



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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Honorable Robert Dole
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Dole:

This letter presents the views of the Administration concerning S. 1664, the "Immigration Control and Financial Responsibility Act of 1996", as reported by the Committee on the Judiciary on March 21, 1996.

Many of the provisions in S. 1664 advance the Administration's four-part strategy to control illegal immigration. This strategy calls for regaining control of our borders; protecting U.S. workers and removing the job magnet through worksite enforcement; aggressively removing criminal and other deportable aliens; and securing from Congress the resources to support the Administration's illegal immigration enforcement strategy and to assist states with the costs of illegal immigration. Many of the provisions of S. 1664 are identical or similar to provisions in the Administration's bill, S. 754, the "Immigration Enforcement Improvements Act of 1995."

While the Administration strongly supports reform of the current immigration law that deters illegal immigration, and S. 1664 contains many provisions that are similar or identical to the Administration's legislative proposal, enforcement initiatives, and overall strategy, S. 1664 raises serious concerns in specific areas that we hope the Senate will examine thoroughly during floor consideration of the bill. The Administration's concerns include, but are not limited to the following:

♦ If S. 1664 were presented to the President with provisions that would jeopardize any child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs, the Secretary of Education and the Attorney General would recommend that the bill be vetoed.

♦ The Administration opposes broadening the application of deeming rules from a well-defined set of programs to all means-tested programs including Medicaid, the Maternal and Child Health Services program, the School Lunch program, student financial assistance programs for postsecondary education and scores of

additional programs.

♦ The penalties for and enforcement of employer sanctions should be increased. Similar increases should be included for the enforcement of laws against immigration-related employment discrimination. The intentional discrimination standard in the document abuse provision of S. 1664 will severely undermine anti-discrimination enforcement.

♦ Repeal of the Cuban Adjustment Act would detract from the Administration's goal of returning democracy to Cuba and regularizing the flow of immigration from Cuba. In addition, restricting the Attorney General's parole authority will jeopardize the Attorney General's ability to quickly and appropriately respond to compelling immigration emergencies.

♦ This Administration has built and reinforced physical barriers along the Southwest border. S. 1394's multiple layers of fencing will endanger the physical safety of our Border Patrol agents who may get trapped and ambushed between the layers of fencing. We support the authorization of further appropriations for the purpose of constructing barriers, but we do not support limiting the use of those funds to one untested type of physical barrier. Funds should be authorized for multiple fencing as deemed appropriate along with other types of physical barriers and sensors. We would like to work with the Senate to ensure that appropriate deterrence technologies are deployed along the border.

♦ We oppose S. 1664's greatly expanded definition of "aggravated felony," which would encompass crimes, even nonviolent ones, for which the sentence imposed is one year or more. Aggravated felons are subject to streamlined removal procedures and are precluded from many forms of relief from deportation, including fundamental refugee protections required by treaty. While we have made the removal of criminal aliens a top priority, such a drastic expansion of the definition eliminates the chance to consider individual circumstances even in the most exceptional cases.

♦ While we strongly support the objective of combating breeder document fraud, federal regulation of birth certificates would impose a large unfunded mandate with costs on states and localities as well as subject private individuals to burdensome and costly requirements. One possible effect of the standardization of birth certificates is a flood of millions of citizens in state and local offices paying for new birth certificates. The Administration has concerns about this section and would like to work with the Senate to address them.

♦ If S. 1664 were presented to the President with amendments containing a new agricultural guestworker program, the Attorney

General and the Secretary of Labor would recommend that the bill be vetoed. The Administration strongly opposes a new agricultural guestworker program because it would: (1) reduce work opportunities for U.S. citizens and other legal residents; (2) depress wages and work standards for U.S. farmworkers; (3) not be a sustainable solution to any labor shortage that might develop; and (4) increase illegal immigration.

This Administration appreciates the continued opportunity to work with you and other members of the Senate. Our positions on the individual provisions of S. 1664 are outlined in the following section-by-section discussion.

Title I--Immigrant Control

Part 1--Additional Enforcement Personnel

The Administration has already demonstrated that our borders can be controlled when there is a commitment to do so by the President and Congress. With an unprecedented infusion of resources since 1993, we have implemented a multi-year border control strategy of prevention through deterrence. We have carefully crafted long range strategic plans tailored to the unique geographic and demographic characteristics of each border area to restore integrity to the border. The results of our flexible approach are reflected in the successful implementation of Operations "Hold-The-Line" in El Paso, "Gatekeeper" in San Diego, and "Safeguard" in Arizona. We have increased the number of Border Patrol agents by 40% since 1993 -- a higher level of staffing than ever before. Those agents are also backed up by the highest level of support than ever before. For the first time in over a decade we are backfilling positions previously left vacant by attrition. We are committed to achieving a strength of more than 5,600 Border Patrol agents by the end of Fiscal Year (FY) 1996 and more than 7,000 agents by the end of FY 1998. Border Patrol personnel are now equipped with new and sophisticated technology and basic support allowing them to work more effectively.

Sec. 101 mandates that the number of Border Patrol agents be increased by no fewer than 700 in FY 1996 and by no fewer than 1,000 in each of FYs 1997 through 2000. The number of Border Patrol support personnel would be increased by not more than 300 each FY from 1996 through 2000.

For FY 1996, the Administration will start the training of 1480 new Border Patrol agents and complete the training of and deploy 700 new agents. S. 754 proposes increases of at least 700 agents in each of FYs 1996-1998, to the maximum extent possible consistent with standards of professionalism and training. This reflects the Administration's commitment to achieve substantial increases in agent strength by the end of FY 1998. The

Administration has greatly expanded the size of the Border Patrol and, for the first time in many years, has undertaken serious efforts to eliminate hiring and attrition shortfalls. In some FYs, we will hire and train more than 1000 new and replacement Border Patrol personnel. However, we ask the members of the Senate to be mindful of the danger to the law enforcement structure and mission should too many newly hired positions be created at once. We believe that the net annual increase of 700 agents represents the maximum agent strength that the Border Patrol can responsibly achieve in each year at this time based upon a number of fundamental law enforcement considerations. The International Association of Chiefs of Police recently analyzed Border Patrol hiring and concluded that a massive infusion of inexperienced law enforcement agents deployed in the field with new supervisors would jeopardize overall effectiveness and would carry with it a risk of unintended consequences such as cutting corners on training, excessive force, civil rights violations and decreased professionalism. We urge the Senate to incorporate the Administration's proposal on the number of Border Patrol agents to be hired each year and to strike the limitation on the number of support personnel who can be hired.

Sec. 102 authorizes funding for 300 new positions for each of FYs 1996 through 1998 for investigators and support personnel to investigate alien smuggling and enforce employer sanctions. We support this increase for personnel to investigate alien smuggling and enforce employer sanctions.

This section would also limit administrative expenditures for the payment of overtime to an employee for any amount over \$25,000. The restrictions on overtime expenditures currently apply because they are included in the FY 1996 Commerce, Justice, State Appropriations Act. The President's FY 1996 budget request also includes this restriction but proposes an increase in the overtime limit to \$30,000. Accordingly, we recommend that the overtime provision be stricken from the bill and be addressed in the appropriations bill.

Sec. 103 would increase the number of land border inspectors by approximately equal numbers in FYs 1996 and 1997 to a level that will provide full staffing to end undue delay and facilitate inspections.

We strongly support increased service and inspections at land ports of entry.

Sec. 104 authorizes an increase of 300 investigators in FY 1996 for the investigation of visa overstayers. The Administration's approach to the problem of visa overstayers includes greater enforcement of the employer sanctions provision and worksite enforcement. Consequently, the additional investigators authorized by this section should also be

authorized to do worksite enforcement. We urge the Senate to remove language limiting these investigators' powers to the investigation of "visa overstayers" per se.

Sec. 105 authorizes the hiring of not more than 350 investigators and staff in FYs 1996 and 1997 in the Wage and Hour Division of the Department of Labor for the enforcement of existing Federal wage and hour laws. Priority shall be given to the employment of multilingual candidates who are proficient in English and such other language or languages as may be spoken in the region in which such personnel are likely to be deployed.

We support this provision to ensure that worksite enforcement serve its critical role in comprehensive and effective illegal immigration control.

Sec. 106 requires the Attorney General, subject to appropriations, to provide for an increase in detention space of at least 9,000 beds by the end of FY 1997. While we recommend and support an increase in available detention capacity, that capacity includes more than beds and facilities, for example detention and deportation staffing. Also, while a capacity of 9,000 may be appropriate, specifying a number would appear premature and speculative prior to the submission by the Attorney General of the study and report on detention space requirements provided for in section 182.

Sec. 107 requires that the Attorney General review INS hiring and training standards and where necessary revise those standards to ensure their consistency with relevant standards of professionalism. This section requires the Attorney General to certify to Congress after each of the next five FYs that all personnel hired and trained pursuant to Title I during that FY were hired and trained pursuant to appropriate standards.

We do not object to this provision, but we believe it is unnecessary given the high level of attention and commitment to professionalism and skill development reflected in the INS hiring and training programs.

Sec. 108 requires the construction of triple fencing with roads in between the fences along the 14 miles of the United States border with Mexico from the Pacific Ocean and extending eastward. Funds to carry out this section are authorized to be appropriated in an amount not to exceed \$12 million.

This Administration has built and reinforced physical barriers along the Southwest border. Over the past several years, the Immigration and Naturalization Service (INS) with the support of military personnel and the National Guard has built miles of strategically placed fencing along the border to control drug trafficking, alien smuggling, crime, and illegal

immigration. For example, there are now 28 miles of fencing in the San Diego Sector to support the Administration's increased deployment of Border Patrol agents, resources, and sophisticated technology. Recently, we began construction of a 1.3 mile fence along the border at Sunland Park, New Mexico. We support the authorization of further appropriations for the purpose of constructing barriers, but we do not support limiting the use of those funds to one untested type of physical barrier. Funds should be authorized for multiple fencing as deemed appropriate along with other types of physical barriers and sensors. We would like to work with the Senate to ensure that appropriate deterrence technologies are deployed along the border.

Part 2--Eligibility to Work and to Receive Public Assistance

Jobs are the greatest magnet for illegal immigration. Thus, a comprehensive effort to deter illegal immigration, particularly visa overstaying, must make worksite enforcement a top priority. The Administration is committed to hiring more DOL Wage and Hour and other personnel to enhance enforcement of laws prohibiting employment of unauthorized aliens and assuring minimum labor standards, including sweatshop enforcement. Enforcement efforts will focus on selected areas of high illegal immigration. Already the Atlanta and Dallas District Offices of the Immigration and Naturalization Service (INS) have successfully conducted Operation SouthPAW (Protecting America's Workers) and Operation Jobs, unprecedented interior enforcement initiatives which are designed to place authorized U.S. workers in job vacancies created by the arrest of unauthorized workers during worksite enforcement surveys. The Administration is deeply concerned by the provisions in this bill that will weaken employer sanctions and anti-discrimination enforcement. In particular, we are concerned that the Committee on the Judiciary eliminated increases in employer sanctions penalties and failed to adopt commensurate increases in penalties for immigration-related employment discrimination. We recommend that the penalty increases contained in the former section 117 of S. 1664 as reported by the Subcommittee on Immigration be restored and that commensurate increases be included for violations of the anti-discrimination provisions of the INA.

With regard to Federal benefits, under current law the status of aliens applying for major federal benefits is generally verified through direct access to INS via the Systematic Alien Verification for Entitlement program (SAVE), enacted by section 121 of the Immigration Reform and Control Act of 1986 (IRCA). The SAVE process seeks to ensure that each applicant born outside the U.S. is properly identified as a U.S. citizen, or as an eligible immigrant and to prevent unauthorized immigrants from receiving benefits for which they are ineligible. The SAVE process of verifying eligibility has worked well. Recently, SAVE was awarded the Federal Technology Leadership Award for 1995.

Nevertheless, the Administration is conducting a review of the SAVE system to determine if improvements or changes are appropriate. We believe that the creation of a new system at this time would be premature, duplicative and unnecessary and would also siphon resources away from other enforcement priorities.

Sections 111 through 113, which were substantially amended by the Committee on the Judiciary, are now consistent with the Administration's proposal. These sections provide for the completion and evaluation of demonstration programs prior to the enactment by Congress of a new verification system for employment and benefit eligibility. It gives the Executive Branch flexibility to select appropriate techniques for demonstration program and evaluation purposes.

Section 111 requires the President to submit a report to Congress setting forth a recommended plan for the establishment of a system to verify eligibility for employment and immigration status for purposes of eligibility for benefits under federal, state, and local government public assistance programs. Under section 112, the President, acting through the Attorney General is directed to undertake demonstration projects, including a project with the legislative branch of the federal government, that are consistent with the objectives set forth in section 111. The authority to conduct the projects is effective for four years after the date of enactment unless the President determines that an existing project should be extended or a new one undertaken prior to the recommendation of a plan for implementation. Such a determination will result in a three-year extension of the authority. The Attorney General or the Attorney General's representatives shall consult with the Judiciary Committees at least every twelve months from the date of enactment on the demonstration projects initiated and being evaluated. The Attorney General shall submit to Congress the estimated costs to employers of each demonstration project. To the extent a demonstration project is determined to meet certain established criteria, participants in the project need not comply with the existing verification requirements of the INA.

Section 111 includes strong provisions for the protection of privacy, penalties for wrongful disclosure of information about an individual, and remedies for persons who are harmed by the wrongful disclosure of such information. Use of personal information gained under the system is limited to specified eligibility, fraud, and immigration purposes. Any new document that would be required for use must be resistant to counterfeiting and tampering and may not be required as a national identification card or be presented for other than the specified purposes. Under section 111, the system must ensure that information is complete, accurate, verifiable, and timely. Corrections must be made within ten working days of receipt.

Section 113 provides that the demonstration projects authorized under section 112 will be tracked, monitored and evaluated by the Comptroller General. The evaluation will include hiring data on employers who are not participating in the projects to serve as a baseline against which to measure any unlawful discriminatory practices. The Comptroller General will report every twelve months and finally within 60 days of the submission to Congress of the recommended plan required under section 111.

We strongly support the approach to verification adopted in sections 111 through 113, as amended, with one reservation.

Section 111(e) relieves an employer from liability under section 274A of the INA if (1) the alien appeared throughout the term of employment to be prima facie eligible for employment, (2) the employer followed all procedures required in the new verification system, and (3) the alien was verified under such system as eligible for employment, or a secondary verification procedure was conducted with respect to the alien and the employer discharged the alien promptly after receiving notice that the secondary verification procedure failed to verify the eligibility of the employee. The Judiciary Committee also adopted an amendment that limits liability under section 274A of the INA for any person who takes an action adverse to an individual on the basis of information relating to that individual gained from the new verification system or a demonstration project.

The presence of two provisions which seemingly address the same issue, i.e. employer liability under the INA, is confusing. Moreover, neither provision is necessary in our view. An employer who complies with employee verification requirements is entitled to raise a good faith defense against the imposition of penalties for knowingly hiring an unauthorized alien. Moreover, section 274A does not impose liability on an employer for an adverse action taken against an employee. We are concerned that these provisions could have an unintended effect of increasing employer challenges to 274A enforcement efforts and discrimination against employees who are in fact later verified to be work authorized. Furthermore, the Administration's pilot program called the Verification Information System gives an employee an additional opportunity after a failed secondary verification to verify eligibility for employment. Accordingly, we recommend that the Senate strike both provisions. If both provisions are to be retained, their relationship should be clarified.

Sec. 114 provides that nothing in the Act may be construed to preempt existing rights or remedies except to the extent such right or remedy is inconsistent with Title I.

Sec. 115 contains definitions of "Administration", "Employment Authorized Alien", and "Service" as those terms are used in Subpart A.

Sec. 116 authorizes the Attorney General to require an individual to provide his or her Social Security account number for purposes of complying with this section. S. 754 has a similar provision, and we support this provision.

We also support this section's limits upon the number of documents which establish both employment authorization and identity and the number of documents which establish employment authorization. This section shall apply to hiring beginning no more than 180 days from the date of enactment of the Act. Although S. 754 contained the same effective date, on further consideration of technological capabilities this timeframe appears unworkable. We would like to work with the Senate on an appropriate timeframe for implementation.

Sec. 117 provides that an employer's request for more or different documents to verify an employee's employment eligibility or an employer's refusal to honor documents that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice only if made for the purpose or with the intent of discriminating against the employee because of his or her national origin or citizenship status.

We strongly oppose this section because of its potentially harmful and discriminatory impact on U.S. citizens, legal permanent residents, and all work-authorized persons who appear or sound "foreign". Under this section, all work-authorized persons--including citizens and legal permanent residents--who possess valid acceptable documentation of work eligibility under the law, but who do not possess the specific documents required by a certain employer, could lose a job and have no legal remedy. The DOJ Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC) currently litigates on behalf of such employees. In Texas, a publishing company refused to hire a native born U.S. citizen of Hispanic descent because she presented a state identification card and a Social Security card instead of a birth certificate. In Virginia, a janitorial service firm fired a naturalized U.S. citizen of Guatemalan descent after demanding to see his "green card" and U.S. passport and rejecting his driver's license, Social Security card and voter registration card. In Colorado, a major meatpacking company discharged seven work authorized employees when they could not produce INS-issued work authorization extension documents although all seven had other legally sufficient evidence of their continued employment eligibility. This section would provide no remedy for such individuals who are unfairly denied jobs.

Under section 117, it will be difficult, if not impossible, for the OSC to demonstrate that the employer's conduct regarding documentation is tied to the national origin or citizenship status of the individual. Under section 117, all work authorized persons, citizens and non-citizens alike, who possess valid acceptable documentation under the law, but who do not possess the exact documents required by a specific employer, could lose an opportunity for employment and livelihood on that basis alone and have no legal remedy. If the driving force behind an employer's conduct is fear of INS sanctions, very few cases will be actionable, since it will be extremely difficult, if not impossible, to meet the proposed intent requirement. The employer will claim to be avoiding sanctions rather than discriminating intentionally. Clearly, the brunt of this change will fall on those who look or sound "foreign" -- legal immigrants and minority U.S. citizens -- because employers will be most critical of documentation produced by those persons most likely to lead to sanctions. Employers could pretextually support their alleged non-discriminatory position by highlighting the percentage of minority and non-U.S. citizens in their workforce to show that they have no reason to treat minorities or non-U.S. citizens more harshly in the employment verification process, but the effect on those authorized workers who do not have the specific documents requested by the employer will be the same: loss of employment and livelihood.

Congress knew when it enacted IRCA's anti-discrimination provision that fear of sanctions could result in employer discrimination against citizens and work-authorized aliens, especially those who "look or sound" foreign. When IRCA's antidiscrimination provision became law in 1986, Congress did not include an intent element in the prohibitions against citizenship-status or national origin discrimination. In 1990, when the document abuse provision was added to the law, the intent element was also absent. Thus, the protection afforded by the antidiscrimination provision was designed to protect workers not only from invidious discrimination, but also from employment discrimination resulting from employers' negligence or ignorance.

The Administration has worked closely and cooperatively with employer associations to educate them about their responsibilities under the law. Employer education efforts, including directly funding efforts by employer associations themselves and reducing the number of documents an employer must accept, have reduced the burdens on employers. By contrast, section 117 would allow discrimination against U.S. citizens and authorized workers to go unchecked. We strongly urge the Committee to delete this section.

In addition, we urge the Committee to clarify the authority of the OSC to litigate pattern and practice cases and to grant the OSC the authority to investigate and prosecute discrimination

charges involving the terms and conditions of employment.

Former Section 117 as reported by the Subcommittee on Immigration was amended in the Committee by striking subsections (a), (b), and (c) and redesignating the succeeding subsections accordingly. Former subsection 117(a) would have amended section 274(e)(4)(A) of the INA to increase the civil penalties for employer sanctions for first violations from the current range of \$250 to \$2,000 to a range of \$1,000 to \$3,000. The subsection also increases penalties for second violations from the current range of \$2,000 to \$5,000 to a range of \$3,000 to \$8,000. The penalties for subsequent violations are increased from a range of \$3,000 to \$10,000 to a range of \$8,000 to \$25,000. Sec. 117(b) would have increased the penalties for employer sanctions paperwork violations from the current range of \$100 to \$1,000 to a range of \$200 to \$2,500. Sec. 117(c) would have increased the criminal penalty for pattern and practice violations of employer sanctions to a felony offense, increasing the applicable fines from \$3,000 to \$9,000 and the criminal sentence which may be imposed from not more than six months to not more than two years.

These penalty increases are consistent with those proposed by the Administration. Their elimination is inconsistent with any effort to deter the hiring of unauthorized aliens by employers and to foster compliance with the law. We strongly recommend that the deleted subsections be restored.

We also believe that the penalties for immigration related discrimination, as covered by section 274B(g) of the INA, should be similarly increased. Congress made an important decision in the Immigration Act of 1990 to have the same penalties for both the anti-discrimination provisions and employer sanctions. Symmetry remains critical in these closely associated areas. Imbalance has the potential to create a financial incentive for employers to violate the lesser penalized statute of anti-discrimination law to avoid the higher penalties of the employer sanctions statute. This section will also eliminate the perception that there is an order of preference in enforcement efforts.

To further harmonize the sanctions and the anti-discrimination provisions of the INA, we urge the Senate to grant express authority to the Office of Special Counsel to pursue pattern or practice violations based on independent investigations, and that penalties equal to those set forth in the pattern or practice section of the employer sanctions provision be added for engaging in a pattern or practice of the antidiscrimination provision.

Sec. 118 would require the Secretary of Health and Human Services (HHS) to issue regulations mandating a standard format for copies of birth certificates. Effective October 1, 1997,

Federal agencies, and state agencies that issue driver's licenses and identification documents, could accept for official purposes only copies of birth certificates issued in this standard format. The provision also requires that copies of birth certificates prominently note (to the extent that it is known) that an individual is deceased; provides for the Secretary of HHS to prepare a report on birth certificate fraud; and authorizes two grant programs to be administered through the National Center for Health Statistics (NCHS). The first grant program would provide grants to states to encourage them to develop the capability to match birth and death records. The other would provide for a pilot project in 5 states to demonstrate the feasibility of providing information establishing the fact of death within 24 hours for each individual dying within the state. Appropriations would be authorized for these grant programs.

The Administration supports the objective of addressing breeder document fraud. However, this section presents myriad constitutional, operational, and programmatic concerns. First, it is not clear what enumerated power gives the federal government the authority to regulate birth certificates in this way. The Supreme Court has interpreted the federal government's authority over immigration quite broadly, but the relevant cases involved statutes that explicitly dealt with immigrants. See Fiallo v. Bell, 430 U.S. 787 (1977); Mathews v. Diaz, 426 U.S. 67 (1976). Section 118, though part of an immigration bill, does not by its terms involve immigration or immigrants; rather, it applies to all birth certificates. Indeed, by its silence with regard to foreign birth certificates, it appears to apply only to U.S. citizens and to make a foreign born person's birth certificate unacceptable for identification. In the absence of relevant cases, we are uncertain whether the Court would conclude that the bill is within the federal government's immigration authority. In addition, insofar as section 118 imposes non-ministerial duties on the states or compels policy decisions, it could be challenged as violative of the principles underlying the Tenth Amendment, under New York v. United States, 112 S. Ct. 2408 (1992).

This provision would prohibit Federal agencies and state agencies that issue driver's licenses or identification documents from accepting copies of birth certificates that did not meet a standard format as specified by HHS. The standardized format for birth certificates likely creates an unfunded mandate on those states which must change their current processes. Also, the requirement to obtain and present the new birth certificate for benefits likely creates a large unfunded mandate on members of the public. Current copies of birth certificates would be useless if needed for any Federal agency or for acquiring driver's licenses. Eventually almost everyone in the country would have to undergo the inconvenience and cost of replacing the copy of their birth certificate. This represents a significant

intrusion by the federal government into the responsibilities of states and the personal lives of law-abiding citizens.

As an example, there are about 60 million Americans under age 16. If each had to replace the copy of his or her birth certificate before applying for a driver's license, and states charged an average of \$10 for a certified copy of a birth certificate, this would cost these teenagers a total of \$600 million. In addition, the cost of this section to senior citizens and others who do business with the SSA would be at least \$100 million annually. About 5 million elderly persons would have to purchase a new birth certificate each year in order to apply for Medicare and cash benefits. Another 5 million would have to purchase a new birth certificate each year to apply for Social Security cards.

In addition, the Administration has a number of concerns regarding the section on drivers' licenses. First, this section would likely create an unfunded mandate on those states and localities that have to change their drivers' licenses, e.g. format, required information, and procedures for issuing a license. Second, we have strong reservations about requiring a Social Security number on drivers' licenses, which could then become tantamount to a universal identification card. Lastly, we are concerned about the constitutional and operational aspects of attempting to regulate state-issued drivers' licenses and state procedures.

The requirement that HHS submit a report on ways to reduce the fraudulent obtaining and use of birth certificates places the responsibility for the report in just one of the agencies that has an interest in this issue. We remain concerned about the constitutional and operational aspects of attempting to regulate birth certificates. The language approved by the Judiciary Committee represents an improvement over previous language, but the Administration continues to have concerns.

Former Section 118 as reported by the Subcommittee on Immigration, would have credited any employer sanctions penalties received in excess of \$5,000,000 to the INS Salaries and Expenses appropriations account that funds activities associated with employer sanctions enforcement, but was stricken from the bill by the Judiciary Committee. This provision was identical to the Administration's proposal. It would represent a substantial commitment to the enforcement of the employer sanctions provisions of the INA, and we recommend that it be restored.

Sec. 119 authorizes an administrative law judge to increase the civil penalties provided under employer sanctions to an amount up to two times the normal penalties if labor standards violations are present.

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

Sec. 120 authorizes the Attorney General to hire for FYs 1996 and 1997 such additional Assistant U.S. Attorneys as may be necessary for INA prosecutions. We support this provision.

Sec. 120A amends the INA to clarify that immigration officers may issue subpoenas for investigations of employer sanctions offenses. This section also authorizes the Secretary of Labor to issue subpoenas for investigations relating to the enforcement of any immigration program. It makes the authority contained in sections 9 and 10 of the Federal Trade Commission Act--provisions which allow access to documents and files of corporations, including the authority to call witnesses and require production of documents--available to the Secretary of Labor.

This provision is identical to the Administration's proposal, and we support it.

Sec. 120B provides for a task force within the Department of Justice to provide advice and guidance to employers and employees, relating to employer sanctions and unfair immigration-related employment practices and to assist employers in complying with these laws. We support this section.

Sec. 120C authorizes appropriations to expand the IDENT fingerprint system into a nationwide program. We do not object to this provision.

Sec. 120D requires a State agency that refers an individual for employment to comply with the verification requirements of section 274A of the INA. This provision would impose an unfunded mandate on the states. Under current law, a state agency may, but need not comply. Some have instituted successful programs. The mandatory provision should be stricken.

Sec. 120E limits the liability of an employer for the retention of records under section 274A of the INA in cases of disaster, acts of God, and other events beyond the employer's control. We do not object to this section.

PART 3--ALIEN SMUGGLING; DOCUMENT FRAUD

The Administration is aggressively investigating, apprehending, and prosecuting alien smugglers. The INS, Federal Bureau of Investigation, Department of State, and Coast Guard have been sharing and developing information on numerous smuggling endeavors. As a result of these efforts over 200

significant alien smuggling investigations were initiated in FY 1994. Similar efforts are being conducted to combat document fraud. INS is adding new staffing positions to investigate and prosecute an increased number of fraudulent document vendors. This includes targeting major suppliers of fraudulent documents and employers who knowingly accept such documents as proof of employment authorization. In general Part 3 appropriately cracks down on alien smugglers and individuals involved in document fraud. We are pleased the Committee has adopted many provisions from the Administration's bill.

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

This provision is similar to the Administration's proposal, and we support it.

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

The Administration proposal contains a similar provision, but it does not include identification document fraud, naturalization and citizenship procurement and document fraud, and visa and passport fraud offenses (18 U.S.C. §§ 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1546). We urge the Committee to adopt the S. 754 provision. We would prefer that the Committee directly increase the penalties for violating these statutes rather than adding them as RICO predicates. Direct increases in penalties would be the more effective way to strengthen the punishment for these crimes.

Sec. 123 adds conspiracy and aiding to alien smuggling offenses. This section provides that a person who smuggles aliens shall be fined or imprisoned for each alien to whom a violation occurs and not for each transaction constituting a violation, regardless of the number of aliens involved. It also increases the penalties for alien smuggling offenses to not more than 10 years for a first or second offense, and to not more than 15 years for subsequent offenses. We support this provision.

Sec. 123(a)(5) makes it a criminal offense subject to fine and imprisonment for not more than 5 years to hire an alien with knowledge that the alien is not authorized to work and that the alien was smuggled into the U.S. This parallels the Administration's proposal, and we support this provision.

Sec. 123(b) creates a new offense punishable by imprisonment

for more than one year for smuggling aliens with the intent or with reason to believe that the alien will commit an offense against the U.S. or any State. This provision is substantially similar to the Administration's proposal, and we support it.

Sec. 123(c) directs the Sentencing Commission to promulgate or amend guidelines to: increase the base offense level by at least three levels for an offender convicted of smuggling, transporting, or harboring an unlawful alien; increase the sentencing enhancement by at least 50 percent based on the number of aliens involved; impose an appropriate enhancement for an offender with one prior similar felony conviction; impose an additional appropriate enhancement for an offender with two prior felony convictions; and impose an appropriate sentencing enhancement for an offender who murders or otherwise causes death or bodily injury, uses or threatens to use a firearm or dangerous weapon, or engages in conduct that recklessly places another in serious danger of death or serious bodily injury. This section also directs the Sentencing Commission to consider appropriate downward departures for offenses involving less than six aliens or where the offense was committed for other than profit.

We strongly support section 123(c) because the sentencing guidelines provide wholly inadequate sentences for many serious alien smuggling and related offenses. Under the current guidelines smuggling between 25 and 99 aliens, then entering into a high-speed chase to avoid apprehension by Border Patrol agents, and finally causing the death of several people in an ensuing accident would produce a guideline sentence of only 18-24 months of imprisonment for a first offender -- or less if the offender accepted responsibility for the offense. Such a low sentence cannot serve as a deterrent to unlawful and dangerous behavior involving alien smuggling and related offenses.

The directive to the United States Sentencing Commission in section 123(c) of the bill would require the Commission to raise the base offense level for alien smuggling and related offenses and to provide sentencing enhancements for a variety of important aggravating factors, as noted above. The directive would cause the Sentencing Commission to provide much-needed increased guideline sentences to reflect the increased statutory maximum sentences enacted as part of the Violent Crime Control and Law Enforcement Act of 1994.

Because we view the need for an improved alien smuggling guideline as an urgent matter, we recommend that S. 1664 be amended to provide for the promulgation of sentencing guideline amendments on an expedited basis to implement section 123(c). Without such an amendment, the Sentencing Commission's statutorily established guideline cycle would not permit the promulgation of such an amendment until well into 1997, with a likely effective date of November 1, 1997.

Sec. 124 provides that the videotaped deposition of a witness to a violation of section 274(a) of the INA who was available for cross examination and who has been deported from the U.S. may be admitted into evidence. We support this provision.

Sec. 125 provides for seizure and forfeiture of any property, real or personal, which facilitates or is intended to facilitate, or which has been used in or is intended to be used in the commission of a violation of, or which constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of subsection 274(a) of the INA, or of sections 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, 1545, or 1546 of title 18, U.S.C. It provides that before the seizure of any real property, the Attorney General shall provide notice and an opportunity to be heard to the owner of the property.

The three separate but overlapping innocent owner defenses to civil forfeiture in paragraphs A through C of section 1324(b)(1) in S. 1664's section 125 are drawn from existing, flawed innocent owner provisions that the Department of Justice's proposed forfeiture legislation (section 123) would rectify. The innocent owners provisions in S. 1664 will carry the same problems that the proposed uniform innocent owner provision is designed to correct. See, e.g., United States v. One 1973 Rolls Royce, 43 F.3d 794 (3d Cir. 1994) (holding that present innocent owner defense in 21 U.S.C. § 881 precludes forfeiture from any person who acquired the property after the offense giving rise to the forfeiture action). The proposed new uniform innocent owner defense in the Department's Forfeiture Act is to be codified at 18 U.S.C. § 983 and apply to any civil forfeiture provision in Title 18, United States Code, the Controlled Substances Act, and the Immigration and Naturalization Act (which includes section 1324(b)).

Section 125 also appears to try to codify the Supreme Court's decision in United States v. James Daniel Good Real Property, 114 S.Ct. 492 (1993). This provision is unnecessary because the pre-seizure due process requirements for seizures of real property for civil forfeiture (and the exceptions to those requirements not set out in section 125, e.g., exigent circumstances) are more clearly explained by the Good decision itself. Additionally, the provision unnecessarily would make 8 U.S.C. § 1324(b) inconsistent with other civil forfeiture provisions to which the Good standards also apply for seizures of real property. The regulations called for by the proposal to provide guidance to meet the requirements of Good are also unnecessary. On November 14, 1994, the Department of Justice Executive Office for Asset Forfeiture issued such guidance in a ten-page Directive No. 94-8, captioned "Seizure of Real Property In Civil In Rem Proceedings in Light of the Supreme Court's

Decision in United States v. James Daniel Good Real Property."

Similarly, proposed 1324(b)(4)(E) at section 125(a)(5) of S. 1664 is unnecessary. Provision for the transfer of property forfeited under section 1324(b) is already present through 19 U.S.C. § 1616a(c) which is already incorporated into and made applicable to 8 U.S.C. § 1324(b) forfeitures. See 8 U.S.C. § 1324(b)(3) (incorporating the customs laws forfeiture procedures (19 U.S.C. § 1602 et seq.) by reference).

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

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

The provision is similar to the Administration's proposal, and we support it. We note, however, that references to 274(a)(1) and (2) should have been stricken pursuant to an amendment adopted by the Judiciary Committee. These sections are civil employer sanctions provisions to which criminal asset forfeiture should not apply.

Sec. 127 increases the term of imprisonment for identification, passport, visa, naturalization, and citizenship document fraud from not more than five years to not more than 10 years for a first or second offense and to not more than 15 years for third and subsequent offenses. The maximum term of imprisonment is up to 15 years if committed to facilitate a drug trafficking offense, and up to 20 years if committed to facilitate an act of international terrorism. The Administration supports increasing the maximum penalties for these offenses.

This section also directs the Sentencing Commission to make appropriate adjustments to the sentencing guidelines. The Sentencing Commission recently adopted guideline amendments which became effective on November 1, 1995, and will significantly

increase the punishments for these offenses. In our view, the Commission's guideline amendments should be given an opportunity to work before additional changes are made.

Sec. 128 adds a new penalty to 18 U.S.C. 1546(a) for presenting a document that contains a false statement or that fails to contain any reasonable basis in law or fact. We support this provision.

Sec. 129 adds a new criminal provision to section 274C of the Act which penalizes any person who knowingly and willfully fails to disclose, conceals, or covers up the fact that he or she has prepared or assisted in preparing an application for asylum which was falsely made for immigration benefits. A violation of this provision is a felony and a fine or imprisonment for 2 to 5 years, or both, may be imposed. This section prohibits a person who has been convicted of this offense from any further involvement in the immigration application process. Anyone convicted of a subsequent violation is punishable by a fine, 5 to 15 years imprisonment, or both.

Current criminal statutes are adequate to punish this type of illegal conduct. Stepped up investigation efforts have led to indictments for fraudulent preparation of spurious asylum claims in New York, Los Angeles, San Francisco, and Arlington, Virginia. We do not believe that a new and special offense is needed to prosecute a person involved in assisting in fraud in the asylum process. Furthermore, mandatory minimum sentences are not appropriate in this context.

Sec. 130 inserts an additional violation to section 274C of the Act, by prohibiting preparing, filing, or assisting another in preparing or filing documents which are falsely made, in reckless disregard of the fact that the information is false or does not relate to the applicant. This section also adds a penalty for those aliens who present a document upon boarding a carrier bound for the U.S. and then fail to present a document to the inspector at the port of entry. A discretionary waiver for penalties is provided if an alien is subsequently granted asylum or withholding of deportation.

This provision is substantially similar to the Administration's proposal, and we support it.

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

We support this provision.

Sec. 131 adds to the current exclusion ground for misrepresentation at section 212(a)(6) a ground for document fraud and for failure to present documents to the inspector at the port of entry.

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

Sec. 132 provides that aliens excludable because of document fraud under the new section 212(a)(6)(C)(iii) and excludable aliens brought or escorted into the U.S. having been interdicted at sea are ineligible for relief from exclusion, including withholding of deportation and asylum, subject to a "credible fear of persecution" exception.

Because the new section 212(a)(6)(C)(iii) subsumes much of what is now covered by section 212(a)(6)(C)(i), it may effectively eliminate the waivers for exclusion for fraud provided by the INA. Section 212(d)(3) provides for a general waiver of excludability for nonimmigrants. In addition, section 212(i) of the INA currently provides for a waiver for exclusion for fraud for an immigrant who is the spouse, parent, or son or daughter of a U.S. citizen or of a lawful permanent resident, or if the fraud occurred at least 10 years before an application for a visa or entry. We believe that the availability of these discretionary waivers is consistent with a fair and humanitarian immigration policy.

Similarly, the restriction on withholding of deportation in section 132 for an alien who is inadmissible under section 212(a)(6)(C)(iii), as written, would apply irrespective of whether special exclusion is invoked. We do not support this provision, and we recommend limiting the restriction to those in special exclusion proceedings.

As a technical matter, we urge the Senate to replace the term "special inquiry officer" with "immigration judge" and to adopt the following definition for "immigration judge": an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including proceedings under section 240. An Immigration Judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe.

Sec. 133 increases the maximum criminal sentences for peonage, slavery, involuntary servitude, and transportation of

slaves from the United States from five years to ten years. This section also directs the Sentencing Commission to examine any disparities in the Sentencing Guidelines between the sentences for the above-mentioned crimes and the sentences for kidnapping and alien smuggling. To the extent disparities exist, the Sentencing Commission is directed to make appropriate adjustments in the guidelines considering the heinous nature of the listed offenses. We support this provision.

Sec. 134 adds the provision of false documentation to the list of the types of material support to a terrorist organization which under section 212(a)(3)(B)(iii)(III) of the INA will render an alien excludable. We support this provision.

Part 4--EXCLUSION AND DEPORTATION

Removals of criminal aliens have increased dramatically during this Administration. The number of criminal aliens removed from the United States jumped by 12% in 1993, and by 17.6% in 1994 over 1992 levels. More than four times as many criminal aliens were removed in 1994 than in 1988. In FY 1995, we removed 31,787 criminal aliens and 17,593 non-criminal aliens. We will increase the number of criminal alien removals to 37,200 in FY 1996 by enhancing and deploying extensive new resources for detention and deportation. We will increase the number of non-criminal alien removals to 24,800 in FY 1996 through a major emphasis on locating and removing absconders, among other measures. Other INS initiatives, such as the National Alien Transportation Program, provide for the detention and removal of more criminal aliens. INS technology enhancements have also played a critical role in removing criminal aliens, as have INS alternatives to formal deportation, such as stipulated, judicial, and administrative deportation.

Sec. 141 provides that the Attorney General may, without referral to an immigration judge or after such a referral, order the exclusion and deportation of an alien who appears to be excludable when (1) the alien has entered the U.S. without having been inspected and admitted by an immigration officer, unless such alien has been physically present in the U.S. for a continuous period of two years since entry without inspection, or the alien is excludable under section 212(a)(6)(C)(iii); (2) when the alien is brought or has arrived on board a smuggling vessel; or (3) the Attorney General determines that the numbers or circumstances of aliens en route to or arriving in the U.S. present an extraordinary migration situation. The judgement whether an extraordinary migration situation exists or whether to invoke these provisions is committed to the sole and exclusive discretion of the Attorney General. The Attorney General may invoke the provisions of this section during an extraordinary migration situation for a period not to exceed 90 days, unless within such 90 day period or extension thereof, the Attorney

General determines, after consultation with the House of Representatives and Senate Committees on the Judiciary, that an extraordinary migration situation continues to warrant such procedures remaining in place for an additional 90-day period.

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

We are pleased that this section has moved significantly closer to the Administration's provision. We strongly support making the applicability of the special exclusion procedures discretionary and explicitly authorizing the special exclusion of aliens who are intercepted on the high seas, within the territorial sea or internal waters. The Coast Guard frequently interdicts illegal aliens on the high seas and is required to keep the aliens at sea while arrangements are made for their repatriation or for a third country to accept the aliens so they may be resettled. This is neither resource efficient nor cost effective. Two interdiction cases in 1995 consumed a total of 105 cutter days and 548 aircraft hours in order to deliver the interdicted migrants to El Salvador and Mexico. Using standard rates, these cases cost in excess of \$7 million. Clearly, there is a need for special exclusion authority. Rapid delivery of the aliens to the United States for special exclusion would allow the Coast Guard vessels to promptly return to their primary law enforcement mission, including drug interdiction and search and rescue.

However, we have concerns about making special exclusion applicable to aliens who entered without inspection. For those aliens who have been here for lengthy periods after having entered without inspection, the determination of when they entered will be difficult and could lead to protracted litigation. If such authority is to be used at all, we would expect to invoke it only in extraordinary migration situations and only in circumstances that would support a strong presumption that the person's entrance without inspection was quite recent.

As we stated in section 132, we urge the Senate to replace the term "special inquiry officer" with "immigration judge" and to adopt our definition of "immigration judge".

Sec. 142 streamlines judicial review of Orders of Exclusion or Deportation. Many of the provisions are similar to those of S. 754.

This section provides for judicial review of final administrative orders of both deportation and exclusion through a

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

This section requires that a petition for review be filed within 30 days, except that an aggravated felon must file within 15 days. We recommend that the uniform filing period of thirty (30) days contained in S. 754 be adopted, to avoid an additional issue for the courts which, if litigated, would take far more than fifteen days to resolve.

The filing of a petition no longer stays deportation. The alien must apply to the court for a stay. We support this provision.

This section would eliminate judicial review for virtually all aliens who are found excludable or deportable on the basis of a criminal conviction. This restriction applies to review of applications for relief as well as the underlying determination of excludability or deportability. We oppose this provision as being overly broad in its restrictions on judicial review. As written, it would not permit even challenges based on mistaken identity or constitutional issues. While we favor limitations on judicial review for criminal aliens, we urge the Senate to consider retaining the very limited scope of review that had been proposed in subsection 106(e) as reported by the Subcommittee on Immigration.

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

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

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

Under section 106(f) there is no judicial review of an individual order of special exclusion or of any other challenge relating to the special exclusion provisions. The only authorized review is through a habeas corpus proceeding, limited to determinations of alienage, whether the petitioner was ordered specially excluded, and whether the petitioner can prove by a preponderance of the evidence that he is an alien admitted for permanent residence and is entitled to further inquiry. In such cases the court may order no relief other than a hearing under section 236 or a determination in accordance with sections 235(a) or 273(d). There shall be no review of whether the alien was actually excludable or entitled to relief. S. 754 contains similar provisions. However, S. 754 does not make special exclusion applicable to all the same cases as S. 1394 does, as noted in our comments on section 141 above.

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

This section provides that the automatic stay of deportation in section 242B of the INA for an alien who files a motion to reopen an in absentia order of deportation is effective only until the immigration judge's decision. A stay may be issued upon a showing of individually compelling circumstances. We support this provision.

Sec. 143 subjects an alien who willfully fails to depart on time pursuant to a final order of exclusion and deportation or a final order of deportation to a \$500 per day penalty. This section also provides that an alien who remains in the United States for more than sixty days beyond the period of validity of a nonimmigrant visa shall be ineligible for a nonimmigrant or immigrant visa for three years (five years in the case of an alien who failed to appear or remain during the deportation proceeding). There is a good cause exception.

The penalty provision is similar to the Administration's proposal, and we support it. We do not object to the limitation on nonimmigrant visa eligibility for overstayers; however, we are concerned that the immigrant visa restriction would result in a hardship for U.S. citizenship and permanent resident relations.

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

This provision is identical to the Administration's proposal, and we support it.

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

242 (deportation) of the INA.

This provision is identical to the Administration's proposal, and we support it.

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

We believe that this section would create substantial litigation on the adequacy and accuracy of the notice in English only. A written notice in a language the alien understands, which is most often Spanish, protects the INS from unnecessary delays of enforcement actions based upon whether sufficient notice was provided as well as informs the alien of the nature of the action. In order to avoid unnecessary and costly due process litigation, it would be best not to amend this provision of the INA.

This section would shorten the time that an alien who is detained is given to obtain counsel before a hearing is scheduled from 14 days to 3 after service of an order to show cause. The section also provides that the alien's right to obtain counsel must not unreasonably delay proceedings.

We believe that the current 14-day period gives the alien a fair and appropriate opportunity to obtain counsel. The INS' experience has been that deportation proceedings move more quickly if an alien does have counsel. In addition, immigration judges normally provide at least one continuance to allow an alien a reasonable opportunity to obtain counsel. S. 1664's proposed shortening of the time period in which aliens may obtain counsel may not achieve the intended result of speeding up deportation proceedings. Like the notice language requirement, the 14 day period is not burdensome to INS and its repeal may unintentionally cause delay in deportations or encourage frivolous appeals. We do not support this provision.

Sec. 147 directs the withholding of nonimmigrant visas to nationals of countries that refuse or unduly delay acceptance of their nationals for deportation. This requirement may be waived if it is determined to be in the national interest or necessary to comply with a treaty or international agreement.

S. 754 contains a similar provision, and we support it.

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

We support this provision.

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

This provision is identical to the Administration's proposal, and we support it.

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

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

The cancellation of deportation provisions basically replace both the 212(c) remedy for legal permanent resident aliens who have not departed the United States, and the suspension remedy for aliens who have been here unlawfully.

Section 244(a)(1)(C) of the INA, as amended by section 150, provides for suspension of deportation for battered spouses of U.S. citizens or lawful permanent residents, who have been physically present for three years. The purpose of this provision was to avoid the situation in which a battered alien spouse is forced to remain in a dangerous relationship in hopes of gaining legal status through the citizen or permanent resident spouse. Under the amendments made by section 150, the time period for calculating physical presence in the United States is cut off at the time of service of an order to show cause to place the alien in deportation proceedings. If this "cutoff" is applied to the battered spouse provision, it may have the anomalous result of forcing a battered spouse to remain in a

dangerous situation or to avoid seeking help until the three-year period has passed. Because of the special circumstances involving these applications, we recommend that for battered spouses of U.S. citizens or lawful permanent residents the physical presence period not be deemed to end upon service of the order to show cause. Also, current subsection 244(g), relating to evidence submitted by abused of battered spouses, has not been included and should be restored.

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

Sec. 151 defines a stowaway as any alien who obtains transportation without consent or through concealment or evasion. A passenger who boards with a ticket is not to be considered a stowaway. This section also clarifies that a stowaway is subject to immediate exclusion and deportation; however, a stowaway may apply for asylum or withholding of deportation. The carrier will be required to detain a stowaway until he or she has been inspected by an immigration officer and to pay for any detention costs incurred by the Attorney General should the alien be taken into custody. It raises the fine for failure to remove a stowaway from \$3,000 to \$5,000 per stowaway.

This provision is similar to the Administration's proposal, and we support it.

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

This is an area of enforcement in which the Administration already has made progress. This provision is similar to the Administration's proposal, and we support it.

Sec. 153 authorizes the Attorney General and the Secretary of Defense to establish a pilot program for up to 2 years to determine the feasibility of the use of closed military bases as detention centers for INS. Within 35 months after enactment,

they must submit a feasibility report to the House and Senate Committees on the Judiciary, and the House and Senate Committees on Armed Service.

The use of closed military bases would make additional detention space available to INS. For years, INS has been forced to release many aliens who are awaiting proceedings due to lack of detention space. We have worked with the Department of Defense in conjunction with the Bureau of Prisons and other agencies to explore the use of closed bases. Conversion costs and staffing have been the most difficult problems to resolve. Accordingly, this provision does not address the underlying obstacles that would permit such a pilot to be conducted.

Sec. 154 would amend section 212 of the INA to exclude aliens seeking permanent residency who have not received immunizations against vaccine-preventable diseases.

While reducing the number of unvaccinated persons in the United States is a laudable goal, the mechanism outlined in this section would present a number of implementation and other difficulties that may actually jeopardize the public health in the United States.

In many countries, the vaccines specified under this section might not be licensed. Even if these vaccines are licensed, they may not be readily available or the costs of these vaccines may be prohibitive for some prospective immigrants. In addition, an immigrant's visa could be delayed as much as 18 months in order to allow time to receive all recommended doses of the specified vaccines, over the interval recommended by the Advisory Committee Immunization Practices (ACIP).

The ACIP-recommended vaccine schedule is complex and lengthy and subject to regular revisions. It would be difficult and labor intensive for Department of State and INS officials to check individual immunizations records against ACIP schedule and to ensure that U.S. government officials are using the most up-to-date revisions. Neither the Department of State nor the INS have the resources to verify the authenticity of most vaccination certificates.

The requirements outlined in section 154 could subject immigrants to serious delays, considerable expense, and the prospect of having to choose between emigrating as a family or splitting up the family to allow, for example, an adult to emigrate to begin employment in the United States while other family members stay behind to complete the immunization requirements. The result might be that the immigrant will choose to secure false immunization records rather than attempt to comply with the requirements imposed by section 154. If that were to happen, the immigrant, once admitted to the U.S., would

be thought to have been vaccinated. Yet, the immigrant could become infected and could transmit a vaccine-preventable disease to others in the U.S. To further confound the matter, the unimmunized person may be unwilling to admit he was not vaccinated, fearing that he could become subject to deportation. We also note that because of the lack of centralized immunization records in most countries, it would be difficult, if not impossible, for the INS and the State Department officials to detect fraudulent vaccination certificates.

Under current state laws, children in the U.S. are required to comply with immunization requirements before they enter school. Therefore, the current public health system would "capture" school-aged immigrant children almost immediately upon entry into the U.S. Even without the proposed provision in the immigration bill, these children would be vaccinated once they came to the U.S. In addition, in many states, licensed day care establishments also have immunization requirements.

We suggest modifying this provision and making immunization part of the medical examination process now covered by section 134 of the INA. In working with Senate staff, we understand that an amendment may be offered on the Senate floor that addresses our concerns regarding this section, which we support.

Sec. 155 requires immigrants and nonimmigrants, except physicians, who seek to work in the U.S. to obtain a qualifications certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services. Such certificate must verify that (1) the individual's education, training, license, and experience meet statutory and regulatory requirements for admission to the U.S. under the classification specified, are comparable to that required for U.S. workers in the health care occupation, and any foreign license submitted is authentic and unencumbered; (2) the individual has English language proficiency as shown by passing a nationally recognized standardized test of speaking and writing ability; and (3) if a majority of states licensing the profession recognize a test predicting success on the profession's licensing and certification examination, the alien has passed such a test.

The imposition of the credentialing requirement may not be in conformity with certain U.S. international obligations. We recommend that the Senate adopt an amendment that would permit the Administration to address these concerns.

Sec. 156 increases the bar to reentry for aliens previously removed under an exclusion order from one year to five years and to twenty years for any second or subsequent removal. This section also makes technical changes to section 276 of the INA.

We support this section.

Sec. 157 prohibits consulate shopping for visa overstayers by requiring that an alien who has previously overstayed a visa obtain a visa for admission to the United States at a consulate in the alien's country of nationality. There is an exception where no consulate exists in that country or the Secretary of State finds the existence of extraordinary circumstances. We do not object to this provision.

Sec. 158 provides for the exclusion of an alien who has indicated an intention to cause death or serious bodily harm, incited terrorism, engaged in targeted racial vilification, or has threatened the overthrow of the United States or the death or serious bodily harm to a U.S. citizen or Government official. We oppose inclusion of this section in S. 1664 since expansion of the exclusion grounds for someone involved in terrorism is already adequately addressed in the pending antiterrorism legislation. We also note that expanding exclusion to cover vague, difficult to define concepts such as racial vilification is not necessary.

Sec. 159 permits withholding of deportation to a country where the alien's life or freedom would be threatened if the Attorney General determines that it would be necessary to ensure compliance with the United Nations 1967 Refugee Protocol. We strongly support this provision.

PART 5--CRIMINAL ALIENS

The Administration has made removals of criminal aliens a priority and achieved dramatic success. The number of criminal aliens removed from the U.S. jumped by 12% in 1993, and by 17.6% in 1994 over 1992 levels. More than four times as many criminal aliens were removed in 1994 than in 1988. We surpassed our FY 1995 goal of 28,500 criminal alien removals and set a new record of 31,654 non-criminal alien removals. Even more criminal aliens will be deported next year as we further streamline deportation procedures, expand the Institutional Hearing Program, and enhance the international prisoner transfer treaty program. In addition, other INS initiatives, such as the National Alien Transportation Program, provide for the detention and removal of more criminal aliens. INS technology enhancements are playing a critical role in removing criminal aliens, as are INS alternatives to formal deportation, such as stipulated, judicial, and administrative deportation.

Sec. 161 amends the definition of aggravated felony contained in 8 U.S.C. Sec. 1101(a)(43) to include: (1) an offense relating to laundering of monetary instruments or relating to engaging in monetary transactions in property derived from specific unlawful activity is an aggravated felony if the amount

of funds exceeds \$10,000 (down from \$100,000); (2) a crime of violence, a theft offense (including receipt of stolen property) or burglary offense, or an offense relating to trafficking of fraudulent documents, for which the term of imprisonment imposed is at least one year (down from 5 years imposed); (3) a RICO offense, as well as offenses described in 18 U.S.C. 1084 or 1955, for which a term of imprisonment of one year or more may be imposed (down from 5 years); (4) offenses relating to transportation for the purpose of prostitution for commercial advantage; (5) a violation of Section 601 of the National Security Act relating to protecting the identity of undercover agents; (6) an offense that involves fraud or deceit in which the loss to the victim exceeds \$10,000 (down from \$200,000) or involves tax evasion in which the revenue loss to the Government exceeds \$10,000 (down from \$200,000); (7) alien smuggling without regard to commercial advantage except for a first offense in which the alien has affirmatively shown that he or she committed the offense for the purpose of aiding only the alien's spouse, child or parent; (8) any violation of 18 U.S.C. 1546(a) (relating to document fraud) except for a first offense in which the alien has affirmatively shown that he or she committed the offense for the purpose of aiding only the alien's spouse, child or parent; (9A) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered for which the term of imprisonment imposed is one year or more; (9B) any offense relating to perjury or subornation of perjury for which the term of imprisonment imposed is one year or more; (10) any offense relating to a defendant's failure to appear for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years (down from 15 years) or more.

Regarding section 161(a)(8) we believe that the "commercial advantage" language found in section 406 of S. 754 provides a more flexible approach for compelling cases than the narrower approach in section 161(a)(8). We urge the Committee to adopt the S. 754 "commercial advantage" language. We also recommend that the reference to 8 U.S.C. 1101(a)(3)(O) in section 161(a)(2) be deleted, as it conflicts with the action taken in section 161(a)(8).

We oppose expanding the definition of aggravated felon to include persons convicted of crimes for which the term of imprisonment imposed is one year or more. The grave consequences of being considered an aggravated felon include being ineligible for withholding of deportation and asylum, and being subject to mandatory detention and expedited deportation proceedings, and should be imposed only on serious criminals. Current law gives immigration judges the discretion to weigh the seriousness of the crime against the positive equities of each individual case and to grant relief only where it is appropriate. Immigration judges should be allowed to retain this discretion. The expanded

definition would also impose a burden on the operations of the INS which is required to detain all aggravated felons, except for certain lawful permanent residents. Wide imposition of aggravated felon consequences would also hinder law enforcement's ability to enter into cooperation agreements with aggravated felons.

This section also prohibits the Attorney General from withholding the deportation of aliens whose life or freedom would be threatened in the country of return if they have been convicted of one or more of the following: an aggravated felony or an attempt or conspiracy to commit an aggravated felony for which the term of imprisonment imposed or served is or was at least five years; a crime of violence or attempt or conspiracy to commit such a crime of violence for which the term of imprisonment imposed or served is or was at least three years; or any of the following aggravated felonies or attempt to conspiracy to commit such offense: murder, illicit drug trafficking, illicit firearms trafficking, explosive materials offenses, demand for ransom, child pornography, racketeering, national security offense, slavery. As discussed above, section 159 permits withholding of deportation where the Attorney General determines, in the Attorney General's unreviewable discretion, that it would be necessary to ensure compliance with the United Nations 1967 Refugee Protocol. We support this provision.

However, we continue to urge the Senate to adopt the provisions in S. 754 which provide that an alien is ineligible for withholding of deportation based on an aggravated felony conviction when the sentence imposed is 5 years or more. This provision would provide a clear basis for distinguishing particularly serious crimes from less serious crimes; would facilitate application of the definition; and would make the law truly effective in removing aggravated felons.

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

We support this provision.

Sec. 163 provides that the expeditious deportation of aggravated felons creates no enforceable right for aggravated felons.

This provision is identical to section 604 of S. 754, and we support it.

Sec. 164 amends section 242 of the INA to require the Attorney General to take into custody and not release aliens convicted to virtually any offense that renders them deportable. The Attorney General must remove such aliens within thirty days

of release from criminal incarceration or a final order of deportation, whichever is later. The custody and removal requirements may only be waived in the case of an alien who is cooperating with law enforcement authorities or for purposes of national security. This section also amends section 242(f) of the INA to provide a 15-year sentence, in addition to the punishment provided for any other crime, for any alien who unlawfully reenters the United States after having been previously deported for a criminal conviction.

We strongly oppose the mandatory detention requirements of this section. They would apply irrespective of whether the alien is a permanent resident and notwithstanding any relief from deportation for which the alien may be eligible. There is no provision for release where travel documents can not be secured. Given the limitations on habeas review of custody status, the scope of this provision raises serious constitutional concerns as it relates to permanent resident aliens. Operationally, this provision will have a serious adverse impact on the availability of space for the detention of both criminal and non-criminal aliens. Under current law, the Attorney General must detain all aggravated felons as a general rule. She is, however, vested with discretion to release a lawfully admitted alien who is likely to appear for future proceedings and who presents no danger to the community. Accordingly, in our view current law permits the appropriate allocation of resources to our objective of removing criminals and other deportable aliens. We do support the provision that affords discretion to release a cooperating witness.

The amendment to 242(f) to include penalties for reentry of criminal aliens would appear to be inconsistent with the provisions of existing section 276 which provides for a 20-year sentence for the unlawful reentry of an alien who was previously deported as an aggravated felon. We do not support this provision.

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

It provides that a U.S. Magistrate shall have jurisdiction to enter a judicial order of deportation at the time of sentencing where the alien has been convicted of a misdemeanor offense and the alien is deportable under this Act. The U.S. Attorney, with the concurrence of the Commissioner, may enter

into a plea agreement which calls for the alien, who is deportable under this Act, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of deportation as a condition of the plea agreement or as a condition of probation or supervised release, or both.

The existing judicial deportation statute authorizes a U.S. District Court to order deportation at the time of sentencing if the conviction renders an alien deportable as an aggravated felon or for certain crimes involving moral turpitude. This provision, however, would allow U.S. District Judges and U.S. Magistrates (in misdemeanor cases) to order deportation on any grounds of deportability.

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

Section 165 also provides that a State sentencing court is authorized to enter a finding of deportability based on certain criminal convictions. Such a finding would be binding on any agency or court. This provision is unnecessary and will result in needless litigation in State trial and appellate courts over often complicated issues of federal law, including issues of citizenship and nationality. State court convictions currently provide conclusive evidence of deportability. Their validity cannot be challenged in immigration court. Accordingly, existing law affords appropriate finality to State court criminal convictions for deportation purposes.

We do not support this provision, and we urge the Senate to strike it from the bill.

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

This provision is identical to the Administration's proposal, and we support it. However, as we stated in section 133 and 141, we urge the Senate to replace the term "special inquiry officer" with "immigration judge" and to adopt our definition of "immigration judge".

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

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

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

We are concerned that paragraph (2) requires the Attorney General to report on the number of aliens convicted but not sentenced to incarceration. Without providing any resources, this provision would require significant effort on the part of state prosecutors and courts which are not under the administrative jurisdiction of the DOJ. We do not support this provision.

Sec. 169 authorizes INS to use appropriated funds to lease space, establish, acquire, or operate business entities for

undercover operations, proprietary corporations or businesses to facilitate undercover immigration-related criminal investigations. INS may deposit funds generated by these operations or use them to offset operational expenses. Authority may be exercised only upon written certification of the INS Commissioner in consultation with Deputy Attorney General.

This provision is identical to the Administration's proposal, and we support it.

Sec. 170 advises the President to begin to negotiate or renegotiate, no later than ninety days after the date of enactment, bilateral prisoner transfer treaties providing for the incarceration in that country of any individual who is a national of that country and is an alien who has been convicted of a criminal offense under federal or state law and who is not in lawful immigration status or is subject to deportation, for the duration of the prison term to which the individual was sentenced. Any such agreement may provide for the release of such individual pursuant to parole procedures of that country. The Secretary should give priority to concluding an agreement with any country for which the President determines that the number of such individuals who are nationals of that country in the United States represents a significant percentage of all such individuals in the United States.

This section also provides that it is the Sense of Congress that no new treaty should permit the prisoner to refuse the transfer. It also provides that, except as required by treaty, the transfer of an alien shall not require the alien's consent. The focus of such negotiations shall be to expedite the transfer of aliens unlawfully in the United States who are about to be incarcerated in U.S. prisons, to ensure that a transferred prisoner serves the balance of the sentence imposed, to eliminate the requirement that the alien consent to the transfer, and to allow the U.S. to maintain the original sentence in effect so that a transferred prisoner who returns to the United States may be returned to custody for the balance of the sentence. The section authorizes the payment of compensation to countries where the conditions and length of custody can be verified. The section requires an annual report by the Attorney General on the effectiveness of prisoner transfer treaties in effect.

We agree that some level of nonconsensual prisoner transfer should be implemented; however, the current proposal is problematic in several areas. A number of concerns must be resolved prior to implementing such a regime.

Section 170(a) provides that transferred aliens will be incarcerated for the duration of their sentences; however, this conflicts with the balance of that section which further provides for the release of such transferred persons pursuant to the

parole procedures of that country. Section (b)(1) seeks to clarify the focus of 170(a) -- to expedite the transfer of affected aliens and ensure that the balance of their sentences are served, but it appears to contradict (a). This provision, however, may infringe upon the sovereignty of the parties in administering the transferred sentence thus raising concerns related to international treaty obligations and relations with our treaty partners.

The State Department has noted that involuntary transfers of prisoners whose crimes were not particularly serious or who do not present a danger could run afoul of our obligations under the 1967 Protocol relating to the Status of Refugees not to return a refugee to a place of persecution. Further, the U.S. is severely limited in its ability to monitor activities in foreign countries' prisons, most importantly with respect to potential human rights abuses which might be directed against the transferred prisoners. The U.S. might bear some legal responsibility in such human rights abuse cases. Finally, such agreements would almost certainly have to contain a reciprocal provision for the involuntary transfer of U.S. citizens imprisoned in foreign countries back to the U.S. Non-consensual transfers of U.S. citizens from foreign prisons back to the U.S. may well raise issues of a constitutional nature.

In 1994, we transferred 424 prisoners abroad, including 394 to Mexico. The Mexican transfers alone resulted in a savings of over \$7.5 million for the DOJ. As of December 31, 1995, we transferred 438 prisoners abroad, including 266 prisoners to Mexico. In May 1995, the United States and Mexico had committed to returning 400 Mexican nationals to Mexico pursuant to the prisoner transfer program, by the end of December 1995. By December 31, 1995, the DOJ had approved over 506 Mexican prisoner transfer applications. Due to the large number of prisoners scheduled to transfer to fulfill our commitment of 400, the December transfer was to be completed in January 1996; however, due to the government furlough, the second phase was completed in February.

Limited prison capacity in other countries seriously inhibits our ability to increase significantly the number of prisoner transfers. In our view, the premature release of transferred prisoners due to a lack of prison space would be unacceptable and inconsistent with the purposes of the transfer treaty.

Sec. 170A requires the Secretary of State and the Attorney General to submit to Congress not later than 180 days after this Act's enactment a report that describes the use and effectiveness of the prisoner transfer treaties with the three countries with the greatest number of their nationals incarcerated in the U.S. in removing from the U.S. such incarcerated nationals.

As a general matter, the Administration discourages the imposition of reporting requirements, which necessarily divert a significant commitment of resources away from prisoner transfers, particularly when the resources of the DOJ's Office of Enforcement Operations (OEO), which has responsibility for the International Prisoner Transfer Program, are already limited. Moreover, much of the information requested in the study would have to be collected by the states which have similar resource concerns. Previous reviews of the prisoner transfer program and requests for information from the states have been met with mixed responses.

When OEO assumed responsibility for the International Prisoner Transfer Program, only 34 states had implementing legislation. As a result of our outreach efforts, four more states enacted implementing legislation. Many of the states without the legislation expressed no interest in prisoner transfer because of the limited number of foreign nationals in their systems. Other states that expressed an interest have other major priorities, so state legislation to implement prisoner transfer has been delayed. Further, according to the American Correctional Association, which is comprised of correctional specialists from the various states, very few states have adequate prisoner tracking systems. Indeed, most do not include a question relating to nationality or citizenship in their intake process. Consequently, the ability to gather the data contemplated by the Congress would be haphazard, at best, because many states do not maintain such records. The DOJ is working to help states collect such data. DOJ's Office of Justice Programs has initiated a process to identify foreign nationals incarcerated in state and local institutions, but this system is only partially on-line and is not expected to be completed in time for the report mandated by this provision.

Sec. 170B modifies the filing requirement for individuals who keep, maintain, control, support, or harbor in any house or place an alien for the purpose of prostitution. This provision is identical to the Administration's proposal, and we support it.

Sec. 170C makes a technical correction to the Violent Crime Control Act of 1994. It also clarifies that the INS may place an alien in administrative deportation proceedings if a Federal district court judge has declined the Government's petition to issue a judicial deportation order.

This provision is identical to the Administration's proposal, and we support it.

Sec. 170D authorizes the Attorney General to conduct a demonstration project for six months in Anaheim, California to study the feasibility of identifying illegal aliens among those

persons detained in the local prison awaiting arraignment. This provision is similar to a successful Administration project in the Los Angeles County Jail, and we support the extension of our work to Anaheim.

PART 6--MISCELLANEOUS

Sec. 171 permits reimbursement of other Federal agencies, as well as the States, out of the immigration emergency fund. Reimbursements may be made to other countries for repatriation expenses without the requirement that the President declare an immigration emergency. It also permits the control and seizure of vessels when the Attorney General determines that urgent circumstances exist due to a mass migration of aliens. This section also authorizes the Attorney General to designate local enforcement officers to enforce the immigration laws when the Attorney General determines that an actual or imminent mass migration of aliens presents urgent circumstances.

This provision is identical to the Administration's proposal, and we support it.

Sec. 172 amends section 202(a)(1) of the INA, which provides that immigrant visas must be issued without discrimination because of race, sex, nationality, place of birth, or place of residence, to state that nothing in this subsection limits the authority of the Secretary of State to determine procedures for processing visas. This section would reverse a recent judicial decision which interpreted the existing language to require the Secretary of State to process visas in a specific location.

This provision is identical to the Administration's proposal, and we support it.

Sec. 173 calls for a study to develop a plan for automated data collection at ports of entry. We support this provision.

Sec. 174 requires the Attorney General to develop not later than 2 years after the enactment of this Act an automated entry and exit control system that can identify lawfully admitted nonimmigrants who overstay their visas.

The Administration is generally supportive of this provision's concept, which would allow us to more systematically track nonimmigrant visa overstayers. We do not, however, believe that a two year statutory deadline is appropriate or feasible. INS is already reviewing new ways to identify overstayers, and it would be important to pilot test and evaluate some of these concepts before implementing a new automated entry and exit control system. We are prepared to brief Senate staff on the Administration's plans for strengthening enforcement against illegal immigration by visa overstayers.

Sec. 175 authorizes the Attorney General to provide information furnished under the Legalization and Special Agricultural Worker programs when such information is requested in writing by a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, or to an official coroner for purposes of affirmatively identifying a deceased individual (whether or not related to a crime). It allows the Attorney General, in her discretion, to furnish the information in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce. The criminal penalties for violation of these provisions is retained.

We agree that confidentiality provisions should be modified because it is very difficult to obtain crucial information contained in these files, such as fingerprints and photographs, when the alien becomes a subject of a criminal investigation. However, we support a waiver of the confidentiality provisions, along the lines of S. 735, the Antiterrorism Amendments Act of 1995, the bipartisan antiterrorism bill which the U.S. Senate passed in June of 1995, that is, only if a federal judge authorizes disclosure of information to be used for identification of an alien who has been killed or severely incapacitated or for criminal law enforcement purposes against an alien if the alleged criminal activity occurred after the legalization or SAW application was filed and such activity poses either an immediate risk to life or to national security or would be prosecutable as an aggravated felony.

Sec. 176 clarifies that the Attorney General is not required to rescind the lawful permanent resident status of a deportable alien separate and apart from the deportation proceeding under section 242 or 242A. This provision will allow INS to place a lawful permanent resident who has become deportable into deportation proceedings immediately.

This provision is identical to the Administration's proposal, and we support it.

Sec. 177 prohibits governmental entities from restricting availability of information related to the immigration status of an alien in the U.S.

We have a number of concerns with this provision as drafted. In some instances the provision could raise troubling privacy and due process issues. While information restrictions may have been a problem in the 1970s or 1980s, we know of no existing local or state government policies on information availability which burden the INS. We do not support this provision, but will work with Senate staff to explore appropriate alternatives.

Sec. 178 authorizes the Attorney General to accept, administer and utilize services of volunteers to assist in

administering programs relating to naturalization, adjudication at ports of entry, and removal of criminal aliens. Such volunteers may not administer or score tests and may not adjudicate.

This provision is similar to the Administration's proposal, and we support it.

Sec. 179 authorizes the Attorney General to acquire and utilize any federal equipment determined available for transfer to the DOJ by any other Federal agency upon request of the Attorney General in order to facilitate the detection, interdiction and reduction of illegal immigration.

We support this provision.

Sec. 180 denies any court jurisdiction of any cause or claim by or on behalf of any person asserting an interest under section 245A (regarding legalization applications) of the INA unless such person in fact filed a complete application and application fee to an authorized legalization officer of the INS but had the application and fee refused by that officer.

This provision would affect several major class action lawsuits that involve the legalization program where district courts have granted relief to aliens who did not timely file for legalization. We support this provision.

Sec. 181 prohibits any alien from adjusting his or her status under section 245(a) as an employment-based immigrant if he or she is not in a lawful nonimmigrant status and worked while unauthorized to work or has otherwise violated the terms of a nonimmigrant visa.

Section 245(c)(2) of the INA already provides that an alien "who ... continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States" may not apply for adjustment of status. Accordingly, we believe the proposed amendment does not represent a significant addition to current law and is unnecessary.

Sec. 182 requires the Attorney General to submit a report on the amount of detention space that would be required under several different detention policy assumptions. We do not object to this requirement.

Sec. 183 establishes levels of compensation for immigration judges. We support this provision and note, as a technical

matter, that the table of contents should be conformed to read "immigration judge" instead of "special inquiry officer."

Sec. 184 authorizes the Attorney General to enter into agreements with States and local governments for the purpose of authorizing State or local officers or employees to perform functions related to the arrest or detention of aliens in the United States. Such functions may be carried out at the expense of the State or local government and to the extent consistent with State and local law. The performance of any designated functions shall be subject to the direction and supervision of the Attorney General.

While a number of factors, including training and scope of control, must be considered in determining whether and where to exercise this authority, the authority will aid the mission of the INS, and we support it.

Sec. 185 would increase the number of alien cooperating witnesses who may be admitted as nonimmigrants from 100 to 200 for witnesses possessing information relating to criminal organizations and enterprises and from 25 to 50 for witnesses with information concerning terrorist organizations.

We support this provision. As a technical matter, the reference to section 101(a)(15)(5)(ii) should read "101(a)(15)(S)(ii)."

Subtitle B--Other Control Measures

Part 1--Parole Authority

Sec. 191 tightens parole authority by changing the acceptable reasons from "emergent reasons" and "reasons deemed strictly in the public interest" to "urgent humanitarian reasons or significant public benefit," and by requiring a case-by-case determination.

We oppose this provision as an inappropriate restriction on the Attorney General's parole authority. The case-by-case determination requirement would dangerously limit the Attorney General's ability to deal with emergency situations involving numerous aliens. Current law provides the Attorney General with appropriate, needed flexibility to respond to compelling immigration situations.

Sec. 192 reduces the world-wide level of family-sponsored immigrants in a fiscal year by the number of parolees who were paroled in the two previous fiscal years and who remained in the U.S. for more than a year.

We oppose this provision because it may have a significant

adverse effect on family reunification by creating longer waiting times for admission of relatives of U.S. citizens and legal permanent residents. Humanitarian parole and family-sponsored immigration advance two vital, but distinct, national interests. This section blurs the distinction between the two and hinders both. It also could affect our ability to carry out the Cuban Migration agreements.

Part 2--Asylum

Pursuant to a presidential directive to address asylum abuse, the DOJ dramatically restructured the asylum process in January 1994. In addition, the Administration secured and Congress provided the resources necessary to do the job in the Violent Crime Control and Law Enforcement Act of 1994 which more than doubled the authorized number of INS asylum officers from 150 to 325, and increased the number of Immigration Judges from 116 to 179. In FY 1996 we expect to have approximately 200 immigration judges. The new asylum process allows the INS to quickly identify and promptly grant valid claims, and to refer all other cases to immigration court for deportation proceedings; to grant work authorization only to applicants who are granted asylum or when an applicant's case is not adjudicated within 180 days; and to streamline procedures to help asylum officers keep current with incoming applications.

To date, these reforms have had tremendous positive results. New asylum claims filed with the INS dropped 57 percent. Asylum officers completed 126,000 cases in calendar year (CY) 1995 compared to 61,000 in CY 1994. Immigration Judges completed 40,000 asylum cases in CY 1995 compared to 17,000 in CY 1994--an increase of 135 percent. More than 98 percent of the new non-American Baptist Churches v. Thornburgh cases were completed by Immigration Judges within 180 days from the initial INS receipt of the asylum application. We have streamlined procedures without reducing the quality of our asylum decisions. INS has instituted quality assurance procedures to monitor the new system. Approval rates have not changed significantly.

In addition to restructuring the asylum process, the INS has stepped up its fraud investigation of preparers of spurious asylum claims. As noted earlier, investigations have resulted in indictments of preparers in Los Angeles, San Francisco, New York, and Arlington, VA. In addition, INS has requested additional funding in FY 1996 for detention and deportation of failed asylum seekers.

Sec. 193 precludes an alien who used any fraudulent document to enter the U.S. or destroyed his or her document en route to the U.S. from applying for asylum unless the alien had to present such document to depart from a country in which he or she had a credible fear of persecution and travelled directly from such

country to the U.S. The alien shall be referred to an asylum officer for interview to determine credible fear. If the asylum officer determines that the alien does not have a credible fear of persecution, the alien may be specially excluded and deported. The Attorney General shall provide for prompt supervisory review of the determination that the alien does not have a credible fear. If the asylum officer determines that the alien does have a credible fear of persecution, the alien shall be taken before an immigration judge for an exclusion hearing.

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

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

Furthermore, the concept of "presentation" of fraudulent documents pursuant to "direct departure" from a country in which the alien has a credible fear of persecution is problematic. The "presentation" of such documents is not necessary for departure, and transit countries may refuse to accept the return of aliens who did not travel directly to the U.S. In addition, the concept of "direct departure" is unnecessary and confusing. Section 208(3)(5)(B) adequately addresses asylum shopping by an alien already present in a country in which she or he has no fear of persecution. Adding "direct departure" may cause needless litigation and confusion in the context of connecting air flights. It may also disadvantage individuals fleeing persecution from countries which lack direct flights to the United States such as countries in Africa.

Sec. 194 requires that an application for asylum filed for the first time during a deportation or exclusion proceeding may not be considered, absent a showing of good cause for the untimely filing, if the proceeding was commenced more than one year after the alien's entry of admission into the United States.

We oppose this provision as a matter of policy. To return a refugee to a country where he or she would face a threat to life or freedom simply because the refugee failed to make a timely request for protection violates a fundamental duty. Failure to file a timely asylum claim does not relieve the U.S. of its non-refoulement obligation under the Refugee Protocol. In addition, it will require the DOJ to divert resources from adjudication of

the merits of asylum applications to adjudication of the timeliness of filing. Since eligibility for withholding of deportation is not affected by this section, the Attorney General must still adjudicate the merits of a refugee claim. Our proposed special exclusion proceedings, limitations on judicial review, and standard of judicial review, along with the asylum regulations we have implemented give the DOJ sufficient mechanisms for processing asylum applications and preventing asylum abuse. We do not believe that this provision is needed. However, if the Senate chooses to adopt a deadline, we strongly support the exception for good cause.

We also note, as a technical matter, that not all aliens in exclusion proceedings under this bill will have entered or been admitted to the United States. Accordingly, if this provision is retained the language "arrival in the United States or" should be inserted after "alien's".

Sec. 195 limits the employment authorization of an asylum applicant. The section provides that the Attorney General may deny any application for, or suspend or place conditions on any grant of, employment authorization of anyone who makes an application for asylum.

We do not support this provision because it is unnecessary. Section 208(e), which was added by section 130004 the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, September 13, 1994, is sufficient to address this concern. The provision in S. 1664 would terminate employment authorization in some instances, such as when a nonimmigrant who already has employment authorization applies for asylum. Current INS procedure to withhold employment authorization for 180 days while an application for asylum is pending review has reduced the incidence of asylum abuse.

Sec. 196 authorizes the Attorney General, for two years, in order to reduce the asylum backlog, to expend out of funds such amounts as may be necessary for leasing or acquiring property.

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

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

uniformed services.

This provision is unnecessary. This can already be accomplished administratively under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. §§ 8344(i) and 8468(f)).

Part 3--Cuban Adjustment Act

Sec. 197 repeals the Cuban Adjustment Act, P.L. 89-732 (1966). The Act provides for adjustment of status, in the discretion of the Attorney General, of any national or citizen of Cuba who has been inspected and admitted or paroled into the U.S. and has resided here for one year. This section repeals the Act except as to individuals who will be paroled into the U.S. pursuant to the Cuban Migration Agreement of 1995.

We oppose repeal of the Cuban Adjustment Act. Our long term goal, to which we are absolutely committed, is to bring democracy to Cuba. Until Cuba has a democratic government, we need flexibility to respond appropriately to changing conditions in Cuba. We look forward to the time when Cuban migration to the U.S. is normalized and on par with migration from other countries. We took major steps towards normalizing migration from Cuba to the U.S. when we concluded the Cuban Migration Agreements in September 1994 and May 1995.

While we are pleased that this section extends application of the Act to individuals who will be paroled into the U.S. pursuant to the Cuban Migration Agreement of 1995, we are concerned that this section fails to mention the Cuban Migration Agreement signed on September 9, 1994, the announcements by the President on October 14, 1994, and by the Attorney General on December 2, 1994, and thus continues to lack a means to adjust the immigration status of individuals who will be or have been admitted, inspected, or paroled from Havana or from the safehavens in Guantanamo and Panama into the U.S.

Sec. 197 also provides that the number of those obtaining lawful permanent resident status after being paroled into the U.S. will be counted as family-sponsored immigrants for purposes of the world-wide and per-country ceiling.

We oppose this provision because it may have a significant adverse effect on family reunification by creating longer waiting times for admission of relatives of U.S. citizens and legal permanent residents from countries other than Cuba.

Sec. 198 establishes that the effective date of title I is the date of enactment of this Act, unless otherwise provided. The amendments made by sections 131, 132, 141 and 195 shall be effective upon the date of enactment and shall apply to aliens who arrive in or seek admission to the United States on or after

such date. The amendments made by sections 122, 126, 128, 129, 143, and 150(b) shall apply with respect to offenses occurring on or after the date of enactment. The Attorney General may issue interim final regulations to implement these sections at any time on or after the date of enactment. Such regulations may become effective upon publication without prior notice or opportunity for public comment.

We object to the provision specifying that the Attorney General may proceed directly to interim final rule in this section. Decisions about the form in which regulation should be issued are governed by the Administrative Procedures Act (APA). The Attorney General has sufficient authority there to determine when exceptions to the APA's notice-and-comment and 30 day delayed effective date provisions are appropriate. Given these concerns, section 501(b)(2)(B) should be deleted as redundant and inconsistent with the APA.

We are also concerned that it will be difficult to promulgate regulations, even interim regulations, before the date of enactment to allow for immediate implementation of the provisions such as special exclusion procedures. Special exclusion is a sensitive area that will require advance guidance to field officers to ensure fair and equitable treatment of aliens and to avoid unnecessary litigation. We believe that drafting proposed regulations and allowing public comment before implementation would be clearly preferable to issuing interim regulations for the many major changes made in this title. Therefore, the effective date of this title should be at least 270 days after enactment.

Title II--FINANCIAL RESPONSIBILITY

SUBTITLE A--RECEIPT OF CERTAIN PUBLIC BENEFITS

The Administration generally supports the denial of means-tested benefits to undocumented immigrants. The only exceptions should include matters of public health and safety such as emergency medical services, immunization and temporary disaster relief assistance; every child's right to full participation in public elementary and secondary education, including pre-school and school lunch programs; and benefits earned as a result of U.S. military service. In so doing, care must be taken not to limit or deny benefits or services to eligible individuals or in instances where denial does not serve the national interest or is costly and intrusive on small businesses.

The Administration generally supports tightening sponsorship and eligibility rules for non-citizens and requiring sponsors of legal immigrants to bear greater responsibility through legally enforceable sponsorship agreements for those whom they encourage to enter the U.S. The Administration, however, opposes

application of new eligibility and deeming provisions to current recipients, particularly with regard to the disabled who are exempted under current law, and to lawful immigrants seeking to participate in student financial aid programs. The Administration also opposes the application of deeming provisions to Medicaid and other programs where deeming would adversely affect public health and welfare.

Section 201 defines "eligible alien" as an alien: lawfully admitted for permanent residence; granted refugee or asylee status; whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act; or who has been granted parole for a period of 1 year or more. All other aliens would be 'ineligible aliens' and would not be eligible for needs-based benefits under any Federal, state, or local program, except: (1) emergency medical services under title XIX of the Social Security Act including prenatal and postpartum services only in limited situations; (2) short-term emergency disaster relief; (3) assistance or benefits under the National School Lunch Act; (4) assistance or benefits under the Child Nutrition Act of 1966; (5) public health assistance for immunizations and for testing and treatment for communicable diseases; and (6) services provided by nonprofit or charitable organizations. Ineligible aliens would be ineligible to receive any grant, contract, loan, professional license, or commercial license provided or funded by any Federal, state, or local government. Only aliens eligible to work would be able to receive unemployment benefits.

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

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

While we support the goal of establishing a uniform definition of alien eligibility, we oppose section 201 as drafted. The provision would affect many diverse Federal, state, and local programs; represents a new mandate to many state and local governments; and targets current immigrant beneficiaries, some of whom are residing lawfully in the U.S. with the knowledge and permission of the INS.

We encourage you to examine the definition of "qualified" alien as the Administration proposed in its welfare reform bill,

introduced in 1994, the "Work and Responsibility Act of 1994" and in the Administration's Balanced Budget proposal.

We recommend this definition of eligibility apply only to the four primary needs-based programs--AFDC, SSI, and Medicaid--and only to noncitizens who apply for such benefits after enactment. The Food Stamp Act already defines an eligible alien. We would also allow state and local programs of cash and medical general assistance to utilize the same alien eligibility criteria. Finally, we support the provision in section 201 that would retain the current law provision for illegal aliens to receive only emergency medical services under Medicaid.

While we recognize the public health importance of providing prenatal and postpartum care, we have technical and administrative concerns with section 201(a). We have not completed our review of this section and may advance additional concerns once our review is finished. We support providing additional assistance to alleviate the burden on states that provide health care services to high numbers of undocumented immigrants. The President's FY 1997 budget request proposes a funding pool to states to help pay for some of the remaining non-federal share of Medicaid expenses for states with large numbers of undocumented immigrants.

The Administration's approach would avoid a number of problems that would result under S. 1664. For example, the eligibility provision in S. 1664 might be read to deny needs-based, education-related services and assistance paid for with Federal, State, or local funds--except for services under the National School Lunch Act--to undocumented alien children. The principal reasons given by the Supreme Court in Plyler v. Doe for not permitting States to do so remain powerful. In addition, students who are not undocumented aliens could be stigmatized based on name or appearance, and parents, fearful of their children's well-being, might keep them at home. These results are in direct conflict with the Administration's policy of encouraging better education for all students and are likely to adversely affect, and be divisive within, our communities. Moreover, instead of making progress towards becoming productive, responsible adults, uneducated children are vastly more likely to wind up on the streets, possibly engaged in unlawful behavior. Finally, schools and school systems are ill-suited to make determinations about the citizenship status of students and should not be forced to bear the uncompensated expense and burden of doing so. We urge that this section be revised so that it does not call into question the full participation of any child in the U.S. in public elementary and secondary education, including participation in pre-school and school lunch programs.

In addition, the definition of an "eligible alien" in section 201(d) could be read to exclude certain postsecondary

students currently eligible for student assistance under title IV of the Higher Education Act of 1965; the negative consequences of varying eligibility requirements on these students and their educational institutions must be considered.

Also, section 201 implies that each of the hundreds of thousands of businesses that provide contractual goods or services to the federal government every year would have to provide proof of the owner's identity as a citizen or eligible alien. For example, most doctors and health care providers might be forced to provide such proof before being reimbursed under Medicare or the Federal Employees Health Benefits Program. As another example, small businesses that provide a myriad of supplies and services through purchase orders and credit card orders would face this problem. At best, such a requirement would be costly to both the businesses and the government to administer. At worst, the statute implies that this proof would have to be provided in person to federal agencies in order to properly verify identity. The travel alone would be extremely burdensome. We are unaware of any substantial problem that would warrant such a strict requirement. A similar problem could arise with regard to federal grants, many thousands of which flow annually to small organizations and businesses.

This provision also should be modified to clarify that it has no effect on the applicability of section 214 of the Housing and Community Development Act of 1980 to HUD programs, and that it does not apply to assistance provided by HUD. Without such clarification, this provision would impose a great burden on States and local governments that administer HUD mortgage programs, Federal Housing Administration contract programs, and Community Development Block Grants to identify noncitizens who may indirectly benefit from these non-direct assistance programs. Furthermore, it would jeopardize progress made and cooperation by HUD, INS, housing authorities, and multifamily project owners to smoothly implement section 214 of the Housing and Community Development Act of 1980.

Furthermore, the definition of "eligible alien" does not include Cuban and Haitian entrants as defined under section 501 of the Refugee Education and Assistance Act of 1980. If Cuban and Haitian entrants are not included in the list of eligible aliens, they no longer would be eligible for assistance and services under the refugee program.

The definition of "eligible alien" also fails to include aliens lawfully admitted under temporary visas (e.g., B for business visitors, E for treaty traders and investors, L for intracompany transferees, and H-1B for professionals) and aliens outside the United States. Under section 201 ineligible aliens would be unable to receive, inter alia, contracts, professional licenses, or commercial licenses provided or funded by any

federal, state, or local government. One concern is that by prohibiting the award of federal contracts and the granting of federal licenses, this section would preclude local acquisition by diplomatic posts and military bases in foreign countries to the extent that such acquisitions involve contracts with foreign individuals. In addition, section 201(a)(1), which would make ineligible aliens ineligible for government contracts, would be inconsistent with our obligations under the World Trade Organization's Agreement on Government Procurement. We recommend including "contracts with nonimmigrants authorized to work in the United States, or with aliens outside of the United States" among benefits exempted from the definition of "government benefits."

Section 201 may violate NAFTA provisions on services and investment (chapters 11 and 12) and potentially violate our obligations under the GATS agreement and bilateral investment treaties if the class of ineligible aliens is not specifically narrowed. Furthermore, NAFTA parties have agreed to eliminate citizenship and permanent residency requirements for professional licenses, and section 201 would be in violation of those obligations.

This section appears to impose a duty on agencies to make new eligibility determinations for each individual served. There are many programs for which it would not be cost-effective, or in some cases feasible, to determine individual eligibility. These programs include public health programs such as community and migrant health centers. The Administration's approach which would apply this definition of eligibility to the four major federal entitlement programs would avoid these burdensome effects.

In addition, section 201(a)(3) requires agencies administering public assistance programs to notify individually or by public notices all ineligible aliens of the termination of their benefits. While we believe that it is important to notify individuals of their benefit determination, this requirement would place a significant burden on smaller benefit programs such as those mentioned above. The effects of these requirements on smaller programs should be considered.

Section 201(c) has many undesirable effects on the operation of the Social Security program. The payment restrictions in this provision violate the terms of the bilateral Social Security totalization agreements with 17 foreign countries, including Canada and virtually all of Western Europe. Also, the U.S. has treaties with other countries that require the U.S. to pay Social Security benefits to foreign treaty nationals on the same basis as U.S. citizens. Legislation abrogating these agreements and treaties would presumably lead to retaliatory restrictions on the payment of such benefits by other countries to U.S. citizens. Furthermore, this provision would deny Social Security benefits

as well as Social Security tax refunds to aliens legally admitted on a temporary basis to work in the U.S.

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

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

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

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

The Administration would support a provision that would restrict the payment of Social Security benefits to aliens who are in the United States illegally if the provision were drafted in a manner that did not compromise existing international arrangements concerning payment of Social Security benefits. We look forward to working with the Committee to address these concerns.

We also would seek to ensure that programs of assistance to refugees under Title IV of the Social Security Act be designed to promote early economic self-sufficiency and social adjustment and to meet the specific needs of refugees. Our concern is that newly arriving refugees, for whom the federal government has a special responsibility, should be provided with services and work and training participation requirements that are adapted to their situation.

Sec. 202 defines "public charge" for purposes of deportation as the receipt of certain benefits for an aggregate of more than 12 months in the first five years after entry as an immigrant or, in the case of an individual who entered as a nonimmigrant, the first five years after adjustment to permanent resident status.

Such benefits are limited to one or more of the following programs: AFDC, SSI, Medicaid, Food Stamps, state general assistance, or any other program of assistance funded in whole or in part by the Federal government for which eligibility is based on need (except the exempted programs noted in section 201).

This section also provides that any alien who during the public charge period becomes a public charge, regardless of when the cause arose, is deportable. This section exempts from the public charge definition refugees and asylees. Further, if the cause of the alien's becoming a public charge arose after entry as an immigrant or, in the case of a nonimmigrant, after adjustment to permanent resident status, and was a physical illness or injury that kept the alien from working or a mental disability that required continuous hospitalization, then the alien would be exempt. While this section now excludes refugees and asylees from the public charge provision, it would place Cuban and Haitian entrants at risk of deportation if they received benefits from one or more of the listed programs for more than an aggregate of 12 months. We strongly object to the effect of this provision and believe Cuban and Haitian entrants should be excluded from the public charge provision. We believe this would be consistent with the Administration's position on providing assistance to Cuban parolees to alleviate any State or local impact.

We also strongly object to including the receipt of financial assistance under title IV of the Higher Education Act of 1965 as grounds for becoming a public charge, and thus deportable. Student financial assistance offers legal immigrants a way to achieve productive and self-sufficient lives in the economic mainstream--the opposite of becoming a public charge.

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

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

amendment.

Sec. 203 sets forth the requirements for a sponsor's affidavit of support. It requires that the affidavit of support be executed as a contract that is enforceable against the sponsor by the sponsored individual, the Federal government, a state, district, territory or possession or any subdivision thereof, providing any benefits to sponsored eligible aliens. In the affidavit, the sponsor must agree to financially support the sponsored individual until the sponsored individual becomes a U.S. citizen or has worked in the U.S. for 40 qualifying quarters or has become a U.S. citizen, whichever occurs first. A sponsor must be age 18 or over, a citizen or legal permanent resident, domiciled in any of the several states of the U.S., the District of Columbia, or a territory or possession of the U.S. and demonstrate an ability to maintain an annual income of at least 125% of the poverty line for him or herself and the sponsored individual.

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

We strongly support making the current affidavit of support legally binding until citizenship or until the noncitizen has worked in the U.S. for a significant period of time. We applaud the passage of the amendment in the Judiciary Committee that limits enforcement of the affidavit of support until the sponsored individual obtains citizenship. However, we have serious concerns with a number of remaining provisions in section 203. The definition of qualifying quarter is unworkable and unreasonable. For example, section 203(f)(3)(A) defines "qualifying quarter" as a 3-month period in which the sponsored individual has earned the minimum amount necessary for the period to count as a Social Security quarter of coverage. Since the implementation of annual wage reporting in 1978, SSA no longer maintains quarterly records of earnings and thus could not determine the amount earned in a calendar quarter. Quarters of coverage are now based on annual earnings. We recommend changing the definition of "qualifying quarters" to be consistent with the Social Security Act. Also, individuals may become entitled to disability insurance benefits with less than 40 quarters of work. The bill should clarify that an immigrant that otherwise qualifies for title II disability insurance would be eligible for benefits under title II and would be exempt from the deeming requirements for purposes of disability benefits under title XVI if he or she became disabled after entry.

In addition, sections 203(f)(3)(B) and 203(f)(3)(C) require that in order to be considered as a qualifying quarter, the sponsored individual must not have received needs-based public assistance and must have income tax liability for the year in which the quarter was earned. Making case-by-case determinations of when these conditions have been met will be difficult and will significantly increase administrative costs and burden. More important, it is unreasonable to penalize hard working, but low income immigrant families by continuing to apply deeming rules just because they have not incurred income tax liability. For example, a family of three with one wage earner employed an entire year at the minimum wage would earn less than \$9,000 leaving that family not only significantly below the poverty level, but also means they would not incur income tax liability due to those low wages.

Section 203 should also clarify that a sponsor would not be liable for support during the time the sponsor may be bankrupt or in need of assistance. This could easily be accomplished by stipulating that a sponsor who received means-tested assistance would not be liable for assistance received by the sponsored alien during the time period the sponsor received assistance.

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

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

Sec. 203(e) would allow an action to enforce the affidavit of support to be brought against the sponsor in any Federal or State court, by a sponsored individual with respect to financial support, or by a Federal, state, local agency with respect to reimbursement. This section also would require that no state court may decline jurisdiction over any action brought against a sponsor for reimbursement of the costs of a benefit if the sponsored individual received assistance while residing in the state.

We do not object to this provision.

Sec. 204 requires that in determining the eligibility for

and amount of benefits of a noncitizen under any Federal program of assistance, or any program of assistance funded in whole or in part by the federal government for which eligibility is based on need except for services provided by nonprofit, charitable organizations, the entire amount of income and resources of the sponsor and sponsor's spouse would be presumed to be available to the individual. This section may also apply to any state or local program of assistance for which eligibility is based on need, or any need-based program of assistance administered by a state or local government.

This "deeming" period would continue for the period for which the sponsor has agreed in the affidavit or for five years from the date the alien was first lawfully in the U.S., whichever period is longer. Thus, immigrants who signed the new affidavit of support under section 203 would be deemed for 40 qualifying quarters or until they become U.S. citizens, whichever occurs first.

We applaud the changes made to this title in the Judiciary Committee that ensures sponsor-to-alien deeming would not be applied to citizens, and while we support the goal of making sponsors more responsible for the immigrants they sponsor, we strongly oppose section 204 as drafted. This section would affect many current immigrant beneficiaries; repeal the current law exemption from deeming for sponsored immigrants who become disabled after entry; affect many diverse Federal programs--including Medicaid and student financial assistance for post secondary education; create new administrative complexities and requirements; and change the current deeming formula to include 100 percent of a sponsor's income and resources. By attributing 100 percent of a sponsor's income and resources to the sponsored immigrant, section 204 does not take into account the needs of the sponsor and his or her family and is inconsistent with current practice in the major entitlement programs. Legal challenges may also arise where the spouse was not a signatory to the affidavit or the spouse is separated from the sponsor.

The Administration supports strengthening deeming, and we would like to work with the Committee to establish a reasonable deeming policy that addresses the concerns identified above. The Administration is opposed to unilaterally applying the new deeming and eligibility provisions to current recipients, including the disabled exempted under current law. In addition, we oppose applying deeming provisions to the Medicaid and student financial assistance programs. Access to student assistance by legal immigrants assists them in obtaining a postsecondary education that can provide them a productive and self-sufficient life in the economic mainstream. We support providing state and local governments with the authority to implement the same deeming rules under their cash general assistance programs as the Federal government uses in its cash welfare programs.

Sec. 205 would require the Secretary of Education and the Commissioner of the Social Security Administration to transmit jointly to Congress a report on the Department of Education's computer matching program under section 484(p) of the Higher Education Act of 1965 (HEA). The Administration has no objection to this reporting requirement, and it is far preferable to the provision it replaced, which would have added a duplicative verification system that may have had other, unintended consequences. The Department of Education's computer matching program enables the Department of Education to confirm that the Social Security number and citizenship status of title IV student aid applicants are valid at the time of application. The Department of Education also has in place a system to verify the immigration status of non-citizen applicants, as required under section 484(g) of the HEA. These two systems ensure that illegal immigrants do not receive student financial assistance under title IV of the HEA, whether by falsely claiming an eligible immigrant status or by falsely claiming citizenship.

Sec. 206 authorizes state and local governments to prohibit or limit assistance to aliens and to distinguish among classes of aliens in providing general cash public assistance so long as the restrictions are no more restrictive than those of similar Federal programs.

We support this provision.

Sec. 207 denies eligibility for the earned income tax credit to individuals who are not, for the entire tax year, U.S. citizens or lawful permanent resident aliens. We support this provision. The President's FY 1996 Budget contained a similar provision.

Sec. 208 requires that whoever falsely makes, forges, counterfeits, mutilates, or alters the seal of any U.S. department or agency, or any copy thereof; knowingly uses, affixes, or impresses such altered seal or copy to or upon any instrument; or with fraudulent intent possesses, sells, offers to sell, furnishes, offers to furnish, gives away, offers to give away, transports, offers to transport, imports, or offers to import any such seal or copy, knowing it to have been falsely made, shall be fined under this title, or imprisoned for up to 5 years, or both. If any of the above was done with the intent or effect of facilitating an unlawful alien's application for, or receipt of a federal benefit, the penalties which may be imposed for each offense shall be double the maximum fine, and three times the maximum imprisonment, or both. Each instance of forgery, counterfeiting, mutilation, or alteration shall constitute a separate offense.

We support this provision.

Sec. 209 permits a State that is certified by the Attorney General as having high illegal immigration to establish and operate a program for the placement of anti-fraud investigators in State, county, and private hospitals to verify the immigration status and income eligibility of applicants for medical assistance under the State plan prior to the furnishing of medical assistance.

We note that current law would permit a State to operate such a program, and thus the provision is unnecessary.

Sec. 210 would require the Office of Refugee Resettlement to allocate grants to ensure that each qualifying county shall receive the same amount of assistance for each refugee and entrant residing in the county as of the beginning of the fiscal year who arrived in the United States not more than 60 months prior.

The amendment's formula for the allocation of Targeted Assistance (TA) funds is consistent with the Administration's policy to limit the provision of Office of Refugee Resettlement funded services to a refugee's first five years in the United States. We support the exception for the Targeted Assistance discretionary program. We note, however, that the amendment may limit Congress' ability to set aside special TA funds for Cuban and Haitian entrants which it has historically done through the appropriations process.

SUBTITLE B--MISCELLANEOUS PROVISIONS

Sec. 211 requires the Attorney General to reimburse the full costs incurred by state or local authorities for emergency ambulance services provided to aliens injured while entering the U.S. without inspection. The obligation occurs only when the injured alien is taken into the custody of the state or local authority as a result of a transfer or other action by a federal authority. Lastly, the section allows the Attorney General to seek reimbursement for emergency medical services provided to aliens.

We support this provision because it encourages local authorities to provide customary emergency medical transport to aliens that have been detected or discovered, but not arrested, by the INS. Under current law, INS may only pay the medical transportation costs in instances where the alien is under arrest. This authority will alleviate the financial burden accruing to some border communities experiencing a large number of emergency medical transports. This provision will encourage rapid transport of aliens injured during an illegal entry without regard to the state of their immigration processing.

Sec. 212 appears to provide full Federal reimbursement to

State and local governments for emergency medical services furnished to undocumented immigrants in public or private hospitals or other facilities, subject to amounts provided in appropriation acts. It requires hospitals and other facilities to confirm immigration status of individuals as a condition for receiving reimbursement. The confirmation procedure would be determined by the Secretary of HHS in consultation with the Attorney General.

As a policy matter, the Administration supports providing additional assistance to alleviate the burdens of states that provide health care services with the highest concentrations of unauthorized immigrants. The President's FY 97 budget proposes a funding pool to help pay for some of the remaining non-federal share of Medicaid expenses for states with the large numbers of undocumented immigrants.

However, we have technical concerns with this section. First, this section still contains provisions requiring hospitals and facilities to seek reimbursement from other Federal programs and recovery from undocumented individuals and other persons, which would be impracticable and unworkable. Second, it is unclear what the definition of emergency services would be or how reimbursements would be made, particularly to local governments. This could result in substantial additional administrative costs.

Sec. 213 authorizes additional commuter border crossing fees pilot projects, one on the northern land border and another one on the southern land border.

The Administration proposal provides for projects along the southern and northern land borders and does not limit the number of pilot projects that may be established. We recommend that S. 1394 adopt the Administration proposal.

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

This provision is similar to the Administration's proposal, and we support it.

Sec. 221 establishes that the effective date of title II is the date of enactment of this Act, unless otherwise provided. The provisions of section 201 and 204 shall apply to benefits and to applications for benefits received on or after the date of enactment of this Act.

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

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

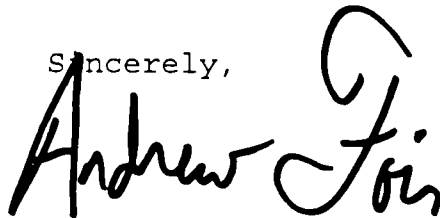
The provisions with the greatest SSI impact--the definition of "eligible alien" and sponsor-to-alien deeming--would be effective upon enactment. Such an effective date could eliminate benefit eligibility for as many as 250,000 legal immigrants under the SSI program. Even more immigrants would be affected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

We are also concerned that it will be difficult to promulgate regulations, even interim regulations, before the date of enactment to allow for immediate implementation of the provisions of this title. We believe that drafting proposed regulations and allowing public comment before implementation would be clearly preferable to issuing interim regulations for the many major changes made in this title. Therefore, the effective date of this title should be at least 270 days after enactment.

Senator Dole, we appreciate the continued support of the Senate for the initiatives taken by this Administration on urgent immigration matters. We have provided lengthy briefings to the staff of the Judiciary Committee and others regarding the Administration's vision for immigration reform legislation, and we will continue to work with the members of the Senate on necessary improvements to achieve bipartisan immigration improvements legislation that is in the national interest.

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

Sincerely,

A handwritten signature in black ink, reading "Andrew Foia". The signature is written in a cursive, flowing style. The first name "Andrew" is written in a standard cursive, while "Foia" has a more stylized, looped appearance. The signature is positioned below the word "Sincerely,".

Andrew Foia
Assistant Attorney General