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107TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 107–413

BARBARA JORDAN IMMIGRATION REFORM AND ACCOUNTABILITY ACT OF 2002

APRIL 19, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3231]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3231) to replace the Immigration and Naturalization Service with the Agency for Immigration Affairs, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Barbara Jordan Immigration Reform and Accountability Act of 2002".

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

Sec. 1. Short title; table of contents.
Sec. 2. Abolishment of Immigration and Naturalization Service; establishment of Office of Associate Attorney General for Immigration Affairs.
Sec. 3. Positions within Office of Associate Attorney General for Immigration Affairs.
Sec. 4. Establishment of Bureau of Citizenship and Immigration Services.
Sec. 5. Office of the Ombudsman.
Sec. 6. Establishment of Bureau of Immigration Enforcement.
Sec. 7. Office of Immigration Statistics within Bureau of Justice Statistics.
Sec. 8. Exercise of authorities.
Sec. 9. Savings provisions.
Sec. 10. Transfer and allocation of appropriations and personnel.
Sec. 11. Authorization of appropriations; prohibition on transfer of fees; leasing or acquisition of property; sense of Congress.
Sec. 12. Reports and implementation plans.
Sec. 13. Application of Internet-based technologies.
Sec. 14. Definitions.
Sec. 15. Effective date; transition.
Sec. 16. Conforming amendment.

SEC. 2. ABOLISHMENT OF IMMIGRATION AND NATURALIZATION SERVICE; ESTABLISHMENT OF OFFICE OF ASSOCIATE ATTORNEY GENERAL FOR IMMIGRATION AFFAIRS.

(a) ABOLISHMENT OF INS.—The Immigration and Naturalization Service of the Department of Justice is abolished.

(b) ESTABLISHMENT OF OFFICE OF ASSOCIATE ATTORNEY GENERAL FOR IMMIGRATION AFFAIRS.—

(1) IN GENERAL.—There is established in the Department of Justice an office to be known as the "Office of the Associate Attorney General for Immigration Affairs".

(2) ASSOCIATE ATTORNEY GENERAL.—The head of the Office shall be the Associate Attorney General for Immigration Affairs. The Associate Attorney General for Immigration Affairs—

(A) shall be appointed by the President, by and with the consent of the Senate; and

(B) shall have a minimum of 5 years of experience in managing a large and complex organization.

(3) COMPENSATION AT LEVEL III OF EXECUTIVE SCHEDULE.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Associate Attorney General for Immigration Affairs.".

(c) FUNCTIONS.—The Associate Attorney General for Immigration Affairs shall be responsible for—

(1) overseeing the work of, and supervising, the Director of the Bureau of Citizenship and Immigration Services and the Director of the Bureau of Immigration Enforcement;

(2) coordinating the administration of national immigration policy, including coordinating the operations of the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement, and reconciling conflicting policies of such bureaus; and

(3) allocating and coordinating resources involved in supporting shared support functions for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement, through the Office of Shared Services established by section 3.

SEC. 3. POSITIONS WITHIN OFFICE OF ASSOCIATE ATTORNEY GENERAL FOR IMMIGRATION AFFAIRS.

(a) POLICY ADVISOR.—

(1) IN GENERAL.—There shall be a position of Policy Advisor for the Associate Attorney General for Immigration Affairs.

(2) FUNCTIONS.—The Policy Advisor shall be responsible for—

(A) providing advice to the Associate Attorney General for Immigration Affairs on all matters relating to immigration and naturalization policy; and

(B) coordinating and reconciling the resolution of policy issues by the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(b) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be a position of General Counsel to the Associate Attorney General for Immigration Affairs.

(2) FUNCTIONS.—The General Counsel shall serve as the principal legal advisor to the Associate Attorney General for Immigration Affairs. The General Counsel shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Associate Attorney General for Immigration Affairs with respect to legal matters affecting the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigration Enforcement;

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review and in other legal or administrative proceedings involving immigration services issues; and

(C) representing the Bureau of Immigration Enforcement in all exclusion, deportation, or removal proceedings before the Executive Office for Immigration Review, including in proceedings to adjudicate relief from exclusion, deportation, or removal, and in other legal or administrative proceedings involving immigration enforcement issues.

(3) LIMITATION.—Paragraph (2) shall not apply to the functions transferred under subsection (h) to the extent that the Associate Attorney General for Immigration Affairs does not delegate such functions to the General Counsel.

(c) CHIEF FINANCIAL OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Financial Officer for the Associate Attorney General for Immigration Affairs.

(2) FUNCTIONS.—The Chief Financial Officer shall be responsible for—

(A) financial management of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of such office and bureaus;

(B) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement; and

(C) coordinating all budget and other financial management issues with the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(d) DIRECTOR OF SHARED SERVICES.—

(1) IN GENERAL.—There shall be a position of Director of the Office of Shared Services for the Associate Attorney General for Immigration Affairs.

(2) FUNCTIONS.—The Director of the Office of Shared Services shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement, including—

(A) facilities management;

(B) information resources management, including computer databases and information technology;

(C) records and file management; and

(D) forms management.

(e) OFFICE OF THE OMBUDSMAN.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Office of the Associate Attorney General for Immigration Affairs an office to be known as the "Office of the Ombudsman".

(B) OMBUDSMAN.—

(i) IN GENERAL.—The Office of the Ombudsman shall be under the supervision and direction of an official to be known as the "Ombudsman". The Ombudsman shall report directly to the Associate Attorney General for Immigration Affairs.

(ii) QUALIFICATIONS.—The Ombudsman shall have a background in customer service as well as immigration law.

(2) FUNCTIONS OF OFFICE.—The Ombudsman shall perform the functions described in section 5.

(f) OFFICE OF PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.—

(1) IN GENERAL.—There is established in the Office of the Associate Attorney General for Immigration Affairs an office to be known as the "Office of Professional Responsibility and Quality Review". The head of the Office of Professional Responsibility and Quality Review shall be the Director of the Office of Professional Responsibility and Quality Review. The Director of the Office of Professional Responsibility and Quality Review shall be responsible for—

(A) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigration Enforcement that are not subject to investigation by the Department of Justice Office of the Inspector General;

(B) inspecting the operations of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement and providing assessments of the quality of the operations of such office and bureaus as a whole and each of their components; and

(C) providing an analysis of the management of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement.

(2) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with paragraph (1)(B) with respect to a decision of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigration Enforcement, or any of their components, consideration shall be given to—

(A) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(B) any fraud or misrepresentation associated with the decision; and

(C) the efficiency with which the decision was rendered.

(g) OFFICE OF CHILDREN'S AFFAIRS.—

(1) IN GENERAL.—There is established within the Office of the Associate Attorney General for Immigration Affairs an office to be known as the "Office of Children's Affairs". The head of the Office of Children's Affairs shall be the Director of the Office of Children's Affairs.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Director of the Office of Children's Affairs shall be responsible for—

(i) coordinating and implementing law and policy for unaccompanied alien children who come into the custody of the Department of Justice;

(ii) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(iii) making placement determinations for all unaccompanied alien children apprehended by the Attorney General or who otherwise come into the custody of the Department of Justice;

(iv) implementing the placement determinations made by the Office;

(v) implementing policies with respect to the care and placement of unaccompanied alien children;

(vi) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(vii) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(viii) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(ix) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

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

(I) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;

(II) the date on which the child came into the custody of the Department of Justice;

(III) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(IV) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(V) the disposition of any actions in which the child is the subject;

(xi) collecting and compiling statistical information from the Office of the Associate Attorney General, Bureau of Citizenship and Immigra-

tion Services, and Bureau of Enforcement (including Border Patrol and inspections officers), on the unaccompanied alien children with whom they come into contact; and

(xii) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(B) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in subparagraph (A)(iii), the Director of the Office of Children's Affairs—

(i) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Director of the Bureau of Immigration Enforcement to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(I) are likely to appear for all hearings or proceedings in which they are involved;

(II) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(III) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(ii) shall not release such children upon their own recognizance.

(C) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Children's Affairs functions with respect to the care of unaccompanied alien children under the immigration laws of the United States vested by statute in, or performed by, the Commissioner of the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately before the effective date specified in section 15(a).

(D) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in subparagraph (A)(vii), the Director of the Office of Children's Affairs shall assess the extent to which it is cost-effective to use the refugee children foster care system for the placement of unaccompanied alien children.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, the Executive Office of Immigration Review, or the Department of State.

(4) DEFINITION.—As used in this subsection—

(A) the term "placement" means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(B) the term "unaccompanied alien child" means a child who—

(i) has no lawful immigration status in the United States;

(ii) has not attained 18 years of age; and

(iii) with respect to whom—

(I) there is no parent or legal guardian in the United States; or

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

(h) TRANSFER OF FUNCTIONS OF OFFICE OF IMMIGRATION LITIGATION.—There are transferred from the Assistant Attorney General, Civil Division, to the Associate Attorney General for Immigration Affairs all functions performed by the Office of Immigration Litigation, and all personnel, infrastructure, and funding provided to the Assistant Attorney General, Civil Division, in support of such functions, immediately before the effective date specified in section 15(a). The Associate Attorney General for Immigration Affairs may, in the Associate Attorney General's discretion, charge the General Counsel to the Associate Attorney General for Immigration Affairs with such functions.

(i) EMPLOYEE DISCIPLINE FOR WILLFUL DECEIT.—The Associate Attorney General for Immigration Affairs may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigration Enforcement who willfully deceives the Congress or agency leadership on any matter.

(j) REFERENCES.—With respect to any function transferred by this section or Act to, and exercised on or after the effective date specified in section 15(a) by, the Associate Attorney General for Immigration Affairs or any other official whose functions are described in this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Associate Attorney General for Immigration Affairs; or

(2) to such component is deemed to refer to the Office of the Associate Attorney for Immigration Affairs.

SEC. 4. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Justice a bureau to be known as the "Bureau of Citizenship and Immigration Services".

(2) DIRECTOR.—The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who—

(A) shall report directly to the Associate Attorney General for Immigration Affairs; and

(B) shall have a minimum of 10 years professional experience in the rendering of adjudications on the provision of government benefits or services, at least 5 of which shall have been years of service in a managerial capacity or in a position affording comparable management experience.

(3) FUNCTIONS.—The Director of the Bureau of Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Associate Attorney General for Immigration Affairs with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Immigration Enforcement, including potentially conflicting policies or operations;

(D) shall meet regularly with the Ombudsman to correct serious service problems identified by the Ombudsman; and

(E) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to the Congress within 3 months after its submission to the Congress.

(4) STUDENT VISA PROGRAMS.—The Director of the Bureau of Citizenship and Immigration Services shall designate an official to be responsible for administering student visa programs and the Student and Exchange Visitor Information System established under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), and successor programs and systems, until September 30, 2004. The Director may continue such policy after September 30, 2004, at the Director's discretion. The Director shall provide any information collected by the Student and Exchange Visitor Information System to the Director of the Bureau of Immigration Enforcement that is necessary for the performance of the functions of the Bureau of Immigration Enforcement.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—There are transferred from the Commissioner of the Immigration and Naturalization Service to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 15(a):

(1) Adjudications of nonimmigrant and immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 15(a).

(c) OFFICE OF POLICY AND STRATEGY.—There is established in the Bureau of Citizenship and Immigration Services an office to be known as the "Office of Policy and Strategy". The head of the Office of Policy and Strategy shall be the Chief of the Office of Policy and Strategy. In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of the Office of Policy and Strategy shall be responsible for—

(1) establishing national immigration services policies and priorities;

(2) performing policy research and analysis on immigration services issues; and

(3) coordinating immigration policy issues with the Chief of the Office of Policy and Strategy for the Bureau of Immigration Enforcement and the Associate Attorney General for Immigration Affairs through the Policy Advisor for the Associate Attorney General for Immigration Affairs, as appropriate.

(d) LEGAL ADVISOR.—There may be a position of Legal Advisor for the Bureau of Citizenship and Immigration Services.

(e) CHIEF BUDGET OFFICER FOR BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—There shall be a position of Chief Budget Officer for the Bureau of Citizenship and Immigration Services. The Chief Budget Officer shall be responsible for formulating and executing the budget of the Bureau of Citizenship and Immigration Services. The Chief Budget Officer shall report to the Director of the Bureau of Citizenship and Immigration Services and shall provide information to, and coordinate resolution of relevant issues with, the Chief Financial Officer for the Associate Attorney General for Immigration Affairs.

(f) OFFICE OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—There is established in the Bureau of Citizenship and Immigration Services an office to be known as the "Office of Congressional, Intergovernmental, and Public Affairs". The head of such office shall be the Chief of the Office of Congressional, Intergovernmental, and Public Affairs. The Chief shall be responsible for—

(1) providing information relating to immigration services to the Congress, including information on specific cases relating to immigration services;

(2) serving as a liaison with other Federal agencies on immigration services issues; and

(3) responding to inquiries from the media and general public on immigration services issues.

(g) OFFICE OF CITIZENSHIP.—There is established in the Bureau of Citizenship and Immigration Services an office to be known as the "Office of Citizenship". The head of such office shall be the Chief of the Office of Citizenship. The Chief shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

(h) SECTORS.—Headed by sector directors, and located in appropriate geographic locations, sectors of the Bureau of Citizenship and Immigration Services shall be responsible for directing all aspects of the operations of the Bureau of Citizenship and Immigration Services within their assigned geographic areas of activity. Sector directors shall provide general guidance and supervision to the field offices of the Bureau of Citizenship and Immigration Services within their sectors.

(i) FIELD OFFICES.—Headed by field directors, who may be assisted by deputy field directors, field offices of the Bureau of Citizenship and Immigration Services shall be responsible for assisting the Director of the Bureau of Citizenship and Immigration Services in carrying out the Director's functions. Field directors shall be subject to the general supervision and direction of their respective sector director, except that field directors outside of the United States shall be subject to the general supervision and direction of the Director of the Bureau of Citizenship and Immigration Services. All field directors shall remain accountable to, and receive their authority from, the Director of the Bureau of Citizenship and Immigration Services, in order to ensure consistent application and implementation of policies nationwide.

(j) SERVICE CENTERS.—Headed by service center directors, service centers of the Bureau of Citizenship and Immigration Services shall be responsible for assisting the Director of the Bureau of Citizenship and Immigration Services in carrying out the Director's functions that can be effectively carried out at remote locations. Service center directors are subject to the general supervision and direction of their respective sector director, except that all service center directors shall remain accountable to, and receive their authority from, the Director of the Bureau of Citizenship and Immigration Services, in order to ensure consistent application and implementation of policies nationwide.

(k) TRANSFER AND REMOVAL.—Notwithstanding any other provision of law, the Director of the Bureau of Citizenship and Immigration Services may, in the Director's discretion, transfer or remove any sector director, field director, or service center director.

(l) MISSION.—It shall be the mission of the field offices and service centers of the Bureau of Citizenship and Immigration Services to directly and consistently follow all instructions and guidelines of the Director of the Bureau of Citizenship and Immigration Services and the Associate Attorney General for Immigration Affairs in order to ensure the development of a cohesive and consistent national immigration policy.

(m) REFERENCES.—With respect to any function transferred by this section or Act to, and exercised on or after the effective date specified in section 15(a) by, the Director of the Bureau of Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

SEC. 5. OFFICE OF THE OMBUDSMAN.

(a) FUNCTIONS.—It shall be the function of the Office of the Ombudsman established under section 3—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services;

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2); and

(4) to identify potential legislative changes that may be appropriate to mitigate such problems.

(b) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the United States House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the initiatives the Office of the Ombudsman has taken on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior review or comment from the Attorney General, Associate Attorney General for Immigration Affairs, any other officer or employee of the Department of Justice or the Office of Management and Budget.

(c) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present rec-

ommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(d) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(e) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(f) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component in the Office of the Associate Attorney General for Immigration Affairs and report directly to the Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 6. ESTABLISHMENT OF BUREAU OF IMMIGRATION ENFORCEMENT.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Justice a bureau to be known as the "Bureau of Immigration Enforcement".

(2) DIRECTOR.—The head of the Bureau of Immigration Enforcement shall be the Director of the Bureau of Immigration Enforcement, who—

(A) shall report directly to the Associate Attorney General for Immigration Affairs; and

(B) shall have a minimum of 10 years professional experience in law enforcement, at least 5 of which shall have been years of service in a managerial capacity.

(3) FUNCTIONS.—The Director of the Bureau of Immigration Enforcement—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Associate Attorney General for Immigration Affairs with respect to any policy or operation of the Bureau of Immigration Enforcement that may affect the Bureau of Citizenship and Immigration Services, including potentially conflicting policies or operations.

(b) TRANSFER OF FUNCTIONS.—There are transferred from the Commissioner of the Immigration and Naturalization Service to the Director of the Bureau of Immigration Enforcement all functions performed under the following programs, and all personnel, infrastructure, and funding provided to the Commissioner in support of such programs immediately before the effective date specified in section 15(a):

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

(c) OFFICE OF POLICY AND STRATEGY.—There is established in the Bureau of Immigration Enforcement an office to be known as the "Office of Policy and Strategy". The head of the Office of Policy and Strategy shall be the Chief of the Office of Pol-

icy and Strategy. In consultation with Bureau of Immigration Enforcement personnel in field offices, the Chief of the Office of Policy and Strategy shall be responsible for—

(1) establishing national immigration enforcement policies and priorities;

(2) performing policy research and analysis on immigration enforcement issues; and

(3) coordinating immigration policy issues with the Chief of the Office of Policy and Strategy for the Bureau of Citizenship and Immigration Services and the Associate Attorney General for Immigration Affairs through the Policy Advisor for the Associate Attorney General for Immigration Affairs, as appropriate.

(d) LEGAL ADVISOR.—There may be a position of Legal Advisor for the Bureau of Immigration Enforcement.

(e) CHIEF BUDGET OFFICER FOR THE BUREAU OF IMMIGRATION ENFORCEMENT.—There shall be a position of Chief Budget Officer for the Bureau of Immigration Enforcement. The Chief Budget Officer shall be responsible for formulating and executing the budget of the Bureau of Immigration Enforcement. The Chief Budget Officer shall report to the Director of the Bureau of Immigration Enforcement and shall provide information to, and coordinate resolution of relevant issues with, the Chief Financial Officer for the Associate Attorney General for Immigration Affairs.

(f) OFFICE OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—There is established in the Bureau of Immigration Enforcement an office to be known as the "Office of Congressional, Intergovernmental, and Public Affairs". The head of such office shall be the Chief of the Office of Congressional, Intergovernmental, and Public Affairs. The Chief shall be responsible for—

(1) providing information relating to immigration enforcement to the Congress, including information on specific cases relating to immigration enforcement;

(2) serving as a liaison with other Federal agencies on immigration enforcement issues; and

(3) responding to inquiries from the media and the general public on immigration enforcement issues.

(g) SECTORS.—Headed by sector directors, and located in appropriate geographic locations, sectors of the Bureau of Immigration Enforcement shall be responsible for directing all aspects of the operations of the Bureau of Immigration Enforcement within their assigned geographic areas of activity. Sector directors shall provide general guidance and supervision to the field offices of the Bureau of Immigration Enforcement within their sectors.

(h) FIELD OFFICES.—Headed by field directors, who may be assisted by deputy field directors, field offices of the Bureau of Immigration Enforcement shall be responsible for assisting the Director of the Bureau of Immigration Enforcement in carrying out the Director's functions. Field directors shall be subject to the general supervision and direction of their respective sector director, except that field directors outside of the United States shall be subject to the general supervision and direction of the Director of the Bureau of Immigration Enforcement. All field directors shall remain accountable to, and receive their authority from, the Director of the Bureau of Immigration Enforcement, in order to ensure consistent application and implementation of policies nationwide. There shall be a field office of the Bureau of Immigration Enforcement situated in at least every location where there is situated a field office of the Bureau of Citizenship and Immigration Services.

(i) BORDER PATROL SECTORS.—Headed by chief patrol agents, who may be assisted by deputy chief patrol agents, border patrol sectors of the Bureau of Immigration Enforcement shall be responsible for the enforcement of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and all other laws relating to immigration and naturalization within their assigned geographic areas of activity, unless any such power and authority is required to be exercised by higher authority or has been exclusively delegated to another immigration official or class of immigration officer. Chief patrol agents are subject to the general supervision and direction of their respective sector director, except that they shall remain accountable to, and receive their authority from, the Director of the Bureau of Immigration Enforcement, in order to ensure consistent application and implementation of policies nationwide.

(j) TRANSFER AND REMOVAL.—Notwithstanding any other provision of law, the Director of the Bureau of Immigration Enforcement may, in the Director's discretion, transfer or remove any sector director, field director, or chief patrol officer.

(k) REFERENCES.—With respect to any function transferred by this section or Act to, and exercised on or after the effective date specified in section 15(a) by, the Director of the Bureau of Immigration Enforcement, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any docu-

ment of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Immigration Enforcement; or

(2) to such component is deemed to refer to the Bureau of Immigration Enforcement.

SEC. 7. OFFICE OF IMMIGRATION STATISTICS WITHIN BUREAU OF JUSTICE STATISTICS.

(a) IN GENERAL.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3731 et seq.) is amended by adding at the end the following:

"OFFICE OF IMMIGRATION STATISTICS

"SEC. 305. (a) There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.

"(b) The Director of the Office shall be responsible for the following:

"(1) Maintenance of all immigration statistical information of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review. Such statistical information shall include information and statistics of the type contained in the publication entitled 'Statistical Yearbook of the Immigration and Naturalization Service' prepared by the Immigration and Naturalization Service (as in effect on the day prior to the effective date specified in section 15(a) of the Barbara Jordan Immigration Reform and Accountability Act of 2002).

"(2) Establishment of standards of reliability and validity for immigration statistics collected by the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review.

"(c) The Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review shall provide statistical information to the Office of Immigration Statistics from the operational data systems controlled by the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review, respectively, for the purpose of meeting the responsibilities of the Director.".

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Office of Immigration Statistics established under section 305 of the Omnibus Crime Control and Safe Streets Act of 1968, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service on the day before the effective date specified in section 15(a).

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

(1) by striking "and" at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting "; and"; and

(3) by adding at the end the following:

"(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review.".

SEC. 8. EXERCISE OF AUTHORITIES.

(a) IN GENERAL.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this Act may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 15(a).

(b) PRESERVATION OF ATTORNEY GENERAL'S AUTHORITY.—

(1) IN GENERAL.—Any function for which this Act vests responsibility in an official other than the Attorney General, or which is transferred by this Act to such an official, may, notwithstanding any provision of this Act, be performed

by the Attorney General, or the Attorney General's delegate, in lieu of such official.

(2) REFERENCES.—In a case in which the Attorney General performs a function described in paragraph (1), any reference in any other Federal law, Executive order, rule, regulation, document, or delegation of authority to the official otherwise responsible for the function is deemed to refer to the Attorney General.

(c) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed to preclude or limit in any way the powers, authorities, or duties of the Secretary of State and special agents of the Department of State and the Foreign Service under the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651 note), the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), or any other Act, to investigate illegal passport or visa issuance or use.

SEC. 9. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, recognition of labor organizations, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—Sections 4 and 6 and this section shall not affect any proceedings or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date specified in section 15(a) before an office whose functions are transferred by this Act, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This Act shall not affect suits commenced before the effective date specified in section 15(a), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred by this Act, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this Act (or an amendment made by this Act) such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this Act, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this Act shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred by this Act.

SEC. 10. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.

(a) IN GENERAL.—The personnel of the Department of Justice employed in connection with the functions transferred by this Act (and functions that the Attorney General determines are properly related to the functions of the Bureau of Citizenship and Immigration Services or the Bureau of Immigration Enforcement and would, if transferred, further the purposes of the bureau to which the function is transferred), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed,

held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service or the Office of Immigration Litigation of the Civil Division in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Associate Attorney General for Immigration Affairs for allocation to the appropriate component or bureau. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney General shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this Act for a period of 2 years after the effective date specified in section 15(a).

(b) DELEGATION AND ASSIGNMENT.—Except as otherwise expressly prohibited by law or otherwise provided in this Act, of the Associate Attorney General for Immigration Affairs, the Director of the Bureau of Citizenship and Immigration Services, and the Director of the Bureau of Immigration Enforcement, the person to whom functions are transferred under this Act may delegate any of the functions so transferred to such officers and employees of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigration Enforcement, respectively, as the person may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this Act shall relieve the official to whom a function is transferred under this Act of responsibility for the administration of the function.

(c) AUTHORITIES OF ATTORNEY GENERAL.—The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary with regard to the functions transferred by this Act, and may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this Act. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(d) DATABASES.—The Associate Attorney General for Immigration Affairs shall ensure that the databases of the Office of the Associate Attorney General for Immigration Affairs and those of the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement are integrated with the databases of the Executive Office for Immigration Review in such a way as to permit—

(1) the electronic docketing of each case by date of service upon the alien of the notice to appear in the case of a removal proceeding (or an order to show cause in the case of a deportation proceeding, or a notice to alien in the case of an exclusion proceeding); and

(2) the tracking of the status of any alien throughout the alien's contact with United States immigration authorities, without regard to whether the entity with jurisdiction over the alien is the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, or the Executive Office for Immigration Review.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS; PROHIBITION ON TRANSFER OF FEES; LEASING OR ACQUISITION OF PROPERTY; SENSE OF CONGRESS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to effect the abolition of the Immigration and Naturalization Service, the establishment of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement and their components, and the transfers of functions required to be made under this Act (and the amendments made by this Act), and to carry out any other duty related to the reorganization of the immigration and naturalization functions that is made necessary by this Act (or any such amendment).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) shall remain available until expended.

(3) TRANSITION ACCOUNT.—

(A) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the "Immigration Reorganization Transition Account" (in this paragraph referred to as the "Account").

(B) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under paragraph (1).

(C) ADVANCED AVAILABILITY OF FUNDS.—To the extent provided in appropriations Acts, funds in the Account shall be available for expenditure before the effective date specified in section 15(a).

(b) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(2) SEPARATE BUDGETS.—To ensure that the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

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

(4) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement for purposes not authorized by section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

(5) ESTABLISHMENT OF FEES FOR ADJUDICATION AND NATURALIZATION SERVICES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking "services, including the costs of similar services provided without charge to asylum applicants or other immigrants." and inserting "services.".

(6) AUTHORIZATION OF APPROPRIATIONS FOR REFUGEE AND ASYLUM ADJUDICATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act (8 U.S.C. 1157–1159). All funds appropriated under this paragraph shall be deposited into the Immigration Examinations Fee Account established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) and shall remain available until expended.

(c) LEASING OR ACQUISITION OF PROPERTY.—Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Attorney General is authorized to expend, from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of establishing the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement under this Act.

(d) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the missions of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement are equally important and, accordingly, they each should be adequately funded; and

(2) the functions of the Associate Attorney General for Immigration Affairs described in section 3, the immigration adjudication and service functions referred to in section 4, and the immigration enforcement functions referred to in section 6 should not operate at levels below that in existence prior to the enactment of this Act.

(e) ELIMINATION OF LIMITATION ON EXPENDITURES FOR BACKLOG REDUCTION.—Section 204(b) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(b)) is amended by striking paragraph (4).

SEC. 12. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Attorney General, not later than 120 days after the date of the enactment of this Act, shall submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, among the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement.

(b) DIVISION OF PERSONNEL.—The Attorney General, not later than 120 days after the date of the enactment of this Act, shall submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division of personnel among the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Attorney General, not later than 120 days after the date of the enactment of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such office and bureaus.

(D) Procedures for the Director of Shared Services to perform all shared support functions, including authorizing the Director of the Bureau of Citizenship and Immigration Services and the Director of the Bureau of Immigration Enforcement to approve training curricula and to acquire such supplies and equipment as may be necessary to perform the daily operations of that director's bureau.

(E) Procedures to establish separate accounts and financial management systems for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement, and to implement all provisions of section 11(b).

(F) Fraud detection and investigation.

(G) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(H) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(I) Establishment of a transition team.

(J) Ways to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement in instances where separate systems are more efficient or effective.

(d) REPORT ON IMPROVING IMMIGRATION SERVICES.—

(1) IN GENERAL.—The Attorney General, not later than 1 year after the date of the enactment of this Act, shall submit to the Committees on the Judiciary and Appropriations of the United States House of Representatives and of the Senate a report containing a plan for how the Director of the Bureau of Citizenship and Immigration Services will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 4(b).

(2) CONTENTS.—For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

(A) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(B) The goal for processing time with respect to the application.

(C) Any statutory modifications with respect to the adjudication that the Attorney General considers advisable.

(3) CONSULTATION.—In carrying out paragraph (1), the Attorney General shall consult with the Secretary of State, the Secretary of Labor, the Associate Attorney General for Immigration Affairs, the Director of the Bureau of Immigration Enforcement, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 4(b) and related processes.

(e) REPORT ON IMPROVING ENFORCEMENT FUNCTION.—

(1) IN GENERAL.—The Attorney General, not later than 1 year after the date of the enactment of this Act, shall submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Immigration Enforcement, after the transfer of functions performed under the programs described in paragraphs (1) through (5) of section 6(b), will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such programs.

(2) CONSULTATION.—In carrying out paragraph (1), the Attorney General shall consult with the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Associate Attorney General for Immigration Affairs, the Director of the Bureau of Citizenship and Immigration Services, the

Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

(f) REPORT ON SHARED SERVICES.—The Attorney General, not later than 3 years after the effective date specified in section 15(a), shall submit to the Committees on the Judiciary and Appropriations of the United States House of Representatives and of the Senate a report on whether the Director of Shared Services is properly serving the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement. The report should address whether it would be more efficient to transfer one or more of the functions described in section 3 to the Director of the Bureau of Citizenship and Immigration Services or the Director of the Bureau of Immigration Enforcement, and shall include an estimate of the cost of any such transfer that the Attorney General recommends. The report should also address whether it would be more efficient to transfer one or more of the functions described in sections 4 and 6 to the Office of the Associate Attorney General for Immigration Affairs, and shall include an estimate of the cost of any such transfer that the Attorney General recommends.

(g) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the effective date specified in section 15(a), and every 6 months thereafter, until full implementation of this Act has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by sections 4 and 6 have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by sections 4 and 6 have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the effective date specified in section 15(a), the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement, and the transfer of functions from the Immigration and Naturalization Service and the Office of Immigration Litigation of the Civil Division to the Office of the Associate Attorney General for Immigration Affairs, under this Act have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement.

(h) REPORT ON INTERIOR CHECKPOINTS.—Not later than 6 months after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on whether all permanent interior checkpoints operated by the Immigration and Naturalization Service ought to be closed, and the funds that otherwise would be expended for the operation of such checkpoints ought to be reallocated for protecting and maintaining the integrity of the borders of the United States and increasing enforcement at other points of entry into the United States.

(i) REPORT ON RESPONDING TO FLUCTUATING NEEDS.—Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the effective date specified in section 15(a), the Bureau of Citizenship and Immigration Services, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications

for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

SEC. 13. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Attorney General, not later than 1 year after the date of the enactment of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Attorney General for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

(1) ONLINE FILING.—The Attorney General, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the United States House of Representatives and the Senate not later than 1 year after the date of the enactment of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Attorney General shall establish, not later than 60 days after the date of the enactment of this Act, an advisory committee (in this section referred to as the "Technology Advisory Committee") to assist the Attorney General in—

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

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

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the United States House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

SEC. 14. DEFINITIONS.

For purposes of this Act:

(1) The term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(2) The term "office" includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

SEC. 15. EFFECTIVE DATE; TRANSITION.

(a) IN GENERAL.—The abolishment of the Immigration and Naturalization Service, the establishment of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement, the transfers of functions specified under this Act, and the amendments made by this Act, shall take effect 1 year after the date of the enactment of this Act. The Associate Attorney General for Immigration Affairs, the Director of the Bureau of Citizenship and Immigration Services, and the Director of the Bureau of Immigration Enforcement shall be appointed not later than such effective date. To the extent that functions to be transferred to such persons under this Act continue to be performed by the Immigration and Naturalization Service and the Office of Immigration Litigation of the Civil Division during fiscal year 2003, the Attorney General shall provide for an appropriate accounting of funds and an appropriate transfer of funds appropriated to such entities to the appropriate component of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigration Enforcement.

(b) TRANSITION PERIOD FOR CERTAIN BUREAU FUNCTIONS.—Notwithstanding subsection (a), during the 18-month period after the transfer of functions under this Act takes effect, the Associate Attorney General for Immigration Affairs is authorized to perform the functions described in subsections (c), (d), and (f) of each of sections 4 and 6 for both the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

SEC. 16. CONFORMING AMENDMENT.

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

"Commissioner of Immigration and Naturalization, Department of Justice.".

Amend the title so as to read:

A bill to replace the Immigration and Naturalization Service with the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement, and for other purposes.

PURPOSE AND SUMMARY

H.R. 3231 replaces the Immigration and Naturalization Service (INS) with the Office of the Associate Attorney General for Immigration Affairs (AAGIA), the Bureau of Citizenship and Immigration Services (BCIS), and the Bureau of Immigration Enforcement (BIE).

BACKGROUND AND NEED FOR THE LEGISLATION

The INS has been a beleaguered bureaucracy for decades. Congress has increased the INS' budget, hoping that additional resources were what was needed to solve the agency's shortcomings. The INS' budget increased from $1.4 billion in fiscal year 1992 to $5.5 billion in fiscal year 2002. Notwithstanding this budgetary expansion, the INS' performance has not improved. Most Members of Congress have grown increasingly frustrated with the INS' poor performance in both immigration services and enforcement.

The magnitude of the INS' problems is extraordinary—it had a backlog of 4.9 million applications and petitions at the end of fiscal year 2001, forcing aliens trying to play by the rules to wait in limbo for years. The Census Bureau estimates that at least 8 million undocumented aliens reside in the U.S. Over 300,000 criminal and deportable aliens ordered removed by immigration judges have absconded. Much of the INS' failure stems from the conflict between its enforcement and service missions. The INS is unable to adequately perform either of its missions. Rather, the agency appears to move from one crisis to the next, with no coherent strategy of how to accomplish both missions successfully.

The Immigration Act of 1990 established the U.S. Commission on Immigration Reform (CIR) to review and evaluate our immigration system. The CIR, chaired by the late Barbara Jordan, concluded that the INS suffered from mission overload. The Commission explained that the INS must give equal weight to more priorities than any one agency can handle. The Commission stated that "[i]mmigration law enforcement requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits or labor standards regulation of U.S. businesses."[1] Such a system is set up for failure and, with such failure, further loss of public confidence in the immigration system.

On the issue of structural and management reform, the CIR found that the current structure for the administration of the immigration law was problematic. In fact, the CIR found that "no one

[1] U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy, 1997 Report to Congress*, 148.

agency is likely to have the capacity to accomplish all of the goals of immigration policy equally well."[2] Also, the CIR stated that the system compounded the problems of fragmentation, redundancy and delay. To resolve these problems, the CIR recommended the dismantling of the INS.

The INS has reorganized itself numerous times in just the last two decades. However, if one glances at the current organizational chart of the INS, it is clear how dysfunctional the agency's structure is, even after these numerous internal reorganizations over the years. In response to the CIR's recommendations, several INS restructuring proposals were offered by Members of Congress, think tanks, and policy experts. The Fiscal Year 1998 Commerce, Justice, State Appropriations Conference Report required the Clinton Administration to review the recommendations of the CIR on restructuring, reorganizing and managing the immigration responsibilities of the INS. The INS rejected the CIR's recommendations and presented its own restructuring plan in April 1998. The proposal called for splitting INS' enforcement components from its service components, but leaving both within the INS. The proposal would have eliminated the current INS structure of over 30 district and 3 regional offices and create new Service and Enforcement areas. The plan was to have approximately 6 to 12 Immigrant Service Areas and 6 to 12 Enforcement Areas nation-wide, each with a separate chain of command reporting to an Executive Associate Commissioner at INS Headquarters. The Commissioner would maintain control over both branches. However, the INS under Commissioner Meissner never strongly pursued its own restructuring plan.

A handful of INS restructuring bills were introduced and considered during the 105th and 106th Congresses. The plans ranged from duplicating the CIR's recommendation to legislating the Meissner restructuring plan, from creating totally separate enforcement and service agencies to putting both agencies under the supervision of an Associate Attorney General. However, no bill moved beyond the Subcommittee level.

During his presidential campaign, then-Governor Bush endorsed legislation splitting the INS into two separate agencies—one to deal with the enforcement functions, and the other to handle services, and the creation of an Associate Attorney General to head the new immigration structure.

Legislation is needed to dismantle the INS and restructure the immigration organization in a better, more manageable structure. H.R. 3231 is intended to break the INS into smaller, more manageable pieces that concentrate on very different missions—administering immigration benefits and enforcing immigration laws. By separating immigration services from enforcement, managers will no longer be pulled in two directions and both bureaus will make significant improvements in fulfilling their respective statutory missions. The BCIS, led by an expert in Government benefits, can concentrate on improving immigration services and reducing adjudication backlogs for legal immigrants. Likewise, the BIE, led by a law enforcement professional, will be an agency with a true enforcement mission: denying admission to aliens who should be kept

[2] *Id.*

out of the U.S., and apprehending and removing aliens along the border and in the interior who are deportable. Each bureau will have a distinct mission, will be able to craft its own policies, will have its own budget and its own dedicated employees who cannot be shifted to the other agency. No longer will service be sacrificed for the sake of enforcement, or enforcement for the sake of service, as has happened so often in the past. Both functions are equally important and are treated as such in this legislation.

H.R. 3231's creation of an Associate Attorney General in the Department of Justice who handles only immigration affairs raises these issues to the level and attention that they deserve in the Department of Justice. This will also create more accountability for the actions taken by the bureaus than currently exists in the INS. The Associate Attorney General will supervise the two bureaus and resolve conflicts arising between them. An Office of the Associate Attorney General is created under the control and primary responsibility of the Associate Attorney General. Created within the Associate Attorney General's Office is a Policy Advisor, General Counsel, Chief Financial Officer, Director of Shared Services, Office of the Ombudsman, Office of Professional Responsibility and Quality Review, and Office of Children's Affairs.

H.R. 3231 also requires the application of Internet-based technologies to track immigration applications as well as to eventually permit applicants to file applications on-line, thereby improving customer service.

HEARINGS

A hearing on "Restructuring the INS—How the Agency's Dysfunctional Structure Impedes the Performance of its Dual Mission" was held on April 9, 2002. The witnesses were: (1) The Honorable James W. Ziglar, Commissioner of the INS; (2) Richard J. Gallo, President of the Federal Law Enforcement Officers Association; (3) Dr. Susan F. Martin, Director for the Institute for the Study of International Migration at Georgetown University; and (4) Mr. Lawrence Gonzalez, Washington Director of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund.

COMMITTEE CONSIDERATION

On April 10, 2002, the Committee met in open session and ordered favorably reported the bill H.R. 3231, with amendment, by a recorded vote of 32 to 2, a quorum being present.

VOTE OF THE COMMITTEE

An amendment in the nature of a substitute was offered by Mr. Sensenbrenner, Mr. Conyers, Mr. Gekas, and Ms. Jackson Lee and passed by voice vote.

Mr. Berman offered an amendment to authorize such sums as may be necessary to adjudicate refugee and asylum claims, which passed by voice vote.

Mr. Issa offered an amendment requiring a report on the cost effectiveness of interior checkpoints, which passed by voice vote.

Ms. Jackson Lee offered an amendment adding a mission statement for the BCIS that requires consistency of policy and practice

within the BCIS, which passed by voice vote. Ms. Jackson Lee offered an amendment requiring a report to Congress to ensure a prompt and timely response to unforeseen changes in the number of applications for immigration benefits, which passed by voice vote.

On the Motion to Report H.R. 3231 favorably, as amended, the motion passed by a rollcall vote of 32 yeas to 2 nays.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Bryant	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Cannon	X		
Mr. Graham	X		
Mr. Bachus	X		
Mr. Hostettler	X		
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Ms. Hart	X		
Mr. Flake	X		
Mr. Pence	X		
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman	X		
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee	X		
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt	X		
Mr. Wexler	X		
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff			
Mr. Sensenbrenner, Chairman	X		
Total	32	2	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

Performance Goals and Objectives

H.R. 3231 authorizes funding. Section 11(a) authorizes such appropriated sums as are necessary to (1) abolish the INS; (2) estab-

lish the Office of the Associate Attorney General for Immigration Affairs, the BCIS, the BIE, and their components, and the transfer of functions required under H.R. 3231; and (3) carry out any other duty related to the reorganization of the immigration and naturalization functions that is necessitated by H.R. 3231. The money used to carry out this transition will streamline the immigration agencies and create more accountability and better management in the new immigration structure. A better immigration structure, with enforcement separated from services, will lead to better immigration enforcement and immigration services.

Section 11(a) establishes a separate account in the general fund of the U.S. Treasury known as the "Immigration Reorganization Transition Account." All appropriated amounts mentioned above are to be deposited into this transition account and to the extent possible in appropriations acts, the funds in the transition account should be available for expenditure prior to the effective date of H.R. 3231, so that non-transition money is not used for transition purposes.

Monies for immigration services must remain separate from those for immigration enforcement. Section 11(b) establishes separate accounts in the U.S. Treasury for appropriated funds and other funds available for the BCIS and the BIE. By requiring separate budgets, both immigration enforcement and immigration services will each receive individualized budget attention, ensuring that each bureau requests the money each needs for strong immigration enforcement and quality immigration service. It also requires the Director of the Office of Management and Budget to separate the budget requests for the BCIS and the BIE to ensure that the two bureaus are funded to the extent necessary to fully carry out their respective functions. Fees imposed for a specific service, application, or benefit must be deposited into the appropriate account for the bureau with jurisdiction over the function to which the fee relates. No fee may be transferred between the BCIS and the BIE. Currently, funds for immigration services are often transferred to immigration enforcement purposes and visa versa. This prohibition on the transfer of fees is designed to end such practices.

Section 11(b) also ends the policy of using a portion of fees paid by visa applicants to cover the costs of adjudicating asylum applications. No longer will non-asylum applicants pay for asylum application processing. Instead, H.R. 3231 authorizes sums to be appropriated to process refugee and asylum applications, as well as adjustment of status applications for refugees.

The missions of the Office of the AAGIA, the BCIS, and the BIE are equally important, each should be adequately funded, and the functions of all three should not operate at financial levels below that in existence prior to the enactment of H.R. 3231.

Section 11(e) removes the limitation on expenditures contained in section 204 of the Immigration Services and Infrastructure Improvements Act of 2000 for the purpose of reducing application backlogs. That act authorizes appropriations to reduce the immigration application backlogs. It states that none of the funds appropriated may be expended until a report on the backlogs has been submitted to Congress. The Attorney General is long overdue in issuing that backlog report. Section 11(e) of H.R. 3231 eliminates such limitation so that the funds can be appropriated to reduce the

overwhelming application backlogs without waiting additional time for the backlog report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3231, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, DC 20515

Dan L. Crippen
Director

April 19, 2002

Honorable F. James Sensenbrenner Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3231, the Barbara Jordan Immigration Reform and Accountability Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

Barry B. Anderson
for Dan L. Crippen

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

April 19, 2002

H.R. 3231

Barbara Jordan Immigration Reform and Accountability Act of 2002

As ordered reported by the House Committee on the Judiciary on April 10, 2002

SUMMARY

H.R. 3231 would reorganize the Immigration and Naturalization Service (INS) as the Agency for Immigration Affairs (AIA), which would be comprised of the Bureau of Immigration Services and Adjudications and the Bureau of Immigration Enforcement. The bill would create a new Associate Attorney General post in the Department of Justice (DOJ) to oversee the AIA, as well as several new offices within the new agency, and would transfer the Office of Immigration Litigation from the Civil Division of DOJ to the new AIA. H.R. 3231 also would prohibit INS from covering certain costs through fee collections and would instead authorize the appropriation of such sums as necessary for INS to adjudicate refugee and asylum claims. Finally, the bill would direct the General Accounting Office (GAO) and the AIA to prepare several reports, mostly relating to the effectiveness of the new agency.

CBO estimates that implementing H.R. 3231 would cost about $1.1 billion over the 2003-2007 period, assuming appropriation of the necessary amounts. We estimate that about $1 billion of the total would be for adjudicating refugee and asylum claims. Enacting H.R. 3231 would affect direct spending, so pay-as-you-go procedures would apply, but we estimate that any net effects on direct spending would be insignificant. H.R. 3231 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The following table summarizes the estimated budgetary impact of H.R. 3231. The table shows estimated costs under the bill, as compared to INS funding under current law projected in the CBO baseline—that is, the 2002 appropriation, adjusted for anticipated inflation in succeeding years. Under the bill, those costs incurred by the INS to perform its mission would continue. The costs of this legislation fall within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
Baseline Spending for INS Salaries and Expenses Under Current Law						
Estimated Authorization Level [a]	3,821	3,965	4,091	4,220	4,351	4,490
Estimated Outlays	3,418	3,725	4,099	4,187	4,314	4,450
Proposed Changes						
Additional Costs for AIA						
Estimated Authorization Level	0	18	30	27	28	29
Estimated Outlays	0	16	29	28	28	29
Refugee and Asylum Adjudications						
Estimated Authorization Level	0	180	189	198	208	219
Estimated Outlays	0	171	189	198	208	218
Total Changes Under H.R. 3231						
Estimated Authorization Level	0	198	219	225	236	248
Estimated Outlays	0	187	218	226	236	247
Spending Under H.R. 3231						
Estimated Authorization Level	3,821	4,163	4,310	4,445	4,587	4,738
Estimated Outlays	3,418	3,912	4,317	4,413	4,550	4,697

a. The 2002 level is the amount appropriated for that year for INS salaries and expenses. The estimated authorization levels for 2003 through 2007 are CBO baseline estimates, assuming adjustments for anticipated inflation.

BASIS OF ESTIMATE

CBO estimates that implementing the legislation would cost about $1.1 billion over the 2003-2007 period, with most of those funds used to adjudicate refugee and asylum claims because under the bill, fees would no longer offset those costs. For this estimate, CBO assumes that H.R. 3231 will be enacted in fiscal year 2002, and that the necessary funds will be appropriated for each fiscal year.

Additional Costs for New Agency

The effective date of the bill would be one year after enactment, so the full costs to establish the AIA would not be incurred until fiscal year 2004. Such costs would result from new offices established by the bill and increased requirements for certain administrative functions and office space. CBO estimates that these costs would be about $30 million annually, beginning in fiscal year 2004, and would total $130 million over the 2003-2007 period, assuming appropriation of the necessary amounts. Most of these costs would be for the new ombudsman offices established by the bill.

New Offices in AIA. H.R. 3231 would establish a new Associate Attorney General position to oversee the AIA, as well as a policy advisor and chief financial officer to serve the agency, plus offices for ombudsman, citizenship, children's affairs, and statistics.

Associate Attorney General. Based on the costs of other Associate Attorney General offices in DOJ, CBO estimates that it would cost about $3 million annually to support about 20 new employees, including the policy advisor and chief financial officer functions.

Ombudsman. H.R. 3231 would require the AIA to establish at least one local ombudsman office in each state to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services. CBO expects each local office to employ, on average, five to ten persons, so there would be a total of about 350 employees nationwide. We estimate that this would cost about $25 million annually, beginning in fiscal year 2004.

Office of Citizenship. Based on information from the INS, CBO expects the proposed Office of Citizenship would employ about 10 employees and cost about $1 million annually. This office would promote educational programs for aliens interested in becoming naturalized citizens.

Office of Children's Services and Office of Statistics. Most of the functions that would be performed by these proposed offices are already being done by existing offices within INS. Thus, CBO estimates that additional costs would be less than $1 million a year.

Increased Administrative Functions and Office Space. Under H.R. 3231, the AIA would be composed of two separate organizations, the Bureau of Immigration Services and Adjudications, and the Bureau of Immigration Enforcement. These bureaus would carry out all activities currently performed by the INS. Dividing the INS would add to the need for personnel to perform certain administrative functions such as general counsel work, budgeting, and Congressional affairs activities. CBO expects that under H.R. 3231 current costs for these activities would increase by about $1 million annually for roughly a dozen additional administrative positions, beginning in fiscal year 2004.

In addition, under the bill the new agency would require reconfigured office space in Washington, D.C., and in 36 field offices. Based on information from the INS, CBO expects that these costs would involve a one-time cost of about $10 million in fiscal year 2003.

Refugee and Asylum Adjudications

Current law authorizes the INS to collect fees to cover the costs of adjudicating applications for immigration benefits, such as citizenship and employment eligibility. (Those collections and the spending of them are recorded in the budget as direct spending.) The agency is permitted to set fees at a level to recover all such costs, including the costs of providing immigration benefits at no charge to certain individuals (including applicants for asylum and refugee status). Consequently, the INS charges fees that exceed the amount needed for cost recovery for some applicants to cover the costs of others. This practice would be prohibited by H.R. 3231. CBO expects this would lead to equivalent reductions in collections and spending.

To pay for the costs of processing asylum and refugee claims, H.R. 3231 would authorize the appropriation of such sums as necessary. Because the number of such claims is expected to rise over the next several years, CBO estimates that implementing this provision would cost about $180 million in 2003, and $1 billion over the 2003-2007 period.

Reports

H.R. 3231 would require GAO and the Attorney General to prepare about a dozen reports over the next several years, mostly relating to the effectiveness of the AIA. CBO estimates these reports would cost about $1 million in fiscal year 2003 and less than $500,000 in each year thereafter.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Pay-as-you-go procedures would apply to H.R. 3231 because the bill would affect direct spending, but CBO estimates that any net changes in direct spending would be less than $500,000 for each year.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (226-2860)
Impact on State, Local, and Tribal Governments: Angela Seitz (225-3220)
Impact on the Private Sector: Paige Piper/Bach (226-2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

Section 1(a) Short Title. The short title of H.R. 3231, the "Barbara Jordan Immigration Reform and Accountability Act of 2002," memorializes Chairman Barbara Jordan's important work with the

Commission on Immigration Reform, which called for dramatic reform of the INS, including a dismantling of the agency.

SEC. 2. ABOLISHMENT OF IMMIGRATION AND NATURALIZATION SERVICE; ESTABLISHMENT OF OFFICE OF AAGIA

Section 2(a) Abolishment of the INS. Section 2(a) abolishes the INS.

Section 2(b) Establishment of Office of AAGIA. Section 2(b) establishes in the Justice Department an Office of the AAGIA. The AAGIA heads this new Office, is appointed by the President, with consent of the Senate, must have at least 5 years of experience in managing a large and complex organization, and is to be paid at the same level as the pre-existing Associate Attorney General. Currently, the Commissioner of the INS reports to the Deputy Attorney General along with numerous other agencies, including the FBI, DEA, U.S. Attorneys, the Criminal Division, and the Marshals Service. As a result, the INS does not receive the attention it deserves, given the importance of immigration policy to our national well-being and security. Creating the new Associate Attorney General elevates immigration issues within the Justice Department and ensures that immigration will consistently receive the attention, management, and oversight that it needs. The 5-year management experience requirement is a minimum requirement that ensures that the person selected by the President is capable of managing a large organization. This will foster better management at the top of the immigration structure.

Section 2(c) Functions. Section 2(c) lists the responsibilities of the new AAGIA which are: (1) overseeing the work of, and supervising, the directors of the service and enforcement bureaus; (2) coordinating the administration of national immigration policy and the operations of the two bureaus, and reconciling conflicting policies of the bureaus; and (3) allocating and coordinating resources in the shared support functions for the two bureaus through the Office of Shared Services established in section 3. The day-to-day immigration operations shall be run and managed independently within each immigration bureau, while the Associate Attorney General is to supervise the bureau directors, coordinate such operations, resolve any conflicts that may arise between the two bureaus, and coordinate resources needed by both bureaus.

SEC. 3. POSITIONS WITHIN OFFICE OF AAGIA

Section 3(a) Policy Advisor. Section 3(a) establishes a position of Policy Advisor for the AAGIA. The Policy Advisor advises the Associate Attorney General on all immigration and naturalization policy matters. While policies specific to immigration services and enforcement are generally to be made in each respective bureau by the bureau's Chief of Policy and Strategy, the Policy Advisor in the Associate Attorney General's office coordinates and reconciles any inconsistent policies that arise between the two bureaus.

Section 3(b) General Counsel. Section 3(b) establishes a position of General Counsel for the AAGIA. The General Counsel acts as the principal legal advisor to the Associate Attorney General and is responsible for (1) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Associate Attorney General regarding legal matters that affect the Of-

fice of the AAGIA or the bureaus; (2) representing the BCIS regarding service issues before the Executive Office for Immigration Review (EOIR) and in other legal or administrative proceedings involving immigration service issues; and (3) representing the BIE in all exclusion, deportation, or removal proceedings before the EOIR, including in proceedings to adjudicate relief from exclusion, deportation, or removal, and in other legal or administrative proceedings involving immigration enforcement issues.

Unless the Associate Attorney General transfers the functions of the Office of Immigration Litigation (OIL), Civil Division, to the General Counsel's office, the General Counsel shall not perform the functions of OIL. While the directors of the bureaus may have legal advisors, such legal advisors remain accountable for implementing and complying with the specialized legal advice, opinions, determinations, and regulations given by the General Counsel regarding legal matters that affect the Office of the Associate Attorney General or the bureaus.

Section 3(c) Chief Financial Officer. Section 3(c) establishes the position of Chief Financial Officer (CFO) for the AAGIA. The CFO is responsible for (1) managing the finances of the Office of the AAGIA and the two bureaus, and has the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the Office and bureaus; (2) collecting payments, fines, and debts for the two bureaus; and (3) coordinating budget and financial management issues with the bureaus. While the budgets for immigration services and enforcement are to be formulated and executed in each respective bureau by the bureau's Chief Budget Officer, the CFO in the Associate Attorney General's office coordinates budget and financial issues that affect both bureaus.

Section 3(d) Director of Shared Services. Section 3(d) establishes a position of Director of the Office of Shared Services for the AAGIA. Although separating immigration services from enforcement will improve each mission, it is critical that the two separated bureaus communicate with each other and share resources that are needed by both bureaus, particularly files and computer databases. The Director of the Office of Shared Services is responsible for the allocation and coordination of resources involved in shared support functions for the two bureaus, including facilities management; information resources management, including computer databases and information technology; records and file management; and forms management. Such shared services are necessary to ensure that the BCIS will know when the BIE is enforcing an immigration law against an alien, and the BIE will know when the BCIS is considering an alien's application for an immigration benefit.

Section 3(e) Office of the Ombudsman. Section 3(e) establishes an Office of the Ombudsman in the Office of the AAGIA. The Ombudsman reports directly to the Associate Attorney General and must have a background in customer service and immigration law. The functions of the Ombudsman are described in section 5.

Section 3(f) Office of Professional Responsibility and Quality Review. Section 3(f) establishes the Office of Professional Responsibility and Quality Review in the Office of the AAGIA. The Director of the Office of Professional Responsibility and Quality Review: (1)

conducts investigations of non-criminal allegations of misconduct, corruption, and fraud involving any employee of the Office of the AAGIA or the two bureaus that are not subject to investigation by the Justice Department's Office of the Inspector General; (2) inspects the operations of the Associate Attorney General's office and the two bureaus and provides assessments of the quality of the operations of the office and bureaus as a whole and each of their components; and (3) provides an analysis of the management of the Associate Attorney General's office and the two bureaus. In assessing the quality of decisions made in the Associate Attorney General's office and the bureaus, or any of their components, the Office of Professional Responsibility and Quality Review shall consider (1) the accuracy of the finding of fact and conclusions of law used in rendering the decision; (2) any fraud or misrepresentation associated with the decision; and (3) the efficiency with which the decision was rendered. The backlog of immigration applications now numbers in the millions. Meanwhile, the General Accounting Office found in a 2002 report[3] that fraud in immigration benefit applications is significant. Therefore, while it is essential that the backlog be eliminated and that applications be adjudicated in a timely manner, adjudicators must not choose speed over accurate and thorough adjudication.

Section 3(g) Office of Children's Affairs. Section 3(g) establishes an Office of Children's Affairs within the Office of the AAGIA. The Office of Children's Affairs is to be headed by a Director, who will report to the AAGIA.

Section 3(g) transfers the functions with respect to "unaccompanied alien children's" care and placement that were exercised by the INS Commissioner, or his subordinates, prior to the effective date of H.R. 3231, to the Director of the new Office of Children's Affairs. The new Office specifically is responsible for coordinating and implementing the law and policy for unaccompanied alien children who come into the custody of the Department of Justice; making placement determinations for all unaccompanied alien children apprehended by the Attorney General or who otherwise come into the custody of the Department of Justice; identifying and overseeing the infrastructure and personnel of facilities that house unaccompanied alien children; annually publishing a State-by-State list of professionals or other entities qualified to provide guardian and attorney services; maintaining statistics on unaccompanied alien children; and reuniting unaccompanied alien children with a parent abroad, where appropriate.

An "unaccompanied alien child" means a child who (1) has no lawful immigration status in the United States; (2) has not yet turned 18 years old; and (3) with respect to whom—(a) there is no parent or legal guardian in the United States; or (b) no parent or legal guardian in the United States. is available to provide care and physical custody. In exercising its responsibility for the care and placement of unaccompanied alien children found in the United States, the new Office shall ensure that such placements take into account the childrens' interests. The Office also shall ensure that such children are likely to appear for hearings or actions

[3] United States General Accounting Office, *Immigration Benefit Fraud—Focused Approach is Needed to Address Problems* (2002).

involving them, that their placement does not endanger themselves or the community, and that they are not released on their own recognizance. Section 3(g) does not alter or affect substantive immigration law with regard to unaccompanied alien children in the United States. It leaves jurisdiction for adjudicating their immigration status or removing such children who are found to be removable with the BCIS, the BIE, the EOIR, and the Department of State.

Approximately 5,000 unaccompanied alien children are taken into custody by the INS every year. Most are held in INS detention facilities for the duration of their immigration proceedings. The Federal Government has a special responsibility to protect the dignity, health, and well-being of children in its custody, and this responsibility particularly extends to unaccompanied alien children.

The Committee is deeply concerned by the 2001 report on unaccompanied alien children in INS custody issued by the Office of the Inspector General.[4] That report, and independent investigations by nongovernmental organizations, such as the Women's Commission on Refugee Women and Children, have consistently revealed that many unaccompanied alien children are being held in conditions that are inappropriate for children, including reports of children being held in secure facilities with adults or with juvenile offenders, reports that unaccompanied children are being shackled and strip searched, and reports that unaccompanied alien children who have experienced great trauma are not having their particular psychological, physical, and emotional needs addressed while in custody.

While the Committee applauds the Department of Justice for recognizing the need for reform, we believe that these reforms have not gone far enough, and that the Federal Government's duty to protect and care for unaccompanied alien children continues to fall short of our expectations.

The Committee supports centralizing care and placement authority for unaccompanied alien children under an Office of Children's Affairs within the Office of the AAGIA and transferring current functions with respect to the care and placement of such children from the Commissioner of the INS and his subordinates to the Director of the newly created Office of Children's Affairs.

The Committee expects that the Director of the new Office will have authority to make placement and care decisions involving unaccompanied alien children in the custody of the Department of Justice, in consultation, with other entities within the Department of Justice, including the BIE. Moreover, the Committee expects that the Director of the Office and any employees under his or her supervision will have appropriate child welfare expertise to ensure that children in the custody of the Department of Justice are provided appropriate care.

The Committee expects the BIE field personnel, or others within the Department of Justice who encounter unaccompanied alien children, to be accountable to the Director of the Office of Children's Affairs for ensuring that the Director is promptly notified that such a child is in the custody of the Department.

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[4] Department of Justice Office of the Inspector General, *Unaccompanied Juveniles in INS Custody*, Report Number I–2001–009 (2001).

The Committee appreciates that the problems surrounding the treatment and care of unaccompanied alien children are pervasive and difficult. It believes that creating an Office of Children's Affairs with substantial authority is a step in the right direction toward resolving these problems.

At the same time, the Committee recognizes that the creation of the Office does not address a number of substantive problems that need to be addressed. The Committee has chosen to address care and placement issues in this bill, which is a bill dealing exclusively with the organization structure under which the nation's immigration functions are carried out. As with other areas, the Committee intends to continue to explore the special needs of unaccompanied alien children.

Section 3(h) Transfer of Functions of Office of Immigration Litigation. Section 3(h) transfers all functions, personnel, infrastructure, and funding of the Office of Immigration Litigation (OIL) from the Assistant Attorney General, Civil Division, to the AAGIA. The Associate Attorney General may, in the Associate Attorney General's discretion, charge the General Counsel to the Associate Attorney General with such functions, or transfer the functions elsewhere within the Office of the AAGIA.

OIL, in addition to being in a different component (the Civil Division) than the INS, reports to an Assistant Attorney General specific to the Civil Division, who reports to the pre-existing Associate Attorney General, who reports to the Deputy Attorney General. Although OIL represents the INS in Federal court, it has a very different chain of command to the Attorney General than does the INS. With the creation of a new AAGIA who handles only immigration affairs in the Justice Department, it makes sense to consolidate and streamline similar immigration functions under the new high level Justice Department official.

Section 3(i) Employee Discipline for Willful Deceit. Regardless of any other provision of law, section 3(i) permits the AAGIA to impose disciplinary action, including termination of employment, under the same policies and procedures applicable to FBI employees, upon any employee of the Office of the AAGIA or the bureaus who willfully deceives the Congress or agency leadership on any matter.

Willful deceit of Congress or agency leadership is unacceptable behavior and is cause for strong disciplinary action, including firing an employee. It prevents the recognition of problems by Congress and agency headquarters, and thus hinders their ability to solve problems and provide effective leadership. Too often, unscrupulous INS employees go unpunished and leave INS with a legacy of a lack of accountability.

SEC. 4. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

Section 4(a) Establishment of Bureau. Section 4(a) establishes the BCIS in the Justice Department. The bureau is headed by the Director, who reports directly to the AAGIA and must have at least 10 years professional experience in adjudicating Government benefits or services, at least five of which must have been years of service in a managerial capacity or in a position affording comparable management experience. The experience requirements encourage

better management of immigration services because the director will be familiar with both providing Government benefits and managing an organization. The years of experience need not have been in the ISN. The bureau director: (1) establishes citizenship and immigration services policies for the bureau; (2) oversees the administration of such policies and advises the Associate Attorney General on any policy or operation of the BCIS that may affect the BIE, including potentially conflicting policies or operations; (3) meets regularly with the Ombudsman to correct serious service problems identified by the Ombudsman; and (4) establishes procedures for a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months of its submission to Congress. The bureau director must also designate an official to administer student visa programs and the Student and Exchange Visitor Information System (SEVIS), and successor programs and systems, until September 30, 2004. The Director has the discretion to continue such position beyond September 30, 2004. The Director must provide any information collected by the SEVIS to the Director of the BIE necessary to enforce immigration laws. The Director is responsible for the day-to-day operations of the BCIS and is accountable for the performance of the BCIS.

Section 4(b) Transfer of Functions from Commissioner. Section 4(b) transfers from the INS Commissioner to the Director of the BCIS the following functions, and all personnel, infrastructure, and funding given to the Commissioner in support of such functions prior to the abolishment of the INS: (1) adjudications of nonimmigrant and immigrant visa petitions; (2) naturalization petition adjudications; (3) asylum and refugee application adjudications; (4) service center adjudications; and (5) all other immigration benefit adjudications.

Section 4(c) Office of Policy and Strategy. Section 4(c) establishes in the BCIS an Office of Policy and Strategy, headed by the Chief. The Chief must consult with BCIS personnel in the field and (1) establish national immigration services policies and priorities; (2) perform policy research and analysis on immigration services issues; and (3) coordinate immigration services policy issues with the Chief of Policy and Strategy in the BIE and the AAGIA through the Policy Advisor for the Associate Attorney General's Office, as appropriate. The Chief is responsible for devising policy and strategy specific to the BCIS.

Section 4(d) Legal Advisor. Section 4(d) permits the position of Legal Advisor for the BCIS to provide legal advice for the bureau's director and the bureau's employees.

Section 4(e) Chief Budget Officer for Bureau of Citizenship and Immigration Services. Section 4(e) establishes the position of Chief Budget Officer (CBO) for the BCIS. The CBO formulates and executes the budget of the BCIS according to the needs of the service bureau. The CBO should make the day-to-day budget decisions for the BCIS. The CBO reports to the bureau director and provides information to, and coordinates resolution of relevant issues with the CFO for the AAGIA.

Section 4(f) Office of Congressional, Intergovernmental, and Public Affairs. Section 4(f) establishes the Office of Congressional, Intergovernmental, and Public Affairs in the BCIS, which is headed by the Chief. The Chief (1) provides citizenship and immigration

services information to the Congress, including information on specific constituent cases relating to immigration services; (2) serves as a liaison with other Federal agencies on citizenship and immigration services issues; and (3) responds to inquiries from the media and general public on citizenship and immigration services issues.

Section 4(g) Office of Citizenship. Section 4(g) establishes an Office of Citizenship in the BCIS, which is headed by the Chief. The Chief promotes instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials. Creation of this office is to emphasize the importance of becoming a U.S. citizen, along with the rights and responsibilities that come with such status.

Section 4(h) Sectors. Section 4(h) calls for sectors of the BCIS, headed by sector directors and located in appropriate geographic locations. The sectors need not exist in exactly the same locations or number as the current INS regions. Sectors are responsible for directing all aspects of the BCIS' operations within their assigned geographic areas of activity. Sector directors provide general guidance and supervision to the field offices of the BCIS within their sectors. Sectors should not second-guess decisions made in the field offices, but rather should act as a conduit for information, guidelines, policy decisions, and management between headquarters and the field offices to ensure consistent service operations nation-wide.

Section 4(i) Field Offices. Section 4(i) establishes field offices in the BCIS, headed by field directors, who may be assisted by deputy field directors. The field offices need not exist in exactly the same locations or number as the current INS district offices, but should be established in locations that most efficiently serve the populations in the area. Field offices are responsible for assisting the Director of the BCIS in carrying out the Director's functions. Field directors are subject to the supervision and direction of their respective sector director, while field directors outside of the United States are subject to the supervision and direction of the bureau director. All field directors are accountable to, and receive their authority from, the Director of the BCIS to ensure consistent application and implementation of citizenship and immigration services policies and practices nationwide. Field offices shall not become the fiefdoms as too commonly exist currently in INS district offices around the country. Consistency across field offices is essential.

Section 4(j) Service Centers. Section 4(j) establishes service centers, headed by directors. Service centers are responsible for assisting the bureau director in carrying out the director's functions that can be effectively carried out at remote locations. Service centers need not exist in the exact same location or number as current INS service centers, but should be established in locations that most efficiently serve the populations in the area. Service center directors shall be subject to the general supervision and direction of their respective sector director, except that all service center directors are accountable to, and receive their authority from, the bureau director, to ensure consistent application and implementation of citizenship and immigration services policies and practices nationwide.

Section 4(k) Transfer and Removal. Regardless of any other law, the Director of the BCIS is authorized to transfer or remove any

sector director, field director, or service center director, in the bureau director's discretion.

Section 4(l) Mission. The BCIS' mission for the field offices and service centers is to directly and consistently follow all instructions and guidelines of the BCIS director and the AAGIA to ensure the development of a cohesive and consistent national immigration services policy.

SEC. 5. OFFICE OF THE OMBUDSMAN

Section 5(a) Functions. Section 5(a) establishes the functions of the Ombudsman as: (1) assisting individuals and employers in resolving problems with the BCIS; (2) identifying areas in which individuals and employers have problems in dealing with the BCIS; (3) proposing changes in the administrative practices of the BCIS to mitigate identified problems; and (4) identifying potential legislative changes appropriate to mitigate such problems. It is common practice currently for individuals and employers frustrated with delays and ill treatment from the INS to approach their Member of Congress for help. As a result, each congressional district office has one or more caseworkers to handle immigration casework and they are overwhelmed. Therefore, in addition to the functions stated above, it is envisioned that the Office of the Ombudsman serve as an alternative to the congressional immigration caseworkers handling routine immigration service problems to give relief to the caseworkers.

Section 5(b) Annual Reports. The Ombudsman is required to submit a report to the Judiciary Committees of the House and Senate by June 30 of each calendar year on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Such reports shall contain full and substantive analysis, statistical analysis, and shall (1) identify the initiatives the Office has taken to improve the services and responsiveness of the BCIS; (2) contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems; (3) contain an inventory of the items described in (1) and (2) above for which action has been taken and the result of such action, for which action remains to be completed and the period in which each item has remained on such inventory, finally for which no action has been taken, including the period in which each item has remained on such inventory, the reasons for the inaction, and the identity of any BCIS official responsible for such inaction; (4) contain recommendations for appropriate administrative and legislative action to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and (5) include any other information deemed advisable by the Ombudsman. The annual report is to be provided directly to the congressional Committees without prior review or comment from the Attorney General, AAGIA, any employee of the Justice Department, or the Office of Management and Budget. To help improve services, it is important that Congress have an accurate, unfiltered report on serious problems with the BCIS.

Section 5(c) Other Responsibilities. The Ombudsman also monitors the coverage and geographic allocation of local Ombudsman offices; develops guidance to distribute to all BCIS officers and em-

ployees outlining the criteria for referral of inquiries to the local Ombudsman offices; ensures that each local Ombudsman office telephone number is published and available to individuals and employers served by the local office; and meets regularly with the BCIS director to identify serious service problems and to present recommendations for appropriate administrative actions to resolve problems encountered by individuals and employers.

Section 5(d) Personnel Actions. The Ombudsman has the responsibility and authority to appoint local ombudsmen and ensure that at least one ombudsman is available for each State. The Ombudsman is also authorized to evaluate and take personnel actions, including dismissal, against any employee of any local ombudsman office. In carrying out these responsibilities, the Ombudsman may consult with the appropriate BCIS supervisory personnel.

Section 5(e) Responsibilities of Bureau of Citizenship and Immigration Services. Section 5(e) requires the BCIS director to establish procedures requiring a formal, written response to all recommendations submitted to the director by the Ombudsman within 3 months of receiving the recommendations.

Section 5(f) Operation of Local Offices. Each local ombudsman is required to report to the Ombudsman or delegate; may consult with the appropriate BCIS supervisory personnel regarding the daily operation of the local ombudsman office; shall notify any individual or employer initially seeking assistance from the local office that the local offices operate independently of any other component in the Office of the AAGIA and report directly to the Congress through the Ombudsman; and at the local ombudsman's discretion, may determine not to disclose to the BCIS that the office has had contact with, or has had information provided by an individual or employer. Each local ombudsman office is required to maintain a phone, fax, and other electronic communication access, and a post office address that is separate from those maintained by the BCIS or any component of the BCIS.

SEC. 6. ESTABLISHMENT OF BUREAU OF IMMIGRATION ENFORCEMENT

Section 6(a) Establishment of Bureau. Section 6(a) establishes the BIE in the Justice Department. The BIE is headed by a director who reports directly to the AAGIA and must have a minimum of at least 10 years professional experience in law enforcement, at least five of which must have been years of service in a managerial capacity. The experience requirements encourage better management of immigration enforcement because the director will be familiar with both law enforcement and managing an organization. The years of experience need not have been in the ISN. The bureau director: (1) establishes immigration enforcement policies for the bureau; (2) oversees the administration of such policies; and (3) advises the Associate Attorney General on any policy or operation of the BIE that may affect the BCIS, including potentially conflicting policies or operations.

Section 6(b) Transfer of Functions. Section 6(b) transfers from the INS Commissioner to the Director of the BIE the following functions, and all personnel, infrastructure, and funding given to the Commissioner in support of such functions prior to the abolishment of the INS: (1) the Border Patrol program; (2) the detention and re-

moval program; (3) the intelligence program; (4) the investigations program; and (5) the inspections program.

Section 6(c) Office of Policy and Strategy. Section 6(c) establishes in the BIE an Office of Policy and Strategy, headed by the Chief. The Chief must consult with BIE personnel in the field offices and (1) establish national immigration enforcement policies and priorities; (2) perform policy research and analysis on immigration enforcement issues; and (3) coordinate immigration enforcement policy issues with the Chief of Policy and Strategy in the BCIS and the AAGIA through the Policy Advisor for the Associate Attorney General's Office, as appropriate. The Chief is responsible for devising policy and strategy specific to the BIE.

Section 6(d) Legal Advisor. Section 6(d) permits the position of Legal Advisor for the BIE to provide legal advice for the bureau's director and the bureau's employees.

Section 6(e) Chief Budget Officer for Bureau of Immigration Enforcement. Section 6(e) establishes the position of Chief Budget Officer (CBO) for the BIE. The CBO formulates and executes the budget of the BIE according to the needs of the enforcement bureau. The CBO should make the day-to-day budget decisions for the BIE. The CBO reports to the bureau director and provides information to, and coordinates resolution of relevant issues with, the CFO for the AAGIA.

Section 6(f) Office of Congressional, Intergovernmental, and Public Affairs. Section 6(f) establishes the Office of Congressional, Intergovernmental, and Public Affairs in the BIE, which is headed by the Chief. The Chief (1) provides immigration enforcement information to the Congress, including information on specific enforcement cases; (2) serves as a liaison with other Federal agencies on immigration enforcement issues; and (3) responds to inquiries from the media and general public on immigration enforcement issues.

Section 6(g) Sectors. Section 6(g) calls for sectors of the BIE, headed by sector directors and located in appropriate geographic locations. The sectors need not exist in exactly the same locations or number as the current INS regions. Sectors are responsible for directing all aspects of the BIE's operations within their assigned geographic areas of activity. Sector directors provide general guidance and supervision to the field offices of the BIE within their sectors. Sectors should not second-guess decisions made in the field offices, but rather should act as a conduit for information, guidelines, policy decisions, and management between headquarters and the field offices to ensure consistent enforcement operations nation-wide.

Section 6(h) Field Offices. Section 6(h) establishes field offices in the BIE, headed by field directors, who may be assisted by deputy field directors. The field offices need not exist in exactly the same locations or number as the current INS district offices, but should be established in locations that most efficiently serve the populations in the area. There shall be a BIE field office situated in at least every city where there is situated a BCIS field office so that the two bureaus will communicate with each other, can share files of aliens who may face action from both bureaus, and so that the BCIS can easily bring any suspected application fraud to the BIE for investigation or other necessary immigration enforcement action. Field offices are responsible for assisting the Director of the BIE in carrying out the Director's functions. Field directors are

subject to the supervision and direction of their respective sector director, while field directors outside of the United States are subject to the supervision and direction of the bureau director. All field directors are accountable to, and receive their authority from, the Director of the BIE to ensure consistent application and implementation of immigration enforcement policies and practices nationwide. Field offices shall not become fiefdoms as too commonly exist currently with INS district offices around the country. Consistency across field offices is essential.

Section 6(i) Border Patrol Sectors. Section 6(i) permits the BIE to establish Border Patrol Sectors, headed by chief patrol agents, who may be assisted by deputy chief patrol agents. Since border patrol sectors may need to cover geographical areas different from the BIE sectors, due to needs specific to the Border Patrol, border patrol sectors may differ geographically from the BIE sectors. Border Patrol sectors are responsible for the enforcement of all the immigration and naturalization laws within their assigned geographic areas of activity, unless a power and authority is required to be exercised by a higher authority or has been exclusively delegated to another immigration official or class of immigration officer. Chief patrol agents are subject to the general supervision and direction of their respective sector director, except that they shall remain accountable to, and receive their authority from, the BIE director, to ensure consistent application and implementation of immigration enforcement policies nationwide.

Section 6(j) Transfer and Removal. Regardless of any other law, the Director of the BIE is authorized to transfer or remove any sector director, field director, or chief patrol officer, in the bureau director's discretion.

SEC. 7. OFFICE OF IMMIGRATION STATISTICS WITHIN BUREAU OF JUSTICE STATISTICS

Section 7(a) In General. Section 7(a) establishes within the Justice Department's Bureau of Justice Statistics an Office of Immigration Statistics. The Office is headed by a director who is appointed by the Attorney General and reports to the Director of Justice Statistics. The director is responsible for maintaining all immigration statistical information of the Office of the AAGIA, the BCIS, the BIE, and EOIR. The statistical information is required to include the information and immigration statistics in a publication similar to the statistical yearbook prepared by the INS and EOIR. However, the Office of Immigration Statistics should endeavor to collect much more statistical information than the INS currently does. Too often, much of the statistical information that Congress requests from the INS is unavailable because the INS does not gather such statistics, even after the Congress has asked for similar statistics repeatedly.

The director is also responsible for establishing standards of reliability and validity for immigration statistics collected by the Office of the Associate Attorney General, the BCIS, the BIE, and EOIR. Immigration statistics should no longer be politicized or manipulated to avoid negative press. Accordingly, established standards of reliability and validity are essential and long overdue.

While this new Office of Immigration Statistics maintains all immigration statistics, the Office of the Associate Attorney General,

the BCIS, BIE, and EOIR each gives the Office of Immigration Statistics statistical information from the operational data systems controlled by each respective component.

Section 7(b) Transfer of Functions. Section 7(b) transfers the functions performed by the Statistics Branch of the INS Office of Policy and Planning to this newly established Office of Immigration Statistics.

SEC. 8. EXERCISE OF AUTHORITIES

Section 8(b) Preservation of Attorney General's Authority. Section 8(b) states that the Attorney General or his delegate may perform any function for which H.R. 3231 vests responsibility in an official other than the Attorney General.

Section 8(c) Statutory Construction. Nothing in H.R. 3231 can be construed to limit the powers, authorities, or duties of the Secretary of State and special agents of the State Department and the Foreign Service under the State Department Basic Authorities Act, the Immigration and Nationality Act, or any other act, to investigate illegal passport or visa issuance or use.

SEC. 9. SAVINGS PROVISIONS

Section 9 states that all legal documents, including recognition of labor organizations, proceedings, suits, administrative procedure and judicial review that were in effect on the effective date of H.R. 3231, continue in effect according to their terms, until modified or terminated.

SEC. 10. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL

Section 10(a) In General. Section 10(a) states that the Justice Department personnel employed in connection with the functions transferred by H.R. 3231, as well as the functions that the Attorney General determines are related to the BCIS or BIE functions, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds available to the INS or OIL in connection with the functions transferred by H.R. 3231, shall be transferred to the AAGIA for allocation to the appropriate component or bureau. Unexpended funds transferred may only be used for the originally authorized and appropriated purposes. The Attorney General may continue to adjust or realign transfers of funds and personnel effected by H.R. 3231 for 2 years after the effective date of H.R. 3231.

Section 10(b) Delegation and Assignment. Section 10(b) permits the AAGIA, the BCIS director, and the BIE director to delegate any transferred function to such officers and employees of the Office of the Associate Attorney General, BCIS, or BIE, respectively, as the person may designate, and permits successive re-delegations of such functions as necessary. However, no delegation of functions may relieve the official to whom a function is transferred under H.R. 3231 of responsibility for the administration of the function. The official is still accountable for the daily operations by the official's subordinate officials and employees.

Section 10(d) Databases. Section 10(d) requires the AAGIA to ensure that the databases of the Office of the Associate Attorney General and those of the bureaus are integrated with each other and with the databases of EOIR to permit (1) the electronic docketing of each case by date of service upon an alien of the charging document; and (2) the tracking of the status of any alien throughout the alien's contact(s) with the United States immigration authorities, regardless of whether the entity with jurisdiction of the alien is, or was, the BCIS, the BIE, or EOIR. It is vital that the Government be able to track with which agencies an alien has had contact to avoid situations such as granting adjustment of status to an alien to whom the EOIR has issued a final order of removal, or removing an alien who was recently granted asylum by the BCIS. Integrated databases are essential for communication between the components to ensure consistent immigration procedures.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS; PROHIBITION ON TRANSFER OF FEES; LEASING OR ACQUISITION OF PROPERTY; SENSE OF CONGRESS

Section 11(a) Authorization of Appropriations for Transition. Section 11(a) authorizes such appropriated sums as are necessary to (1) abolish the INS; (2) establish the Office of the AAGIA, the BCIS, the BIE, and their components, and the transfers of functions required under H.R. 3231; and (3) carry out any other duty related to the reorganization of the immigration and naturalization functions that is necessary by H.R. 3231. The amounts appropriated must remain available until expended. The AAGIA should be designated as the principal person in the Department of Justice to appear before the House and Senate Appropriations Committees regarding appropriation requests, unless the Attorney General otherwise designates.

Section 11(a) also establishes a separate account in the general fund of the United States Treasury known as the "Immigration Reorganization Transition Account." All appropriated amounts mentioned above, in addition to amounts otherwise generated or reprogrammed, are to be deposited into this transition account. To the extent possible in appropriations acts, the funds in the transition account should be available for expenditure prior to the effective date of H.R. 3231. This prevents non-transition money, such as application fees, to be used for unintended purposes.

Section 11(b) Separation of Funding. Section 11(b) emphasizes that monies for immigration services must remain separate from immigration enforcement monies. Section 11(b) establishes separate accounts in the U.S. Treasury for appropriated funds and other deposits available for the BCIS and the BIE. It also requires the Director of the Office of Management and Budget to separate the budget requests for the BCIS and the BIE to ensure that the two bureaus are funded to the extent necessary to fully carry out their respective functions. Fees imposed for a specific service, application, or benefit must be deposited into the appropriate account for the bureau with jurisdiction over the function to which the fee relates. No fee may be transferred between the BCIS and the BIE. Currently, immigration service money can be transferred to immigration enforcement and visa versa. This prohibition on the transfer of fees is designed to end any such practice. In addition, col-

lected application fees should be spent on application adjudication and not for non-adjudicatory purposes.

Section 11(b) also ends the fee policy of using a portion of fees paid by visa applicants to cover the costs of adjudicating asylum applications. No longer will non-asylum applicants pay for asylum application processing. In addition, H.R. 3231 authorizes such sums as are necessary to process refugee, asylum, and adjustment of status for refugees applications.

Section 11(d) Sense of Congress. Section 11(d) gives the sense of Congress that the missions of the Office of the AAGIA, the BCIS, and the BIE are equally important, each should be adequately funded, and the functions of all three should not operate at financial levels below that in existence prior to the enactment of H.R. 3231.

Section 11(e) Elimination of Limitation on Expenditures for Backlog Reduction. Section 11(e) removes the limitation on expenditures for the reduction of application backlogs found in section 204 of the Immigration Services and Infrastructure Improvements Act of 2000. That act authorizes appropriations to reduce the immigration application backlogs, but states that none of the funds appropriated may be expended until a report on the backlogs has been submitted to Congress. The Attorney General is long overdue in issuing that backlog report. Section 11(e) of H.R. 3231 eliminates such limitation so that the funds can be appropriated to reduce the overwhelming application backlogs without waiting additional time for the backlog report.

SEC. 12. REPORTS AND IMPLEMENTATION PLANS

Section 12 requires the Attorney General to report to the Committees on Appropriations and the Judiciary of both the House of Representatives and the Senate on the proposed division and transfer of funds, as well as the division of personnel among the Office of the AAGIA and the two bureaus, within 120 days from the date of enactment of H.R. 3231. Section 12 also requires the Attorney General to submit to the same Committees an implementation plan to carry out H.R. 3231 within 120 days from the date of enactment, and every 6 months thereafter, until the end of FY 2005. The plan should include details concerning the separation of the Office of the Associate Attorney General and the two bureaus, including the following: (1) organizational structure, including field structure; (2) chain of command; (3) procedures for interaction among such office and bureaus; (4) procedures for the Director of Shared Services to perform all shared support functions, including authorizing the bureau directors to approve training curricula and to acquire necessary supplies and equipment to perform the daily operations of their respective bureau; (5) procedures to establish separate accounts and financial management systems for the two bureaus and to implement all provisions of section 11(b) of H.R. 3231; (6) fraud detection and investigation; (7) the processing and handling of removal proceedings, including expedited removal and application for relief from removal; (8) recommendations for conforming amendments to the Immigration and Nationality Act; (9) establishment of a transition team; and (10) ways to phase in the costs of separating the administrative support systems of the INS to provide for sepa-

rate administrative support systems for the two bureaus in instances where separate systems are more efficient or effective.

Section 12 also requires the Attorney General to report to the Appropriations and Judiciary Committees of both the House of Representatives and Senate on plans to improve immigration services and immigration enforcement within 1 year from the date of enactment of H.R. 3231. The Attorney General must also report on whether the Director of Shared Services is properly serving the two bureaus; and whether it would be more efficient to transfer more functions down to the bureaus or up to the Office of AAGIA, and the cost of such transfers, within 3 years from the date of enactment of H.R. 3231.

The Attorney General must also submit to Congress a report to ensure a prompt and timely response to emergent, unforeseen, or impending changes in applications for immigration benefits, including the amount of immediate funding that would be needed to respond to such unforeseen changes.

The last report required of the Attorney General by section 12 relates to the cost effectiveness of interior checkpoints. No later than 6 months after the date of enactment of H.R. 3231, the Attorney General must submit to the Congress a report on whether all permanent interior checkpoints operated by the INS should be closed and whether the funds that otherwise would be expended for the operation of such checkpoints should be reallocated for protecting and maintaining the integrity of the U.S. borders and increased enforcement at other points of entry into the U.S.

Section 12 requires the Comptroller General to submit reports to the Appropriations and Judiciary Committees of Congress as well. The Comptroller General must report on the transition within 18 months from the effective date of H.R. 3231 and every 6 months thereafter, until full implementation of H.R. 3231 has been completed. No later than 4 years from the effective date of H.R. 3231, the Comptroller General must submit a report, following a study, on whether the transferred functions have improved in the Office of AAGIA and the bureaus with respect to the following: operations; management, including accountability and communication; financial administration; and record keeping, including information and technology. The report must give a statement of the reasons for the determinations made above and any recommendations for further improvements to the Office of the AAGIA and the two bureaus.

SEC. 13. APPLICATION OF INTERNET-BASED TECHNOLOGIES

Section 13(a) Establishment of Tracking System. Section 13(a) requires the Attorney General to establish an Internet-based system that will permit individuals and employers with immigration applications filed with the Attorney General to have access to online information about the processing status of the application within 1 year from the date of enactment of H.R. 3231. Currently, individuals and employers must spend far too much time waiting in line at, and on the phone with, the INS to learn the status of a pending application. Allowing applicants to go on-line to check the status of an application will save hours of time and frustration in dealing with the INS' poor customer service and information officers.

Section 13(b) Feasibility Study for On-Line Filing and Improved Processing. Section 13(b) requires the Attorney General to conduct a feasibility study for applicants to have the ability to file applications on-line, in addition to checking the status on line. The study must include a review of computerization and technology of the INS relating to the immigration services and processing of filings related to immigrant services. The study must also include a time and cost estimate and consider other factors in implementing such a filing system, including the feasibility of fee payment on-line. The Attorney General is required to submit a report on this study to the Committees on the Judiciary for both chambers of Congress within 1 year from the date of enactment of H.R. 3231.

Section 13(c) Technology Advisory Committee. Section 13(c) requires the Attorney General to establish an advisory committee within 60 days from the date of enactment of H.R. 3231 to assist the Attorney General in establishing the tracking system and conducting the study discussed above. The Attorney General should consult with the Judiciary Committees in establishing the Technology Advisory Committee. The advisory committee shall be composed of representatives from high technology companies capable of establishing and implementing the system expeditiously and representatives of persons who may use the tracking system and the on-line filing system described above.

SEC. 14. DEFINITIONS

Section 14 defines "function" to include "any duty, obligation, power, authority, responsibility, right, privilege, activity, or program." It defines "office" as "any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof."

SEC. 15. EFFECTIVE DATE; TRANSITION

Section 15(a) In General. The abolishment of the INS, the establishment of the Office of the AAGIA, the BCIS, and the BIE, and the transfer of functions specified in H.R. 3231 take effect 1 year after the date of enactment of H.R. 3231. The AAGIA and the directors of the BCIS and BIE are also to be appointed no later than 1 year after the date of enactment of H.R. 3231. To the extent that functions to be transferred to such persons continue to be performed by the INS and OIL during fiscal year 2003, the Attorney General is required to provide for an appropriate accounting of funds and an appropriate transfer of funds appropriated to such entities to the appropriate component of the Office of the AAGIA, the BCIS or the BIE.

Section 15(b) Transition Period for Certain Bureau Functions. Regardless of the effective dates mentioned above, if it is more efficient to do so during the transition, the AAGIA may perform the policy, legal, and congressional, intergovernmental, and public affairs functions for both the BCIS and the BIE during the 18-month period after the transfer of functions under this act takes effect.

SEC. 16. CONFORMING AMENDMENT

Section 16 strikes the "Commissioner of Immigration and Naturalization, Department of Justice" from level IV of the Executive

Schedule list of positions, found at section 5315 of title 5 of the United States Code.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

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§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

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Associate Attorney General for Immigration Affairs.

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

* * * * * * *

[Commissioner of Immigration and Naturalization, Department of Justice.]

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OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

TITLE I—JUSTICE SYSTEM IMPROVEMENT

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PART C—BUREAU OF JUSTICE STATISTICS

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ESTABLISHMENT, DUTIES, AND FUNCTIONS

SEC. 302. (a) * * *

* * * * * * *

(c) The Bureau is authorized to—

(1) * * *

* * * * * * *

(22) ensure conformance with security and privacy requirement of section 812 and identify, analyze, and participate in the development and implementation of privacy, security and information policies which impact on Federal and State criminal justice operations and related statistical activities; **[**and**]**

(23) exercise the powers and functions set out in part H**[**.**]***; and*

(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review.

* * * * * * *

OFFICE OF IMMIGRATION STATISTICS

SEC. 305. (a) There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the "Office"), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.

(b) The Director of the Office shall be responsible for the following:

(1) Maintenance of all immigration statistical information of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review. Such statistical information shall include information and statistics of the type contained in the publication entitled "Statistical Yearbook of the Immigration and Naturalization Service" prepared by the Immigration and Naturalization Service (as in effect on the day prior to the effective date specified in section 15(a) of the Barbara Jordan Immigration Reform and Accountability Act of 2002).

(2) Establishment of standards of reliability and validity for immigration statistics collected by the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review.

(c) The Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review shall provide statistical information to the Office of Immigration Statistics from the operational data systems controlled by the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review, respectively, for the purpose of meeting the responsibilities of the Director.

* * * * * * *

SECTION 286 OF THE IMMIGRATION AND NATIONALITY ACT

DISPOSITION OF MONEYS COLLECTED UNDER THE PROVISIONS OF THIS TITLE

SEC. 286. (a) * * *

* * * * * * *

(m) Notwithstanding any other provisions of law, all adjudication fees as are designated by the Attorney General in regulations shall be deposited as offsetting receipts into a separate account entitled "Immigration Examinations Fee Account" in the Treasury of the United States, whether collected directly by the Attorney General or through clerks of courts: *Provided, however*, That all fees received by the Attorney General from applicants residing in the Virgin Islands of the United States and in Guam, under this subsection shall be paid over to the treasury of the Virgin Islands and to the treasury of Guam: *Provided further,* That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such ⟦services, including the costs of similar services provided without charge to asylum applicants or other immigrants.⟧ *services.* Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

* * * * * * *

SECTION 204 OF THE IMMIGRATION SERVICES AND INFRASTRUCTURE IMPROVEMENTS ACT OF 2000

SEC. 204. IMMIGRATION SERVICES AND INFRASTRUCTURE IMPROVEMENT ACCOUNT.

(a) * * *

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) * * *

* * * * * * *

[(4) LIMITATION ON EXPENDITURES.—None of the funds appropriated pursuant to paragraph (1) may be expended until the report described in section 205(a) has been submitted to Congress.]

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, APRIL 10, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:08 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., chairman of the Committee, presiding.

Chairman SENSENBRENNER. The Committee will be in order.

Pursuant to notice I now call up the bill H.R. 3231, the "Immigration Reform and Accountability Act of 2001" for purposes of markup, and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 3231, follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 3231

To replace the Immigration and Naturalization Service with the Agency for Immigration Affairs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 6, 2001

Mr. SENSENBRENNER (for himself and Mr. GEKAS) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To replace the Immigration and Naturalization Service with the Agency for Immigration Affairs, 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.

This Act may be cited as the ''Immigration Reform and Accountability Act of 2001''.

SEC. 2. ABOLISHMENT OF IMMIGRATION AND NATURALIZATION SERVICE; ESTABLISHMENT OF AGENCY FOR IMMIGRATION AFFAIRS.

(a) ABOLISHMENT OF INS.—The Immigration and Naturalization Service of the Department of Justice is abolished.

(b) ESTABLISHMENT OF AGENCY FOR IMMIGRATION AFFAIRS.—

(1) IN GENERAL.—There is established in the Department of Justice an agency to be known as the ''Agency for Immigration Affairs''.

(2) ASSOCIATE ATTORNEY GENERAL.—The head of the Agency for Immigration Affairs shall be the Associate Attorney General for Immigration Affairs. The Associate Attorney General for Immigration Affairs—

(A) shall be appointed by the President, by and with the consent of the Senate;

(B) shall report directly to the Attorney General; and

(C) shall have a minimum of 10 years experience in managing a large and complex organization.

(c) FUNCTIONS.—The Associate Attorney General for Immigration Affairs—

(1) shall oversee the work of, and supervise, the Director of the Bureau of Immigration Services and Adjudications and the Director of the Bureau of Immigration Enforcement;

(2) shall oversee the work of, and supervise, the Director of the Executive Office for Immigration Review;

(3) shall review on referral such decisions of the Board of Immigration Appeals as—

(A) he or she directs the Board to refer to him or her;

(B) the Chairman or a majority of the Board of Immigration Appeals refers to him or her;

(C) requested by the Director of the Bureau of Immigration Services and Adjudications; or

(D) requested by the Director of the Bureau of Immigration Enforcement;

(4) shall coordinate the administration of national immigration policy, including coordinating the operations of the Executive Office for Immigration Review, the Bureau of Immigration Services and Adjudications, and the Bureau of Immigration Enforce-

ment, and reconcile conflicting policies of such office and bureaus; and

(5) shall allocate and coordinate resources involved in supporting shared support functions for the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and offices within the Department of Justice, through the Office of Shared Services established by section 3.

SEC. 3. OFFICERS OF AGENCY FOR IMMIGRATION AFFAIRS.

(a) POLICY ADVISOR.—There shall be a position of Policy Advisor for the Agency for Immigration Affairs. The Policy Advisor shall be charged with providing advice to the Associate Attorney General for Immigration Affairs on all matters relating to immigration and naturalization policy. The Policy Advisor shall coordinate and reconcile the resolution of policy issues by the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review.

(b) LEGAL ADVISOR.—There shall be a position of Legal Advisor for the Agency for Immigration Affairs. The Legal Advisor shall be charged with providing legal advice to the Associate Attorney General for Immigration Affairs on all matters relating to immigration and naturalization.

The Legal Advisor shall coordinate and reconcile the resolution of legal issues by the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review. The Legal Advisor may issue legal opinions on general issues of law, which shall be binding on all officers and employees of the Agency for Immigration Affairs and which shall be published in an appropriate form.

(c) CHIEF FINANCIAL OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Financial Officer for the Agency for Immigration Affairs.

(2) FUNCTIONS.—The Chief Financial Officer shall be responsible for—

(A) the financial management of the Agency for Immigration Affairs and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of the agency;

(B) collection of all payments, fines, and other debts for the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review; and

(C) coordinating all budget and other financial management issues with the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review.

(d) DIRECTOR OF SHARED SERVICES.—There shall be a position of Director of the Office of Shared Services for the Agency for Immigration Affairs. The Director of the Office of Shared Services shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, the Executive Office for Immigration Review, and other offices within the Department of Justice, including—

(1) facilities management;

(2) information resources management, including computer databases and information technology;

(3) records and file management; and

(4) forms management.

(e) OFFICE OF THE OMBUDSMAN.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Agency for Immigration Affairs an office to be known as the ''Office of the Ombudsman''.

(B) OMBUDSMAN.—

(i) IN GENERAL.—The Office of the Ombudsman shall be under the supervision and direction of an official to be known as the ''Ombudsman''. The Ombudsman shall report directly to the Associate Attorney General for Immigration Affairs.

(ii) QUALIFICATIONS.—The Ombudsman shall have a background in customer service as well as immigration law.

(2) FUNCTIONS OF OFFICE.—The Ombudsman shall perform the functions described in section 5.

(f) OFFICE OF PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.—

(1) IN GENERAL.—There is established in the Agency for Immigration Affairs an office to be known as the ''Office of Professional Responsibility and Quality Review''. The head of the Office of Professional Responsibility and Quality Review shall be the Chief of the Office of Professional Responsibility and Quality Review. The Chief of the Office of Professional Responsibility and Quality Review shall be responsible for—

(A) conducting investigations of non-criminal allegations of misconduct, corruption,

and fraud involving any employee of the Agency for Immigration Affairs that are not subject to investigation by the Department of Justice Office of the Inspector General;

(B) inspecting the operations of the Agency for Immigration Affairs and providing assessments of the quality of the operations of the agency as a whole and each of its components; and

(C) providing an analysis of the management of the Agency for Immigration Affairs.

(2) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with paragraph (1)(B) with respect to decisions of the Agency for Immigration Affairs or any of its components, consideration shall be given to—

(A) the accuracy of the finding of fact and conclusions of law used in rendering the decision;

(B) any fraud or misrepresentation associated with the decision; and

(C) the efficiency with which the decision was rendered.

(g) EMPLOYEE DISCIPLINE FOR WILLFUL DECEIT.—The Associate Attorney General for Immigration

Affairs may, notwithstanding any other provision of law, 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 Agency for Immigration Affairs who willfully deceives the Congress or agency leadership on any matter.

(h) DEFINITION.—For purposes of this section, the term ''employee of the Agency for Immigration Affairs'' includes all employees of the Agency for Immigration Affairs, the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office of Immigration Review (including immigration judges, administrative law judges, and members of the Board of Immigration Appeals).

SEC. 4. ESTABLISHMENT OF BUREAU OF IMMIGRATION SERVICES AND ADJUDICATIONS.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Agency for Immigration Affairs a bureau to be known as the ''Bureau of Immigration Services and Adjudications''.

(2) DIRECTOR.—The head of the Bureau of Immigration Services and Adjudications shall be the

Director of the Bureau of Immigration Services and Adjudications, who—

(A) shall report directly to the Associate Attorney General for Immigration Affairs; and

(B) shall have a minimum of 10 years professional experience in the rendering of adjudications on the provision of government benefits or services, at least 5 of which shall have been years of service in a managerial capacity or in a position affording comparable management experience.

(3) FUNCTIONS.—The Director of the Bureau of Immigration Services and Adjudications—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Associate Attorney General for Immigration Affairs with respect to any policy or operation of the Bureau of Immigration Services and Adjudications that may affect the Bureau of Immigration Enforcement, the Executive Office for Immigration Review, or

both, including potentially conflicting policies or operations;

(D) shall meet regularly with the Ombudsman to correct serious service problems identified by the Ombudsman; and

(E) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to the Congress within 3 months after its submission to the Congress.

(b) TRANSFER OF FUNCTIONS.—

(1) FROM COMMISSIONER.—There are transferred from the Commissioner of the Immigration and Naturalization Service to the Director of the Bureau of Immigration Services and Adjudications all functions performed under the following programs, and all personnel, infrastructure, and funding provided to the Commissioner in support of such programs immediately before the effective date of this section:

(A) Adjudications of nonimmigrant and immigrant visa petitions.

(B) Adjudications of naturalization petitions.

(C) Adjudications of asylum and refugee applications.

(D) Adjudications performed at Service centers.

(E) All other adjudications under the Immigration and Nationality Act performed by the Immigration and Naturalization Service as of the date of the enactment of this Act.

(2) FROM ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION.—There are transferred from the Assistant Attorney General, Civil Rights Division, to the Director of the Bureau of Immigration Services and Adjudications all functions performed by the Office of Special Counsel for Immigration Related Unfair Employment Practices, and all personnel, infrastructure, and funding provided to the Assistant Attorney General, United States Civil Rights Division, in support of the Office of Special Counsel for Immigration Related Unfair Employment Practices immediately before the effective date of this section.

(3) FROM ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION.—There are transferred from the Assistant Attorney General, Civil Division, to the Director of the Bureau of Immigration Services and

Adjudications all functions performed by the Office of Immigration Litigation relating to the litigation of naturalization suits and litigation involving immigrant and nonimmigrant visas and all personnel, infrastructure, and funding provided to the Assistant Attorney General, Civil Division, in support of those functions immediately before the effective date of this section.

(c) OFFICE OF POLICY AND STRATEGY.—There is established in the Bureau of Immigration Services and Adjudications an office to be known as the ''Office of Policy and Strategy''. The head of the Office of Policy and Strategy shall be the Chief of the Office of Policy and Strategy. In consultation with Bureau of Immigration Services and Adjudications personnel in field offices, the Chief of the Office of Policy and Strategy shall be responsible for—

(1) establishing national immigration services policies and priorities;

(2) performing policy research and analysis on immigration services issues (excluding statistical information); and

(3) coordinating immigration policy issues with the Office of Policy and Strategy for the Bureau of Immigration Enforcement and the Associate Attorney General for Immigration Affairs through the

Policy Advisor for the Agency for Immigration Affairs, as appropriate.

(d) GENERAL COUNSEL FOR BUREAU OF IMMIGRATION SERVICES AND ADJUDICATIONS.—There shall be a position of General Counsel for the Bureau of Immigration Services and Adjudications. The General Counsel and his or her delegates—

(1) shall provide specialized legal advice and other assistance to the Director of the Bureau of Immigration Services and Adjudications, the Director's delegates, and all employees of the components transferred under this section;

(2) shall represent the Bureau of Immigration Services and Adjudications in visa petition appeal proceedings and unfair immigration-related employment practice proceedings before the Executive Office for Immigration Review and in other legal, judicial, or administrative proceedings involving immigration services issues (excluding exclusion, deportation, or removal proceedings and applications for relief therefrom); and

(3) shall coordinate legal issues with the General Counsel for the Bureau of Immigration Enforcement, including the issuance of joint legal opinions where more than the Bureau of Immigration

Services and Adjudications is affected, the General Counsel for the Executive Office for Immigration Review, and the Associate Attorney General for Immigration Affairs through the Legal Advisor for the Agency for Immigration Affairs, as appropriate.

(e) CHIEF BUDGET OFFICER FOR BUREAU OF IMMIGRATION SERVICES AND ADJUDICATIONS.—There shall be a position of Chief Budget Officer for the Bureau of Immigration Services and Adjudications. The Chief Budget Officer shall be responsible for formulating and executing the budget of the Bureau of Immigration Services and Adjudications. The Chief Budget Officer shall report to the Director of the Bureau of Immigration Services and Adjudications and shall provide information to, and coordinate resolution of relevant issues with, the Chief Financial Officer for the Agency for Immigration Affairs.

(f) OFFICE OF OPERATIONS STATISTICS.—There is established in the Bureau of Immigration Services and Adjudications an office to be known as the ''Office of Operations Statistics''. The head of the Office of Operations Statistics shall be the Chief of the Office of Operations Statistics. The Chief shall have had experience in statistical programs. The Chief of the Office of Operations Statistics shall be responsible for compiling and disseminating

the daily operational statistics of the Bureau of Immigration Services and Adjudications.

(g) OFFICE OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—There is established in the Bureau of Immigration Services and Adjudications an office to be known as the ''Office of Congressional, Intergovernmental, and Public Affairs''. The head of such office shall be the Chief of the Office of Congressional, Intergovernmental, and Public Affairs. The Chief shall be responsible for—

(1) providing information relating to immigration services to the Congress, including information on specific cases relating to immigration services;

(2) serving as a liaison with other Federal agencies on immigration services issues; and

(3) responding to inquiries from the media and general public on immigration services issues.

(h) SECTORS.—Headed by sector directors, and located in appropriate geographic locations, sectors of the Bureau of Immigration Services and Adjudications shall be responsible for directing all aspects of the Bureau of Immigration Services and Adjudication operations within their assigned geographic areas of activity. Sector directors shall provide general guidance and supervision to the

field offices of the Bureau of Immigration Services and Adjudications within their sectors.

(i) FIELD OFFICES.—Headed by field directors, who may be assisted by deputy field directors, these offices shall be responsible for assisting the Director of the Bureau of Immigration Services and Adjudications in carrying out the Director's functions. Field directors shall be subject to the general supervision and direction of their respective sector director, except that field directors outside of the United States shall be subject to the general supervision and direction of the Director of the Bureau of Immigration Services and Adjudications. All field directors shall remain accountable to, and receive their authority from, the Director of the Bureau of Immigration Services and Adjudications, in order to ensure consistent application and implementation of policies nationwide.

(j) SERVICE CENTERS.—Headed by service center directors, field offices shall be responsible for assisting the Director of the Bureau of Immigration Services and Adjudications in carrying out the Director's functions that can be effectively carried out at remote locations. Service center directors are subject to the general supervision and direction of their respective sector director, except that all service center directors shall remain accountable to, and receive their authority from, the Director of the Bureau

of Immigration Services and Adjudications, in order to ensure consistent application and implementation of policies nationwide.

(k) TRANSFER AND REMOVAL.—Notwithstanding any other provision of law, the Director of the Bureau of Immigration Services and Adjudications may, in the Director's discretion, transfer or remove any field director, sector director, or service center director.

(l) REFERENCES.—With respect to any function transferred by this section or Act to, and exercised on or after the effective date of this section by, the Director of the Bureau of Immigration Services and Adjudications, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Immigration Services and Adjudications; or

(2) to such component is deemed to refer to the Bureau of Immigration Services and Adjudications.

SEC. 5. OFFICE OF THE OMBUDSMAN.

(a) FUNCTIONS.—It shall be the function of the Office of the Ombudsman established under section 3—

(1) to assist individuals and employers in resolving problems with the Bureau of Immigration Services and Adjudications;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Immigration Services and Adjudications;

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Immigration Services and Adjudications to mitigate problems identified under paragraph (2); and

(4) to identify potential legislative changes which may be appropriate to mitigate such problems.

(b) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the initiatives the Office of the Ombudsman has taken on improving services and responsiveness of the Bureau of Immigration Services and Adjudications;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Bureau of Immigration Services and Adjudications official who is responsible for such inaction;

(F) shall contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by individuals and employers; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior review or comment from the Assistant Attorney General for Immigration Affairs, any other officer or employee of the Department of Justice, or the Office of Management and Budget.

(c) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all Bureau of Immigration Services and Adjudications officers and employees outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of the Bureau of Immigration Services and Adjudications to identify serious service problems and to present

recommendations for administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(d) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman described in subparagraph (A).

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Immigration Services and Adjudications in carrying out the Ombudsman's responsibilities under this subsection.

(e) RESPONSIBILITIES OF BUREAU OF IMMIGRATION SERVICES AND ADJUDICATIONS.—The Director of the Bureau of Immigration Services and Adjudications shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(f) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman —

(A) shall report to the Ombudsman or delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Immigration Services and Adjudications regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component in the Agency for Immigration Affairs and report directly to the Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Immigration Services and Adjudications contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office

address, that is separate from those maintained by the Bureau of Immigration Services and Adjudications, or any component of the Bureau of Immigration Services and Adjudications.

SEC. 6. ESTABLISHMENT OF BUREAU OF IMMIGRATION ENFORCEMENT.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Agency for Immigration Affairs a bureau to be known as the ''Bureau of Immigration Enforcement''.

(2) DIRECTOR.—The head of the Bureau of Immigration Enforcement shall be the Director of the Bureau of Immigration Enforcement, who—

(A) shall report directly to the Associate Attorney General for Immigration Affairs; and

(B) shall have a minimum of 10 years professional experience in law enforcement, at least 5 of which shall have been years of service in a managerial capacity.

(3) FUNCTIONS.—The Director of the Bureau of Immigration Enforcement—

(A) shall establish the policies for performing such functions as are transferred to the

Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Associate Attorney General for Immigration Affairs with respect to any policy or operation of the Bureau of Immigration Enforcement that may affect the Bureau of Immigration Services and Adjudications, or the Executive Office for Immigration Review, including potentially conflicting policies or operations.

(b) TRANSFER OF FUNCTIONS.—

(1) FROM COMMISSIONER.—There are transferred from the Commissioner of the Immigration and Naturalization Service to the Director of the Bureau of Immigration Enforcement all functions performed under the following programs, and all personnel, infrastructure, and funding provided to the Commissioner in support of such programs immediately before the effective date of this section:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

(E) The inspections program.

(2) FROM ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION.—There are transferred from the Assistant Attorney General, Criminal Division, to the Director of the Bureau of Immigration Enforcement all functions performed by the Office of Special Investigations and all personnel, infrastructure, and funding provided to the Assistant Attorney General, Criminal Division, in support of the Office of Special Investigations immediately before the effective date of this section.

(3) FROM ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION.—There are transferred from the Assistant Attorney General, Civil Division, to the Director of the Bureau of Immigration Enforcement all functions performed by the Office of Immigration Litigation relating to the litigation of the following:

(A) Challenges to orders of exclusion, deportation, and removal;

(B) Denials of relief from exclusion, deportation, and removal;

(C) Petitions seeking review of employer sanctions;

(D) Habeas corpus actions filed by aliens seeking release from detention or to block deportation or removal;

(E) Appeals from district court immigration decisions;

(F) Suits challenging immigration policy and enforcement actions by the Attorney General; and

(G) all personnel, infrastructure, and funding provided to the Assistant Attorney General, Civil Division, in support of those functions immediately before the effective date of this section.

(c) OFFICE OF POLICY AND STRATEGY.—There is established in the Bureau of Immigration Enforcement an office to be known as the ''Office of Policy and Strategy''. The head of the Office of Policy and Strategy shall be the Chief of the Office of Policy and Strategy. In consultation with Bureau of Immigration Enforcement personnel in field offices, the Chief of the Office of Policy and Strategy shall be responsible for—

(1) establishing national immigration enforcement policies and priorities;

(2) performing policy research and analysis on immigration enforcement issues (excluding statistical information); and

(3) coordinating immigration policy issues with the Office of Policy and Strategy for the Bureau of Immigration Services and Adjudications and the Associate Attorney General for Immigration Affairs through the Policy Advisor for the Office of the Associate Attorney General for Immigration Affairs, as appropriate.

(d) GENERAL COUNSEL FOR THE BUREAU OF IMMIGRATION ENFORCEMENT.—There shall be a position of General Counsel for the Bureau of Immigration Enforcement. The General Counsel and his or her delegates—

(1) shall provide specialized legal advice and other assistance to the Director of the Bureau, the Director's delegates, and all employees of the components transferred under this section;

(2) shall represent the Bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review, including in proceedings to adjudicate relief from exclusion, deportation and removal, and in other legal, judicial, or administrative proceedings involving immigration enforcement issues; and

(3) shall coordinate legal issues with the General Counsel for the Bureau of Immigration Services and Adjudications, including the issuance of joint legal opinions where more than the Bureau of Immigration Enforcement is affected, the General Counsel for the Executive Office for Immigration Review, and the Associate Attorney General for Immigration Affairs through the Legal Advisor for the Agency for Immigration Affairs, as appropriate.

(e) CHIEF BUDGET OFFICER FOR THE BUREAU OF IMMIGRATION ENFORCEMENT.—There shall be a position of Chief Budget Officer for the Bureau of Immigration Enforcement. The Chief Budget Officer shall be responsible for formulating and executing the budget of the Bureau of Immigration Enforcement. The Chief Budget Officer shall report to the Director of the Bureau of Immigration Enforcement and shall provide information to, and coordinate resolution of relevant issues with, the Chief Financial Officer for the Agency for Immigration Affairs.

(f) OFFICE OF OPERATIONS STATISTICS.—There is established in the Bureau of Immigration Enforcement an office to be known as the ''Office of Operations Statistics''. The head of the Office of Operations Statistics shall be the Chief of the Office of Operations Statistics. The Chief shall have had experience in statistical programs. The

Chief of the Office of Operations Statistics shall be responsible for compiling and disseminating the daily operational statistics of the Bureau of Immigration Enforcement.

(g) OFFICE OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—There is established in the Bureau of Immigration Enforcement an office to be known as the ''Office of Congressional, Intergovernmental, and Public Affairs''. The head of such office shall be the Chief of the Office of Congressional, Intergovernmental, and Public Affairs. The Chief shall be responsible for—

(1) providing information relating to immigration enforcement to the Congress, including information on specific cases relating to immigration enforcement;

(2) serving as a liaison with other Federal agencies on immigration enforcement issues; and

(3) responding to inquiries from the media and the general public on immigration enforcement issues.

(h) SECTORS.—Headed by sector directors, and located in appropriate geographic locations, sectors of the Bureau of Immigration Enforcement shall be responsible for directing all aspects of the Bureau of Immigration Enforcement's operations within their assigned geographic

areas of activity. Sector directors shall provide general guidance and supervision to the field offices of the Bureau of Immigration Enforcement within their sectors.

(i) FIELD OFFICES.—Headed by field directors, who may be assisted by deputy field directors, field offices shall be responsible for assisting the Director of the Bureau of Immigration Enforcement in carrying out the Director's functions. Field directors shall be subject to the general supervision and direction of their respective sector director, except that field directors outside of the United States shall be subject to the general supervision and direction of the Director of the Bureau of Immigration Enforcement. All field directors shall remain accountable to, and receive their authority from, the Director of the Bureau of Immigration Enforcement, in order to ensure consistent application and implementation of policies nationwide. There shall be a field office situated in at least every location where there is situated a field office of the Bureau of Immigration Services and Adjudications.

(j) BORDER PATROL SECTORS.—Headed by chief patrol agents, who may be assisted by deputy chief patrol agents, these offices shall be responsible for the enforcement of the Immigration and Nationality Act and all other laws relating to immigration and naturalization within their assigned geographic areas of activity, unless any

1 such power and authority is required to be exercised by
2 higher authority or has been exclusively delegated to an-
3 other immigration official or class of immigration officer.
4 Chief patrol agents are subject to the general supervision
5 and direction of their respective sector director, except
6 that they shall remain accountable to, and receive their
7 authority from, the Director of the Bureau of Immigration
8 Enforcement, in order to ensure consistent application and
9 implementation of policies nationwide.

10 (k) TRANSFER AND REMOVAL.—Notwithstanding
11 any other provision of law, the Director of the Bureau of
12 Immigration Enforcement may, in the Director's discre-
13 tion, transfer or remove any field director, sector director,
14 or chief patrol officer.

15 (l) REFERENCES.—With respect to any function
16 transferred by this section or Act to, and exercised on or
17 after the effective date of this section by, the Director of
18 the Bureau of Immigration Enforcement, any reference in
19 any other Federal law, Executive order, rule, regulation,
20 or delegation of authority, or any document of or per-
21 taining to a component of government from which such
22 function is transferred—

23 (1) to the head of such component is deemed to
24 refer to the Director of the Bureau of Immigration
25 Enforcement; or

(2) to such component is deemed to refer to the Bureau of Immigration Enforcement.

SEC. 7. EXERCISE OF AUTHORITIES.

Except as otherwise provided by law, a Federal official to whom a function is transferred by this Act may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this Act.

SEC. 8. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, recognition of labor organizations, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act; and

(2) that are in effect on the effective date of such transfer (or become effective after such date

pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—Sections 4 and 6 and this section shall not affect any proceedings or any application for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date specified in section 17(a) before an office whose functions are transferred by this Act, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This Act shall not affect suits commenced before the effective date specified in section 17(a), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official capacity of such individual as an officer or employee in connection with a function transferred by this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer and under this Act such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this Act, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this Act shall apply to the exercise of such function by the head of the office,

and other officers of the office, to which such function is transferred by such section.

SEC. 9. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.

(a) IN GENERAL.—The personnel of the Department of Justice employed in connection with the functions transferred by this Act (and functions that the Attorney General determines are properly related to the functions of the Bureau of Immigration Services and Adjudications or the Bureau of Immigration Enforcement and would, if transferred, further the purposes of the bureau to which the function is transferred), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Immigration and Naturalization Service, the Executive Office for Immigration Review, the Office of Immigration Litigation of the Civil Division, the Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division, or the Office of Special Investigations of the Criminal Division in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Agency for Immigration Affairs for appropriate allocation by the

Associate Attorney General for Immigration Affairs or the appropriate head of component of the agency. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney General shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this Act for a period of 2 years after the date of the establishment of the Agency for Immigration Affairs.

(b) DELEGATION AND ASSIGNMENT.—Except as otherwise expressly prohibited by law or otherwise provided in this Act, of the Associate Attorney General for Immigration Affairs, the Director of the Bureau of Immigration Services and Adjudications, and the Director of the Bureau of Immigration Enforcement, the person to whom functions are transferred under this Act may delegate any of the functions so transferred to such officers and employees of the Agency for Immigration Affairs, the Bureau of Immigration Services and Adjudications or the Bureau of Immigration Enforcement, respectively, as the person may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this Act shall relieve the official to whom

a function is transferred under this Act of responsibility for the administration of the function.

(c) AUTHORITIES OF ATTORNEY GENERAL.—The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary with regard to the functions transferred by this Act, and may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this Act. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(d) DATABASES.—The Associate Attorney General for Immigration Affairs shall ensure that the Agency for Immigration Affairs' databases and those of the Bureau of Immigration Services and Adjudications and the Bureau of Immigration Enforcement are integrated with the databases of the Executive Office for Immigration Review in such a way as to permit—

(1) the electronic docketing of each case by date of service upon an alien of the notice to appear in the case of a removal proceeding (or an order to show cause in the case of a deportation proceeding, or a notice to alien in the case of an exclusion proceeding); and

(2) the tracking of the status of any alien throughout the alien's contact with United States immigration authorities without regard to whether the entity with jurisdiction over the alien is the Agency for Immigration Affairs, the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, or the Executive Office for Immigration Review.

SEC. 10. STATUTORY CONSTRUCTION.

Nothing in this Act may be construed to preclude or limit in any way the powers, authorities, or duties of the Secretary of State and special agents of the Department of State and the Foreign Service under the State Department Basic Authorities Act of 1956, the Immigration and Nationality Act, or any other Act, to investigate illegal passport or visa issuance or use.

SEC. 11. PERSONNEL FLEXIBILITIES.

(a) GENERAL IMPROVEMENTS IN PERSONNEL FLEXIBILITIES.—Subpart I of part III of title 5, United

States Code, is amended by adding at the end the following chapter:

"CHAPTER 96—PERSONNEL FLEXIBILITIES RELATING TO THE AGENCY FOR IMMIGRATION AFFAIRS

"Sec.
"9601. Agency for Immigration Affairs personnel flexibilities.
"9602. Pay authority for critical positions.
"9603. Streamlined critical pay authority.
"9604. Recruitment, retention, relocation incentives, and relocation expenses.

"§ 9601. Agency for Immigration Affairs personnel flexibilities

"(a) Any flexibilities provided by sections 9602 through 9604 shall be exercised in a manner consistent with—

"(1) chapter 23 (relating to merit system principles and prohibited personnel practices);

"(2) provisions relating to preference eligibles;

"(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

"(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

"(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Attorney General under section 1104(a)(2).

"(b) The Attorney General shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

"(c) Employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any flexibility provided by sections 9602 through 9604.

"§ 9602. Pay authority for critical positions

"(a) When the Attorney General seeks a grant of authority under section 5377 for critical pay for 1 or more positions at the Agency for Immigration Affairs, the Office of Management and Budget may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

"(b) No allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

"§ 9603. Streamlined critical pay authority

"(a) Notwithstanding section 9602, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Attorney General may, for a period of 10 years after the date of the enactment of this section, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Agency for Immigration Affairs, if—

"(1) the positions—

"(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

"(B) are critical to the Agency for Immigration Affairs' successful accomplishment of an important mission;

"(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

"(3) the number of such positions does not exceed 20 at any one time;

"(4) designation of such positions is approved by the Attorney General;

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

"(6) appointees to such positions were not employees of the Immigration and Naturalization Service, the Executive Office for Immigration Review, the Office of Immigration Litigation of the Civil Division, the Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division, or the Office of Special Investigations of the Criminal Division prior to the date of the enactment of this Act;

"(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

"(8) all such positions are excluded from the collective bargaining unit.

"(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

"§ 9604. Recruitment, retention, relocation incentives, and relocation expenses

"(a) For a period of 10 years after the date of the enactment of this section and subject to approval by the Office of Personnel Management, the Attorney General

may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives.

"(b) For a period of 10 years after the date of the enactment of this section, the Attorney General may pay from appropriations made to the Agency for Immigration Affairs allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9602 or 9603 after the date of the enactment of this Act.".

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding after the item relating to chapter 95 the following:

"96. Personnel flexibilities relating to the Agency for Immigration Affairs ..... 9601".

(c) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) DEFINITION.—In this subsection, the term "employee" means an employee (as defined by section 2105 of title 5, United States Code) who is employed by the Agency for Immigration Affairs serving under an appointment without time limitation,

and has been currently employed for a continuous period of at least 3 years, but does not include—

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

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under the applicable retirement system referred to in subparagraph (A);

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

(D) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

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

(F) an employee covered by statutory reemployment rights who is on transfer to another organization;

(G) any employee who, during the 24-month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the 12-month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code; or

(H) any employee within a unit to which a labor organization is accorded exclusive recognition under chapter 71.

(2) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(A) IN GENERAL.—The Associate Attorney General for Immigration Affairs may pay voluntary separation incentive payments under this section to any employee to the extent necessary to carry out the plan to restructure the immigration functions of the Department of Justice into the Agency for Immigration Affairs under this Act.

(B) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

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

(ii) shall be paid from appropriations or funds available for the payment of the basic pay of the employee;

(iii) shall be equal to the lesser of—

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

(II) an amount determined by the Associate Attorney General for Immigration Affairs not to exceed $25,000;

(iv) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before January 1, 2005;

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

(vi) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(3) ADDITIONAL AGENCY FOR IMMIGRATION AFFAIRS CONTRIBUTIONS TO THE RETIREMENT FUND.—

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

(B) DEFINITION.—In subparagraph (A), the term ''final basic pay'', with respect to an

employee, means the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(4) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who has received a voluntary separation incentive payment under this subsection and accepts any employment for compensation with the Government of the United States, or who works for any agency of the United States Government through a personal services contract, within 5 years after the date of the separation on which the payment is based, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment to the Agency for Immigration Affairs.

(5) EFFECT ON EMPLOYMENT LEVELS.—

(A) INTENDED EFFECT.—Voluntary separations under this subsection are not intended to necessarily reduce the total number of full-time equivalent positions in the Agency for Immigration Affairs.

(B) USE OF VOLUNTARY SEPARATIONS.—The Agency for Immigration Affairs may redeploy or use the full-time equivalent positions vacated by voluntary separations under this subsection to make other positions available to more critical locations or more critical occupations.

SEC. 12. MISCELLANEOUS PROVISIONS.

Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Attorney General is authorized to expend from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act, such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of establishing the Agency for Immigration Affairs under this Act.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS; PROHIBITION ON TRANSFER OF FEES; SENSE OF CONGRESS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to effect the abolition of the Immigration and Naturalization Service, the establishment of the Agency

for Immigration Affairs and its components, and the transfers of functions required to be made under this Act, and to carry out any other duty related to the reorganization of the immigration and naturalization functions that is made necessary by this Act.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) shall remain available until expended.

(3) TRANSITION ACCOUNT.—

(A) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Immigration Reorganization Transition Account'' (in this paragraph referred to as the ''Account'').

(B) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under paragraph (1).

(C) ADVANCED AVAILABILITY OF FUNDS.—To the extent provided in appropriations Acts, funds in the Account shall be available for expenditure before the effective date in section 17(a).

(b) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review.

(2) SEPARATE BUDGETS.—To ensure that the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

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

(4) FEES NOT TRANSFERABLE.—No fee may be transferred among the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigra-

tion Review for purposes not authorized by section 286 of the Immigration and Nationality Act.

(5) ESTABLISHMENT OF FEES FOR ADJUDICATION AND NATURALIZATION SERVICES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'' and inserting ''services.''.

(c) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the missions of both the Bureau of Immigration Services and Adjudications and the Bureau of Immigration Enforcement are equally important and, accordingly, both Bureaus should be adequately funded; and

(2) neither the immigration adjudication and service functions referred to in section 4 nor the immigration enforcement functions referred to in section 6 should operate at levels below that in existence prior to the enactment of this Act.

(d) AUTHORIZATION OF APPROPRIATIONS FOR BACKLOG REDUCTION.—There are authorized to be appropriated such sums as may be necessary for fiscal years

2002 through 2004 to reduce any backlog in processing and adjudicating pending—

(1) applications for naturalization under section 308 of the Immigration and Nationality Act;

(2) applications for adjustments of status under sections 245 and 209 of such Act;

(3) petitions for nonimmigrant visas under section 214 of such Act;

(4) applications for immigrant visas under section 222 of such Act;

(5) applications for asylum under section 208 of such Act; and

(6) petitions for temporary protected status under section 244 of such Act.

SEC. 14. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Attorney General, not later than 120 days after the date of the enactment of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, among the components of the Agency for Immigration Affairs. Not later than 60 days after the date of submittal of such report, each such component shall

submit to such Committees an operating plan of resources allocated, by object class and decision unit structure.

(b) DIVISION OF PERSONNEL.—The Attorney General, not later than 120 days after the date of the enactment of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel among the components of the Agency for Immigration Affairs.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Attorney General, not later than 120 days after the date of the enactment of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the components of the Agency for Immigration Affairs, including but not limited to the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction between such components.

(D) Procedures for the Director of Shared Services to perform all shared support functions, including authorizing the Directors of the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review to approve training curricula and to acquire such supplies and equipment as may be necessary to perform the daily operations of their component of the Agency for Immigration Affairs.

(E) Procedures to establish separate accounts and financial management systems for the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review and to implement all provisions of section 13(b).

(F) Fraud detection and investigation.

(G) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(H) Recommendations for conforming amendments to the Immigration and Nationality Act.

(I) Establishment of a transition team.

(J) Ways to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review in instances where separate systems are more efficient or effective.

(d) REPORT ON IMPROVING IMMIGRATION SERVICES.—

(1) IN GENERAL.—The Attorney General, not later than 1 year after the date of the enactment of this Act, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report containing a plan for how the Director of the Bureau of Immigration Services and Adjudications will complete efficiently, fairly, and within a reasonable time, the adjudications described in subparagraphs (A) through (E) of section 4(b)(1).

(2) CONTENTS.—For each type of adjudication to be undertaken by the Director of the Bureau of

Immigration Services and Adjudications, the report shall include the following:

(A) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(B) The goal for processing time with respect to the application.

(C) Any statutory modifications with respect to the adjudication that the Attorney General considers advisable.

(3) CONSULTATION.—In carrying out paragraph (1), the Attorney General shall consult with the Secretary of State, the Secretary of Labor, the Associate Attorney General for Immigration Affairs, the Director of the Bureau of Immigration Enforcement, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 4(b)(1) and related processes.

(e) REPORT ON IMPROVING ENFORCEMENT FUNCTION.—

(1) IN GENERAL.—The Attorney General, not later than 1 year after the date of the enactment of this Act, shall submit to the Committees on Appro-

priations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Immigration Enforcement, after the transfer of functions performed under the programs described in subparagraphs (A) through (E) of section 6(b)(1), will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act relating to such programs.

(2) CONSULTATION.—In carrying out paragraph (1), the Attorney General shall consult with the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Associate Attorney General for Immigration Affairs, the Director of the Bureau of Immigration Services and Adjudications, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

(f) REPORT ON SHARED SERVICES.—The Attorney General, not later than 3 years after the effective date of the transfer of functions under this Act, shall submit to the Committees on the Judiciary and Appropriations of

the House of Representatives and of the Senate a report on whether the Director of Shared Services is properly serving the Bureau of Immigration Services and Adjudications, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review. The report should address whether it would be more efficient to transfer the functions described in paragraphs (1) through (4) of section 3(d) to the Director of the Bureau of Immigration Services and Adjudications, the Director of the Bureau of Immigration Enforcement, and the Director of the Executive Office for Immigration Review, and shall include an estimate of the cost of such transfers.

(g) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the effective date of the transfer of functions under this Act, and every 6 months thereafter, until full implementation of this Act has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfer of functions made by sections 4 and 6 of

this Act has been completed, and if the transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfer of functions made by sections 4 and 6 of this Act has been completed, an identification of any issues that have arisen due to the completed transfer of functions.

(C) An identification of any issues that may arise due to the future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the effective date of the transfer of the function under this Act, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service, the Office of Immigration Litigation of the Civil Division, and the Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division to the Bureau of Immigration Services

and Adjudications, and the transfer of functions from the Immigration and Naturalization Service, the Office of Immigration Litigation of the Civil Division, and the Office of Special Investigations of the Criminal Division to the Bureau of Immigration Enforcement, under this Act has improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Agency for Immigration Affairs.

SEC. 15. APPLICATION OF INTERNET BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Attorney General, not later than 1 year after the date of the enactment of this Act, in consultation with the Technology Advisory Committee established under subsection

(c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Attorney General for any benefit under the Immigration and Nationality Act, access to online information about the processing status of the filing involved.

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

(1) ON-LINE FILING.—The Attorney General, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the on-line filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment on-line.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives and

the Senate not later than 1 year after the date of the enactment of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Attorney General shall establish, not later than 60 days after the date of the enactment of this Act an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Attorney General in—

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

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

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 16. DEFINITIONS.

For purposes of this Act:

(1) The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(2) The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

SEC. 17. EFFECTIVE DATE; TRANSITION.

(a) IN GENERAL.—The abolishment of the Immigration and Naturalization Service, the establishment of the Agency for Immigration Affairs, and the transfers of functions specified under this Act shall take effect on the date that is 1 year after the date of the enactment of this Act. The Associate Attorney General for Immigration Affairs, the Director of the Bureau of Immigration Services and Adjudications, and the Director of the Bureau of Immigration Enforcement shall be appointed not later than such effective date. To the extent that functions to be transferred to such persons under this Act continue to be performed by the Immigration and Naturalization Service, the Office of Immigration Litigation of the Civil Division, the Office of Special Counsel for Immigration Related Unfair Employment Practices of the Civil Rights Division, and the Office of Special Investigations of the Criminal Division during fiscal year 2002, the Attorney General

shall provide for an appropriate accounting of funds and an appropriate transfer of funds appropriated to such entities to the appropriate component of the Agency for Immigration Affairs.

(b) TRANSITION PERIOD FOR CERTAIN BUREAU FUNCTIONS.—Notwithstanding subsection (a), during the 18-month period after the transfer of functions under this Act takes effect, the Associate Attorney General for Immigration Affairs is authorized to perform the functions described in subsections (c), (d), and (g) of each of sections 4 and 6 for both the Bureau of Immigration Services and Adjudications and the Bureau of Immigration Enforcement.

SEC. 18. CONFORMING AMENDMENT.

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

"Commissioner of Immigration and Naturalization, Department of Justice.".

○

Chairman SENSENBRENNER. Without objection, the Amendment in the Nature of a Substitute, which is before all Members, will be considered as the original text for the purpose of amendment, considered as read, and open for amendment at any point.

[The Amendment in the Nature of a Substitute follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231 OFFERED BY MR. SENSENBRENNER, MR. CONYERS, MR. GEKAS, AND MS. JACKSON-LEE OF TEXAS

Strike all after the enacting clause and insert the following:

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 ''Barbara Jordan Immigration Reform and Accountability
4 Act of 2002''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Abolishment of Immigration and Naturalization Service; establishment of Office of Associate Attorney General for Immigration Affairs.
Sec. 3. Positions within Office of Associate Attorney General for Immigration Affairs.
Sec. 4. Establishment of Bureau of Citizenship and Immigration Services.
Sec. 5. Office of the Ombudsman.
Sec. 6. Establishment of Bureau of Immigration Enforcement.
Sec. 7. Office of Immigration Statistics within Bureau of Justice Statistics.
Sec. 8. Exercise of authorities.
Sec. 9. Savings provisions.
Sec. 10. Transfer and allocation of appropriations and personnel.
Sec. 11. Authorization of appropriations; prohibition on transfer of fees; leasing or acquisition of property; sense of Congress.
Sec. 12. Reports and implementation plans.
Sec. 13. Application of Internet-based technologies.
Sec. 14. Definitions.
Sec. 15. Effective date; transition.
Sec. 16. Conforming amendment.

SEC. 2. ABOLISHMENT OF IMMIGRATION AND NATURALIZATION SERVICE; ESTABLISHMENT OF OFFICE OF ASSOCIATE ATTORNEY GENERAL FOR IMMIGRATION AFFAIRS.

(a) ABOLISHMENT OF INS.—The Immigration and Naturalization Service of the Department of Justice is abolished.

(b) ESTABLISHMENT OF OFFICE OF ASSOCIATE ATTORNEY GENERAL FOR IMMIGRATION AFFAIRS.—

(1) IN GENERAL.—There is established in the Department of Justice an office to be known as the ''Office of the Associate Attorney General for Immigration Affairs''.

(2) ASSOCIATE ATTORNEY GENERAL.—The head of the Office shall be the Associate Attorney General for Immigration Affairs. The Associate Attorney General for Immigration Affairs—

(A) shall be appointed by the President, by and with the consent of the Senate; and

(B) shall have a minimum of 5 years of experience in managing a large and complex organization.

(3) COMPENSATION AT LEVEL III OF EXECUTIVE SCHEDULE.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Associate Attorney General for Immigration Affairs.".

(c) FUNCTIONS.—The Associate Attorney General for Immigration Affairs shall be responsible for—

(1) overseeing the work of, and supervising, the Director of the Bureau of Citizenship and Immigration Services and the Director of the Bureau of Immigration Enforcement;

(2) coordinating the administration of national immigration policy, including coordinating the operations of the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement, and reconciling conflicting policies of such bureaus; and

(3) allocating and coordinating resources involved in supporting shared support functions for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement, through the Office of Shared Services established by section 3.

SEC. 3. POSITIONS WITHIN OFFICE OF ASSOCIATE ATTORNEY GENERAL FOR IMMIGRATION AFFAIRS.

(a) POLICY ADVISOR.—

(1) IN GENERAL.—There shall be a position of Policy Advisor for the Associate Attorney General for Immigration Affairs.

(2) FUNCTIONS.—The Policy Advisor shall be responsible for—

(A) providing advice to the Associate Attorney General for Immigration Affairs on all matters relating to immigration and naturalization policy; and

(B) coordinating and reconciling the resolution of policy issues by the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(b) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be a position of General Counsel to the Associate Attorney General for Immigration Affairs.

(2) FUNCTIONS.—The General Counsel shall serve as the principal legal advisor to the Associate Attorney General for Immigration Affairs. The General Counsel shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Associate Attorney General for Immigration Affairs with respect to legal mat-

ters affecting the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigration Enforcement;

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review and in other legal or administrative proceedings involving immigration services issues; and

(C) representing the Bureau of Immigration Enforcement in all exclusion, deportation, or removal proceedings before the Executive Office for Immigration Review, including in proceedings to adjudicate relief from exclusion, deportation, or removal, and in other legal or administrative proceedings involving immigration enforcement issues.

(3) LIMITATION.—Paragraph (2) shall not apply the functions transferred under subsection (h) to the extent that the Associate Attorney General for Immigration Affairs does not delegate such functions to the General Counsel.

(c) CHIEF FINANCIAL OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Financial Officer for the Associate Attorney General for Immigration Affairs.

(2) FUNCTIONS.—The Chief Financial Officer shall be responsible for—

(A) financial management of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement and shall have the authorities and functions described in section 902 of title 31, United States Code, in relation to financial activities of such office and bureaus;

(B) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement; and

(C) coordinating all budget and other financial management issues with the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(d) DIRECTOR OF SHARED SERVICES.—

(1) IN GENERAL.—There shall be a position of Director of the Office of Shared Services for the Associate Attorney General for Immigration Affairs.

(2) FUNCTIONS.—The Director of the Office of Shared Services shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement, including—

(A) facilities management;

(B) information resources management, including computer databases and information technology;

(C) records and file management; and

(D) forms management.

(e) OFFICE OF THE OMBUDSMAN.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established in the Office of the Associate Attorney General for Immigration Affairs an office to be known as the ''Office of the Ombudsman''.

(B) OMBUDSMAN.—

(i) IN GENERAL.—The Office of the Ombudsman shall be under the supervision and direction of an official to be known as the ''Ombudsman''. The Ombudsman shall

report directly to the Associate Attorney General for Immigration Affairs.

(ii) QUALIFICATIONS.—The Ombudsman shall have a background in customer service as well as immigration law.

(2) FUNCTIONS OF OFFICE.—The Ombudsman shall perform the functions described in section 5.

(f) OFFICE OF PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.—

(1) IN GENERAL.—There is established in the Office of the Associate Attorney General for Immigration Affairs an office to be known as the ''Office of Professional Responsibility and Quality Review''. The head of the Office of Professional Responsibility and Quality Review shall be the Director of the Office of Professional Responsibility and Quality Review. The Director of the Office of Professional Responsibility and Quality Review shall be responsible for—

(A) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigra-

tion Enforcement that are not subject to investigation by the Department of Justice Office of the Inspector General;

(B) inspecting the operations of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement and providing assessments of the quality of the operations of such office and bureaus as a whole and each of their components; and

(C) providing an analysis of the management of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement.

(2) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with paragraph (1)(B) with respect to decisions of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement, or any of their components, consideration shall be given to—

(A) the accuracy of the finding of fact and conclusions of law used in rendering the decision;

(B) any fraud or misrepresentation associated with the decision; and

(C) the efficiency with which the decision was rendered.

(g) OFFICE OF CHILDREN'S AFFAIRS.—

(1) IN GENERAL.—There is established within the Office of the Associate Attorney General for Immigration Affairs an office to be known as the ''Office of Children's Affairs''. The head of the Office of Children's Affairs shall be the Director of the Office of Children's Affairs.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Director of the Office of Children's Affairs shall be responsible for—

(i) coordinating and implementing law and policy for unaccompanied alien children who come into the custody of the Department of Justice;

(ii) ensuring that the interests of the child are considered in decisions and ac-

tions relating to the care and custody of an unaccompanied alien child;

(iii) making placement determinations for all unaccompanied alien children apprehended by the Attorney General or who otherwise come into the custody of the Department of Justice;

(iv) implementing the placement determinations made by the Office;

(v) implementing policies with respect to the care and placement of unaccompanied alien children;

(vi) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(vii) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(viii) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(ix) compiling, updating, and publishing at least annually a State-by-State list of professionals or other entities quali-

fied to provide the guardian and attorney representation services;

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

(I) biographical information such as the child's name, gender, date of birth, country of birth, and country of habitual residence;

(II) the date on which the child came into the custody of the Department of Justice;

(III) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(IV) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(V) the disposition of any actions in which the child is the subject;

(xi) collecting and compiling statistical information from the Office of the Asso-

ciate Attorney General, Bureau of Citizenship and Immigration Services, and Bureau of Enforcement (including Border Patrol and inspections officers), on the unaccompanied alien children with whom they come into contact; and

(xii) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(B) COORDINATION WITH OTHER ENTITIES.—In making determinations described in subparagraph (A)(iii), the Director of the Office of Children's Affairs—

(i) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Director of the Bureau of Immigration Enforcement to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(I) are likely to appear for all hearings or proceedings in which they are involved;

(II) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(III) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(ii) shall not release such children upon their own recognizance.

(C) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Children's Affairs functions with respect to the care of unaccompanied alien children under the immigration laws of the United States vested by statute in, or performed by, the Commissioner of the Immigration and Naturalization Service (or any officer, employee, or component thereof), immediately before the effective date specified in section 15(a).

(D) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in subparagraph (A)(vii), the Director of the Office of Children's Affairs shall assess the extent to which it is cost-effective to use the refugee

children foster care system for the placement of unaccompanied alien children.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, the Executive Office of Immigration Review, or the Department of State.

(4) DEFINITION.—As used in this subsection—

(A) the term ''placement'' means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(B) the term ''unaccompanied alien child'' means a child who—

(i) has no lawful immigration status in the United States;

(ii) has not attained 18 years of age; and

(iii) with respect to whom—

(I) there is no parent or legal guardian in the United States; or

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

(h) TRANSFER OF FUNCTIONS OF OFFICE OF IMMIGRATION LITIGATION.—There are transferred from the Assistant Attorney General, Civil Division, to the Associate Attorney General for Immigration Affairs all functions performed by the Office of Immigration Litigation, and all personnel, infrastructure, and funding provided to the Assistant Attorney General, Civil Division, in support of those functions, immediately before the effective date specified in section 15(a). The Associate Attorney General for Immigration Affairs may, in the Associate Attorney General's discretion, charge the General Counsel to the Associate Attorney General for Immigration Affairs with such functions.

(i) EMPLOYEE DISCIPLINE FOR WILLFUL DECEIT.—The Associate Attorney General for Immigration Affairs may, notwithstanding any other provision of law, 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 Office of the Associate Attorney General for

Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigration Enforcement who willfully deceives the Congress or agency leadership on any matter.

(j) REFERENCES.—With respect to any function transferred by this section or Act to, and exercised on or after the effective date specified in section 15(a) by, the Associate Attorney General for Immigration Affairs or any other official whose functions are described in this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Associate Attorney General for Immigration Affairs; or

(2) to such component is deemed to refer to the Office of the Associate Attorney for Immigration Affairs.

SEC. 4. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Justice a bureau to be known as the ''Bureau of Citizenship and Immigration Services''.

(2) DIRECTOR.—The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who—

(A) shall report directly to the Associate Attorney General for Immigration Affairs; and

(B) shall have a minimum of 10 years professional experience in the rendering of adjudications on the provision of government benefits or services, at least 5 of which shall have been years of service in a managerial capacity or in a position affording comparable management experience.

(3) FUNCTIONS.—The Director of the Bureau of Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Associate Attorney General for Immigration Affairs with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may af-

fect the Bureau of Immigration Enforcement, including potentially conflicting policies or operations;

(D) shall meet regularly with the Ombudsman to correct serious service problems identified by the Ombudsman; and

(E) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to the Congress within 3 months after its submission to the Congress.

(4) STUDENT VISA PROGRAMS.—The Director of the Bureau of Citizenship and Immigration Services shall designate an official to be responsible for administering student visa programs and the Student and Exchange Visitor Information System established under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), and successor programs and systems, until September 30, 2004. The Director may continue such policy after September 30, 2004, at the Director's discretion. The Director shall provide any information collected by the Student and Exchange Visitor Information System to the Director of the Bureau of Immigration Enforcement that

is necessary for the performance of the functions of the Bureau of Immigration Enforcement.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—There are transferred from the Commissioner of the Immigration and Naturalization Service to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 15(a):

(1) Adjudications of nonimmigrant and immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) performed by the Immigration and Naturalization Service immediately before the effective date specified in section 15(a).

(c) OFFICE OF POLICY AND STRATEGY.—There is established in the Bureau of Citizenship and Immigration Services an office to be known as the ''Office of Policy and Strategy''. The head of the Office of Policy and Strat-

egy shall be the Chief of the Office of Policy and Strategy. In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of the Office of Policy and Strategy shall be responsible for—

(1) establishing national immigration services policies and priorities;

(2) performing policy research and analysis on immigration services issues; and

(3) coordinating immigration policy issues with the Office of Policy and Strategy for the Bureau of Immigration Enforcement and the Associate Attorney General for Immigration Affairs through the Policy Advisor for the Associate Attorney General for Immigration Affairs, as appropriate.

(d) LEGAL ADVISOR.—There may be a position of Legal Advisor for the Bureau of Citizenship and Immigration Services.

(e) CHIEF BUDGET OFFICER FOR BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—There shall be a position of Chief Budget Officer for the Bureau of Citizenship and Immigration Services. The Chief Budget Officer shall be responsible for formulating and executing the budget of the Bureau of Citizenship and Immigration Services. The Chief Budget Officer shall report to the Director of the Bureau of Citizenship and Immigration Serv-

ices and shall provide information to, and coordinate resolution of relevant issues with, the Chief Financial Officer for the Associate Attorney General for Immigration Affairs.

(f) OFFICE OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—There is established in the Bureau of Citizenship and Immigration Services an office to be known as the ''Office of Congressional, Intergovernmental, and Public Affairs''. The head of such office shall be the Chief of the Office of Congressional, Intergovernmental, and Public Affairs. The Chief shall be responsible for—

(1) providing information relating to immigration services to the Congress, including information on specific cases relating to immigration services;

(2) serving as a liaison with other Federal agencies on immigration services issues; and

(3) responding to inquiries from the media and general public on immigration services issues.

(g) OFFICE OF CITIZENSHIP.—There is established in the Bureau of Citizenship and Immigration Services an office to be known as the ''Office of Citizenship''. The head of such office shall be the Chief of the Office of Citizenship. The Chief shall be responsible for promoting instruction and training on citizenship responsibilities for

1 aliens interested in becoming naturalized citizens of the
2 United States, including the development of educational
3 materials.

4 (h) SECTORS.—Headed by sector directors, and lo-
5 cated in appropriate geographic locations, sectors of the
6 Bureau of Citizenship and Immigration Services shall be
7 responsible for directing all aspects of the Bureau of Citi-
8 zenship and Immigration Services' operations within their
9 assigned geographic areas of activity. Sector directors
10 shall provide general guidance and supervision to the field
11 offices of the Bureau of Citizenship and Immigration
12 Services within their sectors.

13 (i) FIELD OFFICES.—Headed by field directors, who
14 may be assisted by deputy field directors, field offices of
15 the Bureau of Citizenship and Immigration Services shall
16 be responsible for assisting the Director of the Bureau of
17 Citizenship and Immigration Services in carrying out the
18 Director's functions. Field directors shall be subject to the
19 general supervision and direction of their respective sector
20 director, except that field directors outside of the United
21 States shall be subject to the general supervision and di-
22 rection of the Director of the Bureau of Citizenship and
23 Immigration Services. All field directors shall remain ac-
24 countable to, and receive their authority from, the Direc-
25 tor of the Bureau of Citizenship and Immigration Serv-

1 ices, in order to ensure consistent application and imple-
2 mentation of policies nationwide.

3 (j) SERVICE CENTERS.—Headed by service center di-
4 rectors, service centers of the Bureau of Citizenship and
5 Immigration Services shall be responsible for assisting the
6 Director of the Bureau of Citizenship and Immigration
7 Services in carrying out the Director's functions that can
8 be effectively carried out at remote locations. Service cen-
9 ter directors are subject to the general supervision and
10 direction of their respective sector director, except that all
11 service center directors shall remain accountable to, and
12 receive their authority from, the Director of the Bureau
13 of Citizenship and Immigration Services, in order to en-
14 sure consistent application and implementation of policies
15 nationwide.

16 (k) TRANSFER AND REMOVAL.—Notwithstanding
17 any other provision of law, the Director of the Bureau of
18 Citizenship and Immigration Services may, in the Direc-
19 tor's discretion, transfer or remove any sector director,
20 field director, or service center director.

21 (l) REFERENCES.—With respect to any function
22 transferred by this section or Act to, and exercised on or
23 after the effective date specified in section 15(a) by, the
24 Director of the Bureau of Citizenship and Immigration
25 Services, any reference in any other Federal law, Execu-

tive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

SEC. 5. OFFICE OF THE OMBUDSMAN.

(a) FUNCTIONS.—It shall be the function of the Office of the Ombudsman established under section 3—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services;

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2); and

(4) to identify potential legislative changes which may be appropriate to mitigate such problems.

(b) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the initiatives the Office of the Ombudsman has taken on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and identify any Bureau of Citizenship and Immigration Services official who is responsible for such inaction;

(F) shall contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior review or comment from the Attorney General, Associate Attorney General for Immigration Affairs, any other officer or employee of the Department of Justice or the Office of Management and Budget.

(c) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all Bureau of Citizenship and Immigration Services officers and employees outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(d) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any em-

ployee of any local office of the Ombudsman described in subparagraph (A).

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(e) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(f) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman —

(A) shall report to the Ombudsman or delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or em-

ployer that the local offices of the Ombudsman operate independently of any other component in the Office of the Associate Attorney General for Immigration Affairs and report directly to the Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 6. ESTABLISHMENT OF BUREAU OF IMMIGRATION ENFORCEMENT.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Justice a bureau to be known as the ''Bureau of Immigration Enforcement''.

(2) DIRECTOR.—The head of the Bureau of Immigration Enforcement shall be the Director of the Bureau of Immigration Enforcement, who—

(A) shall report directly to the Associate Attorney General for Immigration Affairs; and

(B) shall have a minimum of 10 years professional experience in law enforcement, at least 5 of which shall have been years of service in a managerial capacity.

(3) FUNCTIONS.—The Director of the Bureau of Immigration Enforcement—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Associate Attorney General for Immigration Affairs with respect to any policy or operation of the Bureau of Immigration Enforcement that may affect the Bureau of Citizenship and Immigration Services, including potentially conflicting policies or operations.

(b) TRANSFER OF FUNCTIONS.—There are transferred from the Commissioner of the Immigration and Naturalization Service to the Director of the Bureau of Immigration Enforcement all functions performed under the following programs, and all personnel, infrastructure, and funding provided to the Commissioner in support of such programs immediately before the effective date specified in section 15(a):

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

(c) OFFICE OF POLICY AND STRATEGY.—There is established in the Bureau of Immigration Enforcement an office to be known as the ''Office of Policy and Strategy''. The head of the Office of Policy and Strategy shall be the Chief of the Office of Policy and Strategy. In consultation with Bureau of Immigration Enforcement personnel in field offices, the Chief of the Office of Policy and Strategy shall be responsible for—

(1) establishing national immigration enforcement policies and priorities;

(2) performing policy research and analysis on immigration enforcement issues; and

(3) coordinating immigration policy issues with the Office of Policy and Strategy for the Bureau of Citizenship and Immigration Services and the Associate Attorney General for Immigration Affairs through the Policy Advisor for the Associate Attorney General for Immigration Affairs, as appropriate.

(d) LEGAL ADVISOR.—There may be a position of Legal Advisor for the Bureau of Immigration Enforcement.

(e) CHIEF BUDGET OFFICER FOR THE BUREAU OF IMMIGRATION ENFORCEMENT.—There shall be a position of Chief Budget Officer for the Bureau of Immigration Enforcement. The Chief Budget Officer shall be responsible for formulating and executing the budget of the Bureau of Immigration Enforcement. The Chief Budget Officer shall report to the Director of the Bureau of Immigration Enforcement and shall provide information to, and coordinate resolution of relevant issues with, the Chief Financial Officer for the Associate Attorney General for Immigration Affairs.

(f) OFFICE OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—There is established in the Bureau of Immigration Enforcement an office to be known as the ''Office of Congressional, Intergovernmental, and Public Affairs''. The head of such office shall be the

1 Chief of the Office of Congressional, Intergovernmental,
2 and Public Affairs. The Chief shall be responsible for—
3 (1) providing information relating to immigra-
4 tion enforcement to the Congress, including informa-
5 tion on specific cases relating to immigration en-
6 forcement;
7 (2) serving as a liaison with other Federal
8 agencies on immigration enforcement issues; and
9 (3) responding to inquiries from the media and
10 the general public on immigration enforcement
11 issues.
12 (g) SECTORS.—Headed by sector directors, and lo-
13 cated in appropriate geographic locations, sectors of the
14 Bureau of Immigration Enforcement shall be responsible
15 for directing all aspects of the Bureau of Immigration En-
16 forcement's operations within their assigned geographic
17 areas of activity. Sector directors shall provide general
18 guidance and supervision to the field offices of the Bureau
19 of Immigration Enforcement within their sectors.
20 (h) FIELD OFFICES.—Headed by field directors, who
21 may be assisted by deputy field directors, field offices of
22 the Bureau of Immigration Enforcement shall be respon-
23 sible for assisting the Director of the Bureau of Immigra-
24 tion Enforcement in carrying out the Director's functions.
25 Field directors shall be subject to the general supervision

and direction of their respective sector director, except that field directors outside of the United States shall be subject to the general supervision and direction of the Director of the Bureau of Immigration Enforcement. All field directors shall remain accountable to, and receive their authority from, the Director of the Bureau of Immigration Enforcement, in order to ensure consistent application and implementation of policies nationwide. There shall be a field office of the Bureau of Immigration Enforcement situated in at least every location where there is situated a field office of the Bureau of Citizenship and Immigration Services.

(i) BORDER PATROL SECTORS.—Headed by chief patrol agents, who may be assisted by deputy chief patrol agents, border patrol sectors of the Bureau of Immigration Enforcement shall be responsible for the enforcement of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and all other laws relating to immigration and naturalization within their assigned geographic areas of activity, unless any such power and authority is required to be exercised by higher authority or has been exclusively delegated to another immigration official or class of immigration officer. Chief patrol agents are subject to the general supervision and direction of their respective sector director, except that they shall remain accountable to, and

1 receive their authority from, the Director of the Bureau
2 of Immigration Enforcement, in order to ensure consistent
3 application and implementation of policies nationwide.

4 (j) TRANSFER AND REMOVAL.—Notwithstanding any
5 other provision of law, the Director of the Bureau of Im-
6 migration Enforcement may, in the Director's discretion,
7 transfer or remove any sector director, field director, or
8 chief patrol officer.

9 (k) REFERENCES.—With respect to any function
10 transferred by this section or Act to, and exercised on or
11 after the effective date specified in section 15(a) by, the
12 Director of the Bureau of Immigration Enforcement, any
13 reference in any other Federal law, Executive order, rule,
14 regulation, or delegation of authority, or any document of
15 or pertaining to a component of government from which
16 such function is transferred—

17 (1) to the head of such component is deemed to
18 refer to the Director of the Bureau of Immigration
19 Enforcement; or

20 (2) to such component is deemed to refer to the
21 Bureau of Immigration Enforcement.

22 **SEC. 7. OFFICE OF IMMIGRATION STATISTICS WITHIN BU-**
23 **REAU OF JUSTICE STATISTICS.**

24 (a) IN GENERAL.—Part C of title I of the Omnibus
25 Crime Control and Safe Streets Act of 1968 (42 U.S.C.

3731 et seq.) is amended by adding at the end the following:

"OFFICE OF IMMIGRATION STATISTICS

"SEC. 305. (a) There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice Statistics.

"(b) The Director of the Office shall be responsible for the following:

"(1) Maintenance of all immigration statistical information of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review. Such statistical information shall include information and statistics of the type contained in the publication entitled 'Statistical Yearbook of the Immigration and Naturalization Service' prepared by the Immigration and Naturalization Service (as in effect on the day prior to the effective date specified in section 15(a) of the Barbara Jordan Immigration Reform and Accountability Act of 2002).

"(2) Establishment of standards of reliability and validity for immigration statistics collected by the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review.

"(c) The Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review shall provide statistical information to the Office of Immigration Statistics from the operational data systems controlled by the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review, respectively, for the purpose of meeting the responsibilities of the Director.".

(b) TRANSFER OF FUNCTIONS.—There are transferred to the Office of Immigration Statistics established under section 305 of the Omnibus Crime Control and Safe Streets Act of 1968, as added by subsection (a), the functions performed by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturaliza-

tion Service on the day before the effective date specified in section 15(a).

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

(1) by striking ''and'' at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting ''; and''; and

(3) by adding at the end the following:

''(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics about immigration in the United States, including information and statistics involving the functions of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, and the Executive Office for Immigration Review.''.

SEC. 8. EXERCISE OF AUTHORITIES.

(a) IN GENERAL.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this Act may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that

function to the official responsible for the performance of the function immediately before the effective date specified in section 15(a).

(b) PRESERVATION OF ATTORNEY GENERAL'S AUTHORITY.—

(1) IN GENERAL.—Any function for which this Act vests responsibility in an official other than the Attorney General, or which is transferred by this Act to such an official, may, notwithstanding any provision of this Act, be performed by the Attorney General, or the Attorney General's delegate, in lieu of such official.

(2) REFERENCES.—In a case in which the Attorney General performs a function described in paragraph (1), any reference in any other Federal law, Executive order, rule, regulation, document, or delegation of authority to the official otherwise responsible for the function is deemed to refer to the Attorney General.

(c) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed to preclude or limit in any way the powers, authorities, or duties of the Secretary of State and special agents of the Department of State and the Foreign Service under the State Department Basic Authorities Act of 1956 (22 U.S.C 2651 note), the Immigration and Na-

tionality Act (8 U.S.C. 1101 et seq.), or any other Act, to investigate illegal passport or visa issuance or use.

SEC. 9. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, recognition of labor organizations, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Attorney General, the Commissioner of the Immigration and Naturalization Service, their delegates, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—Sections 4 and 6 and this section shall not affect any proceedings or any application

for any benefit, service, license, permit, certificate, or financial assistance pending on the effective date specified in section 15(a) before an office whose functions are transferred by this Act, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this section shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

(c) SUITS.—This Act shall not affect suits commenced before the effective date specified in section 15(a), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Justice or the Immigration and Naturalization Service, or by or against any individual in the official ca-

pacity of such individual as an officer or employee in connection with a function transferred by this section, shall abate by reason of the enactment of this Act.

(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer and under this Act such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this Act, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this Act shall apply to the exercise of such function by the head of the office, and other officers of the office, to which such function is transferred by such section.

SEC. 10. TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.

(a) IN GENERAL.—The personnel of the Department of Justice employed in connection with the functions transferred by this Act (and functions that the Attorney General determines are properly related to the functions of the Bureau of Citizenship and Immigration Services or

the Bureau of Immigration Enforcement and would, if transferred, further the purposes of the bureau to which the function is transferred), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service or the Office of Immigration Litigation of the Civil Division in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Associate Attorney General for Immigration Affairs for allocation to the appropriate component or bureau. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated. The Attorney General shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this Act for a period of 2 years after the effective date specified in section 15(a).

(b) DELEGATION AND ASSIGNMENT.—Except as otherwise expressly prohibited by law or otherwise provided in this Act, of the Associate Attorney General for Immigration Affairs, the Director of the Bureau of Citizenship and Immigration Services, and the Director of the Bureau

of Immigration Enforcement, the person to whom functions are transferred under this Act may delegate any of the functions so transferred to such officers and employees of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigration Enforcement, respectively, as the person may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this subsection or under any other provision of this Act shall relieve the official to whom a function is transferred under this Act of responsibility for the administration of the function.

(c) AUTHORITIES OF ATTORNEY GENERAL.—The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary with regard to the functions transferred by this Act, and may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this Act. The Attorney Gen-

eral shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(d) DATABASES.—The Associate Attorney General for Immigration Affairs shall ensure that the databases of the Office of the Associate Attorney General for Immigration Affairs and those of the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement are integrated with the databases of the Executive Office for Immigration Review in such a way as to permit—

(1) the electronic docketing of each case by date of service upon an alien of the notice to appear in the case of a removal proceeding (or an order to show cause in the case of a deportation proceeding, or a notice to alien in the case of an exclusion proceeding); and

(2) the tracking of the status of any alien throughout the alien's contact with United States immigration authorities without regard to whether the entity with jurisdiction over the alien is the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement, or the Executive Office for Immigration Review.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS; PROHIBITION ON TRANSFER OF FEES; LEASING OR ACQUISITION OF PROPERTY; SENSE OF CONGRESS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR TRANSITION.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to effect the abolition of the Immigration and Naturalization Service, the establishment of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement and their components, and the transfers of functions required to be made under this Act, and to carry out any other duty related to the reorganization of the immigration and naturalization functions that is made necessary by this Act.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated under paragraph (1) shall remain available until expended.

(3) TRANSITION ACCOUNT.—

(A) ESTABLISHMENT.—There is established in the general fund of the Treasury of the United States a separate account, which shall be known as the ''Immigration Reorga-

nization Transition Account'' (in this paragraph referred to as the ''Account'').

(B) USE OF ACCOUNT.—There shall be deposited into the Account all amounts appropriated under paragraph (1).

(C) ADVANCED AVAILABILITY OF FUNDS.—To the extent provided in appropriations Acts, funds in the Account shall be available for expenditure before the effective date specified in section 15(a).

(b) SEPARATION OF FUNDING.—

(1) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

(2) SEPARATE BUDGETS.—To ensure that the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

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

(4) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement for purposes not authorized by section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

(5) ESTABLISHMENT OF FEES FOR ADJUDICATION AND NATURALIZATION SERVICES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'' and inserting ''services.''.

(c) LEASING OR ACQUISITION OF PROPERTY.—Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Attorney General is authorized to expend, from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), such amounts as may be necessary for the leasing or ac-

quisition of property in the fulfillment of establishing the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement under this Act.

(d) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the missions of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement are equally important and, accordingly, they each should be adequately funded; and

(2) the functions of the Associate Attorney General for Immigration Affairs described in section 3, the immigration adjudication and service functions referred to in section 4, and the immigration enforcement functions referred to in section 6 should not operate at levels below that in existence prior to the enactment of this Act.

(e) ELIMINATION OF LIMITATION ON EXPENDITURES FOR BACKLOG REDUCTION.—Section 204(b) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(b)) is amended by striking paragraph (4).

SEC. 12. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Attorney General, not later than 120 days after the date of the enactment of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, among the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement.

(b) DIVISION OF PERSONNEL.—The Attorney General, not later than 120 days after the date of the enactment of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel among the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Attorney General, not later than 120 days after the date of the enactment of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of

the House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such office and bureaus.

(D) Procedures for the Director of Shared Services to perform all shared support functions, including authorizing the Directors of the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement to approve training curricula and to acquire such supplies and equipment as may be necessary to perform the daily operations of their bureau.

(E) Procedures to establish separate accounts and financial management systems for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration En-

forcement, and to implement all provisions of section 11(b).

(F) Fraud detection and investigation.

(G) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(H) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(I) Establishment of a transition team.

(J) Ways to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement in instances where separate systems are more efficient or effective.

(d) REPORT ON IMPROVING IMMIGRATION SERVICES.—

(1) IN GENERAL.—The Attorney General, not later than 1 year after the date of the enactment of this Act, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report containing a

plan for how the Director of the Bureau of Citizenship and Immigration Services will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 4(b).

(2) CONTENTS.—For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

(A) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(B) The goal for processing time with respect to the application.

(C) Any statutory modifications with respect to the adjudication that the Attorney General considers advisable.

(3) CONSULTATION.—In carrying out paragraph (1), the Attorney General shall consult with the Secretary of State, the Secretary of Labor, the Associate Attorney General for Immigration Affairs, the Director of the Bureau of Immigration Enforcement, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and mak-

ing adjudications described in section 4(b) and related processes.

(e) REPORT ON IMPROVING ENFORCEMENT FUNCTION.—

(1) IN GENERAL.—The Attorney General, not later than 1 year after the date of the enactment of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Immigration Enforcement, after the transfer of functions performed under the programs described in paragraphs (1) through (5) of section 6(b), will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such programs.

(2) CONSULTATION.—In carrying out paragraph (1), the Attorney General shall consult with the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Associate Attorney General for Immigration Affairs, the Director of the Bureau of Citizenship and Immigration Services, the Director of the Executive Office for Immigration Review, and

the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

(f) REPORT ON SHARED SERVICES.—The Attorney General, not later than 3 years after the effective date specified in section 15(a), shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report on whether the Director of Shared Services is properly serving the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement. The report should address whether it would be more efficient to transfer one or more of the functions described in section 3 to the Director of the Bureau of Citizenship and Immigration Services or the Director of the Bureau of Immigration Enforcement, and shall include an estimate of the cost of any such transfer that the Attorney General recommends. The report should also address whether it would be more efficient to transfer one or more of the functions described in sections 4 and 6 to the Office of the Associate Attorney General for Immigration Affairs, and shall include an estimate of the cost of any such transfer that the Attorney General recommends.

(g) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the effective date specified in section 15(a), and every 6 months thereafter, until full implementation of this Act has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfer of functions made by sections 4 and 6 of this Act has been completed, and if the transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfer of functions made by sections 4 and 6 of this Act has been completed, an identification of any issues that have arisen due to the completed transfer of functions.

(C) An identification of any issues that may arise due to the future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the effective date specified in section 15(a), the Comptroller General of the United States

shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement, and the transfer of functions from the Immigration and Naturalization Service and the Office of Immigration Litigation of the Civil Division to the Office of the Associate Attorney General for Immigration Affairs, under this Act has improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Office of the Associate Attor-

ney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement.

SEC. 13. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Attorney General, not later than 1 year after the date of the enactment of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Attorney General for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

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

(1) ON-LINE FILING.—The Attorney General, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the on-line filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of fil-

ings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment on-line.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate not later than 1 year after the date of the enactment of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Attorney General shall establish, not later than 60 days after the date of the enactment of this Act an advisory committee (in this section referred to as the ''Technology Advisory Committee'') to assist the Attorney General in—

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

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

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the on-line filing system described in subsection (b)(1).

SEC. 14. DEFINITIONS.

For purposes of this Act:

(1) The term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(2) The term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

SEC. 15. EFFECTIVE DATE; TRANSITION.

(a) IN GENERAL.—The abolishment of the Immigration and Naturalization Service, the establishment of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement, and the transfers of functions specified under this Act shall take effect on the date that is 1 year after the date of the enactment of this Act. The Associate Attorney General

for Immigration Affairs, the Director of the Bureau of Citizenship and Immigration Services, and the Director of the Bureau of Immigration Enforcement shall be appointed not later than such effective date. To the extent that functions to be transferred to such persons under this Act continue to be performed by the Immigration and Naturalization Service and the Office of Immigration Litigation of the Civil Division during fiscal year 2003, the Attorney General shall provide for an appropriate accounting of funds and an appropriate transfer of funds appropriated to such entities to the appropriate component of the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, or the Bureau of Immigration Enforcement.

(b) TRANSITION PERIOD FOR CERTAIN BUREAU FUNCTIONS.—Notwithstanding subsection (a), during the 18-month period after the transfer of functions under this Act takes effect, the Associate Attorney General for Immigration Affairs is authorized to perform the functions described in subsections (c), (d), and (g) of each of sections 4 and 6 for both the Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement.

SEC. 16. CONFORMING AMENDMENT.

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

"Commissioner of Immigration and Naturalization, Department of Justice.".

Amend the title so as to read: "A bill to replace the Immigration and Naturalization Service with the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement, and for other purposes.".

Chairman SENSENBRENNER. The Chair yields himself 5 minutes to explain the bill.

Today we take the next step in advancing the process of fundamental reform of the most beleaguered agency in the Federal Government, the INS. At yesterday's hearing there was a consensus that the agency needs to be restructured. Today we will take such a step by voting on H.R. 3231, the "Immigration Reform and Accountability Act."

This process began in the 1990's when the Barbara Jordan Commission on Immigration Reform issued its report, calling for a drastic restructuring of the INS, and the performance of the immigration law enforcement and the delivery of immigration benefits by separate agencies to avoid mission overload.

Since then various alternative restructuring proposals have been put forward including one by the INS itself. Yet none of these proposals advance very far, and even the INS's own proposal was shelved during the last Administration. The current INS administrative plan keeps the INS intact as a consolidated agency, when what needs to be created are two new bureaus in the Justice Department. As we saw yesterday, the INS has reorganized itself numerous times in the past decades, but the agency is still in a deep quagmire. I don't think any additional attempt at internally reorganizing can pull the INS out of this morass in which it finds itself. Dramatic change must be made to our immigration system, and that is what H.R. 3231 brings.

The bill creates within the Justice Department an Associate Attorney General for Immigration Affairs. This would elevate immigration policy to the level that it deserves in the department, and ensure uniformity in national immigration policy. Also the bill promotes good management by requiring that the Associate AG has several years of experience in managing a large complex organization.

The bill establishes two bureaus under the supervision of the agency, a bureau for Immigration Services and a bureau for Immigration Enforcement. Each bureau would be headed by a director with 10 years of experience in his or her respective immigration mission including 5 years of management experience. Each bureau would also have its own set of offices to set policy and focus on and carry out its distinct mission. Each bureau would have a separate budget. No longer will service be sacrificed for the sake of enforcement or vice versa as has so often happened in the past. The bill also provides for the reality that two separate immigration bureaus will need access to the same items, aliens' files and computer databases, for instance. Accordingly, the bill creates an office of shared services to allocate and coordinate resources needed by all of the components such as facilities, information resources and records.

We learned at the end of fiscal year 2001 the INS had a backlog of 4.9 million applicants. There are serious service problems and needs serious service help. The bill creates an Office of the Ombudsman to ensure that legal aliens are treated with the respect they deserve by the service bureau. The Ombudsman will serve as an alternative to congressional immigration case workers, something welcome in this hallowed halls, for aliens and employers who are at their wit's end. The bill requires that the ombudsman have a background of customer service and immigration law.

Finally, the bill requires the AG to establish the Internet-based system that will permit people with immigration applications filed with the AG to have access to online information about the procession status of the application. An online system would cut down on the long lines of people waiting each morning in front of INS offices to pick up forms and to check on their status, decrease the number of phone calls made to the INS by people trying to get information on status, and most important, would prevent the INS from losing the alien's paper files.

This bill lays out the blueprint for success. It creates clear change of command, separate the agency into its to equally important but more manageable missions and requires more accountability. However, we in Congress cannot do all that's necessary to improve the INS. The Justice Department will need to fill the positions this bill creates with talented and resourceful people dedicated to improving the immigration system.

Also the Commissioner will need to use solid leadership and creative management throughout the transfer of functions.

Nevertheless the bill is the catalyst needed to reform and truly improve the INS, and I urge all Committee Members to support it.

The Chair was about ready to recognize the gentleman from Michigan. The Chair will recognize in his stead the gentlewoman from Texas, who is the Ranking Member, for 5 minutes.

Ms. JACKSON LEE. I thank the gentleman very much. I imagine the gentleman from Michigan will be here.

Let me acknowledge first of all the collaborative work of the Members of this Committee. I'd like to thank all of the Members of the Committee because their staff were engaged in these discussions. And, Mr. Chairman, I'd like to thank you and the Ranking Member, and of course, the chairman of the Immigration Committee for a word that seems to be difficult to utilize here in Washington, and that is "engagement." And I think out of that we have an answer to what many Americans have posed as a question over a number of years, and that is, can the INS work, can the INS function?

And we have given the INS almost 20 years with administrative changes, and I believe that we have now a large opportunity, this is a large day, if you will, an expansive day to begin turning the tide. This legislation offers to turn the tide.

Many would offer to say what's in a name? And I believe there is something in a name and I am grateful saw the wisdom of a request by the Ranking Member, and I joined him to name this legislation after Honorable Barbara Jordan, one of my predecessors in the 18th Congressional District and obviously the author of the Jordan legislation. Times have changed, but one of the things Congresswoman Jordan attempted to do was to bring chaos into order. And I said this yesterday, that the INS can be an agency of law and order and compassion. It does not have to be an agency of chaos.

This bill has come a long way, and I think the key elements of it are elements that generate out of compromise. I filed legislation a couple of years ago, H.R. 1562, and I saw the necessity of eliminating the existing and present INS with the understanding that there are many good employees and many good persons who are committed and dedicated public servants, but they're functioning

on an antiquated, broken, misdirected system. This particular legislation creates an Associate Attorney General. I believe we need someone as high ranking at that position. There is only one Associate Attorney General existing in the Department of Justice as we speak. We now will create a second one. That is a powerful position.

The bureau that will be created, there will be two directors, who will have distinct responsibilities over enforcement and then services, but they will be coordinated. They will know what each other are doing. They will not step on each other. They will not compete to the extent that they draw from the ability to perform their task well.

The Enforcement Bureau will have the opportunity to create options and opportunities for professional development of the special investigators. And the Border Patrol, which has been a real problem, will be able to fight against attrition by fighting for more increased compensation for the Border Patrol agents, giving them the respectability of an enforcement agency, but yet not drawing upon the need of the Services Bureau and the responsibilities that they have.

Mr. Chairman and my colleagues, if you talk to any Member you will find out that the overload of their office are immigration issues. They are totally inundated with the problems that constituents have in accessing legalization. The service centers don't work. The district offices don't work. Now we will have an integrated system with a direct line to Washington, where people will say, "Washington has directed us to do this." That does not happen now. You'll find in the district offices and the field offices, they don't know what Washington is doing, they have no consistency in policy or direction. This legislation gives that direction.

I'm very proud that many of us proposed the idea of dealing with children. We were finding, in the immigration system, that children were being divided from parents if they were in detention centers, that they didn't know what to do with children, that children were languishing in detention centers, that there was no special effort to combine the understanding of the laws of the child's nation and this Nation, and so we now have an Office of Children Affairs established in the Associate Attorney General's Office, raising the concern and importance of children's issues in the immigration system. This is a very important mechanism.

We still need to secure a student tracking system that keeps track of every foreign national. We need to make sure that the proposals that the INS are putting forward work. That's why this is good legislation——

Chairman SENSENBRENNER. The time——

Ms. JACKSON LEE.—Mr. Chairman. Let me simply——

Chairman SENSENBRENNER.—of the gentlewoman has expired.

Ms. JACKSON LEE. May I simply just conclude in this sentence, if I could just conclude, by simply saying, Mr. Chairman, is that this bill does not preclude, does not preclude the Administration's offerings of last November. Clearly, it is structured for the Administration to integrate its structural changes in this legislation. And I ask my colleagues as we move forward, to join us in commending or recommending this bill.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

The gentleman from Michigan?

Mr. CONYERS. Mr. Chairman, I ask unanimous consent to introduce my statement into the record.

Chairman SENSENBRENNER. Without objection, and also without objection, all opening statements will be placed in the record.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, I strongly support the proposed compromise.

I would like to thank you, along with Chairman Gekas and Ranking Member Jackson Lee, for working with us in good faith to develop a proposal that will accomplish our joint goal of an effective and efficient immigration service that both enforces the law and properly provides benefits to those seeking to immigrate.

After months of negotiation and consideration of several bills and the Administration's proposal, we are all convinced that the chance for meaningful change at the INS is through legislative restructuring.

In the broadest sense, we have agreed from the beginning that in order for the INS to meet its dual missions, it must be restructured into 2 agencies—one for enforcement and one for services—with a person at the top coordinating the activities of both branches where their missions' overlap.

I agreed to join in this Substitute after we filled in some of the blanks and made some significant improvements.

First, we have established an Associate Attorney General for Immigration Affairs, elevating policy decisions and management to a higher level within the Department of Justice. The Associate Attorney General has been given many of the tools and the resources needed to effectuate positive changes.

In particular, within the Office of the Associate Attorney General is a single General Counsel. Originally there had been a General Counsel in each bureau. Needless to say, when have 2 lawyers ever been able to agree on anything? As the mission of the 2 branches will be different, the AAG now has a General Counsel to make sure that both bureaus apply the laws fairly and consistently.

Second, the Substitute establishes an Office of Children's Affairs to address the special needs of immigrant children who are in the United States without their parents, often times in detention.

Third, the Executive Office for Immigration Review has been moved out from under the responsibilities of the Associate Attorney General. As an adjudicatory body that reviews immigration decisions, it was inappropriate to have EOIR under the authority of the AAG for Immigration Affairs.

Fourth, the Substitute leaves in place the Office of Special Counsel within the Civil Rights Division and the Office of Special Investigations within the Criminal Division. These organizations are presently functioning well and we saw no need to burden them with the immigration bureaucracy.

Finally, we've agreed to make clear that asylum and refugee applications are to be paid for out of appropriated funds rather than raising the visa fees for other applicants in order to subsidize these important programs.

I recognize that others—namely the Senate and the Administration—have ideas on how to improve this bill. Some of them I probably agree with and I look forward to working with them as this bill moves its way through Congress. Today, however, we are taking a very positive step forward in making our immigration system work better.

I urge my colleagues to support the amendment.

[The prepared statement of Mr. Hyde follows:]

PREPARED STATEMENT OF THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I plan to vote in favor of H.R. 3231, as amended by your amendment in the nature of a substitute. I would like to offer a few words by way of explanation.

I strongly support the efforts of the Bush Administration, spearheaded by Attorney General Ashcroft and Commissioner Ziglar, to reorganize and reform the Immigration and Naturalization Service. Because the Administration already has all the statutory authority it needs to carry out its reorganization plan, my position has

been that we should give the Administration plan a chance to work before legislating in this area.

H.R. 3231, however, contains an important additional reform provision that does require legislative authority. This is the creation of an Associate Attorney General for Immigration Affairs to oversee all of our immigration-related operations. I believe the creation of this new position will complement and facilitate the Administration's reorganization and reform plan. Because the new Associate Attorney General position is at a substantially higher level in the Justice Department than the current INS Commissioner position, this change will make it far more likely that immigration issues get the attention they deserve—not just in times of crisis but day in and day out.

H.R. 3231 contains several provisions that I think can and should be substantially improved as the bill works its way through the legislative process. In particular, the bill in its current form prescribes extremely detailed job specifications for the Associate Attorney General and for the heads of the immigration benefits and enforcement bureaus. I believe these requirements constitute inappropriate micromanagement. Rather than limit the President's flexibility in these appointments, we should allow him to choose from the broadest possible range of highly qualified candidates. To the extent that a check on the President's discretion is needed, this is more than amply provided by the Senate's advise and consent power.

Despite these reservations, I believe a favorable report on H.R. 3231 by the Judiciary Committee will be a step forward. I look forward to working with you, Mr. Chairman, as well as with the Administration, for further improvements in the legislation and in our immigration and naturalization system.

Chairman SENSENBRENNER. Let me say that there has been a motion to instruct on bankruptcy provisions on the farm bill that has been filed, which will be brought up at the end of the day, which limits our ability to consider this bill later on in the afternoon, and I'd like to be able to prevent us from having to come back tomorrow morning to finish this bill up, and that will require a little self discipline on the part of all of the Members so that we can get the amendments disposed of as quickly as possible.

Are there any amendments?

Mr. BERMAN. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from California.

Mr. BERMAN. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the amendment in the Nature of a Substitute to H.R. 3231 offered by Mr. Berman.

Mr. BERMAN. Mr. Chairman, I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered. The gentleman is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231

OFFERED BY MR. BERMAN

To authorize such sums as will be necessary to adjudicate refugee and asylum claims.

On page 49, line 19, insert the following,

" (6) AUTHORIZATION OF APPROPRIATIONS FOR REFUGEE AND ASYLUM ADJUDICATIONS- There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act. All funds appropriated to carry out this paragraph shall be deposited into the Account authorized by Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) and shall remain available until expended."

Mr. BERMAN. Yes, Mr. Chairman. This is a fairly simple and straightforward amendment. It simply is an authorization of appropriations for refugee and asylum seekers. By law we do not charge, for very understandable reasons, refugees and asylum seekers application fees for adjustment of their status and for admission.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. BERMAN. Yes.

Chairman SENSENBRENNER. I am prepared to accept this amendment. The impact of this authorization means that the fees that are charged to other applicants for benefits in the INS would not have to be raised to pay for the adjudications of the asylees and the refugees, and I think that cost shifting that is presently going on is unfair. If we want to state by law there are no fees charged to asylees and refugees, then we ought to use taxpayers' money to pay for their adjudication. That's what this amendment authorizes the funds for, and I think it is a good amendment.

Mr. BERMAN. I couldn't have said it as well myself. Thank you, Mr. Chairman.

Mr. CONYERS. Would the gentleman yield?

Mr. BERMAN. I'd be happy to.

Mr. CONYERS. I'd like to indicate my support for the amendment as well and thank the gentleman, and I yield back the——

Chairman SENSENBRENNER. I thank the gentleman.

Ms. JACKSON LEE. Will the gentleman yield?

Mr. BERMAN. I would be happy to yield.

Ms. JACKSON LEE. Mr. Berman, first of all I want to thank you for this. I'm dealing with an asylum case as we speak, and I think that the statement that we make on this is the appropriate statement under refugee and asylum purposes, the reason why they're engaged in that process, and so I thank you for the amendment and support it.

Mr. BERMAN. Thank you very much. I yield back.

Mr. GEKAS. Mr. Chairman?

Chairman SENSENBRENNER. Gentleman from Pennsylvania.

Mr. GEKAS. Yes. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. I'd like to draw the attention of the Members to two phenomena that I wish to comment upon. One is that we have learned this morning, for those who have not heard, that the second of the four Pakistani ship jumpers is now in custody, so were 2 down and 2 to go apparently. We are not sure of the details of how the second came into custody, but it may be that he surrendered, thus making it easier to put the resources on trying to find the other two.

Secondly, I wish to comment upon an added attractive feature that now appears in the substitute which we are considering, and that is that we will be contemplating and accentuating citizenship and the road to citizenship in the new structure that we have formulated for the INS.

For instance, we would be adjusting the name of the Bureau of Services to the Bureau of Citizenship and Services. By itself, that is a wonderful symbol and message to our immigration policies and to all those involved in that phenomenon by accenting citizenship. And within that there would be an Office of Citizenship added to the Bureau of Citizenship and Services. This is in keeping with the often mentioned Barbara Jordan Commission accent on citizenship, and it is conforming to the ideas that many of us have had that we've got to elevate the feeling that new immigrants, in their drive towards citizenship, can accumulate while learning English, while learning some of the Americans, the American history that is so important to all Americans, and working their way finally to be able to undertake a test, to pass the test, and then to take an oath which will be meaningful, not just in its rhetoric but also in its fulsome meaning. In the current oath that we have so often observed in naturalization ceremonies, there are many of us who have been over educated who do not understand some of the words. In that oath that is now prevalent, there are the words "abjure" and "potentate." I myself have watched many of the new citizens stumble over those words, and I do not believe that 2 percent of them really understand what is meant by their own oath of citizenship.

At some later point we have prepared, and we will offer to the Committee, a new oath, one that has been crafted to reflect that the beginnings of English are only—the beginnings of English only have sifted through to the new immigrants, but yet that oath will carry with it the two basic themes. One, the allegiance, the new allegiance to the new Nation that they are adopting; and secondly a concomitant rejection of allegiance to any other nation or any other foreign potentate, to use that word.

So I'm looking forward to completion of the bill today which will elevate the symbol of and the actuality of citizenship, and then to ask the Members to be patient until we have another hearing on the basis of promoting a new oath and giving credence to what a new citizen is all about.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from California, Mr. Berman. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

Mr. ISSA. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, for what purpose do you seek recognition?

Mr. ISSA. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. ISSA. Number 1.

The CLERK. Amendment to the Amendment in the Nature of a Substitute offered by Mr. Issa to H.R. 3231. "At the end of section 12 (relating to reports and implementation plans), add the following:"

"(h) Report on Interior Checkpoints.—Not later than 6 months after the date of the"——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman——

Mr. WATT. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. The point of order is reserved.

The gentleman from California is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT OFFERED BY MR. ISSA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231

At the end of section 12 (relating to reports and implementation plans), add the following:

1 (h) REPORT ON INTERIOR CHECKPOINTS.—Not later
2 than 6 months after the date of the enactment of this Act,
3 the Attorney General shall submit to the Congress a report
4 on whether all permanent interior checkpoints operated by
5 the Immigration and Naturalization Service ought to be
6 closed, and the funds that otherwise would be expended
7 for the operation of such checkpoints ought to be reallo-
8 cated for protecting and maintaining the integrity of the
9 borders of the United States and increasing enforcement
10 at other points of entry into the United States.

Mr. ISSA. Mr. Chairman, my amendment seeks not to immediately perform an act as part of the reforming of the Border Patrol, but to in fact put once and for all a study out that would set what I believe to be a misguided practice by the Border Patrol and a misuse of resources aside.

Within my district the Border Patrol on both the I–5 Freeway, the busiest in our Nation, and the I–15, another major intersection, uses about 270 Border Patrol agents per day to apprehend between 7 and 14 illegals a day, depending upon a period of years, but right now it's running more toward the 7. When we look at the resources of hundreds of Border Patrol agents, in spite of the fact that the Border Patrol itself says that this is a wonderful thing, it doesn't appear to pass the test of cost effectiveness, and therefore, I would like to have the opportunity to study it, and then upon appropriate study, I believe we will be encouraging appropriately the INS to reallocate its resources to where they could do a lot more good with-

out stopping hundreds of thousands of American citizens and noncitizens alike, needlessly every single day.

Ms. LOFGREN. Would the gentleman yield?

Mr. ISSA. Yes, I would yield.

Ms. LOFGREN. I'd just like to say I think this is such a sensible amendment. I think all of us in California have experienced what you've just described. Not only is it intrusive, but it seems so pointless, and—and I really strongly think this is a terrific idea and I hope that we can do it.

I yield back.

Chairman SENSENBRENNER. Does——

Mr. WATT. I withdraw my point order.

Chairman SENSENBRENNER. The question is on the Issa Amendment.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I support the amendment, but I want to direct an inquiry to the Chair. Yesterday during the hearing, I posed the question in terms of the utilization of local and State officials to conduct investigations to affect enforcement, I assist in enforcement activities. And I wonder—I haven't had an opportunity to examine the amendment, the substitute, but if there is legal authority that is necessary, doesn't it make sense to incorporate it in this bill now?

And the answer I received yesterday was somewhat murky, and I'm just posing that question because I think it's related to what this gentleman said.

Mr. ISSA. If the gentleman would yield?

Mr. DELAHUNT. I yield to Mr. Issa.

Mr. ISSA. I think your point of inquiry is very, very appropriate, and probably this study is going to point up whether or not hundreds of trained professionals stopping hundreds of thousands of cars a day is effective. If it is effective, perhaps you're right that local authorities, highway patrolmen, who it would be a routine thing for them to do, would be more appropriately used. I think in this particular case though, we will find that that type of activity would not be the best use of Border Patrol or local officials.

Chairman SENSENBRENNER. Will the gentleman from Massachusetts yield?

Mr. DELAHUNT. I yield to the Chair.

Chairman SENSENBRENNER. Textually there is nothing in the Amendment in the Nature of a Substitute or in the bill relating to the Immigration Service deputizing State and local law enforcement to enforce the Immigration and Nationality Act. However, there is a provision in the '96 amendments to the INA that does give the INS the authority to do that, and this legislation does not affect what was in the '96 act in any respect. Does that answer your question?

Mr. DELAHUNT. It does answer my question. I thank the Chair. I would hope that there would be a—I hope that the INS, the new bureau if it should occur, would encourage cooperation among local and State agencies so that we can have a force multiplier, if you will, because yesterday, we were listening to testimony by Mr.

Ziglar that he has less than 2,000 enforcement agents to cover the entire United States, and that is just simply inaccurate.

Chairman SENSENBRENNER. And if the gentleman will yield further, I think that is a very valid point, and certainly, given the magnitude particularly with figures of 321,000 aliens who have already been ordered deported by immigration judges, we ought to have the dragnet out on the people who have already had their day in court and lost.

Mr. BERMAN. Would the gentleman yield?

Mr. DELAHUNT. I yield to Mr. Berman.

Mr. BERMAN. The whole question of in what situations to deputize State and local law enforcement officials to force our immigration off is a very complicated question. There are obviously some very clear and interesting questions about the 300,000 that the Chairman mentioned, who are already under deportation orders, but then there are many other questions raised to, including cooperation with law enforcement.

I would just suggest on a bill that I think has a great promise for strong bipartisan support, that if we start getting into legislating on that issue, we have—we could have some—it could raise a level of—it's something that really needs to be examined very carefully, in what situations you authorize and in what situations you don't.

Mr. DELAHUNT. Reclaiming my time—I'll yield the time, but before I do I think—and I would commend to the subcommittee chairs and to the chair of the full Committee, consideration for a hearing into the issues that were raised by Mr. Berman, because I think it is absolutely essential. There is no way we are going to enforce our immigration laws without having some sort of ongoing cooperative effort with local and State law enforcement officials, we go through our airports—in my State, in Massachusetts for example, it's the Massachusetts State Police that are there. They're available. I'm sure that given the appropriate protocol they could be an invaluable assistance in terms of enforcing the immigration laws. And I yield back.

Chairman SENSENBRENNER. The question is on the Issa Amendment. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

Ms. BALDWIN. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Wisconsin.

Ms. BALDWIN. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment offered by Ms. Baldwin to the Amendment in the Nature of a Substitute to H.R. 3231.

Ms. BALDWIN. Mr. Chairman, I ask that the amendment be considered as read.

Chairman SENSENBRENNER. If the clerk would keep on reading, I'd like to see some of—you know, some of the copies distributed before we waive the reading.

The CLERK. "In section 3(g)(2)(A)(i) of the bill, insert before the semicolon at the end the following:, including developing a plan to ensure"——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentlewoman from Wisconsin is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT OFFERED BY MS. BALDWIN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231

In section 3(g)(2)(A)(i) of the bill, insert before the semicolon at the end the following: ", including developing a plan to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child".

Ms. BALDWIN. Thank you, Mr. Chairman. This amendment is simple. It would require the Office of Children's Affairs within the newly created agency for Immigration Affairs, to develop a plan to provide unaccompanied alien children with independent legal counsel. In the year 2000 the INS took approximately 4,700 alien children who lacked a family member of a close friend here in the U.S. into custody. Many unaccompanied children are smuggled into our country and forced into prostitution or labor. Many are simply used as tools for others to enter our country, and are then left behind.

While the current laws were intended to protect the child's best interest, it has become increasingly clear that the law's intent and purpose has become as blurry and confused as the entire Immigration and Naturalization Services.

While some of these unaccompanied alien children are deported or reunited with family members, many of them are placed in detention centers for long periods of time without receiving adequate counsel to help them navigate the legal process. Recently an 18-month-old infant was placed before a judge in her swing chair by the INS lawyer who sought to deport her as mandated under current law, as well as serve as her counsel, which is also mandated by law. Fortunately, another lawyer present in the chambers realized this enormous conflict of interest and offered to take the case pro bono.

Almost one-third of the alien children will be shackled, periodically strip searched before being sent into detention centers, where they will eat, sleep and live beside juveniles who may have com-

mitted very serious crimes. They can end up staying in these detention centers for long periods of time, often between 1 month and 2 years before receiving asylum hearings.

Many of these children will be transferred several times to other states an other detention centers without being provided legal advice, let alone being told in their native language where and why they are being moved.

During the debate over INS restructuring, a common theme has been how the INS needs to do a much better job separating those who want to tear down this country from those who want to build it up. In most cases, unaccompanied alien children came to America to do neither. They came here because of situations out of their control or to flee the kinds of evil in their home countries we have learned so well exists throughout the world.

By accepting this amendment, we will compel the INS to develop a plan that would provide unaccompanied alien children with the legal counsel they need to have a fair chance in the courtrooms in our country.

Ms. JACKSON LEE. Will the gentlelady yield?

Ms. BALDWIN. Be happy to yield to the gentlelady.

Ms. JACKSON LEE. Let me thank the gentlelady for an excellent proposal and excellent amendment. In the United States, of course, we're quite familiar with the guardian ad litem and the independent lawyer that is selected for any child that happens to appear in a judicial proceeding and/or an administrative proceeding. I think that this is minimally what we owe children who are languishing in detention centers, and I for one know that the detention centers that are spread across the Southern border in particular have children such as the Brazilian street children that have made their way up through Mexico and others who are trying to escape persecution and abuse, and thereby need to have independent counsel to assist them in whatever petitioning they're trying to achieve. So I would applaud the gentlelady and I would hope that my colleagues would support the amendment. I think it's an excellent addition to the Office of Children Affairs, and I yield back to the gentlelady.

Chairman SENSENBRENNER. For what purpose does the gentleman from Texas, Mr. Smith, seek recognition?

Mr. SMITH. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, I appreciate the motives of the gentlewoman from Wisconsin and understand why she's offering this amendment, but I'm going to oppose it for 2 reasons. First of all, if we will direct our attention to page 11 of the bill that we are considering, I want to point out that the children are not without help, and I'll read that provision that I think is applicable and appropriate from the bill.

It calls for compiling, updating and publishing at least annually a state-by-state list of professionals or other entities qualified to provide the guardian and attorney representation services. In addition, the second reason, Mr. Chairman, I think we should oppose the amendment is that it violates Section 292 of the Immigration and Nationality Act which states that a person, "Shall have the privilege of being represented at no expense to the government."

Appointing an attorney means the government is paying for it, and that is obviously and clearly prohibited by the INA. Mandating counsel raises the question of what is no attorney is willing to represent the alien pro bono. Must the government pay for an attorney to ensure the child has one in every case? Imagine this scenario, and this is not out of the realm of possibility. Imagine that a radical 17-year-old is apprehended by the INS before he can blow himself and dozens of others up. I'm not sure we really want to be in a position where we're asking the American taxpayer to pay for that 17-year-old's attorney.

And for those reasons, Mr. Chairman——

Ms. BALDWIN. Would the gentleman yield?

Mr. SMITH.—I would encourage us to oppose the amendment, and I'll be happy to yield to the gentleman—the gentlewoman from Wisconsin.

Ms. BALDWIN. I just wanted to make very clear that this amendment stops short of—it requires the newly-created division to create plans that we would then have a chance to review in the future, and I think that this will bring this issue squarely before this Committee and the Congress in the future, but it does stop short of creating a mandate for appointment immediately, and I just don't want to see this issue lose the focus that it truly deserves and that was the only other point I wanted to make to the gentleman, that it does not immediately mandate appointment of counsel.

Mr. SMITH. Reclaiming my time, the language as you just stated does say "developing a plan" but I'm not sure there's much distinction really between developing a plan and mandating that attorney be appointed. It seems to me if you have a plan it's maybe a difference without a distinction and that's my concern.

I'll yield back the balance of my time, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the amendment——

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts.

Mr. DELAHUNT. I direct this to my colleague from Wisconsin. Would she accept an amendment based upon the statement by the gentleman from Texas which would indicate planning, but not implementing.

Ms. BALDWIN. I would certainly be interested n working out wording that could get this amendment—my critical mission here is to keep this very important issue moving. We do not want to see what is happening now continue, and I want to use the resources of the newly-restructured department to bring a plan back before us, and so if we can work out wording, as the gentleman from Massachusetts suggests or others, to keep this up front and center, I would be amenable to that at this point.

Mr. DELAHUNT. Reclaiming my time, I direct to the gentleman from Texas whether he would accept an amendment which would specify that the planning, but without—without implementation to address——

Mr. SMITH. If the gentleman will yield.

Mr. DELAHUNT. Sure, I yield.

Mr. SMITH. Again, I think my point is that may or may not be a difference with—a distinction without a difference. I'd be happy to work with you or the gentlewoman from Wisconsin between here

and the House floor in a possible manager's amendment to consider that, but I wouldn't accept that amendment right now without——

Mr. WATT. Would the gentleman yield?

Mr. SMITH.—clarification from others about whether it would still be violating the INA.

Mr. DELAHUNT. I yield to the gentleman from North Carolina, Mr. Watt.

Mr. WATT. I would just suggest that after word "plan" on line 3, we insert "to be considered by Congress," so that it would be clear that whatever proposals or studies or suggestions that were being made would have to come back. I just think the gentleman is overreacting here. Even if you were going to implement a plan to have all children represented by counsel, even our plans here in the United States that require appointment of counsel end up with counsel being appointed for some pretty sinister terrible people. I agree that that is a problem, but the bulk of the—the important thing is that we assure that children's interests are represented, not necessarily looking beyond that because that will then come out in a hearing of some kind, and to try to make it seem like Ms. Baldwin is trying to implement a representation system by this amendment, I just think is a severe misreading, and I think that would clarify it, and I would ask the gentlelady if she would consider that as a friendly amendment?

Chairman SENSENBRENNER. Without—well, just so that we're sure——

Mr. DELAHUNT. I yield back my time.

Chairman SENSENBRENNER. Is the gentleman from North Carolina proposing a modification of the Baldwin Amendment, and if so would he be——

Mr. WATT. I'm not proposing it unless she's amenable to it, but if she is I would move——

Chairman SENSENBRENNER. Well, it would have to be done by unanimous consent anyhow, so——

Mr. WATT. I would ask unanimous consent that the amendment be considered by adding, after the word "plan" on the third line, "to be considered by Congress."

Chairman SENSENBRENNER. Is there any objection to the modification?

Mr. ISSA. I would object.

Chairman SENSENBRENNER. Objection is heard. The question——

Mr. CONYERS. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Would the gentleman from Massachusetts yield?

Mr. DELAHUNT. I yield to the Ranking Member, Mr. Conyers.

Mr. CONYERS. I thank you. My unofficial counter tells me this good amendment is going to go down, so why don't we withdraw it, I say to the gentleman, and let's work on it, because it's too good to suffer this kind of fate.

Mr. DELAHUNT. I'll yield to the gentlelady from Wisconsin.

Ms. BALDWIN. Well, I certainly do want to recognize the incredible bipartisan effort that went into the crafting of the substitute that's before us. I would certainly hope that prior to this being considered on the floor, that we might be able to have language in a manager's amendment considered that will address this topic, and

would hope that we can work with that understanding, that we can make progress on this issue, I would be willing to withdraw.

Mr. CONYERS. I thank the gentlelady.

Chairman SENSENBRENNER. Does the gentlewoman ask that the amendment be withdrawn?

Ms. BALDWIN. I ask that the amendment be withdrawn.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Arizona, Mr. Flake.

Mr. FLAKE. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment offered by Mr. Flake to the Amendment in the Nature of a Substitute to H.R. 3231.

"In section 4(a) of the bill, add at the end the following."

Mr. FLAKE. Mr. Chairman, I ask unanimous consent that the bill be—the amendment be considered read.

Mr. WATT. I reserve a point of order.

Chairman SENSENBRENNER. Point of order is reserved. Without objection the amendment is considered as read and the gentleman is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT OFFERED BY MR. FLAKE TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231

In section 4(a) of the bill, add at the end the following:

1 (4) MANAGERIAL ROTATION PROGRAM.—
2 (A) IN GENERAL.—Not later than 1 year
3 after the effective date specified in section
4 15(a), the Director of the Bureau of Citizenship
5 and Immigration Services shall design and im-
6 plement a managerial rotation program under
7 which employees of such bureau holding posi-
8 tions involving supervisory or managerial re-
9 sponsibility and classified, in accordance with
10 chapter 51 of title 5, United States Code, as a
11 GS–14 or above, shall, as a condition on further
12 promotion—
13 (i) gain some experience in all the
14 major functions performed by such bureau;
15 and
16 (ii) work in at least one field office
17 and one service center of such bureau.
18 (B) REPORT.—Not later than 2 years after
19 the effective date specified in section 15(a), the

1 Attorney General shall submit a report to the
2 Congress on the implementation of such pro-
3 gram.

In section 6(a) of the bill, add at the end the following:

4 (4) MANAGERIAL ROTATION PROGRAM.—
5 (A) IN GENERAL.—Not later than 1 year
6 after the effective date specified in section
7 15(a), the Director of the Bureau of Immigra-
8 tion Enforcement shall design and implement a
9 managerial rotation program under which em-
10 ployees of such bureau holding positions involv-
11 ing supervisory or managerial responsibility and
12 classified, in accordance with chapter 51 of title
13 5, United States Code, as a GS–14 or above,
14 shall, as a condition on further promotion—
15 (i) gain some experience in all the
16 major functions performed by such bureau;
17 and
18 (ii) work in at least one field office
19 and one border patrol sector of such bu-
20 reau.
21 (B) REPORT.—Not later than 2 years after
22 the effective date specified in section 15(a), the
23 Attorney General shall submit a report to the

1 Congress on the implementation of such pro-

2 gram.

Mr. FLAKE. Mr. Chairman, I appreciate this opportunity to discuss this amendment. Chairman Ziglar's testimony yesterday touched upon one of the key concerns that I, and I believe many of my colleagues on this Committee share, and that's the culture of carelessness within the INS. Part of the problem is that many of the mid-level managers, career managers at the INS, have worked in their current divisions more than 10 years. Many don't have experience with other aspects of INS work, they stay and sometimes retire having spent their whole career in one mid-level position or in the same division. This is not done at the FBI or the Bureau of Prisons or the Armed Services. We have the policy there that individuals transfer around, move, have a more coherent view of the goal of the agency and what they're about.

Something needs to be done to create a core of competent mid-level managers that will serve the good of the entire agency or bureau that they work in. I'm afraid that if we reform or abolish the INS, create separate bureaus, but create and have the same managers staying in their same positions, not move around and not have a program where they have a better sense of what the entire bureau or agency is about, that we'll have the same problem years from now.

Now, Mr. Chairman, I understand the need for this bill to move quickly through the process. I have an understanding that we will have a markup coming up where we might be able to offer amendments such as this or bills such as this. And with that understanding then, I will withdraw this amendment, but I believe it is important.

Chairman SENSENBRENNER. The amendment is withdrawn. Are there further amendments?

Ms. LOFGREN. Mr. Chairman, I have an amendment.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Lofgren.

Ms. LOFGREN. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. LOFGREN. Number 069.

Chairman SENSENBRENNER. Number 069.

The CLERK. Amendment offered by Ms. Lofgren.

Mr. WATT. Point of order.

Chairman SENSENBRENNER. Point of order is reserved. Without objection the amendment is considered as read, and the gentlewoman is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT OFFERED BY MS. LOFGREN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231

At the appropriate place in the bill, insert the following (and redesignate provisions and conform the table of contents accordingly):

1 **SEC. ___. TEMPORARY AUTHORITIES RELATING TO CER-**
2 **TAIN SUPERVISORY OR MANAGERIAL PER-**
3 **SONNEL.**

4 (a) IN GENERAL.—Following the submission of a
5 plan in accordance with subsection (c)(2)(A), the Attorney
6 General may, with respect to any person described in sub-
7 section (b), exercise any authority allowable under sub-
8 section (c), during the period—

9 (1) beginning upon the expiration of the 60-day
10 period referred to in subsection (c)(2)(A); and

11 (2) ending 18 months after the date on which
12 such plan is so submitted.

13 (b) APPLICABILITY.—This section applies with re-
14 spect to any employee of (or individual seeking employ-
15 ment with) the Immigration and Naturalization Service,
16 the Office of the Associate Attorney General for Immigra-
17 tion Affairs, the Bureau of Citizenship and Immigration

1 Services, or the Bureau of Immigration Enforcement who
2 occupies (or is applying for)—
3 (1) a Senior Executive Service position, as de-
4 fined by section 3132(a)(2) of such title 5, which
5 satisfies subparagraph (A) or (D) thereof; or
6 (2) a position (other than a Senior Executive
7 Service position) having significant supervisory or
8 managerial responsibilities, as determined under rel-
9 evant provisions of the plan under subsection
10 (c)(2)(A).
11 (c) AUTHORITIES DESCRIBED.—
12 (1) IN GENERAL.—The authority under this
13 subsection is the authority to take personnel actions,
14 without regard to any inconsistent provision of title
15 5, United States Code, or regulation prescribed
16 under such title, relating to the means for—
17 (A) making appointments to positions;
18 (B) assigning, reassigning, or promoting
19 employees; or
20 (C) removing employees from the Senior
21 Executive Service or the civil service.
22 (2) CONDITIONS.—A personnel action taken
23 pursuant to any authority under this subsection
24 shall be ineffective unless—

1 (A) at least 60 days before the first exer-
2 cise of the authority involved, the Attorney
3 General submits to each House of Congress a
4 detailed plan describing—
5 (i) the proposed authority;
6 (ii) the reasons why such authority is
7 necessary; and
8 (iii) a specific citation to any provision
9 of law, rule, or regulation which, but for
10 this section, would prohibit or limit the
11 proposed authority; and
12 (B) the personnel action is taken in con-
13 formance with the provisions of such plan relat-
14 ing to the authority involved.
15 (3) LIMITATIONS.—Nothing in this section shall
16 be considered to permit the waiving of—
17 (A) any provision of law referred to in sec-
18 tion 2302(b)(1) of title 5, United States Code;
19 (B) any provision of law implementing any
20 provision of law referred to in such section
21 2302(b)(1) by—
22 (i) providing for equal employment op-
23 portunity through affirmative action; or

1 (ii) providing any right or remedy
2 available to any employee or applicant for
3 employment in the civil service; or
4 (C) any rule or regulation prescribed under
5 any provision of law referred to in subpara-
6 graph (A) or (B).
7 (4) DEADLINE.—No authority under this sub-
8 section shall derive from any plan submitted later
9 than 9 months after the date of the enactment of
10 this Act.
11 (d) CONSULTATION.—In order to permit, on the part
12 of any organization which represents a substantial per-
13 centage of the employees of the Immigration and Natu-
14 ralization Service, the Office of the Associate Attorney
15 General for Immigration Affairs, the Bureau of Citizen-
16 ship and Immigration Services, or the Bureau of Immigra-
17 tion Enforcement occupying the respective positions de-
18 scribed in subsection (b)(1) or (2), consultation and direct
19 participation in the development of any plan under this
20 section, the Attorney General shall—
21 (1) provide the organization a copy of the pro-
22 posed plan;
23 (2) give the organization at least 30 days to re-
24 view and make comments or recommendations with
25 respect to the proposed plan;

1 (3) give any comments or recommendations
2 from the organization full and fair consideration in
3 deciding whether or how to proceed on the proposed
4 plan; and
5 (4) include with the submission under sub-
6 section (c)(2)(A) (if the Attorney General decides to
7 proceed), any written comments or recommendations
8 timely received from any such organization.
9 (e) NOTICE TO EMPLOYEES.—The Attorney General
10 shall ensure that, concurrent with the notice to Congress
11 given under subsection (c)(2)(A), the persons described in
12 subsection (b) shall be informed of the proposed plan, in-
13 cluding the changes provided for under the plan and the
14 schedule for their implementation.
15 (f) DEFINITIONS.—For purposes of this section—
16 (1) the term "civil service" has the meaning
17 given such term by section 2101(1) of title 5, United
18 States Code; and
19 (2) the term "Senior Executive Service" has the
20 meaning given such term by section 2101a of such
21 title 5.

Ms. LOFGREN. Thank you, Mr. Chairman.

As I mentioned yesterday, I think that while there are a few items in the legislation before us that are meritorious, most particularly I appreciate the efforts made to include the technology language that was in a bill I introduced a couple of years ago, as well as the children's services efforts are a huge improvement over our current situation, I think in large measure, the legislation misses the grit of what's problematic in the agency, and that is the

need to hold management accountable, and in fact, replace large sections of the management of the agency.

This amendment would grant the Attorney General the authority to remove employees of the INS, the Office of the Associate Attorney General, the Bureau of Citizenship, to remove Senior Executive Service employees and those with significant supervisory or managerial responsibilities, and it would provide an 18-month period where management could be cleaned out. I really do think that if you take a look at the problems in this agency—and Mr. Flake's amendment I think attempted to address the same thing——

Chairman SENSENBRENNER. Would the gentlewoman yield?

Ms. LOFGREN. I would like to yield. Before I do, I would like to note the effort of Mr. Cannon in working on this amendment, and I would yield to the Chairman.

Chairman SENSENBRENNER. I thank you for yielding. I appreciate the effort that the gentlewoman from California has put in on this, and if I had my druthers and this would not trigger a sequential referral to the Government Reform Committee, I would enthusiastically support this amendment because I think that it is needed and it is necessary, you know, given the managerial problems that both Commissioner Ziglar and his predecessor, Commissioner Meissner noted. However, it will trigger a sequential referral and if and when the Government Reform Committee gets around to dealing with this issue, you know, the clock may very well have run out in this session of Congress.

I would ask the gentlewoman from California to withdraw this amendment with the following understanding, that we work with the Government Reform Committee between now and the floor to see if we can work something out where they would agree to have the Rules Committee make this amendment an order, either in the form that it has been drafted by the gentlewoman from California or in some other form that is mutually acceptable to us and the Government Reform Committee.

If we cannot work this out, then I am all for introducing this as separate legislation together with other personnel questions, and I imagine that there will be a joint referral. And I can give the gentlewoman from California that there will be an extremely expeditious markup on this as a way of pressuring the Government Reform Committee to deal with this issue, but I don't want this issue to slow down the reorganization of INS, which I think we all agree is necessary,

And if they want to be with the program, we can put it in the bill when it gets to the floor. If they don't want to be with the program, then we'll turn up the heat on them to try to get this passed separately.

Ms. LOFGREN. Reclaiming my time, if I might inquire of the Chairman, would it be your intention to structure this and other measures that might be worthwhile in the form of a manager's amendment for the floor?

Chairman SENSENBRENNER. The answer to that question is very clearly yes. But again, we're going to need Government Reform sign-off. We've got it all drafted. They know it's out there, and we're going to have the staff work with Government Reform, and I'll talk to the Chairman about this, to try to get this done between now and the time this bill goes to the floor.

Ms. LOFGREN. Before asking to withdraw the amendment, might I yield time to the gentleman from Utah?

Mr. CANNON. I thank the gentlelady.

Mr. Chairman, I'd ask unanimous consent to submit a statement for the record.

Chairman SENSENBRENNER. Without objection.

[The prepared statement of Mr. Cannon follows:]

PREPARED STATEMENT OF THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. Chairman,

I have an Amendment with Congresswoman Lofgren at the desk designated #1.

Mr. Chairman, I was planning on offering this amendment today to increase the ability of the new head of the restructured agency to remove personnel in supervisory positions and restore some accountability.

However, because of concerns about the Committee's exclusive jurisdiction and germaneness at this time, I am planning on withdrawing this amendment.

But first let me speak to the importance of providing increased personnel flexibility and removal authority to whoever is in charge of a restructured immigration agency. I care passionately about this, and I know a number of my colleagues do as well.

There are many good ideas and changes in this restructuring bill before us today, but re-arranging the organizational chart and giving someone the title of Association Attorney General for Immigration Affairs (AAGIA) alone does not give them the clout to effect the changes we are seeking.

Commissioner Ziglar testified before us about the importance of changing not just the structures but the culture of this bureaucracy and that all comes down to accountability and effective management.

If we do not provide better tools to deal with the personnel issues, the new head of this agency will be hamstrung in the same way Commissioner Ziglar is today.

Indeed the problem could get worse under the new structure without increased personnel authority because under this bill we are transferring the authority and functions of the current commissioner directly to the two directors over services and enforcement. This could result in situations where the Attorney General has no authority to control agencies and bureaus which he supervises. It would be better if these functions were delegated to the two Directors "subject to the authority and control of the Attorney General and the AAGIA." *[Sec. 4(b) and 6(b)]*.

Moreover, I am concerned that the description of the AAGIA's functions in the amendment in the nature of a substitute is *"overseeing the work of, and supervising"* the Directors of the service and enforcement bureaus, and with *"coordinating the administration of national immigration policy."* This language does not necessarily create a position with the authority to set immigration policy and direct its implementation by the separate bureaus. These powers should be described in strong language that makes it clear that the AAGIA will be "directly responsible for the administration of immigration affairs and for the development and implementation policy under the immigration laws of the United States." [Sec. 2(c)]

But if we are not willing to do that, we at least need to adopt other tools to allow more effective manage. I fear that all of the organizational changes will be for naught if the same people take different titles and different desks with the same level of accountability.

Our amendment would:

1. Grant the Attorney General the authority to remove employees of the INS, Office of the Associate Attorney General, Bureau of Citizenship and Immigration and Bureau of Immigration Enforcement in the-
   a. Senior Executive Service, and
   b. Those with significant supervisory or managerial responsibilities.
2. This authority would be provided initially for an 18 month temporary period for the purpose of seeing whether this flexibility and accountability actually increases the management effectiveness of the agency. The authority does not become effective until the Attorney General submits a plan to Congress within six months that details how he will implement this plan and the AG must also provide notice to covered employees.

I want to note that the amendment does not waive anti-discrimination requirements of current law or the rights of employees who allege discrimination in a dis-

ciplinary action, but it does provide much greater flexibility to terminate or otherwise remove supervisory employees for cause.

Unfortunately our Committee does not have exclusive jurisdiction over federal personnel matters. So I will withdraw this amendment,

I appreciate that the Chairman has agreed to work with me, Congresswoman Lofgren, the Government Reform Committee, and other interested Members of the Committee to do something about this very important issue before this bill comes to the floor. I thank him for his favorable comments and willingness to continue working on this issue and the other amendments we are offering and withdrawing today in anticipation of floor action.

I thank the Chair and I yield back the balance of my time.

Mr. CANNON. And let me just thank the gentlewoman for her work on this issue. It's very, very important, and further, let me state I appreciate your approach to dealing with this issue and really giving authority to the agency in some form at some time, so that they can actually perform the functions without the obstructionism of entrenched bureaucrats.

I thank you and I yield back.

Ms. LOFGREN. Thank you.

Mr. Chairman, I would ask unanimous consent to withdrawn the amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

Mr. BARR. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Georgia, Mr. Barr.

Mr. BARR. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. BARR. I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Now, let's look at it first.

Mr. CONYERS. Mr. Chairman, reserve a point of order.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to the Amendment in the Nature of a Substitute to H.R. 3231 offered by Mr. Barr of Georgia.

Chairman SENSENBRENNER. Point of order is reserved by the gentleman from Michigan. Without objection, the amendment is considered as read, and the gentleman from Georgia is recognized for 5 minutes.

[The amendment follows:]

Amendment to the Amendment in the Nature of a Substitute to H.R. 3231
Offered by Mr. Barr of Georgia

On Page 3, line 21, insert the following (and re-designate provisions accordingly):

(d) TRANSFER OF FUNCTIONS. – There are transferred to the Associate Attorney General for Immigration Affairs functions with respect to workforce enforcement and compliance, vested by statute in, or performed by, the Special Counsel for Immigration Related Unfair Employment Practices (or any officer, employee, or component thereof), immediately before the effective date specified in section 15(a).

Mr. BARR. Thank you, Mr. Chairman.

Mr. Chairman, this amendment would reflect a change that would take us back to the provision in the original bill. It would transfer the functions of the Office of Special Counsel for Immigration-related Unfair Employment Practices into the new INS structure, taking it out of the general structure of the Department of Justice.

Mr. Chairman, the Chairman of the Immigration Subcommittee, the gentleman from the Commonwealth of Pennsylvania, held a hearing recently at my request to inquire into problems that had developed with regard both to the statute underlying the responsibilities and jurisdiction of the Special Counsel for Immigration-related Unfair Employment Practices, as well as inconsistent and arbitrary policy implementation of those responsibilities.

On the one hand the law makes it a crime for an employer to hire a new employee who is not legally in this country and properly authorized to obtain employment. Yet on the other hand, the law, such as enforced by the Special Counsel here, makes it impossible in many instances from a practical standpoint for the employer to ask certain questions or to take reasonable steps to determine whether or not the potential employee is in fact illegal in the country. And it's that whipsawing of the employers that leads to inconsistent application of the law and very serious problems for some employers.

For example, we determined at this hearing that even the Department of Justice does not believe that one particular provision of this law that establishes a Special Counsel, which requires the employer, it actually mandates that the employer must accept as proof of a person being legal in this country and able to seek employment, an expired passport. We asked the witness from the Department of Justice to try and explain that. He could not do it or defend it with a straight face. There are very serious problems with this law, and in particular its application. I do believe that this amendment is worthwhile.

However, due to the fact that in an effort to obtain a compromised piece of legislation that we can get through this Committee and get to the floor expeditiously, which I do believe is in the best interest of our Nation, I will withdraw the amendment at this point, but would urge all Members of the Committee to study this issue because it is something that I intend to bring back up because we really should not be putting our employers in the situation of making them liable for hiring illegals, but then making it impossible for them to reasonably determine whether or not those persons are illegal. Putting our employers in this impossible situation leads to lack of credibility in the law and the enforcement thereof. It creates very serious problems for employers and potential employees as well, and I do think that we need to address this expeditiously, but at this point I do withdraw the amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

Ms. LOFGREN. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from California. For what purpose do you seek recognition?

Ms. LOFGREN. I have an amendment at the desk, Number 070.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. GEKAS. Point of order.

Chairman SENSENBRENNER. Point of order is reserved by the gentleman from Pennsylvania.

The CLERK. I have 3 amendments.

Ms. LOFGREN. It's 070.

The CLERK. Amendment offered by Ms. Lofgren to the Amendment in the Nature of a Substitute to H.R. 3231.

At the appropriate place in the bill, insert the following and redesignate provisions and conform——

Ms. LOFGREN. I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered, and the gentlewoman is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT OFFERED BY MS. LOFGREN TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231

At the appropriate place in the bill, insert the following (and redesignate provisions and conform the table of contents accordingly):

1 **SEC. ___. PROMOTION OF EFFICIENT MANAGEMENT.**

2 (a) CONTRACT AUTHORITY.—Notwithstanding any
3 other provision of law, the Attorney General may enter
4 into a contract to carry out a management function of the
5 Immigration and Naturalization Service, the Office of the
6 Associate Attorney General for Immigration Affairs, the
7 Bureau of Citizenship and Immigration Services, or the
8 Bureau of Immigration Enforcement if the Attorney Gen-
9 eral determines that the performance of such management
10 function would be performed more efficiently under such
11 a contract.

12 (b) TERMINATION OF AUTHORITY.—No contract may
13 be entered into using the authority under subsection (a)
14 after the date that is two years after the date of the enact-
15 ment of this Act.

Ms. LOFGREN. Mr. Chairman, as I indicated in the discussion of the prior amendment, there is a need to address management deficiencies in this agency. Part of that equation is the need to be able to efficiently remove managers who are not performing adequately or whose functions are no longer required as this agency is cleaned

up. The other side of the coin is the need to efficiently bring in people to efficiently manage this agency at the management level. And I am aware, having worked with this agency, as so many of us have, that there are big holes in the skill sets in some parts of the management. In particular, there is a dramatic need to upgrade the management directives in the technology arena. It is very difficult to attract that talent using the civil service system, and in fact, I think it's going to be impossible to do so.

What this amendment would do would grant to the Attorney General the ability to enter into contracts in order to promote efficiency in management. It would allow for a 2-year period contracting either with individuals or with firms to provide for necessary management services, and I think it is essential if we are going to ask the new Attorney General or if the current proposal by the Commissioner remains in place and is fully implemented, the Commissioner have this opportunity.

Chairman SENSENBRENNER. Would the gentlewoman yield?

Ms. LOFGREN. I would. Before I yield, also thank the gentleman from Utah for his efforts at putting this amendment together.

Chairman SENSENBRENNER. This amendment poses the same problem as the previous amendment, in that it will trigger a sequential referral to Government Reform, and with the same representations I made with the previous amendment, that we would try to work something out between now and the floor, I would request that the gentlewoman withdraw this amendment and we will work on it without delaying the underlying bill.

I'd make a further request, is that the further amendments that the gentlewoman is proposing have the same problem of the sequential referral, and maybe she'd like to offer those in block.

Ms. LOFGREN. I'll certainly consider it, but before asking to withdraw this amendment, I would like to yield time to the gentleman from Utah.

Mr. CANNON. I thank the gentlewoman.

Let me just say I think this—recognizing the problems of jurisdiction and supporting the Chairman in his position on it, let me just add that I—we've done a lot of this kind of thing and a lot of different countries across the world, and certainly in America. The problems that the INS have are going to be solved this way, and somehow we need to see our way clear to have an amendment to this effect somewhere so that the agency can move quickly to solve the problems that have accrued over a very long period of time, and under management that has taken advantage of the technologies that have been available in other fashions.

So I'd like to thank the gentlelady for offering the amendment and for her work on the amendment, and just want to point out how important the amendment is, and with that I yield back.

Ms. JACKSON LEE. Would the gentlelady yield?

Ms. LOFGREN. I would yield.

Ms. JACKSON LEE. I thank the gentlelady as well for the—this sort of train of thought on the amendments that she's offered. As I recall, Commissioner Ziglar made some of these very points as related to the hearing that we had on the snafu of the visas of the terrorists going to the school after their death and after the tragic incident of September 11th. What it was is of course the ability to move people about, to bring in expertise that will be useful.

I hope that the Chairman can work with you on this amendment. I think this is a step in the right direction. It also goes to the point, very briefly, that we are not precluding the Administration from making some of the changes they would like to make which include giving them greater flexibility and the kind of staffing that they will have.

I yield back to the gentlelady and I think this is an excellent amendment.

Ms. LOFGREN. Thank you. I ask unanimous consent to withdraw this amendment.

Chairman SENSENBRENNER. The amendment is withdrawn. Are there further amendments?

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee, for what purpose do you seek recognition?

Ms. JACKSON LEE. I have an amendment at the desk, Number 1.

Chairman SENSENBRENNER. The clerk will report Jackson Lee Number 1.

The CLERK. Amendment offered by Ms. Jackson Lee to the Amendment in the Nature of a Substitute to H.R. 3231.

In section 4 of the bill, insert after subsection (k) the following (and redesignate provisions accordingly).

Ms. JACKSON LEE. Mr. Chairman, I ask that the amendment be designated as read.

The CLERK. (1) Mission—It shall be the mission——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentlewoman is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT OFFERED BY MS. JACKSON-LEE OF TEXAS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231

In section 4 of the bill, insert after subsection (k) the following (and redesignate provisions accordingly):

1 (l) MISSION.—It shall be the mission of the field of-
2 fices and service centers of the Bureau of Citizenship and
3 Immigration Services to directly and consistently follow all
4 instructions and guidelines of the Director of the Bureau
5 of Citizenship and Immigration Services and the Associate
6 Attorney General for Immigration Affairs in order to en-
7 sure the development of a cohesive and consistent national
8 immigration policy.

Ms. JACKSON LEE. Mr. Chairman, this is a straightforward amendment, and it is consistent with the constant cry that you get from the constituents who have to utilize service bureaus and various service bureaus and field bureaus. It simply says that the new INS should be integrated from top to bottom and bottom to top, that the mission of the field offices and service centers of the Bureau of Citizenship and Immigration, which is the service arm——

Chairman SENSENBRENNER. Would the gentlewoman yield?

Ms. JACKSON LEE. I'd be happy to yield.

Chairman SENSENBRENNER. I think this is an excellent amendment and I'm prepared to accept it. One of the problems with the current INS is inconsistent interpretations of the same law and the same regulations. So there are different strokes for different folks depending upon what district office you're dealing with. This is designed to prevent this from happening in the restructured Immigration Affair, something that's long overdue.

Ms. JACKSON LEE. I thank the Chairman for his kindness. This is an amendment for consistency of policy and practice.

And with that, Mr. Chairman, I yield back, asking my colleagues to support the amendment.

Chairman SENSENBRENNER. The question is on the adoption of Jackson Lee Amendment No. 1. Those in favor will say aye.

Opposed no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

Ms. LOFGREN. Mr. Chairman, I have one more amendment.

Chairman SENSENBRENNER. The gentlewoman from California.

Ms. LOFGREN. It's 071.

Chairman SENSENBRENNER. The clerk will report Lofgren 071.

The CLERK. Amendment offered by Ms. Lofgren and Mr. Cannon to the Amendment in the Nature of a Substitute to H.R. 3231.

At the appropriate place in the bill insert the following (and redesignate provisions and conform the table of contents accordingly).

Chairman SENSENBRENNER. Without objection the amendment is considered as read.

Mr. GEKAS. Mr. Chairman, I reserve a point of order.

Chairman SENSENBRENNER. The gentleman from Pennsylvania reserves a point of order. And the gentlewoman from California is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT OFFERED BY MS. LOFGREN AND MR. CANNON TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231

At the appropriate place in the bill, insert the following (and redesignate provisions and conform the table of contents accordingly):

1 **SEC. ___. INFORMATION TECHNOLOGY EFFICIENCY.**

2 (a) COMPREHENSIVE INFORMATION TECHNOLOGY
3 SOLUTION.—Notwithstanding any other provision of law,
4 the Attorney General may enter into a contract or con-
5 tracts under which a private entity assists the Immigra-
6 tion and Naturalization Service in developing and imple-
7 menting a comprehensive integrated information tech-
8 nology solution which shall include providing the ability
9 of computer systems of the Immigration and Naturaliza-
10 tion Service to share information with other public agen-
11 cies and law enforcement authorities.

12 (b) REVIEW OF INFORMATION TECHNOLOGY SYS-
13 TEM.—Before awarding a contract under subsection (a),
14 the Attorney General shall provide private entities with the
15 opportunity to review, assess, and evaluate the computer
16 systems, databases, and technology of the Immigration

1 and Naturalization Service with the intent of providing the
2 solution described in subsection (a).
3 (c) ADVERTISEMENT OF CONTRACT; DEADLINE FOR
4 DECISION.—The Attorney General shall—
5 (1) widely advertise a contract under subsection
6 (a) to private entities; and
7 (2) determine the private entity to whom any
8 such contract shall be awarded not later than 9
9 months after the date of the enactment of this Act.
10 (d) INCENTIVES FOR TIMELY COMPLETION.—The
11 Attorney General may provide incentives for the efficient
12 and timely completion of a contract described in sub-
13 section (a), including financial incentives or requiring the
14 use of performance work statements that set forth con-
15 tract requirements in clear, specific, and objective terms
16 with measurable outcomes.

Ms. LOFGREN. Mr. Chairman, this amendment likely will fall into the category of the prior two amendments, but I do want to discuss it and get it in that mix. Currently, Federal law makes contracting quite a burdensome and bulky process. And what this amendment would do would allow the Attorney General to enter into contracts with private sector firms to develop and implement an overall technology solution to the INS current problems. It would allow—give the INS the ability to update technology and data-based systems, allowing information sharing with other public agencies. It provides for advertising and allowing the AG to have private sector firms come in and to use a nonspecific nontechnical term, case the joint, and see what's necessary. I know that there are dozens of firms in Silicon Valley who are prepared to do this, but the current structure really prevents it from occurring.

This would allow this increased flexibility for 9 months, so that as we restructure internally the functions within this agency, it can be done with technology in mind.

Chairman SENSENBRENNER. Would the gentlewoman yield?

Ms. LOFGREN. I would be happy to yield.

Chairman SENSENBRENNER. Again, contracting requires a sequential referral to Government Reform. Idea number three is just as good as ideas number one and two, and I will incorporate by reference my comments on one and two and try to work it out between now and the floor.

Ms. LOFGREN. Before asking unanimous consent to withdraw this amendment, I would like to thank Mr. Cannon for his efforts on this and yield time to Mr. Cannon.

Mr. CANNON. Thank you again. I appreciate the gentlewoman's hard work on this. These three amendments, I think, are very, very important. We have talked about them and worked on them, and I think all three of them are critical to the real effective running of the agency.

And with that, I yield back.

Ms. LOFGREN. Mr. Chairman, I was going to prepare another amendment that would also fall in the category of a sequential referral item. Rather than do that and take the Committee's time to bring up still another amendment, I would hope that as we put together a measure for a manager's amendment that we would also include pay parity for Border Patrol and inspectors so that we will not have the turnover rate that we are experiencing on the law enforcement side.

Chairman SENSENBRENNER. Will the gentlewoman yield further on that?

Ms. LOFGREN. Yes, I will.

Chairman SENSENBRENNER. I support that idea as well, and you may recall that we took a big step in that direction with the visa and border security bill that the House has passed twice, once with and once without 245(i) in it, and which is stuck in a hold in the Senate. Hopefully, the Senators will be able to figure out a way to change Mr. Byrd's mind and we can get that to the President even before we pass this in the House.

Ms. LOFGREN. Thank you, Mr. Chairman. With your comments on this technology amendment as well as the pay parity issue——

Ms. JACKSON LEE. Would the gentlelady yield?

Ms. LOFGREN. I would yield to the lady from Texas.

Ms. JACKSON LEE. I just want to—the technology issue, to the gentlelady from California, is such a key element. You had mentioned a recent visit to the border. One of the issues that was discussed in dealing with homeland security was, in fact, technology utilization by the INS at both of our borders, basically in the INS. I think it is excellent.

I hope we can also go unanimously on record, this entire Committee, of our support for border pay parity. That is something that many of us have had legislative initiatives on, but I think if we could come out on this Committee with a unanimous push that we would manage to get them not only parity but also professional development training as well.

I thank the gentlelady for the effort. I yield back to her.

Ms. LOFGREN. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

Ms. JACKSON LEE. I have an amendment at the desk.

Mr. ISSA. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. This is my amendment 4.

Chairman SENSENBRENNER. The clerk will report Issa number 4.

The CLERK. Amendment offered by Mr. Issa to the amendment in the nature of a substitute to H.R. 3231——

Chairman SENSENBRENNER. The gentleman reserves a point of order on the amendment.

Without objection, the amendment is considered as read, and the gentleman from California is recognized for 5 minutes.

Mr. ISSA. Mr. Chairman, I offer this amendment because in looking at the restructuring, I felt that there was an absence of what I would consider to be corporate transparency.

In my years in the private sector, what I discovered is that if the financially accounting and responsible people, the people responsible for your budget, your profits, your losses in the private sector—obviously, in this case just expenditures—have to report to somebody else, what you end up with is you end up with somebody telling you their interpretation of two distinctly different organizations.

If we are to create two organizations that we fund separately and that we make them accountable for the good and proper use of the monies that the Government authorizes and appropriates, then I believe very strongly that we need to have a CFO in each camp, and that a CFO in each camp reporting then not to a financial adviser but to someone who reports here to Congress, appears to be the appropriate way to have it.

And that is the reason that I offer this amendment. I believe that CBOs reporting to a CFO opens the possibility for a CFO to be ombudsman for a continuation of the movement of cash and resources between two agencies, where we have chosen to end that practice. That is the reason I offer it, and I believe—I encourage everyone here to support this amendment.

Thank you.

[The amendment follows:]

AMENDMENT OFFERED BY MR. ISSA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231

In section 3 of the bill, strike subsection (c) (and redesignate provisions accordingly).

Amend section 4(e) to read as follows:

1 (e) CHIEF FINANCIAL OFFICER.—

2 (1) IN GENERAL.—There shall be a position of
3 Chief Financial Officer for the Bureau of Citizenship
4 and Immigration Services.

5 (2) FUNCTIONS.—The Chief Financial Officer
6 shall be responsible for—

7 (A) financial management of the Bureau of
8 Citizenship and Immigration Services and shall
9 have the authorities and functions described in
10 section 902 of title 31, United States Code, in
11 relation to financial activities of such bureau;

12 (B) formulating and executing the budget
13 of the Bureau of Citizenship and Immigration
14 Services;

15 (C) collecting all payments, fines, and
16 other debts for the Bureau of Citizenship and
17 Immigration Services; and

1 (D) providing information to, and coordi-
2 nating resolution of relevant issues with, the
3 Chief Financial Officer for the Bureau of Immi-
4 gration Enforcement.

Amend section 6(e) to read as follows:

5 (e) CHIEF FINANCIAL OFFICER.—
6 (1) IN GENERAL.—There shall be a position of
7 Chief Financial Officer for the Bureau of Immigra-
8 tion Enforcement.
9 (2) FUNCTIONS.—The Chief Financial Officer
10 shall be responsible for—
11 (A) financial management of the Bureau of
12 Immigration Enforcement and shall have the
13 authorities and functions described in section
14 902 of title 31, United States Code, in relation
15 to financial activities of such bureau;
16 (B) formulating and executing the budget
17 of the Bureau of Immigration Enforcement;
18 (C) collecting all payments, fines, and
19 other debts for the Bureau of Immigration En-
20 forcement; and
21 (D) providing information to, and coordi-
22 nating resolution of relevant issues with, the
23 Chief Financial Officer for the Bureau of Citi-
24 zenship and Immigration Services.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentlemen from Michigan.

Mr. CONYERS. Mr. Chairman, this is—now, here is the amendment that will gut the whole bill and everything that we are trying to do in a bipartisan fashion. I can't figure out this morning whether the gentleman is aware of it or not, but it doesn't make any difference.

Once you take the financial adviser out of this deal, we are done for, and I think it is very regrettable that at this stage of the hearing the gentlemen from California would try something like this. I think that——

Mr. ISSA. Would the gentleman yield?

Mr. CONYERS. No.

I think we have got to turn this thing down right now or we have just blown the agreement that we have worked for weeks and weeks and weeks on.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. CONYERS. Yes.

Ms. JACKSON LEE. Mr. Conyers, just for edification, one of the issues that those who applaud the INS—there may be a few—and those who oppose it is the whole idea of funding and the independent financial position in the INS, meaning the limit of such.

This is a key element to answering the concerns of ordering their dollars and directing their dollars, and I do agree with you and I hope that we will have the opportunity to answer the gentleman's question from California, but not pass this amendment.

Mr. COBLE. Mr. Chairman?

Chairman SENSENBRENNER. The time belongs to the gentleman from Michigan.

Mr. CONYERS. I return my time.

Chairman SENSENBRENNER. I move to strike the last word.

I am strongly opposed to this amendment and I would ask all of the Members of the Committee to vote it down. This is bill is a result of delicate negotiations and one of the things that the people who did the negotiating on a bipartisan way attempted to do was to establish vertical lines of authority so that there would be accountability in both of the new bureaus in the INS and the buck will stop at the top.

Now, the amendment of the gentleman from California diffuses the responsibility and once we start diffusing the responsibility, then, you know, we end up creating two bureaucracies that won't have accountability to replace one bureaucracy that doesn't have accountability.

And my hope is that Members on both sides of the aisle would end up voting this amendment down because we do not need another cook to spoil the broth, called a chief financial officer.

Mr. ISSA. Would the gentleman yield?

Chairman SENSENBRENNER. I yield to the gentleman from California.

Mr. ISSA. Thank you, Mr. Chairman. It is with regret that I will withdraw this amendment. I have to be honest. I disagree with the Ranking Member and the chairman on the effects of this. However, since I was not part of the negotiations and was not aware of the delicateness of those negotiations, then I think it appropriate to leave the status quo, and with that I withdraw the amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

Ms. JACKSON LEE. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. JACKSON LEE. I think this is amendment number 2.

Mr. GEKAS. I reserve a point of order, Mr. Chairman.

The CLERK. Amendment offered by Ms. Jackson Lee, of Texas, to the amendment in the nature of a substitute——

Chairman SENSENBRENNER. A point of order is reserved by the gentleman from Pennsylvania.

Without objection, the amendment is considered as read and the gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Yes, Mr. Chairman. This amendment has been conformed to follow the trend that was voted on by this Committee just a while back with respect to a report, but let me offer to my colleagues the intent of this amendment.

We heard testimony yesterday by Professor Martin, I believe, and the Commissioner about what we call emergent needs for the INS, when all of a sudden the application surge comes forward and there is no way to respond to it.

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. JACKSON LEE. I will be happy to yield.

Chairman SENSENBRENNER. I am prepared to accept this amendment. And, you know, as we know, there will be proposals coming in the future to change the Immigration and Nationality Act——

Ms. JACKSON LEE. Right.

Chairman SENSENBRENNER.—and to require the Attorney General to submit this report to Congress. We will make sure that if we get rid of a 5-million-case backlog we don't end up creating a new 5-million-case backlog, should Congress decide to change the Immigration and Nationality Act. So I accept the amendment.

Ms. JACKSON LEE. I thank the chairman. I ask my colleagues to support it. It is to be able to respond to the needs, emerging needs, of the INS. It is a study.

Thank you.

[The amendment follows:]

AMENDMENT OFFERED BY MS. JACKSON-LEE OF TEXAS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3231

At the end of section ~~11~~ 12 of the bill, insert the following:

(H) ~~(5)~~ REPROGRAMMING.—

(1) IN GENERAL.—~~In order to~~ ensure a prompt and timely response to emergent, unforeseen, or impending changes in applications for immigration benefits, and otherwise to ensure the accomodation of changing immigration service needs, ~~the~~ Attorney General is authorized to, and shall, carry out any reprogramming of previously appropriated amounts that—

(A) has been submitted in a formal notification of reprogramming to the Committees on Appropriations of the Senate and the U.S. House of Representatives; and

(B) complies with applicable reprogramming law.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect 30 days after the date of the enactment of this section.

The Attorney General shall submit to the Congress a report to what immediate funding would be needed.

Chairman SENSENBRENNER. Does the gentlewoman yield back the balance of her time?

Ms. JACKSON LEE. I would be happy to yield back my time, Mr. Chairman.

Chairman SENSENBRENNER. The question is on the——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. WATT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I will be brief. I have not offered any amendments and do not intend to. I appreciate the several people who approached me after yesterday's hearing to see

whether there were amendments that I might be interested in offering that would garner my support for this bill, and it seemed to me better not to offer any amendments and not to prolong the process, but I did want to say a couple of words before we move to final passage.

I have some serious reservations about the direction of this bill. At worst, I think it will make a terrible situation even more terrible and be counterproductive. I do not think that putting the Bureau of Citizenship and Immigration Services in the Attorney General's office sends the kind of message that we should be sending.

I don't think it is a law enforcement function. I don't think it is naturally related to the functions of the Attorney General. Perhaps the Enforcement Section would appropriately be there, but I think dividing these services into two separate agencies really has the potential to make matters worse and reduce even the minimal level of coordination that exists already and make it more difficult for everybody to get to records and to do the work that the INS should be doing.

I didn't want to prolong this. I just wanted to say that there are people—that it is—I guess I applaud the efforts of those people who have been trying to negotiate a deal and to improve the services of the INS. I am just not convinced that this is going to do it, and I think there are a lot of people who will then go out and say that we did something magnificent today that really is not nearly as magnificent as we could have done if we had tried to deal with some of the substantive issues in the INS.

So it is my intention—I won't ask for a recorded vote, but I did want to note for the record that my voice vote, if we don't have a recorded vote, will be against this bill. And I just think the public needs to know that despite the fact that a deal has been made and despite the fact that we have put Barbara Jordan's name on this bill there are still some people here who do not think this is a good idea, and I happen to be one of them.

I yield to the gentlelady from California.

Ms. LOFGREN. Thank you, Mr. Watt. I just wanted to take a minute to concur in some of your comments.

I do not doubt at all the sincerity of the chairman and the Ranking Member, their intentions. I just think that the product before us is likely to make matters worse instead of better. I have grave concerns about the lack of line authority on the part of the new Associate Attorney General. I am also concerned about the codification of the fiefdoms out in the field.

I worry also that the resource allocation will be inadequate on the benefits side, and I—you know, I know that a lot of hard work was put into this by many Members and I respect that as well. I just feel that diverting attention from what the Commissioner is attempting to do with the restructuring plan that he put before us in November is a mistake and likely to make matters worse.

I would note we have all been frustrated with the INS.

Chairman SENSENBRENNER. The time of the gentleman from——

Ms. LOFGREN. I ask unanimous consent for an additional minute.

Chairman SENSENBRENNER. Without objection.

Ms. LOFGREN. We have all been frustrated with the INS. I have been a harsh critic of the INS, but very—the Commissioner had been on the job 36 days prior to September 11, and I think he de-

serves a chance to manage this agency and restructure it. And if he can't do it, he ought to be replaced with someone who can. We ought to give him the tools, tell him to get the job done, and I think that would be preferable to the bill before us.

I yield back the balance of my time.

Chairman SENSENBRENNER. The time of the gentleman has expired.

Are there further amendments?

Ms. JACKSON LEE. Mr. Chairman?

Mr. BARR. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Georgia.

Mr. BARR. Thank you. I have an amendment at the desk, number 2.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment offered by Mr. Barr to the amendment in the nature of a substitute——

[The amendment follows:]

AMENDMENT OFFERED BY Mr. BARR
TO THE AMENDMENT IN THE NATURE OF
A SUBSTITUTE TO H.R. 3231

§4(b)(1) "Transfer of Functions – From the Commissioner-"
Strike the language and insert the following language:

Page 20, line 11-12

Administrative review, adjudication where required by law, and approval, where not otherwise reserved by this Act to the Bureau of Immigration Enforcement, the Executive Office for Immigration Review, or the Attorney General, of all applications for any grant of or change in any immigrant or non-immigrant status or privilege. Approval of an application ~~described under (A)~~ shall require prior confirmation that the Director of Immigration Enforcement, based on records controlled by the Bureau of Immigration Enforcement, has no objection to such action."

Chairman SENSENBRENNER. A point of order is reserved by the gentleman from Michigan.

Without objection, the amendment is considered as read and the gentleman from Georgia is recognized for 5 minutes.

Mr. BARR. I appreciate the chairman and again appreciate this very carefully crafted and extremely important bill which will provide a framework for a properly functioning immigration system in this country, and to which we will in the near future insert various substantive changes to immigration statuses, immigration law, and so forth.

One of those that I do think we ought to take up—and I will not press the point or this amendment at this point, Mr. Chairman, in recognition of the work that you and other Members on both sides have done to craft a bill that reflects a serious effort to compromise and make sure that we get something good through here.

But I do think it is important for us down the road not to overlook the fact that when powers are and will be transferred to the Director of the Bureau of Citizenship and Immigration Services, such as administrative review, adjudication, and approval of non-immigrant and immigrant visa petitions that approval must require—before the Director of the Bureau of Citizenship and Immi-

gration Services approves, it shall require prior confirmation from the Director of Immigration Enforcement based on records controlled by the Bureau of Immigration Enforcement to ensure that the right hand knows what the left is doing.

I think as the chairman has indicated, it is important that we split this agency up so that its functions and goals are clear, its vision is clear, and we have clear lines of authority. But with regard to approval of non-immigrant and immigrant visa petitions, I think it is absolutely essential that the Director of Immigration Enforcement have the ability to review those before the Director of the Bureau of Citizenship and Immigration Services moves forward with an approval of a visa petition.

The events and aftermath of the events of September 11th have made painfully clear to all of us what happens when the right hand does not know what the left is doing. So I would urge, as we pass this important bill today and within a number of days on the floor and then we look down the road to sort of filling in all of the clauses and the specifics within this framework that we are going to enact that we look at language like this which I intend to propose later on because I think it is essential, Mr. Chairman, that we do this to avoid the catastrophic problems that we have seen in recent years with the right hand not knowing what the left hand is doing.

At this time, I withdraw the amendment.

Chairman SENSENBRENNER. The amendment is withdrawn.

Are there further amendments?

If there are no further——

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. Report language, Mr. Chairman. How do you want to—I have report language. It is not an amendment.

Chairman SENSENBRENNER. That will be covered with the 2 days that everybody has, and my intent is to work on a bipartisan report and that is where you can get your input.

Are there further——

Ms. JACKSON LEE. Is there an ability for me to read this language and ask for it to be submitted in the report language, at least make note of the fact that what it has to do——

Chairman SENSENBRENNER. We have never voted on report language in the Judiciary Committee. You know, that is passed around amongst the Members and those that think there is an omission have got, you know, the prerogative of filing additional views.

Ms. JACKSON LEE. All right, Mr. Chairman, then I will engage in the staff and look for this language to be put into the report.

Chairman SENSENBRENNER. Are there further amendments?

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia.

Mr. SCOTT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, first, I would like to ask unanimous consent to introduce into the record a letter from the Leadership Conference on Civil Rights which points out that we did not go far

enough in the bill, in that we did not deal with fundamental fairness for legal permanent residents——

Chairman SENSENBRENNER. Without objection.

Mr. SCOTT.—protection of unaccompanied children, and preserving commitment to refugees.

Chairman SENSENBRENNER. Without objection, the letter is included in the record.

[The material referred to follows:]

April 10, 2002

The Honorable James Sensenbrenner, Chairman
The Honorable John Conyers, Ranking Member
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner and Ranking Member Conyers:

We, the undersigned organizations, are writing in regard to H.R. 3231, the Barbara Jordan Immigration Reform and Accountability Act of 2002. As organizations dedicated to protecting the human and civil rights of the millions of immigrants whose lives are impacted by the Immigration and Naturalization Service, we believe that the reforms envisioned in H.R. 3231, on their own, will leave unresolved some of the most serious problems in the way that the INS treats newcomers to our country. Any meaningful reform of the INS must include not only major structural changes, but also changes in the substance of the laws that the agency is charged with enforcing. Many of the harshest and most unfair enforcement practices of the INS, practices that have drawn immense public scrutiny in recent years, are rooted in not only the misplaced priorities of a broken agency but also in statutory mandates that desperately cry out for reform. Accordingly, we respectfully urge you, as you push toward the enactment of an INS overhaul, to also work for reform in three key areas where there is already bi-partisan agreement that change is necessary in order to restore public confidence in our immigration system and reaffirm our nation's long-standing commitment to protecting the right of every person to due process under law:

- **Restoring Due Process and Fundamental Fairness for Legal Permanent Residents:** Several bi-partisan bills have been introduced in this Congress that seek to alleviate the all-too-frequent hardships faced by long-term *legal* permanent residents and their families under the mandatory detention and deportation provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Enacted with the legitimate goal of increasing the power of the INS to quickly deport immigrants convicted of serious crimes, IIRIRA's provisions have, tragically, cast too wide a net. The laws blindly and indiscriminately subject any legal resident convicted of virtually any criminal offense to a "one size fits all" remedy of lifetime deportation, making any equitable factors – such as evidence of rehabilitation, length of residency, family and community ties, the seriousness of the offense, and the simple question of whether deportation in a particular case would truly further public safety – totally irrelevant as a matter of law. Veterans who have honorably served our country and young Americans who do not even remember their countries of birth alike have, regardless of the particular offenses, been treated just as harshly under our immigration laws as illegal immigrants who have committed the most heinous, violent crimes imaginable. Bills that would address these overly harsh, and disproportionate laws include: The Family Reunification Act of 2001 (H.R. 1452), introduced by Reps. Barney Frank (D-MA) and Lincoln Diaz-Balart (R-FL); the Restoration of Fairness in Immigration Act of 2002 (H.R. 3894), introduced by Representative John Conyers (D-MI) and Ileana Ros-Lehtinen (R-FL); and the Keeping Families Together Act of 2001 (H.R. 87), introduced by Representative Bob Filner (D-CA).

- **Protection for Unaccompanied Children:** The Unaccompanied Alien Child Protection Act of 2001 (H.R. 1904), introduced by Reps. Zoe Lofgren (D-CA) and Chris Cannon (R-UT), will end the shameful way our current laws treat the thousands of children who come to the United States alone each year and get lost within a system that even most adults with attorneys cannot navigate. Children come to this country alone for a number of reasons: some to escape political persecution, others to flee civil war, famine, abusive families, slavery, forced conscription in the military or other inhumane conditions. When they arrive, many children have no legal status or support system. Frequently unaware of their rights,

they are often locked up in juvenile detention facilities with violent teenage offenders and are left to fend for themselves against experienced INS attorneys in removal proceedings. As a result, many children are cast away after a cursory hearing with no follow-up to determine their fate.

- **Preserving Our Commitment to Refugees:** The Refugee Protection Act of 2002 (H.R. 4074), introduced by Reps. Christopher Smith (R-NJ), Howard Berman (D-CA), Ileana Ros-Lehtinen (R-FL) and William Delahunt (D-MA), will prevent IIRIRA's expedited removal and detention policies from being applied to people who come here legitimately seeking a safe haven from persecution. Expedited removal gives INS inspectors at airports and other ports of entry unprecedented power to make on-the-spot decisions to summarily exclude people who arrive without valid travel documents, a power previously entrusted to immigration judges. While expedited removal is not supposed to be used to remove asylum seekers, the provisions are so lacking in procedural safeguards that mistaken deportations are inevitable. Many asylum seekers are forced to flee for their lives before obtaining proper travel documents from the governments persecuting them, and many of them arrive here traumatized and unable to effectively articulate their pleas for help. In decisions made by low-level INS inspectors, many are turned away as a result. Other asylum seekers, even after being found to have a credible fear of persecution, are detained while their cases are pending, for months or even years in prisons or prison-like facilities where their needs are often neglected.

The problems outlined above have long defied any sort of administrative solutions, and no amount of changes to the internal structure of the INS will minimize the harsh impact of immigration laws that are themselves fundamentally flawed. Even in the limited instances where the INS does have the discretion under current law to treat immigrants in a sensible and humane manner, it too often fails to exercise that discretion because the laws provide the agency with no statutory incentive to do so. Our immigration system certainly needs a major facelift, and we are recognize that the Committee is working to provide the INS with one, but we must also emphasize the continuing need to reform the heart and soul of our immigration laws as well. The above bipartisan measures will go a long way in achieving true and lasting reform, and we urge you to work for their passage. Thank you for your consideration of our views.

Sincerely,

American Civil Liberties Union
American Immigration Lawyers Association
Citizens and Immigrants for Equal Justice
Episcopal Migration Ministries
Hebrew Immigrant Aid Society
Illinois Coalition for Immigrant and Refugee Rights
Immigration and Refugee Services of America
Lawyers Committee for Human Rights
Leadership Conference on Civil Rights
National Immigration Forum
Southeast Asia Resource Action Center
Washington Lawyers' Committee for Civil Rights and Urban Affairs
World Organization Against Torture USA

cc: Members, House Committee on the Judiciary

Mr. SCOTT. I also wanted to point out that yesterday I asked the Administration official if there was an Administration position on the bill and he said no, that they would have no amendments, that they would not participate in the process. The Administration will be the ones implementing the legislation, and it seems to me that it would have been more helpful if they had offered constructive input in the process.

The reorganization, as the gentleman from Georgia indicated, is just a framework and it does not improve the situation; it just makes it possible for the situation to improve. So I was disappointed that—I was disappointed that they did not have the input because reorganization in and of itself cannot possibly cure the problem, and I was disappointed with the lack of interest on the part of the Administration.

Mr. FRANK. Would the gentleman yield?

Ms. JACKSON LEE. Would the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Massachusetts.

Mr. FRANK. Well, first, I do have to note I cannot remember too many previous occasions when my colleague has lamented the absence of this Justice Department's input from our proceedings. It may not happen again, but I think he makes a valid point in this particular case.

As to the other point that he made regarding that letter from the organizations, I was pleased to hear the chairman when we were talking about the amendment from the gentleman from Texas allude to the fact that further substantive legislative activity is contemplated because I agree.

I think what happened a few years ago was that, probably because of frustration at the laxity of enforcement that was a result of disorganization and underfunding and structural incoherence in the Immigration Service, we enacted some legislation to toughen up almost as a substitute for rational enforcement.

Having established, as I hope we will in this bill, a better framework for enforcement, I think it is logical for us also then to deal with some of the substantive issues to deal with them. And the chairman has already alluded to that in his reference to the gentlewoman from Texas' amendment, and so I want to say that I am hopeful that we will then proceed to deal with some of the issues that the letter mentions because obviously that is an important part of our job.

I thank the gentleman.

Ms. JACKSON LEE. Would the gentleman yield?

Mr. SCOTT. Reclaiming my time, I would like to respond that an invitation to input does not mean that I would necessarily agree with that input. But this has been dealt with on a bipartisan basis and I think there could have been a lot of constructive purpose to be served.

I will yield to the gentlelady from——

Ms. JACKSON LEE. I thank the gentleman from Virginia. I would like to comment on his insightful analysis of the Administration's posture. I would only hope that the Administration, in listening to this process, would determine the sincerity of this Committee to make something happen and to make it work. I would hope that the Administration has heard your words and will go back and seek to integrate in the framework that we are now looking at their need for changes and begin to change the system.

One witness said yesterday this can work if there is a commitment of the mission from the top to the bottom. And as it relates to Barbara Jordan, I think clearly if we have done anything, we have committed to making changes, and we have committed to making those changes stick, and that is what Barbara Jordan was about in her addressing this whole question of immigration reform.

So I thank the gentleman for his insight, but I hope that today we have sent a strong message, or will send a strong message to the Administration for them to get involved on this issue.

I yield back to the gentleman.

Mr. SCOTT. Reclaiming my time, I yield back.

Chairman SENSENBRENNER. Okay, thank you.

I am told in order to make the record complete that there never was a vote on Jackson Lee amendment number 2.

All those in favor of this amendment, say aye.

Opposed, no.

The ayes appear to have it, the ayes have it, and Jackson Lee amendment number 2 is agreed to.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Are there any further amendments?

If there are not further amendments, the question is on the amendment in the nature of a substitute, as amended. Those in favor will signify by saying aye.

Opposed, no.

Mr. WATT. No.

Chairman SENSENBRENNER. The ayes appear to have it, the ayes have it, and the amendment in the nature of a substitute, as amended, is agreed to.

The Chair notes the presence of a reporting quorum. The question now occurs on the motion to report the bill H.R. 3231 favorably, as amended.

All in favor will say aye.

Opposed, no.

Mr. WATT. No.

Ms. LOFGREN. No.

Chairman SENSENBRENNER. The ayes appear to have it, the ayes have it.

Does anybody want to ask for a rollcall?

Ms. LOFGREN. I would just like to note that I have voted no, Mr. Chairman.

Chairman SENSENBRENNER. Okay. The gentleman——

Mr. WATT. I would like for it to be noted that I voted no. I don't want a rollcall.

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green, asks for a rollcall. Those in favor of reporting the bill favorably will, as your names are called answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas, aye. Mr. Coble?

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye. Mr. Smith?

Mr. SMITH OF TEXAS. Aye.

The CLERK. Mr. Smith, aye. Mr. Gallegly?

Mr. GALLEGLY. Aye.

The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye. Mr. Bryant?

[No response.]

The CLERK. Mr. Chabot?

[No response.]

The CLERK. Mr. Barr?

Mr. BARR. Aye.

The CLERK. Mr. Barr, aye. Mr. Jenkins?

Mr. JENKINS. Aye.

The CLERK. Mr. Jenkins, aye. Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye. Mr. Graham?

Mr. GRAHAM. Aye.
The CLERK. Mr. Graham, aye. Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye. Mr. Hostetler?
Mr. HOSTETLER. Aye.
The CLERK. Mr. Hostetler, aye. Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye. Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye. Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye. Ms. Hart?
Ms. HART. Aye.
The CLERK. Ms. Hart, aye. Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye.
Mr. Pence?
Mr. PENCE. Aye.
The CLERK. Mr. Pence, aye. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
Mr. BERMAN. Aye.
The CLERK. Mr. Berman, aye. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
Mr. WEXLER. Aye.
The CLERK. Mr. Wexler, aye. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Are there Members in the chamber who wish to record or to change their votes?

Ms. WATERS. Mr. Chairman, how am I recorded?

Chairman SENSENBRENNER. The gentleman from Tennessee, Mr. Bryant.

Mr. BRYANT. Aye.

The CLERK. Mr. Bryant, aye.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Waters, aye.

The CLERK. Ms. Waters, aye.

Chairman SENSENBRENNER. Other Members who wish to record or change their votes?

If not, the clerk will report.

The CLERK. Mr. Chairman, there are 32 ayes and 2 nays.

Chairman SENSENBRENNER. And the motion to report favorably is agreed to. Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute incorporating the amendments adopted here today.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. Without objection, the chairman is authorized to move to go to conference pursuant to House rules. Without objection——

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER.—the staff is directed to make any technical and conforming changes and all Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental, or minority views.

Let me express as the chairman of this Committee my thanks to the cooperation of all of the Members of this Committee in getting this bill in the form that it is now. I think that this bill will really, if enacted, provide the machinery and the organizational structure to cure many, but not all of the problems that the Immigration Service faces not only in the enforcement area, but also in the area of providing legal immigrants the services and benefits to which they are entitled under the law.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. If you would yield, let me add my appreciation for this process, and as well to the staff. We are about to make a long journey, but we have made a start and I do want to thank the Judiciary staff on both sides of the aisle for engaging in long hours that helped generate, I think, an important compromise and an important step, not for us but for the Nation.

Chairman SENSENBRENNER. And I share that expression of appreciation to the staff.

There being no further business to come before the Committee, the Committee stands adjourned.

[Whereupon, at 11:37 a.m., the Committee was adjourned.]

DISSENTING VIEWS

We commend Chairman Sensenbrenner and Ranking Member Conyers for their willingness to deal with the longstanding problems plaguing the Immigration and Naturalization Service (INS). While we disagree with the details of their proposal, we believe that they are sincere in their determination to reform the agency.

We have been critics of the INS for many years. Like most observers, we feel strongly that agency reform is necessary. Most who have studied the problems in the INS agree on several points. First, it would be useful to achieve some separation between the enforcement and services functions in the agency. Second, the agency has a need to modernize its technology. Finally, improved performance cannot be accomplished without management accountability.

We voted against reporting H.R. 3231 because we do not believe the bill, as it currently stands, will substantially reform the agency by advancing these three goals. In fact, we fear that the bill may actually aggravate existing problems in immigration enforcement and services. We could end up with two dysfunctional agencies instead of one.

While it may seem that the arguments about this bill are petty, the details do matter. The bill creates a figurehead Associate Attorney General, and vests great authority over the essential elements of immigration and enforcement in two bureaucrats. If we think things are bad now, this is a recipe to make them worse. So, while it is abundantly clear that all of the participants in this restructuring process want to create an agency that can function efficiently and effectively, we fear that H.R. 3231 could produce unwelcome results.

Sometimes it is the dissenting view that helps focus on the shortcomings in any given plan. It is our hope that these few comments will help the Congress remedy the flaws in H.R. 3231 so that much needed reform moves forward on a consensus basis.

Lack of Authority:

Proponents of H.R. 3231 have advocated the dissolution of the INS and the creation of two agencies, one for enforcement and one for services. However, under the Judiciary Committee-reported bill, the INS would actually spin off into three distinct entities: the Office of the Associate Attorney General for Immigration Affairs (AAGIA), the Bureau of Citizenship and Immigration Services (BCIS) and the Bureau of Immigration Enforcement (BIE).

While there is nothing inherently inappropriate with elevating the title of the head of the immigration agencies to Associate Attorney General, no great benefit derives from this title. The current INS Commissioner has advised the Committee that he has not suffered from lack of access to the US Attorney General. Furthermore,

persons who do not hold the title of Associate Attorney General head other important functions within the Department of Justice. One example is the Director of the FBI. Immigration functions are important, but are they more important than those of the FBI?

While the bill vests the AAGIA with the authority over national immigration policy, a closer examination of the functions within the three new agencies shows that the office appears to be without any real authority over the Directors of BCIS or the BIE. At a time when our nation's immigration agency plays a critical part in ensuring our national security, we are concerned about the lack of actual authority of the head of the new immigration affairs agency to set the immigration agenda and enforce our immigration laws.

Further, H.R. 3231 establishes criteria for the hiring of the heads of the new enforcement and services agency. In the case of the services agency, these requirements ensure that only a bureaucrat of long standing could be appointed to the position. Arguably, this could mean that someone who has been part of the problem at the agency will become the leader of the new agency. While experience is certainly valuable, the most valuable experience is often measured in management successes and not simply in the number of years served in a government agency. We think it is an error to preclude the possibility of selecting new energy and vision from the private sector to lead the agency to new levels of performance. After all, a customer can track a package on-line when using UPS or FedEx, but tracking the status of a visa petition can take months.

Another concern with the current INS is the autonomy with which many field offices operate. This bill appears to codify the current system where the Administration's restructuring proposal would make changes to provide clarity of function that would improve accountability. The current field office structure would make it difficult for even the most imaginative and talented bureaucrat to hold the new agency accountable for delivery of mission critical objectives. We believe it would be unwise to so severely limit the authority that the head of the immigration affairs agency would have over the bureaus and employees that perform the key functions of the agency.

Lack of Coordination:

While the separation of the nation's immigration service and enforcement functions is desirable, the separation should be accomplished in a manner that emphasizes coordination. Coordination should be real, and not in name only.

While H.R. 3231 would charge the AAG with responsibility for reconciling conflicts in policy between the BCIS and BIE, the bill fails to indicate how such authority would be exercised. Duplication of departments within the three organizations will not ensure cooperation and effective conflict resolution. Without clear chains of command, competing priorities would impair the effectiveness of the agency. Without a strong centralized leader, the separation of the INS into three entities may only exacerbate one of the current agency's greatest weaknesses—its extraordinary inability to share information internally with its own units and externally with other agencies and law enforcement authorities.

Children's Office:

We appreciate the Chairman's accommodation in the area of unaccompanied minors. Section 4(g) of the Committee-reported bill will establish an Office of Children's Affairs with strong authority to look after the care and custody interests of unaccompanied alien children, modeled after Section 101 of H.R. 1904/S.121, the "Unaccompanied Alien Child Protection Act of 2001," which is pending in the Committee. Section 4(g) of the Committee-reported version of H.R. 3231 would place the Office of Children's Affairs inside the Office of the Associate Attorney General for Immigration Affairs. While we appreciate the Committee's recognition of the problems faced by unaccompanied alien children and its creation of the new office, the Office of Children's Affairs should be outside the immigration agency, as outlined in the "Unaccompanied Alien Child Protection Act."

We recognize and respect the Committee's decision to limit the scope of the legislation to issues relating to the organizational structure of the nation's agencies that deal with immigration. As such, the bill does not contain substantive immigration policy provisions addressing many of the substantive problems with our immigration law. At the same time, we believe it is urgently necessary that Congress more comprehensively address the issues relating to the care and custody of unaccompanied alien children, such as their lack of access to counsel to assist them in immigration proceedings, the need for guardians ad litem to look after their interests, and the harsh conditions under which they often are detained.

We urge the Committee to address the special needs of unaccompanied alien children more comprehensively by marking up the "Unaccompanied Alien Child Protection Act" without delay.

Financing Issues:

We note that the Committee-reported bill makes an effort to address some of the key financing issues that are inherent in dividing the INS into three separate structures. The bill creates a transition account, reforms the manner in which fees are calculated, and specifically authorizes funds for refugee and asylum adjudications.

But the bill would benefit from several additional financing provisions, such as more specific language prohibiting the use of examinations fee account funds for nonadjudicatory purposes, the mandating of ongoing reports from the Attorney General on the costs of transitioning from the Immigration and Naturalization Service to the structures contemplated by H.R. 3231, and better integration of the backlog reduction provisions in the bill with the "Immigration Services and Infrastructure Improvements Act" enacted in 2000. That act required the INS to adjudicate various immigration benefits petitions and applications in an expeditious manner and to report to Congress on plans to eliminate backlogs in immigration benefits adjudications.

Tools Necessary to Effectively Manage Immigration Laws:

Congress needs to provide the head of the immigration agency with the tools necessary to effectuate reform internally. The Commissioner needs the authority to remove ineffective managers, to

outsource management, and to procure technology expeditiously. We also believe that retention of immigration inspectors and Border Patrol agents is critical to our national security interests. These individuals should be paid salary and benefits equivalent to law enforcement officials in other government agencies.

For reasons of Committee jurisdiction, the Chairman asked that these amendments be melded into this bill later in the legislative process. We appreciate the Chairman's support of Ms. Lofgren's amendments and his commitment to including them in a Manager's Amendment when H.R. 3231 is considered on the floor of the House of Representatives. The incorporation of these amendments would strengthen the bill immensely.

It appears that the Senate Judiciary Committee is working to develop an INS restructuring plan that more closely mirrors the Administration's own proposal. Since reconciliation of competing bills to the satisfaction of the House, Senate and White House can be a time consuming process, we recommend that the management tools outlined in the amendments offered in Committee be adopted separately from H.R. 3231, in addition to being included in a manager's amendment. It would be a shame to see urgent improvements delayed because the legislative process so necessary to the workings of our democracy is also so time consuming.

MELVIN L. WATT.
ZOE LOFGREN.

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