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Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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Honorable Alan K. Simpson,
Chairman
Subcommittee on Immigration
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Simpson:

This letter presents the views of the Administration concerning the June 2, 1995 Committee Amendment to S. 269, the "Immigrant Control and Financial Responsibility Act of 1995" scheduled to be marked up by the Immigration Subcommittee on Thursday, June 8. We note that subsequent changes have been made to the Committee Amendment which the Administration is now reviewing. We reserve judgment on the new changes and will work with the Subcommittee on these and other issues.

The Attorney General and the Commissioner of the Immigration and Naturalization Service (INS) have appeared before your Committee to express support for the provisions of S. 269 which advance the Administration's four-part strategy to control illegal immigration. This strategy calls for regaining control of our borders; removing the job magnet through worksite enforcement; aggressively pursuing the removal of criminal aliens and other illegal aliens; and providing the INS with the necessary resources to be effective. Many of the provisions of the Committee Amendment to S. 269 are similar to provisions in S. 754, the "Immigration Enforcement Improvements Act of 1995."

This Administration appreciates the continued opportunity to work with you and other members of the Subcommittee and is committed to working with you to ensure passage in this Congress of legislation to control illegal immigration. With limited exceptions, we support the provisions contained in the Committee Amendment to S. 269. Our positions on the individual provisions of the Committee Amendment to S. 269 are outlined in the following section-by-section discussion.

Section 101 mandates the Attorney General in Fiscal Years 1996 through 2000 to increase the number of Border Patrol agents by no fewer than 700 each year and authorizes the Attorney General to increase by not more than 300 the number of Border

Patrol support personnel each Fiscal Year from 1996 through 2000.

S. 754 would call for increases of at least 700 in each of Fiscal Years 1996, 1997, and 1998, to the maximum extent possible consistent with standards of professionalism and training. We note with approval the similarity between the Committee Amendment to S. 269 and S. 754, the Administration's proposal. We urge that S. 269 incorporate the Administration's language which would require that the hiring be to the maximum extent possible consistent with standards of professionalism and training and strike the limitation on the number of support personnel who can be hired.

Section 102 authorizes funding for 300 new positions for each of Fiscal Years 1996 through 1998 for investigators and support personnel to investigate alien smuggling and enforce employer sanctions. We support an increase for personnel to investigate alien smuggling and enforce employer sanctions. The President's Fiscal Year 1996 budget request provides 365 new INS investigations personnel and 202 new Department of Labor Wage and Hour and other personnel to enhance enforcement of employer sanctions and labor standards laws.

This section would also limit administrative expenditures for the payment of overtime to an employee for any amount over \$25,000. The restrictions on overtime expenditures currently apply because they are included in the Fiscal Year 1995 DOJ Appropriations Act. The President's Fiscal Year 1996 budget request also includes these restrictions.

Section 103 mandates the Attorney General and Secretary of the Treasury to increase the number of land border inspectors by approximately equal numbers in Fiscal Years 1996 and 1997 to a level that will provide full staffing to end undue delay and facilitate inspections.

S. 754 subjects the Attorney General's mandate to appropriations or the availability of funds in the Border Services User Fee Account and does not contain a mandate for the Secretary of the Treasury. We support this section and urge the Committee to add the limitations contained in S. 754.

Section 111(a) requires the Attorney General, together with the Commissioner of Social Security, to establish within eight years a system to verify eligibility for employment and eligibility for benefits under government-funded programs of public assistance.

While we agree that verification systems are critical to

immigration enforcement, we strongly oppose the requirement that permanent verification systems be established within eight years. Under the Administration bill, pilot programs will be tested and evaluated for three years so that the technical feasibility, cost effectiveness, resistance to fraud, and impact on employers and employees can be assessed and determined. S. 754 authorizes employment verification pilot projects that will improve the INS databases; expand the Social Security Administration (SSA) databases; simulate links of INS and SSA databases; expand the Telephone Verification System for non-citizens to 1,000 employers; and test a new two step process for citizens and non-citizens alike to verify employment authorization using INS and SSA data. The pilots will be built to guard against discrimination, violations of privacy, and document fraud. After three years, the pilots will be graded and evaluated on the bases of discrimination, privacy, technical feasibility, cost effectiveness, impact on employers, and susceptibility to fraud. We will request permanent authority from Congress only for pilot projects that work.

With regard to public assistance, our current system of verifying eligibility works well for both citizens and noncitizens. For this reason we have not included the benefit programs in our proposed pilot projects.

We also urge the Subcommittee to clarify that the phrase "eligibility for benefits under government-funded programs of public assistance" is limited to programs that provide benefits directly to individuals, and not programs such as Federal assistance provided to schools to assist disadvantaged children.

Under section 111(b), the system must be capable of reliably determining whether the person is eligible and whether the individual whose eligibility is being verified is claiming the identity of another person. It requires any document used by the system to be tamper-proof and prohibits its use as a national identification card except to verify eligibility for employment or benefits, to enforce the fraud provisions of Title 18, U.S.C., if the document was issued by the INS, or if the document was designed for another purpose (e.g., driver license, certificate of birth, Social Security card) as required under law for that other purpose.

We agree that efforts to test verification techniques should not be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

Section 111(b)(3) provides that the system may not be used other than to enforce the INA, the fraud provisions of Title 18, U.S.C., local laws relating to eligibility for certain Government-funded benefits, or laws relating to any document used

by the system which was designed for another purpose. We support this provision.

Section 111(b)(4) provides that the privacy and security of personal information and identifiers obtained for and utilized in the system must be protected in accordance with industry standards for privacy and security of confidential information. No personal information obtained from the system may be made available to any person except to the extent necessary to the lawful operation of the system.

This section's reliance upon industry standards is vague and thus not fully adequate to protect the important personal privacy and security interests of employment authorized individuals. The Administration proposal requires that an employer participating in a pilot program have in place such procedures as the Attorney General shall require to safeguard all personal information from unauthorized disclosure and condition redisclosure of such information to any person or entity upon its agreement also to safeguard such information. The Administration proposal also (1) requires notice to all individuals of the right to request an agency to correct or amend the individual's record and the steps to make such a request; (2) applies relevant remedies under the Privacy Act and civil fines for unauthorized disclosure; and (3) provides that no adverse employment action, i.e. firing, demotion, change of title or duties, occur while the employee is challenging the accuracy of the eligibility information during the second verification or thereafter, until the situation has been corrected or verified. We urge the inclusion of these privacy safeguards in the Committee Amendment to S. 269.

Section 111(b)(5) provides that a verification of eligibility may not be withheld or revoked for any reason other than the person's eligibility. We support this provision.

Section 111(c) relieves an employer from liability under section 274A of the INA if (1) the alien appeared throughout the term of employment to be prima facie eligible for employment, (2) the employer followed all procedures required in this new verification system, and (3) the alien was verified under such system as eligible for employment, or a secondary verification procedure was conducted with respect to the alien and the employer discharged the alien promptly after receiving notice that the secondary verification procedure failed to verify the eligibility of the employee.

This provision is unnecessary, potentially confusing, and we do not support it. An employer who complies with employee verification requirements is not liable for employer sanctions penalties under current law and regulations. We are concerned that this provision could have an unintended effect of increasing challenges to paperwork requirements.

Section 111(d) authorizes the Attorney General to require an individual to provide his or her Social Security account number for purposes of complying with this section. S. 754 has a similar provision, and we support this provision.

This section also limits the documents which establish both employment authorization and identity to the United States passport and resident alien card containing appropriate security features. It limits the documents which establish employment authorization to the Social Security card and Employment Authorization Document. The section also gives the Attorney General the authority to restrict the use of certain documents as establishing employment authorization, if she finds the document is being used fraudulently to an unacceptable degree. This section shall apply to hiring beginning no more than 180 days from the date of enactment of the Act.

S. 754 has a similar provision, and we support this section's reduction of documents. Although S. 754 contained the same effective date, on further consideration of technological capabilities we recommend that this amendment be made effective only with respect to hiring (or recruiting or referring) occurring after December 31, 1996.

Section 112 directs the President to conduct 3-year demonstration projects in five States to verify eligibility for employment and for benefits under government-funded programs of public assistance. The section provides that the demonstration projects verify eligibility for benefits under government-funded programs of public assistance, as well as eligibility for employment.

S. 754 provides for pilot projects to test various employment eligibility verification methods as described in the previous section. We believe demonstration pilots are unnecessary for verification of eligibility for benefits, since our current system -- the Systematic Alien Verification for Entitlements program (SAVE), enacted by section 121 of the Immigration Reform and Control Act (IRCA) -- works well for both citizens and noncitizens. We also believe that demonstration pilots must be evaluated before the creation of automated verification systems. Simultaneous implementation of both demonstration pilots and a permanent verification system is burdensome and may cause unnecessary and costly duplication of effort which may negatively affect employment opportunities of U.S. citizens and employment authorized aliens.

If this section is to be enacted, we believe the authority to conduct demonstration projects should be given directly to the Attorney General, rather than to the President. As a technical comment, the second reference to the Attorney General, at section

112(a) should be deleted.

Section 113 provides for an automated system with on-line access for verifying employment and public assistance eligibility. The system would be administered by a newly established Office of Employment and Public Assistance Eligibility Verification within the Department of Justice (DOJ).

We support enhancing the various immigration database systems. INS is currently undertaking significant database improvements. S. 754 authorizes employment verification pilot projects that will expand the Social Security Administration (SSA) databases and simulate links of INS and SSA databases. However, we do not support this provision because the specifics of an automated verification database should not be built into statute until the technical feasibility, cost effectiveness, resistance to fraud, and impact on employers and employees can be assessed and determined through pilot projects. We are concerned that the requirement that information be placed into the system within 10 business days will create an undue burden on INS resources.

As described in sections 111(a) and 112, the Administration supports testing various verification approaches over the next three years. We will request permanent authority from Congress only for pilot projects that work. Creation of a new Office of Employment and Public Assistance Eligibility Verification within the Department of Justice is duplicative of ongoing programs within the INS and other federal agencies. We believe that the effective way to administer this program is to retain the current responsibilities of gathering and verifying data within the contributing agencies, INS and the SSA.

Sec. 114 authorizes the Attorney General to require an individual to provide his or her Social Security account number; reduces the documents establishing both employment authorization and identity to the passport and resident alien card with appropriate security features; reduces the documents establishing employment authorization to the Social Security card and Employment Authorization Document; and requires the effective date with respect to hiring to be at least 180 days after the date of enactment of this Act.

For the reasons we outlined in our comments on Section 111(d) of the Committee Amendment to S. 269, we support this provision except for the effective date.

Sec. 115 provides that all copies of birth certificates

distributed by states or local agencies be issued in a standard form whose requirements are to be set forth by regulations issued by the Department of Health and Human Services after consultation with other agencies. State and local government agencies would be prohibited from accepting for evidentiary purposes a birth certificate issued in any other form, or issued by any entity other than a state or local government agency. No state or local government agency may issue an official copy of a birth certificate unless it has ascertained from the Social Security Administration (SSA) whether the person to whom the requested birth certificate pertains is deceased. No state or local government agency may accept a birth certificate for any evidentiary purpose, unless it has verified the certificate with the issuing agency or a new national birth registry that the SSA may establish, and unless it has verified with the SSA that the certificate does not pertain to a deceased person. A copy of any death certificate issued in the United States must be sent to the SSA (presumably by the issuing entity).

This section presents myriad constitutional, operational, and programmatic concerns, on which we want to work with the Subcommittee. First, it is not clear what enumerated power gives the federal government the authority to regulate birth certificates in this way. The Supreme Court has interpreted the federal government's authority over immigration quite broadly, but the relevant cases involved statutes that explicitly dealt with immigrants. See Fiallo v. Bell, 430 U.S. 787 (1977); Matthews v. Diaz, 426 U.S. 67 (1976). Section 115, though part of an immigration bill, does not by its terms involve immigration or immigrants; rather, it applies to all birth certificates. In light of the scope of section 115 and the absence of relevant cases, we are uncertain whether the Court would conclude that the bill is within the federal government's immigration authority. In addition, insofar as section 115 imposes non-ministerial duties on the states or compels policy decisions, it could be challenged as violative of the principles underlying the Tenth Amendment, under New York v. United States, 112 S. Ct. 2408 (1992).

We are concerned that requiring SSNs on all birth certificates may make the birth certificate a de facto national identification document which is contrary to the intent of S. 269 and S. 754.

Although SSA is not an official custodian of death data, SSA does receive death data from States and other sources. However, SSA is missing death data for an estimated 50 million persons to whom Social Security numbers (SSNs) were issued. Since most of these represent deaths occurring before SSA began receiving death data from the States, the States would have to furnish such data. Furthermore, many deaths involve children who were never issued SSNs, SSA could not maintain death records for these individuals

without first assigning them SSNs. Moreover, current State death data is only 94 percent accurate.

This provision would impose a tremendous unfunded mandate on States and localities as well as subject private citizens to burdensome requirements such as having their fingerprints added to their birth certificates by age 16. This section would also impose very substantial unbudgeted workload requirements on the SSA and the INS. SSA does not have the existing technological infrastructure or FTE's to accept the responsibilities required in section 115(a)(4) and (5). Since SSA is not authorized to use its trust funds for non-program purposes such as those envisioned by section 115, a specific appropriation of new funds would be required. The requirement that INS verify the authenticity of each birth certificate would cause an excessive workload burden on INS offices. The INS inspects over 500 million persons each year. We cannot verify every birth certificate presented as evidence of citizenship.

We ask that the following issues be clarified: (1) whether the requirements of this provision would be prospective only or retroactive; and (2) whether persons born abroad would have to obtain new birth certificates. Sec. 115(a)(3) should be amended to replace Passport Office with the Department of State. It should also be modified to read at the end "unless it is a foreign birth certificate for a person who is claiming acquisition of citizenship through birth abroad." Sec. 115(a)(5) should be modified to read "A copy of every death certificate issued in the United States and Report of Death Abroad issued by the Department of State shall be sent to the Social Security Administration."

While we have reservations about this provision, if it is enacted, we recommend that section 262 of the INA, which requires the INS to fingerprint aliens over the age of 14, be made uniform with the fingerprint requirement in this section.

Sec. 116 amends section 274(e)(4)(A) of the INA to increase the civil penalties for employer sanctions for first violations from the current range of \$250 to \$2,000 to a range of \$1,000 to \$3,000. The subsection also increase penalties for second violations from the current range of \$2,000 to \$5,000 to a range of \$3,000 to \$8,000. The penalties for subsequent violations are increased from a range of \$3,000 to \$10,000 to a range of \$8,000 to \$25,000.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269. However, we believe that the penalties for immigration-related discrimination, as covered by section 274B(g) of the INA, should be similarly increased.

Sec. 116(b) increases the penalties for employer sanctions paperwork violations from the current range of \$100 to \$1,000 to a range of \$200 to \$2,500.

S. 754 increases the penalties to a range of \$200 to \$5,000. We support this provision. However, we believe that the penalties for immigration-related discrimination, as covered by section 274B(g) of the INA, should be similarly increased.

Sec. 116(c) increases the criminal penalty for pattern and practice violations of employer sanctions to a felony offense, increasing the applicable fines from \$3,000 to \$9,000 and the criminal sentence which may be imposed from not more than six months to not more than two years.

S. 754 has a similar provision which raises the applicable fines to \$7,000 and the maximum criminal sentence to two years. We support this provision.

Sec. 116(d) authorizes an administrative law judge to increase the civil penalties provided under employer sanctions to an amount up to two times the normal penalties if labor standards violations are present.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269. However, we believe that this authority should also be extended to cover immigration-related discrimination, as covered by section 274B(g) of the INA.

Sec. 117 credits any employer sanctions penalties received in excess of \$5,000,000 to the INS Salaries and Expenses appropriations account that funds activities associated with employer sanctions enforcement.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 118 authorizes the Attorney General to hire for Fiscal Years 1996 and 1997 such additional Assistant United States Attorneys as may be necessary for INA prosecutions.

The President's Fiscal Year 1996 budget request includes resources to hire new Assistant U.S. Attorneys and support personnel to enhance immigration law enforcement. We support this provision.

Sec. 119 amends the INA to clarify that immigration officers

may issue subpoenas for investigations of employer sanctions offenses under section 274A. This section also authorizes the Secretary of Labor to issue subpoenas for investigations relating to the enforcement of any immigration program. It makes the authority contained in sections 9 and 10 of the Federal Trade Commission Act available to the Secretary of Labor. The Federal Trade Commission Act provisions allow access to documents and files of corporations, including the authority to call witnesses and require production of documents.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

PART 3--ALIEN SMUGGLING; DOCUMENT FRAUD

Sec. 121 grants wiretap authority to the INS for investigations of alien smuggling, identification document fraud, citizenship and naturalization procurement and document fraud, and passport and visa fraud.

We support this provision.

Sec. 122 amends 18 U.S.C. 1961(1) to include alien smuggling, identification document fraud, naturalization and citizenship procurement and document fraud, and visa and passport fraud offenses committed for personal financial gain as predicate offenses for racketeering charges.

S. 754 contains a similar provision, but it does not include identification document fraud, naturalization and citizenship procurement and document fraud, and visa and passport fraud offenses (18 U.S.C. §§ 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1546). We do not believe that there is a sufficient relationship between organized crime and these document fraud offenses to justify adding these offenses to RICO. We recommend that S. 269 adopt the S. 754 provision.

Sec. 123 adds conspiracy and aiding to alien smuggling offenses. This would subject conspirators to increased penalties for alien smuggling offenses rather than the penalty under the general conspiracy statute. This section provides that a person who smuggles aliens shall be fined or imprisoned for each alien to whom a violation occurs and not for each transaction constituting a violation, regardless of the number of aliens involved. This section also increases the penalties for alien smuggling offenses to not less than 3 years or more than 10 years for a first offense, to not less than 5 years or more than 10 years for a second offense, and to not less than 10 years or more

than 15 years for subsequent offenses.

S. 754 also adds conspiracy and aiding to alien smuggling offenses. We support the requirement that an alien smuggler be fined or imprisoned for each alien rather than for each transaction. However, while we do not object to increasing the maximum penalties for alien smuggling offenses, we do not believe that mandatory minimums are appropriate in this context. Providing for mandatory minimum penalties would produce anomalous results compared to penalties for other offenses of comparable severity. Furthermore, mandatory minimums are not necessary in view of the sentencing guidelines system, which is designed to provide appropriate and consistent penalties for all similar offenses.

Sec. 123(a)(5) makes it a criminal offense to hire an alien with knowledge that the alien is not authorized to work and that the alien was smuggled into the United States. The penalty for violating this section is a fine and imprisonment for not less than 2 years or more than 5 years.

S. 754 also criminalizes the employment of an alien knowing that such alien is not authorized to work and that the alien was smuggled into the United States. However, S. 754 provides for a term of imprisonment for not more than 5 years. The Administration does not believe that mandatory minimums are appropriate in this context. Such mandatory minimums would produce anomalous results and are unnecessary since the sentencing guidelines system already provides for consistent penalties for comparable offenses.

Sec. 123(b) creates a new offense for smuggling aliens with the intent or with reason to believe that the alien brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than one year.

This provision is substantially similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 123(c) directs the Sentencing Commission to promulgate or amend guidelines to provide that an offender convicted of smuggling, transporting, or harboring an unlawful alien under dangerous or inhumane conditions shall be assigned a base offense level of at least 22 for a first offense, at least 26 for an offender with one prior felony conviction, at least 32 for an offender with two prior felony convictions, an enhancement of between 2 and 6 levels in the case of bodily injury to such alien in proportion to the severity of the injury inflicted, and a base offense level of at least 41 in the case of the death of an alien.

Although the direction to the Sentencing Commission generally would provide for higher sentences than what the Department of Justice had proposed to the Sentencing Commission during this amendment cycle, we do not object to it.

Sec. 124 provides that the videotaped deposition of a witness to a violation of section 274(a) of the INA who has been deported from the U.S. may be admitted into evidence in an action brought for that violation if the witness was available for cross examination.

We support this provision.

Sec. 125 provides that any property, real or personal, which facilitates or is intended to facilitate, or which has been used in or is intended to be used in the commission of a violation of, or which constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of subsection 274(a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C., shall be subject to seizure and forfeiture. No property used by any person as a common carrier in the transaction of business shall be forfeited unless the owner or other person in charge of such property was a consenting party or privy to the illegal act. Also, no property shall be forfeited by reason of any act or omission established by the owner to have been committed or omitted by any person other than the owner while the property was unlawfully in the possession of a person other than the owner in violation of federal or state criminal laws. No property may be forfeited to the extent of an interest of any owner, by reason of any act or omission established by the owner to have been committed without the owner's knowledge or consent, unless the act or omission was committed by an employee or agent of the owner, and facilitated or was intended to facilitate, or was used in or intended to be used in, the commission of a violation of subsection (a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, or 1546 of title 18, U.S.C., which was committed by the owner or which was intended to further the business interests of the owner, or to confer any other benefit upon the owner.

It amends section 274(b)(2) by striking "conveyance" and inserting "property" and by striking "is being used in" and inserting "is being used in, is facilitating, has facilitated, or was intended to facilitate. It provides that before the seizure of any real property, the Attorney General shall provide notice and an opportunity to be heard to the owner of the property.

This section is similar to the Administration's proposal.

However, section 125's proposed new paragraph (E) to section 1324(b)(4) is unnecessary. The statute incorporated by reference therein (19 U.S.C. § 1616a(c)) is already incorporated into and made applicable to 8 U.S.C. § 1324(b) forfeitures. See 8 U.S.C. § 1324(b)(3) (incorporating the customs laws forfeiture procedures (19 U.S.C. § 1602 et seq.) by reference).

Sec. 126 provides that any person convicted of a violation of subsection 274(a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C., shall forfeit to the United States any conveyance, including any vessel, vehicle, or aircraft used in commission of a violation of 274(a) of the INA, and any property, real or personal, that constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of, or that facilitates or is intended to facilitate, or has been used in or is intended to be used in the commission of a violation of subsection 274(a) or section 274A(a)(1) or 274A(a)(2) of this Act, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C.

The criminal forfeiture of property under this provision, including any seizure and disposition of the property and any related administrative or judicial proceeding shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, except for subsections 413(a) and 413(d) which shall not apply to forfeitures under this provision.

The provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269. We note, however, that the appropriate reference to the criminal provisions for alien smuggling are sections 274(a)(1) and (2) of the INA, and not 274A.

Sec. 127 establishes the illegality of bringing inadmissible aliens from foreign contiguous territories. It increases from \$3,000 to \$5,000 the fine for bringing in an alien unlawfully.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 128 increases the term of imprisonment for identification, passport, visa, naturalization, and citizenship document fraud from not more than five years to not more than 10 years for a first offense if the offender is under the age of 21. If the offender is 21 years of age or older, the term of

imprisonment for a first offense is not less than 2-1/2 or more than 10 years; for a second offense, not less than 5 years or more than 10 years; for subsequent offenses, not less than 10 or more than 15 years. The maximum term of imprisonment is up to 15 years if committed to facilitate a drug trafficking offense, and up to 20 years if committed to facilitate an act of international terrorism.

S. 754 amends 18 U.S.C. 1028(b)(1) on identification document fraud to increase the maximum term of imprisonment from 5 to 10 years. S. 754 has identical provisions for section 1028(b)(1) violations committed to facilitate a drug trafficking offense or an act of international terrorism.

Since the passport fraud statutes, 18 U.S.C. § 1542-1544 and §1546(a), are addressed in this section, we believe that 18 U.S.C. § 1541 (relating to passport issuance without authority) should also be included.

The Administration does not object to increasing the maximum penalties for third and subsequent offenses. However, we do not believe that the mandatory minimums in this section are appropriate. Providing for mandatory minimum penalties would produce anomalous results compared to penalties for other offenses of comparable severity, particularly many white collar crimes. Furthermore, mandatory minimums are not necessary in view of the sentencing guidelines system, which is designed to provide appropriate and consistent penalties for all similar offenses.

The Sentencing Commission recently adopted guideline amendments which will become effective on November 1, 1995 and will significantly increase the punishments for these offenses. In our view, the Commission's guideline amendments should be given an opportunity to work before additional changes are made.

Sec. 129 adds a new penalty to 18 U.S.C. 1546(a) for presenting a document that fails to contain any reasonable basis in law or fact.

We support this provision.

Sec. 130 adds a new criminal provision to section 274C of the Act which penalizes any person who knowingly and willfully fails to disclose, conceals, or covers up the fact that he or she has prepared or assisted in preparing an application for asylum which was falsely made for immigration benefits. A violation of this provision is a felony and a fine or imprisonment for 2 to 5 years, or both, may be imposed. This section prohibits a person who has been convicted of this offense from any further

involvement in the immigration application process. Anyone convicted of a subsequent violation is punishable by a fine, 5 to 15 years imprisonment, or both.

Current criminal statutes are adequate to punish this type of illegal conduct. We do not believe that a new and special offense is needed to prosecute a person involved in assisting in fraud in the asylum process.

Furthermore, mandatory minimum sentences are not appropriate in this context.

Sec. 131 inserts an additional violation to section 274C of the Act, by prohibiting preparing, filing, or assisting another in preparing or filing documents which are falsely made, in reckless disregard of the fact that the information is false or does not relate to the applicant.

While we support the intent of this provision, we believe that the provision is unnecessary because numerous existing document fraud statutes already cover this type of fraud.

This section also adds a penalty for those aliens who present a document upon boarding a carrier bound for the United States and then fail to present a document to the inspector at the port of entry. A discretionary waiver for penalties is provided if an alien is subsequently granted asylum or withholding of deportation.

This provision is substantially similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

This section also creates new civil penalties if the document fraud is committed in order to obtain a benefit under the INA. This section authorizes an administrative law judge to double civil penalties for document fraud if labor standards violations are present. S. 754 increases penalties for employer sanctions violations involving these same labor standards violations.

We support this provision.

Sec. 132 adds to the current exclusion ground for misrepresentation at section 212(a)(6) a ground for document fraud and for failure to present documents to the inspector at the port of entry. It makes excludable any alien who, in seeking entry to the United States, or upon boarding a common carrier for the purpose of coming to the United States, presents any document which, in the determination of the immigration officer, is

forged, counterfeit, altered, falsely made, stolen, or otherwise contains a misrepresentation of a material fact. It makes excludable any alien who is required to present prior to boarding a common carrier a document relating to the alien's eligibility to enter the United States but fails to present such document upon arrival.

We do not believe either of these provisions is needed. Current law at section 212(a)(6) is broad enough to cover fraudulent documents of any nature and already makes a person excludable who attempts to gain entry through use of such documents. Section 212(a)(7) makes excludable both immigrants and nonimmigrants who seek to enter without the required documents. We do not support this section.

Sec. 133 provides that aliens excludable because of document fraud and excludable aliens brought or escorted into the United States having been interdicted at sea are ineligible for relief from exclusion, including withholding of deportation and asylum, subject to a "credible fear of persecution" exception.

Sections 132 and 133 thus have the effect of eliminating the waivers for exclusion for fraud provided by the Act. Section 212(d)(3) provides for a general waiver of excludability for nonimmigrants. In addition, section 212(i) of the Act currently provides for a waiver for exclusion for fraud for an immigrant who is the spouse, parent, or son or daughter of a United States citizen or of a lawful permanent resident, or if the fraud occurred at least 10 years before an application for a visa or entry. We believe that these waivers are consistent with a fair and humanitarian immigration policy, and thus, are appropriate. Because we do not believe these waivers should be eliminated, we do not support Sections 132 and 133.

In addition, the restriction on withholding of deportation in section 133 for an alien who is inadmissible under section 212(a)(6)(C)(iii), as written, would apply irrespective of whether special exclusion is invoked. We do not support this provision.

Sec. 141 provides that the Attorney General may, without referral to an immigration judge or after such a referral, order the exclusion and deportation of an alien who appears to be excludable when (1) the alien has entered the U.S. without having been inspected and admitted by an immigration officer, unless such alien has been physically present in the U.S. for a continuous period of two years since entry without inspection, or the alien is excludable under section 212(a)(6)(C)(iii); (2) when the alien is brought or has arrived on board a smuggling vessel; or (3) the Attorney General determines that the numbers or

circumstances of aliens en route to or arriving in the U.S. present an extraordinary migration situation. The judgement whether an extraordinary migration situation exists or whether to invoke these provisions is committed to the sole and exclusive discretion of the Attorney General. The Attorney General may invoke the provisions of this section during an extraordinary migration situation for a period not to exceed 90 days, unless within such 90 day period or extension thereof, the Attorney General determines, after consultation with the House of Representatives and Senate Committees on the Judiciary, that an extraordinary migration situation continues to warrant such procedures remaining in place for an additional 90-day period.

A person will not be subject to expedited exclusion if he or she claims asylum and establishes a credible fear of persecution in his or her country of nationality. A special exclusion order is subject to administrative review only if an alien claims under oath to have been and appears to have been lawfully admitted for permanent residence.

We support making the applicability of the special exclusion procedures discretionary. We object strongly to making special exclusion applicable to aliens who entered without inspection. This provision has the effect of removing these aliens from the deportation procedures, and radically changing the long-standing "entry doctrine." This provision is impractical and unnecessary. The vast majority of aliens who are apprehended after having entered the United States without inspection depart voluntarily. For those aliens who have been here longer after having entered without inspection, the determination of when they entered will be difficult and could lead to protracted litigation.

We recommend that the Subcommittee adopt the special exclusion provision contained in S. 754.

As a technical comment, we note that section 141 contains the term "immigration judge." The INA uses the term "special inquiry officer." The term should be made consistent.

Sec. 142 streamlines judicial review of Orders of Exclusion or Deportation. This section revises and amends section 106 of the INA. Many of the provisions are similar to that of S. 754.

This section provides for judicial review of final administrative orders of both deportation and exclusion through a petition for review, filed in the judicial circuit in which the immigration judge completed the proceedings. Under current law, an order of exclusion is appealable to a district court and then appealable to the court of appeals. This provision is similar to the Administration's proposal.

This section requires that a petition for review be filed within 30 days, except that an aggravated felon must file within 15 days. We recommend that the uniform filing period of S. 754 be adopted, to avoid an additional issue for the courts.

The filing of a petition stays deportation except for aggravated felons, who must apply to the court for a stay. S. 754 contains a similar provision.

Under this bill, there is no review of discretionary denials under sections 212(c), 212(i), 244(a) and (d), and 245. We do not support this provision. We do not believe that appeals to the courts of such denials have unduly burdened the courts or unduly delayed deportations.

Denials of asylum are "conclusive unless manifestly contrary to law and an unconscionable abuse of discretion." S. 754 provides that all the administrative findings of fact supporting an order of exclusion or deportation are conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary. We recommend that the language of S. 754 be substituted as consistent with current decisional law and more workable.

As in current law, a court may review a final order only if the alien has exhausted all administrative remedies. This section adds a requirement that no other court may decide an issue, unless the petition presents grounds that could not have been presented previously or the remedy provided was inadequate or ineffective to test the validity of the order. S. 754 also retains this provision.

Under section 106(f) there is no judicial review of an individual order of special exclusion or of any other challenge relating to the special exclusion provisions. The only authorized review is through a habeas corpus proceeding, limited to determinations of alienage, whether the petitioner was ordered specially excluded, and whether the petitioner can prove by a preponderance of the evidence that he is an alien admitted for permanent residence and is entitled to further inquiry. In such cases the court may order no relief other than a hearing under section 236 or a determination in accordance with sections 235(a) or 273(d). There shall be no review of whether the alien was actually excludable or entitled to relief. S. 754 contains similar provisions. However, S. 754 does not make special exclusion applicable to the same circumstances as does S. 269, as noted in our comments on section 141 above.

Under new section 106(g), no collateral attack may be brought by an alien subject to penalties for improper entry or reentry. S. 754 contains a similar provision, at section 106(d).

Sec. 143 subjects an alien who willfully fails to depart on time pursuant to a final order of exclusion and deportation or a final order of deportation to a \$500 per day penalty.

This provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 144 permits deportation proceedings to be conducted by video conference or telephone. The alien must consent to such a hearing by telephone if it is to be a full contested evidentiary hearing on the merits.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 145 clarifies the authority of immigration judges to issue subpoenas in proceedings under sections 236 (exclusion) and 242 (deportation) of the INA.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 146 amends section 242B of the Act to eliminate the requirement that an order to show cause (OSC) be issued in Spanish to every alien.

We do not oppose this provision. The requirement that INS issue each OSC in Spanish involves unnecessary duplication of existing INS efforts to ensure that individuals are informed and comprehend the proceedings. Border Patrol agents and investigators generally speak Spanish and are able to communicate the nature of the deportation charges to the aliens. Those INS employees who do not speak Spanish have access to translator services. Such services are also available for languages other than Spanish. Furthermore, INS employees are required to advise aliens of their right to counsel, who can assist them in translating the OSC. At the actual deportation hearing, translators are provided when needed.

This section would also amend the requirement at 242B(b)(1) that an alien be given 14 days from service of an order to show cause (OSC) to obtain counsel before a hearing is scheduled, to provide that a hearing may be scheduled within three days for an alien who is detained. The section also amends section 292 to provide that the alien's right to obtain counsel must not

unreasonably delay proceedings.

We believe that the 14 day period gives the alien a fair opportunity to obtain counsel and question whether this provision would speed deportation proceedings. Because of the statutory right to a reasonable opportunity to obtain counsel, an immigration judge will normally provide at least one continuance to allow an alien that opportunity. The INS' experience has been that deportation proceedings move more quickly if an alien does have counsel. Because it may unintentionally cause delay or provide opportunity for appeals, we do not support this provision.

Sec. 147 authorizes withholding of nonimmigrant visas to nationals of countries that refuse or unduly delay acceptance of their nationals for deportation.

This provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 148 authorizes appropriation of \$10,000,000 in a special "no-year" fund for detaining and removing aliens who are subject to final orders of deportation.

We support this provision.

Sec. 149 authorizes appropriations for the Attorney General to conduct a pilot program or programs to study methods for increasing the efficiency of deportation and exclusion proceedings against detained aliens by increasing the availability of pro bono counseling and representation. The Attorney General may use funds to award grants to not-for-profit organizations assisting aliens.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 150 limits relief under section 212(c) of the INA to a person who has been lawfully admitted to the U.S. for at least 7 years, has been a legal permanent resident for at least 5 years, and is returning to such residence after having temporarily proceeded abroad not under an order of deportation. The 5-year and 7-year periods would end upon initiation of exclusion proceedings. An alien who has been convicted of one or more aggravated felonies and has been sentenced for such felonies to a term or terms of imprisonment totalling, in the aggregate, at

least 5 years is ineligible for 212(c) relief and cancellation of deportation. Also, relief under INA section 212(c) will be available only to persons in exclusion proceedings. Persons in deportation proceedings must now apply for cancellation of deportation.

Cancellation of deportation is available to an alien who has been a lawful permanent resident for at least 5 years who has resided in the U.S. continuously for 7 years after being lawfully admitted and has not been convicted of an aggravated felony or felonies for which the alien has been sentenced to a term or terms of imprisonment totalling, in the aggregate, at least 5 years.

The cancellation provisions replace the current suspension of deportation provisions. However, section 150 omits the current provision at section 244(a)(3), providing for suspension of deportation for battered spouses of U.S. citizens of lawful permanent residents, who have been physically present for three years. This provision was added to the INA by section 40703(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103-322, September 13, 1994). We recommend that the provisions of current section 244(a)(3) be included in section 150. Because this provision was just recently enacted and because of the special circumstances involving these applications, we recommend that the physical presence period not be deemed to end upon service of the order to show cause. Also, current subsection 244(g), relating to evidence submitted by abused or battered spouses, should remain.

This section does not permit appeal from a denial of a request for an order of voluntary departure. S. 754 allows such an appeal provided that no court shall have jurisdiction over an appeal regarding the length of voluntary departure where the alien has been granted voluntary departure for 30 days or more. We oppose eliminating judicial review as an unwarranted departure from longstanding procedural rights. We recommend that the Committee Amendment to S. 269 adopt the S. 754 provision.

We recommend that this provision include discretionary authority for the Attorney General to withhold deportation of an alien when the alien is cooperating in law enforcement efforts or in the interest of national security or for whatever the Attorney General deems appropriate. The provision ignores situations where we do not have diplomatic relations with the country of origin such as Libya or where the country of origin refuses to accept their nationals such as Cuba. We had problems historically with India and Pakistan refusing to accept their nationals, and some problems with firmly settled Afghans. This provision does not provide for situations where a state of war precludes return, such as Bosnia.

As a technical matter, we recommend amending section 244(a)(1) by adding "aggravated" before "felonies" to make it clear that the crimes involved must be aggravated felonies.

Sec. 151 defines a stowaway as any alien who obtains transportation without consent or through concealment of evasion. This section also clarifies that a stowaway is subject to immediate exclusion and deportation; however, a stowaway may apply for asylum or withholding of deportation. The carrier will be required to detain a stowaway until he or she has been inspected by an immigration officer and to pay for any detention costs incurred by the Attorney General should the alien be taken into custody. It raises the fine for failure to remove a stowaway from \$3,000 to \$5,000 per stowaway.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 152 directs the Attorney General, after consultation with the Secretary of State, to establish a pilot program for up to two years for deterring multiple unauthorized entries. The program may include interior repatriation, third country repatriation and other disincentives for multiple unlawful entries into the United States. This provision also requires the Attorney General, together with the Secretary of State, to submit a report to the Senate and House Committees on the Judiciary on the operation of the pilot program and whether the pilot program or any part thereof should be extended or made permanent.

This provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 153 authorizes the Attorney General and the Secretary of Defense to establish a pilot program for up to 2 years to determine the feasibility of the use of closed military bases as detention centers for INS. Within 35 months after enactment, they must submit a feasibility report to the House and Senate Committees on the Judiciary, and the House and Senate Committees on Armed Service.

The use of closed military bases would make additional detention space available to INS. At present, INS is forced to release many aliens who are awaiting proceedings due to lack of detention space. We have worked with the Department of Defense in conjunction with the Bureau of Prisons and other agencies to explore the use of closed bases. Conversion costs and staffing have been the most difficult problems to resolve. Accordingly,

this provision is unnecessary and does not address the underlying obstacles to achieving its goal.

Sec. 161 amends the definition of Aggravated Felony contained in 8 U.S.C. Sec. 1101(a)(43) to include: (1) an offense relating to laundering of monetary instruments or relating to engaging in monetary transactions in property derived from specific unlawful activity is an aggravated felony if the amount of funds exceeds \$10,000 (down from \$100,000); (2) a crime of violence, a theft offense (including receipt of stolen property) or burglary offense, or an offense relating to trafficking of fraudulent documents, for which the term of imprisonment is a minimum of at least two and one half years or a maximum of at least five years (down from 5 years); (3) a RICO offense, as well as offenses described in 18 U.S.C. 1084 or 1955, for which the term of imprisonment is a minimum of at least two and one half years or a maximum of at least five years (down from 5 years); (4) offenses relating to transportation for the purpose of prostitution for commercial advantage; (5) a violation of Section 601 of the National Security Act relating to protecting the identity of undercover agents; (6) an offense that involves fraud or deceit in which the loss to the victim exceeds \$10,000 (down from \$200,000) or involves tax evasion in which the revenue loss to the Government exceeds \$10,000 (down from \$200,000); (7) alien smuggling without regard to commercial advantage except for a first offense in which the alien has affirmatively shown that he or she committed the offense for the purpose of aiding only the alien's spouse, child or parent; (8) any violation of 18 U.S.C. 1546(a) (relating to document fraud) except for a first offense in which the alien has affirmatively shown that he or she committed the offense for the purpose of aiding only the alien's spouse, child or parent; (9A) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered, which is punishable by imprisonment for a minimum of at least two and one half years or a maximum of at least five years; (9B) any offense relating to perjury or subornation of perjury which is punishable by imprisonment for a minimum of at least two and one half years or a maximum of at least five years; (10) any offense relating to a defendant's failure to appear for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years (down from 15 years) or more.

This section also prohibits the Attorney General from withholding the deportation of aliens who have been convicted of one or more of the following: an aggravated felony or an attempt or conspiracy to commit an aggravated felony for which the term of imprisonment imposed or served is or was at least five years; a crime of violence or attempt or conspiracy to commit such a crime of violence for which the term of imprisonment imposed or served is or was at least three years; or any of the following

aggravated felonies or attempt or conspiracy to commit such offense: murder, illicit drug trafficking, illicit firearms trafficking, explosive materials offenses, demand for ransom, child pornography, racketeering, national security offense, slavery.

We oppose expanding the definition of aggravated felon to include persons convicted of crimes punishable by imprisonment for 2 1/2 years or more. The grave consequences of being considered an aggravated felon include being ineligible for withholding of deportation and asylum, and being subject to mandatory detention and expedited deportation proceedings, and should be imposed only on serious criminals. Current law gives immigration judges the discretion to weigh the seriousness of the crime against the positive equities of each individual case and to grant relief only where it is appropriate. Immigration judges should be allowed to retain this discretion. The expanded definition would also impose a burden on the operations of the INS which is required to detain all aggravated felons, except for certain lawful permanent residents. Finally, wide imposition of aggravated felon consequences run afoul of our obligations under the 1967 Protocol relating to the status of refugees not to return a refugee to a place of persecution and hinder law enforcement's ability to enter into cooperation agreements with aggravated felons.

We recommend that the Senate adopt the provisions in S. 754 which provide that an alien is ineligible for withholding of deportation based on an aggravated felony conviction when the sentence imposed is 5 years or more and which makes the definition of aggravated felony applicable to all convictions, regardless of the date committed or the effective date of any bill. These provisions will ensure compliance with United States obligations under the 1967 Protocol not to return a refugee to a place of persecution and will facilitate application of the definition, end controversy and litigation, and make the law truly effective in removing aggravated felons.

As a technical matter, the language "attempt or conspire to commit an aggravated felony" in section 161(c) is unnecessary since attempt or conspiracy to commit an aggravated felony is defined as an aggravated felony under current law, section 101(a)(43)(Q) of the INA.

Sec. 162 makes an alien convicted of an aggravated felony ineligible for suspension of deportation and adjustment of status.

We support this provision. As a technical matter, the appropriate subsection designation should be "(h)." Also the term "suspension" should read "cancellation."

Sec. 163 provides that the expeditious deportation of aggravated felons creates no enforceable right for aggravated felons. This provision is identical to section 604 of S. 754, and we support its inclusion in the Committee Amendment to S.269.

Sec. 164 permits the Attorney General to release an alien convicted of an aggravated felony if the alien is not a threat to the community and release from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member of such person. The section provides that the Attorney General shall take into custody any alien convicted of an aggravated felony when the alien is released and may release the alien only if he was lawfully admitted into the United States, likely to appear for any scheduled proceeding and not a threat to the community or when the Attorney General determines that release from custody is necessary to provide protection to a witness a person cooperating with an investigation into major criminal activity, or an immediate family member.

This provision is identical to section 308 of S. 754, and we support it.

Sec. 165 amends section 242A(d) of the INA to provide that a U.S. district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien (A) whose criminal conviction causes the alien to be conclusively presumed to be deportable as an aggravated felon; (B) who has at any time been convicted of a violation of section 276(a) or (b); (C) who has at any time been convicted of a violation of section 275; or (D) who is otherwise deportable pursuant to sections 241(a)(1)(A) through 241(a)(5).

It provides that a U.S. Magistrate shall have jurisdiction to enter a judicial order of deportation at the time of sentencing where the alien has been convicted of a misdemeanor offense and the alien is deportable under this Act. The U.S. Attorney, with the concurrence of the Commissioner, may enter into a plea agreement which calls for the alien, who is deportable under this Act, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of deportation as a condition of the plea agreement or as a condition of probation or supervised release, or both.

The existing judicial deportation statute authorizes a district court to order deportation at the time of sentencing if the conviction renders an alien deportable as an aggravated felon

or for certain crimes involving moral turpitude. This provision, however, would allow district judges and U.S. Magistrates (in misdemeanor cases) to order deportation on any grounds of deportability.

We believe that in order to maintain a coherent national immigration policy, close questions relating to alienage, deportability, and particularly relief from deportation should be initially decided in the context of administrative proceedings, followed by judicial review, rather than in criminal cases. Therefore, in view of the Department of Justice responsibility to administer and enforce immigration laws, we believe that judicial deportation authority should be limited to situations in which the alien is before the court for sentencing for an aggravated felony or a serious crime involving moral turpitude. The phrase "conclusively presumed to be," should be deleted from the proposed amendment to section 242A(d)(1)(A). It is confusing and adds nothing to an otherwise clear statement that an alien who has been convicted of an aggravated felony is deportable.

Sec. 166 permits the entry of orders of exclusion and deportation stipulated to by the alien and the INS and provides that stipulated orders are conclusive. Such orders may be entered without a personal appearance by the alien before the immigration judge. Department of Justice shall provide that an alien who stipulates to an exclusion or deportation order waives all appeal rights.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 167 permits a United States District Court or Magistrate to order deportation pursuant to a stipulation entered into by the defendant and the United States. In the absence of a stipulation, the Court or Magistrate may order deportation as a condition of probation, if, after notice and hearing pursuant to section 242A(c), the Attorney General demonstrates by clear and convincing evidence that the alien is deportable.

We do not support this provision because we believe it is unnecessary. Under 18 U.S.C. 3583(d), the District Court presently has the authority to order deportation as a condition of supervised release. Under that provision, if the District Court issues such an order, the alien is referred to INS for deportation. Section 302(d) of the Administration proposal would amend that section to provide that such an order be made "pursuant to the provisions of the Immigration and Nationality Act." This amendment would address an issue in litigation in which District Court judges have interpreted this section to

authorize them to order deportation irrespective of the provisions of the INA. We urge the Subcommittee to add section 302(d) in place of this provision.

Sec. 168 requires the Attorney General to submit within one year of the date of enactment and annually thereafter a report to the Committees on the Judiciary of the House and Senate on the number of illegal aliens incarcerated in state and federal prisons stating the number incarcerated for each type of offense; the number of illegal aliens convicted for felonies in any federal or state court but not sentenced to incarceration in the previous year, by type of offense; DOJ programs and plans underway to ensure the prompt removal from the United States of criminal aliens subject to exclusion or deportation; and methods for identifying and preventing the unlawful reentry of aliens who have been convicted of criminal offenses in the U.S. and removed from the United States.

We are concerned that paragraph (2) requires the Attorney General to report on the number of aliens convicted but not sentenced to incarceration. This provision requires complete cooperation of state prosecutors and courts which are not under the administrative jurisdiction of the Department of Justice. We do not support this provision.

Sec. 169 authorizes INS to use appropriated funds to lease space, establish, acquire, or operate business entities for undercover operations, proprietary corporations or businesses to facilitate undercover immigration-related criminal investigations. INS may deposit funds generated by these operations or use them to offset operational expenses. Authority may be exercised only upon written certification of the INS Commissioner in consultation with Deputy Attorney General.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 170 provides that the Secretary of State, together with the Attorney General, may enter into an agreement with any foreign country providing for the incarceration in that country of any individual who is a national of that country and is an alien who has been convicted of a criminal offense under federal or state law and who is not in lawful immigration status or is subject to deportation, for the duration of the prison term to which the individual was sentenced. Any such agreement may provide for the release of such individual pursuant to parole procedures of that country. The Secretary should give priority to concluding an agreement with any country for which the

President determines that the number of such individuals who are nationals of that country in the United States represents a significant percentage of all such individuals in the United States.

This section also provides that it is the Sense of Congress that no new treaty should permit the prisoner to refuse the transfer. It also provides that, except as required by treaty, the transfer of an alien shall not require the alien's consent.

We believe this provision is unnecessary. The Administration is already taking significant steps to enhance the prisoner transfer program. The Deputy Attorney General has directed a review to determine what further steps the Department of Justice can take to increase the number of prisoner transfers. However, limited prison capacity in countries such as Mexico may inhibit our ability to increase significantly the number of transfers.

Sec. 171 modifies the filing requirement for individuals who keep, maintain, control, support, or harbor in any house or place an alien for the purpose of prostitution. It limits application of the filing requirement to whomever knows or recklessly disregards the fact that said individual is an alien; expands application to any alien; and reduces the time period in which to file; increases the term of imprisonment from two to ten years; and clarifies that the information contained in the filing may be used in an action to enforce Section 274A of the INA.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 172 makes a technical correction to the Violent Crime Control Act of 1994. It also clarifies that the INS may place an alien in administrative deportation proceedings if a Federal district court judge has declined the Government's petition to issue a judicial deportation order.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 181 permits reimbursement of other Federal agencies, as well as the States, out of the immigration emergency fund. Reimbursements may be made to other countries for repatriation expenses without the requirement that the President declare an immigration emergency. It also permits the control and seizure of vessels when the Attorney General determines that urgent

circumstances exist due to a mass migration of aliens. This section also authorizes the Attorney General to designate local enforcement officers to enforce the immigration laws when the Attorney General determines that an actual or imminent mass migration of aliens presents urgent circumstances.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 182 repeals the ban on open field searches by the INS.

This provision was subject to much debate when it was first discussed and ultimately incorporated into the Immigration Reform and Control Act of 1986. The Administration has concerns about its repeal, and will work with the Subcommittee to resolve them.

Sec. 183 makes it unlawful for any alien to vote in any general or special election in the United States. A violation is subject to a fine of up to \$5,000 or by imprisonment for up to three years, or both.

We oppose this provision as unnecessary because laws prohibiting unlawful voting already exist. Furthermore, the Constitution does not confer on Congress any general authority to regulate the qualifications for voters in state or local elections. Accordingly, those qualifications are the exclusive province of the states except insofar as they violate the Constitution or an Act of Congress adopted pursuant to some other power.

While we find the constitutionality of section 183 questionable, we are unable to provide a definitive conclusion on the issue at this time. It is important to note, however, that all states now require citizenship as a prerequisite for voting in both state and federal elections. Some states permit local governments to allow non-citizen residents to vote in local, usually school board, elections.

Sec. 184 clarifies that the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed shall not be limited. This section would reverse a recent judicial decision which interpreted the existing language to require the Secretary of State to process visas in a specific location.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment

to S. 269.

Sec. 185 clarifies the content and format for passenger lists and manifests to be prepared and submitted by carriers to INS, including name, date of birth, gender, citizenship, travel document number, and arriving flight number.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 186 provides that a carrier, in consideration for bringing an alien transitting the United States without a visa, must agree to indemnify the United States for any costs of detaining or removing such an alien if the alien is refused admission to the United States, fails to continue his or her journey to a foreign country within the time prescribed, or is refused admission by the foreign country to which the alien is travelling while transitting the United States.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 187 authorizes the Attorney General to provide information furnished under the Legalization and Special Agricultural Worker programs when such information is requested in writing by a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not related to a crime). It allows the Attorney General, in her discretion, to furnish the information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce. The criminal penalties for violation of these provisions is retained.

We agree that confidentiality provisions should be modified because it is very difficult to obtain crucial information contained in these files, such as fingerprints and photographs, when the alien becomes a subject of a criminal investigation. However, we support a waiver of the confidentiality provisions, along the lines of the Administration's Omnibus Counterterrorism bill, that is, only if a federal judge authorizes disclosure of information to be used for identification of an alien who has been killed or severely incapacitated or for criminal law enforcement purposes against an alien if the alleged criminal activity occurred after the legalization or SAW application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated

felony.

Sec. 188 clarifies that the Attorney General is not required to rescind the lawful permanent resident status of a deportable alien separate and apart from the deportation proceeding under section 242 or 242A. This provision will allow INS to place a lawful permanent resident who has become deportable into deportation proceedings immediately.

This provision is identical to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 189 prohibits governmental entities from restricting availability of information related to the immigration status of an alien in the United States.

We have a number of concerns with this provision as drafted. In some instances the provision could raise troubling privacy and due process issues. We do not support this provision, but will work with the Subcommittee to explore appropriate alternatives.

Sec. 190 authorizes the Attorney General to accept, administer and utilize services of volunteers to assist in administering programs relating to naturalization, adjudication at ports of entry, and removal of criminal aliens. Such volunteers may not administer or score tests and may not adjudicate.

This provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 191 authorizes the Attorney General to acquire and utilize any federal equipment determined available for transfer to the Department of Justice by any other Federal agency upon request of the Attorney General in order to facilitate the detection, interdiction and reduction of illegal immigration.

We support this provision.

Sec. 192 denies any court jurisdiction of any cause or claim by or on behalf of any person asserting an interest under Section 245A (regarding legalization applications) unless such person in fact filed a complete application and application fee to an authorized legalization officer of the INS but had the application and fee refused by that officer.

This provision would affect several major class action lawsuits that involve the legalization program where district courts have granted relief to aliens who did not timely file for legalization. We support this provision, but note that the effective date is upon enactment. To effectuate its purpose, the provision relating to the court's lack of jurisdiction ought to be made effective as if included in the provisions of the Immigration Reform and Control Act of 1986, Pub. L. 99-603, November 6, 1986.

Sec. 193 tightens parole authority by changing the acceptable reasons from "emergent reasons" and "reasons deemed strictly in the public interest" to "urgent humanitarian reasons or significant public benefit," and by requiring a case-by-case determination.

We oppose this provision because current law provides the Attorney General with appropriate, needed flexibility to respond to compelling immigration situations.

Sec. 194 reduces the world-wide level of family-sponsored immigrants in a fiscal year by the number of parolees who were paroled in the two previous fiscal years and who remained in the United States for more than a year.

We oppose this provision because it may have a significant adverse effect on family reunification and result in longer waiting times for admission of relatives of United States citizens and legal permanent residents. Humanitarian parole and family sponsored immigration advance two vital, but distinct national interests. This section blurs the distinction between the two and hinders both.

Sec. 195 precludes an alien who used any fraudulent document to enter the United States or destroyed his or her document en route to the United States from applying for asylum unless the alien had to present such document to depart from a country in which he or she had a credible fear of persecution and travelled directly from such country to the United States. The alien shall be referred to an asylum officer for interview to determine credible fear. If the asylum officer determines that the alien does not have a credible fear of persecution, the alien may be specially excluded and deported. The Attorney General shall provide for prompt supervisory review of the determination that the alien does not have a credible fear. If the asylum determines that the alien does have a credible fear of persecution, the alien shall be taken before an immigration judge for an exclusion hearing.

Pursuant to this section, "credible fear" means there is a substantial likelihood that the statements made by the alien in support of his or her claim are true, and there is a significant possibility in light of such statements and of country conditions, that the alien could establish eligibility as a refugee.

We do not support this provision. We believe that the provisions for special exclusion in S. 754 are sufficient to allow us to process efficiently the asylum applications of excludable aliens. Absent smuggling or an extraordinary migration situation, we can handle asylum applications for excludable aliens under our regular procedures.

Furthermore, the concept of "presentation" of fraudulent documents pursuant to "direct departure" from a country in which the alien has a credible fear of persecution is problematic. The "presentation" of such documents is not necessary for departure. In addition, the concept of "direct departure" is unnecessary and confusing. Section 208(3)(5)(B) adequately addresses asylum shopping by an alien already present in a country in which she or he has no fear of persecution. Adding "direct departure" may cause needless litigation and confusion in the context of connecting air flights.

Sec. 196 requires that an application for asylum must be filed within 30 days of entry unless the alien who seeks to apply affirmatively shows that the claim is based on circumstances that arose after the alien's entry and that the claim is filed up to thirty days after the alien knew or reasonably should have known of such circumstances.

We strongly oppose this provision. It will require the INS to divert resources from adjudication of the merits of asylum applications to adjudication of the timeliness of filing. Since eligibility for withholding of deportation is not affected by this section, the Attorney General must still adjudicate the merits of a refugee claim. Our proposed special exclusion proceedings, limitations on judicial review, and standard of judicial review, along with the asylum regulations we have implemented give the INS sufficient mechanisms for processing asylum applications and prevent asylum abuse. We do not believe that this provision is needed.

Sec. 197 limits the employment authorization of an asylum applicant. The section provides that the Attorney General may deny any application for, or suspend or place conditions on any grant of, employment authorization of anyone who makes an application for asylum.

We do not support this provision. Section 208(e), which was added by section 130004 the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, September 13, 1994, is sufficient to address this concern. It would terminate employment authorization in some instances, such as when a non-immigrant who already has employment authorization applies for asylum. Current INS procedure to deny employment authorization for 180 days while an application for asylum is pending review has reduced the instances of asylum abuse.

Sec. 198 authorizes the Attorney General, for two years, in order to reduce the asylum backlog, to expend out of funds such amounts as may be necessary for leasing or acquiring property.

We have no objection to this portion of the section in regard to the leasing or acquiring of property for security and detention space. However, with regard to office space, this provision should be modified to require the Attorney General to lease space pursuant to the Federal Property and Administrative Services Act of 1949. Under the 1949 Act the Attorney General could request a delegation of the authority to lease office space from the General Services Administration's Administrator.

This section also authorizes the Attorney General to employ temporarily up to 300 persons, who by reason of retirement on or before January 1, 1993, are receiving annuities or retired or retainer pay as retired officers of regular components of the uniformed services.

This provision is unnecessary. Under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. §§ 8344(i) and 8468(f)), such reemployment can now be handled administratively. Nevertheless, if this provision remains in S. 269, we recommend that a parallel provision be added to authorize the Secretary of State to increase the number of personnel who address the asylum backlog.

Sec. 199 requires Congressional approval for refugee admissions above 50,000 in any fiscal year.

We do not support legislatively limiting annual refugee admissions. Under current law, the ceiling for annual refugee admissions is set by the President. The current process of consultation between Congress and the executive branch on the annual refugee admissions level, which began in 1981, is working well and allows Congress to participate in the process of determining appropriate refugee admissions levels. In recent years, refugee admission ceilings established by this consultation process have been decreasing. Imposing a strict and arbitrary numerical limitation on annual admissions would

constitute an unwarranted restriction on the process and on the President's responsibility to determine issues of foreign policy.

Sec. 199A repeals the Cuban Adjustment Act, P.L. 89-732 (1966). The Act provides for adjustment of status, in the discretion of the Attorney General, of any national or citizen of Cuba who has been inspected and admitted or paroled into the United States and has resided here for one year. This section extends the application of the Act to individuals who will be paroled into the United States pursuant to the Cuban Migration Agreement of 1995.

We oppose repeal of the Cuban Adjustment Act. Our long term goal, to which we are absolutely committed, is to bring democracy to Cuba. Until Cuba has a democratic government, we need flexibility to respond appropriately to changing conditions in Cuba. We look forward to the time when Cuban migration to the United States is normalized and on par with migration from other countries. We took major steps towards normalizing migration from Cuba to the United States when we signed the Cuban Migration Agreements.

While we are pleased that the Committee Amendment to S. 269 extends application of the Act to individuals who will be paroled into the United States pursuant to the Cuban Migration Agreement of 1995, we are concerned that this section continues to lack a means to adjust the immigration status of individuals who will be or have been paroled from Havana or from the safehavens in Guantanamo and Panama into the United States.

Sec. 199A also provides that the number of those paroled into the United States will be counted as family-sponsored immigrants for purposes of the world-wide and per-country ceiling.

We oppose this provision because it may have a significant adverse effect on family reunification and result in longer waiting times for admission of relatives of United States citizens and legal permanent residents from countries other than Cuba. Furthermore, we presently do not count the number of parolees as family-sponsored immigrants for purposes of the world-wide and per-country ceiling and see no reason to do so now.

Sec. 199B establishes the various effective dates of the provisions of the Immigrant Control and Financial Responsibility Act of 1995.

We support this section.

Title II--FINANCIAL RESPONSIBILITY

PART 1--RECEIPT OF CERTAIN PUBLIC BENEFITS

Part 1 of Title II of S. 269 contains provisions affecting the eligibility of legal and illegal aliens for certain benefits. While the Administration bill does not include comparable provisions, we support reinforcing current law restrictions that prevent illegal aliens from being eligible for most Federal public assistance. We also support reasonable extensions of the deeming policies that require sponsors to maintain a financial commitment to aliens they have sponsored. However, there are a number of specific problems under the various provisions of S. 269 as drafted that we believe should be remedied, most notably the bill would eliminate eligibility for thousands of legal immigrants currently receiving benefits. Our positions on the individual alien eligibility provisions are outlined in the following section-by-section discussion.

Section 201 defines "eligible alien" as an alien: lawfully admitted for permanent residence; granted refugee or asylee status; whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act; or who has been granted parole for a period of 1 year or more. All other aliens would be 'ineligible aliens' and would not be eligible for needs-based benefits under any Federal, state, or local program, except: (1) emergency medical services under title XIX of the Social Security Act; (2) short-term emergency disaster relief; (3) assistance or benefits under the National School Lunch Act; (4) assistance or benefits under the Child Nutrition Act of 1966; and (5) public health assistance for immunizations and for testing and treatment for communicable diseases. Ineligible aliens would be ineligible to receive any grant, contract, loan, professional license, or commercial license provided or funded by any Federal, state, or local government. Only aliens eligible to work would be able to receive unemployment benefits.

This section also requires the Secretary of the Department of Housing and Urban Development (HUD), within 90 days of the date of enactment, to submit a report to the Committees on Banking and Committees on the Judiciary of the House and Senate describing how HUD is enforcing section 214 of Housing & Community Development Act of 1980, including statistics of individuals denied assistance.

This section also limits benefits under the Social Security Act to United States citizens and eligible aliens who have been granted work authorization and then only those benefits attributable to the authorized employment. Ineligible aliens may not be reimbursed amounts paid into Social Security Administration accounts.

While we support the goal of establishing a uniform definition of alien eligibility, we have reservations about

section 201 as drafted. The provision would affect many diverse Federal, state, and local programs; represent a new mandate to many state and local governments; and target current immigrant beneficiaries.

We encourage you to examine the definition of eligible alien as the Administration proposed in its welfare reform bill introduced last year, the "Work and Responsibility Act of 1994."

We recommend this definition of eligibility apply only to the four primary needs-based programs--AFDC, SSI, Medicaid, and Food Stamps. We would also allow state and local programs of cash and medical general assistance to utilize the same alien eligibility criteria. Finally, we support the provision in section 201 that would retain the current law provision for illegal aliens to receive only emergency medical services under Medicaid.

The Administration's approach, unlike a unilateral bar, would avoid a number of problems. For example, the eligibility provision in S. 269 could be read to deny needs-based, education-related services and assistance paid for with Federal, State, or local funds--except for services under the National School Lunch Act--to undocumented alien children. Although the Federal Government could authorize the exclusion of such alien children from elementary and secondary schools, the principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to do so remain powerful. In addition, students who are not undocumented aliens could be stigmatized based on name or appearance, and parents, fearful of their children's safety or well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all students. The definition of an "eligible alien" in section 201(d) could be read to exclude certain post secondary students currently eligible for student assistance under title IV of the Higher Education Act of 1965; the negative consequences of varying eligibility requirements on these students and their educational institutions must be considered.

This provision should further be clarified so as not to apply to programs under section 214 of the Housing and Community Development Act of 1980. Without such clarification, this provision would impose a great burden on States and local governments that administer HUD mortgage programs, Federal Housing Administration contract programs, and Community Development Block Grants to identify noncitizens who may indirectly benefit from these non-direct assistance programs. Furthermore, it would jeopardize progress made and cooperation by HUD, INS, housing authorities, and multifamily project owners to smoothly implement section 214 of the Housing and Community Development Act of 1980.

Furthermore, the definition of "eligible alien" does not include Cuban and Haitian entrants as defined under section 501 of the Refugee Education and Assistance Act of 1980. If Cuban and Haitian entrants are not included in the list of eligible aliens, they no longer would be eligible for assistance and services under the refugee program. (This applies to those who do not fulfill the regular criteria for refugee status as defined in section 101(a)(42) of the INA.) The definition of "ineligible alien" by its silence includes United States nationals thus making natives of American Samoa ineligible for benefits under this section.

The definition of "eligible alien" also fails to include aliens lawfully admitted under temporary visas (e.g. B for business visitors, E for treaty traders and investors, L for intra-company transferees and H-1B for professionals) and aliens outside the United States. Under section 201 ineligible aliens would be unable to receive, inter alia, contracts, professional licenses, or commercial licenses provided or funded by any Federal, state, or local government. If the class of ineligible aliens is not specifically narrowed, section 201 may violate NAFTA provisions on services and investment (chapters 12 and 11), and potentially violate our obligations under the GATS agreement and bilateral investment treaties. Furthermore, NAFTA parties have agreed to eliminate citizenship and permanent residency requirements for professional licenses. Section 201 would be in violation of those obligations.

Section 201(a)(3) requires agencies administering public assistance programs to notify individually or by public notice all ineligible aliens of the termination of their benefits. It is not clear whether this section would impose a duty on agencies to make eligibility determinations for each individual served. There are many programs for which it would not be cost-effective, or in some cases feasible, to determine individual eligibility. These programs include soup kitchens, food banks, and public health programs. The Administration's approach which would apply this definition of eligibility to the four major federal entitlement programs would avoid these burdensome effects.

We believe section 201(c) has many unintended effects on the operation of the Social Security Trust Funds. This provision would deny Social Security benefits as well as Social Security tax refunds to aliens legally admitted on a temporary basis to work in the United States. The payment restrictions in this provision violate the terms of the bilateral Social Security totalization agreements with 17 foreign countries, including Canada and virtually all of Western Europe. Also, the U.S. has treaties with other countries that require the U.S. to pay Social Security benefits to foreign treaty nationals on the same basis as U.S. citizens. Legislation abrogating these agreements and treaties would presumably lead to retaliatory restrictions on the

payment of such benefits by other countries to U.S. citizens.

It is not clear whether the payment restrictions would be prospective or retrospective. If the Social Security benefits payable to current or future beneficiaries should not reflect credit for past periods of unauthorized work, INS would have to provide SSA with the necessary information about the beneficiary's work authorization history. This is probably not feasible because much of the necessary INS information is stored in paper format in Federal Records Centers.

Although it would be feasible for SSA to suspend Social Security benefits payable to a person who is currently in this country illegally, assuming appropriate evidence were obtained, such an approach would not impose any sanctions on legally admitted aliens who received Social Security credit for past periods of unauthorized work.

The payment restrictions are also inconsistent with current provisions of law that permit payment of benefits to aliens outside the U.S. if they are citizens of a country whose social insurance system does the same for U.S. citizens. About 65 countries meet this requirement.

Also the provision does not address the complex issue of Social Security benefit eligibility for citizens who are dependents or survivors of U.S. citizens, or ineligible aliens who are dependents or survivors of U.S. citizens.

Sec. 202 defines "public charge" for purposes of deportation as the receipt of certain benefits for an aggregate of more than 12 months in the first five years after entry as an immigrant or, in the case of an individual who entered as a non-immigrant, the first five years after adjustment to permanent resident status. Such benefits are limited to one or more of the following programs: AFDC, SSI, Medicaid, Food Stamps, state general assistance, or any other program of assistance funded in whole or in part by the Federal government for which eligibility is based on need (except the exempted programs noted in section 201).

This section also provides that any alien who during the public charge period becomes a public charge, regardless of when the cause arose, is deportable. This section exempts from the public charge definition refugees and asylees. Further, if the cause of the alien's becoming a public charge arose after entry as an immigrant or, in the case of a non-immigrant, after adjustment to permanent resident status, and was a physical illness or injury that kept the alien from working or a mental disability that required continuous hospitalization, then the alien would be exempt. While this section now excludes refugees and asylees from the public charge provision, it would place

Cuban and Haitian entrants at risk of deportation if they received benefits from one or more of the listed programs for more than an aggregate of 12 months. We strongly object to this provision and believe Cuban and Haitian entrants should be excluded from the public charge provision. We believe this would be consistent with the Administration's position on providing assistance to Cuban parolees to alleviate any State or local impact.

This section also requires the Attorney General to review applications for benefits under section 216, 245 or chapter 2 of Title III of the INA to determine whether the exception to the definition of public charge applies. If the exception does not apply, the Attorney General shall institute deportation proceedings unless she exercises discretion to withhold or suspend deportation.

The legislation would require increased administrative efforts to ascertain (1) whether an alien who had received benefits for more than an aggregate of 12 months during the public charge period was receiving such benefits due to a "pre-existing condition," or one that arose since entry or since adjustment of status; (2) whether a physical illness or injury was so serious that the alien could not work at any job; or (3) whether the alien's mental disability required continuous hospitalization. Since this section would create a number of administrative and legal complexities as drafted, we do not endorse these provisions without further clarification or amendment.

Furthermore, we urge the Subcommittee to clarify that this provision does not limit the ability of the INS to establish its enforcement priorities. For example, a requirement to institute deportation proceedings against an alien considered a public charge should not mandate the alien's removal prior to or in place of the removal of an aggravated felon who threatens the community.

Sec. 203 sets forth the requirements for a sponsor's affidavit of support. It requires that the affidavit of support be executed as a contract that is enforceable against the sponsor by the sponsored individual, the Federal government, a state, district, territory or possession or any subdivision thereof, that provide any benefits to sponsored eligible aliens. In the affidavit, the sponsor must agree to financially support the sponsored individual until the sponsored individual has worked in the U.S. for 40 qualifying quarters. A sponsor must be age 18 or over, a citizen or legal permanent resident, domiciled in any of the several states of the United States, the District of Columbia, or a territory or possession of the United States and demonstrate an ability to maintain an annual income of at least

125% poverty line for him or herself and the sponsored individual.

The governmental entities are authorized to seek reimbursement from sponsors of aliens who have received benefits, and to bring suit against sponsors that do not reimburse the relevant government agencies. No cause of action could be brought against sponsors after 10 years from an alien's last receipt of benefits. The sponsor is required to notify the Federal, state, and local governments of any change of the sponsor's address.

[The Administration strongly supports making the current affidavit of support legally binding. However, we have reservations about requiring the affidavit to be effective for 40 qualifying quarters, particularly as this requirement interacts with the deeming provisions in section 204. We note that these two sections would require a sponsored immigrant to remain subject to deeming provisions for a minimum of 10 years, or potentially 5 years after becoming a citizen. We have reservations about applying immigration restrictions to people that have become full citizens of the United States.

Also, a number of legal immigrant children would be adversely affected by basing the deeming period on the requirement to work 40 qualifying quarters. Sponsored children that we have permitted to reside permanently in the U.S. would be ineligible for most assistance due to deeming until they had worked for 40 qualifying quarters. Since we do not expect children to work, this particular restriction is unreasonable when applied to immigrant children and would not be in the national interest.

We strongly suggest that rather than basing the time period for the legally binding affidavit on the immigrant working 40 qualifying quarters, that the legislation specify a period of years or until the immigrant naturalizes.

Because discrimination between citizens on the basis of national origin, even by the federal government, is in general subject to strict scrutiny, this section may be subject to a constitutional challenge as applied to naturalized aliens, who may be ineligible, solely because of their former status as aliens, for benefits to which other citizens are entitled. However, the section might be defended on the grounds that it merely regulates the process of naturalization, by making persons who intend to become citizens ineligible for certain benefits, even after their naturalization. On that theory, the section might be upheld as a valid exercise of Congress' power over immigration. We are unable at this time to opine definitively on the constitutional issue presented.

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In addition, the definition of qualifying quarter is unworkable. Section 203(f)(3)(A) defines "qualifying quarter" as a 3-month period in which the sponsored individual has earned the minimum amount necessary for the period to count as a Social Security quarter of coverage. Since the implementation of annual wage reporting in 1978, SSA no longer maintains quarterly records of earnings and thus could not determine the amount earned in a calendar quarter. Quarters of coverage are now based on annual earnings. We recommend changing the definition of quarters of coverage to be consistent with the Social Security Act. Also, individuals may become entitled to disability insurance benefits with less than 40 quarters of work. The bill should clarify that an immigrant that otherwise qualifies for title II disability insurance would be eligible for benefits under title II and would be exempt from the deeming requirements for purposes of disability benefits under title XVI.

Sec. 203(b) should provide 180 days--not 90 days--to develop a new affidavit of support in light of the complex interagency consultations called for by the provision. We suggest that the Secretary of Treasury and the Commissioner of Social Security be included in the list of those responsible for formulating the new affidavit of support since determining which immigrants have worked for 40 qualifying quarters would potentially involve activities managed by those agencies.

Furthermore, it should be clarified that notifications of changes of address should be made to the Attorney General and that the Attorney General--not the Commissioner of Social Security--shall promulgate regulations to carry out actions to obtain reimbursement for any federal or state assistance received by the sponsored individual.

Section 203(e) would require that no state court may decline jurisdiction over any action brought against a sponsor for reimbursement of the costs of a benefit if the sponsored individual received assistance while residing in the state.

We do not object to this provision.

Sec. 204 requires that in determining the eligibility for and amount of benefits of an individual (whether a citizen or national of the United States or an alien) under any Federal program of assistance, or any program of assistance funded in whole or in part by the federal government for which eligibility is based on need, the entire amount of income and resources of the sponsor and sponsor's spouse would be presumed to be available to the individual. This section may also apply to any state or local program of assistance for which eligibility is based on need, or any need-based program of assistance

administered by a state or local government.

This "deeming" period would continue for the period for which the sponsor has agreed in the affidavit or for five years from the date the alien was first lawfully in the United States, whichever period is longer. Thus, immigrants that signed the new affidavit of support under section 203 would be deemed for a minimum of 10 years in order to meet the requirement of working 40 qualifying quarters. As mentioned under section 203, this requirement may lead to deeming even after the immigrant had become a naturalized citizen.

While we support the goal of making sponsors more responsible for the immigrants they sponsor, we have strong reservations about section 204 as drafted. This section would affect many current immigrant beneficiaries; apply to immigrants that have become naturalized citizens if they have signed the new affidavit of support; repeal the current law exemption from deeming for sponsored immigrants who become disabled after entry; affect many diverse Federal programs--including Medicaid; create new administrative complexities and requirements; and change the current deeming formula to include 100 percent of a sponsor's income and resources. By attributing 100 percent of a sponsor's income and resources to the sponsored immigrant, section 204 does not take into account the needs of the sponsor and his or her family and is inconsistent with current practice in the major entitlement programs. Legal challenges may also arise where the spouse was not a signatory to the affidavit or the spouse is separated from the sponsor.

The Administration proposed strengthening the deeming provisions in its welfare reform bill introduced last year, the "Work and Responsibility Act of 1994," and we would like to work with the Subcommittee to establish a reasonable deeming policy that addresses the concerns identified above. The Administration is opposed to unilaterally applying the new deeming and eligibility provisions to current recipients, including the disabled exempted under current law. In addition, we are deeply concerned about applying deeming provisions to the Medicaid program. We support providing state and local governments with the authority to implement the same deeming rules under their cash general assistance programs as the Federal government uses in its cash welfare programs.

Sec. 205 authorizes state and local governments to prohibit or limit assistance to aliens and to distinguish among classes of aliens in providing general public assistance so long as the restrictions are no more restrictive than that of comparable Federal programs.

We support this provision.

Sec. 206 denies eligibility for the earned income tax credit to individuals who are not, for the entire tax year, United States citizens or lawful permanent resident aliens. It amends section 32(c)(1) of the Internal Revenue Code of 1986 (relating to individuals eligible to claim the earned income tax credit) by adding that the term "eligible individual" does not include any individual who does not include on his or her tax return the individual's taxpayer identification number and their spouse's taxpayer identification number (if married). The section further provides that for purposes of the earned income tax credit a social security number issued to an individual pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act, i.e., to qualify for federal benefits, would not satisfy the taxpayer identification number reporting requirement. The section also authorizes IRS to use simplified procedures if a taxpayer claiming the earned income tax credit omits a correct taxpayer identification number.

We support this provision. The President's FY 1996 Budget contained a similar provision.

Sec. 207 requires that whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any U.S. department or agency, or any copy thereof; knowingly uses, affixes, or impresses such altered seal or copy to or upon any instrument; or with fraudulent intent possesses, sells, offers to sell, furnishes, offers to furnish, gives away, offers to give away, transports, offers to transport, imports, or offers to import any such seal or copy, knowing it to have been falsely made, shall be fined under this title, or imprisoned for up to 5 years, or both. If any of the above was done with the intent or effect of facilitating an unlawful alien's application for, or receipt of a federal benefit, the penalties which may be imposed for each offense shall be double the maximum fine, and three times the maximum imprisonment, or both. Each instance of forgery, counterfeiting, mutilation, or alteration shall constitute a separate offense.

We support this provision.

Sec. 208 permits a State that is certified by the Attorney General as having high illegal immigration, to establish and operate a program for the placement of anti-fraud investigators in State, county, and private hospitals to verify the immigration status and income eligibility of applicants for medical assistance under the State plan prior to the furnishing of medical assistance.

We note that this would be permitted under current law, and thus the provision is unnecessary.

Sec. 209 bars costs, attorney fees or expenses from being awarded under the Equal Access to Justice Act (EAJA) in any civil action brought by or on behalf of any individual who is not a United States citizen or legal permanent resident.

We do not support this provision. Although there are some problems related to litigation abuse and the EAJA as presently formulated, these are not resolved by a blanket denial of access to certain classes of aliens, most particularly refugees and asylees. The Administration is studying effective ways to address existing problems.

Sec. 211 authorizes the collection of a \$1 land border fee for each individual entering the U.S. as a pedestrian or in a noncommercial conveyance. The commercial conveyance fee shall be set by the Attorney General in consultation with the Secretary of State. The Attorney General may establish frequent crosser discounts and contract with private and public sector entities to collect the fee.

The section also provides that funds shall be deposited into the Fee Account as offsetting receipts and remain available until expended. The funds may be used to pay for inspection services and related expenses. Unused funds may be used for Border security, including hiring additional Border Patrol agents.

Revenues may be spent on providing inspection services and maintaining inspection facilities; expanding, operating and maintaining information systems for nonimmigrant control; employing additional permanent and temporary inspectors; minor construction costs, including commuter lanes; detecting fraudulent documents; and administering the border fee. Excess funds may be spent on additional border patrol, support and equipment resources. Any additional excess funds may be spent on deportations.

The Administration proposal also calls for a land border user fee. We recommend that section 211 be modified to be consistent with the key features of our proposal, which provides local flexibility on collecting such a fee. Our proposal adds a new subsection 286(s) to the INA, authorizing the Attorney General to charge and collect a border services user fee for every land border entry, including persons arriving at U.S. borders by ferry. The fee is to be collected in U.S. currency and is set at \$1.50 for each non-commercial conveyance, and \$.75 for each pedestrian. The Administration will soon transmit legislation authorizing the Department of Treasury to collect and

spend a parallel fee for Customs-related activities. Commercial passenger conveyances will be charged the pedestrian fee for the operator and each passenger, except that ferry crewmen are not subject to the fee.

The Administration proposal provides for funding of start-up costs. The fees proposed in this section are too low to generate the funds needed to accomplish the goal of timely and effective land border inspection.

The Administration proposal also provides for a "local option" which allows each State to determine at which, if any, ports the fee is to be collected. A State that exercises this local option may establish a Border Service Council for each port to develop priorities for use of the fees collected, for submission to the Commissioner. The Commissioner must consider these priorities in funding port services. Funds remaining after payment of the costs of port services are to be granted to the Councils to spend on port-related enhancements. The Commissioner will allocate enhancement funds for ports that do not set up a Border Service Council.

Section 212 authorizes additional commuter border crossing fees pilot projects, one on the northern land border and another one on the southern land border.

The Administration proposal provides for projects along the southern and northern land borders and does not limit the number of pilot projects that may be established. We recommend that S. 269 adopt the Administration proposal.

Sec. 213 removes the current exemption from payment of the \$6 immigration user fee for cruise ship passengers.

This provision is similar to the Administration's proposal, and we support its inclusion in the Committee Amendment to S. 269.

Sec. 221 establishes the effective dates for the sections of this title. The date of enactment is the effective date except in the case of the section related to benefits (received or applied for on or after the date of enactment) and the section authorizing a border services user fee (which shall be six months after the date of enactment).

The new definition of eligible alien (section 201) and the 5 year deeming period (section 204) would apply to benefits being received at the time of enactment, and affect current recipients as well as future applicants. We are opposed to applying the new deeming and eligibility provisions to current recipients,

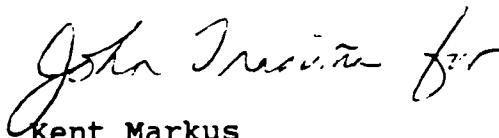
including the disabled. Benefits received after the date of enactment would be counted towards the new public charge provisions (section 202), and we are concerned about the ability to adequately inform current immigrants of the new rules concerning public charge and the potential for becoming deportable.

The provisions with the greatest SSI impact--the definition of "eligible alien" and sponsor-to-alien deeming--would be effective upon enactment. Such an effective date would eliminate benefit eligibility for as many as 250,000 legal immigrants under the SSI program. Even more immigrants would be affected when the other federal programs are considered. These are individuals who have already entered the country and "played by the rules." We do not support penalizing this group.

Mr. Chairman, we want to work with you on bipartisan immigration enforcement legislation that is in the national interest. We are pleased to see that S. 269 incorporates many of the provisions in S. 754. We look forward to working with you to address the core issues of worksite enforcement, border control, criminal alien deportation and comprehensive immigration law enforcement.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Markus for".

Kent Markus
Acting Assistant Attorney General