

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2444

To amend the Immigration and Nationality Act to improve the administration and enforcement of the immigration laws, to enhance the security of the United States, and to establish the Office of Children’s Services within the Department of Justice, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 2, 2002

Mr. KENNEDY (for himself, Mr. BROWNBACK, Mr. HATCH, Mr. HELMS, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. DEWINE, Mr. DURBIN, Mr. HAGEL, Mr. GRAHAM, and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to improve the administration and enforcement of the immigration laws, to enhance the security of the United States, and to establish the Office of Children’s Services within the Department of Justice, and for other purposes.

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

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

4 (a) SHORT TITLE.—Titles I through III of this Act  
5 may be cited as the “Immigration Reform, Accountability,  
6 and Security Enhancement Act of 2002”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

TITLE I—IMMIGRATION AFFAIRS AGENCY

Subtitle A—Organization

- Sec. 101. Abolition of INS.
- Sec. 102. Establishment of Immigration Affairs Agency.
- Sec. 103. Director of Immigration Affairs.
- Sec. 104. Bureau of Immigration Services and Adjudications.
- Sec. 105. Bureau of Enforcement and Border Affairs.
- Sec. 106. Office of the Ombudsman within the Department of Justice.
- Sec. 107. Office of Immigration Statistics within the Bureau of Justice Statistics.
- Sec. 108. Clerical amendments.

Subtitle B—Transition Provisions

- Sec. 111. Transfer of functions.
- Sec. 112. Transfer of personnel and other resources.
- Sec. 113. Determinations with respect to functions and resources.
- Sec. 114. Delegation and reservation of functions.
- Sec. 115. Allocation of personnel and other resources.
- Sec. 116. Savings provisions.
- Sec. 117. Interim service of the Commissioner of Immigration and Naturalization.
- Sec. 118. Executive Office for Immigration Review and Attorney General authorities not affected.
- Sec. 119. Other authorities not affected.
- Sec. 120. Transition funding.

Subtitle C—Effective Date

- Sec. 121. Effective date.

TITLE II—PERSONNEL FLEXIBILITIES

- Sec. 201. Improvements in personnel flexibilities.
- Sec. 202. Voluntary separation incentive payments for INS employees.
- Sec. 203. Voluntary separation incentive payments for employees of the Immigration Affairs Agency.
- Sec. 204. Basis for evaluation of Immigration Affairs Agency employees.
- Sec. 205. Effective date.

TITLE III—UNACCOMPANIED ALIEN CHILD PROTECTION

- Sec. 301. Short title.
- Sec. 302. Definitions.

Subtitle A—Structural Changes

- Sec. 311. Establishment of the Office of Children's Services.

- Sec. 312. Establishment of Interagency Task Force on Unaccompanied Alien Children.
- Sec. 313. Effective date.

Subtitle B—Custody, Release, Family Reunification, and Detention

- Sec. 321. Procedures when encountering unaccompanied alien children.
- Sec. 322. Family reunification for unaccompanied alien children with relatives in the United States.
- Sec. 323. Appropriate conditions for detention of unaccompanied alien children.
- Sec. 324. Repatriated unaccompanied alien children.
- Sec. 325. Establishing the age of an unaccompanied alien child.
- Sec. 326. Effective date.

Subtitle C—Access by Unaccompanied Alien Children to Guardians Ad Litem and Counsel

- Sec. 331. Right of unaccompanied alien children to guardians ad litem.
- Sec. 332. Right of unaccompanied alien children to counsel.
- Sec. 333. Transitional pilot program.
- Sec. 334. Effective date; applicability.

Subtitle D—Strengthening Policies for Permanent Protection of Alien Children

- Sec. 341. Special immigrant juvenile visa.
- Sec. 342. Training for officials and certain private parties who come into contact with unaccompanied alien children.
- Sec. 343. Effective dates.

Subtitle E—Children Refugee and Asylum Seekers

- Sec. 351. Guidelines for children's asylum claims.
- Sec. 352. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.
- Sec. 353. Unaccompanied refugee children.

Subtitle F—Authorization of Appropriations

- Sec. 361. Authorization of appropriations.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Funding adjudication and naturalization services.
- Sec. 402. Application of Internet-based technologies.
- Sec. 403. Department of State study on matters relating to the employment of consular officers.
- Sec. 404. Alternatives to detention of asylum seekers.

**1 SEC. 2. PURPOSES.**

**2** The purposes of this Act are—

1           (1) to improve the administration and enforce-  
2           ment of the immigration laws of the United States  
3           and to enhance the security of the United States;

4           (2) to abolish the Immigration and Naturaliza-  
5           tion Service and to establish the Immigration Affairs  
6           Agency within the Department of Justice; and

7           (3) to establish the Office of Children’s Services  
8           within the Department of Justice to coordinate and  
9           implement Government actions involving unaccom-  
10          panied alien children.

11 **SEC. 3. DEFINITIONS.**

12         In this Act:

13           (1) DIRECTOR.—The term “Director” means  
14           the Director of Immigration Affairs appointed under  
15           section 112 of the Immigration and Nationality Act,  
16           as added by section 103 of this Act.

17           (2) ENFORCEMENT BUREAU.—The term “En-  
18           forcement Bureau” means the Bureau of Enforce-  
19           ment and Border Affairs established in section 114  
20           of the Immigration and Nationality Act, as added by  
21           section 105 of this Act.

22           (3) FUNCTION.—The term “function” includes  
23           any duty, obligation, power, authority, responsibility,  
24           right, privilege, activity, or program.

1           (4) IMMIGRATION ENFORCEMENT FUNC-  
2           TIONS.—The term “immigration enforcement func-  
3           tions” has the meaning given the term in section  
4           114(b)(2) of the Immigration and Nationality Act,  
5           as added by section 105 of this Act.

6           (5) IMMIGRATION LAWS OF THE UNITED  
7           STATES.—The term “immigration laws of the United  
8           States” has the meaning given the term in section  
9           111(e) of the Immigration and Nationality Act, as  
10          added by section 102 of this Act.

11          (6) IMMIGRATION POLICY, ADMINISTRATION,  
12          AND INSPECTION FUNCTIONS.—The term “immigra-  
13          tion policy, administration, and inspection func-  
14          tions” has the meaning given the term in section  
15          112(b)(3) of the Immigration and Nationality Act,  
16          as added by section 103 of this Act.

17          (7) IMMIGRATION SERVICE AND ADJUDICATION  
18          FUNCTIONS.—The term “immigration service and  
19          adjudication functions” has the meaning given the  
20          term in section 113(b)(2) of the Immigration and  
21          Nationality Act, as added by section 104 of this Act.

22          (8) OFFICE.—The term “office” includes any  
23          office, administration, agency, bureau, institute,  
24          council, unit, organizational entity, or component  
25          thereof.

1           (9) SERVICE BUREAU.—The term “Service Bu-  
 2           reau” means the Bureau of Immigration Services  
 3           and Adjudications established in section 113 of the  
 4           Immigration and Nationality Act, as added by sec-  
 5           tion 104 of this Act.

6           **TITLE I—IMMIGRATION AFFAIRS**  
 7                                   **AGENCY**  
 8                                   **Subtitle A—Organization**

9           **SEC. 101. ABOLITION OF INS.**

10           (a) IN GENERAL.—The Immigration and Naturaliza-  
 11           tion Service is abolished.

12           (b) REPEAL.—Section 4 of the Act of February 14,  
 13           1903, as amended (32 Stat. 826; relating to the establish-  
 14           ment of the Immigration and Naturalization Service), is  
 15           repealed.

16           **SEC. 102. ESTABLISHMENT OF IMMIGRATION AFFAIRS**  
 17                                   **AGENCY.**

18           (a) ESTABLISHMENT.—Title I of the Immigration  
 19           and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

20                           (1) by inserting “**CHAPTER 1—DEFINITIONS**  
 21                           **AND GENERAL AUTHORITIES**” after “**TITLE**  
 22                           **I—GENERAL**”; and

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

1       **“CHAPTER 2—IMMIGRATION AFFAIRS**  
2                               **AGENCY**

3       **“SEC. 111. ESTABLISHMENT OF IMMIGRATION AFFAIRS**  
4                               **AGENCY.**

5       “(a) **ESTABLISHMENT.**—There is established within  
6 the Department of Justice the Immigration Affairs Agen-  
7 cy.

8       “(b) **PRINCIPAL OFFICERS.**—The principal officers of  
9 the Agency are the following:

10               “(1) The Director of Immigration Affairs ap-  
11 pointed under section 112.

12               “(2) The Deputy Director of Immigration Serv-  
13 ices and Adjudications appointed under section 113.

14               “(3) The Deputy Director of Enforcement and  
15 Border Affairs appointed under section 114.

16       “(c) **FUNCTIONS.**—Under the authority of the Attor-  
17 ney General, the Agency shall perform the following func-  
18 tions:

19               “(1) Immigration policy, administration, and  
20 inspection functions, as defined in section 112(b).

21               “(2) Immigration service and adjudication func-  
22 tions, as defined in section 113(b).

23               “(3) Immigration enforcement functions, as de-  
24 fined in section 114(b).

25       “(d) **AUTHORIZATION OF APPROPRIATIONS.**—

1           “(1) IN GENERAL.—There are authorized to be  
2           appropriated to the Department of Justice such  
3           sums as may be necessary to carry out—

4                   “(A) the functions of the Agency; and

5                   “(B) such other functions of the Attorney  
6           General or the Department of Justice under the  
7           immigration laws of the United States as are  
8           not covered by subparagraph (A).

9           “(2) AVAILABILITY OF FUNDS.—Amounts ap-  
10          propriated pursuant to paragraph (1) are authorized  
11          to remain available until expended.

12          “(e) IMMIGRATION LAWS OF THE UNITED STATES  
13          DEFINED.—In this chapter, the term ‘immigration laws  
14          of the United States’ means the following:

15                   “(1) This Act.

16                   “(2) Such other statutes, Executive orders, reg-  
17          ulations, or directives, treaties, or other international  
18          agreements to which the United States is a party,  
19          insofar as they relate to the admission to, detention  
20          in, or removal from the United States of aliens, inso-  
21          far as they relate to the naturalization of aliens, or  
22          insofar as they otherwise relate to the status of  
23          aliens.”.



1 (b) CONFORMING AMENDMENTS.—(1) The Immigra-  
2 tion and Nationality Act (8 U.S.C. 1101 et seq.) is  
3 amended—

4 (A) by striking section 101(a)(34) (8 U.S.C.  
5 1101(a)(34)) and inserting the following:

6 “(34) The term ‘Agency’ means the Immigra-  
7 tion Affairs Agency established by section 111.”;

8 (B) in section 101(a)(17) (8 U.S.C.  
9 1101(a)(17)), by striking “The” and inserting “Ex-  
10 cept as otherwise provided in section 111(e), the;  
11 and

12 (C) by striking “Immigration and Naturaliza-  
13 tion Service”, “Service”, and “Service’s” each place  
14 they appear and inserting “Immigration Affairs  
15 Agency”, “Agency”, and “Agency’s”, respectively.

16 (2) Section 6 of the Act entitled “An Act to authorize  
17 certain administrative expenses for the Department of  
18 Justice, and for other purposes”, approved July 28, 1950  
19 (64 Stat. 380), is amended—

20 (A) by striking “Immigration and Naturaliza-  
21 tion Service” and inserting “Immigration Affairs  
22 Agency”;

23 (B) by striking clause (a); and

24 (C) by redesignating clauses (b), (c), (d), and  
25 (e) as clauses (a), (b), (c), and (d), respectively.

1           (c) REFERENCES.—Any reference in any statute, re-  
2 organization plan, Executive order, regulation, agreement,  
3 determination, or other official document or proceeding to  
4 the Immigration and Naturalization Service shall be  
5 deemed to refer to the Immigration Affairs Agency.

6 **SEC. 103. DIRECTOR OF IMMIGRATION AFFAIRS.**

7           (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
8 gration and Nationality Act, as added by section 102 of  
9 this Act, is amended by adding at the end the following:

10 **“SEC. 112. DIRECTOR OF IMMIGRATION AFFAIRS.**

11           “(a) DIRECTOR OF IMMIGRATION AFFAIRS.—The  
12 Agency shall be headed by a Director of Immigration Af-  
13 fairs who shall be appointed in accordance with section  
14 103(c) of the Immigration and Nationality Act.

15           “(b) RESPONSIBILITIES OF THE DIRECTOR.—

16                 “(1) IN GENERAL.—The Director shall be  
17 charged with any and all responsibilities and author-  
18 ity in the administration of the Agency and of this  
19 Act which are conferred upon the Attorney General  
20 as may be delegated to the Director by the Attorney  
21 General or which may be prescribed by the Attorney  
22 General.

23                 “(2) DUTIES.—Subject to the authority of the  
24 Attorney General under paragraph (1), the Director  
25 shall have the following duties:

1           “(A) IMMIGRATION POLICY.—The Director  
2 shall develop and implement policy under the  
3 immigration laws of the United States. The Di-  
4 rector, shall propose, promulgate, and issue  
5 rules, regulations, and statements of policy with  
6 respect to any function within the jurisdiction  
7 of the Agency.

8           “(B) ADMINISTRATION.—The Director  
9 shall have responsibility for—

10           “(i) the administration and enforce-  
11 ment of the functions conferred upon the  
12 Agency under section 111(c) of this Act;  
13 and

14           “(ii) the administration of the Agency,  
15 including the direction, supervision, and  
16 coordination of the Bureau of Immigration  
17 Services and Adjudications and the Bureau  
18 of Enforcement and Border Affairs.

19           “(C) INSPECTIONS.—The Director shall be  
20 directly responsible for the administration and  
21 enforcement of the functions of the Attorney  
22 General and the Agency under the immigration  
23 laws of the United States with respect to the  
24 inspection of aliens arriving at ports of entry of  
25 the United States.

1           “(D) OTHER DELEGATED DUTIES AND  
2 POWERS.—The Director shall carry out such  
3 other duties and exercise such powers as the  
4 Attorney General may prescribe.

5           “(3) ACTIVITIES.—As part of the duties de-  
6 scribed in paragraph (2), the Director shall do the  
7 following:

8           “(A) RESOURCES AND PERSONNEL MAN-  
9 AGEMENT.—The Director shall manage the re-  
10 sources, personnel, and other support require-  
11 ments of the Agency.

12           “(B) INFORMATION RESOURCES MANAGE-  
13 MENT.—Except as otherwise provided in section  
14 305 of the Omnibus Crime Control and Safe  
15 Streets Act of 1968, the Director shall manage  
16 the information resources of the Agency, includ-  
17 ing the maintenance of records and databases  
18 and the coordination of records and other infor-  
19 mation within the Agency, and shall ensure that  
20 the Agency obtains and maintains adequate in-  
21 formation technology systems to carry out its  
22 functions.

23           “(C) COORDINATION OF RESPONSE TO  
24 CIVIL RIGHTS VIOLATIONS.—The Director shall  
25 coordinate, with the Assistant Attorney Gen-

1           eral, the Civil Rights Division, or other officials  
2           or components of the Department of Justice, as  
3           appropriate, the resolution of immigration  
4           issues that involve civil rights violations.

5           “(3) DEFINITION.—In this chapter, the term  
6           “immigration policy, administration, and inspection  
7           functions” means the duties, activities, and powers  
8           described in this subsection.

9           “(c) GENERAL COUNSEL.—

10           “(1) IN GENERAL.—There shall be within the  
11           Agency a General Counsel, who shall be appointed  
12           by the Attorney General, in consultation with the  
13           Director.

14           “(2) FUNCTION.—The General Counsel shall—

15           “(A) serve as the chief legal officer for the  
16           Agency; and

17           “(B) be responsible for providing special-  
18           ized legal advice, opinions, determinations, reg-  
19           ulations, and any other assistance to the Direc-  
20           tor with respect to legal matters affecting the  
21           Immigration Affairs Agency, and any of its  
22           components.

23           “(d) FINANCIAL OFFICERS FOR THE IMMIGRATION  
24           AFFAIRS AGENCY.—

25           “(1) CHIEF FINANCIAL OFFICER.—

1           “(A) IN GENERAL.—There shall be within  
2           the Agency a Chief Financial Officer for the  
3           Immigration Affairs Agency. The position of  
4           Chief Financial Officer shall be a career re-  
5           served position in the Senior Executive Service  
6           and shall have the authorities and functions de-  
7           scribed in section 902 of title 31, United States  
8           Code, in relation to financial activities of the  
9           Agency. For purposes of section 902(a)(1) of  
10          such title, the Director shall be deemed to be  
11          the head of the agency.

12          “(B) FUNCTIONS.—The Chief Financial  
13          Officer shall be responsible for directing, super-  
14          vising, and coordinating all budget formulas  
15          and execution for the Agency.

16          “(2) DEPUTY CHIEF FINANCIAL OFFICER.—The  
17          Agency shall be deemed to be an agency for pur-  
18          poses of section 903 of such title (relating to Deputy  
19          Chief Financial Officers).

20          “(e) CHIEF OF POLICY AND STRATEGY.—

21                 “(1) IN GENERAL.—There shall be within the  
22                 Agency a Chief of Policy and Strategy. Under the  
23                 authority of the Director, the Chief of Policy and  
24                 Strategy shall be responsible for—

1           “(A) establishing national immigration pol-  
2           icy and priorities;

3           “(B) performing policy research and anal-  
4           ysis on issues arising under the immigration  
5           laws of the United States; and

6           “(C) coordinating immigration policy be-  
7           tween the Agency, the Service Bureau, and the  
8           Enforcement Bureau.

9           “(2) WITHIN THE SENIOR EXECUTIVE SERV-  
10          ICE.—The position of Chief of Policy and Strategy  
11          shall be a Senior Executive Service position under  
12          section 5382 of title 5, United States Code.

13          “(f) CHIEF OF CONGRESSIONAL, INTERGOVERN-  
14          MENTAL, AND PUBLIC AFFAIRS.—

15          “(1) IN GENERAL.—There shall be within the  
16          Agency a Chief of Congressional, Intergovernmental,  
17          and Public Affairs. Under the authority of the Di-  
18          rector, the Chief of Congressional, Intergovern-  
19          mental, and Public Affairs shall be responsible for—

20                 “(A) providing to Congress information re-  
21                 lating to issues arising under the immigration  
22                 laws of the United States, including information  
23                 on specific cases;

24                 “(B) serving as a liaison with other Fed-  
25                 eral agencies on immigration issues; and

1           “(C) responding to inquiries from, and  
2           providing information to, the media on immi-  
3           gration issues.

4           “(2) WITHIN THE SENIOR EXECUTIVE SERV-  
5           ICE.—The position of Chief of Congressional, Inter-  
6           governmental, and Public Affairs shall be a Senior  
7           Executive Service position under section 5382 of  
8           title 5, United States Code.”.

9           (b) COMPENSATION OF THE DIRECTOR.—Section  
10          5314 of title 5, United States Code, is amended by adding  
11          at the end the following:

12                 “Director of Immigration Affairs, Department  
13                 of Justice.”.

14           (c) COMPENSATION OF GENERAL COUNSEL AND  
15          CHIEF FINANCIAL OFFICER.—Section 5316 of title 5,  
16          United States Code, is amended by adding at the end the  
17          following:

18                 “General Counsel, Immigration Affairs Agency.

19                 “Chief Financial Officer, Immigration Affairs  
20                 Agency.”.

21           (d) REPEALS.—The following provisions of law are  
22          repealed:

23                 (1) Section 7 of the Act of March 3, 1891, as  
24                 amended (26 Stat. 1085; relating to the establish-



1 ment of the office of the Commissioner of Immigra-  
2 tion and Naturalization).

3 (2) Section 201 of the Act of June 20, 1956  
4 (70 Stat. 307; relating to the compensation of as-  
5 sistant commissioners and district directors).

6 (3) Section 1 of the Act of March 2, 1895 (28  
7 Stat. 780; relating to special immigrant inspectors).

8 (e) CONFORMING AMENDMENTS.—(1)(A) Section  
9 101(a)(8) of the Immigration and Nationality Act (8  
10 U.S.C. 1101(a)(8)) is amended to read as follows:

11 “(8) The term ‘Director’ means the Director of  
12 Immigration Affairs who is appointed under section  
13 103(c).”.

14 (B) Except as provided in subparagraph (C), the Im-  
15 migration and Nationality Act (8 U.S.C. 1101 et seq.) is  
16 amended by striking “Commissioner of Immigration and  
17 Naturalization” and “Commissioner” each place they ap-  
18 pear and inserting “Director of Immigration Affairs” and  
19 “Director”, respectively.

20 (C) The amendments made by subparagraph (B) do  
21 not apply to references to the “Commissioner of Social Se-  
22 curity” in section 290(c) of the Immigration and Nation-  
23 ality Act (8 U.S.C. 1360(c)).

24 (2) Section 103 of the Immigration and Nationality  
25 Act (8 U.S.C. 1103) is amended—

1 (A) in subsection (c), by striking “Commis-  
2 sioner” and inserting “Director”;

3 (B) in the section heading, by striking “COM-  
4 MISSIONER” and inserting “DIRECTOR”;

5 (C) in subsection (d), by striking “Commis-  
6 sioner” and inserting “Director”; and

7 (D) in subsection (e), by striking “Commis-  
8 sioner” and inserting “Attorney General”.

9 (3) Sections 104 and 105 of the Immigration and Na-  
10 tionality Act (8 U.S.C. 1104, 1105) are amended by strik-  
11 ing “Director” each place it appears and inserting “As-  
12 sistant Secretary of State for Consular Affairs”.

13 (4) Section 104(c) of the Immigration and Nation-  
14 ality Act (8 U.S.C. 1104(c)) is amended—

15 (A) in the first sentence, by striking “Passport  
16 Office, a Visa Office,” and inserting “a Passport  
17 Services office, a Visa Services office, an Overseas  
18 Citizen Services office,”; and

19 (B) in the second sentence, by striking “the  
20 Passport Office and the Visa Office” and inserting  
21 “the Passport Services office and the Visa Services  
22 office”.

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

1           “Commissioner of Immigration and Naturaliza-  
2           tion, Department of Justice.”.

3           (f) REFERENCES.—Any reference in any statute, re-  
4           organization plan, Executive order, regulation, agreement,  
5           determination, or other official document or proceeding to  
6           the Commissioner of Immigration and Naturalization shall  
7           be deemed to refer to the Director of Immigration Affairs.

8           **SEC. 104. BUREAU OF IMMIGRATION SERVICES AND ADJU-  
9           DICATIONS.**

10          (a) IN GENERAL.—Chapter 2 of title I of the Immi-  
11          gration and Nationality Act, as added by section 102 and  
12          amended by section 103, is further amended by adding  
13          at the end the following:

14          **“SEC. 113. BUREAU OF IMMIGRATION SERVICES AND ADJU-  
15          DICATIONS.**

16          “(a) ESTABLISHMENT OF BUREAU.—

17                 “(1) IN GENERAL.—There is established within  
18                 the Agency a bureau to be known as the Bureau of  
19                 Immigration Services and Adjudications (in this  
20                 chapter referred to as the ‘Service Bureau’).

21                 “(2) DEPUTY DIRECTOR.—The head of the  
22                 Service Bureau shall be the Deputy Director of Im-  
23                 migration Services and Adjudications (in this chap-  
24                 ter referred to as the ‘Deputy Director of the Serv-  
25                 ice Bureau’), who—

1           “(A) shall be appointed by the Attorney  
2           General, in consultation with the Director; and

3           “(B) shall report directly to the Director.

4           “(b) RESPONSIBILITIES OF THE DEPUTY DIREC-  
5           TOR.—

6           “(1) IN GENERAL.—Subject to the authority of  
7           the Director, the Deputy Director of the Service Bu-  
8           reau shall administer the immigration service and  
9           adjudication functions of the Agency.

10           “(2) IMMIGRATION SERVICE AND ADJUDICA-  
11           TION FUNCTIONS DEFINED.—In this chapter, the  
12           term ‘immigration service and adjudication func-  
13           tions’ means the following functions under the immi-  
14           gration laws of the United States (as defined in sec-  
15           tion 111(e)):

16           “(A) Adjudications of petitions for classi-  
17           fication of nonimmigrant and immigrant status.

18           “(B) Adjudications of applications for ad-  
19           justment of status and change of status.

20           “(C) Adjudications of naturalization appli-  
21           cations.

22           “(D) Adjudications of asylum and refugee  
23           applications.

24           “(E) Adjudications performed at Service  
25           centers.

1           “(F) Determinations concerning custody  
2           and parole of asylum seekers who do not have  
3           prior nonpolitical criminal records and who  
4           have been found to have a credible fear of per-  
5           secution, including determinations under section  
6           236B.

7           “(G) All other adjudications under the im-  
8           migration laws of the United States (as defined  
9           in section 111(e)).

10          “(c) CHIEF BUDGET OFFICER OF THE SERVICE BU-  
11 REAU.—There shall be within the Service Bureau a Chief  
12 Budget Officer. Under the authority of the Chief Finan-  
13 cial Officer of the Agency, the Chief Budget Officer of the  
14 Service Bureau shall be responsible for monitoring and su-  
15 pervising all financial activities of the Service Bureau.

16          “(d) QUALITY ASSURANCE.—There shall be within  
17 the Service Bureau an Office of Quality Assurance that  
18 shall develop procedures and conduct audits to—

19           “(1) ensure that the Agency’s policies with re-  
20 spect to the immigration service and adjudication  
21 functions of the Agency are properly implemented;  
22 and

23           “(2) ensure that Service Bureau policies or  
24 practices result in sound records management and  
25 efficient and accurate service.

1       “(e) OFFICE OF PROFESSIONAL RESPONSIBILITY.—  
2 There shall be within the Service Bureau an Office of Pro-  
3 fessional Responsibility that shall have the responsibility  
4 for ensuring the professionalism of the Service Bureau  
5 and for receiving and investigating charges of misconduct  
6 or ill treatment made by the public.

7       “(f) TRAINING OF PERSONNEL.—The Deputy Direc-  
8 tor of the Service Bureau, in consultation with the Direc-  
9 tor, shall have responsibility for determining the training  
10 for all personnel of the Service Bureau.”.

11       (b) COMPENSATION OF DEPUTY DIRECTOR OF SERV-  
12 ICE BUREAU.—Section 5315 of title 5, United States  
13 Code, is amended by adding at the end the following:

14               “Deputy Director of Immigration Services and  
15 Adjudications, Immigration Affairs Agency.”.

16       (c) SERVICE BUREAU OFFICES.—

17               (1) IN GENERAL.—The Director, acting  
18 through the Deputy Director of the Service Bureau,  
19 shall establish Service Bureau offices, including sub-  
20 offices and satellite offices, in appropriate municipi-  
21 palities and locations in the United States. In the  
22 selection of sites for the Service Bureau offices, the  
23 Director shall consider the location’s proximity and  
24 accessibility to the community served, the workload  
25 for which that office shall be responsible, whether

1 the location would significantly reduce the backlog of  
2 cases in that given geographic area, whether the lo-  
3 cation will improve customer service, and whether  
4 the location is in a geographic area with an increase  
5 in the population to be served. The Director shall  
6 conduct periodic reviews to assess whether the loca-  
7 tion and size of the respective Service Bureau offices  
8 adequately serve customer service needs.

9 (2) **TRANSITION PROVISION.**—In determining  
10 the location of Service Bureau offices, including sub-  
11 offices and satellite offices, the Director shall first  
12 consider maintaining and upgrading offices in exist-  
13 ing geographic locations that satisfy the provisions  
14 of paragraph (1). The Director shall also explore the  
15 feasibility and desirability of establishing new Serv-  
16 ice Bureau offices, including suboffices and satellite  
17 offices, in new geographic locations where there is a  
18 demonstrated need.

19 **SEC. 105. BUREAU OF ENFORCEMENT AND BORDER AF-**  
20 **FAIRS.**

21 (a) **IN GENERAL.**—Chapter 2 of title I of the Immi-  
22 gration and Nationality Act, as added by section 102 and  
23 amended by sections 103 and 104, is further amended by  
24 adding at the end the following:

1 **“SEC. 114. BUREAU OF ENFORCEMENT AND BORDER AF-**  
2 **FAIRS.**

3 “(a) ESTABLISHMENT OF BUREAU.—

4 “(1) IN GENERAL.—There is established within  
5 the Agency a bureau to be known as the Bureau of  
6 Enforcement and Border Affairs (in this chapter re-  
7 ferred to as the ‘Enforcement Bureau’).

8 “(2) DEPUTY DIRECTOR.—The head of the En-  
9 forcement Bureau shall be the Deputy Director of  
10 the Bureau of Enforcement and Border Affairs (in  
11 this chapter referred to as the ‘Deputy Director of  
12 the Enforcement Bureau’), who—

13 “(A) shall be appointed by the Attorney  
14 General, in consultation with the Director; and

15 “(B) shall report directly to the Director.

16 “(b) RESPONSIBILITIES OF THE DEPUTY DIREC-  
17 TOR.—

18 “(1) IN GENERAL.—Subject to the authority of  
19 the Director, the Deputy Director of the Enforce-  
20 ment Bureau shall administer the immigration en-  
21 forcement functions of the Agency.

22 “(2) IMMIGRATION ENFORCEMENT FUNCTIONS  
23 DEFINED.—In this chapter, the term ‘immigration  
24 enforcement functions’ means the following functions  
25 under the immigration laws of the United States (as  
26 defined in section 111(e)):



1           “(A) The border patrol function.

2           “(B) The detention function, except as  
3 specified in section 113(b)(2)(F).

4           “(C) The removal function.

5           “(D) The intelligence function.

6           “(E) The investigations function.

7           “(c) CHIEF BUDGET OFFICER OF THE ENFORCE-  
8 MENT BUREAU.—There shall be within the Enforcement  
9 Bureau a Chief Budget Officer. Under the authority of  
10 the Chief Financial Officer of the Agency, the Chief Budg-  
11 et Officer of the Enforcement Bureau shall be responsible  
12 for monitoring and supervising all financial activities of  
13 the Enforcement Bureau.

14          “(d) OFFICE OF PROFESSIONAL RESPONSIBILITY.—  
15 There shall be within the Enforcement Bureau an Office  
16 of Professional Responsibility that shall have the responsi-  
17 bility for ensuring the professionalism of the Enforcement  
18 Bureau and receiving charges of misconduct or ill treat-  
19 ment made by the public and investigating the charges.

20          “(e) OFFICE OF QUALITY ASSURANCE.—There shall  
21 be within the Enforcement Bureau an Office of Quality  
22 Assurance that shall develop procedures and conduct au-  
23 dits to—

1           “(1) ensure that the Agency’s policies with re-  
2           spect to immigration enforcement functions are  
3           properly implemented; and

4           “(2) ensure that Enforcement Bureau policies  
5           or practices result in sound record management and  
6           efficient and accurate recordkeeping.

7           “(f) TRAINING OF PERSONNEL.—The Deputy Direc-  
8           tor of the Enforcement Bureau, in consultation with the  
9           Director, shall have responsibility for determining the  
10          training for all personnel of the Enforcement Bureau.”.

11          (b) COMPENSATION OF DEPUTY DIRECTOR OF EN-  
12          FORCEMENT BUREAU.—Section 5315 of title 5, United  
13          States Code, is amended by adding at the end the fol-  
14          lowing:

15                 “Director of Enforcement and Border Affairs,  
16                 Immigration Affairs Agency.”.

17          (c) ENFORCEMENT BUREAU OFFICES.—

18                 (1) IN GENERAL.—The Director, acting  
19                 through the Deputy Director of the Enforcement  
20                 Bureau, shall establish Enforcement Bureau offices,  
21                 including suboffices and satellite offices, in appro-  
22                 priate municipalities and locations in the United  
23                 States. In the selection of sites for the Enforcement  
24                 Bureau offices, the Director shall be selected accord-  
25                 ing to trends in unlawful entry and unlawful pres-

1       ence, alien smuggling, national security concerns,  
2       the number of Federal prosecutions of immigration-  
3       related offenses in a given geographic area, and  
4       other enforcement considerations. The Director shall  
5       conduct periodic reviews to assess whether the loca-  
6       tion and size of the respective Enforcement Bureau  
7       offices adequately serve enforcement needs.

8               (2) **TRANSITION PROVISION.**—In determining  
9       the location of Enforcement Bureau offices, includ-  
10      ing suboffices and satellite offices, the Director shall  
11      first consider maintaining and upgrading offices in  
12      existing geographic locations that satisfy the provi-  
13      sions of paragraph (1). The Director shall also ex-  
14      plore the feasibility and desirability of establishing  
15      new Enforcement Bureau offices, including sub-  
16      offices and satellite offices, in new geographic loca-  
17      tions where there is a demonstrated need.

18 **SEC. 106. OFFICE OF THE OMBUDSMAN WITHIN THE DE-**  
19 **PARTMENT OF JUSTICE.**

20       (a) **IN GENERAL.**—Chapter 2 of title I of the Immi-  
21      gration and Nationality Act, as added by section 102 and  
22      amended by sections 103, 104 and 105, is further amend-  
23      ed by adding at the end the following:

1 **“SEC. 115. OFFICE OF THE OMBUDSMAN WITHIN THE DE-**  
2 **PARTMENT OF JUSTICE.**

3 “(a) IN GENERAL.—There is established within the  
4 Department of Justice the Office of the Ombudsman,  
5 which shall be headed by the Ombudsman.

6 “(b) OMBUDSMAN.—

7 “(1) APPOINTMENT.—The Ombudsman shall be  
8 appointed by the Attorney General. The Ombuds-  
9 man shall report directly to the Attorney General.

10 “(2) COMPENSATION.—The Ombudsman shall  
11 be entitled to compensation at the same rate as the  
12 highest rate of basic pay established for the Senior  
13 Executive Service under section 5382 of title 5,  
14 United States Code, or, if the Attorney General so  
15 determines, at a rate fixed under section 9503 of  
16 such title.

17 “(c) FUNCTIONS OF OFFICE.—The functions of the  
18 Office of the Ombudsman shall include—

19 “(1) to assist individuals in resolving problems  
20 with the Agency or any component thereof;

21 “(2) to identify systemic problems encountered  
22 by the public in dealings with the Agency or any  
23 component thereof;

24 “(3) to propose changes in the administrative  
25 practices or regulations of the Agency, or any com-

1       ponent thereof, to mitigate problems identified under  
2       paragraph (2);

3           “(4) to identify potential changes in statutory  
4       law that may be required to mitigate such problems;  
5       and

6           “(5) to monitor the coverage and geographic  
7       distribution of local offices of the Agency.

8       “(d) PERSONNEL ACTIONS.—The Ombudsman shall  
9       have the responsibility and authority to appoint local or  
10      regional representatives of the Ombudsman’s Office as in  
11      the Ombudsman’s judgment may be necessary to address  
12      and rectify problems.

13      “(e) ANNUAL REPORT.—Not later than December 31  
14      of each year, the Ombudsman shall submit a report to the  
15      Committee on the Judiciary of the House of Representa-  
16      tives and the Committee on the Judiciary of the Senate  
17      on the activities of the Ombudsman during the fiscal year  
18      ending in that calendar year. Each report shall contain  
19      a full and substantive analysis, in addition to statistical  
20      information, and shall contain—

21           “(1) a description of the initiatives that the Of-  
22      fice of the Ombudsman has taken on improving the  
23      responsiveness of the Agency;

1           “(2) a summary of serious or systemic problems  
2 encountered by the public, including a description of  
3 the nature of such problems;

4           “(3) an accounting of the items described in  
5 paragraphs (1) and (2) for which action has been  
6 taken, and the result of such action;

7           “(4) an accounting of the items described in  
8 paragraphs (1) and (2) for which action remains to  
9 be completed;

10           “(5) an accounting of the items described in  
11 paragraphs (1) and (2) for which no action has been  
12 taken, the reasons for the inaction, and identify any  
13 Agency official who is responsible for such inaction;

14           “(6) recommendations as may be appropriate to  
15 resolve problems encountered by the public;

16           “(7) recommendations as may be appropriate to  
17 resolve problems encountered by the public, includ-  
18 ing problems created by backlogs in the adjudication  
19 and processing of petitions and applications;

20           “(8) recommendations to resolve problems  
21 caused by inadequate funding or staffing; and

22           “(9) such other information as the Ombudsman  
23 may deem advisable.

24           “(f) AUTHORIZATION OF APPROPRIATIONS.—

1           “(1) IN GENERAL.—There are authorized to be  
2           appropriated to the Office of the Ombudsman such  
3           sums as may be necessary to carry out its functions.

4           “(2) AVAILABILITY OF FUNDS.—Amounts ap-  
5           propriated pursuant to paragraph (1) are authorized  
6           to remain available until expended.”.

7   **SEC. 107. OFFICE OF IMMIGRATION STATISTICS WITHIN**  
8                           **THE BUREAU OF JUSTICE STATISTICS.**

9           (a) IN GENERAL.—Part C of title I of the Omnibus  
10          Crime Control and Safe Streets Act of 1968 (42 U.S.C.  
11          3731 et seq.) is amended by adding at the end the fol-  
12          lowing new section:

13   **“SEC. 305. OFFICE OF IMMIGRATION STATISTICS.**

14          “(a) ESTABLISHMENT.—There is established within  
15          the Bureau of Justice Statistics of the Department of Jus-  
16          tice an Office of Immigration Statistics (in this section  
17          referred to as the ‘Office’), which shall be headed by a  
18          Director who shall be appointed by the Attorney General  
19          and who shall report to the Director of Justice Statistics.

20          “(b) RESPONSIBILITIES OF DIRECTOR.—The Direc-  
21          tor of the Office shall be responsible for the following:

22                 “(1) STATISTICAL INFORMATION.—Maintenance  
23                 of all immigration statistical information of the Im-  
24                 migration Affairs Agency and the Executive Office  
25                 for Immigration Review.

1           “(2) STANDARDS OF RELIABILITY AND VALID-  
2           ITY.—Establishment of standards of reliability and  
3           validity for immigration statistics collected by the  
4           Bureau of Immigration Services and Adjudications,  
5           the Bureau of Enforcement and Border Affairs of  
6           the Immigration Affairs Agency, and the Executive  
7           Office for Immigration Review.

8           “(e) RELATION TO THE IMMIGRATION AFFAIRS AGEN-  
9           CY AND THE EXECUTIVE OFFICE FOR IMMIGRATION RE-  
10          VIEW.—

11           “(1) OTHER AUTHORITIES.—The Immigration  
12           Affairs Agency and the Executive Office for Immi-  
13           gration Review shall provide statistical information  
14           to the Office from the operational data systems con-  
15           trolled by the Immigration Affairs Agency and the  
16           Executive Office for Immigration Review, respec-  
17           tively, as requested by the Office, for the purpose of  
18           meeting the responsibilities of the Director of the  
19           Office.

20           “(2) DATABASES.—The Director of the Office,  
21           under the direction of the Attorney General, shall  
22           ensure the interoperability of the databases of the  
23           Immigration Affairs Agency, the Bureau of Immi-  
24           gration Services and Adjudications, the Bureau of  
25           Enforcement and Border Affairs, and the Executive



1 Office for Immigration Review to permit the Direc-  
2 tor of the Office to perform the duties of such office.

3 (b) TRANSFER OF FUNCTIONS.—There are trans-  
4 ferred to the Attorney General, for exercise through the  
5 Office of Immigration Statistics established by section 305  
6 of the Omnibus Crime Control and Safe Streets Act of  
7 1968, as added by subsection (a), the functions performed  
8 by the Statistics Branch of the Office of Policy and Plan-  
9 ning of the Immigration and Naturalization Service, and  
10 the statistical functions performed by the Executive Office  
11 for Immigration Review, on the day before the effective  
12 date of this title.

13 (c) CONFORMING AMENDMENT.—Section 302(c) of  
14 the Omnibus Crime Control and Safe Streets Act of 1968  
15 (42 U.S.C. 3732(c)) is amended—

16 (1) by striking “and” at the end of paragraph  
17 (22);

18 (2) by striking the period at the end of para-  
19 graph (23) and inserting “; and”; and

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

21 “(24) collect, maintain, compile, analyze, pub-  
22 lish, and disseminate information and statistics  
23 about immigration in the United States, including  
24 information and statistics involving the functions of

1 the Immigration Affairs Agency and the Executive  
2 Office for Immigration Review.”.

3 **SEC. 108. CLERICAL AMENDMENTS.**

4 The table of contents of the Immigration and Nation-  
5 ality Act is amended—

6 (1) by inserting after the item relating to the  
7 heading for title I the following:

“CHAPTER 1—DEFINITIONS AND GENERAL AUTHORITIES”;

8 (2) by striking the item relating to section 103  
9 and inserting the following:

“Sec. 103. Powers and duties of the Attorney General and the Director.”;

10 and

11 (3) by inserting after the item relating to sec-  
12 tion 106 the following:

“CHAPTER 2—IMMIGRATION AFFAIRS AGENCY

“Sec. 111. Establishment of Immigration Affairs Agency.

“Sec. 112. Director of Immigration Affairs.

“Sec. 113. Bureau of Immigration Services and Adjudications.

“Sec. 114. Bureau of Enforcement and Border Affairs.

“Sec. 115. Office of the Ombudsman within the Department of Justice.”.

13 **Subtitle B—Transition Provisions**

14 **SEC. 111. TRANSFER OF FUNCTIONS.**

15 (a) IN GENERAL.—All functions under the immigra-  
16 tion laws of the United States vested by statute in, or ex-  
17 ercised by, the Commissioner of Immigration and Natu-  
18 ralization or the Immigration and Naturalization Service  
19 (or any officer, employee, or component thereof), imme-  
20 diately prior to the effective date of this title, are trans-

1 ferred to the Immigration Affairs Agency on such effective  
2 date for exercise by the Director in accordance with sec-  
3 tion 112(b) of the Immigration and Nationality Act, as  
4 added by section 103 of this Act.

5 (b) EXERCISE OF AUTHORITIES.—Except as other-  
6 wise provided by law, the Director may, for purposes of  
7 performing any function transferred to the Immigration  
8 Affairs Agency under subsection (a), exercise all authori-  
9 ties under any other provision of law that were available  
10 with respect to the performance of that function to the  
11 official responsible for the performance of the function im-  
12 mediately before the effective date of the transfer of the  
13 function pursuant to this title.

14 **SEC. 112. TRANSFER OF PERSONNEL AND OTHER RE-**  
15 **SOURCES.**

16 Subject to section 1531 of title 31, United States  
17 Code, upon the effective date of this title, there are trans-  
18 ferred to the Director for appropriate allocation in accord-  
19 ance with section 115—

20 (1) the personnel of the Department of Justice  
21 employed in connection with the functions trans-  
22 ferred pursuant to this title (and such other func-  
23 tions that the Attorney General determines are prop-  
24 erly related to the functions of the Immigration Af-

1       fairs Agency and that would, if so transferred, fur-  
2       ther the purposes of the Agency); and

3               (2) the assets, liabilities, contracts, property,  
4       records, and unexpended balance of appropriations,  
5       authorizations, allocations, and other funds em-  
6       ployed, held, used, arising from, available to, or to  
7       be made available to the Immigration and Natu-  
8       ralization Service in connection with the functions  
9       transferred pursuant to this title.

10 **SEC. 113. DETERMINATIONS WITH RESPECT TO FUNCTIONS**  
11                               **AND RESOURCES.**

12       The Director shall determine, in accordance with the  
13       corresponding criteria set forth in sections 112(b), 113(b),  
14       and 114(b) of the Immigration and Nationality Act (as  
15       added by this Act)—

16               (1) which of the functions transferred under  
17       section 111 are—

18                       (A) immigration policy, administration,  
19       and inspection functions;

20                       (B) immigration service and adjudication  
21       functions; and

22                       (C) immigration enforcement functions;  
23       and

24               (2) which of the personnel, assets, liabilities,  
25       grants, contracts, property, records, and unexpended

1 balances of appropriations, authorizations, alloca-  
2 tions, and other funds transferred under section 112  
3 were held or used, arose from, were available to, or  
4 were made available, in connection with the perform-  
5 ance of the respective functions specified in para-  
6 graph (1) immediately prior to the effective date of  
7 this title.

8 **SEC. 114. DELEGATION AND RESERVATION OF FUNCTIONS.**

9 (a) IN GENERAL.—

10 (1) DELEGATION TO THE BUREAUS.—Subject  
11 to section 112(b)(1) of the Immigration and Nation-  
12 ality Act (as added by section 103 of this Act), the  
13 Director shall delegate—

14 (A) immigration service and adjudication  
15 functions to the Deputy Director of the Service  
16 Bureau; and

17 (B) immigration enforcement functions to  
18 the Deputy Director of the Enforcement Bu-  
19 reau.

20 (2) RESERVATION OF FUNCTIONS.—Subject to  
21 section 112(b)(1) of the Immigration and Nation-  
22 ality Act (as added by section 103 of this Act), im-  
23 migration policy, administration, and inspection  
24 functions shall be reserved for exercise by the Direc-  
25 tor.

1 (b) NONEXCLUSIVE DELEGATIONS AUTHORIZED.—  
2 Delegations made under subsection (a) may be on a non-  
3 exclusive basis as the Director may determine may be nec-  
4 essary to ensure the faithful execution of the Director's  
5 responsibilities and duties under law.

6 (c) EFFECT OF DELEGATIONS.—Except as otherwise  
7 expressly prohibited by law or otherwise provided in this  
8 title, the Director may make delegations under this sub-  
9 section to such officers and employees of the office of the  
10 Director, the Service Bureau, and the Enforcement Bu-  
11 reau, respectively, as the Director may designate, and may  
12 authorize successive redelegations of such functions as  
13 may be necessary or appropriate. No delegation of func-  
14 tions under this subsection or under any other provision  
15 of this title shall relieve the official to whom a function  
16 is transferred pursuant to this title of responsibility for  
17 the administration of the function.

18 (d) STATUTORY CONSTRUCTION.—Nothing in this  
19 Act may be construed to limit the authority of the Direc-  
20 tor, acting directly or by delegation under the Attorney  
21 General, to establish such offices or positions within the  
22 Immigration Affairs Agency, in addition to those specified  
23 by this Act, as the Director may determine to be necessary  
24 to carry out the functions of the Agency.

1 **SEC. 115. ALLOCATION OF PERSONNEL AND OTHER RE-**  
2 **SOURCES.**

3 (a) **AUTHORITY OF THE DIRECTOR.—**

4 (1) **IN GENERAL.—**Subject to paragraph (2)  
5 and section 114(b), the Director shall make alloca-  
6 tions of personnel, assets, liabilities, grants, con-  
7 tracts, property, records, and unexpended balances  
8 of appropriations, authorizations, allocations, and  
9 other funds held, used, arising from, available to, or  
10 to be made available in connection with the perform-  
11 ance of the respective functions, as determined  
12 under section 113, in accordance with the delegation  
13 of functions and the reservation of functions made  
14 under section 114.

15 (2) **LIMITATION.—**Unexpended funds trans-  
16 ferred pursuant to section 112 shall be used only for  
17 the purposes for which the funds were originally au-  
18 thorized and appropriated.

19 (b) **AUTHORITIES OF ATTORNEY GENERAL.—**

20 (1) **INCIDENTAL TRANSFERS.—**The Attorney  
21 General may make such additional incidental dis-  
22 positions of personnel, assets, liabilities, grants, con-  
23 tracts, property, records, and unexpended balances  
24 of appropriations, authorizations, allocations, and  
25 other funds held, used, arising from, available to, or  
26 to be made available in connection with such func-

1 tions, as may be necessary to carry out the provi-  
2 sions of this title, and the amendments made by this  
3 title. The Attorney General shall provide for such  
4 further measures and dispositions as may be nec-  
5 essary to effectuate the purposes of this title and the  
6 amendments made by this title.

7 (2) **AUTHORITY TO TERMINATE AFFAIRS OF**  
8 **INS.**—The Attorney General shall provide for the  
9 termination of the affairs of the Immigration and  
10 Naturalization Service and such further measures  
11 and dispositions as may be necessary to effectuate  
12 the purposes of this Act.

13 (c) **TREATMENT OF SHARED RESOURCES.**—The Di-  
14 rector is authorized to provide for an appropriate alloca-  
15 tion, or coordination, or both, of resources involved in sup-  
16 porting shared support functions for the office of the Di-  
17 rector, the Service Bureau, the Enforcement Bureau, and  
18 offices within the Department of Justice. The Director  
19 shall maintain oversight and control over the shared com-  
20 puter databases and systems and records management.

21 **SEC. 116. SAVINGS PROVISIONS.**

22 (a) **LEGAL DOCUMENTS.**—All orders, determinations,  
23 rules, regulations, permits, grants, loans, contracts, rec-  
24 ognition of labor organizations, agreements, including col-



1 lective bargaining agreements, certificates, licenses, and  
2 privileges—

3           (1) that have been issued, made, granted, or al-  
4           lowed to become effective by the President, the At-  
5           torney General, the Commissioner of the Immigra-  
6           tion and Naturalization Service, their delegates, or  
7           any other Government official, or by a court of com-  
8           petent jurisdiction, in the performance of any func-  
9           tion that is transferred pursuant to this title; and

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

14 shall continue in effect according to their terms until  
15 modified, terminated, superseded, set aside, or revoked in  
16 accordance with law by the President, any other author-  
17 ized official, a court of competent jurisdiction, or operation  
18 of law, except that any collective bargaining agreement  
19 shall remain in effect until the date of termination speci-  
20 fied in the agreement.

21           (b) PROCEEDINGS.—

22           (1) PENDING.—Sections 111 through 115 of  
23           the Immigration and Nationality Act, and section  
24           305 of the Omnibus Crime Control and Safe Streets  
25           Act, as added by title I of this Act, shall not affect

1 any proceeding or any application for any benefit,  
2 service, license, permit, certificate, or financial as-  
3 sistance pending on the effective date of this title be-  
4 fore an office whose functions are transferred pursu-  
5 ant to this title, but such proceedings and applica-  
6 tions shall be continued.

7 (2) ORDERS.—Orders shall be issued in such  
8 proceedings, appeals shall be taken therefrom, and  
9 payments shall be made pursuant to such orders, as  
10 if this Act had not been enacted, and orders issued  
11 in any such proceeding shall continue in effect until  
12 modified, terminated, superseded, or revoked by a  
13 duly authorized official, by a court of competent ju-  
14 risdiction, or by operation of law.

15 (3) DISCONTINUANCE OR MODIFICATION.—  
16 Nothing in this section shall be considered to pro-  
17 hibit the discontinuance or modification of any such  
18 proceeding under the same terms and conditions and  
19 to the same extent that such proceeding could have  
20 been discontinued or modified if this section had not  
21 been enacted.

22 (c) SUITS.—This title, and the amendments made by  
23 this title, shall not affect suits commenced before the ef-  
24 fective date of this title, and in all such suits, proceeding  
25 shall be had, appeals taken, and judgments rendered in

1 the same manner and with the same effect as if this title,  
2 and the amendments made by this title, had not been en-  
3 acted.

4 (d) NONABATEMENT OF ACTIONS.—No suit, action,  
5 or other proceeding commenced by or against the Depart-  
6 ment of Justice or the Immigration and Naturalization  
7 Service, or by or against any individual in the official ca-  
8 pacity of such individual as an officer or employee in con-  
9 nection with a function transferred pursuant to this sec-  
10 tion, shall abate by reason of the enactment of this Act.

11 (e) CONTINUANCE OF SUIT WITH SUBSTITUTION OF  
12 PARTIES.—If any Government officer in the official capac-  
13 ity of such officer is party to a suit with respect to a func-  
14 tion of the officer, and pursuant to this title such function  
15 is transferred to any other officer or office, then such suit  
16 shall be continued with the other officer or the head of  
17 such other office, as applicable, substituted or added as  
18 a party.

19 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-  
20 VIEW.—Except as otherwise provided by this title, any  
21 statutory requirements relating to notice, hearings, action  
22 upon the record, or administrative or judicial review that  
23 apply to any function transferred pursuant to any provi-  
24 sion of this title shall apply to the exercise of such function  
25 by the head of the office, and other officers of the office,

1 to which such function is transferred pursuant to such  
2 provision.

3 **SEC. 117. INTERIM SERVICE OF THE COMMISSIONER OF IM-**  
4 **MIGRATION AND NATURALIZATION.**

5 The individual serving as the Commissioner of Immi-  
6 gration and Naturalization on the day before the effective  
7 date of this title may serve as Director until the date on  
8 which a Director is appointed under section 112 of the  
9 Immigration and Nationality Act, as added by section 103  
10 of this Act.

11 **SEC. 118. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**  
12 **AND ATTORNEY GENERAL AUTHORITIES NOT**  
13 **AFFECTED.**

14 Nothing in this title, or any amendment made by this  
15 title, may be construed to authorize or require the transfer  
16 or delegation of any function vested in, or exercised by—

17 (1) the Executive Office for Immigration Re-  
18 view of the Department of Justice, or any officer,  
19 employee, or component thereof, or

20 (2) the Attorney General with respect to any  
21 matter under the immigration laws of the United  
22 States, including the institution of any prosecution,  
23 or the institution or defense of any action or appeal,  
24 in any court of the United States established under  
25 Article III of the Constitution,

1 immediately prior to the effective date of this title.

2 **SEC. 119. OTHER AUTHORITIES NOT AFFECTED.**

3 Nothing in this title, or any amendment made by this  
4 title, may be construed to authorize or require the transfer  
5 or delegation of any function vested in, or exercised by—

6 (1) the Secretary of State under the State De-  
7 partment Basic Authorities Act of 1956, or under  
8 the immigration laws of the United States, imme-  
9 diately prior to the effective date of this title, with  
10 respect to the issuance and use of passports and  
11 visas;

12 (2) the Secretary of Labor or any official of the  
13 Department of Labor immediately prior to the effec-  
14 tive date of this title, with respect to labor certifi-  
15 cations or any other authority under the immigra-  
16 tion laws of the United States; or

17 (3) except as otherwise specifically provided in  
18 this Act, any other official of the Federal Govern-  
19 ment under the immigration laws of the United  
20 States immediately prior to the effective date of this  
21 title.

22 **SEC. 120. TRANSITION FUNDING.**

23 (a) AUTHORIZATION OF APPROPRIATIONS FOR TRAN-  
24 SITION.—

1           (1) IN GENERAL.—There are authorized to be  
2 appropriated to the Department of Justice such  
3 sums as may be necessary—

4           (A) to effect—

5                 (i) the abolition of the Immigration  
6 and Naturalization Service;

7                 (ii) the establishment of the Immigra-  
8 tion Affairs Agency and its components,  
9 the Bureau of Immigration Services and  
10 Adjudications, and the Bureau of Enforce-  
11 ment and Border Affairs; and

12                 (iii) the transfer of functions required  
13 to be made under this Act; and

14           (B) to carry out any other duty that is  
15 made necessary by this Act, or any amendment  
16 made by this Act.

17           (2) ACTIVITIES SUPPORTED.—Activities sup-  
18 ported under paragraph (1) include—

19                 (A) planning for the transfer of functions  
20 from the Immigration and Naturalization Serv-  
21 ice to the Immigration Affairs Agency, includ-  
22 ing the preparation of any reports and imple-  
23 mentation plans necessary for such transfer;

24                 (B) the division, acquisition, and disposi-  
25 tion of—

- 1 (i) buildings and facilities;
- 2 (ii) support and infrastructure re-
- 3 sources; and
- 4 (iii) computer hardware, software, and
- 5 related documentation;
- 6 (C) other capital expenditures necessary to
- 7 effect the transfer of functions described in this
- 8 paragraph;
- 9 (D) revision of forms, stationery, logos,
- 10 and signage;
- 11 (E) expenses incurred in connection with
- 12 the transfer and training of existing personnel
- 13 and hiring of new personnel; and
- 14 (F) such other expenses necessary to effect
- 15 the transfers, as determined by the Attorney
- 16 General.

17 (b) AVAILABILITY OF FUNDS.—Amounts appro-

18 priated pursuant to subsection (a) are authorized to re-

19 main available until expended.

20 (c) TRANSITION ACCOUNT.—

21 (1) ESTABLISHMENT.—There is established in

22 the general fund of the Treasury of the United

23 States a separate account, which shall be known as

24 the “Immigration Affairs Agency Transition Ac-

1 count” (in this section referred to as the “Ac-  
2 count”).

3 (2) USE OF ACCOUNT.—There shall be depos-  
4 ited into the Account all amounts appropriated  
5 under subsection (a) and amounts reprogrammed for  
6 the purposes described in subsection (a).

7 (d) REPORT TO CONGRESS ON TRANSITION.—Begin-  
8 ning not later than 90 days after the date of enactment  
9 of this Act, and at the end of each fiscal year in which  
10 appropriations are made pursuant to subsection (c), the  
11 Attorney General shall submit a report to Congress con-  
12 cerning the availability of funds to cover transition costs,  
13 including—

14 (1) any unobligated balances available for such  
15 purposes; and

16 (2) a calculation of the amount of appropria-  
17 tions that would be necessary to fully fund the ac-  
18 tivities described in subsection (a).

19 (e) EFFECTIVE DATE.—This section shall take effect  
20 on the date of enactment of this Act.

## 21 **Subtitle C—Effective Date**

### 22 **SEC. 121. EFFECTIVE DATE.**

23 Except as otherwise provided in section 120(e), this  
24 title, and the amendments made by this title, shall take  
25 effect 18 months after the date of enactment of this Act.



1                   **TITLE II—PERSONNEL**  
 2                   **FLEXIBILITIES**

3 **SEC. 201. IMPROVEMENTS IN PERSONNEL FLEXIBILITIES.**

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

7           **“Subpart J—Immigration Affairs Agency Personnel**  
 8 **“CHAPTER 96—PERSONNEL FLEXIBILI-**  
 9 **TIES RELATING TO THE IMMIGRATION**  
 10 **AFFAIRS AGENCY**

“Sec.

“9601. Immigration Affairs Agency personnel flexibilities.

“9602. Pay authority for critical positions.

“9603. Streamlined critical pay authority.

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

11 **“§ 9601. Immigration Affairs Agency personnel flexi-**  
 12 **bilities**

13           “(a) Any flexibilities provided by sections 9602  
 14 through 9604 of this chapter shall be exercised in a man-  
 15 ner consistent with—

16                   “(1) chapter 23 (relating to merit system prin-  
 17 ciples and prohibited personnel practices);

18                   “(2) provisions relating to preference eligibles;

19                   “(3) except as otherwise specifically provided,  
 20 section 5307 (relating to the aggregate limitation on  
 21 pay);

1           “(4) except as otherwise specifically provided,  
2           chapter 71 (relating to labor-management relations);  
3           and

4           “(5) subject to subsections (b) and (c) of sec-  
5           tion 1104, as though such authorities were delegated  
6           to the Attorney General under section 1104(a)(2).

7           “(b) The Attorney General shall provide the Office  
8           of Personnel Management with any information that Of-  
9           fice requires in carrying out its responsibilities under this  
10          section.

11        **“§ 9602. Pay authority for critical positions**

12          “(a) When the Attorney General seeks a grant of au-  
13          thority under section 5377 for critical pay for 1 or more  
14          positions at the Immigration Affairs Agency, the Office  
15          of Management and Budget may fix the rate of basic pay,  
16          notwithstanding sections 5377(d)(2) and 5307, at any  
17          rate up to the salary set in accordance with section 104  
18          of title 3.

19          “(b) Notwithstanding section 5307, no allowance, dif-  
20          ferential, bonus, award, or similar cash payment may be  
21          paid to any employee receiving critical pay at a rate fixed  
22          under subsection (a), in any calendar year if, or to the  
23          extent that, the employee’s total annual compensation will  
24          exceed the maximum amount of total annual compensation

1 payable at the salary set in accordance with section 104  
2 of title 3.

3 **“§ 9603. Streamlined critical pay authority**

4 “(a) Notwithstanding section 9602, and without re-  
5 gard to the provisions of this title governing appointments  
6 in the competitive service or the Senior Executive Service  
7 and chapters 51 and 53 (relating to classification and pay  
8 rates), the Attorney General may, for a period of 10 years  
9 after the effective date of title II of the Immigration Re-  
10 form, Accountability, and Security Enhancement Act of  
11 2002, establish, fix the compensation of, and appoint indi-  
12 viduals to, designated critical administrative, technical,  
13 and professional positions needed to carry out the func-  
14 tions of the Immigration Affairs Agency, if—

15 “(1) the positions—

16 “(A) require expertise of an extremely high  
17 level in an administrative, technical, or profes-  
18 sional field; and

19 “(B) are critical to the Immigration Af-  
20 fairs Agency’s successful accomplishment of an  
21 important mission;

22 “(2) exercise of the authority is necessary to re-  
23 cruit or retain an individual exceptionally well quali-  
24 fied for the position;

1           “(3) the number of such positions does not ex-  
2           ceed 40 at any one time;

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

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

7           “(6) appointees to such positions were not em-  
8           ployees of the Immigration and Naturalization Serv-  
9           ice prior to the effective date of title II of the Immig-  
10          ration Reform, Accountability, and Security En-  
11          hancement Act of 2002;

12          “(7) total annual compensation for any ap-  
13          pointee to such positions does not exceed the highest  
14          total annual compensation payable at the rate deter-  
15          mined under section 104 of title 3; and

16          “(8) all such positions are excluded from the  
17          collective bargaining unit.

18          “(b) Individuals appointed under this section shall  
19          not be considered to be employees for purposes of sub-  
20          chapter II of chapter 75.

21       **“§ 9604. Recruitment, retention, relocation incen-**  
22                         **tives, and relocation expenses**

23          “(a) For a period of 10 years after the effective date  
24          of title II of the Immigration Reform, Accountability, and  
25          Security Enhancement Act of 2002, and subject to ap-

1 proval by the Office of Personnel Management, the Attor-  
 2 ney General may provide for variations from sections 5753  
 3 and 5754 governing payment of recruitment, relocation,  
 4 and retention incentives with respect to employees of the  
 5 Immigration Affairs Agency.

6 “(b) For a period of 10 years after the effective date  
 7 of title II of the Immigration Reform, Accountability, and  
 8 Security Enhancement Act of 2002, and subject to ap-  
 9 proval by the Office of Personnel Management, the Attor-  
 10 ney General may pay from appropriations made to the Im-  
 11 migration Affairs Agency allowable relocation expenses  
 12 under section 5724a for employees transferred or reem-  
 13 ployed and allowable travel and transportation expenses  
 14 under section 5723 for new appointees, for any new ap-  
 15 pointee appointed to a position for which pay is fixed  
 16 under section 9602 or 9603 after such effective date.”.

17 (b) CLERICAL AMENDMENT.—The table of chapters  
 18 for part III of title 5, United States Code, is amended  
 19 by adding at the end the following new items:

“SUBPART J—IMMIGRATION AFFAIRS AGENCY PERSONNEL

“**96. Personnel flexibilities relating to the Immigration  
 Affairs Agency ..... 9601.**”.

20 **SEC. 202. VOLUNTARY SEPARATION INCENTIVE PAYMENTS**  
 21 **FOR INS EMPLOYEES.**

22 (a) DEFINITION.—In this section, the term “em-  
 23 ployee” means an employee (as defined by section 2105

1 of title 5, United States Code) who is employed by the  
2 Immigration and Naturalization Service serving under an  
3 appointment without time limitation, and has been cur-  
4 rently employed for a continuous period of at least 3 years,  
5 but does not include—

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

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

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

16 (4) an employee who, upon completing an addi-  
17 tional period of service as referred to in section  
18 3(b)(2)(B)(ii) of the Federal Workforce Restruc-  
19 turing Act of 1994 (5 U.S.C. 5597 note), would  
20 qualify for a voluntary separation incentive payment  
21 under section 3 of such Act;

22 (5) an employee who has previously received  
23 any voluntary separation incentive payment by the  
24 Federal Government under this section or any other  
25 authority and has not repaid such payment;

1           (6) an employee covered by statutory reemploy-  
 2           ment rights who is on transfer to another organiza-  
 3           tion; or

4           (7) any employee who, during the 24-month pe-  
 5           riod preceding the date of separation, has received a  
 6           recruitment or relocation bonus under section 5753  
 7           of title 5, United States Code, or who, within the  
 8           12-month period preceding the date of separation,  
 9           received a retention allowance under section 5754 of  
 10          title 5, United States Code.

11          (b) AUTHORITY TO PROVIDE VOLUNTARY SEPARA-  
 12          TION INCENTIVE PAYMENTS.—

13           (1) IN GENERAL.—The Attorney General may  
 14           pay voluntary separation incentive payments under  
 15           this section to any employee to the extent necessary  
 16           to carry out the plan to establish the Immigration  
 17           Affairs Agency under title I.

18           (2) AMOUNT AND TREATMENT OF PAYMENTS.—  
 19           A voluntary separation incentive payment—

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

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

25                   (C) shall be equal to the lesser of—

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

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

7 (D) may not be made except in the case of  
8 any qualifying employee who voluntarily sepa-  
9 rates (whether by retirement or resignation) be-  
10 fore January 1, 2006;

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

14 (F) shall not be taken into account in de-  
15 termining the amount of any severance pay to  
16 which the employee may be entitled under sec-  
17 tion 5595 of title 5, United States Code, based  
18 on any other separation.

19 (c) ADDITIONAL IMMIGRATION AND NATURALIZA-  
20 TION SERVICE CONTRIBUTIONS TO THE RETIREMENT  
21 FUND.—

22 (1) IN GENERAL.—In addition to any other  
23 payments which it is required to make under sub-  
24 chapter III of chapter 83 of title 5, United States  
25 Code, the Immigration and Naturalization Service



1 shall remit to the Office of Personnel Management  
2 for deposit in the Treasury of the United States to  
3 the credit of the Civil Service Retirement and Dis-  
4 ability Fund an amount equal to 15 percent of the  
5 final basic pay of each employee who is covered  
6 under subchapter III of chapter 83 or chapter 84 of  
7 title 5, United States Code, to whom a voluntary  
8 separation incentive has been paid under this sec-  
9 tion.

10 (2) DEFINITION.—In paragraph (1), the term  
11 “final basic pay”, with respect to an employee,  
12 means the total amount of basic pay which would be  
13 payable for a year of service by such employee, com-  
14 puted using the employee’s final rate of basic pay,  
15 and, if last serving on other than a full-time basis,  
16 with appropriate adjustment therefore.

17 (d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH  
18 THE GOVERNMENT.—An individual who has received a  
19 voluntary separation incentive payment under this section  
20 and accepts any employment for compensation with the  
21 Government of the United States, or who works for any  
22 agency of the United States Government through a per-  
23 sonal services contract, within 5 years after the date of  
24 the separation on which the payment is based, shall be  
25 required to pay, prior to the individual’s first day of em-

1 ployment, the entire amount of the incentive payment to  
 2 the Immigration and Naturalization Service or, in the case  
 3 of employment or work occurring after the effective date  
 4 of title I, the Immigration Affairs Agency.

5 (e) USE OF VOLUNTARY SEPARATIONS.—The Immi-  
 6 gration and Naturalization Service may redeploy or use  
 7 the full-time equivalent positions vacated by voluntary sep-  
 8 arations under this section to make other positions avail-  
 9 able to more critical locations or more critical occupations.

10 (f) EFFECTIVE DATE.—This section shall take effect  
 11 on the date of enactment of this Act.

12 **SEC. 203. VOLUNTARY SEPARATION INCENTIVE PAYMENTS**  
 13 **FOR EMPLOYEES OF THE IMMIGRATION AF-**  
 14 **FAIRS AGENCY.**

15 (a) DEFINITION.—In this section, the term “em-  
 16 ployee” means an employee (as defined by section 2105  
 17 of title 5, United States Code) who is employed by the  
 18 Immigration Affairs Agency serving under an appointment  
 19 without time limitation, and has been currently employed  
 20 for a continuous period of at least 3 years, but does not  
 21 include—

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

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

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

8           (4) an employee who, upon completing an addi-  
9 tional period of service as referred to in section  
10 3(b)(2)(B)(ii) of the Federal Workforce Restruc-  
11 turing Act of 1994 (5 U.S.C. 5597 note), would  
12 qualify for a voluntary separation incentive payment  
13 under section 3 of such Act;

14           (5) an employee who has previously received  
15 any voluntary separation incentive payment by the  
16 Federal Government under this section or any other  
17 authority and has not repaid such payment;

18           (6) an employee covered by statutory reemploy-  
19 ment rights who is on transfer to another organiza-  
20 tion; or

21           (7) any employee who, during the 24-month pe-  
22 riod preceding the date of separation, has received a  
23 recruitment or relocation bonus under section 5753  
24 of title 5, United States Code, or who, within the  
25 12-month period preceding the date of separation,

1 received a retention allowance under section 5754 of  
2 title 5, United States Code.

3 (b) AUTHORITY TO PROVIDE VOLUNTARY SEPARA-  
4 TION INCENTIVE PAYMENTS.—

5 (1) IN GENERAL.—The Attorney General may  
6 pay voluntary separation incentive payments under  
7 this section to any employee to the extent necessary  
8 to carry out the plan to establish the Immigration  
9 Affairs Agency under title I.

10 (2) AMOUNT AND TREATMENT OF PAYMENTS.—

11 A voluntary separation incentive payment—

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

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

17 (C) shall be equal to the lesser of—

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

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

24 (D) may not be made except in the case of  
25 any qualifying employee who voluntarily sepa-

1 rates (whether by retirement or resignation) be-  
2 fore January 1, 2006;

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

6 (F) shall not be taken into account in de-  
7 termining the amount of any severance pay to  
8 which the employee may be entitled under sec-  
9 tion 5595 of title 5, United States Code, based  
10 on any other separation.

11 (c) ADDITIONAL IMMIGRATION AFFAIRS AGENCY  
12 CONTRIBUTIONS TO THE RETIREMENT FUND.—

13 (1) IN GENERAL.—In addition to any other  
14 payments which it is required to make under sub-  
15 chapter III of chapter 83 of title 5, United States  
16 Code, the Immigration Affairs Agency shall remit to  
17 the Office of Personnel Management for deposit in  
18 the Treasury of the United States to the credit of  
19 the Civil Service Retirement and Disability Fund an  
20 amount equal to 15 percent of the final basic pay of  
21 each employee who is covered under subchapter III  
22 of chapter 83 or chapter 84 of title 5, United States  
23 Code, to whom a voluntary separation incentive has  
24 been paid under this section.

1           (2) DEFINITION.—In paragraph (1), the term  
2           “final basic pay”, with respect to an employee,  
3           means the total amount of basic pay which would be  
4           payable for a year of service by such employee, com-  
5           puted using the employee’s final rate of basic pay,  
6           and, if last serving on other than a full-time basis,  
7           with appropriate adjustment therefore.

8           (d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH  
9           THE GOVERNMENT.—An individual who has received a  
10          voluntary separation incentive payment under this section  
11          and accepts any employment for compensation with the  
12          Government of the United States, or who works for any  
13          agency of the United States Government through a per-  
14          sonal services contract, within 5 years after the date of  
15          the separation on which the payment is based, shall be  
16          required to pay, prior to the individual’s first day of em-  
17          ployment, the entire amount of the incentive payment to  
18          the Immigration Affairs Agency.

19          (e) USE OF VOLUNTARY SEPARATIONS.—The Immi-  
20          gration Affairs Agency may redeploy or use the full-time  
21          equivalent positions vacated by voluntary separations  
22          under this section to make other positions available to  
23          more critical locations or more critical occupations.

1 **SEC. 204. BASIS FOR EVALUATION OF IMMIGRATION AF-**  
2 **FAIRS AGENCY EMPLOYEES.**

3 The Immigration Affairs Agency shall use the fair  
4 and equitable treatment of aliens by employees as one of  
5 the standards for evaluating employee performance.

6 **SEC. 205. EFFECTIVE DATE.**

7 Except as otherwise provided in section 202(f), this  
8 title, and the amendments made by this title, shall take  
9 effect 18 months after the date of enactment of this Act.

10 **TITLE III—UNACCOMPANIED**  
11 **ALIEN CHILD PROTECTION**

12 **SEC. 301. SHORT TITLE.**

13 This title may be cited as the “Unaccompanied Alien  
14 Child Protection Act of 2002”.

15 **SEC. 302. DEFINITIONS.**

16 (a) IN GENERAL.—In this title:

17 (1) DIRECTOR.—The term “Director” means  
18 the Director of the Office.

19 (2) OFFICE.—The term “Office” means the Of-  
20 fice of Children’s Services established by section  
21 311.

22 (3) SERVICE.—The term “Service” means the  
23 Immigration and Naturalization Service (or, upon  
24 the effective date of title I, the Immigration Affairs  
25 Agency).

1           (4) UNACCOMPANIED ALIEN CHILD.—The term  
2           “unaccompanied alien child” means a child who—

3                   (A) has no lawful immigration status in  
4           the United States;

5                   (B) has not attained the age of 18; and

6                   (C) with respect to whom—

7                           (i) there is no parent or legal guard-  
8                   ian in the United States; or

9                           (ii) no parent or legal guardian in the  
10           United States is available to provide care  
11           and physical custody.

12           (5) VOLUNTARY AGENCY.—The term “vol-  
13           untary agency” means a private, nonprofit voluntary  
14           agency with expertise in meeting the cultural, devel-  
15           opmental, or psychological needs of unaccompanied  
16           alien children as licensed by the appropriate State  
17           and certified by the Attorney General.

18           (b) AMENDMENTS TO THE IMMIGRATION AND NA-  
19           TIONALITY ACT.—Section 101(a) (8 U.S.C. 1101(a)) is  
20           amended by adding at the end the following new para-  
21           graphs:

22                   “(51) The term ‘unaccompanied alien child’ means  
23           a child who—

24                           “(A) has no lawful immigration status in the  
25           United States;



1 “(B) has not attained the age of 18; and

2 “(C) with respect to whom—

3 “(i) there is no parent or legal guardian in  
4 the United States; or

5 “(ii) no parent or legal guardian in the  
6 United States is able to provide care and phys-  
7 ical custody.

8 “(52) The term ‘unaccompanied refugee children’  
9 means persons described in paragraph (42) who—

10 “(A) have not attained the age of 18; and

11 “(B) with respect to whom there are no parents  
12 or legal guardians available to provide care and  
13 physical custody.”.

## 14 **Subtitle A—Structural Changes**

### 15 **SEC. 311. ESTABLISHMENT OF THE OFFICE OF CHILDREN’S** 16 **SERVICES.**

17 (a) ESTABLISHMENT.—

18 (1) PROHIBITED WITHIN INS.—There is estab-  
19 lished within the Department of Justice the Office  
20 of Children’s Services. The Office shall not be an of-  
21 fice within the Immigration and Naturalization Serv-  
22 ice.

23 (2) COMPONENTS.—The Office shall include  
24 such other components, staff, and resources as the

1 Attorney General may determine necessary to carry  
2 out this title.

3 (b) TRANSFER OF FUNCTIONS.—

4 (1) IN GENERAL.—All functions with respect to  
5 the care and custody of unaccompanied alien chil-  
6 dren under the immigration laws of the United  
7 States vested by statute in, or exercised by, the  
8 Commissioner of Immigration and Naturalization (or  
9 any officer, employee, or component thereof), imme-  
10 diately prior to the effective date of this subtitle, are  
11 transferred to the Office under the general authority  
12 of the Attorney General.

13 (2) RESPONSIBILITIES OF THE OFFICE.—The  
14 Office shall be responsible for coordinating and im-  
15 plementing law and policy for unaccompanied alien  
16 children who come into the custody of the Depart-  
17 ment of Justice.

18 (c) DIRECTOR OF THE OFFICE OF CHILDREN'S  
19 SERVICES.—

20 (1) IN GENERAL.—The Office shall be headed  
21 by a Director of Children's Services, who shall be  
22 appointed by and report directly to the Attorney  
23 General or his designee, if the designee is at a level  
24 no lower than Associate Attorney General.

1           (2) COMPENSATION AT LEVEL IV OF EXECU-  
2           TIVE SCHEDULE.—Section 5315 of title 5, United  
3           States Code, is amended by adding at the end the  
4           following:

5           “Director of the Office of Children’s Services, De-  
6           partment of Justice.”.

7           (3) DUTIES.—The Director shall be responsible  
8           for—

9                   (A) ensuring that the best interests of the  
10                  child are considered in decisions and actions re-  
11                  lating to the care and placement of an unac-  
12                  companied alien child;

13                  (B) making placement, release, and deten-  
14                  tion determinations for all unaccompanied alien  
15                  children in the custody of the Office;

16                  (C) implementing the placement, release,  
17                  and detention determinations made by the Of-  
18                  fice;

19                  (D) coordinating and implementing law  
20                  and policy for unaccompanied alien children  
21                  who come into the custody of the Department  
22                  of Justice;

23                  (E) convening, in the absence of the Attor-  
24                  ney General, the Interagency Task Force on

1 Unaccompanied Alien Children established in  
2 section 312;

3 (F) identifying a sufficient number of  
4 qualified persons, entities, and facilities to  
5 house unaccompanied alien children in accord-  
6 ance with sections 322 and 323;

7 (G) overseeing the persons, entities, and  
8 facilities described in sections 322 and 323 to  
9 ensure their compliance with such provisions;

10 (H) compiling, updating, and publishing at  
11 least annually a State-by-State list of profes-  
12 sionals or other entities qualified to contract  
13 with the Office to provide the services described  
14 in sections 331 and 332;

15 (I) maintaining statistical information and  
16 other data on unaccompanied alien children in  
17 the Office's custody and care, which shall  
18 include—

19 (i) biographical information such as  
20 the child's name, gender, date of birth,  
21 country of birth, and country of habitual  
22 residence;

23 (ii) the date on which the child came  
24 into the custody of—

1 (I) the Department of Justice  
2 (other than as described in subclause  
3 (II) or (III);

4 (II) the Service; or  
5 (III) the Office;

6 (iii) information relating to the cus-  
7 tody, detention, release, and repatriation of  
8 unaccompanied alien children who have  
9 been in the custody of the Office;

10 (iv) in any case in which the child is  
11 placed in detention, an explanation relating  
12 to the detention; and

13 (v) the disposition of any actions in  
14 which the child is the subject;

15 (J) collecting and compiling statistical in-  
16 formation from the Service, including Border  
17 Patrol and inspections officers, on the unaccom-  
18 panied alien children with whom they come into  
19 contact; and

20 (K) conducting investigations and inspec-  
21 tions of facilities and other entities in which un-  
22 accompanied alien children reside.

23 (4) DUTIES WITH RESPECT TO FOSTER CARE.—

24 In carrying out the duties described in paragraph  
25 (3)(F), the Director shall assess the extent to which

1 the refugee children foster care system utilized pur-  
2 suant to section 412(d)(2) of the Immigration and  
3 Nationality Act can feasibly be expanded for the  
4 placement of unaccompanied alien children.

5 (5) POWERS.—In carrying out the duties speci-  
6 fied in paragraph (3), the Director shall have the  
7 power to—

8 (A) contract with service providers to per-  
9 form the services described in sections 322,  
10 323, 331, and 332; and

11 (B) compel compliance with the terms and  
12 conditions set forth in section 323, including  
13 the power to terminate the contracts of pro-  
14 viders that are not in compliance with such con-  
15 ditions and reassign any unaccompanied alien  
16 child to a similar facility that is in compliance  
17 with such section.

18 (d) NO EFFECT ON INS, EOIR, AND DEPARTMENT  
19 OF STATE ADJUDICATORY RESPONSIBILITIES.—Nothing  
20 in this title may be construed to transfer the responsibility  
21 for adjudicating benefit determinations under the Immi-  
22 gration and Nationality Act from the authority of any offi-  
23 cial of the Service, the Executive Office of Immigration  
24 Review of the Department of Justice, or the Department  
25 of State.

1 **SEC. 312. ESTABLISHMENT OF INTERAGENCY TASK FORCE**  
2 **ON UNACCOMPANIED ALIEN CHILDREN.**

3 (a) ESTABLISHMENT.—There is established an Inter-  
4 agency Task Force on Unaccompanied Alien Children.

5 (b) COMPOSITION.—The Task Force shall consist of  
6 the following members:

7 (1) The Attorney General.

8 (2) The Commissioner of Immigration and Nat-  
9 uralization.

10 (3) The Assistant Secretary of State for Popu-  
11 lation, Refugees, and Migration.

12 (4) The Director of the Office of Refugee Re-  
13 settlement of the Department of Health and Human  
14 Services.

15 (5) The Director.

16 (6) Such other officials in the executive branch  
17 of Government as may be designated by the Presi-  
18 dent.

19 (c) CHAIRMAN.—The Task Force shall be chaired by  
20 the Attorney General.

21 (d) ACTIVITIES OF THE TASK FORCE.—In consulta-  
22 tion with nongovernmental organizations, the Task Force  
23 shall—

24 (1) measure and evaluate the progress of the  
25 United States in treating unaccompanied alien chil-  
26 dren in United States custody; and

1           (2) expand interagency procedures to collect  
2           and organize data, including significant research and  
3           resource information on the needs and treatment of  
4           unaccompanied alien children in the custody of the  
5           United States Government.

6 **SEC. 313. EFFECTIVE DATE.**

7           This subtitle shall take effect 180 days after the date  
8           of enactment of this Act.

9 **Subtitle B—Custody, Release, Fam-**  
10 **ily Reunification, and Detention**

11 **SEC. 321. PROCEDURES WHEN ENCOUNTERING UNACCOM-**  
12 **PANIED ALIEN CHILDREN.**

13           (a) UNACCOMPANIED CHILDREN FOUND ALONG THE  
14 UNITED STATES BORDER OR AT UNITED STATES PORTS  
15 OF ENTRY.—

16           (1) IN GENERAL.—Subject to paragraph (2), if  
17           an immigration officer finds an unaccompanied alien  
18           child who is described in paragraph (2) at a land  
19           border or port of entry of the United States and de-  
20           termines that such child is inadmissible under the  
21           Immigration and Nationality Act, the officer shall—

22                   (A) permit such child to withdraw the  
23                   child’s application for admission pursuant to  
24                   section 235(a)(4) of the Immigration and Na-  
25                   tionality Act; and



1 (B) remove such child from the United  
2 States.

3 (2) SPECIAL RULE FOR CONTIGUOUS COUN-  
4 TRIES.—

5 (A) IN GENERAL.—Any child who is a na-  
6 tional or habitual resident of a country that is  
7 contiguous with the United States and that has  
8 an agreement in writing with the United States  
9 providing for the safe return and orderly repa-  
10 triation of unaccompanied alien children who  
11 are nationals or habitual residents of such  
12 country shall be treated in accordance with  
13 paragraph (1), unless a determination is made  
14 on a case-by-case basis that—

15 (i) such child has a fear of returning  
16 to the child's country of nationality or  
17 country of last habitual residence owing to  
18 a fear of persecution;

19 (ii) the return of such child to the  
20 child's country of nationality or country of  
21 last habitual residence would endanger the  
22 life or safety of such child; or

23 (iii) the child cannot make an inde-  
24 pendent decision to withdraw the child's

1 application for admission due to age or  
2 other lack of capacity.

3 (B) RIGHT OF CONSULTATION.—Any child  
4 described in subparagraph (A) shall have the  
5 right to consult with a consular officer from the  
6 child’s country of nationality or country of last  
7 habitual residence prior to repatriation, as well  
8 as consult with the Office, telephonically, and  
9 such child shall be informed of that right.

10 (3) RULE FOR APPREHENSIONS AT THE BOR-  
11 DER.—The custody of unaccompanied alien children  
12 not described in paragraph (2) who are apprehended  
13 at the border of the United States or at a United  
14 States port of entry shall be treated in accordance  
15 with the provisions of subsection (b).

16 (b) CUSTODY OF UNACCOMPANIED ALIEN CHILDREN  
17 FOUND IN THE INTERIOR OF THE UNITED STATES.—

18 (1) ESTABLISHMENT OF JURISDICTION.—

19 (A) IN GENERAL.—Except as otherwise  
20 provided in subsection (a) and subparagraph  
21 (B), the custody of all unaccompanied alien  
22 children, including responsibility for their de-  
23 tention, where appropriate, shall be under the  
24 jurisdiction of the Office.

1 (B) EXCEPTION FOR CHILDREN WHO HAVE  
2 COMMITTED CRIMES.—Notwithstanding sub-  
3 paragraph (A), the Service shall retain or as-  
4 sume the custody and care of any unaccom-  
5 panied alien child who—

6 (i) has been charged with any felony,  
7 excluding offenses proscribed by the Immi-  
8 gration and Nationality Act, while such  
9 charges are pending; or

10 (ii) has been convicted of any such fel-  
11 ony.

12 (2) NOTIFICATION.—Upon apprehension of an  
13 unaccompanied alien child, the Attorney General  
14 shall promptly notify the Office.

15 (3) TRANSFER OF UNACCOMPANIED ALIEN  
16 CHILDREN.—

17 (A) TRANSFER TO THE OFFICE.—Not later  
18 than 72 hours after apprehension of an unac-  
19 companied alien child, the care and custody of  
20 such children not described in paragraph (1)(B)  
21 shall be transferred to the Office.

22 (B) TRANSFER OF CHILDREN WHO HAVE  
23 COMMITTED CRIMES.—Upon determining that a  
24 child in the custody of the Office is described  
25 in paragraph (1)(B), the Director shall prompt-

1           ly make arrangements to transfer the care and  
2           custody of such child to the Service.

3           (c) AGE DETERMINATIONS.—In any case in which  
4 the age of an alien is in question and the resolution of  
5 questions about such alien’s age would affect the alien’s  
6 eligibility for treatment under the provisions of this title,  
7 a determination of whether such alien meets the age re-  
8 quirements of this title shall be made in accordance with  
9 the provisions of section 325.

10 **SEC. 322. FAMILY REUNIFICATION FOR UNACCOMPANIED**  
11                           **ALIEN CHILDREN WITH RELATIVES IN THE**  
12                           **UNITED STATES.**

13           (a) PLACEMENT AUTHORITY.—

14           (1) ORDER OF PREFERENCE.—Subject to the  
15 Attorney General’s discretion under paragraph (4)  
16 and section 323(a)(2), an unaccompanied alien child  
17 in the custody of the Office shall be promptly placed  
18 with one of the following individuals in the following  
19 order of preference:

20                   (A) A parent who seeks to establish cus-  
21                   tody, as described in paragraph (3)(A).

22                   (B) A legal guardian who seeks to estab-  
23                   lish custody, as described in paragraph (3)(A).

24                   (C) An adult relative.

1           (D) An entity designated by the parent or  
2           legal guardian that is capable and willing to  
3           care for the child's well-being.

4           (E) A State-licensed juvenile shelter, group  
5           home, or foster home willing to accept legal cus-  
6           tody of the child.

7           (F) A qualified adult or entity seeking cus-  
8           tody of the child when it appears that there is  
9           no other likely alternative to long-term deten-  
10          tion and family reunification does not appear to  
11          be a reasonable alternative. For purposes of  
12          this subparagraph, the qualification of the adult  
13          or entity shall be decided by the Office.

14          (2) HOME STUDY.—Notwithstanding the provi-  
15          sions of paragraph (1), no unaccompanied alien child  
16          shall be placed with a person or entity unless a valid  
17          home-study conducted by an agency of the State of  
18          the child's proposed residence, by an agency author-  
19          ized by that State to conduct such a study, or by an  
20          appropriate voluntary agency contracted with the  
21          Office to conduct such studies has found that the  
22          person or entity is capable of providing for the  
23          child's physical and mental well-being.

24          (3) RIGHT OF PARENT OR LEGAL GUARDIAN TO  
25          CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

1 (A) PLACEMENT WITH PARENT OR LEGAL  
2 GUARDIAN.—If an unaccompanied alien child is  
3 placed with any person or entity other than a  
4 parent or legal guardian, but subsequent to  
5 that placement a parent or legal guardian seeks  
6 to establish custody, the Director shall assess  
7 the suitability of placing the child with the par-  
8 ent or legal guardian and shall make a written  
9 determination on the child’s placement within  
10 30 days.

11 (B) RULE OF CONSTRUCTION.—Nothing in  
12 this title shall be construed to—

13 (i) supersede obligations under any  
14 treaty or other international agreement to  
15 which the United States is a party, includ-  
16 ing The Hague Convention on the Civil As-  
17 pects of International Child Abduction, the  
18 Vienna Declaration and Programme of Ac-  
19 tion, and the Declaration of the Rights of  
20 the Child; or

21 (ii) limit any right or remedy under  
22 such international agreement.

23 (4) PROTECTION FROM SMUGGLERS AND TRAF-  
24 FICKERS.—The Director shall take steps to ensure  
25 that unaccompanied alien children are protected

1 from smugglers, traffickers, or others seeking to vic-  
2 timize or otherwise engage such children in criminal,  
3 harmful, or exploitative activity.

4 (5) GRANTS AND CONTRACTS.—Subject to the  
5 availability of appropriations, the Director is author-  
6 ized to make grants to, and enter into contracts  
7 with, voluntary agencies to carry out the provisions  
8 of this section.

9 (6) REIMBURSEMENT OF STATE EXPENSES.—  
10 Subject to the availability of appropriations, the Di-  
11 rector is authorized to reimburse States for any ex-  
12 penses they incur in providing assistance to unac-  
13 companied alien children who are served pursuant to  
14 this title.

15 (b) CONFIDENTIALITY.—All information obtained by  
16 the Office relating to the immigration status of a person  
17 listed in subsection (a) shall remain confidential and may  
18 be used only for the purposes of determining such person's  
19 qualifications under subsection (a)(1).

20 **SEC. 323. APPROPRIATE CONDITIONS FOR DETENTION OF**  
21 **UNACCOMPANIED ALIEN CHILDREN.**

22 (a) STANDARDS FOR PLACEMENT.—

23 (1) PROHIBITION OF DETENTION IN CERTAIN  
24 FACILITIES.—Except as provided in paragraph (2),  
25 an unaccompanied alien child shall not be placed in

1 an adult detention facility or a facility housing delin-  
2 quent children.

3 (2) DETENTION IN APPROPRIATE FACILITIES.—

4 An unaccompanied alien child who has exhibited a  
5 violent or criminal behavior that endangers others  
6 may be detained in conditions appropriate to the be-  
7 havior in a facility appropriate for delinquent chil-  
8 dren.

9 (3) STATE LICENSURE.—In the case of a place-  
10 ment of a child with an entity described in section  
11 322(a)(1)(E), the entity must be licensed by an ap-  
12 propriate State agency to provide residential, group,  
13 child welfare, or foster care services for dependent  
14 children.

15 (4) CONDITIONS OF DETENTION.—

16 (A) IN GENERAL.—At a minimum, the At-  
17 torney General shall promulgate regulations in-  
18 corporating standards for conditions of deten-  
19 tion in such placements that provide for—

20 (i) educational services appropriate to  
21 the child;

22 (ii) medical care;

23 (iii) mental health care, including  
24 treatment of trauma;

25 (iv) access to telephones;



- 1 (v) access to legal services;
- 2 (vi) access to interpreters;
- 3 (vii) supervision by professionals
- 4 trained in the care of children, taking into
- 5 account the special cultural, linguistic, and
- 6 experiential needs of children in immigra-
- 7 tion proceedings;
- 8 (viii) recreational programs and activi-
- 9 ties;
- 10 (ix) spiritual and religious needs; and
- 11 (x) dietary needs.

12 (B) NOTIFICATION OF CHILDREN.—Such

13 regulations shall provide that all children are

14 notified orally and in writing of such standards.

15 (b) PROHIBITION OF CERTAIN PRACTICES.—The Di-

16 rector and the Commissioner of Immigration and Natu-

17 ralization shall develop procedures prohibiting the unrea-

18 sonable use of—

19 (1) shackling, handcuffing, or other restraints

20 on children;

21 (2) solitary confinement; or

22 (3) pat or strip searches.

23 (c) RULE OF CONSTRUCTION.—Nothing in this sec-

24 tion shall be construed to supersede procedures favoring

25 release of children to appropriate adults or entities or

1 placement in the least secure setting possible, as defined  
2 in the Stipulated Settlement Agreement under Flores v.  
3 Reno.

4 **SEC. 324. REPATRIATED UNACCOMPANIED ALIEN CHIL-**  
5 **DREN.**

6 (a) COUNTRY CONDITIONS.—

7 (1) SENSE OF CONGRESS.—It is the sense of  
8 Congress that, to the extent consistent with the trea-  
9 ties and other international agreements to which the  
10 United States is a party and to the extent prac-  
11 ticable, the United States Government should under-  
12 take efforts to ensure that it does not repatriate  
13 children in its custody into settings that would  
14 threaten the life and safety of such children.

15 (2) ASSESSMENT OF CONDITIONS.—

16 (A) IN GENERAL.—In carrying out repatri-  
17 ations of unaccompanied alien children, the Of-  
18 fice shall conduct assessments of country condi-  
19 tions to determine the extent to which the coun-  
20 try to which a child is being repatriated has a  
21 child welfare system capable of ensuring the  
22 child's well being.

23 (B) FACTORS FOR ASSESSMENT.—In as-  
24 sessing country conditions, the Office shall, to  
25 the maximum extent practicable, examine the

1 conditions specific to the locale of the child's re-  
2 patriation.

3 (b) REPORT ON REPATRIATION OF UNACCOMPANIED  
4 ALIEN CHILDREN.—Beginning not later than 18 months  
5 after the date of enactment of this Act, and annually  
6 thereafter, the Director shall submit a report to the Judi-  
7 ciary Committees of the House of Representatives and  
8 Senate on the Director's efforts to repatriate unaccom-  
9 panied alien children. Such report shall include at a min-  
10 imum the following information:

11 (1) The number of unaccompanied alien chil-  
12 dren ordered removed and the number of such chil-  
13 dren actually removed from the United States.

14 (2) A description of the type of immigration re-  
15 lief sought and denied to such children.

16 (3) A statement of the nationalities, ages, and  
17 gender of such children.

18 (4) A description of the procedures used to ef-  
19 fect the removal of such children from the United  
20 States.

21 (5) A description of steps taken to ensure that  
22 such children were safely and humanely repatriated  
23 to their country of origin.

1           (6) Any information gathered in assessments of  
 2           country and local conditions pursuant to subsection  
 3           (a)(2).

4   **SEC. 325. ESTABLISHING THE AGE OF AN UNACCOMPANIED**  
 5                           **ALIEN CHILD.**

6           The Director shall develop procedures that permit the  
 7           presentation and consideration of a variety of forms of evi-  
 8           dence, including testimony of a child and other persons,  
 9           to determine an unaccompanied alien child's age for pur-  
 10          poses of placement, custody, parole, and detention. Such  
 11          procedures shall allow the appeal of a determination to  
 12          an immigration judge. Radiographs shall not be the sole  
 13          means of determining age.

14   **SEC. 326. EFFECTIVE DATE.**

15          This subtitle shall take effect 180 days after the date  
 16          of enactment of this Act.

17   **Subtitle C—Access by Unaccom-**  
 18                   **panied Alien Children to Guard-**  
 19                   **ians Ad Litem and Counsel**

20   **SEC. 331. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO**  
 21                           **GUARDIANS AD LITEM.**

22          (a) GUARDIAN AD LITEM.—

23                  (1) APPOINTMENT.—The Director shall appoint  
 24                  a guardian ad litem who meets the qualifications de-  
 25                  scribed in paragraph (2) for each unaccompanied

1 alien child in the custody of the Office not later than  
2 72 hours after the Office assumes physical or con-  
3 structive custody of such child. The Director is en-  
4 couraged, wherever practicable, to contract with a  
5 voluntary agency for the selection of an individual to  
6 be appointed as a guardian ad litem under this para-  
7 graph.

8 (2) QUALIFICATIONS OF GUARDIAN AD  
9 LITEM.—

10 (A) IN GENERAL.—No person shall serve  
11 as a guardian ad litem who is not—

12 (i) a child welfare professional or  
13 other individual who has received training  
14 in child welfare matters; and

15 (ii) possessing of special training on  
16 the nature of problems encountered by un-  
17 accompanied alien children.

18 (B) PROHIBITION.—A guardian ad litem  
19 shall not be an employee of the Service.

20 (3) DUTIES.—The guardian ad litem shall—

21 (A) conduct interviews with the child in a  
22 manner that is appropriate, taking into account  
23 the child's age;

24 (B) investigate the facts and circumstances  
25 relevant to such child's presence in the United

1 States, including facts and circumstances arising in the country of the child's nationality or  
2 last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

3  
4  
5  
6 (C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

7  
8  
9  
10 (D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

11  
12  
13 (E) ensure that the child's best interests are promoted while the child participates in, or is subject to, proceedings or actions under the Immigration and Nationality Act;

14  
15  
16 (F) ensure that the child understands such determinations and proceedings; and

17  
18  
19 (G) report findings and recommendations to the Director and to the Executive Office of Immigration Review.

20  
21  
22 (4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

23  
24  
25 (A) those duties are completed,

1 (B) the child departs the United States,

2 (C) the child is granted permanent resi-  
3 dent status in the United States,

4 (D) the child attains the age of 18, or

5 (E) the child is placed in the custody of a  
6 parent or legal guardian,

7 whichever occurs first.

8 (5) POWERS.—The guardian ad litem—

9 (A) shall have reasonable access to the  
10 child, including access while such child is being  
11 held in detention or in the care of a foster fam-  
12 ily;

13 (B) shall be permitted to review all records  
14 and information relating to such proceedings  
15 that are not deemed privileged or classified;

16 (C) may seek independent evaluations of  
17 the child;

18 (D) shall be notified in advance of all hear-  
19 ings involving the child that are held in connec-  
20 tion with proceedings under the Immigration  
21 and Nationality Act, and shall be given a rea-  
22 sonable opportunity to be present at such hear-  
23 ings; and

1           (E) shall be permitted to consult with the  
2           child during any hearing or interview involving  
3           such child.

4           (b) TRAINING.—The Director shall provide profes-  
5           sional training for all persons serving as guardians ad  
6           litem under this section in the circumstances and condi-  
7           tions that unaccompanied alien children face as well as  
8           in the various immigration benefits for which such a child  
9           might be eligible.

10 **SEC. 332. RIGHT OF UNACCOMPANIED ALIEN CHILDREN TO**  
11 **COUNSEL.**

12           (a) ACCESS TO COUNSEL.—

13           (1) IN GENERAL.—The Director shall ensure  
14           that all unaccompanied alien children in the custody  
15           of the Office or in the custody of the Service who  
16           are not described in section 321(a)(2) shall have  
17           competent counsel to represent them in immigration  
18           proceedings or matters.

19           (2) PRO BONO REPRESENTATION.—To the max-  
20           imum extent practicable, the Director shall utilize  
21           the services of pro bono attorneys who agree to pro-  
22           vide representation to such children without charge.

23           (3) GOVERNMENT FUNDED REPRESENTA-  
24           TION.—



1 (A) APPOINTMENT OF COMPETENT COUN-  
2 SEL.—Notwithstanding section 292 of the Im-  
3 migration and Nationality Act (8 U.S.C. 1362)  
4 or any other provision of law, when no com-  
5 petent counsel is available to represent an unac-  
6 companied alien child without charge, the Di-  
7 rector shall appoint competent counsel for such  
8 child at the expense of the Government.

9 (B) LIMITATION ON ATTORNEY FEES.—  
10 Counsel appointed under subparagraph (A) may  
11 not be compensated at a rate in excess of the  
12 rate provided under section 3006A of title 18,  
13 United States Code.

14 (C) AVAILABILITY OF FUNDING.—In car-  
15 rying out this paragraph, the Director may  
16 make use of funds derived from—

17 (i) the premium fee for employment-  
18 based petitions and applications authorized  
19 by section 286(u) of the Immigration and  
20 Nationality Act (8 U.S.C. 1356(u)); or

21 (ii) any other source designated by the  
22 Attorney General from discretionary funds  
23 available to the Department of Justice.

24 (D) ASSUMPTION OF THE COST OF GOV-  
25 ERNMENT-PAID COUNSEL.—In the case of a

1 child for whom counsel is appointed under sub-  
2 paragraph (A) who is subsequently placed in  
3 the physical custody of a parent or legal guard-  
4 ian, such parent or legal guardian may elect to  
5 retain the same counsel to continue representa-  
6 tion of the child, at no expense to the Govern-  
7 ment, beginning on the date that the parent or  
8 legal guardian assumes physical custody of the  
9 child.

10 (4) DEVELOPMENT OF NECESSARY INFRA-  
11 STRUCTURES AND SYSTEMS.—In ensuring that legal  
12 representation is provided to such children, the Di-  
13 rector shall develop the necessary mechanisms to  
14 identify entities available to provide such legal as-  
15 sistance and representation and to recruit such enti-  
16 ties.

17 (5) CONTRACTING AND GRANT MAKING AU-  
18 THORITY.—

19 (A) IN GENERAL.—Subject to the avail-  
20 ability of appropriations, the Director shall  
21 enter into contracts with or make grants to na-  
22 tional nonprofit agencies with relevant expertise  
23 in the delivery of immigration-related legal serv-  
24 ices to children in order to carry out this sub-  
25 section.

1                   (B) INELIGIBILITY FOR GRANTS AND CON-  
2                   TRACTS.—In making grants and entering into  
3                   contracts with such agencies, the Director shall  
4                   ensure that no such agency is—

5                   (i) a grantee or contractee for services  
6                   provided under section 322 or 331; and

7                   (ii) simultaneously a grantee or con-  
8                   tractee for services provided under sub-  
9                   paragraph (A).

10           (b) REQUIREMENT OF LEGAL REPRESENTATION.—

11           The Director shall ensure that all unaccompanied alien  
12           children have legal representation within 7 days of the  
13           child coming into the custody of the Department of Jus-  
14           tice.

15           (c) DUTIES.—Counsel shall represent the unaccom-  
16           panied alien child all proceedings and actions relating to  
17           the child's immigration status or other actions involving  
18           the Service and appear in person for all individual merits  
19           hearings before the Executive Office for Immigration Re-  
20           view and interviews involving the Service.

21           (d) ACCESS TO CHILD.—

22           (1) IN GENERAL.—Counsel shall have reason-  
23           able access to the unaccompanied alien child, includ-  
24           ing access while the child is being held in detention,

1 in the care of a foster family, or in any other setting  
2 that has been determined by the Office.

3 (2) RESTRICTION ON TRANSFERS.—Absent  
4 compelling and unusual circumstances, no child who  
5 is represented by counsel shall be transferred from  
6 the child’s placement to another placement unless  
7 advance notice of at least 24 hours is made to coun-  
8 sel of such transfer.

9 (e) TERMINATION OF APPOINTMENT.—Counsel shall  
10 carry out the duties described in subsection (c) until—

11 (1) those duties are completed,

12 (2) the child departs the United States,

13 (3) the child is granted withholding of removal  
14 under section 241(b)(3) of the Immigration and Na-  
15 tionality Act,

16 (4) the child is granted protection under the  
17 Convention Against Torture,

18 (5) the child is granted asylum in the United  
19 States under section 208 of the Immigration and  
20 Nationality Act,

21 (6) the child is granted permanent resident sta-  
22 tus in the United States, or

23 (7) the child attains 18 years of age,  
24 whichever occurs first.

1 (f) NOTICE TO COUNSEL DURING IMMIGRATION PRO-  
2 CEEDINGS.—

3 (1) IN GENERAL.—Except when otherwise re-  
4 quired in an emergency situation involving the phys-  
5 ical safety of the child, counsel shall be given prompt  
6 and adequate notice of all immigration matters af-  
7 fecting or involving an unaccompanied alien child,  
8 including adjudications, proceedings, and processing,  
9 before such actions are taken.

10 (2) OPPORTUNITY TO CONSULT WITH COUN-  
11 SEL.—An unaccompanied alien child in the custody  
12 of the Office may not give consent to any immigra-  
13 tion action, including consenting to voluntary depart-  
14 ure, unless first afforded an opportunity to consult  
15 with counsel.

16 (g) ACCESS TO RECOMMENDATIONS OF GUARDIAN  
17 AD LITEM.—Counsel shall be afforded an opportunity to  
18 review the recommendation by the guardian ad litem af-  
19 fecting or involving a client who is an unaccompanied alien  
20 child.

21 **SEC. 333. TRANSITIONAL PILOT PROGRAM.**

22 (a) IN GENERAL.—Not later than 90 days after the  
23 date of enactment of this Act, the Attorney General shall  
24 establish and begin to carry out a transitional pilot pro-  
25 gram (in this section referred to as the “pilot program”)

1 of not more than 90 days in duration to test the imple-  
2 mentation of the guardian ad litem provisions in section  
3 331 and the counsel provisions in section 332(a)(3).

4 (b) PURPOSE.—The purpose of the pilot program is  
5 to study and assess the most efficient and cost-effective  
6 means of implementing the guardian ad litem provisions  
7 in section 331 and the counsel provisions in section  
8 332(a)(3) on a nationwide basis.

9 (c) SCOPE OF PROGRAM.—

10 (1) IN GENERAL.—The Attorney General shall  
11 select three sites in which to operate the pilot pro-  
12 gram, including at least one secure facility and at  
13 least one shelter care facility.

14 (2) ELIGIBILITY OF SITES.—To the maximum  
15 extent practicable, each such site should have—

16 (A) at least 25 children held in immigra-  
17 tion custody at any given time; and

18 (B) an existing pro bono legal representa-  
19 tion program for such children.

20 (d) REFERENCES TO DIRECTOR.—For the purpose of  
21 operating the pilot program, to the extent that such pro-  
22 gram is operating prior to the designation of a Director,  
23 the Attorney General may designate any officer within the  
24 Department of Justice to perform the functions of the Di-

1 rector, if that officer is not an employee of the Immigra-  
2 tion and Naturalization Service.

3 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated such sums as may be  
5 necessary to operate the pilot program.

6 **SEC. 334. EFFECTIVE DATE; APPLICABILITY.**

7 (a) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Except as provided in para-  
9 graph (2), this subtitle shall take effect 180 days  
10 after the date of enactment of this Act.

11 (2) EXCEPTIONS.—Sections 331 and 332(a)(3)  
12 shall take effect 270 days after the date of enact-  
13 ment of this Act.

14 (b) APPLICABILITY.—The provisions of this subtitle  
15 shall apply to all unaccompanied alien children in the cus-  
16 tody of the Department of Justice on, before, or after the  
17 date of enactment of this Act.

18 **Subtitle D—Strengthening Policies**  
19 **for Permanent Protection of**  
20 **Alien Children**

21 **SEC. 341. SPECIAL IMMIGRANT JUVENILE VISA.**

22 (a) J VISA.—Section 101(a)(27)(J) (8 U.S.C.  
23 1101(a)(27)(J)) is amended to read as follows:

1           “(J) an immigrant under the age of 18 on the  
2           date of application who is present in the United  
3           States—

4                   “(i) who has been declared dependent on a  
5                   juvenile court located in the United States or  
6                   whom such a court has legally committed to, or  
7                   placed under the custody of, a department or  
8                   agency of a State, or an individual or entity ap-  
9                   pointed by a State, and who has been deemed  
10                  eligible by that court for long-term foster care  
11                  due to abuse, neglect, or abandonment, or a  
12                  similar basis found under State law;

13                  “(ii) for whom it has been determined in  
14                  administrative or judicial proceedings that it  
15                  would not be in the alien’s best interest to be  
16                  returned to the alien’s or parent’s previous  
17                  country of nationality or country of last habit-  
18                  ual residence; and

19                  “(iii) for whom the Office of Children’s  
20                  Services of the Department of Justice has cer-  
21                  tified to the Commissioner that the classifica-  
22                  tion of an alien as a special immigrant under  
23                  this subparagraph has not been made solely to  
24                  provide an immigration benefit to that alien;



1       except that no natural parent or prior adoptive par-  
2       ent of any alien provided special immigrant status  
3       under this subparagraph shall thereafter, by virtue  
4       of such parentage, be accorded any right, privilege,  
5       or status under this Act;”.

6       (b) ADJUSTMENT OF STATUS.—Section 245(h)(2) (8  
7 U.S.C. 1255(h)(2)) is amended—

8           (1) by amending subparagraph (A) to read as  
9       follows:

10           “(A) paragraphs (1), (4), (5), (6), and  
11           (7)(A) of section 212(a) shall not apply;”;

12           (2) in subparagraph (B), by striking the period  
13       and inserting “, and”; and

14           (3) by adding at the end the following new sub-  
15       paragraph:

16           “(C) the Attorney General may waive  
17           paragraphs (2)(A) and (2)(B) in the case of an  
18           offense which arose as a consequence of the  
19           child being unaccompanied.”.

20       (c) ELIGIBILITY FOR ASSISTANCE.—A child who has  
21       been granted relief under section 101(a)(27)(J) of the Im-  
22       migration and Nationality Act (8 U.S.C. 1101(a)(27)(J)),  
23       as amended by subsection (a), and who is in the custody  
24       of a State shall be eligible for all funds made available  
25       under section 412(d) of such Act.

1 **SEC. 342. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE**  
2 **PARTIES WHO COME INTO CONTACT WITH**  
3 **UNACCOMPANIED ALIEN CHILDREN.**

4 (a) TRAINING OF STATE AND LOCAL OFFICIALS AND  
5 CERTAIN PRIVATE PARTIES.—The Attorney General, act-  
6 ing jointly with the Secretary of Health and Human Serv-  
7 ices, shall provide appropriate training to be available to  
8 State and county officials, child welfare specialists, teach-  
9 ers, public counsel, and juvenile judges who come into con-  
10 tact with unaccompanied alien children. The training shall  
11 provide education on the processes pertaining to unaccom-  
12 panied alien children with pending immigration status and  
13 on the forms of relief potentially available. The Director  
14 shall be responsible for establishing a core curriculum that  
15 can be incorporated into currently existing education,  
16 training, or orientation modules or formats that are cur-  
17 rently used by these professionals.

18 (b) TRAINING OF INS PERSONNEL.—The Attorney  
19 General shall provide specialized training to all personnel  
20 of the Service who come into contact with unaccompanied  
21 alien children. In the case of Border Patrol agents and  
22 immigration inspectors, such training shall include specific  
23 training on identifying children at the United States bor-  
24 der or at United States ports of entry who have been vic-  
25 timized by smugglers or traffickers, and children for whom

1 asylum or special immigrant relief may be appropriate, in-  
2 cluding children described in section 321(a)(2).

3 **SEC. 343. EFFECTIVE DATES.**

4 The amendment made by section 341 shall apply to  
5 all eligible children who were in the United States before,  
6 on, or after the date of enactment of this Act.

7 **Subtitle E—Children Refugee and**  
8 **Asylum Seekers**

9 **SEC. 351. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.**

10 (a) SENSE OF CONGRESS.—Congress commends the  
11 Service for its issuance of its “Guidelines for Children’s  
12 Asylum Claims”, dated December 1998, and encourages  
13 and supports the Service’s implementation of such guide-  
14 lines in an effort to facilitate the handling of children’s  
15 asylum claims. Congress calls upon the Executive Office  
16 for Immigration Review of the Department of Justice to  
17 adopt the “Guidelines for Children’s Asylum Claims” in  
18 its handling of children’s asylum claims before immigra-  
19 tion judges and the Board of Immigration Appeals.

20 (b) TRAINING.—The Attorney General shall provide  
21 periodic comprehensive training under the “Guidelines for  
22 Children’s Asylum Claims” to asylum officers, immigra-  
23 tion judges, members of the Board of Immigration Ap-  
24 peals, and immigration officers who have contact with chil-  
25 dren in order to familiarize and sensitize such officers to

1 the needs of children asylum seekers. Voluntary agencies  
2 shall be allowed to assist in such training.

3 **SEC. 352. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHIL-**  
4 **DREN IN ASYLUM AND REFUGEE-LIKE CIR-**  
5 **CUMSTANCES.**

6 (a) EXCEPTION FROM EXPEDITED REMOVAL.—Sec-  
7 tion 235(b)(1)(F) (8 U.S.C. 1225(b)(1)(F)) is amended  
8 by striking “an alien” and inserting “unaccompanied alien  
9 child or an alien”.

10 (b) EXCEPTION FROM TIME LIMIT FOR FILING ASY-  
11 LUM APPLICATION.—Section 208(a)(2) (8 U.S.C.  
12 1158(a)(2)) is amended by adding at the end the following  
13 new subparagraph:

14 “(E) Subparagraphs (A) and (B) shall not  
15 apply to an unaccompanied alien child.”.

16 **SEC. 353. UNACCOMPANIED REFUGEE CHILDREN.**

17 (a) IDENTIFYING UNACCOMPANIED REFUGEE CHIL-  
18 DREN.—Section 207(e) (8 U.S.C. 1157(e)) is amended—

19 (1) by redesignating paragraphs (3), (4), (5),  
20 (6), and (7) as paragraphs (4), (5), (6), (7), and  
21 (8), respectively; and

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

1           “(3) An analysis of the worldwide situation  
2           faced by unaccompanied refugee children, by region.

3           Such analysis shall include an assessment of—

4                   “(A) the number of unaccompanied refugee  
5           children, by region;

6                   “(B) the capacity of the Department of  
7           State to identify such refugees;

8                   “(C) the capacity of the international com-  
9           munity to care for and protect such refugees;

10                   “(D) the capacity of the voluntary agency  
11           community to resettle such refugees in the  
12           United States;

13                   “(E) the degree to which the United States  
14           plans to resettle such refugees in the United  
15           States in the coming fiscal year; and

16                   “(F) the fate that will befall such unac-  
17           companied refugee children for whom resettle-  
18           ment in the United States is not possible.”.

19           (b) TRAINING ON THE NEEDS OF UNACCOMPANIED  
20           REFUGEE CHILDREN.—Section 207(f)(2) (8 U.S.C.  
21           1157(f)(2)) is amended by—

22                   (1) striking “and” after “countries,”; and

23                   (2) inserting before the period at the end the  
24           following: “, and instruction on the needs of unac-  
25           companied refugee children”.

1           **Subtitle F—Authorization of**  
2                           **Appropriations**

3   **SEC. 361. AUTHORIZATION OF APPROPRIATIONS.**

4           (a) IN GENERAL.—There are authorized to be appro-  
5   priated such sums as may be necessary to carry out the  
6   provisions of this title.

7           (b) AVAILABILITY OF FUNDS.—Amounts appro-  
8   priated pursuant to subsection (a) are authorized to re-  
9   main available until expended.

10           **TITLE IV—MISCELLANEOUS**  
11                           **PROVISIONS**

12   **SEC. 401. FUNDING ADJUDICATION AND NATURALIZATION**  
13                           **SERVICES.**

14           (a) LEVEL OF FEES.—Section 286(m) of the Immi-  
15   gration and Nationality Act (8 U.S.C. 1356(m)) is amend-  
16   ed by striking “services, including the costs of similar  
17   services provided without charge to asylum applicants or  
18   other immigrants” and inserting “services”.

19           (b) USE OF FEES.—

20           (1) IN GENERAL.—Each fee collected for the  
21   provision of an adjudication or naturalization service  
22   shall be used only to fund adjudication or natu-  
23   ralization services or, subject to the availability of  
24   funds provided pursuant to subsection (c), costs of

1 similar services provided without charge to asylum  
2 and refugee applicants.

3 (2) PROHIBITION.—No fee may be used to fund  
4 adjudication- or naturalization-related audits that  
5 are not regularly conducted in the normal course of  
6 operation.

7 (c) REFUGEE AND ASYLUM ADJUDICATION SERV-  
8 ICES.—

9 (1) AUTHORIZATION OF APPROPRIATIONS.—In  
10 addition to such sums as may be otherwise available  
11 for such purposes, there are authorized to be appro-  
12 priated such sums as may be necessary to carry out  
13 the provisions of sections 207 through 209 of the  
14 Immigration and Nationality Act.

15 (2) AVAILABILITY OF FUNDS.—Funds appro-  
16 priated pursuant to paragraph (1) are authorized to  
17 remain available until expended.

18 (d) SEPARATION OF FUNDING.—

19 (1) IN GENERAL.—There shall be established  
20 separate accounts in the Treasury of the United  
21 States for appropriated funds and other collections  
22 available for the Bureau of Immigration Services  
23 and Adjudications and the Bureau of Enforcement  
24 and Border Affairs.

1           (2) FEES.—Fees imposed for a particular serv-  
2           ice, application, or benefit shall be deposited into the  
3           account established under paragraph (1) that is for  
4           the bureau with jurisdiction over the function to  
5           which the fee relates.

6           (3) FEES NOT TRANSFERABLE.—No fee may be  
7           transferred between the Bureau of Immigration  
8           Services and Adjudications and the Bureau of En-  
9           forcement and Border Affairs for purposes not au-  
10          thorized by section 286 of the Immigration and Na-  
11          tionality Act, as amended by subsection (a).

12          (e) AUTHORIZATION OF APPROPRIATIONS FOR BACK-  
13          LOG REDUCTION.—

14           (1) IN GENERAL.—There are authorized to be  
15           appropriated such sums as may be necessary for  
16           each of the fiscal years 2003 through 2006 to carry  
17           out the Immigration Services and Infrastructure Im-  
18           provement Act of 2000 (title II of Public Law 106–  
19           313).

20           (2) AVAILABILITY OF FUNDS.—Amounts appro-  
21           priated under paragraph (1) are authorized to re-  
22           main available until expended.

23           (3) INFRASTRUCTURE IMPROVEMENT AC-  
24           COUNT.—Amounts appropriated under paragraph  
25           (1) shall be deposited into the Immigration Services



1 and Infrastructure Improvements Account estab-  
2 lished by section 204(a)(2) of title II of Public Law  
3 106–313.

4 **SEC. 402. APPLICATION OF INTERNET-BASED TECH-**  
5 **NOLOGIES.**

6 (a) ESTABLISHMENT OF ON-LINE DATABASE.—

7 (1) IN GENERAL.—Not later than one year  
8 after the date of the enactment of this Act, the Di-  
9 rector, in consultation with the Technology Advisory  
10 Committee, shall establish an Internet-based system  
11 that will permit an immigrant, nonimmigrant, em-  
12 ployer, or other person who files with the Attorney  
13 General any application, petition, or other request  
14 for any benefit under the immigration laws of the  
15 United States access to on-line information about  
16 the processing status of the application, petition, or  
17 other request.

18 (2) PRIVACY CONSIDERATIONS.—The Director  
19 shall consider all applicable privacy issues in the es-  
20 tablishment of the Internet system described in  
21 paragraph (1). No personally identifying information  
22 shall be accessible to unauthorized persons.

23 (3) MEANS OF ACCESS.—The on-line informa-  
24 tion under the Internet system described in para-  
25 graph (1) shall be accessible to other persons de-

1 scribed in subsection (a) through a personal identi-  
2 fication number (PIN) or other personalized pass-  
3 word.

4 (4) PROHIBITION ON FEES.—The Director shall  
5 not charge any immigrant, nonimmigrant, employer,  
6 or other person described in subsection (a) a fee for  
7 access to the information in the database that per-  
8 tains to that person.

9 (b) FEASIBILITY STUDY FOR ON-LINE FILING AND  
10 IMPROVED PROCESSING.—

11 (1) ON-LINE FILING.—

12 (A) IN GENERAL.—The Director, in con-  
13 sultation with the Technology Advisory Com-  
14 mittee, shall conduct a study to determine the  
15 feasibility of on-line filing of the documents de-  
16 scribed in subsection (a).

17 (B) STUDY ELEMENTS.—The study  
18 shall—

19 (i) include a review of computerization  
20 and technology of the Immigration and  
21 Naturalization Service (or successor agen-  
22 cy) relating to immigration services and  
23 the processing of such documents;

1                   (ii) include an estimate of the time-  
2                   frame and costs of implementing on-line  
3                   filing of such documents; and

4                   (iii) consider other factors in imple-  
5                   menting such a filing system, including the  
6                   feasibility of the payment of fees on-line.

7                   (2) REPORT.—Not later than one year after the  
8                   date of the enactment of this Act, the Director shall  
9                   submit to the Committees on the Judiciary of the  
10                  Senate and the House of Representatives a report on  
11                  the findings of the study conducted under this sub-  
12                  section.

13                  (c) TECHNOLOGY ADVISORY COMMITTEE.—

14                  (1) ESTABLISHMENT.—Not later than 60 days  
15                  after the date of the enactment of this Act, the Di-  
16                  rector shall establish, after consultation with the  
17                  Committees on the Judiciary of the Senate and the  
18                  House of Representatives, an advisory committee (in  
19                  this section referred to as the “Technology Advisory  
20                  Committee”) to assist the Director in—

21                         (A) establishing the tracking system under  
22                         subsection (a); and

23                         (B) conducting the study under subsection  
24                         (b).

1           (2) COMPOSITION.—The Technology Advisory  
2 Committee shall be composed of—

3           (A) experts from the public and private  
4 sector capable of establishing and implementing  
5 the system in an expeditious manner; and

6           (B) representatives of persons or entities  
7 who may use the tracking system described in  
8 subsection (a) and the on-line filing system de-  
9 scribed in subsection (b)(1).

10 **SEC. 403. DEPARTMENT OF STATE STUDY ON MATTERS RE-**  
11 **LATING TO THE EMPLOYMENT OF CONSULAR**  
12 **OFFICERS.**

13 (a) FINDINGS.—Congress finds that—

14           (1) consular officers perform an important role  
15 daily, often under difficult conditions, at United  
16 States embassies throughout the world; and

17           (2) many consular officers, who provide the  
18 first line of defense against the admission of unde-  
19 sirable persons into the United States, require ap-  
20 propriate training, supervision, and opportunities for  
21 promotion while performing this critical work.

22 (b) STUDY.—The Secretary of State shall conduct a  
23 study on matters relating to the employment of consular  
24 officers of the Department of State, including training  
25 promotion policies, rotation frequency, level of experience

1 and seniority, and level of oversight provided by senior  
2 personnel.

3 (c) REPORT.—Not later than nine months after the  
4 date of enactment of this Act, the Secretary shall submit  
5 to the Committee on Foreign Relations and the Committee  
6 on the Judiciary of the Senate and the Committee on  
7 International Relations and the Committee on the Judici-  
8 ary of the House of Representatives a report containing—

9 (1) the findings of the study conducted under  
10 subsection (b); and

11 (2) recommendations on how to best retain con-  
12 sular officers with the level of training and expertise  
13 in visa issuance appropriate to this important func-  
14 tion, especially in sensitive, remote, and hostile loca-  
15 tions.

16 **SEC. 404. ALTERNATIVES TO DETENTION OF ASYLUM SEEK-**  
17 **ERS.**

18 (a) IN GENERAL.—Chapter 4 of title II of the Immi-  
19 gration and Nationality Act (8 U.S.C. 1221 et seq.) is  
20 amended by inserting after section 236A the following new  
21 section:

22 **“SEC. 236B. ALTERNATIVES TO DETENTION OF ASYLUM**  
23 **SEEKERS.**

24 “(a) DEVELOPMENT OF ALTERNATIVES TO DETEN-  
25 TION.—The Director shall—

1           “(1) authorize and promote the utilization of al-  
2           ternatives to the detention of asylum seekers who do  
3           not have nonpolitical criminal records; and

4           “(2) establish conditions for the detention of  
5           asylum seekers that ensure a safe and humane envi-  
6           ronment.

7           “(b) SPECIFIC ALTERNATIVES FOR CONSIDER-  
8           ATION.—The Director shall consider the following specific  
9           alternatives to the detention of asylum seekers described  
10          in subsection (a):

11           “(1) Parole from detention.

12           “(2) For individuals not otherwise qualified for  
13           parole under paragraph (1), parole with appearance  
14           assistance provided by private nonprofit voluntary  
15           agencies with expertise in the legal and social needs  
16           of asylum seekers.

17           “(3) For individuals not otherwise qualified for  
18           parole under paragraph (1) or (2), non-secure shel-  
19           ter care or group homes operated by private non-  
20           profit voluntary agencies with expertise in the legal  
21           and social needs of asylum seekers.

22           “(4) Noninstitutional settings for minors such  
23           as foster care or group homes operated by private  
24           nonprofit voluntary agencies with expertise in the  
25           legal and social needs of asylum seekers.

1       “(c) REGULATIONS.—The Director shall promulgate  
2 such regulations as may be necessary to carry out this  
3 section.

4       “(d) DEFINITION.—In this section, the term ‘asylum  
5 seeker’ means any applicant for asylum under section 208  
6 or any alien who indicates an intention to apply for asylum  
7 under that section.”.

8       (b) CLERICAL AMENDMENT.—The table of contents  
9 of the Immigration and Nationality Act is amended by in-  
10 serting after the item relating to section 236A the fol-  
11 lowing new item:

“Sec. 236B. Alternatives to detention of asylum seekers.”.

