



U.S. Department of Justice
Civil Division

Washington, D.C. 20530

April 7, 1998

Julie

Attached are the
CSS order/decisions
& CSS briefs we
discussed yesterday.
If I can be of any
further assistance, please
call.

Donald



Pub. L. 104-208 Illegal Immigration Reform and Immigrant Responsibility Act of 1996
 TITLE III-INSPECTION, APPREHENSION, DETENTION, ADJUDICATION, AND REMOVAL OF
 INADMISSIBLE AND DEPORTABLE ALIENS
 SEC. 377. LIMITATION ON LEGALIZATION LITIGATION.



"(C) **JURISDICTION OF COURTS.**-Notwithstanding any other provision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1), or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer."

(b) **EFFECTIVE DATE.**-The amendment made by subsection (a) shall be effective as if included in the enactment of the Immigration Reform and Control Act of 1986.

SEC. 378. RESCISSION OF LAWFUL PERMANENT RESIDENT STATUS.

(a) **IN GENERAL.**-Section 246(a) (8 U.S.C. 1256(a)) is amended by adding at the end the following sentence: "Nothing in this subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to remove the alien under section 240, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status."

(b) **EFFECTIVE DATE.**-The amendment made by subsection (a) shall take effect on the title III-A effective date (as defined in section 309(a) of this division).

SEC. 379. ADMINISTRATIVE REVIEW OF ORDERS.

(a) **IN GENERAL.**-Sections 274A(e)(7) and 274C(d)(4) (8 U.S.C. 1324a(e)(7), 1324c(d)(4)) are each amended-

(1) by striking "unless, within 30 days, the Attorney General modifies or vacates the decision and order" and inserting "unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations"; and

(2) by striking "a final order" and inserting "the final agency decision and order".

(b) **EFFECTIVE DATE.**-The amendments made by subsection (a) shall apply to orders issued on or after the date of the enactment of this Act.

SEC. 380. CIVIL PENALTIES FOR FAILURE TO DEPART.

(a) **IN GENERAL.**-The Immigration and Nationality Act is amended by inserting after section 274C the following new section:

"CIVIL PENALTIES FOR FAILURE TO DEPART

"SEC. 274D. (a) **IN GENERAL.**-Any alien subject to a final order of removal who-

"(1) willfully fails or refuses to-

"(A) depart from the United States pursuant to the order,

"(B) make timely application in good faith for travel or other documents necessary for departure, or

"(C) present for removal at the time and place required by the Attorney General; or

"(2) conspires to or takes any action designed to prevent or hamper the alien's departure pursuant to the order, shall pay a civil penalty of not more than \$500 to the Commissioner for each day the alien is in violation of this section.

"(b) CONSTRUCTION.-Nothing in this section shall be construed to diminish or qualify any penalties to which an alien may be subject for activities proscribed by section 243(a) or any other section of this Act."

(b) CLERICAL AMENDMENT.-The table of contents is amended by inserting after the item relating to section 274C the following new item:

"Sec. 274D. Civil penalties for failure to depart."

(c) EFFECTIVE DATE.-The amendment made by subsection (a) shall apply to actions occurring on or after the title III-A effective date (as defined in section 309(a) of this division).

SEC. 381. CLARIFICATION OF DISTRICT COURT JURISDICTION.

(a) IN GENERAL.-Section 279 (8 U.S.C. 1329) is amended-

(1) by amending the first sentence to read as follows: "The district courts of the United States shall have jurisdiction of all causes, civil and criminal, brought by the United States that arise under the provisions of this title.", and

(2) by adding at the end the following new sentence: "Nothing in this section shall be construed as providing jurisdiction for suits against the United States or its agencies or officers."

(b) EFFECTIVE DATE.-The amendments made by subsection (a) shall apply to actions filed after the date of the enactment of this Act.

SEC. 382. APPLICATION OF ADDITIONAL CIVIL PENALTIES TO ENFORCEMENT.

(a) IN GENERAL.-Subsection (b) of section 280 (8 U.S.C. 1330) is amended to read as follows:

"(b)(1) There is established in the general fund of the Treasury a separate account which shall be known as the 'Immigration Enforcement Account'. Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the Immigration Enforcement Account amounts described in paragraph (2) to remain available until expended.

"(2) The amounts described in this paragraph are the following:

"(A) The increase in penalties collected resulting from the amendments made by sections 203(b) and 543(a) of the Immigration Act of 1990.

"(B) Civil penalties collected under sections 240B(d), 274C, 274D, and 275(b).

"(3)(A) The Secretary of the Treasury shall refund out of the Immigration Enforcement Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Attorney General for activities that enhance enforcement of provisions of this title. Such activities include-

"(i) the identification, investigation, apprehension, detention, and removal of criminal aliens;

"(ii) the maintenance and updating of a system to identify and track criminal aliens, deportable aliens, inadmissible aliens, and aliens illegally entering the United States; and

"(iii) for the repair, maintenance, or construction on the United States border, in areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States.

"(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Attorney General of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amount required to be refunded under subparagraph (A).

"(C) The amounts required to be refunded from the Immigration Enforcement Account for fiscal year 1996 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years. Any proposed changes in the amounts designated in such budget requests shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of Public Law 104-134.

"(D) The Attorney General shall prepare and submit annually to the Congress statements of financial condition of the Immigration Enforcement Account, including beginning account balance, revenues, withdrawals, and ending account balance and projection for the ensuing fiscal year."

(b) IMMIGRATION USER FEE ACCOUNT.-Section 286(h)(1)(B) (8 U.S.C. 1356(h)(1)(B)) is amended by striking "271" and inserting "243(c), 271,".



II

To state a claim under the Cruel and Unusual Punishments Clause, a party must prove not only that the challenged conduct was both cruel and unusual, but also that it constitutes punishment. The text and history of the Eighth Amendment, together with pre-*Estelle* precedent, raise substantial doubts in my mind that the Eighth Amendment proscribes a prison deprivation that is not inflicted as part of a sentence. And *Estelle* itself has not dispelled these doubts. Were the issue squarely presented, therefore, I might vote to overrule *Estelle*. I need not make that decision today, however, because this case is not a straightforward application of *Estelle*. It is, instead, an extension.

In *Hudson*, the Court extended *Estelle* to cases in which the prisoner has suffered only minor injuries; here, it extends *Estelle* to cases in which there has been no injury at all.³ Because I seriously doubt that *Estelle* was correctly decided, I decline to join the Court's holding. *Stare decisis* may call for hesitation in overruling a dubious precedent, but it does not demand that such a precedent be expanded to its outer limits. I would draw the line at actual, serious injuries and reject the claim that exposure to the risk of injury can violate the Eighth Amendment.

Accordingly, I would reverse the judgment of the Court of Appeals.

³ None of our prior decisions, including the three that are cited by the Court today, see *ante*, at 33, held that the mere threat of injury can violate the Eighth Amendment. In *Hutto v. Finney*, 437 U.S. 678 (1978), the defendants challenged the district court's remedy; they did not dispute the court's conclusion that "conditions in [the] prisons . . . constituted cruel and unusual punishment." *Id.*, at 685. *Youngberg v. Romeo*, 457 U.S. 307 (1982), involved the liberty interests (under the Due Process Clause) of an involuntarily committed mentally retarded person, and *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189 (1989), involved the due process rights of a child who had been beaten by his father in the home.

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RENO, ATTORNEY GENERAL, ET AL. v. CATHOLIC SOCIAL SERVICES, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 91-1826. Argued January 11, 1993—Decided June 18, 1993

Under the alien legalization program created by Title II of the Immigration Reform and Control Act of 1986, an alien unlawfully present in the United States who sought permission to reside permanently had to apply first for temporary resident status by establishing, *inter alia*, that he had resided continuously in this country in an unlawful status and had been physically present here continuously for specified periods. After the Immigration and Naturalization Service (INS) issued regulations construing particular aspects of, respectively, the "continuous physical presence" and "continuous unlawful residence" requirements, two separate class actions were brought, each challenging one of the regulations on behalf of aliens whom it would render ineligible for legalization. In each instance, the District Court struck down the challenged regulation as inconsistent with the Reform Act and issued a remedial order directing the INS to accept legalization applications beyond the statutory deadline. The Court of Appeals, among other rulings, consolidated the INS's appeals from the remedial orders, rejected the INS's argument that the Reform Act's restrictive judicial review provisions barred district court jurisdiction in each case, and affirmed the District Courts' judgments.

Held: The record is insufficient to allow this Court to decide all issues necessary to determine whether the District Courts had jurisdiction. Pp. 53-67.

(a) The Reform Act's exclusive review scheme—which applies to "determination[s] respecting an application for adjustment of status," 8 U.S.C. § 1255a(f)(1), and specifies that "a denial" of such adjustment may be judicially scrutinized "only in the . . . review of an order of deportation" in the Courts of Appeals, § 1255a(f)(4)(A)—does not preclude district court jurisdiction over an action which, in challenging the legality of an INS regulation, does not refer to or rely on the denial of any individual application. The statutory language delimiting the jurisdictional bar refers only to review of such an individual denial. *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 494. Pp. 53-56.

(b) However, the promulgation of the challenged regulations did not itself affect each of the plaintiff class members concretely enough to

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render his claim "ripe" for judicial review, as is required by, *e. g.*, *Abbott Laboratories v. Gardner*, 387 U. S. 136, 148–149. The regulations impose no penalties for violating any newly imposed restriction, but limit access to a benefit created by the Reform Act but not automatically bestowed on eligible aliens. Rather, the Act requires each alien desiring the benefit to take further affirmative steps, and to satisfy criteria beyond those addressed by the disputed regulations. It delegates to the INS the task of determining on a case-by-case basis whether each applicant has met all of the Act's conditions, not merely those interpreted by the regulations in question. In these circumstances, a class member's claim would ripen only once he took the affirmative steps that he could take before the INS blocked his path by applying a regulation to him. Ordinarily, that barrier would appear when the INS formally denied the alien's application on the ground that a regulation rendered him ineligible for legalization. But a plaintiff who sought to rely on such a denial to satisfy the ripeness requirement would then still find himself at least temporarily barred by the Reform Act's exclusive review provisions, since he would be seeking "judicial review of a determination respecting an application" under § 1255a(f)(1). Pp. 56–61.

(c) Nevertheless, the INS's "front-desking" policy—which directs employees to reject applications at a Legalization Office's front desk if the applicant is statutorily ineligible for adjustment of status—may well have left some of the plaintiffs with ripe claims that are outside the scope of § 1255a(f)(1). A front-desked class member whose application was rejected because one of the regulations at issue rendered him ineligible for legalization would have felt the regulation's effects in a particularly concrete manner, for his application would have been blocked then and there; his challenge to the regulation should not fail for lack of ripeness. Front-desking would also have the untoward consequence for jurisdictional purposes of effectively excluding such an applicant from access even to the Reform Act's limited administrative and judicial review procedures, since he would have no formal denial to appeal administratively or any opportunity to build an administrative record on which judicial review might be based. Absent clear and convincing evidence of a congressional intent to preclude judicial review entirely, it must be presumed that front-desked applicants may obtain district court review of the regulations in these circumstances. See *McNary*, *supra*, at 496–497. However, as there is also no evidence that particular class members were actually subjected to front-desking, the jurisdictional issue cannot be resolved on the records below. Because, as the cases have been presented to this Court, only those class members (if any) who were front-desked have ripe claims over which the District Courts should exercise jurisdiction, the cases must be remanded for

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new jurisdictional determinations and, if appropriate, remedial orders. Pp. 61–67.

956 F. 2d 914, vacated and remanded.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment, *post*, p. 67. STEVENS, J., filed a dissenting opinion, in which WHITE and BLACKMUN, JJ., joined, *post*, p. 77.

Ronald J. Mann argued the cause for the United States. With him on the briefs were Solicitor General Starr, Assistant Attorney General Gerson, Deputy Solicitor General Mahoney, and Michael Jay Singer.

Ralph Santiago Abascal argued the cause for respondents. With him on the brief were Stephen A. Rosenbaum, Peter A. Schey, and Carlos R. Holguin.*

JUSTICE SOUTER delivered the opinion of the Court.

This petition joins two separate suits, each challenging a different regulation issued by the Immigration and Naturalization Service (INS) in administering the alien legalization program created by Title II of the Immigration Reform and Control Act of 1986. In each instance, a District Court struck down the regulation challenged and issued a remedial order directing the INS to accept legalization applications beyond the statutory deadline; the Court of Appeals consolidated the INS's appeals from these orders, and affirmed the District Courts' judgments. We are now asked to consider whether the District Courts had jurisdiction to hear the challenges, and whether their remedial orders were permitted

*Briefs of *amici curiae* urging affirmance were filed for the city of Chicago et al. by Lawrence Rosenthal, John Payton, O. Peter Sherwood, Leonard J. Koerner, and Stephen J. McGrath; for the American Bar Association by J. Michael McWilliams, Ira Kurzban, Robert A. Williams, and Carol L. Wolchok; for the American Civil Liberties Union et al. by Lucas Guttentag, Steven R. Shapiro, John A. Powell, and Carolyn P. Blum; and for Church World Service et al. by Steven L. Mayer.

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by law. We find the record insufficient to decide all jurisdictional issues and accordingly vacate and remand for new jurisdictional determinations and, if appropriate, remedial orders limited in accordance with the views expressed here.

I

On November 6, 1986, the President signed the Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 3359, Title II of which established a scheme under which certain aliens unlawfully present in the United States could apply, first, for the status of a temporary resident and then, after a 1-year wait, for permission to reside permanently.¹ An applicant for temporary resident status must have resided continuously in the United States in an unlawful status since at least January 1, 1982, 8 U.S.C. § 1255a(a)(2)(A); must have been physically present in the United States continuously since November 6, 1986, the date the Reform Act was enacted, § 1255a(a)(3)(A); and must have been otherwise admissible as an immigrant, § 1255a(a)(4). The applicant must also have applied during the 12-month period beginning on May 5, 1987. § 1255a(a)(1).²

¹The Immigration Reform and Control Act of 1986 amended the Immigration and Nationality Act, 66 Stat. 163, as amended, 8 U.S.C. § 1101 *et seq.* Section 201(a)(1) of the Reform Act created the alien legalization program at issue in this case by adding § 245A to the Immigration and Nationality Act, codified at 8 U.S.C. § 1255a. For the sake of convenience, we will refer to the sections of the Act as they have been codified.

²The Reform Act requires the 12-month period to "begin on a date (not later than 180 days after November 6, 1986) designated by the Attorney General." 8 U.S.C. § 1255a(a)(1)(A). The Attorney General set the period to begin on May 5, 1987, the latest date the Reform Act authorized him to designate. See 8 CFR § 245a.2(a)(1) (1992). A separate provision of the Act requires "[a]n alien who, at any time during the first 11 months of the 12-month period . . . , is the subject of an order to show cause [why he should not be deported]" to "make application . . . not later than the end of the 30-day period beginning either on the first day of such 12-month period or on the date of the issuance of such order, whichever day is

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The two separate suits joined before us challenge regulations addressing, respectively, the first two of these four requirements. The first, *Reno v. Catholic Social Services, Inc. (CSS)*, *et al.*, focuses on an INS interpretation of 8 U.S.C. § 1255a(a)(3), the Reform Act's requirement that applicants for temporary residence prove "continuous physical presence" in the United States since November 6, 1986. To mitigate this requirement, the Reform Act provides that "brief, casual, and innocent absences from the United States" will not break the required continuity. § 1255a(a)(3)(B). In a telex sent to its regional offices on November 14, 1986, however, the INS treated the exception narrowly, stating that it would consider an absence "brief, casual, and innocent" only if the alien had obtained INS permission, known as "advance parole," before leaving the United States; aliens who left without it would be "ineligible for legalization." App. 186. The INS later softened this limitation somewhat by regulations issued on May 1, 1987, forgiving a failure to get advance parole for absences between November 6, 1986, and May 1, 1987. But the later regulation confirmed that any absences without advance parole on or after May 1, 1987, would not be considered "brief, casual, and innocent" and would therefore be taken to have broken the required continuity. See 8 CFR § 245a.1(g) (1992) ("Brief, casual, and innocent means a departure authorized by [the INS] (advance parole) subsequent to May 1, 1987 of not more than thirty (30) days for legitimate emergency or humanitarian purposes").

The CSS plaintiffs challenged the advance parole regulation as an impermissible construction of the Reform Act. After certifying the case as a class action, the District Court eventually defined a class comprising "persons prima facie eligible for legalization under [8 U.S.C. § 1255a] who de-

later." § 1255a(a)(1)(B); see § 1255a(e)(1) (providing further relief for certain aliens "apprehended before the beginning of the application period").

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parted and reentered the United States without INS authorization (i. e. 'advance parole') after the enactment of the [Reform Act] following what they assert to have been a brief, casual and innocent absence from the United States."³ No. Civ. S-86-1343 LKK (ED Cal., May 3, 1988) (App. 50). On April 22, 1988, 12 days before the end of the legalization program's 12-month application period, the District Court granted partial summary judgment invalidating the regulation and declaring that "brief, casual, and innocent" absences did not require prior INS approval. No. Civ. S-86-1343 LKK (ED Cal., Apr. 22, 1988) (Record, Doc. No. 161); see *Catholic Social Services, Inc. v. Meese*, 685 F. Supp. 1149 (ED Cal. 1988) (explaining the basis of the April 22 order). No appeal was taken by the INS (by which initials we will refer to the Immigration and Naturalization Service and the Attorney General collectively), and after further briefing on remedial issues the District Court issued an order on June 10, 1988, requiring the INS to extend the application period to November 30, 1988⁴ for class members who "knew of [the INS's] unlawful regulation and thereby concluded that they

³The CSS lawsuit originally challenged various aspects of the INS's administration of both the legalization program created by Title II of the Reform Act and the "Special Agricultural Workers" (SAW) legalization program created by Part A of Title III of the Reform Act (codified at 8 U. S. C. § 1160). The challenge to the SAW program eventually took its own procedural course, and was resolved by a district court order that neither party appealed. No. Civ. S-86-1343 LKK (ED Cal., Aug. 11, 1988) (App. 3, Record, Doc. No. 188). With respect to the Title II challenge, the District Court originally certified a broad class comprising all persons believed by the Government to be deportable aliens who could establish a prima facie claim for adjustment of status to temporary resident under 8 U. S. C. § 1255a. No. Civ. S-86-1343 LKK (ED Cal., Nov. 24, 1986) (App. 15). After further proceedings, the District Court narrowed the class definition to that set out in the text.

⁴The District Court chose November 30, 1988, to coincide with the deadline for legalization applications under the Reform Act's SAW program. See No. Civ. S-86-1343 LKK (ED Cal., June 10, 1988) (App. to Pet. for Cert. 22a).

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were ineligible for legalization and by reason of that conclusion did not file an application."⁵ No. Civ. S-86-1343 LKK (ED Cal., June 10, 1988) (App. to Pet. for Cert. 25a). Two further remedial orders issued on August 11, 1988, provided, respectively, an alternative remedy if the extension of the application period should be invalidated on appeal, and further specific relief for any class members who had been detained or apprehended by the INS or who were in deportation proceedings.⁶ No. Civ. S-86-1343 LKK (ED Cal.) (Record, Doc. Nos. 187, 189). The INS appealed all three of the remedial orders.⁷

The second of the two lawsuits, styled *INS v. League of United Latin American Citizens (LULAC) et al.*, goes to the INS's interpretation of 8 U. S. C. § 1255a(a)(2)(A), the Reform Act's "continuous unlawful residence" requirement. The Act provides that certain brief trips abroad will not break an alien's continuous unlawful residence (just as

⁵The order also required the INS to identify all class members whose applications had been denied or recommended for denial on the basis of the advance parole regulation, and to "rescind such denials . . . and readjudicate such applications in a manner consistent with the court's order." No. Civ. S-86-1343 LKK (ED Cal., June 10, 1988) (App. to Pet. for Cert. 24a). The INS did not appeal this part of the order. See Brief for Petitioners 11, n. 11.

⁶The latter order required the INS to provide apprehended and detained aliens, and those in deportation proceedings, with "a reasonable opportunity, of not less than thirty (30) days, to submit an application [for legalization]." See n. 2, *supra* (describing the Act's provisions regarding such aliens); n. 12, *infra* (describing the LULAC court's relief for such aliens in *INS v. League of United Latin American Citizens*).

⁷The CSS plaintiffs cross-appealed, challenging the District Court's denial of their request for an injunction ordering the INS to permit class members outside the United States to enter the United States so that they could file applications for adjustment of status. The Court of Appeals affirmed the District Court's denial, see *Catholic Social Services, Inc. v. Thornburgh*, 956 F. 2d 914, 923 (CA9 1992), and the plaintiffs did not petition this Court for review of the Court of Appeals' judgment; thus, the issues presented by the cross-appeal are not before us.

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certain brief absences from the United States would not violate the "continuous physical presence" requirement). See § 1255a(g)(2)(A). Under an INS regulation, however, an alien would fail the "continuous unlawful residence" requirement if he had gone abroad and reentered the United States by presenting "facially valid" documentation to immigration authorities. 8 CFR § 245a.2(b)(8) (1992).⁸ On the INS's reasoning, an alien's use of such documentation made his subsequent presence "lawful" for purposes of § 1255a(a)(2)(A), thereby breaking the continuity of his unlawful residence. Thus, an alien who had originally entered the United States under a valid nonimmigrant visa, but had become an unlawful resident by violating the terms of that visa in a way known to the Government before January 1, 1982, was eligible for relief under the Reform Act. If, however, the same alien left the United States briefly and then used the same visa to get back in (a facially valid visa that had in fact become invalid after his earlier violation of its terms), he rendered himself ineligible.

In July 1987, the *LULAC* plaintiffs brought suit challenging the reentry regulation as inconsistent both with the Act and the equal protection limitation derived from Fifth Amendment due process. With this suit still pending, on November 17, 1987, some seven months into the Reform

⁸ This regulation expresses the INS policy in signally cryptic form, stating that an alien's eligibility "shall not be affected by entries to the United States subsequent to January 1, 1982 that were not documented on Service Form I-94, Arrival-Departure Record." By negative implication, an alien would be rendered ineligible by an entry that was documented on an I-94 form. An entry is documented on an I-94 form when it occurs through a normal, official port of entry, at which an alien must present some valid-looking document (for example, a nonimmigrant visa) to get into the United States. See 8 CFR § 235.1(f) (1992). Under the INS policy, an alien who reentered by presenting such a "facially valid" document broke the continuity of his unlawful residence, whereas an alien who reentered the United States by crossing a desolate portion of the border, thus avoiding inspection altogether, maintained that continuity.

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Act's 12-month application period, the INS modified its reentry policy by issuing two new regulations.⁹ The first, codified at 8 CFR § 245a.2(b)(9) (1992), specifically acknowledged the eligibility of an alien who "reentered the United States as a nonimmigrant . . . in order to return to an unrelinquished unlawful residence," so long as he "would be otherwise eligible for legalization and . . . was present in the United States in an unlawful status prior to January 1, 1982." 52 Fed. Reg. 43845 (1987). The second, codified at 8 CFR § 245a.2(b)(10) (1992), qualified this expansion of eligibility by obliging such an alien to obtain a waiver of a statutory provision requiring exclusion of aliens who enter the United States by fraud. *Ibid.*

Although the *LULAC* plaintiffs then amended their complaint, they pressed their claim that 8 CFR § 245a.2(b)(8) (1992), the reentry regulation originally challenged, had been invalid prior to its modification. As to that claim, the District Court certified the case as a class action, with a class including

"all persons who qualify for legalization but who were deemed ineligible for legalization under the original [reentry] policy, who learned of their ineligibility following promulgation of the policy and who, relying upon information that they were ineligible, did not apply for legalization before the May 4, 1988 deadline."¹⁰ No. 87-4757-WDK (JR_x) (CD Cal., July 15, 1988) (App. 216).

⁹ The INS first announced its intention to modify its policy in a statement issued by then-INS Commissioner Alan Nelson on October 8, 1987, see Record, Addendum to Doc. No. 8; however, it did not issue the new regulations until November 17 following.

¹⁰ The *LULAC* plaintiffs also challenged the modified policy, claiming that aliens should not have to comply with the requirement of 8 CFR § 245a.2(b)(10) (1992) to obtain a waiver of excludability for having fraudulently procured entry into the United States. With respect to this challenge, the District Court certified a second class comprising persons adversely affected by the modified policy. See No. 87-4757-WDK (JR_x) (CD Cal., July 15, 1988) (App. 216). However, the District Court ultimately

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On July 15, 1988, 10 weeks after the end of the 12-month application period, the District Court held the regulation invalid, while reserving the question of remedy. *Ibid.* (App. 224-225). Again, the INS took no appeal. The *LULAC* plaintiffs then sought a remedial order extending the application period for class members to November 30, 1988,¹¹ and compelling the INS to publicize the modified policy and the extended application period. They argued that the INS had effectively truncated the 12-month application period by enforcing the invalid regulation, by publicizing the regulation so as to dissuade potential applicants, and by failing to give sufficient publicity to its change in policy. On August 12, 1988, the District Court granted the plaintiffs' request for injunctive relief.¹² No. 87-4757-WDK (JR_x) (CD Cal., Aug. 12, 1988) (App. to Pet. for Cert. 50a). The INS appealed this remedial order.

In its appeals in both *CSS* and *LULAC*, the INS raised two challenges to the orders of the respective District Courts. First, it argued that the restrictive judicial review provisions of the Reform Act barred district court jurisdiction over the claim in each case. It contended, second, that each District Court erred in ordering an extension of the 12-month application period, the 12-month limit being, it maintained, a substantive statutory restriction on relief beyond the power of a court to alter.

rejected the challenge to the modified policy, see *ibid.* (App. 234), and the *LULAC* plaintiffs did not appeal the grant of summary judgment to the INS on this issue.

¹¹ As in the *CSS* case, this date was chosen to coincide with the deadline for legalization applications under the Reform Act's SAW program. No. 87-4757-WDK (JR_x) (CD Cal., Aug. 12, 1988) (App. to Pet. for Cert. 50a); see n. 5, *supra*.

¹² The order also required the INS to give those illegal aliens apprehended by INS enforcement officials "adequate time" to apply for legalization. App. to Pet. for Cert. 60a; see n. 2, *supra* (describing the Act's provisions regarding such aliens); n. 6, *supra* (describing the *CSS* court's relief for such aliens).

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The Ninth Circuit eventually consolidated the two appeals. After holding them pending this Court's disposition of *McNary v. Haitian Refugee Center, Inc.*, 498 U. S. 479 (1991), it rendered a decision in February 1992, affirming the District Courts.¹³ *Catholic Social Services, Inc. v. Thornburgh*, 956 F. 2d 914 (1992). We were prompted to grant certiorari, 505 U. S. 1203 (1992), by the importance of the issues, and by a conflict between circuits on the jurisdictional issue, see *Ayuda, Inc. v. Thornburgh*, 292 U. S. App. D. C. 150, 156-162, 948 F. 2d 742, 748-754 (1991) (holding that the Reform Act precluded district court jurisdiction over a claim that INS regulations were inconsistent with the Act), cert. pending, No. 91-1924. We now vacate and remand.

II

The Reform Act not only sets the qualifications for obtaining temporary resident status, but provides an exclusive scheme for administrative and judicial review of "determination[s] respecting . . . application[s] for adjustment of status" under the Title II legalization program. 8 U. S. C. § 1255a(f)(1). Section 1255a(f)(3)(A) directs the Attorney General to "establish an appellate authority to provide for a single level of administrative appellate review" of such deter-

¹³ While the appeals were pending in the Ninth Circuit, the orders of the District Courts were each subject to a stay order. Under the terms of each stay order, the INS was obliged to grant a stay of deportation and temporary work authorization to any class member whose application made a *prima facie* showing of eligibility for legalization, but was not obliged to process the applications. See App. to Pet. for Cert. 63a-64a. Because the Court of Appeals has stayed its mandate pending this Court's disposition of the case, see Nos. 88-15046, 88-15127, 88-15128, 88-6447 (CA9, May 1, 1992) (staying the mandate); Nos. 88-15046, 88-15127, 88-15128, 88-6447 (CA9, Sept. 17, 1992) (denying the INS's motion to dissolve the stay and issue its mandate), the INS is still operating under these stay orders. By March 1992, it had received some 300,000 applications for temporary resident status under the stay orders. See App. to Pet. for Cert. 83a.

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minations. Section 1255a(f)(4)(A) provides that a denial of adjustment of status is subject to review by a court "only in the judicial review of an order of deportation under [8 U.S.C. § 1105a]"; under § 1105a, this review takes place in the Courts of Appeals. Section 1255a(f)(1) closes the circle by explicitly rendering the scheme exclusive: "There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection."

Under this scheme, an alien denied adjustment of status by the INS in the first instance may appeal to the Associate Commissioner for Examinations, the "appellate authority" designated by the Attorney General pursuant to § 1255a(f)(3)(A). See 8 CFR §§ 103.1(f)(1)(xxvii), 245a.2(p) (1992). Although the Associate Commissioner's decision is the final agency action on the application, an adverse decision does not trigger deportation proceedings. On the contrary, because the Reform Act generally allows the INS to use information in a legalization application only to make a determination on the application, see 8 U.S.C. § 1255a(c)(5),¹⁴ an alien whose appeal has been rejected by the Associate Commissioner stands (except for a latent right to judicial review of that rejection) in the same position he did before he applied: he is residing in the United States in an unlawful status, but the Government has not found out about him yet.¹⁵

¹⁴The INS may also use the information to enforce a provision penalizing the filing of fraudulent applications, and to prepare statistical reports to Congress. § 1255a(c)(5)(A).

¹⁵This description excludes the alien who was already in deportation proceedings before he applied for legalization under § 1255a. Once his application is denied, however, such an alien must also continue with deportation proceedings as if he had never applied, and may obtain further review of the denial of his application only upon review of a final order of deportation entered against him. See 8 U.S.C. § 1255a(f)(4)(A). The Act's provisions regarding aliens who have been issued an order to show cause before applying are described at n. 2, *supra*; the provisions of the

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We call the right to judicial review "latent" because § 1255a(f)(4)(A) allows judicial review of a denial of adjustment of status only on appeal of "an order of deportation." Hence, the alien must first either surrender to the INS for deportation¹⁶ or wait for the INS to catch him and commence a deportation proceeding, and then suffer a final adverse decision in that proceeding, before having an opportunity to challenge the INS's denial of his application in court.

The INS takes these provisions to preclude the District Courts from exercising jurisdiction over the claims in both the *CSS* and *LULAC* cases, reasoning that the regulations it adopted to elaborate the qualifications for temporary resident status are "determination[s] respecting an application for adjustment of status" within the meaning of § 1255a(f)(1); because the claims in *CSS* and *LULAC* attack the validity of those regulations, they are subject to the limitations contained in § 1255a(f), foreclosing all jurisdiction in the district courts, and granting it to the Courts of Appeals only on review of a deportation order. The INS recognizes, however, that this reasoning is out of line with our decision in *McNary v. Haitian Refugee Center, Inc.*, *supra*, where we construed a virtually identical set of provisions governing judicial review within a separate legalization program for agricultural workers created by Title III of the Reform Act.¹⁷ There, as

District Court orders regarding such aliens are described at nn. 6 and 12, *supra*.

¹⁶Although aliens have no explicit statutory right to force the INS to commence a deportation proceeding, the INS has represented that "any alien who wishes to challenge an adverse determination on his legalization application may secure review by surrendering for deportation at any INS district office." Reply Brief for Petitioners 9-10 (footnote omitted).

¹⁷The single difference between the two sets of provisions is the addition, in the provisions now before us, of a further specific jurisdictional bar: "No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative pro-

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here, the critical language was "a determination respecting an application for adjustment of status." We said that "the reference to 'a determination' describes a single act rather than a group of decisions or a practice or procedure employed in making decisions." *Id.*, at 492. We noted that the provision permitting judicial review only in the context of a deportation proceeding also defined its scope by reference to a single act: "'judicial review of *such a denial*.'" *Ibid.* (emphasis in original) (quoting 8 U.S.C. § 1160(e)(3)); see § 1255a(f)(4)(A) (using identical language). We therefore decided that the language setting the limits of the jurisdictional bar "describes the denial of an individual application," 498 U.S., at 492, and thus "applies only to review of denials of individual . . . applications." *Id.*, at 494. The INS gives us no reason to reverse course, and we reject its argument that § 1255a(f)(1) precludes district court jurisdiction over an action challenging the legality of a regulation without referring to or relying on the denial of any individual application.

Section 1255a(f)(1), however, is not the only jurisdictional hurdle in the way of the CSS and LULAC plaintiffs, whose claims still must satisfy the jurisdictional and justiciability requirements that apply in the absence of a specific congressional directive. To be sure, a statutory source of jurisdiction is not lacking, since 28 U.S.C. § 1331, generally granting federal question jurisdiction, "confer[s] jurisdiction on federal courts to review agency action." *Califano v. Sanders*, 430 U.S. 99, 105 (1977). Neither is it fatal that the Reform Act is silent about the type of judicial review those plaintiffs seek. We customarily refuse to treat such silence "as a denial of authority to [an] aggrieved person to seek appropriate relief in the federal courts," *Stark v. Wickard*, 321 U.S. 288, 309 (1944), and this custom has been "reinforced by the enactment of the Administrative Procedure Act, which embod-

ceeding of the United States Government." 8 U.S.C. § 1255a(f)(2). As the INS appears to concede, see Brief for Petitioners 19, the claims at issue in this case do not fall within the scope of this bar.

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ies the basic presumption of judicial review to one 'suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.'" *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140 (1967) (quoting 5 U.S.C. § 702).

As we said in *Abbott Laboratories*, however, the presumption of available judicial review is subject to an implicit limitation: "injunctive and declaratory judgment remedies," what the respondents seek here, "are discretionary, and courts traditionally have been reluctant to apply them to administrative determinations unless these arise in the context of a controversy 'ripe' for judicial resolution,"¹⁸ 387 U.S., at 148, that is to say, unless the effects of the administrative action challenged have been "felt in a concrete way by the challenging parties," *id.*, at 148-149. In some cases, the promulgation of a regulation will itself affect parties concretely enough to satisfy this requirement, as it did in *Abbott Laboratories* itself. There, for example, as well as in *Gardner v. Toilel Goods Assn., Inc.*, 387 U.S. 167 (1967), the promulgation of the challenged regulations presented plaintiffs with the immediate dilemma to choose between complying with newly imposed, disadvantageous restrictions and risking serious penalties for violation. *Abbott Laboratories*, *supra*, at 152-153; *Gardner*, *supra*, at 171-172. But that will not be so in every case. In *Toilel Goods Assn., Inc. v. Gardner*, 387 U.S. 158 (1967), for example, we held that a chal-

¹⁸ We have noted that ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 114 (1976) (*per curiam*); *Socialist Labor Party v. Gilligan*, 406 U.S. 583, 588 (1972). Even when a ripeness question in a particular case is prudential, we may raise it on our own motion, and "cannot be bound by the wishes of the parties." *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 138 (1974). Although the issue of ripeness is not explicitly addressed in the questions presented in the INS's petition, it is fairly included and both parties have touched on it in their briefs before this Court. See Brief for Petitioners 20; Brief for Respondents 17, n. 23.

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lenge to another regulation, the impact of which could not "be said to be felt immediately by those subject to it in conducting their day-to-day affairs," *id.*, at 164, would not be ripe before the regulation's application to the plaintiffs in some more acute fashion, since "no irremediabl[y] adverse consequences flow[ed] from requiring a later challenge," *ibid.* See *Lujan v. National Wildlife Federation*, 497 U.S. 871, 891 (1990) (a controversy concerning a regulation is not ordinarily ripe for review under the Administrative Procedure Act until the regulation has been applied to the claimant's situation by some concrete action).

The regulations challenged here fall on the latter side of the line. They impose no penalties for violating any newly imposed restriction, but limit access to a benefit created by the Reform Act but not automatically bestowed on eligible aliens. Rather, the Act requires each alien desiring the benefit to take further affirmative steps, and to satisfy criteria beyond those addressed by the disputed regulations.¹⁹ It

¹⁹ JUSTICE O'CONNOR contends that "if the court can make a firm prediction that the plaintiff will apply for the benefit, and that the agency will deny the application by virtue of the [challenged] rule[,] then there may well be a justiciable controversy that the court may find prudent to resolve." *Post*, at 69. Even if this is true, however, we do not see how such a "firm prediction" could be made in this case. As for the prediction that the plaintiffs "will apply for the benefit," we are now considering only the cases of those plaintiffs who, in fact, failed to file timely applications. As for the prediction that "the agency will deny the application by virtue of the [challenged] rule," we reemphasize that in this case, access to the benefit in question is conditioned on several nontrivial rules other than the two challenged. This circumstance makes it much more difficult to predict firmly that the INS would deny a particular application "by virtue of the [challenged] rule," and not by virtue of some other, unchallenged rule that it determined barred an adjustment of status.

Similarly distinguishable is our decision in *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656 (1993), the factual and legal setting of which JUSTICE STEVENS appears to equate with that of the present cases, see *post*, at 81-82. In *Associated General Contractors*, the plaintiff association alleged that "many of its members regularly bid on and perform construction work for the [defendant city]," 508 U.S., at 659 (internal quotation marks omitted), thus pro-

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delegates to the INS the task of determining on a case-by-case basis whether each applicant has met all of the Act's conditions, not merely those interpreted by the regulations in question. In these circumstances, the promulgation of the challenged regulations did not itself give each CSS and LULAC class member a ripe claim; a class member's claim would ripen only once he took the affirmative steps that he could take before the INS blocked his path by applying the regulation to him.²⁰

viding an historical basis for the further unchallenged allegation that the members "would have . . . bid on . . . designated set aside contracts but for the restrictions imposed by the [challenged] ordinance," *ibid.* (internal quotation marks omitted). A plaintiff in these cases can point to no similar history of application behavior to support a claim that "she would have applied . . . but for the invalid regulations," *post*, at 85; and we think the mere fact that she may have heard of the invalid regulations through a Qualified Designated Entity, a private attorney, or "word of mouth," *post*, at 80, insufficient proof of this counterfactual. Further, we defined the "injury in fact" in *Associated General Contractors* as "the inability to compete on an equal footing in the bidding process, not the loss of a contract," 508 U.S., at 666; thus, whether the association's members would have been awarded contracts but for the challenged ordinance was not immediately relevant. Here, the plaintiffs seek, not an equal opportunity to compete for adjustments of status, but the adjustments of status themselves. Under this circumstance, it becomes important to know whether they would be eligible for the adjustments but for the challenged regulations.

²⁰ JUSTICE O'CONNOR maintains that the plaintiffs' actions are now ripe because they have amended their complaints to seek the additional remedy of extending the application period, and the application period is now over. *Post*, at 71-72. We do not see how these facts establish ripeness. In both cases before us, the plaintiffs' underlying claim is that an INS regulation implementing the Reform Act is invalid. Because the Act requires each alien desiring legalization to take certain affirmative steps, and because the Act's conditions extend beyond those addressed by the challenged regulations, one cannot know whether the challenged regulation actually makes a concrete difference to a particular alien until one knows that he will take those affirmative steps and will satisfy the other conditions. Neither the fact that the application period is now over, nor the fact that the plaintiffs would now like the period to be extended, tells us anything about the willingness of the class members to take the required

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Ordinarily, of course, that barrier would appear when the INS formally denied the alien's application on the ground that the regulation rendered him ineligible for legalization. A plaintiff who sought to rely on the denial of his application to satisfy the ripeness requirement, however, would then still find himself at least temporarily barred by the Reform Act's exclusive review provisions, since he would be seeking "judicial review of a determination respecting an application." 8 U. S. C. § 1255a(f)(1). The ripeness doctrine and the Reform Act's jurisdictional provisions would thus dovetail neatly, and not necessarily by mere coincidence. Congress may well have assumed that, in the ordinary case, the courts would not hear a challenge to regulations specifying limits to eligibility before those regulations were actually applied to an individual, whose challenge to the denial of an individual application would proceed within the Reform Act's limited scheme. The *CSS* and *LULAC* plaintiffs do not

affirmative steps, or about their satisfaction of the Reform Act's other conditions. The end of the application period may mean that the plaintiffs no longer have an opportunity to take the steps that could make their claims ripe; but this fact is significant only for those plaintiffs who can claim that the Government prevented them from filing a timely application. See *infra*, at 61-64 (discussing the INS's "front-desking" practice).

JUSTICE O'CONNOR's ripeness analysis encounters one further difficulty. In her view, the plaintiffs' claims are ripe because "[i]t is certain that an alien who now applies to the INS for legalization will be denied that benefit because the period has closed." *Post*, at 72 (emphasis in original). In these circumstances, she suggests, it would make no sense to require "the would-be beneficiary [to] make the wholly futile gesture of submitting an application." *Ibid.* But a plaintiff who, to establish ripeness, relies on the certainty that his application would be denied on grounds of untimeliness, must confront § 1255a(f)(2), which flatly bars all "court[s] of the United States" from reviewing "denial[s] of adjustment of status . . . based on a late filing of an application for such adjustment." We would almost certainly interpret this provision to bar such reliance, since otherwise plaintiffs could always entangle the INS in litigation over application timing claims simply by suing without filing an application, a result we believe § 1255a(f)(2) was intended to foreclose in the ordinary case.

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argue that this limited scheme would afford them inadequate review of a determination based on the regulations they challenge, presumably because they would be able to obtain such review on appeal from a deportation order, if they become subject to such an order; their situation is thus different from that of the "17 unsuccessful individual SAW applicants" in *McNary*, 498 U. S., at 487, whose procedural objections, we concluded, could receive no practical judicial review within the scheme established by 8 U. S. C. § 1160(e), *id.*, at 496-497.

This is not the end of the matter, however, because the plaintiffs have called our attention to an INS policy that may well have placed some of them outside the scope of § 1255a(f)(1). The INS has issued a manual detailing procedures for its offices to follow in implementing the Reform Act's legalization programs and instructing INS employees called "Legalization Assistants" to review certain applications in the presence of the applicants before accepting them for filing. See *Procedures Manual for the Legalization and Special Agricultural Worker Programs of the Immigration Reform and Control Act of 1986* (Legalization Manual or Manual).²¹ According to the Manual, "[m]inor correctable deficiencies such as incomplete responses or typographical errors may be corrected by the [Legalization Assistant]." *Id.*, at IV-6. "[I]f the applicant is statutorily ineligible," however, the Manual provides that "the application will be rejected by the [Legalization Assistant]." *Ibid.* (emphasis added). Because this prefiling rejection of applications oc-

²¹ Under the Manual's procedures, only those applications that were not prepared with the assistance of a "Qualified Designated Entity" (the Reform Act's designation for private organizations that serve as intermediaries between applicants and the INS, see 8 U. S. C. § 1255a(c)(1)) are subject to review by Legalization Assistants. The applications that were prepared with the help of Qualified Designated Entities skip this step. See *Legalization Manual*, at IV-5, IV-6. There is no evidence in the record indicating how many *CSS* and *LULAC* class members were assisted by Qualified Designated Entities in preparing their applications.

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curs at the front desk of an INS office, it has come to be called "front-desking."²² While the regulations challenged in *CSS* and *LULAC* were in force, Legalization Assistants who applied both the regulations and the Manual's instructions may well have "front-desked" the applications of class members who disclosed the circumstances of their trips outside the United States, and affidavits on file in the *LULAC* case represent that they did exactly that.²³ See n. 26, *infra*.

²²The INS forwards a different interpretation of the policy set forth in the Legalization Manual. According to the INS, the Manual reflects a policy, motivated by "charitable concern," of "inform[ing] aliens of [the INS's] view that their applications are deficient before it accepts the filing fee, so that they can make an informed choice about whether to pay the fee if they are not going to receive immediate relief." Reply Brief for Petitioners 9 (emphasis omitted). The "rejection" policy, argues the INS, did not really bar applicants from filing applications; another sentence in the Manual proves that the door remains open, for it provides that "[i]f an applicant whose application has been rejected by the [Legalization Assistant] insists on filing, the application will be routed through a fee clerk to an adjudicator with a routing slip from the [Legalization Assistant] stating the noted deficiency(ies)." Legalization Manual, at IV-6.

We cannot find, in either of the two sentences the parties point to, the policy now articulated by the INS. The first sentence does not say that applicants will be informed; it says that applications will be rejected. The second sentence contains no hint that the Legalization Assistant should tell the applicant that he has a right to file an application despite the "rejection," or that he should file an application if he wants to preserve his rights. Rather, it seems to provide little more than a procedure for dealing with the pesky applicant who "won't take 'no' for an answer." Neither of the sentences preserves a realistic path to judicial review.

²³In its reply brief in this Court, see Reply Brief for Petitioners 14, the INS argues that those individuals who were front-desked fall outside the classes defined by the District Courts, since the *CSS* class included only those who "knew of [INS's] unlawful regulation and thereby concluded that they were ineligible for legalization and by reason of that conclusion did not file an application," App. to Pet. for Cert. 25a, and the *LULAC* class included only those "who learned of their ineligibility following promulgation of the policy and who, relying upon information that they were ineligible, did not apply for legalization before the May 4, 1988 deadline," App. 216. The language in *CSS* that the INS points to, however, is not

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As respondents argue, see Brief for Respondents 17, n. 23, a class member whose application was "front-desked" would have felt the effects of the "advance parole" or "facially valid document" regulation in a particularly concrete manner, for his application for legalization would have been blocked then and there; his challenge to the regulation should not fail for lack of ripeness. Front-desking would also have a further, and untoward, consequence for jurisdictional purposes, for it would effectively exclude an applicant from access even to the limited administrative and judicial review procedures established by the Reform Act. He would have no formal denial to appeal to the Associate Commissioner for Examinations, nor would he have an opportunity to build an administrative record on which judicial review might be based.²⁴ Hence, to construe § 1255a(f)(1) to bar district court jurisdiction over his challenge, we would have to impute to Congress an intent to preclude judicial review of the legality of INS action entirely under those circumstances. As we stated recently in *McNary*, however, there is a "well-

the class definition, which is much broader, see *supra*, at 48-49; rather, it is part of the requirements class members must meet to obtain one of the forms of relief ordered by the District Court. We understand the *LULAC* class definition to use the word "apply" to mean "have an application accepted for filing by the INS," as under this reading the definition encompasses all those whom the INS refuses to treat as having timely applied (which is the refusal that lies at the heart of the parties' dispute), and as the definition then includes those who "learned of their ineligibility" by being front-desked, since it would be odd to exclude those who learned of their ineligibility in the most direct way possible from this description. As we note below, however, see n. 29, *infra*, we believe that the word "applied" as used in § 1255a(a)(1)(A) has a broader meaning than that given to the word in the *LULAC* class definition.

²⁴The Reform Act limits judicial review to "the administrative record established at the time of the review by the appellate authority." 8 U. S. C. § 1255a(f)(4)(B). In addition, an INS regulation provides that a legalization application may not "be filed or reopened before an immigration judge or the Board of Immigration Appeals during exclusion or deportation proceedings." 8 CFR § 103.3(a)(3)(iii) (1992).

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settled presumption favoring interpretations of statutes that allow judicial review of administrative action," *McNary*, 498 U. S., at 496; and we will accordingly find an intent to preclude such review only if presented with "'clear and convincing evidence,'" *Abbott Laboratories*, 387 U. S., at 141 (quoting *Rusk v. Cort*, 369 U. S. 367, 379-380 (1962)). See generally *Bowen v. Michigan Academy of Family Physicians*, 476 U. S. 667, 670-673 (1986) (discussing the presumption in favor of judicial review).

There is no such clear and convincing evidence in the statute before us. Although the phrase "a determination respecting an application for adjustment of status" could conceivably encompass a Legalization Assistant's refusal to accept the application for filing at the front desk of a Legalization Office, nothing in the statute suggests, let alone demonstrates, that Congress was using "determination" in such an extended and informal sense. Indeed, at least one related statutory provision suggests just the opposite. Section 1255a(f)(3)(B) limits administrative appellate review to "the administrative record established at the time of the determination on the application"; because there obviously can be no administrative record in the case of a front-desked application, the term "determination" is best read to exclude front-desking. Thus, just as we avoided an interpretation of 8 U. S. C. § 1160(e) in *McNary* that would have amounted to "the practical equivalent of a total denial of judicial review of generic constitutional and statutory claims," *McNary*, *supra*, at 497, so here we avoid an interpretation of § 1255a(f)(1) that would bar front-desked applicants from ever obtaining judicial review of the regulations that rendered them ineligible for legalization.

Unfortunately, however, neither the CSS record nor the LULAC record contains evidence that particular class members were actually subjected to front-desking. None of the named individual plaintiffs in either case alleges that he or

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she was front-desked,²⁵ and while a number of affidavits in the LULAC record contain the testimony of immigration attorneys and employees of interested organizations that the INS has "refused," "rejected," or "den[ied] individuals the right to file" applications,²⁶ the testimony is limited to such general assertions; none of the affiants refers to any specific incident that we can identify as an instance of front-desking.²⁷

²⁵ In LULAC, the one named individual plaintiff who represents the subclass challenging the INS's original "facially-valid document" policy never attempted to file an application, because he was advised by an attorney over the telephone that he was ineligible. See LULAC, First Amended Complaint 11-12 (Record, Doc. No. 56) (describing plaintiff John Doe). In CSS, none of the named plaintiffs challenging the "advance parole" regulation allege that they attempted to file applications. See CSS Sixth Amended Complaint 12-18 (Record, Doc. No. 140).

²⁶ See App. 204 (affidavit of Pilar Cuen) (legalization counselor states that "INS has refused applications for legalization because our clients entered after January 1, 1982 with a non-immigrant visa and an I-94 was issued at the time of reentry"); App. 209 (affidavit of Joanne T. Stark) (immigration lawyer in private practice states that she is "aware that the Service has discouraged application in the past by [LULAC class members] or has rejected applications made"); Record, Doc. No. 16, Exh. H, p. 135 (affidavit of Isabel Garcia Gallegos) (immigration attorney states that "the legalization offices in Southern Arizona [have] rejected, and otherwise, discouraged individuals who had, in fact entered the United States with an I-94 after January 1, 1982"); App. 200 (affidavit of Marc Van Der Hout) (immigration attorney states that "[i]t has been the practice of the San Francisco District legalization office to deny individuals the right to file an application for legalization under the [Reform Act] if the individual had been in unlawful status prior to January 1, 1982, departed the United States post January 1, 1982, and re-entered on a non-immigrant visa").

²⁷ Only one affiant refers to a specific incident. He recounts: "[I]n August [1987] I was at the San Francisco legalization office when an individual came in seeking to apply for legalization. She was met at the reception desk by a clerk and when she explained the facts of her case, [that she had departed and re-entered the United States after January 1, 1982, on a non-immigrant visa], she was told that she did not qualify for legalization and could not file." App. 200-201 (affidavit of Marc Van Der Hout). The significance of this incident is unclear, however, since there is no way

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This lack of evidence precludes us from resolving the jurisdictional issue here, because, on the facts before us, the front-desking of a particular class member is not only sufficient to make his legal claims ripe, but necessary to do so. As the case has been presented to us, there seems to be no reliable way of determining whether a particular class member, had he applied at all (which, we assume, he did not), would have applied in a manner that would have subjected him to front-desking. As of October 16, 1987, the INS had certified 977 Qualified Designated Entities which could have aided class members in preparing applications that would not have been front-desked, see 52 Fed. Reg. 44812 (1987); n. 21, *supra*, and there is no prior history of application behavior on the basis of which we could predict who would have applied without Qualified Designated Entity assistance and therefore been front-desked. Hence, we cannot say that the mere existence of a front-desking policy involved a "concrete application" of the invalid regulations to those class members who were not actually front-desked.²⁸ Because only those class members (if any) who were front-desked have ripe claims over which the District Courts should exercise jurisdiction, we must vacate the judgment of the Court of Appeals, and remand with directions to remand to the respec-

of telling whether this individual was a *LULAC* class member (that is, whether she would otherwise have been eligible for legalization), nor whether she had a completed application ready for filing and payment in hand.

²⁸ The record reveals relatively little about the application of the front-desking policy and surrounding circumstances. Although we think it unlikely, we cannot rule out the possibility that further facts would allow class members who were not front-desked to demonstrate that the front-desking policy was nevertheless a substantial cause of their failure to apply, so that they can be said to have had the "advanced parole" or "facially valid document" regulation applied to them in a sufficiently concrete manner to satisfy ripeness concerns.

O'CONNOR, J., concurring in judgment

tive District Courts for proceedings to determine which class members were front-desked.²⁹

The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE O'CONNOR, concurring in the judgment.

I agree that the District Courts in these two cases, *Reno v. Catholic Social Services, Inc. (CSS)*, and *INS v. League of United Latin American Citizens (LULAC)*, erred in extending the application period for legalization beyond May 4, 1988, the end of the 12-month interval specified by the Immigration Reform and Control Act of 1986. I would not, however, reach this result on ripeness grounds. The Court holds that a member of the plaintiff class in *CSS* or *LULAC* who failed to apply to the INS during the 12-month period does not now have a ripe claim to extend the application deadline. In my view, that claim *became ripe* after May 4, 1988, even if it was not ripe before. The claim may well lack merit, but it is no longer premature.

The Court of Appeals did not consider the problem of ripeness, and the submissions to this Court have not discussed

²⁹ Although we do not reach the question of remedy on this disposition of the case, we note that, by definition, each *CSS* and *LULAC* class member who was front-desked presented at an INS office to an INS employee an application that under the terms of the Reform Act (as opposed to the terms of the invalid regulation) entitled him to an adjustment of status. Under any reasonable interpretation of the word, such an individual "applied" for an adjustment of status within the 12-month period under § 1255a(a)(1)(A). Because that individual timely applied, the INS need only readjudicate the application, and grant the individual the relief to which he is entitled. Since there is no statutory deadline for processing the applications, and since a front-desked individual need not await a deportation order before obtaining judicial review, there is no reason to think that a District Court would lack the power to order such relief.

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that problem except in passing. See Pet. for Cert. 11, n. 13; Brief for Petitioners 20; Brief for Respondents 17, n. 23. Rather, certiorari was granted on two questions, to which the parties rightly have adhered: first, whether the District Courts had jurisdiction under 8 U. S. C. § 1255a(f), the judicial-review provision of Title II of the Reform Act; and second, whether the courts properly extended the application period. See Pet. for Cert. 1. The Court finds the jurisdictional challenge meritless under *McNary v. Haitian Refugee Center, Inc.*, 498 U. S. 479 (1991), see *ante*, at 53–56, as do I. But instead of proceeding to consider the second question presented, the Court *sua sponte* attempts to resolve the case on ripeness grounds. It reaches out to hold that “the promulgation of the challenged regulations did not itself give each CSS and LULAC class member a ripe claim; a class member’s claim would ripen only once he took the affirmative steps that he could take before the INS blocked his path by applying the regulation to him.” *Ante*, at 59. This is new and, in my view, incorrect law. Moreover, even if it is correct, the new ripeness doctrine propounded by the Court is irrelevant to the case at hand.

Our prior cases concerning anticipatory challenges to agency rules do not specify when an anticipatory suit may be brought against a benefit-conferring rule, such as the INS regulations here. An anticipatory suit by a would-be beneficiary, who has not yet applied for the benefit that the rule denies him, poses different ripeness problems than a pre-enforcement suit against a duty-creating rule, see *Abbott Laboratories v. Gardner*, 387 U. S. 136, 148–156 (1967) (permitting pre-enforcement suit). Even if he succeeds in his anticipatory action, the would-be beneficiary will not receive the benefit until he actually applies for it; and the agency might then deny him the benefit on grounds other than his ineligibility under the rule. By contrast, a successful suit against the duty-creating rule will relieve the plaintiff immediately of a burden that he otherwise would bear.

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Yet I would not go so far as to state that a suit challenging a benefit-conferring rule is necessarily unripe simply because the plaintiff has not yet applied for the benefit. “Where the inevitability of the operation of a statute against certain individuals is patent, it is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect.” *Regional Rail Reorganization Act Cases*, 419 U. S. 102, 143 (1974). If it is “inevitable” that the challenged rule will “operat[e]” to the plaintiff’s disadvantage—if the court can make a firm prediction that the plaintiff will apply for the benefit, and that the agency will deny the application by virtue of the rule—then there may well be a justiciable controversy that the court may find prudent to resolve.

I do not mean to suggest that a simple anticipatory challenge to the INS regulations would be ripe under the approach I propose. Cf. *ante*, at 58–59, n. 19. That issue need not be decided because, as explained below, these cases are *not* a simple anticipatory challenge. See *infra*, at 71–74. My intent is rather to criticize the Court’s reasoning—its reliance on a categorical rule that would-be beneficiaries cannot challenge benefit-conferring regulations until they apply for benefits.

Certainly the line of cases beginning with *Abbott Laboratories* does not support this categorical approach. That decision itself discusses with approval an earlier case that involved an anticipatory challenge to a benefit-conferring rule.

“[I]n *United States v. Storer Broadcasting Co.*, 351 U. S. 192, the Court held to be a final agency action . . . an FCC regulation announcing a Commission policy that it would not issue a television license to an applicant already owning five such licenses, *even though no specific application was before the Commission.*” 387 U. S., at 151 (emphasis added).

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More recently, in *EPA v. National Crushed Stone Assn.*, 449 U. S. 64 (1980), the Court held that a facial challenge to the variance provision of an EPA pollution-control regulation was ripe even "prior to application of the regulation to a particular [company's] request for a variance." *Id.*, at 72, n. 12. And in *Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Development Comm'n*, 461 U. S. 190 (1983), the Court permitted utilities to challenge a state law imposing a moratorium on the certification of nuclear power plants, even though the utilities had not yet applied for a certificate. See *id.*, at 200–202. To be sure, all of these decisions involved licenses, certificates, or variances, which exempt the bearer from otherwise-applicable duties; but the same is true of the instant cases. The benefit conferred by the Reform Act—an adjustment in status to lawful temporary resident alien, see 8 U. S. C. § 1255a(a)—readily can be conceptualized as a "license" or "certificate" to remain in the United States, or a "variance" from the immigration laws.

As for *Lujan v. National Wildlife Federation*, 497 U. S. 871 (1990), the Court there stated:

"Absent [explicit statutory authorization for immediate judicial review], a regulation is not ordinarily considered the type of agency action 'ripe' for judicial review under the APA until the scope of the controversy has been reduced to more manageable proportions, and its factual components fleshed out, by some concrete action applying the regulation to the claimant's situation in a fashion that harms or threatens to harm him. (The major exception, of course, is a substantive rule which as a practical matter requires the plaintiff to adjust his conduct immediately. Such agency action is 'ripe' for review at once, whether or not explicit statutory review apart from the APA is provided.)" *Id.*, at 891–892 (citations omitted).

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This language does not suggest that an anticipatory challenge to a benefit-conferring rule will of necessity be constitutionally unripe, for otherwise an "explicit statutory review" provision would not help cure the ripeness problem. Rather, *Lujan* points to the prudential considerations that weigh in the ripeness calculus: the need to "fles[h] out" the controversy and the burden on the plaintiff who must "adjust his conduct immediately." These are just the kinds of factors identified in the two-part, prudential test for ripeness that *Abbott Laboratories* articulated. "The problem is best seen in a twofold aspect, requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." 387 U. S., at 149. See *Thomas v. Union Carbide Agricultural Products Co.*, 473 U. S. 568, 581–582 (1985) (relying upon *Abbott Laboratories* test); *Pacific Gas*, *supra*, at 200–203 (same); *National Crushed Stone*, *supra*, at 72–73, n. 12 (same). At the very least, where the challenge to the benefit-conferring rule is purely legal, and where the plaintiff will suffer hardship if he cannot raise his challenge until later, a justiciable, anticipatory challenge to the rule may well be ripe in the prudential sense. Thus I cannot agree with the Court that ripeness will never obtain until the plaintiff actually applies for the benefit.

But this new rule of ripeness law, even if correct, is irrelevant here. These cases no longer fall in the above-described category of anticipatory actions, where a would-be beneficiary simply seeks to invalidate a benefit-conferring rule before he applies for benefits. As the cases progressed in the District Courts, respondents amended their complaints to request an additional remedy beyond the invalidation of the INS regulations: an extension of the 12-month application period. Compare Sixth Amended Complaint in *CSS* (Record, Doc. No. 140) and First Amended Complaint in *LULAC* (Record, Doc. No. 56) with Third Amended Complaint in *CSS* (Record, Doc. No. 69) and Complaint in *LULAC* (Record,

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Doc. No. 1). That period expired on May 4, 1988, and the District Courts *thereafter* granted an extension. See App. to Pet. for Cert. 22a–28a, 50a–60a (orders dated June and August 1988). The only issue before us is whether these orders should have been entered. See *ante*, at 48–49, 52–53. Even if the Court is correct that a plaintiff cannot seek to invalidate an agency's benefit-conferring rule before applying to the agency for the benefit, it is a separate question whether the would-be beneficiary must make the wholly futile gesture of submitting an application *when the application period has expired and he is seeking to extend it*.

In the instant cases, I do not see why a class member who failed to apply to the INS within the 12-month period lacks a ripe claim to extend the application deadline, now that the period actually has expired. If Congress in the Reform Act had provided for an 18-month application period, and the INS had closed the application period after only 12 months, no one would argue that court orders extending the period for 6 more months should be vacated on ripeness grounds. The orders actually before us are not meaningfully distinguishable. Of course, respondents predicate their argument for extending the period on the invalidity of the INS regulations, see *infra*, at 75–77, not on a separate statutory provision governing the length of the period, but this difference does not change the ripeness calculus. The “basic rationale” behind our ripeness doctrine “is to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements,” when those “disagreements” are premised on “contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Union Carbide, supra*, at 580–581 (internal quotation marks omitted). There is no contingency to the closing of the 12-month application period. It is *certain* that an alien who now applies to the INS for legalization will be denied that benefit because the period has closed. Nor does prudence justify this Court in postponing an alien's claim to extend the period, since that

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claim is purely legal and since a delayed opportunity to seek legalization will cause grave uncertainty.

The Court responds to this point by reiterating that class members who failed to apply to the INS have not yet suffered a “concrete” injury, because the INS has not denied them legalization by virtue of the challenged regulations. See *ante*, at 59–60, n. 20. At present, however, class members are seeking to redress a different, and logically prior, injury: the denial of the very opportunity to apply for legalization.

The Court's ripeness analysis focuses on the wrong question: whether “the *promulgation* of the challenged regulations [gave] each CSS and LULAC class member a ripe claim.” *Ante*, at 59 (emphasis added). But the question is not whether the class members' claims were ripe *at the inception of these suits*, when respondents were seeking simply to invalidate the INS regulations and the 12-month application period had not yet closed. Whatever the initial status of those claims, they became ripe once the period had in fact closed and respondents had amended their complaints to seek an extension. In the *Regional Rail Reorganization Act Cases*, this Court held that “since ripeness is peculiarly a question of timing, it is the situation now rather than the situation at the time of the District Court's decision that must govern.” 419 U. S., at 140. Accord, *Buckley v. Valeo*, 424 U. S. 1, 114–118 (1976) (*per curiam*). Similarly, in the cases before us, it is the situation now (and, as it happens, at the time of the District Courts' orders), rather than at the time of the initial complaints, that must govern.

The Court also suggests that respondents' claim to extend the application period may well be “flatly” barred by 8 U. S. C. § 1255a(f)(2), which provides: “No denial of adjustment of status [under Title II of the Reform Act] based on a late filing of an application for such adjustment may be reviewed by [any] court” See *ante*, at 60, n. 20. I find it remarkable that the Court might construe § 1255a(f)(2) as barring *any* suit seeking to extend the application dead-

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line set by the INS, while at the same time interpreting § 1255a(f)(1) *not* to bar respondents' substantive challenge to the INS regulations, see *ante*, at 53–56. As the INS itself observes, the preclusive language in § 1255a(f)(1) is “broader” than in § 1255a(f)(2), because the latter provision uses the word “denial” instead of “determination.” See Brief for Petitioners 19. If Congress in the Reform Act had provided for an 18-month application period, and the INS had closed the period after only 12 months, I cannot believe that § 1255a(f)(2) would preclude a suit seeking to extend the period by 6 months. Nor do I think that § 1255a(f)(2) bars respondents' claim to extend the period, because that claim is predicated on their substantive challenge to the INS regulations, which in turn is permitted by § 1255a(f)(1). In any event, § 1255a(f)(2) concerns reviewability, not ripeness; whether or not that provision precludes the instant actions, the Court's ripeness analysis remains misguided.

Of course, the closing of the application period was not an unalloyed benefit for class members who had failed to apply. After May 4, 1988, those aliens had ripe claims, but they also became statutorily ineligible for legalization. The Reform Act authorizes the INS to adjust the status of an illegal alien only if he “appl[ies] for such adjustment during the 12-month period beginning on a date . . . designated by the Attorney General.” 8 U.S.C. § 1255a(a)(1)(A). As the INS rightly argues, this provision precludes the legalization of an alien who waited to apply until after the 12-month period had ended. The District Courts' orders extending the application period were not unripe, either constitutionally or prudentially, but they *were* impermissible under the Reform Act. “A court is no more authorized to overlook the valid [requirement] that applications be [submitted] than it is to overlook any other valid requirement for the receipt of benefits.” *Schweiker v. Hansen*, 450 U.S. 785, 790 (1981) (*per curiam*).

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Respondents assert that equity requires an extension of the time limit imposed by § 1255a(a)(1)(A). Whether that provision is seen as a limitations period subject to equitable tolling, see *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 95–96 (1990), or as a substantive requirement subject perhaps to equitable estoppel, see *Office of Personnel Management v. Richmond*, 496 U.S. 414, 419–424 (1990), the District Courts needed some special reason to exercise that equitable power against the United States. The only reason respondents adduce is supposed “affirmative misconduct” by the INS. See *Irwin*, *supra*, at 96 (“We have allowed equitable tolling in situations . . . where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass”); *Richmond*, *supra*, at 421 (“Our own opinions have continued to mention the possibility, in the course of rejecting estoppel arguments, that some type of ‘affirmative misconduct’ might give rise to estoppel against the Government”). Respondents argue that the INS engaged in “affirmative misconduct” by promulgating the invalid regulations, which deterred aliens who were ineligible under those regulations from applying for legalization. See Plaintiffs' Submission Re Availability of Remedies for the Plaintiff Class in CSS, pp. 6–15 (Record, Doc. No. 164), Plaintiffs' Memorandum on Remedies in *LULAC* (Record, Doc. No. 40). The District Courts essentially accepted the argument, ordering remedies coextensive with the INS' supposed “misconduct.” The CSS court extended the application period for those class members who “knew of [the INS'] unlawful regulation and thereby concluded that they were ineligible for legalization and by reason of that conclusion did not file an application,” App. to Pet. for Cert. 25a; the *LULAC* court provided an almost identical remedy, see *id.*, at 59a.

I cannot agree that a benefit-conferring agency commits “affirmative misconduct,” sufficient to justify an equitable extension of the statutory time period for application, simply

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by promulgating a regulation that incorrectly specifies the eligibility criteria for the benefit. When Congress passes a benefits statute that includes a time period, it has two goals. It intends *both* that eligible claimants receive the benefit *and* that they promptly assert their claims. The broad definition of "misconduct" that respondents propose would give the first goal absolute priority over the second, but I would not presume that Congress intends such a prioritization. Rather, absent evidence to the contrary, Congress presumably intends that the two goals be harmonized as best possible, by requiring would-be beneficiaries to make a timely application *and* concurrently to contest the invalid regulation. "We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights." *Irwin, supra*, at 96. The broad equitable remedy entered by the District Courts in these cases is contrary to Congress' presumptive intent in the Reform Act, and thus is error. "'Courts of equity can no more disregard statutory . . . requirements and provisions than can courts of law.'" *INS v. Pangilinan*, 486 U. S. 875, 883 (1988) (quoting *Hedges v. Dixon County*, 150 U. S. 182, 192 (1893)).

I therefore agree with the Court that the District Courts' orders extending the application period must be vacated. I also agree that "front-desked" aliens already have "applied" within the meaning of §1255a(a)(1)(A). See *ante*, at 67, n. 29. On remand, respondents may be able to demonstrate particular instances of "misconduct" by the INS, beyond the promulgation of the invalid regulations, that might perhaps justify an extension for certain members of the *LULAC* class or the *CSS* class. See Brief for Respondents 16-20, 35-42. I would not preclude the possibility of a narrower order requiring the INS to adjudicate the applications of both "front-desked" aliens and some aliens who were not "front-desked," but neither would I endorse that possibility, because at this

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point respondents have made only the most general suggestions of "misconduct."

JUSTICE STEVENS, with whom JUSTICE WHITE and JUSTICE BLACKMUN join, dissenting.

After Congress authorized a major amnesty program in 1986, the Government promulgated two regulations severely restricting access to that program. If valid, each regulation would have rendered ineligible for amnesty the members of the respective classes of respondents in this case. The Government, of course, no longer defends either regulation. See *ante*, at 48, 52. Nevertheless, one of the regulations was in effect for all but 12 days of the period in which applications for legalization were accepted; the other, for over half of that period. See *ante*, at 48, 50-51. Accordingly, after holding the regulations invalid, the District Courts entered orders extending the time for filing applications for certain class members. See *ante*, at 48-49, 52.

On appeal, the Government argued that the District Courts lacked jurisdiction both to entertain the actions and to provide remedies in the form of extended application periods. The Court of Appeals rejected the first argument on the authority of our decision in *McNary v. Haitian Refugee Center, Inc.*, 498 U. S. 479 (1991). *Catholic Social Services, Inc. v. Thornburgh*, 956 F. 2d 914, 919-921 (CA9 1992). As the Court holds today, *ante*, at 53-56, that ruling was plainly correct. The Court of Appeals also correctly rejected the second argument advanced by the Government, noting that extension of the filing deadline effectuated Congress' intent to provide "meaningful opportunities to apply for adjustments of status," which would otherwise have been frustrated by enforcement of the invalid regulations. 956 F. 2d, at 921-922. We should, accordingly, affirm the judgment of the Court of Appeals.

This Court, however, finds a basis for prolonging the litigation on a theory that was not argued in either the District

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Courts or the Court of Appeals, and was barely mentioned in this Court: that respondents' challenges are not, for the most part, "ripe" for adjudication. *Ante*, at 57–61. I agree with JUSTICE O'CONNOR, *ante*, p. 67 (opinion concurring in judgment), that the Court's rationale is seriously flawed. Unlike JUSTICE O'CONNOR, however, see *ante*, at 73, I have no doubt that respondents' claims were ripe as soon as the concededly invalid regulations were promulgated.

Our test for ripeness is two pronged, "requiring us to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967). Whether an issue is fit for judicial review, in turn, often depends on "the degree and nature of [a] regulation's present effect on those seeking relief," *Toilet Goods Assn., Inc. v. Gardner*, 387 U.S. 158, 164 (1967), or, put differently, on whether there has been some "concrete action applying the regulation to the claimant's situation in a fashion that harms or threatens to harm him," *Lujan v. National Wildlife Federation*, 497 U.S. 871, 891 (1990). As JUSTICE O'CONNOR notes, we have returned to this two-part test for ripeness time and again, see *ante*, at 71, and there is no question but that the *Abbott Laboratories* formulation should govern this case.

As to the first *Abbott Laboratories* factor, I think it clear that the challenged regulations have an impact on respondents sufficiently "direct and immediate," 387 U.S., at 152, that they are fit for judicial review. My opinion rests, in part, on the unusual character of the amnesty program in question. As we explained in *McNary*:

"The Immigration Reform and Control Act of 1986 (Reform Act) constituted a major statutory response to the vast tide of illegal immigration that had produced a 'shadow population' of literally millions of undocumented aliens in the United States. . . . [I]n recognition that a large segment of the shadow population played a

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useful and constructive role in the American economy, but continued to reside in perpetual fear, the Reform Act established two broad amnesty programs to allow existing undocumented aliens to emerge from the shadows." 498 U.S., at 481–483 (footnotes omitted).¹

A major purpose of this ambitious effort was to eliminate the fear in which these immigrants lived, "afraid to seek help when their rights are violated, when they are victimized by criminals, employers or landlords or when they become ill." *Ayuda, Inc. v. Thornburgh*, 292 U.S. App. D.C. 150, 168, 948 F.2d 742, 760 (1991) (Wald, J., dissenting) (quoting H.R. Rep. No. 99–682, pt. 1, p. 49 (1986)). Indeed, in recognition of this fear of governmental authority, Congress established a special procedure through which "qualified designated entities," or "QDE's," would serve as a channel of communication between undocumented aliens and the INS, providing reasonable assurance that "emergence from the shadows" would result in amnesty and not deportation. 8 U.S.C. § 1255a(c)(2); see *Ayuda*, 292 U.S. App. D.C., at 168, and n. 1, 948 F.2d, at 760, and n. 1.

Under these circumstances, official advice that specified aliens were ineligible for amnesty was certain to convince those aliens to retain their "shadow" status rather than come forward. At the moment that decision was made—at the moment respondents conformed their behavior to the invalid regulations—those regulations concretely and directly affected respondents, consigning them to the shadow world from which the Reform Act was designed to deliver them, and threatening to deprive them of the statutory entitlement that would otherwise be theirs.² Cf. *Lujan*, 497 U.S., at 891 (concrete application threatening harm as basis for ripeness).

¹ This case involves the first, and more important, of the two amnesty programs; *McNary* involved the second.

² As the majority explains, the classes certified in both actions were limited to persons otherwise eligible for legalization. See *ante*, at 47–48, 51.

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The majority concedes, of course, that class members whose applications were "front-desked" felt the effects of the invalid regulations concretely, because their applications were "blocked then and there." See *ante*, at 63. Why "then and there," as opposed to earlier and elsewhere, should be dispositive remains unclear to me; whether a potential application is thwarted by a front-desk Legalization Assistant, by advice from a QDE, by consultation with a private attorney, or even by word of mouth regarding INS policies, the effect on the potential applicant is equally concrete, and equally devastating. In my view, there is no relevant difference, for purposes of ripeness, between respondents who were "front-desked" and those who can demonstrate, like the LULAC class, that they "'learned of their ineligibility following promulgation of the policy and who, relying upon information that they were ineligible, did not apply,'" *ante*, at 51, or, like the class granted relief in CSS, that they "'knew of [the INS'] unlawful regulation and thereby concluded that they were ineligible for legalization and by reason of that conclusion did not file an application,'" *ante*, at 48-49. As Judge Wald explained in *Ayuda*:

"[T]he majority admits that if low level INS officials had refused outright to accept legalization applications for filing, the district court could hear the suit. Even if the plaintiffs' affidavits are read to allege active discouragement rather than outright refusal to accept, this is a subtle distinction indeed, and one undoubtedly lost on the illegal aliens involved, upon which to grant or deny jurisdiction to challenge the practice." 292 U.S. App. D. C., at 169, n. 3, 948 F. 2d, at 761, n. 3 (Wald, J., dissenting) (internal citation omitted).

The second *Abbott Laboratories* factor, which focuses on the cost to the parties of withholding judicial review, also weighs heavily in favor of ripeness in this case. Every day during which the invalid regulations were effective meant

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another day spent in the shadows for respondents, with the attendant costs of that way of life. See *supra*, at 78-79. Even more important, with each passing day, the clock on the application period continued to run, increasing the risk that review, when it came, would be meaningless because the application period had already expired. See *Ayuda*, 292 U.S. App. D. C., at 178, 948 F. 2d, at 770 (Wald, J., dissenting).³ Indeed, the dilemma respondents find themselves in today speaks volumes about the costs of deferring review in this situation. Cf. *Toilet Goods Assn.*, 387 U.S., at 164 (challenge not ripe where "no irremediable adverse consequences flow from requiring a later challenge").

Under *Abbott Laboratories*, then, I think it plain that respondents' claims were ripe for adjudication at the time they were filed. The Court's contrary holding, which seems to rest on the premise that respondents cannot challenge a condition of legalization until they have satisfied all other conditions, see *ante*, at 58-59, is at odds not only with our ripeness case law, but also with our more general understanding of the way in which government regulation affects the regulated. In *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656 (1993), for instance, we held that a class of contractors could challenge an ordinance making it more difficult for them to compete for public business without making any showing that class members were actually in a position to receive such business,

³ "Absent judicial action, the period for filing for IRCA legalization would have ended and thousands of persons would have lost their chance for amnesty. In purely human terms, it is difficult—perhaps impossible—for those of us fortunate enough to have been born in this country to appreciate fully the value of that lost opportunity. For undocumented aliens, IRCA offered a one-time chance to come out of hiding, to stop running, to 'belong' to America. The hardship of withholding judicial review is as severe as any that I have encountered in more than a decade of administrative review." 292 U.S. App. D. C., at 178, 948 F. 2d, at 770 (Wald, J., dissenting).

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absent the challenged regulation. We announced the following rule:

"When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The 'injury in fact' in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit." *Id.*, at 666.⁴

Our decision in the *Jacksonville* case is well supported by precedent; the Court's ripeness holding today is notable for its originality.

Though my approach to the ripeness issue differs from that of JUSTICE O'CONNOR, we are in agreement in concluding that respondents' claims are ripe for adjudication. We also agree that the validity of the relief provided by the District Courts, in the form of extended application periods, turns on whether that remedy is consistent with congressional intent. See *ante*, at 76 (opinion concurring in judgment); *American Pipe & Constr. Co. v. Utah*, 414 U. S. 538, 557-558 (1974) (equitable relief must be "consonant with the legislative scheme"); *Weinberger v. Romero-Barcelo*, 456 U. S. 305, 313 (1982) (courts retain broad equity powers to enter remedial orders absent clear statutory restriction); *INS v. Pangilinan*, 486 U. S. 875, 883 (1988) (courts of equity bound by statutory requirements). Where I differ from

⁴ *Jacksonville* is, of course, an equal protection case, while respondents in this case are seeking a statutory benefit. If this distinction has any relevance to a ripeness analysis, then it should mitigate in favor of finding ripeness here; I assume we should be more reluctant to overcome jurisdictional hurdles to decide constitutional issues than to effectuate statutory programs.

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JUSTICE O'CONNOR is in my determination that extensions of the application period in this case were entirely consistent with legislative intent, and hence well within the authority of the District Courts.

It is no doubt true that "[w]hen Congress passes a benefits statute that includes a time period, it has two goals." See *ante*, at 76 (opinion concurring in judgment). Here, Congress' two goals were finality in its one-time amnesty program, and the integration of productive aliens into the American mainstream. See *Perales v. Thornburgh*, 967 F. 2d 798, 813 (CA2 1992). To balance both ends, and to achieve each, Congress settled on a 12-month application period. Twelve months, Congress determined, would be long enough for frightened aliens to come to understand the program and to step forward with applications, especially when the full period was combined with the special outreach efforts mandated by the Reform Act. *Ibid.*; see 8 U. S. C. § 1255a(i) (requiring broad dissemination of information about amnesty program); § 1255a(c)(2) (establishing QDE's). The generous 12-month period would also serve the goal of finality, by "ensur[ing] true resolution of the problem and . . . that the program will be a one-time-only program." 967 F. 2d, at 813 (quoting H. R. Rep. No. 99-682, pt. 1, at 72).

The problem, of course, is that the full 12-month period was never made available to respondents. For the CSS class, the 12-month period shrank to precisely 12 days during which they were eligible for legalization; for the LULAC class, to roughly 5 months. See *supra*, at 77. Accordingly, congressional intent required an extension of the filing deadline, in order to make effective the 12-month application period critical to the balance struck by Congress. See 956 F. 2d, at 922; *Perales*, 967 F. 2d, at 813.

That congressional intent is furthered, not frustrated, by the equitable relief granted here distinguishes this case from *Pangilinan*, in which we held that a court lacked the authority to order naturalization for certain persons after expira-

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tion of a statutory deadline.— 486 U. S., at 882–885. In *Pangilinan*, we were faced with a “congressional command [that] could not be more manifest” specifically precluding the relief granted. *Id.*, at 884. The Reform Act, on the other hand, contains no such explicit limitation.⁶ Indeed, the Reform Act does not itself contain a statutory deadline at all, leaving it largely to the Attorney General to delineate a 12-month period. 8 U. S. C. § 1255a(a)(1)(A). This delegation highlights the relative insignificance to Congress of the application cutoff date, as opposed to the length of the application period itself. See *Perales*, 967 F. 2d, at 813, n. 4.

Finally, I can see no reason to limit otherwise available relief to those class members who experienced “front-desking,” on the theory that they have “applied” for legalization. Cf. *ante*, at 67, n. 29; *ante*, at 76–77 (O’CONNOR, J., concurring in judgment). It makes no sense to condition relief on the filing of a futile application. Indeed, we have already rejected the proposition that such an application is necessary for receipt of an equitable remedy. In *Teamsters v. United States*, 431 U. S. 324 (1977), a case involving discriminatory employment practices under Title VII of the Civil Rights Act of 1964, we held that those who had been deterred from applying for jobs by an employer’s practice of rejecting applicants like themselves were eligible for relief along with those who had unsuccessfully applied. We reasoned:

“A consistently enforced discriminatory policy can surely deter job applications from those who are aware of it and are unwilling to subject themselves to the humiliation of explicit and certain rejection.

⁶ There is no language in the Reform Act prohibiting an extension of the application period. Section 1255a(f)(2), relied on by the Government, see Brief for Petitioners 28–29, precludes review of *individual* late-filed applications; like § 1255a(f)(1), it has no bearing on the kind of broad-based challenge and remedy at issue here. See *ante*, at 55, and n. 17; *ante*, at 73–74 (O’CONNOR, J., concurring in judgment).

STEVENS, J., dissenting

“... When a person’s desire for a job is not translated into a formal application solely because of his unwillingness to engage in a futile gesture he is as much a victim of discrimination as is he who goes through the motions of submitting an application.” 431 U. S., at 365–366.

The same intelligent principle should control this case. A respondent who can show that she would have applied for legalization but for the invalid regulations is “in a position analogous to that of an applicant,” and entitled to the same relief. See *id.*, at 368.

In my view, then, the Court of Appeals was correct on both counts when it affirmed the District Court orders in this case: Respondents’ claims were justiciable when filed, and the relief ordered did not exceed the authority of the District Courts. Accordingly, I respectfully dissent.

No. 96-15495

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHOLIC SOCIAL SERVICES, INC.
(CENTRO DE GUADALUPE IMMIGRATION CENTER), ET AL.,

Plaintiffs-Appellees,

v.

JANET RENO, ATTORNEY GENERAL OF THE
UNITED STATES, AND DORIS MEISSNER, COMMISSIONER
OF IMMIGRATION AND NATURALIZATION SERVICE,

Defendants-Appellants.

INTERLOCUTORY APPEAL FROM ORDERS
OF THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF CALIFORNIA

SUPPLEMENTAL BRIEF FOR DEFENDANTS-APPELLANTS

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INTRODUCTION

On September 30, 1996, at approximately 9:00 p.m. EDT, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). In addition to many provisions regarding the prevention and control of terrorism, crime, and illegal immigration, the IIRIRA also includes a section that makes it clear that the district court lacks jurisdiction to hear the claims set forth in the Seventh Amended Complaint and to enter the interlocutory orders that are the subject matter of this appeal. In particular, Section 377 of the IIRIRA provides:

Sec. 377. LIMITATION ON LEGALIZATION LITIGATION.

(a) LIMITATION ON COURT JURISDICTION. -- Section 245A(f)(4) [of the Immigration and Nationality Act] (8 U.S.C. 1255a(f)(4)) is amended by adding at the end the following new subparagraph:

"(C) JURISDICTION OF COURTS. -- Notwithstanding any other provision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1), or attempted to file a complete application and application fee with an authorized legalization officer of the [Immigration and Naturalization] Service but had the application and fee refused by that officer."

(b) EFFECTIVE DATE. -- The amendment made by subsection (a) shall be effective as if included in the enactment of the Immigration Reform and Control Act of 1986.

See IIRIRA § 377, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (to be codified at 8 U.S.C. § 1255a(f)(4)(C)) (Addendum A).

As discussed more fully below, all of the plaintiffs in this class action are persons who neither filed an application for legalization within the time period prescribed by Section

245A(a)(1),^{1/} nor "attempted to file a complete application and application fee with an authorized legalization officer of the [Immigration and Naturalization] Service, but had the application and fee refused by that officer." Id. Thus, under Section 377 of the IIRIRA, the district court does not have subject matter jurisdiction to hear their claims nor to enter any injunctive relief on their behalf. Indeed, in light of the effective date of this amendment, it is clear that the district court never had subject matter jurisdiction to hear the plaintiffs' claims. Consequently, this Court should vacate the interlocutory orders that are the subject of this appeal and remand the case back to the district court with instructions to dismiss the complaint.

ARGUMENT

THE PLAIN LANGUAGE OF SECTION 377 MAKES CLEAR THAT THE DISTRICT COURT LACKS JURISDICTION TO HEAR PLAINTIFFS' CLAIMS OR TO ENTER ANY RELIEF ON THEIR BEHALF.

It is well-established that "Congress has the constitutional authority to define the jurisdiction of the lower federal courts." Keene Corp. v. United States, 508 U.S. 200, 207 (1993); Duldulao v. INS, 90 F.3d 396, 400 (9th Cir. 1996).^{2/} After all, Article III, section 1, of the United States Constitution

^{1/} Section 245A(a)(1) of the Act, 8 U.S.C. § 1255(a)(1), provides that an alien "must apply for [legalization] during the 12-month period beginning on a date (not later than 180 days after November 6, 1986) designated by the Attorney General." Pursuant to this statute, the Attorney General designated that the application period would begin on May 5, 1987, the latest date permitted by Congress, and then end on May 4, 1988. See 8 C.F.R. § 245a.2(a).

^{2/} On September 9, 1996, the petitioner in Duldulao filed a petition for rehearing en banc, which is currently pending.

declares that "[t]he judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish," and Article I, section 7, clause 9, provides Congress with the authority "[t]o constitute tribunals inferior to the Supreme Court." Thus, if Congress has the constitutional authority to create the federal courts in the first instance, it certainly has the constitutional authority to define and to limit their jurisdiction. Id.; see also Aldinger v. Howard, 427 U.S. 1, 15 (1976) (noting the "well-established principle that federal courts . . . are courts of limited jurisdiction marked out by Congress"); Lauf v. E.G. Shinner & Co., 303 U.S. 323, 330 (1938) ("There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States"); Kline v. Burke Const. Co., 260 U.S. 226, 234 (1922) (noting that Congress "may give, withhold or restrict jurisdiction at its discretion").²

In accordance with this well-established principle, the Supreme Court has repeatedly held that Congress may enact legislation that statutorily precludes judicial review of

² See also Cary v. Curtis, 44 U.S. (3 How.) 236, 245, 11 L. Ed. 576 (1845) ("[T]he judicial power of the United States . . . is (except in enumerated instances, applicable exclusively to this court) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess [sic] the sole power of creating the tribunals (inferior to the Supreme Court) . . . and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good").

administrative actions whenever it deems appropriate.^{4/} See Bowen v. Michigan Academy of Family Physicians, 476 U.S. 667, 672-73 (1986) ("Congress can, of course, make exceptions to the historic practice whereby courts review agency action"); see also, e.g., Lindahl v. Office of Personnel Management, 470 U.S. 768, 779 (1985); Block v. Community Nutrition Inst., 467 U.S. 340, 349 (1984); Heckler v. Ringer, 466 U.S. 602, 614 (1984); Duldulac, 90 F.3d at 399-400 (holding that Congress has the constitutional authority to prohibit judicial review of final orders of deportation). While there may be a strong presumption in favor of judicial review of administrative actions, this presumption "is just that -- a presumption" which, "like all presumptions used in interpreting statutes, may be overcome by specific language or specific legislative history" that indicates that Congress intended "to leave [persons] without a judicial remedy." Block, 467 U.S. at 349.

In this case, the statutory language could not be more clear. Entitled "Limitation on Legalization Litigation," Section 377 of the IIRIRA amends Section 245A of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1255a, to provide that "no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section" unless he or she timely applied for legalization as

⁴ This principle is especially true in the immigration area where the Supreme Court has "repeatedly emphasized" that "over no conceivable subject is the legislative power of Congress more complete." Fiallo v. Bell, 430 U.S. 787, 792 (1977) (citing cases); Duldulac, 90 F.3d at 399.

required by 8 U.S.C. § 1255a(a)(1) or "attempted to file a complete application and application fee with an authorized legalization officer of the [Immigration and Naturalization] Service but had the application and fee refused by that officer." IIRIRA, § 377 (emphasis added).^{5/}

Here, all of the plaintiffs' claims assert an interest under Section 245A -- they all allege that they were entitled to and would have received the benefits afforded by the Immigration Reform and Control Act of 1986 ("IRCA") (i.e., lawful permanent residence in the United States, work authorization, and stays of deportation, etc.), but for the wrongful actions of INS. Yet, as the district court specifically found in its Order of March 17, 1995, none of the plaintiffs either timely applied for legalization in accordance with 8 U.S.C. § 1255a(a)(1) or "presented a completed amnesty application and filing fee to an INS office, which an INS official refused to accept for adjudication." See Order of March 17, 1995, at 19 [DN 330].

⁵ The second exception in Section 377 clearly was intended to refer to a situation where an alien has been "front-desked" by the INS, as defined by the Supreme Court in its 1993 decision in this case. Compare IIRIRA § 377 ("attempted to file a complete application and application fee with an authorized legalization officer of [the INS] and had the application and fee refused by that officer") (emphasis added) with Reno v. Catholic Social Services, 509 U.S. 43, 61-62, 65 & n.27 (1993) ("CSS") (defining "front-desking" to mean a circumstance where an alien attempted to submit a "completed application" and filing fee to an authorized legalization officer of the INS, but had that application and fee rejected by that officer pursuant to the legalization manual); see also District Court's Order of March 17, 1995, at 19 [DN 330] (defining "front-desking" to mean a circumstance where an alien "presented a completed amnesty application and filing fee to an INS office, which an INS official refused to accept for adjudication").

Consequently, under the plain language of Section 377, it is clear that the district court lacked jurisdiction to enter any injunctive relief on the plaintiffs' behalf, but instead should be required to dismiss the complaint for lack of subject matter jurisdiction.

Indeed, it is not only clear that the district court lacks jurisdiction over this case now, it is also clear that it lacked jurisdiction when the action was first filed on November 12, 1986. Congress has provided that Section 377 "shall be effective as if included in the enactment of the Immigration Reform and Control Act of 1986 [November 6, 1986]." See IIRIRA § 377(b). As a result, there can be no dispute over whether the section operates prospectively or retroactively as Congress has made its intentions on this subject clear. See Landgraf v. USI Film Products, 114 S. Ct. 1483, 1498-1502 (1994) (recognizing that expressed intent of Congress is the controlling factor in determining whether a new statute should be applied retroactively or prospectively).^{6/} It is now clear that the Court never had subject matter jurisdiction to hear the plaintiffs' claims nor to enter any orders on the plaintiffs' behalf. When the plaintiffs filed this action six days after the enactment of IRCA, none of

^{6/} It is important to note that the Supreme Court in Landgraf specifically stated that jurisdictional statutes apply to all pending cases, even if Congress was silent on the issue, as they address the Court's authority to hear a case, not the substantive rights and liabilities of the parties. Id. at 1501 (recognizing that it has "regularly applied intervening statutes conferring or ousting jurisdiction, whether or not jurisdiction lay when the underlying conduct occurred or when the suit was filed"); Duldulao, 90 F.3d at 398-99 (discussing Landgraf).

the plaintiffs had submitted a timely application to INS. See Keene Corp., 508 U.S. at 207 (applying the "longstanding principle that 'the jurisdiction of the Court depends upon the state of things at the time of the action brought'"). Accordingly, this Court should overturn the orders that are the subject of this appeal and remand the case to the district court with instructions to vacate all of its prior orders and to dismiss the complaint. See, e.g., Ayuda v. Reno, 7 F.3d 246, 251 (D.C. Cir. 1993) (ordering prior orders vacated after determining that the district court lacked jurisdiction to hear the plaintiffs' claims), reh'g denied, 14 F.3d 61 (1994), cert. denied, 115 S. Ct. 70 (1994), order entered on remand, No. 95-5214 (D.C. Cir., Sept. 6, 1995) (directing district court "to vacate all remaining orders and injunctions") (Addendum C).

This clearly was the result that Congress intended when it enacted Section 377. Since the Supreme Court's 1993 decision in this case, the government has repeatedly contended that the district court does not have subject matter jurisdiction to hear the plaintiffs' claims because none of them have alleged that they were "front-desked," i.e., that they attempted to file a complete application and application fee with the INS within the prescribed time limits, and had the application and fee refused by an INS legalization officer. See Defendants-Appellants' Opening Brief ("Def. Brf.") at 32-41. Moreover, since the beginning of the litigation, the government has repeatedly contended that Congress intended for the amnesty program to last

for only one year and that the courts therefore lack the jurisdiction and the equitable authority to extend the application deadline or to compel INS to grant relief to persons who did not submit a complete application and application fee to the INS within the time limits prescribed by Congress in the original statute.^{2/} See Def. Brf. at 41-49.

Despite these arguments, however, the district court has continued to exercise jurisdiction over this case and to require INS to grant extensive "interim" benefits to the tens of thousands of persons who did not submit a timely application to the INS. Certainly, Congress was aware when it enacted Section 377 of the allegations made, the orders issued, and the benefits provided in this class action and in all of the other legalization class actions currently pending across the country.^{3/} Yet, despite the allegations of wrongdoing by INS, Congress deemed it necessary to impose a jurisdictional

^{2/} As the Supreme Court explained in CSS, persons who were "front-desked" by INS are persons who complied with IRCA's substantive eligibility requirement of a timely application because they, by definition, submitted a complete application and application fee to an authorized legalization officer of the INS prior to the expiration of the statutory deadline, and thus fulfilled all of the filing requirements under the statute and the applicable regulations. See CSS, 509 U.S. at 67 n.29; see also 8 C.F.R. § 245a.2(e) and (f) (setting forth filing requirements).

^{3/} The allegations made and the orders issued in this case are similar to the allegations made and the orders issued in other legalization cases currently pending in this Circuit, Zambrano v. INS, No. CIV-S-88-455-EJG (E.D. Cal.), Newman v. INS, No. 87-4757-WDK (C.D. Cal.), appeal of interlocutory order pending, No. 96-56024 (9th Cir.), and Immigration Assistance Project v. INS, No. C88-379R (W.D. Wash.), appeal of interlocutory order pending, No. 95-36295 (9th Cir.).

"Limitation On Legalization Litigation" in order, as the Conference Report explains, "**to put an end** to litigation seeking to extend the amnesty provisions of the Immigration Reform and Control Act of 1986, and to limit claims under that section to aliens who in fact filed an application for legalization under that section within the prescribed time limits, or attempted to do so but their application was refused by an immigration officer." See Conference Report on the Illegal Immigration Reform And Immigrant Responsibility Act of 1996, H.R. Rep. No. 828, 104th Cong., 2d Sess., 230 (1996) (emphasis added) (Addendum B). Accordingly, this Court should follow the will of Congress and hold that the district court lacks the jurisdiction to hear the plaintiffs' claims or to grant any relief on their behalf.

Indeed, where, as here, Congress has enacted a statute to eliminate judicial relief for persons that the courts previously recognized existed, the judges in this Circuit have been quick to recognize that they were the intended target of the legislation and to reverse their prior decisions on the subject. In Campos v. INS, 62 F.3d 311, 313-14 (9th Cir. 1995), for example, the United States Court of Appeals for the Ninth Circuit was asked to address a similar situation where Congress specifically amended a statute in order to clarify for that Court's benefit that certain aliens are not entitled to any relief in the federal courts. The issue in Campos was whether deportable aliens who were incarcerated in prison had standing to sue to compel INS to

institute deportation proceedings under 8 U.S.C. § 1252(i), which provided:

In the case of an alien who is convicted of an offense which makes the alien subject to deportation, the Attorney General shall begin any deportation proceeding as expeditiously as possible after the date of the conviction.

8 U.S.C. § 1251(i). Following the enactment of Section 1251(i), the Ninth Circuit issued a number of decisions that held that incarcerated aliens could bring suit under the Mandamus Act, 28 U.S.C. § 1361, to compel INS to institute immediate deportation proceedings. See Garcia v. Taylor, 40 F.3d 299, 301 (9th Cir. 1994); Silveyra v. Moscharak, 989 F.2d 1012, 1014 n.1 (9th Cir. 1993); Soler v. Scott, 942 F.2d 597, 605 (9th Cir. 1991), vacated as moot sub nom., Silvey v. Soler, 506 U.S. 969 (1992).

Congress, however, passed the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4305 ("INTCA"), which included a section providing:

[No] amendment made by this Act and nothing in § 242(i) of the Immigration and Nationality Act (8 U.S.C. § 1252(i)) shall be construed to create any substantive right or procedural right that is legally enforceable by any party against the United States or its agencies or officers or any other person.

Recognizing that its case law allowing mandamus relief was the "intended target" of Section 225, the Ninth Circuit in Campos reversed its prior holdings and held that incarcerated aliens do not have any right to sue under the mandamus statute for relief based on 8 U.S.C. § 1251:

Congress took the opportunity in section 225 of the INTCA to clarify for our benefit that section 1252(i) does not create an obligation on the part of the

government toward individual incarcerated aliens and that such aliens lack standing to sue for any relief under section 1252 because they are outside the "zone of interests" of the statute.

Id., 62 F.3d at 314.

Similarly, this Court should recognize that the intended target of Section 377 is the district court's continuing exercise of jurisdiction over claims brought by aliens who seek to extend the amnesty program, but who cannot establish that they in fact filed a timely application or that they attempted to file a complete application and application fee with the INS, but had the application and fee refused by an INS legalization officer. As in Campos, Congress has determined as a matter of public policy "to put an end" to this litigation by providing in explicit terms that the courts lack jurisdiction to hear the plaintiffs' claims and thus to enter any relief on their behalf. Therefore, the Court should vacate the orders that are the subject of this appeal, remand the case with instructions to dismiss the Seventh Amended Complaint, and "put an end" to this litigation once and for all.

* * *

Although this case has a long and complicated procedural history, the issues presented are simple. All of the plaintiffs in this class action are illegal aliens who seek the benefits of the amnesty program created by the Immigration Reform and Control Act of 1986, even though they failed to take all of the affirmative steps that they were required by law to take in order to obtain such benefits, i.e., to prepare and to submit a

complete application, along with the required filing fee, before the close of the one year, statutory filing period. When it enacted IRCA, Congress intended that the benefits of the amnesty program should only be available for one year, and that persons who failed to apply for benefits in a timely fashion would not be able to assert any interest under the 1986 Act. Accordingly, it specifically mandated that the submission of a timely application was a substantive eligibility requirement for legalization and that aliens who failed to submit a timely application could not obtain any judicial review of their legalization denial, no matter what the reason may be for why they were unable to file on time. See 8 U.S.C. § 1255a(a)(1); 8 U.S.C. § 1255a(f)(2).

Despite the existence of clear statutory provisions and legislative history showing that Congress intended that the benefits of the legalization program remain available for one year, and² only one year,² the district court has nevertheless implemented its own legalization program, which for the past eight years, has required INS to accept hundreds of thousands of legalization applications and to grant temporary benefits under IRCA to tens of thousands of aliens who did not submit a timely application and who are thus statutorily ineligible for legalization. Having observed the efforts by the courts to extend the benefits of IRCA to aliens who did not submit timely applications for legalization, Congress has now intervened -- "to put an end to litigation seeking to extend the amnesty program of

² See Def. Brf. at 48-49.

the Immigration Reform and Control Act of 1986" by making clear that the courts lack jurisdiction to hear any claim brought by an alien who did not submit a complete application and application fee prior to May 4, 1988. See H.R. Rep. 828, 104th Cong., 2d Sess., 230 (1996). The will of Congress could not be more clear. It is time for this litigation to come to an end.

CONCLUSION

For the foregoing reasons, the government respectfully request that the Court overturn the district court's orders of November 3, 1995, and December 26, 1995, and remand the case with instructions to vacate all existing orders and injunctions and to dismiss the Seventh Amended Complaint for lack of jurisdiction.

Respectfully submitted,

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Dated: October 8, 1996

ADDENDUM A

FLOOR PROCEDURE IN THE 104TH CONGRESS 1ST SESSION; COMPILED BY THE RULES COMMITTEE DEMOCRATS—Continued

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 3562	The Wisconsin Works Waiver Approval Act	H. Res. 446	Restrictive	N/A
H.R. 2754	Shipbuilding Trade Agreement Act	H. Res. 448	Restrictive	1R
H.R. 3603	Agriculture Appropriations FY 1997	H. Res. 451	Open	N/A
H.R. 3610	Defense Appropriations FY 1997	H. Res. 453	Open	N/A
H.R. 3662	Interior Appropriations FY 1997	H. Res. 455	Open	N/A
H.R. 3666	VAMUAD Appropriations	H. Res. 456	Open	N/A
H.R. 3675	Transportation Appropriations FY 1997	H. Res. 460	Open	N/A
H.J. Res. 1829 (H. Res. 461)	Disapproving MFN Status for the Peoples Republic of China	H. Res. 463	Closed	N/A
H. Con. Res. 192	Making in order a Concurrent Resolution Providing for the Adjournment of the House over the 4th of July district work period.	H. Res. 465	Closed	N/A
H.R. 3755	Labor/HHS Appropriations FY 1997	H. Res. 472	Open	N/A
H.R. 3754	Legislative Branch Appropriations FY 1997	H. Res. 473	Restrictive	3B, 5B
H.R. 3396	Balance of Marriage Act	H. Res. 474	Restrictive	2B
H.R. 3756	Treasury, Postal Appropriations, FY 1997	H. Res. 475	Open	N/A
H.R. 3814	Commerce, Justice, State Appropriations, FY 1997	H. Res. 479	Open	N/A
H.R. 3820	Campaign Finance Reform Act of 1996	H. Res. 481	Restrictive	1B
H.R. 3734	The Personal Responsibility Act of 1996	H. Res. 482	Restrictive	1B, 1R
H.R. 3816	Energy and Water Appropriations, FY 1997	H. Res. 483	Open	N/A
H.R. 2391	Working Families Flexibility Act of 1996	H. Res. 488	Restrictive	N/A
H.R. 2823	The International Dolphin Conservation Program Act	H. Res. 489	Restrictive	1B
H.R. 123	English as the Official Language	H. Res. 499	Restrictive	4B, 1R
H.R. 3719	The Small Business Programs Improvement Act of 1996	H. Res. 516	Open	N/A
H.R. 3368	United States Armed Forces Protection Act	H. Res. 517	Restrictive	1B, 1R, 1
H.R. 4134	Authorizing to deny public education benefits to certain aliens not lawfully present in the United States.	H. Res. 530	Closed	Specialism N/A

* Contract Bills, 67% restrictive, 33% open. All legislation 1st Session, 53% restrictive, 47% open. *** All legislation 2d Session, 61% restrictive, 39% open. All legislation 104th Congress, 57% restrictive, 43% open. **** All legislation that the legislation being considered by the House for amendment has circumvented standard procedure and was never reported from any House committee. PQ indicates that previous question was ordered on the resolution. Restrictive rules are those which limit the number of amendments which can be offered, and include so-called modified open and modified closed rules as well as completely closed rules and rules providing for consideration in the House as opposed to the Committee of the Whole. This definition of restrictive rule is taken from the Republican chart of resolutions reported from the Rules Committee in the 103d Congress. N/A means not available.

Mr. MOAKLEY. Mr. Speaker, I yield back the balance of my time.

Ms. PRYCE. Mr. Speaker, House Resolution 546 is noncontroversial in its form, for a number of minor house-keeping items, and I urge its adoption. Let us pass this final rule and bring us one step closer to finishing our work her in this Congress.

With that, Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. (Mr. BURTON of Indiana). The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MOAKLEY. Mr. Speaker, I object to the vote on the ground that a

quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

NOTICE

Incomplete record of House proceedings. Except for the following matter, today's House proceedings will be continued in the next issue of the Record.

CONFERENCE REPORT ON H.R. 3610, DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1997

Mr. LIVINGSTON submitted the following conference report and statement on the bill (H.R. 3610) making appropriations for the Department of Defense for the fiscal year ending September 30, 1997, and for other purposes:

CONFERENCE REPORT (H. REPT. 104-863)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3610) "making appropriations for the Department of Defense for the fiscal year ending September 30, 1997, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

DIVISION A

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the several departments, agencies, corporations and other organizational units of the Government for the fiscal year 1997, and for other purposes, namely:

TITLE I—OMNIBUS APPROPRIATIONS

Sec. 101(a) For programs, projects or activities in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1997, provided as follows, to be effective as if it had been enacted into law as the regular appropriations Act:

AN ACT Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1997, and for other purposes

TITLE I—DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, \$75,773,000 of which not to exceed \$3,317,000 is for the Facilities Program 2000, to remain available until expended: Provided, That not to exceed 43 permanent positions and 44 full-time equivalent workyears and \$7,477,000 shall be expended for the Department Leadership Program exclusive of augmentation that occurred in these offices in fiscal year 1996: Provided further, That not to exceed 41 permanent positions and 48 full-time equivalent workyears and \$4,660,000 shall be expended for the Offices of Legislative Affairs and Public Affairs: Provided further, That the latter two aforementioned offices shall not be augmented by personnel details, temporary transfers of personnel on either a reimbursable or non-reimbursable basis or any other type of formal or informal transfer or reimbursement of

personnel or funds on either a temporary or long-term basis.

For an additional amount, for enhancements for the Office of Intelligence Policy and Review and security measures, \$3,600,000; of which \$2,170,000 is for security enhancements: Provided, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

COUNTERTERRORISM FUND

For necessary expenses, as determined by the Attorney General, \$9,450,000, to remain available until expended, to reimburse any Department of Justice organization for (1) the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as a result of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City or any domestic or international terrorist incident, (2) the costs of providing support to counter, investigate or prosecute domestic or international terrorism, including payment of rewards in connection with these activities, and (3) the costs of conducting a terrorism threat assessment of Federal agencies and their facilities: Provided, That funds provided under this heading shall be available only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act.

For an additional amount for necessary expenses, as determined by the Attorney General, \$20,000,000, to remain available until expended.

waters of the Little Sandy River. Nothing in this section shall be construed to expand or diminish Federal, State, or local jurisdiction, responsibility, interests, or rights in water resources development or control, including rights in and current uses of water resources in the unit.

SEC. 606. Lands within the Bull Run Management Unit, as defined in Public Law 95-200, but not contained within the Bull Run River Drainage, as defined by this title and as depicted on the map dated July 1996 described in Section 604 of this title, shall continue to be managed in accordance with Public Law 95-200.

TITLE VII—OREGON ISLANDS WILDERNESS ADDITIONS

SEC. 701. OREGON ISLANDS WILDERNESS ADDITIONS.

(a) In furtherance of the purposes of the Wilderness Act of 1964, certain lands within the boundaries of the Oregon Islands National Wildlife Refuge, Oregon, comprising approximately ninety-five acres and as generally depicted on a map entitled "Oregon Island Wilderness Additions—Proposed" dated August 1996, are hereby designated as wilderness. The map shall be on file and available for public inspection in the offices of the Fish and Wildlife Service, Department of the Interior.

(b) All other federally owned named, unnamed, surveyed and unsurveyed rocks, reefs, islets and islands lying within three geographic miles off the coast of Oregon and above mean high tide, not currently designated as wilderness and also within the Oregon Islands National Wildlife Refuge boundaries under the administration of the United States Fish and Wildlife Service, Department of the Interior, as designated by Executive Order 7035, Proclamation 2416, Public Land Orders 4395, 4475 and 6287, and Public Laws 91-504 and 95-450, are hereby designated as wilderness.

(c) All federally owned named, unnamed, surveyed and unsurveyed rocks, reefs, islets and islands lying within three geographic miles off the coast of Oregon and above mean high tide, and presently under the jurisdiction of the Bureau of Land Management, except Chiefs Island, are hereby designated as wilderness, shall become part of the Oregon Islands National Wildlife Refuge and the Oregon Island Wilderness and shall be under the jurisdiction of the United States Fish and Wildlife Service, Department of the Interior.

(d) As soon as practicable after this title takes effect, a map of the wilderness area and a description of its boundaries shall be filed with the Senate Committee on Energy and Natural Resources and the House Committee on Resources, and such map shall have the same force and effect as if included in this title. Provided, however, That correcting clerical and typographical errors in the map and land descriptions may be made.

(e) Public Land Order 6287 of June 16, 1982, which withdrew certain rocks, reefs, islets and islands lying within three geographic miles off the coast of Oregon and above mean high tide, including the ninety-five acres described in subsection (a), as an addition to the Oregon Islands National Wildlife Refuge is hereby made permanent.

TITLE VIII—UMPUQUA RIVER LAND EXCHANGE STUDY

SEC. 801. UMPQUA RIVER LAND EXCHANGE STUDY: POLICY AND DIRECTION.

(a) IN GENERAL.—The Secretaries of the Interior and Agriculture (Secretaries) are hereby authorized and directed to consult, coordinate, and cooperate with the Umpqua Land Exchange Project (ULEP), affected units and agencies of State and local government, and, as appropriate, the World Forestry Center and National Fish and Wildlife Foundation, to assist ULEP's ongoing efforts in studying and analyzing land exchange opportunities in the Umpqua River Basin and to provide scientific technical research, mapping and other assistance to improve

mation to such entities. Such consultation, coordination, and cooperation shall at a minimum include, but not be limited to:

(1) working with ULEP to develop or assemble comprehensive scientific and other information (including comprehensive and integrated mapping) concerning the Umpqua River Basin's resources of forest, plants, wildlife, fisheries (anadromous and other), recreational opportunities, wetlands, riparian habitat, and other physical or natural resources;

(2) working with ULEP to identify general or specific areas within the basin where land exchanges could promote consolidation of forestland ownership for long-term, sustained timber production; protection and restoration of habitat for plants, fish, and wildlife (including any federally listed threatened or endangered species); protection of drinking water supplies; recovery of threatened and endangered species; protection and restoration of wetlands, riparian lands, and other environmentally sensitive areas; consolidation of land ownership for improved public access and a broad array of recreational uses; consolidation of land ownership to achieve management efficiency and reduced costs of administration; and

(3) developing a joint report for submission to the Congress which discusses land exchange opportunities in the basin and outlines either a specific land exchange proposal or proposals which may merit consideration by the Secretaries or the Congress, or ideas and recommendations for new authorizations, direction, or changes in existing law or policy to expedite and facilitate the consummation of beneficial land exchanges in the basin via administrative means.

(b) MATTERS FOR SPECIFIC STUDY.—In analyzing land exchange opportunities with ULEP, the Secretaries shall give priority to assisting ULEP's ongoing efforts in:

(1) studying, identifying, and mapping areas where the consolidation of land ownership via land exchanges could promote the goals of long term species and watershed protection and utilization, including but not limited to the goals of the Endangered Species Act of 1973 more effectively than current land ownership patterns and whether any changes in law or policy applicable to such lands after consummation of an exchange would be advisable or necessary to achieve such goals;

(2) studying, identifying and mapping areas where land exchanges might be utilized to better satisfy the goals of sustainable timber harvest, including studying whether changes in existing law or policy applicable to such lands after consummation of an exchange would be advisable or necessary to achieve such goals;

(3) identifying issues and studying options and alternatives, including possible changes in existing law or policy, to insure that combined post-exchange revenues to units of local government from State and local property, severance, and other taxes or levies and shared Federal land receipts will approximate pre-exchange revenues;

(4) identifying issues and studying whether possible changes in law, special appraisal instruction, or changes in certain Federal appraisal procedures might be advisable or necessary to facilitate the appraisal of potential exchange lands which may have special characteristics or restrictions affecting land values;

(5) identifying issues and studying options and alternatives, including changes in existing laws or policy, for achieving land exchanges without reducing the net supply of timber available to small businesses;

(6) identifying, mapping, and recommending potential changes in land use plans, land classifications, or other actions which might be advisable or necessary to expedite, facilitate or consummate land exchanges in certain areas;

(7) analyzing potential sources or new or enhanced Federal, State, or other funding to promote improved resource recovery, and management in the basin, and

(8) identifying and analyzing whether increased efficiency and better land and resource management could occur through either consolidation of Federal forest management under one agency or exchange lands between the Forest Service and the Bureau of Land Management.

SEC. 802. REPORT TO CONGRESS.

No later than February 1, 1998, ULEP and the Secretaries shall submit a joint report to the Committee on Resources of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate concerning their studies, findings, recommendations, mapping and other activities conducted pursuant to this title.

SEC. 803. AUTHORIZATION OF APPROPRIATIONS.

In furtherance of the purposes of this title, there is hereby authorized to be appropriated the sum of \$2 million, to remain available until expended.

DIVISION C—ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

SEC. 1. SHORT TITLE OF DIVISION; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT; APPLICATION OF DEFINITIONS OF SUCH ACT; TABLE OF CONTENTS OF DIVISION; SEVERABILITY.

(a) SHORT TITLE.—This division may be cited as the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided—

(1) whenever in this division an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act; and

(2) amendments to a section or other provision are to such section or other provision before any amendment made to such section or other provision elsewhere in this division.

(c) APPLICATION OF CERTAIN DEFINITIONS.—Except as otherwise specifically provided in this division, for purposes of titles I and VI of this division, the terms "alien", "Attorney General", "border crossing identification card", "entry", "immigrant", "immigrant visa", "lawfully admitted for permanent residence", "national", "naturalization", "refugee", "State", and "United States" shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act.

(d) TABLE OF CONTENTS OF DIVISION.—The table of contents of this division is as follows:

Sec. 1. Short title of division; amendments to Immigration and Nationality Act; application of definitions of such Act; table of contents of division; severability.

TITLE I—IMPROVEMENTS TO BORDER CONTROL, FACILITATION OF LEGAL ENTRY, AND INTERIOR ENFORCEMENT

Subtitle A—Improved Enforcement at the Border

Sec. 101. Border patrol agents and support personnel.

Sec. 102. Improvement of barriers at border.

Sec. 103. Improved border equipment and technology.

Sec. 104. Improvement in border crossing identification card.

Sec. 105. Civil penalties for illegal entry.

Sec. 106. Hiring and training standards.

Sec. 107. Report on border strategy.

Sec. 108. Criminal penalties for high speed flights from immigration checkpoints.

Sec. 109. Joint study of automated data collection.

Sec. 110. Automated entry-exit control system.

Sec. 111. Submission of final plan on realignment of border patrol positions from interior stations.

Sec. 112. Nationwide fingerprinting of apprehended aliens.

Subtitle B—Facilitation of Legal Entry

- Sec. 121. Land border inspectors.
- Sec. 122. Land border inspection and automated permit pilot projects.
- Sec. 123. Preinspection at foreign airports.
- Sec. 124. Training of airline personnel in detection of fraudulent documents.
- Sec. 125. Preclearance authority.

Subtitle C—Interior Enforcement

- Sec. 131. Authorization of appropriations for increase in number of certain investigators.
- Sec. 132. Authorization of appropriations for increase in number of investigators of visa overstayers.
- Sec. 133. Acceptance of State services to carry out immigration enforcement.
- Sec. 134. Minimum State INS presence.

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

Subtitle A—Enhanced Enforcement and Penalties Against Alien Smuggling

- Sec. 201. Wiretap authority for investigations of alien smuggling or document fraud.
 - Sec. 202. Racketeering offenses relating to alien smuggling.
 - Sec. 203. Increased criminal penalties for alien smuggling.
 - Sec. 204. Increased number of assistant United States Attorneys.
 - Sec. 205. Undercover investigation authority.
- Subtitle B—Deterrence of Document Fraud
- Sec. 211. Increased criminal penalties for fraudulent use of government-issued documents.
 - Sec. 212. New document fraud offenses; new civil penalties for document fraud.
 - Sec. 213. New criminal penalty for failure to disclose role as preparer of false application for immigration benefits.
 - Sec. 214. Criminal penalty for knowingly presenting document which fails to contain reasonable basis in law or fact.
 - Sec. 215. Criminal penalty for false claim to citizenship.
 - Sec. 216. Criminal penalty for voting by aliens in Federal election.
 - Sec. 217. Criminal forfeiture for passport and visa related offenses.
 - Sec. 218. Penalties for involuntary servitude.
 - Sec. 219. Admissibility of videotaped witness testimony.
 - Sec. 220. Subpoena authority in document fraud enforcement.

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

Subtitle A—Revision of Procedures for Removal of Aliens

- Sec. 301. Treating persons present in the United States without authorization as not admitted.
- Sec. 302. Inspection of aliens; expedited removal of inadmissible arriving aliens; referral for hearing (revised section 235).
- Sec. 303. Apprehension and detention of aliens not lawfully in the United States (revised section 236).
- Sec. 304. Removal proceedings; cancellation of removal and adjustment of status; voluntary departure (revised and new sections 239 to 240C).
- Sec. 305. Detention and removal of aliens ordered removed (new section 241).
- Sec. 306. Appeals from orders of removal (new section 242).
- Sec. 307. Penalties relating to removal (revised section 243).
- Sec. 308. Resignation and reorganization of other provisions; additional conforming amendments.
- Sec. 309. Effective dates; transition.

Subtitle B—Criminal Alien Provisions

- Sec. 321. Amended definition of aggravated felony.
- Sec. 322. Definition of conviction and term of imprisonment.
- Sec. 323. Authorizing registration of aliens on criminal probation or criminal parole.
- Sec. 324. Penalty for reentry of deported aliens.
- Sec. 325. Change in filing requirement.
- Sec. 326. Criminal alien identification system.
- Sec. 327. Appropriations for criminal alien tracking center.
- Sec. 328. Provisions relating to State criminal alien assistance program.
- Sec. 329. Demonstration project for identification of illegal aliens in incarceration facility of Anaheim, California.
- Sec. 330. Prisoner transfer treaties.
- Sec. 331. Prisoner transfer treaties study.
- Sec. 332. Annual report on criminal aliens.
- Sec. 333. Penalties for conspiring with or assisting an alien to commit an offense under the Controlled Substances Import and Export Act.
- Sec. 334. Enhanced penalties for failure to depart, illegal reentry, and passport and visa fraud.

Subtitle C—Revision of Grounds for Exclusion and Deportation

- Sec. 341. Proof of vaccination requirement for immigrants.
- Sec. 342. Incident of terrorist activity and provision of false documentation to terrorists as a basis for exclusion from the United States.
- Sec. 343. Certification requirements for foreign health-care workers.
- Sec. 344. Removal of aliens falsely claiming United States citizenship.
- Sec. 345. Waiver of exclusion and deportation ground for certain section 274C violators.
- Sec. 346. Inadmissibility of certain student visa abusers.
- Sec. 347. Removal of aliens who have unlawfully voted.
- Sec. 348. Waivers for immigrants convicted of crimes.
- Sec. 349. Waiver of misrepresentation ground of inadmissibility for certain alien.
- Sec. 350. Offenses of domestic violence and stalking as ground for deportation.
- Sec. 351. Clarification of date as of which relationship required for waiver from exclusion or deportation for smuggling.
- Sec. 352. Exclusion of former citizens who renounced citizenship to avoid United States taxation.
- Sec. 353. References to changes elsewhere in division.

Subtitle D—Changes in Removal of Alien Terrorist Provisions

- Sec. 354. Treatment of classified information.
- Sec. 355. Exclusion of representatives of terrorist organizations.
- Sec. 356. Standard for judicial review of terrorist organization designations.
- Sec. 357. Removal of ancillary relief for voluntary departure.
- Sec. 358. Effective date.

Subtitle E—Transportation of Aliens

- Sec. 361. Definition of stowaway.
- Sec. 362. Transportation contracts.

Subtitle F—Additional Provisions

- Sec. 371. Immigration judges and compensation.
- Sec. 372. Delegation of immigration enforcement authority.
- Sec. 373. Powers and duties of the Attorney General and the Commissioner.
- Sec. 374. Judicial deportation.
- Sec. 375. Limitation on adj.

- Sec. 376. Treatment of certain fees.
- Sec. 377. Limitation on legalization litigation.
- Sec. 378. Rescission of lawful permanent resident status.

- Sec. 379. Administrative review of orders.
- Sec. 380. Civil penalties for failure to depart.
- Sec. 381. Clarification of district court jurisdiction.
- Sec. 382. Application of additional civil penalties to enforcement.
- Sec. 383. Exclusion of certain aliens from family unity program.
- Sec. 384. Penalties for disclosure of information.
- Sec. 385. Authorization of additional funds for removal of aliens.
- Sec. 386. Increase in INS detention facilities; report on detention space.
- Sec. 387. Pilot program on use of closed military bases for the detention of inadmissible or deportable aliens.
- Sec. 388. Report on interior repatriation program.

TITLE IV—ENFORCEMENT OF RESTRICTIONS AGAINST EMPLOYMENT

Subtitle A—Pilot Programs for Employment Eligibility Confirmation

- Sec. 401. Establishment of programs.
- Sec. 402. Voluntary election to participate in a pilot program.
- Sec. 403. Procedures for participants in pilot programs.
- Sec. 404. Employment eligibility confirmation system.
- Sec. 405. Reports.

Subtitle B—Other Provisions Relating to Employer Sanctions

- Sec. 411. Limiting liability for certain technical violations of paperwork requirements.
- Sec. 412. Paperwork and other changes in the employer sanctions program.
- Sec. 413. Report on additional authority or resources needed for enforcement of employer sanctions provisions.
- Sec. 414. Reports on earnings of aliens not authorized to work.
- Sec. 415. Authorizing maintenance of certain information on aliens.
- Sec. 416. Subpoena authority.

Subtitle C—Unfair Immigration-Related Employment Practices

- Sec. 421. Treatment of certain documentary practices as unfair immigration-related employment practices.

TITLE V—RESTRICTIONS ON BENEFITS FOR ALIENS

Subtitle A—Eligibility of Aliens for Public Assistance and Benefits

- Sec. 501. Exception to ineligibility for public benefits for certain battered aliens.
- Sec. 502. Pilot programs on limiting issuance of driver's licenses to illegal aliens.
- Sec. 503. Ineligibility of aliens not lawfully present for Social Security benefits.
- Sec. 504. Procedures for requiring proof of citizenship for Federal public benefits.
- Sec. 505. Limitation on eligibility for preferential treatment of aliens not lawfully present on basis of residence for higher education benefits.
- Sec. 506. Study and report on alien student eligibility for postsecondary Federal student financial assistance.
- Sec. 507. Verification of immigration status for purposes of Social Security and higher educational assistance.
- Sec. 508. No verification requirement for non-profit charitable organizations.
- Sec. 509. GAO study of provision of means-tested public benefits to aliens who are not qualified aliens on behalf of eligible individuals.

Sec. 510. Transition for aliens currently receiving benefits under the Food Stamp program.

Subtitle B—Public Charge Exclusion

Sec. 531. Ground for exclusion.

Subtitle C—Affidavits of Support

Sec. 551. Requirements for sponsor's affidavit of support.

Sec. 552. Indigence and battered spouse and child exceptions to Federal attribution of income rule.

Sec. 553. Authority of States and political subdivisions of States to limit assistance to aliens and to distinguish among classes of aliens in providing general cash public assistance.

Subtitle D—Miscellaneous Provisions

Sec. 561. Increased maximum criminal penalties for forging or counterfeiting seal of a Federal department or agency to facilitate benefit fraud by an unlawful alien.

Sec. 562. Treatment of expenses subject to emergency medical services exception.

Sec. 563. Reimbursement of States and localities for emergency ambulance services.

Sec. 564. Pilot programs to require bonding.

Sec. 565. Reports.

Subtitle E—Housing Assistance

Sec. 571. Short title.

Sec. 572. Prorating of financial assistance.

Sec. 573. Actions in cases of termination of financial assistance.

Sec. 574. Verification of immigration status and eligibility for financial assistance.

Sec. 575. Prohibition of sanctions against entities making financial assistance eligibility determinations.

Sec. 576. Eligibility for public and assisted housing.

Sec. 577. Regulations.

Subtitle F—General Provisions

Sec. 591. Effective dates.

Sec. 592. Not applicable to foreign assistance.

Sec. 593. Notification.

Sec. 594. Definitions.

TITLE VI—MISCELLANEOUS PROVISIONS

Subtitle A—Refugees, Parole, and Asylum

Sec. 601. Persecution for resistance to coercive population control methods.

Sec. 602. Limitation on use of parole.

Sec. 603. Treatment of long-term parolees in applying worldwide numerical limitations.

Sec. 604. Asylum reform.

Sec. 605. Increase in asylum officers.

Sec. 606. Conditional repeal of Cuban Adjustment Act.

Subtitle B—Miscellaneous Amendments to the Immigration and Nationality Act

Sec. 621. Alien witness cooperation.

Sec. 622. Waiver of foreign country residence requirement with respect to international medical graduates.

Sec. 623. Use of legalization and special agricultural worker information.

Sec. 624. Continued validity of labor certifications and classification petitions for professional athletes.

Sec. 625. Foreign students.

Sec. 626. Services to family members of certain officers and agents killed in the line of duty.

Subtitle C—Provisions Relating to Visa Processing and Consular Efficiency

Sec. 631. Validity of period of visas.

Sec. 632. Elimination of consulate shopping for visa overstays.

Sec. 633. Authority to determine visa processing procedures.

Sec. 634. Changes regarding visa application process.

Sec. 635. Visa waiver program.

Sec. 636. Fee for diversity immigrant lottery.

Sec. 637. Eligibility for visas for certain Polish applicants for the 1995 diversity immigrant program.

Subtitle D—Other Provisions

Sec. 641. Program to collect information relating to nonimmigrant foreign students.

Sec. 642. Communication between government agencies and the Immigration and Naturalization Service.

Sec. 643. Regulations regarding habitual residence.

Sec. 644. Information regarding female genital mutilation.

Sec. 645. Criminalization of female genital mutilation.

Sec. 646. Adjustment of status for certain Polish and Hungarian parolees.

Sec. 647. Support of demonstration projects.

Sec. 648. Sense of Congress regarding American-made products; requirements regarding notice.

Sec. 649. Vessel movement controls during immigration emergency.

Sec. 650. Review of practices of testing entities.

Sec. 651. Designation of a United States customs administrative building.

Sec. 652. Mail-order bride business.

Sec. 653. Review and report on H-2A non-immigrant workers program.

Sec. 654. Report on allegations of harassment by Canadian customs agents.

Sec. 655. Sense of Congress on discriminatory application of New Brunswick provincial sales tax.

Sec. 656. Improvements in identification-related documents.

Sec. 657. Development of prototype of counterfeit-resistant Social Security card.

Sec. 658. Border Patrol Museum.

Sec. 659. Sense of the Congress regarding the mission of the Immigration and Naturalization Service.

Sec. 660. Authority for National Guard to assist in transportation of certain aliens.

Subtitle E—Technical Corrections

Sec. 671. Miscellaneous technical corrections.

(e) **SEVERABILITY.**—If any provision of this division or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of this division and the application of the provisions of this division to any person or circumstance shall not be affected thereby.

TITLE I—IMPROVEMENTS TO BORDER CONTROL, FACILITATION OF LEGAL ENTRY, AND INTERIOR ENFORCEMENT

Subtitle A—Improved Enforcement at the Border

SEC. 101. BORDER PATROL AGENTS AND SUPPORT PERSONNEL

(a) **INCREASED NUMBER OF BORDER PATROL AGENTS.**—The Attorney General in each of fiscal years 1997, 1998, 1999, 2000, and 2001 shall increase by not less than 1,000 the number of positions for full-time, active-duty border patrol agents within the Immigration and Naturalization Service above the number of such positions for which funds were allotted for the preceding fiscal year.

(b) **INCREASE IN BORDER PATROL SUPPORT PERSONNEL.**—The Attorney General, in each of fiscal years 1997, 1998, 1999, 2000, and 2001, may increase by 300 the number of positions for personnel in support of border patrol agents above the number of such positions for which funds were allotted for the preceding fiscal year.

(c) **DEPLOYMENT OF BORDER PATROL AGENTS.**—The Attorney General shall, to the maximum extent practicable, ensure that additional border patrol agents shall be deployed among Immigration and Naturalization Service sectors along the border in proportion to the

level of illegal crossing of the borders of the United States measured in each sector during the preceding fiscal year and reasonably anticipated in the next fiscal year.

(d) **FORWARD DEPLOYMENT.**—

(1) **IN GENERAL.**—The Attorney General shall forward deploy existing border patrol agents in those areas of the border identified as areas of high illegal entry into the United States in order to provide a uniform and visible deterrent to illegal entry on a continuing basis. The previous sentence shall not apply to border patrol agents located at checkpoints.

(2) **PRESERVATION OF LAW ENFORCEMENT FUNCTIONS AND CAPABILITIES IN INTERIOR STATES.**—The Attorney General shall, when deploying border patrol personnel from interior stations to border stations, coordinate with, and act in conjunction with, State and local law enforcement agencies to ensure that such deployment does not degrade or compromise the law enforcement capabilities and functions currently performed at interior border patrol stations.

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

(A) the progress and effectiveness of the forward deployment under paragraph (1); and

(B) the measures taken to comply with paragraph (2).

SEC. 102. IMPROVEMENT OF BARRIERS AT BORDER

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

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

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

(2) **PROMPT ACQUISITION OF NECESSARY EASEMENTS.**—The Attorney General, acting under the authority conferred in section 103(b) of the Immigration and Nationality Act (as inserted by subsection (d)), shall promptly acquire such easements as may be necessary to carry out this subsection and shall commence construction of fences immediately following such acquisition (or conclusion of portions thereof).

(3) **SAFETY FEATURES.**—The Attorney General, while constructing the additional fencing under this subsection, shall incorporate such safety features into the design of the fence system as are necessary to ensure the well-being of border patrol agents deployed within or in near proximity to the system.

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

(c) **WAIVER.**—The provisions of the Endangered Species Act of 1973 and the National Environmental Policy Act of 1969 are waived to the extent the Attorney General determines necessary to ensure expeditious construction of the barriers and roads under this section.

(d) **LAND ACQUISITION AUTHORITY.**—

(1) **IN GENERAL.**—Section 103 (8 U.S.C. 1103) is amended—

(A) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively; and

(B) by inserting, after subsection (a) the following:

The United States district court, in both felony and misdemeanor cases, and a United States magistrate judge in misdemeanor cases, may accept such a stipulation and shall have jurisdiction to enter a judicial order of deportation pursuant to the terms of such stipulation."

(b) **DEPORTATION AS A CONDITION OF PROBATION.**—Section 3563(b) of title 18, United States Code, is amended—

(1) by striking "or" at the end of paragraph (20);

(2) by redesignating paragraph (21) as paragraph (22); and

(3) by inserting after paragraph (20) the following new paragraph:

"(21) be ordered deported by a United States district court, or United States magistrate judge, pursuant to a stipulation entered into by the defendant and the United States under section 242A(d)(5) of the Immigration and Nationality Act, except that, in the absence of a stipulation, the United States district court or a United States magistrate judge, may order deportation as a condition of probation, if, after notice and hearing pursuant to such section, the Attorney General demonstrates by clear and convincing evidence that the alien is deportable; or"

(c) **EFFECTIVE DATE.**—The amendment made by subsection (a)(2) shall be effective as if included in the enactment of section 224(a) of the Immigration and Nationality Technical Corrections Act of 1994.

SEC. 376. LIMITATION ON ADJUSTMENT OF STATUS.

Section 245(c) (8 U.S.C. 1255(c)) is amended—

(1) by striking "or (6)" and inserting "(6)"; and

(2) by inserting before the period at the end the following: "(7) any alien who seeks adjustment of status to that of an immigrant under section 203(b) and is not in a lawful non-immigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 274A(h)(3), or who has otherwise violated the terms of a non-immigrant visa"

SEC. 378. TREATMENT OF CERTAIN FEES.

(a) **INCREASE IN FEE.**—Section 245(i) (8 U.S.C. 1255(i)), as added by section 506(b) of Public Law 103-317, is amended—

(1) in paragraph (1), by striking "five times the fee required for the processing of applications under this section" and inserting "\$1,000"; and

(2) by amending paragraph (3) to read as follows:

"(3)(A) The portion of each application fee (not to exceed \$200) that the Attorney General determines is required to process an application under this section and is remitted to the Attorney General pursuant to paragraphs (1) and (2) of this subsection shall be disposed of by the Attorney General as provided in subsections (m), (n), and (o) of section 286.

"(B) Any remaining portion of such fees remitted under such paragraphs shall be deposited by the Attorney General into the Immigration Detention Account established under section 286(a)."

(b) **IMMIGRATION DETENTION ACCOUNT.**—Section 286 (8 U.S.C. 1356) is amended by adding at the end the following new subsection:

"(s) **IMMIGRATION DETENTION ACCOUNT.**—(1) There is established in the general fund of the Treasury a separate account which shall be known as the 'Immigration Detention Account'. Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the Immigration Detention Account amounts described in section 245(i)(3)(B) to remain available until expended.

"(2)(A) The Secretary of the Treasury shall refund out of the Immigration Detention Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Attorney General for the detention of aliens under sections 236(c) and 241(a).

"(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Attorney General of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amount required to be refunded under subparagraph (A)."

"(C) The amounts required to be refunded from the Immigration Detention Account for fiscal year 1997 and thereafter shall be refunded in accordance with estimates made in the budget request of the Attorney General for those fiscal years. Any proposed changes in the amounts designated in such budget requests shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of Public Law 104-134.

"(D) The Attorney General shall prepare and submit annually to the Congress statements of financial condition of the Immigration Detention Account, including beginning account balance, revenues, withdrawals, and ending account balance and projection for the ensuing fiscal year."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to applications made on or after the end of the 90-day period beginning on the date of the enactment of this Act.

SEC. 377. LIMITATION ON LEGALIZATION LITIGATION.

(a) **LIMITATION ON COURT JURISDICTION.**—Section 245A(f)(4) (8 U.S.C. 1255a(f)(4)) is amended by adding at the end the following new subparagraph:

"(C) **JURISDICTION OF COURTS.**—Notwithstanding any other provision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1), or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective as if included in the enactment of the Immigration Reform and Control Act of 1986.

SEC. 378. RESCISSION OF LAWFUL PERMANENT RESIDENT STATUS.

(a) **IN GENERAL.**—Section 246(a) (8 U.S.C. 1256(a)) is amended by adding at the end the following sentence: "Nothing in this subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to remove the alien under section 240, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the title III-A effective date (as defined in section 309(a) of this division).

SEC. 379. ADMINISTRATIVE REVIEW OF ORDERS.

(a) **IN GENERAL.**—Sections 274A(e)(7) and 274C(d)(4) (8 U.S.C. 1324a(e)(7), 1324c(d)(4)) are each amended—

(1) by striking "unless, within 30 days, the Attorney General modifies or vacates the decision and order" and inserting "unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations"; and

(2) by striking "a final order" and inserting "the final agency decision and order"

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to orders issued on or after the date of the enactment of this Act.

SEC. 380. CIVIL PENALTIES FOR FAILURE TO DEPART.

(a) **IN GENERAL.**—The Immigration and Nationality Act is amended by inserting after section 274C the following new section:

"CIVIL PENALTIES FOR FAILURE TO DEPART"

"Sec. 274D. (a) **IN GENERAL.**—Any alien subject to a final order of removal who—

"(1) willfully fails or refuses to—

"(A) depart from the United States pursuant

to the order,

"(B) make timely application in good faith for travel or other documents necessary for departure, or

"(C) present for removal at the time and place required by the Attorney General; or

"(2) conspires to or takes any action designed to prevent or hamper the alien's departure pursuant to the order,

shall pay a civil penalty of not more than \$500 to the Commissioner for each day the alien is in violation of this section.

"(b) **CONSTRUCTION.**—Nothing in this section shall be construed to diminish or qualify any penalties to which an alien may be subject for activities prohibited by section 243(a) or any other section of this Act."

(b) **CLERICAL AMENDMENT.**—The table of contents is amended by inserting after the item relating to section 274C the following new item:

"Sec. 274D. Civil penalties for failure to depart."

(c) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply to actions occurring on or after the title III-A effective date (as defined in section 309(a) of this division).

SEC. 381. CLARIFICATION OF DISTRICT COURT JURISDICTION.

(a) **IN GENERAL.**—Section 279 (8 U.S.C. 1329) is amended—

(1) by amending the first sentence to read as follows: "The district courts of the United States shall have jurisdiction of all causes, civil and criminal, brought by the United States that arise under the provisions of this title," and

(2) by adding at the end the following new sentence: "Nothing in this section shall be construed as providing jurisdiction for suits against the United States or its agencies or officers."

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to actions filed after the date of the enactment of this Act.

SEC. 382. APPLICATION OF ADDITIONAL CIVIL PENALTIES TO ENFORCEMENT.

(a) **IN GENERAL.**—Subsection (b) of section 280 (8 U.S.C. 1330) is amended to read as follows:

"(b)(1) There is established in the general fund of the Treasury a separate account which shall be known as the 'Immigration Enforcement Account'. Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the Immigration Enforcement Account amounts described in paragraph (2) to remain available until expended.

"(2) The amounts described in this paragraph are the following:

"(A) The increase in penalties collected resulting from the amendments made by sections 203(b) and 543(a) of the Immigration Act of 1990.

"(B) Civil penalties collected under sections 240B(d), 274C, 274D, and 275(b).

"(3)(A) The Secretary of the Treasury shall refund out of the Immigration Enforcement Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Attorney General for activities that enhance enforcement of provisions of this title. Such activities include—

"(i) the identification, investigation, apprehension, detention, and removal of criminal aliens;

"(ii) the maintenance and updating of a system to identify and track criminal aliens, deportable aliens, inadmissible aliens, and aliens illegally entering the United States; and

"(iii) for the repair, maintenance, or construction on the United States border, in areas experiencing high levels of apprehensions of illegal

ADDENDUM B

ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

SEPTEMBER 24, 1996.—Ordered to be printed

Mr. HYDE, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2202]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2202) to amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States by increasing border patrol and investigative personnel, by increasing penalties for alien smuggling and for document fraud, by reforming exclusion and deportation law and procedures, by improving the verification system for the eligibility for employment, and through other measures, to reform the legal immigration system and facilitate legal entries into the United States, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT; APPLICATION OF DEFINITIONS OF SUCH ACT; TABLE OF CONTENTS; SEVERABILITY.

(a) **SHORT TITLE.**—*This Act may be cited as the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996”.*

(b) **AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.**—*Except as otherwise specifically provided—*

(1) whenever in this Act an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act; and

the Executive Office for Immigration Review to conduct proceedings, including proceedings under section 240. Subsection (b) substitutes the term "immigration judge" for "special inquiry officer" wherever it appears in the INA.

Subsection (c) establishes a four-level pay scale for immigration judges, beginning at 70 percent and reaching 92 percent of the next-to-highest rate of basic pay for the Senior Executive Service.

Section 372—House recedes to Senate amendment section 171(c). This section amends INA section 103(a) to provide that in the event of a mass influx of aliens off the coast of the United States or at a land border, the Attorney General may authorize a State or local law enforcement officer, with the consent of the officer's superiors, to perform duties of immigration officers under the INA.

Section 373—House recedes to Senate amendment section 329. This section amends INA section 103(a) to clarify the authority of the Attorney General to use appropriated funds for the care and security of individuals detained by the Service through agreements with State and local governments. This provision also grants authority for the Attorney General to contract with State and local authorities for construction, renovation, and acquisition of equipment in support of the detention of aliens held by the INS in State and local facilities.

Section 374—House recedes to Senate amendment section 165(a)(2)(A), with modifications, and Senate amendment section 167. This section extends the authority for judicial deportation under INA section 242A(c) (redesignated as section 238(c)) to any case in which an alien is deportable. This section also clarifies that no denial of a request for a judicial order of deportation (including a decision on the merits) shall preclude the Attorney General from initiating deportation proceedings before an immigration judge on the same or different ground of deportability. Finally, this section permits the entry of a stipulated order of deportation as part of a plea agreement.

Section 375—House recedes to Senate amendment section 181. This section amends INA section 245(c) to make ineligible for adjustment of status aliens who are not in lawful nonimmigrant status, who have violated the terms of their nonimmigrant visa, or who have engaged in unauthorized employment.

Section 376—Senate recedes to House section 808, with modifications. This section amends INA section 245(i) to provide that an alien applying for adjustment of status under this provision shall pay a fee of \$1,000, not less than \$800 of which shall be paid into an Immigration Detention Account. This section also amends INA section 286 to provide for creation and operation of the Immigration Detention Account.

Section 377—House recedes to Senate amendment section 180. This section amends INA section 245A to put an end to litigation seeking to extend the amnesty provisions of the Immigration Reform and Control Act of 1986, and to limit claims under that section to aliens who in fact filed an application for legalization under that section within the prescribed time limits, or attempted to do so but their application was refused by an immigration officer.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 95-5214

September Term, 1995

88cv00625

Ayuda, Inc., et al.,
Appellees

v.

Janet Reno, Individually and as Attorney General of
the United States, et al.,
Appellants

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED

SEP - 6 1996

CLERK

BEFORE: Silberman, Williams, and Ginsburg, Circuit Judges

ORDER

Upon consideration of the joint stipulation and motion to withdraw appeal, it is

ORDERED that the motion to withdraw appeal be granted. It is

FURTHER ORDERED that the case be remanded to the district court with instructions to dismiss the complaint and to vacate all remaining orders and injunctions.

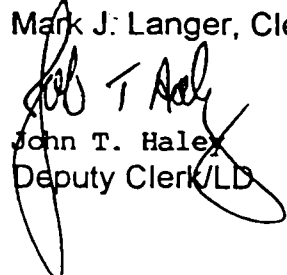
The Clerk is directed to issue forthwith to the district court a certified copy of this order in lieu of formal mandate.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:


John T. Haley
Deputy Clerk/LD

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 1996,
two (2) copies of the foregoing SUPPLEMENTAL BRIEF FOR
DEFENDANTS-APPELLANTS was served on the counsel of record for
Plaintiffs-Appellees via first class mail, postage prepaid, at
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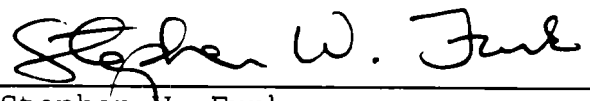
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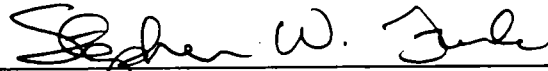
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CERTIFICATION OF COMPLIANCE WITH RULE 32(E)(3)

Pursuant to Ninth Circuit Rule 32(e)(3), the undersigned counsel certifies that the following supplemental brief for Defendants-Appellants is monospaced, has 10.5 or fewer characters per inch, and contains fewer than 7,000 words.



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