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Brian A. Barreto

11/08/99 11:18:58 AM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP, Maria Echaveste/WHO/EOP@EOP, Mickey Ibarra/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: INS Restructuring 

Accordong to Lisa the following groups and idividuals will participate on the call at 1:30pm today.

✓ Lisa Sugar - National Immigration Forum
Frank Sherry - National Immigration Forum *Angel*
✓ Kevin Applebee - US Catholic Conference
Mike Hill - US Catholic Conference
✓ Judy Golib - ALA
✓ Mark Hetfield - HIAS
Roslynn Gold - NALEO
Marcela Urruta - NCLR
✓ Bob Sakiniwa - Leadership Conference on Civil Rights
✓ Jane Park - NAPALC
✓ Jeff Landee - UJC
Diana Aviv - UJC
Ellen Witman - UJC
Irene Bueno
Irene Bueno

Irene Bueno

 11/08/99 11:00:13 AM

Record Type: Record

To: Brian A. Barreto/WHO/EOP@EOP
cc:
bcc:
Subject: Re: INS Restructuring 

Please call Lisa Sugar 544-0004 ext 41 - she has the list of the participants for the call today and let me know who will be on the call. Thanks.
Brian A. Barreto

Brian A. Barreto

11/08/99 09:32:03 AM

Record Type: Record

**THE HEBREW IMMIGRANT AID SOCIETY**

1640 Rhode Island Avenue N.W.
Washington, D.C. 20036-3278
(202) 828-5115
Fax: (202) 828-4144

TIME-SENSITIVE

To: Irene Bueno, Special Assistant to the President for Domestic Policy
(202-456-2878)

From: Mark Hetfield, Washington Representative, HIAS *Mark*

Subject: Refugee Groups' Position on INS Restructuring

Date: November 8, 1999

Pages: 4 (plus cover page)

Irene --

Attached is a sign-on letter (sent to all members of the Senate and House Judiciary Committees) from last week concerning issues of importance to the refugee community in INS restructuring.

I hope this will be useful as you work on this issue. Please note that the position taken by the refugee agencies on INS restructuring is consistent with the Abraham-Kennedy and the Jackson-Lee bills, but not with the Rogers-Reyes-Smith bills, nor with the position taken by the Department of Justice.

Thank you very much. Please call me if I can be helpful.

NOV-08-99 10:10 From:Crystal City Courtyard

7035497440

T-230 P.02/05 Job-152

InterAction

American Council for Voluntary International Action

November 4, 1999

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Byron Scheuneman,
Adventist Development and Relief Agency
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Sandra Swan,
Presiding Bishop's Fund for World Relief/
Episcopal Church
Bruce Waldman, World Vision

Ex Officio
Sam Evans, YMCA of the USA
Donald Hammond, World Relief Corporation
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Charles E. McCormack, Save the Children
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Representative Sheila Jackson Lee
410 Canon HOB
Washington, D.C. 20515

Dear Congresswoman Jackson Lee,

As national non-governmental organizations devoted to assisting asylum seekers and refugees, we are writing to express our views on the issue of the restructuring of the Immigration and Naturalization Service (INS) which, as you know, is now under Congressional consideration.

We all concur that a thoughtful restructuring of INS is a necessary first step toward making INS more accountable, effective, and service-oriented. We would, however, like to raise our concerns on those aspects of INS restructuring which could most seriously impact on the United States' ability to meet its international obligations under the 1951 Convention Relating to the Status of Refugees. In our opinion, some INS Restructuring proposals currently under consideration would so undermine procedural safeguards and accountability that they would lead to the United States delivering refugees and asylum seekers back into the hands of their persecutors.

INS Restructuring and Inspections

One contentious INS Restructuring issue is whether the immigration "inspections function" should be housed in an "immigration enforcement structure," or in an "immigration services (adjudications) structure." We urge you to work to ensure that the immigration inspections function, or at least final decision making authority to remove applicants for admission to the US, is not delegated to any immigration entity or division focused on police-like functions relating to immigration enforcement.

Inspections now falls under the jurisdiction of INS' "Office of Examinations" - the "services" division of INS. Indeed, the Inspections division serves and interfaces with millions of immigrants, visitors, and US citizens each year at ports of entry by "adjudicating" their applications for admission. For every person coming to the US through a "port of entry," inspectors must make the decision to (1) approve the applicant for admission; (2) refer the applicant for a credible fear interview or "deferred inspection;" or (3) deny the applicant admission, exclude her from the US, and

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InterAction is a membership association of US private voluntary organizations engaged in international humanitarian efforts including relief, development, refugee assistance, environment, population, public policy, and global education.

Jackson Lee-Page 2

order her removed with a five year bar to reapplying. These are clearly "adjudications." Indeed, prior to 1997, only immigration judges had the authority to order applicants excluded or deported.

Although inspectors clearly have service and adjudication functions, they also carry firearms and are entrusted with enforcement responsibilities, such as searching persons, vessels, and aircraft; collecting evidence and taking sworn statements from applicants and from witnesses; referring aliens for secondary inspection and, ultimately, for removal proceedings; and detaining or assisting with the physical removal of aliens. In sum, the inspections function is a hybrid of immigration adjudications and enforcement.

From a refugee protection viewpoint, it would be dangerous to simply move the "inspections box" to the Enforcement side of the Immigration function, without first examining what is inside of that box. For example, while we feel that the procedural deficiencies of the "expedited removal" process already put asylum seekers at risk of being returned to their persecutors without a fair hearing, at least some procedural safeguards have been put in place due primarily to the INS Asylum Corps' ability to engage in the policy development and field implementation of the expedited removal process. An INS Restructuring which would place inspections in an "enforcement" bureaucracy would all but sever this important link of the asylum corps to expedited removal.

Likewise, expedited removal gives immigration inspectors the ability to question the credibility of refugees (as well as other immigrants and visitors) who are at ports of entry after having been granted status by INS. Inspectors, in second guessing decisions of INS adjudication officers, could refuse refugees entry to the United States. While inspectors are required to refer those who claim to face persecution for credible fear interviews before "expeditiously removing" them, there is no monitoring to ensure that refugees are not, in fact, returned to their persecutors. While such issues are now, albeit problematically, addressed through the existing ties between INS' Adjudications offices and Inspections, bona fide approved refugees will be at greater risk once the link between the enforcement and adjudications bureaus has been severed or blurred by a restructuring.

In sum, by taking Inspections out of the Examinations side of INS and placing it in a bureaucracy exclusively focused on enforcement, there would be no checks or balances to ensure that inspectors do not remove and impose severe penalties on bona fide refugees, asylum seekers, and immigrants. Such a restructuring would represent a failure to respect our constitutional tradition of ensuring that prosecutors and police do not exercise judicial authority, and would result in two bureaucracies having inconsistent interpretations of the same laws concerning eligibility for admission to the US.

The most effective solution would be to repeal or severely limit expedited removal to ensure that enforcement personnel cannot also issue unreviewable judgments which could have a life-and-death impact on those who are fleeing persecution. At the very least, Congress should ensure that a restructuring of the federal immigration function limits

Jackson Lee-Page 3

final adjudication authority to adjudication personnel well-versed in the rules of due process and refugee protection. Such authority must not be within the domain of law enforcement personnel.

We are concerned that H.R. 2528 ("the Rogers-Smith-Reyes Bill"), would place Inspections under the enforcement division of INS. In contrast, the relevant provisions of S. 1563 ("the Abraham-Kennedy-Hegel Bill") and H.R. 2680 ("the Jackson-Lee Bill") would more effectively protect those who are fleeing persecution by placing Inspections outside of the law enforcement cone of INS.

INS Restructuring and the Need for Unified Leadership

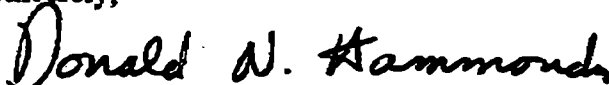
To see that inspectors and adjudicators are interpreting the same laws consistently, it is also essential to ensure that there is strong coordination and supervision in implementing a unified immigration policy. For that reason, we would urge that any restructuring of INS into two or more bureaucracies provide for strong leadership at the top, with a unified structure to develop policy and interpret the law.

Finance Issues and INS Restructuring

Finally, any restructuring of the INS must ensure that the adjudications side is fully funded, and should recognize the public benefits of immigration, refugee protection and naturalization by authorizing and appropriating funds over and above those provided by application fees. The adjudications function must be sufficiently funded to ensure that the current backlogs endured by refugee, immigrant, and naturalization applicants will not continue in INS' successor agency.

Thank you very much for your consideration. If we can be helpful in the restructuring effort, please let us know.

Sincerely,



Donald N. Hammond

Senior Vice President, WORLD RELIEF

Chair, Committee on Migration and Refugee Affairs

on behalf of the following agencies:

Bill Sage, Interim Director

CHURCH WORLD SERVICE/IMMIGRATION & REFUGEE PROGRAM

Tsehaye Teferra, Executive Director

ETHIOPIAN COMMUNITY DEVELOPMENT COUNCIL

Jackson Lee-Page 4

**C. Richard Parkins, Director
EPISCOPAL MIGRATION MINISTRIES**

**Leonard Glickman, Executive Vice President
HEBREW IMMIGRANT AID SOCIETY**

**Roger Winter, Executive Director
IMMIGRATION & REFUGEE SERVICES OF AMERICA**

**Reynold Levy, President
INTERNATIONAL RESCUE COMMITTEE**

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LUTHERAN IMMIGRATION AND REFUGEE SERVICE**

**Mark Franken, Director
MIGRATION & REFUGEE SERVICES /U.S. CATHOLIC CONFERENCE**

**Lionel Rosenblatt, President
REFUGEES INTERNATIONAL**

**KaYing Yang, Director
SOUTHEAST ASIA ACTION RESOURCE CENTER**

**Diana Aviv, Vice President for Public Policy
UNITED JEWISH COMMUNITIES**

**Mary Diaz, Executive Director
WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN**



Marcela Urrutia <murrutia@nclr.org>

11/05/99 04:43:05 PM

Record Type: Record

To: Irene Bueno/OPD/EOP

cc:

Subject: INS REORG

Hi Irene,

What a week!

Here are our general concerns:

With the rash of INS enforcement abuses, NCLR is particularly concerned with providing a means of accountability and remedies if misconduct occurs. Under the Smith language, the Office of Professional Responsibility and Quality Review does not have the authority to provide remedies if there are situations of misconduct. Sen. Abraham's bill included language that would be helpful if incorporated :

"There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility of receiving charges of misconduct or ill treatment made by the public and investigating the charges and providing an appropriate remedy or disposition."

Also, under the Smith bill (pg 50), there is language mandating a report on the goals for the number of cases prosecuted (both criminally and administratively) for each enforcement function. We would prefer this not be included but if it is, it must include language ensuring that civil rights are not infringed in the process of meeting goals.

Like the other groups, we're very concerned about having a strong person in charge , preferably titled Associate or something similar with an office of policy, general counsel, etc. We're also in line with the need for strong firewall language, the need to move inspections out of the enforcement side, etc. Also we are extremely concerned about transferring the detentions to the Bureau of Prisons. Since I know you've received language on the above, I won't elaborate unless you'd like.

Thanks for your help,

Marcela

For Immediate Release
Thursday, November 4, 1999

Contact:
Matthew Tallmer
Public Affairs Manager
Office: 202-216-2404
Fax: 202-371-9449
mtallmer@aila.org

H.R. 2528 Neither Reorganizes Nor Improves INS

WASHINGTON – A revised bill that would reform the Immigration and Naturalization Services fails on its face, according to the American Immigration Lawyers Association (AILA). The measure, H.R. 2528 – revised today by Representatives Harold Rogers (R-KY), Lamar Smith (R-TX), and Silvestre Reyes (D-TX) – would make it more difficult to enforce the nation's immigration laws, and cause even larger backlogs than the ones currently facing refugees seeking protection, people trying to reunite with their families, and businesses seeking to hire needed foreign professionals.

“AILA wants change at the INS, and is on record supporting efficient, effective and fair reform of the INS. However, any reorganization must provide for a single person in charge with clout who sets and supervises national immigration policy; separate, but coordinated, enforcement and adjudications functions; and adequate funding for adjudications that includes direct appropriated funds to supplement user fees. H.R. 2528 meets none of those principles,” said Jeanne Butterfield, AILA's Executive Director. “Those principles reflect the fact that INS reform is not about moving boxes on a flow chart. It is about hundreds of thousands of people who will be deeply affected by INS reorganization. That is why INS reform is too important not to do well.”

Butterfield also explained that, for some months, the sponsors of H.R. 2528 have been negotiating with Members of Congress and the Administration in an effort to address the concerns of AILA and other advocacy groups. “The revisions introduced today not only do not reflect any understandings reached during those negotiations, but take a major step backwards,” she said.

“As revised, the Immigration Reorganization and Improvement Act of 1999 neither reorganizes nor improves the INS. In fact, it would make things worse for the hundreds of thousands of people seeking to enter the U.S., reunite with their families, and for American companies trying to hire needed foreign professionals. For those reasons, AILA strongly opposes H.R. 2528,” Butterfield said.

38me9079

Leadership Conference Education Fund

1629 K Street, N.W., Suite 1010

Washington, DC 20006

(202) 466-3434

FAX MEMORANDUM

TO:

Irene Bueno

COMPANY:

FAX #:

466-5581

FROM:

Bob Sakaniwa, Immigration Policy Director

FAX:

202-466-3435

PHONE:

202-466-3434

E-MAIL:

sakaniwa@civilrights.org

DATE:

11/5/99NUMBER OF
PAGES:2

(following cover page)

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November 4, 1999

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The Honorable Janet Reno
Attorney General
Office of the Attorney General
Department of Justice
Tenth Street and Constitution Avenue, N.W.
Washington, D.C. 20503

Via Facsimile

Dear Attorney General Reno:

As you are aware there are two bills - S.1563 [Kennedy (D-MA) and Abraham (R-MI)] and H.R.2528 [Smith (R-TX), Rogers (R-KY) and Reyes (D-TX)] which propose a reorganization of the Immigration and Naturalization Service (INS). We understand that the House Immigration Subcommittee intends to begin mark-up of H.R. 2528 today.

We are in agreement that the INS is in need of fundamental reform to address the multiple problems confronting the agency in both services and enforcement. However, we are writing to express our serious concern over the possible creation of a new Associate Attorney General position for Immigration Affairs. While the House bill currently does not contain such a proposal, our understanding is that there are negotiations to amend the House bill with a provision that would create the position of Associate Attorney General for Immigration Affairs.

We agree that the immigration head must be given greater clout and visibility within the Department of Justice (DOJ) structure, and that this position must be elevated to guarantee meaningful reform. However, we oppose the creation of an "Associate Attorney General" title for immigration matters because of the potential negative implications for civil rights enforcement.

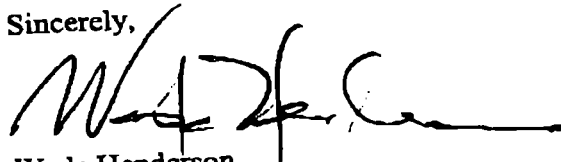
Our first concern is that creating an "Associate Attorney General" for immigration, while not directly attacking the Civil Rights Division (CRD) of DOJ, nonetheless could have the effect of diminishing its role and stature within the overall structure of the DOJ. Secondly, placing the immigration head above and beyond the reach of the Assistant Attorney General for Civil Rights within the DOJ hierarchy could severely undermine the ability of the CRD to monitor the immigration agency

The Honorable Janet Reno
November 4, 1999
Page two

for civil rights violations and concerns. It would also severely undermine the ability of the Assistant Attorney General for Civil Rights to coordinate policy-making decisions with the immigration head on issues where immigration and civil rights overlap.

Therefore, we are amenable to titles such as Chief Executive or Administrator for the new head of a restructured INS and oppose giving that position the title of "Associate Attorney General." We strongly urge you to support a title other than Associate Attorney General for the head of a much needed reorganized immigration affairs entity within the Department of Justice.

Sincerely,



Wade Henderson
Executive Director

106TH CONGRESS
1ST SESSION

H. R. 2528

To establish the Bureau of Immigration Services and the Bureau of Immigration Enforcement within the Department of Justice.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 1999

Mr. ROGERS (for himself, Mr. SMITH of Texas, Mr. REYES, Mr. BARR of Georgia, Mr. BARRETT of Nebraska, Mr. BECERRA, Mr. BENTSEN, Mr. BILBRAY, Mr. BONILLA, Mrs. BONO, Mr. BOSWELL, Mr. BOYD, Mr. BRADY of Texas, Mr. CALLAHAN, Mr. CANADY of Florida, Mr. CANNON, Mrs. CAPPS, Mr. CHAMBLISS, Mr. CLEMENT, Mr. COLLINS, Mr. CONDIT, Mr. COSTELLO, Mr. CUNNINGHAM, Mr. DAVIS of Illinois, Mr. DEAL of Georgia, Mr. DOOLEY of California, Mr. DUNCAN, Mr. EDWARDS, Mr. FARR of California, Mr. FILNER, Mr. FORD, Mrs. FOWLER, Mr. GALLEGLY, Mr. GONZALEZ, Mr. GOODLATTE, Ms. GRANGER, Mr. GREEN of Texas, Mr. HINOJOSA, Mr. HOBSON, Mr. HUNTER, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. KINGSTON, Mr. KOLBE, Mr. LATHAM, Mr. LEWIS of California, Mr. LEWIS of Kentucky, Mr. MARTINEZ, Mr. METCALF, Mr. MILLER of Florida, Mr. MINGE, Mrs. NAPOLITANO, Mr. ORTIZ, Mr. PACKARD, Mr. PASTOR, Mr. ROHRBACHER, Mr. ROMERO-BARCELÓ, Mr. ROTHMAN, Mr. ROYCE, Mr. SENSENBRENNER, Mr. SHERMAN, Mr. SKEEN, Mr. SNYDER, Mr. SPRATT, Mr. STUMP, Mr. SUNUNU, Mr. TRAFICANT, Mr. TURNER, Mr. UNDERWOOD, Mr. WAMP, Mr. WELDON of Pennsylvania, and Mr. WHITFIELD) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish the Bureau of Immigration Services and the Bureau of Immigration Enforcement within the Department of Justice.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Immigration Reorganization and Improvement Act of
 6 1999”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
 8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Establishment of Bureau of Immigration Services.
- Sec. 3. Establishment of Bureau of Immigration Enforcement.
- Sec. 4. Exercise of authorities.
- Sec. 5. Savings provisions.
- Sec. 6. Transfer and allocation of appropriations and personnel.
- Sec. 7. Statutory construction.
- Sec. 8. Reports and implementation plans.
- Sec. 9. Definitions.
- Sec. 10. Effective date; transition.

9 **SEC. 2. ESTABLISHMENT OF BUREAU OF IMMIGRATION**
 10 **SERVICES.**

11 (a) **ESTABLISHMENT OF BUREAU.**—

12 (1) **IN GENERAL.**—There is established in the
 13 Department of Justice a bureau to be known as the
 14 Bureau of Immigration Services (in this section re-
 15 ferred to as the “Service Bureau”).

16 (2) **DIRECTOR.**—The head of the Service Bu-
 17 reau shall be the Director of the Bureau of Immi-
 18 gration Services who—

19 (A) shall be appointed by the President, by
 20 and with the advice and consent of the Senate;

(B) shall report directly to the Attorney General or her delegate; and

(C) shall have a minimum of 10 years experience in providing services or processing applications for benefits, or both, with at least 5 of those years in management, or shall have comparable management experience.

(3) COMPENSATION.—Such Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule (as listed in section 5315 of title 5, United States Code).

(4) FUNCTIONS.—Such Director shall perform such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law.

(b) TRANSFER OF FUNCTIONS.—There are transferred from the Commissioner of the Immigration and Naturalization Service to the Director of the Bureau of Immigration Services all functions performed under the following programs, and all personnel, infrastructure, and funding provided to the Commissioner in support of such programs immediately before the effective date of this section:

(1) Adjudications of nonimmigrant and immigrant visa petitions.

1 (2) Adjudications of naturalization petitions.

2 (3) Adjudications of asylum and refugee appli-
3 cations.

4 (4) Adjudications performed at Service centers.

5 (5) All other adjudications under the Immigra-
6 tion and Nationality Act performed by the Immigra-
7 tion and Naturalization Service as of the date of the
8 enactment of this Act.

9 (c) **CHIEF FINANCIAL OFFICER FOR THE BUREAU OF**
10 **IMMIGRATION SERVICES.**—There shall be a position of
11 Chief Financial Officer for the Bureau of Immigration
12 Services and this position shall be a career reserved posi-
13 tion within the Senior Executive Service and shall have
14 the authorities and functions described in section 902 of
15 title 31, United States Code, in relation to financial activi-
16 ties of the Service Bureau. The provisions of section 903
17 of such title (relating to Deputy Chief Financial Officers)
18 shall also apply to such Bureau in the same manner as
19 the previous sentence applies to such Bureau.

20 (d) **REFERENCES.**—With respect to any function
21 transferred from the Commissioner of the Immigration
22 and Naturalization Service by this section or Act to, and
23 exercised on or after the effective date of this section by,
24 the Services Bureau, reference in any other Federal law,
25 Executive order, rule, regulation, or delegation of author-

1 ity, or any document

2 which a function is so

3 (1) to the b

4 to the Director o

5 ices; or

6 (2) to such

7 Services Bureau

8 **SEC. 3. ESTABLISHMENT**

9 **FORCEM**

10 (a) **ESTABLISHMENT**

11 (1) **IN GENERAL**

12 Department of J

13 Bureau of Immig

14 referred to as the

15 (2) **DIRECTOR**

16 Bureau shall be t

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BUREAU OF IMMIGRATION EN-

BUREAU.—

There is established in the
bureau to be known as the
Enforcement (in this section
cement Bureau”).

he head of the Enforcement
ector of the Bureau of Immi-

ointed by the President, by
and consent of the Senate;

at directly to the Attorney
ate; and

a minimum of 10 years' ex-
rcement, with at least 5 of
gement, or shall have com-
experience.

1 (3) COMPENSATION.—Such Director shall be
2 paid at the rate of basic pay payable for level IV of
3 the Executive Schedule (as listed in section 5315 of
4 title 5, United States Code).

5 (4) FUNCTIONS.—Such Director shall perform
6 such functions as are transferred to the Director by
7 this section or Act or otherwise vested in the Direc-
8 tor by law.

9 (b) TRANSFER OF FUNCTIONS.—There are trans-
10 ferred from the Commissioner of the Immigration and
11 Naturalization Service to the Director of the Bureau of
12 Immigration Enforcement all functions performed under
13 the following programs, and all personnel, infrastructure,
14 and funding provided to the Commissioner in support of
15 such programs immediately before the effective date of
16 this section:

17 (1) The Border Patrol program.

18 (2) The detention and deportation program.

19 (3) The intelligence program.

20 (4) The investigations program.

21 (5) The inspections program.

22 (c) CHIEF FINANCIAL OFFICER FOR THE BUREAU OF
23 IMMIGRATION ENFORCEMENT.—There shall be a position
24 of Chief Financial Officer for the Bureau of Immigration
25 Enforcement and this position shall be a career reserved

1 position within the Senior Executive Service and shall
2 have the authorities and functions described in section 902
3 of title 31, United States Code, in relation to financial
4 activities of the Enforcement Bureau. The provisions of
5 section 903 of such title (relating to Deputy Chief Finan-
6 cial Officers) shall also apply to such Bureau in the same
7 manner as the previous sentence applies to such Bureau.

8 (d) REFERENCES.—With respect to any function
9 transferred from the Commissioner of the Immigration
10 and Naturalization Service by this section or Act to, and
11 exercised on or after the effective date of this section by,
12 the Director of the Bureau of Immigration Enforcement,
13 any reference in any other Federal law, Executive order,
14 rule, regulation, or delegation of authority, or any docu-
15 ment of or pertaining to an office from which a function
16 is so transferred—

17 (1) to the head of such office is deemed to refer
18 to the Director of the Bureau of Immigration En-
19 forcement; or

20 (2) to such office is deemed to refer to the En-
21 forcement Bureau.

22 **SEC. 4. EXERCISE OF AUTHORITIES.**

23 Except as otherwise provided by law, a Federal offi-
24 cial to whom a function is transferred by this Act may,
25 for purposes of performing the function, exercise all au-

1 thorities under any other provision of law that were avail-
2 able with respect to the performance of that function to
3 the official responsible for the performance of the function
4 immediately before the effective date of the transfer of the
5 function under this Act.

6 **SEC. 5. SAVINGS PROVISIONS.**

7 (a) **LEGAL DOCUMENTS.**—All orders, determinations,
8 rules, regulations, permits, grants, loans, contracts, agree-
9 ments, certificates, licenses, and privileges—

10 (1) that have been issued, made, granted, or al-
11 lowed to become effective by the President, the At-
12 torney General, the Commissioner of the Immigra-
13 tion and Naturalization Service, their delegates, or
14 any other Government official, or by a court of com-
15 petent jurisdiction, in the performance of any func-
16 tion that is transferred by this Act; and

17 (2) that are in effect on the effective date of
18 such transfer (or become effective after such date
19 pursuant to their terms as in effect on such effective
20 date);

21 shall continue in effect according to their terms until
22 modified, terminated, superseded, set aside, or revoked in
23 accordance with law by the President, any other author-
24 ized official, a court of competent jurisdiction, or operation
25 of law.

1 (b) PROCEEDINGS.—Sections 2 and 3 and this sec-
2 tion shall not affect any proceedings or any application
3 for any benefits, service, license, permit, certificate, or fi-
4 nancial assistance pending on the effective date specified
5 in section 10 before an office whose functions are trans-
6 ferred by this Act, but such proceedings and applications
7 shall be continued. Orders shall be issued in such pro-
8 ceedings, appeals shall be taken therefrom, and payments
9 shall be made pursuant to such orders, as if this Act had
10 not been enacted, and orders issued in any such pro-
11 ceeding shall continue in effect until modified, terminated,
12 superseded, or revoked by a duly authorized official, by
13 a court of competent jurisdiction, or by operation of law.
14 Nothing in this section shall be considered to prohibit the
15 discontinuance or modification of any such proceeding
16 under the same terms and conditions and to the same ex-
17 tent that such proceeding could have been discontinued
18 or modified if this section had not been enacted.

19 (c) SUITS.—This Act shall not affect suits com-
20 menced before the effective date specified in section 10,
21 and in all such suits, proceeding shall be had, appeals
22 taken, and judgments rendered in the same manner and
23 with the same effect as if this Act had not been enacted.

24 (d) NONABATEMENT OF ACTIONS.—No suit, action,
25 or other proceeding commenced by or against the Depart-

1 ment of Justice or the Immigration and Naturalization
2 Service, or by or against any individual in the official ca-
3 pacity of such individual as an officer or employee in con-
4 nection with a function transferred by this section, shall
5 abate by reason of the enactment of this Act.

6 (e) CONTINUANCE OF SUITS.—If any Government of-
7 ficer in the official capacity of such officer is party to a
8 suit with respect to a function of the officer and under
9 this Act such function is transferred to any other officer
10 or office, then such suit shall be continued with the other
11 officer or the head of such other office, as applicable, sub-
12 stituted or added as a party.

13 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-
14 VIEW.—Except as otherwise provided by this Act, any
15 statutory requirements relating to notice, hearings, action
16 upon the record, or administrative or judicial review that
17 apply to any function transferred by this Act shall apply
18 to the exercise of such function by the head of the office,
19 and other officers of the office, to which such function is
20 transferred by such section.

21 **SEC. 6. TRANSFER AND ALLOCATION OF APPROPRIATIONS**
22 **AND PERSONNEL.**

23 (a) IN GENERAL.—The personnel of the Department
24 of Justice employed in connection with the functions
25 transferred by this section (and functions that the Attor-

1 new General determin
2 tions of the Bureau
3 of Immigration Enfor
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7 tions, and other funds
8 available to, or to be
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11 Budget and Accountin
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13 Director of the Burea
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15 tively. Unexpended fun
16 section shall be used
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18 Attorney General shall
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20 Act for a period of 2 y
21 ment of the Bureaus.

22 (b) EFFECT ON P

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subject to section 202 of the
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appropriate allocation by the
migration Services and Di-
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the purposes for which the
zed and appropriated. The
he right to adjust or realign
nel effected pursuant to this
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EL.—

INDIVIDUAL EMPLOYEES.—The
full-time personnel (except
loyees) and part-time per-

1 personnel holding permanent positions shall not cause
2 any such employee to be separated or reduced in
3 grade or compensation for 1 year after the date of
4 transfer to the Bureau involved.

5 (2) COMPENSATION LEVELS.—All transfers of
6 personnel under this Act shall be consistent with em-
7 ployee pay and grade retention entitlement under
8 subchapter VI of chapter 53 of title 5, United States
9 Code, and shall not be reduced for any individual in
10 a career position in the civil service, as of the date
11 of the enactment of this Act.

12 (3) SENIOR EXECUTIVE SERVICE.—A person
13 who, on the day preceding the effective date in sec-
14 tion 10, holds a career Senior Executive Service po-
15 sition in the Immigration and Naturalization Service
16 shall be appointed, without a break in service, to a
17 similar or like position in the Bureau of Immigration
18 Services or the Bureau of Immigration Enforcement
19 if the person meets the minimum qualifications of
20 such position.

21 (c) NUMBER OF AUTHORIZED PERSONNEL.—Noth-
22 ing in this Act shall be interpreted to decrease the number
23 of authorized positions within each program as it exists
24 on the date of the enactment of this Act in the Immigra-
25 tion and Naturalization Service.

1 (d) DELEGATION AND ASSIGNMENT.—Except as oth-
2 erwise expressly prohibited by law or otherwise provided
3 in this Act, the Director of the Bureau of Immigration
4 Services and the Director of the Bureau of Immigration
5 Enforcement to whom functions are transferred under this
6 Act may delegate any of the functions so transferred to
7 such officers and employees of the Bureau of Immigration
8 Services and the Bureau of Immigration Enforcement, re-
9 spectively, as such Director may designate, and may au-
10 thorize successive redelegations of such functions as may
11 be necessary or appropriate. No delegation of functions
12 under this subsection or under any other provision of this
13 Act shall relieve the official to whom a function is trans-
14 ferred under this Act of responsibility for the administra-
15 tion of the function.

16 (e) AUTHORITIES OF ATTORNEY GENERAL.—

17 (1) INCIDENTAL TRANSFERS.—The Attorney
18 General (or a delegate of the Attorney General), at
19 such time or times as the Attorney General (or the
20 delegate) shall provide, may make such determina-
21 tions as may be necessary with regard to the func-
22 tions transferred by this Act, and to make such ad-
23 ditional incidental dispositions of personnel, assets,
24 liabilities, grants, contracts, property, records, and
25 unexpended balances of appropriations, authoriza-

1 tions, allocations, and other funds held, used, arising
2 from, available to, or to be made available in connec-
3 tion with such functions, as may be necessary to
4 carry out the provisions of this Act. The Attorney
5 General shall provide for such further measures and
6 dispositions as may be necessary to effectuate the
7 purposes of this Act.

8 (2) TREATMENT OF SHARED RESOURCES.—The
9 Attorney General is authorized to provide for an ap-
10 propriate allocation, or coordination, or both, of re-
11 sources involved in supporting shared support func-
12 tions for the Bureau of Immigration Services, the
13 Bureau of Immigration Enforcement, and offices
14 within the Department of Justice. Such shared sup-
15 port functions may include information resources
16 management, human resources and training, secu-
17 rity, records and forms management, equal oppor-
18 tunity activities, and facilities and procurement ad-
19 ministration. The Attorney General, through the
20 Justice Management Division, shall maintain over-
21 sight and control over the shared computer data-
22 bases and systems and records management.

23 **SEC. 7. STATUTORY CONSTRUCTION.**

24 Nothing in this Act may be construed to preclude or
25 limit in any way the powers, authorities, or duties of the

1 Secretary of State and special agents of the Department
2 of State and the Foreign Service under the State Depart-
3 ment Basic Authorities Act of 1956, the Immigration and
4 Nationality Act, or any other Act to investigate illegal
5 passport or visa issuance or use.

6 **SEC. 8. REPORTS AND IMPLEMENTATION PLANS.**

7 (a) DIVISION OF FUNDS.—The Attorney General, not
8 later than 120 days after the date of the enactment of
9 this Act, shall submit to the Committees on Appropria-
10 tions of the House of Representatives and of the Senate
11 a report on the proposed division and transfer of funds,
12 including unexpended funds, appropriations, and fees, be-
13 tween the Bureau of Immigration Services and the Bureau
14 of Immigration Enforcement. Not later than 60 days after
15 the date of submittal of such report, each Bureau shall
16 submit to such Committees an operating plan of resources
17 allocated, by object class and decision unit structure.

18 (b) DIVISION OF PERSONNEL.—The Attorney Gen-
19 eral, not later than 120 days after the date of the enact-
20 ment of this Act, shall submit to the Committees on Ap-
21 propriations and the Judiciary of the House of Represent-
22 atives and of the Senate a report on the proposed division
23 of personnel between such Bureaus.

24 (c) IMPLEMENTATION PLAN.—The Attorney General,
25 not later than 120 days after the date of the enactment

1 of this Act, shall submit to the Committees on Appropria-
2 tions and the Judiciary of the House of Representatives
3 and of the Senate a plan to carry out this Act. The plan
4 should include details concerning the separation of the Bu-
5 reaus and address the issues of chain of command, shared
6 services, file and data management and oversight, finan-
7 cial management systems, procedures for interaction be-
8 tween the two Bureaus, fraud detection and investigation,
9 organizational structure, and establishment of a transition
10 team. The plan should also include ways to phase in the
11 costs of separating the administration support systems of
12 the Immigration and Naturalization Service in order to
13 provide for separate administrative support systems for
14 such Bureaus where such systems are best provided for
15 separately.

16 (d) DETENTION.—The Attorney General shall, not
17 later than 180 days after the date of the enactment of
18 this Act, submit to the Committees on Appropriations of
19 the House of Representatives and of the Senate a plan
20 to transfer the detention operations of the Bureau of Im-
21 migration Enforcement (established under section 3) to
22 the Federal Prison System. The plan should specifically
23 address the detention of criminal aliens, non-criminal
24 aliens, and asylum seekers and should outline the steps

1 necessary for the trans
2 after the date the plan

3 **SEC. 9. DEFINITIONS.**

4 For purposes of th

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7 lege, activity, or p

8 (2) The term
9 ministration, agen
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11 **SEC. 10. EFFECTIVE DATE**

12 The transfer of fu
13 effect on the date that is
14 ment of this Act. The B
15 the Bureau of Immigra
16 lished, and the Directo
17 pointed, not later than
18 that functions to be tra
19 reaus under this Act co
20 migration and Naturali
21 2000, the Attorney Ge
22 priate accounting of fun
23 funds appropriated to th
24 Service to such respectiv

cur not later than 4 years
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on" includes any duty, ob-
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' includes any office, ad-
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SITION.

under this Act shall take
after the date of the enact-

Immigration Services and
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ective date. To the extent
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Service during fiscal year
all provide for an appro-
an appropriate transfer of
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HR 2680 IH

106th CONGRESS

1st Session

H. R. 2680

To replace the Immigration and Naturalization Service with the National Immigration Bureau, to separate the immigration enforcement and adjudication functions performed by officers and employees of the Bureau reporting to the Director, to amend the Immigration and Nationality Act to restore eligibility for adjustment of status under section 245(i) of that Act and to restructure the use of fees collected for providing adjudication and naturalization services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

August 3, 1999

Ms. JACKSON-LEE of Texas (for herself, Mr. CONYERS, Mr. BERMAN, Mr. GUTIERREZ, and Mr. MEEHAN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To replace the Immigration and Naturalization Service with the National Immigration Bureau, to separate the immigration enforcement and adjudication functions performed by officers and employees of the Bureau reporting to the Director, to amend the Immigration and Nationality Act to restore eligibility for adjustment of status under section 245(i) of that Act and to restructure the use of fees collected for providing adjudication and naturalization services, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Immigration Restructuring and Accountability Act of 1999'.

TITLE I--NATIONAL IMMIGRATION BUREAU

SEC. 101. ESTABLISHMENT OF NATIONAL IMMIGRATION BUREAU.

(a) NATIONAL IMMIGRATION BUREAU; DIRECTOR--

(1) IN GENERAL- There is established in the Department of Justice a bureau to be known as the National Immigration Bureau (in this Act referred to as the 'Bureau').

(2) DIRECTOR- The head of the Bureau shall be the Director of the National Immigration Bureau (in this Act referred to as the 'Director') who--

(A) shall be a citizen of the United States;

(B) shall be appointed by the President, by and with the advice and consent of the Senate; and

(C) shall report directly to the Attorney General or the Attorney General's delegate.

(3) COMPENSATION- Such Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule (as listed in section 5315 of title 5, United States Code).

(4) FUNCTIONS- Such Director--

(A) shall be charged with any and all responsibilities and authority in the administration of the Bureau and of the Immigration and Nationality Act which are conferred upon the Attorney General as may be delegated to the Director by the Attorney General or which may be prescribed by the Attorney General; and

(B) shall perform such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law.

(b) ASSISTANT DIRECTOR FOR COMMUNITY LIAISON- Within the Office of the Director of the National Immigration Bureau, there shall be an Assistant Director for Community Liaison. The Assistant Director shall be charged with any and all responsibilities and authority which are conferred upon the Director as may be delegated to him or her by the Director, or which may be prescribed by the Director, relating to the following:

(1) Accountability of the Bureau to the communities it serves.

(2) Communication between the Director and such communities.

(3) Resolution of issues and concerns that cannot be resolved at a local level or through ordinary administrative channels.

(c) TRANSFER OF FUNCTIONS- There are transferred from the Commissioner of the Immigration and Naturalization Service to the Director of the National Immigration Bureau all functions performed by the Commissioner, and all personnel, infrastructure, and funding provided to the Commissioner, immediately before the effective date of this section.

(d) REFERENCES- With respect to any function transferred from the Commissioner of the Immigration and Naturalization Service by this section or Act to, and exercised on or after the effective date of this section by, the Bureau, reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to an office from which a function is so transferred--

(1) to the head of such office is deemed to refer to the Director of the National Immigration Bureau; or

(2) to such office is deemed to refer to the Bureau.

SEC. 102. OFFICES WITHIN NATIONAL IMMIGRATION BUREAU.

(a) IN GENERAL- Within the National Immigration Bureau there shall be the following offices, each office to be headed by a deputy director:

(1) The Office of Immigration Adjudications.

(2) The Office of Immigration Enforcement.

(3) The Office of Prehearing Services.

(4) The Office of Shared Services.

(b) OFFICE OF IMMIGRATION ADJUDICATIONS-

(1) IN GENERAL- The Deputy Director for Immigration Adjudications shall be charged with any and all responsibilities and authority which are conferred upon the Director of the National Immigration Bureau as may be delegated to the Deputy Director by the Director, or which may be prescribed by the Director, relating to any of the functions described in paragraphs (3) through (5).

(2) DIVISIONS- Within the Office of Immigration Adjudications there shall be the following divisions, each division to be headed by a division chief:

(A) The Division of Adjudications.

(B) The Division of Refugees, Asylum, Parole, and Humanitarian Affairs.

(C) The Division of Community Relations.

(3) DIVISION OF ADJUDICATIONS- The Division Chief of the Division of Adjudications shall be charged with any and all responsibilities and authority which are conferred upon the Deputy Director for Immigration Adjudications as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to the following functions:

(A) Adjudication of petitions for immigrant or nonimmigrant status.

(B) Adjudication of applications for naturalization.

(C) Inspections, and adjudications of applications for admission, at a port of entry.

(D) All other adjudications under the Immigration and Nationality Act performed by the Immigration and Naturalization Service as of the effective date in section 401(a).

(4) DIVISION OF REFUGEES, ASYLUM, PAROLE, AND HUMANITARIAN AFFAIRS- The Division Chief of the Division of Refugees, Asylum, Parole, and Humanitarian Affairs shall be charged with any and all responsibilities and authority which are conferred upon the Deputy Director for Immigration Adjudications as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to the following functions:

(A) Adjudication of petitions and applications for admission as a refugee, asylum, or parole into the United States.

(B) Liaison with international organizations concerned with the protection of refugees and asylum seekers.

(5) DIVISION OF COMMUNITY RELATIONS- The Division Chief of the Division of Community Relations shall be charged with any and all responsibilities and authority which are conferred upon the Deputy Director for Immigration Adjudications as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to community relations.

(c) OFFICE OF IMMIGRATION ENFORCEMENT-

(1) IN GENERAL- The Deputy Director for Immigration Enforcement shall be charged with any and all responsibilities and authority which are conferred upon the Director of the National Immigration Bureau as may be delegated to the Deputy Director by the Director, or which may be prescribed by the Director, relating to any of the functions described in paragraphs (3) through (6).

(2) DIVISIONS- Within the Office of Immigration Enforcement there shall be the following divisions, each division to be headed by a division chief:

- (A) The Border Patrol Division.
- (B) The Division of Removal.
- (C) The Division of Intelligence and Investigations.
- (D) The Division of Community Relations.

(3) BORDER PATROL DIVISION- The Division Chief of the Border Patrol Division shall be charged with any and all responsibilities and authority which are conferred upon the Deputy Director for Immigration Enforcement as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to the following functions:

- (A) Border control and enforcement (excluding inspections or adjudications at ports of entry).
- (B) All other functions performed by the United States Border Patrol as of the effective date in section 401(a).

(4) DIVISION OF REMOVAL- The Division Chief of the Division of Removal shall be charged with any and all responsibilities and authority which are conferred upon the Deputy Director for Immigration Enforcement as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to implementing the removal of deportable and inadmissible aliens from the United States (excluding inspections or adjudications relating to such removals).

(5) DIVISION OF INTELLIGENCE AND INVESTIGATIONS- The Division Chief of the Division of Intelligence and Investigations shall be charged with any and all responsibilities and authority which are conferred upon the Deputy Director for Immigration Enforcement as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to intelligence and investigations (including fraud detection and investigation).

(6) DIVISION OF COMMUNITY RELATIONS- The Division Chief of the Division of Community Relations shall be charged with any and all responsibilities and authority which are conferred upon the

Deputy Director for Immigration Enforcement as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to community relations.

(d) OFFICE OF PREHEARING SERVICES-

(1) IN GENERAL- The Deputy Director for Prehearing Services shall be charged with any and all responsibilities and authority which are conferred upon the Director of the National Immigration Bureau as may be delegated to the Deputy Director by the Director, or which may be prescribed by the Director, relating to any of the functions described in paragraphs (3) through (6).

(2) DIVISIONS- Within the Office of Prehearing Services there shall be the following divisions, each division to be headed by a division chief:

- (A) The Division of Detention.

(B) The Division of Alternatives to Detention.

(C) The Division of Prehearing Services.

(D) The Division of Community Relations.

(3) DIVISION OF DETENTION- The Division Chief of the Division of Detention shall be charged with any and all responsibilities and authority which are conferred upon the Deputy Director for Prehearing Services as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to detention of aliens (including criminal aliens, noncriminal aliens, and asylum seekers) pending completion of adjudications and appeals or pending removal from the United States. Such responsibilities and authority shall be subject to section 301.

(4) DIVISION OF ALTERNATIVES TO DETENTION- The Division Chief of the Division of Alternatives to Detention shall be charged with any and all responsibilities and authority which are conferred upon the Deputy Director for Prehearing Services as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to alternatives to detention of aliens pending completion of adjudications and appeals or pending removal from the United States (such as supervised release programs) and methods to ensure required appearances by aliens with respect to adjudications. Such responsibilities and authority shall be subject to section 301.

(5) DIVISION OF PREHEARING SERVICES- The Division Chief of the Division of Prehearing Services shall be charged with any and all responsibilities and authority which are conferred upon the Deputy Director for Prehearing Services as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to the following functions:

(A) Prehearing services for aliens.

(B) Access by aliens to legal representation in adjudications.

(6) DIVISION OF COMMUNITY RELATIONS- The Division Chief of the Division of Community Relations shall be charged with any and all responsibilities and authority which are conferred upon the Deputy Director for Prehearing Services as may be delegated to the Division Chief by the Deputy Director, or which may be prescribed by the Deputy Director, relating to community relations.

(e) OFFICE OF SHARED SERVICES- The Deputy Director for Shared Services shall be charged with any and all responsibilities and authority which are conferred upon the Director of the National Immigration Bureau as may be delegated to the Deputy Director by the Director, or which may be prescribed by the Director, relating to providing operational support to all offices of the Bureau (including coordination among such offices).

(f) SPECIAL RULE FOR LOCAL OFFICES- Any local office established to carry out the functions of the Office of Immigration Adjudications shall be separate from any local office established to carry out the functions of the Office of Immigration Enforcement. The preceding sentence shall not be construed to inhibit or preclude the coordination of functions by the Office of Immigration Adjudications and the Office of Immigration Enforcement, or by any local offices.

SEC. 103. EXERCISE OF AUTHORITIES.

Except as otherwise provided by law, a Federal official to whom a function is transferred by this Act may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official

responsible for the performance of the function immediately before the effective date of the transfer of the function under this Act.

SEC. 104. SAVINGS PROVISIONS.

(a) **LEGAL DOCUMENTS-** All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges--

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) **PROCEEDINGS-** This Act shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date in section 401(a) before an office whose functions are transferred by this Act, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or

by operation of law. Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) **SUITS-** This Act shall not affect suits commenced before the effective date in section 401(a), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(d) **NONABATEMENT OF ACTIONS-** No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred by this Act, shall abate by reason of the enactment of this Act.

(e) **CONTINUANCE OF SUITS-** If any Government officer, in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this Act such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) **ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW-** Except as otherwise provided by this Act, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this Act shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred by such section.

SEC. 105. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.

(a) **IN GENERAL-** The personnel of the Department of Justice employed in connection with the

functions transferred by this section (and functions that the Attorney General determines are properly related to the functions of the Bureau and would, if so transferred, further the purposes of the Bureau), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Bureau for appropriate allocation by the Director. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney General shall retain the right to adjust or realign transfers of funds and personnel effected pursuant to this Act.

(b) EFFECT ON PERSONNEL-

(1) EFFECT ON INDIVIDUAL EMPLOYEES- The transfer under this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Bureau.

(2) COMPENSATION LEVELS- All transfers of personnel under this Act shall be consistent with employee pay and grade retention entitlement under subchapter VI of chapter 53 of title 5, United States Code, and shall not be reduced for any individual in a career position in the civil service, as of the date of the enactment of this Act.

(3) SENIOR EXECUTIVE SERVICE- A person who, on the day preceding the effective date in section 401(a), holds a career Senior Executive Service position in the Immigration and Naturalization Service shall be appointed, without a break in service, to a similar or like position in the Bureau if the person meets the minimum qualifications of such position.

(4) ADOPTION OF EXISTING LABOR AGREEMENTS- The National Immigration Bureau shall adopt all labor agreements which are in effect, as of the day before the effective date in section 401(a), with respect to the Immigration and Naturalization Service. Each such agreement shall remain in effect for the 2-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree otherwise before such period ends.

(c) NUMBER OF AUTHORIZED PERSONNEL- Nothing in this Act shall be interpreted to decrease the number of authorized positions within each program as it exists on the date of the enactment of this Act in the Immigration and Naturalization Service.

(d) DELEGATION AND ASSIGNMENT- Except as otherwise expressly prohibited by law or otherwise provided in this Act, the Director may delegate any of the functions so transferred to such officers and employees of the Bureau as such Director may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this Act shall relieve the official to whom a function is transferred

under this Act of responsibility for the administration of the function.

(e) AUTHORITIES OF ATTORNEY GENERAL-

(1) INCIDENTAL TRANSFERS- The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary with regard to the functions transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be

made available in connection with such functions, as may be necessary to carry out the provisions of this Act. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(2) **TREATMENT OF SHARED RESOURCES-** The Attorney General shall provide for an appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the Bureau and other offices within the Department of Justice. Such shared support functions may include information resources management, human resources and training, security, records and forms management, equal opportunity activities, and facilities and procurement administration. The Attorney General, through the Justice Management Division, shall maintain oversight and control over the shared computer databases and systems and records management.

SEC. 106. STATUTORY CONSTRUCTION.

Nothing in this Act may be construed to preclude or limit in any way the powers, authorities, or duties of the Secretary of State and special agents of the Department of State and the Foreign Service under the State Department Basic Authorities Act of 1956, the Immigration and Nationality Act, or any other Act to investigate illegal passport or visa issuance or use.

SEC. 107. IMPLEMENTATION PLAN.

(a) **IN GENERAL-** The Attorney General, not later than one year after the date of the enactment of this Act, shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate an implementation plan that details, consistent with this Act, an organizational structure for the National Immigration Bureau at the national and local levels. Such structure shall ensure accountability by, and coordination among, the offices of the Bureau. The plan shall address the severe management problems within the Immigration and Naturalization Service on the date of the enactment of this Act by including provisions that will prevent these problems from being perpetuated within the National Immigration Bureau. The plan shall also address the issues of chain of command, shared services, file and data management and oversight, financial management systems, fraud detection and investigation, and establishment of a transition team.

(b) **CONSULTANT-** The Attorney General shall enter into a contract with a private entity specializing in management consulting requiring the entity to conduct a study of the management problems within the Immigration and Naturalization Service and to issue a report containing recommendations that will prevent these problems from being perpetuated within the National Immigration Bureau.

SEC. 108. DEFINITIONS.

For purposes of this title:

(1) The term 'function' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(2) The term 'office' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

TITLE II--AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT

SEC. 201. REMOVAL OF CERTAIN LIMITATIONS ON ELIGIBILITY FOR ADJUSTMENT OF STATUS UNDER SECTION 245(i).

Section 245(i)(1) of the Immigration and Nationality Act (8 U.S.C. 1255(i)(1)) is amended by striking '(i)(1)' through 'The Attorney General' and inserting the following:

`(i)(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States who--

`(A) entered the United States without inspection; or

`(B) is within one of the classes enumerated in subsection (c) of this section;

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General'.

SEC. 202. USE OF FEES FOR PROVIDING ADJUDICATION AND NATURALIZATION SERVICES.

(a) FINDING- The Congress finds that the policy of the United States is generally to fund naturalization activities under title III of the Immigration and Naturalization Act (8 U.S.C. 1401 et seq.) through the appropriation of sums under appropriations Acts.

(b) PROHIBITION ON IMPOSITION OF FEES ON ASYLUM OR REFUGEE APPLICANTS-

(1) REFUGEES- Section 207(c) of the Immigration and Nationality Act (8 U.S.C. 1157(c)) is amended by adding at the end the following:

`(5) The Attorney General may not impose a fee on an alien applying for admission as a refugee, or as a spouse or child accompanying or following to join such a refugee, in accordance with this section.'.

(2) ASYLUM- Section 208(a) of the Immigration and Nationality Act (8 U.S.C. 1158(a)) is amended by adding at the end the following:

`(4) PROHIBITION ON IMPOSITION OF FEE- The Attorney General may not impose a fee on an alien applying for asylum in accordance with this section or section 235(b), or a spouse or child applying to accompany or follow to join an alien granted asylum under subsection (b).'

(c) TREATMENT OF FEES FOR ADJUDICATION AND NATURALIZATION SERVICES- Subsections (m), (n), (o), and (p) of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) are amended to read as follows:

`(m) ADJUDICATION AND NATURALIZATION FEES- (1) Notwithstanding any other provisions of law except subsection (n), all immigration adjudication and naturalization fees as are designated by the Attorney General in regulations shall be deposited as offsetting receipts into one of the accounts established by this subsection, whether collected directly by the Attorney General or through clerks of courts, except that--

`(A) all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States and in Guam, under this subsection shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam; and

`(B) fees for providing immigration adjudication and naturalization services shall be set at a level that, taking into account the appropriations to carry out these activities, is not higher than the amount necessary to recover any balance of the cost of providing such services that is not funded through such appropriations (including, subject to subsection (o), the costs of similar services provided without charge to applicants for admission as a refugee, asylum applicants, or other immigrants).

`(2) Except as provided in paragraph (1), naturalization fees that are subject to paragraph (1) and

are imposed due to a lack of appropriated amounts shall be deposited as offsetting receipts into a separate account entitled 'Naturalization Fee Account' in the Treasury of the United States, and shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing naturalization services. Notwithstanding the preceding sentence, deposits into such account may not be expended for the costs of providing naturalization services, unless the Attorney General determines, in the Attorney General's discretion, that the appropriation to carry out these activities is inadequate to fully fund them.

`(3) Except as provided in paragraph (1), immigrant and nonimmigrant petition fees (excluding any fee collected at a port of entry) that are subject to paragraph (1) shall be deposited as offsetting receipts into a separate account entitled 'Immigrant and Nonimmigrant Fee Account' in the Treasury of the United States, and shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing services in connection with petitions for immigrant or nonimmigrant status.

`(4) Except as provided in paragraph (1), fees collected by the Attorney General at a port of entry that are subject to paragraph (1) shall be deposited as offsetting receipts into a separate account entitled 'Admission Fee Account' in the Treasury of the United States, and shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration inspection and adjudication services at ports of entry.

`(5) Except as provided in paragraph (1), all other immigration adjudication fees that are subject to paragraph (1) shall be deposited as offsetting receipts into a separate account entitled 'Miscellaneous Adjudication Fee Account' in the Treasury of the United States, and shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication services that are not described in paragraphs (2) through (4).

`(n) SPECIAL RULE FOR SECTION 245(i)- Fees remitted under section 245(i) shall be deposited as offsetting receipts into a separate account entitled '245(i) Application Fee Account' in the Treasury of the United States, and shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for functions performed by the Office of Immigration Adjudications of the National Immigration Bureau.

`(o) SPECIAL RULE FOR SERVICES PROVIDED WITHOUT CHARGE- Deposits into any account established under subsection (m) or (n) may not be expended for the costs of providing immigration adjudication and naturalization services without charge to applicants for admission as a refugee, asylum applicants, or other immigrants, unless the Attorney General determines, in the Attorney General's discretion, that the appropriation to carry out these activities is inadequate to fully fund them.

`(p) PROHIBITED USES OF FEES; ACCOUNTING FOR FEES- (1) Deposits into any account established under subsection (m) or (n) may not be expended for--

`(A) safeguarding or accounting for fees deposited in, or funds reimbursed from, any such account; or

`(B) capital investments, facilities, technology development, data or communications infrastructure, oversight, audits, or functions of the Inspector General.

`(2) The Attorney General shall prepare and submit annually to Congress statements of financial condition of each of the accounts established under subsections (m) and (n), including beginning account balance, revenues, withdrawals, and ending account balance and projections for the ensuing fiscal year.'

(d) CONFORMING AMENDMENTS-

(1) SECTION 245(i)- Section 245(i) of the Immigration and Nationality Act (8 U.S.C. 1255(i)) is amended by striking paragraph (3).

(2) SECTION 286(r)- Section 286(r)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(r)(2)) is amended by striking 'Justice, and amount described in section 245(i)(3)(b).' and inserting 'Justice.'

TITLE III--GENERAL POLICY AGAINST DETENTION OF ASYLUM SEEKERS

SEC. 301. ALTERNATIVES TO DETENTION OF ASYLUM SEEKERS.

(a) FINDING- The Congress finds that the policy of the United States is generally not to detain asylum seekers who have established a credible fear of persecution.

(b) DEVELOPMENT OF ALTERNATIVES TO DETENTION- In consultation with private nonprofit voluntary agencies with expertise in meeting the legal, spiritual, cultural, and psychological needs of asylum seekers, the Attorney General shall develop alternatives to detention, and procedures to ensure their maximum feasible use, that shall at a minimum take into account specific alternatives to the detention of asylum seekers, including--

(1) unsupervised release from detention, including the Asylum Pre-Screening Officer Program, as defined in the Immigration and Naturalization Service Memorandum of April 20, 1992;

(2) for individuals not otherwise qualified for release under paragraph (1), parole supervised by private nonprofit voluntary agencies with expertise in meeting the legal, spiritual, cultural, and psychological needs of asylum seekers;

(3) for individuals not otherwise qualified for release under paragraph (1) or (2), non-secure shelter care or group homes supervised by private nonprofit voluntary agencies with expertise in meeting the legal, spiritual, cultural, and psychological needs of asylum seekers; and

(4) noninstitutional settings for minors, such as foster care or group homes, especially for those with special needs, those age 14 and under, and those in long-term custody of the Attorney General.

(c) PROHIBITION RELATING TO MINORS- The procedures developed by the Attorney General under subsection (b) shall prohibit detention of minors in adult facilities or facilities housing delinquent minors (except in the case of an alien who is inadmissible or deportable by reason of having committed a criminal offense).

(d) ALTERNATIVES TO DETENTION IN CRIMINAL SETTING- In the case of an asylum seeker not otherwise qualified for release under paragraph (1) or (2) of subsection (b), for whom the alternatives specified in paragraphs (3) and (4) of subsection (b) are not appropriate, and who is not inadmissible or deportable by reason of having committed a criminal offense, the procedures developed by the Attorney General under subsection (b) shall include alternatives to detention in detention facilities used for the incarceration of persons convicted of a criminal offense.

(e) DEFINITIONS- In this section:

(1) The term 'asylum seeker' means any applicant for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) or any alien who indicates an intention to apply for asylum under that section and who has been found by an asylum officer to have a

credible fear of persecution.

(2) The term 'credible fear of persecution' has the meaning given the term in section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)).

TITLE IV--GENERAL PROVISIONS

SEC. 401. EFFECTIVE DATES.

(a) NATIONAL IMMIGRATION BUREAU- The transfer of functions under title I shall take effect on the date that is 2 years after the date of the enactment of this Act. The National Immigration Bureau shall be established, and the Director, deputy directors, and division chiefs of such Bureau shall be appointed, not later than such effective date.

(b) REMOVAL OF LIMITATIONS ON ADJUSTMENT OF STATUS UNDER SECTION 245(i)- The amendment made by section 201 shall be effective as if included in the enactment of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Public Law 105-119; 111 Stat. 2440).

(c) FEES- The amendments made by section 202 shall take effect on the date that is 2 years after the date of the enactment of this Act and shall apply to immigration adjudication and naturalization services performed and to related fees collected on or after such date.

(d) OTHER PROVISIONS- The remaining provisions of this Act shall take effect on the date of the enactment of this Act.

END

106th CONGRESS

1st Session

S. 1563

To establish the Immigration Affairs Agency within the Department of Justice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

August 5, 1999

Mr. ABRAHAM (for himself, Mr. KENNEDY, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish the Immigration Affairs Agency within the Department of Justice, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'INS Reform and Border Security Act of 1999'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Immigration laws of the United States defined.

TITLE I--IMMIGRATION AFFAIRS AGENCY

Sec. 101. Establishment of Immigration Affairs Agency.

Sec. 102. Establishment of the Office of the Associate Attorney General for Immigration Affairs.

Sec. 103. Establishment of Bureau of Immigration Services and Adjudications.

Sec. 104. Office of Ombudsman within the Service Bureau.

Sec. 105. Establishment of Bureau of Enforcement and Border Affairs.

Sec. 106. Exercise of authorities.

Sec. 107. Savings provisions.

Sec. 108. Transfer and allocation of appropriations and personnel.

Sec. 109. Executive Office for Immigration Review and Attorney General litigation authorities not affected.

Sec. 110. Definitions.

Sec. 111. Effective date.

TITLE II--PERSONNEL FLEXIBILITIES

Sec. 201. Improvements in personnel flexibilities.

Sec. 202. Voluntary separation incentive payments.

Sec. 203. Basis for evaluation of Immigration Affairs Agency employees.

Sec. 204. Employee training program.

Sec. 205. Effective date.

TITLE III--ADDITIONAL PROVISIONS

Sec. 301. Expedited processing of documents.

Sec. 302. Funding adjudication and naturalization services.

Sec. 303. Increase in Border Patrol agents and support personnel.

SEC. 2. IMMIGRATION LAWS OF THE UNITED STATES DEFINED.

In this Act, the term 'immigration laws of the United States' means the following:

(1) The Immigration and Nationality Act.

(2) The Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(3) The Immigration and Nationality Technical Corrections Act of 1994.

(4) The Immigration Act of 1990.

(5) The Immigration Reform and Control Act of 1986.

(6) The Refugee Act of 1980.

(7) Such other statutes, Executive orders, regulations, or directives that relate to the admission to, detention in, or removal from the United States of aliens, or that otherwise relate to the status of aliens in the United States.

TITLE I--IMMIGRATION AFFAIRS AGENCY

SEC. 101. ESTABLISHMENT OF IMMIGRATION AFFAIRS AGENCY.

(a) ESTABLISHMENT-

(1) IN GENERAL- There is established within the Department of Justice the Immigration Affairs Agency (in this title referred to as the 'Agency').

(2) COMPONENTS- The Agency shall consist of--

(A) the Office of the Associate Attorney General for Immigration Affairs established in section 102;

(B) the Bureau of Immigration Services and Adjudications established in section 103; and

(C) the Bureau of Enforcement and Border Affairs established in section 105.

(b) ASSOCIATE ATTORNEY GENERAL FOR IMMIGRATION AFFAIRS-

(1) IN GENERAL- The Agency shall be headed by an Associate Attorney General for Immigration Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION AT RATE OF PAY FOR EXECUTIVE LEVEL III- Section 5314 of title 5, United States Code, is amended by adding at the end the following:

'Associate Attorney General for Immigration Affairs, Department of Justice.'

(3) CONFORMING AMENDMENT- Section 103(c) of the Immigration and Nationality Act is amended--

(i) by striking the first sentence and

(ii) in the second sentence, by striking 'He' and inserting 'The Associate Attorney General for Immigration Affairs'.

(B) Section 103 of such Act is amended by striking 'Commissioner' and inserting 'Associate Attorney General for Immigration Affairs'.

(C) Section 5315 of title 5, United States Code, is amended by striking the following:

'Commissioner of Immigration and Naturalization, Department of Justice.'

(c) REPEALS- The following provisions of law are repealed:

(1) Section 4 of the Act of February 14, 1903, as amended (32 Stat. 826; relating to the establishment of the Immigration and Naturalization Service).

(2) Section 7 of the Act of March 3, 1907, as amended (26 Stat. 1085; relating to the establishment of the office of the Commissioner of Immigration and Naturalization).

(3) Section 201 of the Act of June 20, 1956 (70 Stat. 307; relating to the compensation of assistant commissioners and district director).

(4) Section 1 of March 2, 1895 (28 Stat. 780; relating to special immigrant inspectors).

(d) REFERENCES- Except as otherwise provided in sections 103 and 105, any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to the Immigration and Naturalization Service shall be deemed to refer to the Immigration Affairs Agency.

(e) AUTHORIZATION OF APPROPRIATIONS-

(1) IN GENERAL- There are authorized to be appropriated to the Agency such sums as may be necessary to carry out its functions.

(2) AVAILABILITY OF FUNDS- Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

SEC. 102. OFFICE OF THE ASSOCIATE ATTORNEY GENERAL FOR IMMIGRATION AFFAIRS.

(a) POLICY AND ADMINISTRATIVE FUNCTIONS DEFINED- In this section, the term 'immigration policy and administrative functions' includes the following functions under the immigration laws of the United States:

(1) Inspections at ports of entry in the United States.

(2) Policy and planning formulation on immigration matters.

(3) Information technology, information resources management, and maintenance of records and databases, and the coordination of records and other information of the two bureaus within the Agency.

(4) Such other functions as involve providing resources and other support for the Bureau of Immigration Services and Adjudications (established in section 103) and the Bureau of Enforcement and Border Affairs (established in section 105).

(b) ESTABLISHMENT OF OFFICE-

(1) IN GENERAL- There is established within the Agency the Office of the Associate Attorney General for Immigration Affairs (in this title referred to as the 'Office').

(2) GENERAL COUNSEL-

(A) IN GENERAL- There shall be within the Office of the Associate Attorney General for Immigration Affairs a General Counsel, who shall be appointed by the Attorney General.

(B) COMPENSATION- Section 5316 of title 5, United States Code, is

amended by adding at the end the following:

'General Counsel, Immigration Affairs Agency.'

(3) Chief financial officer for the immigration affairs agency-

(A) IN GENERAL- There shall be a position of Chief Financial Officer for the Immigration Affairs Agency and this position shall be a career reserved position within the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities related to immigration policy and administrative functions. For purposes of section 902(a)(1) of such title, the Associate Attorney General for Immigration Affairs shall be deemed to be the head of the agency. The provisions of section 903 of such title (relating to Deputy Chief Financial Officers) shall also apply in the same manner as the previous sentence.

(B) COMPENSATION- Section 5316 of title 5, United States Code, is amended by adding at the end the following:

'Chief Financial Officer, Immigration Affairs Agency.'

(c) RESPONSIBILITIES OF THE OFFICE- Under the direction of the Attorney General, the Office of the Associate Attorney General for Immigration Affairs shall be responsible for carrying out the immigration policy and administrative functions of the Agency.

(d) DELEGATION OF AUTHORITY BY THE ATTORNEY GENERAL- All immigration policy and administrative functions vested by statute in, or exercised by--

(1) the Attorney General, or

(2) the Commissioner of Immigration and Naturalization, the Immigration and Naturalization Service, or officers, employees, or components thereof,

immediately prior to the effective date of this title shall be exercised by the Attorney General through the Associate Attorney General for Immigration Affairs.

(e) REFERENCES- Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to--

(1) the Commissioner of Immigration and Naturalization or any other officer or employee of the Immigration and Naturalization Service (insofar as such references refer to any immigration policy and administrative function) shall be deemed to refer to the Associate Attorney General for Immigration Affairs; or

(2) the Immigration and Naturalization Service (insofar as such references refer to any immigration policy and administrative function) shall be deemed to refer to the Office of the Associate Attorney General for Immigration Affairs.

SEC. 103. ESTABLISHMENT OF BUREAU OF IMMIGRATION

SERVICES AND ADJUDICATIONS.

(a) IMMIGRATION ADJUDICATION AND SERVICE FUNCTIONS DEFINED- In this section, the term 'immigration adjudication and service functions' means the following functions under the immigration laws of the United States:

- (1) Adjudications of nonimmigrant and immigrant visa petitions.
- (2) Adjudications of naturalization petitions.
- (3) Adjudications of asylum and refugee applications.
- (4) Determinations concerning custody, parole, and conditions of parole regarding applicants for asylum detained at ports of entry who do not have prior nonpolitical criminal records and who have been found to have a credible fear of persecution, and responsibility for the detention of any such applicant with respect to whom a determination has been made that detention is required.
- (5) Adjudications performed at Service centers.
- (6) All other adjudications under the immigration laws of the United States.

(b) ESTABLISHMENT OF BUREAU-

(1) IN GENERAL- There is established within the Agency a bureau to be known as the Bureau of Immigration Services and Adjudications (in this section referred to as the 'Service Bureau').

(2) SENSE OF CONGRESS- It is the sense of Congress that the structure of the Service Bureau

should be based on the organization of the Social Security Administration.

(3) DIRECTOR- The head of the Service Bureau shall be the Director of Immigration Services and Adjudications who--

(A) shall be appointed by the President, by and with the advice and consent of the Senate; and

(B) shall report directly to the Associate Attorney General for Immigration Affairs.

(4) COMPENSATION AT LEVEL IV OF EXECUTIVE SCHEDULE- Section 5315 of title 5, United States Code, is amended by adding at the end the following:

'Director of Immigration Services and Adjudications, Immigration Affairs Agency.'

(c) RESPONSIBILITIES OF THE BUREAU- Subject to the policy guidance of the Associate Attorney General for Immigration Affairs, the Service Bureau shall be responsible for carrying out the immigration adjudication and service functions of the Agency.

(d) DELEGATION OF AUTHORITY BY THE ATTORNEY GENERAL- All immigration adjudication and service functions vested by statute in, or exercised by--

(1) the Attorney General, or

(2) the Commissioner of Immigration and Naturalization, the Immigration and Naturalization Service, or officers, employees, or components thereof,

immediately prior to the effective date of this title shall be exercised by the Attorney General through the Associate Attorney General for Immigration Affairs and the Director of the Service Bureau.

(e) CHIEF FINANCIAL OFFICER FOR THE BUREAU OF IMMIGRATION SERVICES AND ADJUDICATIONS-

(1) IN GENERAL- There shall be a position of Chief Financial Officer for the Bureau of Immigration Services and Adjudications and this position shall be a career reserved position within the Senior Executive Service and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Service Bureau. For purposes of section 902(a)(1) of such title, the Director of the Service Bureau shall be deemed to be the head of the agency. The provisions of section 903 of such title (relating to Deputy Chief Financial Officers) shall also apply to such Bureau in the same manner as the previous sentence applies to such Bureau.

(2) COMPENSATION- Section 5316 of title 5, United States Code, is amended by adding at the end the following:

'Chief Financial Officer, Bureau of Immigration Services and Adjudications of the Immigration Affairs Agency.'

(f) REGIONAL COMMISSIONERS- There shall be within the Service Bureau Regional Commissioners who shall be responsible for carrying out the functions of the Bureau within specified geographic regions. The Director of the Service Bureau shall establish the number of Regional Commissioners based on workload and economies of scale.

(g) AREA DIRECTORS- The Director of the Service Bureau shall appoint Area Directors who shall report to the Regional Commissioner in his or her region. In States with large populations there may be more than one Area Director. Each Area Director is in charge of field offices within his or her area.

(h) FIELD OFFICE MANAGERS- A Field Office Manager is in charge of each field office. The field offices, located in cities and other places around the country, are the Service Bureau's main source of contact with the public. Congress encourages the development of telephone service centers to improve service and efficiency, which may or may not be located in the same location as service centers under subsection (k).

(i) TERM OF SERVICE- No Field Office Manager or Area Director may hold his or her post in a single geographic region for more than 6 years without a break of at least 2 years. The

Attorney General may waive this subsection for extraordinary reasons.

(j) SERVICE CENTERS- In addition, there shall be Service Centers, located depending on the workloads and economies of scale. The head of each Service Center shall report to the Regional Commissioner in the region in which the Service Center is situated.

(k) QUALITY ASSURANCE- There shall be within the Service Bureau an Office of Quality Assurance, modeled on the corresponding office of the Social Security Administration, that shall develop procedures and conduct audits to--

(1) ensure that national policies are correctly implemented;

(2) determine whether Service Bureau policies or practices result in poor file management or poor or inaccurate service; and

(3) report findings recommending corrective action to the Director of the Service Bureau.

(l) OFFICE OF PROFESSIONAL RESPONSIBILITY- There shall be within the Service Bureau an Office of Professional Responsibility that shall have the responsibility of receiving charges of misconduct or ill treatment made by the public and investigating the charges and providing an appropriate remedy or disposition.

(m) TRAINING OF PERSONNEL- The Director of the Service Bureau, in consultation with the Associate Attorney General for Immigration Affairs, shall have responsibility for the training of all personnel of the Service Bureau.

(n) AUTHORIZATION OF APPROPRIATIONS-

(1) IN GENERAL- There are authorized to be appropriated to the Service Bureau such sums as may be necessary to carry out its functions.

(2) AVAILABILITY OF FUNDS- Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

(o) REFERENCES- Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to--

(1) the Commissioner of Immigration and Naturalization or any other officer or employee of the Immigration and Naturalization Service (insofar as

such references refer to any immigration adjudication and service function) shall be deemed to refer to the Director of the Service Bureau; or

(2) the Immigration and Naturalization Service (insofar as such references refer to any immigration adjudication and service function) shall be deemed to refer to the Service Bureau.

SEC. 104. OFFICE OF THE OMBUDSMAN WITHIN THE SERVICE BUREAU.

(a) **IN GENERAL-** There is established within the Service Bureau the Office of the Ombudsman, which shall be headed by the Ombudsman.

(b) **OMBUDSMAN-**

(1) **APPOINTMENT-** The Ombudsman shall be appointed by the Director of the Service Bureau after consultation with the Associate Attorney General for Immigration Affairs and without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or the Senior Executive Service. The Ombudsman shall report directly to the Director of the Service Bureau.

(2) **COMPENSATION-** The Ombudsman shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, or, if the Attorney General so determines, at a rate fixed under section 5303 of such title.

(c) **FUNCTIONS OF OFFICE-** The functions of the Office of the Ombudsman shall include to--

(1) assist individuals in resolving service case problems with the Agency or Service Bureau;

(2) identify areas in which individuals have problems in dealings with the Immigration Affairs Agency or Service Bureau;

(3) to the extent possible, propose changes in the administrative practices of the Agency or Service Bureau to mitigate problems identified under paragraph (2);

(4) monitor the coverage and geographic allocation of local offices of the Service Bureau; and

(5) ensure that the local telephone number for each local office of the Service Bureau is published and available to individuals served by the office.

(e) **PERSONNEL ACTIONS-** The Ombudsman shall have the responsibility and authority to appoint local or regional representatives of the Ombudsman's Office as in the Ombudsman's judgment may be necessary to address and identify serious service problems.

(f) **RESPONSIBILITIES OF DIRECTOR OF THE SERVICE BUREAU-** The Director of the Service Bureau shall establish procedures requiring a formal response to all recommendations submitted to the Director by the Ombudsman within 3 months after submission of the Ombudsman's reports on recommendations. The Director of the Service Bureau shall meet regularly with the Ombudsman to identify and correct serious service problems.

(g) **ANNUAL REPORTS-**

(1) OBJECTIVES- Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information.

(2) ACTIVITIES- Not later than December 31 of each calendar year, the Ombudsman shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on the activities of the Ombudsman during the fiscal year ending in that calendar year. Any such report shall contain a full and substantive analysis, in addition to statistical information, and shall--

(A) identify the initiatives the Office of the Ombudsman has taken on improving services and the responsiveness of the Agency and the Service Bureau;

(B) contain a summary of the most serious problems encountered by individuals, including a description of the nature of such problems;

(C) contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken, and the result of such action;

(D) contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Agency or Service Bureau official who is responsible for such inaction;

(F) contain recommendations as may be appropriate to resolve problems encountered by individuals;

(G) include such other information as the Ombudsman may deem advisable.

SEC. 105. ESTABLISHMENT OF BUREAU OF ENFORCEMENT AND BORDER AFFAIRS.

(a) IMMIGRATION ENFORCEMENT FUNCTIONS DEFINED- In this section, the term 'immigration enforcement functions' means the following functions under the immigration laws of the United States:

(1) The Border Patrol program.

(2) The detention program (except as specified in section 103(a)).

(3) The deportation program.

(4) The intelligence program.

(5) The investigations program.

(b) ESTABLISHMENT OF BUREAU-

(1) IN GENERAL- There is established within the Agency a bureau to be known as the Bureau of Enforcement and Border Affairs (in this section referred to as the 'Enforcement Bureau').

(2) ENFORCEMENT BUREAU- It is the sense of Congress that the Enforcement Bureau be organized in accordance with the 'best practices' of other federal law enforcement agencies, including the Federal Bureau of Investigation and the Drug Enforcement Agency.

(3) DIRECTOR- The head of the Enforcement Bureau shall be the Director of the Bureau of Enforcement and Border Affairs who--

(A) shall be appointed by the President, by and with the advice and consent of the Senate; and

(B) shall report directly to the Associate Attorney General for Immigration Affairs.

(4) COMPENSATION AT LEVEL IV OF EXECUTIVE SCHEDULE- Section 5315 of title 5, United States Code, is amended by adding at the end the following:

'Director of Enforcement and Border Affairs, Immigration Affairs Agency.'

(c) RESPONSIBILITIES OF THE BUREAU- Subject to the policy guidance of the Associate Attorney General for Immigration Affairs, the Enforcement Bureau shall be responsible for carrying out the immigration enforcement functions of the Agency.

(d) DELEGATION OF AUTHORITY BY THE ATTORNEY GENERAL- All immigration enforcement functions vested by statute in, or exercised by--

(1) the Attorney General, or

(2) the Commissioner of Immigration and Naturalization, the Immigration and Naturalization Service, or officers, employees, or components thereof,

immediately prior to the effective date of this title shall be exercised by the Attorney General through the Associate Attorney General for Immigration Affairs and the Director of the Enforcement Bureau.

(e) CHIEF FINANCIAL OFFICER FOR THE BUREAU OF ENFORCEMENT AND BORDER AFFAIRS-

(1) IN GENERAL- There shall be a position of Chief Financial Officer for the Bureau of Enforcement and Border Affairs and this position shall be a career reserved position within the Senior Executive Service and shall have the authorities and

functions described in section 902 of title 31, United States Code, in relation to financial activities of the Enforcement Bureau. For purposes of section 902(a)(1) of such title, the Director of the Enforcement Bureau shall be deemed to be the head of the agency. The provisions of section 903 of such title (relating to Deputy Chief Financial Officers) shall also apply to such Bureau in the same manner as the previous sentence applies to such Bureau.

(2) COMPENSATION- Section 5316 of title 5, United States Code, is amended by adding at the end the following:

'Chief Financial Officer, Bureau of Enforcement and Border Affairs of the Immigration Affairs Agency.'

(f) ORGANIZATION- The Director of the Enforcement Bureau shall establish field offices in major cities and regions of the United States. The locations shall be selected according to trends in illegal immigration, alien smuggling, criminal aliens, the need for regional centralization, and the need to manage resources efficiently. Field offices shall also establish satellite offices as needed.

(g) OFFICE OF PROFESSIONAL RESPONSIBILITY- There shall be within the Enforcement Bureau an Office of Professional Responsibility that shall have the responsibility of receiving charges of misconduct or ill treatment made by the public and investigating the charges and providing an appropriate remedy or disposition.

(h) TRAINING OF PERSONNEL- The Director of the Enforcement Bureau, in consultation with the Associate Attorney General for Immigration Affairs, shall have responsibility for determining the law enforcement training for all personnel of the Enforcement Bureau.

(i) REFERENCES- Any reference in any statute, reorganization plan, Executive order, regulation, agreement, determination, or other official document or proceeding to--

(1) the Commissioner of Immigration and Naturalization or any other officer or employee of the Immigration and Naturalization Service (insofar as such references refer to any immigration enforcement function) shall be deemed to refer to the Director of the Enforcement Bureau; or

(2) the Immigration and Naturalization Service (insofar as such references refer to any immigration enforcement function) shall be deemed to refer to the Enforcement Bureau.

(j) AUTHORIZATION OF APPROPRIATIONS-

(1) IN GENERAL- There are authorized to be appropriated to the Enforcement Bureau such sums as may be necessary to carry out its functions.

(2) AVAILABILITY OF FUNDS- Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

SEC. 106. EXERCISE OF AUTHORITIES.

Except as otherwise provided by law, a Federal official to whom a function is transferred pursuant to this title may, for purposes of performing the function, exercise

all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function pursuant to this title.

SEC. 107. SAVINGS PROVISIONS.

(a) **LEGAL DOCUMENTS-** All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges--

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred pursuant to this title; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date);

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) **PROCEEDINGS-** Sections 101 through 105 and this section shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office whose functions are transferred pursuant to this title, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) **SUITS-** This title shall not affect suits commenced before the effective date of this title, and in all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) **NONABATEMENT OF ACTIONS-** No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred pursuant to this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUITS- If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and pursuant to this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW- Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred pursuant to this title shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred pursuant to such section.

SEC. 108. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.

(a) IN GENERAL-

(1) TRANSFERS- The personnel of the Department of Justice employed in connection with the functions transferred pursuant to this title (and functions that the Attorney General determines are properly related to the functions of the Office, the Service Bureau, or the Enforcement Bureau would, if so transferred, further the purposes of the Office and the respective Bureau), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service in connection with the functions transferred pursuant to this title, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Office or the Bureau, as the case may be, for appropriate allocation by the Associate Attorney General for Immigration Affairs for the Office or the Bureau, as the case may be. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney General shall retain the right to adjust or realign transfers of funds and personnel effected pursuant to this title for a period of 2 years after the date of the establishment of the Agency.

(2) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated such sums as may be necessary to carry out the transfers made pursuant to this title.

(b) DELEGATION AND ASSIGNMENT- Except as otherwise expressly prohibited by law or otherwise provided in this title, the Associate Attorney General for Immigration Affairs, the Director of the Service Bureau, and the Director of the Enforcement Bureau to whom functions are transferred pursuant to this title may delegate any of the functions so transferred to such officers and employees of the Office of the Associate Attorney General for Immigration Affairs, the Service Bureau, and the Enforcement Bureau, respectively, as the Associate Attorney General or such Director may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this title shall relieve the official to whom a function is transferred pursuant to this title of responsibility for the

administration of the function.

(c) AUTHORITIES OF ATTORNEY GENERAL

(1) INCIDENTAL TRANSFERS- The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary with regard to the functions transferred pursuant to this title and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriated funds, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

(2) TREATMENT OF SHARED RESOURCES-

(A) IN GENERAL- The Assistant Attorney General for Immigration Affairs is authorized to provide for the appropriate allocation, or coordination, or both, of resources involved in supporting shared support functions for the Office, the Service Bureau, the Enforcement Bureau, and offices within the Department of Justice. The Assistant Attorney General for Immigration Affairs shall maintain overall control over the shared computer databases and systems and their management.

(B) DATABASES- The Assistant Attorney General for Immigration Affairs, with the assistance of the Attorney General, shall ensure that the Immigration Affairs Agency's databases, those of the Service Bureau and the Enforcement Bureau are integrated with the databases of the Executive Office for Immigration Review in such a way as to permit--

(i) the electronic docketing of each case by date of service upon an alien of the notice to appear in the case of a removal proceeding (or an order to show cause in the case of a deportation proceeding); and

(ii) the tracking of the status of any alien throughout the alien's contact with United States immigration authorities without regard to whether the entity with jurisdiction over the alien is the Immigration Affairs Agency, the Service Bureau, the Enforcement Bureau, or the Executive Office for Immigration Review.

SEC. 109. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW AND ATTORNEY GENERAL LITIGATION AUTHORITIES NOT AFFECTED.

Nothing in this title may be construed to authorize or require the transfer or delegation of any function vested in, or exercised by--

(1) the Executive Office for Immigration Review of the Department of Justice, or any officer, employee, or component thereof;

(2) the Attorney General with respect to the institution of any prosecution, or the institution or defense of any action or appeal, in any court of the United States established under Article III of the Constitution,

immediately prior to the effective date of this title.

SEC. 110. DEFINITIONS.

For purposes of this title:

(1) **FUNCTION**- The term `function' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(2) **OFFICE**- The term `office' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

SEC. 111. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect 18 months after the date of enactment of this Act.

TITLE II--PERSONNEL FLEXIBILITIES

SEC. 201. IMPROVEMENTS IN PERSONNEL FLEXIBILITIES.

(a) **IN GENERAL**- Part III of title 5, United States Code, is amended by adding at the end the following new subpart:

`Subpart J--Immigration Affairs Agency Personnel

`CHAPTER 96--PERSONNEL FLEXIBILITIES RELATING TO THE IMMIGRATION AFFAIRS AGENCY

`Sec.

`9601. Immigration Affairs Agency personnel flexibilities.

`9602. Pay authority for critical positions.

`9603. Streamlined critical pay authority.

`9604. Recruitment, retention, relocation incentives, and relocation expenses.

`9605. Performance awards for senior executives.

`Sec. 9601. Immigration Affairs Agency personnel flexibilities

`(a) Any flexibilities provided by sections 9602 through 9610 of this chapter shall be exercised in a manner consistent with--

`(1) chapter 23 (relating to merit system principles and prohibited personnel

practices);

`(2) provisions relating to preference eligibles;

`(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

`(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

`(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Attorney General under section 1104(a)(2).

`(b) The Attorney General shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

`(c) Employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any flexibility provided by sections 9607 through 9610 of this chapter unless the exclusive representative and the Immigration Affairs Agency have entered into a written agreement which specifically provides for the exercise of that flexibility. Such written agreement may be imposed by the Federal Services Impasses Panel under section 7119.

`Sec. 9602. Pay authority for critical positions

`(a) When the Attorney General seeks a grant of authority under section 5377 for critical pay for 1 or more

positions at the Immigration Affairs Agency, the Office of Management and Budget may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

`(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

`Sec. 9603. Streamlined critical pay authority

`(a) Notwithstanding section 9602, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Attorney General may, for a period of 10 years after the date of enactment of this section, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Immigration Affairs Agency, if--

`(1) the positions--

`(A) require expertise of an extremely high level in an administrative,

technical, or professional field; and

`(B) are critical to the Immigration Affairs Agency's successful accomplishment of an important mission;

`(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

`(3) the number of such positions does not exceed 40 at any one time;

`(4) designation of such positions are approved by the Attorney General;

`(5) the terms of such appointments are limited to no more than 4 years;

`(6) appointees to such positions were not Immigration Affairs Agency employees prior to July 1, 1999;

`(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

`(8) all such positions are excluded from the collective bargaining unit.

`(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

`Sec. 9604. Recruitment, retention, relocation incentives, and relocation expenses

`(a) For a period of 10 years after the date of enactment of this section and subject to approval by the Office of Personnel Management, the Attorney General may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives.

`(b) For a period of 10 years after the date of enactment of this section, the Attorney General may pay from appropriations made to the Immigration Affairs Agency allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9602 or 9603 after July 1, 1999.

`Sec. 9605. Performance awards for senior executives

`(a) For a period of 10 years after the date of enactment of this section, Immigration Affairs Agency senior executives who have program management responsibility over significant functions of the Immigration Affairs Agency may be paid a performance bonus without regard to the limitation in section 5384(b)(2) if the Attorney General finds such award warranted based on the executive's performance.

`(b) In evaluating an executive's performance for purposes of an award under this section, the Attorney General shall take into account the executive's contributions toward the successful accomplishment of goals and objectives established under the Government Performance and Results Act of 1993 and other performance metrics or plans established in consultation with

the Attorney General.

`(c) Any award in excess of 20 percent of an executive's rate of basic pay shall be approved by the Attorney General.

`(d) Notwithstanding section 5384(b)(3), the Attorney General shall determine the aggregate amount of performance awards available to be paid during any fiscal year under this section and section 5384 to career senior executives in the Immigration Affairs Agency. Such amount may not exceed an amount equal to 5 percent of the aggregate amount of basic pay paid to career senior executives in the Immigration Affairs Agency during the preceding fiscal year. The Immigration Affairs Agency shall not be included in the determination under section 5384(b)(3) of the aggregate amount of performance awards payable to career senior executives in the Department of the Justice other than the Immigration Affairs Agency.

`(e) Notwithstanding section 5307, a performance bonus award may not be paid to an executive in a calendar year if, or to the extent that, the executive's total annual compensation will exceed the maximum amount of total annual compensation payable at the rate determined under section 104 of title 3.'

(b) CLERICAL AMENDMENT- The table of sections for part III of title 5, United States Code, is amended by adding at the end the following new items:

`Subpart J--Immigration Affairs Agency Personnel

9601'.

SEC. 202. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITION- In this section, the term `employee' means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Immigration Affairs Agency serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 3 years, but does not include--

(1) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, or another retirement system;

(2) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in paragraph (1);

(3) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

(4) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

(5) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or any other authority and has

not repaid such payment;

(6) an employee covered by statutory reemployment rights who is on transfer to another organization; or

(7) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

(b) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS-

(1) **IN GENERAL-** The Associate Attorney General for Immigration Affairs may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to reorganize the Immigration Affairs Agency under title I.

(2) **AMOUNT AND TREATMENT OF PAYMENTS-** A voluntary separation incentive payment--

(A) shall be paid in a lump sum after the employee's separation;

(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employees;

(C) shall be equal to the lesser of--

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(ii) an amount determined by an agency head not to exceed \$25,000;

(D) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2003;

(E) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(F) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(c) Additional Immigration Affairs Agency Contributions to the Retirement Fund-

(1) **IN GENERAL-** In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, the Immigration Affairs Agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each

employee who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

(2) DEFINITION- In paragraph (1), the term 'final basic pay', with respect to an employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed at the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefore.

(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT- An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation from the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation from which the payment is based, shall be required to pay, prior to the individual's first subsequent employment, the entire amount of the incentive payment to the Immigration Affairs Agency.

(e) USE OF VOLUNTARY SEPARATION- The Immigration Affairs Agency may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 203. BASIS FOR EVALUATION OF IMMIGRATION AFFAIRS AGENCY EMPLOYEES.

(a) FAIR AND EQUITABLE TREATMENT- The Immigration Affairs Agency shall use the fair and equitable treatment of aliens by employees as one of the standards for evaluating employee performance.

(b) EFFECTIVE DATE- This section shall apply to evaluations conducted on or after the date of the enactment of this Act.

SEC. 204. EMPLOYEE TRAINING PROGRAM.

(a) IN GENERAL- Not later than 180 days after the effective date of this Act, the Director of the Service Bureau and the Director of the Enforcement Bureau, in consultation with the Associate Attorney General for Immigration Matters, shall each implement an employee training program for the personnel of their respective bureaus and shall each submit an employee training plan to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(b) CONTENTS- The plan submitted under subsection (a) shall--

(1) detail a schedule for training and the fiscal years during which the training will occur;

(2) detail the funding of the program and relevant information to demonstrate the priority and commitment of resources to the plan;

(3) with respect to the Service Bureau, after consultation by the Associate Attorney General for Immigration Affairs with the Director of the Service Bureau, detail a comprehensive employee training program to ensure adequate customer service training;

(4) detail any joint training of both Service Bureau and Enforcement Bureau personnel in appropriate areas;

(5) review the organizational design of customer service; and

(6) provide for the implementation of a performance development system.

SEC. 205. EFFECTIVE DATE.

Except as otherwise provided in this title, this title, and the amendments made by this title, shall take effect 18 months after the date of enactment of this Act.

TITLE III--ADDITIONAL PROVISIONS

SEC. 301. EXPEDITED PROCESSING OF DOCUMENTS.

(a) 30-DAY PROCESSING OF 'H-1B', 'L', 'O', OR 'P-1' NONIMMIGRANTS- Section 214(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(1)) is amended by adding at the end the following: 'The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 101(a)(15) (H)(i)(b), (L), (O), or (P)(i) within 30 days after the date a completed petition has been filed.'

(b) 30-DAY PROCESSING OF 'R' NONIMMIGRANTS- Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

'(10) The Attorney General shall provide a process for reviewing and acting upon petitions under the subsection with respect to nonimmigrants described in section 101(a)(15)(R) within 30 days after the date a completed petition has been filed.'

(c) 60-DAY PROCESSING OF IMMIGRANTS- Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following:

'(j) The Attorney General shall provide a process for reviewing and acting upon petitions under this section within 60 days after the date a completed petition has been filed under this section.'

(d) 90-DAY PROCESSING OF ADJUSTMENT OF STATUS APPLICATIONS- Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

'(l) The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection within 90 days after the date a completed petition has been filed.'

(e) 90-DAY PROCESSING OF IMMIGRANT VISA APPLICATIONS- Section 222 of the

Immigration and Nationality Act (8 U.S.C. 1202) is amended by adding at the end the following new subsection:

`(h) The Secretary of State shall provide a process for reviewing and acting upon petitions under this section within 90 days after the date a completed application has been filed.'

(f) REENTRY PERMITS- Section 223 of the Immigration and Nationality Act (8 U.S.C. 1203) is amended by adding at the end the following new subsection:

`(f) EXCEPTION- No permit shall be required for a permanent resident who is transferred abroad temporarily as a result of employment with a United States employer or its overseas parent, subsidiary, or affiliate.'

(g) ELECTRONIC FILING- Not later than one year after the date of enactment of this Act, the Attorney General shall establish a demonstration project regarding the feasibility of electronic filing of petitions with respect to nonimmigrants described in section 101(a)(15) (H), (L), (O), (P)(i), or (R) of the Immigration and Nationality Act. The demonstration project shall utilize a representative number of employers who seek to employ those nonimmigrants. The demonstration project shall make provision for payment by the employer of related fees through the establishment of an account with the Immigration and Naturalization Service or through a credit card. Within 2 years of the date of enactment of this Act, the Attorney General shall consider the feasibility of offering electronic filing to all petitioners.'

(h) REPORT- Section 214(c)(8) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(8)) is amended by adding at the end the following new subparagraph:

`(F) The average processing time of each such type of petition shall be reported annually and quarterly.'

(i) EFFECTIVE DATE- The amendments made by this section shall take effect 6 months after the effective date of Title I.

SEC. 302. FUNDING ADJUDICATION AND NATURALIZATION SERVICES.

Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended--

(1) by striking `: *Provided further*,' and all that follows through `immigrants.' and inserting the following: `Each fee collected for the provision of an adjudication or naturalization service may be used only to fund adjudication or naturalization services or the costs of similar services provided without charge to asylum or refugee applicants.'; and

(2) by adding at the end the following new sentences: `Nothing in this subsection shall be construed to modify the conditions specified in section 286(s) for the expenditure of the proceeds for the fee authorized under section 214(c)(9). There are authorized to be appropriated such sums as may be necessary to carry out the provisions of section 207 through 209 of this Act.'

SEC. 303. INCREASE IN BORDER PATROL AGENTS AND SUPPORT PERSONNEL.

Section 101(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is amended by striking `and 2001' and inserting `2001, 2002, 2003, and 2004'.

END