

103^D CONGRESS
1ST SESSION

H. R. 3363

To amend the Immigration and Nationality Act to improve immigration enforcement and anti-smuggling activities, to reform the asylum law, and to authorize appropriations for the Immigration and Naturalization Service.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 26, 1993

Mr. MAZZOLI (for himself, Mr. SCHUMER, and Mr. MCCOLLUM) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to improve immigration enforcement and anti-smuggling activities, to reform the asylum law, and to authorize appropriations for the Immigration and Naturalization Service.

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

3 **SECTION 1. SHORT TITLE; AMENDMENTS MADE BY ACT;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Immigration Enforcement and Asylum Reform Act of
7 1993”.

1 (b) AMENDMENTS TO IMMIGRATION AND NATIONAL-
 2 ITY ACT.—Except as otherwise expressly provided, when-
 3 ever in this Act an amendment or repeal is expressed in
 4 terms of an amendment to, or repeal of, a section or other
 5 provision, the reference shall be considered to be made to
 6 a section or other provision of the Immigration and Na-
 7 tionality Act.

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

Sec. 1. Short title; amendments made by Act; table of contents.

TITLE I—SMUGGLING AND FRAUD

Sec. 101. Inspection and exclusion by immigration officers.

Sec. 102. Enhanced penalties for alien smuggling.

Sec. 103. Expanded forfeiture for smuggling or harboring illegal aliens.

Sec. 104. Wiretap authority for alien smuggling investigations.

Sec. 105. Including alien smuggling as a racketeering activity for purposes of
 racketeering influenced and corrupt organizations (RICO) en-
 forcement authority.

Sec. 106. Effective dates.

TITLE II—ASYLUM

Sec. 201. Asylum.

Sec. 202. Failure to appear for provisional asylum hearing; judicial review.

Sec. 203. Conforming amendments.

Sec. 204. Effective dates.

TITLE III—INSPECTIONS

Sec. 301. Preinspection at foreign airports.

Sec. 302. Expediting airport immigration processing.

Sec. 303. Visa waiver program.

Sec. 304. Training of airline personnel in detection of fraudulent documents.

Sec. 305. Fines for unlawful bringing of aliens into the United States.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS FOR THE IMMIGRATION AND NATURALIZATION SERVICE

Sec. 401. Authorization of appropriations for I.N.S. for fiscal years 1994 and
 1995.

1 TITLE I—SMUGGLING AND FRAUD

2 **SEC. 101. INSPECTION AND EXCLUSION BY IMMIGRATION**3 **OFFICERS.**

4 (a) IN GENERAL.—Section 235(b) (8 U.S.C.
5 1225(b)) is amended to read as follows:

6 “(b) INSPECTION AND EXCLUSION BY IMMIGRATION
7 OFFICERS.—

8 “(1) An immigration officer shall inspect each
9 alien who is seeking entry to the United States.

10 “(2)(A) If the examining immigration officer
11 determines that an alien seeking entry—

12 “(i) does not present the documentation
13 required (if any) to obtain legal entry to the
14 United States; and

15 “(ii) does not indicate either an intention
16 to apply for provisional asylum (under section
17 208) or a fear of persecution,

18 the officer shall order the alien excluded from the
19 United States without further hearing or review.

20 “(B) The examining immigration officer shall
21 refer for immediate inspection at the port of entry
22 by an asylum officer under subparagraph (C) any
23 alien who (i) does not present the documentation re-
24 quired (if any) to obtain legal entry to the United

1 States, and (ii) has indicated an intention to apply
2 for provisional asylum or a fear of persecution.

3 “(C)(i) If an asylum officer determines that an
4 alien has a credible fear of persecution, the alien
5 shall be entitled to apply for provisional asylum
6 under section 208.

7 “(ii)(I) Subject to subclause (II), if an asylum
8 officer determines that an alien does not have a
9 credible fear of persecution the officer shall order
10 the alien excluded from the United States without
11 further hearing or review.

12 “(II) The Attorney General shall promulgate
13 regulations to provide for the immediate review by
14 another asylum officer at the port of entry of a deci-
15 sion under subclause (I).

16 “(iii) For the purposes of this subparagraph,
17 the term ‘credible fear of persecution’ means (I) that
18 it is more probable than not that the statements
19 made by the alien in support of his or her claim are
20 true, and (II) that there is a significant possibility,
21 in light of such statements and of such other facts
22 as are known to the officer that the alien could es-
23 tablish eligibility for provisional asylum under sec-
24 tion 208.

1 “(iv) Notwithstanding any other provision of
2 law, no court shall have jurisdiction to review, except
3 by petition for habeas corpus, any determination
4 made with respect to an alien found excludable pur-
5 suant to this paragraph. In any such case, review by
6 habeas corpus shall be limited to examination of
7 whether the petitioner (I) is an alien, and (II) was
8 ordered excluded from the United States pursuant to
9 this paragraph.

10 “(3)(A) Except as provided in subparagraph
11 (B), if the examining immigration officer determines
12 that an alien seeking entry is not clearly and beyond
13 a doubt entitled to enter, the alien shall be detained
14 for a hearing before a special inquiry officer.

15 “(B) The provisions of subparagraph (A) shall
16 not apply—

17 “(i) to an alien crewman,

18 “(ii) to an alien described in paragraph
19 (2)(A) or 2(C)(ii)(I), or

20 “(iii) if the conditions described in section
21 273(d) exist.

22 “(4) The decision of the examining immigration
23 officer, if favorable to the admission of any alien,
24 shall be subject to challenge by any other immigra-
25 tion officer and such challenge shall operate to take

1 the alien, whose privilege to enter is so challenged,
2 before a special inquiry officer for a hearing on ex-
3 clusion of the alien.

4 “(5)(A) Subject to subparagraph (B), an alien
5 has not entered the United States for purposes of
6 this Act unless and until such alien has been in-
7 spected and admitted by an immigration officer pur-
8 suant to this subsection.

9 “(B) An alien who (i) is physically present in
10 the United States, (ii) has been physically present in
11 the United States for a continuous period of one
12 year, and (iii) has not been inspected and admitted
13 by an immigration officer shall be deemed to have
14 entered the United States without inspection.”.

15 (b) CONFORMING AMENDMENTS.—Section 237(a) (8
16 U.S.C. 1227(a)) is amended—

17 (1) in the second sentence of paragraph (1) by
18 striking “Deportation” and inserting “Subject to
19 section 235(b)(2), deportation”; and

20 (2) in the first sentence of paragraph (2) by
21 striking “If” and inserting “Subject to section
22 235(b)(2), if”.

23 **SEC. 102. ENHANCED PENALTIES FOR ALIEN SMUGGLING.**

24 (a) ADDITIONAL CRIMINAL PENALTY.—Section
25 274(a)(1) (8 U.S.C. 1324(a)(1)) is amended—

1 (1) by striking “or” at the end of subparagraph
2 (C),

3 (2) by striking the comma at the end of sub-
4 paragraph (D) and inserting “; or”,

5 (3) by inserting after subparagraph (D) the fol-
6 lowing:

7 “(E) contracts or agrees with another party for
8 that party to provide, for employment by the person
9 or another, an alien who is not authorized to be em-
10 ployed in the United States, knowing that such
11 party intends to cause such alien to be brought into
12 the United States in violation of the laws of the
13 United States,” and

14 (4) by striking “shall be fined” and all that fol-
15 lows and inserting the following: “shall, for each
16 alien in respect to whom any violation of this para-
17 graph occurs, be fined in accordance with title 18,
18 United States Code, imprisoned not more than 5
19 years (or 10 years in the case of a violation of sub-
20 paragraph (A) or (E)), or 20 years if during and in
21 relation to the violation the person causes serious
22 bodily injury (as defined in section 1365 of title 18,
23 United States Code) to, or places in jeopardy the life
24 of, any alien, or for any term of years up to life if

1 during and in relation to the violation the person
2 causes the death of any alien, or both.”.

3 (b) TREATMENT OF SMUGGLING AS AN AGGRAVATED
4 FELONY.—The first sentence of section 101(a)(43) (8
5 U.S.C. 1101(a)(43)) is amended by inserting “or any of-
6 fense under section 274(a)” before “for which the term
7 of imprisonment”.

8 **SEC. 103. EXPANDED FORFEITURE FOR SMUGGLING OR**
9 **HARBORING ILLEGAL ALIENS.**

10 (a) IN GENERAL.—Paragraph (1) of section 274(b)
11 of the Immigration and Nationality Act (8 U.S.C.
12 1324(b)) is amended to read as follows:

13 “(1)(A) Except as provided in subparagraph (B), the
14 following property shall be subject to seizure and forfeit-
15 ure:

16 “(i) Any conveyance, including any vessel, vehi-
17 cle, or aircraft, which has been or is being used in
18 the commission of a violation of subsection (a).

19 “(ii) Any property, real or personal, which—

20 “(I) constitutes, or is derived from or
21 traceable to, the proceeds obtained directly or
22 indirectly from the commission of a violation of
23 subsection (a), or

1 “(II) is used to facilitate, or is intended to
2 be so used in the commission of, a violation of
3 subsection (a)(1)(A).

4 “(B)(i) No property used by any person as a common
5 carrier in the transaction of business as a common carrier
6 shall be forfeited under this section, unless the owner or
7 other person with lawful custody of the property was a
8 consenting party to or privy to the violation of subsection
9 (a) or of section 274A(a)(1) or 274A(a)(2).

10 “(ii) No property shall be forfeited under the provi-
11 sions of this section by reason of any act or omission es-
12 tablished by the owner to have been committed or omitted
13 by a person other than the owner while the property was
14 unlawfully in the possession of a person other than the
15 owner in violation of the criminal laws of the United
16 States or of any State.

17 “(iii) No property shall be forfeited under the provi-
18 sions of this section to the extent of an interest of the
19 owner, by reason of any act or omission established by
20 the owner to have been committed or omitted without the
21 knowledge, consent, or willful blindness of the owner, un-
22 less the act or omission was committed or omitted by an
23 employee or agent of the owner or other person with lawful
24 custody of the property with the intent of furthering the
25 business interests of, or to confer any other benefit upon,

1 the owner or other person with lawful custody of the
2 property.”.

3 (b) CONFORMING AMENDMENTS.—Section 274(b) of
4 such Act (8 U.S.C. 1324(b)) is amended—

5 (1) in paragraph (2)—

6 (A) by striking “conveyance” and inserting
7 “property” each place it appears, and

8 (B) by striking “is being used in” and in-
9 serting “is being used in, is facilitating, has fa-
10 cilitated, is facilitating or was intended to facili-
11 tate”; and

12 (2) in paragraphs (4) and (5), by striking “a
13 conveyance”, “any conveyance”, and “conveyance”
14 and inserting “property” each place it appears.

15 **SEC. 104. WIRETAP AUTHORITY FOR ALIEN SMUGGLING**
16 **INVESTIGATIONS.**

17 Section 2516(1) of title 18, United State Code, is
18 amended—

19 (1) in paragraph (c) by inserting after “weap-
20 ons),” the following: “or a felony violation of section
21 1028 (relating to production of false identification
22 documentation), section 1542 (relating to false
23 statements in passport applications), section 1546
24 (relating to fraud and misuse of visas, permits, and
25 other documents),”;

1 (2) by striking out “or” after paragraph (l) and
2 redesignating paragraphs (m), (n), and (o) as para-
3 graphs (n), (o), and (p), respectively; and

4 (3) by inserting after paragraph (l) the follow-
5 ing new paragraph:

6 “(m) a violation of section 274 of the Immigration
7 and Nationality Act (8 U.S.C. 1324) (relating to alien
8 smuggling), of section 277 of the Immigration and Nation-
9 ality Act (8 U.S.C. 1327) (relating to the smuggling of
10 aliens convicted of aggravated felonies or of aliens subject
11 to exclusion on grounds of national security), or of section
12 278 of the Immigration and Nationality Act (8 U.S.C.
13 1328) (relating to smuggling of aliens for the purpose of
14 prostitution or other immoral purpose);”.

15 **SEC. 105. INCLUDING ALIEN SMUGGLING AS A RACKETEER-**
16 **ING ACTIVITY FOR PURPOSES OF RACK-**
17 **ETEERING INFLUENCED AND CORRUPT OR-**
18 **GANIZATIONS (RICO) ENFORCEMENT AU-**
19 **THORITY.**

20 Section 1961(1) of title 18, United States Code, is
21 amended—

22 (1) by striking “or” before “(E) any act”, and

23 (2) by inserting before the period at the end the
24 following: , or (F) any act which is indictable under

1 section 274(a)(1) of the Immigration and National-
2 ity Act (relating to alien smuggling)’’.

3 **SEC. 106. EFFECTIVE DATES.**

4 (a) IN GENERAL.—Except as otherwise provided, the
5 amendments made by this title shall take effect on the
6 date of the enactment of this Act and shall apply to aliens
7 who arrive in or seek admission to the United States on
8 or after such date.

9 (b) SMUGGLING.—The amendment made by section
10 102(b) shall apply to offenses for which convictions are
11 entered before, on, or after the date of the enactment of
12 this Act.

13 (c) INTERIM REFERENCE TO PROVISIONAL ASY-
14 LUM.—Any reference in section 235(b)(2) of the Immigra-
15 tion and Nationality Act (as amended by section 101(a)
16 of this Act) to provisional asylum under section 208 of
17 the Immigration and Nationality Act shall be deemed, be-
18 fore the effective date of the amendment made by section
19 201(a), to be a reference to asylum under section 208 of
20 such Act.

21 TITLE II—ASYLUM

22 **SEC. 201. ASYLUM.**

23 (a) IN GENERAL.—Section 208 (8 U.S.C. 1158) is
24 amended to read as follows:

25 “ASYLUM

26 “SEC. 208. (a) PROVISIONAL ASYLUM.—

1 “(1) RIGHT TO APPLY.—An alien physically
2 present in the United States or at a land border or
3 port of entry, irrespective of such alien’s status, may
4 apply for provisional asylum in accordance with this
5 section.

6 “(2) CONDITIONS FOR GRANTING.—

7 “(A) MANDATORY CASES.—The Attorney
8 General shall grant provisional asylum to an
9 alien if the alien applies for provisional asylum
10 in accordance with the requirements of this sec-
11 tion and establishes that it is more likely than
12 not that in the alien’s country of nationality
13 (or, in the case of a person having no national-
14 ity, the country in which such alien last habit-
15 ually resided) such alien’s life or freedom would
16 be threatened on account of race, religion, na-
17 tionality, membership in a particular social
18 group, or political opinion.

19 “(B) DISCRETIONARY CASES.—The Attor-
20 ney General may grant provisional asylum to an
21 alien if the alien applies for provisional asylum
22 in accordance with the requirements of this sec-
23 tion and establishes that the alien is a refugee
24 within the meaning of section 101(a)(42).

1 “(C) EXCEPTIONS.—(i) Subparagraphs
2 (A) and (B) shall not apply to an alien if the
3 Attorney General determines that—

4 “(I) the alien ordered, incited, as-
5 sisted, or otherwise participated in the per-
6 secution of any person on account of race,
7 religion, nationality, membership in a par-
8 ticular social group, or political opinion;

9 “(II) the alien, having been convicted
10 by a final judgment of a particularly seri-
11 ous crime, constitutes a danger to the com-
12 munity of the United States;

13 “(III) there are serious reasons for
14 believing that the alien has committed a
15 serious nonpolitical crime outside the
16 United States prior to the arrival of the
17 alien in the United States;

18 “(IV) there are reasonable grounds
19 for regarding the alien as a danger to the
20 security of the United States; or

21 “(V) a country willing to accept the
22 alien has been identified (other than the
23 country described in subparagraph (A)) to
24 which the alien can be deported or re-
25 turned and the alien does not establish

1 that it is more likely than not that the
2 alien’s life or freedom would be threatened
3 in such country on account of race, reli-
4 gion, nationality, membership in a particu-
5 lar social group, or political opinion.

6 “(ii)(I) For purposes of clause (i)(II), an
7 alien who has been convicted of an aggravated
8 felony shall be considered to have committed a
9 particularly serious crime.

10 “(II) The Attorney General shall promul-
11 gate regulations that specify additional crimes
12 that will be considered to be a crime described
13 in clause (i)(II) or (i)(III).

14 “(III) The Attorney General shall promul-
15 gate regulations establishing such additional
16 limitations and conditions as the Attorney Gen-
17 eral considers appropriate under which an alien
18 shall be ineligible to apply for provisional asy-
19 lum under subparagraph (B).

20 “(3) PROVISIONAL ASYLUM STATUS.—In the
21 case of any alien granted provisional asylum under
22 paragraph (2), the Attorney General, in accordance
23 with this section—

24 “(A) shall not deport or return the alien to
25 the country described under paragraph (2)(A);

1 “(B) shall authorize the alien to engage in
2 employment in the United States and provide
3 the alien with an ‘employment authorized’ en-
4 dorsement or other appropriate work permit;
5 and

6 “(C) may allow the alien to travel abroad
7 with the prior consent of the Attorney General.

8 “(4) TERMINATION.—Provisional asylum grant-
9 ed under paragraph (2) may be terminated if the At-
10 torney General, pursuant to such regulations as the
11 Attorney General may prescribe, determines that—

12 “(A) the alien no longer meets the condi-
13 tions described in paragraph (2) owing to a
14 change in circumstances in the alien’s country
15 of nationality or, in the case of an alien having
16 no nationality, in the country in which the alien
17 last habitually resided;

18 “(B) the alien meets a condition described
19 in paragraph (2)(C); or

20 “(C) a country willing to accept the alien
21 has been identified (other than the country de-
22 scribed in paragraph (2)) to which the alien can
23 be deported or returned and the alien cannot
24 establish that it is more likely than not that the
25 alien’s life or freedom would be threatened in

1 such country on account of race, religion, na-
2 tionality, membership in a particular social
3 group, or political opinion.

4 “(5) ACCEPTANCE BY ANOTHER COUNTRY.—In
5 the case of an alien described in paragraph
6 (2)(C)(i)(V) or paragraph (4)(C), the alien’s depor-
7 tation or return shall be directed by the Attorney
8 General in the sole discretion of the Attorney Gen-
9 eral, to any country which is willing to accept the
10 alien into its territory (other than the country de-
11 scribed in paragraph (2)).”.

12 “(b) PROVISIONAL ASYLUM PROCEDURE.—

13 “(1) APPLICATIONS.—

14 “(A) IN GENERAL.—

15 “(i) DEADLINE.—Subject to clause
16 (ii), an alien’s application for provisional
17 asylum shall not be considered under this
18 section unless—

19 “(I) the alien has filed, not later
20 than 30 days after entering or coming
21 to the United States, notice of inten-
22 tion to file such an application, and

23 “(II) such application is actually
24 filed not later than 60 days after en-
25 tering or coming to the United States.

1 “(ii) EXCEPTION.—An application for
2 provisional asylum may be considered, not-
3 withstanding that the requirements of
4 clause (i) have not been met, only if the
5 alien demonstrates by clear and convincing
6 evidence changed circumstances in the
7 alien’s country of nationality (or in the
8 case of an alien with no nationality, in the
9 country where the alien last habitually re-
10 sided) affecting eligibility for provisional
11 asylum.

12 “(B) REQUIREMENTS.—An application for
13 provisional asylum shall not be considered un-
14 less the alien submits to the taking of finger-
15 prints and a photograph in a manner deter-
16 mined by the Attorney General.

17 “(C) FEES.—In the discretion of the At-
18 torney General, the Attorney General may im-
19 pose reasonable fees for the consideration of an
20 application for provisional asylum, for employ-
21 ment authorization under this section, and for
22 adjustment of status under section 209(b). The
23 Attorney General is authorized to provide for
24 the assessment and payment of any such fee
25 over a period of time or by installments.

1 “(D) NOTICE OF PRIVILEGE OF COUNSEL
2 AND CONSEQUENCES OF FRIVOLOUS APPLICA-
3 TION.—

4 “(i) NOTICE.—At the time of filing a
5 notice of intention to apply for provisional
6 asylum, the alien shall be advised of the
7 privilege of being represented by counsel
8 (as provided under paragraph (2)(D)) and
9 of the consequences, under subsection (d),
10 of filing a frivolous application for provi-
11 sional asylum.

12 “(ii) PROVISION OF LIST OF COUN-
13 SEL.—The Attorney General shall provide
14 for lists (updated not less often than quar-
15 terly) of persons who have indicated their
16 availability to represent pro bono aliens in
17 provisional asylum proceedings. Such lists
18 shall be provided to the alien at the time
19 of filing of notice of intention to apply for
20 provisional asylum, and otherwise be made
21 generally available.

22 “(E) An applicant for provisional asylum is
23 not entitled to engage in employment in the
24 United States. The Attorney General may au-
25 thorize an alien who has filed an application for

1 provisional asylum to engage in employment in
2 the United States, in the discretion of the At-
3 torney General.

4 “(2) CONSIDERATION OF APPLICATIONS; HEAR-
5 INGS.—

6 “(A) ASYLUM OFFICERS.—Applications for
7 provisional asylum shall be considered by offi-
8 cers of the Service (referred to in this Act as
9 ‘asylum officers’) who are specially designated
10 by the Service as having special training and
11 knowledge of international conditions and
12 human rights records of foreign countries.
13 Pending the designation of such officers, indi-
14 viduals who as of the date of the enactment of
15 the Immigration Enforcement and Asylum Re-
16 form Act of 1993 are authorized to perform du-
17 ties as asylum officers shall be deemed to be
18 qualified to be asylum officers for purposes of
19 this Act.

20 “(B) SCHEDULING OF HEARINGS.—

21 “(i) IN GENERAL.—Upon the filing of
22 an application for provisional asylum, an
23 asylum officer, at the earliest practicable
24 time and after consultation with the attor-
25 ney for the Government and the attorney

1 (if any) for the applicant, shall set the ap-
2 plication for hearing on a day certain or
3 list it on a weekly or other short-term cal-
4 endar, so as to assure a speedy hearing.

5 “(ii) DEADLINE.—Unless the appli-
6 cant (or an attorney for the applicant) con-
7 sents in writing to the contrary, the hear-
8 ing on the provisional asylum application
9 shall commence not later than 45 days
10 after the date the application was filed.

11 “(C) PUBLIC HEARINGS.—A hearing on a
12 provisional asylum application shall be open to
13 the public unless the applicant requests that it
14 be closed to the public.

15 “(D) PRIVILEGE OF COUNSEL.—The alien
16 shall have the privilege of being represented by
17 such counsel (at no expense to the government),
18 authorized to practice in such proceedings, as
19 the alien shall choose. Such representation may
20 not cause undue delay in the proceedings. The
21 Attorney General, in the discretion of the Attor-
22 ney General, shall provide standards by regula-
23 tion for determinations of undue delay.

24 “(E) RIGHTS IN HEARINGS.—The officer
25 shall conduct the hearing in a nonadversarial

1 manner. During such hearing, the applicant
2 shall have the privilege of the assistance and
3 participation of counsel and shall be entitled to
4 present evidence and witnesses, to examine and
5 object to evidence presented by the Government,
6 and to cross-examine all witnesses presented by
7 the Government.

8 “(F) COUNTRY CONDITIONS.—

9 “(i) The Secretary of State shall pro-
10 vide information regarding country condi-
11 tions to the Attorney General to be in-
12 cluded, along with information from other
13 reliable sources, in the collections of the
14 asylum resource information center of the
15 Immigration and Naturalization Service.

16 “(ii) An officer may request informa-
17 tion regarding country conditions from the
18 asylum resource information center of the
19 Immigration and Naturalization Service
20 and from the Secretary of State, but may
21 not request or consider recommendations
22 from the Secretary of State as to whether
23 a particular named individual should or
24 should not be granted provisional asylum.

1 “(G) TRANSCRIPT OF HEARINGS.—A com-
2 plete record of the proceedings and of all testi-
3 mony and evidence produced at the hearing
4 shall be kept. The hearing shall be recorded
5 verbatim. The Attorney General and the Service
6 shall provide that a transcript of a hearing held
7 under this section is made available not later
8 than 10 days after the date of completion of the
9 hearing.

10 “(H) DEADLINE FOR DETERMINATIONS ON
11 APPLICATIONS.—The officer shall render a de-
12 termination on the application not later than 30
13 days after the date of completion of the hear-
14 ing. The determination of the officer shall be
15 based only on the evidence produced at the
16 hearing or on information which is the subject
17 of official notice with respect to country condi-
18 tions.

19 “(I) RESOURCE ALLOCATION.—The Attor-
20 ney General shall allocate sufficient resources
21 so as to assure that applications for provisional
22 asylum are heard and determined on a timely
23 basis. However, nothing in this paragraph relat-
24 ing to scheduling or deadlines shall be con-
25 strued as creating any right or benefit, sub-

1 stantive or procedural, which is legally enforce-
2 able by any party against the United States, its
3 agencies, its officers, or any other person.

4 “(J) SANCTIONS FOR FAILURE TO AP-
5 PEAR.—

6 “(i) Subject to clause (ii), the applica-
7 tion for provisional asylum of an alien who
8 does not appear for a hearing on such ap-
9 plication shall be summarily dismissed un-
10 less the alien can show exceptional cir-
11 cumstances (as defined in section
12 242B(f)(2)) as determined by the asylum
13 officer.

14 “(ii) Clause (i) shall not apply if writ-
15 ten and oral notice were not provided as
16 required by section 242B(e)(4)(B).

17 “(K) FINALITY OF DETERMINATIONS.—

18 “(i) IN GENERAL.—The decision of
19 the asylum officer shall be the final admin-
20 istrative determination of a claim for provi-
21 sional asylum.

22 “(ii) TREATMENT OF CASES IN EX-
23 CLUSION OR DEPORTATION.—If proceed-
24 ings are instituted against an alien under
25 section 235 or 242 of this Act and the

1 alien files an application for provisional
2 asylum based on circumstances described
3 in subsection (b)(1)(A)(ii), the asylum offi-
4 cer shall render, on an expedited basis, a
5 decision on the application.

6 “(c) ASYLUM.—

7 “(1) ADJUSTMENT OF STATUS.—Under such
8 regulations as the Attorney General may prescribe,
9 the Attorney General shall adjust to the status of an
10 alien granted asylum the status of any alien granted
11 provisional asylum under subsection (a)(2)(A) or
12 (a)(2)(B) who—

13 “(A) applies for such adjustment;

14 “(B) has been physically present in the
15 United States for at least 1 year after being
16 granted provisional asylum;

17 “(C) continues to be eligible for provisional
18 asylum under this section; and

19 “(D) is admissible under this Act at the
20 time of examination for adjustment of status
21 under this subsection.

22 “(2) TREATMENT OF SPOUSE AND CHIL-
23 DREN.—A spouse or child (as defined in section
24 101(b) (A), (B), (C), (D), or (E)) of an alien whose
25 status is adjusted to that of an alien granted asylum

1 under paragraph (a)(2) may be granted the same
2 status as the alien if accompanying, or following to
3 join, such alien.

4 “(3) APPLICATION FEES.—The Attorney Gen-
5 eral may impose a reasonable fee for the filing of an
6 application for asylum under this subsection.

7 “(d) DENIAL OF IMMIGRATION BENEFITS FOR FRIV-
8 OLOUS APPLICATIONS.—

9 “(1) IN GENERAL.—If the asylum officer deter-
10 mines that an alien has made a frivolous application
11 for provisional asylum under this section and the
12 alien has received the notice under subsection
13 (b)(1)(D)(i), the alien shall be permanently ineligible
14 for any benefits under this Act, effective as of the
15 date of a final determination on such application.

16 “(2) TREATMENT OF MATERIAL MISREPRESENTEN-
17 TATIONS.—For purposes of this subsection, an appli-
18 cation considered to be ‘frivolous’ includes, but is
19 not limited to, an application which contains a will-
20 ful misrepresentation or concealment of a material
21 fact.”.

22 (b) CLERICAL AMENDMENT.—The item in the table
23 of contents relating to section 208 is amended to read as
24 follows:

“Sec. 208. Asylum.”.

1 **SEC. 202. FAILURE TO APPEAR FOR PROVISIONAL ASYLUM**
2 **HEARING; JUDICIAL REVIEW.**

3 (a) FAILURE TO APPEAR FOR PROVISIONAL ASYLUM
4 HEARING.—Section 242B(e)(4) (8 U.S.C. 1252b(e)(4)) is
5 amended—

6 (1) in the heading, by striking “ASYLUM” and
7 inserting “PROVISIONAL ASYLUM”;

8 (2) by striking “asylum” each place it appears
9 and inserting “provisional asylum”; and

10 (3) in subparagraph (A), by striking all after
11 clause (iii) and inserting “shall not be eligible for
12 any benefits under this Act.”.

13 (b) JUDICIAL REVIEW.—Section 106 (8 U.S.C.
14 1105a) is amended by adding at the end the following sub-
15 section:

16 “(d) The procedure prescribed by, and all the provi-
17 sions of chapter 158 of title 28, United States Code, shall
18 apply to, and shall be the sole and exclusive procedure for,
19 the judicial review of all final orders granting or denying
20 provisional asylum, except that—

21 “(1) a petition for review may be filed not later
22 than 90 days after the date of the issuance of the
23 final order granting or denying provisional asylum;

24 “(2) the venue of any petition for review under
25 this subsection shall be in the judicial circuit in
26 which the administrative proceedings before an asy-

1 lum officer were conducted in whole or in part, or
2 in the judicial circuit wherein is the residence, as de-
3 fined in this Act, of the petitioner, but not in more
4 than one circuit; and

5 “(3) notwithstanding any other provision of
6 law, a determination granting or denying provisional
7 asylum based on changed circumstances pursuant to
8 section 208(b)(1)(A)(ii) shall be in the sole discre-
9 tion of the asylum officer.”.

10 **SEC. 203. CONFORMING AMENDMENTS.**

11 (a) **LIMITATION ON DEPORTATION.**—Section 243 (8
12 U.S.C. 1253) is amended by striking subsection (h).

13 (b) **ADJUSTMENT OF STATUS.**—Section 209(b) (8
14 U.S.C. 1159(b)) is amended—

15 (1) in paragraph (2) by striking “one year” and
16 inserting “2 years”; and

17 (2) by amending paragraph (3) to read as
18 follows:

19 “(3) continues to be eligible for provisional asy-
20 lum under section 208,”.

21 (c) **ALIENS INELIGIBLE FOR TEMPORARY PRO-**
22 **TECTED STATUS.**—Section 244A(c)(2)(B)(ii) (8 U.S.C.
23 1254a(c)(2)(B)(ii)) is amended by striking “section
24 243(h)(2)” and inserting “clauses (i), (ii), (iii), or (iv) of
25 section 208(a)(2)(B)”.

1 (d) ELIGIBILITY FOR NATURALIZATION.—Section
2 316(f)(1) (8 U.S.C. 1427(f)(1)) is amended by striking
3 “subparagraphs (A) through (D) of paragraph 243(h)(2)”
4 and inserting “clauses (i), (ii), (iii), or (iv) of section
5 208(a)(2)(B).”.

6 (e) FAMILY UNITY.—Section 301(e) of the Immigra-
7 tion Act of 1990 (P.L. 101–649) is amended by striking
8 “section 243(h)(2)” and inserting “clauses (i), (ii), (iii),
9 or (iv) of section 208(a)(2)(B).”.

10 **SEC. 204. EFFECTIVE DATES.**

11 (a) IN GENERAL.—Except as otherwise provided, the
12 amendments made by this title shall take effect on the
13 date of the enactment of this Act.

14 (b) EXCEPTIONS.—

15 (1) The amendments made by this title shall
16 not apply to applications for asylum or withholding
17 of deportation made before the first day of the first
18 month that begins more than 180 days after the
19 date of the enactment of this Act and no application
20 for provisional asylum under section 208 of the Im-
21 migration and Nationality Act (as amended by sec-
22 tion 201 of this Act) shall be considered before such
23 first day.

24 (2) In applying section 208(b)(1)(A) of the Im-
25 migration and Nationality Act (as amended by this

1 title) in the case of an alien who has entered or
2 came to the United States before the first day de-
3 scribed in paragraph (1), notwithstanding the dead-
4 lines specified in such section—

5 (A) the deadline for the filing of a notice
6 of intention to file an application for provisional
7 asylum is 30 days after such first day, and

8 (B) the deadline for the filing of the appli-
9 cation for provisional asylum is 30 days after
10 the date of filing such notice.

11 (3) The amendments made by section 203(b)
12 (relating to adjustment of status) shall not apply to
13 aliens granted asylum under section 208 of the Im-
14 migration and Nationality Act, as in effect before
15 the date of the enactment of this Act.

16 TITLE III—INSPECTIONS

17 **SEC. 301. PREINSPECTION AT FOREIGN AIRPORTS.**

18 (a) IN GENERAL.—The Immigration and Nationality
19 Act is amended by inserting after section 235 the following
20 new section:

21 “PREINSPECTION AT FOREIGN AIRPORTS

22 “SEC. 235A. (a) ESTABLISHMENT OF ADDITIONAL
23 PREINSPECTION STATIONS AT HIGH VOLUME AIR-
24 PORTS.—Subject to subsection (c), not later than 2 years
25 after the date of the enactment of this section, the Attor-
26 ney General, in consultation with the Secretary of State,

1 shall establish and maintain preinspection stations in at
2 least 3 of the foreign airports that are among the 10 for-
3 eign airports which the Attorney General identifies as
4 serving as last points of departure for the greatest num-
5 bers of passengers who arrive from abroad by air at ports
6 of entry within the United States. Such preinspection sta-
7 tions shall be in addition to any preinspection stations es-
8 tablished or authorized to be established prior to the date
9 of the enactment of this section.

10 “(b) ESTABLISHMENT OF ADDITIONAL
11 PREINSPECTION STATIONS AT CERTAIN FOREIGN AIR-
12 PORTS FROM WHICH UNDOCUMENTED ALIENS DEPART
13 FOR THE UNITED STATES.—

14 “(1) REPORTS TO CONGRESS.—Not later than
15 November 1, 1993, and each subsequent November
16 1, the Attorney General shall compile and submit to
17 the Committee on the Judiciary of the House of
18 Representatives and the Committee on the Judiciary
19 of the Senate a report identifying the foreign air-
20 ports which served as last points of departure for
21 aliens who arrived by air at United States ports of
22 entry without valid documentation during the pre-
23 ceding fiscal year. Such report shall indicate the
24 number and nationality of such aliens arriving from
25 each such foreign airport.

1 “(2) ESTABLISHMENT OF ADDITIONAL
2 PREINSPECTION STATIONS.—Subject to subsection
3 (c), not later than November 1, 1995, the Attorney
4 General, in consultation with the Secretary of State,
5 shall establish preinspection stations in at least 3 of
6 the foreign airports that are among the 10 foreign
7 airports identified in the first report submitted
8 under paragraph (1) as serving as the last points of
9 departure for the greatest number of aliens who ar-
10 rive from abroad by air at points of entry within the
11 United States without valid documentation. Such
12 preinspection stations shall be in addition to any
13 preinspection stations established or authorized to be
14 established either under subsection (a) or prior to
15 the date of the enactment of this section.

16 “(3) ESTABLISHMENT OF CARRIER CONSULT-
17 ANT PROGRAM.—The Attorney General shall assign
18 additional immigration officers to any foreign air-
19 port identified in the first report submitted under
20 paragraph (1) which served as a point of departure
21 for a significant number of arrivals at United States
22 ports of entry without valid documentation, but
23 where no preinspection station is established.

24 “(c) CONDITIONS FOR ESTABLISHMENT OF
25 PREINSPECTION.—Prior to the establishment of a

1 preinspection station the Attorney General, in consultation
2 with the Secretary of State, shall ensure that—

3 “(1) employees of the United States stationed
4 at the preinspection station and their accompanying
5 family members will receive appropriate protection,

6 “(2) such employees and their families will not
7 be subject to unreasonable risks to their welfare and
8 safety,

9 “(3) the country in which the preinspection sta-
10 tion is to be established maintains practices and pro-
11 cedures with respect to asylum seekers and refugees
12 in accordance with the Convention Relating to the
13 Status of Refugees (done at Geneva, July 28, 1951)
14 or the Protocol Relating to the Status of Refugees
15 (done at New York, January 31, 1967), and

16 “(4) the country in which the preinspection sta-
17 tion is to be established has not been the source of
18 a significant number of asylum seekers or refugees
19 in the 5-year period preceding establishment of the
20 preinspection station.”.

21 (b) CLERICAL AMENDMENT.—The table of contents
22 is amended by inserting after the item relating to section
23 235 the following new item:

“Sec. 235A. Preinspection at foreign airports.”.

1 **SEC. 302. EXPEDITING AIRPORT IMMIGRATION PROCESS-**
2 **ING.**

3 (a) PASSENGER MANIFESTS.—

4 (1) ELECTRONIC PASSENGER MANIFESTS.—Sec-
5 tion 231(a) (8 U.S.C. 1221(a)) is amended in the
6 first sentence by striking “typewritten” and insert-
7 ing “electronic, typewritten,”.

8 (2) INFORMATION CONTAINED IN PASSENGER
9 MANIFEST.—Section 231(a) (8 U.S.C. 1221(a)) is
10 further amended by inserting immediately before the
11 period at the end of the second sentence “, except
12 that regulations concerning the information con-
13 tained in such lists may not require information
14 other than the full name, date of birth, passport
15 number, and citizenship of the person transported,
16 and information identifying the flight on which the
17 person was transported”.

18 (b) INSPECTION BY IMMIGRATION OFFICERS.—Sec-
19 tion 235(a) (8 U.S.C. 1225(a)) is amended by adding
20 after the second sentence the following: “Except as the
21 Attorney General may provide, nothing in this section
22 shall be construed as requiring a personal interview in the
23 conduct of an examination or inspection.”.

24 (c) EXPEDITED PROCESS FOR THE INSPECTION OF
25 CITIZENS.—

1 (1) by amending the section heading to read as
2 follows:

3 “VISA WAIVER PROGRAM FOR CERTAIN VISITORS”;

4 (2) in the heading of subsection (a), (a)(2), and
5 (c) by striking “PILOT” and “PILOT” each place ei-
6 ther appears and inserting “VISA WAIVER” and
7 “VISA WAIVER”, respectively;

8 (3) by striking “pilot” each place it appears
9 and inserting “visa waiver”;

10 (4) in subsection (a)(1) by striking “during the
11 pilot program period (as defined in subsection (e)),”;

12 (5) in subsection (c)(3) by striking “(within the
13 pilot program period) after the initial period”;

14 (6) in subsection (c) by striking paragraph (4);

15 (7) in subsection (e)(1)(A) by striking
16 “(a)(1)(A)” and inserting “(a)(1)”; and

17 (8) by striking subsection (f).

18 (b) ELIMINATION OF REQUIREMENT FOR EXECU-
19 TION OF IMMIGRATION FORMS.—Section 217 is further
20 amended—

21 (1) in subsection (a) by striking paragraph (3);

22 (2) in subsection (a) by redesignating para-
23 graphs (4) through (7) as paragraphs (3) through
24 (6); and

25 (3) in subsection (e)(1) by striking “subsection
26 (a)(4)” and inserting “subsection (a)(3)”.

1 (c) EXCLUSION AND DEPORTATION OF APPLICANTS
2 FOR ADMISSION UNDER VISA WAIVER PROGRAM.—Sec-
3 tion 217(b) (8 U.S.C. 1187(b)) is amended to read as
4 follows:

5 “(b) EXCLUSION AND DEPORTATION OF APPLICANTS
6 FOR ADMISSION UNDER VISA WAIVER PROGRAM.—

7 “(1) EXCLUSION.—

8 “(A) An immigration officer’s determina-
9 tion that an applicant for admission under this
10 section is not clearly and beyond a doubt enti-
11 tled to land shall constitute a final order of ex-
12 clusion and deportation, enforceable pursuant
13 to section 237. Pending such a determination,
14 the Attorney General may maintain such appli-
15 cant in custody.

16 “(B) The procedure described in section
17 236 shall not apply to an order issued under
18 this paragraph.

19 “(2) DEPORTATION.—

20 “(A) Notwithstanding any other provision
21 of law, an alien admitted to the United States
22 under this section who is determined, pursuant
23 to such regulations as the Attorney General
24 shall prescribe, to be subject to deportation
25 shall be deported pursuant to section 243. An

1 immigration officer's determination under this
2 subsection shall constitute a final order of de-
3 portation. Pending such determination, the At-
4 torney General may maintain such alien in
5 custody.

6 “(B) The procedure described in section
7 242 shall not apply to an order issued under
8 this paragraph.

9 “(3) REVIEW.—Notwithstanding any other pro-
10 vision of law or the failure of a carrier to provide the
11 notice described in subsection (e)(1)(D), an alien
12 who applies for admission to the United States
13 under this section shall not be entitled—

14 “(A) to review or appeal under this Act of
15 an immigration officer's determination as to the
16 admissibility of the alien at the port of entry
17 into the United States, or

18 “(B) subject to paragraph (4), to contest
19 an immigration officer's determination under
20 paragraph (2).

21 “(4) ASYLUM.—The Attorney General shall es-
22 tablish a procedure for an alien who is applying for
23 admission under this section or who has been admit-
24 ted under this section to apply for provisional asy-
25 lum under section 208.

1 “(5) TREATMENT OF NATIONALS OF VISA WAIV-
2 ER COUNTRIES.—An alien who—

3 “(A) is a national of a visa waiver program
4 country or claims to be a national of a visa
5 waiver country, and

6 “(B) is not in possession of a valid visa,
7 shall be considered to be an applicant for ad-
8 mission under this section.”.

9 (d) CARRIER AGREEMENTS.—Section 217(e)(1) (8
10 U.S.C. 1187(e)(1)) is amended—

11 (1) in subparagraph (B) by striking “and”;

12 (2) in subparagraph (C) by striking the period
13 at the end and inserting “; and”; and

14 (3) by inserting after subparagraph (C) the fol-
15 lowing new subparagraph:

16 “(D) to provide passengers applying for
17 admission to the United States under this sec-
18 tion with written notification that they are not
19 entitled (i) to any appeal or review of an immi-
20 gration officer’s determination of admissibility,
21 or (ii) to contest any action for deportation.”.

22 (e) CLERICAL AMENDMENT.—The item in the table
23 of contents relating to section 217 is amended to read as
24 follows:

“Sec. 217. Visa waiver program for certain visitors.”.

1 **SEC. 304. TRAINING OF AIRLINE PERSONNEL IN DETEC-**
2 **TION OF FRAUDULENT DOCUMENTS.**

3 (a) USE OF FUNDS.—Section 286(h)(2)(A) (8 U.S.C.
4 1356(h)(2)(A)) is amended—

5 (1) in clause (iv), by inserting “, including
6 training of, and technical assistance to, commercial
7 airline personnel on such detection” after “United
8 States”, and

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

10 “The Attorney General shall provide for expenditures for
11 training and assistance described in clause (iv) in an
12 amount, for any fiscal year, not less than 5 percent of
13 the total of the expenses incurred that are described in
14 the previous sentence.”.

15 (b) COMPLIANCE WITH DETECTION REGULA-
16 TIONS.—Section 212(f) (8 U.S.C. 1182(f)) is amended by
17 adding at the end the following: “Whenever the Attorney
18 General finds that a commercial airline has failed to com-
19 ply with regulations of the Attorney General relating to
20 requirements of airlines for the detection of fraudulent
21 documents used by passengers traveling to the United
22 States (including the training of personnel in such detec-
23 tion), the Attorney General may suspend the entry of some
24 or all aliens transported to the United States by such air-
25 line.”.

26 (c) EFFECTIVE DATES.—

1 (1) The amendments made by subsection (a)
2 shall apply to expenses incurred during or after fis-
3 cal year 1994.

4 (2) The Attorney General shall first issue, in
5 proposed form, regulations referred to in the second
6 sentence of section 212(f) of the Immigration and
7 Nationality Act, as added by the amendment made
8 by subsection (b), by not later than 90 days after
9 the date of the enactment of this Act.

10 **SEC. 305. FINES FOR UNLAWFUL BRINGING OF ALIENS**
11 **INTO THE UNITED STATES.**

12 (a) IN GENERAL.—Section 273 of the Immigration
13 and Nationality Act (8 U.S.C. 1323) is amended—

14 (1) in subsections (b) and (d) by striking “the
15 sum of \$3000” and inserting “a fine of \$3000” each
16 place it appears;

17 (2) in the first sentence of subsection (b) by
18 striking “a sum equal” and inserting “an amount
19 equal”;

20 (3) in the second sentence of subsection (d) by
21 striking “a sum sufficient to cover such fine” and
22 inserting “an amount sufficient to cover such fine”;

23 (4) by striking “sum” and “sums” each place
24 either appears and inserting “fine”;

1 (5) in subsection (c) by striking “Such” and in-
2 serting “Except as provided in subsection (e), such”;
3 and

4 (6) by adding at the end the following new sub-
5 section:

6 “(e) A fine under this section may be reduced, re-
7 funded, or waived under such regulations as the Attorney
8 General shall prescribe in cases in which—

9 “(1) the carrier demonstrates that it had
10 screened all passengers on the vessel or aircraft in
11 accordance with procedures prescribes by the Attor-
12 ney General, or

13 “(2) circumstances exist that the Attorney Gen-
14 eral determines would justify such reduction, refund,
15 or waiver.”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this subsection shall apply with respect to aliens brought
18 to the United States more than 60 days after the date
19 of enactment of this Act.

1 TITLE IV—AUTHORIZATION OF APPROPRIA-
2 TIONS FOR THE IMMIGRATION AND NATU-
3 RALIZATION SERVICE

4 **SEC. 401. AUTHORIZATION OF APPROPRIATIONS FOR I.N.S.**
5 **FOR FISCAL YEARS 1994 AND 1995.**

6 (a) IN GENERAL.—There are authorized to be appro-
7 priated for the Immigration and Naturalization Service—

8 (1) for fiscal year 1994, \$1,082,038,100, of
9 which \$413,224,900 are authorized to be appro-
10 priated for the operation of the Border Patrol and
11 \$27,434,000 are authorized to be appropriated for
12 anti-smuggling activities; and

13 (2) for fiscal year 1995, \$1,154,885,900, of
14 which \$454,547,000 are authorized to be appro-
15 priated for the operation of the Border Patrol and
16 \$31,277,400 are authorized to be appropriated for
17 anti-smuggling activities.

18 Of the amounts authorized to be appropriated under this
19 subsection, such sums as may be necessary are authorized
20 to be available to provide by April 1, 1994, for not less
21 than a 100 percent increase in the number of asylum offi-
22 cers over the level on September 30, 1993, with appro-
23 priate additional support staff.

24 (b) ACTIVITIES INCLUDED.—The amounts provided
25 pursuant to subsection (a) for a fiscal year include—

1 (1) funds for the purchase for police-type use of
2 passenger motor vehicles, without regard to the gen-
3 eral purchase price limit for the fiscal year involved,
4 and for the hire of passenger motor vehicles;

5 (2) funds for the acquisition, lease, mainte-
6 nance, and operation of aircraft;

7 (3) funds for the purchase of uniforms without
8 regard to the general purchase price limitation for
9 the fiscal year involved;

10 (4) not to exceed \$50,000 to meet unforeseen
11 emergencies of a confidential character to be ex-
12 pended under the direction of the Attorney General
13 and to be accounted for solely on the certificate of
14 the Attorney General; and

15 (5) not to exceed \$500,000 of those sums ap-
16 propriated for research and \$17,188,000 of those
17 funds appropriated for construction, which amounts
18 shall remain available until expended.

19 (c) LIMITATION ON OVERTIME.—None of the funds
20 available to the Immigration and Naturalization Service
21 under this section shall be available for administrative ex-
22 penses to pay any employee overtime pay in an amount
23 in excess of \$25,000 for a fiscal year involved.

○

HR 3363 IH—2

HR 3363 IH—3

HR 3363 IH—4