#### COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

\_\_\_\_\_

No. SJC-11986

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LILIANA M. RIVERA RECINOS, Plaintiff/Appellant

VS.

MARIA I. RECINOS ESCOBAR, Defendant/Appellant

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On APPEAL FROM A JUDGMENT OF THE MASSACHUSETTS PROBATE AND FAMILY COURT, MIDDLESEX DIVISION, CIVIL ACTION NUMBER MI14E0039QC

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#### BRIEF OF AMICI CURIAE FOR APPELLANT

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November 3, 2015

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# TABLE OF CONTENTS

State	ement	of Interest1
State	ement	of the Issues20
State	ement	of the Case20
Argun	ment.	20
I.	Immig	Pathway to Permanent Legal Residency for grant Youth and the Essential Role of State
	Α.	Evolution of the Federal Immigration  Law22
	В.	The Process For Obtaining Legal Permanent Resident Status and the Crucial Role of State Courts24
II.	Obta:	Special Findings an Immigrant Youth Must In from a State Court May Include Either a ody Determination or a Declaration that the grant Is Dependent on a Juvenile Court27
III.		Probate and Family Court's Equity sdiction Extends to Youth Until Age 2131
	A.	General Principles of Equity Jurisprudence Support Equity Jurisdiction Here33
	В.	The Court's Equity Jurisdiction Is Not Limited By Statute
	C.	The Massachusetts Declaration of Rights Supports a Remedy Based on Equity Jurisdiction42
IV.		dren Who Have Been Abused, Abandoned, or ected Are Dependent on the Court44
V.	Equit	ry Demands Expedited Entry of an Order46
CONCI	LUSION	J48

# TABLE OF AUTHORITIES

Constitutional Provisions
United States Constitution32
Massachusetts Declaration of Rights42
Massachusetts Statutes and Acts
G.L. c. 119, § 122, 36, 41, 45
G.L. c. 208, § 2838, 39
G.L. c. 215, § 631, 34, 39
G.L. c. 231A, § 130, 44
G.L. c. 231A, § 230
G.L. c. 231A, § 930
1975 Mass. Acts c. 66139
1976 Mass. Acts c. 27939
1991 Mass. Acts c. 17339
Federal Statutes, Regulations, and Acts
8 U.S.C. § 110123, 24, 25, 27, 28
8 C.F.R. § 204.1124, 25
Pub. L. 105-119, 111 Stat. 2460 (1997)23
The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044 (2008)23
Massachusetts Legislative Materials
H.R. 1418, 189th44
S. 740, 189th44
Cases
Adoption of Vito, 431 Mass 550 (2000)

Culliton v. Beth Israel Deaconess Medical Center, 435 Mass. 285 (2001)37
E.N.O. v. L.M.M., 429 Mass. 824 (1999)
Eccleston v. Bankosky, 438 Mass. 428 (2003)passim
Gerald Clerge v. Elie Clerge et al., Suffolk Probate and Family Court No. 13-E-008128
Gomez v. U.S., 490 U.S. 858 (1989)
In re Guardianship of de la Cruz, 86 Mass. App. Ct. 1106 (2014)48
In re Guardianship of German Josué Mendoza, Mass. Sup. Jud. Ct., No. SJ-2009-0261 (May 18, 2009)
In re Guardianship of Rosa Mercedes Duchi Agualema, Mass. Sup. Jud. Ct., No. SJ- 2011-0548 (Dec. 28, 2011)
Howlett v. Rose, 496 U.S. 356 (1990)
Jones v. U.S., 526 U.S. 227 (1999)
Jose Mauricio Alas Castillo v. Cruz de Maria Castillo, Suffolk Probate and Family Court No. 14-E-0003
Ledy Zarahi Suazo Castillo v. Wilfredo Suazo  Donaire et al., Suffolk County Probate and Family Court No. SU15E0025 (Apr. 9, 2015)30
Mobil Pipe Line Co. v. Providence & Worcester R.R. Co., 22 Mass. L. Rptr. 492 (2007)
Matter of Moe, 385 Mass. 555 (1982)37
Ropes & Gray LLP v. Jalbert, 454 Mass. 407 (2009)28

T.F. v. B.L., 442 Mass. 522 (2004)
Tetrault v. Bruscoe, 398 Mass. 454 (1986)31
Ventrice v. Ventrice, 87 Mass. App. Ct. 190 (2015)42
Wilmer Josue Guevara Lopez v. Byron Guevara Cardona et al., Suffolk County Probate and Family Court No. 13-E-0112
Wolfe v. Gormally, 440 Mass. 699 (2004)28
Additional Materials
Letter dated August 31, 2015 from Greater  Boston Legal Services to the Senate and  House Chairs of the Joint Committee on the  Judiciary
Memorandum regarding "Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions" to Field Leadership from Donald Neufeld, USCIS Acting Associate Director, Domestic Operations and Pearl Chang, Acting Chief, Office of Policy & Strategy, dated March 24, 2009, # HQOPS 70/8.5
Mississippi Chancery Practice § 2:19 (2015 ed.)
Pomeroy, Equity Jurisprudence (5th ed. 1941)33

## STATEMENT OF INTEREST

Amici Curiae are legal services and professional associations of attorneys who advocate for immigrants' rights and who represent immigrant youth in removal (deportation) proceedings in the Immigration Courts, before the U.S. Citizenship and Immigration Services of the Department of Homeland Security, and in the Massachusetts Probate and Family and Juvenile Courts. Amici are aware of many cases of undocumented immigrant youth up to the age of 21 who have suffered abuse, abandonment, or neglect by one or both parents, who cannot viably be reunified with their parent(s) due to that abuse, neglect or abandonment, who have suffered deeply in their countries of origin and here in the United States, and who face lives marked by neglect, violence, and in many cases, the threat of death in their home countries.

For those who come forward before their 18th birthdays, many such immigrant youth become the subject of guardianship or custody proceedings and petition the court for the special findings which form the basis for Special Immigrant Juvenile ("SIJ")

classification<sup>1</sup> in that context. Special Immigrant
Juvenile Status allows them to pursue legal residency
in the United States. For the majority of these
youths, SIJ classification is the only option for
regularizing their immigration status.

For reasons beyond their control, however, many are unable to obtain the special findings before they reach the age of 18. For example, "Maria" disclosed to a legal services group that both of her parents abused her continuously for many years, both in her country of origin and in the United States. Because of the uncertainty of her immigration status, though, she did not feel safe disclosing the abuse to social service workers until she was 18 and was able to leave her family. In other cases, longer-term but still undocumented Massachusetts residents who grew up in the Massachusetts school system often do not fully appreciate their immigration options until they graduate from high school and are either applying to college or looking for work.

Some immigrant youth, like the appellant in this case, have filed complaints in equity seeking the

<sup>&</sup>lt;sup>1</sup> Special Immigrant Juvenile Status is discussed in Section I below.

predicate findings via declaratory relief, but with varying degrees of success. Some Massachusetts

Probate and Family Court judges have determined that they have both the authority to take jurisdiction over such cases and the authority to deem the youths in question dependent upon the court, and have entered the special findings. But others have concluded that they are powerless to grant the requested relief.

"Marlon" was before a judge who came to the latter conclusion. Marlon was abandoned by his father at birth, and at the age of four was left behind in El Salvador when his mother relocated to the United States without him. He was shuttled back and forth to various relatives' houses until the age of twelve, when they turned him out onto the street. He lived with his fifteen year-old sister for a year and then lived alone in the house his mother owned for one more. Finally, terrified to live alone any longer, he fled and traveled overland to the United States. was reunited with his mother in Boston, but eventually had to drop out of high school and go to live on his own at the age of 17 because his mother (who by then had three young children) could no longer afford to support him. Marlon filed a complaint in equity at

the age of 20, but the Probate and Family Court judge dismissed it, finding that he could not be deemed "dependent" on the Court.

"Benjamin" was also left behind by his parents when they relocated from their native Honduras to the United States when Benjamin was three years old. When he was ten, they returned to Honduras, only to abandon him again after less than a year. When he was seventeen, Benjamin was targeted, threatened with death, and stabbed by members of a criminal gang. Unable to protect himself, and with no parents to protect him, he fled Honduras and traveled overland through Central America to the United States in search of his parents. He found them in Massachusetts, but soon after he arrived, his parents abandoned him for a third time and returned to Honduras without him, leaving Benjamin effectively stranded in the United States without legal immigration status. He filed a complaint in equity in the Middlesex Probate and Family Court when he was twenty years old. The judge found that reunification with his parents was not viable due to neglect and abandonment and that it was in his best interests to remain in the Unites States,

but determined that she did not have the authority to find him dependent on the Court.

For many undocumented immigrant youth in the Commonwealth, Special Immigrant Juvenile Status is the only means of regularizing their immigration status. Without it, they are unable to obtain social security numbers, drivers' licenses, or permission to work in the United States. They are unable to go to college or enter the job market; some municipalities preclude them from enrolling in high school. And they face forced removal to some of the most dangerous countries on earth. Benjamin is facing deportation to Honduras, the country with the highest murder rate of any nation in the world. Many others are part of Massachusetts' sizeable Salvadoran and Guatemalan populations; those countries (like Honduras) are plagued by levels of violent crime and gang activity which render them veritable war zones, with young people without parental protection being specifically targeted by the gangs for forced recruitment, physical violence including sexual assault, trafficking, and murder. Many of these youth then seek protection in the United States, only to face further parental neglect, abuse, and underinvestment once they are here.

The plight of these youth is a humanitarian crisis that gravely concerns Amici; that concern is shared by the United States Congress, which in 1990 passed a federal statute that created a path for these youth to be classified Special Immigrant Juveniles and to be granted permanent resident status. Amici urge the Court to interpret Massachusetts law in a manner consistent with federal immigration law to permit the Probate and Family Court to enter special findings of fact and rulings of law for immigrant youth up to age 21.

American Immigration Lawyers Association New
England Chapter ("AILA NE") is a chapter within the
AILA national association. AILA NE has more than 675
members within the New England region (Massachusetts,
Maine, Rhode Island, Vermont and New Hampshire),
including lawyers and law school professors who
practice and teach in the field of immigration and
nationality law. AILA NE seeks to advance the
administration of law pertaining to immigration,
nationality and naturalization; to cultivate the
jurisprudence of the immigration laws; and to
facilitate the administration of justice and elevate
the standard of integrity, honor and courtesy of those

appearing in a representative capacity in immigration and naturalization matters. AILA NE's members practice regularly before the Department of Homeland Security and Executive Office for Immigration Review, as well as before the United States District Courts, Courts of Appeals, and Supreme Court.

The mission of the Boston Bar Association ("BBA") traces its origins to meetings convened by John Adams in 1761, thirty-six years before he became President of the United States. The BBA works "to advance the highest standards of excellence for the legal profession, facilitate access to justice, and serve the community at large." About Us, Boston Bar Association, http://www.bostonbar.org/about-us (last visited Nov. 2, 2015). The vast pool of legal expertise of the BBA's members serves as a resource for the judiciary, as well as the legislative and executive branches of government.

Casa Myrna Vasquez' Legal Advocacy Program

("LAP") provides free legal services to survivors of
domestic violence in its programs and in the
community. LAP's goal is to help survivors achieve
safe, independent lives by providing them with
information, advice, representation, and resources to

help them make informed choices. LAP attorneys have considerable expertise in family law matters and have represented survivors in a variety of contexts, including family law and immigration matters. LAP also believes that community responses to domestic violence must be improved through legal representation and education.

The Catholic Charitable Bureau of the Archdiocese of Boston, Inc. ("Catholic Charities of Boston") is one of the largest providers of social services in Massachusetts. Founded in 1903 as a child welfare agency, Catholic Charities of Boston has consistently expanded its services to meet the needs of impoverished children, teens, working families and senior citizens. For more than 100 years, Catholic Charities of Boston has continued its mission of building a just and compassionate society rooted in the dignity of all people. Catholic Charities of Boston offers nearly 90 programs and services in 27 locations around Eastern Massachusetts. The agency's programs include community health and social services, residential shelters and transitional housing, mental health counseling and substance abuse treatment programs, and refugee and immigration services.

Through Catholic Charities' immigration legal services, indigent clients receive representation for an array of immigration benefits, including Special Immigrant Juvenile classification. Catholic Charities of Boston presently represents six clients whose cases seeking relief before the Massachusetts Probate and Family Court or petitions for Special Immigrant Juvenile classification based on equitable relief from the Probate and Family Court would be directly impacted by this case.

The Central West Justice Center ("CWJC") provides free civil legal services to low-income residents of Worcester, Hampden, Hampshire, Franklin, and Berkshire Counties. CWJC's mission is to improve the lives of low-income people through legal assistance that protects fundamental rights, secures access to basic needs, and challenges policies and practices that harm its clients. CJWC's Immigration Unit has represented hundreds of immigrant children and families seeking safety from domestic abuse and other forms of violence. CWJC currently represents four young people between the ages of 18 and 20 in complaints in equity before the Probate & Family Court, the outcome of

which will be directly impacted by the decision in this case.

The Children's Law Center of Massachusetts ("CLCM") is a not-for-profit organization founded in 1977 whose mission is to promote and secure equal justice and to maximize opportunity for low-income children and youth by providing quality advocacy and legal services. The CLCM defends the rights of young people in immigration matters and has long been concerned with their treatment in the state courts and the federal immigration system. The CLCM has represented unaccompanied immigrant children before the Massachusetts Probate and Family Courts as well as children and youth, up to 22 years of age, in state foster care before the Massachusetts Juvenile Courts. The CLCM has also represented young people seeking equitable relief before the Massachusetts Probate and Family Court, and joins in this amicus brief in light of the impact of this litigation on future clients.

Community Legal Services and Counseling Center ("CLSACC") has been one of the state's primary legal service providers for 40 years, providing free legal representation in family, disability, housing and immigration matters. It also provides affordable

mental health services to low-income individuals. The Immigration Unit is a leading intake provider for noncitizens who have been the victims of violence, abuse, and neglect, both in and outside of the United States, many of whom are youth under the age of 21.

CLSACC operates with a unique interdisciplinary model of legal representation and mental health counseling in representing asylum seekers.

CLSACC is concerned with the matters at issue in this case and the impact of this decision on the juvenile cases it represents both in its Immigration Unit and its Family Law Unit. CLSACC's in-house forensic psychological program providing treatment and evaluation of post-trauma survivors is also concerned with the protections for abused, immigrant youth in the Commonwealth. CLSACC's clients include those ages 18-20-years-old with pending cases before either the Probate and Family Court or the immigration agency whose cases will be directly impacted by the decision of this Court.

Greater Boston Legal Services ("GBLS") is the second oldest legal services program in the country and the largest in New England. The Immigration Unit of GBLS provides advice, referrals and direct

representation to low-income individuals throughout the Commonwealth of Massachusetts who are seeking lawful immigration status in the United States or seeking protection against removal from the United States. In addition, the staff of the Immigration Unit provides training to students, attorneys, and government officials regarding matters of immigration law and representation of children; and they have submitted amicus curiae briefs to the Board of Immigration Appeals and Circuit Courts of Appeal. GBLS has provided representation and other services to hundreds of children and youth seeking protection against removal from the United States, including those seeking Special Immigrant Juvenile Status. this capacity, GBLS has represented youth seeking equitable relief before the Massachusetts Probate and Family Court and currently has 14 clients who would be directly affected. GBLS, through its work on behalf of immigrants, has an interest in ensuring access of children and youth to the courts and to proper application of the law.

The Immigration Legal Assistance Program ("ILAP")
of Ascentria Care Alliance, formerly Lutheran Social
Services, provides free and low-cost legal services to

low-income immigrants in Massachusetts. ILAP's mission is to provide legal representation and advice to noncitizens in Massachusetts who could not otherwise afford legal counsel. ILAP provides representation to asylum seekers, survivors of domestic violence, and unaccompanied minors. ILAP currently has a 20-year-old client with an equity complaint pending before the Massachusetts Probate and Family Court whose case would be directly impacted by this decision.

Irish International Immigrant Center ("IIIC") is a multi-service welcome center for immigrants of all nationalities, based in Boston, Massachusetts.

Originally founded in 1989 to serve the needs of Irish immigrants in the New England area, the IIIC now annually provides immigration, education, and social services to thousands of immigrants from around the world. IIIC's Immigration Legal Services program provides legal counsel and representation to over a thousand clients each year on matters relating to immigration. Among its clients are children seeking to gain permanent residence as Special Immigrant

Juveniles, including those who are between the ages of

18 and 21. As such, the IIIC has a strong interest in this case.

Justice Center of Southeast Massachusetts, a subsidiary of South Coastal Counties Legal Services, provides free civil legal services to indigent and elderly individuals in our service area. It serves communities in Plymouth, Bristol, Dukes, Nantucket, and Barnstable Counties, as well as residents of the towns of Avon and Stoughton. Its mission is to achieve equal justice for the poor and disadvantaged through community based legal advocacy. The Justice Center of Southeast Massachusetts provides civil legal services in the areas of housing, family law, education, immigration, benefits, foreclosure, and through the Medical-Legal Partnership. Its immigration practice represents individuals in a widerange of cases, including representing numerous unaccompanied minors seeking Special Immigrant Juvenile classification. It currently represents three individuals between the ages of 18 and 20 whose cases could be directly impacted by this decision.

Massachusetts Immigrant & Refugee Advocacy

Coalition ("MIRA") is the largest organization in New

England promoting the rights and integration of

immigrants and refugees. It serves the Commonwealth's one million foreign-born residents with policy analysis and advocacy, institutional organizing, training and leadership development, strategic communications, citizenship assistance, and AmeriCorps initiatives that provide capacity-building for community-based organizations. The Coalition involves an active membership of over 130 organizations, including community-based groups, social service organizations, ethnic associations, schools, refugee resettlement agencies, health centers, hospitals, religious institutions, unions and law firms, as well as thousands of individual members, contributors, and allies. MIRA is actively involved in ongoing advocacy to ensure that all eligible immigrant youths between the ages of 18 and 21 have a predictable and unimpeded path to acquiring the Special Immigrant Juvenile status to which they are entitled by federal law. Many of its member organizations directly represent this population before the Probate and Family Court.

Massachusetts Law Reform Institute ("MLRI") is a statewide poverty law and policy center. Its mission is to advance economic, racial and social justice for low income people through legal action, administrative

and legislative advocacy, coalition building and provision of information about laws, policies and practices that impact low income people. Through its Family Law and Child Advocacy Unit, MLRI advocates for policies that make the lives of low-income children and families safer and more physically, emotionally, and economically stable. Through its Immigrants Protection Project, MLRI advocates for policies that improve low-income immigrants' social and economic opportunities via the acquisition and preservation of legal status as well as polices that promote fair treatment of low-income immigrants and greater racial equity.

MetroWest Legal Services ("MWLS") provides legal advocacy to protect and advance the rights of the poor, elderly, disabled and other disenfranchised people in thirty-six communities from Dedham to Marlborough and from Bedford to the Rhode Island border. MWLS represents approximately 2,200 low income and elderly clients annually in various civil matters, including Special Immigrant Juvenile applicants seeking equitable and declaratory relief before the Massachusetts Probate and Family Court, whose cases would be directly impacted by results of

this case. In its respective service area, MWLS'

Immigration Unit is a leading intake provider for

noncitizens who have been the victims of violence,

abuse, and neglect, both in and outside of the United

States, many of whom are youth under twenty-one years

old. While these youth may also be eligible for

asylum, trafficking visas, or visas for victims of

crimes, Special Immigrant Juvenile classification is

often the best fit to their unique needs for

protection and stability.

MWLS is concerned about the matters at issue in this case and the impact of this decision on the juvenile cases it represents both in its Immigration Unit and Family Law Unit. MWLS has at least five clients, between the ages of eighteen and twenty-one, with pending cases before either the Probate and Family Court, or the immigration agency, whose cases will be directly impacted by the decision of this Court.

The Political Asylum/Immigration Representation

("PAIR") Project, founded in 1989, is the premiere

provider of pro bono services in the Commonwealth to

indigent asylum-seekers who have fled from persecution

throughout the world. PAIR began representing

immigrant youths who had been abused, abandoned, or neglected by one or both parents in seeking Special Immigrant Juvenile Status due to the growing number of children fleeing non-intact families, predominantly from Central America, and the scarce resources available to help them. In PAIR's attempt to respond to the need of abused, abandoned, and neglected children fleeing familial violence, PAIR represents many youths who are between 18-20 years of age. Currently, PAIR represents approximately nine clients whose cases seeking relief before the Massachusetts Probate and Family Court or petitions for SIJ classification based on equitable relief from the Probate and Family Court would be directly impacted by this case. The impact of the Appellant's appeal on vulnerable youth similarly situated to her in the Commonwealth cannot be overemphasized.

Suffolk University Law School's Immigration

Clinic is a law school-based clinic in which law students represent vulnerable immigrant populations seeking to remain in the United States. A quarter of its cases are abused, abandoned youths seeking relief before the Massachusetts Probate and Family Court or petitions for Special Immigrant Juvenile

classification. As the Immigration Clinic prioritizes the representation of youth, especially those in removal proceedings, its ability to seek equitable relief from the Probate and Family Court would be directly impacted by this case.

Signing in Individual Capacity: The individual signors are all experienced immigration law practitioners. They are committed, through both private practice and legal service clinics, to providing much-needed representation throughout the complex immigration process to noncitizens, including unaccompanied children.

- Sabrineh Ardalan, Assistant Director, Harvard Immigration and Refugee Clinical Program, Harvard Law School
- Ilana Etkin Greenstein, Esq., Macias & Greenstein, LLC
- Laila Hlass, Clinical Associate Professor, Boston University School of Law, Immigrants' Rights Clinic, Civil Litigation Program
- Mary Holper, Associate Clinical Professor, Director, Boston College Immigration Clinic, Boston College Law School
- Nancy Kelly, Co-Managing Director, Lecturer on Law & Clinical Instructor, Harvard Immigration and Refugee Clinical Program, Harvard Law School
- Maggie Moran, Albert M. Sacks Clinical Teaching & Advocacy Fellow, Harvard Immigration and Refugee Clinical Program, Harvard Law School

- Sarah Sherman-Stokes, Clinical Teaching Fellow, Boston University School of Law, Immigrants' Rights Clinic, Civil Litigation Program
- Phillip L. Torey, Lecturer on Law, Clinical Instructor, Harvard Immigrant and Refugee Clinical Program, Harvard Law School
- John Willshire-Carrera, Co-Managing Director, Lecturer on Law, & Clinical Instructor, Harvard Immigrant and Refugee Clinical Program, Harvard Law School

### STATEMENT OF THE ISSUES

- 1. Does the Probate and Family Court have equity jurisdiction over youth up to the age of 21 to enter the findings needed to be eligible for Special Immigrant Juvenile Status where the only relief sought is declaratory?
- 2. Should youth up to the age of 21 who demonstrate that they have suffered abuse, abandonment, or neglect (or similar harm under Massachusetts law) be deemed necessarily dependent on the court?

### STATEMENT OF THE CASE

Amici adopt Appellant's Statement of the Case.

### ARGUMENT

Since 1990, the federal government has provided a mechanism to safeguard the well-being of immigrant youth by making them eligible for Special Immigrant Juvenile Status, which in turn provides a pathway for

seeking legal permanent resident status. While the ultimate determination of whether a child — defined by federal law to be an unmarried person under the age of 21 — is entitled to lawful permanent residency as a Special Immigrant Juvenile is made by a federal immigration agency or federal immigration court, in deference to the long-standing expertise of specialized state courts charged with fostering the well-being and protecting the best interests of children, Congress vested the state courts with the exclusive authority to make certain predicate findings, which are necessary before the child may be designated a Special Immigrant Juvenile ("SIJ").

In this case, appellant Liliana Maribel Rivera
Recinos ("Liliana") sought to obtain the predicate SIJ
findings by filing a Complaint in Equity and Request
for Declaratory Relief in the Middlesex Probate and
Family Court when she was 19 years old. Without any
analysis or explanation, the Probate and Family Court
judge dismissed her petition on the grounds that the
court lacked jurisdiction over her solely because she
was over the age of 18. Record Appendix ("RA") 6. In
view of the broad equitable powers vested in the
Probate and Family Court, interpreted in light of the

legislative mandate that Massachusetts courts must protect the "long-term well being" of every child in the Commonwealth, including "'dependent' adult children to age twenty-three," Eccleston v. Bankosky, 438 Mass. 428, 438 (2003) (quoting G.L. c. 119, § 1), this Court should reverse the lower court's ruling and clarify that a child up to the age of 21 may properly invoke the equitable jurisdiction of the Probate and Family Court for the purpose of seeking declaratory relief in the form of the special findings required for Special Immigrant Juvenile classification.<sup>2</sup>

### I. The Pathway to Permanent Legal Residency for Immigrant Youth and the Essential Role of State Courts

A. Evolution of the Federal Immigration Law

Congress initially created the classification of
"special immigrant juvenile" in the Immigration Act of

1990. The Act provided lawful permanent resident

<sup>2</sup> Although not raised by this case, immigrant youth

private or public resources for psychiatric, psychological, educational, occupational, medical, dental or social services.

face additional issues arising from their history of abuse, abandonment, and neglect that also would appropriately fall within the Probate and Family Court's equity jurisdiction to address. For that reason, the court should also be able to grant other relief for immigrant youth up to age 21, such as entering orders of support or making referrals to a probation officer to direct youth to appropriate

unavailable to provide for their care and protection and who were therefore eligible for long-term foster care. 8 U.S.C. § 1101(a)(27)(J). In 1997, Congress amended the law to require that a child be deemed eligible for long-term foster care due to abuse, neglect or abandonment. Pub. L. 105-119, 111 Stat. 2460 (1997). However, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), Pub. L. 110-457, 122 Stat. 5044 (2008), which reflects the current law, further amended the eligibility requirements by eliminating the need that the child be eligible for long-term foster care. Now, a state court with authority over

 $<sup>^3</sup>$  The United States Citizenship and Immigration Service ("USCIS") interprets the use of the term "child" in § 235(d)(6) of the TVPRA to refer to the definition of child found at § 101(b)(1) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(b)(1), which states that a child is an unmarried person under 21 years of age. The SIJ definition found at INA § 101(1)(27)(J), 8 U.S.C. § 1101(a)(27)(j), does not use the term "child", but USCIS has previously incorporated the child definition of INA § 101(b)(1), 8 U.S.C. § 1101(b)(1), into the regulation governing SIJ petitions. See Memorandum regarding "Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions" to Field Leadership from Donald Neufeld, USCIS Acting Associate Director, Domestic Operations and Pearl Chang, Acting Chief, Office of Policy & Strategy, dated March 24, 2009, # HQOPS 70/8.5, page 3, RA 15-19. Thus,

the youth must simply find that "reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law."4

B. The Process For Obtaining Legal Permanent Resident Status and the Crucial Role of State Courts

The process of obtaining protection by way of lawful permanent residence as a special immigrant juvenile consists of three steps. First, the immigrant must obtain what usually are referred to as special findings (or predicate findings) from a state court having competent jurisdiction to make determinations about the care and custody of juveniles. These findings are that:

unmarried immigrant youth who apply for SIJ classification (with the predicate findings) before they turn 21 may be classified as SIJ.

<sup>&</sup>lt;sup>4</sup> A copy of the amended statute and the implementing regulations, 8 C.F.R. § 204.11, are attached in the Addendum. It is important to note that the regulations have not yet been changed to comport with the TVPRA.

<sup>&</sup>lt;sup>5</sup> The statute refers to a "juvenile court." 8 U.S.C. § 1101(a)(27)(J)(i). The regulations provide that a juvenile court is a "court located in the United States having jurisdiction under State law to make judicial determinations about the care and custody of juveniles." 8 C.F.R. § 204.11. Thus, in Massachusetts, the Probate and Family Court and the Juvenile Court have the power to make the required special findings.

- 1) the immigrant has been declared dependent on a juvenile court located in the United States or the court has legally committed or placed the immigrant in the custody of an individual or entity appointed by a State or juvenile court located in the United States;
- 2) reunification with one or both parents is not viable due to abuse, abandonment, or neglect, or a similar basis found under State law; and
- 3) it is not in the immigrant's best interest to be returned to his/her country of origin.
- 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(a).

If the state court makes these special findings, the second step in the process is for the immigrant to apply to the United States Citizenship and Immigration Service ("USCIS") for SIJ classification. The special findings must be submitted to the USCIS for the immigrant to have a basis for classification as a Special Immigrant Juvenile.

If USCIS approves the petition for Special

Immigrant Juvenile Status, the third step is to file
an application for adjustment of status before USCIS
or the Immigration Court of the Executive Office for
Immigration Review. The Immigration and Nationality
Act includes statutory admissibility criteria that are

<sup>&</sup>lt;sup>6</sup> While the special findings enable an immigrant to apply to USCIS for SIJ classification, they do not, in and of themselves, entitle the immigrant to such status. USCIS retains the authority to approve or deny the application.

considered in adjudicating the permanent resident application, including review of health issues, immigration history, and any involvement in the criminal justice system (both in the United States and abroad). Only USCIS and the Department of Justice, not the state courts, make immigration status determinations for persons seeking permanent resident status through the SIJ process. If the application for adjustment of status is approved, the immigrant is granted lawful permanent resident status and is allowed to remain in the United States indefinitely.

The critical issue is that an immigrant in Massachusetts may not apply for Special Immigrant Juvenile Status unless and until the Probate and Family Court<sup>7</sup> enters the special findings that (1) either the immigrant is dependent on the court or is in the custody of an individual or entity; (2) it is not viable for the immigrant to reunify with at least one parent due to abuse, abandonment, or neglect (or similar basis); and (3) it is not in the immigrant's best interest to be returned to her country of origin.

<sup>&</sup>lt;sup>7</sup> Because many immigrants proceed through the Probate and Family Court, this brief refers to that court throughout this brief even though, as stated in footnote 5 *supra*, the Juvenile Court also qualifies under the federal statute.

Without these findings, the immigrant has no chance to be classified as a Special Immigrant Juvenile. Thus, it is imperative that immigrants have access to a state court to request the findings, all of which address subjects squarely within the Probate and Family Court's core areas of expertise.

II. The Special Findings an Immigrant Youth Must Obtain from a State Court May Include Either a Custody Determination or a Declaration that the Immigrant Is Dependent on a Juvenile Court.

As stated above, one of the three special findings an immigrant youth in Massachusetts must obtain from the Probate and Family Court is <a href="either">either</a> (1) that the immigrant is declared dependent on the court, <a href="or">or</a> (2) that the court has placed the immigrant in the custody of an individual or an entity. The specific language is as follows:

The term "special immigrant" means . . . an immigrant who is present in the United States . . . who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States

8 U.S.C. § 1101(a)(27)(J) (emphasis added).

Although it is not entirely clear, it appears that some judges in the Probate and Family Court -

possibly including the judge in Liliana's case — have the erroneous understanding that they must be able to make a custody determination about the immigrant for the court to be able to enter the special findings. 8

TR 16-17. This is not the case.

But as a matter of statutory construction, the use of the word "or" in the statute must be understood to indicate a legislative intent to extend the statute's reach beyond cases seeking a custody determination. To read the statute otherwise would render the first clause surplusage. See Ropes & Gray LLP v. Jalbert, 454 Mass. 407, 412 (2009) ("A statute should be construed so as to give effect to each word, and no word shall be regarded as surplusage."); Wolfe v. Gormally, 440 Mass. 699, 704 (2004) ("A basic tenet of statutory construction requires that a statute 'be construed so that effect is given to all its

<sup>&</sup>lt;sup>8</sup> The judges in the Probate and Family Court are not of a single mind on this issue. In addition to the instant case, Amici are aware of other cases in which judges have made comments that suggest they believe that the term "dependent" in 8 U.S.C. § 1101(a)(27)(J) is limited to a custody determination. Other judges have been willing to find dependency even without a custody finding. See Gerald Clerge v. Elie Clerge et al., Suffolk Probate and Family Court No. 13-E-0081 (RA 55); Wilmer Josue Guevara Lopez v. Byron Guevara Cardona et al., Suffolk County Probate and Family Court No. 13-E-0112 (RA 57).

provisions, so that no part will be inoperative or superfluous.'") (quoting Bankers Life & Cas. Co. v. Commissioner of Ins., 427 Mass. 136, 140 (1998)).

Thus, "dependent on a juvenile court" must have a meaning that is separate and distinct from "custody," allowing a court to make a finding that the immigrant is dependent on the court even if the immigrant is over the age of majority.

Another reason why the "dependency" requirement must mean something different from custody is because the language of the statute is clearly meant to protect children living in single-parent homes, where a custody order may not always be sought. As discussed below, Massachusetts law recognizes that children and youth, including those between the ages of 18 and 21, can be dependent on the courts to provide critical care and protection in situations other than custody cases.

Additionally, even where Probate and Family Court judges appreciate the substantive distinction between dependency and custody, it appears that some judges have the opinion that they lack the authority to enter

a dependency finding by itself.<sup>9</sup> However, the declaratory judgment statute, G.L. c. 231A, provides ample basis for the Probate and Family Court to enter a finding that an immigrant under the age of 21 is dependent on the court.

That statute empowers the Probate and Family

Court to "make binding declarations of right, . . . ,

status and other legal relations . . . ." G.L.

c. 231A, § 1. Nor is there even any requirement of a

controversy — it is sufficient that the petitioner is

seeking to "remove an uncertainty" of her status under

a statute. G.L. c. 231A, § 2. Use of Chapter 231A to

enter a finding of dependency (and the other requisite

findings) is also consistent with the remedial purpose

of the statute. See G.L. c. 231A, § 9. The

declaratory judgment statute is meant to be liberally

construed and administered, thus making it wholly

appropriate as a basis to enter an immigrant's

requested special findings via a complaint in equity,

and in the absence of any other relief. See id.

<sup>9</sup> For example, this occurred in the case of Ledy Zarahi Suazo Castillo v. Wilfredo Suazo Donaire et al., Suffolk County Probate and Family Court No. SU15E0025 (Apr. 9, 2015) (Addendum at 154). In contrast, in Jose Mauricio Alas Castillo v. Cruz de Maria Castillo, Suffolk Probate and Family Court No. 14-E-0003 (RA 58), the Court issued only declaratory relief.

# III. The Probate and Family Court's Equity Jurisdiction Extends to Youth Until Age 21.

Although some judges have found youth dependent on the Probate and Family Court without additional findings regarding custody, support, or other claims, others have questioned whether the Probate and Family Court has jurisdiction over "adult children" between the ages of 18 and 21 seeking the SIJ special findings. This is clearly what happened in Liliana's case. TR 18 (The Court: "Well, the federal law says up until 21. The problem is the state law doesn't give me jurisdiction over a child that's over the age of 18."). This is true despite the common understanding that the equitable reach of the Probate and Family Court is wide-ranging.

The scope of the Probate and Family Court's equitable jurisdiction is set out in G.L. c. 215, § 6:

The probate and family court department shall have original . . . jurisdiction . . . of all cases and matters of equity cognizable under the general principles of equity jurisprudence and, with reference thereto, shall be courts of general equity jurisdiction, . . . "

In other words, the Probate and Family Court's equity jurisdiction is co-extensive with general principles of equity jurisprudence. See Tetrault v. Bruscoe, 398

Mass. 454, 458 (1986) ("The plaintiffs' original suit against the Bruscoes was not within the exclusive jurisdiction of the Land Court . . . as it was not in the nature of a petition for confirmation or registration of land. Rather, it was a suit to enjoin a trespass, and, as such, was cognizable under general equity principles. Consequently, the Probate Court had jurisdiction . . . to hear the suit.") (internal citations omitted) (emphasis added). For the reasons laid out below, the Probate and Family Court surely has jurisdiction over youth up to the age of 21 who are seeking declaratory relief in the form of the SIJ special findings. 10

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<sup>10</sup> A ruling that the Probate and Family Court does not have jurisdiction potentially raises a very serious question of whether the absence of any court in the Commonwealth with jurisdiction to adjudicate the rights of youth between the ages of 18 and 21 seeking the predicate SIJ findings violates the Supremacy Clause of the United States Constitution. Although the general rule is that federal law does not require a state to create a court with jurisdiction to hear federal claims if one does not exist and that states have "great latitude to establish the structure and jurisdiction of their own courts," a court of otherwise competent jurisdiction that refuses to hear a federal claim violates the Supremacy Clause. See Howlett v. Rose, 496 U.S. 356, 372, 381-82 (1990).

Here, as explained in this brief *infra*, the Probate and Family Court does have jurisdiction over youth up to age 23 in at least some circumstances. The exercise of jurisdiction in at least some circumstances takes this out of the realm of a neutral

# A. <u>General Principles of Equity Jurisprudence</u> Support Equity Jurisdiction Here.

One of the fundamental maxims of equity jurisprudence is that equity will not suffer a wrong to be without a remedy. 2 Pomeroy, Equity Jurisprudence § 363 (5th ed. 1941). Applied to the circumstances of this case and other cases involving immigrants up to the age of 21, the wrong is the abuse, abandonment, and neglect the children have suffered as a result of their parent's or parents' actions. In recognition of this wrong, the federal government created a remedy: it enacted a law that makes it possible for unmarried children under the age of 21 who have suffered these wrongs to become legal permanent residents of the United States and thus obtain the means to stabilize their lives and move forward to overcome the deleterious effects of their past ill-treatment. Part of that remedy, however, relies on access to the state courts, as it is only the state courts that can enter the special findings

rule of judicial administration and puts it squarely in the world of selective application of jurisdiction by the courts. This kind of selective application appears to violate the Supremacy Clause. See id. at 372-75, 381-82.

an immigrant needs to apply for Special Immigrant Juvenile Status.

Put simply, equity demands that the Probate and Family Court provide Liliana and other immigrant youth like her with a forum in which they can pursue their remedies under federal law. In the absence of such a remedy, youth like Liliana will remain vulnerable to the abuse, abandonment, and neglect that brought her to the United States in the first place and then ultimately left her stranded here. This is a gap which can and must be filled by the equity jurisdiction of the Probate and Family Court. If not, the result is completely contrary to the principles of equity, as it would allow a wrong to be without a remedy.

It is therefore also contrary to G.L. c. 215, § 6, which endows the Probate and Family Court with original jurisdiction of all matters cognizable under

<sup>&</sup>quot;The maxim ['equity will not suffer a wrong to be without a remedy'] simply means this: it is not necessary that some exact precedent be found for extending relief in a given situation. If the case be such that under the established principles of the law of the land some relief is clearly requisite and a practical remedy may be applied, such a remedy is not to be denied because that remedy has never been applied in just that manner to that exact state of case." Mississippi Chancery Practice § 2:19 (2015 ed.).

the general principles of equity jurisprudence. On the facts of this case and similar cases, it is clear that the Probate and Family Court has jurisdiction to entertain petitions like Liliana's.

Such a holding would be consistent with recent rulings from this Court. In the 2003 Eccleston case, this Court directed the Probate and Family Court to "take any other action consistent with general equity jurisprudence to assure that the interests of justice are served." Eccleston v. Bankosky, 438 Mass. 428, 440 (2003) (emphasis added). Notably, that case concerned the Probate and Family Court's ability to enter relief for the benefit of an "adult child" over the age of 18. Id. at 438. The fact that the "child" in that case was over the age of majority did not prevent the court from exercising equity jurisdiction. Instead, Eccleston confirmed that equity jurisdiction should be exercised whenever necessary to right a wrong.

Amici recognize that a court may not exercise equity jurisdiction if the exercise of jurisdiction would be contrary to public policy or specific statutory prohibitions. *T.F. v. B.L.*, 442 Mass. 522, 523 (2004); *Eccleston*, 438 Mass. at 438. But the

values underlying Special Immigrant Juvenile Status — protecting vulnerable children and fostering their recovery, well-being, and best interests — are the foundation of Massachusetts family law and policy.

See, e.g., G.L. c. 119, § 1. Exercising equity jurisdiction to allow the Probate and Family Court to enter the SIJ special findings would provide youth up to the age of 21 with the potential to stabilize their lives independent of their history of abuse, neglect, or abandonment, and to become self-sufficient adults. In this case, it is the failure to exercise equity jurisdiction that is contrary to public policy.

For Liliana to be able to apply for SIJ status, she <u>must</u> be able to ask the Probate and Family Court to enter the findings she needs to submit to USCIS. If she is barred from doing so, her right to seek relief under federal law will be stymied. Surely the interests of justice and the principles of equity dictate that Liliana be given access to the Probate and Family Court to preserve her ability to seek relief under a federal law. There simply must be a remedy for 18 to 21 year olds when there has been a failure or lack of care or protection during the period of minority, as in all SIJ cases.

# B. The Court's Equity Jurisdiction Is Not Limited By Statute.

Numerous cases have held that the Probate and Family Court's equitable authority is broad and "although not unbounded, extends to deciding many specific and complex child-related issues that have not been foreseen by statute." T.F. v. B.L., 442 Mass. 522, 537 (2004) (Greaney, J., concurring in part and dissenting in part). See Culliton v. Beth Israel Deaconess Medical Center, 435 Mass. 285, 290-92 (2001) (holding that the Probate and Family Court could make a declaration of paternity and maternity to genetic parents of a child born via surrogate, despite no statute specifically authorizing it to do so); E.N.O. v. L.M.M., 429 Mass. 824, 829-31 (1999) (recognizing the status of a "de facto parent" who may be accorded certain parental rights even if neither a biological or adoptive parent, despite no statute recognizing such status). It is long-established that the Probate and Family Court's equitable power "extends to actions necessary to afford any relief in the best interests of a person under [the court's] jurisdiction." Matter of Moe, 385 Mass. 555, 561 (1982).

As for youth aged 18 and over, in 2003 the Supreme Judicial Court made it clear in the case of Eccleston v. Bankosky, 438 Mass. 428 (2003), that the Probate and Family Court's jurisdiction extended to "adult children to age twenty-three" in certain circumstances, even in the absence of clear statutory language establishing such jurisdiction. Eccleston, 438 Mass. at 438.

In that case, the guardian of a soon-to-be-18-year-old youth filed a complaint to extend child support beyond the youth's eighteenth birthday.

Eccleston, 438 Mass. at 431. Over opposition, the Probate and Family Court ordered child support pursuant to G.L. c. 208, § 28. On direct appellate review, this Court vacated the lower court's order entered pursuant to G.L. c. 208, § 28, holding that that statute provides for child support for children between the ages of 18 and 21 only if they are domiciled in the home of a parent. Eccleston, 438 Mass. at 433, 440. Because the youth in Eccleston resided with a guardian, the statutory requirements that the child reside with a parent were not met. Id. at 433.

Nevertheless, this Court held that the Probate and Family Court had the authority to enter the requested support order pursuant to its equitable powers. *Eccleston*, 438 Mass. at 437; G.L. c. 215, § 6.12 In reaching this conclusion, this Court noted that, since the presumptive age of majority was lowered from 21 to 18, the Legislature has acted many times to extend the Probate and Family Court's jurisdiction to children over the age of 18.

Eccleston, 438 Mass. at 434-35.13 Presumably this has been driven by the Commonwealth's recognition that "merely attaining the age of eighteen years does not

<sup>&</sup>lt;sup>12</sup> Amici are aware of cases where Probate and Family Court judges have misinterpreted *Eccleston* to mean that if the petitioner is over 18, there is equity jurisdiction only if the youth is seeking child support.

<sup>13</sup> In 1975, the Legislature amended G.L. c. 208, § 28 to authorize Probate Court judges to issue "orders of maintenance" for youth under the age of 21 who still resided in the home of one or both parents. 1975 Mass. Acts c. 661. In 1976, the Legislature again amended G.L. c. 208, § 28 to authorize Probate Court judges to issue orders for "support and education," in addition to maintenance, for youth between 18 and 21. 1976 Mass. Acts c. 279. And once again, in 1991, the Legislature extended the Probate Court's jurisdiction, authorizing Probate Court judges to order support for children between 21 and 23 who still resided with a custodial parent and who were pursing an undergraduate degree. 1991 Mass. Acts c. 173.

by itself endow young people with the ability to be self-sufficient in the adult world." *Id.* at 436.

In holding that the Probate and Family Court had this power, this Court acknowledged that it was closing what it called "an unintended gap in the comprehensive legislative scheme." Id. at 437. In other words, because the Legislature intended the Probate and Family Court's general equity jurisdiction to be broad enough to "assure that the interests of justice are served," id. (quoting Feinberg v. Diamant, 378 Mass. 131, 137 (1979)), the Probate and Family Court's equity jurisdiction extended to this particular situation.

Cases like Eccleston are instructive to show that this Court has invoked equity as the basis for addressing the needs of postminority children who are not able to provide for themselves, on the grounds that "[t]he Legislature did not intend that emancipation 'automatically occur on reaching the age of majority' in all circumstances." Eccleston, 438

Mass. at 434 (citations omitted). In Eccleston, this Court referenced numerous statutory provisions that illustrated that parental support obligations can continue in some cases to youth as old as 23, noting

that such enactments mean some children can continue to be treated as dependent past the age of 18. *Id.* at 436-37.

While Special Immigrant Juvenile Status cases, like the current case, do not necessarily involve financial support orders, the same rationale applies here as in Eccleston. Were Liliana, who is now nearly 21, under the care of a former guardian who was seeking support from one of Liliana's biological parents, the fact that she is over 18 would not matter; the Probate and Family Court would still have equity jurisdiction over the matter. The factual distinctions between Liliana's circumstances and those in Eccleston do not dictate a different result. this Court noted in Eccleston, relying on the "Legislature's command" in G.L. c. 119, § 1, equity jurisdiction extends to circumstances not contemplated by statute when necessary to "safeguard 'the long-term well being of the child.'" Eccleston, 438 Mass. at 438 (quoting G.L. c. 119, § 1). Other purposes included in Ch. 119, § 1 include the rights of any child to sound health and normal physical, mental, spiritual and moral development and ensuring "that the children of the commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of parents or parent substitutes," words that echo the SIJ findings of abuse, abandonment and neglect.

C. The Massachusetts Declaration of Rights
Supports a Remedy Based on Equity
Jurisdiction.

The narrow interpretation of the Probate and

Family Court jurisdiction applied in this case

frustrates not only fundamental public policy of the

Commonwealth in the realm of family and child

protection law, but fundamental rights protected by

the Massachusetts Declaration of Rights. "Every

subject of the commonwealth ought to find a certain

remedy, by having recourse to the laws, for all

injuries or wrongs which he may receive in his person,

property, or character. He ought to obtain right and

justice freely, and without being obliged to purchase

it; completely, and without any denial; promptly, and

without delay; conformably to the laws." Art. 11 of

the Massachusetts Declaration of Rights. 14

<sup>14</sup> Cf. Ventrice v. Ventrice, 87 Mass. App. Ct. 190, 194
(2015) (holding that the Probate and Family Court
requirement that the parties engage in mediation
before they could file an action before the court
violated the Massachusetts Declaration of Rights,
stating that "[b]ecause the Probate and Family Court

If Liliana, and other youth like her, do not have "recourse to the laws" to remedy the wrongs they have suffered - wrongs no child should ever have to suffer - this case presents a serious constitutional issue. But the Court may avoid this question, Jones v. U.S., 526 U.S. 227, 239 (1999) ("'Where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.'") (quoting United States ex rel. Attorney General v. Delaware & Hudson Co., 213 U.S. 366, 408 (1909)); Gomez v. U.S., 490 U.S. 858, 864 (1989) ("It is our settled policy to avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question."), as the Court has ample other grounds to find in Liliana's favor 15

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has exclusive jurisdiction in this area, the Ventrices would have no alternative forum in which to pursue such a claim. In this light, we conclude that the amended judgment does precisely what art. 11 of the Declaration of Rights forbids, i.e., it chills the Ventrices' right to freely petition the courts.").

<sup>15</sup> It should be noted that the Massachusetts Legislature is currently considering whether to expand Probate and Family Court jurisdiction by statute to include immigrant youth up to the age of 21 seeking

# IV. Children Who Have Been Abused, Abandoned, or Neglected Are Dependent on the Court.

Once the Court is satisfied that the Probate and Family Court has jurisdiction over youth up to the age of 21 seeking the SIJ findings, the next question the Court must confront is whether youth like Liliana are dependent upon the state court. (As addressed above, the Probate and Family Court may make such findings pursuant to G.L. c. 231A.) *Eccleston* made it clear that youth up to age 23 could be deemed "dependent" in at least some circumstances.

Amici submit that, in deciding whether youth between 18 and 21 who are seeking SIJ findings are dependent on the court, the Court should be guided by

SIJ findings and other relief. See S. 740, 189th Gen. Ct. (Mass. 2015) and H.R. 1418, 189th Gen. Ct. (Mass. 2015). The fact that there are proposed bills pending that would resolve the issue, albeit in a different way, is not determinative of whether the court has equity jurisdiction without legislative action. In light of inconsistent positions held by lower court judges, both routes have been pursued to ensure that these vulnerable youth have the access to the courts they desperately need.

A clear statement from this Court that youth up to the age of 21 may seek SIJ findings in the form of declaratory relief in the Probate and Family Court will be of immediate assistance to youth seeking the stability and pathway to self-sufficiency afforded by the opportunity to stay in Massachusetts as lawful permanent residents should they be so entitled under federal law.

the purposes behind G.L. c. 119. Under that statute, the Commonwealth is to ensure "that the children of the commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of parents or parent substitutes." G.L. c. 119, § 1.

Youth seeking SIJ status must prove to a court that reunification with at least one parent is not viable due to abuse, abandonment, or neglect (or similar basis under state law). For youth who are even facially able to show that they have suffered abuse, abandonment, or neglect by a parent, it should be self-evident that these youth are dependent on the Probate and Family Court. As this Court has recognized, "merely attaining the age of eighteen years does not by itself endow young people with the ability to be self-sufficient in the adult world."

Eccleston, 438 Mass. at 436. Instead, these youth need the help of the Probate and Family Court to become productive, legally recognized members of society.

Finding these youth dependent on the court is a valid exercise of the court's duty as parens patriae, which requires a court to protect a child's best

interest. See, e.g., Adoption of Vito, 431 Mass. 550, 558 (2000). It also requires a court to protect those who have no other lawful protector. Id. Youth in Liliana's situation clearly need protection. Liliana's father is now deceased, he beat her and abused her while he was alive. RA 11. Liliana's mother knowingly allowed this to happen. RA 11. escape from these horrors, Liliana fled to the United States and is now in the care of an adult third-party. RA 12. To enable Liliana to stay in the safety of the United States and to fully participate in society and the workforce, she needs to be able to pursue permanent resident status. So long as she needs a finding from the Probate and Family Court to enable her to do so, she must be deemed dependent on the court.

# V. Equity Demands Expedited Entry of an Order

The number of youth between the ages of 18 and 21 who approach Amici for assistance with their immigration status, while not overwhelming relative to children under the age of 18, is significant. 16 While

<sup>&</sup>lt;sup>16</sup> Confirming Probate and Family Court jurisdiction over SIJ petitions for 18-21 year olds will not flood the courts with cases. According to estimates based on information collected by Amicus GBLS, only about

some of those youth succeed in obtaining the SIJ predicate findings from the Probate and Family Court, many do not. When that happens, deportation proceedings become a harsh reality.

Another familiar maxim of equity is that "delay defeats equity." See Mobil Pipe Line Co. v.

Providence & Worcester R.R. Co., 22 Mass. L. Rptr.

492, \*1 (2007). Not only do Amici urge this Court to find that the Probate and Family Court has jurisdiction over youth up to the age of 21 who are seeking SIJ findings and that those youth are dependent on the court, but Amici urge this Court to act quickly. As each day passes, youth in Liliana's situation step closer and closer to age 21, when they are no longer eligible for Special Immigrant Juvenile Status. In fact, Liliana turns 21 on December 5, 2015. This Court should act quickly to protect the

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sixty SIJ equity petitions were filed statewide between January 2013 and August 2015. See August 31, 2015 letter from GBLS to the Senate and House Chairs of the Joint Committee on the Judiciary, Addendum at 165. Based on Amici's experience, children in these cases are almost always represented by counsel such that it will not result in an increased number of prose petitioners before the court.

rights of Liliana and other vulnerable youth like her.  $^{17}$ 

# CONCLUSION

For all these reasons, the Court should hold that the Probate and Family Court's equity jurisdiction permits it to adjudicate petitions for entry of SIJ findings for Liliana and other petitioners like her up to the age of 21, even if the only relief sought is declaratory. The Court should also hold that youth who can establish that they have been abused, abandoned, or neglected (or similarly harmed) by at least one parent are dependent on the Probate and Family Court. Finally, in view of the exigencies of this case, the Court should enter the requested findings on the basis of the record before it prior to December 5, 2015.

<sup>17</sup> This Court and the Appeals Court have acknowledged the need for expedition in at least three SIJ cases. See In re Guardianship of German Josué Mendoza, Mass. Sup. Jud. Ct., No. SJ-2009-0261 (May 18, 2009) (Addendum at 156); In re Guardianship of Rosa Mercedes Duchi Agualema, Mass. Sup. Jud. Ct., No. SJ-2011-0548 (Dec. 28, 2011) (Addendum at 159); In re Guardianship of de la Cruz, 86 Mass. App. Ct. 1106 (2014).

Respectfully submitted,

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# ADDENDUM

Constitutional Provisions
United States Constitution, Article VI, cl. 2ADD 1
Massachusetts Declaration of Rights,
Article 11ADD 2
Massachusetts Statutes and Acts
G.L. c. 119, § 1ADD 3
G.L. c. 208, § 28ADD 5
G.L. c. 215, § 6ADD 7
G.L. c. 231A, § 1ADD 8
G.L. c. 231A, § 2ADD 9
G.L. c. 231A, § 9ADD 10
1975 Mass. Acts c. 661ADD 11
1976 Mass. Acts c. 279ADD 12
1991 Mass. Acts c. 173ADD 13
Federal Statutes, Regulations, and Acts
8 U.S.C. § 1101ADD 14
8 C.F.R. § 204.11ADD 41
Pub. L. 105-119, 111 Stat. 2460 (1997)ADD 44
The William Wilberforce Trafficking
Victims Protection Reauthorization
Act of 2008, Pub. L. 110-457, 122 Stat. 5044 (2008)ADD 102
Massachusetts Legislative Materials
S. 740, 189th Gen. Ct. (Mass. 2015)ADD 144
H.R. 1418, 189th Gen. Ct. (Mass. 2015)ADD 149
Massachusetts Cases
Ledy Zarahi Suazo Castillo v. Wilfredo
Suazo Donaire et al., Suffolk County
Probate and Family Court NO. SU15E0025 (Apr. 9, 2015)
(11pr - 2, 2010)

In re Guardianship of German Josue	
Mendoza, Mass. Sup. Jud. Ct., No. SJ-2009-0261 (May 18, 2009)ADD	156
In re Guardianship of Rosa Mercedes Duchi Agualema, Mass. Sup. Jud. Ct.,	
No. SJ-2011-0548 (Dec. 28, 2011)ADD	159
Additional Materials	
Letter from Greater Boston Legal Services	
to the Joint Committee on the Judiciary	
(August 31, 2015)ADD	165

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United States Code Annotated Constitution of the United States Annotated

Article VI. Debts Validated--Supreme Law of Land--Oath of Office (Refs & Annos)

U.S.C.A. Const. Art. VI cl. 2

Clause 2. Supreme Law of Land

Currentness

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S.C.A. Const. Art. VI cl. 2, USCA CONST Art. VI cl. 2 Current through P.L. 114-61 (excluding P.L. 114-52, 114-54, 114-59, and 114-60) approved 10-7-2015

**End of Document** 

Constitution or Form of Government for the Commonwealth of Massachusetts [Annotated]

Part the First a Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

# M.G.L.A. Const. Pt. 1, Art. 11

Art. XI. Remedy by recourse to the laws; obtaining of right and justice freely, completely and promptly

### Currentness

ART. XI. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

M.G.L.A. Const. Pt. 1, Art. 11, MA CONST Pt. 1, Art. 11 Current through amendments approved October 1, 2015

**End of Document** 

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182) Title XVII. Public Welfare (Ch. 115-123b)

Chapter 119. Protection and Care of Children, and Proceedings Against Them (Refs & Annos)

M.G.L.A. 119 § 1

§ 1. Declaration of policy; purpose

Effective: July 8, 2008
Currentness

It is hereby declared to be the policy of this commonwealth to direct its efforts, first, to the strengthening and encouragement of family life for the care and protection of children; to assist and encourage the use by any family of all available resources to this end; and to provide substitute care of children only when the family itself or the resources available to the family are unable to provide the necessary care and protection to insure the rights of any child to sound health and normal physical, mental, spiritual and moral development.

The purpose of this chapter is to insure that the children of the commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of parents or parent substitutes, and to assure good substitute parental care in the event of the absence, temporary or permanent inability or unfitness of parents to provide care and protection for their children.

The health and safety of the child shall be of paramount concern and shall include the long-term well-being of the child.

In all matters and decisions by the department of children and families, the policy of the department, as applied to children in its care and protection or children who receive its services, shall be to define best interests of the child as that which shall include, but not be limited to, considerations of precipitating factors and previous conditions leading to any decisions made in proceedings related to the past, current and future status of the child, the current state of the factors and conditions together with an assessment of the likelihood of their amelioration or elimination; the child's fitness, readiness, abilities and developmental levels; the particulars of the service plan designed to meet the needs of the child within the child's current placement whether with the child's family or in a substitute care placement and whether such service plan is used by the department or presented to the courts with written documentation; and the effectiveness, suitability and adequacy of the services provided and of placement decisions, including the progress of the child or children therein. The department's considerations of appropriate services and placement decisions shall be made in a timely manner in order to facilitate permanency planning for the child.

In all department proceedings that affect the child's past, current and future placements and status, when determining the best interests of the child, there shall be a presumption of competency that a child who has attained the age of 12 is able to offer statements on the child's own behalf and shall be provided with timely opportunities and access to offer such statements, which shall be considered by the department if the child is capable and willing. In all matters relative to the care and protection of a child, the ability, fitness and capacity of the child shall be considered in all department proceedings.

For purposes of this section, the words "all department proceedings" shall include departmental hearings and proceedings but shall not include a court proceeding even when the department is a party.

# **Credits**

 $Added \ by \ St. 1954, \ c. \ 646, \ \S \ 1. \ Amended \ by \ St. 1972, \ c. \ 785, \ \S \ 5; \ St. 1999, \ c. \ 3, \ \S \ 4; \ St. 2008, \ c. \ 176, \ \S \ 82, \ eff. \ July \ 8, \ 2008.$ 

# M.G.L.A. 119 § 1, MA ST 119 § 1

Current through Chapter 103 of the 2015 1st Annual Session

**End of Document** 

Massachusetts General Laws Annotated
Part II. Real and Personal Property and Domestic Relations (Ch. 183-210)
Title III. Domestic Relations (Ch. 207-210)
Chapter 208. Divorce (Refs & Annos)

#### M.G.L.A. 208 § 28

§ 28. Children; care, custody and maintenance; child support obligations; provisions for education and health insurance; parents convicted of first degree murder

Effective: July 1, 2012 Currentness

Upon a judgment for divorce, the court may make such judgment as it considers expedient relative to the care, custody and maintenance of the minor children of the parties and may determine with which of the parents the children or any of them shall remain or may award their custody to some third person if it seems expedient or for the benefit of the children. In determining the amount of the child support obligation or in approving the agreement of the parties, the court shall apply the child support guidelines promulgated by the chief justice of the trial court, and there shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. Upon a complaint after a divorce, filed by either parent or by a next friend on behalf of the children after notice to both parents, the court may make a judgment modifying its earlier judgment as to the care and custody of the minor children of the parties provided that the court finds that a material and substantial change in the circumstances of the parties has occurred and the judgment of modification is necessary in the best interests of the children. In furtherance of the public policy that dependent children shall be maintained as completely as possible from the resources of their parents and upon a complaint filed after a judgment of divorce, orders of maintenance and for support of minor children shall be modified if there is an inconsistency between the amount of the existing order and the amount that would result from application of the child support guidelines promulgated by the chief justice of the trial court or if there is a need to provide for the health care coverage of the child. A modification to provide for the health care coverage of the child shall be entered whether or not a modification in the amount of child support is necessary. There shall be a rebuttable presumption that the amount of the order which would result from the application of the guidelines is the appropriate amount of child support to be ordered. If, after taking into consideration the best interests of the child, the court determines that a party has overcome such presumption, the court shall make specific written findings indicating the amount of the order that would result from application of the guidelines; that the guidelines amount would be unjust or inappropriate under the circumstances; the specific facts of the case which justify departure from the guidelines; and that such departure is consistent with the best interests of the child. The order shall be modified accordingly unless the inconsistency between the amount of the existing order and the amount of the order that would result from application of the guidelines is due to the fact that the amount of the existing order resulted from a rebuttal of the guidelines and that there has been no change in the circumstances which resulted in such rebuttal; provided, however, that even if the specific facts that justified departure from the guidelines upon entry of the existing order remain in effect, the order shall be modified in accordance with the guidelines unless the court finds that the guidelines amount would be unjust or inappropriate under the circumstances and that the existing order is consistent with the best interests of the child. A modification of child support may enter notwithstanding an agreement of the parents that has independent legal significance. If the IV-D agency as set forth in chapter 119A is responsible for enforcing a case, an order may also be modified in accordance with the procedures set out in section 3B of said chapter 119A. The court may make appropriate orders of maintenance, support and education of any child who has attained age eighteen but who has not attained age twentyone and who is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance. The court

may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three, if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program, excluding educational costs beyond an undergraduate degree. When the court makes an order for maintenance or support of a child, said court shall determine whether the obligor under such order has health insurance or other health coverage on a group plan available to him through an employer or organization or has health insurance or other health coverage available to him at a reasonable cost that may be extended to cover the child for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of the child or obtain coverage for the child.

When a court makes an order for maintenance or support, the court shall determine whether the obligor under such order is responsible for the maintenance or support of any other children of the obligor, even if a court order for such maintenance or support does not exist, or whether the obligor under such order is under a preexisting order for the maintenance or support of any other children from a previous marriage, or whether the obligor under such order is under a preexisting order for the maintenance or support of any other children born out of wedlock. If the court determines that such responsibility does, in fact, exist and that such obligor is fulfilling such responsibility such court shall take into consideration such responsibility in setting the amount to paid <sup>1</sup> under the current order for maintenance or support.

No court shall make an order providing visitation rights to a parent who has been convicted of murder in the first degree of the other parent of the child who is the subject of the order, unless such child is of suitable age to signify his assent and assents to such order; provided, further, that until such order is issued, no person shall visit, with the child present, a parent who has been convicted of murder in the first degree of the other parent of the child without the consent of the child's custodian or legal guardian.

#### Credits

Amended by St.1975, c. 400, § 29; St.1975, c. 661, § 1; St.1976, c. 279, § 1; St.1983, c. 233, § 76; St.1985, c. 490, § 1; St.1988, c. 23, § 66; St.1991, c. 173, § 1; St.1993, c. 460, § 60 to 62; St.1997, c. 77, § 2; St.1998, c. 64, § 194, 195; St.2011, c. 93, § 37, eff. July 1, 2012.

#### Footnotes

So in enrolled bill.

M.G.L.A. 208 § 28, MA ST 208 § 28

Current through Chapter 111 of the 2015 1st Annual Session

**End of Document** 

Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)
Title I. Courts and Judicial Officers (Ch. 211-222)
Chapter 215. Probate Courts (Refs & Annos)

### M.G.L.A. 215 § 6

§ 6. Equity jurisdiction

#### Currentness

The probate and family court department shall have original and concurrent jurisdiction with the supreme judicial court and the superior court department of all cases and matters of equity cognizable under the general principles of equity jurisprudence and, with reference thereto, shall be courts of general equity jurisdiction, except that the superior court department shall have exclusive original jurisdiction of all actions in which injunctive relief is sought in any matter growing out of a labor dispute as defined in section twenty C of chapter one hundred and forty-nine.

Probate courts shall also have jurisdiction concurrent with the supreme judicial and superior courts, of all cases and matters in which equitable relief is sought relative to: (i) the administration of the estates of deceased persons; (ii) wills, including questions arising under section twenty of chapter one hundred and ninety-one; (iii) trusts created by will or other written instrument; (iv) cases involving in any way the estate of a deceased person or the property of an absentee whereof a receiver has been appointed under chapter two hundred or the property of a person under guardianship or conservatorship; (v) trusts created by parol or constructive or resulting trusts; (vi) all matters relative to guardianship or conservatorship; and (vii) actions such as one described in clause (11) of section three of chapter two hundred and fourteen and of all other matters of which they now have or may hereafter be given jurisdiction. They shall also have jurisdiction to grant equitable relief to enforce foreign judgments for support of a wife or of a wife and minor children against a husband who is a resident or inhabitant of this commonwealth, upon an action by the wife commenced in the county of which the husband is a resident or inhabitant. They shall, after the divorce judgment has become absolute, also have concurrent jurisdiction to grant equitable relief in controversies over property between persons who have been divorced. They shall also have jurisdiction of an action by an administrator, executor, guardian, conservator, receiver appointed as aforesaid or trustee under a will to enjoin for a reasonable period of time the foreclosure, otherwise than by open and peaceable entry, of a mortgage on real estate, or the foreclosure of a mortgage on personal property, which real estate or personal property is included in the estate or trust being administered by such fiduciary, if in the opinion of the court the proper administration of the estate or trust would be hindered by such foreclosure. They shall also have jurisdiction, concurrent with the superior court, of proceedings in which equitable relief is sought under sections seven to twelve, inclusive, of chapter one hundred and seventeen and section twenty-six of chapter one hundred and twenty-three.

Notwithstanding any contrary or inconsistent provisions of the General Laws, procedure in cases in the probate court within the jurisdiction granted by this section shall be governed by the Massachusetts Rules of Civil Procedure.

#### **Credits**

Amended by St.1933, c. 237, § 1; St.1937, c. 257; St.1939, c. 194, § 2; St.1950, c. 485, § 3; St.1951, c. 657, § 2; St.1954, c. 556, § 2; St.1958, c. 223; St.1963, c. 820, § 1; St.1970, c. 888, § 24; St.1973, c. 1114, § 63; St.1975, c. 400, § 55; St.1981, c. 616.

M.G.L.A. 215 § 6, MA ST 215 § 6 Current through Chapter 103 of the 2015 1st Annual Session

**End of Document** 

Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)

Title II. Actions and Proceedings Therein (Ch. 223-236)

Chapter 231A. Procedure for Declaratory Judgments (Refs & Annos)

### M.G.L.A. 231A § 1

§ 1. Power to make declaratory determination; jury questions

#### Currentness

The supreme judicial court, the superior court, the land court and the probate courts, within their respective jurisdictions, may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby, either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen and is specifically set forth in the pleadings and whether any consequential judgment or relief is or could be claimed at law or in equity or not; and such proceeding shall not be open to objection on the ground that a merely declaratory judgment or decree is sought thereby and such declaration, when made, shall have the force and effect of a final judgment or decree and be reviewable as such; provided, that nothing contained herein shall be construed to authorize the change, extension or alteration of the law regulating the method of obtaining service on, or jurisdiction over, parties or affect their right to trial by jury. When a declaration of right, or the granting of further relief based thereon, shall involve the determination of issues of fact triable by a jury as of right and as to which a jury trial is duly claimed by the party entitled thereto, or issues which the court, in accordance with the practice of courts of equity, considers should be tried by a jury, such issues may be submitted to a jury in the form of questions, with proper instructions by the court, whether a general verdict be required or not.

## Credits

Added by St.1945, c. 582, § 1.

M.G.L.A. 231A § 1, MA ST 231A § 1

Current through Chapter 111 of the 2015 1st Annual Session

**End of Document** 

Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262) Title II. Actions and Proceedings Therein (Ch. 223-236)

Chapter 231A. Procedure for Declaratory Judgments (Refs & Annos)

M.G.L.A. 231A § 2

§ 2. Controversies to which declaratory judgment procedure is applicable

#### Currentness

The procedure under section one may be used to secure determinations of right, duty, status or other legal relations under deeds, wills or written contracts or other writings constituting a contract or contracts or under the common law, or a charter, statute, municipal ordinance or by-law, or administrative regulation, including determination of any question of construction or validity thereof which may be involved in such determination. Said procedure under section one may be used in the superior court to enjoin and to obtain a determination of the legality of the administrative practices and procedures of any municipal, county or state agency or official which practices or procedures are alleged to be in violation of the Constitution of the United States or of the constitution or laws of the commonwealth, or are in violation of rules or regulations promulgated under the authority of such laws, which violation has been consistently repeated; provided, however, that this section shall not apply to the governor and council or the legislative and judicial departments. For the purpose of this section practices or procedures mean the customary and usual method of conducting municipal, county, state agency or official business.

The foregoing enumeration shall not limit or restrict the exercise of the general powers conferred in section one in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

#### Credits

Added by St.1945, c. 582, § 1. Amended by St.1974, c. 630, § 1.

M.G.L.A. 231A § 2, MA ST 231A § 2

Current through Chapter 111 of the 2015 1st Annual Session

**End of Document** 

Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)

Title II. Actions and Proceedings Therein (Ch. 223-236)

Chapter 231A. Procedure for Declaratory Judgments (Refs & Annos)

# M.G.L.A. 231A § 9

§ 9. Purpose and construction of declaratory judgment provisions

#### Currentness

This chapter is declared to be remedial. Its purpose is to remove, and to afford relief from, uncertainty and insecurity with respect to rights, duties, status and other legal relations, and it is to be liberally construed and administered. Nothing in this chapter shall be held to affect the jurisdiction of the land court, and the procedure established hereby shall be in addition to any other procedure for declaratory relief.

#### **Credits**

Added by St.1945, c. 582, § 1.

M.G.L.A. 231A § 9, MA ST 231A § 9

Current through Chapter 111 of the 2015 1st Annual Session

**End of Document** 

men of said town for a term of five years. All subsequent members, except the member appointed by the department of community affairs, shall be so appointed for similar terms.

Approved October 20, 1975.

Chap. 660. An Act authorizing the city of boston to construct certain public improvements in the central business district of said city.

Be it enacted, etc., as follows:

The city of Boston is hereby authorized to appropriate eleven million two hundred thousand dollars under the indebtedness limitations of section twenty-one of chapter one hundred and twenty-one B of the General Laws for the design and construction of public improvements such as streets, sidewalks, plazas, curbs, lighting, traffic signals, surface drainage, landscaping and street furniture within the central business district of said city, as bounded and described in the central business district urban renewal plan, dated July 27, 1967, as approved by the city council on December 11, 1967, which district includes the Bedford-West urban renewal project, the School-Franklin urban renewal project, the Boylston-Essex urban renewal project, and the South Station urban renewal project. Approved October 20, 1975.

Chap. 661. An Act permitting the probate court to make appropriate orders of maintenance for children under the age of twenty-one years who are dependents of and who reside in the home of a parent.

Be it enacted, etc., as follows:

SECTION 1. Section 28 of chapter 208 of the General Laws, as most recently amended by section 29 of chapter 400 of the acts of 1975, is hereby further amended by adding the following sentence: — The court may make appropriate orders of maintenance of any child who has attained age eighteen years but who has not attained the age of twenty-one years and who is living in the home of a parent, and is principally dependent upon said parent for maintenance.

Section 2. Section 37 of chapter 209 of the General Laws, as most recently amended by section 38 of chapter 400 of the acts of 1975, is hereby further amended by adding the following sentence: — The probate court may make appropriate orders of maintenance of any child who has attained age eighteen years but who has not attained the age of twenty-one years and who is living in the home of a parent, and is principally dependent upon said parent for maintenance.

Approved October 20, 1975.

300

**Chap. 279.** An Act authorizing the probate court to make appropriate orders of support and education for Children under twenty-one years of age.

Be it enacted, etc., as follows:

SECTION 1. Section 28 of chapter 208 of the General Laws is hereby amended by striking out the last sentence, added by section 1 of chapter 661 of the acts of 1975, and inserting in place thereof the following sentence:- The court may make appropriate orders of maintenance, support and education of any child who has attained age eighteen but who has not attained age twenty-one and who is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance.

Section 2. Section 37 of chapter 209 of the General Laws is hereby amended by striking out the last sentence, added by section 2 of said chapter 661, and inserting in place thereof the following sentence: The probate court may make appropriate orders of maintenance, support and education of any child who has attained age eighteen but who has not attained age twenty-one and who is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance.

Approved August 9, 1976.

**Chap. 280.** An Act authorizing the town of falmouth to acouire land in Said Town.

Be it enacted, etc., as follows:

The town of Falmouth is hereby authorized to purchase for conservation purposes twenty-six and three-tenths acres of land, more or less from Arthur W. Robichaud et ux of the town of Falmouth, said land being shown as an "Area Remaining 26.3 acres more or less" on a plan of land entitled "Plan of Land in Falmouth, Massachusetts for Arthur W. Robichaud et ux, Scale 1" = 50" December 19, 1972, John P. Doyle, R.L.S.", recorded in the registry of deeds in Barnstable county in Plan Book 266, Page 12 and bound and described as follows:-

Beginning at the northwesterly corner of the property by land now or formerly of Helen B. Hibbs et al (formerly land of Charles Blair), 1187.72 feet to a stone bound;

Thence running in a southeasterly direction 118.21 feet to a stone bound by land now of F.V. Lawrence, Inc. (formerly of Charles L. Swift et al, Trustees);

Thence in a northerly direction 1309.87 feet to a stone bound by land of F.V. Lawrence, Inc. (formerly land of Swift):

Thence easterly by land now of the Town of Falmouth, 508.01 feet to a stone bound;

dollars and seventy cents refunds received by said town under said town's group insurance policy.

Approved August 8, 1991.

#### Chapter 173. AN ACT RELATIVE TO THE SUPPORT OF CHILDREN.

Be it enacted, etc., as follows:

**SECTION 1.** Section 28 of chapter 208 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting after the third sentence the following sentence: The court may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three, if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program, excluding educational costs beyond an undergraduate degree.

**SECTION 2.** Section 37 of chapter 209 of the General Laws, as so appearing, is hereby amended by inserting after the second sentence the following sentence: The court may make appropriate orders of maintenance, support and education for any child who has attained age twenty-one but who has not attained age twenty-three if such child is domiciled in the home of a parent, and is principally dependent upon said parent for maintenance due to the enrollment of such child in an educational program, excluding educational costs beyond an undergraduate degree.

Approved August 8, 1991.

# Chapter 174. AN ACT RELATIVE TO THE FINANCING OF CERTAIN INDUSTRIAL PARK IMPROVEMENTS BY THE TOWN OF MANSFIELD.

Be tt enacted, etc., as follows:

**SECTION 1.** The selectmen of the town of Mansfield may levy assessments upon the property owners within the Cabot, Cabot and Forbes (CC&F) Mansfield Industrial Park so-called in accordance with the provisions of chapter eighty of the General Laws in order to pay for all or any portion of the improvements to be financed by the town under the vote passed under article thirty-nine at the annual town meeting held in the year nineteen hundred and ninety, notwithstanding any limitation in chapter eighty-three of the General Laws or any other provisions of

KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or Preempted Held Unconstitutional by Dimaya v. Lynch, 9th Cir., Oct. 19, 2015

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

#### United States Code Annotated

Title 8. Aliens and Nationality (Refs & Annos)

Chapter 12. Immigration and Nationality (Refs & Annos)

Subchapter I. General Provisions (Refs & Annos)

8 U.S.C.A. § 1101

§ 1101. Definitions

Effective: January 17, 2014 Currentness

- (a) As used in this chapter--
  - (1) The term "administrator" means the official designated by the Secretary of State pursuant to section 1104(b) of this title.
  - (2) The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.
  - (3) The term "alien" means any person not a citizen or national of the United States.
  - (4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.
  - (5) The term "Attorney General" means the Attorney General of the United States.
  - (6) The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and (B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.
  - (7) The term "clerk of court" means a clerk of a naturalization court.

- (8) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and Deputy Commissioner of Immigration and Naturalization, respectively.
- (9) The term "consular officer" means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this chapter, for the purpose of issuing immigrant or nonimmigrant visas or, when used in subchapter III of this chapter, for the purpose of adjudicating nationality.
- (10) The term "crewman" means a person serving in any capacity on board a vessel or aircraft.
- (11) The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.
- (12) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.
- (13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.
- **(B)** An alien who is paroled under section 1182(d)(5) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.
- (C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien--
  - (i) has abandoned or relinquished that status,
  - (ii) has been absent from the United States for a continuous period in excess of 180 days,
  - (iii) has engaged in illegal activity after having departed the United States,
  - (iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
  - (v) has committed an offense identified in section 1182(a)(2) of this title, unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a) of this title, or
  - (vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

- (14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions or territories under mandate or trusteeship shall be regarded as separate foreign states.
- (15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens--
  - (A)(i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign government, recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;
  - (ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and
  - (iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;
  - (B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;
  - (C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758);
  - (**D**)(i) an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 1288(a) of this title (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;
  - (ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam or the Commonwealth of the Northern Mariana Islands and solely in pursuit of his calling as a crewman and to depart from Guam or the Commonwealth of the Northern Mariana Islands with the vessel on which he arrived;
  - (E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him; (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital; or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor

determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title;

(F) (i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 1184(l) of this title at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(G)(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669)[22 U.S.C.A. 288 et seq.], accredited resident members of the staff of such representatives, <sup>1</sup> and members of his or their immediate family;

- (ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;
- (iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization; and the members of his immediate family;
- (iv) officers, or employees of such international organizations, and the members of their immediate families;
- (v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;
- (H) an alien (i) (a) [Repealed. Pub.L. 106-95, § 2(c), Nov. 12, 1999, 113 Stat. 1316] (b) subject to section 1182(j)(2) of this title, who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in section 1184(i)(1) of this title or as a fashion model, who meets the requirements for the occupation specified in section 1184(i)(2) of this title or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 1182(n)(1) of this title, or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 1184(g) (8)(A) of this title, who is engaged in a specialty occupation described in section 1184(i)(3) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 1182(t)(1) of this title, or

(c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 1182(m)(1) of this title, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 1182(m)(2) of this title for the facility (as defined in section 1182(m)(6) of this title) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of Title 26, agriculture as defined in section 203(f) of Title 29, and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative, if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(K) subject to subsections (d) and (p) of section 1184 of this title, an alien who--

(i) is the fiance or fiance of a citizen of the United States (other than a citizen described in section 1154(a)(1)(A)(viii) (I) of this title) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 1154(a) (1)(A)(viii)(I) of this title) who is the petitioner, is the beneficiary of a petition to accord a status under section 1151(b) (2)(A)(i) of this title that was filed under section 1154 of this title by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(L) subject to section 1184(c)(2) of this title, an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an

affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

- (M) (i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;
- (N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), but only if and while the alien is a child, or
- (ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I) (or under analogous authority under paragraph (27)(L));
- (O) an alien who--
  - (i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or
  - (ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,
  - (II) is an integral part of such actual performance,
  - (III) (a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing longstanding working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and
  - (IV) has a foreign residence which the alien has no intention of abandoning; or

- (iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;
- (P) an alien having a foreign residence which the alien has no intention of abandoning who-
  - (i) (a) is described in section 1184(c)(4)(A) of this title (relating to athletes), or (b) is described in section 1184(c)(4) (B) of this title (relating to entertainment groups);
  - (ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
  - (II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers;
  - (iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
  - (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or
  - (iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;
- (Q) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers;
- (R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who--
  - (i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and
  - (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);
- (S) subject to section 1184(k) of this title, an alien--

- (i) who the Attorney General determines--
  - (I) is in possession of critical reliable information concerning a criminal organization or enterprise;
  - (II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and
  - (III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or
- (ii) who the Secretary of State and the Attorney General jointly determine--
  - (I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;
  - (II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;
  - (III) will be or has been placed in danger as a result of providing such information; and
  - (IV) is eligible to receive a reward under section 2708(a) of Title 22,

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

- (T)(i) subject to section 1184(o) of this title, an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines--
  - (I) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of Title 22;
  - (II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;
  - (III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

- (**bb**) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or
- (cc) has not attained 18 years of age; and
- (IV) the alien <sup>2</sup> would suffer extreme hardship involving unusual and severe harm upon removal; and
- (ii) if accompanying, or following to join, the alien described in clause (i)--
  - (I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;
  - (II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or
  - (III) any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, as of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.
- (iii) Repealed. Pub.L. 110-457, Title II, § 201(a)(3), Dec. 23, 2008, 122 Stat. 5053
- (U)(i) subject to section 1184(p) of this title, an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that--
  - (I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);
  - (II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);
  - (III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and
  - (IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;
- (ii) if accompanying, or following to join, the alien described in clause (i)--

- (I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or
- (II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and
- (iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of Title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or
- (V) subject to section 1184(q) of this title, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of a petition to accord a status under section 1153(a)(2)(A) of this title that was filed with the Attorney General under section 1154 of this title on or before December 21, 2000, if--
  - (i) such petition has been pending for 3 years or more; or
  - (ii) such petition has been approved, 3 years or more have elapsed since such filing date, and-
    - (I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 1153(a)(2)(A) of this title; or
    - (II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 1255 of this title, pursuant to the approval of such petition, remains pending.
- (16) The term "immigrant visa" means an immigrant visa required by this chapter and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this chapter.
- (17) The term "immigration laws" includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.
- (18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.
- (19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885;

- 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76)[50 App. U.S.C.A. 454(a)], or under any section of this chapter, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.
- (20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.
- (21) The term "national" means a person owing permanent allegiance to a state.
- (22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.
- (23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.
- (24) Repealed. Pub.L. 102-232, Title III, § 305(m)(1), Dec. 12, 1991, 105 Stat. 1750.
- (25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.
- (26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.
- (27) The term "special immigrant" means--
  - (A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;
  - (B) an immigrant who was a citizen of the United States and may, under section 1435(a) or 1438 of this title, apply for reacquisition of citizenship;
  - (C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who--
    - (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
    - (ii) seeks to enter the United States--
      - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
- (III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c) (3) of Title 26) at the request of the organization in a religious vocation or occupation; and
- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);
- (**D**) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;
- (E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3602(a)(1) of Title 22) enters into force [October 1, 1979], who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty [April 1, 1979], and who has performed faithful service as such an employee for one year or more;
- (**F**) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force [October 1, 1979], has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;
- (G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979], who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;
- (H) an immigrant, and his accompanying spouse and children, who--
  - (i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

- (ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,
- (iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) of this section before January 10, 1978, and
- (iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;
- (I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later;
- (ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after October 24, 1988, whichever is later;
- (iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after October 25, 1994, whichever is later; or
- (iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;
- (J) an immigrant who is present in the United States--
  - (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
  - (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

- (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that--
  - (I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
  - (II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;
- (**K**) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on October 1, 1991) for a period or periods aggregating--
  - (i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or
  - (ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

- (L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause--
  - (i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);
  - (ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO-6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty, or as a dependent); and
  - (iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998 <sup>3</sup>

- (M) subject to the numerical limitations of section 1153(b)(4) of this title, an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors, and the immigrant's accompanying spouse and children.
- (28) The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.
- (29) The term "outlying possessions of the United States" means American Samoa and Swains Island.
- (30) The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.
- (31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.
- (32) The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.
- (33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.
- (34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.
- (35) The term "spouse", "wife", or "husband" do not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.
- (36) The term "State" includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.
- (37) The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

- (38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.
- (39) The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.
- (40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.
- (41) The term "graduates of a medical school" means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.
- (42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in section 1157(e) of this title) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.
- (43) The term "aggravated felony" means--
  - (A) murder, rape, or sexual abuse of a minor;
  - (B) illicit trafficking in a controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18);
  - (C) illicit trafficking in firearms or destructive devices (as defined in section 921 of Title 18) or in explosive materials (as defined in section 841(c) of that title);

- (**D**) an offense described in section 1956 of Title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;
- (E) an offense described in--
  - (i) section 842(h) or (i) of Title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);
  - (ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of Title 18 (relating to firearms offenses); or
  - (iii) section 5861 of Title 26 (relating to firearms offenses);
- (**F**) a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for which the term of imprisonment at <sup>4</sup> least one year;
- (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at <sup>4</sup> least one year;
- (H) an offense described in section 875, 876, 877, or 1202 of Title 18 (relating to the demand for or receipt of ransom);
- (I) an offense described in section 2251, 2251A, or 2252 of Title 18 (relating to child pornography);
- (**J**) an offense described in section 1962 of Title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;
- (K) an offense that--
  - (i) relates to the owning, controlling, managing, or supervising of a prostitution business;
  - (ii) is described in section 2421, 2422, or 2423 of Title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or
  - (iii) is described in any of sections 1581-1585 or 1588-1591 of Title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

- (L) an offense described in--
  - (i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of Title 18;
  - (ii) section 3121 of Title 50 (relating to protecting the identity of undercover intelligence agents); or
  - (iii) section 3121 of Title 50 (relating to protecting the identity of undercover agents);
- (M) an offense that--
  - (i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or
  - (ii) is described in section 7201 of Title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;
- (N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter <sup>5</sup>
- (O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;
- (P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of Title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;
- (Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;
- (**R**) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;
- (S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

- (T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and
- (U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

- (44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily-
  - (i) manages the organization, or a department, subdivision, function, or component of the organization;
  - (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
  - (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
  - (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.
  - A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.
- (B) The term "executive capacity" means an assignment within an organization in which the employee primarily--
  - (i) directs the management of the organization or a major component or function of the organization;
  - (ii) establishes the goals and policies of the organization, component, or function;
  - (iii) exercises wide latitude in discretionary decision-making; and
  - (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.
- (C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered

to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

- (45) The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.
- (46) The term "extraordinary ability" means, for purposes of subsection (a)(15)(O)(i) of this section, in the case of the arts, distinction.
- (47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.
- (B) The order described under subparagraph (A) shall become final upon the earlier of--
  - (i) a determination by the Board of Immigration Appeals affirming such order; or
  - (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.
- (48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
  - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
  - (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.
- **(B)** Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.
- (49) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.
- (50) The term "intended spouse" means any alien who meets the criteria set forth in section 1154(a)(1)(A)(iii)(II)(aa)(BB), 1154(a)(1)(B)(ii)(II)(aa)(BB), or 1229b(b)(2)(A)(i)(III) of this title.
- (51) The term "VAWA self-petitioner" means an alien, or a child of the alien, who qualifies for relief under-

(A) clause (iii), (iv), or (vii) of section 1154(a)(1)(A) of this title; (B) clause (ii) or (iii) of section 1154(a)(1)(B) of this title; (C) section 1186a(c)(4)(C) of this title; (D) the first section of Public Law 89-732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty; (E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note); (F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act; or (G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208). (52) The term "accredited language training program" means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education. (b) As used in subchapters I and II of this chapter--(1) The term "child" means an unmarried person under twenty-one years of age who is--(A) a child born in wedlock; (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; (C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

relationship with the person;

(**D**) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child

- (E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or
- (ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;
- (**F**)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence; *Provided*, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or
- (ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 1151(b) of this title; or
- (G)(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 1151(b) of this title, who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, Provided, That--
  - (I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;
  - (II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

- (III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;
- (IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and
- (V) in the case of a child who has not been adopted--
  - (aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and
  - (**bb**) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and
- (ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or
- (iii) subject to the same provisos as in clauses (i) and (ii), a child who--
  - (I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);
  - (II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and
  - (III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 1151(b) of this title.
- (2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) and paragraph (1)(G)(i) in the case of a child born out of wedlock described in paragraph (1) (D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.
- (3) The term "person" means an individual or an organization.
- (4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing

under section 1229a of this title. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

- (5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.
- (c) As used in subchapter III of this chapter--
  - (1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431 and 1432 of this title, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1) of this section), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.
  - (2) The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.
- (d) Repealed. Pub.L. 100-525, § 9(a)(3), Oct. 24, 1988, 102 Stat. 2619.
- (e) For the purposes of this chapter--
  - (1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.
  - (2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.
  - (3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.
- (f) For the purposes of this chapter--

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was--

(1) a habitual drunkard;

- (2) Repealed. Pub.L. 97-116, § 2(c)(1), Dec. 29, 1981, 95 Stat. 1611.
- (3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 1182(a) of this title; or subparagraphs (A) and (B) of section 1182(a)(2) of this title and subparagraph
- (C) thereof of such section <sup>6</sup> (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;
- (4) one whose income is derived principally from illegal gambling activities;
- (5) one who has been convicted of two or more gambling offenses committed during such period;
- (6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;
- (7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;
- (8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43) of this section); or
- (9) one who at any time has engaged in conduct described in section 1182(a)(3)(E) of this title (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 1182(a)(2)(G) of this title (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

- (g) For the purposes of this chapter any alien ordered deported or removed (whether before or after the enactment of this chapter) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.
- (h) For purposes of section 1182(a)(2)(E) of this title, the term "serious criminal offense" means-
  - (1) any felony;

- (2) any crime of violence, as defined in section 16 of Title 18; or
- (3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.
- (i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i) of this section-
  - (1) the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and
  - (2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

#### CREDIT(S)

(June 27, 1952, c. 477, Title I, § 101, 66 Stat. 166; Pub.L. 85-316, §§ 1, 2, Sept. 11, 1957, 71 Stat. 639; Pub.L. 85-508, § 22, July 7, 1958, 72 Stat. 351; Pub.L. 86-3, § 20(a), Mar. 18, 1959, 73 Stat. 13; Pub.L. 87-256, § 109(a), (b), Sept. 21, 1961, 75 Stat. 534; Pub.L. 87-301, §§ 1, 2, 7, Sept. 26, 1961, 75 Stat. 650, 653; Pub.L. 89-236, §§ 8, 24, Oct. 3, 1965, 79 Stat. 916, 922; Pub.L. 89-710, Nov. 2, 1966, 80 Stat. 1104; Pub.L. 91-225, § 1, Apr. 7, 1970, 84 Stat. 116; Pub.L. 94-155, Dec. 16, 1975, 89 Stat. 824; Pub.L. 94-484, Title VI, § 601(b), (e), Oct. 12, 1976, 90 Stat. 2301, 2302; Pub.L. 94-571, § 7(a), Oct. 20, 1976, 90 Stat. 2706; Pub.L. 94-484, Title VI, § 602(c), as added Pub.L. 95-83, Title III, § 307(q)(3), Aug. 1, 1977, 91 Stat. 395; Pub.L. 95-105, Title I, § 109(b)(3), Aug. 17, 1977, 91 Stat. 847; 1977 Reorg. Plan No. 2, § 7(a)(8), 42 F.R. 62461, 91 Stat. 1637; Pub.L. 96-70, Title III, § 3201(a), Sept. 27, 1979, 93 Stat. 496; Pub.L. 96-212, Title II, § 201(a), Mar. 17, 1980, 94 Stat. 102; Pub.L. 97-116, §§ 2, 5(d)(1), 18(a), Dec. 29, 1981, 95 Stat. 1611, 1614, 1619; Pub.L. 98-47, § 3, Oct. 30, 1984, 98 Stat. 3435; Pub.L. 99-505, § 1, Oct. 21, 1986, 100 Stat. 1806; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 99-603, Title III, §§ 301(a), 312, 315(a), Nov. 6, 1986, 100 Stat. 3411, 3434, 3439; Pub.L. 99-653, §§ 2, 3, Nov. 14, 1986, 100 Stat. 3655; Pub.L. 100-459, Title II, § 210(a), Oct. 1, 1988, 102 Stat. 2203; Pub.L. 100-525, §§ 2(O)(1), 8(b), 9(a), Oct. 24, 1988, 102 Stat. 2613, 2617, 2619; Pub.L. 100-690, Title VII, § 7342, Nov. 18, 1988, 102 Stat. 4469; Pub.L. 101-162, Title VI, § 611(a), Nov. 21, 1989, 103 Stat. 1038; Pub.L. 101-238, § 3(a), Dec. 18, 1989, 103 Stat. 2100; Pub.L. 101-246, Title 1, § 131(b), Feb. 16, 1990,104 Stat. 31; Pub.L. 101-649, Title I, §§ 123, 151(a), 153(a), 162(f)(2)(A), Title II, §§ 203(c), 204(a), (c), 205(c)(1), (d), (e), 206(c), 207(a), 208, 209(a), Title IV, § 407(a)(2), Title V, § 501(a), 509(a), Title VI, § 603(a)(1), Nov. 29, 1990, 104 Stat. 4995, 5004, 5005, 5012, 5018, 5019, 5020, 5022, 5023, 5024, 5026, 5027, 5040, 5048, 5051, 5082; Pub.L. 102-110, § 2(a), Oct. 1, 1991, 105 Stat. 555; Dec. 12, 1991, Pub.L. 102-232, Title II, §§ 203(a), 205(a) to (c), 206(b), (c)(1), (d), 207(b), Title III, §§ 302(e)(8)(A), 303(a)(5)(A), (7)(A), (14), 305(m)(1), 306(a)(1), 309(b)(1), (4), 105 Stat. 1737, 1740, 1741, 1746 to 1748, 1750, 1751, 1758; Pub.L. 103-236, Title I, § 162(h)(1), Apr. 30, 1994, 108 Stat. 407; Pub.L. 103-322, Title XIII, § 130003(a), Sept. 13, 1994, 108 Stat. 2024; Pub.L. 103-337, Div. C, Title XXXVI, § 3605, Oct. 5, 1994, 108 Stat. 3113; Pub.L. 103-416, Title II, §§ 201, 202, 214, 219(a), 222(a), Oct. 25, 1994, 108 Stat. 4310, 4311, 4314, 4316, 4320; Pub.L. 104-51, § 1, Nov. 15, 1995, 109 Stat. 467; Pub.L. 104-132, Title IV, § 440(b), (e), Apr. 24, 1996, 110 Stat. 1277; Pub.L. 104-208, Div. C, Title I, § 104(a), Title III, §§ 301(a), 308(d)(3)(A), (4)(A), (e)(3), (f)(1)(A), (B), 321(a), (b), 322(a)(1), (2)(A), 361(a), 371(a), Title VI, §§ 601(a)(1), 625(a)(2), 671(a)(3)(B), (b)(5), (e)(2), Sept. 30, 1996, 110 Stat. 3009-555, 3009-575, 3009-617, 3009-620, 3009-621, 3009-627, 3009-628, 3009-629, 3009-644, 3009-645, 3009-689, 3009-700, 3009-721 to 3009-723; Pub.L. 105-54, § 1(a), Oct. 6, 1997, 111 Stat. 1175; Pub.L. 105-119, Title I, § 113, Nov. 26, 1997, 111 Stat. 2460; Pub.L. 105-277, Div. C, Title IV, § 421, Div. G, Title XXII, § 2222(e), Oct. 21, 1998, 112 Stat. 2681-657, 2681-819; Pub.L. 105-319, § 2(b)(1), (e)(2), Oct. 30, 1998, 112 Stat. 3014, 3015; amended Pub.L. 106-95, § 2(a), (c), Nov. 12, 1999, 113 Stat. 1312; Pub.L. 106-139, § (1) (a), (b)(1), Dec. 7, 1999, 113 Stat. 1696; Pub.L. 106-279, Title III, § 302(a), (c), Oct. 6, 2000, 114 Stat. 838; Pub.L. 106-386, Div. A, § 107(e)(1), (4), Div. B, Title V, § § 1503(a), 1513(b), Oct. 28, 2000, 114 Stat. 1477, 1479, 1518, 1534; Pub.L. 106-395, Title II, § 201(a)(1), Oct. 30, 2000, 114 Stat. 1633; Pub.L. 106-409, § 2(a), Nov. 1, 2000, 114 Stat. 1787; Pub.L. 106-536, § 1(a), Nov. 22, 2000, 114 Stat. 2560; Pub.L. 106-553, § 1(a)(2) [Title XI, § 1102(a), 1103(a)], Dec. 21, 2000, 114 Stat. 2762, 2762A-142, 2762A-143; Pub.L. 107-125, § 2(b), Jan. 16, 2002, 115 Stat. 2403; Pub.L. 107-234, § 1(4), Oct. 30, 1998, 116 Stat. 1481; Pub.L. 107-274, § 2(a), (b), Nov. 2, 2002, 116 Stat. 1923; Pub.L. 108-77, Title IV, § 402(a)(1), Sept. 3, 2003, 117 Stat. 2939; Pub.L. 108-99, § 1, Oct. 15, 2003, 117 Stat. 1176; Pub.L. 108-193, § § 4(b)(1), (5), 8(a)(1), Dec. 19, 2003, 117 Stat. 2878, 2879, 2886; Pub.L. 108-449, § 1(a)(2)(B), (b)(1), Dec. 10, 2004, 118 Stat. 3469, 3470; Pub.L. 108-458, Title V, § 5504, Dec. 17, 2004, 118 Stat. 3741; Pub.L. 109-13, Div. B, Title V, § 501(a), May 11, 2005, 119 Stat. 321; Pub.L. 109-90, Title V, § 536, Oct. 18, 2005, 119 Stat. 2087; Pub.L. 109-162, Title VIII, § 801, 805(d), 811, 822(c)(1), Jan. 5, 2006, 119 Stat. 3053, 3056, 3057, 3063; Pub.L. 109-248, Title IV, § 402(b), July 27, 2006, 120 Stat. 623; Pub.L. 110-229, Title VII, § 702(j)(1) to (3), May 8, 2008, 122 Stat. 866; Pub.L. 111-457, Title II, § 201(a), 235(d)(1), Dec. 23, 2008, 122 Stat. 5052, 5079; Pub.L. 111-9, § 1, Mar. 20, 2009, 123 Stat. 989; Pub.L. 111-83, Title V, § 568(a)(1), Oct. 28, 2009, 123 Stat. 2186; Pub.L. 111-287, § 3, Nov. 30, 2010, 124 Stat. 3058; Pub.L. 111-306, § 1(a), Dec. 14, 2010, 124 Stat. 3280; Pub.L. 112-176, § 3, Sept. 28, 2012, 126 Stat. 1325; Pub.L. 113-4, Title VIII, § 801, Title XII, § 1221, 1222, Mar. 7, 2013, 127 Stat. 110, 144; Pub.L. 113-76, Div. K, Title VII, § 7083, Jan. 17, 2014, 128 Stat. 567.)

#### Footnotes

- 1 So in original. Probably should read "representative".
- 2 So in original. The words "the alien" probably should not appear.
- 3 So in original. Probably should be followed by "; or".
- 4 So in original. Probably should be preceded by "is".
- 5 So in original. Probably should be followed by a semicolon.
- 6 So in original. The phrase "of such section" probably should not appear.

8 U.S.C.A. § 1101, 8 USCA § 1101

Current through P.L. 114-61 (excluding P.L. 114-52, 114-54, 114-59, and 114-60) approved 10-7-2015

**End of Document** 

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**Code of Federal Regulations** 

Title 8. Aliens and Nationality

Chapter I. Department of Homeland Security (Refs & Annos)

Subchapter B. Immigration Regulations

Part 204. Immigrant Petitions (Refs & Annos)

Subpart A. Immigrant Visa Petitions (Refs & Annos)

8 C.F.R. § 204.11

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

Effective: July 6, 2009 Currentness

#### (a) Definitions.

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

- (b) Petition for special immigrant juvenile. An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant. The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.
- (c) Eligibility. An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:
  - (1) Is under twenty-one years of age;
  - (2) Is unmarried;
  - (3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;
  - (4) Has been deemed eligible by the juvenile court for long-term foster care;

- (5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and
- (6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or
- (7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I–360 before June 1, 1994.
- (d) Initial documents which must be submitted in support of the petition.
  - (1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and
  - (2) One or more documents which include:
  - (i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;
  - (ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and
  - (iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.
- (e) Decision. The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

#### **Credits**

[58 FR 42849, 42850, Aug. 12, 1993; 74 FR 26937, June 5, 2009]

SOURCE: 52 FR 30900, Aug. 18, 1987; 52 FR 33797, Sept. 8, 1987; 54 FR 11161, March 17, 1988; 53 FR 30016, Aug. 10, 1988; 56 FR 60905, Nov. 29, 1991; 57 FR 41056, Sept. 9, 1992; 59 FR 38881, Aug. 1, 1994; 62 FR 60771, Nov. 13, 1997; 63 FR 12986, March 17, 1998; 68 FR 10923, March 6, 2003; 68 FR 35275, June 13, 2003; 72 FR 56853, Oct. 4, 2007; 73 FR 78127, Dec. 19, 2008, unless otherwise noted.

 $AUTHORITY: 8\ U.S.C.\ 1101,\ 1103,\ 1151,\ 1153,\ 1154,\ 1182,\ 1184,\ 1186a,\ 1255,\ 1641;\ 8\ CFR\ part\ 2.$ 

Notes of Decisions (40)

Current through Oct. 22, 2015; 80 FR 64298.

**End of Document** 

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PL 105-119, November 26, 1997, 111 Stat 2440

## UNITED STATES PUBLIC LAWS 105th Congress - First Session Convening January 7, 1997

Additions and Deletions are not identified in this document.

PL 105–119 (HR 2267)
November 26, 1997
DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE
JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

An Act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1998, and for other purposes, namely:

## TITLE I—DEPARTMENT OF JUSTICE GENERAL ADMINISTRATION SALARIES AND EXPENSES

For expenses necessary for the administration of the Department of Justice, \$76,199,000, of which not to exceed \$3,317,000 is for the Facilities Program 2000, to remain available until expended: Provided, That not to exceed 43 permanent positions and 44 full-time equivalent workyears and \$7,860,000 shall be expended for the Department Leadership Program exclusive of augmentation that occurred in these offices in fiscal year 1997: Provided further, That not to exceed 41 permanent positions and 48 full-time equivalent workyears and \$4,660,000 shall be expended for the Offices of Legislative Affairs and Public Affairs: Provided further, That the latter two aforementioned offices shall not be augmented by personnel details, temporary transfers of personnel on either a reimbursable or non-reimbursable basis or any other type of formal or informal transfer or reimbursement of personnel or funds on either a temporary or long-term basis.

## COUNTERTERRORISM FUND

For necessary expenses, as determined by the Attorney General, \$20,000,000 to remain available until expended, to reimburse any Department of Justice organization for: (1) the costs incurred in reestablishing the operational capability of an office or facility which has been damaged or destroyed as a result of any domestic or international terrorist incident; (2) the costs of providing support to counter, investigate or prosecute domestic or international terrorism, including payment of rewards in connection with these activities; and (3) the costs of conducting a terrorism threat assessment of Federal agencies and their facilities: Provided, That funds provided under this paragraph shall be available only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act.

In addition, for necessary expenses, as determined by the Attorney General, \$32,700,000, to remain available until expended, to reimburse departments and agencies of the Federal Government for any costs incurred in connection with—

- (1) counterterrorism technology research and development;
- (2) providing training and related equipment for chemical, biological, nuclear, and cyber attack prevention and response capabilities to State and local law enforcement agencies; and
- (3) providing bomb training and response capabilities to State and local law enforcement agencies.

## ADMINISTRATIVE REVIEW AND APPEALS

For expenses necessary for the administration of pardon and clemency petitions and immigration related activities, \$70,007,000.

VIOLENT CRIME REDUCTION PROGRAMS. ADMINISTRATIVE REVIEW AND APPEALS

For activities authorized by section 130005 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended, \$59,251,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund.

#### OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$33,211,000; including not to exceed \$10,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; and for the acquisition, lease, maintenance, and operation of motor vehicles, without regard to the general purchase price limitation for the current fiscal year: Provided, That up to one-tenth of one percent of the Department of Justice's allocation from the Violent Crime Reduction Trust Fund grant programs may be transferred at the discretion of the Attorney General to this account for the audit or other review of such grant programs, as authorized by section 130005 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322).

# UNITED STATES PAROLE COMMISSION SALARIES AND EXPENSES

For necessary expenses of the United States Parole Commission as authorized by law, \$5,009,000.

#### LEGAL ACTIVITIES

## SALARIES AND EXPENSES, GENERAL LEGAL ACTIVITIES

For expenses, necessary for the legal activities of the Department of Justice, not otherwise provided for, including not to exceed \$20,000 for expenses of collecting evidence, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; and rent of private or Government-owned space in the District of Columbia; \$444,200,000; of which not to exceed \$10,000,000 for litigation support contracts shall remain available until expended: Provided, That of the funds available in this appropriation, not to exceed \$17,525,000 shall remain available until expended for office automation systems for the legal divisions covered by this appropriation, and for the United States Attorneys, the Antitrust Division, and offices funded through "Salaries and Expenses", General Administration: Provided further, That of the total amount appropriated, not to exceed \$1,000 shall be available to the United States National Central Bureau, INTERPOL, for official reception and representation expenses.

In addition, for reimbursement of expenses of the Department of Justice associated with processing cases under the National Childhood Vaccine Injury Act of 1986, as amended, not to exceed \$4,028,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

## VIOLENT CRIME REDUCTION PROGRAMS, GENERAL LEGAL ACTIVITIES

For the expeditious deportation of denied asylum applicants, as authorized by section 130005 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended, \$7,969,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund.

#### SALARIES AND EXPENSES, ANTITRUST DIVISION

For expenses necessary for the enforcement of antitrust and kindred laws, \$75,495,000: Provided, That notwithstanding any other provision of law, not to exceed \$70,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18(a)) shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: Provided further, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 1998, so as to result in a final fiscal year 1998 appropriation from the general fund estimated at not more than \$5,495,000: Provided further, That any fees received in excess of \$70,000,000 in fiscal year 1998, shall remain available until expended, but shall not be available for obligation until October 1, 1998.

## SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For necessary expenses of the Office of the United States Attorneys, including intergovernmental and cooperative agreements, \$972,460,000; of which not to exceed \$2,500,000 shall be available until September 30, 1999, for: (1) training personnel in debt collection; (2) locating debtors and their property; (3) paying the net costs of selling property; and (4) tracking debts owed to the United States Government: Provided, That of the total amount appropriated, not to exceed \$8,000 shall be available for official reception and representation expenses: Provided further, That not to exceed \$10,000,000 of those funds available for automated litigation support contracts shall remain available until expended: Provided further, That not to exceed \$1,200,000

for the design, development, and implementation of an information systems strategy for D.C. Superior Court shall remain available until expended: Provided further, That not to exceed \$2,500,000 for the operation of the National Advocacy Center shall remain available until expended: Provided further, That not to exceed \$2,000,000 shall remain available until expended for the expansion of existing Violent Crime Task Forces in United States Attorneys Offices into demonstration projects, including inter-governmental, inter-local, cooperative, and task-force agreements, however denominated, and contracts with State and local prosecutorial and law enforcement agencies engaged in the investigation and prosecution of violent crimes, including bank robbery and carjacking, and drug trafficking: Provided further, That, in addition to reimbursable full-time equivalent workyears available to the Office of the United States Attorneys, not to exceed 8,948 positions and 9,113 full-time equivalent workyears shall be supported from the funds appropriated in this Act for the United States Attorneys.

#### VIOLENT CRIME REDUCTION PROGRAMS, UNITED STATES ATTORNEYS

For activities authorized by sections 40114, 130005, 190001(b), 190001(d), and 250005 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended, and section 815 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), \$62,828,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund.

#### UNITED STATES TRUSTEE SYSTEM FUND

For necessary expenses of the United States Trustee Program, as authorized by 28 U.S.C. 589a(a), \$114,248,000, to remain available until expended and to be derived from the United States Trustee System Fund: Provided, That, notwithstanding any other provision of law, deposits to the Fund shall be available in such amounts as may be necessary to pay refunds due depositors: Provided further, That, notwithstanding any other provision of law, \$114,248,000 of offsetting collections derived from fees collected pursuant to 28 U.S.C. 589a(b) shall be retained and used for necessary expenses in this appropriation and remain available until expended: Provided further, That the sum herein appropriated from the Fund shall be reduced as such offsetting collections are received during fiscal year 1998, so as to result in a final fiscal year 1998 appropriation from the Fund estimated at \$0: Provided further, That any such fees collected in excess of \$114,248,000 in fiscal year 1998 shall remain available until expended but shall not be available for obligation until October 1, 1998.

## SALARIES AND EXPENSES, FOREIGN CLAIMS SETTLEMENT COMMISSION

For expenses necessary to carry out the activities of the Foreign Claims Settlement Commission, including services as authorized by 5 U.S.C. 3109, \$1,226,000.

#### SALARIES AND EXPENSES, UNITED STATES MARSHALS SERVICE

## << 31 USCA § 6505 NOTE >>

For necessary expenses of the United States Marshals Service; including the acquisition, lease, maintenance, and operation of vehicles and aircraft, and the purchase of passenger motor vehicles for police-type use, without regard to the general purchase price limitation for the current fiscal year, \$467,833,000, as authorized by 28 U.S.C. 561(i); of which not to exceed \$6,000 shall be available for official reception and representation expenses; and of which not to exceed \$4,000,000 for development, implementation, maintenance and support, and training for an automated prisoner information system, and not to exceed \$2,200,000 to support the Justice Prisoner and Alien Transportation System, shall remain available until expended: Provided, That, for fiscal year 1998 and thereafter, the service of maintaining and transporting State, local, or territorial prisoners shall be considered a specialized or technical service for purposes of 31 U.S.C. 6505, and any prisoners so transported shall be considered persons (transported for other than commercial purposes) whose presence is associated with the performance of a governmental function for purposes of 49 U.S.C. 40102.

#### VIOLENT CRIME REDUCTION PROGRAMS, UNITED STATES MARSHALS SERVICE

For activities authorized by section 190001(b) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended, \$25,553,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund.

## FEDERAL PRISONER DETENTION

For expenses, related to United States prisoners in the custody of the United States Marshals Service as authorized in 18 U.S.C. 4013, but not including expenses otherwise provided for in appropriations available to the Attorney General, \$405,262,000, as authorized by 28 U.S.C. 561(i), to remain available until expended.

## FEES AND EXPENSES OF WITNESSES

For expenses, mileage, compensation, and per diems of witnesses, for expenses of contracts for the procurement and supervision of expert witnesses, for private counsel expenses, and for per diems in lieu of subsistence, as authorized by law, including advances, \$75,000,000, to remain available until expended; of which not to exceed \$4,750,000 may be made available for planning, construction, renovations, maintenance, remodeling, and repair of buildings, and the purchase of equipment incident thereto, for protected witness safesites; of which not to exceed \$1,000,000 may be made available for the purchase and maintenance of armored vehicles for transportation of protected witnesses; and of which not to exceed \$4,000,000 may be made available for the purchase, installation and maintenance of a secure, automated information network to store and retrieve the identities and locations of protected witnesses.

## SALARIES AND EXPENSES, COMMUNITY RELATIONS SERVICE

For necessary expenses of the Community Relations Service, established by title X of the Civil Rights Act of 1964, \$5,319,000 and, in addition, up to \$2,000,000 of funds made available to the Department of Justice in this Act may be transferred by the Attorney General to this account: Provided, That notwithstanding any other provision of law, upon a determination by the Attorney General that emergent circumstances require additional funding for conflict prevention and resolution activities of the Community Relations Service, the Attorney General may transfer such amounts to the Community Relations Service, from available appropriations for the current fiscal year for the Department of Justice, as may be necessary to respond to such circumstances: Provided further, That any transfer pursuant to the previous proviso shall be treated as a reprogramming under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

## ASSETS FORFEITURE FUND

For expenses authorized by 28 U.S.C. 524(c)(1)(A)(ii), (B), (F), and (G), as amended, \$23,000,000, to be derived from the Department of Justice Assets Forfeiture Fund.

# RADIATION EXPOSURE COMPENSATION ADMINISTRATIVE EXPENSES

For necessary administrative expenses in accordance with the Radiation Exposure Compensation Act, \$2,000,000.

## PAYMENT TO RADIATION EXPOSURE COMPENSATION TRUST FUND

For payments to the Radiation Exposure Compensation Trust Fund, \$4,381,000.

## INTERAGENCY LAW ENFORCEMENT

#### INTERAGENCY CRIME AND DRUG ENFORCEMENT

For necessary expenses for the detection, investigation, and prosecution of individuals involved in organized crime drug trafficking not otherwise provided for, to include intergovernmental agreements with State and local law enforcement agencies engaged in the investigation and prosecution of individuals involved in organized crime drug trafficking, \$294,967,000, of which \$50,000,000 shall remain available until expended: Provided, That any amounts obligated from appropriations under this heading may be used under authorities available to the organizations reimbursed from this appropriation: Provided further, That any unobligated balances remaining available at the end of the fiscal year shall revert to the Attorney General for reallocation among participating organizations in succeeding fiscal years, subject to the reprogramming procedures described in section 605 of this Act.

## FEDERAL BUREAU OF INVESTIGATION SALARIES AND EXPENSES

For necessary expenses of the Federal Bureau of Investigation for detection, investigation, and prosecution of crimes against the United States; including purchase for police-type use of not to exceed 3,094 passenger motor vehicles, of which 2,270 will be for replacement only, without regard to the general purchase price limitation for the current fiscal year, and hire of passenger motor vehicles; acquisition, lease, maintenance, and operation of aircraft; and not to exceed \$70,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General, \$2,750,921,000; of which not to exceed \$50,000,000 for automated data processing and telecommunications and technical investigative equipment and not to exceed \$1,000,000 for undercover operations shall remain available until September 30, 1999; of which not less than \$221,050,000 shall be for counterterrorism investigations, foreign counterintelligence, and other activities related to our national security; of which not to exceed \$98,400,000 shall remain available until expended; of which not to exceed \$10,000,000 is authorized to be made available for making advances for expenses arising out of contractual or reimbursable agreements with State and local law enforcement agencies while engaged in

cooperative activities related to violent crime, terrorism, organized crime, and drug investigations; and of which \$1,500,000 shall be available to maintain an independent program office dedicated solely to the relocation of the Criminal Justice Information Services Division and the automation of fingerprint identification services: Provided, That not to exceed \$45,000 shall be available for official reception and representation expenses: Provided further, That no funds in this Act may be used to provide ballistics imaging equipment to any State or local authority which has obtained similar equipment through a Federal grant or subsidy unless the State or local authority agrees to return that equipment or to repay that grant or subsidy to the Federal Government.

#### VIOLENT CRIME REDUCTION PROGRAMS

For activities authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended ("the 1994 Act"), and the Antiterrorism and Effective Death Penalty Act of 1996 ("the Antiterrorism Act"), \$179,121,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund; of which \$102,127,000 shall be for activities authorized by section 190001(c) of the 1994 Act and section 811 of the Antiterrorism Act; \$57,994,000 shall be for activities authorized by section 190001(b) of the 1994 Act; \$4,000,000 shall be for training and investigative assistance authorized by section 210501 of the 1994 Act; \$9,500,000 shall be for grants to States, as authorized by section 811(b) of the Antiterrorism Act; and \$5,500,000 shall be for establishing DNA quality-assurance and proficiency-testing standards, establishing an index to facilitate law enforcement exchange of DNA identification information, and related activities authorized by section 210501 of the 1994 Act.

#### CONSTRUCTION

For necessary expenses to construct or acquire buildings and sites by purchase, or as otherwise authorized by law (including equipment for such buildings); conversion and extension of federally owned buildings; and preliminary planning and design of projects; \$44,506,000, to remain available until expended.

# DRUG ENFORCEMENT ADMINISTRATION SALARIES AND EXPENSES

For necessary expenses of the Drug Enforcement Administration, including not to exceed \$70,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; expenses for conducting drug education and training programs, including travel and related expenses for participants in such programs and the distribution of items of token value that promote the goals of such programs; purchase of not to exceed 1,602 passenger motor vehicles, of which 1,410 will be for replacement only, for police-type use without regard to the general purchase price limitation for the current fiscal year; and acquisition, lease, maintenance, and operation of aircraft; \$723,841,000, of which not to exceed \$1,800,000 for research and \$15,000,000 for transfer to the Drug Diversion Control Fee Account for operating expenses shall remain available until expended, and of which not to exceed \$4,000,000 for purchase of evidence and payments for information, not to exceed \$10,000,000 for contracting for automated data processing and telecommunications equipment, and not to exceed \$2,000,000 for laboratory equipment, \$4,000,000 for technical equipment, and \$2,000,000 for aircraft replacement retrofit and parts, shall remain available until September 30, 1999; and of which not to exceed \$50,000 shall be available for official reception and representation expenses.

### VIOLENT CRIME REDUCTION PROGRAMS

For activities authorized by sections 180104 and 190001(b) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended, and section 814 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), \$403,537,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund.

## CONSTRUCTION

For necessary expenses to construct or acquire buildings and sites by purchase, or as otherwise authorized by law (including equipment for such buildings); conversion and extension of federally owned buildings; and preliminary planning and design of projects; \$8,000,000, to remain available until expended.

IMMIGRATION AND NATURALIZATION SERVICE SALARIES AND EXPENSES

<< 8 USCA § 1103 NOTE >>

#### << 8 USCA § 1446 NOTE >>

For expenses, not otherwise provided for, necessary for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, including not to exceed \$50,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; purchase for police-type use (not to exceed 2,904 passenger motor vehicles, of which 1,711 are for replacement only), without regard to the general purchase price limitation for the current fiscal year, and hire of passenger motor vehicles; acquisition, lease, maintenance and operation of aircraft; research related to immigration enforcement; and for the care and housing of Federal detainees held in the joint Immigration and Naturalization Service and United States Marshals Service's Buffalo Detention Facility; \$1,657,886,000 of which not to exceed \$400,000 for research shall remain available until expended; of which not to exceed \$10,000,000 shall be available for costs associated with the training program for basic officer training, and \$5,000,000 is for payments or advances arising out of contractual or reimbursable agreements with State and local law enforcement agencies while engaged in cooperative activities related to immigration; and of which not to exceed \$5,000,000 is to fund or reimburse other Federal agencies for the costs associated with the care, maintenance, and repatriation of smuggled illegal aliens: Provided, That none of the funds available to the Immigration and Naturalization Service shall be available to pay any employee overtime pay in an amount in excess of \$30,000 during the calendar year beginning January 1, 1998: Provided further, That uniforms may be purchased without regard to the general purchase price limitation for the current fiscal year: Provided further, That not to exceed \$5,000 shall be available for official reception and representation expenses: Provided further, That none of the funds provided in this or any other Act shall be used for the continued operation of the San Clemente and Temecula checkpoints unless the checkpoints are open and traffic is being checked on a continuous 24-hour basis: Provided further, That not to exceed 43 permanent positions and 43 full-time equivalent workyears and \$4,167,000 shall be expended for the Office of Legislative Affairs and Public Affairs: Provided further, That the latter two aforementioned offices shall not be augmented by personnel details, temporary transfers of personnel on either a reimbursable or non-reimbursable basis or any other type of formal or informal transfer or reimbursement of personnel or funds on either a temporary or long-term basis: Provided further, That beginning seven calendar days after the enactment of this Act and for each fiscal year thereafter, none of the funds appropriated or otherwise made available to the Immigration and Naturalization Service may be used by the Immigration and Naturalization Service to accept, for the purpose of conducting criminal background checks on applications for any benefit under the Immigration and Nationality Act, any FD-258 fingerprint card which has been prepared by or received from any individual or entity other than an office of the Immigration and Naturalization Service with the following exceptions: (1) State and local law enforcement agencies; and (2) United States consular offices at United States embassies and consulates abroad under the jurisdiction of the Department of State or United States military offices under the jurisdiction of the Department of Defense authorized to perform fingerprinting services to prepare FD-258 fingerprint cards for applicants residing abroad applying for immigration benefits: Provided further, That agencies may collect and retain a fee for fingerprinting services: Provided further, That, during fiscal year 1998 and each fiscal year thereafter, none of the funds appropriated or otherwise made available to the Immigration and Naturalization Service shall be used to complete adjudication of an application for naturalization unless the Immigration and Naturalization Service has received confirmation from the Federal Bureau of Investigation that a full criminal background check has been completed, except for those exempted by regulation as of January 1, 1997: Provided further, That the number of positions filled through non-career appointment at the Immigration and Naturalization Service, for which funding is provided in this Act or is otherwise made available to the Immigration and Naturalization Service, shall not exceed four permanent positions and four full-time equivalent workyears after July 1, 1998: Provided further, That notwithstanding any other provision of law, during fiscal year 1998, the Attorney General is authorized and directed to impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, for any employee of the Immigration and Naturalization Service who violates policies and procedures set forth by the Department of Justice relative to the granting of citizenship or who willfully deceives the Congress or department leadership on any matter.

### VIOLENT CRIME REDUCTION PROGRAMS

For activities authorized by sections 130002, 130005, 130006, 130007, and 190001(b) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended, and section 813 of the Antiterrorism and Effective Death Penalty

Act of 1996 (Public Law 104–132), \$608,206,000, to remain available until expended, which will be derived from the Violent Crime Reduction Trust Fund.

#### CONSTRUCTION

For planning, construction, renovation, equipping, and maintenance of buildings and facilities necessary for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, not otherwise provided for, \$75,959,000, to remain available until expended.

# FEDERAL PRISON SYSTEM SALARIES AND EXPENSES

<< 42 USCA § 250a >>

For expenses necessary for the administration, operation, and maintenance of Federal penal and correctional institutions, including purchase (not to exceed 834, of which 599 are for replacement only) and hire of law enforcement and passenger motor vehicles, and for the provision of technical assistance and advice on corrections related issues to foreign governments; \$2,821,642,000: Provided, That the Attorney General may transfer to the Health Resources and Services Administration such amounts as may be necessary for direct expenditures by that Administration such amoutns as may be necessary for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions: Provided further, That the Director of the Federal Prison System (FPS), where necessary, may enter into contracts with a fiscal agent/fiscal intermediary claims processor to determine the amounts payable to persons who, on behalf of the FPS, furnish health services to individuals committed to the custody of the FPS: Provided further, That uniforms may be purchased without regard to the general purchase price limitation for the current fiscal year: Provided further, That not to exceed \$6,000 shall be available for official reception and representation expenses: Provided further, That not to exceed \$90,000,000 for the activation of new facilities shall remain available until September 30, 1999: Provided further, That of the amounts provided for Contract Confinement, not to exceed \$20,000,000 shall remain available until expended to make payments in advance for grants, contracts and reimbursable agreements, and other expenses authorized by section 501(c) of the Refugee Education Assistance Act of 1980, as amended, for the care and security in the United States of Cuban and Haitian entrants: Provided further, That notwithstanding section 4(d) of the Service Contract Act of 1965 (41 U.S.C. 353(d)), FPS may enter into contracts and other agreements with private entities for periods of not to exceed 3 years and 7 additional option years for the confinement of Federal prisoners.

#### VIOLENT CRIME REDUCTION PROGRAMS

For substance abuse treatment in Federal prisons as authorized by section 32001(e) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), as amended, \$26,135,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund.

### **BUILDINGS AND FACILITIES**

For planning, acquisition of sites and construction of new facilities; leasing the Oklahoma City Airport Trust Facility; purchase and acquisition of facilities and remodeling, and equipping of such facilities for penal and correctional use, including all necessary expenses incident thereto, by contract or force account; and constructing, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions, including all necessary expenses incident thereto, by contract or force account; \$255,133,000 to remain available until expended, of which not to exceed \$14,074,000 shall be available to construct areas for inmate work programs: Provided, That labor of United States prisoners may be used for work performed under this appropriation: Provided further, That not to exceed 10 percent of the funds appropriated to "Buildings and Facilities" in this Act or any other Act may be transferred to "Salaries and Expenses", Federal Prison System, upon notification by the Attorney General to the Committees on Appropriations of the House of Representatives and the Senate in compliance with provisions set forth in section 605 of this Act: Provided further, That, of the total amount appropriated, not to exceed \$2,300,000 shall be available for the renovation and construction of United States Marshals Service prisoner-holding facilities.

### FEDERAL PRISON INDUSTRIES, INCORPORATED

The Federal Prison Industries, Incorporated, is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available, and in accord with the law, and to make such contracts and commitments, without regard to fiscal year limitations as provided by section 9104 of title 31, United States Code, as may be necessary in carrying out the program set forth in the budget for the current fiscal year for such corporation, including purchase of (not to exceed five for replacement only) and hire of passenger motor vehicles.

#### LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL PRISON INDUSTRIES, INCORPORATED

Not to exceed \$3,266,000 of the funds of the corporation shall be available for its administrative expenses, and for services as authorized by 5 U.S.C. 3109, to be computed on an accrual basis to be determined in accordance with the corporation's current prescribed accounting system, and such amounts shall be exclusive of depreciation, payment of claims, and expenditures which the said accounting system requires to be capitalized or charged to cost of commodities acquired or produced, including selling and shipping expenses, and expenses in connection with acquisition, construction, operation, maintenance, improvement, protection, or disposition of facilities and other property belonging to the corporation or in which it has an interest.

# OFFICE OF JUSTICE PROGRAMS JUSTICE ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Missing Children's Assistance Act, as amended, including salaries and expenses in connection therewith, and with the Victims of Crime Act of 1984, as amended, and sections 819 and 821 of the Antiterrorism and Effective Death Penalty Act of 1996, \$173,600,000, to remain available until expended, as authorized by section 1001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by Public Law 102–534 (106 Stat. 3524); of which \$25,000,000 is for the National Sexual Offender Registry: Provided, That, of funds appropriated under this heading, such funds are available as may be necessary to carry out the orderly termination of the Ounce of Prevention Council.

### STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, for State and Local Narcotics Control and Justice Assistance Improvements, notwithstanding the provisions of section 511 of said Act, \$509,000,000, to remain available until expended, as authorized by section 1001 of title I of said Act, as amended by Public Law 102–534 (106 Stat. 3524), of which \$46,500,000 shall be available to carry out the provisions of chapter A of subpart 2 of part E of title I of said Act, for discretionary grants under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, including \$2,097,000 which shall be available to the Executive Office of United States Attorneys to support the National District Attorneys Association's participation in legal education training at the National Advocacy Center.

#### VIOLENT CRIME REDUCTION PROGRAMS. STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For assistance (including amounts for administrative costs for management and administration, which amounts shall be transferred to and merged with the "Justice Assistance" account) authorized by the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), as amended ("the 1994 Act"); the Omnibus Crime Control and Safe Streets Act of 1968, as amended ("the 1968 Act"); and the Victims of Child Abuse Act of 1990, as amended ("the 1990 Act"); \$2,382,400,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund; of which \$523,000,000 shall be for Local Law Enforcement Block Grants, pursuant to H.R. 728 as passed by the House of Representatives on February 14, 1995, except that for purposes of this Act, the Commonwealth of Puerto Rico shall be considered a "unit of local government" as well as a "State", for the purposes set forth in subparagraphs (A), (B), (D), (F), and (I) of section 101(a)(2) of H.R. 728 and for establishing crime prevention programs involving cooperation between community residents and law enforcement personnel in order to control, detect, or investigate crime or the prosecution of criminals: Provided, That no funds provided under this heading may be used as matching funds for any other Federal grant program: Provided further, That \$20,000,000 of this amount shall be for Boys and Girls Clubs in public housing facilities and other areas in cooperation with State and local law enforcement: Provided further, That funds may also be used to defray the costs of indemnification insurance for law enforcement officers: Provided further, That for the purpose of eligibility for the Local Law Enforcement Block Grant Program in the State of Louisiana, parish sheriffs are to be considered the unit of local government under section 108 of H.R. 728; of which \$45,000,000 shall be for grants to upgrade criminal records, as authorized by section 106(b) of the Brady Handgun Violence Prevention Act of 1993, as amended, and section 4(b) of the National Child Protection Act of 1993; of which \$42,500,000 shall be available as authorized by section 1001 of title I of the 1968 Act, to carry out the provisions of subpart 1, part E of title I of the 1968 Act notwithstanding section 511 of said Act, for the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs; of which \$420,000,000 shall be for the State Criminal Alien Assistance Program, as authorized by section 242(j) of the Immigration and Nationality Act, as amended; of which \$720,500,000 shall be for Violent Offender Incarceration and Truth in Sentencing Incentive Grants pursuant to subtitle A of title II of the 1994 Act, of which \$165,000,000 shall be available for payments to States for incarceration of criminal aliens, of which \$25,000,000 shall be available for the Cooperative

Agreement Program, and of which \$5,000,000 shall be reserved by the Attorney General for fiscal year 1998 under section 20109(a) of subtitle A of title II of the 1994 Act; of which \$7,000,000 shall be for the Court Appointed Special Advocate Program, as authorized by section 218 of the 1990 Act; of which \$2,000,000 shall be for Child Abuse Training Programs for Judicial Personnel and Practitioners, as authorized by section 224 of the 1990 Act; of which \$172,000,000 shall be for Grants to Combat Violence Against Women, to States, units of local government, and Indian tribal governments, as authorized by section 1001(a)(18) of the 1968 Act, including \$12,000,000 which shall be used exclusively for the purpose of strengthening civil legal assistance programs for victims of domestic violence: Provided further, That, of these funds, \$7,000,000 shall be provided to the National Institute of Justice for research and evaluation of violence against women and \$853,000 shall be provided to the Office of the United States Attorney for the District of Columbia for domestic violence programs in D.C. Superior Court; of which \$59,000,000 shall be for Grants to Encourage Arrest Policies to States, units of local government, and Indian tribal governments, as authorized by section 1001(a)(19) of the 1968 Act; of which \$25,000,000 shall be for Rural Domestic Violence and Child Abuse Enforcement Assistance Grants, as authorized by section 40295 of the 1994 Act; of which \$2,000,000 shall be for training programs to assist probation and parole officers who work with released sex offenders, as authorized by section 40152(c) of the 1994 Act; of which \$1,000,000 shall be for grants for televised testimony, as authorized by section 1001(a)(7) of the 1968 Act; of which \$2,750,000 shall be for national stalker and domestic violence reduction, as authorized by section 40603 of the 1994 Act; of which \$63,000,000 shall be for grants for residential substance abuse treatment for State prisoners, as authorized by section 1001(a)(17) of the 1968 Act; of which \$12,500,000 shall be for grants to States and units of local government for projects to improve DNA analysis, as authorized by section 1001(a)(22) of the 1968 Act; of which \$900,000 shall be for the Missing Alzheimer's Disease Patient Alert Program, as authorized by section 240001(c) of the 1994 Act; of which \$750,000 shall be for Motor Vehicle Theft Prevention Programs, as authorized by section 220002(h) of the 1994 Act; of which \$30,000,000 shall be for Drug Courts, as authorized by title V of the 1994 Act; of which \$1,000,000 shall be for Law Enforcement Family Support Programs, as authorized by section 1001(a)(21) of the 1968 Act; of which \$2,500,000 shall be for public awareness programs addressing marketing scams aimed at senior citizens, as authorized by section 250005(3) of the 1994 Act; and of which \$250,000,000 shall be for Juvenile Accountability Incentive Block Grants pursuant to title III of H.R. 3 as passed by the House of Representatives on May 8, 1997: Provided further, That notwithstanding the requirements of H.R. 3, a State, or unit of local government within such State, shall be eligible for a grant under this program if the Governor of the State certifies to the Attorney General, consistent with guidelines established by the Attorney General in consultation with Congress, that the State is actively considering, or will consider within one year from the date of such certification, legislation, policies, or practices which if enacted would qualify the State for a grant under section 1802 of H.R. 3: Provided further, That 3 percent shall be available to the Attorney General for research, evaluation, and demonstration consistent with this program and 2 percent shall be available to the Attorney General for training and technical assistance consistent with this program: Provided further, That not less than 45 percent of any grant provided to a State or unit of local government shall be spent for the purposes set forth in paragraphs (3) through (9), and not less than 35 percent shall be spent for the purposes set forth in paragraphs (1), (2), and (10) of section 1801(b) of H.R. 3, unless the State or unit of local government certifies to the Attorney General or the State, whichever is appropriate, that the interests of public safety and juvenile crime control would be better served by expending its grant for other purposes set forth under section 1801(b) of H.R. 3: Provided further, That the Federal share limitation in section 1805(e) of H.R. 3 shall be 50 percent in relation to the costs of constructing a permanent juvenile corrections facility: Provided further, That prior to receiving a grant under this program, a unit of local government must establish a coordinated enforcement plan for reducing juvenile crime, developed by a juvenile crime enforcement coalition, such coalition consisting of individuals representing the police, sheriff, prosecutor, State or local probation services, juvenile court, schools, business, and religious affiliated, fraternal, non-profit, or social service organizations involved in crime prevention: Provided further, That the conditions of sections 1802(a)(3) and 1802(b)(1)(C) of H.R. 3 regarding juvenile adjudication records require a State or unit of local government to make available to the Federal Bureau of Investigation records of delinquency adjudications which are treated in a manner equivalent to adult records: Provided further, That no State or unit of local government may receive a grant under this program unless such State or unit of local government has implemented, or will implement no later than January 1, 1999, a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system and funds received under this program may be expended for such purpose: Provided further, That the minimum allocation for each State under section 1803(a)(1)(A) of H.R. 3 shall be 0.5 percent: Provided further, That the terms and conditions under this heading for juvenile accountability incentive block grants are effective for fiscal year 1998 only and upon the enactment of authorization legislation for juvenile accountability incentive block grants, funding provided in this Act shall from that date be subject to the provisions of that legislation and any provisions in this Act that are inconsistent with that legislation shall no longer have effect: Provided further, That funds made available in fiscal year 1998 under subpart 1 of part E of title I of the 1968 Act may be obligated for programs to assist States in the litigation processing of death penalty Federal habeas corpus petitions and for drug testing initiatives: Provided further, That if a unit of local government uses any of the funds made available under this title to increase the number of law enforcement officers, the unit of local government will achieve a net gain in the number of law enforcement officers who perform nonadministrative public safety service.

#### WEED AND SEED PROGRAM FUND

For necessary expenses, including salaries and related expenses of the Executive Office for Weed and Seed, to implement "Weed and Seed" program activities, \$33,500,000, for intergovernmental agreements, including grants, cooperative agreements, and contracts, with State and local law enforcement agencies engaged in the investigation and prosecution of violent crimes and drug offenses in "Weed and Seed" designated communities, and for either reimbursements or transfers to appropriation accounts of the Department of Justice and other Federal agencies which shall be specified by the Attorney General to execute the "Weed and Seed" program strategy: Provided, That funds designated by Congress through language for other Department of Justice appropriation accounts for "Weed and Seed" program activities shall be managed and executed by the Attorney General through the Executive Office for Weed and Seed: Provided further, That the Attorney General may direct the use of other Department of Justice funds and personnel in support of "Weed and Seed" program activities only after the Attorney General notifies the Committees on Appropriations of the House of Representatives and the Senate in accordance with section 605 of this Act.

#### COMMUNITY ORIENTED POLICING SERVICES

#### VIOLENT CRIME REDUCTION PROGRAMS

For activities authorized by the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322 ("the 1994 Act") (including administrative costs), \$1,400,000,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund, for Public Safety and Community Policing Grants pursuant to title I of the 1994 Act: Provided, That not to exceed 186 permanent positions and 186 full-time equivalent workyears and \$20,553,000 shall be expended for program management and administration: Provided further, That of the unobligated balances available in this program, \$103,000,000 shall be used for innovative community policing programs, of which \$38,000,000 shall be used for a law enforcement technology program, \$1,000,000 shall be used for a law enforcement technology program, \$1,000,000 shall be used for policing initiatives to combat methamphetamine production and trafficking, \$12,500,000 shall be used for the Community Policing to Combat Domestic Violence Program pursuant to section 1701(d) of part Q of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and \$17,500,000 shall be used for other innovative community policing programs, such as programs to improve the safety of elementary and secondary school children, reduce crime on or near elementary and secondary school grounds, and enhance policing initiatives in drug "hot spots".

In addition, for programs of Police Corps education, training and service as set forth in sections 200101–200113 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), \$30,000,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund.

#### JUVENILE JUSTICE PROGRAMS

For grants, contracts, cooperative agreements, and other assistance authorized by the Juvenile Justice and Delinquency Prevention Act of 1974, as amended ("the Act"), including salaries and expenses in connection therewith to be transferred to and merged with the appropriations for Justice Assistance, \$201,672,000, to remain available until expended, as authorized by section 299 of part I of title II and section 506 of title V of the Act, as amended by Public Law 102–586, of which: (1) notwithstanding any other provision of law, \$5,922,000 shall be available for expenses authorized by part A of title II of the Act, \$96,500,000 shall be available for expenses authorized by part B of title II of the Act, and \$45,250,000 shall be available for expenses authorized by part C of title II of the Act: Provided, That \$26,500,000 of the amounts provided for part B of title II of the Act, as amended, is for the purpose of providing additional formula grants under part B to States that provide assurances to the Administrator that the State has in effect (or will have in effect no later than one year after date of application) policies and programs, that ensure that juveniles are subject to accountability-based sanctions for every act for which they are adjudicated delinquent; (2) \$12,000,000 shall be available for expenses authorized by sections 281 and 282 of part D of title II of the Act for prevention and treatment programs relating to juvenile gangs; (3) \$10,000,000 shall be available for expenses

authorized by section 285 of part E of title II of the Act; (4) \$12,000,000 shall be available for expenses authorized by part G of title II of the Act for juvenile mentoring programs; and (5) \$20,000,000 shall be available for expenses authorized by title V of the Act for incentive grants for local delinquency prevention programs: Provided further, That upon the enactment of reauthorization legislation for Juvenile Justice Programs under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, funding provisions in this Act shall from that date be subject to the provisions of that legislation and any provisions in this Act that are inconsistent with that legislation shall no longer have effect.

In addition, for grants, contracts, cooperative agreements, and other assistance, \$5,000,000 to remain available until expended, for developing, testing, and demonstrating programs designed to reduce drug use among juveniles.

In addition, \$25,000,000 shall be available for grants of \$360,000 to each State and \$6,640,000 shall be available for discretionary grants to States, for programs and activities to enforce State laws prohibiting the sale of alcoholic beverages to minors or the purchase or consumption of alcoholic beverages to minors or the purchase or consumption of alcoholic beverages by minors, prevention and reduction of consumption of alcoholic beverages by minors, and for technical assistance and training. In addition, for grants, contracts, cooperative agreements, and other assistance authorized by the Victims of Child Abuse Act of 1990, as amended, \$7,000,000, to remain available until expended, as authorized by section 214B of the Act.

#### PUBLIC SAFETY OFFICERS BENEFITS

To remain available until expended, for payments authorized by part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796), as amended, such sums as are necessary, as authorized by section 6093 of Public Law 100–690 (102 Stat. 4339–4340); and \$2,000,000 for the Federal Law Enforcement Education Assistance Program, as authorized by section 1212 of said Act.

#### GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

SEC. 101. In addition to amounts otherwise made available in this title for official reception and representation expenses, a total of not to exceed \$45,000 from funds appropriated to the Department of Justice in this title shall be available to the Attorney General for official reception and representation expenses in accordance with distributions, procedures, and regulations established by the Attorney General.

SEC. 102. Authorities contained in the Department of Justice Appropriation Authorization Act, Fiscal Year 1980 (Public Law 96–132; 93 Stat. 1040 (1979)), as amended, shall remain in effect until the termination date of this Act or until the effective date of a Department of Justice Appropriation Authorization Act, whichever is earlier.

SEC. 103. None of the funds appropriated by this title shall be available to pay for an abortion, except where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape: Provided, That should this prohibition be declared unconstitutional by a court of competent jurisdiction, this section shall be null and void.

SEC. 104. None of the funds appropriated under this title shall be used to require any person to perform, or facilitate in any way the performance of, any abortion.

SEC. 105. Nothing in the preceding section shall remove the obligation of the Director of the Bureau of Prisons to provide escort services necessary for a female inmate to receive such service outside the Federal facility: Provided, That nothing in this section in any way diminishes the effect of section 104 intended to address the philosophical beliefs of individual employees of the Bureau of Prisons.

#### << 18 USCA § 3059 NOTE >>

SEC. 106. Notwithstanding any other provision of law, not to exceed \$10,000,000 of the funds made available in this Act may be used to establish and publicize a program under which publicly advertised, extraordinary rewards may be paid, which shall not be subject to spending limitations contained in sections 3059 and 3072 of title 18, United States Code: Provided, That any reward of \$100,000 or more, up to a maximum of \$2,000,000, may not be made without the personal approval of the President or the Attorney General and such approval may not be delegated.

SEC. 107. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Justice in this Act, including those derived from the Violent Crime Reduction Trust Fund, may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: Provided, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation except in compliance with the procedures set forth in that section.

SEC. 108. Section 524(c)(8)(E) of title 28, United States Code, is amended by striking "1996" and inserting "1997 and thereafter".

SEC. 109. (a) Section 1402(d) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)), is amended—

- (1) by striking paragraph (1); and
- (2) in paragraph (2), by striking "the next" and inserting "The first".

(b) Any unobligated sums hitherto available to the judicial branch pursuant to the paragraph repealed by subsection (a) shall be deemed to be deposits into the Crime Victims Fund as of the effective date hereof and may be used by the Director of the Office for Victims of Crime to improve services for the benefit of crime victims, including the processing and tracking of criminal monetary penalties and related litigation activities, in the Federal criminal justice system.

SEC. 110. The Immigration and Nationality Act of 1952, as amended, is further amended—

- (1) by striking entirely section 286(s);
- (2) in section 286(r) by—
- (A) adding ", and amount described in section 245(i)(3)(b)" after "recovered by the Department of Justice" in paragraph (2);
- (B) replacing "Immigration and Naturalization Service" with "Attorney General" in paragraph (3); and
- (C) striking paragraph (4), and replacing it with, "The amounts required to be refunded from the Fund for fiscal year 1998 and thereafter shall be refunded in accordance with estimates made in the budget request of the President for those fiscal years. Any proposed changes in the amounts designated in such budget requests shall only be made after Congressional reprogramming notification in accordance with the reprogramming guidelines for the applicable fiscal year."; and

(3) in section 245(i)(3)(B), by replacing "Immigration Detention Account established under section 286(s)" with "Breached Bond/Detention Fund established under section 286(r)".

- SEC. 111. (a) LIMITATION ON ELIGIBILITY UNDER SECTION 245(i).—Section 245(i)(1) of the Immigration and Nationality Act (8 U.S.C. 1255(i)(1)) is amended by striking "(i)(1)" through "The Attorney General" and inserting the following:
- "(i)(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States—
  - "(A) who-
  - "(i) entered the United States without inspection; or
  - "(ii) is within one of the classes enumerated in subsection (c) of this section; and
- "(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 203(d)) of—
- "(i) a petition for classification under section 204 that was filed with the Attorney General on or before January 14, 1998; or
- "(ii) an application for a labor certification under section 212(a)(5)(A) that was filed pursuant to the regulations of the Secretary of Labor on or before such date;

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General".

#### << 8 USCA § 1182 NOTE >>

- (b) REPEAL OF SUNSET FOR SECTION 245(i).—Section 506(c) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995 (Public Law 103–317; 108 Stat. 1766) is amended to read as follows:
- "(c) The amendment made by subsection (a) shall take effect on October 1, 1994, and shall cease to have effect on October 1, 1997. The amendment made by subsection (b) shall take effect on October 1, 1994.".

- (c) INAPPLICABILITY OF CERTAIN PROVISIONS OF SECTION 245(c) FOR CERTAIN EMPLOYMENT–BASED IMMIGRANTS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—
  - (1) in subsection (c)(2), by inserting "subject to subsection (k)," after "(2)"; and
  - (2) by adding at the end the following:
- "(k) An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 203(b) (or, in the case of an alien who is an immigrant described in section 101(a)(27)(C), under section 203(b)(4)) may adjust status pursuant to subsection (a) and notwithstanding subsection (c)(2), (c)(7), and (c)(8), if—
- "(1) the alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;
- "(2) the alien, subsequent to such lawful admission has not, for an aggregate period exceeding 180 days—
- "(A) failed to maintain, continuously, a lawful status;
- "(B) engaged in unauthorized employment; or
- "(C) otherwise violated the terms and conditions of the alien's admission.".

#### << 8 USCA § 1101 NOTE >>

SEC. 112. (a) SHORT TITLE.—This section may be cited as the "Philippine Army, Scouts, and Guerilla Veterans of World War II Naturalization Act of 1997".

### << 8 USCA § 1440 NOTE >>

- (b) IN GENERAL.—Section 405 of the Immigration and Nationality Act of 1990 (8 U.S.C. 1440 note) is amended—
- (1) by striking subparagraph (B) of subsection (a)(1) and inserting the following:
- "(B) who-
- "(i) is listed on the final roster prepared by the Recovered Personnel Division of the United States Army of those who served honorably in an active duty status within the Philippine Army during the World War II occupation and liberation of the Philippines,
- "(ii) is listed on the final roster prepared by the Guerilla Affairs Division of the United States Army of those who received recognition as having served honorably in an active duty status within a recognized guerilla unit during the World War II occupation and liberation of the Philippines, or
- "(iii) served honorably in an active duty status within the Philippine Scouts or within any other component of the United States Armed Forces in the Far East (other than a component described in clause (i) or (ii)) at any time during the period beginning September 1, 1939, and ending December 31, 1946:";
- (2) by adding at the end of subsection (a) the following new paragraph:
- "(3)(A) For purposes of the second sentence of section 329(a) and section 329(b)(3) of the Immigration and Nationality Act, the executive department under which a person served shall be—
- "(i) in the case of an applicant claiming to have served in the Philippine Army, the United States Department of the Army;
- "(ii) in the case of an applicant claiming to have served in a recognized guerilla unit, the United States Department of the Army; or

- "(iii) in the case of an applicant claiming to have served in the Philippine Scouts or any other component of the United States Armed Forces in the Far East (other than a component described in clause (i) or (ii)) at any time during the period beginning September 1, 1939, and ending December 31, 1946, the United States executive department (or successor thereto) that exercised supervision over such component.
- "(B) An executive department specified in subparagraph (A) may not make a determination under the second sentence of section 329(a) with respect to the service or separation from service of a person described in paragraph (1) except pursuant to a request from the Service.": and
- (3) by adding at the end the following new subsection:
- "(d) IMPLEMENTATION.—(1) Notwithstanding any other provision of law, for purposes of the naturalization of natives of the Philippines under this section—
- "(A) the processing of applications for naturalization, filed in accordance with the provisions of this section, including necessary interviews, shall be conducted in the Philippines by employees of the Service designated pursuant to section 335(b) of the Immigration and Nationality Act; and
- "(B) oaths of allegiance for applications for naturalization under this section shall be administered in the Philippines by employees of the Service designated pursuant to section 335(b) of that Act.
- "(2) Notwithstanding paragraph (1), applications for naturalization, including necessary interviews, may continue to be processed, and oaths of allegiance may continue to be taken in the United States.".

#### << 8 USCA § 1440 NOTE >>

- (c) REPEAL.—Section 113 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1440 note), is repealed.
- (d) EFFECTIVE DATE; TERMINATION DATE.—
- (1) APPLICATION TO PENDING APPLICATIONS.—The amendments made by subsection (b) shall apply to applications filed before February 3, 1995.
- (2) TERMINATION DATE.—The authority provided by the amendments made by subsection (b) shall expire February 3, 2001.

#### << 8 USCA § 1101 >>

- SEC. 113. Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:
  - "(J) an immigrant who is present in the United States—
  - "(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;
  - "(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
  - "(iii) in whose case the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status; except that—
  - "(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction; and
  - "(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or".
- SEC. 114. Not to exceed \$200,000 of funds appropriated under section 1304 of title 31, United States Code, shall be available for payment pursuant to the Hearing Officer's Report in United States Court of Federal Claims No. 93–645X (June 3, 1996) (see 35 Fed.Cl. 99 (March 7, 1996)).
- SEC. 115. (a) STANDARDS FOR SEX OFFENDER REGISTRATION PROGRAMS.—

<< 42 USCA § 14071 >>

- (1) IN GENERAL.—Section 170101(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a)) is amended—
  - (A) in paragraph (1)—
  - (i) in subparagraph (A), by striking "with a designated State law enforcement agency"; and
  - (ii) in subparagraph (B), by striking "with a designated State law enforcement agency";
  - (B) by striking paragraph (2) and inserting the following:
- "(2) DETERMINATION OF SEXUALLY VIOLENT PREDATOR STATUS; WAIVER; ALTERNATIVE MEASURES.—
- "(A) IN GENERAL.—A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.
- "(B) WAIVER.—The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.
- "(C) ALTERNATIVE MEASURES.—The Attorney General may also approve alternative measures of comparable or greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators.";
- (C) in paragraph (3)—
- (i) in subparagraph (A), by striking "that consists of—" and inserting "in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:";
- (ii) in subparagraph (B), by striking "that consists of" and inserting "in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by"; and
- (D) by adding at the end the following:
- "(F) The term 'employed, carries on a vocation' includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.
- "(G) The term 'student' means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education."
- (2) REQUIREMENTS UPON RELEASE, PAROLE, SUPERVISED RELEASE, OR PROBATION.—Section 170101(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(b)) is amended—
  - (A) in paragraph (1)—
  - (i) by striking the paragraph designation and heading and inserting the following:
- "(1) DUTIES OF RESPONSIBLE OFFICIALS.—";
  - (ii) in subparagraph (A)—
  - (I) in the matter preceding clause (i), by striking "or in the case of probation, the court" and inserting "the court, or another responsible officer or official":
  - (II) in clause (ii), by striking "give" and all that follows before the semicolon and inserting "report the change of address as provided by State law"; and
  - (III) in clause (iii), by striking "shall register" and all that follows before the semicolon and inserting "shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student"; and
  - (iii) in subparagraph (B), by striking "or the court" and inserting ", the court, or another responsible officer or official";
- (B) by striking paragraph (2) and inserting the following:
- "(2) TRANSFER OF INFORMATION TO STATE AND FBI; PARTICIPATION IN NATIONAL SEX OFFENDER REGISTRY.—
- "(A) STATE REPORTING.—State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

- "(B) NATIONAL REPORTING.—A State shall participate in the national database established under section 170102(b) in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.";
- (C) in paragraph (3)(A)—
- (i) in the matter preceding clause (i), by striking "on each" and all that follows through "applies:" and inserting the following: "State procedures shall provide for verification of address at least annually."; and
- (ii) by striking clauses (i) through (v);
- (D) in paragraph (4), by striking "section reported" and all that follows before the period at the end and inserting the following: "section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system";
- (E) in paragraph (5), by striking "shall register" and all that follows before the period at the end and inserting "and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration"; and
- (F) by adding at the end the following:
- "(7) REGISTRATION OF OUT-OF-STATE OFFENDERS, FEDERAL OFFENDERS, PERSONS SENTENCED BY COURTS MARTIAL, AND OFFENDERS CROSSING STATE BORDERS.—As provided in guidelines issued by the Attorney General, each State shall include in its registration program residents who were convicted in another State and shall ensure that procedures are in place to accept registration information from—
  - "(A) residents who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and
  - "(B) nonresident offenders who have crossed into another State in order to work or attend school.".
- (3) REGISTRATION OF OFFENDER CROSSING STATE BORDER.—Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071) is amended by redesignating subsections (c) through (f) as (d) through (g), respectively, and inserting after subsection (b) the following:
- "(c) REGISTRATION OF OFFENDER CROSSING STATE BORDER.—Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student."
- (4) RELEASE OF INFORMATION.—Section 170101(e)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(e)(2)), as redesignated by subsection (c) of this section, is amended by striking "The designated" and all that follows through "State agency" and inserting "The State or any agency authorized by the State".
- (5) IMMUNITY FOR GOOD FAITH CONDUCT.—Section 170101(f) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(f)), as redesignated by subsection (c) of this section, is amended by striking ", and State officials" and inserting "and independent contractors acting at the direction of such agencies, and State officials".

#### << 42 USCA § 14072 >>

- (6) FBI REGISTRATION.—(A) Section 170102(a)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14072(a)(2)) is amended by striking "and 'predatory' "and inserting the following: "'predatory', 'employed, or carries on a vocation', and 'student'".
- (B) Section 170102(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14072(a)(3)) is amended
- (i) in subparagraph (A), by inserting "in a range of offenses specified by State law which is comparable to or exceeds that" before "described";
- (ii) by amending subparagraph (B) to read as follows:
- "(B) participates in the national database established under subsection (b) of this section in conformity with guidelines issued by the Attorney General;"; and
- (iii) by amending subparagraph (C) to read as follows:
- "(C) provides for verification of address at least annually;".

(C) Section 170102(i) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14072(i)) in the matter preceding paragraph (1), is amended by inserting "or pursuant to section 170101(b)(7)" after "subsection (g)".

- (7) PAM LYCHNER SEXUAL OFFENDER TRACKING AND IDENTIFICATION ACT OF 1996.—Section 10 of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 is amended by inserting at the end the following:
- "(d) EFFECTIVE DATE.—States shall be allowed the time specified in subsection (b) to establish minimally sufficient sexual offender registration programs for purposes of the amendments made by section 2. Subsections (c) and (k) of section 170102 of the Violent Crime Control and Law Enforcement Act of 1994, and any requirement to issue related regulations, shall take effect at the conclusion of the time provided under this subsection for the establishment of minimally sufficient sexual offender registration programs."

- (8) FEDERAL OFFENDERS AND MILITARY PERSONNEL.—(A) Section 4042 of title 18, United States Code, is amended—
  - (i) in subsection (a)(5), by striking "subsection (b)" and inserting "subsections (b) and (c)";
  - (ii) in subsection (b), by striking paragraph (4);
  - (iii) by redesignating subsection (c) as subsection (d); and
  - (iv) by inserting after subsection (b) the following:
- "(c) NOTICE OF SEX OFFENDER RELEASE.—(1) In the case of a person described in paragraph (4) who is released from prison or sentenced to probation, notice shall be provided to—
  - "(A) the chief law enforcement officer of the State and of the local jurisdiction in which the person will reside; and
- "(B) a State or local agency responsible for the receipt or maintenance of sex offender registration information in the State or local jurisdiction in which the person will reside.

The notice requirements under this subsection do not apply in relation to a person being protected under chapter 224.

- "(2) Notice provided under paragraph (1) shall include the information described in subsection (b)(2), the place where the person will reside, and the information that the person shall be subject to a registration requirement as a sex offender. For a person who is released from the custody of the Bureau of Prisons whose expected place of residence following release is known to the Bureau of Prisons, notice shall be provided at least 5 days prior to release by the Director of the Bureau of Prisons. For a person who is sentenced to probation, notice shall be provided promptly by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts. Notice concerning a subsequent change of residence by a person described in paragraph (4) during any period of probation, supervised release, or parole shall also be provided to the agencies and officers specified in paragraph (1) by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts.
- "(3) The Director of the Bureau of Prisons shall inform a person described in paragraph (4) who is released from prison that the person shall be subject to a registration requirement as a sex offender in any State in which the person resides, is employed, carries on a vocation, or is a student (as such terms are defined for purposes of section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994), and the same information shall be provided to a person described in paragraph (4) who is sentenced to probation by the probation officer responsible for supervision of the person or in a manner specified by the Director of the Administrative Office of the United States Courts.
- "(4) A person is described in this paragraph if the person was convicted of any of the following offenses (including such an offense prosecuted pursuant to section 1152 or 1153):
  - "(A) An offense under section 1201 involving a minor victim.
  - "(B) An offense under chapter 109A.
  - "(C) An offense under chapter 110.
  - "(D) An offense under chapter 117.
  - "(E) Any other offense designated by the Attorney General as a sexual offense for purposes of this subsection.

"(5) The United States and its agencies, officers, and employees shall be immune from liability based on good faith conduct in carrying out this subsection and subsection (b)."

- (B)(i) Section 3563(a) of title 18, United States Code, is amended by striking the matter at the end of paragraph (7) beginning with "The results of a drug test" and all that follows through the end of such paragraph and inserting that matter at the end of section 3563.
- (ii) The matter inserted by subparagraph (A) at the end of section 3563 is amended—
- (I) by striking "The results of a drug test" and inserting the following:
- "(e) RESULTS OF DRUG TESTING.—The results of a drug test"; and
  - (II) by striking "paragraph (4)" each place it appears and inserting "subsection (a)(5)".
- (iii) Section 3563(a) of title 18, United States Code, is amended—
- (I) so that paragraphs (6) and (7) appear in numerical order immediately after paragraph (5);
- (II) by striking "and" at the end of paragraph (6);
- (III) in paragraph (7), by striking "assessments." and inserting "assessments; and"; and
- (IV) by inserting immediately after paragraph (7) (as moved by clause (i)) the following new paragraph:
- "(8) for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a) (3) of the Violent Crime Control and Law Enforcement Act of 1994)."

(iv) Section 3583(d) of title 18, United States Code, is amended by inserting after the second sentence the following: "The court shall order, as an explicit condition of supervised release for a person described in section 4042(c)(4), that the person report the address where the person will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the person register in any State where the person resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994)."

(v) Section 4209(a) of title 18, United States Code, insofar as such section remains in effect with respect to certain individuals, is amended by inserting after the first sentence the following: "In every case, the Commission shall impose as a condition of parole for a person described in section 4042(c)(4), that the parolee report the address where the parolee will reside and any subsequent change of residence to the probation officer responsible for supervision, and that the parolee register in any State where the parolee resides, is employed, carries on a vocation, or is a student (as such terms are defined under section 170101(a)(3) of the Violent Crime Control and Law Enforcement Act of 1994)."

### << 10 USCA § 951 NOTE >>

- (C)(i) The Secretary of Defense shall specify categories of conduct punishable under the Uniform Code of Military Justice which encompass a range of conduct comparable to that described in section 170101(a)(3)(A) and (B) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a)(3)(A) and (B)), and such other conduct as the Secretary deems appropriate for inclusion for purposes of this subparagraph.
- (ii) In relation to persons sentenced by a court martial for conduct in the categories specified under clause (i), the Secretary shall prescribe procedures and implement a system to—
  - (I) provide notice concerning the release from confinement or sentencing of such persons;
  - (II) inform such persons concerning registration obligations; and
- (III) track and ensure compliance with registration requirements by such persons during any period of parole, probation, or other conditional release or supervision related to the offense.

- (iii) The procedures and requirements established by the Secretary under this subparagraph shall, to the maximum extent practicable, be consistent with those specified for Federal offenders under the amendments made by subparagraphs (A) and (B).
- (iv) If a person within the scope of this subparagraph is confined in a facility under the control of the Bureau of Prisons at the time of release, the Bureau of Prisons shall provide notice of release and inform the person concerning registration obligations under the procedures specified in section 4042(c) of title 18, United States Code.

- (9) PROTECTED WITNESS REGISTRATION.—Section 3521(b)(1) of title 18, United States Code, is amended—
- (A) by striking "and" at the end of subparagraph (G);
- (B) by redesignating subparagraph (H) as subparagraph (I); and
- (C) by inserting after subparagraph (G) the following:
- "(H) protect the confidentiality of the identity and location of persons subject to registration requirements as convicted offenders under Federal or State law, including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons; and".
- (b) SENSE OF CONGRESS AND REPORT RELATING TO STALKING LAWS.—
- (1) SENSE OF CONGRESS.—It is the sense of Congress that each State should have in effect a law that makes it a crime to stalk any individual, especially children, without requiring that such individual be physically harmed or abducted before a stalker is restrained or punished.

(2) REPORT.—The Attorney General shall include in an annual report under section 40610 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14039) information concerning existing or proposed State laws and penalties for stalking crimes against children.

#### << 42 USCA § 14701 NOTE >>

- (c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act, except that—
- (1) subparagraphs (A), (B), and (C) of subsection (a)(8) shall take effect 1 year after the date of the enactment of this Act; and
- (2) States shall have 3 years from such date of enactment to implement amendments made by this Act which impose new requirements under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, and the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement these amendments.

SEC. 116. (a) IN GENERAL.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153; Public Law 102–395) is amended—

- (1) by striking "300" and inserting "3,000"; and
- (2) by striking "five years" and inserting "seven years".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall be deemed to have become effective on October 6, 1992.

SEC. 117. For fiscal year 1998, the Attorney General shall provide a magnetometer and not less than one qualified guard at each unsecured entrance to the real property (including offices, buildings, and related grounds and facilities) that is leased to the United States as a place of employment for Federal employees at 625 Silver, S.W., in Albuquerque, New Mexico for the duration of time that Department of Justice employees are occupants of this building, after which the General Services Administration shall provide the same level of security equipment and personnel at this location until the date on which the new Albuquerque Federal building is occupied.

#### << 40 USCA § 484 >>

 $SEC.\ 118.\ Section\ 203(p)(1)\ of\ the\ Federal\ Property\ and\ Administrative\ Services\ Act\ of\ 1949\ (40\ U.S.C.\ 484(p)(1))\ is\ amended$ 

- (1) by inserting "(A)" after "(1)"; and
- (2) by adding at the end the following new subparagraph:
- "(B)(i) The Administrator may exercise the authority under subparagraph (A) with respect to such surplus real and related property needed by the transferee or grantee for—
  - "(I) law enforcement purposes, as determined by the Attorney General; or
- "(II) emergency management response purposes, including fire and rescue services, as determined by the Director of the Federal Emergency Management Agency.
- "(ii) The authority provided under this subparagraph shall terminate on December 31, 1999.".

SEC. 119. Section 1701(b)(2)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) is amended to read as follows—

"(A) may not exceed 20 percent of the funds available for grants pursuant to this subsection in any fiscal year.".

SEC. 120. Section 233(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (110 Stat. 1245) is amended by striking "1 year after the date of enactment of this Act" and inserting "October 1, 1999".

SEC. 121. (a) DEFINITIONS.—In this section—

- (1) the terms "criminal offense against a victim who is a minor", "sexually violent offense", and "sexually violent predator" have the meanings given those terms in section 170101(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a));
- (2) the term "DNA" means deoxyribonucleic acid; and
- (3) the term "sex offender" means an individual who—
- (A) has been convicted in Federal court of—
- (i) a criminal offense against a victim who is a minor; or
- (ii) a sexually violent offense; or
- (B) is a sexually violent predator.
- (b) REPORT.—From amounts made available to the Department of Justice under this title, not later than 180 days after the date of enactment of this Act, the Attorney General shall submit to Congress a report, which shall include a plan for the implementation of a requirement that, prior to the release (including probation, parole, or any other supervised release) of any sex offender from Federal custody following a conviction for a criminal offense against a victim who is a minor or a sexually violent offense, the sex offender shall provide a DNA sample to the appropriate law enforcement agency for inclusion in a national law enforcement DNA database.
- (c) PLAN REQUIREMENTS.—The plan submitted under subsection (b) shall include recommendations concerning—
- (1) a system for—
- (A) the collection of DNA samples from any sex offender;
- (B) the analysis of the collected samples for DNA and other genetic typing analysis; and
- (C) making the DNA and other genetic typing information available for law enforcement purposes only;
- (2) guidelines for coordination with existing Federal and State DNA and genetic typing information databases and for Federal cooperation with State and local law in sharing this information;
- (3) addressing constitutional, privacy, and related concerns in connection with the mandatory submission of DNA samples; and
- (4) procedures and penalties for the prevention of improper disclosure or dissemination of DNA or other genetic typing information.

#### << 5 USCA § 3104 NOTE >>

- SEC. 122. (a) Notwithstanding any other provision of law relating to position classification or employee pay or performance, during the 3–year period beginning on the date of enactment of this Act, the Director of the Federal Bureau of Investigation may, with the approval of the Attorney General, establish a personnel management system providing for the compensation and performance management of not more than 3,000 non-Special Agent employees to fill critical scientific, technical, engineering, intelligence analyst, language translator, and medical positions in the Federal Bureau of Investigation.
- (b) Except as otherwise provided by law, no employee compensated under any system established under this section may be paid at a rate in excess of the rate payable for a position at level III of the Executive Schedule.
- (c) Total payments to employees under any system established under this section shall be subject to the limitation on payments to employees set forth in section 5307 of title 5, United States Code.
- (d) Not later than 90 days after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committees on Appropriations and the Committees on the Judiciary of the House of Representatives and the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Committee on Governmental Affairs of the Senate, an operating plan describing the Director's intended use of the authority under this section, and identifying any provisions of title 5, United States Code, being waived for purposes of any personnel management system to be established by the Director under this section.
- (e) Any performance management system established under this section shall have not less than 2 levels of performance above a retention standard.
- (f) Not later than March 31, 2000, the Director of the Federal Bureau of Investigation shall submit to Congress an evaluation of the performance management system established under this section, which shall include—
  - (1) a comparison of-
  - (A) the compensation, benefits, and performance management provisions governing personnel of similar employment classification series in other departments and agencies of the Federal Government; and
  - (B) the costs, consistent with standards prescribed in Office of Management and Budget Circular A–76, of contracting for any services provided through those departments and agencies; and
  - (2) if appropriate, a recommendation for legislation to extend the authority under this section.
- (g) Notwithstanding any other provision of law, the Secretary of the Treasury shall have the same authority provided to the Office of Personnel Management under section 4703 of title 5, United States Code, to establish, in the discretion of the Secretary, demonstration projects for a period of 3 years, for not to exceed a combined total of 950 employees, to fill critical scientific, technical, engineering, intelligence analyst, language translator, and medical positions in the Bureau of Alcohol, Tobacco and Firearms, the United States Customs Service, and the United States Secret Service.
- (h) The authority under this section shall terminate 3 years after the date of enactment of this Act.

- SEC. 123. (a) IN GENERAL.—Section 3626 of title 18, United States Code, is amended—
- (1) in subsection (a)—
- (A) in paragraph (1)(B)(i), by striking "permits" and inserting "requires"; and
- (B) in paragraph (3)—
- (i) in subparagraph (A), by striking "no prisoner release order shall be entered unless" and inserting "no court shall enter a prisoner release order unless"; and
- (ii) in subparagraph (F)—
- (I) by inserting "including a legislator" after "local official"; and
- (II) by striking "program" and inserting "prison";
- (2) in subsection (b)(3), by striking "current or ongoing" and inserting "current and ongoing";
- (3) in subsection (e)—
- (A) in paragraph (1), by adding at the end the following: "Mandamus shall lie to remedy any failure to issue a prompt ruling on such a motion.";

- (B) in paragraph (2), by striking "Any prospective relief subject to a pending motion shall be automatically stayed" and inserting "Any motion to modify or terminate prospective relief made under subsection (b) shall operate as a stay"; and (C) by adding at the end the following:
- "(3) POSTPONEMENT OF AUTOMATIC STAY.—The court may postpone the effective date of an automatic stay specified in subsection (e)(2)(A) for not more than 60 days for good cause. No postponement shall be permissible because of general congestion of the court's calendar.
- "(4) ORDER BLOCKING THE AUTOMATIC STAY.—Any order staying, suspending, delaying, or barring the operation of the automatic stay described in paragraph (2) (other than an order to postpone the effective date of the automatic stay under paragraph (3)) shall be treated as an order refusing to dissolve or modify an injunction and shall be appealable pursuant to section 1292(a)(1) of title 28, United States Code, regardless of how the order is styled or whether the order is termed a preliminary or a final ruling.".

#### << 18 USCA § 3626 NOTE >>

(b) EFFECTIVE DATE.—The amendments made by this Act shall take effect upon the date of the enactment of this Act and shall apply to pending cases.

SEC. 124. Section 524(c)(8)(B) of title 28, United States Code, is amended by deleting "1996, and 1997," and inserting "and 1996," in place thereof.

#### << 8 USCA § 1187 >>

SEC. 125. Section 217(f) of the Immigration and Nationality Act (8 U.S.C. 1187(f)) is amended to read as follows:

"(f) DEFINITION OF PILOT PROGRAM PERIOD.—For purposes of this section, the term 'pilot program period' means the period beginning on October 1, 1988, and ending on April 30, 1998.".

#### << 8 USCA § 1182 NOTE >>

SEC. 126. Section 140 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), is amended in subsection (g) by striking "December 31, 1997" and inserting "May 1, 1998".

This title may be cited as the "Department of Justice Appropriations Act, 1998".

# TITLE II—DEPARTMENT OF COMMERCE AND RELATED AGENCIES TRADE AND INFRASTRUCTURE DEVELOPMENT RELATED AGENCIES

# OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

#### SALARIES AND EXPENSES

For necessary expenses of the Office of the United States Trade Representative, including the hire of passenger motor vehicles and the employment of experts and consultants as authorized by 5 U.S.C. 3109, \$23,450,000, of which \$2,500,000 shall remain available until expended: Provided, That not to exceed \$98,000 shall be available for official reception and representation expenses: Provided further, That the total number of political appointees on board as of May 1, 1998, shall not exceed 25 positions.

# INTERNATIONAL TRADE COMMISSION SALARIES AND EXPENSES

For necessary expenses of the International Trade Commission, including hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, and not to exceed \$2,500 for official reception and representation expenses, \$41,200,000 to remain available until expended.

# DEPARTMENT OF COMMERCE INTERNATIONAL TRADE ADMINISTRATION OPERATIONS AND ADMINISTRATION

For necessary expenses for international trade activities of the Department of Commerce provided for by law, and engaging in trade promotional activities abroad, including expenses of grants and cooperative agreements for the purpose of promoting exports of United States firms, without regard to 44 U.S.C. 3702 and 3703; full medical coverage for dependent members of immediate families of employees stationed overseas and employees temporarily posted overseas; travel and transportation of employees of the United States and Foreign Commercial Service between two points abroad, without regard to 49 U.S.C. 1517: employment of Americans and aliens by contract for services; rental of space abroad for periods not exceeding ten years, and expenses of alteration, repair, or improvement; purchase or construction of temporary demountable exhibition structures for use abroad; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed \$327,000 for official representation expenses abroad; purchase of passenger motor vehicles for official use abroad, not to exceed \$30,000 per vehicle; obtain insurance on official motor vehicles; and rent tie lines and teletype equipment; \$283,066,000, to remain available until expended: Provided, That of the \$287,866,000 provided for in direct obligations (of which \$283,066,000 is appropriated from the general fund, and \$4,800,000 is derived from unobligated balances and deobligations from prior years), \$58,986,000 shall be for Trade Development, \$17,340,000 shall be for Market Access and Compliance, \$28,770,000 shall be for the Import Administration, \$171,070,000 shall be for the United States and Foreign Commercial Service, and \$11,700,000 shall be for Executive Direction and Administration: Provided further, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities without regard to section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4912); and that for the purpose of this Act, contributions under the provisions of the Mutual Educational and Cultural Exchange Act shall include payment for assessments for services provided as part of these activities.

# EXPORT ADMINISTRATION OPERATIONS AND ADMINISTRATION

For necessary expenses for export administration and national security activities of the Department of Commerce, including costs associated with the performance of export administration field activities both domestically and abroad; full medical coverage for dependent members of immediate families of employees stationed overseas; employment of Americans and aliens by contract for services abroad; rental of space abroad for periods not exceeding ten years, and expenses of alteration, repair, or improvement; payment of tort claims, in the manner authorized in the first paragraph of 28 U.S.C. 2672 when such claims arise in foreign countries; not to exceed \$15,000 for official representation expenses abroad; awards of compensation to informers under the Export Administration Act of 1979, and as authorized by 22 U.S.C. 401(b); purchase of passenger motor vehicles for official use and motor vehicles for law enforcement use with special requirement vehicles eligible for purchase without regard to any price limitation otherwise established by law; \$43,900,000 to remain available until expended, of which \$1,900,000 shall be for inspections and other activities related to national security: Provided, That the provisions of the first sentence of section 105(f) and all of section 108(c) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2455(f) and 2458(c)) shall apply in carrying out these activities: Provided further, That payments and contributions collected and accepted for materials or services provided as part of such activities may be retained for use in covering the cost of such activities, and for providing information to the public with respect to the export administration and national security activities of the Department of Commerce and other export control programs of the United States and other governments.

# ECONOMIC DEVELOPMENT ADMINISTRATION ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS

For grants for economic development assistance as provided by the Public Works and Economic Development Act of 1965, as amended, Public Law 91–304, and such laws that were in effect immediately before September 30, 1982, and for trade adjustment assistance, \$340,000,000: Provided, That none of the funds appropriated or otherwise made available under this heading may be used directly or indirectly for attorneys' or consultants' fees in connection with securing grants and contracts made by the Economic Development Administration: Provided further, That, notwithstanding any other provision of law, the Secretary of Commerce may provide financial assistance for projects to be located on military installations closed or scheduled for closure or realignment to grantees eligible for assistance under the Public Works and Economic Development Act of 1965, as amended, without it being required that the grantee have title or ability to obtain a lease for the property, for the useful life of the project, when in the opinion of the Secretary of Commerce, such financial assistance is necessary for the economic

development of the area: Provided further, That the Secretary of Commerce may, as the Secretary considers appropriate, consult with the Secretary of Defense regarding the title to land on military installations closed or scheduled for closure or realignment.

#### SALARIES AND EXPENSES

For necessary expenses of administering the economic development assistance programs as provided for by law, \$21,028,000: Provided, That these funds may be used to monitor projects approved pursuant to title I of the Public Works Employment Act of 1976, as amended, title II of the Trade Act of 1974, as amended, and the Community Emergency Drought Relief Act of 1977.

#### MINORITY BUSINESS DEVELOPMENT AGENCY

#### MINORITY BUSINESS DEVELOPMENT

For necessary expenses of the Department of Commerce in fostering, promoting, and developing minority business enterprise, including expenses of grants, contracts, and other agreements with public or private organizations, \$25,000,000.

### ECONOMIC AND INFORMATION INFRASTRUCTURE

#### ECONOMIC AND STATISTICAL ANALYSIS

#### SALARIES AND EXPENSES

For necessary expenses, as authorized by law, of economic and statistical analysis programs of the Department of Commerce, \$47,499,000, to remain available until September 30, 1999.

#### ECONOMICS AND STATISTICS ADMINISTRATION REVOLVING FUND

#### << 15 USCA § 1527a NOTE >>

The Secretary of Commerce is authorized to disseminate economic and statistical data products as authorized by sections 1, 2, and 4 of Public Law 91–412 (15 U.S.C. 1525–1527) and, notwithstanding section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4912), charge fees necessary to recover the full costs incurred in their production. Notwithstanding 31 U.S.C. 3302, receipts received from these data dissemination activities shall be credited to this account, to be available for carrying out these purposes without further appropriation.

# BUREAU OF THE CENSUS

#### SALARIES AND EXPENSES

For expenses necessary for collecting, compiling, analyzing, preparing, and publishing statistics, provided for by law, \$137,278,000.

#### PERIODIC CENSUSES AND PROGRAMS

For expenses necessary to conduct the decennial census, \$389,887,000, to remain available until expended: Provided, That of this amount, \$4,000,000 shall be transferred to the Census Monitoring Board for necessary expenses as authorized by section 210 of this Act.

In addition, for expenses to collect and publish statistics for other periodic censuses and programs provided for by law, \$165,926,000, to remain available until expended.

# NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION SALARIES AND EXPENSES

### << 47 USCA § 903 NOTE >>

For necessary expenses, as provided for by law, of the National Telecommunications and Information Administration (NTIA), \$16,550,000, to remain available until expended: Provided, That notwithstanding 31 U.S.C. 1535(d), the Secretary of Commerce shall charge Federal agencies for costs incurred in spectrum management, analysis, and operations, and related services and such fees shall be retained and used as offsetting collections for costs of such spectrum services, to remain available until expended: Provided further, That hereafter, notwithstanding any other provision of law, NTIA shall not authorize spectrum use or provide any spectrum functions pursuant to the NTIA Organization Act, 47 U.S.C. 902–903, to any Federal entity without reimbursement as required by NTIA for such spectrum management costs, and Federal entities withholding payment of such cost shall not use spectrum: Provided further, That the Secretary of Commerce is authorized to retain and use as offsetting collections all funds transferred, or previously transferred, from other Government agencies for all costs incurred in telecommunications research, engineering, and related activities by the Institute for Telecommunication Sciences of the NTIA, in furtherance of

its assigned functions under this paragraph, and such funds received from other Government agencies shall remain available until expended.

#### PUBLIC TELECOMMUNICATIONS FACILITIES. PLANNING AND CONSTRUCTION

For grants authorized by section 392 of the Communications Act of 1934, as amended, \$21,000,000, to remain available until expended as authorized by section 391 of the Act, as amended: Provided, That not to exceed \$1,500,000 shall be available for program administration as authorized by section 391 of the Act: Provided further, That notwithstanding the provisions of section 391 of the Act, the prior year unobligated balances may be made available for grants for projects for which applications have been submitted and approved during any fiscal year: Provided further, That, notwithstanding any other provision of law, the Pan–Pacific Education and Communication Experiments by Satellite (PEACESAT) Program is eligible to compete for Public Telecommunications Facilities, Planning and Construction funds.

#### INFORMATION INFRASTRUCTURE GRANTS

For grants authorized by section 392 of the Communications Act of 1934, as amended, \$20,000,000, to remain available until expended as authorized by section 391 of the Act, as amended: Provided, That not to exceed \$3,000,000 shall be available for program administration and other support activities as authorized by section 391: Provided further, That of the funds appropriated herein, not to exceed 5 percent may be available for telecommunications research activities for projects related directly to the development of a national information infrastructure: Provided further, That, notwithstanding the requirements of section 392(a) and 392(c) of the Act, these funds may be used for the planning and construction of telecommunications networks for the provision of educational, cultural, health care, public information, public safety, or other social services.

### PATENT AND TRADEMARK OFFICE

#### SALARIES AND EXPENSES

For necessary expenses of the Patent and Trademark Office provided for by law, including defense of suits instituted against the Commissioner of Patents and Trademarks, \$691,000,000, to remain available until expended: Provided, That of this amount, \$664,000,000 shall be derived from offsetting collections assessed and collected pursuant to 15 U.S.C. 1113 and 35 U.S.C. 41 and 376 and shall be retained and used for necessary expenses in this appropriation: Provided further, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 1998, so as to result in a final fiscal year 1998 appropriation from the general fund estimated at \$0: Provided further, That during fiscal year 1998, should the total amount of offsetting fee collections be less than \$664,000,000, the total amounts available to the Patent and Trademark Office shall be reduced accordingly: Provided further, That any fees received in excess of \$664,000,000 in fiscal year 1998 shall remain available until expended, but shall not be available for obligation until October 1, 1998: Provided further, That the remaining \$27,000,000 shall be derived from deposits in the Patent and Trademark Office Fee Surcharge Fund as authorized by law and shall remain available until expended.

#### SCIENCE AND TECHNOLOGY

#### TECHNOLOGY ADMINISTRATION

#### UNDER SECRETARY FOR TECHNOLOGY/OFFICE OF TECHNOLOGY POLICY

### SALARIES AND EXPENSES

For necessary expenses for the Under Secretary for Technology/Office of Technology Policy, \$8,500,000, of which not to exceed \$1,600,000 shall remain available until September 30, 1999.

# NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

# SCIENTIFIC AND TECHNICAL RESEARCH AND SERVICES

For necessary expenses of the National Institute of Standards and Technology, \$276,852,000, to remain available until expended, of which not to exceed \$3,800,000 shall be used to fund a cooperative agreement with Texas Tech University for wind research; and of which not to exceed \$5,000,000 of the amount above \$268,000,000 shall be used to fund a cooperative agreement with Montana State University for a research program on green buildings; and of which not to exceed \$1,625,000 may be transferred to the "Working Capital Fund".

## INDUSTRIAL TECHNOLOGY SERVICES

#### << 15 USCA § 278k NOTE >>

For necessary expenses of the Manufacturing Extension Partnership of the National Institute of Standards and Technology, \$113,500,000, to remain available until expended, of which not to exceed \$300,000 may be transferred to the "Working Capital"

Fund": Provided, That notwithstanding the time limitations imposed by 15 U.S.C. 278k(c)(1) and (5) on the duration of Federal financial assistance that may be awarded by the Secretary of Commerce to Regional Centers for the transfer of Manufacturing Technology ("Centers"), such Federal financial assistance for a Center may continue beyond six years and may be renewed for additional periods, not to exceed one year, at a rate not to exceed one-third of the Center's total annual costs, subject before any such renewal to a positive evaluation of the Center and to a finding by the Secretary of Commerce that continuation of Federal funding to the Center is in the best interest of the Regional Centers for the transfer of Manufacturing Technology Program: Provided further, That the Center's most recent performance evaluation is positive, and the Center has submitted a reapplication which has successfully passed merit review.

In addition, for necessary expenses of the Advanced Technology Program of the National Institute of Standards and Technology, \$192,500,000, to remain available until expended, of which not to exceed \$82,000,000 shall be available for the award of new grants, and of which not to exceed \$500,000 may be transferred to the "Working Capital Fund".

#### CONSTRUCTION OF RESEARCH FACILITIES

For construction of new research facilities, including architectural and engineering design, and for renovation of existing facilities, not otherwise provided for the National Institute of Standards and Technology, as authorized by 15 U.S.C. 278c–278e, \$95,000,000, to remain available until expended: Provided, That of the amounts provided under this heading, \$78,308,000 shall be available for obligation and expenditure only after submission of a plan for the expenditure of these funds, in accordance with section 605 of this Act.

# NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OPERATIONS, RESEARCH, AND FACILITIES (INCLUDING TRANSFERS OF FUNDS)

<< 33 USCA § 851 >>

For necessary expenses of activities authorized by law for the National Oceanic and Atmospheric Administration, including maintenance, operation, and hire of aircraft; not to exceed 283 commissioned officers on the active list as of September 30, 1998; grants, contracts, or other payments to nonprofit organizations for the purposes of conducting activities pursuant to cooperative agreements; and relocation of facilities as authorized by 33 U.S.C. 883i; \$1,512,050,000, to remain available until expended: Provided, That, notwithstanding 31 U.S.C. 3302 but consistent with other existing law, fees shall be assessed, collected, and credited to this appropriation as offsetting collections to be available until expended, to recover the costs of administering aeronautical charting programs: Provided further, That the sum herein appropriated from the general fund shall be reduced as such additional fees are received during fiscal year 1998, so as to result in a final general fund appropriation estimated at not more than \$1,509,050,000: Provided further, That any such additional fees received in excess of \$3,000,000 in fiscal year 1998 shall not be available for obligation until October 1, 1998: Provided further, That fees and donations received by the National Ocean Service for the management of the national marine sanctuaries may be retained and used for the salaries and expenses associated with those activities, notwithstanding 31 U.S.C. 3302: Provided further, That in addition, \$62,381,000 shall be derived by transfer from the fund entitled "Promote and Develop Fishery Products and Research Pertaining to American Fisheries": Provided further, That grants to States pursuant to sections 306 and 306A of the Coastal Zone Management Act of 1972, as amended, shall not exceed \$2,000,000: Provided further, That unexpended balances in the accounts "Construction" and "Fleet Modernization, Shipbuilding and Conversion" shall be transferred to and merged with this account, to remain available until expended for the purposes for which the funds were originally appropriated.

# PROCUREMENT, ACQUISITION AND CONSTRUCTION (INCLUDING TRANSFER OF FUNDS)

For procurement, acquisition and construction of capital assets, including alteration and modification costs, of the National Oceanic and Atmospheric Administration, \$491,609,000, to remain available until expended: Provided, That not to exceed \$116,910,000 is available for the advanced weather interactive processing system, and may be available for obligation and expenditure only pursuant to a certification by the Secretary of Commerce that the total cost to complete the acquisition and deployment of the advanced weather interactive processing system and NOAA Port system, including program management, operations and maintenance costs through deployment will not exceed \$188,700,000: Provided further, That unexpended balances of amounts previously made available in the "Operations, Research, and Facilities" account and the "Construction"

account for activities funded under this heading may be transfered to and merged with this account, to remain available until expended for the purposes for which the funds were originally appropriated.

#### COASTAL ZONE MANAGEMENT FUND

Of amounts collected pursuant to section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456a), not to exceed \$7,800,000, for purposes set forth in sections 308(b)(2)(A), 308(b)(2)(B)(v), and 315(e) of such Act.

#### FISHERMEN'S CONTINGENCY FUND

For carrying out the provisions of title IV of Public Law 95–372, not to exceed \$953,000, to be derived from receipts collected pursuant to that Act, to remain available until expended.

#### FOREIGN FISHING OBSERVER FUND

For expenses necessary to carry out the provisions of the Atlantic Tunas Convention Act of 1975, as amended (Public Law 96-339), the Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended (Public Law 100-627), and the American Fisheries Promotion Act (Public Law 96-561), to be derived from the fees imposed under the foreign fishery observer program authorized by these Acts, not to exceed \$189,000, to remain available until expended.

#### FISHERIES FINANCE PROGRAM ACCOUNT

For the cost of direct loans, \$338,000, as authorized by the Merchant Marine Act of 1936, as amended: Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: Provided further, That none of the funds made available under this heading may be used for direct loans for any new fishing vessel that will increase the harvesting capacity in any United States fishery.

# GENERAL ADMINISTRATION

#### SALARIES AND EXPENSES

For expenses necessary for the general administration of the Department of Commerce provided for by law, including not to exceed \$3,000 for official entertainment, \$27,490,000.

#### OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended (5 U.S.C.App. 1-11), as amended by Public Law 100-504, \$20,140,000.

# NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OPERATIONS, RESEARCH, AND FACILITIES (RESCISSION)

Of the unobligated balances available under this heading, \$20,500,000 are rescinded.

## UNITED STATES TRAVEL AND TOURISM ADMINISTRATION SALARIES AND EXPENSES

(RESCISSION)

Of the unobligated balances available under this heading, \$3,000,000 are rescinded.

#### GENERAL PROVISIONS—DEPARTMENT OF COMMERCE

SEC. 201. During the current fiscal year, applicable appropriations and funds made available to the Department of Commerce by this Act shall be available for the activities specified in the Act of October 26, 1949 (15 U.S.C. 1514), to the extent and in the manner prescribed by the Act, and, notwithstanding 31 U.S.C. 3324, may be used for advanced payments not otherwise authorized only upon the certification of officials designated by the Secretary of Commerce that such payments are in the public interest.

SEC. 202. During the current fiscal year, appropriations made available to the Department of Commerce by this Act for salaries and expenses shall be available for hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; services as authorized by 5 U.S.C. 3109; and uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901–5902).

SEC. 203. None of the funds made available by this Act may be used to support the hurricane reconnaissance aircraft and activities that are under the control of the United States Air Force or the United States Air Force Reserve.

#### << 13 USCA § 23 NOTE >>

SEC. 204. None of the funds provided in this or any previous Act, or hereinafter made available to the Department of Commerce, shall be available to reimburse the Unemployment Trust Fund or any other fund or account of the Treasury to pay for any expenses paid before October 1, 1992, as authorized by section 8501 of title 5, United States Code, for services

performed after April 20, 1990, by individuals appointed to temporary positions within the Bureau of the Census for purposes relating to the 1990 decennial census of population.

SEC. 205. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of Commerce in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: Provided, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 206. (a) Should legislation be enacted to dismantle or reorganize the Department of Commerce, or any portion thereof, the Secretary of Commerce, no later than 90 days thereafter, shall submit to the Committees on Appropriations of the House and the Senate a plan for transferring funds provided in this Act to the appropriate successor organizations: Provided, That the plan shall include a proposal for transferring or rescinding funds appropriated herein for agencies or programs terminated under such legislation: Provided further, That such plan shall be transmitted in accordance with section 605 of this Act.

(b) The Secretary of Commerce or the appropriate head of any successor organization(s) may use any available funds to carry out legislation dismantling or reorganizing the Department of Commerce, or any portion thereof, to cover the costs of actions relating to the abolishment, reorganization, or transfer of functions and any related personnel action, including voluntary separation incentives if authorized by such legislation: Provided, That the authority to transfer funds between appropriations accounts that may be necessary to carry out this section is provided in addition to authorities included under section 205 of this Act: Provided further, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 207. Any costs incurred by a department or agency funded under this title resulting from personnel actions taken in response to funding reductions included in this title or from actions taken for the care and protection of loan collateral or grant property shall be absorbed within the total budgetary resources available to such department or agency: Provided, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: Provided further, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 208. The Secretary of Commerce may award contracts for hydrographic, geodetic, and photogrammetric surveying and mapping services in accordance with title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.).

#### << 13 USCA § 141 NOTE >>

SEC. 209. (a) Congress finds that—

- (1) it is the constitutional duty of the Congress to ensure that the decennial enumeration of the population is conducted in a manner consistent with the Constitution and laws of the United States;
- (2) the sole constitutional purpose of the decennial enumeration of the population is the apportionment of Representatives in Congress among the several States;
- (3) section 2 of the 14th article of amendment to the Constitution clearly states that Representatives are to be "apportioned among the several States according to their respective numbers, counting the whole number of persons in each State";
- (4) article I, section 2, clause 3 of the Constitution clearly requires an "actual Enumeration" of the population, and section 195 of title 13, United States Code, clearly provides "Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as 'sampling' in carrying out the provisions of this title.";
- (5) the decennial enumeration of the population is one of the most critical constitutional functions our Federal Government performs;
- (6) it is essential that the decennial enumeration of the population be as accurate as possible, consistent with the Constitution and laws of the United States;
- (7) the use of statistical sampling or statistical adjustment in conjunction with an actual enumeration to carry out the census with respect to any segment of the population poses the risk of an inaccurate, invalid, and unconstituional census;

- (8) the decennial enumeration of the population is a complex and vast undertaking, and if such enumeration is conducted in a manner that does not comply with the requirements of the Constitution or laws of the United States, it would be impracticable for the States to obtain, and the courts of the United States to provide, meaningful relief after such enumeration has been conducted; and
- (9) Congress is committed to providing the level of funding that is required to perform the entire range of constitutional census activities, with a particular emphasis on accurately enumerating all individuals who have historically been undercounted, and toward this end, Congress expects—
  - (A) aggressive and innovative promotion and outreach campaigns in hard-to-count communities;
  - (B) the hiring of enumerators from within those communities;
  - (C) continued cooperation with local government on address list development; and
  - (D) maximized census employment opportunities for individuals seeking to make the transition from welfare to work.
- (b) Any person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law (other than this Act), in connection with the 2000 or any later decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress, may in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method.
- (c) For purposes of this section—
- (1) the use of any statistical method as part of a dress rehearsal or other simulation of a census in preparation for the use of such method, in a decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress shall be considered the use of such method in connection with that census; and
- (2) the report ordered by title VIII of Public Law 105–18 and the Census 2000 Operational Plan shall be deemed to constitute final agency action regarding the use of statistical methods in the 2000 decennial census, thus making the question of their use in such census sufficiently concrete and final to now be reviewable in a judicial proceeding.
- (d) For purposes of this section, an aggrieved person (described in subsection (b)) includes—
- (1) any resident of a State whose congressional representation or district could be changed as a result of the use of a statistical method challenged in the civil action;
- (2) any Representative or Senator in Congress; and
- (3) either House of Congress.
- (e)(1) Any action brought under this section shall be heard and determined by a district court of three judges in accordance with section 2284 of title 28, United States Code. The chief judge of the United States court of appeals for each circuit shall, to the extent practicable and consistent with the avoidance of unnecessary delay, consolidate, for all purposes, in one district court within that circuit, all actions pending in that circuit under this section. Any party to an action under this section shall be precluded from seeking any consolidation of that action other than is provided in this paragraph. In selecting the district court in which to consolidate such actions, the chief judge shall consider the convenience of the parties and witnesses and efficient conduct of such actions. Any final order or injunction of a United States district court that is issued pursuant to an action brought under this section shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under this section may be issued by a single Justice of the Supreme Court.
- (2) It shall be the duty of a United States district court hearing an action brought under this section and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any such matter.
- (f) Any agency or entity within the executive branch having authority with respect to the carrying out of a decennial census may in a civil action obtain a declaratory judgment respecting whether or not the use of a statistical method, in connection with such census, to determine the population for the purposes of the apportionment or redistricting of Members in Congress is forbidden by the Constitution and laws of the United States.
- (g) The Speaker of the House of Representatives or the Speaker's designee or designees may commence or join in a civil action, for and on behalf of the House of Representatives, under any applicable law, to prevent the use of any statistical method, in connection with the decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress. It shall be the duty of the Office of the General Counsel of the House of Representatives to represent the House in

such civil action, according to the directions of the Speaker. The Office of the General Counsel of the House of Representatives may employ the services of outside counsel and other experts for this purpose.

- (h) For purposes of this section and section 210—
- (1) the term "statistical method" means an activity related to the design, planning, testing, or implementation of the use of representative sampling, or any other statistical procedure, including statistical adjustment, to add or subtract counts to or from the enumeration of the population as a result of statistical inference; and
- (2) the term "census" or "decennial census" means a decennial enumeration of the population.
- (i) Nothing in this Act shall be construed to authorize the use of any statistical method, in connection with a decennial census, for the apportionment or redistricting of Members in Congress.
- (j) Sufficient funds appropriated under this Act or under any other Act for puroses of the 2000 decennial census shall be used by the Bureau of the Census to plan, test, and become prepared to implement a 2000 decennial census, without using statistical methods, which shall result in the percentage of the total population actually enumerated being as close to 100 percent as possible. In both the 2000 decennial census, and any dress rehearsal or other simulation made in preparation for the 2000 decennial census, the number of persons enumerated without using statistical methods must be publicly available for all levels of census geography which are being released by the Bureau of the Census for: (1) all data releases before January 1, 2001; (2) the data contained in the 2000 decennial census Public Law 94–171 data file released for use in redistricting; (3) the Summary Tabulation File One (STF–1) for the 2000 decennial census; and (4) the official populations of the States transmitted from the Secretary of Commerce through the President to the Clerk of the House used to reapportion the districts of the House among the States as a result of the 2000 decennial census. Simultaneously with any other release or reporting of any of the information described in the preceding sentence through other means, such information shall be made available to the public on the Internet. These files of the Bureau of the Census shall be available concurrently to the release of the original files to the same recipients, on identical media, and at a comparable price. They shall contain the number of persons enumerated without using statistical methods and any additions or subtractions thereto. These files shall be based on data gathered and generated by the Bureau of the Census in its official capacity.
- (k) This section shall apply in fiscal year 1998 and succeeding fiscal years.

## << 13 USCA Sec. 141 NOTE >>

SEC. 210. (a) There shall be established a board to be known as the Census Monitoring Board (hereafter in this section referred to as the "Board").

- (b) The function of the Board shall be to observe and monitor all aspects of the preparation and implementation of the 2000 decennial census (including all dress rehearsals and other simulations of a census in preparation therefor).
- (c)(1) The Board shall be composed of 8 members as follows:
- (A) Two individuals appointed by the majority leader of the Senate.
- (B) Two individuals appointed by the Speaker of the House of Representatives.
- (C) Four individuals appointed by the President, of whom—
- (i) one shall be on the recommendation of the minority leader of the Senate; and
- (ii) one shall be on the recommendation of the minority leader of the House of Representatives.

All members of the Board shall be appointed within 60 days after the date of enactment of this Act. A vacancy in the Board shall be filled in the manner in which the original appointment was made.

- (2) Members shall not be entitled to any pay by reason of their service on the Board, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.
- (3) The Board shall have—
- (A) a co-chairman who shall be appointed jointly by the members under subsection (c)(1)(A) and (B), and
- (B) a co-chairman who shall be appointed jointly by the members under subsection (c)(1)(C).
- (4) The Board shall meet at the call of either co-chairman.
- (5) A quorum shall consist of five members of the Board.
- (6) The Board may promulgate any regulations necessary to carry out its duties.
- (d)(1) The Board shall have—

- (A) an executive director who shall be appointed jointly by the members under subsection (c)(1)(A) and (B), and
- (B) an executive director who shall be appointed jointly by the members under subsection (c)(1)(C),

each of whom shall be paid at a rate not to exceed level IV of the Executive Schedule.

- (2) Subject to such rules as the Board may prescribe, each executive director—
- (A) may appoint and fix the pay of such additional personnel as that executive director considers appropriate; and
- (B) may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of pay payable for grade GS-15 of the General Schedule.

Such rules shall include provisions to ensure an equitable division or sharing of resources, as appropriate, between the respective staff of the Board.

- (3) The staff of the Board shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).
- (4) The Administrator of the General Services Administration, in coordination with the Secretary of Commerce, shall locate suitable office space for the operation of the Board in the W. Edwards Deming Building in Suitland, Maryland. The facilities shall serve as the headquarters of the Board and shall include all necessary equipment and incidentals required for the proper functioning of the Board.
- (e)(1) For the purpose of carrying out its duties, the Board may hold such hearings (at the call of either co-chairman) and undertake such other activities as the Board determines to be necessary to carry out its duties.
- (2) The Board may authorize any member of the Board or of its staff to take any action which the Board is authorized to take by this subsection.
- (3)(A) Each co-chairman of the Board and any members of the staff who may be designated by the Board under this paragraph shall be granted access to any data, files, information, or other matters maintained by the Bureau of the Census (or received by it in the course of conducting a decennial census of population) which they may request, subject to such regulations as the Board may prescribe in consultation with the Secretary of Commerce.
- (B) The Board or the co-chairmen acting jointly may secure directly from any other Federal agency, including the White House, all information that the Board considers necessary to enable the Board to carry out its duties. Upon request of the Board or both co-chairmen, the head of that agency (or other person duly designated for purposes of this paragraph) shall furnish that information to the Board.
- (4) The Board shall prescribe regulations under which any member of the Board or of its staff, and any person whose services are procured under subsection (d)(2)(B), who gains access to any information or other matter pursuant to this subsection shall, to the extent that any provisions of section 9 or 214 of title 13, United States Code, would apply with respect to such matter in the case of an employee of the Department of Commerce, be subject to such provisions.
- (5) Upon the request of the Board, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Board to assist the Board in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.
- (6) Upon the request of the Board, the head of a Federal agency shall provide such technical assistance to the Board as the Board determines to be necessary to carry out its duties.
- (7) The Board may use the United States mails in the same manner and under the same conditions as Federal agencies and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.
- (8) Upon request of the Board, the Administrator of General Services shall provide to the Board on a reimbursable basis such administrative support services as the Board may request.
- (9) For purposes of costs relating to printing and binding, including the cost of personnel detailed from the Government Printing Office, the Board shall be deemed to be a committee of the Congress.
- (f)(1) The Board shall transmit to the Congress—
- (A) interim reports, with the first such report due by April 1, 1998;
- (B) additional reports, the first of which shall be due by February 1, 1999, the second of which shall be due by April 1, 1999, and subsequent reports at least semiannually thereafter;

- (C) a final report which shall be due by September 1, 2001; and
- (D) any other reports which the Board considers appropriate.

The final report shall contain a detailed statement of the findings and conclusions of the Board with respect to the matters described in subsection (b).

- (2) In addition to any matter otherwise required under this subsection, each such report shall address, with respect to the period covered by such report—
  - (A) the degree to which efforts of the Bureau of the Census to prepare to conduct the 2000 census—
  - (i) shall achieve maximum possible accuracy at every level of geography;
  - (ii) shall be taken by means of an enumeration process designed to count every individual possible; and
  - (iii) shall be free from political bias and arbitrary decisions; and
  - (B) efforts by the Bureau of the Census intended to contribute to enumeration improvement, specifically, in connection with—
  - (i) computer modernization and the appropriate use of automation;
  - (ii) address list development;
  - (iii) outreach and promotion efforts at all levels designed to maximize response rates, especially among groups that have historically been undercounted (including measures undertaken in conjunction with local government and community and other groups):
  - (iv) establishment and operation of field offices; and
  - (v) efforts relating to the recruitment, hiring, and training of enumerators.
- (3) Any data or other information obtained by the Board under this section shall be made available to any committee or subcommittee of Congress of appropriate jurisdiction upon request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, or member thereof, shall disclose any information obtained under this paragraph which is submitted to it on a confidential basis unless the full committee determines that the withholding of that information is contrary to the national interest.
- (4) The Board shall study and submit to Congress, as part of its first report under paragraph (1)(A), its findings and recommendations as to the feasibility and desirability of using postal personnel or private contractors to help carry out the decennial census.
- (g) There is authorized to be appropriated \$4,000,000 for each of fiscal years 1998 through 2001 to carry out this section.
- (h) To the extent practicable, members of the Board shall work to promote the most accurate and complete census possible by using their positions to publicize the need for full and timely responses to census questionnaires.
- (i)(1) No individual described in paragraph (2) shall be eligible—
- (A) to be appointed or to continue serving as a member of the Board or as a member of the staff thereof; or
- (B) to enter into any contract with the Board.
- (2) This subsection applies with respect to any individual who is serving or who has ever served—
- (A) as the Director of the Census; or
- (B) with any committee or subcommittee of either House of Congress, having jurisdiction over any aspect of the decennial census, as—
  - (i) a Member of Congress; or
  - (ii) a congressional employee.
- (j) The Board shall cease to exist on September 30, 2001.

(k) Section 9(a) of title 13, United States Code, is amended in the matter before paragraph (1) thereof by striking "of this title —" and inserting "of this title or section 210 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998—".

SEC. 211. (a) Section 401 of title 22, United States Code, is amended—

- (1) in subsection (a), by adding after the first sentence the following: "The Secretary of Commerce may seize and detain any commodity (other than arms or munitions of war) or technology which is intended to be or is being exported in violation of laws governing such exports and may seize and detain any vessel, vehicle, or aircraft containing the same or which has been used or is being used in exporting or attempting to export such articles."; and
- (2) in subsection (b), by adding after "and not inconsistent with the provisions hereof." the following: "However, with respect to seizures and forfeitures of property under this section by the Secretary of Commerce, such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs law may be performed by such officers as are designated by the Secretary of Commerce or, upon the request of the Secretary of Commerce, by any other agency that has authority to manage and dispose of seized property."

#### << 28 USCA § 524 >>

(b) Section 524(c)(11)(B) of title 28, United States Code, is amended by adding at the end thereof "or pursuant to the authority of the Secretary of Commerce".

SEC. 212. Notwithstanding any other provision of law, the Economic Development Administration is directed to transfer funds obligated and awarded to the Butte–Silver Bow Consolidated Local Government as Project Number 05–01–02822 to the Butte Local Development Corporation Revolving Loan Fund to be administered by the Butte Local Development Corporation, such funds to remain available until expended. In accordance with section 1557 of title 31, United States Code, funds obligated and awarded in fiscal year 1994 under the heading "Economic Development Administration–Economic Development Assistance Programs" for Metropolitan Dade County, Florida, and subsequently transferred to Miami–Dade Community College for Project No. 04–49–04021 shall be exempt from subchapter IV of chapter 15 of such title and shall remain available for expenditure without fiscal year limitation.

This title may be cited as the "Department of Commerce and Related Agencies Appropriations Act, 1998".

# TITLE III—THE JUDICIARY SUPREME COURT OF THE UNITED STATES SALARIES AND EXPENSES

For expenses necessary for the operation of the Supreme Court, as required by law, excluding care of the building and grounds, including purchase or hire, driving, maintenance, and operation of an automobile for the Chief Justice, not to exceed \$10,000 for the purpose of transporting Associate Justices, and hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344; not to exceed \$10,000 for official reception and representation expenses; and for miscellaneous expenses, to be expended as the Chief Justice may approve; \$29,245,000.

#### CARE OF THE BUILDING AND GROUNDS

For such expenditures as may be necessary to enable the Architect of the Capitol to carry out the duties imposed upon him by the Act approved May 7, 1934 (40 U.S.C. 13a–13b), \$3,400,000, of which \$485,000 shall remain available until expended.

#### UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

### SALARIES AND EXPENSES

For salaries of the chief judge, judges, and other officers and employees, and for necessary expenses of the court, as authorized by law, \$15,575,000.

#### UNITED STATES COURT OF INTERNATIONAL TRADE

# SALARIES AND EXPENSES

For salaries of the chief judge and eight judges, salaries of the officers and employees of the court, services as authorized by 5 U.S.C. 3109, and necessary expenses of the court, as authorized by law, \$11,449,000.

#### COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

#### SALARIES AND EXPENSES

#### (INCLUDING TRANSFER OF FUNDS)

For the salaries of circuit and district judges (including judges of the territorial courts of the United States), justices and judges retired from office or from regular active service, judges of the United States Court of Federal Claims, bankruptcy judges, magistrate judges, and all other officers and employees of the Federal Judiciary not otherwise specifically provided for, and necessary expenses of the courts, as authorized by law, \$2,682,400,000 (including the purchase of firearms and ammunition); of which not to exceed \$13,454,000 shall remain available until expended for space alteration projects; of which \$900,000

shall be transferred to the Commission on Structural Alternatives for the Federal Courts of Appeals, to remain available until expended; and of which not to exceed \$10,000,000 shall remain available until expended for furniture and furnishings related to new space alteration and construction projects.

In addition, for expenses of the United States Court of Federal Claims associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed \$2,450,000, to be appropriated from the Vaccine Injury Compensation Trust Fund.

#### VIOLENT CRIME REDUCTION PROGRAMS

For activities of the Federal Judiciary as authorized by law, \$40,000,000, to remain available until expended, which shall be derived from the Violent Crime Reduction Trust Fund, as authorized by section 190001(a) of Public Law 103–322, and sections 818 and 823 of Public Law 104–132.

#### **DEFENDER SERVICES**

For the operation of Federal Public Defender and Community Defender organizations; the compensation and reimbursement of expenses of attorneys appointed to represent persons under the Criminal Justice Act of 1964, as amended; the compensation and reimbursement of expenses of persons furnishing investigative, expert and other services under the Criminal Justice Act (18 U.S.C. 3006A(e)); the compensation (in accordance with Criminal Justice Act maximums) and reimbursement of expenses of attorneys appointed to assist the court in criminal cases where the defendant has waived representation by counsel; the compensation and reimbursement of travel expenses of guardians ad litem acting on behalf of financially eligible minor or incompetent offenders in connection with transfers from the United States to foreign countries with which the United States has a treaty for the execution of penal sentences; and the compensation of attorneys appointed to represent jurors in civil actions for the protection of their employment, as authorized by 28 U.S.C. 1875(d); \$329,529,000, to remain available until expended as authorized by 18 U.S.C. 3006A(i).

#### FEES OF JURORS AND COMMISSIONERS

For fees and expenses of jurors as authorized by 28 U.S.C. 1871 and 1876; compensation of jury commissioners as authorized by 28 U.S.C. 1863; and compensation of commissioners appointed in condemnation cases pursuant to rule 71A(h) of the Federal Rules of Civil Procedure (28 U.S.C. Appendix Rule 71A(h)); \$64,438,000, to remain available until expended: Provided, That the compensation of land commissioners shall not exceed the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code.

#### **COURT SECURITY**

For necessary expenses, not otherwise provided for, incident to the procurement, installation, and maintenance of security equipment and protective services for the United States Courts in courtrooms and adjacent areas, including building ingress-egress control, inspection of packages, directed security patrols, and other similar activities as authorized by section 1010 of the Judicial Improvement and Access to Justice Act (Public Law 100–702); \$167,214,000, of which not to exceed \$10,000,000 shall remain available until expended for security systems, to be expended directly or transferred to the United States Marshals Service which shall be responsible for administering elements of the Judicial Security Program consistent with standards or guidelines agreed to by the Director of the Administrative Office of the United States Courts and the Attorney General.

### ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

#### SALARIES AND EXPENSES

For necessary expenses of the Administrative Office of the United States Courts as authorized by law, including travel as authorized by 31 U.S.C. 1345, hire of a passenger motor vehicle as authorized by 31 U.S.C. 1343(b), advertising and rent in the District of Columbia and elsewhere, \$52,000,000, of which not to exceed \$7,500 is authorized for official reception and representation expenses.

# FEDERAL JUDICIAL CENTER SALARIES AND EXPENSES

For necessary expenses of the Federal Judicial Center, as authorized by Public Law 90–219, \$17,495,000; of which \$1,800,000 shall remain available through September 30, 1999, to provide education and training to Federal court personnel; and of which not to exceed \$1,000 is authorized for official reception and representation expenses.

# JUDICIAL RETIREMENT FUNDS PAYMENT TO JUDICIARY TRUST FUNDS

For payment to the Judicial Officers' Retirement Fund, as authorized by 28 U.S.C. 377(o), \$25,000,000; to the Judicial Survivors' Annuities Fund, as authorized by 28 U.S.C. 376(c), \$7,400,000; and to the United States Court of Federal Claims Judges' Retirement Fund, as authorized by 28 U.S.C. 178(l), \$1,800,000.

#### UNITED STATES SENTENCING COMMISSION

#### SALARIES AND EXPENSES

For the salaries and expenses necessary to carry out the provisions of chapter 58 of title 28, United States Code, \$9,240,000, of which not to exceed \$1,000 is authorized for official reception and representation expenses.

#### GENERAL PROVISIONS—THE JUDICIARY

SEC. 301. Appropriations and authorizations made in this title which are available for salaries and expenses shall be available for services as authorized by 5 U.S.C. 3109.

SEC. 302. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Judiciary in this Act may be transferred between such appropriations, but no such appropriation, except "Courts of Appeals, District Courts, and Other Judicial Services, Defender Services" and "Courts of Appeals, District Courts, and Other Judicial Services, Fees of Jurors and Commissioners", shall be increased by more than 10 percent by any such transfers: Provided, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 303. Notwithstanding any other provision of law, the salaries and expenses appropriation for district courts, courts of appeals, and other judicial services shall be available for official reception and representation expenses of the Judicial Conference of the United States: Provided, That such available funds shall not exceed \$10,000 and shall be administered by the Director of the Administrative Office of the United States Courts in his capacity as Secretary of the Judicial Conference.

SEC. 304. Section 612 of title 28, United States Code, shall be amended by striking out subsection (1).

#### << 28 USCA § 41 NOTE >>

#### SEC. 305. (a) COMMISSION ON STRUCTURAL ALTERNATIVES FOR THE FEDERAL COURTS OF APPEALS.—

- (1) ESTABLISHMENT AND FUNCTIONS OF COMMISSION.—
- (A) ESTABLISHMENT.—There is established a Commission on Structural Alternatives for the Federal Courts of Appeals (hereinafter referred to as the "Commission").
- (B) FUNCTIONS.—The functions of the Commission shall be to—
- (i) study the present division of the United States into the several judicial circuits;
- (ii) study the structure and alignment of the Federal Court of Appeals system, with particular reference to the Ninth Circuit; and
- (iii) report to the President and the Congress its recommendations for such changes in circuit boundaries or structure as may be appropriate for the expenditious and effective disposition of the caseload of the Federal Courts of Appeals, consistent with fundamental concepts of fairness and due process.
- (2) MEMBERSHIP.—
- (A) COMPOSITION.—The Commission shall be composed of five members who shall be appointed by the Chief Justice of the United States.
- (B) APPOINTMENT.—The members of the Commission shall be appointed within 30 days after the date of enactment of this Act.
- (C) VACANCY.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.
- (D) CHAIR.—The Commission shall elect a chair and vice chair from among its members.
- (E) QUORUM.—Three members of the Commission shall constitute a quorum, but two may conduct hearings.
- (3) COMPENSATION.—
- (A) IN GENERAL.—Members of the Commission who are officers, or full-time employees, of the United States shall receive no additional compensation for their services, but shall be reimbursed for travel, subsistence, and other necessary

expenses incurred in the performance of duties vested in the Commission, but not in excess of the maximum amounts authorized under section 456 of title 28. United States Code.

- (B) PRIVATE MEMBERS.—Members of the Commission from private life shall receive \$200 for each day (including travel time) during which the member is engaged in the actual performance of duties, but not in excess of the maximum amounts authorized under section 456 of title 28, United States Code.
- (4) PERSONNEL.—
- (A) EXECUTIVE DIRECTOR.—The Commission may appoint an Executive Director who shall receive compensation at a rate not exceeding the rate prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.
- (B) STAFF.—The Executive Director, with the approval of the Commission, may appoint and fix the compensation of such additional personnel as the Executive Director determines necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service or the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Compensation under this paragraph shall not exceed the annual maximum rate of basic pay for a position above GS–15 of the General Schedule under section 5108 of title 5, United States Code.
- (C) EXPERTS AND CONSULTANTS.—The Executive Director may procure personal services of experts and consultants as authorized by section 3109 of title 5, United States Code, at rates not to exceed the highest level payable under the General Schedule pay rates under section 5332 of title 5, United States Code.
- (D) SERVICES.—The Administrative Office of the United States Courts shall provide administrative services, including financial and budgeting services, to the Commission on a reimbursable basis. The Federal Judicial Center shall provide necessary research services to the Commission on a reimbursable basis.
- (5) INFORMATION.—The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information and assistance the Commission determines necessary to carry out its functions under this section. Each such department, agency, and independent instrumentality is authorized to provide such information and assistance to the extent permitted by law when requested by the chair of the Commission.
- (6) REPORT.—The Commission shall conduct the studies required in this section during the 10-month period beginning on the date on which a quorum of the Commission has been appointed. Not later than 2 months following the completion of such 10-month period, the Commission shall submit its report to the President and the Congress. The Commission shall terminate 90 days after the date of the submission of its report.
- (b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums, not to exceed \$900,000, as may be necessary to carry out the purposes of this section. Such sums as are appropriated shall remain available until expended.

#### << 28 USCA § 461 NOTE >>

SEC. 306. Pursuant to section 140 of Public Law 97–92, justices and judges of the United States are authorized during fiscal year 1998, to receive a salary adjustment in accordance with 28 U.S.C. 461: Provided, That \$5,000,000 is appropriated for salary adjustments pursuant to this section and such funds shall be transferred to and merged with appropriations in title III of this Act.

SEC. 307. Section 44(c) of title 28, United States Code, is amended by adding at the end thereof the following sentence: "In each circuit (other than the Federal judicial circuit) there shall be at least one circuit judge in regular active service appointed from the residents of each state in that circuit."

- SEC. 308. Section 3006A(d) of title 18, United States Code, is amended by striking paragraph (4) and inserting the following: "(4) DISCLOSURE OF FEES.—
- "(A) IN GENERAL.—Subject to subparagraphs (B) through (E), the amounts paid under this subsection for services in any case shall be made available to the public by the court upon the court's approval of the payment.

- "(B) PRE-TRIAL OR TRIAL IN PROGRESS.—If a trial is in pre-trial status or still in progress and after considering the defendant's interests as set forth in subparagraph (D), the court shall—
- "(i) redact any detailed information on the payment voucher provided by defense counsel to justify the expenses to the court; and
- "(ii) make public only the amounts approved for payment to defense counsel by dividing those amounts into the following categories:
  - "(I) Arraignment and or plea.
  - "(II) Bail and detention hearings.
  - "(III) Motions.
  - "(IV) Hearings.
  - "(V) Interviews and conferences.
  - "(VI) Obtaining and reviewing records.
  - "(VII) Legal research and brief writing.
  - "(VIII) Travel time.
  - "(IX) Investigative work.
  - "(X) Experts.
  - "(XI) Trial and appeals.
  - "(XII) Other.
- "(C) TRIAL COMPLETED.—
- "(i) IN GENERAL.—If a request for payment is not submitted until after the completion of the trial and subject to consideration of the defendant's interests as set forth in subparagraph (D), the court shall make available to the public an unredacted copy of the expense voucher.
- "(ii) PROTECTION OF THE RIGHTS OF THE DEFENDANT.—If the court determines that defendant's interests as set forth in subparagraph (D) require a limited disclosure, the court shall disclose amounts as provided in subparagraph (B).
- "(D) CONSIDERATIONS.—The interests referred to in subparagraphs (B) and (C) are—
- "(i) to protect any person's 5th amendment right against self-incrimination;
- "(ii) to protect the defendant's 6th amendment rights to effective assistance of counsel;
- "(iii) the defendant's attorney-client privilege;
- "(iv) the work product privilege of the defendant's counsel;
- "(v) the safety of any person; and
- "(vi) any other interest that justice may require.
- "(E) NOTICE.—The court shall provide reasonable notice of disclosure to the counsel of the defendant prior to the approval of the payments in order to allow the counsel to request redaction based on the considerations set forth in subparagraph (D). Upon completion of the trial, the court shall release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court. If there is an appeal, the court shall not release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court until such time as the appeals process is completed, unless the court determines that none of the defendant's interests set forth in subparagraph (D) will be compromised.
- "(F) EFFECTIVE DATE.—The amendment made by paragraph (4) shall become effective 60 days after enactment of this Act, will apply only to cases filed on or after the effective date, and shall be in effect for no longer than 24 months after the effective date."

This title may be cited as "The Judiciary Appropriations Act, 1998".

TITLE IV—DEPARTMENT OF STATE AND RELATED AGENCIES
DEPARTMENT OF STATE
ADMINISTRATION OF FOREIGN AFFAIRS
DIPLOMATIC AND CONSULAR PROGRAMS

<< 8 USCA § 1351 NOTE >>

For necessary expenses of the Department of State and the Foreign Service not otherwise provided for, including expenses authorized by the State Department Basic Authorities Act of 1956, as amended; representation to certain international

organizations in which the United States participates pursuant to treaties, ratified pursuant to the advice and consent of the Senate, or specific Acts of Congress; acquisition by exchange or purchase of passenger motor vehicles as authorized by 31 U.S.C. 1343, 40 U.S.C. 481(c), and 22 U.S.C. 2674; and for expenses of general administration; \$1,705,600,000: Provided, That of the amount made available under this heading, not to exceed \$4,000,000 may be transferred to, and merged with, funds in the "Emergencies in the Diplomatic and Consular Service" appropriations account, to be available only for emergency evacuations and terrorism rewards: Provided further, That notwithstanding section 140(a)(5), and the second sentence of section 140(a)(3), of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), fees may be collected during fiscal years 1998 and 1999 under the authority of section 140(a)(1) of that Act: Provided further, That all fees collected under the preceding proviso shall be deposited in fiscal years 1998 and 1999 as an offsetting collection to appropriations made under this heading to recover costs as set forth under section 140(a)(2) of that Act and shall remain available until expended.

In addition to funds otherwise available, of the funds provided under this heading, \$24,856,000 shall be available only for the Diplomatic Telecommunications Service for operation of existing base services and \$17,312,000 shall be available only for the enhancement of the Diplomatic Telecommunications Service and shall remain available until expended.

In addition, not to exceed \$700,000 in registration fees collected pursuant to section 38 of the Arms Export Control Act, as amended, may be used in accordance with section 45 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2717); in addition not to exceed \$1,252,000 shall be derived from fees collected from other executive agencies for lease or use of facilities located at the International Center in accordance with section 4 of the International Center Act (Public Law 90–553), as amended, and in addition, as authorized by section 5 of such Act \$490,000, to be derived from the reserve authorized by that section, to be used for the purposes set out in that section; and in addition not to exceed \$15,000 which shall be derived from reimbursements, surcharges, and fees for use of Blair House facilities in accordance with section 46 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2718(a)).

Notwithstanding section 402 of this Act, not to exceed 20 percent of the amounts made available in this Act in the appropriation accounts "Diplomatic and Consular Programs" and "Salaries and Expenses" under the heading "Administration of Foreign Affairs" may be transferred between such appropriation accounts: Provided, That any transfer pursuant to this sentence shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

In addition, for counterterrorism requirements overseas, including security guards and equipment, \$23,700,000, to remain available until expended.

#### SALARIES AND EXPENSES

For expenses necessary for the general administration of the Department of State and the Foreign Service, provided for by law, including expenses authorized by section 9 of the Act of August 31, 1964, as amended (31 U.S.C. 3721), and the State Department Basic Authorities Act of 1956, as amended, \$363,513,000.

#### CAPITAL INVESTMENT FUND

For necessary expenses of the Capital Investment Fund, \$86,000,000, to remain available until expended, as authorized in Public Law 103–236: Provided, That section 135(e) of Public Law 103–236 shall not apply to funds available under this heading.

#### OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended (5 U.S.C.App.), \$27,495,000, notwithstanding section 209(a)(1) of the Foreign Service Act of 1980, as amended (Public Law 96–465), as it relates to post inspections.

### REPRESENTATION ALLOWANCES

For representation allowances as authorized by section 905 of the Foreign Service Act of 1980, as amended (22 U.S.C. 4085), \$4,200,000.

### PROTECTION OF FOREIGN MISSIONS AND OFFICIALS

For expenses, not otherwise provided, to enable the Secretary of State to provide for extraordinary protective services in accordance with the provisions of section 214 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4314) and 3 U.S.C. 208, \$7,900,000, to remain available until September 30, 1999.

#### SECURITY AND MAINTENANCE OF UNITED STATES MISSIONS

For necessary expenses for carrying out the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 292–300), preserving, maintaining, repairing, and planning for, buildings that are owned or directly leased by the Department of State, and

carrying out the Diplomatic Security Construction Program as authorized by title IV of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4851), \$404,000,000, to remain available until expended as authorized by section 24(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2696(c)): Provided, That none of the funds appropriated in this paragraph shall be available for acquisition of furniture and furnishings and generators for other departments and agencies.

#### EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE

For expenses necessary to enable the Secretary of State to meet unforeseen emergencies arising in the Diplomatic and Consular Service pursuant to the requirement of 31 U.S.C. 3526(e), \$5,500,000 to remain available until expended as authorized by section 24(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2696(c)), of which not to exceed \$1,000,000 may be transferred to and merged with the Repatriation Loans Program Account, subject to the same terms and conditions.

#### REPATRIATION LOANS PROGRAM ACCOUNT

For the cost of direct loans, \$593,000, as authorized by section 4 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2671): Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974. In addition, for administrative expenses necessary to carry out the direct loan program, \$607,000 which may be transferred to and merged with the Salaries and Expenses account under Administration of Foreign Affairs.

#### PAYMENT TO THE AMERICAN INSTITUTE IN TAIWAN

For necessary expenses to carry out the Taiwan Relations Act, Public Law 96-8, \$14,000,000.

PAYMENT TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY FUND

For payment to the Foreign Service Retirement and Disability Fund, as authorized by law, \$129,935,000.

<< 22 USCA § 269a NOTE >>

# INTERNATIONAL ORGANIZATIONS AND CONFERENCES CONTRIBUTIONS TO INTERNATIONAL ORGANIZATIONS

For expenses, not otherwise provided for, necessary to meet annual obligations of membership in international multilateral organizations, pursuant to treaties ratified pursuant to the advice and consent of the Senate, conventions or specific Acts of Congress, \$955,515,000, of which not to exceed \$54,000,000 shall remain available until expended for payment of arrearages: Provided, That none of the funds appropriated or otherwise made available by this Act for payment of arrearages may be obligated or expended unless such obligation or expenditure is expressly authorized by the enactment of an Act that makes payment of arrearages contingent upon reforms that should include the following: (1) a reduction in the United States assessed share of the United Nations regular budget to 20 percent and of peacekeeping operations to 25 percent; (2) reimbursement for goods and services provided by the United States to the United Nations; (3) certification that the United Nations and its specialized or affiliated agencies have not taken any action to infringe on the sovereignty of the United States; (4) a ceiling on United States contributions to international organizations after fiscal year 1998 of \$900,000,000; (5) establishment of a meritbased personnel system at the United Nations that includes a code of conduct and a personnel evaluation system; (6) United States membership on the Advisory Committee on Administrative and Budgetary Questions that oversees the United Nations budget; (7) access to United Nations financial data by the General Accounting Office; (8) achievement of a negative growth budget and the establishment of independent inspectors general for affiliated organizations; and (9) improved consultation procedures with the Congress: Provided further, That any payment of arrearages shall be directed toward special activities that are mutually agreed upon by the United States and the respective international organization: Provided further, That 20 percent of the funds appropriated in this paragraph for the assessed contribution of the United States to the United Nations shall be withheld from obligation and expenditure until a certification is made under section 401(b) of Public Law 103-236 and under such other requirements related to the Office of Internal Oversight Services of the United Nations as may be enacted into law for fiscal year 1998: Provided further, That certification under section 401(b) of Public Law 103-236 for fiscal year 1998 may only be made if the Committees on Appropriations and Foreign Relations of the Senate and the Committees on Appropriations and International Relations of the House of Representatives are notified of the steps taken, and anticipated, to meet the requirements of section 401(b) of Public Law 103-236 at least 15 days in advance of the proposed certification: Provided further, That none of the funds appropriated in this paragraph shall be available for a United States contribution to an international organization for the United States share of interest costs made known to the United States Government by such organization for loans incurred on or after October 1, 1984, through external borrowings: Provided further, That of the funds

appropriated in this paragraph, \$100,000,000 may be made available only on a semiannual basis pursuant to a certification by the Secretary of State on a semiannual basis, that the United Nations has taken no action during the preceding six months to increase funding for any United Nations program without identifying an offsetting decrease during that six-month period elsewhere in the United Nations budget and cause the United Nations to exceed the expected reform budget for the biennium 1998–1999 of \$2,533,000,000: Provided further, That not to exceed \$12,000,000 shall be transferred from funds made available under this heading to the "International Conferences and Contingencies" account for United States contributions to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission, provided that such transferred funds are obligated or expended only for Commission meetings and sessions, provisional technical secretariat salaries and expenses, other Commission administrative and training activities, including purchase of training equipment, and upgrades to existing internationally based monitoring systems involved in cooperative data sharing agreements with the United States as of the date of enactment of this Act, until the United States Senate ratifies the Comprehensive Nuclear Test Ban Treaty.

#### CONTRIBUTIONS FOR INTERNATIONAL PEACEKEEPING ACTIVITIES

For necessary expenses to pay assessed and other expenses of international peacekeeping activities directed to the maintenance or restoration of international peace and security, \$256,000,000, of which not to exceed \$46,000,000 shall remain available until expended for payment of arrearages: Provided, That none of the funds appropriated or otherwise made available by this Act for payment of arrearages may be obligated or expended unless such obligation or expenditure is expressly authorized by the enactment of an Act described in the first proviso under the heading "Contributions to International Organizations" in this title: Provided further, That none of the funds made available under this Act shall be obligated or expended for any new or expanded United Nations peacekeeping mission unless, at least 15 days in advance of voting for the new or expanded mission in the United Nations Security Council (or in an emergency, as far in advance as is practicable): (1) the Committees on Appropriations of the House of Representatives and the Senate and other appropriate committees of the Congress are notified of the estimated cost and length of the mission, the vital national interest that will be served, and the planned exit strategy; and (2) a reprogramming of funds pursuant to section 605 of this Act is submitted, and the procedures therein followed, setting forth the source of funds that will be used to pay for the cost of the new or expanded mission: Provided further, That funds shall be available for peacekeeping expenses only upon a certification by the Secretary of State to the appropriate committees of the Congress that American manufacturers and suppliers are being given opportunities to provide equipment, services, and material for United Nations peacekeeping activities equal to those being given to foreign manufacturers and suppliers.

<< 22 USCA § 269a NOTE >>

#### INTERNATIONAL COMMISSIONS

For necessary expenses, not otherwise provided for, to meet obligations of the United States arising under treaties, or specific Acts of Congress, as follows:

#### INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

For necessary expenses for the United States Section of the International Boundary and Water Commission, United States and Mexico, and to comply with laws applicable to the United States Section, including not to exceed \$6,000 for representation; as follows:

#### SALARIES AND EXPENSES

For salaries and expenses, not otherwise provided for, \$17,490,000.

#### CONSTRUCTION

For detailed plan preparation and construction of authorized projects, \$6,463,000, to remain available until expended, as authorized by section 24(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2696(c)).

#### AMERICAN SECTIONS, INTERNATIONAL COMMISSIONS

For necessary expenses, not otherwise provided for the International Joint Commission and the International Boundary Commission, United States and Canada, as authorized by treaties between the United States and Canada or Great Britain, and for the Border Environment Cooperation Commission as authorized by Public Law 103–182, \$5,490,000, of which not to exceed \$9,000 shall be available for representation expenses incurred by the International Joint Commission.

#### INTERNATIONAL FISHERIES COMMISSIONS

For necessary expenses for international fisheries commissions, not otherwise provided for, as authorized by law, \$14,549,000: Provided, That the United States' share of such expenses may be advanced to the respective commissions, pursuant to 31 U.S.C. 3324.

#### **OTHER**

#### PAYMENT TO THE ASIA FOUNDATION

For a grant to the Asia Foundation, as authorized by section 501 of Public Law 101–246, \$8,000,000, to remain available until expended, as authorized by section 24(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2696(c)).

### RELATED AGENCIES

# ARMS CONTROL AND DISARMAMENT AGENCY ARMS CONTROL AND DISARMAMENT ACTIVITIES

For necessary expenses not otherwise provided, for arms control, nonproliferation, and disarmament activities, \$41,500,000, of which not to exceed \$50,000 shall be for official reception and representation expenses as authorized by the Act of September 26, 1961, as amended (22 U.S.C. 2551 et seq.).

#### (RESCISSION)

Of the unexpended balances previously appropriated under this heading, \$700,000 are rescinded.

# UNITED STATES INFORMATION AGENCY INTERNATIONAL INFORMATION PROGRAMS

For expenses, not otherwise provided for, necessary to enable the United States Information Agency, as authorized by the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451 et seq.), the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431 et seq.), and Reorganization Plan No. 2 of 1977 (91 Stat. 1636), to carry out international communication, educational and cultural activities; and to carry out related activities authorized by law, including employment, without regard to civil service and classification laws, of persons on a temporary basis (not to exceed \$700,000 of this appropriation), as authorized by section 801 of such Act of 1948 (22 U.S.C. 1471), and entertainment, including official receptions, within the United States, not to exceed \$25,000 as authorized by section 804(3) of such Act of 1948 (22 U.S.C. 1474(3)); \$427,097,000: Provided, That not to exceed \$1,400,000 may be used for representation abroad as authorized by section 302 of such Act of 1948 (22 U.S.C. 1452) and section 905 of the Foreign Service Act of 1980 (22 U.S.C. 4085): Provided further, That not to exceed \$6,000,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from or in connection with English teaching, library, motion pictures, and publication programs as authorized by section 810 of such Act of 1948 (22 U.S.C. 1475e) and, notwithstanding any other law, fees from educational advising and counseling, and exchange visitor program services: Provided further, That not to exceed \$920,000 to remain available until expended may be used to carry out projects involving security construction and related improvements for agency facilities not physically located together with Department of State facilities abroad.

#### **TECHNOLOGY FUND**

For expenses necessary to enable the United States Information Agency to provide for the procurement of information technology improvements, as authorized by the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431 et seq.), the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451 et seq.), and Reorganization Plan No. 2 of 1977 (91 Stat. 1636), \$5,050,000, to remain available until expended.

### EDUCATIONAL AND CULTURAL EXCHANGE PROGRAMS

For expenses of educational and cultural exchange programs, as authorized by the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451 et seq.), and Reorganization Plan No. 2 of 1977 (91 Stat. 1636), \$197,731,000, to remain available until expended as authorized by section 105 of such Act of 1961 (22 U.S.C. 2455): Provided, That not to exceed \$800,000, to remain available until expended, may be credited to this appropriation from fees or other payments received from or in connection with English teaching and publication programs as authorized by section 810 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1475e) and, notwithstanding any other provision of law, fees from educational advising and counseling.

#### EISENHOWER EXCHANGE FELLOWSHIP PROGRAM TRUST FUND

For necessary expenses of Eisenhower Exchange Fellowships, Incorporated, as authorized by sections 4 and 5 of the Eisenhower Exchange Fellowship Act of 1990 (20 U.S.C. 5204–5205), all interest and earnings accruing to the Eisenhower Exchange Fellowship Program Trust Fund on or before September 30, 1998, to remain available until expended: Provided,

That none of the funds appropriated herein shall be used to pay any salary or other compensation, or to enter into any contract providing for the payment thereof, in excess of the rate authorized by 5 U.S.C. 5376; or for purposes which are not in accordance with OMB Circulars A–110 (Uniform Administrative Requirements) and A–122 (Cost Principles for Nonprofit Organizations), including the restrictions on compensation for personal services.

#### ISRAELI ARAB SCHOLARSHIP PROGRAM

For necessary expenses of the Israeli Arab Scholarship Program as authorized by section 214 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 (22 U.S.C. 2452), all interest and earnings accruing to the Israeli Arab Scholarship Fund on or before September 30, 1998, to remain available until expended.

#### INTERNATIONAL BROADCASTING OPERATIONS

For expenses necessary to enable the United States Information Agency, as authorized by the United States Information and Educational Exchange Act of 1948, as amended, the United States International Broadcasting Act of 1994, as amended, and Reorganization Plan No. 2 of 1977, to carry out international communication activities, \$364,415,000, of which \$12,100,000 shall remain available until expended, not to exceed \$16,000 may be used for official receptions within the United States as authorized by section 804(3) of such Act of 1948 (22 U.S.C. 1747(3)), not to exceed \$35,000 may be used for representation abroad as authorized by section 302 of such Act of 1948 (22 U.S.C. 1452) and section 905 of the Foreign Service Act of 1980 (22 U.S.C. 4085), and not to exceed \$39,000 may be used for official reception and representation expenses of Radio Free Europe/Radio Liberty; and in addition, notwithstanding any other provision of law, not to exceed \$2,000,000 in receipts from advertising and revenue from business ventures, not to exceed \$500,000 in receipts from cooperating international organizations, and not to exceed \$1,000,000 in receipts from privatization efforts of the Voice of America and the International Broadcasting Bureau, to remain available until expended for carrying out authorized purposes.

#### BROADCASTING TO CUBA

For expenses necessary to enable the United States Information Agency to carry out the Radio Broadcasting to Cuba Act, as amended, the Television Broadcasting to Cuba Act, and the International Broadcasting Act of 1994, including the purchase, rent, construction, and improvement of facilities for radio and television transmission and reception, and purchase and installation of necessary equipment for radio and television transmission and reception, \$22,095,000, to remain available until expended.

#### RADIO CONSTRUCTION

For the purchase, rent, construction, and improvement of facilities for radio transmission and reception, and purchase and installation of necessary equipment for radio and television transmission and reception as authorized by section 801 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1471), \$40,000,000, to remain available until expended, as authorized by section 704(a) of such Act of 1948 (22 U.S.C. 1477b(a)).

#### EAST-WEST CENTER

To enable the Director of the United States Information Agency to provide for carrying out the provisions of the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2054–2057), by grant to the Center for Cultural and Technical Interchange Between East and West in the State of Hawaii, \$12,000,000: Provided, That none of the funds appropriated herein shall be used to pay any salary, or enter into any contract providing for the payment thereof, in excess of the rate authorized by 5 U.S.C. 5376.

#### NORTH/SOUTH CENTER

To enable the Director of the United States Information Agency to provide for carrying out the provisions of the North/South Center Act of 1991 (22 U.S.C. 2075), by grant to an educational institution in Florida known as the North/South Center, \$1,500,000, to remain available until expended.

#### NATIONAL ENDOWMENT FOR DEMOCRACY

For grants made by the United States Information Agency to the National Endowment for Democracy as authorized by the National Endowment for Democracy Act, \$30,000,000, to remain available until expended.

### GENERAL PROVISIONS—DEPARTMENT OF STATE AND RELATED AGENCIES

SEC. 401. Funds appropriated under this title shall be available, except as otherwise provided, for allowances and differentials as authorized by subchapter 59 of title 5, United States Code; for services as authorized by 5 U.S.C. 3109; and hire of passenger transportation pursuant to 31 U.S.C. 1343(b).

SEC. 402. Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Department of State in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided,

shall be increased by more than 10 percent by any such transfers: Provided, That not to exceed 5 percent of any appropriation made available for the current fiscal year for the United States Information Agency in this Act may be transferred between such appropriations, but no such appropriation, except as otherwise specifically provided, shall be increased by more than 10 percent by any such transfers: Provided further, That any transfer pursuant to this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

SEC. 403. Funds appropriated by this Act for the United States Information Agency, the Arms Control and Disarmament Agency, and the Department of State may be obligated and expended notwithstanding section 701 of the United States Information and Educational Exchange Act of 1948 and section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, section 53 of the Arms Control and Disarmament Act, and section 15 of the State Department Basic Authorities Act of 1956.

SEC. 404. (a)(1) For purposes of implementing the International Cooperative Administrative Support Services program in fiscal year 1998, the amounts referred to in paragraph (2) shall be transferred in accordance with the provisions of subsection (b).

- (2) Paragraph (1) applies to amounts made available by title IV of this Act under the heading "ADMINISTRATION OF FOREIGN AFFAIRS" as follows:
  - (A) \$108,932,000 of the amount made available under the paragraph "DIPLOMATIC AND CONSULAR PROGRAMS".
- (B) \$3,530,000 of the amount made available under the paragraph "SECURITY AND MAINTENANCE OF UNITED STATES MISSIONS".
- (b) Funds transferred pursuant to subsection (a) shall be transferred to the specified appropriation, allocated to the specified account or accounts in the specified amount, be merged with funds in such account or accounts that are available for administrative support expenses of overseas activities, and be available for the same purposes, and subject to the same terms and conditions, as the funds with which merged, as follows:
  - (1) Appropriations for the legislative branch—
  - (A) for the Library of Congress, for salaries and expenses, \$500,000; and
  - (B) for the General Accounting Office, for salaries and expenses, \$12,000.
  - (2) Appropriations for the Office of the United States Trade Representative, for salaries and expenses, \$302,000.
- (3) Appropriations for the Department of Commerce, for the International Trade Administration, for operations and administration, \$7,055,000.
- (4) Appropriations for the Department of Justice—
- (A) for legal activities—
- (i) for general legal activities, for salaries and expenses, \$194,000; and
- (ii) for the United States Marshals Service, for salaries and expenses, \$2,000;
- (B) for the Federal Bureau of Investigation, for salaries and expenses, \$2,477,000;
- (C) for the Drug Enforcement Administration, for salaries and expenses, \$6,356,000; and
- (D) for the Immigration and Naturalization Service, for salaries and expenses, \$1,313,000.
- (5) Appropriations for the United States Information Agency, for international information programs, \$25,047,000.
- (6) Appropriations for the Arms Control and Disarmament Agency, for arms control and disarmament activities, \$1,247,000.
- (7) Appropriations to the President—
- (A) for the Foreign Military Financing Program, for administrative costs, \$6,660,000;
- (B) for the Economic Support Fund, \$336,000;
- (C) for the Agency for International Development—
- (i) for operating expenses, \$6,008,000;
- (ii) for the Urban and Environmental Credit Program, \$54,000;
- (iii) for the Development Assistance Fund, \$124,000;
- (iv) for the Development Fund for Africa, \$526,000;
- (v) for assistance for the new independent states of the former Soviet Union, \$818,000;
- (vi) for assistance for Eastern Europe and the Baltic States, \$283,000; and
- (vii) for international disaster assistance, \$306,000;
- (D) for the Peace Corps, \$3,672,000; and

- (E) for the Department of State—
- (i) for international narcotics control, \$1,117,000; and
- (ii) for migration and refugee assistance, \$394,000.
- (8) Appropriations for the Department of Defense—
- (A) for operation and maintenance—
- (i) for operation and maintenance, Army, \$4,394,000;
- (ii) for operation and maintenance, Navy, \$1,824,000;
- (iii) for operation and maintenance, Air Force, \$1,603,000; and
- (iv) for operation and maintenance, Defense-Wide, \$21,993,000; and
- (B) for procurement, for other procurement, Air Force, \$4,211,000.
- (9) Appropriations for the American Battle Monuments Commission, for salaries and expenses, \$210,000.
- (10) Appropriations for the Department of Agriculture—
- (A) for the Animal and Plant Health Inspection Service, for salaries and expenses, \$932,000;
- (B) for the Foreign Agricultural Service and General Sales Manager, \$4,521,000; and
- (C) for the Agricultural Research Service, \$16,000.
- (11) Appropriations for the Department of the Treasury—
- (A) for the United States Customs Service, for salaries and expenses, \$2,002,000;
- (B) for departmental offices, for salaries and expenses, \$804,000;
- (C) for the Internal Revenue Service, for tax law enforcement, \$662,000;
- (D) for the Bureau of Alcohol, Tobacco, and Firearms, for salaries and expenses, \$17,000;
- (E) for the United States Secret Service, for salaries and expenses, \$617,000; and
- (F) for the Comptroller of the Currency, for assessment funds, \$29,000.
- (12) Appropriations for the Department of Transportation—
- (A) for the Federal Aviation Administration, for operations, \$1,594,000; and
- (B) for the Coast Guard, for operating expenses, \$65,000.
- (13) Appropriations for the Department of Labor, for departmental management, for salaries and expenses, \$58,000.
- (14) Appropriations for the Department of Health and Human Services—
- (A) for the National Institutes of Health, for the National Cancer Institute, \$42,000;
- (B) for the Office of the Secretary, for general departmental management, \$71,000; and
- (C) for the Centers for Disease Control and Prevention, for disease control, research, and training, \$522,000.
- (15) Appropriations for the Social Security Administration, for administrative expenses, \$370,000.
- (16) Appropriations for the Department of the Interior—
- (A) for the United States Fish and Wildlife Service, for resource management, \$12,000;
- (B) for the United States Geological Survey, for surveys, investigations, and research, \$80,000; and
- (C) for the Bureau of Reclamation, for water and related resources, \$101,000.
- (17) Appropriations for the Department of Veterans Affairs, for departmental administration, for general operating expenses, \$453,000.
- (18) Appropriations for the National Aeronautics and Space Administration, for mission support, \$183,000.
- (19) Appropriations for the National Science Foundation, for research and related activities, \$39,000.
- (20) Appropriations for the Federal Emergency Management Agency, for salaries and expenses, \$4,000.
- (21) Appropriations for the Department of Energy—
- (A) for departmental administration, \$150,000; and
- (B) for atomic energy defense activities, for other defense activities, \$54,000.
- (22) Appropriations for the Nuclear Regulatory Commission, for salaries and expenses, \$26,000.
- (c)(1) The amount in subsection (a)(2)(A) is reduced by \$2,800,000.
- (2) Each amount in subsection (b) is reduced on a pro rata basis in the same proportion as \$2,800,000 bears to \$112,462,,000, rounded to the nearest thousand.
- SEC. 405. (a) An employee who regularly commutes from his or her place of residence in the continental United States to an official duty station in Canada or Mexico shall receive a border equalization adjustment equal to the amount of comparability

payments under section 5304 of title 5, United States Code, that he or she would receive if assigned to an official duty station within the United States locality pay area closest to the employee's official duty station.

- (b) For purposes of this section, the term "employee" shall mean a person who—
- (1) is an "employee" as defined under section 2105 of title 5, United States Code; and
- (2) is employed by the United States Department of State, the United States Information Agency, the United States Agency for International Development, or the International Joint Commission, except that the term shall not include members of the Foreign Service as defined by section 103 of the Foreign Service Act of 1980 (Public Law 96–465), section 3903 of title 22, United States Code.
- (c) An equalization adjustment payable under this section shall be considered basic pay for the same purposes as are comparability payments under section 5304 of title 5, United States Code, and its implementing regulations.
- (d) The agencies referenced in subsection (c)(2) are authorized to promulgate regulations to carry out the purposes of this section.

This title may be cited as the "Department of State and Related Agencies Appropriations Act, 1998".

TITLE V—RELATED AGENCIES
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
OPERATING-DIFFERENTIAL SUBSIDIES
(LIQUIDATION OF CONTRACT AUTHORITY)

For the payment of obligations incurred for operating-differential subsidies, as authorized by the Merchant Marine Act, 1936, as amended, \$51,030,000, to remain available until expended.

#### MARITIME SECURITY PROGRAM

For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, \$35,500,000, to remain available until expended.

#### OPERATIONS AND TRAINING

For necessary expenses of operations and training activities authorized by law, \$67,600,000: Provided, That reimbursements may be made to this appropriation from receipts to the "Federal Ship Financing Fund" for administrative expenses in support of that program in addition to any amount heretofore appropriated.

#### MARITIME GUARANTEED LOAN (TITLE XI) PROGRAM ACCOUNT

For the cost of guaranteed loans, as authorized by the Merchant Marine Act, 1936, \$32,000,000, to remain available until expended: Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: Provided further, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$1,000,000,000.

In addition, for administrative expenses to carry out the guaranteed loan program, not to exceed \$3,725,000, which shall be transferred to and merged with the appropriation for Operations and Training.

# ADMINISTRATIVE PROVISIONS—MARITIME ADMINISTRATION

Notwithstanding any other provision of this Act, the Maritime Administration is authorized to furnish utilities and services and make necessary repairs in connection with any lease, contract, or occupancy involving Government property under control of the Maritime Administration, and payments received therefor shall be credited to the appropriation charged with the cost thereof: Provided, That rental payments under any such lease, contract, or occupancy for items other than such utilities, services, or repairs shall be covered into the Treasury as miscellaneous receipts.

No obligations shall be incurred during the current fiscal year from the construction fund established by the Merchant Marine Act, 1936, or otherwise, in excess of the appropriations and limitations contained in this Act or in any prior appropriation Act, and all receipts which otherwise would be deposited to the credit of said fund shall be covered into the Treasury as miscellaneous receipts.

# COMMISSION FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD SALARIES AND EXPENSES

For expenses for the Commission for the Preservation of America's Heritage Abroad, \$250,000, as authorized by section 1303 of Public Law 99–83.

### COMMISSION ON CIVIL RIGHTS

#### SALARIES AND EXPENSES

For necessary expenses of the Commission on Civil Rights, including hire of passenger motor vehicles, \$8,740,000: Provided, That not to exceed \$50,000 may be used to employ consultants: Provided further, That none of the funds appropriated in this paragraph shall be used to employ in excess of four full-time individuals under Schedule C of the Excepted Service exclusive of one special assistant for each Commissioner: Provided further, That none of the funds appropriated in this paragraph shall be used to reimburse Commissioners for more than 75 billable days, with the exception of the chairperson who is permitted 125 billable days.

#### COMMISSION ON IMMIGRATION REFORM

#### SALARIES AND EXPENSES

For necessary expenses of the Commission on Immigration Reform pursuant to section 141(f) of the Immigration Act of 1990, \$459,000 to remain available until expended.

#### COMMISSION ON SECURITY AND COOPERATION IN EUROPE

#### SALARIES AND EXPENSES

For necessary expenses of the Commission on Security and Cooperation in Europe, as authorized by Public Law 94–304, \$1,090,000, to remain available until expended as authorized by section 3 of Public Law 99–7.

### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

#### SALARIES AND EXPENSES

For necessary expenses of the Equal Employment Opportunity Commission as authorized by title VII of the Civil Rights Act of 1964, as amended (29 U.S.C. 206(d) and 621–634), the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991, including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); non-monetary awards to private citizens; and not to exceed \$27,500,000 for payments to State and local enforcement agencies for services to the Commission pursuant to title VII of the Civil Rights Act of 1964, as amended, sections 6 and 14 of the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, and the Civil Rights Act of 1991; \$242,000,000: Provided, That the Commission is authorized to make available for official reception and representation expenses not to exceed \$2,500 from available funds.

### FEDERAL COMMUNICATIONS COMMISSION

### SALARIES AND EXPENSES

For necessary expenses of the Federal Communications Commission, as authorized by law, including uniforms and allowances therefor, as authorized by 5 U.S.C. 5901–02; not to exceed \$600,000 for land and structure; not to exceed \$500,000 for improvement and care of grounds and repair to buildings; not to exceed \$4,000 for official reception and representation expenses; purchase (not to exceed 16) and hire of motor vehicles; special counsel fees; and services as authorized by 5 U.S.C. 3109; \$186,514,000, of which not to exceed \$300,000 shall remain available until September 30, 1999, for research and policy studies: Provided, That \$162,523,000 of offsetting collections shall be assessed and collected pursuant to section 9 of title I of the Communications Act of 1934, as amended, and shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: Provided further, That the sum herein appropriated shall be reduced as such offsetting collections are received during fiscal year 1998 so as to result in a final fiscal year 1998 appropriation estimated at \$23,991,000: Provided further, That any offsetting collections received in excess of \$162,523,000 in fiscal year 1998 shall remain available until expended, but shall not be available for obligation until October 1, 1998.

#### FEDERAL MARITIME COMMISSION

#### SALARIES AND EXPENSES

For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C.App. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; \$14,000,000: Provided, That not to exceed \$2,000 shall be available for official reception and representation expenses.

# FEDERAL TRADE COMMISSION

#### SALARIES AND EXPENSES

For necessary expenses of the Federal Trade Commission, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; and not to exceed \$2,000 for official reception and representation expenses; \$88,500,000: Provided, That not to exceed \$300,000 shall be available for use to contract

with a person or persons for collection services in accordance with the terms of 31 U.S.C. 3718, as amended: Provided further, That notwithstanding any other provision of law, not to exceed \$70,000,000 of offsetting collections derived from fees collected for premerger notification filings under the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18(a)) shall be retained and used for necessary expenses in this appropriation, and shall remain available until expended: Provided further, That the sum herein appropriated from the general fund shall be reduced as such offsetting collections are received during fiscal year 1998, so as to result in a final fiscal year 1998 appropriation from the general fund estimated at not more than \$18,500,000, to remain available until expended: Provided further, That any fees received in excess of \$70,000,000 in fiscal year 1998 shall remain available until expended, but shall not be available for obligation until October 1, 1998: Provided further, That none of the funds made available to the Federal Trade Commission shall be available for obligation for expenses authorized by section 151 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Public Law 102–242; 105 Stat. 2282–2285).

#### GAMBLING IMPACT STUDY COMMISSION

#### SALARIES AND EXPENSES

For necessary expenses of the National Gambling Impact Study Commission, \$1,000,000, to remain available until expended. LEGAL SERVICES CORPORATION

#### PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, \$283,000,000, of which \$274,400,000 is for basic field programs and required independent audits; \$1,500,000 is for the Office of Inspector General, of which such amounts as may be necessary may be used to conduct additional audits of recipients; and \$7,100,000 is for management and administration.

#### ADMINISTRATIVE PROVISIONS—LEGAL SERVICES CORPORATION

- SEC. 501. (a) CONTINUATION OF COMPETITIVE SELECTION PROCESS.—None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity except through a competitive selection process conducted in accordance with regulations promulgated by the Corporation in accordance with the criteria set forth in subsections (c), (d), and (e) of section 503 of Public Law 104–134 (110 Stat. 1321–52 et seq.).
- (b) INAPPLICABILITY OF CERTAIN PROCEDURES.—Sections 1007(a)(9) and 1011 of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(9) and 2996j) shall not apply to the provision, denial, suspension, or termination of any financial assistance using funds appropriated in this Act.
- (c) ADDITIONAL PROCEDURES.—If, during any term of a grant or contract awarded to a recipient by the Legal Services Corporation under the competitive selection process referred to in subsection (a) and applicable Corporation regulations, the Corporation finds, after notice and opportunity for the recipient to be heard, that the recipient has failed to comply with any requirement of the Legal Services Corporation Act (42 U.S.C. 2996 et seq.), this Act, or any other applicable law relating to funding for the Corporation, the Corporation may terminate the grant or contract and institute a new competitive selection process for the area served by the recipient, notwithstanding the terms of the recipient's grant or contract.
- SEC. 502. (a) CONTINUATION OF REQUIREMENTS AND RESTRICTIONS.—None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose prohibited or limited by, or contrary to any of the provisions of—
- (1) sections 501, 502, 505, 506, and 507 of Public Law 104–134 (110 Stat. 1321–51 et seq.), and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions as set forth in such sections, except that all references in such sections to 1995 and 1996 shall be deemed to refer instead to 1997 and 1998, respectively; and
- (2) section 504 of Public Law 104–134 (110 Stat. 1321–53 et seq.), and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions set forth in such section, except that—
  - (A) subsection (c) of such section 504 shall not apply;
- (B) paragraph (3) of section 508(b) of Public Law 104–134 (110 Stat. 1321–58) shall apply with respect to the requirements of subsection (a)(13) of such section 504, except that all references in such section 508(b) to the date of enactment shall be deemed to refer to April 26, 1996; and
- (C) subsection (a)(11) of such section 504 shall not be construed to prohibit a recipient from using funds derived from a source other than the Corporation to provide related legal assistance to—

- (i) an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty; or
- (ii) an alien whose child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (without the active participation of the alien in the battery or extreme cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty.
- (b) DEFINITIONS.—For purposes of subsection (a)(2)(C):
- (1) The term "battered or subjected to extreme cruelty" has the meaning given such term under regulations issued pursuant to subtitle G of the Violence Against Women Act of 1994 (Public Law 103–322; 108 Stat. 1953).
- (2) The term "related legal assistance" means legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty described in such subsection.
- SEC. 503. (a) CONTINUATION OF AUDIT REQUIREMENTS.—The requirements of section 509 of Public Law 104–134 (110 Stat. 1321–58 et seq.), other than subsection (l) of such section, shall apply during fiscal year 1998.
- (b) REQUIREMENT OF ANNUAL AUDIT.—An annual audit of each person or entity receiving financial assistance from the Legal Services Corporation under this Act shall be conducted during fiscal year 1998 in accordance with the requirements referred to in subsection (a).
- SEC. 504. (a) DEBARMENT.—The Legal Services Corporation may debar a recipient, on a showing of good cause, from receiving an additional award of financial assistance from the Corporation. Any such action to debar a recipient shall be instituted after the Corporation provides notice and an opportunity for a hearing to the recipient.
- (b) REGULATIONS.—The Legal Services Corporation shall promulgate regulations to implement this section.
- (c) GOOD CAUSE.—In this section, the term "good cause", used with respect to debarment, includes—
- (1) prior termination of the financial assistance of the recipient, under part 1640 of title 45, Code of Federal Regulations (or any similar corresponding regulation or ruling);
- (2) prior termination in whole, under part 1606 of title 45, Code of Federal Regulations (or any similar corresponding regulation or ruling), of the most recent financial assistance received by the recipient, prior to date of the debarment decision;
- (3) substantial violation by the recipient of the statutory or regulatory restrictions that prohibit recipients from using financial assistance made available by the Legal Services Corporation or other financial assistance for purposes prohibited under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) or for involvement in any activity prohibited by, or inconsistent with, section 504 of Public Law 104–134 (110 Stat. 1321–53 et seq.), section 502(a)(2) of Public Law 104–208 (110 Stat. 3009–59 et seq.), or section 502(a)(2) of this Act;
- (4) knowing entry by the recipient into a subgrant, subcontract, or other agreement with an entity that had been debarred by the Corporation; or
- (5) the filing of a lawsuit by the recipient, on behalf of the recipient, as part of any program receiving any Federal funds, naming the Corporation, or any agency or employee of a Federal, State, or local government, as a defendant.
- SEC. 505. (a) Not later than January 1, 1998, the Legal Services Corporation shall implement a system of case information disclosure which shall apply to all basic field programs which receive funds from the Legal Services Corporation from funds appropriated in this Act.
- (b) Any basic field program which receives Federal funds from the Legal Services Corporation from funds appropriated in this Act must disclose to the public in written form, upon request, and to the Legal Services Corporation in semiannual reports, the following information about each case filed by its attorneys in any court:
- (1) The name and full address of each party to the legal action unless such information is protected by an order or rule of a court or by State or Federal law or revealing such information would put the client of the recipient of such Federal funds at risk of physical harm.
- (2) The cause of action in the case.
- (3) The name and address of the court in which the case was filed and the case number assigned to the legal action.
- (c) The case information disclosed in semiannual reports to the Legal Services Corporation shall be subject to disclosure under section 552 of title 5, United States Code.

SEC. 506. In establishing the income or assets of an individual who is a victim of domestic violence, under section 1007(a) (2) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)), to determine if the individual is eligible for legal assistance, a recipient described in such section shall consider only the assets and income of the individual, and shall not include any jointly held assets.

# MARINE MAMMAL COMMISSION SALARIES AND EXPENSES

For necessary expenses of the Marine Mammal Commission as authorized by title II of Public Law 92–522, as amended, \$1,185,000.

# SECURITIES AND EXCHANGE COMMISSION SALARIES AND EXPENSES

For necessary expenses for the Securities and Exchange Commission, including services as authorized by 5 U.S.C. 3109, the rental of space (to include multiple year leases) in the District of Columbia and elsewhere, and not to exceed \$3,000 for official reception and representation expenses, \$283,000,000, of which not to exceed \$10,000 may be used toward funding a permanent secretariat for the International Organization of Securities Commissions, and of which not to exceed \$100,000 shall be available for expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to securities matters, development, and implementation of cooperation agreements concerning securities matters and provision of technical assistance for the development of foreign securities markets, such expenses to include necessary logistic and administrative expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including: (1) such incidental expenses as meals taken in the course of such attendance; (2) any travel and transportation to or from such meetings; and (3) any other related lodging or subsistance: Provided, That fees and charges authorized by sections 6(b)(4) of the Securities Act of 1933 (15 U.S.C. 77f(b)(4)) and 31(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78ee(d)) shall be credited to this account as offsetting collections: Provided further, That not to exceed \$249,523,000 of such offsetting collections shall be available until expended for necessary expenses of this account: Provided further, That the total amount appropriated from the general fund for fiscal year 1998 under this heading shall be reduced as all such offsetting fees are deposited to this appropriation so as to result in a final total fiscal year 1998 appropriation from the general fund estimated at not more than \$33,477,000.

# SMALL BUSINESS ADMINISTRATION SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the Small Business Administration as authorized by Public Law 103–403, including hire of passenger motor vehicles as authorized by 31 U.S.C. 1343 and 1344, and not to exceed \$3,500 for official reception and representation expenses, \$254,200,000, of which: \$3,000,000 shall be available for a grant to Lackawanna County, Pennsylvania for infrastructure development to assist in small business development; \$3,000,000 shall be available for a grant to the NTTC at Wheeling Jesuit University to continue the outreach program to assist small business development; \$2,000,000 shall be for a grant to Western Carolina University to develop a facility to assist in small business and rural economic development; \$1,500,000 shall be available for a grant to the State University of New York to develop a facility and operate the Institute of Entrepreneurship for small business and workforce development; \$1,000,000 shall be for a grant for the Genesis Small Business Incubator Facility, Fayetteville, Arkansas; and \$500,000 shall be available for a continuation grant to the Center for Entrepreneurial Opportunity in Greensburg, Pennsylvania, to provide for small business consulting and assistance: Provided, That the Administrator is authorized to charge fees to cover the cost of publications developed by the Small Business Administration, and certain loan servicing activities: Provided further, That, notwithstanding 31 U.S.C. 3302, revenues received from all such activities shall be credited to this account, to be available for carrying out these purposes without further appropriations: Provided further, That \$75,800,000 shall be available to fund grants for performance in fiscal year 1998 or fiscal year 1999 as authorized by section 21 of the Small Business Act, as amended.

#### OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended (5 U.S.C.App. 1–11), as amended by Public Law 100–504, \$10,000,000.

#### **BUSINESS LOANS PROGRAM ACCOUNT**

For the cost of guaranteed loans, \$181,232,000, as authorized by 15 U.S.C. 631 note, of which \$45,000,000 shall remain available until September 30, 1999: Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: Provided further, That during fiscal year 1998, commitments to guarantee loans under section 503 of the Small Business Investment Act of 1958, as amended, shall not exceed the amount of financings authorized under section 20(n)(2)(B) of the Small Business Act, as amended: Provided further, That during fiscal year 1998, commitments for general business loans authorized under section 7(a) of the Small Business Act, as amended, shall not exceed \$10,000,000,000 without prior notification of the Committees on Appropriations of the House of Representatives and Senate in accordance with section 605 of this Act.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, \$94,000,000, which may be transferred to and merged with the appropriations for Salaries and Expenses.

#### DISASTER LOANS PROGRAM ACCOUNT

For the cost of direct loans authorized by section 7(b) of the Small Business Act, as amended, \$23,200,000, to remain available until expended: Provided, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, for administrative expenses to carry out the direct loan program, \$150,000,000, including not to exceed \$500,000 for the Office of Inspector General of the Small Business Administration for audits and reviews of disaster loans and the disaster loan program, and said sums shall be transferred to and merged with appropriations for the Office of Inspector General.

#### SURETY BOND GUARANTEES REVOLVING FUND

For additional capital for the "Surety Bond Guarantees Revolving Fund", authorized by the Small Business Investment Act, as amended, \$3,500,000, to remain available without fiscal year limitation as authorized by 15 U.S.C. 631 note.

#### ADMINISTRATIVE PROVISION—SMALL BUSINESS ADMINISTRATION

Not to exceed 5 percent of any appropriation made available for the current fiscal year for the Small Business Administration in this Act may be transferred between such appropriations, but no such appropriation shall be increased by more than 10 percent by any such transfers: Provided, That any transfer pursuant to this paragraph shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.

# STATE JUSTICE INSTITUTE SALARIES AND EXPENSES

For necessary expenses of the State Justice Institute, as authorized by the State Justice Institute Authorization Act of 1992 (Public Law 102–572 (106 Stat. 4515–4516)), \$6,850,000, to remain available until expended: Provided, That not to exceed \$2,500 shall be available for official reception and representation expenses.

### TITLE VI—GENERAL PROVISIONS

SEC. 601. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

SEC. 602. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 603. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

SEC. 604. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of each provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 605. (a) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 1998, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds which: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) reorganizes offices, programs, or activities; or (6) contracts out or privatizes

any functions, or activities presently performed by Federal employees; unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 1998, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of \$500,000 or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

SEC. 606. None of the funds made available in this Act may be used for the construction, repair (other than emergency repair), overhaul, conversion, or modernization of vessels for the National Oceanic and Atmospheric Administration in shipyards located outside of the United States.

SEC. 607. (a) PURCHASE OF AMERICAN–MADE EQUIPMENT AND PRODUCTS.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

- (b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.
- (c) PROHIBITION OF CONTRACTS WITH PERSONS FALSELY LABELING PRODUCTS AS MADE IN AMERICA. —If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the person shall be ineligible to receive any contract or subcontract made with funds made available in this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

SEC. 608. None of the funds made available in this Act may be used to implement, administer, or enforce any guidelines of the Equal Employment Opportunity Commission covering harassment based on religion, when it is made known to the Federal entity or official to which such funds are made available that such guidelines do not differ in any respect from the proposed guidelines published by the Commission on October 1, 1993 (58 Fed.Reg. 51266).

SEC. 609. None of the funds appropriated or otherwise made available by this Act may be obligated or expended to pay for any cost incurred for: (1) opening or operating any United States diplomatic or consular post in the Socialist Republic of Vietnam that was not operating on July 11, 1995; (2) expanding any United States diplomatic or consular post in the Socialist Republic of Vietnam that was operating on July 11, 1995; or (3) increasing the total number of personnel assigned to United States diplomatic or consular posts in the Socialist Republic of Vietnam above the levels existing on July 11, 1995, unless the President certifies within 60 days the following:

- (A) Based upon all information available to the United States Government, the Government of the Socialist Republic of Vietnam is fully cooperating in good faith with the United States in the following:
  - (i) Resolving discrepancy cases, live sightings, and field activities.
  - (ii) Recovering and repatriating American remains.
- (iii) Accelerating efforts to provide documents that will help lead to fullest possible accounting of prisoners of war and missing in action.
- (iv) Providing further assistance in implementing trilateral investigations with Laos.
- (B) The remains, artifacts, eyewitness accounts, archival material, and other evidence associated with prisoners of war and missing in action recovered from crash sites, military actions, and other locations in Southeast Asia are being thoroughly analyzed by the appropriate laboratories with the intent of providing surviving relatives with scientifically defensible, legal determinations of death or other accountability that are fully documented and available in unclassified and unredacted form to immediate family members.

SEC. 610. None of the funds made available by this Act may be used for any United Nations undertaking when it is made known to the Federal official having authority to obligate or expend such funds: (1) that the United Nations undertaking is a peacekeeping mission; (2) that such undertaking will involve United States Armed Forces under the command or operational control of a foreign national; and (3) that the President's military advisors have not submitted to the President a recommendation that such involvement is in the national security interests of the United States and the President has not submitted to the Congress such a recommendation.

SEC. 611. None of the funds made available in this Act shall be used to provide the following amenities or personal comforts in the Federal prison system—

- (1) in-cell television viewing except for prisoners who are segregated from the general prison population for their own safety;
- (2) the viewing of R, X, and NC-17 rated movies, through whatever medium presented;
- (3) any instruction (live or through broadcasts) or training equipment for boxing, wrestling, judo, karate, or other martial art, or any bodybuilding or weightlifting equipment of any sort;
- (4) possession of in-cell coffee pots, hot plates or heating elements; or
- (5) the use or possession of any electric or electronic musical instrument.
- SEC. 612. None of the funds made available in title II for the National Oceanic and Atmospheric Administration (NOAA) under the headings "Operations, Research, and Facilities" and "Procurement, Acquisition and Construction" may be used to implement sections 603, 604, and 605 of Public Law 102–567: Provided, That NOAA may develop a modernization plan for its fisheries research vessels that takes fully into account opportunities for contracting for fisheries surveys.
- SEC. 613. Any costs incurred by a Department or agency funded under this Act resulting from personnel actions taken in response to funding reductions included in this Act shall be absorbed within the total budgetary resources available to such Department or agency: Provided, That the authority to transfer funds between appropriations accounts as may be necessary to carry out this section is provided in addition to authorities included elsewhere in this Act: Provided further, That use of funds to carry out this section shall be treated as a reprogramming of funds under section 605 of this Act and shall not be available for obligation or expenditure except in compliance with the procedures set forth in that section.
- SEC. 614. None of the funds made available in this Act to the Federal Bureau of Prisons may be used to distribute or make available any commercially published information or material to a prisoner when it is made known to the Federal official having authority to obligate or expend such funds that such information or material is sexually explicit or features nudity.
- SEC. 615. Of the funds appropriated in this Act under the heading "OFFICE OF JUSTICE PROGRAMS—STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE", not more than 90 percent of the amount to be awarded to an entity under the Local Law Enforcement Block Grant shall be made available to such an entity when it is made known to the Federal official having authority to obligate or expend such funds that the entity that employs a public safety officer (as such term is defined in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968) does not provide such a public safety officer who retires or is separated from service due to injury suffered as the direct and proximate result of a personal injury sustained in the line of duty while responding to an emergency situation or a hot pursuit (as such terms are defined by State law) with the same or better level of health insurance benefits at the time of retirement or separation as they received while on duty.
- SEC. 616. (a) None of the funds made available in this Act may be used to issue or renew a fishing permit or authorization for any fishing vessel of the United States greater than 165 feet in registered length or of more than 750 gross registered tons, and that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower—
- (1) as specified in the permit application required under part 648.4(a)(5) of title 50, Code of Federal Regulations, part 648.12 of title 50, Code of Federal Regulations, and the authorization required under part 648.80(d)(2) of title 50, Code of Federal Regulations, to engage in fishing for Atlantic mackerel or herring (or both) under the Magnuson–Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); or
- (2) that would allow such a vessel to engage in the catching, taking, or harvesting of fish in any other fishery within the exclusive economic zone of the United States (except territories), unless a certificate of documentation had been issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997 and such fishery endorsement was not surrendered at any time thereafter.
- (b) Any fishing permit or authorization issued or renewed prior to the date of the enactment of this Act for a fishing vessel to which the prohibition in subsection (a)(1) applies that would allow such vessel to engage in fishing for Atlantic mackerel or herring (or both) during fiscal year 1998 shall be null and void, and none of the funds made available in this Act may be

used to issue a fishing permit or authorization that would allow a vessel whose permit or authorization was made null and void pursuant to this subsection to engage in the catching, taking, or harvesting of fish in any other fishery within the exclusive economic zone of the United States.

#### << 18 USCA § 3006A NOTE >>

SEC. 617. During fiscal year 1998 and in any fiscal year thereafter, the court, in any criminal case (other than a case in which the defendant is represented by assigned counsel paid for by the public) pending on or after the date of the enactment of this Act, may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust. Such awards shall be granted pursuant to the procedures and limitations (but not the burden of proof) provided for an award under section 2412 of title 28, United States Code. To determine whether or not to award fees and costs under this section, the court, for good cause shown, may receive evidence ex parte and in camera (which shall include the submission of classified evidence or evidence that reveals or might reveal the identity of an informant or undercover agent or matters occurring before a grand jury) and evidence or testimony so received shall be kept under seal. Fees and other expenses awarded under this provision to a party shall be paid by the agency over which the party prevails from any funds made available to the agency by appropriation. No new appropriations shall be made as a result of this provision.

SEC. 618. None of the funds provided by this Act shall be available to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.

SEC. 619. None of the funds made available in this Act may be used to pay the expenses of an election officer appointed by a court to oversee an election of any officer or trustee for the International Brotherhood of Teamsters.

SEC. 620. The second proviso of the second paragraph under the heading "OFFICE OF THE CHIEF SIGNAL OFFICER." in the Act entitled "An Act Making appropriations for the support of the Regular and Volunteer Army for the fiscal year ending June thirtieth, nineteen hundred and one", approved May 26, 1900 (31 Stat. 206; ch. 586; 47 U.S.C. 17), is repealed.

SEC. 621. (a) None of the funds appropriated or otherwise made available in this Act shall be used to issue visas to any person who—

- (1) has been credibly alleged to have ordered, carried out, or materially assisted in the extrajudicial and political killings of Antoine Izmery, Guy Malary, Father Jean–Marie Vincent, Pastor Antoine Leroy, Jacques Fleurival, Mireille Durocher Bertin, Eugene Baillergeau, Michelange Hermann, Max Mayard, Romulus Dumarsais, Claude Yves Marie, Mario Beaubrun, Leslie Grimar, Joseph Chilove, Michel Gonzalez, and Jean–Hubert Feuille;
- (2) has been included in the list presented to former President Jean–Bertrand Aristide by former National Security Council Advisor Anthony Lake in December 1995, and acted upon by President Rene Preval;
- (3) was sought for an interview by the Federal Bureau of Investigation as part of its inquiry into the March 28, 1995, murder of Mireille Durocher Bertin and Eugene Baillergeau, Jr., and was credibly alleged to have ordered, carried out, or materially assisted in those murders, per a June 28, 1995, letter to the then Minister of Justice of the Government of Haiti, Jean–Joseph Exume;
- (4) was a member of the Haitian High Command during the period 1991 through 1994, and has been credibly alleged to have planned, ordered, or participated with members of the Haitian Armed Forces in—
- (A) the September 1991 coup against any person who was a duly elected government official of Haiti (or a member of the family of such official), or
- (B) the murders of thousands of Haitians during the period 1991 through 1994; or
- (5) has been credibly alleged to have been a member of the paramilitary organization known as FRAPH who planned, ordered, or participated in acts of violence against the Haitian people.
- (b) EXEMPTION.—Subsection (a) shall not apply if the Secretary of State finds, on a case-by-case basis, that the entry into the United States of a person who would otherwise be excluded under this section is necessary for medical reasons or such

person has cooperated fully with the investigation of these political murders. If the Secretary of State exempts any such person, the Secretary shall notify the appropriate congressional committees in writing.

- (c) REPORTING REQUIREMENT.—(1) The United States chief of mission in Haiti shall provide the Secretary of State a list of those who have been credibly alleged to have ordered or carried out the extrajudicial and political killings mentioned in paragraph (1) of subsection (a).
- (2) The Secretary of State shall submit the list provided under paragraph (1) to the appropriate congressional committees not later than 3 months after the date of enactment of this Act.
- (3) The Secretary of State shall submit to the appropriate congressional committees a list of aliens denied visas, and the Attorney General shall submit to the appropriate congressional committees a list of aliens refused entry to the United States as a result of this provision.
- (4) The Secretary of State shall submit a report under this subsection not later than 6 months after the date of enactment of this Act and not later than March 1 of each year thereafter as long as the Government of Haiti has not completed the investigation of the extrajudicial and political killings and has not prosecuted those implicated for the killings specified in paragraph (1) of subsection (a).
- (d) DEFINITION.—In this section, the term "appropriate congressional committees" means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

#### << 47 USCA § 254 NOTE >>

- SEC. 622. Section 3006 of the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 251, 269) is hereby repealed. This section shall be deemed a section of the Balanced Budget Act of 1997 for the purposes of section 10213 of that Act (111 Stat. 712), and shall be scored pursuant to paragraph (2) of such section.
- SEC. 623. REPORT ON UNIVERSAL SERVICE UNDER THE TELECOMMUNICATIONS ACT OF 1996.—(a) The Federal Communications Commission shall undertake a review of the implementation by the Commission of the provisions of the Telecommunications Act of 1996 (Public Law 104–104) relating to universal service. Such review shall be completed and submitted to the Congress no later than April 10, 1998.
- (b) The report required under subsection (a) shall provide a detailed description of the extent to which the Commission interpretations reviewed under paragraphs (1) through (5) are consistent with the plain language of the Communications Act of 1934 (47 U.S.C. 151 et seq.), as amended by the Telecommunications Act of 1996, and shall include a review of—
- (1) the definitions of "information service", "local exchange carrier", "telecommunications", "telecommunications service", "telecommunications carrier", and "telephone exchange service" that were added to section 3 of the Communications Act of 1934 (47 U.S.C. 153) by the Telecommunications Act of 1996 and the impact of the Commission's interpretation of those definitions on the current and future provision of universal service to consumers in all areas of the Nation, including high cost and rural areas;
- (2) the application of those definitions to mixed or hybrid services and the impact of such application on universal service definitions and support, and the consistency of the Commission's application of those definitions, including with respect to Internet access under section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h));
- (3) who is required to contribute to universal service under section 254(d) of the Communications Act of 1934 (47 U.S.C. 254(d)) and related existing Federal universal service support mechanisms, and of any exemption of providers or exclusion of any service that includes telecommunications from such requirement or support mechanisms;
- (4) who is eligible under sections 254(e), 254(h)(1), and 254(h)(2) of the Communications Act of 1934 (47 U.S.C. 254(e), 254(h)(1), and 254(h)(2)) to receive specific Federal universal service support for the provision of universal service, and the consistency with which the Commission has interpreted each of those provisions of section 254; and
- (5) the Commission's decisions regarding the percentage of universal service support provided by Federal mechanisms and the revenue base from which such support is derived.

<< 20 USCA § 955 >>

SEC. 624. Section 6(d)(1) of the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 955(d)(1)) is amended by striking the word "fourteen" and inserting in lieu thereof "eight".

SEC. 625. (a) Section 814(g)(1) of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (22 U.S.C. 2291 note) is amended by striking "\$325,000" and inserting "\$370,000".

#### << 22 USCA § 2291 NOTE >>

(b) Section 814(i) of such section is amended by striking "September 30, 1997" and inserting "September 30, 1999".

SEC. 626. (a) IN GENERAL.—Notwithstanding any provision of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Administrator of General Services shall convey, to any person that acquires an interest in the Naval Petroleum Reserve Numbered 1 (Elk Hills) under subtitle B of title XXXIV of the National Defense Authorization Act for Fiscal Year 1996 (110 Stat. 631), not to exceed 318 motor vehicles that are leased for use at that reserve on November 6, 1997.

- (b) PROCEDURES AND REQUIREMENTS.—Any conveyance of motor vehicles under this section shall be made—
- (1) after payment to the United States of consideration equal to the fair market value of the motor vehicles; and
- (2) under procedures, terms, and conditions that shall be established by negotiation between the Administrator of General Services and the person to whom the motor vehicles are conveyed.
- (c) TREATMENT OF PROCEEDS.—Amounts received by the United States as consideration for motor vehicles conveyed under this section shall be retained in the General Supply Fund and available in the same manner as are increments for estimated replacement cost of motor vehicles under section 211(d)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 491(d)(2)).

SEC. 627. Section 19(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2718(a)) is amended to read as follows:

"(a) Subject to section 18, there are authorized to be appropriated, for fiscal year 1998, and for each fiscal year thereafter, an amount equal to the amount of funds derived from the assessments authorized by section 18(a)."

SEC. 628. Notwithstanding the failure of Clarence P. Stewart of Broadway, North Carolina, to file a timely appeal of his wrongful dismissal, during a reduction in force, from the Department of Agriculture as a State Executive Director for the former Agricultural Stabilization and Conservation Service of the Department, the Secretary of Agriculture shall cause Clarence P. Stewart to be afforded relief that is fully commensurate with the relief afforded the similarly dismissed appellants in the case before the Merit Systems Protection Board styled Blalock v. Department of Agriculture, 28 M.S.P.R. 17 (1985).

SEC. 629. Funds made available under Public Law 103–112 for the purposes of section 2007 of the Social Security Act shall be considered "qualified nonprivate funds" for the purposes of section 103(13)(B) of the Small Business Investment Act of 1958 (15 U.S.C. 662(13)(B)); provided such funds were invested on or before July 1, 1995 in a licensee that was licensed prior to July 1, 1990 under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681).

SEC. 630. Section 332 of the Act making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1998, and for other purposes, H.R. 2107 (105th Congress, 1st Session), is amended as follows—

- (1) after "October 1, 1997" strike ", or" and insert in lieu thereof "; those national forests"; and
- (2) after "court-ordered to revise" strike "," and insert in lieu thereof"; and the White Mountain National Forest".

SEC. 631. Section 512(b) of Public Law 105–61 is amended by adding before the period: "unless the President announced his intent to nominate the individual prior to November 30, 1997".

SEC. 632. (a) IN GENERAL.—The Secretary of Energy shall—

- (1) convey, without consideration, to the Incorporated County of Los Alamos, New Mexico (in this section referred to as the "County"), or to the designee of the County, fee title to the parcels of land that are allocated for conveyance to the County in the agreement under subsection (e); and
- (2) transfer to the Secretary of the Interior, in trust for the Pueblo of San Ildefonso (in this section referred to as the "Pueblo"), administrative jurisdiction over the parcels that are allocated for transfer to the Secretary of the Interior in such agreement.
- (b) PRELIMINARY IDENTIFICATION OF PARCELS OF LAND FOR CONVEYANCE OR TRANSFER.—(1) Not later than 90 days after the date of enactment of this Act, the Secretary of Energy shall submit to the congressional defense committees a report identifying the parcels of land under the jurisdiction or administrative control of the Secretary at or in the vicinity of Los Alamos National Laboratory that are suitable for conveyance or transfer under this section.
- (2) A parcel is suitable for conveyance or transfer for purposes of paragraph (1) if the parcel—
- (A) is not required to meet the national security mission of the Department of Energy or will not be required for that purpose before the end of the 10-year period beginning on the date of enactment of this Act;
- (B) is likely to be conveyable or transferable, as the case may be, under this section not later than the end of such period; and (C) is suitable for use for a purpose specified in subsection (h).
- (c) REVIEW OF TITLE.—(1) Not later than one year after the date of enactment of this Act, the Secretary shall submit to the congressional defense committees a report setting forth the results of a title search on each parcel of land identified as suitable for conveyance or transfer under subsection (b), including an analysis of any claims against or other impairments to the fee title to each such parcel.
- (2) In the period beginning on the date of the completion of the title search with respect to a parcel under paragraph (1) and ending on the date of the submittal of the report under that paragraph, the Secretary shall take appropriate actions to resolve the claims against or other impairments, if any, to fee title that are identified with respect to the parcel in the title search.
- (d) ENVIRONMENTAL RESTORATION.—(1) Not later than 21 months after the date of enactment of this Act, the Secretary shall—
- (A) identify the environmental restoration or remediation, if any, that is required with respect to each parcel of land identified under subsection (b) to which the United States has fee title;
- (B) carry out any review of the environmental impact of the conveyance or transfer of each such parcel that is required under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (C) submit to Congress a report setting forth the results of the activities under subparagraphs (A) and (B).
- (2) If the Secretary determines under paragraph (1) that a parcel described in paragraph (1)(A) requires environmental restoration or remediation, the Secretary shall, to the maximum extent practicable, complete the environmental restoration or remediation of the parcel not later than 10 years after the date of enactment of this Act.
- (e) AGREEMENT FOR ALLOCATION OF PARCELS.—As soon as practicable after completing the review of titles to parcels of land under subsection (c), but not later than 90 days after the submittal of the report under subsection (d)(1)(C), the County and the Pueblo shall submit to the Secretary an agreement between the County and the Pueblo which allocates between the County and the Pueblo the parcels identified for conveyance or transfer under subsection (b).
- (f) PLAN FOR CONVEYANCE AND TRANSFER.—(1) Not later than 90 days after the date of the submittal to the Secretary of Energy of the agreement under subsection (e), the Secretary shall submit to the congressional defense committees a plan for conveying or transferring parcels of land under this section in accordance with the allocation specified in the agreement.
- (2) The plan under paragraph (1) shall provide for the completion of the conveyance or transfer of parcels under this section not later than 9 months after the date of the submittal of the plan under that paragraph.
- (g) CONVEYANCE OR TRANSFER.—(1) Subject to paragraphs (2) and (3), the Secretary shall convey or transfer parcels of land in accordance with the allocation specified in the agreement submitted to the Secretary under subsection (e).
- (2) In the case of a parcel allocated under the agreement that is not available for conveyance or transfer in accordance with the requirement in subsection (f)(2) by reason of its requirement to meet the national security mission of the Department, the Secretary shall convey or transfer the parcel, as the case may be, when the parcel is no longer required for that purpose.
- (3)(A) In the case of a parcel allocated under the agreement that is not available for conveyance or transfer in accordance with such requirement by reason of requirements for environmental restoration or remediation, the Secretary shall convey or transfer the parcel, as the case may be, upon the completion of the environmental restoration or remediation that is required with respect to the parcel.

- (B) If the Secretary determines that environmental restoration or remediation cannot reasonably be expected to be completed with respect to a parcel by the end of the 10–year period beginning on the date of enactment of this Act, the Secretary shall not convey or transfer the parcel under this section.
- (h) USE OF CONVEYED OR TRANSFERRED LAND.—The parcels of land conveyed or transferred under this section shall be used for historic, cultural, or environmental preservation purposes, economic diversification purposes, or community self-sufficiency purposes.
- (i) TREATMENT OF CONVEYANCES AND TRANSFERS.—(1) The purpose of the conveyances and transfers under this section is to fulfill the obligations of the United States with respect to Los Alamos National Laboratory, New Mexico, under sections 91 and 94 of the Atomic Energy Community Act of 1955 (42 U.S.C. 2391, 2394).
- (2) Upon the completion of the conveyance or transfer of the parcels of land available for conveyance or transfer under this section, the Secretary shall make no further payments with respect to Los Alamos National Laboratory under section 91 or section 94 of the Atomic Energy Community Act of 1955.
- (j) REPEAL OF SUPERSEDED PROVISION.—In the event of the enactment of the National Defense Authorization Act for Fiscal Year 1998 by reason of the approval of the President of the conference report to accompany the bill (H.R. 1119) of the 105th Congress, section 3165 of such Act is repealed.
- SEC. 633. Effective only for losses beginning March 1, 1997 through the date of enactment of this Act, the Secretary of Agriculture may use up to \$6,000,000 from proceeds earned from the sale of grain in the disaster reserve established in the Agricultural Act of 1970 to implement a livestock indemnity program for losses from natural disasters pursuant to a Presidental or Secretarial declaration requested subsequent to enactment of Public Law 105–18 and prior to December 1, 1997, in a manner similar to catastrophic loss coverage available for other commodities under 7 U.S.C. 1508(b): Provided, That in administering a program described in the preceding sentence, the Secretary shall, to the extent practicable, utilize gross income and payment limitations conditions established for the Disaster Reserve Assistance Program for the 1996 crop year: Provided further, That the entire amount shall be available only to the extent an official budget request, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress: Provided further, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

SEC. 634. During fiscal year 1998, from funds available to the Department of Defense, up to \$800,000 is available to the Department of Defense to compensate persons who have suffered documented commercial loss of cranberry crops in 1997 in the Mashpee or Falmouth bogs, located on the Quashnet and Coonamessett Rivers, respectively, as a result of the presence of ethylene dibromide (EDB) in or on cranberries from either of the plumes of EDB-contaminated groundwater known as "FS–28" and "FS–1" adjacent to the Massachusetts Military Reservation, Cape Cod, Massachusetts.

TITLE VII—RESCISSIONS DEPARTMENT OF JUSTICE GENERAL ADMINISTRATION WORKING CAPITAL FUND (RESCISSION)

Of the unobligated balances available under this heading on September 30, 1997, \$100,000,000 are rescinded.

TITLE VIII—EMERGENCY SUPPLEMENTAL APPROPRIATIONS NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OPERATIONS, RESEARCH, AND FACILITIES

For an additional amount for "Operations, Research, and Facilities", for emergency expenses to provide disaster assistance pursuant to section 312(a) of the Magnuson–Stevens Fishery Conservation and Management Act for the Bristol Bay and Kuskokwim areas of Alaska, \$7,000,000 to remain available until expended: Provided, That the entire amount is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: Provided further, That the entire amount shall be available only to the extent that the Secretary of Commerce transmits a determination that there is a commercial fishery failure.

This Act may be cited as the "Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998".

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Approved November 26, 1997.

PL 105–119, 1997 HR 2267

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### PL 110-457, December 23, 2008, 122 Stat 5044

#### UNITED STATES PUBLIC LAWS

110th Congress - Second Session Convening January 04, 2008

Additions and Deletions are not identified in this database. Vetoed provisions within tabular material are not displayed

PL 110-457 (HR 7311)

December 23, 2008

#### WILLIAM WILBERFORCE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008

An Act To authorize appropriations for fiscal years 2008 through 2011 for the Trafficking Victims Protection Act of 2000, to enhance measures to combat trafficking in persons, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

#### << 22 USCA § 7101 NOTE >>

- (a) SHORT TITLE.—This Act may be cited as the "William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008".
- (b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:
- Sec. 1. Short title: table of contents.

#### TITLE I—COMBATING INTERNATIONAL TRAFFICKING IN PERSONS

- Sec. 101. Interagency Task Force to Monitor and Combat Trafficking.
- Sec. 102. Office to Monitor and Combat Trafficking.
- Sec. 103. Prevention and prosecution of trafficking in foreign countries.
- Sec. 104. Assistance for victims of trafficking in other countries.
- Sec. 105. Increasing effectiveness of anti-trafficking programs.
- Sec. 106. Minimum standards for the elimination of trafficking.
- Sec. 107. Actions against governments failing to meet minimum standards.
- Sec. 108. Research on domestic and international trafficking in persons.
- Sec. 109. Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons.
- Sec. 110. Report on activities of the Department of Labor to monitor and combat forced labor and child labor.
- Sec. 111. Sense of Congress regarding multilateral framework between labor exporting and labor importing countries.

  TITLE II—COMBATING TRAFFICKING IN PERSONS IN THE UNITED STATES

Subtitle A—Ensuring Availability of Possible Witnesses and Informants

- Sec. 201. Protecting trafficking victims against retaliation.
- Sec. 202. Protections for domestic workers and other nonimmigrants.
- Sec. 203. Protections, remedies, and limitations on issuance for A–3 and G–5 visas.
- Sec. 204. Relief for certain victims pending actions on petitions and applications for relief.
- Sec. 205. Expansion of authority to permit continued presence in the United States.
  - Subtitle B—Assistance for Trafficking Victims
- Sec. 211. Assistance for certain nonimmigrant status applicants.
- Sec. 212. Interim assistance for children.
- Sec. 213. Ensuring assistance for all victims of trafficking in persons.
  - Subtitle C—Penalties Against Traffickers and Other Crimes
- Sec. 221. Restitution of forfeited assets; enhancement of civil action.
- Sec. 222. Enhancing penalties for trafficking offenses.
- Sec. 223. Jurisdiction in certain trafficking offenses.
- Sec. 224. Bail conditions, subpoenas, and repeat offender penalties for sex trafficking.
- Sec. 225. Promoting effective State enforcement.
  - Subtitle D—Activities of the United States Government
- Sec. 231. Annual report by the Attorney General.
- Sec. 232. Investigation by the Inspectors General.
- Sec. 233. Senior Policy Operating Group.
- Sec. 234. Preventing United States travel by traffickers.
- Sec. 235. Enhancing efforts to combat the trafficking of children.
- Sec. 236. Restriction of passports for sex tourism.
- Sec. 237. Additional reporting on crime.
- Sec. 238. Processing of certain visas.
- Sec. 239. Temporary increase in fee for certain consular services.

# TITLE III—AUTHORIZATIONS OF APPROPRIATIONS

- Sec. 301. Trafficking Victims Protection Act of 2000.
- Sec. 302. Trafficking Victims Protection Reauthorization Act of 2005.
- Sec. 303. Rule of construction.
- Sec. 304. Technical amendments.

#### TITLE IV—CHILD SOLDIERS PREVENTION

Sec. 401. Short title.

Sec. 402. Definitions.

Sec. 403. Sense of Congress.

Sec. 404. Prohibition.

Sec. 405. Reports.

Sec. 406. Training for foreign service officers.

Sec. 407. Effective date; applicability.

#### TITLE I—COMBATING INTERNATIONAL TRAFFICKING IN PERSONS

<< 22 USCA § 7103 >>

#### SEC. 101. INTERAGENCY TASK FORCE TO MONITOR AND COMBAT TRAFFICKING.

Section 105(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7103(b)) is amended by inserting "the Secretary of Education," after "the Secretary of Homeland Security,".

#### SEC. 102. OFFICE TO MONITOR AND COMBAT TRAFFICKING.

Section 105(e) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7103(e)) is amended—

<< 22 USCA § 7103 >>

(1) in the subsection heading, by striking "SUPPORT FOR THE TASK FORCE" and inserting "**OFFICE TO MONITOR AND COMBAT TRAFFICKING**";

<< 22 USCA § 7103 >>

- (2) by striking "The Secretary of State is authorized to" and inserting the following:
- "(1) IN GENERAL.—The Secretary of State shall"; and

<< 22 USCA § 7103 >>

- (3) by adding at the end the following:
- "(2) COORDINATION OF CERTAIN ACTIVITIES.—
- "(A) PARTNERSHIPS.—The Director, in coordination and cooperation with other officials at the Department of State involved in corporate responsibility, the Deputy Under Secretary for International Affairs of the Department of Labor, and other relevant officials of the United States Government, shall promote, build, and sustain partnerships between the United States Government and private entities (including foundations, universities, corporations, community-based organizations, and other nongovernmental organizations) to ensure that—
- "(i) United States citizens do not use any item, product, or material produced or extracted with the use of labor from victims of severe forms of trafficking; and
- "(ii) such entities do not contribute to trafficking in persons involving sexual exploitation.
- "(B) UNITED STATES ASSISTANCE.—The Director shall be responsible for—
- "(i) all policy, funding, and programming decisions regarding funds made available for trafficking in persons programs that are centrally controlled by the Office to Monitor and Combat Trafficking; and

"(ii) coordinating any trafficking in persons programs of the Department of State or the United States Agency for International Development that are not centrally controlled by the Director.".

#### SEC. 103. PREVENTION AND PROSECUTION OF TRAFFICKING IN FOREIGN COUNTRIES.

- (a) PREVENTION.—Section 106 of the Trafficking Victims Protection Act of 2000 (22 U.S. C. 7104) is amended by adding at the end the following:
- "(i) ADDITIONAL MEASURES TO PREVENT AND DETER TRAFFICKING.—The President shall establish and carry out programs to prevent and deter trafficking in persons, including—
- "(1) technical assistance and other support to improve the capacity of foreign governments to investigate, identify, and carry out inspections of private entities, including labor recruitment centers, at which trafficking victims may be exploited, particularly exploitation involving forced and child labor;
- "(2) technical assistance and other support for foreign governments and nongovernmental organizations to provide immigrant populations with information, in the native languages of the major immigrant groups of such populations, regarding the rights of such populations in the foreign country and local in-country nongovernmental organization-operated hotlines;
- "(3) technical assistance to provide legal frameworks and other programs to foreign governments and nongovernmental organizations to ensure that—
  - "(A) foreign migrant workers are provided the same protection as nationals of the foreign country;
  - "(B) labor recruitment firms are regulated; and
  - "(C) workers providing domestic services in households are provided protection under labor rights laws; and
- "(4) assistance to foreign governments to register vulnerable populations as citizens or nationals of the country to reduce the ability of traffickers to exploit such populations.".

(b) PROSECUTION.—Section 134(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2152d(a)(2)) is amended by adding at the end before the semicolon the following: ", including investigation of individuals and entities that may be involved in trafficking in persons involving sexual exploitation".

### SEC. 104. ASSISTANCE FOR VICTIMS OF TRAFFICKING IN OTHER COUNTRIES.

Section 107(a) of Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(a)) is amended—(1) in paragraph (1)—

(A) in the second sentence, by inserting before the period at the end the following: ", and shall be carried out in a manner which takes into account the cross-border, regional, and transnational aspects of trafficking in persons"; and

- (B) by adding at the end the following:
- "(F) In cooperation and coordination with relevant organizations, such as the United Nations High Commissioner for Refugees, the International Organization for Migration, and private nongovernmental organizations that contract with, or receive grants from, the United States Government to assist refugees and internally displaced persons, support for—
- "(i) increased protections for refugees and internally displaced persons, including outreach and education efforts to prevent such refugees and internally displaced persons from being exploited by traffickers; and
- "(ii) performance of best interest determinations for unaccompanied and separated children who come to the attention of the United Nations High Commissioner for Refugees, its partner organizations, or any organization that contracts with

the Department of State in order to identify child trafficking victims and to assist their safe integration, reintegration, and resettlement."; and

(2) in paragraph (2), by adding at the end the following: "In carrying out this paragraph, the Secretary and the Administrator shall take all appropriate steps to ensure that cooperative efforts among foreign countries are undertaken on a regional basis.".

#### SEC. 105. INCREASING EFFECTIVENESS OF ANTI-TRAFFICKING PROGRAMS.

The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 et seq.) is amended by inserting after section 107 the following:

#### "SEC. 107A, INCREASING EFFECTIVENESS OF ANTI-TRAFFICKING PROGRAMS.

- "(a) AWARDING OF GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—In administering funds made available to carry out this Act within and outside the United States—
  - "(1) solicitations of grants, cooperative agreements, and contracts for such programs shall be made publicly available;
- "(2) grants, cooperative agreements, and contracts shall be subject to full and open competition, in accordance with applicable laws; and
- "(3) the internal department or agency review process for such grants, cooperative agreements, and contracts shall not be subject to ad hoc or intermittent review or influence by individuals or organizations outside the United States Government except as provided under paragraphs (1) and (2).

#### "(b) ELIGIBILITY.—

- "(1) IN GENERAL.—An applicant desiring a grant, contract, or cooperative agreement under this Act shall certify that, to the extent practicable, persons or entities providing legal services, social services, health services, or other assistance have completed, or will complete, training in connection with trafficking in persons.
- "(2) DISCLOSURE.—If appropriate, applicants should indicate collaboration with nongovernmental organizations, including organizations with expertise in trafficking in persons.

### "(c) EVALUATION OF ANTI-TRAFFICKING PROGRAMS.—

- "(1) IN GENERAL.—The President shall establish a system to evaluate the effectiveness and efficiency of the assistance provided under anti-trafficking programs established under this Act on a program-by-program basis in order to maximize the long-term sustainable development impact of such assistance.
- "(2) REQUIREMENTS.—In carrying out paragraph (1), the President shall—
- "(A) establish performance goals for the assistance described in paragraph (1), expressed in an objective and quantifiable form, to the extent practicable;
- "(B) ensure that performance indicators are used for programs authorized under this Act to measure and assess the achievement of the performance goals described in subparagraph (A);
- "(C) provide a basis for recommendations for adjustments to the assistance described in paragraph (1) to enhance the impact of such assistance; and
- "(D) ensure that evaluations are conducted by subject matter experts in and outside the United States Government, to the extent practicable.
- "(d) TARGETED USE OF ANTI-TRAFFICKING PROGRAMS.—In providing assistance under this division, the President should take into account the priorities and country assessments contained in the most recent report submitted by the Secretary of State to Congress pursuant to section 110(b).
- "(e) CONSISTENCY WITH OTHER PROGRAMS.—The President shall ensure that the design, monitoring, and evaluation of United States assistance programs for emergency relief, development, and poverty alleviation under part I and chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq. and 2346 et seq.) and other similar United States

assistance programs are consistent with United States policies and other United States programs relating to combating trafficking in persons.

- "(f) AUTHORIZATION OF APPROPRIATIONS.—For each of the fiscal years 2008 through 2011, not more than 5 percent of the amounts made available to carry out this division may be used to carry out this section, including—
  - "(1) evaluations of promising anti-trafficking programs and projects funded by the disbursing agency pursuant to this Act; and
  - "(2) evaluations of emerging problems or global trends.".

#### SEC. 106. MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING.

Section 108 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7106) is amended—

- (1) in subsection (a), by striking "a significant number of"; and
- (2) in subsection (b)—

(A) in paragraph (1), by striking the period at the end of the first sentence and inserting the following: ", including, as appropriate, requiring incarceration of individuals convicted of such acts. For purposes of the preceding sentence, suspended or significantly-reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons shall be considered, on a case-by-case basis, whether to be considered an indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons.";

(B) in paragraph (2), by inserting before the period at the end the following: ", including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims";

(C) in paragraph (3), by striking "measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals of the country" and inserting "measures to establish the identity of local populations, including birth registration, citizenship, and nationality"; and

- (D) by adding at the end the following:
- "(11) Whether the government of the country has made serious and sustained efforts to reduce the demand for—
- "(A) commercial sex acts; and
- "(B) participation in international sex tourism by nationals of the country.".

# SEC. 107. ACTIONS AGAINST GOVERNMENTS FAILING TO MEET MINIMUM STANDARDS.

- (a) COUNTRIES ON SPECIAL WATCH LIST RELATING TO TRAFFICKING IN PERSONS FOR 2 CONSECUTIVE YEARS.—Section 110(b)(3) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)(3)) is amended by adding at the end the following:
  - "(D) COUNTRIES ON SPECIAL WATCH LIST FOR 2 CONSECUTIVE YEARS.—

- "(i) IN GENERAL.—Except as provided under clause (ii), a country that is included on the special watch list described in subparagraph (A) for 2 consecutive years after the date of the enactment of this subparagraph, shall be included on the list of countries described in paragraph (1)(C).
- "(ii) EXERCISE OF WAIVER AUTHORITY.—The President may waive the application of clause (i) for up to 2 years if the President determines, and reports credible evidence to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, that such a waiver is justified because—
- "(I) the country has a written plan to begin making significant efforts to bring itself into compliance with the minimum standards for the elimination of trafficking;
- "(II) the plan, if implemented, would constitute making such significant efforts; and
- "(III) the country is devoting sufficient resources to implement the plan.".

<< 22 USCA § 7107 >>

(b) CLARIFICATION OF MEASURES AGAINST CERTAIN FOREIGN COUNTRIES.—Section 110(d)(1)(A)(ii) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(d)(1)(A)) is amended by inserting "such assistance to the government of the country for the subsequent fiscal year and will not provide" after "will not provide".

<< 22 USCA § 7107 NOTE >>

- (c) TRANSLATION OF TRAFFICKING IN PERSONS REPORT.—The Secretary of State shall—
- (1) timely translate the annual report submitted under section 110(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)) into the principal languages of as many countries as possible, with particular emphasis on the languages of the countries on the lists described in subparagraphs (B) and (C) of section 110(b)(1) of such Act; and
- (2) ensure that the translations described in paragraph (1) are made available to the public through postings on the Internet website of the Department of State and other appropriate websites.
- SEC. 108. RESEARCH ON DOMESTIC AND INTERNATIONAL TRAFFICKING IN PERSONS.
- (a) INTEGRATED DATABASE.—Section 112A of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7109a) is amended—

<< 22 USCA § 7109a >>

- (1) in subsection (a), by amending paragraph (5) to read as follows:
- "(5) An effective mechanism for quantifying the number of victims of trafficking on a national, regional, and international basis, which shall include, not later than 2 years after the date of the enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, the establishment and maintenance of an integrated database within the Human Smuggling and Trafficking Center."; and

<< 22 USCA § 7109a >>

- (2) by amending subsection (b) to read as follows:
- "(b) ROLE OF HUMAN SMUGGLING AND TRAFFICKING CENTER.—
- "(1) IN GENERAL.—The research initiatives described in paragraphs (4) and (5) of subsection (a) shall be carried out by the Human Smuggling and Trafficking Center, established under section 7202 of the  $^9/_{11}$  Commission Implementation Act of 2004 (8 U.S.C. 1777).
- "(2) DATABASE.—The database described in subsection (a)(5) shall be established by combining all applicable data collected by each Federal department and agency represented on the Interagency Task Force to Monitor and Combat Trafficking, consistent with the protection of sources and methods, and, to the maximum extent practicable, applicable data from relevant international organizations, to—
- "(A) improve the coordination of the collection of data related to trafficking in persons by each agency of the United States Government that collects such data:

- "(B) promote uniformity of such data collection and standards and systems related to such collection;
- "(C) undertake a meta-analysis of patterns of trafficking in persons, slavery, and slave-like conditions to develop and analyze global trends in human trafficking;
- "(D) identify emerging issues in human trafficking and establishing integrated methods to combat them; and
- "(E) identify research priorities to respond to global patterns and emerging issues.
- "(3) CONSULTATION.—The database established in accordance with paragraph (2) shall be maintained in consultation with the Director of the Office to Monitor and Combat Trafficking in Persons of the Department of State.
- "(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$2,000,000 to the Human Smuggling and Trafficking Center for each of the fiscal years 2008 through 2011 to carry out the activities described in this subsection."
- (b) REPORT.—Section 110(b)(1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)(1)) is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period at the end and inserting a semicolon; and

- (3) by adding at the end the following:
- "(E) reporting and analysis on the emergence or shifting of global patterns in human trafficking, including data on the number of victims trafficked to, through, or from major source and destination countries, disaggregated by nationality, gender, and age, to the extent possible; and
- "(F) emerging issues in human trafficking.".

#### SEC. 109. PRESIDENTIAL AWARD FOR EXTRAORDINARY EFFORTS TO COMBAT TRAFFICKING IN PERSONS.

The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 et seq.) is amended by inserting after section 112A the following:

- "SEC. 112B. PRESIDENTIAL AWARD FOR EXTRAORDINARY EFFORTS TO COMBAT TRAFFICKING IN PERSONS.
- "(a) ESTABLISHMENT OF AWARD.—The President is authorized to establish an award, to be known as the 'Presidential Award for Extraordinary Efforts To Combat Trafficking in Persons', for extraordinary efforts to combat trafficking in persons. To the maximum extent practicable, the Secretary of State shall present the award annually to not more than 5 individuals or organizations, including—
  - "(1) individuals who are United States citizens or foreign nationals; and
  - "(2) United States or foreign nongovernmental organizations.
- "(b) SELECTION.—The President shall establish procedures for selecting recipients of the award authorized under subsection (a).
- "(c) CEREMONY.—The Secretary of State shall host an annual ceremony for recipients of the award authorized under subsection (a) as soon as practicable after the date on which the Secretary submits to Congress the report required under section 110(b)(1). The Secretary of State may pay the travel costs of each recipient and a guest of each recipient who attends the ceremony.
- "(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, for each of the fiscal years 2008 through 2011, such sums as may be necessary to carry out this section."

# SEC. 110. REPORT ON ACTIVITIES OF THE DEPARTMENT OF LABOR TO MONITOR AND COMBAT FORCED LABOR AND CHILD LABOR.

- (a) FINAL REPORT; PUBLIC AVAILABILITY OF LIST.—Not later than January 15, 2010, the Secretary of Labor shall—
  (1) submit to the appropriate congressional committees a final report that—
- (A) describes the implementation of section 105(b) of the Trafficking Victims Protection Reauthorization Act of 2005 (22 U.S.C. 7103(b)); and
- (B) includes an initial list of goods described in paragraph (2)(C) of such section; and
- (2) make the list of goods described in paragraph (1)(B) available to the public.
- (b) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "appropriate congressional committees" has the meaning given the term in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).

# SEC. 111. SENSE OF CONGRESS REGARDING MULTILATERAL FRAMEWORK BETWEEN LABOR EXPORTING AND LABOR IMPORTING COUNTRIES.

It is the sense of Congress that the Secretary of State, in conjunction with the International Labour Organization, the United Nations Office of Drug and Crime Prevention, and other relevant international and nongovernmental organizations, should seek to establish a multilateral framework between labor exporting and labor importing countries to ensure that workers migrating between such countries are protected from trafficking in persons.

TITLE II—COMBATING TRAFFICKING IN PERSONS IN THE UNITED STATES Subtitle A—Ensuring Availability of Possible Witnesses and Informants

#### SEC. 201. PROTECTING TRAFFICKING VICTIMS AGAINST RETALIATION.

(a) T VISAS.—Section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)) is amended—(1) in clause (i)—

(A) in the matter preceding subclause (I), by striking "Security and the Attorney General jointly;" and inserting "Security, in consultation with the Attorney General,";

(B) in subclause (I), by striking the comma at the end and inserting a semicolon;

- (C) in subclause (II), by adding at the end the following: "including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;";
- (D) in subclause (III)—

(i) in item (aa), by striking "or" at the end;

(ii) by redesignating item (bb) as item (cc);

<< 8 USCA § 1101 >>

(iii) by inserting after item (aa) the following:

"(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or"; and

<< 8 USCA § 1101 >>

(iv) in item (cc), as redesignated, by striking ", and" at the end and inserting "; and"; and

<< 8 USCA § 1101 >>

(E) in subclause (IV), by adding "and" at the end;

(2) in clause (ii)—

<< 8 USCA § 1101 >>

(A) in subclause (I), by striking "or" at the end;

<< 8 USCA § 1101 >>

(B) in subclause (II), by striking "and" at the end and inserting "or"; and

<< 8 USCA § 1101 >>

(C) by adding at the end the following:

"(III) any parent or unmarried sibling under 18 years of age of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement."; and

- (3) by striking clause (iii).
- (b) REQUIREMENTS FOR T VISA ISSUANCE.—Section 214(o)(7) of the Immigration and Nationality Act (8 U.S.C. 1184(o)(7)) is amended—
  - (1) in subparagraph (B)—

(A) by striking "subparagraph (A) if a Federal" and inserting the following: "subparagraph (A) if—

"(i) a Federal";

(B) by striking the period at the end and inserting a semicolon; and

- (C) by adding at the end the following:
- "(ii) the alien is eligible for relief under section 245(l) and is unable to obtain such relief because regulations have not been issued to implement such section; or

"(iii) the Secretary of Homeland Security determines that an extension of the period of such nonimmigrant status is warranted due to exceptional circumstances."; and

- (2) by adding at the end the following:
- "(C) Nonimmigrant status under section 101(a)(15)(T) shall be extended during the pendency of an application for adjustment of status under section 245(l)."

- (c) CONDITIONS ON NONIMMIGRANT STATUS FOR CERTAIN CRIME VICTIMS.—Section 214(p)(6) of the Immigration and Nationality Act (8 U.S.C. 1184(p)(6)) is amended by adding at the end the following: "The Secretary of Homeland Security may extend, beyond the 4—year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien's nonimmigrant status shall be extended beyond the 4—year period authorized under this section if the alien is eligible for relief under section 245(m) and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 245(m). The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U)."
- (d) ADJUSTMENT OF STATUS FOR TRAFFICKING VICTIMS.—Section 245(l) of the Immigration and Nationality Act (8 U.S.C. 1255(l)) is amended—
  - (1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking "the Attorney General,," and inserting "in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate";

- (B) in subparagraph (B)—
- (i) by inserting "subject to paragraph (6)," after "(B)"; and
- (ii) by striking ", and" and inserting "; and"; and
- (C) in subparagraph (C)—

(i) in clause (i), by striking ", or" and inserting a semicolon;

(ii) in clause (ii), by striking ", or in the case of subparagraph (C)(i), the Attorney General, as appropriate"; and

- (iii) by striking the period at the end and inserting the following: "; or
- "(iii) was younger than 18 years of age at the time of the victimization qualifying the alien for relief under section 101(a) (15)(T).";

(2) in paragraph (3), by striking the period at the end and inserting the following: ", unless—

- "(A) the absence was necessary to assist in the investigation or prosecution described in paragraph (1)(A); or
- "(B) an official involved in the investigation or prosecution certifies that the absence was otherwise justified."; and

- (3) by adding at the end the following:
- "(6) For purposes of paragraph (1)(B), the Secretary of Homeland Security may waive consideration of a disqualification from good moral character with respect to an alien if the disqualification was caused by, or incident to, the trafficking described in section 101(a)(15)(T)(i)(I).
- "(7) The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 101(a)(15)(T), 101(a)(15)(U), 106, 240A(b)(2), and 244(a)(3) (as in effect on March 31, 1997)."
- (e) ADJUSTMENT OF STATUS FOR CRIME VICTIMS.—Section 245(m) of the Immigration and Nationality Act (8 U.S.C. 1255(m)) is amended—

(1) in paragraph (1), in the matter preceding subparagraph (A), by striking "unless the Attorney General" and inserting "unless the Secretary"; and

- (2) by adding at the end the following:
- "(5)(A) The Secretary of Homeland Security shall consult with the Attorney General, as appropriate, in making a determination under paragraph (1) whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a Federal law enforcement official, Federal prosecutor, Federal judge, or other Federal authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii).
- "(B) Nothing in paragraph (1)(B) may be construed to prevent the Secretary from consulting with the Attorney General in making a determination whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a State or local law enforcement official, State or local prosecutor, State or local judge, or other State or local authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii)."

- (f) EFFECTIVE DATE.—The amendments made by this section shall—
- (1) take effect on the date of enactment of the Act; and
- (2) apply to applications for immigration benefits filed on or after such date.

#### SEC. 202. PROTECTIONS FOR DOMESTIC WORKERS AND OTHER NONIMMIGRANTS.

- (a) INFORMATION PAMPHLET.—
- (1) DEVELOPMENT AND DISTRIBUTION.—The Secretary of State, in consultation with the Secretary of Homeland Security, the Attorney General, and the Secretary of Labor, shall develop an information pamphlet on legal rights and resources for aliens applying for employment- or education-based nonimmigrant visas.
- (2) CONSULTATION.—In developing the information pamphlet under paragraph (1), the Secretary of State shall consult with nongovernmental organizations with expertise on the legal rights of workers and victims of severe forms of trafficking in persons.
- (b) CONTENTS.—The information pamphlet developed under subsection (a) shall include information concerning items such as—
  - (1) the nonimmigrant visa application processes, including information about the portability of employment;

- (2) the legal rights of employment or education-based nonimmigrant visa holders under Federal immigration, labor, and employment law;
- (3) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States;
- (4) the legal rights of immigrant victims of trafficking in persons and worker exploitation, including—
- (A) the right of access to immigrant and labor rights groups;
- (B) the right to seek redress in United States courts;
- (C) the right to report abuse without retaliation;
- (D) the right of the nonimmigrant to relinquish possession of his or her passport to his or her employer;
- (E) the requirement of an employment contract between the employer and the nonimmigrant; and
- (F) an explanation of the rights and protections included in the contract described in subparagraph (E); and
- (5) information about nongovernmental organizations that provide services for victims of trafficking in persons and worker exploitation, including—
  - (A) anti-trafficking in persons telephone hotlines operated by the Federal Government;
  - (B) the Operation Rescue and Restore hotline; and
- (C) a general description of the types of victims services available for individuals subject to trafficking in persons or worker exploitation.
- (c) TRANSLATION.—
- (1) IN GENERAL.—To best serve the language groups having the greatest concentration of employment-based nonimmigrant visas, the Secretary of State shall translate the information pamphlet developed under subsection (a) into all relevant foreign languages, to be determined by the Secretary based on the languages spoken by the greatest concentrations of employment-or education-based nonimmigrant visa applicants.
- (2) REVISION.—Every 2 years, the Secretary of State, in consultation with the Attorney General and the Secretary of Homeland Security, shall determine the specific languages into which the information pamphlet will be translated based on the languages spoken by the greatest concentrations of employment- or education-based nonimmigrant visa applicants.
- (d) AVAILABILITY AND DISTRIBUTION.—
- (1) POSTING ON FEDERAL WEBSITES.—The information pamphlet developed under subsection (a) shall be posted on the websites of the Department of State, the Department of Homeland Security, the Department of Justice, the Department of Labor, and all United States consular posts processing applications for employment- or education-based nonimmigrant visas.
- (2) OTHER DISTRIBUTION.—The information pamphlet developed under subsection (a) shall be made available to any—
- (A) government agency;
- (B) nongovernmental advocacy organization; or
- (C) foreign labor broker doing business in the United States.
- (3) DEADLINE FOR PAMPHLET DEVELOPMENT AND DISTRIBUTION.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall distribute and make available the information pamphlet developed under subsection (a) in all the languages referred to in subsection (c).
- (e) RESPONSIBILITIES OF CONSULAR OFFICERS OF THE DEPARTMENT OF STATE.—
- (1) INTERVIEWS.—A consular officer conducting an interview of an alien for an employment-based nonimmigrant visa shall—
- (A)(i) confirm that the alien has received, read, and understood the contents of the pamphlet described in subsections (a) and (b); and
- (ii) if the alien has not received, read, or understood the contents of the pamphlet described in subsections (a) and (b), distribute and orally disclose to the alien the information described in paragraphs (2) and (3) in a language that the alien understands; and
- (B) offer to answer any questions the alien may have regarding the contents of the pamphlet described in subsections (a) and (b).
- (2) LEGAL RIGHTS.—The consular officer shall disclose to the alien—
- (A) the legal rights of employment-based nonimmigrants under Federal immigration, labor, and employment laws;

- (B) the illegality of slavery, peonage, trafficking in persons, sexual assault, extortion, blackmail, and worker exploitation in the United States; and
- (C) the legal rights of immigrant victims of trafficking in persons, worker exploitation, and other related crimes, including—
- (i) the right of access to immigrant and labor rights groups;
- (ii) the right to seek redress in United States courts; and
- (iii) the right to report abuse without retaliation.
- (3) VICTIM SERVICES.—In carrying out the disclosure requirement under this subsection, the consular officer shall disclose to the alien the availability of services for victims of human trafficking and worker exploitation in the United States, including victim services complaint hotlines.
- (f) DEFINITIONS.—In this section:
- (1) EMPLOYMENT.—OR EDUCATION–BASED NONIMMIGRANT VISA- The term "employment-or education-based nonimmigrant visa" means—
- (A) a nonimmigrant visa issued under subparagraph (A)(iii), (G)(v), (H), or (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)); and
- (B) any nonimmigrant visa issued to a personal or domestic servant who is accompanying or following to join an employer.
- (2) SEVERE FORMS OF TRAFFICKING IN PERSONS.—The term "severe forms of trafficking in persons" has the meaning given the term in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).
- (3) SECRETARY.—The term "Secretary" means the Secretary of State.
- (4) ABUSING AND EXPLOITING.—The term "abusing and exploiting" means any conduct which would constitute a violation of section 1466A, 1589, 1591, 1592, 2251, or 2251A of title 18, United States Code.

#### << 8 USCA § 1375c >>

#### SEC. 203. PROTECTIONS, REMEDIES, AND LIMITATIONS ON ISSUANCE FOR A-3 AND G-5 VISAS.

- (a) LIMITATIONS ON ISSUANCE OF A-3 AND G-5 VISAS.—
- (1) CONTRACT REQUIREMENT.—Notwithstanding any other provision of law, the Secretary of State may not issue—
- (A) an A–3 visa unless the applicant is employed, or has signed a contract to be employed containing the requirements set forth in subsection (d)(2), by an officer of a diplomatic mission or consular post; or
- (B) a G–5 visa unless the applicant is employed, or has signed a contract to be employed by an employee in an international organization.
- (2) SUSPENSION REQUIREMENT.—Notwithstanding any other provision of law, the Secretary shall suspend, for such period as the Secretary determines necessary, the issuance of A–3 visas or G–5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that 1 or more employees of such mission or international organization have abused or exploited 1 or more nonimmigrants holding an A–3 visa or a G–5 visa, and that the diplomatic mission or international organization tolerated such actions.
- (3) ACTION BY DIPLOMATIC MISSIONS OR INTERNATIONAL ORGANIZATIONS.—The Secretary may suspend the application of the limitation under paragraph (2) if the Secretary determines and reports to the appropriate congressional committees that a mechanism is in place to ensure that such abuse or exploitation does not reoccur with respect to any alien employed by an employee of such mission or institution.
- (b) PROTECTIONS AND REMEDIES FOR A–3 AND G–5 NONIMMIGRANTS EMPLOYED BY DIPLOMATS AND STAFF OF INTERNATIONAL ORGANIZATIONS.—
  - (1) IN GENERAL.—The Secretary may not issue or renew an A-3 visa or a G-5 visa unless—
  - (A) the visa applicant has executed a contract with the employer or prospective employer containing provisions described in paragraph (2); and
  - (B) a consular officer has conducted a personal interview with the applicant outside the presence of the employer or any recruitment agent in which the officer reviewed the terms of the contract and the provisions of the pamphlet required under section 202.

- (2) MANDATORY CONTRACT.—The contract between the employer and domestic worker required under paragraph (1) shall include—
  - (A) an agreement by the employer to abide by all Federal, State, and local laws in the United States;
- (B) information on the frequency and form of payment, work duties, weekly work hours, holidays, sick days, and vacation days; and
- (C) an agreement by the employer not to withhold the passport, employment contract, or other personal property of the employee.
- (3) TRAINING OF CONSULAR OFFICERS.—The Secretary shall provide appropriate training to consular officers on the fair labor standards described in the pamphlet required under section 202, trafficking in persons, and the provisions of this section.
- (4) RECORD KEEPING.—
- (A) IN GENERAL.—The Secretary shall maintain records on the presence of nonimmigrants holding an A–3 visa or a G–5 visa in the United States, including—
  - (i) information about when the nonimmigrant entered and permanently exited the country of residence;
  - (ii) the official title, contact information, and immunity level of the employer; and
  - (iii) information regarding any allegations of employer abuse received by the Department of State.
- (c) PROTECTION FROM REMOVAL DURING LEGAL ACTIONS AGAINST FORMER EMPLOYERS.—
- (1) REMAINING IN THE UNITED STATES TO SEEK LEGAL REDRESS.—
- (A) EFFECT OF COMPLAINT FILING.—Except as provided in subparagraph (B), if a nonimmigrant holding an A–3 visa or a G–5 visa working in the United States files a civil action under section 1595 of title 18, United States Code, or a civil action regarding a violation of any of the terms contained in the contract or violation of any other Federal, State, or local law in the United States governing the terms and conditions of employment of the nonimmigrant that are associated with acts covered by such section, the Attorney General and the Secretary of Homeland Security shall permit the nonimmigrant to remain legally in the United States for time sufficient to fully and effectively participate in all legal proceedings related to such action.
- (B) EXCEPTION.—An alien described in subparagraph (A) may be deported before the conclusion of the legal proceedings related to a civil action described in such subparagraph if such alien is—
- (i) inadmissible under paragraph (2)(A)(i)(II), (2)(B), (2)(C), (2)(E), (2)(H), (2)(I), (3)(A)(i), (3)(A)(iii), (3)(B), (3)(C), or (3)(F) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)); or
- (ii) deportable under paragraph (2)(A)(ii), (2)(A)(iii), (4)(A)(i), (4)(A)(iii), (4)(B), or (4)(C) of section 237(a) of such Act (8 U.S.C. 1227(a)).
- (C) FAILURE TO EXERCISE DUE DILIGENCE.—If the Secretary of Homeland Security, after consultation with the Attorney General, determines that the nonimmigrant holding an A–3 visa or a G–5 visa has failed to exercise due diligence in pursuing an action described in subparagraph (A), the Secretary may terminate the status of the A–3 or G–5 nonimmigrant.
- (2) AUTHORIZATION TO WORK.—The Attorney General and the Secretary of Homeland Security shall authorize any nonimmigrant described in paragraph (1) to engage in employment in the United States during the period the nonimmigrant is in the United States pursuant to paragraph (1).
- (d) STUDY AND REPORT.—
- (1) INVESTIGATION REPORT.—
- (A) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and every 2 years thereafter for the following 10 years, the Secretary shall submit a report to the appropriate congressional committees on the implementation of this section.
- (B) CONTENTS.—The report submitted under subparagraph (A) shall include—
- (i) an assessment of the actions taken by the Department of State and the Department of Justice to investigate allegations of trafficking or abuse of nonimmigrants holding an A–3 visa or a G–5 visa; and
- (ii) the results of such investigations.
- (2) FEASIBILITY OF OVERSIGHT OF EMPLOYEES OF DIPLOMATS AND REPRESENTATIVES OF OTHER INSTITUTIONS REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report to the appropriate congressional committees on the feasibility of—

- (A) establishing a system to monitor the treatment of nonimmigrants holding an A–3 visa or a G–5 visa who have been admitted to the United States;
- (B) a range of compensation approaches, such as a bond program, compensation fund, or insurance scheme, to ensure that such nonimmigrants receive appropriate compensation if their employers violate the terms of their employment contracts; and
- (C) with respect to each proposed compensation approach described in subparagraph (B), an evaluation and proposal describing the proposed processes for—
  - (i) adjudicating claims of rights violations;
  - (ii) determining the level of compensation; and
  - (iii) administering the program, fund, or scheme.
- (e) ASSISTANCE TO LAW ENFORCEMENT INVESTIGATIONS.—The Secretary shall cooperate, to the fullest extent possible consistent with the United States obligations under the Vienna Convention on Diplomatic Relations, done at Vienna, April 18, 1961, (23 U.S.T. 3229), with any investigation by United States law enforcement authorities of crimes related to abuse or exploitation of a nonimmigrant holding an A–3 visa or a G–5 visa.
- (f) DEFINITIONS.—In this section:
- (1) A-3 VISA.—The term "A-3 visa" means a nonimmigrant visa issued pursuant to section 101(a)(15)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)(iii)).
- (2) G-5 VISA.—The term "G-5 visa" means a nonimmigrant visa issued pursuant to section 101(a)(15)(G)(v) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(G)(v)).
- (3) SECRETARY.—The term "Secretary" means the Secretary of State.
- (4) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—
- (A) the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives; and
- (B) the Committee on Foreign Relations and the Committee on the Judiciary of the Senate.

#### << 8 USCA § 1227 >>

#### SEC. 204. RELIEF FOR CERTAIN VICTIMS PENDING ACTIONS ON PETITIONS AND APPLICATIONS FOR RELIEF.

Section 237 of the Immigration and Nationality Act (8 U.S.C. 1227) is amended by adding at the end the following:

- "(d)(1) If the Secretary of Homeland Security determines that an application for nonimmigrant status under subparagraph (T) or (U) of section 101(a)(15) filed for an alien in the United States sets forth a prima facie case for approval, the Secretary may grant the alien an administrative stay of a final order of removal under section 241(c)(2) until—
  - "(A) the application for nonimmigrant status under such subparagraph (T) or (U) is approved; or
  - "(B) there is a final administrative denial of the application for such nonimmigrant status after the exhaustion of administrative appeals.
- "(2) The denial of a request for an administrative stay of removal under this subsection shall not preclude the alien from applying for a stay of removal, deferred action, or a continuance or abeyance of removal proceedings under any other provision of the immigration laws of the United States.
- "(3) During any period in which the administrative stay of removal is in effect, the alien shall not be removed.
- "(4) Nothing in this subsection may be construed to limit the authority of the Secretary of Homeland Security or the Attorney General to grant a stay of removal or deportation in any case not described in this subsection.".

# SEC. 205. EXPANSION OF AUTHORITY TO PERMIT CONTINUED PRESENCE IN THE UNITED STATES.

(a) EXPANSION OF AUTHORITY.—

- (1) IN GENERAL.—Section 107(c)(3) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(c)(3)) is amended to read as follows:
- "(3) AUTHORITY TO PERMIT CONTINUED PRESENCE IN THE UNITED STATES.—
- "(A) TRAFFICKING VICTIMS.—

- "(i) IN GENERAL.—If a Federal law enforcement official files an application stating that an alien is a victim of a severe form of trafficking and may be a potential witness to such trafficking, the Secretary of Homeland Security may permit the alien to remain in the United States to facilitate the investigation and prosecution of those responsible for such crime.
- "(ii) SAFETY.—While investigating and prosecuting suspected traffickers, Federal law enforcement officials described in clause (i) shall endeavor to make reasonable efforts to protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.
- "(iii) CONTINUATION OF PRESENCE.—The Secretary shall permit an alien described in clause (i) who has filed a civil action under section 1595 of title 18, United States Code, to remain in the United States until such action is concluded. If the Secretary, in consultation with the Attorney General, determines that the alien has failed to exercise due diligence in pursuing such action, the Secretary may revoke the order permitting the alien to remain in the United States.
- "(iv) EXCEPTION.—Notwithstanding clause (iii), an alien described in such clause may be deported before the conclusion of the administrative and legal proceedings related to a complaint described in such clause if such alien is inadmissible under paragraph (2)(A)(i)(II), (2)(B), (2)(C), (2)(E), (2)(H), (2)(I), (3)(A)(i), (3)(A)(iii), (3)(B), or (3)(C) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)).
- "(B) PAROLE FOR RELATIVES.—Law enforcement officials may submit written requests to the Secretary of Homeland Security, in accordance with section 240A(b)(6) of the Immigration and Nationality Act (8 U.S.C. 1229b(b)(6)), to permit the parole into the United States of certain relatives of an alien described in subparagraph (A)(i).
- "(C) STATE AND LOCAL LAW ENFORCEMENT.—The Secretary of Homeland Security, in consultation with the Attorney General, shall—
- "(i) develop materials to assist State and local law enforcement officials in working with Federal law enforcement to obtain continued presence for victims of a severe form of trafficking in cases investigated or prosecuted at the State or local level; and
- "(ii) distribute the materials developed under clause (i) to State and local law enforcement officials.".

- (2) EFFECTIVE DATE.—The amendment made by paragraph (1)—
- (A) shall take effect on the date of the enactment of this Act;
- (B) shall apply to pending requests for continued presence filed pursuant to section 107(c)(3) of the Trafficking Victims Protection Act (22 U.S.C. 7105(c)(3)) and requests filed on or after such date; and
- (C) may not be applied to an alien who is not present in the United States.

- (b) PAROLE FOR DERIVATIVES OF TRAFFICKING VICTIMS.—Section 240A(b) of the Immigration and Nationality Act (8 U.S.C. 1229b(b)) is amended by adding at the end the following:
  - "(6) RELATIVES OF TRAFFICKING VICTIMS.—
  - "(A) IN GENERAL.—Upon written request by a law enforcement official, the Secretary of Homeland Security may parole under section 212(d)(5) any alien who is a relative of an alien granted continued presence under section 107(c)(3)(A) of the Trafficking Victims Protection Act (22 U.S.C. 7105(c)(3)(A)), if the relative—
    - "(i) was, on the date on which law enforcement applied for such continued presence—
    - "(I) in the case of an alien granted continued presence who is under 21 years of age, the spouse, child, parent, or unmarried sibling under 18 years of age, of the alien; or
  - "(II) in the case of an alien granted continued presence who is 21 years of age or older, the spouse or child of the alien; or "(ii) is a parent or sibling of the alien who the requesting law enforcement official, in consultation with the Secretary of Homeland Security, as appropriate, determines to be in present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement, irrespective of age.
  - "(B) DURATION OF PAROLE.—

- "(i) IN GENERAL.—The Secretary may extend the parole granted under subparagraph (A) until the final adjudication of the application filed by the principal alien under section 101(a)(15)(T)(ii).
- "(ii) OTHER LIMITS ON DURATION.—If an application described in clause (i) is not filed, the parole granted under subparagraph (A) may extend until the later of—
- "(I) the date on which the principal alien's authority to remain in the United States under section 107(c)(3)(A) of the Trafficking Victims Protection Act (22 U.S.C. 7105(c)(3)(A)) is terminated; or
- "(II) the date on which a civil action filed by the principal alien under section 1595 of title 18, United States Code, is concluded.
- "(iii) DUE DILIGENCE.—Failure by the principal alien to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) of subparagraph (A), or in pursuing the civil action described in clause (ii)(II) (as determined by the Secretary of Homeland Security in consultation with the Attorney General), may result in revocation of parole.
- "(C) OTHER LIMITATIONS.—A relative may not be granted parole under this paragraph if—
- "(i) the Secretary of Homeland Security or the Attorney General has reason to believe that the relative was knowingly complicit in the trafficking of an alien permitted to remain in the United States under section 107(c)(3)(A) of the Trafficking Victims Protection Act (22 U.S.C. 7105(c)(3)(A)); or
- "(ii) the relative is an alien described in paragraph (2) or (3) of section 212(a) or paragraph (2) or (4) of section 237(a).".

  Subtitle B—Assistance for Trafficking Victims

#### SEC. 211. ASSISTANCE FOR CERTAIN NONIMMIGRANT STATUS APPLICANTS.

(a) IN GENERAL.—Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)) is amended—

(1) in paragraph (2)(B), by striking "or" at the end;

(2) in paragraph (3)(B), by striking the period at the end and inserting "; or"; and

- (3) by inserting after paragraph (3) the following:
- "(4) an alien who has been granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to applications for public benefits and public benefits provided on or after the date of the enactment of this Act without regard to whether regulations have been implemented to carry out such amendments.

#### SEC. 212. INTERIM ASSISTANCE FOR CHILDREN.

(a) IN GENERAL.—Section 107(b)(1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)(1)) is amended—

(1) in subparagraph (E)(i)(I), by inserting "or is unable to cooperate with such a request due to physical or psychological trauma" before the semicolon; and

#### << 22 USCA § 7105 >>

- (2) by adding at the end the following:
- "(F) ELIGIBILITY FOR INTERIM ASSISTANCE OF CHILDREN.—
- "(i) DETERMINATION.—Upon receiving credible information that a child described in subparagraph (C)(ii)(I) who is seeking assistance under this paragraph may have been subjected to a severe form of trafficking in persons, the Secretary of Health and Human Services shall promptly determine if the child is eligible for interim assistance under this paragraph. The Secretary shall have exclusive authority to make interim eligibility determinations under this clause. A determination of interim eligibility under this clause shall not affect the independent determination whether a child is a victim of a severe form of trafficking.
- "(ii) NOTIFICATION.—The Secretary of Health and Human Services shall notify the Attorney General and the Secretary of Homeland Security not later than 24 hours after all interim eligibility determinations have been made under clause (i).
- "(iii) DURATION.—Assistance under this paragraph may be provided to individuals determined to be eligible under clause (i) for a period of up to 90 days and may be extended for an additional 30 days.
- "(iv) LONG-TERM ASSISTANCE FOR CHILDREN.-
- "(I) ELIGIBILITY DETERMINATION.—Before the expiration of the period for interim assistance under clause (iii), the Secretary of Health and Human Services shall determine if the child referred to in clause (i) is eligible for assistance under this paragraph.
- "(II) CONSULTATION.—In making a determination under subclause (I), the Secretary shall consult with the Attorney General, the Secretary of Homeland Security, and nongovernmental organizations with expertise on victims of severe form of trafficking.
- "(III) LETTER OF ELIGIBILITY.—If the Secretary, after receiving information the Secretary believes, taken as a whole, indicates that the child is eligible for assistance under this paragraph, the Secretary shall issue a letter of eligibility. The Secretary may not require that the child cooperate with law enforcement as a condition for receiving such letter of eligibility.
- "(G) NOTIFICATION OF CHILDREN FOR INTERIM ASSISTANCE.—Not later than 24 hours after a Federal, State, or local official discovers that a person who is under 18 years of age may be a victim of a severe form of trafficking in persons, the official shall notify the Secretary of Health and Human Services to facilitate the provision of interim assistance under subparagraph (F)."

#### << 22 USCA § 7105 >>

- (b) TRAINING OF GOVERNMENT PERSONNEL.—Section 107(c)(4) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(c)(4)) is amended—
- (1) by inserting ", the Department of Homeland Security, the Department of Health and Human Services," after "the Department of State"; and
- (2) by inserting ", including juvenile victims. The Attorney General and the Secretary of Health and Human Services shall provide training to State and local officials to improve the identification and protection of such victims" before the period at the end.
- SEC. 213. ENSURING ASSISTANCE FOR ALL VICTIMS OF TRAFFICKING IN PERSONS.
- (a) AMENDMENTS TO TRAFFICKING VICTIMS PROTECTION ACT OF 2000.—

### << 22 USCA § 7105 >>

- (1) ASSISTANCE FOR UNITED STATES CITIZENS AND LAWFUL PERMANENT RESIDENTS.—Section 107 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105) is amended by inserting after subsection (e) the following: "(f) ASSISTANCE FOR UNITED STATES CITIZENS AND LAWFUL PERMANENT RESIDENTS.—
- "(1) IN GENERAL.—The Secretary of Health and Human Services and the Attorney General, in consultation with the Secretary of Labor, shall establish a program to assist United States citizens and aliens lawfully admitted for permanent

residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20))) who are victims of severe forms of trafficking. In determining the assistance that would be most beneficial for such victims, the Secretary and the Attorney General shall consult with nongovernmental organizations that provide services to victims of severe forms of trafficking in the United States.

- "(2) USE OF EXISTING PROGRAMS.—In addition to specialized services required for victims described in paragraph (1), the program established pursuant to paragraph (1) shall—
  - "(A) facilitate communication and coordination between the providers of assistance to such victims;
  - "(B) provide a means to identify such providers; and
- "(C) provide a means to make referrals to programs for which such victims are already eligible, including programs administered by the Department of Justice and the Department of Health and Human Services.
- "(3) GRANTS.—
- "(A) IN GENERAL.—The Secretary of Health and Human Services and the Attorney General may award grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victim service organizations to develop, expand, and strengthen victim service programs authorized under this subsection.
- "(B) MAXIMUM FEDERAL SHARE.—The Federal share of a grant awarded under this paragraph may not exceed 75 percent of the total costs of the projects described in the application submitted by the grantee."
- (2) AUTHORIZATION OF APPROPRIATIONS.—Section 113 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7110) is amended—
  - (A) in subsection (b)—

- (i) by striking "To carry out" and inserting the following:
- "(1) ELIGIBILITY FOR BENEFITS AND ASSISTANCE.—To carry out"; and

- (ii) by adding at the end the following:
- "(2) ADDITIONAL BENEFITS FOR TRAFFICKING VICTIMS.—To carry out the purposes of section 107(f), there are authorized to be appropriated to the Secretary of Health and Human Services—
  - "(A) \$2,500,000 for fiscal year 2008;
  - "(B) \$5,000,0000 for fiscal year 2009;
  - "(C) \$7,000,000 for fiscal year 2010; and
  - "(D) \$7,000,000 for fiscal year 2011."; and

#### << 22 USCA § 7110 >>

- (B) in subsection (d)—
- (i) by striking "To carry out the purposes of section 107(b)" and inserting the following:
- "(A) ELIGIBILITY FOR BENEFITS AND ASSISTANCE.—To carry out the purposes of section 107(b)";
- (ii) by striking "To carry out the purposes of section 134" and inserting the following:
- "(B) ASSISTANCE TO FOREIGN COUNTRIES.—To carry out the purposes of section 134'; and
- (iii) by adding at the end the following:
- "(C) ADDITIONAL BENEFITS FOR TRAFFICKING VICTIMS.—To carry out the purposes of section 107(f), there are authorized to be appropriated to the Attorney General—
  - "(i) \$2,500,000 for fiscal year 2008;
  - "(ii) \$5,000,0000 for fiscal year 2009;
  - "(iii) \$7,000,000 for fiscal year 2010; and
  - "(iv) \$7,000,000 for fiscal year 2011.".

#### << 22 USCA § 7105 >>

- (3) TECHNICAL ASSISTANCE.—Section 107(b)(2)(B)(ii) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(b)(2)(B)(ii)) is amended to read as follows:
  - "(ii) 5 percent for training and technical assistance, including increasing capacity and expertise on security for and protection of service providers from intimidation or retaliation for their activities.".
- (b) STUDY.—
- (1) REQUIREMENT.—Not later than 1 year after the date of the enactment of this Act, the Attorney General and the Secretary of Health and Human Services shall submit a report to the appropriate congressional committees that identifies the existence and extent of any service gap between victims described in section 107(b)(1) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105) and individuals described in section 107(f) of such Act, as amended by section 213(a) of this Act.
- (2) ELEMENTS.—In carrying out the study under subparagraph (1), the Attorney General and the Secretary of Health and Human Services shall—
- (A) investigate factors relating to the legal ability of the victims described in paragraph (1) to access government-funded social services in general, including the application of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(5)) and the Illegal Immigration and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009 et seq.);
- (B) investigate any other impediments to the access of the victims described in paragraph (1) to government-funded social services;
- (C) investigate any impediments to the access of the victims described in paragraph (1) to government-funded services targeted to victims of severe forms of trafficking;
- (D) investigate the effect of trafficking service-provider infrastructure development, continuity of care, and availability of caseworkers on the eventual restoration and rehabilitation of the victims described in paragraph (1); and
- (E) include findings, best practices, and recommendations, if any, based on the study of the elements described in subparagraphs (A) through (D) and any other related information.

Subtitle C—Penalties Against Traffickers and Other Crimes

#### SEC. 221. RESTITUTION OF FORFEITED ASSETS; ENHANCEMENT OF CIVIL ACTION.

Chapter 77 of title 18, United States Code, is amended—

- (1) in section 1593(b), by adding at the end the following:
- "(4) The forfeiture of property under this subsection shall be governed by the provisions of section 413 (other than subsection (d) of such section) of the Controlled Substances Act (21 U.S.C. 853)."; and
  - (2) in section 1595—

- (A) in subsection (a)—
- (i) by striking "of section 1589, 1590, or 1591"; and
- (ii) by inserting "(or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter)" after "perpetrator"; and

<< 18 USCA § 1595 >>

(B) by adding at the end the following:

"(c) No action may be maintained under this section unless it is commenced not later than 10 years after the cause of action arose."

#### SEC. 222. ENHANCING PENALTIES FOR TRAFFICKING OFFENSES.

(a) DETENTION.—Section 3142(e) of title 18, United States Code, is amended—

<< 18 USCA § 3142 >>

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

<< 18 USCA § 3142 >>

(2) by inserting "(1)" before "If, after a hearing";

<< 18 USCA § 3142 >>

(3) by inserting "(2)" before "In a case";

<< 18 USCA § 3142 >>

(4) by inserting "(3)" before "Subject to rebuttal";

<< 18 USCA § 3142 >>

- (5) by striking "paragraph (1) of this subsection" each place it appears and inserting "subparagraph (A)";
- (6) in paragraph (3), as redesignated—

- (A) by striking "committed an offense" and inserting the following: "committed—
- "(A) an offense";

- (B) by striking "46, an offense" and inserting the following: "46;
- "(B) an offense";

- (C) by striking "title, or an offense" and inserting the following: "title;
- "(C) an offense"; and

- (D) by striking "prescribed or an offense" and inserting the following: "prescribed;
- "(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or "(E) an offense".
- (b) PREVENTING OBSTRUCTION.—
- (1) ENTICEMENT INTO SLAVERY.—Section 1583 of title 18, United States Code, is amended to read as follows:

"§ 1583. Enticement into slavery

"(a) Whoever-

- "(1) kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave:
- "(2) entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he or she may be made or held as a slave, or sent out of the country to be so made or held; or
- "(3) obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section,

shall be fined under this title, imprisoned not more than 20 years, or both.

- "(b) Whoever violates this section shall be fined under this title, imprisoned for any term of years or for life, or both if—
- "(1) the violation results in the death of the victim; or
- "(2) the violation includes kidnaping, an attempt to kidnap, aggravated sexual abuse, an attempt to commit aggravated sexual abuse, or an attempt to kill.".

#### << 18 USCA § 1584 >>

- (2) SALE INTO INVOLUNTARY SERVITUDE.—Section 1584 of such title is amended—
- (A) by striking "Whoever" and inserting the following:
- "(a) Whoever"; and
  - (B) by adding at the end the following:
- "(b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties described in subsection (a)."

(3) PUNISHING FINANCIAL GAIN FROM TRAFFICKED LABOR.—Section 1589 of such title is amended to read as follows:

#### "SEC. 1589. FORCED LABOR.

- "(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—
  - "(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
  - "(2) by means of serious harm or threats of serious harm to that person or another person;
  - "(3) by means of the abuse or threatened abuse of law or legal process; or
- "(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint,

shall be punished as provided under subsection (d).

- "(b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).
- "(c) In this section:
- "(1) The term 'abuse or threatened abuse of law or legal process' means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
- "(2) The term 'serious harm' means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.
- "(d) Whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both. If death results from a violation of this section, or if the violation includes kidnaping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both."

<< 18 USCA § 1590 >>

- (4) TRAFFICKING.—Section 1590 of such title is amended—
- (A) by striking "Whoever" and inserting the following:
- "(a) Whoever"; and
  - (B) by adding at the end the following:
- "(b) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties under subsection (a).".
  - (5) SEX TRAFFICKING OF CHILDREN.—Section 1591 of such title is amended—
  - (A) in subsection (a)—

(i) in paragraph (1), by striking "or obtains" and inserting "obtains, or maintains"; and

(ii) in the matter following paragraph (2), by striking "that force, fraud, or coercion described in subsection (c)(2)" and inserting ", or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means";

(B) by redesignating subsection (c) as subsection (e);

(C) in subsection (b)(1), by striking "force, fraud, or coercion" and inserting "means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means,";

- (D) by inserting after subsection (b) the following:
- "(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of 18 years.
- "(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 20 years, or both.";
  - (E) in subsection (e), as redesignated—

(i) by redesignating paragraph (3) as paragraph (5);

(ii) by redesignating paragraph (1) as paragraph (3);

(iii) by inserting before paragraph (2) the following:

"(1) The term 'abuse or threatened abuse of law or legal process' means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action."; and

- (iv) by inserting after paragraph (3), as redesignated, the following:
- "(4) The term 'serious harm' means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm."

- (6) UNLAWFUL CONDUCT.—Section 1592 of such title is amended by adding at the end the following:
- "(c) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties described in subsection (a)."
- (c) HOLDING CONSPIRATORS ACCOUNTABLE.—Section 1594 of title 18, United States Code, is amended—

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

- (2) by inserting after subsection (a) the following:
- "(b) Whoever conspires with another to violate section 1581, 1583, 1589, 1590, or 1592 shall be punished in the same manner as a completed violation of such section.
- "(c) Whoever conspires with another to violate section 1591 shall be fined under this title, imprisoned for any term of years or for life, or both.".
- (d) BENEFITTING FINANCIALLY FROM PEONAGE, SLAVERY, AND TRAFFICKING IN PERSONS.—

(1) IN GENERAL.—Chapter 77 of title 18, United States Code, is amended by inserting after section 1593 the following:

"§ 1593A. Benefitting financially from peonage, slavery, and trafficking in persons

"Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act in violation of section 1581(a), 1592, or 1595(a), knowing or in reckless disregard of the fact that the venture has engaged in such violation, shall be fined under this title or imprisoned in the same manner as a completed violation of such section."

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1593 the following:

"Sec. 1593A. Benefitting financially from peonage, slavery, and trafficking in persons.".

(e) RETALIATION IN FOREIGN LABOR CONTRACTING.—Chapter 63 of title 18, United States Code, is amended—

- (1) in the chapter heading, by adding at the end the following: "AND OTHER FRAUD OFFENSES";
- (2) by adding at the end the following:

<< 18 USCA § 1351 >>

"§ 1351. Fraud in foreign labor contracting

"Whoever knowingly and with intent to defraud recruits, solicits or hires a person outside the United States for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be fined under this title or imprisoned for not more than 5 years, or both."; and

- (3) in the table of sections, by inserting after the item relating to section 1350 the following:
- "1351. Fraud in foreign labor contracting.".
- (f) TIGHTENING IMMIGRATION PROHIBITIONS.—

<< 8 USCA § 1182 >>

(1) GROUND OF INADMISSIBILITY FOR TRAFFICKING.—Section 212(a)(2)(H)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(H)(i)) is amended by striking "who is listed in a report submitted pursuant to section 111(b) of the Trafficking Victims Protection Act of 2000" and inserting "who commits or conspires to commit human trafficking offenses in the United States or outside the United States".

- (2) GROUND OF REMOVABILITY.—Section 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:
  - "(F) TRAFFICKING.—Any alien described in section 212(a)(2)(H) is deportable.".

- (g) AMENDMENT TO SENTENCING GUIDELINES.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of alien harboring to ensure conformity with the sentencing guidelines applicable to persons convicted of promoting a commercial sex act if—
  - (1) the harboring was committed in furtherance of prostitution; and
  - (2) the defendant to be sentenced is an organizer, leader, manager, or supervisor of the criminal activity.

#### SEC. 223. JURISDICTION IN CERTAIN TRAFFICKING OFFENSES.

- (a) IN GENERAL.—Chapter 77 of title 18, United States Code, is amended by adding at the end the following:
- "§ 1596. Additional jurisdiction in certain trafficking offenses
- "(a) IN GENERAL.—In addition to any domestic or extra-territorial jurisdiction otherwise provided by law, the courts of the United States have extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit an offense) under section 1581, 1583, 1584, 1589, 1590, or 1591 if—
- "(1) an alleged offender is a national of the United States or an alien lawfully admitted for permanent residence (as those terms are defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)); or
- "(2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender.
- "(b) LIMITATION ON PROSECUTIONS OF OFFENSES PROSECUTED IN OTHER COUNTRIES.—No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval

of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 77 of title 18, United States Code, is amended by adding at the end the following:

"1596. Additional jurisdiction in certain trafficking offenses.".

SEC. 224. BAIL CONDITIONS, SUBPOENAS, AND REPEAT OFFENDER PENALTIES FOR SEX TRAFFICKING.

(a) RELEASE AND DETENTION.—Subsections (f)(1)(A) and (g)(1) of section 3142 of title 18, United States Code, are amended by striking "violence," each place such term appears and inserting "violence, a violation of section 1591,".

(b) SUBPOENAS.—Section 3486(a)(1)(D) of title 18, United States Code, is amended by inserting "1591," after "1201,".

(c) REPEAT OFFENDERS.—Section 2426(b)(1)(A) of title 18, United States Code, is amended, by striking "or chapter 110" and inserting "chapter 110, or section 1591".

#### SEC. 225. PROMOTING EFFECTIVE STATE ENFORCEMENT.

- (a) RELATIONSHIP AMONG FEDERAL AND STATE LAW.—Nothing in this Act, the Trafficking Victims Protection Act of 2000, the Trafficking Victims Protection Reauthorization Act of 2003, the Trafficking Victims Protection Reauthorization Act of 2005, chapters 77 and 117 of title 18, United States Code, or any model law issued by the Department of Justice to carry out the purposes of any of the aforementioned statutes—
  - (1) may be construed to treat prostitution as a valid form of employment under Federal law; or
  - (2) shall preempt, supplant, or limit the effect of any State or Federal criminal law.
- (b) MODEL STATE CRIMINAL PROVISIONS.—In addition to any model State antitrafficking statutes in effect on the date of the enactment of this Act, the Attorney General shall facilitate the promulgation of a model State statute that—
- (1) furthers a comprehensive approach to investigation and prosecution through modernization of State and local prostitution and pandering statutes; and
- (2) is based in part on the provisions of the Act of August 15, 1935 (49 Stat. 651; D.C. Code 22–2701 et seq.) (relating to prostitution and pandering).
- (c) DISTRIBUTION.—The model statute described in subsection (b) and the text of chapter 27 of the Criminal Code of the District of Columbia (D.C. Code 22–2701 et seq.) shall be—
  - (1) posted on the website of the Department of Justice; and
  - (2) distributed to the Attorney General of each State.

Subtitle D-Activities of the United States Government

#### SEC. 231. ANNUAL REPORT BY THE ATTORNEY GENERAL.

Section 105(d)(7) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7103(d)(7)) is amended—

<< 22 USCA § 7103 >>

- (1) in subparagraph (A)—
- (A) by striking "section 107(b)" and inserting "subsections (b) and (f) of section 107"; and
- (B) by inserting "the Attorney General," after "the Secretary of Labor,";

(2) in subparagraph (G), by striking "and" at the end;

(3) by redesignating subparagraph (H) as subparagraph (J); and

- (4) by inserting after subparagraph (G) the following:
- "(H) activities by the Department of Defense to combat trafficking in persons, including—
- "(i) educational efforts for, and disciplinary actions taken against, members of the United States Armed Forces;
- "(ii) the development of materials used to train the armed forces of foreign countries; and
- "(iii) efforts to ensure that United States Government contractors and their employees or United States Government subcontractors and their employees do not engage in trafficking in persons;
- "(I) activities or actions by Federal departments and agencies to enforce—
- "(i) section 106(g) and any similar law, regulation, or policy relating to United States Government contractors and their employees or United States Government subcontractors and their employees that engage in severe forms of trafficking in persons, the procurement of commercial sex acts, or the use of forced labor, including debt bondage;
- "(ii) section 307 of the Tariff Act of 1930 (19 U.S.C. 1307; relating to prohibition on importation of convict-made goods), including any determinations by the Secretary of Homeland Security to waive the restrictions of such section; and
- "(iii) prohibitions on the procurement by the United States Government of items or services produced by slave labor, consistent with Executive Order 13107 (December 10, 1998); and".

#### SEC. 232. INVESTIGATION BY THE INSPECTORS GENERAL.

- (a) IN GENERAL.—For each of the fiscal years 2010 through 2012, the Inspectors General of the Department of Defense, the Department of State, and the United States Agency for International Development shall investigate a sample of the contracts described in subsection (b).
- (b) CONTRACTS DESCRIBED.—
- (1) IN GENERAL.—The contracts described in subsection (a) are contracts, or subcontracts at any tier, under which there is a heightened risk that a contractor may engage, knowingly or unknowingly, in acts related to trafficking in persons, such as—
  - (A) confiscation of an employee's passport;
  - (B) restriction on an employee's mobility;
  - (C) abrupt or evasive repatriation of an employee;
  - (D) deception of an employee regarding the work destination; or
  - (E) acts otherwise described in section 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104).
- (2) CONSULTATION AND INFORMATION RECEIVED.—In determining the type of contact that should be investigated pursuant to subsection (a), the Inspectors General shall—
  - (A) consult with the Director of the Office to Combat Trafficking in Persons of the Department of State; and
  - (B) take into account any credible information received regarding report of trafficking in persons.
- (c) CONGRESSIONAL NOTIFICATION.—
- (1) IN GENERAL.—Not later than January 15, 2009, and annually thereafter through January 15, 2011, each Inspector General shall submit a report to the congressional committees listed in paragraph (3)—

- (A) summarizing the findings of the investigations conducted in the previous year, including any findings regarding trafficking in persons or any improvements needed to prevent trafficking in persons; and
- (B) In the case of any contractor or subcontractor with regard to which the Inspector General has found substantial evidence of trafficking in persons, report as to—
  - (i) whether or not the case has been referred for prosecution; and
- (ii) whether or not the case has been treated in accordance with section 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104) (relating to termination of certain grants, contracts and cooperative agreements).
- (2) JOINT REPORT.—The Inspectors General described in subsection (a) may submit their reports jointly.
- (3) CONGRESSIONAL COMMITTEES.—The committees list in this paragraph are—
- (A) the Committee on Armed Services of the Senate;
- (B) the Committee on Foreign Relations of the Senate;
- (C) the Committee on Armed Services of the House of Representatives; and
- (D) the Committee on Foreign Affairs of the House of Representatives.

<< 42 USCA § 14044d >>

#### SEC. 233. SENIOR POLICY OPERATING GROUP.

Section 206 of the Trafficking Victims Protection Reauthorization Act of 2005 (42 U.S.C. 14044d) is amended by striking ", as the department or agency determines appropriate,".

<< 8 USCA § 1182 >>

#### SEC. 234. PREVENTING UNITED STATES TRAVEL BY TRAFFICKERS.

Section 212(a)(2)(H)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(H)(i)) is amended by striking "consular officer" and inserting "consular officer, the Secretary of Homeland Security, the Secretary of State,".

<< 8 USCA § 1232 NOTE >>

#### SEC. 235. ENHANCING EFFORTS TO COMBAT THE TRAFFICKING OF CHILDREN.

- (a) COMBATING CHILD TRAFFICKING AT THE BORDER AND PORTS OF ENTRY OF THE UNITED STATES.—
- (1) POLICIES AND PROCEDURES.—In order to enhance the efforts of the United States to prevent trafficking in persons, the Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Secretary of Health and Human Services, shall develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence.
- (2) SPECIAL RULES FOR CHILDREN FROM CONTIGUOUS COUNTRIES.—
- (A) DETERMINATIONS.—Any unaccompanied alien child who is a national or habitual resident of a country that is contiguous with the United States shall be treated in accordance with subparagraph (B), if the Secretary of Homeland Security determines, on a case-by-case basis, that—
- (i) such child has not been a victim of a severe form of trafficking in persons, and there is no credible evidence that such child is at risk of being trafficked upon return to the child's country of nationality or of last habitual residence;
- (ii) such child does not have a fear of returning to the child's country of nationality or of last habitual residence owing to a credible fear of persecution; and
- (iii) the child is able to make an independent decision to withdraw the child's application for admission to the United States.
- (B) RETURN.—An immigration officer who finds an unaccompanied alien child described in subparagraph (A) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) may—
- (i) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and
- (ii) return such child to the child's country of nationality or country of last habitual residence.

- (C) CONTIGUOUS COUNTRY AGREEMENTS.—The Secretary of State shall negotiate agreements between the United States and countries contiguous to the United States with respect to the repatriation of children. Such agreements shall be designed to protect children from severe forms of trafficking in persons, and shall, at a minimum, provide that—
- (i) no child shall be returned to the child's country of nationality or of last habitual residence unless returned to appropriate employees or officials, including child welfare officials where available, of the accepting country's government;
- (ii) no child shall be returned to the child's country of nationality or of last habitual residence outside of reasonable business hours; and
- (iii) border personnel of the countries that are parties to such agreements are trained in the terms of such agreements.
- (3) RULE FOR OTHER CHILDREN.—The custody of unaccompanied alien children not described in paragraph (2)(A) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with subsection (b).
- (4) SCREENING.—Within 48 hours of the apprehension of a child who is believed to be described in paragraph (2)(A), but in any event prior to returning such child to the child's country of nationality or of last habitual residence, the child shall be screened to determine whether the child meets the criteria listed in paragraph (2)(A). If the child does not meet such criteria, or if no determination can be made within 48 hours of apprehension, the child shall immediately be transferred to the Secretary of Health and Human Services and treated in accordance with subsection (b). Nothing in this paragraph may be construed to preclude an earlier transfer of the child.
- (5) ENSURING THE SAFE REPATRIATION OF CHILDREN.—
- (A) REPATRIATION PILOT PROGRAM.—To protect children from trafficking and exploitation, the Secretary of State shall create a pilot program, in conjunction with the Secretary of Health and Human Services and the Secretary of Homeland Security, nongovernmental organizations, and other national and international agencies and experts, to develop and implement best practices to ensure the safe and sustainable repatriation and reintegration of unaccompanied alien children into their country of nationality or of last habitual residence, including placement with their families, legal guardians, or other sponsoring agencies.
- (B) ASSESSMENT OF COUNTRY CONDITIONS.—The Secretary of Homeland Security shall consult the Department of State's Country Reports on Human Rights Practices and the Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.
- (C) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—Not later than 18 months after the date of the enactment of this Act, and annually thereafter, the Secretary of State and the Secretary of Health and Human Services, with assistance from the Secretary of Homeland Security, shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on efforts to improve repatriation programs for unaccompanied alien children. Such report shall include—
- (i) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States;
- (ii) a statement of the nationalities, ages, and gender of such children;
- (iii) a description of the policies and procedures used to effect the removal of such children from the United States and the steps taken to ensure that such children were safely and humanely repatriated to their country of nationality or of last habitual residence, including a description of the repatriation pilot program created pursuant to subparagraph (A);
- (iv) a description of the type of immigration relief sought and denied to such children;
- (v) any information gathered in assessments of country and local conditions pursuant to paragraph (2); and
- (vi) statistical information and other data on unaccompanied alien children as provided for in section 462(b)(1)(J) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)(J)).
- (D) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child sought to be removed by the Department of Homeland Security, except for an unaccompanied alien child from a contiguous country subject to exceptions under subsection (a)(2), shall be—
  - (i) placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a);
  - (ii) eligible for relief under section 240B of such Act (8 U.S.C. 1229c) at no cost to the child; and
  - (iii) provided access to counsel in accordance with subsection (c)(5).

#### (b) COMBATING CHILD TRAFFICKING AND EXPLOITATION IN THE UNITED STATES.—

- (1) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN.—Consistent with section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279), and except as otherwise provided under subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of the Secretary of Health and Human Services.
- (2) NOTIFICATION.—Each department or agency of the Federal Government shall notify the Department of Health and Human services within 48 hours upon—
  - (A) the apprehension or discovery of an unaccompanied alien child; or
  - (B) any claim or suspicion that an alien in the custody of such department or agency is under 18 years of age.
- (3) TRANSFERS OF UNACCOMPANIED ALIEN CHILDREN.—Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.
- (4) AGE DETERMINATIONS.—The Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, shall develop procedures to make a prompt determination of the age of an alien, which shall be used by the Secretary of Homeland Security and the Secretary of Health and Human Services for children in their respective custody. At a minimum, these procedures shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien.

#### (c) PROVIDING SAFE AND SECURE PLACEMENTS FOR CHILDREN.—

- (1) POLICIES AND PROGRAMS.—The Secretary of Health and Human Services, Secretary of Homeland Security, Attorney General, and Secretary of State shall establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity, including policies and programs reflecting best practices in witness security programs.
- (2) SAFE AND SECURE PLACEMENTS.—Subject to section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)), an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child. In making such placements, the Secretary may consider danger to self, danger to the community, and risk of flight. Placement of child trafficking victims may include placement in an Unaccompanied Refugee Minor program, pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)), if a suitable family member is not available to provide care. A child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense. The placement of a child in a secure facility shall be reviewed, at a minimum, on a monthly basis, in accordance with procedures prescribed by the Secretary, to determine if such placement remains warranted.

#### (3) SAFETY AND SUITABILITY ASSESSMENTS.—

- (A) IN GENERAL.—Subject to the requirements of subparagraph (B), an unaccompanied alien child may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child.
- (B) HOME STUDIES.—Before placing the child with an individual, the Secretary of Health and Human Services shall determine whether a home study is first necessary. A home study shall be conducted for a child who is a victim of a severe form of trafficking in persons, a special needs child with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2))), a child who has been a victim of physical or sexual abuse under circumstances that indicate that the child's health or welfare has been significantly harmed or threatened, or a child whose proposed sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence. The Secretary of Health and Human Services shall conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted and is authorized to conduct follow-up services in cases involving children with mental health or other needs who could benefit from ongoing assistance from a social welfare agency.

- (C) ACCESS TO INFORMATION.—Not later than 2 weeks after receiving a request from the Secretary of Health and Human Services, the Secretary of Homeland Security shall provide information necessary to conduct suitability assessments from appropriate Federal, State, and local law enforcement and immigration databases.
- (4) LEGAL ORIENTATION PRESENTATIONS.—The Secretary of Health and Human Services shall cooperate with the Executive Office for Immigration Review to ensure that custodians receive legal orientation presentations provided through the Legal Orientation Program administered by the Executive Office for Immigration Review. At a minimum, such presentations shall address the custodian's responsibility to attempt to ensure the child's appearance at all immigration proceedings and to protect the child from mistreatment, exploitation, and trafficking.
- (5) ACCESS TO COUNSEL.—The Secretary of Health and Human Services shall ensure, to the greatest extent practicable and consistent with section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in subsection (a)(2)(A), have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking. To the greatest extent practicable, the Secretary of Health and Human Services shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.
- (6) CHILD ADVOCATES.—The Secretary of Health and Human Services is authorized to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children. A child advocate shall be provided access to materials necessary to effectively advocate for the best interest of the child. The child advocate shall not be compelled to testify or provide evidence in any proceeding concerning any information or opinion received from the child in the course of serving as a child advocate. The child advocate shall be presumed to be acting in good faith and be immune from civil and criminal liability for lawful conduct of duties as described in this provision.
- (d) PERMANENT PROTECTION FOR CERTAIN AT-RISK CHILDREN.—
- (1) IN GENERAL.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended—

#### << 8 USCA § 1101 >>

- (A) in clause (i), by striking "State and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;" and inserting "State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;"; and
- (B) in clause (iii)—

(i) in the matter preceding subclause (I), by striking "the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status;" and inserting "the Secretary of Homeland Security consents to the grant of special immigrant juvenile status,"; and

- (ii) in subclause (I), by striking "in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction;" and inserting "in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction;".
- (2) EXPEDITIOUS ADJUDICATION.—All applications for special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) shall be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the application is filed.

- (3) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended to read as follows:
  - "(A) paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 212(a) shall not apply; and".

#### (4) ELIGIBILITY FOR ASSISTANCE.—

- (A) IN GENERAL.—A child who has been granted special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) and who was either in the custody of the Secretary of Health and Human Services at the time a dependency order was granted for such child or who was receiving services pursuant to section 501(a) of the Refugee Education Assistance Act of 1980 (8 U.S.C. 1522 note) at the time such dependency order was granted, shall be eligible for placement and services under section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) until the earlier of—
- (i) the date on which the child reaches the age designated in section 412(d)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1522(d)(2)(B)); or
- (ii) the date on which the child is placed in a permanent adoptive home.
- (B) STATE REIMBURSEMENT.—Subject to the availability of appropriations, if State foster care funds are expended on behalf of a child who is not described in subparagraph (A) and has been granted special immigrant status under section 101(a) (27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), the Federal Government shall reimburse the State in which the child resides for such expenditures by the State.
- (5) STATE COURTS ACTING IN LOCO PARENTIS.—A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).
- (6) TRANSITION RULE.—Notwithstanding any other provision of law, an alien described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by paragraph (1), may not be denied special immigrant status under such section after the date of the enactment of this Act based on age if the alien was a child on the date on which the alien applied for such status.
- (7) ACCESS TO ASYLUM PROTECTIONS.—Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended—

#### << 8 USCA § 1158 >>

- (A) in subsection (a)(2), by adding at the end the following:
- "(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)))."; and

- (B) in subsection (b)(3), by adding at the end the following:
- "(C) INITIAL JURISDICTION.—An asylum officer (as defined in section 235(b)(1)(E)) shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))), regardless of whether filed in accordance with this section or section 235(b)."

- (8) SPECIALIZED NEEDS OF UNACCOMPANIED ALIEN CHILDREN.—Applications for asylum and other forms of relief from removal in which an unaccompanied alien child is the principal applicant shall be governed by regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children's cases.
- (e) TRAINING.—The Secretary of State, the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Attorney General shall provide specialized training to all Federal personnel, and upon request, state and local personnel, who have substantive contact with unaccompanied alien children. Such personnel shall be trained to work with unaccompanied alien children, including identifying children who are victims of severe forms of trafficking in persons, and children for whom asylum or special immigrant relief may be appropriate, including children described in subsection (a)(2).
- (f) AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002.—

#### << 6 USCA § 279 >>

- (1) ADDITIONAL RESPONSIBILITIES.—Section 462(b)(1)(L) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)
- (L)) is amended by striking the period at the end and inserting ", including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements."
- (2) TECHNICAL CORRECTIONS.—Section 462(b) of such Act (6 U.S.C. 279(b)) is further amended—

(A) in paragraph (3), by striking "paragraph (1)(G)," and inserting "paragraph (1),"; and

- (B) by adding at the end the following:
- "(4) RULE OF CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for an unaccompanied alien child who is released to a qualified sponsor."
- (g) DEFINITION OF UNACCOMPANIED ALIEN CHILD.—For purposes of this section, the term "unaccompanied alien child" has the meaning given such term in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)).
- (h) EFFECTIVE DATE.—This section—
- (1) shall take effect on the date that is 90 days after the date of the enactment of this Act; and
- (2) shall also apply to all aliens in the United States in pending proceedings before the Department of Homeland Security or the Executive Office for Immigration Review, or related administrative or Federal appeals, on the date of the enactment of this Act.
- (i) GRANTS AND CONTRACTS.—The Secretary of Health and Human Services may award grants to, and enter into contracts with, voluntary agencies to carry out this section and section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279).

#### SEC. 236. RESTRICTION OF PASSPORTS FOR SEX TOURISM.

- (a) IN GENERAL.—Following any conviction of an individual for a violation of section 2423 of title 18, United States Code, the Attorney General shall notify in a timely manner—
  - (1) the Secretary of State for appropriate action under subsection (b); and
  - (2) the Secretary of Homeland Security for appropriate action under the Immigration and Nationality Act.
- (b) AUTHORITY TO RESTRICT PASSPORT.—
- (1) INELIGIBILITY FOR PASSPORT.—
- (A) IN GENERAL.—The Secretary of State shall not issue a passport or passport card to an individual who is convicted of a violation of section 2423 of title 18, United States Code, during the covered period if the individual used a passport or passport card or otherwise crossed an international border in committing the offense.
- (B) PASSPORT REVOCATION.—The Secretary of State shall revoke a passport or passport card previously issued to an individual described in subparagraph (A).
- (2) EXCEPTIONS.—
- (A) EMERGENCY AND HUMANITARIAN SITUATIONS.—Notwithstanding paragraph (1), the Secretary of State may issue a passport or passport card, in emergency circumstances or for humanitarian reasons, to an individual described in paragraph (1)(A).
- (B) LIMITATION FOR RETURN TO UNITED STATES.—Notwithstanding paragraph (1), the Secretary of State may, prior to revocation, limit a previously issued passport or passport card only for return travel to the United States, or may issue a limited passport or passport card that only permits return travel to the United States.
- (3) DEFINITIONS.—In this subsection—
- (A) the term "covered period" means the period beginning on the date on which an individual is convicted of a violation of section 2423 of title 18, united states code, and ending on the later o.—

- (i) the date on which the individual is released from a sentence of imprisonment relating to the offense; and
- (ii) the end of a period of parole or other supervised release of the covered individual relating to the offense; and
- (B) the term "imprisonment" means being confined in or otherwise restricted to a jail, prison, half-way house, treatment facility, or another institution, on a full or part-time basis, pursuant to the sentence imposed as the result of a criminal conviction.

#### SEC. 237. ADDITIONAL REPORTING ON CRIME.

#### << 28 USCA § 534 NOTE >>

- (a) TRAFFICKING OFFENSE CLASSIFICATION.—The Director of the Federal Bureau of Investigation shall—
- (1) classify the offense of human trafficking as a Part I crime in the Uniform Crime Reports;
- (2) to the extent feasible, establish subcategories for State sex crimes that involve—
- (A) a person who is younger than 18 years of age;
- (B) the use of force, fraud or coercion; or
- (C) neither of the elements described in subparagraphs (A) and (B); and
- (3) classify the offense of human trafficking as a Group A offense for purpose of the National Incident–Based Reporting System.

#### << 28 USCA § 534 NOTE >>

- (b) ADDITIONAL INFORMATION.—The Director of the Federal Bureau of Investigation shall revise the Uniform Crime Reporting System and the National Incident–Based Reporting System to distinguish between reports of—
  - (1) incidents of assisting or promoting prostitution, which shall include crimes committed by persons who—
  - (A) do not directly engage in commercial sex acts; and
  - (B) direct, manage, or profit from such acts, such as State pimping and pandering crimes;
- (2) incidents of purchasing prostitution, which shall include crimes committed by persons who purchase or attempt to purchase or trade anything of value for commercial sex acts; and
- (3) incidents of prostitution, which shall include crimes committed by persons providing or attempting to provide commercial sex acts.
- (c) REPORTS AND STUDIES.—
- (1) REPORTS.—Not later than February 1, 2010, the Attorney General shall submit to the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate reports on the following:
- (A) Activities or actions, in fiscal years 2001 through 2009, by Federal departments and agencies to enforce the offenses set forth in chapter 117 of title 18, United States Code, including information regarding the number of prosecutions, the number of convictions, an identification of multiple-defendant cases and the results thereof, and, for fiscal years 2008 and 2009, the number of prosecutions, the number of convictions, and an identification of multiple-defendant case and the results thereof, the use of expanded statutes of limitation and other tools to prosecute crimes against children who reached the age of eighteen years since the time the crime was committed.
- (B) The interaction, in Federal human trafficking prosecutions in fiscal years 2001 through 2010, of Federal restitution provisions with those provisions of law allowing restoration and remission of criminally and civilly forfeited property, including the distribution of proceeds among multiple victims.
- (C) Activities or actions, in fiscal years 2001 through 2010, to enforce the offenses set forth in chapters 95 and 96 of title 18, United States Code, in cases involving human trafficking, sex trafficking, or prostitution offenses.
- (D) Activities or actions, in fiscal years 2008 and 2009, by Federal departments and agencies to enforce the offenses set forth in the Act of August 15, 1935 (49 Stat. 651; D.C. Code 22–2701 et seq.) (relating to prostitution and pandering), including information regarding the number of prosecutions, the number of convictions, and an identification of multiple-defendant cases and the results thereof.
- (2) STUDIES.—Subject to availability of appropriations, the head of the National Institute of Justice shall conduct—

- (A) a comprehensive study to examine the use of Internet-based businesses and services by criminal actors in the sex industry, and to disseminate best practices for investigation and prosecution of trafficking and prostitution offenses involving the Internet; and
- (B) a comprehensive study to examine the application of State human trafficking statutes, including such statutes based on the model law developed by the Department of Justice, cases prosecuted thereunder, and the impact, if any, on enforcement of other State criminal statutes.
- (3) STUDIES PREVIOUSLY REQUIRED BY LAW.—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall report to the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate on the status of the studies required by paragraph (B)(i) and (ii) of section 201(a)(1) of the Trafficking Victims Protection Reauthorization Act of 2005 (42 U.S.C. 14044(a)(1)) and indicate the projected date when such studies will be completed.

#### SEC. 238. PROCESSING OF CERTAIN VISAS.

- (a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives and the Committee on Foreign Relations and the Committee on the Judiciary of the Senate a report on the operations of the specially-trained Violence Against Women Act Unit at the Citizenship and Immigration Service's Vermont Service Center.
- (b) ELEMENTS.—The report required by subsection (a) shall include the following elements:
- (1) Detailed information about the funds expended to support the work of the Violence Against Women Act Unit at the Vermont Service Center.
- (2) A description of training for adjudicators, victim witness liaison officers, managers, and others working in the Violence Against Women Act Unit, including general training and training on confidentiality issues.
- (3) Measures taken to ensure the retention of specially-trained staff within the Violence Against Women Act Unit.
- (4) Measures taken to ensure the creation and retention of a core of supervisory staff within the Violence Against Women Act Unit and the Vermont Service Center with responsibility over resource allocation, policy, program development, training and other substantive or operational issues affecting the Unit, who have historical knowledge and experience with the Trafficking Victims Protection Act of 2000, the Violence Against Women Act of 1994, Violence Against Women Act of 1994 confidentiality, and the specialized policies and procedures of the Department of Homeland Security and its predecessor agencies in such cases.
- (5) Measures taken to ensure routine consultation between the Violence Against Women Act Unit, U.S. Citizenship and Immigration Services Headquarters, and the Office of Policy and Strategy during the development of any Department of Homeland Security regulations or policies that impact Violence Against Women Act of 1994 confidentiality-protected victims and their derivative family members.
- (6) Information on any circumstances in which victim-based immigration applications have been adjudicated by entities other than the Violence Against Women Act Unit at the Vermont Service Center, including reasons for such action and what steps, if any, were taken to ensure that such applications were handled by trained personnel and what steps were taken to comply with the confidentiality provisions of the Violence Against Women Act of 1994.
- (7) Information on the time in which it takes to adjudicate victim-based immigration applications, including the issuance of visas, work authorization and deferred action in a timely manner consistent with the safe and competent processing of such applications, and steps taken to improve in this area.

#### << 8 USCA § 1351 NOTE >>

#### SEC. 239. TEMPORARY INCREASE IN FEE FOR CERTAIN CONSULAR SERVICES.

(a) INCREASE IN FEE.—Notwithstanding any other provision of law, not later than October 1, 2009, the Secretary of State shall increase by \$1 the fee or surcharge assessed under section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 8 U.S.C. 1351 note) for processing machine-readable nonimmigrant visas and machine-readable combined border crossing identification cards and nonimmigrant visas.

- (b) DEPOSIT OF AMOUNTS.—Notwithstanding section 140(a)(2) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236; 8 U.S.C. 1351 note), the additional amount collected pursuant the fee increase under subsection (a) shall be deposited in the Treasury.
- (c) DURATION OF INCREASE.—The fee increase authorized under subsection (a) shall terminate on the date that is 3 years after the first date on which such increased fee is collected.

#### TITLE III—AUTHORIZATIONS OF APPROPRIATIONS

#### SEC. 301. TRAFFICKING VICTIMS PROTECTION ACT OF 2000.

Section 113 of the Trafficking Victims Protection Act of 2000, as amended by section 213(a)(2), is amended—

<< 22 USCA § 7110 >>

- (1) in subsection (a)—
- (A) in the first sentence—
- (i) by striking "section 104, and"; and
- (ii) by striking "\$1,500,000" and all that follows through "\$5,500,000 for each of the fiscal years 2006 and 2007" and inserting "\$5,500,000 for each of the fiscal years 2008 through 2011"; and
- (B) in the second sentence—
- (i) by striking "for official reception and representation expenses \$3,000" and inserting "\$1,500,000 for additional personnel for each of the fiscal years 2008 through 2011, and \$3,000 for official reception and representation expenses"; and
- (ii) by striking "2006 and 2007" and inserting "2008 through 2011";

- (2) in subsection (b)(1), by striking "\$5,000,000" and all that follows and inserting "\$12,500,000 for each of the fiscal years 2008 through 2011";
- (3) in subsection (c)—
- (A) in paragraph (1)—

(i) by striking "2004, 2005, 2006, and 2007" each place it appears and inserting "2008 through 2011"; and

(ii) in subparagraph (B), by adding at the end the following: "To carry out the purposes of section 107(a)(1)(F), there are authorized to be appropriated to the Secretary of State \$1,000,000 for each of the fiscal years 2008 through 2011.";

(B) by striking paragraph (2);

(C) by redesignating paragraph (3) as paragraph (2); and

- (D) in paragraph (2), as redesignated—
- (i) by striking "section 104" and inserting "sections 116(f) and 502B(h) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(f) and 2304(h))"; and
- (ii) by striking ", including the preparation" and all that follows and inserting a period;

#### << 22 USCA § 7110 >>

- (4) in subsection (d)—
- (A) in the first sentence, by striking "\$5,000,000" and all that follows through "2007" and inserting "\$10,000,000 for each of the fiscal years 2008 through 2011"; and
- (B) in the second sentence, by striking "2004, 2005, 2006, and 2007" and inserting "2008 through 2011";
- (5) in subsection (e)—

(A) in paragraph (1), by striking "\$5,000,000" and all that follows and inserting "\$15,000,000 for each of the fiscal years 2008 through 2011.";

- (B) in paragraph (2)—
- (i) by striking "section 109" and inserting "section 134 of the Foreign Assistance Act of 1961 (22 U.S.C. 2152d)"; and
- (ii) by striking "\$5,000,000" and all that follows and inserting "\$15,000,000 for each of the fiscal years 2008 through 2011."; and

(C) in paragraph (3), by striking "\$300,000" and all that follows and inserting "\$2,000,000 for each of the fiscal years 2008 through 2011.";

(6) in subsection (f), by striking "\$5,000,000" and all that follows and inserting "\$10,000,000 for each of the fiscal years 2008 through 2011.";

(7) in subsection (h), by striking "fiscal year 2006" and inserting "each of the fiscal years 2008 through 2011"; and

(8) in subsection (i), by striking "2006 and 2007" and inserting "2008 through 2011".

#### SEC. 302. TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2005.

The Trafficking Victims Protection Reauthorization Act of 2005 (Public Law 109-164) is amended—

- (1) in section 102(b)(7), by striking "2006 and 2007" and inserting "2008 through 2011";
- (2) in section 201(c)—

(A) in paragraph (1), by striking "\$2,500,000 for each of the fiscal years 2006 and 2007" each place it appears and inserting "\$1,500,000 for each of the fiscal years 2008 through 2011"; and

(B) in paragraph (2), by striking "2006 and 2007" and inserting "2008 through 2011";

(3) in section 202(d), by striking "\$10,000,000 for each of the fiscal years 2006 and 2007" and inserting "\$8,000,000 for each of the fiscal years 2008 through 2011";

(4) in section 203(g), by striking "2006 and 2007" and inserting "2008 through 2011"; and

(5) in section 204(d), by striking "\$25,000,000 for each of the fiscal years 2006 and 2007" and inserting "\$20,000,000 for each of the fiscal years 2008 through 2011".

SEC. 303. RULE OF CONSTRUCTION.

The amendments made by sections 301 and 302 may not be construed to affect the availability of funds appropriated pursuant to the authorizations of appropriations under the Trafficking Victims Protection Act of 2000 (division A of Public Law 106–386; 22 U.S.C. 7101 et seq.) and the Trafficking Victims Protection Reauthorization Act of 2005 (Public Law 109–164) before the date of the enactment of this Act.

SEC. 304. TECHNICAL AMENDMENTS.

(a) TRAFFICKING VICTIMS PROTECTION ACT OF 2000.—Sections 103(1) and 105(d)(7) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(1) and 7103(d)(7)) are each amended by striking "Committee on International Relations" each place it appears and inserting "Committee on Foreign Affairs".

(b) TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2005.—Section 102(b)(6) and subsections (c)(2)(B)(i) and (e)(2) of section 104 of the Trafficking Victims Protection Reauthorization Act of 2005 (Public Law 109–164) are amended by striking "Committee on International Relations" each place it appears and inserting "Committee on Foreign Affairs".

#### TITLE IV—CHILD SOLDIERS PREVENTION

SEC. 401. SHORT TITLE.

This title may be cited as the "Child Soldiers Prevention Act of 2008".

SEC. 402. DEFINITIONS.

#### In this title:

- (1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—
- (A) the Committee on Foreign Relations of the Senate;
- (B) the Committee on Appropriations of the Senate;
- (C) the Committee on Foreign Affairs of the House of Representatives; and
- (D) the Committee on Appropriations of the House of Representatives.
- (2) CHILD SOLDIER.—Consistent with the provisions of the Optional Protocol to the Convention of the Rights of the Child, the term "child soldier"—
  - (A) means—
  - (i) any person under 18 years of age who takes a direct part in hostilities as a member of governmental armed forces;
  - (ii) any person under 18 years of age who has been compulsorily recruited into governmental armed forces;
  - (iii) any person under 15 years of age who has been voluntarily recruited into governmental armed forces; or
  - (iv) any person under 18 years of age who has been recruited or used in hostilities by armed forces distinct from the armed forces of a state; and
- (B) includes any person described in clauses (ii), (iii), or (iv) of subparagraph (A) who is serving in any capacity, including in a support role such as a cook, porter, messenger, medic, guard, or sex slave.

#### SEC. 403. SENSE OF CONGRESS.

It is the sense of Congress that—

- (1) the United States Government should condemn the conscription, forced recruitment, or use of children by governments, paramilitaries, or other organizations;
- (2) the United States Government should support and, to the extent practicable, lead efforts to establish and uphold international standards designed to end the abuse of human rights described in paragraph (1);
- (3) the United States Government should expand ongoing services to rehabilitate recovered child soldiers and to reintegrate such children back into their respective communities by—
  - (A) offering ongoing psychological services to help such children—
  - (i) to recover from the trauma suffered during their forced military involvement;
  - (ii) to relearn how to interact with others in nonviolent ways so that such children are no longer a danger to their respective communities; and
  - (iii) by taking into consideration the needs of girl soldiers, who may be at risk of exclusion from disarmament, demobilization, and reintegration programs;
- (B) facilitating reconciliation with such communities through negotiations with traditional leaders and elders to enable recovered abductees to resume normal lives in such communities; and
- (C) providing educational and vocational assistance;
- (4) the United States should work with the international community, including, as appropriate, third country governments, nongovernmental organizations, faith-based organizations, United Nations agencies, local governments, labor unions, and private enterprises—
  - (A) to bring to justice rebel and paramilitary forces that kidnap children for use as child soldiers;
  - (B) to recover those children who have been abducted; and
  - (C) to assist such children to be rehabilitated and reintegrated into their respective communities;
- (5) the Secretary of State, the Secretary of Labor, and the Secretary of Defense should coordinate programs to achieve the goals described in paragraph (3);
- (6) United States diplomatic missions in countries in which the use of child soldiers is an issue, whether or not such use is supported or sanctioned by the governments of such countries, should include in their mission program plans a strategy to achieve the goals described in paragraph (3);
- (7) United States diplomatic missions in countries in which governments use or tolerate child soldiers should develop strategies, as part of annual program planning—
  - (A) to promote efforts to end such abuse of human rights; and
  - (B) to identify and integrate global best practices, as available, into such strategies to avoid duplication of effort; and

(8) in allocating or recommending the allocation of funds or recommending candidates for programs and grants funded by the United States Government, United States diplomatic missions should give serious consideration to those programs and candidates that are expected to promote the end to the abuse of human rights described in this section.

#### SEC. 404. PROHIBITION.

- (a) IN GENERAL.—Subject to subsections (b), (c), and (d), the authorities contained in section 516 or 541 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j or 2347) or section 23 of the Arms Export Control Act (22 U.S.C. 2763) may not be used to provide assistance to, and no licenses for direct commercial sales of military equipment may be issued to, the government of a country that is clearly identified, pursuant to subsection (b), for the most recent year preceding the fiscal year in which the authorities or license would have been used or issued in the absence of a violation of this title, as having governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers.
- (b) IDENTIFICATION AND NOTIFICATION TO COUNTRIES IN VIOLATION OF STANDARDS.—
- (1) PUBLICATION OF LIST OF FOREIGN GOVERNMENTS.—The Secretary of State shall include a list of the foreign governments that have violated the standards under this title and are subject to the prohibition in subsection (a) in the report required under section 110(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b)).
- (2) NOTIFICATION OF FOREIGN COUNTRIES.—The Secretary of State shall formally notify any government identified pursuant to subsection (a).
- (c) NATIONAL INTEREST WAIVER.—
- (1) WAIVER.—The President may waive the application to a country of the prohibition in subsection (a) if the President determines that such waiver is in the national interest of the United States.
- (2) PUBLICATION AND NOTIFICATION.—Not later than 45 days after each waiver is granted under paragraph (1), the President shall notify the appropriate congressional committees of the waiver and the justification for granting such waiver.
- (d) REINSTATEMENT OF ASSISTANCE.—The President may provide to a country assistance otherwise prohibited under subsection (a) upon certifying to the appropriate congressional committees that the government of such country—
- (1) has implemented measures that include an action plan and actual steps to come into compliance with the standards outlined in section 404(b); and
- (2) has implemented policies and mechanisms to prohibit and prevent future government or government-supported use of child soldiers and to ensure that no children are recruited, conscripted, or otherwise compelled to serve as child soldiers.
- (e) EXCEPTION FOR PROGRAMS DIRECTLY RELATED TO ADDRESSING THE PROBLEM OF CHILD SOLDIERS OR PROFESSIONALIZATION OF THE MILITARY.—
- (1) IN GENERAL.—The President may provide assistance to a country for international military education, training, and nonlethal supplies (as defined in section 2557(d)(1)(B) of title 10, United States Code) otherwise prohibited under subsection (a) upon certifying to the appropriate congressional committees that—
- (A) the government of such country is taking reasonable steps to implement effective measures to demobilize child soldiers in its forces or in government-supported paramilitaries and is taking reasonable steps within the context of its national resources to provide demobilization, rehabilitation, and reintegration assistance to those former child soldiers; and
- (B) the assistance provided by the United States Government to the government of such country will go to programs that will directly support professionalization of the military.
- (2) LIMITATION.—The exception under paragraph (1) may not remain in effect for a country for more than 5 years.

SEC. 405. REPORTS.

(a) INVESTIGATION OF ALLEGATIONS REGARDING CHILD SOLDIERS.—United States missions abroad shall thoroughly investigate reports of the use of child soldiers.

- (b) INFORMATION FOR ANNUAL HUMAN RIGHTS REPORTS.—In preparing those portions of the annual Human Rights Report that relate to child soldiers under sections 116 and 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(f) and 2304(h)), the Secretary of State shall ensure that such reports include a description of the use of child soldiers in each foreign country, including—
- (1) trends toward improvement in such country of the status of child soldiers or the continued or increased tolerance of such practices; and
- (2) the role of the government of such country in engaging in or tolerating the use of child soldiers.
- (c) ANNUAL REPORT TO CONGRESS.—If, during any of the 5 years following the date of the enactment of this Act, a country is notified pursuant to section 404(b)(2), or a wavier is granted pursuant to section 404(c)(1), the President shall submit a report to the appropriate congressional committees not later than June 15 of the following year. The report shall include—
  - (1) a list of the countries receiving notification that they are in violation of the standards under this title;
  - (2) a list of any waivers or exceptions exercised under this title;
  - (3) justification for any such waivers and exceptions; and
  - (4) a description of any assistance provided under this title pursuant to the issuance of such waiver.

<< 22 USCA § 4028 >>

#### SEC. 406. TRAINING FOR FOREIGN SERVICE OFFICERS.

Section 708 of the Foreign Service Act of 1980 (22 U.S.C. 4028) is amended by adding at the end the following:

"(c) The Secretary of State, with the assistance of other relevant officials, shall establish as part of the standard training provided for chiefs of mission, deputy chiefs of mission, and other officers of the Service who are or will be involved in the assessment of child soldier use or the drafting of the annual Human Rights Report instruction on matters related to child soldiers, and the substance of the Child Soldiers Prevention Act of 2008."

<< 22 USCA § 2370c NOTE >>

SEC. 407. EFFECTIVE DATE: APPLICABILITY.

This title, and the amendments made by this title, shall take effect 180 days after the date of the enactment of this Act.

Approved December 23, 2008.

LEGISLATIVE HISTORY—H.R. 7311:

CONGRESSIONAL RECORD, Vol. 154 (2008):

Dec. 10, considered and passed House and Senate.

PL 110-457, 2008 HR 7311

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# **SENATE . . . . . . . . . . . . . . . . No. 740**

## The Commonwealth of Massachusetts

PRESENTED BY:

## Cynthia S. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to special juveniles.

#### PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia S. Creem	First Middlesex and Norfolk
William N. Brownsberger	Second Suffolk and Middlesex
Daniel J. Ryan	2nd Suffolk
Evandro C. Carvalho	5th Suffolk
Elizabeth A. Malia	11th Suffolk
Mayor Martin J. Walsh	Boston City Hall
	□1 City Hall Plaza - Suite 500
	$\square Boston, MA~02201$
Byron Rushing	9th Suffolk
Jason M. Lewis	Fifth Middlesex
Paul R. Heroux	2nd Bristol
Timothy J. Toomey, Jr.	26th Middlesex
Marjorie C. Decker	25th Middlesex
Sal N. DiDomenico	Middlesex and Suffolk
Carolyn C. Dykema	8th Middlesex
Benjamin B. Downing	Berkshire, Hampshire, Franklin and
	Hampden
James B. Eldridge	Middlesex and Worcester

1 of 5

Sonia Chang-Diaz	Second Suffolk
Linda Dorcena Forry	First Suffolk
Frank A. Moran	17th Essex
Benjamin Swan	11th Hampden
Chris Walsh	6th Middlesex

# **SENATE . . . . . . . . . . . . . . . No. 740**

By Ms. Creem, a petition (accompanied by bill, Senate, No. 740) of Cynthia S. Creem, William N. Brownsberger, Daniel J. Ryan, Evandro C. Carvalho and other members of the General Court for legislation relative to special juveniles. The Judiciary.

# [SIMILAR MATTER FILED IN PREVIOUS SESSION SEE SENATE, NO. 684 OF 2013-2014.]

## The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court (2015-2016)

An Act relative to special juveniles.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- SECTION 1. Said chapter 119 of the General Laws, as so appearing, is hereby further
- 2 amended by adding the following new section:--Section 39DD. (a) For the purposes of this
- 3 section, the term "dependent on the court" shall mean subject to the jurisdiction of the court for
- 4 the findings, orders, and referrals enumerated in this section but shall not constitute a finding of
- 5 legal incompetence.
- 6 (b) The divisions of the probate and family court department shall hear petitions of
- 7 persons, who have attained the age of 18 but remain under the age of 21, seeking a determination
- 8 that, as a result of abuse, neglect, or abandonment that the petitioner suffered as a child, it is in
- 9 the best interest of the petitioner not to return to the petitioner's or the petitioner's parent's
- 10 previous country of nationality or country of last habitual residence.

3 of 5

- 12 (c) Upon reviewing the petition and any supporting affidavits, the court shall issue
  12 findings of fact which (1) declare the petitioner dependent upon the court as defined in this
  13 section; (2) determine whether the petitioner suffered as a child from abuse, neglect or
  14 abandonment as those terms are defined in 110 CMR 2.00, chapter 119 or in section 3 of chapter
  15 210 of the General Laws; (3) determine whether reunification with one or both parents is not
  16 viable due to the abuse, neglect, or abandonment; and (4) determine whether as a result of the
  17 abuse, neglect or abandonment, it is not in the petitioner's best interest to be returned to the
  18 petitioner's or the petitioner's parent's previous country of nationality or country of last habitual
  19 residence.
- The health and safety of the petitioner shall be of paramount, but not exclusive, concern in the above determinations. When considering the health and safety of the petitioner, the court shall consider whether the petitioner's present or past living conditions will adversely affect his physical, mental, moral or emotional health.
- 24 (d) The petitioner under this section may also request orders necessary to protect against 25 further abuse, including, but not limited to, filing a complaint for an abuse prevention order as 26 set out in chapter 209A of the General Laws.
- (e) The court may refer the petitioner to a probation officer for assistance and such officer shall have the authority to make referrals to an appropriate public or private organization or person for psychiatric, psychological, educational, occupational, medical, dental or social services. The petitioner may not be compelled to participate in the referrals.
- 31 (f) The court shall hear the petition and issue the findings of fact under this section before 32 the petitioner attains the age of 21.

- 33 (g) Nothing in this section shall be construed to prevent the divisions of the probate and
- 34 family court department or the juvenile court department from issuing similar findings of fact to
- 35 those in subsection (c) in any proceedings related to a child.

# **HOUSE . . . . . . . . . . . . . . . . No. 1418**

# The Commonwealth of Massachusetts

PRESENTED BY:

Louis L. Kafka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to special juveniles.

### PETITION OF:

NAME:	DISTRICT/ADDRESS:
Louis L. Kafka	8th Norfolk
Mayor Martin J. Walsh	Boston City Hall
	□ One City Hall Square
	$\square$ Boston, MA 02201
Benjamin Swan	11th Hampden
Kevin G. Honan	17th Suffolk
James J. O'Day	14th Worcester
Frank I. Smizik	15th Norfolk
Ellen Story	3rd Hampshire
Elizabeth A. Malia	11th Suffolk
Michael D. Brady	9th Plymouth
Gailanne M. Cariddi	1st Berkshire
Chris Walsh	6th Middlesex
Tom Sannicandro	7th Middlesex
William Smitty Pignatelli	4th Berkshire
Antonio F. D. Cabral	13th Bristol
Ruth B. Balser	12th Middlesex
Linda Dorcena Forry	First Suffolk

Timothy J. Toomey, Jr.	26th Middlesex
Peter V. Kocot	1st Hampshire
Byron Rushing	9th Suffolk
Michael J. Barrett	Third Middlesex
Jason M. Lewis	Fifth Middlesex
Danielle W. Gregoire	4th Middlesex
Gloria L. Fox	7th Suffolk
Lori A. Ehrlich	8th Essex
Jonathan Hecht	29th Middlesex
Jay R. Kaufman	15th Middlesex
Kay Khan	11th Middlesex
Marcos A. Devers	16th Essex
Daniel Cullinane	12th Suffolk
Evandro C. Carvalho	5th Suffolk
Frank A. Moran	17th Essex
Marjorie C. Decker	25th Middlesex
Denise Provost	27th Middlesex
Mary S. Keefe	15th Worcester
David M. Rogers	24th Middlesex
Daniel M. Donahue	16th Worcester
Paul R. Heroux	2nd Bristol
James B. Eldridge	Middlesex and Worcester

## HOUSE . . . . . . . . . . . . . No. 1418

By Mr. Kafka of Stoughton, a petition (accompanied by bill, House, No. 1418) of Louis L. Kafka and others relative to petitions to the Juvenile Court or Probate Court on behalf of certain special juveniles. The Judiciary.

# [SIMILAR MATTER FILED IN PREVIOUS SESSION SEE HOUSE, NO. 1414 OF 2013-2014.]

## The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court (2015-2016)

An Act relative to special juveniles.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Said chapter 119 of the General Laws, as so appearing, is hereby further
- 2 amended by adding the following new section:--
- 3 Section 39DD. (a) For the purposes of this section, the term "dependent on the court"
- 4 shall mean subject to the jurisdiction of the court for the findings, orders, and referrals
- 5 enumerated in this section but shall not constitute a finding of legal incompetence.
- 6 (b) The divisions of the probate and family court department shall hear petitions of
- 7 persons, who have attained the age of 18 but remain under the age of 21, seeking a determination
- 8 that, as a result of abuse, neglect, or abandonment that the petitioner suffered as a child, it is in

3 of 5

- 9 the best interest of the petitioner not to return to the petitioner's or the petitioner's parent's
  10 previous country of nationality or country of last habitual residence.
- (c) Upon reviewing the petition and any supporting affidavits, the court shall issue findings of fact which (1) declare the petitioner dependent upon the court as defined in this section; (2) determine whether the petitioner suffered as a child from abuse, neglect or abandonment as those terms are defined in 110 CMR 2.00, chapter 119 or in section 3 of chapter 210 of the General Laws; (3) determine whether reunification with one or both parents is not viable due to the abuse, neglect, or abandonment; and (4) determine whether as a result of the abuse, neglect or abandonment, it is not in the petitioner's best interest to be returned to the petitioner's or the petitioner's parent's previous country of nationality or country of last habitual residence.
- The health and safety of the petitioner shall be of paramount, but not exclusive, concern in the above determinations. When considering the health and safety of the petitioner, the court shall consider whether the petitioner's present or past living conditions will adversely affect his physical, mental, moral or emotional health.
- 24 (d) The petitioner under this section may also request orders necessary to protect against 25 further abuse, including, but not limited to, filing a complaint for an abuse prevention order as 26 set out in chapter 209A of the General Laws.
- (e) The court may refer the petitioner to a probation officer for assistance and such officer shall have the authority to make referrals to an appropriate public or private organization or person for psychiatric, psychological, educational, occupational, medical, dental or social services. The petitioner may not be compelled to participate in the referrals.

- 31 (f) The court shall hear the petition and issue the findings of fact under this section before 32 the petitioner attains the age of 21.
- 33 (g) Nothing in this section shall be construed to prevent the divisions of the probate and
- 34 family court department or the juvenile court department from issuing similar findings of fact to
- 35 those in subsection (c) in any proceedings related to a child.

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

DOCKET NO. SU15E0025

Ledy Zarahi Suazo Castillo, Plaintiff v. Wilfredo Suazo Donaire & Carmelina Castillo Martinez, Defendants

#### JUDGMENT

After a hearing where Petitioner who was represented by Attorney Elizabeth Badger appeared and was heard, the Court enters the following Judgment:

- 1. The following facts were found:
  - a. Ledy Zarahi Suazo Castillo was born on August 9, 1996 in Honduras. She is eighteen years old.
  - Wilfredo Suazo Donaire and Carmelina Castillo Martinez are the parents of Ledy Zarahi Suazo Castillo
  - c. Ledy Zarahi Suazo Castillo lived with her parents in Honduras until she was thirteen years old. She was subject to abuse and/or neglect during this period by her parents.
  - d. Ledy Zarahi Suazo Castillo is the youngest of the ten children of her parents.
  - e. Ledy's parents forced her to quit school at 12 years old to support them as both are ill and unable to work.
  - f. Ledy moved out of her family home when she was 13 years old and began living with a twenty year old man. This action was supported by her parents.
  - g. Following her boyfriend's murder, she feared for her safety as the murderer was known to her and her boyfriend's family had attempted to kill him.
  - h. Therefore, Ledy was sent by her parents to work as a domestic about four hours away from her family home. In this home, she was subject to abuse and worked long hours. Ledy's parents did nothing to address these issues.
  - i. In April of 2014, Ledy Zarahi Suazo Castillo came to the United States. She lived with her cousin in Alston for a short period of time but was kicked out and then lived with the only other person that she knew, an older man. The relationship was an abusive. She became pregnant and miscarried at the age of seventeen. She began living in shelter care in Massachusetts and had no support from her parents or extended family.
  - j. Ledy Zarahi Suazo Castillo turned 18 in August of 2014 while staying in a temporary home for victims of trafficking. In October 2014, she began living with a family in Leominster Massachusetts. She became involved in a sexual relationship with the forty year old husband of the family who then were evicted.
  - k. Ledy and the husband began living in a car.
  - l. In January of 2014, she spent a night at Rosie's place shelter but subsequently returned to live with the husband for a period of time until she ended that relationship and went to live at the Pine Street Inn.

- m. Ledy Zarahi Suazo Castillo resided in Suffolk County when she filed this action.
- n. Ledy Zarahi Suazo Castillo has now secured temporary housing with a "Good Samaritan" in Massachusetts.
- o. Ledy Zarahi Suazo Castillo is unable to support herself at this time.
- p. Wilfredo Suazo Donaire and Carmelina Castillo Martinez have never been in Massachusetts or the United States.
- q. Ledy Zarahi Suazo Castillo is afraid to return to Honduras as she would have nowhere to live and would have to return somewhere unsafe to work to support herself.
- r. It would be in Ledy's best interest to remain in the United States.
- s. Ledy did seek financial support in this action.
- t. No evidence was presented that Wilfredo Suazo Donaire and Carmelina Castillo Martinez took any actions to send Ledy to Massachusetts.
- u. Wilfredo Suazo Donaire and Carmelina Castillo Martinez were served by email through an agent in Honduras. The Court allowed a motion for alternative service as rendered.

Based upon the facts found: the Court finds that it lacks personal jurisdiction over the parents. Therefore, any order of child support for this child would be void and such request is denied. This Court denies the Complaint in Equity as the requested relief in the form of SIJS findings under 8 U.S.C. § 1101(a)(27)(J) requires the child to be "declared dependent" upon this court. The Court cannot find that Ledy is "declared dependent" upon the Massachusetts Probate and Family Court relative to these proceedings as the only requested relief properly before the Court is a request for the required immigration findings. The Court finds no support in case law that this is a sufficient basis to find the child "dependent" upon the Probate and Family Court pursuant to M.G.L. c.215 s.6 when no action concerning the care or custody of the child is present nor support is properly before the Court.

At the conclusion of the hearing, the Court indicated that he planned to report this issue for appellate review. However, as this is a judgment and this Court has previously reported said question in another matter and that question is still unanswered, the Court will not report the matter but rather rely upon the Plaintiff to seek appellate relief through the normal course if she so desires.

So Ordered & Adjudged

Date: April 9, 2015

Brian J. Dunn, Justice

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAI, COURT FOR SUFFOLK COUNTY DOCKET NO. SJ-2009-0261

PROBATE AND FAMILY COURT DEP'T NORFOLK COUNTY DOCKET NO. 09P1130GD

IN RE: GUARDIANSHIP OF GERMAN JOSUÉ MENDOZA

#### MEMORANDUM AND ORDER FOR JUDGMENT

The plaintiff, Marvin Maldonado, brings this petition for relief under G. L. c. 211, § 3, seeking an order reversing the denial of his motions in a pending guardianship proceeding for (1) appointment as temporary guardian of his minor nephew, German Josué Mendoza (d.o.b. May 19, 1991); and (2) special findings concerning the status of German Josué Mendoza. A hearing on the petition was held today, May 18, 2009, at which German Josué Mendoza and his counsel appeared. Upon review of the plaintiff's petition, the supporting memorandum and accompanying record appendix, including, inter alia: the affidavits of German Josué Mendoza, as well as Jason Corral, Esquire, and Anne Mackin, Esquire; the proof of notice to Catalina Maldonado (mother of German Josué Mendoza) concerning proceedings in Norfolk Probate and Family Court, the assent to guardianship signed by Catalina Maldonado and the accompanying notary's statement; and the Probate and Family Court judge's denials of motions for special findings and rulings), I conclude as follows. Contrary to the apparent determination of the judge below, a judge in the

Probate and Family Court does have the authority to entertain and to consider the merits of the motions for appointment of temporary guardianship and for special findings at issue in this case even though there is no adversarial process involved. If time permitted, I would remand this matter to that court to entertain the merits of these motions. However, there is no time for such a remand in this case; if the merits of the motions are to be acted on, it must be done today. Accordingly, because in the particular circumstances presented, the plaintiff does not have an adequate remedy through either the regular appellate process or even through an order of remand by me as single justice, pursuant to G. L. c. 211, § 3, and based on the hearing held and the record before me, I make the following special findings and rulings:

- The petitioner, Marvin Maldonado, is qualified to serve as temporary guardian for his nephew, German Josué Mendoza, and is appointed as such...
- German Josué Mendoza, age seventeen years, born on May 19, 1991, is an unmarried juvenile ward under the laws of the Commonwealth of Massachusetts. He currently resides in Norwood, Massachusetts, with his uncle, Marvin Maldonado.
- German Josué Mendoza is declared dependent upon the State courts for his care and protection, and his custody continues under the jurisdiction of the State courts.
- 4. Reunification of German Josué Mendoza with his parents is not possible due to neglect or abandonment by his parents in particular, neglect by his mother and abandonment by his father.
- 5. It is not in the best interest of German Josué Mendoza to be returned to El Salvador, the country of his nationality.
- 6. It is in German Josué Mendoza's best interest to remain in the United States under the care of his uncle, Marvin Maldonado.

DATED: May 18, 2009

### ORDER

It is **ORDERED** that a final judgment enter: (1) allowing this petition for relief under G. L. 211, § 3; (2) vacating the orders of the Norfolk Family and Probate Court, dated May 15, 2009, denying the plaintiff's Motion for Appointment of Temporary Guardian and the plaintiff's Motion for Special Findings of Fact and Rulings of Law; (3) allowing the plaintiff's Motion for Appointment of Temporary Guardian dated May 15, 2009; (4) allowing the plaintiff's Motion for Special Findings of Fact and Rulings of Law dated May 15, 2009; and (5) remanding this matter to the Norfolk Family and Probate Court to enter in this case the findings and rulings set forth in paragraphs 1 through 6 above.

Margot Bots

Justice of the Supreme Judicial Court

- 3 -

#### COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY NO:

PROBATE & FAMILY COURT
DEPARTMENT
WORCESTER PROBATE &
FAMILY COURT
No.

IN RE: GUARDIANSHIP OF THE CONTROL O

#### JUDGMENT

Upon consideration, it is ORDERED that the petitioner's petition pursuant to G. L. c. 211, § 3, be, and hereby is, ALLOWED.

It is FURTHER ORDERED that the order of the Worcester

Probate and Family Court, dated , , denying the

plaintiff's motion for special findings of fact and rulings of
law is VACATED.

It is FURTHER ORDERED that the plaintiff's motion for special findings of fact and rulings of law dated ,, is ALLOWED, and the matter is remanded to the Worcester Probate and Family Court to enter in this case the findings and rulings set forth in paragraphs 1 through 11 above.

By the dourt (Duffl

Assistant Clerk

Entered: Transfer D., Comp.

A True Copy

Assistant

#### COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY NO:

PROBATE & FAMILY COURT
DEPARTMENT
WORCESTER PROBATE &
FAMILY COURT
No.

# IN RE: GUARDIANSHIP OF MEMORANDUM OF DECISION AND ORDER FOR JUDGMENT

"Emergency Petition" pursuant to G. L. c. 211, § 3, asking this court to reverse the ruling of a Probate and Family Court judge denying her motion for special findings of fact and rulings of law in an action for guardianship of a minor child. The petitioner, who is the subject of the guardianship petition, a native of , and who will turn eighteen on , requests also that this court enter rulings on her motion because if such rulings are not made prior to the petitioner will suffer irreparable harm and lose the right to apply, at any time hereafter, for "special immigrant juvenile" status pursuant to 8 U.S.C. § 1101(a)(27)(J), and also to apply for lawful permanent resident status.

The petitioner initially sought special findings and rulings on her best interests in the Probate and Family Court.

Apparently uncertain about the role of the Probate and Family

Court judge in making best interests determinations vis à vis the

petitioner in a case involving a question that might have immigration implications, and apparently concerned that she would have been encroaching on an area properly reserved for Federal authorities, the Probate and Family Court judge declined to adopt the petitioner's proposed findings or to make any others.

Contrary to the apparent determination of the Probate and Family Court judge, a judge in that court does have the authority to entertain and to consider on the merits a motion for special findings such as at issue in this case. If time permitted, I would remand the case to the Probate and Family Court for entry of such findings. However, given the time constraints at this point, remand is not possible; if the merits are to be considered, that must be done today. Accordingly, because in these particular circumstances the petitioner has no other adequate remedy through the regular appellate process or through remand, and because of the nature of the rights involved, relief pursuant to G. L. c. 211, § 3, is appropriate.

After an evidentiary hearing at which the petitioner testified, and based also on the affidavits and copies of birth and death certificates in the record, the father's notarized consent to the guardianship of the petitioner by her older brother, the decree by the Probate and Family Court appointing the petitioner's older brother as guardian, the transcript of the proceedings in the Probate and Family Court,

and the Probate and Family Court judge's ruling, I make the following findings of fact and rulings of law:

- 1. age seventeen years, born

  of the Commonwealth of Massachusetts. She currently resides

  in Massachusetts with her legal guardian,
- State courts for her care and protection, and her custody continues under the jurisdiction of the State courts.
- father, because of neglect, abuse, and abandonment. The father is an alcoholic; he would frequently hit her and her younger brother with his hands, a belt, and a stick after drinking. This occurred two to three times per week. He forbid her from attending school at the age of twelve, and required her to work in agriculture.
- 4. In or about , , the father abandoned the child by forcing her to leave his home after beating her.
- mother, because her mother died on
- 6. paternal grandparents are

- deceased. Her maternal grandparents may be alive, but she does not know where they are. They have rejected her and refused to acknowledge her as their grandchild. They are unwilling to provide a home or to care for her.
- where there is no one to care for her and she is unable to care for herself. She would not have a stable source for food, housing, clothing, or education if she were to return to the care for her is her older brother to the care for her is her older brother the care and who has been appointed her guardian.
- school student. She is succeeding academically and wishes to continue her education and go to college. She has a healthy relationship with her legal guardian, works. She lives with him, his wife, and her five-year-old nephew in a nice house. Works in construction and provides for her full support. He pays for all of the costs of her food, clothing, and other needs while she attends school. Because was unable to attend school in the ninth grade.
- 9. It is not in the land the land of the state of the sta

- 10. It is in the United States under the care of , who has been appointed her legal guardian by the Probate and Family Court.

#### ORDER

Therefore, upon consideration, it is ORDERED that a final judgment shall enter allowing the petitioner's petition pursuant to G. L. c. 211, § 3; vacating the , order of the Probate and Family court denying the plaintiff's motion for special findings of fact and rulings of law; allowing the plaintiff's motion for special findings of fact and rulings of law dated , or and remanding to the Worcester Probate and Family Court to enter in this case the findings and rulings set forth in paragraphs 1 through 11 above.

ernande R.V. Dufaly

Associate Justice

Entered: October 20,

A True Copy

Date

Assistant Clerk



August 31, 2015

The Honorable William N. Brownsberger, Senate Chair The Honorable John V. Fernandes, House Chair Members, Joint Committee on the Judiciary Committee State House, Room A-2 Boston, Massachusetts 02133

> RE: An Act Relative to Special Juveniles Senate Bill 740 and House Bill 1418

Dear Senator Brownsberger, Representative Fernandes, and Members of the Joint Committee on the Judiciary:

We write to follow-up the June 24, 2015 hearing before the Judiciary Committee concerning An Act Relative to Special Juveniles, Senate Bill 740 and House Bill 1418. First, thank you very much for scheduling a hearing on the bill in the first year of this legislative session. We were pleased to have an opportunity early in this session to present the bill.

We would like to respond further to the Committee's question about the possibility of handling matters in equity which would be brought as a statutory claim if the proposed legislation is enacted into law. While some cases have been successfully brought in equity, recently a number of Probate and Family Court judges have indicated that the requested declaratory relief cannot be granted in equity unless a postminority support order can be sought against the young person's parents as part of the equity claim. Due to this practice and other issues explained below, cases in equity are rendered non-viable for most potential plaintiffs.

We have surveyed the agencies which we know handle these cases, and we estimate that since 2012 about sixty cases statewide have been filed in equity for 18 – 21 year olds. We have contacted private practitioners who we know represent children, and of those whom we contacted, only a few have filed in equity. Though we do not know nor have we contacted everyone who might handle these cases, we believe this is a fair and accurate representation of the current state of these cases.

As you know, federal law affords youth until age 21 the opportunity to apply for consideration for classification as a "Special Immigrant Juvenile". A prerequisite to that application is an assessment of both the youth's history of abuse/abandonment/neglect and best interests by a court with jurisdiction to hear such matters. If there is a viable legal claim such as an action for child support through which an 18 -21 year old can approach the court, that legal claim is routinely pursued by practitioners to present the youth's situation to the court.

Practitioners in non-profit agencies have exhausted all avenues to address the jurisdictional relief sought in An Act Relative to Special Juveniles. For many of the older teens with potential claims, however, there is no adequate remedy at law through which they can obtain the required assessment of their



The Honorable William N. Brownsberger, Senate Chair The Honorable John V. Fernandes, House Chair Members, Joint Committee on the Judiciary Committee August 31, 2015
Page 2

circumstances. In an effort to address this situation, advocates started filing cases in equity to fill the jurisdictional gap. In recent months, a growing number of Probate and Family Court judges have expressed two primary concerns. First, in equity cases in which a child support claim is included, personal jurisdiction questions have emerged, either because the parents' current location is unknown or because the court otherwise lacks jurisdiction over the parents for purposes of entering a child support order. Second, some judges have raised questions regarding an older teen's "dependency" on the Court, even when their assessment is that the teen has suffered abuse, abandonment, or neglect. Despite the fact that the older teens' life experiences mirror those of otherwise eligible youth, Probate and Family Court judges are now declining to exercise jurisdiction in their cases, leaving these particularly vulnerable young people without an opportunity to present their claims or obtain judicial relief.

#### For example, consider the following:

- 1. "Martha": An 18 year old young woman who escaped the domestic violence perpetrated by her father against her and her mother. He was physically, emotionally, verbally and sexually abusive to Martha. He still regularly beats her mother as well as her younger siblings, and threatens to kill her mother with a machete. Martha's mother tried to escape, but her father refused to pay financial support, necessitating her mother's return with her other siblings to her father's home. Father is in Martha's home country and will not pay child support to Martha. In fact, he believes young women do not need an education and that Martha should work and send her earnings to him. If Martha has to seek a child support order in the U.S. courts, she is worried that her father might retaliate with more physical abuse of her mother, or even carry out his death threat. Although Martha is recovering, she still suffers from PTSD. Now miles away from him, she is too afraid of her father to even consider asking for child support in an equity case.
- 2. "José": His father abandoned him and his family when he was in grade school. His father's whereabouts are unknown. Jose's mother is diabetic and unable to work. Starting at age 12, José tried to work to support himself, his mother and siblings, but he was repeatedly attacked and robbed by local gang members. In a rite of gang initiation, he was tied to a tree and beaten repeatedly by gang members, but managed to duck enough to avoid the machete thrown at him in the last act of gang brutality. The rope holding him to the tree broke, he fell, and the gang members left him for dead. After recovering from his injuries in hiding, José fled to save his life. If his only option is to file a case in equity seeking child support, he faces an impossible burden.

Now in the United States, "Martha" and "José" are high school students, and are unemancipated in the sense that they must rely on others to meet their basic needs. Without the proposed statutory change, they cannot access the Court and are therefore precluded from seeking necessary findings regarding their dependency, histories of abuse, neglect, and abandonment, and best interests. The Probate and Family Court's task is to evaluate the abuse/abandonment/neglect history presented. Any decision about the youth's immigration status lies solely with the U.S. Citizenship and Immigration Service.

The Chief Justice of the Trial Court, the Honorable Paula Carey, was involved in the original drafting of this legislation and, since it was first introduced seven years ago, has been supportive of it, both as Chief Justice of the Probate and Family Court and now as Chief Justice of the Trial Court. Her successor as Chief Justice of the Probate and Family Court, the Honorable Angela Ordoñez, has also regularly expressed her support for the legislation. Both the Court and practitioners need guidance to ensure a uniform application of the law. The proposed statute would clarify and resolve both the jurisdictional and "dependency" concerns expressed by the local judges, and would streamline the process for these cases in

The Honorable William N. Brownsberger, Senate Chair The Honorable John V. Fernandes, House Chair Members, Joint Committee on the Judiciary Committee August 31, 2015 Page 3

all courts. The 18-21 year olds who need an opportunity to present their situations to the court, would have a viable remedy at law, as a remedy in equity is increasingly not a viable option.

We hope that this additional information helps to clarify why the proposed legislation is needed and that the Judiciary Committee will be able to give this bill a favorable report. If you have more questions or would like more information on cases in equity or other issues regarding this bill, please don't hesitate to contact us. The youth who could benefit from the bill would be most grateful for the opportunity to move their lives forward.

Thank you again for your consideration.

Sincerely, Anne Mackin

Anne Mackin, Esq., and on behalf of the following:

Elizabeth Badger, Esq., Kinds in Need of Defense ("KIND"), Boston, MA
Virginia Benzan, Esq., Immigration Clinic, Suffolk University School of Law, Boston, MA
Nancy Kelly, Esq., Immigration Unit, Greater Boston Legal Services, Boston, MA
Jamie Sabino, Esq., Massachusetts Law Reform Institute, Boston, MA
Sarah Sherman-Stokes, Esq., Boston University School of Law, Boston, MA
Ellen Van Scoyoc, Esq., Central West Justice Center, Worcester, MA
Ellen Wilbur, Esq., Community Legal Services and Counseling Center, Cambridge, MA