

107TH CONGRESS
2D SESSION

H. R. 3894

To amend the Immigration and Nationality Act to restore fairness to immigration law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2002

Mr. CONYERS (for himself, Ms. ROS-LEHTINEN, Mr. GEPHARDT, Ms. JACKSON-LEE of Texas, Mr. REYES, Mr. FRANK, Mr. BERMAN, Mr. GUTIERREZ, Mr. RANGEL, Mr. ABERCROMBIE, Mr. ANDREWS, Ms. LEE, Mr. BLAGOJEVICH, Mr. DELAHUNT, Mr. FATTAH, Mr. FILNER, Mr. HONDA, Mr. LAFALCE, Mr. McDERMOTT, Mrs. MEEK of Florida, Mr. NADLER, Mr. RODRIGUEZ, Ms. ROYBAL-ALLARD, Mr. SERRANO, Ms. SCHAKOWSKY, Mr. STARK, Mrs. JONES of Ohio, Mr. UNDERWOOD, Ms. VELÁZQUEZ, Ms. WATERS, Mr. LANTOS, and Mr. BONIOR) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to restore fairness to immigration law, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION**
4 **AND NATIONALITY ACT; TABLE OF CON-**
5 **TENTS.**

6 (a) SHORT TITLE.—This Act may be cited as the
7 “Restoration of Fairness in Immigration Act of 2002”.

1 (b) AMENDMENTS TO IMMIGRATION AND NATION-
 2 ALITY ACT.—Except as otherwise specifically provided in
 3 this Act, whenever in this Act an amendment or repeal
 4 is expressed as the amendment or repeal of a section or
 5 other provision, the reference shall be considered to be
 6 made to that section or provision in the Immigration and
 7 Nationality Act.

8 (c) TABLE OF CONTENTS.—The table of contents of
 9 this Act is as follows:

Sec. 1. Short title; amendments to Immigration and Nationality Act; table of contents.

TITLE I—DUE PROCESS IN IMMIGRATION PROCEEDINGS

Subtitle A—Due Process in Expedited Removal Proceedings

Sec. 101. Due process in admissibility and asylum cases.
 Sec. 102. Using immigration judges in expedited removal proceedings.
 Sec. 103. Equitable determination of “credible fear of persecution” in cases involving unique fact patterns.

Subtitle B—Judicial Review in Immigration Proceedings

Sec. 111. Judicial review of administrative remedies and habeas corpus.
 Sec. 112. Judicial review of asylum determinations.
 Sec. 113. Judicial review of decisions concerning apprehension and detention of aliens.
 Sec. 114. Judicial review of decisions concerning waivers.
 Sec. 115. Judicial review of orders issued in absentia.
 Sec. 116. Judicial review of denial of request for order of voluntary departure.
 Sec. 117. Transitional changes in judicial review.

Subtitle C—Fairness in Removal Proceedings

Sec. 121. Equitable burden of proof for admissibility.
 Sec. 122. Presumption in favor of withdrawal of application for admission.
 Sec. 123. Absences outside the control of the alien.
 Sec. 124. Reinstatement of removal orders against aliens illegally reentering.
 Sec. 125. Removal hearings open to the public.
 Sec. 126. Deadline for placement in removal proceedings.

Subtitle D—Fairness in Detention

Sec. 131. Restoring discretionary authority to the Attorney General in cases of individuals who pose no risk to safety or of fleeing.
 Sec. 132. Periodic review of detention determination.
 Sec. 133. Limitation on indefinite detention.

- Sec. 134. Pilot program to consider alternatives to detention.
- Sec. 135. Elimination of mandatory detention in expedited removal proceedings.
- Sec. 136. Right to counsel.
- Sec. 137. Automatic stays of release orders.
- Sec. 138. Report on detention of aliens.
- Sec. 139. Clarification of intent of transitional provision on references to removal orders.

Subtitle E—Consular Review of Visa Applications

- Sec. 141. Establishment of a Board of Visa Appeals.
- Sec. 142. Nondiscrimination provisions.

TITLE II—FAIRNESS AND EQUITY IN CASES INVOLVING PREVIOUS AND MINOR MISCONDUCT

Subtitle A—Increased Fairness and Equity Concerning Removal Proceedings

- Sec. 201. Equitable definition of “crime involving moral turpitude”.
- Sec. 202. Equitable application and definition of “aggravated felony”.
- Sec. 203. Equitable definitions of “conviction” and “term of imprisonment”.
- Sec. 204. Equitable definition of “crimes of moral turpitude”.
- Sec. 205. Restoration of fairness in equitable relief for long-time legal permanent residents.
- Sec. 206. Restoration of fairness in equitable relief for other noncitizens.
- Sec. 207. Eliminating unfair retroactive changes in removal rules for persons subject to pending proceedings.
- Sec. 208. Eliminating unfair retroactive changes in removal rules for persons previously removed.

Subtitle B—Increased Fairness and Equity Concerning 5-Year Bars to Admission and Other Grounds for Exclusion

- Sec. 211. Limiting 5-year bar to admission to persons who willfully fail to attend removal proceedings.
- Sec. 212. Limiting 5-year bar to admission to persons who willfully violate student visa conditions.
- Sec. 213. Limiting ban on admissibility to persons who willfully make false claims for citizenship.
- Sec. 214. Equitable waiver of inadmissibility for minor criminal offenses.
- Sec. 215. Eliminating the 3 and 10 year bars to inadmissibility.

TITLE III—ENCOURAGING FAMILY REUNIFICATION

Subtitle A—Reuniting Family Members

- Sec. 301. Visa for spouses and children of permanent residents temporarily waiting for visa numbers.
- Sec. 302. Refugee status for unmarried sons and daughters of refugees.
- Sec. 303. Asylee status for unmarried sons and daughters of asylees.
- Sec. 304. Protection against processing delays.

Subtitle B—Limited Waiver of Grounds of Admissibility

- Sec. 311. Discretionary waiver in cases involving family members.
- Sec. 312. Discretionary waiver in document cases involving family members.
- Sec. 313. Discretionary waiver to admit persons in unusual circumstances.

Subtitle C—Eliminating Unfairness and Waste in Section 245(i) Waivers

Sec. 321. Permanent application of section 245(i).

Subtitle D—Equitable Procedures Concerning Voluntary Departure

Sec. 331. Discretionary determination of period of voluntary departure.

Sec. 332. Discretionary determination of voluntary departure bond based on individual circumstances.

Sec. 333. Elimination of automatic penalties for failing to depart in accordance with a voluntary departure grant.

Subtitle E—Fairness in Determination of Public Charge

Sec. 341. Equitable procedures concerning public charge and affidavit of support.

TITLE IV—FAIRNESS IN ASYLUM AND REFUGEE PROCEEDINGS

Subtitle A—Increased Fairness in Asylum Proceedings

Sec. 401. Elimination of arbitrary time limits on asylum applications.

Sec. 402. Gender-based persecution.

Sec. 403. Presumption of asylum in cases of past persecution.

Sec. 404. Rebuttable presumption of asylum where persecution occurs with respect to a particular location in a country.

Sec. 405. Elimination of arbitrary cap on persons eligible to adjust status from asylees to legal permanent residents.

Sec. 406. Restoration of eligibility for withholding of removal for persons facing loss of life or freedom.

Subtitle B—Increased Fairness and Rationality in Refugee Consultations

Sec. 411. Timely consultation with respect to refugee admissions.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Limiting forfeiture for certain assets used to violate INA where there was no commercial gain.

Sec. 502. Elimination of ban on State and local governments from preventing communications with the INS.

Sec. 503. Elimination of authority to permit State personnel to carry out immigration officer functions.

Sec. 504. Parole authority.

Sec. 505. Enhanced border patrol recruitment and retention.

Sec. 506. Elimination of denial of immigration benefits for erroneous asylum application.

Sec. 507. Authorization of appropriations for implementation of Act.

TITLE VI—EFFECTIVE DATES

Sec. 601. General effective date.

Sec. 602. Other effective dates.

**TITLE I—DUE PROCESS IN
IMMIGRATION PROCEEDINGS**
**Subtitle A—Due Process in
Expedited Removal Proceedings**

**SEC. 101. DUE PROCESS IN ADMISSIBILITY AND ASYLUM
CASES.**

At the end of section 235 (8 U.S.C. 1225), add the following:

“(e) LIMITATION ON USE OF EXPEDITED PROCEDURE.—

“(1) EXPEDITED REMOVAL LIMITED TO EXTRAORDINARY MIGRATION SITUATIONS.—Notwithstanding subsection (b)(1), unless the Attorney General determines that the numbers or circumstances of aliens en route to or arriving in the United States present an extraordinary migration situation, the Attorney General may not apply the provisions of such subsection to any such alien.

“(2) EXTRAORDINARY MIGRATION SITUATION.—As used in this subsection, the term ‘extraordinary migration situation’ means the arrival or imminent arrival at a border of the United States of aliens who by their numbers or circumstances substantially exceed the capacity for the inspection and examination of such aliens.

1 “(3) DISCRETION.—Subject to paragraph (4),
 2 the determination whether there exists an extraor-
 3 dinary migration situation within the meaning of
 4 paragraphs (1) and (2) is committed to the sole and
 5 exclusive discretion of the Attorney General.

6 “(4) PERIOD.—The provisions of this sub-
 7 section may be invoked under paragraph (1) for a
 8 period not to exceed 90 days, unless within such 90-
 9 day period or any extension thereof, the Attorney
 10 General determines, after consultation with the
 11 Committees on the Judiciary of the United States
 12 House of Representatives and the Senate, that an
 13 extraordinary migration situation continues to war-
 14 rant such procedures remaining in effect for addi-
 15 tional 90-day periods.”.

16 **SEC. 102. USING IMMIGRATION JUDGES IN EXPEDITED RE-**
 17 **MOVAL PROCEEDINGS.**

18 Section 235(b)(1)(A) (8 U.S.C. 1225(b)(1)(A)) is
 19 amended—

20 (1) in clause (i)—

21 (A) by striking “is inadmissible” and in-
 22 serting “may be inadmissible”;

23 (B) by striking “(iii)” and inserting “(iv)”;

24 and

1 (C) by striking “shall order” and all that
2 follows through the period at the end and in-
3 serting “shall refer the alien to an immigration
4 judge for a hearing.”;

5 (2) by redesignating clauses (ii) and (iii) as
6 clauses (iii) and (iv), respectively;

7 (3) by inserting after clause (i) the following:

8 “(ii) IMMIGRATION JUDGE HEAR-
9 ING.—If an immigration judge determines,
10 based on a hearing, that an alien described
11 in clause (i) is inadmissible under para-
12 graph (6)(C) or (7) of section 212(a), the
13 judge shall order the alien removed from
14 the United States without further hearing
15 or review unless the alien indicates either
16 an intention to apply for asylum under sec-
17 tion 208 or a fear of persecution.”;

18 (4) in clause (iii) (as so redesignated)—

19 (A) by striking “immigration officer” and
20 inserting “immigration judge”;

21 (B) by striking “clause (iii)” and inserting
22 “clause (iv)”;

23 (C) by striking “officer shall” and insert-
24 ing “judge shall”; and

1 (5) in clause (iv) (as so redesignated), by strik-
 2 ing “(i) and (ii)” and inserting “(i), (ii), and (iii)”.

3 **SEC. 103. EQUITABLE DETERMINATION OF “CREDIBLE**
 4 **FEAR OF PERSECUTION” IN CASES INVOLV-**
 5 **ING UNIQUE FACT PATTERNS.**

6 Section 235(b)(1)(B)(v) (8 U.S.C. 1225(b)(1)(B)(v))
 7 is amended by adding at the end “Nothing in the pre-
 8 ceding sentence shall be construed to preclude an alien
 9 from satisfying the standard in such sentence based upon
 10 a novel factual situation or a new legal argument.”.

11 **Subtitle B—Judicial Review in**
 12 **Immigration Proceedings**

13 **SEC. 111. JUDICIAL REVIEW OF ADMINISTRATIVE REM-**
 14 **EDIES AND HABEAS CORPUS.**

15 Section 242 (8 U.S.C. 1252) is amended to read as
 16 follows:

17 “JUDICIAL REVIEW OF ORDERS OF REMOVAL

18 “SEC. 242. (a) The procedure prescribed by, and all
 19 the provisions of chapter 158 of title 28, United States
 20 Code, shall apply to, and shall be the sole and exclusive
 21 procedure for, the judicial review of all final orders of re-
 22 moval heretofore or hereafter made against aliens within
 23 the United States pursuant to administrative proceedings
 24 under section 240 or pursuant to section 238 of this Act
 25 or comparable provisions of any prior Act, except as fol-
 26 lows:

1 “(1) A petition for review may be filed not later
2 than 90 days after the date of the issuance of the
3 final removal order, or, in the case of an alien con-
4 victed of an aggravated felony (including an alien
5 described in section 238) not later than 30 days
6 after the issuance of such order. No alien shall be
7 removed in the 90 day period (or in the 30 day pe-
8 riod in the case of aggravated felons) in which the
9 alien may file a petition for review of a final removal
10 order.

11 “(2) The venue of any petition for review under
12 this section shall be in the judicial circuit in which
13 the administrative proceedings before an immigra-
14 tion judge were conducted in whole or in part, or in
15 the judicial circuit wherein is the residence, as de-
16 fined in this Act, of the petitioner, but not in more
17 than one circuit.

18 “(3) The action shall be brought against the
19 Immigration and Naturalization Service, as respond-
20 ent. Service of the petition to review shall be made
21 upon the Attorney General of the United States and
22 upon the official of the Immigration and Naturaliza-
23 tion Service in charge of the Service district in which
24 the office of the clerk of the court is located. The
25 service of the petition for review upon such official

1 of the Service shall stay the removal of the alien
2 pending determination of the petition by the court,
3 unless the court otherwise directs or unless the alien
4 is convicted of an aggravated felony (including an
5 alien described in section 238), in which case the
6 Service shall not stay the removal of the alien pend-
7 ing determination of the petition of the court unless
8 the court otherwise directs.

9 “(4) Except as provided in clause (B) of para-
10 graph (5) of this subsection, the petition shall be de-
11 termined solely upon the administrative record upon
12 which the removal order is based and the Attorney
13 General’s findings of fact, if supported by reason-
14 able, substantial, and probative evidence on the
15 record considered as a whole, shall be conclusive.

16 “(5) Whenever any petitioner, who seeks review
17 of an order under this section, claims to be a na-
18 tional of the United States and makes a showing
19 that his claim is not frivolous, the court shall (A)
20 pass upon the issues presented when it appears from
21 the pleadings and affidavits filed by the parties that
22 no genuine issue of material fact is presented; or (B)
23 where a genuine issue of material fact as to the peti-
24 tioner’s nationality is presented, transfer the pro-
25 ceedings to a United States district court for the

1 district where the petitioner has his residence for
2 hearing de novo of the nationality claim and deter-
3 mination as if such proceedings were originally initi-
4 ated in the district court under the provisions of sec-
5 tion 2201 of title 28, United States Code. Any such
6 petitioner shall not be entitled to have such issue de-
7 termined under section 360(a) of this Act or other-
8 wise.

9 “(6) Whenever a petitioner seeks review of an
10 order under this section, any review sought with re-
11 spect to a motion to reopen or reconsider such an
12 order shall be consolidated with the review of the
13 order.

14 “(7) If the validity of a removal order has not
15 been judicially determined, its validity may be chal-
16 lenged in a criminal proceeding against the alien for
17 violation of subsection (a) or (b) of section 243 of
18 this Act only by separate motion for judicial review
19 before trial. Such motion shall be determined by the
20 court without a jury and before the trial of the gen-
21 eral issue. Whenever a claim to United States na-
22 tionality is made in such motion, and in the opinion
23 of the court, a genuine issue of material fact as to
24 the alien’s nationality is presented, the court shall
25 accord him a hearing de novo on the nationality

1 claim and determine that issue as if proceedings had
2 been initiated under the provisions of section 2201
3 of title 28, United States Code. Any such alien shall
4 not be entitled to have such issue determined under
5 section 360(a) of this Act or otherwise. If no such
6 hearing de novo as to nationality is conducted, the
7 determination shall be made solely upon the admin-
8 istrative record upon which the removal order is
9 based and the Attorney General's findings of fact, if
10 supported by reasonable, substantial, and probative
11 evidence on the record considered as a whole, shall
12 be conclusive. If the removal order is held invalid,
13 the court shall dismiss the indictment and the
14 United States shall have the right to appeal to the
15 court of appeals within 30 days. The procedure on
16 such appeals shall be as provided in the Federal
17 rules of criminal procedure. No petition for review
18 under this section may be filed by any alien during
19 the pendency of a criminal proceeding against such
20 alien for violation of subsection (a) or (b) of section
21 243 of this Act.

22 “(8) Nothing in this section shall be construed
23 to require the Attorney General to defer removal of
24 an alien after the issuance of a removal order be-
25 cause of the right of judicial review of the order

1 granted by this section, or to relieve any alien from
2 compliance with subsections (a) and (b) of section
3 243 of this Act. No alien shall be removed in the 90-
4 day period (or in the 30-day period in the case of
5 aggravated felons) in which the alien may file a peti-
6 tion for review of a final removal order.

7 “(9) Nothing contained in this section shall be
8 construed to preclude the Attorney General from de-
9 taining or continuing to detain an alien or from tak-
10 ing the alien into custody pursuant to section 241 of
11 this Act at any time after the issuance of a removal
12 order.

13 “(10) it shall not be necessary to print the
14 record or any part thereof, or the briefs, and the
15 court shall review the proceedings on a typewritten
16 record and on typewritten briefs.

17 “(11) Any alien held in custody pursuant to an
18 order of removal may obtain judicial review thereof
19 by habeas corpus proceedings.

20 “(b) Notwithstanding the provisions of any other law,
21 any alien against whom a final order of removal has been
22 made heretofore or hereafter under the provisions of sec-
23 tion 235 of this Act or comparable provisions of any prior
24 Act may obtain judicial review of such order by habeas
25 corpus proceedings and not otherwise.

1 “(c) An order of removal shall not be reviewed by any
2 court if the alien has not exhausted the administrative
3 remedies available to the alien as of right under the immi-
4 gration laws and regulations. Every petition for review or
5 for habeas corpus shall state whether the validity of the
6 order has been upheld in any prior judicial proceeding,
7 and, if so, the nature and date thereof, and the court in
8 which such proceeding took place. No petition for review
9 or for habeas corpus shall be entertained if the validity
10 of the order has been previously determined in any civil
11 or criminal proceeding, unless the petition presents
12 grounds which the court finds could not have been pre-
13 sented in such prior proceeding, or the court finds that
14 the remedy provided by such prior proceeding was inad-
15 equate or ineffective to test the validity of the order.

16 “(d)(1) A petition for review or for habeas corpus on
17 behalf of an alien against whom a final order of removal
18 has been issued pursuant to section 238(b) may challenge
19 only—

20 “(A) whether the alien is in fact the alien de-
21 scribed in the order;

22 “(B) whether the alien is in fact an alien de-
23 scribed in section 238(b)(2)(A) who is not eligible
24 for relief from removal under this Act;

1 “(C) whether the alien has been convicted of an
2 aggravated felony and such conviction has become
3 final; and

4 “(D) whether the alien was afforded the proce-
5 dures required by section 238(b)(4).

6 “(2) No court shall have jurisdiction to review any
7 issue other than an issue described in paragraph (1).”.

8 **SEC. 112. JUDICIAL REVIEW OF ASYLUM DETERMINATIONS.**

9 (a) **AUTHORITY TO APPLY FOR ASYLUM.**—Section
10 208(a) (8 U.S.C. 1158(a)) is amended by striking para-
11 graph (3).

12 (b) **CONDITIONS FOR GRANTING ASYLUM.**—Section
13 208(b)(2) (8 U.S.C. 1158(b)(2)) is amended by striking
14 subparagraph (D).

15 **SEC. 113. JUDICIAL REVIEW OF DECISIONS CONCERNING**
16 **APPREHENSION AND DETENTION OF ALIENS.**

17 Section 236 (8 U.S.C. 1226) is amended by striking
18 subsection (e).

19 **SEC. 114. JUDICIAL REVIEW OF DECISIONS CONCERNING**
20 **WAIVERS.**

21 (a) **INADMISSIBLE ALIENS.**—Section 212 (8 U.S.C.
22 1182) is amended—

23 (1) by striking the final sentences of sub-
24 sections (d)(12) and (h); and

25 (2) in subsection (i)—

1 (A) by striking paragraph (2); and

2 (B) by striking “(i)(1)” and inserting
3 “(i)”.

4 (b) DEPORTABLE ALIENS.—Section 237(a)(3)(C)(ii)
5 (8 U.S.C. 1227(a)(3)(C)(ii)) is amended by striking the
6 final sentence.

7 **SEC. 115. JUDICIAL REVIEW OF ORDERS ISSUED IN**
8 **ABSENTIA.**

9 Section 240(b)(5) (8 U.S.C. 1229a(b)(5)) is amended
10 by striking subparagraph (D) and redesignating subpara-
11 graph (E) as subparagraph (D).

12 **SEC. 116. JUDICIAL REVIEW OF DENIAL OF REQUEST FOR**
13 **ORDER OF VOLUNTARY DEPARTURE.**

14 Section 240B (8 U.S.C. 1229c) is amended by strik-
15 ing subsection (f).

16 **SEC. 117. TRANSITIONAL CHANGES IN JUDICIAL REVIEW.**

17 Section 309(c)(4) of the Illegal Immigration Reform
18 and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101
19 note) is repealed.

20 **Subtitle C—Fairness in Removal**
21 **Proceedings**

22 **SEC. 121. EQUITABLE BURDEN OF PROOF FOR ADMISSI-**
23 **BILITY.**

24 Section 240(c)(2) (8 U.S.C. 1229a(c)(2)) is
25 amended—

1 (1) in the matter preceding subparagraph (A),
 2 by striking “establishing—” and inserting “estab-
 3 lishing, by clear and convincing evidence—”;

4 (2) in subparagraph (A), by striking “clearly
 5 and beyond doubt”; and

6 (3) in subparagraph (B), by striking “by clear
 7 and convincing evidence,”.

8 **SEC. 122. PRESUMPTION IN FAVOR OF WITHDRAWAL OF AP-**
 9 **PLICATION FOR ADMISSION.**

10 Section 235(a)(4) (8 U.S.C. 1225(a)(4)) is amended
 11 to read as follows:

12 “(4) WITHDRAWAL OF APPLICATION FOR AD-
 13 MISSION.—

14 “(A) PRESUMPTION IN FAVOR OF WITH-
 15 DRAWAL.—The Attorney General shall permit
 16 an alien applying for admission to withdraw the
 17 application and depart immediately from the
 18 United States at any time, unless an immigra-
 19 tion judge has rendered a decision with respect
 20 to the admissibility of the alien, except that the
 21 Attorney General may deny permission for the
 22 withdrawal when warranted by unusual cir-
 23 cumstances.

24 “(B) PERMISSIVE WITHDRAWAL.—Except
 25 as provided in subparagraph (A), an alien ap-

plying for admission may, in the discretion of the Attorney General and at any time after a decision described in such subparagraph has been rendered, be permitted to withdraw the application and depart immediately from the United States.”.

SEC. 123. ABSENCES OUTSIDE THE CONTROL OF THE ALIEN.

Section 101(a)(13)(C) (8 U.S.C. 1101(a)(13)(C)) is amended—

(1) by amending clause (ii) to read as follows:

“(ii) has been absent from the United States for a continuous period in excess of one year unless the alien’s return was impeded by emergency or extenuating circumstances outside the control of the alien,”;

(2) by inserting “or” at the end of clause (iii);

(3) by striking clauses (iv) and (v); and

(4) by redesignating clause (vi) as clause (iv).

SEC. 124. REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.

Section 241(a)(5) (8 U.S.C. 1231(a)(5)) is amended is amended to read as follows:

1 “(5) REINSTATEMENT OF REMOVAL ORDERS
2 AGAINST ALIENS ILLEGALLY REENTERING.—If after
3 a hearing before an immigration judge the Attorney
4 General finds that an alien has reentered the United
5 States illegally after having been removed or having
6 departed voluntarily, under an order of removal
7 issued on or after April 1, 1997, the prior order of
8 removal may be deemed to be reinstated from its
9 original date and the alien may be removed under
10 the prior order at any time after the reentry subject
11 to reopening and review of the previous order. Noth-
12 ing in this section shall preclude an alien from ap-
13 plying for any relief from removal under this Act.”.

14 **SEC. 125. REMOVAL HEARINGS OPEN TO THE PUBLIC.**

15 Section 239 (8 U.S.C. 1229) is amended by adding
16 at the end the following new subsection:

17 “(e) REMOVAL PROCEEDINGS OPEN TO THE PUB-
18 LIC.—

19 “(1) IN GENERAL.—Subject to paragraph (2), a
20 removal proceeding held pursuant to section 240
21 shall be open to the public.

22 “(2) EXCEPTIONS.—A removal proceeding may
23 be closed to the public to preserve the confidentiality
24 of asylum applications, withholding of removal, relief
25 under the Convention Against Torture, battered im-

1 migrants, or for protecting witnesses, parties, or
 2 other persons from a substantial risk of physical
 3 harm. In a case where closing a removal proceeding
 4 is appropriate pursuant to this paragraph, the clos-
 5 ing of the proceeding shall be limited to the portion
 6 that is necessary to achieve a compelling interest
 7 and there is no less restrictive alternative.”.

8 **SEC. 126. DEADLINE FOR PLACEMENT IN REMOVAL PRO-**
 9 **CEEDINGS.**

10 Section 236(a) (8 U.S.C. 1226(a)) is amended by
 11 adding after and below paragraph (3) at the end the fol-
 12 lowing:

13 “Except as provided in section 236A(a)(5), the Attorney
 14 General shall place an alien detained under this Act in
 15 removal proceedings not later than 48 hours after com-
 16 mencement of such detention.”.

17 **Subtitle D—Fairness in Detention**

18 **SEC. 131. RESTORING DISCRETIONARY AUTHORITY TO THE**
 19 **ATTORNEY GENERAL IN CASES OF INDIVID-**
 20 **UALS WHO POSE NO RISK TO SAFETY OR OF**
 21 **FLEEING.**

22 Section 236(c) (8 U.S.C. 1226(c)) is amended—

23 (1) in paragraph (1), by striking “Attorney
 24 General shall” and inserting “Attorney General
 25 may”; and

1 (2) by amending paragraph (2) to read as fol-
2 lows:

3 “(2) RELEASE.—The Attorney General shall re-
4 lease any alien described in paragraph (1) if the
5 alien satisfies the Attorney General that the alien
6 will not pose a danger to the safety of other persons
7 or of property and is likely to appear for any sched-
8 uled proceeding. All custody, bond, and parole deter-
9 minations shall be reviewable by an immigration
10 judge and subject to administrative appeal.”.

11 **SEC. 132. PERIODIC REVIEW OF DETENTION DETERMINA-**
12 **TION.**

13 Section 241(a)(6) (8 U.S.C. 1231(a)(6)) is
14 amended—

15 (1) by inserting “(A)” after the dash;

16 (2) by inserting “for a reasonable period of
17 time, not to exceed 6 months following the entry of
18 a final order of removal, to allow for ongoing nego-
19 tiations to effect such removal” after “removal pe-
20 riod”; and

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

22 “(B) During the removal period, the Attorney
23 General shall review whether continued detention of
24 the alien is appropriate under subparagraph (A).

1 “(C) Determinations under this paragraph shall
2 be subject to de novo review by an immigration
3 judge and administrative appeal. In such review, it
4 shall be the Attorney General’s burden to prove that
5 continued detention is appropriate under subpara-
6 graph (A).

7 “(D) This paragraph not apply to aliens de-
8 tained pursuant to section 236A(a)(1).”.

9 **SEC. 133. LIMITATION ON INDEFINITE DETENTION.**

10 Section 241 (8 U.S.C. 1231) is amended by adding
11 at the end the following:

12 “(j) Notwithstanding any other provision of this sec-
13 tion, including subsection (a)(2), the Attorney General
14 may not detain an alien who requests release and dem-
15 onstrates to the Attorney General that—

16 “(1) the alien is not a risk to the community
17 and is likely to comply with the order of removal;
18 and

19 “(2) removal of the alien cannot be effectuated
20 within the removal period specified in section
21 241(a)(6)(A).

22 The determination by the Attorney General shall be sub-
23 ject to de novo review by an immigration judge and admin-
24 istrative appeal.”.

1 **SEC. 134. PILOT PROGRAM TO CONSIDER ALTERNATIVES**
2 **TO DETENTION.**

3 (a) PILOT PROGRAM ON ALTERNATIVES TO DETEN-
4 TION IN PENAL SETTING.—The Attorney General shall es-
5 tablish a pilot program in 3 district offices of the Immi-
6 gration and Naturalization Service to determine the viabil-
7 ity of supervision, through means other than confinement
8 in a penal setting, of aliens who have no criminal record,
9 or have a criminal record that does not include a felony
10 that constitutes a crime of violence as described in section
11 16 of title 18, United States Code, but who are subject
12 to detention under the Immigration and Nationality Act
13 at the discretion of the Attorney General.

14 (b) STUDY AND REPORT ON ALTERNATIVES TO DE-
15 TENTION IN PENAL SETTING.—In carrying out subsection
16 (a), the Attorney General shall conduct a study, and sub-
17 mit a report to the Congress not later than 6 months after
18 the date of the enactment of this Act, on alternatives to
19 detention of aliens who have no criminal record (or have
20 a criminal record that does not include a felony that con-
21 stitutes a crime of violence as described in section 16 of
22 title 18, United States Code) and are not inadmissible or
23 deportable by reason of having committed a criminal of-
24 fense in detention facilities used for the incarceration of
25 persons convicted of a criminal offense.

1 **SEC. 135. ELIMINATION OF MANDATORY DETENTION IN EX-**
 2 **PEDITED REMOVAL PROCEEDINGS.**

3 Section 235(b)(1)(B)(iii)(IV) (8 U.S.C.
 4 1225(b)(1)(B)(iii)(IV)) is amended to read as follows:

5 “(IV) DETENTION.—Aliens sub-
 6 ject to the procedures under this
 7 clause shall be detained in accordance
 8 with section 236.”.

9 **SEC. 136. RIGHT TO COUNSEL.**

10 Section 292 (8 U.S.C. 1362) is amended by striking
 11 the matter after the section designation and inserting the
 12 following: “In any bond, custody, detention, or removal
 13 proceedings before the Attorney General and in any appeal
 14 proceedings before the Attorney General from any such
 15 proceedings, the person concerned shall have the privilege
 16 of being represented (at no expense to the government)
 17 by such counsel, authorized to practice in such pro-
 18 ceedings, as he shall choose. With consent of their clients,
 19 counsel may enter appearances limited to bond, custody,
 20 or other specific proceedings.”.

21 **SEC. 137. AUTOMATIC STAYS OF RELEASE ORDERS.**

22 (a) RELEASE ORDERS OF IMMIGRATION JUDGES AND
 23 THE BOARD OF IMMIGRATION APPEALS.—

24 (1) IN GENERAL.—

25 (A) STAY.—In the case of an alien de-
 26 tained by the Service in which a district direc-

1 tor of the Service has determined that the alien
2 should not be released or has set a bond for re-
3 lease of the alien, no order of an immigration
4 judge or the Board authorizing release (on bond
5 or otherwise) may be stayed except in accord-
6 ance with this section.

7 (B) DEADLINE.—In any case where the
8 Board has issued a stay of release pending ap-
9 peal, a final decision on the appeal from the
10 bond redetermination decision shall be made
11 within 30 days.

12 (2) STAYS OF IMMIGRATION JUDGE RELEASE
13 ORDERS BY BOARD.—

14 (A) EMERGENCY STAY.—An order of an
15 immigration judge redetermining the conditions
16 of custody of an alien may be stayed by order
17 of the Board, for a period not to exceed 30 days
18 from the date of the order authorizing release,
19 if the Service demonstrates to the satisfaction
20 of the Board that—

- 21 (i) there is a likelihood of success by
22 the Service on the merits;
23 (ii) irreparable harm would occur if a
24 stay of the order is not granted;

- 1 (iii) the potential harm to the Service
2 outweighs the harm to the alien who is the
3 subject of the order if a stay of the order
4 is not granted; and
5 (iv) granting a stay of the order would
6 serve the public interest.

7 (B) AUTOMATIC STAY IN CERTAIN
8 CASES.—If an alien is subject to section
9 236(c)(1), and the Service has denied the
10 alien's request for release or has set a bond of
11 \$10,000 or more, any order of an immigration
12 judge authorizing release of an alien (on bond
13 or otherwise) shall, upon the Service's filing of
14 a notice of intent to appeal a custody redeter-
15 mination with the immigration court within one
16 business day of the day the order is issued, be
17 automatically stayed for a period of 5 days in
18 order to provide the Service with an opportunity
19 to request an emergency stay under subpara-
20 graph (A). Any such stay shall lapse upon fail-
21 ure of the Service to file a timely notice of ap-
22 peal.

23 (3) BOARD RELEASE ORDERS; STAYS BY AT-
24 TORNEY GENERAL.—

1 (A) PERIOD REQUIRED TO FILE STAY.—An
2 order of the Board authorizing release of an
3 alien (on bond or otherwise) shall be stayed for
4 a period of 48 hours if the Service files with the
5 Board a notice of intent to seek certification of
6 the case to the Attorney General.

7 (B) STAY.—If, within the 48-hour period
8 described in subparagraph (A), the Attorney
9 General or the Deputy Attorney General per-
10 sonally determines in writing that there are rea-
11 sonable grounds to believe that the alien is in-
12 volved in terrorist activity or is a threat to na-
13 tional security, an order described in subpara-
14 graph (A) may be stayed for an additional pe-
15 riod 10 days from the date of the order of the
16 Board authorizing release.

17 (C) DECISION BY ATTORNEY GENERAL.—
18 Before the expiration of the 10-day period de-
19 scribed in subparagraph (B), the Attorney Gen-
20 eral or the Deputy Attorney General shall per-
21 sonally determine whether to certify the alien
22 under section 236A of the Immigration and
23 Naturalization Act. If the alien is not so cer-
24 tified, the stay shall expire and the order of the
25 Board authorizing release shall go into effect.

1 (b) DEFINITIONS.—In this section:

2 (1) BOARD.—The term “Board” means the
3 Board of Immigration Appeals or successor body
4 charged with reviewing the decisions of an immigra-
5 tion judge.

6 (2) IMMIGRATION JUDGE.—The term “immigra-
7 tion judge” means an immigration judge or other
8 hearing officer charged with reviewing initial cus-
9 tody, bond and release decisions.

10 (2) SERVICE.—The term “Service” means the
11 Immigration and Naturalization Service or successor
12 body charged with making initial custody, bond or
13 release decisions.

14 **SEC. 138. REPORT ON DETENTION OF ALIENS.**

15 (a) AMENDMENT TO HRIFA.—Section 904 of the
16 Haitian Refugee Immigration Fairness Act of 1998 (en-
17 acted as part of Public Law 105–277) is amended—

18 (1) in subsection (a)(3), by inserting “or con-
19 tract facilities with private sector entities,” after
20 “local facilities”;

21 (2) in subsections (d) and (e), by striking “and
22 (c)” and inserting “(c), (d), and (e)” and by redesign-
23 ating such subsections as subsections (f) and (g),
24 respectively; and

1 (3) inserting after subsection (c) the following
2 new subsections:

3 “(d) INDEFINITE DETAINEES.—With respect to non-
4 removable aliens who have been detained for 90 days or
5 more after having been served with a final order of re-
6 moval, the Attorney General shall also collect data and
7 report to Congress, at least once every three months, con-
8 cerning the following:

9 “(1) The number of such detainees per country
10 of origin.

11 “(2) The location of each such detainee by de-
12 tention facility.

13 “(3) The number of such detainees who have
14 been detained for the same length of time, in 3-
15 month increments.

16 “(4) The number and percentage of such de-
17 tainees who have had annual custody reviews.

18 “(5) The number and percentage of such de-
19 tainees who have come forward for a review of their
20 detention pursuant to the Service’s custody review
21 procedures.

22 “(6) The number and percentage of such de-
23 tainees who have legal representation to assist them
24 in custody determinations, cross referenced with the
25 number who have come forward for a review of their

1 detention pursuant to the Service’s custody review
2 procedures.

3 “(7) The percentage of such detainees who did
4 not receive a custody review initially because they
5 did not make the requisite efforts to comply with
6 their removal orders.

7 “(e) PERSONS DETAINED ON OR AFTER SEPTEMBER
8 11, 2001.—With respect to persons who have been de-
9 tained on or after September 11, 2001, by the Department
10 of Justice in connection with its initiatives on terrorism,
11 whether or not certified as suspected terrorists under sec-
12 tion 236A(a)(3), and whether or not charged with any
13 criminal offense or ground of removal relating to ter-
14 rorism, the Attorney General shall collect data and report
15 to Congress, at least once every three months, concerning
16 the following:

17 “(1) The number of such persons who have
18 been detained and the number who remain in deten-
19 tion, by country of origin and ethnic background.

20 “(2) For each person detained—

21 “(A) the charges against such person;

22 “(B) the disposition or current status of
23 such charges; and

1 “(C) the length of time after such person
2 was taken into custody before immigration or
3 criminal charges were filed.

4 “(3) For each person held as a material wit-
5 ness, the orders of a court permitting such detention
6 which have not been sealed and any orders permit-
7 ting the sealing of such orders.

8 “(4) For each alien detained—

9 “(A) whether such alien was advised of the
10 alien’s right to be represented by an attorney,
11 at the alien’s own expense, whether such alien
12 obtained representation, and the efforts of the
13 Department to facilitate such representation;
14 and

15 “(B) whether such alien was advised of the
16 alien’s right to consular assistance and the
17 practical steps taken to permit such person to
18 obtain such assistance.

19 “(5) For each alien who was charged with a
20 ground of removal and ordered removed, whether
21 such alien has been removed.

22 “(6) For each alien who was charged with a
23 ground of removal and who has not been removed—

24 “(A) whether such alien continues to be
25 detained and whether such alien has been given

1 a hearing before an immigration judge to deter-
2 mine risk of flight or dangerousness and the
3 outcome of such hearing and any appeals there-
4 from; and

5 “(B) whether such alien is contesting de-
6 portability or inadmissibility or applying for any
7 relief from removal and, if such alien is not
8 doing so, the reason for the alien’s continued
9 detention.

10 “(7) For each alien who has been removed—

11 “(A) whether the United States govern-
12 ment urged the nation to which the alien was
13 removed to detain that alien;

14 “(B) the United States government’s pur-
15 pose in urging such detention;

16 “(C) whether the Department of State has
17 determined that the foreign government detain-
18 ing such alien uses torture or other coercive
19 methods of interrogation; and

20 “(D) whether the United States govern-
21 ment intends to obtain any information from
22 such foreign government that is the result of in-
23 terrogation of that alien.”.

24 (b) SENSE OF CONGRESS.—The following is the sense

25 of Congress:

1 (1) The failure of the Attorney General to meet
2 the reporting requirements of sections 903(b) and
3 904(d) of the Haitian Refugee Immigration Fairness
4 Act of 1998 (enacted as part of Public Law 105-
5 277), as in effect prior to the date of the enactment
6 of this Act, has severely impacted the ability of Con-
7 gress to exercise its plenary power over immigration
8 and meet its constitutional responsibility to conduct
9 oversight over the detention practices of the Immi-
10 gration and Naturalization Service.

11 (2) Congress is deeply troubled by the repeated
12 failure of the Attorney General, without explanation,
13 to meet these and other reporting requirements
14 mandated by law.

15 (3) Congress expects that the Attorney General
16 will produce the reports mandated by sections
17 903(b) and 904(d) of such Act (as in effect prior to
18 the date of the enactment of this Act) without delay.

19 (4) Congress further expects that the Attorney
20 General will produce the reports mandated by sec-
21 tions 904(d) and 904(e) of such Act, as amended by
22 this section, not later than 90 days after the date of
23 the enactment of this Act.

24 (5) Congress further expects that, immediately
25 upon the enactment of this Act, the Attorney Gen-

1 eral will inform Congress of his progress in com-
 2 plying with the reporting requirements described in
 3 paragraphs (3) and (4), including the estimated
 4 dates of completion of such reports.

5 **SEC. 139. CLARIFICATION OF INTENT OF TRANSITIONAL**
 6 **PROVISION ON REFERENCES TO REMOVAL**
 7 **ORDERS.**

8 Section 309(d)(2) of the Illegal Immigration Reform
 9 and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101
 10 note) is amended by striking “deportation.” and inserting
 11 “deportation, except that nothing in this paragraph shall
 12 be construed as making any change in the Immigration
 13 and Nationality Act made by this Act effective retro-
 14 actively.”.

15 **Subtitle E—Consular Review of**
 16 **Visa Applications**

17 **SEC. 141. ESTABLISHMENT OF A BOARD OF VISA APPEALS.**

18 (a) IN GENERAL.—The Immigration and Nationality
 19 Act is amended by inserting after section 224 the following
 20 new section:

21 “BOARD OF VISA APPEALS

22 “SEC. 225. (a) ESTABLISHMENT.—The Secretary of
 23 State shall establish within the Department of State a
 24 Board of Visa Appeals. The Board shall be composed of
 25 5 members who shall be appointed by the Secretary. Not

1 more than 2 members of the Board may be consular offi-
2 cers. The Secretary shall designate a member who shall
3 be chairperson of the Board.

4 “(b) AUTHORITY AND FUNCTIONS.—The Board shall
5 have authority to review any discretionary decision of a
6 consular officer with respect to an alien concerning the
7 denial, revocation, or cancellation of an immigrant visa or
8 of a nonimmigrant visa or petition, or the denial of an
9 application for waiver of one or more grounds of inadmis-
10 sibility under section 212. The review of the Board shall
11 be made upon the record for decision of the consular offi-
12 cer, including all documents, notes, and memoranda filed
13 with the consular officer, supplemented by affidavits and
14 other writings if offered by the consular officer or alien.
15 Upon a conclusive showing that the decision of the con-
16 sular official is contrary to the preponderance of the evi-
17 dence, the Board shall have authority to overrule, or re-
18 mand for further consideration, the decision of such con-
19 sular officer.

20 “(c) PROCEDURE.—Proceedings before the Board
21 shall be in accordance with such regulations, not incon-
22 sistent with this Act and sections 556 and 557 of title
23 5, United States Code, as the Secretary of State shall pre-
24 scribe. Such regulations shall include requirements that
25 provide that—

1 “(1) at the time of any decision of a consular
2 officer under subsection (b), an alien, attorney of
3 record, and any interested party defined in sub-
4 section (d) shall be given notice of the availability of
5 the review process and the necessary steps to re-
6 quest such review;

7 “(2) a written record of the proceedings and de-
8 cision of the consular officer (in accordance with sec-
9 tions 556 and 557 of title 5, United States Code)
10 shall be available to the Board, and on payment of
11 lawfully prescribed costs, shall be made available to
12 the alien;

13 “(3) upon receipt of request for review under
14 this section, the Board shall, within 30 days, notify
15 the consular officer with respect to whose decision
16 review is sought, and, upon receipt of such notice,
17 such officer shall promptly (but in no event more
18 than 30 days after such receipt) forward to the
19 Board the record of proceeding as described in sub-
20 section (b);

21 “(4) the appellant shall be given notice, reason-
22 able under all the circumstances of the time and
23 place at which the Board proceedings will be held;

24 “(5) the appellant may be represented (at no
25 expense to the Government) by such counsel, author-

1 ized to practice in such proceedings, as the appellant
2 shall choose; and

3 “(6) a request for review under this section
4 must be made in writing to the Board within 60
5 days after receipt of notice of the denial, revocation,
6 or cancellation.

7 “(d) INTERESTED PARTIES.—The Board shall review
8 each decision described in subsection (b) upon request of
9 the alien or any of the following interested parties:

10 “(1) The petitioner or beneficiary of an immi-
11 grant visa petition approved under section 203(a),
12 203(b)(1), 203(b)(4), 203(b)(5), or 203(c), or the
13 petitioner of an immigrant visa petition approved
14 under section 203(b)(2) or 203(b)(3).

15 “(2) The petitioner of a nonimmigrant visa pe-
16 tition.

17 “(3) The postsecondary educational institution
18 approved for the attendance of nonimmigrant stu-
19 dents under section 101(a)(15)(F)(i) or
20 101(a)(15)(M)(i) which has provided notice of the
21 acceptance of the alien in its program.

22 “(4) A recognized international agency or orga-
23 nization approved as a program sponsor under sec-
24 tion 101(a)(15)(J) which has provided notice of the
25 acceptance of the alien in its program.

1 “(5) A treaty investor or trader individual or
2 organization in the United States that, under section
3 101(a)(15)(E), has made an offer of employment to
4 an alien to perform executive or supervisory manage-
5 ment functions.

6 “(e) LIMITATION.—A review may not be requested
7 under this section more than once in any 24-month period.

8 “(f) CONSTRUCTION.—This section may not be con-
9 strued to restrict any right to further administrative or
10 judicial review established under any other provision of
11 law.

12 “(g) FEES.—The Secretary of State shall charge, and
13 collect, an appropriate fee associated with a request to the
14 Board for a review. Such fee shall be sufficient to cover
15 the cost of the administration of this section.”.

16 (b) TECHNICAL AMENDMENTS.—

17 (1) Section 222(f) (8 U.S.C. 1202(f)) is
18 amended—

19 (A) by striking “except that” and all that
20 follows up to the period; and

21 (B) by adding at the end: “An interested
22 party under section 225(d) or court shall be
23 permitted to inspect the record of proceeding as
24 described in subsections (c)(2) and (c)(3) of
25 section 225.”.

1 (2) Section 104(a)(1) (8 U.S.C. 1104(a)(1)) is
 2 amended by striking the “except” and inserting “in-
 3 cluding”.

4 (3) The table of contents is amended by insert-
 5 ing after the item relating to section 224 the fol-
 6 lowing new item:

“Sec. 225. Board of Visa Appeals.”.

7 **SEC. 142. NONDISCRIMINATION PROVISIONS.**

8 (a) NONDISCRIMINATION IN ISSUANCE OF IMMI-
 9 GRANT VISAS.—Section 202(a)(1) (8 U.S.C. 1152(a)(1))
 10 is amended—

11 (1) in subparagraph (A), by inserting “sexual
 12 orientation, disability,” after “sex,”; and

13 (2) in subparagraph (B), by striking “proc-
 14 essed.” and inserting “processed, to the extent that
 15 such procedures do not discriminate based on race,
 16 sex, sexual orientation, disability, nationality, place
 17 of birth, or place of residence in violation of sub-
 18 paragraph (A).”.

19 (b) NONDISCRIMINATION IN ISSUANCE OF NON-
 20 IMMIGRANT VISAS.—Section 214 (8 U.S.C. 1184) is
 21 amended—

22 (1) by redesignating the subsection (l) added by
 23 section 625(a) of the Illegal Immigration Reform
 24 and Immigrant Responsibility Act of 1996 (Public

1 Law 104–208; 110 Stat. 3009–1820) as subsection
 2 (m); and

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

4 “(n) Except as specifically provided by law, no person
 5 shall receive any preference or priority or be discriminated
 6 against in the issuance of a nonimmigrant visa because
 7 of the person’s race, sex, sexual orientation, disability, na-
 8 tionality, place of birth, or place of residence.”.

9 **TITLE II—FAIRNESS AND EQUITY**
 10 **IN CASES INVOLVING PRE-**
 11 **VIOUS AND MINOR MIS-**
 12 **CONDUCT**

13 **Subtitle A—Increased Fairness and**
 14 **Equity Concerning Removal**
 15 **Proceedings**

16 **SEC. 201. EQUITABLE DEFINITION OF “CRIME INVOLVING**
 17 **MORAL TURPITUDE”.**

18 (a) **CONVICTION OF CERTAIN CRIMES.**—Section
 19 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)) is amended
 20 by striking “of, or who admits having committed, or who
 21 admits committing acts which constitute the essential ele-
 22 ments of—” and inserting “of—”.

23 (b) **EXCEPTION.**—Section 212(a)(2)(A)(ii)(II) (8
 24 U.S.C. 1182(a)(2)(A)(ii)(II)) is amended—

1 (1) by striking “the maximum” and all that fol-
2 lows through “such crime,”; and

3 (2) by striking “6 months” and inserting “1
4 year”.

5 **SEC. 202. EQUITABLE APPLICATION AND DEFINITION OF**
6 **“AGGRAVATED FELONY”.**

7 (a) ILLICIT TRAFFICKING.—Section 101(a)(43)(B)
8 (8 U.S.C. 1101(a)(43))(B)) is amended by striking
9 “Code);” and inserting “Code), except a single offense of
10 simple possession of a controlled substance that is an
11 alien’s first controlled substance offense;”.

12 (b) CRIMES OF VIOLENCE AND THEFT OFFENSES.—
13 Subparagraphs (F), (G), (J), (M), (R), and (S) of section
14 101(a)(43) (8 U.S.C. 1101(a)(43)) are each amended by
15 striking “imprisonment” and all that follows through the
16 semicolon and inserting “imprisonment of more than 5
17 years;”.

18 (c) ALIEN SMUGGLING.—Section 101(a)(43)(N) (8
19 U.S.C. 101(a)(43)(N)) is amended—

20 (1) by inserting “committed for the purpose of
21 commercial advantage,” after “smuggling,”; and

22 (2) by adding at the end a semicolon.

23 (d) DISCRETIONARY WAIVER IN CASES OF OTHER
24 MINOR FELONIES.—Section 101 (8 U.S.C. 1101) is
25 amended by adding at the end the following:

1 “(i) For purposes of this Act, and notwithstanding
 2 subsection (a)(43), the Attorney General may treat any
 3 conviction that did not result in incarceration for more
 4 than 1 year as if such conviction were not a conviction
 5 for an aggravated felony.”.

6 (e) CONFORMING CHANGE CONCERNING REMOVAL
 7 OF NONPERMANENT RESIDENTS.—Section 238(b) (8
 8 U.S.C. 1228(b)) is amended by striking paragraph (5).

9 **SEC. 203. EQUITABLE DEFINITIONS OF “CONVICTION” AND**
 10 **“TERM OF IMPRISONMENT”.**

11 Section 101(a)(48) (8 U.S.C. 1101(a)(48)) is
 12 amended—

13 (1) in subparagraph (A), by striking “court”
 14 and all that follows through the period at the end
 15 and inserting “court. An adjudication or judgment
 16 of guilt that has been expunged, deferred, annulled,
 17 invalidated, withheld, or vacated, an order of proba-
 18 tion without entry of judgment, or any similar dis-
 19 position shall not be considered a conviction for pur-
 20 poses of this Act.”; and

21 (2) in subparagraph (B)—

22 (A) by inserting “only” after “deemed to
 23 include”; and

24 (B) by striking “court of law” and all that
 25 follows through the period at the end and in-

1 serting “court of law. Any such reference shall
 2 not be deemed to include any suspension of the
 3 imposition or execution of that imprisonment or
 4 sentence in whole or in part.”.

5 **SEC. 204. EQUITABLE DEFINITION OF “CRIMES OF MORAL**
 6 **TURPITUDE”.**

7 Section 237(a)(2)(A)(i)(II) (8 U.S.C.
 8 1227(a)(2)(A)(i)(II)) is amended to read as follows:
 9 “(II) for which the alien has been
 10 incarcerated for a period exceeding
 11 one year,”.

12 **SEC. 205. RESTORATION OF FAIRNESS IN EQUITABLE RE-**
 13 **LIEF FOR LONG-TIME LEGAL PERMANENT**
 14 **RESIDENTS.**

15 (a) CANCELLATION OF REMOVAL.—Section
 16 240A(a)(3) (8 U.S.C. 1229b(a)(3)) is amended to read as
 17 follows:

18 “(3) has not been convicted of an aggravated
 19 felony for which the sentence imposed is five years
 20 or more.”.

21 (b) REPEAL OF RULE FOR TERMINATION OF CON-
 22 TINUOUS PERIOD.—

23 (1) Section 240A(d)(1) (8 U.S.C. 1229b(d)(1))
 24 (8 U.S.C. 1229b(a)) is repealed.

1 (2) Section 240A(d) (8 U.S.C. 1229b) is
2 amended—

3 (A) by redesignating paragraphs (2) and
4 (3) as paragraphs (1) and (2), respectively; and

5 (B) by inserting before the period at the
6 end of paragraph (1) (as redesignated) the fol-
7 lowing: “, unless the alien’s departure from the
8 United States was due to a temporary trip
9 abroad required by emergency or extenuating
10 circumstances outside the control of the alien”.

11 (c) CANCELLATION OF REMOVAL FOR CERTAIN
12 OTHER PERMANENT RESIDENTS FOR URGENT HUMANI-
13 TARIAN REASONS OR SIGNIFICANT PUBLIC BENEFIT.—
14 Section 240A (8 U.S.C. 1229b) is amended by adding at
15 the end the following:

16 “(f) CANCELLATION OF REMOVAL FOR CERTAIN
17 PERMANENT RESIDENTS FOR URGENT HUMANITARIAN
18 REASONS OR SIGNIFICANT PUBLIC BENEFIT.—In the
19 case of an alien otherwise eligible for cancellation of re-
20 moval under subsection (a), except that the alien has been
21 convicted of an aggravated felony that renders the alien
22 unable to satisfy the requirement in subsection (a)(3), the
23 Attorney General may cancel removal of the alien under
24 such conditions as the Attorney General may prescribe,
25 but only—

1 “(1) on a case-by-case basis for urgent humani-
 2 tarian reasons, significant public benefit (including
 3 assuring family unity), or any other sufficiently com-
 4 pelling reason; and

5 “(2) after making a written determination that
 6 the cancellation of removal poses no danger to the
 7 safety of persons or property.”.

8 **SEC. 206. RESTORATION OF FAIRNESS IN EQUITABLE RE-**
 9 **LIEF FOR OTHER NONCITIZENS.**

10 (a) CANCELLATION OF REMOVAL AND ADJUSTMENT
 11 FOR CERTAIN NONPERMANENT RESIDENTS.—Section
 12 240A(b)(1) (8 U.S.C. 1229b(b)(1)) is amended to read as
 13 follows:

14 “(1) IN GENERAL.—The Attorney General may
 15 cancel removal in the case of an alien who is inad-
 16 missible or deportable from the United States if the
 17 alien—

18 “(A) has been physically present in the
 19 United States for a continuous period of—

20 “(i) 7 years immediately preceding the
 21 date of application in the case of an
 22 alien—

23 “(I) who is deportable on any
 24 ground other than a ground specified
 25 in clause (ii)(I); and

1 “(II) whose deportation would, in
2 the opinion of the Attorney General,
3 result in extreme hardship to the alien
4 or the alien’s spouse, parent, son, or
5 daughter, who is a citizen of the
6 United States or an alien lawfully ad-
7 mitted for permanent residence; or

8 “(ii) 10 years immediately preceding
9 the date of application in the case of an
10 alien—

11 “(I) who is deportable for convic-
12 tion of an offense under section
13 212(a)(2), 237(a)(2), or 237(a)(3);
14 and

15 “(II) whose deportation would, in
16 the opinion of the Attorney General,
17 result in exceptional and extremely
18 unusual hardship to the alien or the
19 alien’s spouse, parent, son, or daugh-
20 ter, who is a citizen of the United
21 States or an alien lawfully admitted
22 for permanent residence”; and

23 “(B) has been a person of good moral
24 character during such period.”.

1 (b) ELIMINATION OF ANNUAL LIMITATION.—Section
2 240A (8 U.S.C. 1229b) is amended by striking subsection
3 (e).

4 **SEC. 207. ELIMINATING UNFAIR RETROACTIVE CHANGES IN**
5 **REMOVAL RULES FOR PERSONS SUBJECT TO**
6 **PENDING PROCEEDINGS.**

7 (a) APPLICATION OF AGGRAVATED FELONY DEFINI-
8 TION.—The last sentence of section 101(a)(43) (8 U.S.C.
9 1101(a)(43)) is amended to read as follows: “The term
10 shall not apply to any offense that was not covered by
11 the term on the date on which the offense occurred.”.

12 (b) GROUNDS OF DEPORTABILITY.—Section 237 (8
13 U.S.C. 1227) is amended by adding at the end the fol-
14 lowing new subsection:

15 “(d) Notwithstanding any other provision of this sec-
16 tion, an alien is not deportable by reason of committing
17 any offense that was not a ground of deportability on the
18 date the offense occurred.”.

19 (c) GROUNDS OF INADMISSIBILITY.—Section 212 (8
20 U.S.C. 1182) is amended by adding at the end the fol-
21 lowing new subsection:

22 “(p) Notwithstanding any other provision of this sec-
23 tion, an alien is not inadmissible by reason of committing
24 any offense that was not a ground of inadmissibility on
25 the date the offense occurred.”.

1 **SEC. 208. ELIMINATING UNFAIR RETROACTIVE CHANGES IN**
2 **REMOVAL RULES FOR PERSONS PREVIOUSLY**
3 **REMOVED.**

4 (a) IN GENERAL.—The Attorney General shall estab-
5 lish a process by which an alien described in subsection
6 (b) may apply for reopening a proceeding so as to seek
7 relief from exclusion, deportation, or removal under sec-
8 tion 212(c) of the Immigration and Nationality Act, as
9 such section was in effect prior to the enactment of the
10 Antiterrorism and Effective Death Penalty Act of 1996,
11 or section 240A of the Immigration and Nationality Act,
12 as amended by this Act.

13 (b) ALIEN DESCRIBED.—An alien referred to in sub-
14 section (a) is an alien who received a final order of exclu-
15 sion, deportation, or removal, or a decision on a petition
16 for review or petition for habeas corpus, on or after Sep-
17 tember 30, 1996, and who was—

18 (1) excluded, deported, or removed from the
19 United States by reason of having committed a
20 criminal offense that was not a basis for removal,
21 exclusion, or deportation on the date on which the
22 offense was committed;

23 (2) excluded, deported, or removed from the
24 United States by reason of having committed a
25 criminal offense that is not a basis for removal, ex-

1 exclusion, or deportation on the date of the enactment
 2 of this Act; or

3 (3) excluded, deported, or removed from the
 4 United States by reason of having committed a
 5 criminal offense prior to April 24, 1996, for which
 6 there was relief from exclusion, deportation, or re-
 7 moval available prior to such date.

8 (c) PAROLE.—The Attorney General may exercise the
 9 parole authority under section 212(d)(5)(A) of the Immi-
 10 gration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for
 11 the purpose of permitting aliens excluded, deported, or re-
 12 moved from the United States to participate in the process
 13 established under subsection (a), if the alien establishes
 14 prima facie eligibility for the relief.

15 **Subtitle B—Increased Fairness and**
 16 **Equity Concerning 5-Year Bars**
 17 **to Admission and Other**
 18 **Grounds for Exclusion**

19 **SEC. 211. LIMITING 5-YEAR BAR TO ADMISSION TO PER-**
 20 **SONS WHO WILLFULLY FAIL TO ATTEND RE-**
 21 **MOVAL PROCEEDINGS.**

22 Section 212(a)(6)(B) (8 U.S.C. 1182(a)(6)(B)) is
 23 amended to read as follows:

24 “(B) FAILURE TO ATTEND REMOVAL PRO-
 25 CEEDINGS.—

1 “(i) IN GENERAL.—Any alien who
 2 willfully and without reasonable cause fails
 3 or refuses to attend or remain in attend-
 4 ance at a proceeding to determine the
 5 alien’s inadmissibility or deportability and
 6 who seeks admission to the United States
 7 within 5 years of such alien’s subsequent
 8 departure or removal is inadmissible.

9 “(ii) WAIVER AUTHORIZED.—For pro-
 10 vision authorizing waiver of clause (i), see
 11 subsection (d)(13).”.

12 **SEC. 212. LIMITING 5-YEAR BAR TO ADMISSION TO PER-**
 13 **SONS WHO WILLFULLY VIOLATE STUDENT**
 14 **VISA CONDITIONS.**

15 (a) IN GENERAL.—Section 212(a)(6)(G) (8 U.S.C.
 16 1182(a)(6)(G)) is amended to read as follows:

17 “(G) STUDENT VISA ABUSERS.—

18 “(i) IN GENERAL.—An alien who ob-
 19 tains the status of a nonimmigrant under
 20 section 101(a)(15)(F)(i) and who willfully
 21 violates a term or condition of such status
 22 under section 214(m) is inadmissible until
 23 the alien has been outside the United
 24 States for a continuous period of 5 years
 25 after the date of the violation.

1 “(ii) WAIVER AUTHORIZED.—For pro-
 2 vision authorizing waiver of clause (i), see
 3 subsection (d)(13).”.

4 (b) TECHNICAL AMENDMENT.—Section
 5 101(a)(15)(F)(i) (8 U.S.C. 1101(a)(15)(F)(i)) is amended
 6 by striking “214(l)” and inserting “214(m)”.

7 **SEC. 213. LIMITING BAN ON ADMISSIBILITY TO PERSONS**
 8 **WHO WILLFULLY MAKE FALSE CLAIMS FOR**
 9 **CITIZENSHIP.**

10 (a) CLASSES OF DEPORTABLE ALIENS.—Section
 11 237(a)(3)(D) (8 U.S.C. 1227(a)(3)(D)) is amended by in-
 12 serting “and willfully” after “falsely” each place such
 13 term appears.

14 (b) CLASSES OF INADMISSIBLE ALIENS.—Section
 15 212(a)(6)(C)(ii) (8 U.S.C. 1182(a)(6)(C)(ii)) is amended
 16 by inserting “and willfully” after “falsely” each place such
 17 term appears.

18 **SEC. 214. EQUITABLE WAIVER OF INADMISSIBILITY FOR**
 19 **MINOR CRIMINAL OFFENSES.**

20 Section 212(h) (8 U.S.C. 1182(h)) is amended—

21 (1) in the matter preceding paragraph (1), by
 22 striking “offense of simple possession of 30 grams or
 23 less of marijuana” and inserting “controlled sub-
 24 stance offense for which the alien was not incarcer-
 25 ated for a period exceeding 1 year”; and

1 (2) by striking the final two sentences.

2 **SEC. 215. ELIMINATING THE 3 AND 10 YEAR BARS TO INAD-**
 3 **MISSIBILITY.**

4 Section 212(a)(9) (8 U.S.C. 1182(a)(9)) is
 5 amended—

6 (1) by striking subparagraph (B) and redesignig-
 7 nating subparagraph (C) as subparagraph (B); and
 8 (2) in subparagraph (B), as so redesignated, by
 9 striking “10 years” and inserting “3 years”.

10 **TITLE III—ENCOURAGING**
 11 **FAMILY REUNIFICATION**
 12 **Subtitle A—Reuniting Family**
 13 **Members**

14 **SEC. 301. VISA FOR SPOUSES AND CHILDREN OF PERMA-**
 15 **NENT RESIDENTS TEMPORARILY WAITING**
 16 **FOR VISA NUMBERS.**

17 (a) IN GENERAL.—Section 101(a)(15)(V) (8 U.S.C.
 18 1101(a)(15)(V)) is amended to read as follows:

19 “(V) an alien (other than one coming for the
 20 purpose of study or of performing skilled or un-
 21 skilled labor or as a representative of foreign press,
 22 radio, film, or other foreign information media com-
 23 ing to engage in such vocation) who is the bene-
 24 ficiary of a petition approved under—

1 “(i) section 204 (excluding the provisions
2 of such section referred to in clause (ii)) for
3 classification by reason of a relationship de-
4 scribed in section 203(a)(2)(A) with an alien
5 lawfully admitted for permanent residence, who
6 is awaiting the availability of an immigrant visa
7 based upon such approval, and who seeks to
8 enter the United States to achieve family unity
9 by joining the permanent resident alien in the
10 United States; or

11 “(ii) clause (iii), (iv), (v), or (vi) of section
12 204(a)(1)(A) or clause (ii), (iii), or (iv) of sec-
13 tion 204(a)(1)(B) and who is awaiting the
14 availability of an immigrant visa based upon
15 such approval.”.

16 (b) PROVISIONS AFFECTING NONIMMIGRANT STA-
17 TUS.—Section 214 (8 U.S.C. 1184) is amended—

18 (1) by redesignating the subsections (o) and
19 (p), as added by sections 1102(b) and 1103(b) of
20 the Departments of Commerce, Justice, and State,
21 the Judiciary, and Related Agencies Appropriations
22 Act, 2001 (as enacted into law by section 1(a)(2) of
23 Public Law 106–553) as subsections (p) and (q), re-
24 spectively; and

1 (2) by amending paragraph (1)(B)(i) of sub-
2 section (p) (as so redesignated) to read as follows:

3 “(i) The petition filed under section 204
4 for which the visa was authorized under section
5 101(a)(15)(V).”.

6 **SEC. 302. REFUGEE STATUS FOR UNMARRIED SONS AND**
7 **DAUGHTERS OF REFUGEES.**

8 Section 207(c)(2) (8 U.S.C. 1157(c)(2)) is amended
9 by adding at the end the following:

10 “When warranted by unusual circumstances or to
11 preserve family unity, the Attorney General may, in
12 the Attorney General’s discretion, consider an un-
13 married son or daughter of a refugee to be a child
14 of the refugee for purposes of this paragraph.”.

15 **SEC. 303. ASYLEE STATUS FOR UNMARRIED SONS AND**
16 **DAUGHTERS OF ASYLEES.**

17 Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended
18 by adding at the end the following:

19 “When warranted by unusual circumstances or to
20 preserve family unity, the Attorney General may, in
21 the Attorney General’s discretion, consider an un-
22 married son or daughter of an alien who is granted
23 asylum under this subsection to be a child of the
24 alien for purposes of this paragraph.”.

1 **SEC. 304. PROTECTION AGAINST PROCESSING DELAYS.**

2 (a) IN GENERAL.—

3 (1) NEW SECTION.—Title I (8 U.S.C. 1101 et
4 seq.) is amended by adding at the end the following:

5 “PROTECTION AGAINST PROCESSING DELAYS FOR
6 CHILDREN

7 “SEC. 106. (a) IN GENERAL.—

8 “(1) DETERMINATION OF WHO IS A CHILD.—In
9 the case of an application initially to grant a benefit
10 under this Act (other than an application for natu-
11 ralization) that otherwise would be granted only
12 after a determination that the beneficiary of the ap-
13 plication is a child (such as classification as an im-
14 mediate relative under section 201(b)(2)(A)(i)), if
15 the application is neither approved nor denied (on
16 procedural or substantive grounds) during the 90-
17 day period beginning on the date of the filing of the
18 application—

19 “(A) the beneficiary shall be considered to
20 be a child for all purposes related to the receipt
21 of the benefit if the beneficiary was a child on
22 the last day of such 90-day period; and

23 “(B) the beneficiary shall not otherwise be
24 prejudiced with respect to such determination
25 by such delay, and shall be considered to be a

1 child under this Act for all purposes related to
2 such application.

3 “(2) TERMINATION OF BENEFIT.—Paragraph
4 (1) shall remain in effect until the termination of
5 the 1-year period beginning on the date on which the
6 application described in such paragraph is approved.

7 “(b) SPECIAL BENEFITS FOR SONS AND DAUGHTERS
8 OF NATURALIZED PARENTS.—

9 “(1) IN GENERAL.—In the case of an alien son
10 or daughter of a parent who is a naturalized citizen,
11 if the alien is the beneficiary of an application for
12 a benefit under this Act that otherwise would be
13 granted only after a determination that the alien is
14 a child—

15 “(A) the alien shall not be prejudiced with
16 respect to such determination by the failure of
17 the Attorney General to approve the parent’s
18 application for naturalization during the 90-day
19 period beginning on date of the filing of the ap-
20 plication; and

21 “(B) the alien son or daughter shall be
22 considered to be a child for all purposes related
23 to such application if the alien was a child on
24 the last day of such 90-day period.

1 “(2) TERMINATION OF BENEFIT.—Paragraph
2 (1) shall remain in effect until the termination of
3 the 1-year period beginning on the date on which the
4 application described in such paragraph is ap-
5 proved.”.

6 (2) CLERICAL AMENDMENT.—The table of con-
7 tents of such Act is amended by inserting after the
8 item relating to section 105 the following:

“Sec. 106. Protection against processing delays for children.”.

9 (b) PROTECTION AGAINST PREJUDICIAL EFFECTS
10 OF PROCESSING DELAYS RELATED TO CHANGE IN FAM-
11 ILY STATUS.—Section 203 (8 U.S.C. 1153) is amended
12 by adding at the end the following:

13 “(h) PROTECTION AGAINST PREJUDICIAL EFFECTS
14 OF PROCESSING DELAYS RELATED TO CHANGE IN FAM-
15 ILY STATUS.—

16 “(1) IN GENERAL.—In the case of an applica-
17 tion for receipt of an immigrant visa under sub-
18 section (a), an application for receipt of an immi-
19 grant visa under subsection (d) based on a familial
20 relationship to an alien entitled to immigrant status
21 under subsection (a), or an application for adjust-
22 ment of status under section 245 based on the avail-
23 ability of an immigrant visa under subsection (a), if
24 the application is neither approved nor denied (on
25 procedural or substantive grounds) during the 90-

1 day period beginning on the date of the filing of the
2 application, the eligibility of the alien beneficiary of
3 the application, for all purposes related to the re-
4 ceipt of the applicable benefit, shall be adjudicated
5 based on the alien's familial status and relationships
6 on the last day of such 90-day period.

7 “(2) TERMINATION OF BENEFIT.—Paragraph
8 (1) shall remain in effect until the termination of
9 the 1-year period beginning on the date on which the
10 application described in such paragraph is approved.

11 “(3) CONSTRUCTION.—Paragraph (1) shall not
12 be construed to supersede any ground of inadmis-
13 sibility under section 212(a).”.

14 (c) PREVENTING IMMIGRANTS FROM WAITING
15 LONGER FOR IMMIGRANT VISAS AS A RESULT OF RE-
16 CLASSIFICATION FROM FAMILY SECOND PREFERENCE TO
17 FAMILY FIRST PREFERENCE.—Section 203 (8 U.S.C.
18 1153) is amended by adding at the end the following new
19 subsection:

20 “(h) ENSURING IMMIGRANTS DO NOT HAVE TO
21 WAIT LONGER FOR AN IMMIGRANT VISA AS A RESULT
22 OF RECLASSIFICATION FROM FAMILY SECOND PREF-
23 ERENCE TO FAMILY FIRST PREFERENCE.—Notwith-
24 standing any other provision of law, in the case of a peti-
25 tion that has been approved to accord preference status

1 under subsection (a)(2)(A), the petition may be deemed
 2 to provide continued entitlement to status under that sub-
 3 section in the case of any alien petitioner who is subse-
 4 quently naturalized as a United States citizen, if a visa
 5 is not immediately available to the beneficiary under sub-
 6 section (a)(1).”.

7 **Subtitle B—Limited Waiver of** 8 **Grounds of Admissibility**

9 **SEC. 311. DISCRETIONARY WAIVER IN CASES INVOLVING** 10 **FAMILY MEMBERS.**

11 (a) IN GENERAL.—Section 212(i) (8 U.S.C. 1182(i))
 12 is amended to read as follows:

13 “(i) The Attorney General may, in the discretion of
 14 the Attorney General, waive the application of subpara-
 15 graph (A)(i), or clause (i) or (ii) of subparagraph (C), of
 16 subsection (a)(6) in the case of an immigrant who is the
 17 parent, spouse, son, or daughter of a United States citizen
 18 or of an alien lawfully admitted for permanent residence
 19 if it is established to the satisfaction of the Attorney Gen-
 20 eral that the refusal of admission to the United States
 21 of such immigrant alien would result in hardship to the
 22 alien or to the citizen or lawfully resident parent, spouse,
 23 son, or daughter of such an alien.”.

24 (b) CONFORMING AMENDMENTS.—Section 212(a)(6)
 25 (8 U.S.C. 1182(a)(6)) is amended—

1 (1) in subparagraph (A), by adding at the end
 2 the following:

3 “(iii) WAIVER AUTHORIZED.—For
 4 provision authorizing waiver of this sub-
 5 paragraph, see subsection (i).”; and

6 (2) in subparagraph (C)(iii), by striking “clause
 7 (i),” and inserting “this subparagraph”.

8 **SEC. 312. DISCRETIONARY WAIVER IN DOCUMENT CASES**
 9 **INVOLVING FAMILY MEMBERS.**

10 (a) INADMISSIBLE ALIENS.—Section 212(d)(12) (8
 11 U.S.C. 1182(d)(12)) is amended by striking “spouse or
 12 child” and inserting “spouse, son, daughter, or parent”.

13 (b) DEPORTABLE ALIENS.—Section 237(a)(3)(C)(ii)
 14 (8 U.S.C. 1227(a)(3)(C)(ii)) is amended by striking
 15 “spouse or child” and inserting “spouse, son, daughter,
 16 or parent”.

17 **SEC. 313. DISCRETIONARY WAIVER TO ADMIT PERSONS IN**
 18 **UNUSUAL CIRCUMSTANCES.**

19 (a) NEW GENERAL WAIVER.—Section 212(d) (8
 20 U.S.C. 1182(d)) is amended by adding at the end the fol-
 21 lowing:

22 “(13) The Attorney General may, in the discretion
 23 of the Attorney General for humanitarian purposes, to as-
 24 sure family unity, or when it is otherwise in the public
 25 interest, waive the application of subparagraph (B)(i) or

1 (G)(i) of subsection (a)(6) or clause (i) or (ii) of subsection
 2 (a)(9)(A) in unusual circumstances. For purposes of the
 3 preceding sentence, an instance of battering or extreme
 4 cruelty is deemed to constitute unusual circumstances in
 5 the case where it is inflicted on an alien (or a child of
 6 an alien) by the alien’s United States citizen or lawful per-
 7 manent resident spouse, parent, child, son, or daughter.”.

8 (b) WAIVER FOR ALIENS PREVIOUSLY REMOVED.—
 9 Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amend-
 10 ed by adding at the end the following:

11 “(iv) WAIVER AUTHORIZED.—For
 12 provision authorizing waiver of clause (i)
 13 or (ii), see subsection (d)(13).”.

14 **Subtitle C—Eliminating Unfairness**
 15 **and Waste in Section 245(i)**
 16 **Waivers**

17 **SEC. 321. PERMANENT APPLICATION OF SECTION 245(i).**

18 Section 245(i)(1) (8 U.S.C. 1255(i)(1)) is amended
 19 by striking “(i)(1)” and all that follows through “The At-
 20 torney General” and inserting the following:

21 “(i)(1) Notwithstanding the provisions of subsections
 22 (a) and (c) of this section, an alien physically present in
 23 the United States who—

24 “(A) entered the United States without inspec-
 25 tion; or

8 SEC. 331. DISCRETIONARY DETERMINATION OF PERIOD OF
9 VOLUNTARY DEPARTURE.

17 SEC. 332. DISCRETIONARY DETERMINATION OF VOL-
18 UNTARY DEPARTURE BOND BASED ON INDI-
19 VIDUAL CIRCUMSTANCES.

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1 **SEC. 333. ELIMINATION OF AUTOMATIC PENALTIES FOR**
 2 **FAILING TO DEPART IN ACCORDANCE WITH A**
 3 **VOLUNTARY DEPARTURE GRANT.**

4 Section 240B (8 U.S.C. 1229c) is amended by strik-
 5 ing subsection (d).

6 **Subtitle E—Fairness in**
 7 **Determination of Public Charge**

8 **SEC. 341. EQUITABLE PROCEDURES CONCERNING PUBLIC**
 9 **CHARGE AND AFFIDAVIT OF SUPPORT.**

10 (a) GROUNDS FOR INELIGIBILITY FOR ADMISSION.—

11 Section 212(a)(4) (8 U.S.C. 1182(a)(4)) is amended—

12 (1) by amending subparagraph (B)(ii) to read
 13 as follows:

14 “(ii) If an alien submits an affidavit of
 15 support described in section 213A, in addition
 16 to the factors under clause (i), the consular of-
 17 ficer or the Attorney General shall also consider
 18 such affidavit in determining whether the alien
 19 is inadmissible under this paragraph.”; and

20 (2) by striking subparagraphs (C) and (D).

21 (b) REQUIREMENTS FOR SPONSOR’S AFFIDAVIT OF
 22 SUPPORT.—Subsections (a)(1)(A), (f)(1)(E), and
 23 (f)(4)(B)(i) of section 213A (8 U.S.C. 1183a(a)(1)(A),
 24 (f)(1)(E), and (f)(4)(B)(i)) are amended by striking
 25 “125” and inserting “100”.

1 **TITLE IV—FAIRNESS IN ASYLUM**
 2 **AND REFUGEE PROCEEDINGS**
 3 **Subtitle A—Increased Fairness in**
 4 **Asylum Proceedings**

5 **SEC. 401. ELIMINATION OF ARBITRARY TIME LIMITS ON**
 6 **ASYLUM APPLICATIONS.**

7 Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is
 8 amended—

9 (1) by striking subparagraph (B);

10 (2) in subparagraph (C), by striking “(D)” and
 11 inserting “(C)”;

12 (3) in subparagraph (D), by striking “subpara-
 13 graphs (B) and (C),” and inserting “subparagraph
 14 (B),”; and

15 (4) by redesignating subparagraphs (C) and
 16 (D) as subparagraphs (B) and (C), respectively.

17 **SEC. 402. GENDER-BASED PERSECUTION.**

18 (a) TREATMENT AS REFUGEE.—Section 101(a)(42)
 19 (8 U.S.C. 1101(a)(42)) is amended by adding at the end
 20 the following:

21 “For purposes of determinations under this Act, a person
 22 who establishes that he or she suffered persecution in the
 23 past, or has a well-founded fear of persecution, on account
 24 of gender shall be considered to have suffered persecution,

1 or to have a well-founded fear of persecution, on account
2 of membership in a particular social group.”.

3 (b) RESTRICTION ON REMOVAL TO COUNTRY WHERE
4 ALIEN WOULD BE THREATENED.—Section 241(b)(3) (8
5 U.S.C. 1231(b)(3)) is amended by adding at the end the
6 following:

7 “(C) GENDER-BASED PERSECUTION.—For
8 purposes of determinations under this para-
9 graph, an alien who establishes that the alien’s
10 life or freedom would be threatened in a coun-
11 try on account of gender shall be considered to
12 have established that the alien’s life or freedom
13 would be threatened in that country on account
14 of membership in a particular social group.”.

15 **SEC. 403. PRESUMPTION OF ASYLUM IN CASES OF PAST**
16 **PERSECUTION.**

17 Section 101(a)(42) (8 U.S.C. 1101(a)(42)) is amend-
18 ed by adding at the end the following:

19 “For purposes of determinations under this Act, a person
20 shall be presumed to have a well-founded fear of future
21 persecution if he or she has established that he or she was
22 persecuted in the past, unless a preponderance of the evi-
23 dence establishes that since the time the persecution oc-
24 curred conditions in the person’s country of nationality or
25 last habitual residence have changed to such an extent

1 that the person no longer has a well-founded fear of being
2 persecuted if he or she were to return. In a case where
3 the presumption is rebutted, the person nonetheless may
4 be considered a refugee if the person demonstrates com-
5 pelling reason for being unwilling to return to the person's
6 country of nationality or last habitual residence arising
7 out of the severity of the past persecution.”.

8 **SEC. 404. REBUTTABLE PRESUMPTION OF ASYLUM WHERE**
9 **PERSECUTION OCCURS WITH RESPECT TO A**
10 **PARTICULAR LOCATION IN A COUNTRY.**

11 Section 101(a)(42) (8 U.S.C. 1101(a)(42)) is amend-
12 ed by adding at the end the following:

13 “For purposes of determinations under this Act, a person
14 who establishes that he or she suffered persecution in the
15 past, or has a well-founded fear of persecution, with re-
16 spect to any location in the person's country of nationality
17 or last habitual residence shall be presumed to have a well-
18 founded fear of future persecution with respect to all loca-
19 tions in such country, unless a preponderance of the evi-
20 dence establishes that the threat of future persecution is
21 not country-wide. In a case where the presumption is re-
22 butted, the person nonetheless may be considered a ref-
23 ugee if the person demonstrates that it would be unreason-
24 able to require the person to resettle in any location in
25 such country.”.

1 **SEC. 405. ELIMINATION OF ARBITRARY CAP ON PERSONS**
 2 **ELIGIBLE TO ADJUST STATUS FROM ASYLEES**
 3 **TO LEGAL PERMANENT RESIDENTS.**

4 Section 209(b) (8 U.S.C. 1159(b)) is amended by
 5 striking “Not more than 10,000 of the” and all that fol-
 6 lows through “to adjust to” and inserting “The Attorney
 7 General may adjust, in the Attorney General’s discretion
 8 and under such regulations as the Attorney General may
 9 prescribe,”.

10 **SEC. 406. RESTORATION OF ELIGIBILITY FOR WITH-**
 11 **HOLDING OF REMOVAL FOR PERSONS FAC-**
 12 **ING LOSS OF LIFE OR FREEDOM.**

13 Section 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is
 14 amended—

15 (1) by amending clause (ii) to read as follows:

16 “(ii) the alien—

17 “(I) has been convicted by final
 18 judgment of a particularly serious
 19 crime for which the sentence imposed
 20 was an aggregate term of imprison-
 21 ment of five years or more; and

22 “(II) is a danger to the commu-
 23 nity of the United States.”;

24 (2) by striking the second and third sentences;

25 and

1 (3) by adding at the end “Notwithstanding this
2 subparagraph, an alien may be granted relief under
3 subparagraph (A) if the Attorney General deter-
4 mines the alien should not be removed for urgent
5 humanitarian reasons.”.

6 **Subtitle B—Increased Fairness and**
7 **Rationality in Refugee Con-**
8 **sultations**

9 **SEC. 411. TIMELY CONSULTATION WITH RESPECT TO REF-**
10 **UGEE ADMISSIONS.**

11 Section 207(d)(1) (8 U.S.C. 1157(d)(1)) is amended
12 by striking “the start of each fiscal year” and inserting
13 “the submission by the President to the Congress of the
14 President’s budget for the Federal Government with re-
15 spect to a fiscal year,”.

16 **TITLE V—MISCELLANEOUS**
17 **PROVISIONS**

18 **SEC. 501. LIMITING FORFEITURE FOR CERTAIN ASSETS**
19 **USED TO VIOLATE INS WHERE THERE WAS**
20 **NO COMMERCIAL GAIN.**

21 Section 274(b)(1) (8 U.S.C. 1324(b)(1)) is amended
22 by inserting “for the purpose of commercial advantage or
23 private financial gain” after “subsection (a)”.

1 **SEC. 502. ELIMINATION OF BAN ON STATE AND LOCAL GOV-**
 2 **ERNMENTS FROM PREVENTING COMMUNICA-**
 3 **TIONS WITH THE INS.**

4 (a) IN GENERAL.—Section 642 of the Illegal Immi-
 5 gration Reform and Immigrant Responsibility Act of 1996
 6 (8 U.S.C. 1373) is repealed.

7 (b) VERIFICATION OF ELIGIBILITY FOR FEDERAL
 8 PUBLIC BENEFITS.—Section 432 of the Personal Respon-
 9 sibility and Work Opportunity Reconciliation Act of 1996
 10 (8 U.S.C. 1642) is repealed.

11 **SEC. 503. ELIMINATION OF AUTHORITY TO PERMIT STATE**
 12 **PERSONNEL TO CARRY OUT IMMIGRATION**
 13 **OFFICER FUNCTIONS.**

14 Section 287(g) (8 U.S.C. 1357(g)) is repealed.

15 **SEC. 504. PAROLE AUTHORITY.**

16 Section 212(d)(5)(A) (8 U.S.C. 1182(d)(5)(A)) is
 17 amended by striking “only on a case-by-case basis for ur-
 18 gent humanitarian reasons or significant public benefit”
 19 and inserting “for emergent reasons or for reasons deemed
 20 strictly in the public interest”.

21 **SEC. 505. ENHANCED BORDER PATROL RECRUITMENT AND**
 22 **RETENTION.**

23 (a) IN GENERAL.—

24 (1) GS–11 CLASSIFICATION.—Any Border Pa-
 25 trol agent classified as a GS–1896 position who
 26 completes a 1-year period of service at a GS–9 grade

1 and whose current rating of record is fully successful
2 or higher shall be classified at a GS–11 grade and
3 receive pay at the minimum rate of basic pay for a
4 GS–11 position.

5 (2) NONREDUCTION.—Paragraph (1) shall not
6 be construed to—

7 (A) limit or reduce the rate of pay of any
8 Border Patrol agent; or

9 (B) reclassify a Border Patrol agent at a
10 lower classification of position.

11 (b) OFFICE OF BORDER PATROL RECRUITMENT AND
12 RETENTION.—

13 (1) ESTABLISHMENT.—Not later than 90 days
14 after the date of the enactment of this Act, the
15 Commissioner of the Immigration and Naturaliza-
16 tion Service shall establish an Office of Border Pa-
17 trol Recruitment and Retention within the Immigra-
18 tion and Naturalization Service.

19 (2) FUNCTIONS.—The Office of Border Patrol
20 Recruitment and Retention shall—

21 (A) develop outreach programs to identify
22 and recruit prospective Border Patrol agents;

23 (B) develop programs to retain Border Pa-
24 trol agents; and

1 (C) submit recommendations to the Com-
2 missioner of the Immigration and Naturaliza-
3 tion Service relating to pay and benefits of Bor-
4 der Patrol agents.

5 (3) REPORT TO CONGRESS.—Not later than
6 150 days after the date of the enactment of this Act,
7 the Commissioner of the Immigration and Natu-
8 ralization Service shall submit a report to the Con-
9 gress on the establishment and activities of the Of-
10 fice of Border Patrol Recruitment and Retention.

11 (c) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated \$50,000,000 for fiscal
13 year 2003 and such sums as may be necessary for each
14 fiscal year thereafter to carry out this section.

15 **SEC. 506. ELIMINATION OF DENIAL OF IMMIGRATION BENE-**
16 **FITS FOR ERRONEOUS ASYLUM APPLICA-**
17 **TION.**

18 Section 208(d) (8 U.S.C. 1158(d)) is amended by
19 striking paragraphs (6) and (7).

20 **SEC. 507. AUTHORIZATION OF APPROPRIATIONS FOR IM-**
21 **PLEMENTATION OF ACT.**

22 There are authorized to be appropriated for fiscal
23 years 2003 through 2009 such sums as may be necessary
24 to implement this Act.

1 **TITLE VI—EFFECTIVE DATES**

2 **SEC. 601. GENERAL EFFECTIVE DATE.**

3 Except as provided in section 602, the amendments
4 made by this Act shall take effect on the date of the enact-
5 ment of this Act.

6 **SEC. 602. OTHER EFFECTIVE DATES.**

7 (a) TITLE I.—

8 (1) SECTION 102.—The amendments made by
9 section 102 shall take effect on the date of the en-
10 actment of this Act and shall apply to petitions for
11 review of determinations of the Attorney General
12 made on or after such date.

13 (2) SECTION 111.—The amendment made by
14 section 111 shall take effect on the date of the en-
15 actment of this Act and shall apply to determina-
16 tions pending on or after such date with respect to
17 which—

18 (A) a final administrative decision has
19 been not been rendered as of such date; or

20 (B) such a decision has been rendered but
21 the period for seeking judicial review of the de-
22 cision has not expired.

23 (3) SECTION 113.—The amendment made by
24 section 113 shall take effect on the date of the en-

1 actment of this Act and shall apply to aliens who are
2 in custody on or after such date.

3 (4) SECTIONS 114 AND 115.—The amendments
4 made by sections 114 and 115 shall take effect on
5 the date of the enactment of this Act and shall apply
6 to petitions for review filed on or after such date.

7 (5) SECTION 116.—The amendment made by
8 section 116 shall take effect on the date of the en-
9 actment of this Act and shall apply to appeals from
10 denial of a request for an order of voluntary depart-
11 ure, and requests for a stay of an alien's removal
12 pending consideration of any claim with respect to
13 voluntary departure, filed on or after such date.

14 (6) SECTION 117.—The amendment made by
15 section 117 shall take effect on the date of the en-
16 actment of this Act and shall apply to cases in which
17 a final order of exclusion or deportation is entered
18 on or after the date of the enactment of this Act.

19 (7) SECTION 121.—The amendments made by
20 section 121 shall take effect on the date of the en-
21 actment of this Act and shall apply to removal pro-
22 ceedings pending on or after such date.

23 (8) SECTION 122.—The amendment made by
24 section 122 shall take effect on the date of the en-

1 actment of this Act and shall apply to applications
2 for admission pending on or after such date.

3 (9) SECTION 141.—

4 (A) IN GENERAL.—The amendment made
5 by section 141(a) shall take effect 120 days
6 after the date of the enactment of this Act.

7 (B) DEADLINE FOR REGULATIONS.—Pro-
8 posed regulations with respect to the amend-
9 ment made by section 141(a) shall be promul-
10 gated not later than 30 days after the date of
11 the enactment of this Act.

12 (C) APPOINTMENTS.—Members of the
13 Board of Visa Appeals under section 225 of the
14 Immigration and Nationality Act (as inserted
15 by section 141(a) of this Act) shall be ap-
16 pointed not later than 120 days after the date
17 of the enactment of this Act.

18 (b) TITLE II.—

19 (1) SECTION 201.—The amendments made by
20 section 201 shall take effect on the date of the en-
21 actment of this Act and shall apply to applications
22 pending on or after such date with respect to which
23 no final administrative decision has been rendered.

24 (2) SECTION 202.—

1 (A) SUBSECTION (a).—The amendment
2 made by section 202(a) shall apply to offenses
3 committed on or after the date of the enact-
4 ment of this Act.

5 (B) SUBSECTIONS (b) AND (c).—The
6 amendments made by subsections (b) and (c) of
7 section 202 shall apply to convictions entered
8 on or after April 24, 1996.

9 (C) SUBSECTION (d).—The amendment
10 made by section 202(d) shall apply to convic-
11 tions entered on or after the date of the enact-
12 ment of this Act.

13 (3) SECTION 203.—The amendments made by
14 section 203 shall take effect on the date of the en-
15 actment of this Act and shall apply to convictions
16 and sentences entered on or after such date.

17 (4) SECTION 204.—The amendment made by
18 section 204 shall apply to convictions entered on or
19 after the date of the enactment of this Act.

20 (5) SECTIONS 206 AND 207.—The amendments
21 made by sections 206(a) and 207 shall take effect
22 on the date of the enactment of this Act and shall
23 apply to aliens in removal proceedings on or after
24 April 1, 1997.

1 (6) SECTIONS 211 AND 214.—The amendments
2 made by sections 211 and 214 shall apply to deter-
3 minations of inadmissibility made on or after April
4 1, 1997.

5 (7) SECTION 212.—The amendments made by
6 section 212 shall apply to aliens who obtain the sta-
7 tus of a nonimmigrant under section 101(a)(15)(F)
8 of the Immigration and Nationality Act after the
9 end of the 60-day period beginning on September
10 30, 1996, including aliens whose status as such a
11 nonimmigrant is extended after the end of such pe-
12 riod.

13 (8) SECTION 213.—The amendments made by
14 section 213 shall apply to representations made on
15 or after September 30, 1996.

16 (c) TITLE III.—

17 (1) SECTION 301.—The amendments made by
18 section 301 shall take effect on the date of the en-
19 actment of this Act and shall apply to an alien who
20 is the beneficiary of a classification petition filed
21 under section 204 before, on, or after such date.

22 (2) SECTION 302.—The amendment made by
23 section 302 shall take effect on the date of the en-
24 actment of this Act and shall apply to applications

1 for admission as a refugee pending on or after such
2 date.

3 (3) SECTION 303.—The amendment made by
4 section 303 shall take effect on the date of the en-
5 actment of this Act and shall apply to asylum appli-
6 cations pending on or after such date.

7 (4) SECTION 304.—The amendments made by
8 section 304 shall take effect 90 days after the date
9 of the enactment of this Act and shall apply to ap-
10 plications pending on or after such effective date.

11 (5) SECTIONS 312(a), 313, AND 341.—The
12 amendments made by sections 312(a), 313, and 341
13 shall take effect on the date of the enactment of this
14 Act and shall apply to applications pending on or
15 after such date with respect to which no final ad-
16 ministrative decision has been rendered.

17 (6) SECTION 312(b).—The amendment made by
18 section 312(b) shall take effect on the date of the
19 enactment of this Act and shall apply to proceedings
20 pending on or after such date with respect to which
21 no final administrative decision has been rendered.

22 (7) SECTION 321.—The amendment made by
23 section 321 shall take effect on the date of the en-
24 actment of this Act and shall apply to applications

1 for adjustment of status pending on or after such
2 date.

3 (d) TITLE IV.—

4 (1) SECTION 401.—The amendments made by
5 section 401 shall take effect on the date of the en-
6 actment of this Act and shall apply to asylum appli-
7 cations pending on or after such date.

8 (2) SECTION 402.—The amendments made by
9 section 402 shall take effect on the date of the en-
10 actment of this Act and shall apply to applications
11 for asylum or admission as a refugee, and deter-
12 minations under section 241(b)(3) of the Immigra-
13 tion and Nationality Act, pending on or after such
14 date.

15 (3) SECTION 403.—The amendment made by
16 section 403 shall take effect on the date of the en-
17 actment of this Act and shall apply to applications
18 for asylum or admission as a refugee pending on or
19 after such date.

20 (4) SECTION 404.—The amendment made by
21 section 404 shall take effect on the date of the en-
22 actment of this Act and shall apply to applications
23 for asylum or admission as a refugee pending on or
24 after such date.

1 (5) SECTION 405.—The amendment made by
2 section 405 shall take effect on the date of the en-
3 actment of this Act and shall apply to applications
4 for adjustment of status pending on or after such
5 date.

6 (e) TITLE V.—

7 (1) SECTION 505.—Paragraphs (1) and (2) of
8 section 505(a) shall take effect on the first day of
9 the first applicable pay period beginning on or after
10 the date that is 120 days after the date of the enact-
11 ment of this Act.

12 (2) SECTION 506.—The amendment made by
13 section 506 shall take effect on the date of the en-
14 actment of this Act and shall apply to asylum appli-
15 cations made before, on, or after such date.

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