

IMMIGRATION REFORM AND CONTROL
ACT OF 1985

R E P O R T

together with

MINORITY VIEWS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ON

S. 1200, as amended



AUGUST 28, 1985.—Ordered to be printed

Filed under authority of the order of the Senate of August 1 (legislative
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CONTENTS

	Page
I. Purpose and summary.....	1
II. General statement.....	2
A. Introduction.....	2
B. The national interest.....	3
C. Current problems.....	4
D. The solution—S. 1200.....	7
(1) Title I—Control of illegal immigration.....	7
a. Reducing the incentive of employment.....	7
b. Enforcement and fees.....	13
c. Agricultural labor.....	13
(2) Title II—Legalization.....	15
(3) Title III—Other changes.....	16
(4) Title IV—Reports to Congress.....	17
(5) Title V—U.S.-Mexico Commission.....	18
III. Recent immigration studies and reform efforts.....	18
A. History, 92d-96th Congresses (1971-1980).....	18
B. Ford administration proposals.....	20
C. Carter administration proposals.....	20
D. Select Commission on Immigration and Refugee Policy.....	21
E. Reagan administration proposals.....	23
F. 97th Congress (1981-1982).....	24
G. 98th Congress (1983-1984).....	25
IV. Committee proceedings.....	26
V. Section-by-section analysis.....	29
VI. Cost estimate.....	57
VII. Regulatory impact evaluation.....	68
VIII. Changes in existing law.....	68
Minority views of Mr. Kennedy.....	103
Minority views of Mr. Simon.....	107

IMMIGRATION REFORM AND CONTROL ACT OF 1985

AUGUST 28, 1985.—Ordered to be printed

Filed under authority of the order of the Senate of August 1 (legislative day, July 16), 1985

Mr. THURMOND, from the Committee on the Judiciary,
submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1200, as amended]

The Committee on the Judiciary, to which was referred the bill (S. 1200) to amend the Immigration and Nationality Act, and for other purposes, having considered the same, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

I. PURPOSE AND SUMMARY

The Committee bill is intended to increase control over illegal immigration.

The primary incentive for illegal immigration is the availability of U.S. employment. In order to reduce this incentive, the bill makes unlawful the knowing employment, or the recruitment or referral for a fee, of illegal aliens; provides for a system to verify work eligibility; and establishes appropriate penalties for violations. In addition, the bill establishes new crimes for certain activities involving fraudulent documents and for bringing illegal aliens to the United States; states the sense of Congress that resources for conventional enforcement and immigration services should be increased; allows the imposition of fees for immigration services and for the use of Immigration and Naturalization Service border and other facilities; and prohibits adjustments of status by visa abusers.

S. 1200 also makes several changes in the system of legal immigration. Special immigration benefits are provided for four categories of individuals who have resided in the United States for many years: certain children of employees of international organizations, surviving spouses of deceased such employees, and retired such employees and their spouses. The colonial quota is increased from 600 to 3,000 visas per year. While no changes are made in the current immigrant preference system, the Committee strongly believes that changes should be considered after the provisions of this bill have been enacted into law.

The bill also amends certain provisions of the law relating to nonimmigrants. The H-2 temporary worker program is revised in order to assist agricultural employers in adjusting to the reduced availability of illegal foreign workers. In addition the bill establishes a 3-year transition program for employers of agricultural labor, and creates a commission to further study agricultural labor issues. A pilot visa waiver program is authorized for up to eight countries with low rates of visa denial, exclusion, and visa abuse.

The bill further provides that under certain circumstances illegal aliens who entered the United States prior to January 1, 1980, may obtain temporary legal resident status. Such aliens will have an opportunity to adjust to permanent status after 3 years if they have satisfied certain conditions, including the presentation of evidence that they have some knowledge of U.S. history, government, and the English language, or have enrolled in a program to acquire such knowledge. The legalization program will not begin until 3 years after enactment unless a presidentially appointed commission, whose members support the concept of legalization in the bill, finds that Federal programs to enforce the immigration laws are in place and are effective enough to prevent legalization from encouraging more illegal immigration. If such finding is made within 3 years after enactment, legalization will begin at the earlier time.

Finally, the bill requires certain reports from the President to Congress with respect to the employer sanctions and employment verification provisions, legal and illegal immigration, the legalization program, and the visa waiver program. A report is also required from the Comptroller General of the United States with respect to the implementation of employer sanctions provisions, including whether a pattern of discrimination on the basis of national origin has resulted against citizens or aliens authorized to work in the United States.

II. GENERAL STATEMENT

A. INTRODUCTION

No other country in the world attracts potential migrants as strongly as the United States of America. No other country approaches the United States in the number of legal immigrants accepted or refugees permanently resettled. The Committee believes that most Americans are proud of both the reputation and the history of this country as a land of opportunity and refuge. We believe that this reputation and this history have generally had a positive effect on America.

However, current U.S. immigration policy is no longer adequate to deal with modern conditions, including the growing immigration pressure on the United States. Immigration to the United States is "out of control" and it is perceived that way at all levels of government and by the American people—indeed by people all over the world.

The Committee believes that reform is imperative. This does not mean the United States must isolate itself from the rest of the world. Immigration can continue to serve the national interest, but only if the law is reasonably amended to be appropriate for contemporary conditions, and only if the law can be enforced. This will in no way be inconsistent with American tradition. Immigration to the United States has been limited in various ways for more than a century and has been subject to forms of numerical limitation for over 60 years.

The moving words on the Statue of Liberty are cited in nearly all discussions of U.S. immigration policy and are certainly consistent with the traditional hospitality and charity of the American people. It is imperative, however, that Americans perceive that this great country is no longer one of vast, undeveloped space and resources, with a relatively small population.

In an earlier time, the Nation could welcome millions of newcomers, many of whom brought few skills, but did bring a willingness to work hard. In a smaller America with a simpler, labor-intensive economy and a labor shortage, that was often quite enough—that, plus their intense drive to become Americans.

Immigrants can still greatly benefit America, but they should be limited to an appropriate number and selected within that number on the basis of immediate family reunification and skills which would truly serve the interest of a highly developed nation. The major purpose of this bill is to make progress toward the day when the American people can be assured that the limitations and selection criteria contained in the immigration statutes are actually implemented through adequate enforcement.

B. THE NATIONAL INTEREST

The Committee believes that the paramount obligation of any nation's government, indeed the very reason for its existence and the justification for its power, is to promote the national interest—the long-term welfare of the majority of its citizens and their descendants.

Consequently, we believe that the formulation of U.S. immigration policy must involve a judgment of what would promote the interests of American citizens—as they are at the present time and as they and their descendants are likely to be in the foreseeable future. An immigration policy which would be detrimental to the long-term well-being of the American people should not be adopted.

We certainly do not mean to suggest that charity and compassion should not play a role in U.S. immigration policy. Even if a particular charitable policy would not promote the national interest, as long as it would not be harmful to that interest and was supported by a majority of the American people, then it should of course be adopted.

Because the well-being of individuals is affected by both economic and noneconomic circumstances, an immigration policy which serves the national interest should be based on an analysis of both the economic and noneconomic impacts of immigration. Economic variables include unemployment, wages, working conditions, productivity and per capita gross national product (GNP). Noneconomic matters include population size, other demographic phenomena, and such cultural elements as values, customs, institutions, and degree of unity or of tension between subcultures.

There is an additional component of the national interest which a realistic analysis must not ignore. This is related to the ability of human beings to experience change without discomfort and it exists regardless of whether any objectively adverse impacts occur. Although the desire of immigrants from other lands to change their lives totally by coming to the United States is obviously greater than their reluctance to leave their homes, the ability of the American people to welcome aliens into their day-to-day life experiences has limits. These limits depend in part on the degree and kind of change which will be caused in their lives. We see evidence that if the newcomers to a community do not excessively disrupt or change the attributes of the community which make it familiar to its residents and uniquely their "home" (as compared with foreign areas, which they may respect highly but are not "home" to them), then the newcomers may well be welcome, especially if they make positive contributions to the community's economic and general well-being. On the other hand, it is seen that if the newcomers remain "foreign," they may not be welcome, especially if they seek to carve out separate enclaves to embrace only their own language and culture and if their numbers and the areas of the community which they directly affect are great. Perhaps this should not be so in the "ideal" world, but it is real.

C. CURRENT PROBLEMS

In the last 9 years, total legal permanent admission to the United States increased from a little over 450,000 in 1976 to 510,000 in 1984. A level of 800,000 was reached in 1980 (if the 145,000 Cubans and Haitians entering that year are counted). As recently as 1965, the total was under 300,000.

During the same 9-year period, the category of "immediate relatives" of U.S. citizens grew 56 percent, from 114,000 to 177,000. Under present law there are no numerical limits on this type of family reunification. In this same period, refugee admissions have ranged from 5,000 in 1977 to a high of over 200,000 in 1980 (excluding the Cubans and Haitians entering that year), to 68,000 in 1984. It should be noted that the United States continues to take more legal immigrants and refugees for permanent resettlement than the rest of the world combined. It is because of these two categories, "immediate relatives" and refugees, neither of which is subject to firm annual numerical limits, that immigration to the United States has increased to such a large extent.

The level of refugee admissions is set by the President after consultation with this Committee and with the Committee on the Judiciary of the House of Representatives. As a result of the maturing

of the consultation process which has occurred in the period since the enactment of the Refugee Act of 1980, the Committee believes that the process provides an appropriate degree of control over this category of entrants not subject to firm statutory limits.

In addition, hundreds of thousands of illegal immigrants now enter the United States every year. Some estimate the net annual inflow at 500,000. The present inflow appears to have become substantially higher in recent years. At least some indication of this can be found in the dramatically increased number of apprehensions. In 1965 the number was just over 100,000. By 1972 it had reached one-half million. Today it is over 1 million.

The number of illegal aliens already in the country is unknown. The Select Commission on Immigration and Refugee Policy used the figure of 3.5 to 6 million as the best guess for 1978. Whatever the number 7 years ago, there are surely many more now.

Immigration—legal plus illegal—now appears to be accounting for 30 to 50 percent of our annual population growth of about 2 million.

At the present time, net immigration—legal plus illegal—probably exceeds 750,000 per year. A net annual immigration of 750,000 would lead to a U.S. population in 100 years of 300 million, if it is assumed that the fertility rate of the existing population remains at its present low level—which seems unlikely—and the fertility rate of the new immigrants immediately declines to that of the present population as a whole—which is even less likely, given the high fertility rates of the less developed countries from which most of the immigrants come. One-third of this 300 million would consist of immigrants arriving after 1980 and their descendants.

Indeed, these figures actually underestimate the impact of immigration. Since it is concentrated in only a few regions of the country, the impact on these regions is of much greater significance than the overall figure suggests. For example, under the same assumptions and assuming continuance of existing settlement patterns, the population of California would double by 2080. Over one-half of that State's population would consist of post-1980 immigrants and their descendants.

The problems which may be caused by excessive population growth are well known and we shall not discuss them here.

Not only is there a very large number of legal and illegal immigrants, but only a small fraction of them are individually selected on the basis of labor market skills which have been determined to benefit the Nation as a whole rather than primarily the interests of the immigrants themselves or their U.S. relatives.

As a result of this and of the fact that the present labor certification process may be of limited effectiveness, we believe there have been adverse job impacts, especially on low-income, low-skilled Americans, who are the most likely to face direct competition, even though we also perceive a degree of short-term economic advantage from the use of "cheap" labor. Such adverse impacts include both unemployment and less favorable wages and working conditions. Not only does this cause economic harm to the directly affected Americans and their families, and in many cases a burden on the taxpayers, but it may also affect society as a whole in the form of social problems associated with unemployment and poverty.

Opponents of more effective measures to enforce the immigration laws have claimed that Americans will not take certain "menial" jobs. The Committee believes that this claim has been overstated.

First, many illegal aliens are working in nonmenial jobs which unemployed, underemployed, or less well-paid Americans would clearly take. This will be increasingly true if Federal and State support for various public assistance programs continue to be reduced.

Second, there is evidence that the recruitment policies of firms which rely on illegal aliens for "menial" jobs effectively exclude U.S. workers through limiting access to information about job vacancies. If no information is available concerning vacancies in such jobs, it is unlikely that U.S. workers will apply for them.

Third, many other jobs, which are not now attractive to a sufficient number of qualified Americans, could be made so if employers were to offer higher wages, better working conditions, or a reasonable training program. If a job cannot be filled by Americans at an affordable cost, then if possible it should be mechanized through additional capital investment and more advanced technology. Alternatively, a business might relocate some labor-intensive production overseas or the product or service might be imported from a foreign firm or simply forgone.

The Committee believes that bringing in foreign labor should be a very last resort. Even when no direct displacement of Americans occurs and even when there are short-term economic benefits to a majority of the current population, such action will frequently reduce this country's average productivity and per capita gross national product (GNP), a commonly used measure of a nation's prosperity.

In any case, if it is concluded that the use of foreign labor is beneficial under certain circumstances, then the law should allow this use under the appropriate limitations and conditions. Obviously, however, if the necessary limitations and conditions cannot be enforced, then no beneficial results can be assured.

Although population and direct economic impacts are of great significance, we think most people would agree that the national interest of the American people also includes certain even more important and fundamental aspects, such as the preservation of freedom, personal safety, and political stability—as well as the public cultural qualities and the political institutions which are their foundation.

No one seeking to enter the United States is now barred because of race, color, or religion, as has sometimes happened in the past. This Nation does have a right, however, to expect that anyone wishing to obtain the freedom and opportunity which have been created by the American people will apply lawfully for entry and that those who are selected to immigrate will seek to assimilate into American society, adopting and supporting the public values, beliefs, and customs underlying America's success, and not seek to recreate their homeland here in America.

In the past several years over 80 percent of the new legal immigrants joining American citizens and permanent residents in the United States have come from Latin America, Asia, and the Caribbean area. With respect to illegal immigrants, it is estimated that

Mexico is the source of at least 50-60 percent of the total, other parts of Latin America 10-15 percent, and the Caribbean area 5-10 percent.

To a large extent, the effect of such patterns will depend upon the degree and the pace at which immigrants and their descendants follow the historical pattern of earlier immigrant groups in assimilating into American society and culture.

A desire to assimilate is often reflected by the rate at which an immigrant completes the naturalization process necessary to become a U.S. citizen. There is considerable variation in the naturalization rates of immigrants from different countries of origin. A sample of those granted permanent resident status in 1971 was examined by the staff of the Select Commission on Immigration and Refugee Policy. Of those of Mexican origin who remained in the United States at the end of 7 years, only 5 percent had naturalized. For the entire region of South America the rate was 24.6 percent, for Europe 42.6 percent, for Asia 80.3 percent (excluding China, India, Korea, and the Philippines, whose rates were, respectively, 73.8 percent, 67.8 percent, 80.9 percent, and 67.6 percent). Interestingly, the naturalization rate of immigrants from Canada, who in most cases already share our language and much of our way of life, was 3.4 percent.

If immigration is continued at a high level, yet a substantial portion of these new persons and their descendants do not assimilate into the society, they have the potential to create in America a measure of the same social, political, and economic problems which exist in the countries from which they have chosen to depart. Furthermore, if language and cultural separatism rise above a certain level, the unity and political stability of the Nation will—in time—be seriously diminished. Pluralism, within a united American nation, has been the single greatest strength of this country. This unity comes from a common language and a core public culture of certain shared values, beliefs, and customs which make us distinctly "Americans."

D. THE SOLUTION—S. 1200

(1) TITLE I—CONTROL OF ILLEGAL IMMIGRATION

Most importantly, S. 1200 contains provisions intended to reduce the problem of illegal immigration.

Obviously, the potential benefits and protections sought under even the most carefully designed statutory standards for determining who may enter the United States, as well as for how long and under what conditions they may remain, will not be available in practice if those statutory standards cannot be enforced.

a. Reducing the incentive of employment

There are only two types of solutions available to the problem of illegal immigration.

The first is direct enforcement:

(A) To physically prevent illegal entry into the United States, for example through border control, fences, and interdiction, and

(B) To find and deport those who are successful in entering illegally, as well as those who enter legally and then violate the terms of their visa.

The second type of solution involves reducing the incentives to enter.

All objective, comprehensive studies of the problem of illegal immigration, including those by the Ford, Carter, and Reagan administrations, as well as the Select Commission on Immigration and Refugee Policy, have concluded that adequate enforcement of U.S. immigration laws cannot be achieved by direct enforcement alone. The Committee agrees.

Reliance on direct enforcement alone would require massive increases in enforcement in the interior—in both neighborhoods and work places—as well as at the border. This would be more costly and intrusive, as well as less effective, than a program which combines direct enforcement at reasonable levels with a reduction in the incentives to enter the United States.

At the present time there is a substantial disparity in job opportunity between the United States and Third World countries—a disparity which may well continue or even widen as a result of political and social conditions in those countries. Such disparity exists not only in rates of unemployment, but also in wages and working conditions. Even if the unemployment rates were reduced, a difficult task in light of the high birth rates in these countries, the disparity in wages and working conditions would remain.

As long as greater job opportunities are available to foreign nationals who succeed in physically entering this country, intense illegal immigration pressure on the United States will continue. This pressure will decline only if the availability of U.S. employment is eliminated, or the disparity in wages and working conditions is reduced, through improvement in the Third World or deterioration in the United States.

The United States should, of course, assist Third World development, but the achievement of substantially higher living standards there is a prospect only for the long run, and probably depends more than anything else on political and cultural change not in the control of the United States. Furthermore, in the short run, Third World development may actually increase migration to the United States. Since deterioration in the United States is certainly not an attractive resolution, only one approach remains: to prohibit the knowing employment of illegal aliens.

S. 1200 provides for penalties against employers who knowingly employ illegal aliens and also against persons who knowingly and for a fee or other consideration recruit or refer for employment such illegal aliens.

In order to protect both the persons subject to penalties and the members of minority groups legally in this country, the bill provides a system to verify that employees and potential employees are eligible to work in the United States. A formal, effective verification system combined with an affirmative defense for those who in good faith follow the proper procedure is imperative. Otherwise, the system cannot both be effective and avoid discrimination. If employers, recruiters, and referrers are given no protection, they will feel insecure and seek to avoid penalties by avoiding persons

who they suspect might be illegal aliens, in other words, those who "look or sound foreign" to them. If, on the other hand, they are given protection by utilizing a verification system which is easily defeated, then very little screening is likely to occur, even if the vast majority of employers, recruiters, and referrers seek to obey the law, which we believe will be the case.

Concern has been expressed that the employer sanctions provisions of S. 1200 will cause some employers to discriminate on the basis of natural origin against certain U.S. citizens or aliens authorized to work in the United States. The Committee does not believe that such discrimination will occur. No convincing evidence or argument has been presented that it will occur, and the evidence that is available to the Committee indicates that it will not.

An innocent employer is protected by the verification system and will have no reason to discriminate. This will be more fully explained below. An employer who wants to avoid hiring certain persons because of their race or national origin could continue to try to do so, but he would be subject to a suit under title VII of the Civil Rights Act of 1964. The employer sanctions law would provide no protection for such an employer. Such an employer might allege that his decision not to hire was motivated by a fear of employer sanctions. If, however, the plaintiff were to show by a preponderance of the evidence that the employer did not actually have such fear, then such allegation would not have helped the defendant's case. The most likely form of such evidence would be a sworn statement that documents had been presented to the employer showing that the applicant was authorized to be so employed, along with the documentary evidence itself (which would of course be in the possession of the applicant). If the documents appeared on their face to be genuine and to belong to the applicant, and if the employer were unable to present equally convincing evidence that such documents had not been presented or that despite the documents the employer had reasonable grounds for believing the applicant to be an alien ineligible to be so employed, then the judge or jury would conclude that the employer's reason for deciding against hiring the applicant was something other than a fear of employer sanctions.

The best evidence that is available—that derived from the experience of several European countries, including France, which is a multiracial society—shows that increased discrimination on the basis of race, ethnicity, or national origin does not result from employer sanctions.

Existing documents will be used for the verification system. It will involve examination of either—

(a) A U.S. passport, certificate of citizenship, certificate of naturalization, unexpired foreign passport with appropriate, unexpired endorsements authorizing U.S. employment, or certain forms of resident alien card or other alien representation card; or

(b) Two other documents, one to verify that the applicant is presenting his true identity, such as State drivers license, or State identification card, and one to verify that he is authorized to work, such as certain forms of the social security account number card, or certificate of birth in the United States.

The user of the system will then sign under penalty of perjury a statement that the required documents have been examined, and obtain the signature of the prospective employee on a written statement that he is a U.S. citizen, permanent resident alien, or alien authorized to perform the particular work. In many cases existing application forms or something very similar could be used. In addition, the employer will be responsible for retaining these signed forms for 3 years or until 1 year after the employment ends, whichever is later. The Committee emphasizes that the user of the system will not be responsible for the genuineness of the documents, only that such documents reasonably appear on their face to be genuine.

The bill requires the executive branch to monitor and evaluate the verification system in order to make it more secure against fraudulent use. To the extent that existing documents are found not to be secure, the President is directed to implement such changes as are necessary to make the system secure in determining employment eligibility. For example, if an improved system were based on a card or other document or on a verifying telephone call to a government office, it would have to be resistant to use by imposters. If the system were to utilize a card or other document, such document would have to be resistant to counterfeiting and tampering. In an improved system, any underlying nonsecure documents, such as current forms of the birth certificate, would be examined by immigration experts. Users would utilize only the more secure system based upon them.

The President is required to give notice to Congress before implementing an improved system. If a minor change is involved (such as improvements in the current Social Security card), 60 days' notice is required. If a major change is involved (such as the creation of a new card or a telephone verification system), 2 years' notice is required, and funds must be specifically provided by Congress before the change is implemented. The President is authorized to undertake demonstration projects consistent with the statutory requirements for any new system. The project may not, however, last longer than 3 years.

Use of the verification system will not be mandatory. However, any employer who uses the system for all applicants will have an affirmative defense against the penalties. Furthermore, if an employer of four or more employees does not use the system, and an illegal alien is found in his employ, the employer will be presumed to have knowingly hired the alien. Such employer could rebut this presumption by "clear and convincing evidence."

It has been claimed that a new verification system would be too costly and that it would pose a threat to privacy and civil liberties.

On the cost issue the Committee believes that several points should be made. First, there are also tremendous costs in inadequate enforcement. The Congressional Budget Office has estimated that each unemployed person in the United States receives an average of about \$7,000 per year in unemployment and welfare benefits. If the number of illegal aliens in the United States today is estimated at 6 million and if even 1 percent hold jobs which unemployed Americans would take, then the savings would be \$420 million per year; if the displacement is 2 percent, the figure would

be \$840 million per year, etc. Actual displacement is probably substantially higher.

The Social Security Administration recently estimated that the cost of replacing all Social Security cards with a tamper- and counterfeit-resistant version would be \$108 million per year for 10 years. The actual cost of this option should be lower since replacement of all cards would not be necessary. The Department of Labor has estimated the cost of a verification system utilizing telephone calls to a government data bank as averaging \$333 million per year for the first 5 years and about \$200 million per year thereafter. Doubling the number of interior Immigration and Naturalization Service investigators would add \$25-\$30 million per year. Thus, a new system to verify work eligibility may well not exceed in cost the amount directly saved as a result of reduced public assistance alone, not even considering the value of the other benefits of reducing illegal immigration. Furthermore, a small fee could be utilized to raise the necessary revenue.

With respect to civil liberties, the Committee has given considerable thought to the question of how, for example, changing the form of the Social Security card, which is one of the alternatives that is available, could pose risks to liberty.

That question was asked of many witnesses at the hearings of the Subcommittee on Immigration and Refugee Policy—from the American Civil Liberties Union to Arthur Flemming of the U.S. Commission on Civil Rights. No one has yet given a satisfactory answer. Others never known for their neglect of civil and human liberties agree with us, including Father Ted Hesburgh, former Chairman of the Select Commission on Immigration and Refugee Policy and of the U.S. Commission on Civil Rights, as well as the editorial writers of the New York Times, Washington Post, Los Angeles Times, Boston Globe, and other major newspapers across the country, and former Attorneys General Elliot Richardson and Benjamin Civiletti.

We wish to emphasize that no likely future verification system would require personal data that is not already available in other government data banks. Thus, an improved verification system would either utilize a preexisting data bank or a new one with less information.

Furthermore, the bill contains specific safeguards intended to minimize the risk of undue invasion of privacy and the risk of government abuse in connection with any improved verification system:

(1) Personal information utilized by the system would not lawfully be available to government agencies, employers, and other persons except to the extent necessary for the purpose of verifying work eligibility.

(2) A withholding of verification would not be lawful except on the basis that the employee or prospective employee had failed to show that he was a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien authorized to be so employed by the immigration law or the Attorney General.

(3) The system would not lawfully be available for law enforcement except to enforce the immigration laws or several

statutory provisions relating to false or fraudulent statements or documents.

(4) If the system required individuals to present a card or other document, then such document could not lawfully be required to be presented for any purpose other than verification of employment eligibility or the enforcement of several statutory provisions relating to false or fraudulent statements or documents, and could not lawfully be required to be carried on the person.

The Committee is most emphatically not requiring or permitting the development of an "internal passport" or "national I.D. card." The 2-year notice to Congress requirement adds an additional safeguard.

In addition to the protective provisions in the bill, there are far stronger protections already in place. The most important safeguard of the civil liberties of Americans is not "the law," which can always be changed, but rather the public cultural elements which underlie the law, including the values and traditions of our form of government, which are part of the American character. As long as the American people themselves do not come to accept and adopt forms of government like those of nations more willing to tolerate repression in their political system and leaders, then no danger exists. There is no "slippery slope" toward loss of liberties, only a long staircase where each step downward must be tolerated by the American people and by their leaders. The Committee does not believe that the system being proposed, or the improved systems which the safeguards would permit, would involve any form of a step toward loss of civil liberties.

With respect to the penalties for knowing employment or knowing recruitment or referral for employment, the bill's provisions are, in the view of the Committee, quite reasonable. Indeed, no penalty at all will be imposed during the first 6 months after enactment, nor will any violation during that period be counted for purposes of determining the level of penalty for later violations. Even in the second 6 months after enactment, the initial violation will be subject only to a warning and will not be counted for the purpose of determining the level of penalty later. For this first year of enactment the bill directs various government agencies to cooperate in disseminating forms and information to employers and other Americans, and otherwise educating the public about the requirements of the program.

Under the normal penalty structure, which becomes effective 12 months after enactment, the first assessment of penalties will include a cease-and-desist order issued by an immigration judge and a fine of between \$100 and \$2,000 per illegal alien. This will be a civil, not a criminal, penalty. For a violation occurring after at least one prior penalty has been assessed and opportunity for a hearing has been provided, a civil penalty of between \$2,000 and \$5,000 per illegal alien may be imposed, as well as the cease-and-desist order.

For a "pattern or practice" of violations, a fine of between \$3,000 and \$10,000 per illegal alien is available. In addition, the Attorney General is instructed to seek compliance with the cease-and-desist orders in Federal district court. Failure to so comply could result in

“contempt of court” penalties—fines and imprisonment—for the offending employer.

If there is a pattern or practice of violations subsequent to the imposition of a penalty for a prior pattern or practice of violations, a criminal penalty may be imposed—a fine of no more than \$3,000 per alien, a term of imprisonment of no more than 6 months for the entire pattern or practice, or both.

Stiff criminal penalties are provided for the fraudulent production, sale, distribution, or use of any document which may be presented to satisfy a requirement of the immigration laws.

b. Enforcement and fees

S. 1200 states the sense of Congress that there are two essential elements in the program of immigration control established by the bill:

(1) An increase in border patrol and other inspection and enforcement activities of the INS and other appropriate Federal agencies; and

(2) An increase in the examinations and service activities of the INS and other agencies.

The bill authorizes \$840 million in fiscal year 1987 and \$830 million in fiscal year 1988 for the INS. This includes approximately \$125 million per year for the 2 years for administration of the legalization program. The authorization level of INS for fiscal year 1985 is \$584 million.

The bill also authorizes additional sums for enforcement activities in connection with the bill by the Wage and Hour Division and the Office of Federal Contract Compliance Programs of the Department of Labor.

In addition, S. 1200 provides authority to the Attorney General, in consultation with the Secretary of State, to impose fees for use of border and other INS facilities and services in an amount commensurate with cost.

The bill also creates a new criminal offense for bringing an alien to the United States with knowledge or in reckless disregard of the fact that the alien has not received *prior* official authorization to enter. No intent to smuggle is required.

c. Agricultural labor

The bill amends the H-2 temporary worker program to establish a special procedure for seasonal workers in agriculture:

Employers may not be required by the Secretary of Labor to apply for a “labor certification” more than 65 days in advance of need;

The application must show—

(A) That there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the work required; and

(B) That employment of the requested alien workers will not adversely affect the wages and working conditions of U.S. workers similarly employed.

If the Secretary of Labor does not notify the employer within 14 days of the filing of the application that the application does not

meet the requirements, then it shall be considered to have met such requirements.

The Secretary of Labor is directed to make the certification at least 20 days in advance of need if requirements for the certification have been complied with and the employer does not have alternative employees.

Special, expedited procedures will be available to agricultural employers in the following instances:

- (1) Certification is denied;
- (2) U.S. workers appear to perform agricultural labor, but are not qualified;
- (3) U.S. workers are referred to agricultural employers, but do not show up on the day of need; and
- (4) Unforeseen circumstances create a critical need for agricultural labor.

The bill provides that all regulations implementing the program must be approved by the Attorney General after consultation with the Secretary of Labor and Secretary of Agriculture.

The Secretary of Labor is authorized to monitor and enforce terms and conditions of the program. There is \$10 million authorized for such monitoring and enforcement, and for the recruitment of U.S. workers.

A 3-year transition program is made available to agricultural employers for the purpose of enabling them to phase out their illegal labor and phase in legal workers. An employer will be allowed to use 100 percent of his prior alien work force in the first year, 67 percent in the second year, and 33 percent in the third year. Domestic workers or lawful temporary agricultural workers must be used thereafter.

In addition, a 12-member commission on agricultural worker programs is created to further examine the many issues surrounding temporary workers. Members will be appointed by the House, Senate, Departments of Labor and Agriculture, and the Attorney General. The Commission is required to report within 2½ years after enactment with specific legislative recommendations.

The Committee rejected proposals to adopt a massive new temporary or "guestworker" program. Such a program would create significant dangers, including adverse impacts on U.S. workers, especially if the temporary workers were not limited to the particular job or job category where they were allegedly needed.

Many of the temporary workers could choose to stay permanently, as they have in Europe, where significant social problems resulted, and where there is now widespread doubt that the guestworker program had been a beneficial idea. Permanent stays are especially likely if the workers may bring in their family, if they have U.S. citizen children, if they are not restricted to a particular job or job category, or if they are authorized to stay for long periods in the United States. Such long periods of stay increase ties to the United States, and also the likelihood that the workers will bring in their family even if it is illegal, or, if they have no family, that they will start a family in the United States.

To the extent that temporary workers believe that they will be returning to their home country, they will tend not to learn English and otherwise integrate into American life. They will tend to

form foreign enclaves, with associated social problems, and may even delay the integration of lawful permanent residents from the same country of origin.

(2) TITLE II—LEGALIZATION

The United States has become home for millions of illegal aliens, a large number of whom have been here for many years. The Committee strongly believes that those with the deepest roots should be allowed to stay, but also that no program to legalize these individuals should be adopted which would encourage new waves of illegal immigrants. As stated by the Select Commission on Immigration and Refugee Policy:

Without more effective enforcement than the United States has had in the past, legalization could serve as a stimulus to further illegal entry. The Select Commission is opposed to *any* program that could precipitate such movement. [Emphasis in the original.]

If legalization occurs before more effective enforcement has been achieved, the illegal population will immediately begin to grow again. This will create pressure for additional legalizations. Periodic legalizations would in effect be a repeal of U.S. immigration law. Furthermore, legalization in the absence of more effective enforcement is likely to *increase* the illegal flow by encouraging illegal entries in anticipation of further legalizations.

Because of these risks and because of significant public and congressional opposition to prior legalization proposals, the Committee believes that a legalization program should not go into effect for 3 years unless a presidentially appointed legalization commission determines that enforcement has become effective enough to prevent legalization from encouraging more illegal immigration.

In order to insure that this statutory requirement is not interpreted by an unsympathetic legalization commission in a way which unduly delays legalization, S. 1200 requires that members of the commission "support the concept of legalization in section 202." The details of the selection of the commission are explained below in the section-by-section analysis.

The bill provides for the legalization, once the program begins, of two categories of illegal aliens who have been physically present in the United States since enactment and are otherwise admissible:

(1) Illegal aliens who arrived in the United States before January 1, 1980, and have continuously resided in the United States in an unlawful status since that date; and

(2) "Special Cuban or Haitian entrants" (defined in section 202(a)(2)(D) of the bill) who have continuously resided in the United States since January 1, 1981.

Such aliens will qualify for temporary resident status. An alien in either group may adjust to permanent status after 3 years if the alien has or is acquiring the understanding of U.S. history, government, and the English language required for naturalization.

Federally funded public assistance will not be available to those granted the temporary status for 6 years (including the initial several years after they have received permanent resident status), pro-

vided, however, that certain Cuban and Haitian nationals who are covered by the legalization will continue to qualify for existing special benefits.

The bill provides for Federal payment to States of up to \$600 million per year for 3 years, in the form of a capped entitlement program, for the purpose of reimbursing them for the cost of public assistance expended as a result of the legalization program and for the cost of incarcerating certain illegal aliens convicted of a felony.

Persons convicted of certain crimes, Nazis and other persons who have persecuted others, Communists, anarchists, saboteurs, and those seeking to overthrow the government, and persons likely to become public charges, will be excluded from each category of legalization. Most other classes of excludable aliens will also not qualify, unless a waiver is obtained. For further details see the section-by-section analysis relating to section 202.

We seek two major goals through legalization:

The first is to avoid wasteful use of the Immigration and Naturalization Service's limited enforcement resources. The United States is unlikely to obtain as much enforcement for its dollar if the Immigration and Naturalization Service attempts to locate and deport those who have become well settled in this country, rather than to prevent new illegal entry or visa abuse.

The second is to eliminate the illegal subclass now present in our society. Not only does their illegal status and resulting weak bargaining position cause these people to depress U.S. wages and working conditions, but it also hinders their full assimilation and, through them, that of legal residents from the same country of origin. Thus they remain a fearful and clearly exploitable group within the U.S. society.

It is the intent of the Committee that the families of legalized aliens will obtain no special petitioning rights by virtue of the legalization. They will be required to "wait in line" in the same manner as immediate family members of other new resident aliens.

The Committee reiterates that legalization will be a "one-time only" program to address a problem resulting from the large-scale illegal immigration of the past. Illegal immigration on the same scale should be prevented from occurring in the future by the employer sanctions and increased enforcement provisions of the bill.

(3) TITLE III—OTHER CHANGES

The annual legal immigrant quota for dependent colonies is increased from 600 to 3,000. This will help reduce the substantial backlog of approved petitions for preference status held by persons born in Hong Kong.

The bill authorizes the Attorney General and the Secretary of State jointly to establish a 3-year pilot visa waiver program subsequent to the implementation of an automated nonimmigrant entry and exit control system. Under the program the requirement of a visitor's visa would be waived for the nationals of up to eight countries selected from those which extend or agree to extend reciprocal privileges to U.S. citizens and for whose nationals the rate of visa denial, exclusion, and visa abuse is very low. In order to qualify, such persons would be required to have a round trip, nonre-

fundable, nontransferable transportation ticket. This change would allow the Secretary of State to transfer resources to consular offices where the need to screen visitors is greater. Furthermore, the beneficial entry of desirable business and tourist visitors would be facilitated.

Finally, the bill provides special immigration benefits to certain holders of the G-iv visa if they have resided in the United States for many years, specifically certain retired employees of international organizations, such as the United Nations and the World Bank, and their spouses, surviving spouses of deceased employees of such organizations, and children of employees of such organizations.

(4) TITLE IV—REPORTS TO CONGRESS

The President is required to report to the Congress on:

- (1) The employer sanctions provisions, including an analysis of the verification system and of the impact of such provisions on illegal immigration and on U.S. workers.
- (2) Legalization.
- (3) Legal immigration.
- (4) Illegal immigration.

In addition the Attorney General and Secretary of State are directed jointly to monitor the visa waiver program and report to the Congress within 2 years of the beginning of the program.

The Attorney General is also required to transmit a report to Congress on the equipment and personnel resources which would improve the service and enforcement capabilities of the INS.

Finally, the Comptroller General is required to report to the Congress annually for 5 years on the implementation of the employer sanctions provisions, on whether such provisions have resulted in any pattern of discrimination against eligible workers seeking employment, and on whether an unnecessary regulatory burden has been created for employers.

The Attorney General, jointly with the Chairman of the Equal Employment Opportunity Commission and the Chairman of the Commission on Civil Rights, is required to establish a task force to review the reports of the Comptroller General. If a report of the Comptroller General states that a pattern of discrimination has resulted from employer sanctions, then the task force is directed to make specific remedial legislative proposals to Congress, taking into account any recommendations in such report. The Judiciary Committees of the House and Senate are required to hold hearings on any such proposals within 60 days.

The Committee emphasizes that the Commission on Civil Rights has full authority under current law to study employment discrimination based on race or national origin, to collect and evaluate reports on such discrimination, and to report to the Congress on any such discrimination.

In addition to the reports to Congress required in title IV, the bill provides, as indicated above, that a report must be submitted by the Commission on Temporary Agricultural Worker programs within 2½ years of enactment.

The Committee encourages State and local governments, and other interested public and private sector organizations, to form regional and local implementation task forces. These task forces could facilitate fair and effective implementation of this act by:

- (1) Reviewing and commenting on proposed regulations and procedures;
- (2) Monitoring and evaluating the implementation of the act as it proceeds; and
- (3) Recommending necessary actions to the Federal implementing agencies.

(5) TITLE V—U.S.-MEXICO COMMISSION

A 12-member commission is created to study how the United States and Mexico can work together to improve the economies of the two countries. The commission is required to report to Congress within 180 days. After submitting its report the commission will terminate.

III. RECENT IMMIGRATION STUDIES AND REFORM EFFORTS

The Immigration Reform and Control Act of 1985 represents the most comprehensive immigration reform effort in the United States in 20 years. The most recent complete revision of the Immigration and Nationality Act occurred in 1952. It is popularly known as the McCarran-Walter Act. The 1952 statute has been modified through the years by a series of amendments, most notably those of 1965 and 1976. These amendments provided primarily for reform of the system for admitting legal immigrants to this country.

While the amendments to the Immigration and Nationality Act ("INA") in the Immigration Reform and Control Act of 1985 would make a few changes in the legal immigration system, the major portion of the legislation is directed toward improving control of illegal immigration to the United States. During the past decade, the principles embodied in these provisions have been the subject of substantial study by the executive branch, as well as by the Congress.

The reports and legislative activity generated during this period have focused on the basic components of the immigration reform package of S. 1200: employer sanctions, legalization, and increased enforcement.

A. HISTORY, 92D-96TH CONGRESSES (1971-1980)

In 1971, during the 92d Congress, the House Judiciary Subcommittee charged with immigration matters and chaired by Representative Peter W. Rodino, Jr., initiated a lengthy series of hearings pertaining to the control of illegal aliens. Mr. Rodino's subcommittee reported in 1975, that:

The basic conclusion reached by the majority of the members of the subcommittee as a result of the hearings was that the adverse impact of illegal aliens was substantial, and warranted legislation both to protect U.S. labor

and the economy, and to assure the orderly entry of immigrants into this country.¹

The legislation resulting from these hearings consisted of two bills which provided for the imposition of graduated administrative, civil, and criminal penalties on employers who knowingly employed illegal aliens. The House Judiciary Committee explained its choice of employer sanctions as the principal means of curbing illegal immigration as follows:

The committee believes that the primary reason for the illegal alien problem is the economic imbalance between the United States and the countries from which aliens come, coupled with the chance of employment in the United States. Consequently, it is apparent that this problem cannot be solved as long as jobs can be obtained by those who enter this country illegally and by those who enter legally as nonimmigrants for the sole purpose of obtaining employment.

The committee, therefore, is of the opinion that the most reasonable approach to this problem is to make unlawful the "knowing" employment of illegal aliens, thereby removing the economic incentive which draws such aliens to the United States as well as the incentive for employers to exploit this source of labor.²

The House Judiciary Committee's employer sanctions legislation was endorsed by both the Nixon and Ford administrations and passed the House of Representatives twice, during the 92d Congress (H.R. 16188) and the 93d Congress (H.R. 982). No Senate action on these or similar bills was taken in either Congress.

During the 93d Congress a related measure was passed by both Houses and signed into law by the President. This law (Public Law 93-518) amended the Farm Labor Contractor Registration Act of 1963 to establish criminal penalties for certain farm labor contractors who knowingly hire illegal workers.

During the 94th Congress an identical bill to H.R. 982 was introduced in the House and additional hearings were held by the House Judiciary Subcommittee on Immigration, Citizenship, and International Law. These hearings resulted in a new version of the bill, H.R. 8713, which included, in addition to employer sanctions, a legalization provision for those illegal immigrants who had resided in the United States since July 1, 1968, and a provision intended to prevent discrimination against citizens and legal aliens on the basis of national origin. This bill was reported out of the full Judiciary Committee in September 1975, but received no further action.

During the 95th Congress a similar bill, H.R. 1663, was introduced by Representative Joshua Eilberg, chairman of the House Judiciary Committee's Subcommittee on Immigration, Citizenship, and International Law, but received no further action.

The principal legislative activity on this issue in the Senate during the 94th Congress focused on S. 3074, an omnibus reform

¹ H. Rept. 94-506, 94th Congress, 1st session, Sept. 24, 1975, p. 5.

² Ibid., p. 6.

bill introduced by Senator James O. Eastland, chairman of the Senate Judiciary Committee and the Subcommittee on Immigration and Naturalization. This bill included employer sanctions (civil penalties as well as an injunctive remedy) for the knowing employment of illegal workers, a legalization program with a July 1, 1968, cutoff date for eligibility, and a revision of the H-2 temporary worker program to allow for the admission of foreign workers to perform certain permanent as well as temporary jobs. Subcommittee hearings were held on S. 3074, but the bill was not reported to the full committee.

B. FORD ADMINISTRATION PROPOSALS

In January 1975, President Gerald Ford established, under the chairmanship of Attorney General Edward Levi, a Cabinet-level Domestic Council Committee on Illegal Aliens. This committee's report, which was dated December 1976, stressed that control of illegal immigration will only result from a multifaceted approach:

The Committee does not believe any single element among its recommendations can solve the illegal alien problem. It does believe that the cumulative effect of implementing the recommendations which follow will be to slow the flow of illegal aliens significantly and to take major strides toward the development of a more effective immigration policy.³

The Committee's recommendations included employer sanctions, a legalization program with a July 1, 1968, eligibility date, increased enforcement resources, increased penalties against smugglers, an evaluation of the H-2 program to make it more responsive to legitimate labor shortages, a revision of immigrant labor certification provisions to eliminate individual certifications, and a broad-based research effort to determine the nature and scope of immigration-related problems.

C. CARTER ADMINISTRATION PROPOSALS

The Carter administration, under the leadership of Attorney General Griffin Bell, Secretary of Labor Ray Marshall, and Immigration and Naturalization Service Commissioner Leonel Castillo determined early in its term that the problem of illegal immigration was a critical national issue:

These proposed actions are based on the results of a thorough Cabinet-level study and on the groundwork which has been laid, since the beginning of the decade, by Congressmen Rodino and Eilberg and Senators Eastland and Kennedy * * *

Each of these actions will play a distinct, but closely related, role in helping to solve one of the most complex domestic problems. In the last several years, millions of undocumented aliens have illegally migrated to the United States. They have breached our nation's immigration laws,

³ Preliminary report, p. 240.

displaced many American citizens from jobs, and placed an increased financial burden on many States and local governments.⁴

After a task force study of the issue, a comprehensive immigration reform bill was drafted by the Carter administration, the "Alien Adjustment and Employment Act of 1977," and introduced in October 1977 as H.R. 9531 and S. 2252.

The Carter proposal contained five basic provisions:

(1) Civil penalties (injunctions and fines of \$1,000 per illegal alien) against those employers who knowingly hire illegal aliens;

(2) Increased enforcement of the Fair Labor Standards Act and the Federal Farm Labor Contractor Registration Act, targeted to areas with high illegal employment;

(3) Permanent resident status for eligible illegal aliens who had resided in the United States since January 1, 1970, and a 5-year temporary resident status for those who had resided continuously since January 1, 1977;

(4) Substantially increased resources for enforcement at the Southern border and ports-of-entry; and

(5) Continued cooperation with source countries in their effort to improve their economies and improve control over alien smuggling activities.

While President Carter rejected any new temporary worker program, he did recommend reviews of the existing H-2 temporary worker program and U.S. immigration policy as a whole.

The Senate Judiciary Committee held hearings on S. 2252 in May 1978, but the Carter administration bill received no further action during the 95th Congress.

The Carter proposals were attacked by some vocal public interest groups and Members of Congress who claimed that the package was not sufficiently grounded in factual studies and that other alternatives to curb illegal immigration had not been adequately examined. It was this desire for a comprehensive review of U.S. immigration policy which led to the establishment of the bipartisan Select Commission on Immigration and Refugee Policy during the 95th Congress.

D. SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Legislation enacted in 1978 (Public Law 95-412) established a 16-member Select Commission on Immigration and Refugee Policy consisting of 4 members of the Senate Judiciary Committee (Senators Mathias, Simpson, Kennedy, DeConcini), 4 members of the House Judiciary Committee (Representatives Rodino, Holtzman, McClory, Fish), 4 Cabinet Secretaries (from the Departments of Justice, State, Labor, and Health and Human Services), and 4 public members appointed by President Carter, plus its Chairman, the Reverend Theodore M. Hesburgh. Its mandate was—

⁴ "Undocumented Aliens, Message from the President of the United States," U.S. House of Representatives, 95th Congress, 1st session, Doc. No. 95-202, Aug. 4, 1977, p. 1.

To study and evaluate * * * existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate.

To fulfill this mandate the Select Commission "sought the most reflective, authoritative information from individuals, groups and studies through a variety of methods," including contracting social science and legal research, and conducting 12 regional public hearings and several site visits across the Nation. Consultations were held with experts inside and outside the Government, including scholars, representatives from State and local governments, Hispanic and other ethnic organizations, environmental and population groups, international organizations, church organizations, civil liberties groups, organized labor, employers' associations, and immigration lawyers.

After 2 years of study and deliberation, the Select Commission issued its final report, entitled "U.S. Immigration Policy and the National Interest" on March 1, 1981. The Commission noted that of all the issues related to immigration and refugee policy, the most critical was illegal immigration.

The Select Commission recommended "immediate action" to control illegal immigration and enumerated the key elements of their program:

- (1) Increased funding, training, and manpower for border and interior enforcement;
- (2) Enactment of legislation making it illegal for employers to hire illegal or undocumented aliens (such sanctions would be combined with some form of system to verify eligibility to work in the United States);
- (3) Increased enforcement of wage and working standards legislation; and
- (4) Legalization of status for certain aliens who entered the United States before January 1, 1980, and have resided here for a minimum number of years to be set by Congress (legalization to begin after a level of enforcement had been achieved which would prevent a legalization program from serving as a stimulus to further illegal entry).

The Select Commission rejected any new temporary worker program, but did recommend improving the existing H-2 program as a means for addressing temporary labor shortages without adversely affecting American workers.

Although the Select Commission did not reach a consensus as to the specific type of identification that should be required for verification of employment eligibility under employer sanctions laws, they did agree on the principles that should underlie a verification system: reliability, protection of civil rights and civil liberties, and cost-effectiveness. They state that without a reliable verification system, employer sanctions laws—the cornerstone of an effective program to reduce illegal immigration—would be very difficult to implement fairly and effectively:

(The Commission) acknowledges the criticism leveled at previous employer sanctions legislation on the basis of the

vague, and therefore unenforceable, requirement that employers must knowingly hire undocumented workers. It holds the view that an effective employer sanctions system must be based on a reliable means of verifying employment eligibility. Lacking a dependable mechanism for determining a potential employee's eligibility, employers would have to use their discretion in determining that eligibility. The Select Commission does not favor the imposition of so substantial a burden on employers and fears widespread discrimination against those U.S. citizens and aliens who are authorized to work and who might look or sound foreign to a prospective employer. Most Commissioners, therefore, support a means of verifying employee eligibility that will allow employers to confidently and easily hire those persons who may legally accept employment. . . . To be nondiscriminatory, they believe, any employee eligibility system must apply equally to each member of the U.S. workforce—whether that individual be an alien authorized to work in this country or a U.S. citizen.

The Select Commission's recommendations were reviewed at special joint congressional hearings and by the Reagan administration.

E. REAGAN ADMINISTRATION PROPOSALS

Following the submission of the final report of the Select Commission on Immigration and Refugee Policy on March 1, 1981, President Reagan appointed Attorney General William French Smith to chair a Cabinet-level task force to review the Commission's findings and recommendations and to develop a comprehensive immigration reform strategy.

On July 30, 1981, President Reagan announced the basic provisions of his proposals for immigration and refugee policy reform. Although he pledged that "America's tradition as a land which welcomes people from other countries" would continue, he emphasized that immigrants must be accepted "in a controlled and orderly fashion." The proposals were principally directed toward improving control of illegal immigration generally, as well as mass arrivals of undocumented aliens claiming asylum.

President Reagan's proposals relating to the general problem of illegal immigration included the following features:

- (1) Sanctions against employers of four or more employees who knowingly hire illegal aliens, with civil penalties ranging from \$500-\$1,000 per violation;
- (2) Verification of employment eligibility would be based on a combination of existing identification documents which would be required of all American workers at the time of seeking employment;
- (3) Legalization of status of otherwise admissible aliens present in the United States as of January 1, 1980, as well as Cubans and Haitians here since January 1, 1981, on a 3-year renewable temporary basis. After 10 years residency (5 years for Cubans and Haitians), such persons could apply for permanent residence provided they demonstrated minimal English proficiency;

(4) A 2-year pilot temporary worker program to admit up to 50,000 Mexican nationals to perform jobs lasting 9-12 months in States and occupations where the Governor had certified a shortage of U.S. workers; and

(5) Increased resources for enforcement of existing immigration and labor laws.

President Reagan's proposal to handle future mass arrivals included:

(1) Increased enforcement measures, including legislation to strengthen penalties for the transporting of undocumented aliens to the United States, to prohibit U.S. residents from traveling to designated foreign countries during presidentially declared emergencies, and to strengthen existing law relating to the seizure and forfeiture of vessels used in violation of the law;

(2) Interdiction by the Coast Guard of certain vessels, and budget authority for additional detention facilities for undocumented aliens awaiting further legal proceedings;

(3) Legislation to expedite exclusion and asylum proceedings; and

(4) Contingency planning for future mass arrivals by sea.

Legislation implementing these and other Reagan administration proposals was introduced on October 22, 1981, as S. 1765/H.R. 4832, the Omnibus Immigration Control Act. This bill was introduced by request by the chairmen of the Senate and House Judiciary Committees, Senator Strom Thurmond and Representative Peter W. Rodino, Jr., and subsequently referred to the Senate and House Judiciary Committees. Hearings were held by the appropriate subcommittees.

F. 97TH CONGRESS (1981-1982)

On March 17, 1982, Senator Simpson, on behalf of himself, Senator Grassley, and Senator Huddleston, introduced S. 2222, the Immigration Reform and Control Act of 1982. The bill was a result of the 14 hearings and 5 consultations held by the Subcommittee on Immigration and Refugee Policy, the recommendations of the Select Commission on Immigration and Refugee Policy, and President Reagan's proposals. S. 2222 was subsequently examined during the 2 days of joint hearings with the House Subcommittee on Immigration, Refugees and International Law.

The Subcommittee on Immigration and Refugee Policy favorably reported the bill on May 6, 1982, by a vote of 4 to 0. The Committee on the Judiciary reported the bill, with amendments, by a vote of 16 to 1, recommending that it be passed by the Senate. Eleven amendments were accepted by the Committee on the Judiciary, the more important of which advanced the legalization date, eliminated an amendment added to the bill in subcommittee relating to the enforcement of immigration laws by local law enforcement agencies, and changed the standards for admitting foreign workers under the H-2 temporary worker program.

The bill was considered on the floor of the Senate on August 12, 13, and 17, 1982. Twelve amendments were accepted, the more important of which reinstated the legalization date of January 1,

1980, established a block grant program to reimburse State costs of benefits provided to legalized aliens, required reports on the discrimination and recordkeeping impacts of employer sanctions, and expressed the sense of the Congress that English is the official language of the United States. On August 17, 1982, the Senate passed S. 2222, 80 to 19.

The House Committee on the Judiciary considered its version of the bill, H.R. 5872, on September 14, 15, 16, 21, and 22, 1982, and favorably reported it on September 22, 1982. H.R. 5872 was debated on the House floor on December 16, 17, and 18, 1982, but was not brought to a vote. The bill died with the end of the 97th Congress.

During the 97th Congress, the Subcommittee on Immigration and Refugee Policy conducted 16 public hearings and 5 consultations on subjects related to reform of the Immigration and Nationality Act.

<i>Hearings</i>	<i>1981</i>
1. Joint Senate and House subcommittee hearings on the final report of the Select Commission on Immigration and Refugee Policy	May 5, 6, 7
2. Administration policy on immigration and refugees	July 30
3. United States as a country of mass first asylum	July 31
4. Employer sanctions	Sept. 30
5. Systems to verify authorization to work in United States	Oct. 2
6. Asylum adjudication	Oct. 14
7. Adjudication procedures	Oct. 16
8. Temporary workers	Oct. 22
9. Legalization	Oct. 29
10. Preference System	Nov. 23
11. H-2 temporary workers and nonimmigrants	Nov. 30
12. Nonimmigrant business visas and adjustment of status	Dec. 11
	<i>1982</i>
13. Population and immigration policy	Jan. 25
14. G-iv relief proposals	Feb. 1
15. Joint Senate and House subcommittee hearing on S. 2222/H.R. 5872—House side	Apr. 1
16. Joint Senate and House subcommittee hearing on S. 2222/H.R. 5872—Senate side	Apr. 20
<i>Consultations:</i>	
1. Systems to verify authorization to work in the United States	Sept. 10, 1981
2. Asylum	Nov. 16, 1981
3. Foreign immigration laws	Dec. 7, 1981
4. Adjudication procedures	Apr. 14, 1982
5. H-2 provisions	Apr. 15, 1982

G. 98TH CONGRESS (1983-1984)

On February 17, 1983, during the last Congress, Senator Simpson introduced S. 529, the Immigration Reform and Control Act of 1983. The bill was referred to the Subcommittee on Immigration and Refugee Policy, which held 4 days of public hearings. The Subcommittee favorably reported the bill on April 7, 1983, by a vote of 4 to 0.

On April 19, 1983, the Committee on the Judiciary met in executive session to consider and discuss S. 529. Two substantive and four technical amendments were accepted. The substantive amendments were:

- (1) An amendment to require the General Accounting Office to investigate the effects of employer sanctions, including whether unlawful discrimination or unnecessary regulatory burdens had resulted; and

(2) An amendment to restore the fifth preference for unmarried brothers and sisters of U.S. citizens.

The Committee then voted 13 to 4 to favorably report the bill. The bill was considered on the floor of the Senate on April 28 and May 16, 17, and 18, 1983. Eighteen amendments were adopted, the more important of which created a 3-year transitional labor program for agricultural employers, deleted the investor preference, required a search warrant for open-field searches of agricultural operations, provided for Federal reimbursement of the incarceration costs of illegal aliens, provided for congressional review of any presidentially proposed change in the worker verification system, and created a compromise system of asylum adjudication that allowed for limited judicial review. On May 18, 1983, the Senate passed S. 529, 76 to 18.

The House Committee on the Judiciary considered its version of the bill, H.R. 1510, on May 3, 4, and 5, 1983, and favorably reported it on May 5, 1983. The bill was then sequentially referred to the House Committees on Agriculture, Energy and Commerce, Education and Labor, and Ways and Means, and either reported or discharged on or before June 28, 1983. H.R. 1510 was considered by the House of Representatives on June 11, 12, 13, 14, 18, 19, and 20, 1984. The bill was passed on June 20, 1984, by a vote of 216 to 211.

House and Senate conferees began to meet on September 13, 1984, in order to resolve the differences between the two bills. Ten days of deliberation were held. However, conferees were unable to resolve the remaining differences at the final meeting of October 9, 1984. The bill died with the end of the 98th Congress.

IV. COMMITTEE PROCEEDINGS

Senator Simpson introduced S. 1200, the Immigration Reform and Control Act of 1985, on May 23, 1985. The bill was referred to the Subcommittee on Immigration and Refugee Policy.

The Subcommittee on Immigration and Refugee Policy conducted 3 days of public hearings on the bill on June 17, 18, and 24, 1985. The Subcommittee was discharged from further consideration of the bill on July 10, 1985.

The Committee on the Judiciary considered and discussed the bill on July 18, 23, 25, and 30. Several technical and other amendments were considered, as discussed below. On July 30, 1985, by a vote of 12 to 5, the Committee ordered the amended bill reported out with the recommendation that it be passed by the Senate. The rollcall vote was as follows:

YEAS (12)	NAYS (5)
Thurmond	Biden*
Mathias*	Kennedy*
Laxalt*	DeConcini
Hatch	Heflin*
Simpson	Simon
East	
Grassley	
Denton*	
Specter	
McConnell	
Metzenbaum	
Leahy*	

*By proxy.

The following amendments were adopted by voice vote:

1. Simpson amendment to ensure that members of the Legalization Commission support the concept of the kind of legalization program contained in the bill, and to conform the finding required to "trigger" legalization to recommendations of the Select Commission on Immigration and Refugee Policy.

2. Simpson amendment to allow reimbursement payments to States for incarceration costs only with respect to illegal aliens convicted of a felony.

3. A package of technical amendments offered by Senator Simpson.

4. Simon amendment to require INS to report to Congress in 90 days on management improvements which would improve agency efficiency.

5. Simon amendment to create a United States-Mexico Commission to determine methods to promote long-term Mexican economic growth.

6. Metzenbaum amendment to impose a criminal penalty of up to \$3,000 per alien, 6 months imprisonment per violation, or both, for a "pattern or practice" of violations after a civil penalty for a "pattern or practice" had already been assessed.

The following amendment was adopted by rollcall vote as indicated:

Metzenbaum amendment to insure that the effective date of the legalization program is no later than 3 years from enactment.

YEAS (10)

Thurmond
Mathias*
Laxalt*
Simpson
East
Grassley
Denton*
Specter
McConnell
Metzenbaum

*By proxy.

NAYS (4)

Hatch
Kennedy*
DeConcini
Simon

The following amendments were defeated by rollcall vote, as indicated:

1. Kennedy amendment to delete the legalization commission requirement and advance the cutoff date from January 1, 1980, to January 1, 1981.

YEAS (6)

Biden
Kennedy
Metzenbaum
DeConcini*
Leahy*
Simon

NAYS (8)

Thurmond
Laxalt
Hatch
Simpson
East
Grassley
Denton
Specter*

*By proxy.

2. Kennedy amendment to require expedited procedures on any joint resolution introduced to "sunset" employer sanctions in 3 years, if the GAO finds that such sanctions have resulted in a widespread pattern of discrimination.

YEAS (7)

Mathias*
Biden
Kennedy
Metzenbaum
DeConcini*
Leahy*
Simon

NAYS (8)

Thurmond
Laxalt
Hatch
Simpson
East
Grassley
Denton
McConnell*

*By proxy.

3. Kennedy amendment to delete the temporary agricultural worker ("N") provisions and the agricultural labor transition program, thus retaining only the present H-2 temporary worker program.

YEAS (4)

Biden
Kennedy
Metzenbaum
Simon

NAYS (13)

Thurmond
Laxalt*
Hatch
Simpson
East
Grassley
Denton
Specter
McConnell*
Byrd*
DeConcini*
Leahy*
Heflin*

*By proxy.

4. Metzenbaum amendment to sunset the bill's temporary agricultural worker ("N") program in 3 years, and to impose a limit of 100,000 persons per year during the 3 years.

YEAS (4)

Biden
Kennedy
Metzenbaum
Simon

NAYS (10)

Thurmond
Laxalt*
Hatch
Simpson
East
Grassley
Denton
McConnell*
DeConcini*
Byrd*

*By proxy.

V. SECTION-BY-SECTION ANALYSIS

TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—FUNDING FOR IMPROVED ENFORCEMENT

Section 101—Authorization of appropriations for enforcement and service activities of the Immigration and Naturalization Service and wage and hour enforcement

Subsection (a) expresses the sense of Congress that an increase in Immigration and Naturalization Service (INS) border patrol and other inspection and enforcement activities, and in INS examinations and service activities, are essential elements of the program of immigration control established in the legislation.

Subsection (b) authorizes \$840 million in fiscal year 1987 and \$830 million in fiscal year 1988 for the INS, in part for these purposes.

Subsection (d) authorizes the appropriation to the Department of Labor of additional sums as may be necessary for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs.

Section 102—User fees

Section 102 provides that the Attorney General, in his discretion, may impose fees for an alien's use of border or other Immigration and Naturalization Service facilities and services, in an amount commensurate with the costs attributable to such use.

PART B—INCREASED PENALTIES FOR IMMIGRATION-RELATED VIOLATIONS

Section 111—Unlawful transportation of aliens to the United States

Section 111 of the bill amends INA section 274, which provides for criminal penalties and seizure of property in connection with the transportation of illegal aliens to or within the United States and the concealing, harboring, or shielding from detection of such aliens. First, it modifies the "Texas Proviso" (the proviso located at the end of subsection (a) of current INA section 274), which under current law provides that "employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring." This section of the bill provides that for purposes of the harboring offense, as amended by the bill (see below), "employment (including the usual and normal practices incident to employment) *by itself* does not constitute harboring." (Emphasis added.) By this modification the Committee intends to make clear that although employment does not by itself constitute harboring, employment and employers are not exempt from coverage. Employment (including the usual and normal practices incident to employment) in combination with other activities or other circumstances, or employment practices which are not usual and normal, may constitute harboring. For example, if an employer, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, engages in, or attempts to engage in, activities which are not the "usual and normal practices incident to employment," knowing or in reckless

disregard of the fact that this will have a substantial probability of harboring such illegal alien, i.e., substantially facilitating such alien's remaining in the United States, then such employer may be in violation of this section. In the view of the Committee, "usual and normal practices incident to employment" excludes, among other things, activities which have as a major purpose such harboring, regardless of how frequent such activities are in the industry or kind of business in which such employer is engaged. Such usual and normal practices would, however, include the furnishing of housing or other services which are required by State or Federal law, or any regulation thereunder. The Committee intends that the modified language be interpreted literally. The language is a clarification of the meaning of "harbors." It does not pertain to the meaning of "conceals" or "shields from detection."

Second, the section clarifies and expands the coverage of INA section 274(a). The state of mind required for an offense is expressly stated to be knowledge or reckless disregard of the relevant facts. With respect to the offenses pertaining to illegal aliens within the United States, a violation requires that a person act "knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law."

With respect to the offense of subparagraph (A) of paragraph (a)(1), a violation requires that a person act "knowingly or in reckless disregard of the fact that a person is an alien." This offense does not require that the alien not have received prior official authorization to come to, enter, or reside in the United States, merely that the person bring to or attempt to bring to the United States the alien "at a place other than a designated port of entry or place other than as designated by the Commissioner."

This is in contrast to the offense of paragraph (a)(2), which also relates to a person who "brings to or attempts to bring to the United States in any manner whatever" an alien, but which requires for a violation that a person act "knowingly or in reckless disregard of the fact that an alien has not received *prior* official authorization to come to, enter, or reside in the United States" (emphasis added) and does not require that the bringing to the United States be at a place other than a designated port of entry or place other than as designated by the Commissioner (the paragraph does provide, however, that the penalty may be increased if "the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry"). No intent to smuggle is required. Penalties may also be increased for a second or subsequent offense, for an offense done for the purpose of commercial advantage or private financial gain, and for an offense during which either the offender or the alien with the knowledge of the offender makes any false or misleading statement or engages in any act intended to mislead any officer, agent, or employee of the United States.

Third, the section increases the fines which may be imposed for violations of INA section 274(a) and strengthens the provisions allowing for the seizure or forfeiture of conveyances used in the commission of such acts.

Section 112—Fraud and misuse of certain documents

Subsection (a) extends the coverage of 18 U.S.C. 1546, which provides for criminal penalties for the use or manufacture of counterfeit or altered entry documents or entry documents relating to another individual, to include all documents which may be used to show authorized stay or authorized employment in the United States.

Subsection (b) provides for a criminal penalty for using a false document, a document not lawfully issued to the possessor, or a false attestation, for the purpose of satisfying the employment verification system requirements of INA section 274A(b) or 274A(c) or any regulation thereunder.

The Committee intends that the new coverage of INA section 274 enable the prosecution of the procurers and purveyors of false, altered, or fraudulently obtained documents and the aliens who use such documents to remain in the United States in violation of law or to obtain unauthorized employment. The Committee also intends that the INS prosecute aliens who present any application, affidavit, or other document required for legalization under section 202 of the bill, knowing that it contains a false statement with respect to a material fact, in violation of current INA section 274, or who, in connection with a legalization application, violate sections 1001 and 1028 of the United States Code (relating to false or fraudulent statements or documents and to fraud in connection with identification documents).

Section 113—Restrictions on adjustment of status

Subsection (a) amends section 245(c) of the INA to provide that aliens who have failed for any reason to maintain continuously a legal status since entry in the United States will not be eligible to adjust to permanent resident status under INA section 245. The present statutory provision prohibits such adjustment only if the failure to maintain legal status is due to unauthorized employment. The new subsection also provides that special immigrants described in INA section 101(a)(27)(H) will not be subject to the prohibition. Current law exempts only immediate relatives of U.S. citizens.

It is the intention of the Committee to make adjustment of status a much less frequently used method of obtaining permanent resident status in the United States. Furthermore, the Committee expects that the administration will continue to implement immigration entry as before and not respond to the new limitations on adjustment of status by making special arrangements enabling aliens who are not nationals of countries which border on the United States to obtain immigrant visas in such countries.

PART C—CONTROL OF UNAUTHORIZED EMPLOYMENT OF ALIENS

Section 121—Making knowing employment of unauthorized aliens unlawful

Section 121(a)(1) inserts a new section 274A into the Immigration and Nationality Act. Subsection (a) of that new section makes it unlawful for anyone (1) after enactment to hire, or for a fee or

other consideration to recruit or refer, for employment in the United States an alien knowing that such alien is unauthorized to be so employed, and (2) to continue to employ an alien hired after enactment, knowing that the alien is not authorized to be so employed. The phrase "to recruit or refer for a fee or other consideration" is intended to include the activities of employment agencies, executive search firms, and labor union hiring halls. The phrase "for a fee or other consideration" was inserted so that such activities as referrals by friends or recruitment by corporations with respect to their own employees would be excluded.

This subsection of the new INA section 274A is intended to be broadly construed with respect to coverage. With the exception of the categories noted, all employers, recruiters, and referrers are covered: individuals, partnerships, corporations and other organizations, nonprofit and profit, private and public, who employ, recruit, or refer persons for employment in the United States.

The subsection provides that any employer, recruiter, or referrer which has uniformly complied in good faith with the employment verification system described in subsection (b) has an affirmative defense in any civil or criminal proceeding in connection with an alleged violation of subsection (a)(1). Subsection (a) also establishes a presumption that an employer of four or more persons has knowingly hired an alien not authorized to work in the United States if such employer is found to have in fact hired such an alien and has not uniformly followed in good faith the employment verification procedures. Similarly, a person or entity which recruits or refers for a fee or other consideration more than four individuals in any 12-month period and who is found to have in fact recruited or referred an unauthorized alien shall be presumed to have knowingly done so unless such person or entity has uniformly complied in good faith with the employment verification system. These presumptions may be rebutted by presentation of "clear and convincing" evidence that such an employer, recruiter or referrer did not knowingly hire (or recruit or refer) an unauthorized alien. An employer who has not complied with the verification procedure in subsection (b) may, for example, rebut the presumption if it can demonstrate that its employment procedures as applied are reasonably likely to avoid the employment of unauthorized aliens. An employer may not merely plead ignorance—willful or unwillful—in order to overcome the presumption. The Committee believes that the affirmative defense which results from compliance and the presumption which results from noncompliance will encourage the majority of employers to elect to comply with the optional worker verification system.

Small businesses are not made subject to the presumption. The Committee seeks to avoid placing an undue burden on such businesses, which are estimated to represent 50 percent of employers but only 5 percent of employees.

Subsection (b) of the new section INA 274A sets forth a procedure for the verification of work eligibility which must be used if such affirmative defense is to be obtained and such presumption is to be avoided. It requires that an employer (or recruiter or referrer) attest, under penalty of perjury, on a form approved by the Attorney General that such employer has examined what reasonably ap-

pears on its face to be either (1) a document which establishes both employment authorization and identity, including the employee's U.S. passport, certificate of U.S. citizenship, certificate of naturalization, unexpired foreign passport with an appropriate, unexpired endorsement of the Attorney General, or a resident alien card or other alien registration card (if it contains the individual's photograph and evidence of employment authorization), or (2) a combination of (i) a document which establishes employment authorization, including the employee's Social Security card, certificate of birth in the United States or establishing U.S. nationality, which the Attorney General finds acceptable by regulation, or other documentation acceptable to the Attorney General, and (ii) a document which establishes identity, including a driver's license or other State identification card, or (for those under 16 or in States that do not issue identification documents) another type of document which the Attorney General finds, by regulation, to be a reliable means of identification.

Subsection (b) of the new INA section 274A also requires the employee to attest on the same form that the employee is a citizen or permanent resident alien, or is otherwise authorized to be so employed.

The employer is required to retain the completed form, and make it available for inspection by the Immigration and Naturalization Service, for 3 years after hiring or 1 year after the date the employment is terminated, whichever is later.

Subsection (c)(1) of the new INA section requires the President to implement such changes in or additions to the verification system as may be necessary to establish a secure system to verify employment eligibility.

Subsection (c)(2) places certain restrictions on any changes in the verification system which the President may implement. Any new system must reliably verify that an applicant is the person he claims to be and that such a person is eligible to work. If the new system will involve examination by an employer of any document, that such document must be in a form which is resistant to counterfeiting and tampering. The Committee intends that the phrase "form which is resistant to counterfeiting and tampering" be interpreted to mean a form specially designed to be so resistant, through the use of fine engraving, special material, magnetic or other coding, or otherwise. Personal information concerning an individual may be made available to Government agencies, employees, and other persons only to the extent necessary to verify that the individual is authorized to be employed. Such verification may be withheld for only one reason: because the individual is an alien not authorized to be employed. The new verification system may not be used for law enforcement, other than as related to enforcement of the INA or several provisions of title 18 of the United States Code relating to false or fraudulent statements or documents. If a new system were to involve presentation of a new card or other document designed specifically for use in the verification system, such document could not be required to be carried on the person or to be presented for any other purpose (except in connection with the enforcement of several provisions of title 18 of the

United States Code relating to false or fraudulent statements or documents).

Subsection (c)(3) of the new INA section 274A requires that the President give notice to Congress before implementing any changes in the worker verification system. Two years notice would be required in the case of a "major change" in the verification system, such as creation of a new card or other document designed specifically for this purpose, or establishment of a telephone verification system. Sixty days notice would be required for other than major changes. These would include, for example, improvements in the present Social Security card.

The subsection also states that a "major change" may not be implemented unless Congress specifically provides funds for implementation of the change.

Subsection (c)(4) authorizes the President to undertake demonstration projects of different changes in the verification system. Such projects would have to conform to the restrictions set forth in paragraph (2), and could not last more than 3 years.

Identification fraud is a staggering problem. A May 12, 1983, report of the Senate Permanent Subcommittee on Investigations dealing with Federal identification fraud estimated that the cost of fraudulent schemes involving Federal, State, and local entitlement programs alone exceeds \$24 billion annually. Hearings on this issue during the 98th Congress by Senator Dole's Senate Judiciary Committee's Subcommittee on Courts also found that, at present, there is easy access to counterfeit identification documents such as Social Security cards, birth certificates, and driver's licenses. Counterfeit documents can be obtained readily and inexpensively anywhere in the United States or neighboring countries from illegal commercial vendors or can be fashioned by "do it yourself" techniques.

Last October, as part of the Comprehensive Crime Control Act, Congress required that agencies operating identification systems use identification documents, insofar as possible, with common descriptive terms and formats so as to reduce redundancy and duplication and to facilitate positive identification. In addition, the Congress required that within 3 years the President make recommendations to the Congress for the enactment of comprehensive legislation concerning Federal identification systems taking into account: (1) the protection of privacy, (2) appropriate civil and criminal sanctions for the misuse or unauthorized disclosure of personal identification information, and (3) the exchange of personal identification information authorized by Federal or State law.

The Committee expects that the President and the Attorney General will take the identification fraud considerations expressed in the Comprehensive Crime Control Act into account, including the results of the President's study, when available, when decisions are made about the type of identification and employment authorization documents which should be relied upon by employers to make determinations under section 121 and about the improvements which should be made therein.

Furthermore, the Committee believes that the President and the Attorney General, in conjunction with other interested Departments and agencies, should work with State and local identification document-issuing authorities to develop demonstration projects and

programs to improve the reliability and validity of identification documents. Efforts should be made to bring State and Federal document-issuing authorities together to deal with the problems of document fraud and abuse and to develop common strategies to deal with them. Document formats could be standardized and software developed for the exchange of document information for the purposes of update, correction, and verification. For example, one of the most prevalent forms of document fraud involves the use of duplicate copies of birth certificates of deceased individuals to obtain new identification documents for an individual who then assumes the identity of the deceased individual. Unless some systematic means is developed for annotating the birth certificate with death information, the potential for fraudulent misuse will remain great.

Subsection (d)(1) of the new INA section requires that the Attorney General establish complaint and investigation procedures. The new procedure must provide for individuals to file written, signed complaints concerning potential violations; for INS to investigate the complaints which have a substantial probability of validity; for INS or other Department of Justice entities to investigate violations on their own initiative; and for designation of a specific unit in INS which will handle the prosecution of cases of violation of INA section 274A.

The Committee intends the written, signed complaint procedure to enhance compliance with subsection (a) by providing a mechanism to inform the INS of violations of the law. The Committee is concerned, however, that such a mechanism could be used for harassment purposes against innocent employers. Furthermore, an excessive amount of INS time and resources might be expended in the investigation of spurious complaints.

Specific protections have been included to minimize the risk of these undesirable results. For example, any complaint under this subsection must be in writing and must be signed by the person or entity filing the complaint. In addition, the subsection requires that any signed, written complaint must have a substantial probability of validity. The Committee intends that determinations by the INS to take no action with respect to complaints filed pursuant to this subsection shall be final and are not subject to further review. The Committee also expects that the procedures developed by the Attorney General will provide additional protections for innocent employers against unwarranted investigations and additional measures to avoid wasteful use of INS time and resources. Finally, the Committee notes that the penalties provided for in section 1001 of title 18 of the United States Code (relating to false or fraudulent statements) would be available in certain cases of deliberately false statements.

Subsection (d)(2) of the new INA section 274A sets forth the penalties available against persons or entities which knowingly employ or recruit or refer for a fee or other consideration an unauthorized alien, as prohibited in subsection (a) of the new INA section. If, after notice and the opportunity for a hearing, if requested, an immigration judge determines, upon a preponderance of the evidence, that the person or entity has violated subsection (a), the judge shall state his findings of fact and cause to be served on the person or

entity a cease-and-desist order. In addition to the order, the violator shall be assessed a civil penalty of \$100 to \$2,000 per alien for the first offense, \$2,000 to \$5,000 per alien for subsequent offenses, and \$3,000 to \$10,000 per alien for a "pattern or practice" of violations. The judge may also require the violator to comply for up to 3 years with the verification procedure or take other appropriate remedial action.

Criminal penalties are available in the case of a person or entity which engages in a "pattern or practice" of violations after having previously been assessed a civil penalty for a "pattern or practice" of violations. Fines of up to \$3,000 per unauthorized alien, or imprisonment of up to 6 months for the entire "pattern or practice" of violations, or both, may be assessed. The presumption of knowing hiring in subsection (a)(3) of the new INA section shall not apply in the case of a criminal prosecution.

Subsection (d)(3) provides that immigration officers and immigration judges shall have reasonable access to examine evidence of any person or entity being investigated. Immigration judges, by subpoena, may compel the attendance of witnesses and the production of evidence at any designated place or hearing. The Attorney General may seek a court order from a U.S. District Court to enforce such subpoena.

Subsection (d)(4) of the new INA section provides that in applying the compliance provisions of subsection (d) to a person or entity composed of distinct, physically separate subdivisions, each such subdivision shall, under certain conditions, be considered a separate person or entity. Such conditions are that the hiring, or recruiting or referring for employment, by each subdivision be conducted separately, without reference to the practices of another subdivision, and not under the control of or under common control with another subdivision.

Subsection (d)(5) authorizes the Attorney General to provide for administrative appellate review of the determination of an immigration judge under this subsection.

Subsection (e) of the new INA section 274A requires that, with certain specified exceptions, judicial review of an order under this subsection shall be in the appropriate Federal judicial circuit and shall proceed according to chapter 158 of title 28, United States Code—the statute currently used for judicial review of an order of deportation. The exceptions include the following: petitions for review must be filed no later than 45 days after the date of the final order; review shall be in either the Federal judicial circuit in which the administrative proceedings before the immigration judge were conducted, or in which the residence of the petitioner is located, but not both; the review shall be based solely upon the administrative record; and the immigration judge's findings of fact shall be conclusive if supported by substantial evidence.

Subsection (f) of the new INA section provides that if a violator fails to comply with a final order issued under subsection (d), the Attorney General shall file suit to seek compliance in the appropriate U.S. District Court. The subsection also provides that in any such suit the validity and appropriateness of the order shall not be subject to review.

Subsection (g) requires that in any documentation or endorsement of an alien's authorization of employment in the United States the Attorney General conspicuously indicate on such documentation or endorsement any limitations with respect to period or type of employment or employer. The subsection also provides that the section preempts State and local laws imposing civil or criminal sanctions for the employment, or the recruitment or referral for a fee or other consideration for employment, of aliens not authorized to be employed in the United States.

Section 121(b) of the bill provides that, with certain specified exceptions, the requirements of section 274A take effect immediately. The exceptions include the following: subsection (a) of the new INA section 274A will apply only to illegal aliens hired, or recruited or referred, after enactment; during the first 6 months notice will be given as to apparent violations of subsection (a), but no penalty shall be assessed; and during the subsequent 6-month period the first apparent offense will result only in a warning.

Section 121(c) requires interim or final regulations implementing this section be issued no later than the first day of the seventh month after enactment. The subsection also provides that during the first year after enactment, the Attorney General, in cooperation with the Secretary of Commerce, the Secretary of Health and Human Services, the Secretary of the Treasury, the Secretary of Labor, the Secretary of Agriculture, and the Administrator of the Small Business Administration, must disseminate forms and information to employers, employees, and the public concerning the provisions of the new INA section 274A.

Section 122—Temporary agricultural worker program

Section 122(a) amends the definition of "nonimmigrant" to distinguish aliens coming temporarily to the United States to perform temporary or seasonal agricultural services, described in subparagraph (N) of INA section 101(a)(15) as amended by this bill, from aliens coming temporarily to perform other temporary services or labor, described in subparagraph (H) of such amended section.

Section 122(b) requires the Attorney General to consult with the Department of Agriculture, as well as the Department of Labor, before he determines whether to admit any temporary agricultural worker under 101(a)(15)(N). The Committee wishes to emphasize that the decision whether to issue a labor certification, as required in new INA section 216 (see below), must be made by the Department of Labor.

Section 122(c) creates a new section 216 in the INA, "Admission of Temporary Agricultural Workers."

Subsection (a) of the new INA section 216 provides that a petition to import an alien as an "N" worker cannot be approved by the Attorney General unless the petitioner has applied for a certification from the Secretary of Labor that (i) there are not sufficient U.S. citizen and authorized alien workers who are able, willing, qualified, and who will be available at the time and at the place needed to perform the required services, and (ii) the employment of aliens in such services will not adversely affect the wages and working conditions of workers in the United States similarly employed. The present requirement that in every case employers must

make a nationwide recruitment and hiring effort has been deleted as excessively burdensome and because it is not currently required by the Department of Labor. However, the Committee intends that in making its certification decision with respect to particular employment, the Department of Labor will continue to consider U.S. citizen and permanent resident alien migrant workers and U.S. citizens from Puerto Rico who are "able, willing, qualified and available" workers for such employment. The requirement that the employment of aliens not adversely affect the wages and working conditions of workers similarly employed in the United States is not intended to require the Department of Labor to change its existing practice of determining adverse effect wage rates on a State-by-State basis.

Subsection (a) of the new INA section 216 also provides that the Secretary of Labor may impose a fee as a condition of applying for the labor certification, for the purpose of recovering the reasonable costs of processing.

Subsection (b) of the new INA section provides that the Secretary of Labor may not issue a labor certification for an employer if such employer during the previous 2 years substantially violated an essential term or condition of a labor certification or did not pay every penalty which has been assessed by the Secretary of Labor for a violation of a term or condition of such labor certification. However, such an employer may not be denied certification for more than 1 year for any such violation. An employer shall also be denied labor certification if he does not provide the Secretary of Labor with adequate assurances that insurance will be provided to "N" workers which will provide benefits at least equal to the applicable State's worker compensation program (unless the employment is covered by the State program).

Subsection (b) of the new INA section also provides that the Secretary may not issue a labor certification for an employer if there is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification. Current regulations promulgated by the Department of Labor state:

20 CFR Sec. 655.203(a): *Assurances*. As part of the temporary labor certification application, the employer shall include assurances, signed by the employer, that:

(a) The job opportunity is not:

(1) Vacant because the former occupant is on strike or being locked out in the course of a labor dispute; or

(2) At issue in a labor dispute involving a work stoppage.

Furthermore, current regulations promulgated by the Immigration and Naturalization Service state:

8 CFR Sec. 214.2(h)(11):

Effect of strike (i)—A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied if the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained and that the employment or training of the beneficiary would adversely

affect the wages and working conditions of U.S. citizen or lawful resident workers.

It is the Committee's view that the regulations of the Immigration and Naturalization Service and the Department of Labor now in force with respect to strikes and lockouts together establish appropriate standards. If such regulations are changed, the statutory reference to "regulations" is to be interpreted to refer to the new regulations.

Subsection (c) of the new INA section 216 provides that the Secretary of Labor may not require employers to file an application for a labor certification for a temporary agricultural worker more than 65 days before the worker's services are required. Subsection (c) of the new section also provides that the application of the employer shall be considered to have met the wage and working conditions requirements in new INA section 216(a)(1)(B), unless the Secretary of Labor informs the employer within 14 days of the application that such requirements have not been met. The Secretary of Labor is directed to make the labor certification at least 20 days before the date the "N" worker's services are first required if the employer has complied with the requirements for certification and if the employer has not found or been referred U.S. citizens or authorized aliens who have agreed to perform the needed services on the terms and conditions of a job offer which meets the requirements of the regulations. In order for the certification to remain effective, the employer must continue to accept U.S. citizens or authorized aliens who apply or are referred until the date the "N" workers depart for work with the employer. In addition, subsection (c) of the new section allows agricultural employers to comply with the regulations concerning the furnishing of worker housing by payment to the "N" worker of a reasonable housing allowance in lieu of furnishing actual housing, but only when suitable housing is available close to the location of employment.

Subsection (d) of the new INA section 216 clarifies the role of agricultural associations in the program. The petition for admission of an "N" worker and the application for a labor certification may be filed by an association representing agricultural producers. Subsection (d) provides that the labor certification issued to such associations may be used for the certified job opportunities of any of its producer members. Furthermore, joint or sole employer associations may transfer their "N" workers among their members for certified job opportunities. In the case of a violation under subsection (b)(2) of the new INA section 216 (which results in temporary disqualification from receiving subsequent labor certifications), an individual member's violation would not be counted against the joint or sole employer association of which he was a member (or against the other producer members individually), unless the Secretary of Labor found that the association or other members participated in, or had knowledge of and derived benefit from, the violation. In the case of such a violation where the joint or sole employer association was involved, the violation would not be counted against the individual producer members unless the Secretary of Labor found that such member or members participated in, or had knowledge of and derived benefit from, the violation. The Committee intends that more than mere membership in an association be

established before an individual member may be found to have "participated" in a violation by the association or by another producer member.

Subsection (e) of the new INA section 216 provides for the following expedited appeal and petitioning procedures for agricultural employers: (1) If labor certification is denied, the Secretary of Labor shall provide an expedited review of the denial, or at the applicant's request, a de novo hearing on the issues involved in the denial. In the case of an application with respect to "N" workers who are sought to perform services in the production of "perishable commodities" (as defined by the Secretary of Agriculture), the expedited review shall occur within 72 hours. (2) If an employer asserts that referred eligible domestic workers are not able, willing, or qualified for employment-related reasons, the Secretary of Labor shall make a new determination on such an employer's certification application within 72 hours of such employer's request. The employer has the burden of establishing that workers referred are not actually able, willing, or qualified because of employment-related reasons. (3) If a labor certification has been denied because of the availability of U.S. citizens and authorized aliens, and the U.S. citizens and authorized aliens who have agreed to perform the services do not report for work at the time and place of need, the Attorney General shall provide for the entry of an appropriate number of "N" workers if necessary. (4) If an employer faces a critical need for workers due to unforeseen circumstances—for example, an unexpected change in climatic conditions—the Secretary of Labor shall permit the employer to amend the application for certification or make a new application and may waive some or all of the recruitment period normally required. In such cases of new or amended applications, the Secretary shall make a new determination of the need for workers no later than 20 days before the date of need, provided that if the amended or new application is made later than 3 days before the date of need the Secretary shall make the determination within 72 hours of its submission.

Finally, subsection (e) of the new INA section 216 provides that if the Secretary of Labor denies a labor certification or fails to act on the application, the Attorney General may permit the applicant to present countervailing evidence with respect to the availability of domestic workers and the observance of Department of Labor employment policies.

Subsection (f) of the new INA section restricts the duration of an "N" worker's visa to the aggregate period (or periods) which the Attorney General establishes by regulation. An exception to this authority is granted where the Secretary of Labor has recognized before enactment of S. 1200 that certain agricultural labor or services require stays which may exceed 1 year. This exception pertains to the particular historical case of the sheep-raising industry. Aliens have been admitted under the H-2 provisions of the Act to work as range shepherders since 1958. They have been allowed to stay for 3-year periods without mandatory return to their country of origin. This provision will allow the continuation of that practice under the new law.

Subsection (f) also provides that any alien admitted in the previous 5 years under the "N" program who violated a term or condi-

tion of that admission would not be allowed to enter as an "N" worker. Finally, the new subsection clarifies that an employer with an approved petition for an "N" worker may hire for a certified job opportunity such a worker who has completed a labor contract with another employer. The Attorney General is directed to provide a procedure which would allow "N" workers who have completed a work contract and are otherwise not deportable to remain in the United States for brief periods in order to seek and accept employment with employers who are authorized to employ such workers. The Committee does not intend, however, that "N" workers be unrestricted in their movement during those brief periods.

Subsection (g) of the new INA section 216 authorizes the Secretary of Labor to take such actions as may be necessary to assure employer compliance with the terms and conditions of employment under this new INA section. Subsection (g) also requires the Attorney General to provide for the endorsement of entry and exit documents of "N" workers as may be necessary to carry out new INA section 274A, added by section 121(a) of this bill. Finally, subsection (g) provides that the provisions of the new INA section 216 and of subsections (a) and (c) of INA section 214 (relating to the admission of nonimmigrants generally) preempt State and local laws regulating admissibility of nonimmigrant aliens.

Section 122(d) authorizes the appropriation to the Department of Labor of \$10 million for each fiscal year (beginning with fiscal year 1987) for the purpose of recruiting domestic workers for jobs which "N" alien workers might otherwise perform and monitoring terms and conditions of employment of "N" workers and U.S. workers employed by the same employers. Subsection (d) also authorizes such sums as are necessary to enable the Secretary of Labor to make the determinations and certifications required under the "N" program, and to enable the Secretary of Agriculture to carry out his duties under the program.

Section 122(e) prohibits an alien who entered the United States as an "N" worker, other than an "immediate relative" (as defined in INA section 201(a) and (b)) of a U.S. citizen, from adjusting his status under INA section 245 or 248.

Section 122(f) provides that the amendments contained in subsections (a), (b), and (c) of this section of the bill will apply to petitions and applications filed under INA sections 214(c) and 216 on or after the first day of the seventh month beginning after enactment.

Section 122(g) requires the Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, to approve all regulations implementing INA sections 101(a)(15)(N) and 216, added by this bill, before they are issued. The Committee believes that the Attorney General, as the final nonjudicial authority on the proper interpretation of immigration laws, should approve all regulations relating to "N" workers. The Committee intends that the Secretary of Labor continue to issue all regulations relating to labor certification, but believes that the Department of Agriculture should have a meaningful advisory role in formulating regulations for the "N" program, since these will be concerned with the particular needs of agriculture.

Section 123—Agricultural labor transition program

Section 123(a) requires the Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, to establish an agricultural labor transition program. The purpose of the program is to assist agricultural employers in shifting from the employment of unauthorized aliens to the employment of U.S. citizens and authorized aliens. The program will become effective on the first day of the seventh month after the date of enactment, and will remain in effect for 3 years.

Subsection (b) provides that during the first year of the program, an agricultural employer will be able (except as provided in subsections (c), (d), and (e), described below) to meet up to 100 percent of his need for nondomestic seasonal agricultural labor with transition workers, up to 67 percent of that need during the second year of the program, and up to 33 percent of that need during the third year. Because agricultural employers currently rely on an unauthorized workforce whose exact size is unknown, the Committee believes that the Attorney General, in determining the number of transition workers to be available to agricultural employers, should adopt flexible guidelines.

Subsection (c) provides that nothing in this section permits transitional workers to replace U.S. workers or other legal alien workers.

Subsection (d) provides that transitional workers will be covered by all Federal and State laws and regulations governing migrant and seasonal agriculture workers. This includes, but is not limited to, the Migrant and Seasonal Agricultural Worker Protection Act.

Subsection (e) provides that an undocumented alien in the United States will be eligible to be a transitional worker if he was employed on the date of enactment as a seasonal agricultural worker in the United States or has been employed as such a worker for at least 90 days during a period of time after January 1, 1980, and before the date of enactment. An alien will not be eligible to participate if he is deportable on any ground except those relating to illegal entry, visa overstay, or lack of possession of proper documents. An alien who qualifies as a transitional worker may not adjust status, unless he is an immediate relative as described in INA section 201(b), but he is not ineligible for the legalization program of title II of this bill.

Subsection (f) provides that an employer must perform the following in order to participate in the transition program: (1) notify the Attorney General of his intention to use the program within 12 months of the beginning of the program, and (2) provide such information as the Attorney General may specify on his seasonal agricultural worker needs in past and future years.

Subsection (g) provides that after an employer begins to participate in the transition program, the employer must submit, at the Attorney General's request, a report on the number of transition workers employed, as well as the number of domestic and foreign seasonal agricultural workers employed.

Subsection (h) provides that any eligible employer who uses the transition program and the "N" worker program under section 216

of the INA must provide the wages and working conditions required by the "N" program to all similarly employed workers.

Subsection (j) provides that the Attorney General may require a fee of participants in the transition program, in order to recover the reasonable costs of processing registrations under the program.

Subsection (k) provides that a work permit or other documentation provided to a transitional worker shall, in accordance with regulations of the Attorney General, be considered documents evidencing employment authorization for purposes of INA section 274A(b)(1)(C), as added by this bill. An alien employed as a transitional worker and in possession of a properly endorsed such work permit or other documentation shall, for purpose of INA section 274A, be considered to be authorized by the Attorney General to be so employed during the period of time indicated on such documentation.

Section 124—Commission on temporary agricultural worker programs

Subsection (a) establishes a 12-member commission on temporary agricultural worker programs: two to be appointed by the Attorney General, two to be appointed by the Secretary of Labor, two to be appointed by the Secretary of Agriculture, three to be appointed by the Speaker of the House, and three to be appointed by the President pro tempore of the Senate. The commission is intended to be comprised of experts in the field of agricultural and labor issues. The subsection requires that appointments be made in a way which produces a balanced representation of the interests involved in temporary agricultural worker programs. Those appointed shall include more than one individual representing labor organizations for temporary agricultural workers and more than one representing employers of nondomestic temporary agricultural workers.

Subsection (b) provides that the commission shall study and review the "N" temporary agricultural worker program in section 122 and the 3-year agricultural labor transition program in section 123—paying particular attention to the impact of those programs on the labor needs of U.S. agricultural employers and on the wages and working conditions, and job opportunities of U.S. agricultural workers. The commission is also directed to study and review the following in connection with the "N" program, as provided in INA section 216, added by section 122(c) of the bill: (1) the standards for the labor certification required by subsection (a)(1) of INA section 216, (2) whether there should be a statutory or other specific limit on the number of workers admitted under the program, (3) whether payments equivalent to Social Security and unemployment taxes (FICA and FUTA) should be made by employers of "N" workers, and, if so, what use should be made of these funds, (4) the duration and manner of recruitment for U.S. workers which should be required, (5) whether "N" workers which should be contractually restricted to employment with specific employers, (6) whether current labor standards offer adequate protection for domestic and foreign agricultural workers, and (7) whether certain geographical regions of the country need special provisions or special programs to meet their needs.

Subsection (c) requires the commission to report to Congress not later than 2 years after the effective date of the "N" program and the transition program (the first day of the seventh month beginning after the date of enactment). The report must include recommendations for improvements in the "N" program, including specific legislative recommendations concerning: (1) the seven issues referred to in the last paragraph above, (2) improving the timeliness of administrative decisions made under the "N" program, (3) removing any current economic disincentives to hiring U.S. workers where temporary foreign agricultural workers have been requested, and (4) improving cooperation among government agencies, employer associations, workers, labor unions, and other worker associations, to end the dependence of any industry on a constant supply of temporary foreign agricultural workers.

The Committee intends that the commission report to Congress at that time, which is before the final year of the 3-year transition program, so that any changes in the "N" temporary agricultural worker program may be made before agricultural employers are prohibited from using any of their original undocumented workers, if hired after enactment, which will occur when the transition program expires and the employment of such aliens becomes subject to INA section 274A, added by section 121(a) of the bill.

Subsection (i) provides that the commission shall cease to exist 27 months after the effective date.

TITLE II—LEGALIZATION

Section 201—Legalization Commission

Section 201(a) provides for the establishment of a Select Commission on Legalization to be composed of 9 members appointed by the President—4 from a list of 12 names submitted by the Speaker of the House of Representatives, 4 from a list of 12 names submitted by the President pro tempore of the Senate, and 1 additional member to be Chairman, who need not be selected from either list. The subsection provides that at least five members of the Legalization Commission must be sitting or retired Federal judges, former members of the Select Commission on Immigration and Refugee Policy, former Members of Congress, or former Attorneys General of the United States.

The individuals on each such list submitted to the President, as well as the individual chosen by the President to be Chairman, must support the concept of the legalization program described in section 202. At least seven of the individuals on each list must be sitting or retired Federal judges, former members of the Select Commission on Immigration and Refugee Policy, former Members of Congress, or former Attorneys General of the United States. At least two of the remaining individuals on each list must be representatives of religious organizations, voluntary agencies, civil rights organizations, or organizations representing minority or ethnic groups.

Subsection (b) describes the duties of the Legalization Commission. Such duties will include the monitoring and review of the border patrol and other Federal enforcement programs intended to curtail illegal entry into the United States and violation of the

terms of legal entry, as well as the programs intended to curtail the employment of aliens not authorized to work in the United States. The subsection expressly requires that the Commission monitor and review the amount of resources devoted to such programs and their effectiveness, and provides that the Commission may study ways to improve such effectiveness.

Subsection (c) requires the Legalization Commission to report to Congress on its activities not later than 1 year after the date a majority of its members are first appointed, and at least annually thereafter. Each report must contain a finding of whether certain conditions have been met. Section 202(a) (described in more detail below) provides that the legalization program becomes effective when a finding is made that these conditions have been met, or 3 years after enactment, whichever is earlier. The conditions which must be met include the following: (A) effective enforcement measures have been instituted by the Federal Government and have adequate resources to curtail illegal immigration (such measures include the penalties for knowing employment, or recruitment or referral for employment, in the United States of unauthorized aliens, as provided in the new INA section 274A, added by section 121 of this bill); (B) there is a reasonable likelihood that these measures will continue in effect and will continue to have adequate resources after the legalization program described in section 202; (C) enforcement has become effective enough to prevent the legalization program from serving as a stimulus to further illegal entry.

Section 202—Legalization of status

Section 202(a) gives the Attorney General discretion to adjust the status of certain aliens to that of aliens lawfully admitted for temporary residence if they apply within 12 months of the date designated by the Attorney General as the beginning of the application period. Such date must be no later than 90 days after the effective date of the program, which is the date the Legalization Commission makes the finding referred to in section 202, or 3 years after enactment, whichever is earlier.

In order to qualify for such temporary resident status, an alien must show that either (i) he arrived in the United States before January 1, 1980, and has continuously resided in the United States in an unlawful status since such date, or (ii) he is a "special Cuban or Haitian entrant" (described below) and has continuously resided in the United States since December 31, 1980. An alien who entered the United States as a nonimmigrant must show either that his period of authorized stay expired before January 1, 1980, through the passage of time, or that his unlawful status was known to the Government as of that date.

Any alien applying for such temporary resident status must also show that he has been physically present in the United States continuously since the date of enactment. Finally, the alien must establish that he is otherwise admissible as an immigrant. He must show that he is not excludable under INA section 212, unless, pursuant to subsection (d) of this bill (see below), such ground of exclusion does not apply or is waived by the Attorney General; that he has not been convicted of any felony (crime punishable at the time of conviction by imprisonment for a term of more than 1 year, re-

ardless of the term such alien actually served, if any) or three or more misdemeanors (crimes each of which was punishable at the time of conviction by imprisonment for a term of 1 year or less, regardless of the term such alien actually served, if any) committed in the United States; that he has not assisted in the persecution of any person on account of race, religion, nationality, or membership in a particular social group, or political opinion; and that he is registered or registering under the Military Selective Service Act, if required to be so registered.

Subsection (a) defines "special Cuban or Haitian entrant" to include:

(1) Two categories of Cuban nationals: (a) those who on December 31, 1980, had an application for asylum pending with the INS, and (b) those who arrived in the United States and presented themselves for inspection between April 20, 1980, and January 1, 1981, and were physically present on December 31, 1980; and

(2) Three categories of Haitian nationals: (a) those who on December 31, 1980, had an application for asylum pending with the INS, (b) those who on December 31, 1980, were the subject of exclusion or deportation proceedings, including those who on that date were under an order of exclusion and deportation or an order of deportation which had not yet been executed, and (c) those who before December 31, 1980, were paroled into the United States under INA section 212(d)(5) or granted voluntary departure, and were physically present in the United States on that December 31, 1980.

Any alien who has at any time been a nonimmigrant exchange alien as defined in INA section 101(a)(15), must show that the 2-year foreign residence requirement of INA section 212(e) has been satisfied or waived.

Extended voluntary departure is not a legal nonimmigrant status. All aliens granted voluntary departure or extended voluntary departure prior to January 1, 1980, will be eligible for legalization if otherwise admissible (as discussed above), and if they did not later receive a legal status.

Subsection (b) gives the Attorney General discretion to adjust the status of certain aliens previously adjusted to lawful temporary resident status pursuant to subsection (a) to that of aliens lawfully admitted for permanent resident status. In order to qualify, an alien must apply during the 12-month period beginning 30 months after the alien received lawful temporary resident status, and must show that he has continuously resided in the United States since being granted such temporary resident status. Certain brief and casual trips abroad during the period of such temporary status may be permitted by the Attorney General if determined to be consistent with an intention to adjust to lawful permanent resident status. The alien must also show that he is otherwise admissible as an immigrant (see discussion in last paragraph above, in connection with applications for lawful temporary resident status). Finally, the alien must show that he either (a) has the ability to read, write, and speak words in ordinary usage in the English language, and the knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States, which is required before aliens may be naturalized as citi-