by the INS pursuant to a deportation order. Allowing persons the right to appeal a denial of voluntary departure gives them an opportunity of avoiding the devastating legal consequences of having been deported. For example, IIRIRA made such people inadmissible for five years following a first removal and for 20 years after a second removal.¹³

Sec. 117. Transitional Changes in Judicial Review. -- Repeals transitional provisions for

¹²See *Matter of Anselmo*, 20 I&N Dec. 25 (BIA 1989).

¹³Section 301(b)(1) of IIRIRA.

changes in judicial review that were needed as a result of the enactment of IIRIRA.¹⁴

DOS/INS - ok w/ some judicial review ok if higher non-precedent from govt to far, multi-layer & ~~multiple~~

Subtitle C – Fairness in Removal Proceedings

Sec. 121. Equitable Burden of Proof for Admissibility. – Changes the admission seeker's burden of proof in removal proceedings on the issue of admissibility from "clearly and beyond doubt" to "clear and convincing evidence."

Before IIRIRA, immigration officers did not have sole authority to exclude an alien from the United States. If the inspecting officer was not satisfied that the person seeking admission was "clearly and beyond doubt entitled to be admitted," he or she referred the person to an immigration judge for a full due process hearing on admissibility. The admission-seeker's burden of proof at the hearing was to establish to the satisfaction of the Attorney General that he or she was not inadmissible under any provision of the INA.¹⁵ IIRIRA has specified that this requires the admission-seeker to establish his or her admissibility "clearly and beyond doubt,"¹⁶ making the aliens' burden of proof even higher than the burden of proof that the government has to meet in criminal proceedings. The "clear and convincing" evidence standard is more reasonable and is the same as the standard that the INS has to meet to establish that an alien already in the United States should be deported.

DOS - why is necessary... unclear... confusion... expelled removal, by this the std.

Sec. 122. Presumption in Favor of Withdrawal of Application for Admission. – Creates a presumption in favor of granting a request for permission to withdraw an application for admission at any time to depart from the United States immediately, unless an immigration judge has rendered a decision on the admission seeker's admissibility. Permission may only be denied when denial is warranted by unusual circumstances. After an immigration judge has rendered a decision on admissibility, permission may still be given as a matter of discretion, but there would be no presumption in favor of granting the request.

The purpose of granting permission to withdraw an application for admission is to make it possible for the admission-seeker to avoid the consequences of a forced removal by leaving voluntarily. Among other things, under IIRIRA, a forced removal would bar the person from returning to the United States for at least five years.¹⁷ A similar device is employed in cases where the person faces the possibility of deportation from the United States.¹⁸ In that context, the privilege is called "voluntary departure." IIRIRA provided authority to grant requests for permission to

¹⁴Section 309(c)(4) of IIRIRA

¹⁵Section 291 of the INA, 8 U.S.C. § 1361.

¹⁶Section 304 of IIRIRA.

¹⁷Section 212(a)(9) of the INA, 8 U.S.C. § 1182(a)(9)

¹⁸Section 240B of the INA, 8 U.S.C. § 1229c.

¹⁹Section 302(a) of IIRIRA.

withdraw an application for admission,¹⁹ but it did not provide a presumption in favor of granting the requests.

DOT will allow people to game the system... completely

Sec. 123. Absences Outside the Control of the Alien. -- Under IIRIRA, a person with lawful permanent resident status is subject to a full inspection upon returning from a trip abroad if he has been absent from the United States for a continuous period of 180 days.²⁰ This section changes the time period from 180 days to a year (or longer if the absence is due to circumstances beyond the person's control).

IIRIRA has caused the detention of long-time permanent residents who temporarily leave the U.S. for business trips or vacations. Upon their return, they are detained and placed in removal proceedings for minor offenses that occurred long ago.

DOT unnecessary in light of order changes in other areas... especially for why
Subtitle D – Fairness in Detention *DOT except but see further review & scrutiny. Ex post facto*

Sec. 131. Restoring Discretionary Authority to the Attorney General in Cases of Individuals Who Pose No Risk to Safety or of Fleeing. -- Restores pre-IIRIRA law granting the Attorney General discretionary authority to release immigrants from detention who do not pose a risk to persons or property and are likely to appear for future proceedings. Custody determinations would be subject to administrative and judicial review. Additionally, such individuals could challenge their detention by filing a writ of habeas corpus.

Sec. 132. Periodic Review of Detention Determinations. -- Immigrants who face deportation after having completed their criminal sentence are often left languishing indefinitely in INS detention if their deportations cannot be effectuated. The frustration and anger that this causes was dramatically illustrated last year in an incident at a St. Martin Parish jail in St. Martinville, Louisiana, when a group of rebellious Cuban inmates held two sheriff's deputies and a jail warden hostage until arrangements were made to return them to Cuba. These inmates had been in custody since the completion of their sentences. Some of them had completed their sentences as far back as 1992. Nationwide, the INS holds about 3,800 people in indefinite custody for crimes ranging from petty theft to murder.

Most of these individuals are from countries such as Cuba, Vietnam, and Cambodia, whose governments are not willing to accept them. Although IIRIRA granted the Attorney General the authority to release persons she cannot deport within 90 days, until recently, no mechanism existed to require the periodic review of these cases to determine whether detained individuals are eligible for release. The INS recently issued a new policy requiring the periodical review of long-term detention cases. This section codifies the new release policy and establishes mandatory review of cases every 90 days. Release determinations would be subject to administrative and judicial review.

¹⁹Section 302(a) of IIRIRA.

²⁰Section 301 of IIRIRA.

The provisions do not authorize the release of persons who pose a risk to the community or are unlikely to comply with their orders of removal.

Sec. 133. Limitation on Indefinite Detention. – Establishes a one year ceiling on the time an individual can be detained while waiting to be removed after he or she has completed his or her criminal sentence, so long as the individual is not at risk to the community and is likely to comply with the removal order. This section is premised on the principal that it is unfair to continue to punish individuals who have completed their criminal sentences.

Sec. 134. Pilot Program to Consider Alternatives to Detention for Noncriminal Detainees. – Requires the Attorney General to establish a pilot program in three district offices to determine the viability of supervision of aliens subject to detention under the INA through means other than confinement in a penal setting.

It can be dangerous to house immigrant families in facilities which also house criminals, and such detentions can become the equivalent of a prison sentence for people who have not committed a crime. For example, when Adelaide Abankwah fled the threat of genital mutilation in her native Ghana, she thought she would find a better life in the United States. When she arrived, she was arrested and taken to a detention center where she was incarcerated for the next two years and three months— more time than many violent felons serve.

Sec. 135. Elimination of Mandatory Detention in Expedited Removal Proceedings. – Provides that aliens detained during extraordinary migration periods may be released under the same circumstances as other noncriminals who have been arrested and detained, pending a decision on whether they should be removed from the United States. Release in such cases would be permitted on bond or on conditional parole.²¹

IIRIRA requires mandatory detention for all individuals involved in expedited proceedings.²² Many of such persons are asylum seekers, and many asylum seekers are women and children. Notwithstanding the fact that such persons are not criminals and have done nothing wrong, under IIRIRA, they face the prospect of indefinite detention with criminals at a penal institute. This section recognizes that such individuals should be released unless they are flight risks, which would be determined on a case-by-case basis.

Sec. 136. Right to Counsel. -- Currently an attorney who agrees to represent someone in a bond hearing at a remote detention center may end up being required by the immigration judge to continue representing the person if he or she is not released from detention. This practice has resulted in a reluctance by some attorneys to accept detention cases because they cannot withdraw their appearance later. This section would allow attorneys, with the consent of their clients, to make

²¹Section 236(a) of the INA, 8 U.S.C. § 1226(a).

²²*Id.*

limited appearances in bond, custody, detention, or removal immigration proceedings and thus ensure that persons have the privilege of being represented by counsel. The right to counsel would be at no expense to the government.

DOT - OK - does it help? but makes it easier to drop cases.

Subtitle E – Consular Review of Visa Applications (Sections 141 – 142)

This subtitle incorporates the text of the “Consular Review Act of 1999” (H.R. 1156), which was introduced by Rep. Frank (D-MA) on March 17, 1999. It would require the Secretary of State to set up a Board of Visa Appeals that would have five members. The Board would have the authority to review any discretionary decision of a consular officer regarding the denial, cancellation, or revocation of an immigrant or nonimmigrant visa or petition, or the denial of an application for a waiver of any ground of inadmissibility under the INA. If the Board, finds that the consular officer’s decision is contrary to the preponderance of the evidence, the Board could overrule or remand the case for further proceedings. The subtitle also provides that the Secretary of State would charge and collect a fee for review before the Board which will be sufficient to cover the administrative costs. In addition, language has been added to the Frank bill to provide that visas are not to be denied on a discriminatory basis within any individual country on account of race, religion, place of birth, gender, sexual orientation, or disability.

concern
State Dept. - strongly oppose - resume implications, parole, parole, parole. Consular officers have visa waiver provision.
broad unreviewable discretion.

TITLE II – FAIRNESS IN CASES INVOLVING PREVIOUS AND MINOR MISCONDUCT

IIRIRA included a wide variety of changes which made it far easier to deport or exclude non-citizens for minor criminal violations which occurred many years ago. Among other things, IIRIRA lowered the sentence and monetary amount thresholds for many of the crimes on the list of aggravated felonies and other excludable or deportable offenses and did so on a retroactive basis -- meaning that offenses that were not previously deportable became deportable retroactively in 1996, even if they occurred in earlier years – and largely eliminated the Attorney General’s discretion to make humanitarian exceptions to such deportation orders, even for long-time legal residents. IIRIRA also included harsh new five-year bars to admission for unintentional immigration offenses.

The changes made by IIRIRA have led to a wide variety of inequitable results. For example, in the spring of 1997, Jesus Collado, a 43-year-old legal resident and restaurant manager from the Dominican Republic was returning from a vacation to his homeland when he was arrested and imprisoned by immigration agents. He was charged with deportability under IIRIRA because twenty-three years earlier, when he was only 19 years old, he had been convicted for having sex with his teenage girlfriend (IIRIRA made the offense “sexual abuse to a minor” an aggravated felony for immigration purposes²³). In another case, Rev. Frank Almonte, a well-known Hispanic television

²³Section 101(a)(43)(A) of the INA, 8 U.S.C. § 1101(a)(43)(A)

State Dept. there are few cases ~~not~~ used with ~~not~~ can not
in the USA context.

evangelist who has been a lawful permanent resident of the United States for 22 years, was imprisoned and charged with deportability because he had packed three jars of "appetite enhancer" pills into his son's suitcase on a recent trip home from the Dominican Republic. The pills, which are freely and legally available from pharmacists in the Dominican Republic, constituted a "controlled substance" of steroids in the U.S. -- a relatively low-level drug violation. Title II is intended to eliminate excesses of this nature and restore a greater semblance of equity and fairness into our immigration system.

Subtitle A – Increased Fairness and Equity Concerning Removal Proceedings

Sec. 201. Equitable Definition of Crime Involving "Moral Turpitude." -- Eliminates exclusion from the United States under IIRIRA for acts of moral turpitude which may have constituted the elements of a crime but have not led to a conviction.²⁴ Limits the exclusion ground to cases in which the applicant has actually been convicted of the offense. This section also limits the applicability of the exclusion ground to offenses for which the person was sentenced to imprisonment for at least one year (as opposed to six months under IIRIRA).²⁵

DOS - don't like actual conviction requiring conviction. Imprisonment - limit - 1 yr. OK
need to work on exact language. respond vs. serve

Sec. 202. Equitable Application and Definition of "Aggravated Felony" --

(a). Illicit Trafficking. --Excepts a single offense of simple possession of a controlled substance from the "aggravated felony" category created by IIRIRA²⁶ if it is the person's first controlled substance offense.

Under federal law, a simple first time possession offense is ordinarily not a felony and the maximum sentence for such offenses is less than a year. This subsection conforms immigration law to federal law by excepting a single offense of simple possession from being considered as an "aggravated felony."

DOS - ok w/ some change but concern w/ "5" year - too high.

(b). Crimes of Violence and Theft Offenses. -- Changes the definition of violence and theft offenses that are considered to be "aggravated felonies"²⁷ under IIRIRA from offenses for which the sentence was imprisonment for at least one year to offenses for which the sentence was imprisonment for at least five years.

DOS Disrupting waiver in the definition. ~~don't~~ like

²⁴Section 212(a)(2)(A) of the INA, 8 U.S.C. § 1182(a)(2)(A).

²⁵This exclusion ground does not apply to an alien who committed only one crime if...(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed...) did not exceed imprisonment for one year... Section 212(a)(2)(A)(ii)(II) of the INA, 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

²⁶Section 101(a)(43)(B) of the INA, 8 U.S.C. § 1101 (a)(43)(B)

²⁷Section 101(a)(43)(F) and (G) of the INA, 8 U.S.C. § 1101(a)(43)(F) and (G).

Before IIRIRA, crimes of violence and theft offenses were not considered to be aggravated felonies unless they were subject to a five-year term of imprisonment. IIRIRA reduced this to a one-year term of imprisonment.²⁸

(c). Alien Smuggling. -- Limits the “alien smuggling” category in the definition of an “aggravated felony” to offenses committed for the purpose of commercial gain.²⁹

Although IIRIRA provided that a first offense of alien smuggling is not an aggravated felony if it was carried out to assist the smuggler’s spouse, child, or parent,³⁰ it still subjects non-citizen repeat offenders to permanent removal for helping his or her spouse, child, or parent to illegally enter the United States. This simply is too harsh for such an offense; a mother should not be deported and barred forever from returning because she tried to reunite with her child. This subsection reflects the view that permanent removal from the United States is only appropriate in cases involving professional smugglers.

(d). Discretionary Waiver in Cases of Other Minor Felonies. -- Grants discretionary authority to the Attorney General to disregard, for immigration purposes, convictions for aggravated felonies that did not result in incarceration for more than one year. This section makes relief available in cases where the person facing permanent removal from the United States committed a relatively minor offense.

(e). Conforming Change Concerning Removal of Nonpermanent Residents. -- Repeals a provision that bars nonpermanent resident aliens who have been convicted of an aggravated felony from being eligible for discretionary relief from removal.

This bar, which was created by IIRIRA,³¹ is superfluous under current immigration law. Under the INA as presently written, people who have aggravated felony convictions in their records are virtually ineligible for any form of relief from removal in any event, so the bar has no operative effect. The bar presents a problem, however, with respect to the provisions included in this title which provide relief for people whose aggravated felony convictions that were based on relatively minor offenses.

Sec. 203. Equitable Definition of “Conviction” and “Term of Imprisonment.” – Modifies IIRIRA’s definition of “conviction” to provide that an adjudication or judgment of guilt that has been expunged, deferred, annulled, invalidated, withheld, or vacated; an order of probation without entry of judgment; or any similar disposition will not be considered a conviction for

²⁸Section 321(a)(3) of IIRIRA.

²⁹Section 101(a)(43)(N) of the INA, 8 U.S.C. § 1101(a)(43)(N)

³⁰Section 321(a)(8) of IIRIRA.

³¹Section 238(b)(5) of the INA, 8 U.S.C. § 1227(b)(5).

purposes of the INA. This section also strikes the provision in that definition which states that any reference to a "term of imprisonment" or "sentence" is deemed to include the period of incarceration or confinement ordered by the court regardless of any suspension of the imposition or execution of the imprisonment or sentence.

Under IIRIRA's definition of a "conviction," it does not matter whether an adjudication of guilt has been withheld.³² This means that a person can suffer the immigration consequences of a felony conviction even in situations where the criminal court judge tried to give the person a break. IIRIRA also specified that any reference to a "term of imprisonment" or "sentence" is deemed to include the period of incarceration or confinement ordered by the court regardless of any suspension of the imposition or execution of the imprisonment or sentence.³³

DOT - agree if there expunged - appropriate to consider. Concern how far state Ct go.
OK if have
Sec. 204. Equitable Definition of Crimes of "Moral Turpitude." – Limits deportation for conviction of a crime involving moral turpitude to cases where the conviction resulted in the alien's incarceration for a period exceeding one year.

DOT - see § 201 commutes. Support to make the under old - 6
IIRIRA provided for deportation when an alien is convicted of a crime involving moral turpitude for which a sentence of one year or longer may be imposed.³⁴ This makes it possible to deport someone who has committed a relatively minor offense. This section limits deportation on this basis to cases where the offense was serious enough to result in incarceration for a year or more.

Sec. 205. Restoration of Fairness in Equitable Relief for Long-Time Legal Permanent Residents (formerly known as section 212(c) relief) – Restores discretion to immigration judges to grant relief from removal to long-time legal permanent residents who have committed minor criminal offenses. Also, repeals IIRIRA's stop-time rule so that lawful permanent residents can continue to accumulate residency time for purposes of the seven-year eligibility requirement so long as they maintain their permanent resident status in the U.S.

elim Long-time
IIRIRA³⁵ deleted former section 212(c) of the INA, which permitted lawful permanent residents to seek discretionary relief from exclusion and deportation, so long as they had maintained domicile in the U.S. for at least seven consecutive years, and substituted a far narrower form of discretionary relief known as "cancellation of removal."³⁶ Of particular concern, IIRIRA included a "stop-time" provision terminating the accrual of time for purposes of the seven-year residency.

³²Section 322(a)(1) of IIRIRA.

³³*Id.*

³⁴Section 237(a)(2)(A)(i) of the INA, 8 U.S.C. § 1227(a)(2)(A)(i).

³⁵Section 304(b) of IIRIRA.

³⁶Section 240A(a) of the INA, 8 U.S.C. § 1229b(a).

³⁷Under IIRIRA, the accrual of such time would stop at the time of the alleged offense or date of notice to appear for removal proceedings. Section 240A(d)(1) of the INA, 8 U.S.C.

§206

ALL Immig
Non-Crime

requirement before the issuance of a decision to terminate the person's lawful permanent resident status.³⁷ IIRIRA also eliminated the discretion to consider relief on a case-by-case basis for persons who have been convicted of minor crimes that are classified as "aggravated felonies." The combined effect of these changes was to greatly reduce the number of deserving long-time lawful permanent residents who can be considered for this type of discretionary relief.

This section retains the concept of cancellation of removal relief enacted under IIRIRA, but restores some modicum of equity and fairness to it. First, the section repeals IIRIRA's stop-time rule so that lawful permanent residents may continue to accumulate residency time for purposes of the seven-year eligibility requirement so long as they maintain their permanent resident status. This is far more equitable than cutting off the accumulation of residency time at an arbitrary point that is prior to a decision regarding whether the applicant may maintain his or her residency. Second, this section would permit immigrants classified as aggravated felons to be eligible for discretionary relief, but only if they did not receive a sentence of five years or more. This insures that dangerous offenders will be removed, while permitting individual circumstances to be considered in less serious cases.

DOS OK entry is fine concern w/ 5 year. served it not for but b/c would be more route legal stop-time rule - OK but why doc rule - sketchy out proceed to be secure

Sec. 206. Restoration of Fairness in Equitable Relief for Other Non-Citizens (formerly known as suspension of deportation). – The previous section enhanced the availability of equitable and discretionary relief for long-term permanent residents. This section would enhance the availability of equitable and discretionary relief to other immigrants by restoring the forms of equitable relief available more generally under pre-IIRIRA law.

Prior to IIRIRA, in addition to the discretionary relief from removal under section 212(c) for long time legal permanent residents, a more stringent two-tier form of relief from removal known as "suspension of deportation" was available to all immigrants by application to an immigration judge in deportation proceedings.³⁸ The first form of such relief required seven years of continuous physical presence and good moral character, and proof that deportation would result in extreme hardship to the immigrant or to his or her U.S. citizen or lawful permanent resident spouse, child, or parent. If the immigrant was subject to deportation for more serious grounds (such as for certain criminal offenses, for security grounds, for failure to register, or for falsification of documents), suspension of deportation relief required 10 years of continuous physical presence and good moral character, and proof that deportation would result in exceptional and extremely unusual hardship to the immigrant or to his or her U.S. citizen or lawful permanent resident spouse, child, or parent.

IIRIRA replaced this suspension of deportation regime with a single form of "cancellation of

§ 1229b(d)(1).

³⁸A third type provided relief for battered spouses. Section 244(a)(3) of the INA, 8 U.S.C. § 1254(a)(3). The requirements for this type of suspension have been retained in nearly the same form in the new provision for cancellation of removal for battered spouses. Section 240A(b)(2) of the INA, 8 U.S.C. § 1229b(b)(2).

removal" relief which significantly narrowed eligibility for equitable relief. First, if an immigrant is subject to the more serious type of removal grounds, IIRIRA completely disqualified him or her, no matter how compelling his or her individual circumstances or the magnitude of harm to his or her family. Second, with respect to other immigrants not subject to removal for such serious grounds, IIRIRA requires them to establish 10 years of continuous physical presence and good moral character, and prove that deportation would result in exceptional and extremely unusual hardship to a U.S. citizen or lawful permanent resident spouse, child, or parent, eliminating consideration of hardship to the alien himself or herself. Third, IIRIRA placed an arbitrary annual cap of 4000 on the number of people who can receive cancellation of removal.

The changes made by IIRIRA with regard to suspension of deportation relief have made discretionary relief unavailable to many immigrants even though they and their families will suffer terrible hardships upon deportation. Restoration of the previous system will make it possible to grant relief to deserving immigrants on a case-by-case basis when it is warranted. This will give immigrants and their families a second chance and will benefit their families and our country.

*INS - 7 - OK in my current
Handbook - some concern - open to change -
Handbook to self - included - ?
ok at what you copy.*

Sec. 207. Eliminating Unfair Retroactive Changes in Removal Rules for Persons

Subject to Pending Proceedings. -- The changes outlined above repeal the specific changes made by IIRIRA which unfairly subjected immigrants to deportation on a prospective basis. In addition, this section ensures that immigrants currently subject to removal proceedings will not suffer from unfair retroactive changes in the law. Thus, an immigrant will not be found to be removable for committing any offense that was not a ground for removal or deportation when the offense occurred (e.g., the "aggravated felony" classification will apply only to an offense that was defined as an "aggravated felony" when the offense occurred).

INS - diff views, some sympathy... INS opposes - Admissibility at time of entry after these people. Human Rights Bill - want to

Sec. 208. Eliminating Unfair Retroactive Changes in Removal Rules for Persons

Previously Removed. -- Just as previous sections restored equity to immigrants subject to deportation prospectively and currently subject to removal, this section helps to provide some fairness to persons already removed as a result of retroactive changes instituted by IIRIRA which made minor offenses grounds for deportation. The section does this by granting discretionary authority to admit previously removed legal permanent residents to the United States with new lawful permanent resident status. To be eligible, the LPR must establish that he or she was removed from the United States on the basis of a criminal offense that became a removal ground under IIRIRA that was not a basis for removal when it was committed. As a first step, the former LPR would have to establish prima facie eligibility for relief under this new provision. After making such a showing, the individual could be paroled into the U.S. for a hearing before an immigration judge on the merits of the application. In applying for parole and at the hearing on the merits of the application, the former LPR would have the burden of establishing eligibility and that relief is warranted as a matter of discretion.

This change addresses the need to readmit deserving LPR's who were stripped of that status on the basis of an action that had no adverse immigration consequences when it was committed. For instance, Jesus Collado, a 43-year-old legal resident and restaurant manager from the Dominican Republic was returning from a vacation to his homeland when he was arrested and

imprisoned by immigration officers. Twenty-three years earlier, when he was only 19 years old, he had been convicted for having sex with a minor -- his then 15 year old girlfriend -- and sentenced to probation. At the time, this conduct did not carry with it any adverse immigration consequences, but in 1996, IIRIRA recharacterized such actions as constituting an "aggravated felony," which made him deportable from the United States and ineligible for any form of relief.³⁹

DOJ INS - concern

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

Sec. 211. Limiting Five-Year Bar to Admission to Persons Who Willfully Fail to Attend Removal Proceedings. – Limits the applicability of the five-year bar to admissibility that IIRIRA imposed on persons who fail to attend or remain in attendance at removal proceedings to situations where the individual acted willfully.⁴⁰ The five-year bar to admissibility mandated by IIRIRA is unnecessarily harsh for cases in which the person has not acted willfully. Such consequences are not warranted in the absence of an element of fault or blameworthiness.

Sec. 212. Limiting Five-Year Bar to Admission to Persons Who Willfully Violate Student Visa Conditions. – Limits the applicability of the five-year bar to admissibility that IIRIRA imposed on persons who violate a term or condition of their nonimmigrant student visas to situations where the student acted willfully.⁴¹ Again, a five-year bar to admissibility is unnecessarily harsh in such situations unless there is an element of fault or blameworthiness.

Sec. 213. Limiting Ban on Admissibility to Persons Who Willfully Make False Claims to Citizenship. – Limits the applicability of an IIRIRA provision which made making a false claim to citizenship for an immigration benefit a basis for exclusion or deportation to cases in which the false claim to citizenship was willful.⁴² This again is an attempt to limit harsh consequences to situations in which there is an element of fault or blameworthiness.

INS - no limit ~~on~~ admission ... but would have to show state of mind. DBregard publicity

Sec. 214. Equitable Waiver of Inadmissibility for Minor Criminal Offenses. – Authorizes granting a waiver of inadmissibility based on a controlled substance violation for which the alien was not incarcerated for a period exceeding one year, thereby overriding IIRIRA's threat of exclusion for minor infractions (e.g., possessing very small amounts of marijuana).⁴³ Also strikes a provision added by IIRIRA which made some lawful permanent residents ineligible for such waivers of inadmissibility.

INS - probably OK

³⁹Anthony Lewis, *Punishing the Past*, N.Y. Times, March 30, 1998, at A17.

⁴⁰Section 301(c) of IIRIRA.

⁴¹Section 346 of IIRIRA.

⁴²Section 344 of IIRIRA.

⁴³Section 212(h) of the INA, 8 U.S.C. § 1182(h).

The proposed one year of incarceration standard provides a more reasonable cut off point for distinguishing between serious and relatively minor offenses. In cases where someone committed a serious offense but was incarcerated for less than a year, the adjudicator could still deny relief as a matter of discretion. *by chye. discretion*

The other change is necessary to overturn provisions in IIRIRA that discriminates against immigrants who have become lawful permanent residents of the United States. These provisions require lawful permanent residents to satisfy requirements that do not have to be met by persons who have not become lawful permanent residents. For instance, an alien who has become a lawful permanent resident is not eligible for relief unless he or she has lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States.⁴⁴

State Dept. OK with some flexibility & doesn't add

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. – Authorizes a visitor's visa permitting family members to join their lawful permanent resident spouse or parent in the United States while waiting for an immigrant visa number. Also makes a visitor's visa available to persons waiting for an immigrant visa number on the basis of their status as battered immigrants.

The INA has a system for determining the order in which aliens will receive the limited number of immigrant visas that are available each year.⁴⁵ Although spouses and children of permanent resident aliens can obtain a preference classification which accords them priority in this system, they may have to wait years before they actually receive a visa and can rejoin their family. The proposed visitor's visa will permit them to join their lawful permanent resident spouse or parent in the United States while they are waiting.

Battered immigrants often need protection from the relative who initially petitioned for them. The proposed visitor's visa will permit such persons to seek the protection of United States law while they are waiting for visa numbers. In a typical case, this will make it possible for a woman to be with her children in the United States instead of being forced to take them to another

⁴⁴Section 348(a) of IIRIRA provides: "No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States."

⁴⁵Section 203 of the INA, 8 U.S.C. § 1153.

country or leave them with an abusive father in the United States.

INS - don't like the # of immig. more than double the # of immig.

Sec. 302. Refugee Status for Unmarried Sons and Daughters of Refugees. – Authorizes granting refugee status to unmarried sons and daughters who are accompanying or following to join a parent who is a refugee when such a benefit is warranted by unusual circumstances.

Under current law, this privilege is accorded only to the spouse or “child” of a refugee, defined as a person under the age of 21. When children reach the age of 21, they are classified as “sons and daughters” and lose their entitlement to refugee status. Ordinarily, a child no longer needs to live with parents after the age of 21, but this is not always the case. For instance, some children are mentally retarded or autistic and continue to need their parents after reaching that age. This section will address that need.

State / PRM - Need clear def. of “unusual circumstances” INS - similar equity issue = LPRK

Sec. 303. Asylee Status for Unmarried Sons and Daughters of Asylees. – Authorizes granting asylee status to unmarried sons and daughters who are accompanying or following to join a parent who is a refugee when such a benefit is warranted by unusual circumstances.

This is the same as the relief for refugees described above. “Refugee” status and “asylee” status are similar for most purposes. In both cases, refuge is being given to a person who is fleeing from persecution.⁴⁶ The main difference between these forms of relief is that “refugee” status is given at a consulate office in another country to a person who has not reached the United States yet, and “asylee” status is given to someone who is already in or at the border of the United States. Consequently, the justification for authorizing discretion in the case of the sons and daughters of refugee parents applies equally to the sons and daughters of asylee parents.

Sec. 304. Protection Against Processing Delays. -- Provides protection against INS delays in processing visa applications for certain time sensitive applicants, such as for minor children, by requiring the determination of an applicant’s eligibility to be based on the beneficiary’s qualifications as of the date on which the application is filed. For instance, if the beneficiary of a visa petition for immediate relative status as a child is under the age of 21 when the visa petition is filed, the beneficiary will continue to be considered a child even if he or she is older than 21 by the time INS has finished processing the application. Also provides for conditional approval of benefits applications. In cases where a first-time benefit is being sought, the applicant receives conditional approval if the application has not been processed within 90 days. This does not apply to naturalization applications, however. In cases where the extension of a benefit is sought, such as for employment authorization, conditional approval is accorded immediately if the application is filed before the expiration of the existing benefit period.

This section also incorporates text of H.R. 2448, legislation introduced by Rep Mink (D-HI) on July 1, 1999, H.R. 2448. This assures that immigrants do not have to wait longer for an

⁴⁶In fact, a person seeking asylum must establish that he meets the definition of a “refugee.”

immigrant visa as a result of a reclassification because of the naturalization of a parent or spouse.

INS - not workable. the delay is considerable approval OK or aging out ~~11/20~~ 11/20

Subtitle B – Limited Waiver of Grounds of Admissibility

Sections 311 -- 313. Prior to IIRIRA, specified categories of immediate relatives (e.g., spouses, children, and parents) who were found to be inadmissible to the U.S. were permitted to apply to the Attorney General for a discretionary waiver of inadmissibility on a case-by-case basis. IIRIRA limited eligibility for such waivers by, among other things, narrowing the category of eligible relatives to exclude parents; by requiring a showing that the refusal to admit the applicant would result in “extreme hardship” to his or her citizen or LPR relative in the U.S.; and by narrowing the grounds for eligible humanitarian relief. Collectively, these changes are not only illogical and inconsistent with the type of discretionary relief available in deportation cases, but they have made it far more difficult for families to reunite so they could support themselves emotionally and financially. The changes outlined in this Subtitle serve to overturn the most severe and anti-family aspects of the changes to the waiver of inadmissibility law made by IIRIRA.

Sec. 311. Discretionary Waiver in Cases Involving Family Members. – Restores waiver eligibility to the parents of a lawful permanent resident or citizen son or daughter. Permits the waiver in cases where the applicant is able to establish that “hardship” would result from refusal of admission, rather than having to meet the higher standard imposed by IIRIRA of showing “extreme hardship.”⁴⁷ Makes the waiver available to eligible relatives who are inadmissible on the ground that they are present in the United States without having been formally admitted or paroled into the country.

IIRIRA made parents of U.S. citizens or lawful permanent residents ineligible for this waiver. In addition, IIRIRA for the first time added a hardship requirement, by requiring the applicant to establish that the waiver is needed to avoid causing “extreme hardship” to his or her spouse or parent.⁴⁸ Although this section retains a general hardship requirement, it would not require a showing of “extreme” hardship. Finally, IIRIRA made persons present in the United States without being admitted or paroled inadmissible, and this section provides a discretionary waiver of that new ground of inadmissibility.

DOJ - OK w/ sons & daughter but not parents.

Sec. 312. Discretionary Waiver in Document Cases Involving Family Members. – Current law provides a waiver of inadmissibility or deportability based on a conviction for a document fraud if the offense was committed solely to assist, aid or support the alien’s “spouse or child” and not any other individual. This subsection adds “parent” to this list of relatives.

⁴⁷Section 349 of IIRIRA.

⁴⁸Section 212(i) of the INA, 8 U.S.C. § 1182(i). This change was made by IIRIRA even though the counterpart for this waiver in the context of deportation grounds did not have such a requirement. Section 237(a)(1)(H) of the INA, 8 U.S.C. § 1227(a)(1)(H).

Under IIRIRA, this waiver is limited to spouses and children.⁴⁹ The reasons for permitting relief in cases where the alien was acting solely to help a spouse or a child apply with equal force to the case in which the alien was trying to help a parent. Relief obviously should be available in both situations.

dk
Sec. 313. Discretionary Waiver to Admit Persons in Exceptional Circumstances. –
Creates a new waiver which provides authority to admit otherwise excludable applicants in exceptional circumstances (including victims of a battering or extreme cruelty by a spouse or other relative) for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

This waiver provides discretion in a variety of situations in which the admission-seeker has inadvertently committed a minor or technical immigration violation. For example, it would apply to cases in which the applicant would be inadmissible or ineligible for adjustment of status because of a failure to attend removal proceedings,⁵⁰ for unintentionally violating the conditions of a student visa,⁵¹ for having been removed previously,⁵² and for being unlawfully present in the United States.⁵³

INS - OK w/ some flexibility - needs to be more tightly drafted - don't include about the int. eff. process.
Subtitle C – Eliminating Unfairness and Waste in Section 245(i) Waivers

D&J - support remote state
Sec. 321. Permanent Application of Section 245(i). – Makes section 245(i) of the INA⁵⁴ a permanent provision and creates special immigration accounts for the fees this provision will generate.

Before the section 245(i) waiver was enacted, an alien in the United States who wanted to become a lawful permanent resident through adjustment of status had to be present in this country lawfully. Without lawful presence, he or she had to leave the United States, apply for an immigrant visa at a consulate office abroad, return to the United States, and then apply for admission as a lawful permanent resident at a border or port of entry. The 245(i) waiver created an exception to this burdensome obstacle for aliens who had become eligible for permanent resident status on the basis of a family relationship or job skills, permitting such a person to become a lawful permanent resident without having to leave the country. Unfortunately, it was not enacted as a permanent provision and initially had an October 1, 1997, sunset date. A continuation was authorized in the

⁴⁹Section 345 of IIRIRA.

⁵⁰Section 212(a)(6)(B) of the INA, 8 U.S.C. § 1182(a)(6)(B).

⁵¹Section 212(a)(6)(G) of the INA, 8 U.S.C. § 1182(a)(6)(G).

⁵²Section 212(a)(9)(A)(I) and (ii) of the INA, 8 U.S.C. § 1182(a)(9)(A)(I) and (ii).

⁵³Section 212(a)(9)(B)(I) of the INA, 8 U.S.C. § 1182(a)(9)(B)(I).

⁵⁴Section 1255(i) of the INA, 8 U.S.C. § 1255(i).

1998 Justice, State, Commerce Appropriations bill, but the authorization only applies to aliens who are the beneficiaries of (1) a petition for a family-based or an employment-based immigration preference which was filed on or before January 14, 1998, or (2) an application for labor certification which was filed on or before January 14, 1998. This section will eliminate these restrictions and make section 245(i) permanent.

Sec. 322. Eliminating Unfairness Created by Temporary Sunset of Section 245(i). -- Provides a waiver of inadmissibility on the basis of a history of unlawful presence in the United States in cases where the unlawful presence occurred during a time when the person involved would have been able to become a lawful permanent resident but for a gap in the life of section 245(i).

The 245(i) waiver became more than a convenience when IIRIRA created a provision (1) making a person who has been unlawfully present for longer than 180 days but less than one year inadmissible for three years after his or her departure from the United States, and (2) making a person who has been unlawfully present for one year or more inadmissible for 10 years after his or her departure.⁵⁵ This section prevents persons otherwise eligible for legal residency from being excluded on this basis if they would have been able to become lawful permanent residents of the United States but for lapses in the life of the 245(i) waiver. Without this waiver, such persons will not be able to enter the United States on the basis of the immigrant visas presently available to them, and they will have to qualify for new visas in three or ten years when they are no longer excludable on this basis. For many, this will mean that they will never be able to immigrate to the United States.

INS + State. look more closely - is this necessary.

Subtitle D – Equitable Procedures Concerning Voluntary Departure

Sec. 331. Discretionary Determination of Period of Voluntary Departure. – Permits grants of voluntary departure for the period of time that is warranted by the alien's circumstances.

A person facing the prospect of forced removal may be permitted to leave the United States voluntarily before being put in removal proceedings or prior to the completion of such proceedings.⁵⁶ Voluntary departure avoids the consequences of a forced departure, such as a five-year ban on readmission. IIRIRA specified that the alien must be required to leave the United States within a 120-day period.⁵⁷ The point of this restriction is not apparent. In many cases, the alien will not need 120 days to prepare for departure from the United States. In some cases, the alien will need more than 120 days. This section simply returns the discretion to make the determination on the basis of the circumstances in a particular case.

INS - flexible. OK w/ spike tailored but concern mostly pre-1994 - bond. not based on appeal. work permit.

Sec. 332. Discretionary Determination of Voluntary Departure Bond Based on

⁵⁵Section 212(a)(9)(B) of the INA, 8 U.S.C. § 1182(a)(9)(B).

⁵⁶Section 240B of the INA, 8 U.S.C. § 1229c.

⁵⁷Section 304(a) of IIRIRA.

Individual Circumstances. – Eliminates the mandatory requirement that an alien must post a bond as a condition for receiving voluntary departure at the conclusion of removal proceedings and instead leaves this matter up to the discretion of the official who sets the bond terms.

The mandatory bond requirements was created by IIRIRA.⁵⁸ It is yet another example of unnecessary rigidity. In fact, some times a bond is appropriate, and some times a bond is not appropriate. It depends on the circumstances and so should the decision on whether to impose one.

Sec. 333. Elimination of Automatic Penalties for Failing to Depart in Accordance With a Voluntary Departure Grant. – Eliminates penalties for failing to depart pursuant to a grant of voluntary departure.

Under IIRIRA, such a failure can result in being ineligible for specified forms of discretionary relief for 10 years and subject the person to civil penalties of between \$1,000 and \$5,000.⁵⁹ This is harsh and unnecessary. Under this section, failure to depart in accordance with a grant of voluntary departure would be an adverse factor in any application for discretionary relief, but the circumstances of the case would determine whether this or any other adverse factor justifies denial of relief.

Subtitle E -- Fairness in Determinations of Public Charge

Sec. 341. Equitable Procedures Concerning Public Charge and Affidavit of Support. – Eliminates the requirement of an affidavit of support as a condition for admissibility,⁶⁰ but it permits using such an affidavit as evidence that the applicant for admission should not be excluded as a person who is likely to become a public charge.⁶¹ Also reduces the minimum income requirement for persons who sponsor the immigrants from 125% of the Federal poverty line to 100%.

IIRIRA required family-sponsored immigrants and certain employment-based immigrants to have an affidavit of support as a condition of admission to the United States.⁶² This and the minimum income requirement frequently prevent family reunification and constitute nothing less than "class warfare," by telling the world that immigration is only for the wealthy and their relatives. These requirements are unnecessary because an immigrant is inadmissible in any event in the absence of proof that he or she is a person who is not likely to become a public charge.

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰Section 212(a)(4)(C) and (D) of the INA, 8 U.S.C. § 1182(a)(4)(C) and (D).

⁶¹Section 212(a)(4)(A) of the INA, 8 U.S.C. § 1182(a)(4)(A).

⁶²Section 531 of IIRIRA.

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. – Eliminates the requirement that an asylum applicant must establish that his application was filed within one year of his arrival at the United States or justify the delay on the basis of extraordinary circumstances.⁶³

The artificial time limit created by IIRIRA has resulted in a complex layer of adjudications over whether delays are justified by extraordinary circumstances and thus diverts resources from resolving the merits of asylum applications. It also increases the number of applications which have not been carefully prepared, as asylum seekers are forced to submit by the deadline or be categorically denied. Moreover, it arguably violates some United States international obligations such as Article 33 of the 1967 Protocol regarding the Status of Refugees. Article 33 binds signatories to the duty of not returning any refugee who could face a threat to his or her life or liberty in the country of feared persecution, without regard to when the person makes known the claim to need such protection. Ironically, when IIRIRA took effect, the INS had already taken substantial strides to increase efficiency and cut down on fraud in asylum applications through the use of more asylum officers and immigration judge corps. Given the political and economic instability in almost every region of the world, it is imperative that the United States maintain its status as a refuge against persecution, and not impose any random deadlines on asylum applications.

INS-ok w/ elim 1 yr-req.

Sec. 402. Asylum in Cases of Gender-based Persecution. – Adds a provision to the definition of a “refugee” which specifies that persecution on account of gender will be deemed to fall within the “particular social group” category for asylum purposes.

Under current law, an applicant for asylum must satisfy the technical requirements for establishing that he or she is a “refugee,”⁶⁴ which include proof that the alleged persecution was or would be “on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁶⁵ Asylum applicants have found it extremely difficult to show that gender-based persecution claims fall within one of these categories. This is illustrated by the case of Alvarado Pena, a Guatemalan woman. Although Ms. Pena established that she had been raped and pistol-whipped by her husband, she was not able to prevail with her argument that her husband’s abuse was on account of her membership in a particular social group consisting of women or, alternatively, Guatemalan women living under male domination. This problem will be eliminated

⁶³Section 604(a) of IIRIRA.

⁶⁴Section 208(b)(1) of the INA, 8 U.S.C. § 1158(b)(1).

⁶⁵Section 101(a)(42)(A) of the INA, 8 U.S.C. § 1101(a)(42)(A).

by the subsection's provision that persecution on account of gender will be deemed to fall within the "particular social group" category.

INS - better to rely on case law, don't change the social grouping & that doesn't help.
DOJ - ?

Sec. 403. Presumption of Asylum in Cases of Past Persecution. – Creates a presumption that a person who was persecuted in the past has a well-founded fear of being persecuted in the future unless the conditions in his or her country have changed. Also provides that the person may still be considered a refugee even where the presumption has been rebutted if the past persecution was sufficiently severe.

It can be very difficult for a person who has left a country after being persecuted to establish that he or she will be persecuted again if he or she returns to the country. The INS is in a much better position to obtain information on how country conditions have changed than is the asylum applicant. Under this section, the burden would be on the INS to rebut the presumption. In some situations, relief should be granted even when the INS has rebutted the presumption. In cases of severe persecution, it may be unconscionable to make the asylee return even if he or she is unlikely to be persecuted again.

Sec. 404. Rebuttable Presumption of Asylum Where Persecution Occurs with Respect to a Particular Location in a Country. – Presumes that a person who has established a persecution claim with respect to a particular location in a country has a well-founded fear of future persecution with respect to all locations in that country, unless this presumption is rebutted by evidence that the threat is not country-wide. Provides further that the person can still be considered a refugee when this presumption has been rebutted if it would be unreasonable to expect resettlement to another location.

The presumption is needed because, just as it can be very difficult to prove past persecution, it can also be very difficult for a person to obtain evidence to show country-wide persecution. The provision with respect to resettlement takes into account the fact that it is frequently unreasonable to expect a person to move to another part of his or her country. For example, it would not be reasonable to expect a person who requires special medical attention that is available only in large metropolitan areas to relocate to a rural community.

INS don't like presumption - it's not necessary in INS - (403 + 404)

Sec. 405. Elimination of Denial of Immigration Benefits for Erroneous Asylum

Application. – Eliminates an IIIRIRA provision prohibiting aliens who have knowingly made a "frivolous" asylum application from ever receiving any benefit under the INA.⁶⁶

The provision that is being eliminated illustrates the extreme rigidity and harshness of IIIRIRA. Under this provision, an asylum applicant who makes a good faith persecution claim that is deemed to be frivolous may be declared permanently ineligible for any benefits under the INA. This means that in addition to being declared ineligible for asylum, such a person would be removed

⁶⁶*Id.*

Share - support for

from the United States as quickly as possible without any possibility of ever returning lawfully, regardless of the individual's circumstances.

INS - don't favor type of benefit bar - it can be discussed,

Sec. 406. Elimination of Arbitrary Cap on Persons Eligible to Adjust Status From Asylees to Legal Permanent Residents. – Eliminates cap of 10,000 on the number of individuals

who can change their status from "asylee" to "lawful permanent resident" in any fiscal year,⁶⁷ and instead permits the President to set the numerical limitation before the beginning of each fiscal year. This permits a cap to be set on the basis current circumstances instead of using an arbitrary limit. *-not do this*

INS fine points - OK - no main
Sec. 407. Restoration of Eligibility for Withholding of Removal for Persons Facing Loss of Life or Freedom. -- Grants the Attorney General discretionary authority to withhold

removal for certain individuals facing the possibility of being removed to a country where their life or freedom would be in danger. Individuals who have been convicted of a certain offenses are currently ineligible for withholding even if they face severe danger upon removal. This section would limit that exclusion to individuals who were sentenced to an aggregate term of imprisonment of more than five years and are considered to be a danger to the United States.

INS - partly agree in the w/ holding bar in some cases up to 5 years + danger but oppose humanitarian exception + susceptible to future crime should be maintained.

Subtitle B – Increased Fairness and Rationality in Refugee Consultations

Sec. 411. Timely Consultation With Respect to Refugee Admissions. – Changes the time for the President's report on refugee admissions from the beginning of each fiscal year⁶⁸ to the date when he or she submits his or her budget proposal to Congress.

Under the present system, Congress often does not obtain access to the refugee report until it is too late to meaningfully evaluate the number of refugee admissions in the framework of the money available for the fiscal year. By the time the report is made, the funds for the fiscal year have already been allocated, including whatever funds are needed for refugee admissions.

State / PRM - agree w/ goal wish to get it out sooner but when budget is too earlier - 5/1/00 usually on Sept. Want to eliminate report that Sec. of State or designee - don't have haven't to show. 1980 ORP

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

Subtitle A – Naturalization Proceedings

Sec. 501. Increased Authorization of Funds for Naturalization Proceedings. –

Establishes an account to be known as "The Immigration Services Backlog Reduction Fund." The money would be used to reduce the backlog of naturalization applications to no more than six months. It would also provide funding for more expeditious processing of visa petitions, adjustment

⁶⁷Section 209(b) of the INA, 8 U.S.C. § 1159(b).

⁶⁸Section 207(d) of the INA, 8 U.S.C. § 1157(d).

of status applications, and work authorization requests.

Increased funding will allow the INS to hire additional staff and improve its processing systems in order to reduce the backlog of immigration applications. Additional funding is urgently needed in the area of naturalization applications in particular. INS is faced with a backlog of some two million immigrants who are waiting for their citizenship applications to be processed. This means that immigrants wait an average of 27 months before their applications are processed. At the same time, legal residents continue to apply for citizenship at near record rates of 700,000 per year.

INS -
OMB -

Subtitle B - Naturalization of Hmong Military Veterans (Sections 502-507)

Incorporates the provisions of the "Hmong Veterans' Naturalization of 1999" (H.R. 371), which was introduced by Rep. Vento (D-MN) on January 19, 1999. It is similar to legislation reported by the Judiciary Committee during the 105th Congress. The Hmong are a mountain people from southern China and parts of Burma, Laos, Thailand, and Vietnam. Hmong soldiers fought the Communist Pathet Lao Movement in Laos, and many Hmong later assisted U.S. forces during the Vietnam War. After the war ended in 1975, the Pathet Lao gained control of Laos and persecuted and imprisoned many of the Hmong allies of the United States. Between 130,000 and 150,000 Laotian Hmong have entered the U.S. as refugees since 1975. Many Hmong refugees have found it difficult to naturalize because of their difficulty in learning English (their language did not have a written form until recent decades). In order to naturalize, permanent residents must generally demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language.

These sections exempt the Hmong naturalization applicants from the English language requirement if they have served with special guerilla units or irregular forces operating from bases in Laos in support of the United States during the Vietnam War (or were spouses or widows of such persons on the day on which such persons applied for admission as refugees). Also provides them with special consideration as to the civics requirement for naturalization (naturalization applicants must demonstrate a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States). Applicants are required to submit documentation of their, or their spouses, service with a special guerilla unit, or irregular forces which the Attorney General would evaluate.

INS - we support

**Subtitle C - Parity in Treatment for Refugees From
Central America and Haiti (Sections 511 -- 516)**

This subtitle incorporates the "Central American and Haitian Parity Act of 1999" (H.R. 2722) bipartisan legislation transmitted by the President and introduced by Reps. Smith (R-NJ) and Gutierrez (D-IL) on August 5, 1999. The subtitle would expand section 202 of the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), which currently provides qualified Cubans and Nicaraguans the opportunity to become lawful permanent residents of the United States. The proposed subtitle would extend the same benefits to eligible nationals of

Guatemala, El Salvador, Honduras, and Haiti.

Like Nicaraguans and Cubans, many Salvadorans, Guatemalans, Hondurans, and Haitians fled human rights abuses or unstable political and economic conditions in the 1980s and 1990s. The United States has a strong foreign policy interest in providing the same treatment to these similarly situated people. In addition, returning migrants to these countries would place significant demands on their fragile economic and political systems. Passage of these provisions would evidence our commitment to fair and even-handed treatment of nations from these countries and to the strengthening of democracy and economic stability among important neighbors.

Although special benefits were extended to Guatemalans and Salvadorans under section 203 of NACARA (relating to suspension of deportation and cancellation of removal), and to Haitians under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), the scope of these provisions is in many respects narrower than section 202 of NACARA. This subtitle would eliminate this disparity. At the same time, relief would still be available under section 203 of NACARA and under HRIFA, so that no one who is currently covered by these laws would be deprived of opportunities for relief.

In addition, the subtitle contains technical amendments to both NACARA and HRIFA that would:

- lift the requirement that the spouse, child, or unmarried son or daughter of a principal applicant be of a specific nationality to be granted relief, in the interest of family unit.
- require dependents to have entered the United States before the date of enactment of the Central American and Haitian Parity Act, but also establish an immigrant visa process for dependents outside the United States on that date. This will discourage illegal entry to obtain benefits, while ensuring that families of eligible principal applicants will be united quickly.
- remove certain obstacles to relief, such as the requirement that an alien be outside the United States to apply for an exception to certain inadmissibility grounds relating to previous removal from the United States. The subtitle would also expand the Attorney General's authority to consider, on a case-by-case basis, whether to grant relief to an applicant who might otherwise be precluded (a) based on a health-related condition, or (b) for attempting to enter the United States (or obtain an immigration benefit) through misrepresentation.

INS - we support

Subtitle D – Equality of Treatment for Women's Citizenship (Sections 521 -- 522)

This subtitle incorporates the "Restoration of Women's Citizenship Act" (H.R. 2493), bipartisan legislation introduced by Rep. Eshoo (D-CA) and Walsh (R-NY) on July 13, 1999. In 1907, Congress passed a law requiring American women to relinquish their citizenship when they married men who were not U.S. citizens (men marrying alien women were not subject to this law). Following increasing awareness of women's rights, over the next few decades Congress repealed most of the law in several different Acts. In 1951, Congress created a procedure for women to

regain citizenship which requires them to take an oath of office. However, there are no provisions for women who died before 1951 to regain citizenship posthumously. This subtitle grants posthumous citizenship to American women who married alien men before September 1922 and died before they could take advantage of the procedures set up by Congress to regain their citizenship in 1951.

This subtitle also incorporates the text of the "Equity in Transmission of Citizenship Act" which was introduced by Sen. Moseley-Braun on May 1, 1997. This provides the descendants of the children of female U.S. citizens born abroad before May 24, 1934, with the same rights to citizenship at birth as the descendants of children born of male citizens abroad. Since the children born abroad to U.S. citizen mothers before May 24, 1934, only became entitled to claim U.S. citizenship, acquired at birth, as of October 25, 1994,⁶⁹ they were not legally admissible into the United States as citizens prior to that date; and therefore they could not meet the residency requirements to transmit U.S. citizenship onto their children as the children of male U.S. citizens could. The subtitle waives that requirement for any person born before the date of enactment of this Act who claims U.S. citizenship based on such person's descent from an individual described in that situation.

ANS - Post-humans - § 521 § 522 - State will review bill

Subtitle E – Fairness in the Treatment for Refugees from Liberia

Section 531. Adjustment of Status of Certain Liberian Nationals. -- Authorizes the Attorney general to adjust the status of certain Liberian refugees. It applies to Liberians who are eligible to remain in the United States under the provisions of the Deferred Enforced Departure Order executed by President Clinton on September 27, 1999; who submit such an application on or before September 29, 2002; and who are otherwise admissible to the United States under the INA.

This is necessary to enable Liberians who entered this country fleeing a brutal and violent civil war and were granted a series of temporary protective status orders over the last ten years. It would be unfair to summarily mandate the repatriation of these refugees who have long since become productive and contributing residents of their state and local communities. Over this period of time, they have bought homes, established businesses, employed others, paid taxes, contributed to social security, and firmly established roots and family ties in these communities. Many are the parents and care providers of minor children who are United States citizens. In addition, any repatriation by the U.S. would create a "domino effect" by which other nations housing Liberian refugees would return them to Liberia, potentially destabilizing the entire country, thereby creating a potentially massive refugee problem.

Subtitle F – Fairness in Review of Previously Granted Amnesty Rights

⁶⁹Pursuant to the enactment of Public Law 103-416.

Sec. 541. Elimination of Limitation on Legalization Litigation. -- Incorporates the text of the "Legal Amnesty Restoration Act of 1999" (H.R. 2125), which was introduced by Rep. Jackson Lee (D-TX) on June 10, 1999 and repeals jurisdictional restrictions imposed by Congress on the courts in IIRIRA respecting certain outstanding claims for legalization and work permits under the Immigration Reform and Control Act of 1986 ("IRCA").⁷⁰

IRCA allowed specified undocumented immigrants to apply to remain in the United States through an amnesty program. It specifically allowed persons who could prove that they had been residing in the United States since the early 1980's to adjust their status to that of a lawful permanent resident beginning on May 5, 1987. Unfortunately, at that time the INS promulgated a narrow rule which restricted anyone who had briefly left the country from applying for amnesty. Many applicants for amnesty were then turned away by the INS. Several class action suits challenged the INS's position and sought redress for immigrants who were not able to apply for amnesty because of the INS' rule. In 1993, the Supreme Court determined that individuals who were eligible for application were unfairly and illegally blocked from applying during the one year period, and that they should not be considered "late."⁷¹ The Court remanded the cases back to the lower courts so their applications could be processed. However, in IIRIRA, Congress retroactively removed the federal courts' jurisdiction over the applicants' cases.⁷² This subtitle will reverse this injustice and permit the remaining applications to be considered.

INS: ~~Registry Data~~ *Registry Data*
Subtitle G – 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. -- Incorporates the text of the "American Asian Justice Act of 1999" (H.R. 1128), which was introduced by Rep. Millender-McDonald (D-CA) on March 16, 1999. It grants certain individuals born in the Philippines or Japan who were fathered by United States citizens the right to file visa petitions in lieu of their parents and other relatives. This is the same treatment presently granted to other groups of children fathered by United States citizens such as certain children born in Korea, Vietnam, Laos, Kampuchea, and Thailand.

sketch

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

Ward

Subtitle A – Discrimination in Immigration-Related Employment Practices

⁷⁰P.L. 99-603.

⁷¹*Reno v. Catholic Social Services*, 509 U.S. 43 (1993).

⁷²Section 277 of the INA, 8 U.S.C. § 1327; Section 377 of IIRIRA..

OSC

Sec. 601. Burden of Proof. – Eliminates the element of intent to discriminate from the burden of proof for showing that requiring more or different documents from a person constitutes an unfair immigration-related employment practice.

IIRIRA made it far more difficult for American workers to bring employment discrimination claims. Prior to IIRIRA, the law required that employers treat all actual and prospective employees equal and not make unnecessary and excessive immigration documentation requests of members of minority groups. IIRIRA raised the burden of proof for showing violations in these cases to require the prospective employee to establish that the discrimination was intentional – an almost impossible standard to meet.⁷³ The result is that under IIRIRA, employers have virtually free rein to discriminate against foreign looking individuals by asking them to produce multiple documents. This section restores the anti-discrimination protections that existed prior to IIRIRA.

Sec. 602. Definition of Protected Individual. – Changes definition of “protected individual” by striking the INA provision⁷⁴ which prevents immigration related discrimination claims from being brought by an individual who (i) fails to apply for naturalization within six months of the date when he or she first becomes eligible by virtue of length of lawful permanent residence, or (ii) has filed a timely application but has not been naturalized within two years after the date of the application (unless the person can establish that he or she is actively pursuing naturalization).

By excluding these categories from the class of persons who may bring an unfair immigration related employment claim, current law discriminates against people who are unable to meet the naturalization requirements. For instance, it permits unfair labor practices against the Hmong war veterans who are the subject of the special considerations provided for above in Title V. Moreover, people should be protected against discrimination in any event. Employment discrimination is never justified by the fact that a person has not become a citizen yet.

Subtitle B – Cracking Down on Illegal Sweatshops (Sections 611 -- 612)

DOV Authorizes funding new wage and hour inspectors; grants the Secretary of Labor authority to issue subpoenas and collect evidence against violating employers; and increases penalties for employers found to have violated labor standards and the immigration laws. This will assist the INS and Department of Labor in uncovering horrible sweatshop conditions, which often borders on slavery and involuntary servitude. In doing so, this subtitle responds to employers who treat the penalties available under current law as a mere cost of doing business. Minor and sporadic sanctions will never be sufficient to overcome the economic and competitive advantages that unscrupulous sweatshop operators achieve by hiring and exploiting undocumented immigrants,

Labor

⁷³Section 421 of IIRIRA.

⁷⁴Section 274B(a)(3) of the INA, 8 U.S.C. § 1324b(a)(3)

thereby undercutting competitors who provide fair and legal wages and working conditions.

8/6/12 - INS appraise - doc. hand.

TITLE VII – FAIRNESS AND COMPASSION IN THE TREATMENT OF BATTERED IMMIGRANTS (Sections 701 -- 715)

Admin bill?

The provisions in this Title were taken from the “Battered Immigrant Women Protection Act of 1999,” (H.R. 3083) bipartisan legislation introduced by Rep. Schakowsky (D-IL), Rep. Morella (R-MD), and Rep. Jackson Lee (D-TX) on October 14, 1999, which continues the work that began with the passage of the first Violence Against Women Act in 1994 (“VAWA 1994”). Prior to VAWA 1994, immigration laws allowed abusive citizens and permanent residents to have total control over their alien spouse’s immigration status. As a result, battered immigrant women and children were forced to remain in abusive relationships, unable to appeal to law enforcement and courts for protection for fear of deportation. VAWA 1994 immigration provisions remedied the situation by allowing battered immigrants to file their own applications for immigration relief without the cooperation of their abusive spouse or parent enabling them to safely flee the violence. Despite the successes of the immigration provisions of VAWA 1994, subsequent immigration reform bills drastically reduced access to VAWA immigration relief for battered immigrant women and children. Title VII seeks to restore and expand access to a variety of legal protections for battered immigrants so they may flee violent homes, obtain court protection, cooperate in the criminal prosecution of their abusers, and take control of their lives without the fear of deportation.

Among other things Title VII addresses:

- **VAWA Restoration Act.** – Allows battered immigrant women and children to obtain permanent immigration status without leaving the US. Under current law, many battered immigrants are forced to leave the US to obtain their lawful permanent residence. Traveling outside the U.S. deprives these women of the protection provided by U.S. courts, legislation, custody decrees, and law enforcement. Permits battered women to safely obtain immigration status in the U.S. Removes barriers to cancellation or suspension relief for battered immigrants who are placed in deportation or removal proceedings and restores to them the legal relief they were granted by VAWA in 1994. Additionally, exempts VAWA applicants from the cancellation removal cap and allows battered immigrants to file motions to reopen beyond the ninety day limitation in removal cases if the purpose of the motion is to attain VAWA relief.

- **Problems with VAWA Implementation.** – Grants battered immigrants access to information about their abuser’s immigration status that they need to file for VAWA immigration relief. Additionally, ensures that changes in the abuser’s citizenship or immigration status can either have a positive effect or no effect on a battered woman’s application for immigration relief. Likewise, the abuser’s death does not bar the battered immigrant from applying for relief. Also requires the adjudication of family-based visa applications without the abuser when credible evidence of abuse is presented to the INS, and allows remarriage of battered immigrants after their self-petition has been approved.

- **Waivers for VAWA Eligible Applicants.** – Provides discretion to waive certain bars to immigration relief and grounds of deportation for qualified VAWA applicants who either committed, were arrested for, were convicted of, or had pled guilty to crimes they committed when they acted in self-defense, were convicted of violating a protection order issued to protect themselves which should not have legally been enforced against them, acted under duress from their abuser or committed other crimes related to the domestic violence. Also exempts battered immigrants from certain other immigration violations that would bar them from VAWA immigration relief. Removes barriers to VAWA relief newly imposed by IIRIRA and other post-VAWA immigration laws.

- **Physical Presence Waiver for VAWA Immigration Relief.** – Under current law, VAWA applicant must be continuously present in the US in order to obtain VAWA immigration relief. Therefore, an abuser who wishes to undermine the victim's cooperation with authorities in his criminal prosecution for domestic violence need only remove the victim from the US for a certain period of time to render her ineligible for VAWA immigration relief. This section provides for a waiver of certain breaks in continuous presence for humanitarian purposes when the applicant has been a victim of domestic violence.

- **Improved Access to VAWA for Battered Immigrant Women.** – Removes the residency in US requirement, granting access to VAWA protection to abused wives and children of U.S. military, U.S. government workers and other U.S. citizens and lawful permanent residents residing abroad. Also deletes the extreme hardship requirement, which impedes access to VAWA for many unrepresented victims. Allows children who file or are included in their mother's VAWA petition when they are under twenty-one to receive their green cards along with their mother as part of their mother's self-petition after turning twenty-one. Also allows VAWA applicants under twenty-one years of age to include any children they may have of their own in their self-petition or cancellation application. VAWA self-petitioning is also available to victims who file within two years of divorce, death or loss of legal immigration status of their citizen or lawful permanent resident abusive spouse or parent. Also expands access to VAWA self-petitioning to certain other needy immigrants battered by family members.

- **Improved Access to VAWA Cancellation of Removal.** – Expands access to VAWA immigration relief to victims of elder abuse; spouses married to bigamists; certain divorced victims; abused children over 21 years old; abused spouses; and children living abroad who are married to or are the children of citizens or permanent resident abusers. Also allows child abuse victims filing as children, sons or daughters to include any children they may have of their own in cancellation cases. Provides battered immigrants with the option of having their children follow to join the persons receiving cancellation of removal rather than placing them in deportation proceedings.

- **Good Moral Character.** – Creates a discretionary waiver for good moral character determinations for self-petitioning immediate relatives, second-preference self-petitioners, VAWA cancellation, and VAWA suspension of deportation. Permits waivers when there is a connection between the abuse and the commission of, arrest for, conviction of, or plea to a crime.

- **Battered Immigrant Women's Economic Security Act.** – Battered immigrant women who leave their abusers often thereby sever ties with their prime source of economic support. VAWA sought to help battered immigrants gain independence by offering them access to

immigration relief, work permits, and some public benefits. This section addresses gaps, errors and oversights in current law that impede battered immigrant women's ability to flee violent relationships and survive economically. Also ensures that battered immigrants with pending immigration applications are able to access public benefits, Food Stamps, SSI, housing, work permits, and immigration relief.

- **Access to Shelter Services and Legal Representation.** – Grants VAWA eligible battered immigrants access to funds from the Legal Services Corporation to be used in their protection order and immigration cases. Also allows programs to use private funds to represent any battered immigrant who qualifies for relief under state domestic violence laws. Provides access to Legal Services attorneys to aid battered immigrants in obtaining the security necessary to flee violent homes while gaining economic security. Clarifies that the definition of “under served populations” under VAWA clearly covers immigrants. Specifically allows VAWA and other domestic violence grant funds to be used for legal and social service assistance to battered immigrants, and requires a report detailing funds serving under-served populations to be submitted to Congress.

- **VAWA Training.** – Makes grant money available for training of federal and state civil and criminal judges, including immigration judges, INS officers, the military and other justice system personnel on issues affecting battered immigrants. There have been increased reports of judges, prosecutors and police who are inquiring into the immigration status of domestic violence crime victims who call them for help. In such communities, battered immigrants are unwilling to call the police or seek protection orders. Instead they are forced to remain with their abusers and continue suffering ever increasing violence. This section stops judicial and law enforcement system employees from inquiring into the immigration status of crime victims.

- **Protection for Certain Crime Victims Including Crimes Against Women.** – Allows victims of rape, torture, incest, battery or extreme cruelty, sexual assault, female genital mutilation, forced prostitution, trafficking, being held hostage, or any other violent crime to obtain a non-immigrant visa and to later apply for lawful permanent residency if they can demonstrate humanitarian need. The victim can self-petition for a visa but should submit an affidavit from a law enforcement officer, prosecutor or state enforcement agency verifying that they have information that has assisted or would assist in the investigation or prosecution of a crime. By providing temporary legal status to aliens who have suffered severe victimization, this provision will strengthen the ability of law enforcement agencies to investigate and prosecute cases of trafficking aliens and cases of domestic violence while protecting victims of such offenses. Also grants the Attorney General discretion to adjust such nonimmigrants to permanent resident status when justified on humanitarian grounds or in the interest of the nation.

- **NACARA, Haitian Refugee Immigration Fairness Act, and Cuban Adjustment.** – Permits battered spouses and children of NACARA petitioners, Haitian Refugee Immigration Fairness Act petitioners and Cuban adjustment applicants to self-petition for relief. Moreover, removes the requirement that battered immigrant spouses and children of Cuban Adjustment applicants must be living with the Cuban Adjustment applicant at the time of filing.

INS = add worse situation, debt pay

X Public Charge Exemption

TITLE VIII – MISCELLANEOUS PROVISIONS

Sec. 801. Technical and Conforming Change Concerning Board of Immigration

Appeals. – Adds a definition of “appellate immigration judge” to the existing definition of “immigration judge” and specifies that the Attorney General may delegate authority to the appellate immigration judges.

IIRIRA included a definition of “immigration judge” in the INA.⁷⁵ This section adds a definition for “appellate immigration judge.” The definition for “appellate immigration judge” is a slightly modified version of the existing definition for “immigration judge.”

NO MLCIO

Sec. 802. Limiting Forfeiture for Certain Assets Used to Violate INA Where There Was No Commercial Gain. – Limits the seizure and forfeiture of a vehicle used to harbor or smuggle an alien to cases in which the purpose of harboring or smuggling the alien was commercial advantage or private financial gain.

With a few exceptions, INA provides that any vehicle used to harbor or smuggle an alien is subject to seizure and forfeiture.⁷⁶ This section limits seizure and forfeiture to cases where it is being done by professional smugglers.

not in

Sec. 803. Elimination of Ban on State and Local Governments from Preventing Communications with the INS. – Repeals a provision in IIRIRA⁷⁷ which prohibits any federal, state or local government official from preventing or restricting any government entity from sending to or receiving information from INS regarding the citizenship status or immigration status of any individual, or maintaining such information.

This subsection restores the right of state and local government entities to decide the extent to which they will participate in the enforcement of immigration laws. For instance, a local government might want to provide charitable benefits to immigrant children without fear of information being released about which immigrants receive the benefits, which could discourage the immigrant community from taking the benefits. Under IIRIRA, the local government is prohibited from keeping such records confidential from INS.

INS - debate need to address early

Sec. 804. Parole Authority – Deletes the present standard for determining when to parole a person into the United States temporarily, which is, “for urgent humanitarian reasons or significant

⁷⁵Section 101(b)(4) of the INA, 8 U.S.C. § 1101(b)(4).

⁷⁶Section 274(b) of the INA, 8 U.S.C. § 1324(b).

⁷⁷Section 642 of IIRIRA.

public benefit, ”⁷⁸ and substitutes in its place, “for emergent reasons or for reasons deemed strictly in the public interest.”

The present standard does not provide sufficient discretion for responding to an unexpected or urgent need to enter the United States in cases where the person involved has not been able to establish his or her admissibility. For instance, a person with a technically deficient entry document might suddenly develop a dental problem such as a loose bridge that requires attention but is not serious enough to be considered an urgent humanitarian reason for parole or a matter of significant public benefit. This section would permit but not require parole in such a situation.

INS - Unnecessary + can cover by law - new mem. ~~INS~~ old policy to give

Sec. 805. Enhanced Border Patrol Recruitment and Retention. -- Incorporates the text of the “Border Patrol Recruitment and Retention Act of 1999” (H.R. 1881), which was introduced by Rep. Jackson Lee (D-TX) on May 20, 1999. It provides for an increase to the GS-11 grade level for Border Patrol agents who have completed one year of services at a GS-09 grade level and who have fully successful performance rating. It also directs the INS Commissioner to establish an Office of Border Patrol Recruitment and Retention to (1) develop outreach programs to identify and recruit prospective Border Patrol agents; (2) develop programs to retain such agents; and (3) submit recommendations to the Commissioner relating to such agents’ pay and benefits.

OMG

Sec. 806. Authorization of Appropriations for Implementation of Act. – Authorizes appropriations for the various provisions included in the Act.

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⁷⁸Section 212(d)(5)(A) of the INA, 8 U.S.C. § 1182(d)(5)(A).