109TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
109–

DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 3402

SEPTEMBER 22, 2005.—Ordered to be printed

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DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009

SEPTEMBER 22, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3402]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3402) to authorize appropriations for the Department of Justice for fiscal years 2006 through 2009, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

"(2) EXCEPTION.—If the Director determines that an Indian tribe has adequate resources to comply with a matching requirement that would otherwise apply but for the operation of paragraph (1), the Director may waive the operation of paragraph (1) for that tribe.

"(h) EVALUATION.—The Director shall award a contract or cooperative agreement to evaluate programs under this section to an entity with the demonstrated expertise in domestic violence, dating violence, sexual assault, and stalking and knowledge and experience in—

"(1) the development and delivery of services to members of Indian tribes who are victimized;

"(2) the development and implementation of tribal governmental responses to such crimes; and

"(3) the traditional and customary practices of Indian tribes to such crimes.".

SEC. 1006. GAO REPORT TO CONGRESS ON STATUS OF PROSECUTION OF SEXUAL ASSAULT AND DOMESTIC VIOLENCE ON TRIBAL LANDS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Comptroller General of the United States shall submit to the Congress a report on the prosecution of sexual assault and domestic violence committed against adult American Indians and Alaska Natives.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall include the following:

(1) An assessment of the effectiveness of prosecution of such cases by the United States district attorneys of such cases.

(2) For each district containing Indian country, a summary of the number of sexual assault and domestic violence related cases within Federal criminal jurisdiction and charged according to the following provisions of title 18, United States Code: Sections 1153, 1152, 113, 2261(a)(1)(2), 2261A(1), 2261A(2), 2261(a)(1)(2), and 922(g)(8).

(3) A summary of the number of—

(A) reports received;

(B) investigations conducted;

(C) declinations and basis for declination;

(D) prosecutions, including original charge and final disposition;

(E) sentences imposed upon conviction; and

(F) male victims, female victims, Indian defendants, and non-Indian defendants.

(3) The priority assigned by the district to the prosecution of such cases and the percentage of such cases prosecuted to total cases prosecuted.

(4) Any recommendations by the Comptroller General for improved Federal prosecution of such cases.

(c) YEARS COVERED.—The report required by this section shall cover the years 2000 through 2005.

PURPOSE AND SUMMARY

H.R. 3402, the "Department of Justice Appropriations Authorization Act, Fiscal Years 2006 Through 2009" establishes spending levels of programs within the Department of Justice ("DOJ" or "Department"). Titles I through III establish spending levels for fiscal years 2006 through 2009. Titles IV through X authorize programs for fiscal years 2006 through 2010. Title I provides the authorizations for appropriations for the various activities of the Department. Title II reforms various Department of Justice grant programs. Title III modifies various Department authorizing statutes. Title IV through title X of the bill reauthorize, improve and establish programs within the Violence Against Women Act ("VAWA") within the DOJ, many of which are set to expire on September 30, 2005.

Titles I-III of H.R. 3402 contain many of the provisions contained in H.R. 3036 (108th Congress) with modified authorization levels. A small number of the provisions contained in that legislation were excluded from H.R. 3402 because those provisions were enacted

elsewhere or are no longer timely. A small number of additional provisions are contained in H.R. 3402 to address programs which are set to expire such as the Juvenile Accountability Block Grants program and the Sex Offender Management program.

Titles IV-X of H.R. 3402 contain grant programs to States and local governments to combat domestic violence, dating violence, sexual assault and stalking that are within the jurisdiction of the Committee on the Judiciary. These sections reauthorize core DOJ programs to combat domestic violence and make improvements to those grant programs to further enhance programs to combat domestic violence, dating violence, sexual assault and stalking. The bill reauthorizes the Services Training Officers Prosecutors ("STOP") program, which provides State formula grants that help fund collaboration efforts among police, prosecutors and victim services providers. The legislation also reauthorizes grants to encourage arrest programs that provide funds to communities to develop and strengthen programs and policies that encourage police officers to arrest abusers who commit acts of violence or violate protection orders. Additionally, the bill authorizes several new programs that include grants to improve training for court officials and law enforcement personnel, and to encourage community based solutions to domestic violence.

BACKGROUND AND NEED FOR THE LEGISLATION

A. STATUTORY AUTHORIZATION AUTHORITY

"Authorization" is the process by which Congress creates, amends, and extends programs in executive agencies. The authorization process is an important oversight tool that Congress and committees of jurisdiction can employ. Through authorization legislation, authorizing committees establish programs, their objectives, and the upper limits for spending on them. Once a Federal program has been authorized, the actual budget authority for the program is set out in appropriations bills.

The Department of Justice, established in 1870 by an act of Congress, is an executive department of the Federal Government under the direction and control of the Attorney General. (12 Stat. 162 (1870)); (28 U.S.C. §§ 501, 503). Except as otherwise authorized by law, the Justice Department has "[p]rimary responsibility for representing the United States, its agencies, and officers in the courts of the United States" and, if necessary or appropriate, in State and local courts. (U.S. Dep't of Justice, Revised Edition of Compendium on Agency Litigation Authority 1–1 (Sept. 2000)); (28 U.S.C. §§ 516–19, 547); (5 U.S.C. § 3106). In addition, Congress has authorized executive departments, independent agencies, and government corporations to appear in court through their own counsel under certain circumstances. *(Id.)*

Congressional authorization of appropriations for the Justice Department is required by law. (Pub. L. No. 94–503, Title II, § 204, 90 Stat. 2427 (1976)). The Crime Control Act of 1976 provided that:

> No sums shall be deemed to be authorized to be appropriated for any fiscal year beginning on or after October 1, 1978, for the Department of Justice (including any bureau, agency, or

other similar subdivision thereof) except as specifically authorized by Act of Congress with respect to such fiscal year.

(Id.) Notwithstanding this statutory authority, until recently the Justice Department had not been formally authorized by Congress since 1980. (Pub. L. No. 96–397, 94 Stat. 1563 (1980)). However, in 2001, Chairman Sensenbrenner introduced H.R. 2215, the "21st Century Department of Justice Appropriations Authorization Act." This authorizing legislation was enacted into law on November 2, 2002. Pub. L. No. 107–273. This legislation fully authorized the appropriations requested by the President for fiscal years 2002 and 2003, strengthened legislative oversight of the Department of Justice by bolstering the authority of the Department's Inspector General, required disclosure of additional information on the operation of the Office of Justice Programs, created additional Federal judgeships, and contained several legislative initiatives that had passed the House but received no floor vote in the Senate.

In the 108th Congress, this Committee and the House of Representatives passed legislation, H.R. 3036, on a bipartisan basis and under suspension of the rules, to reauthorize, improve and establish programs at the Department of Justice for fiscal years 2004 through 2006. This legislation was never acted upon by the Senate, and therefore, never became law. Titles I-III of H.R. 3402 contain many of these provisions. In addition to these programs, the legislation adds reauthorization of grant programs to combat domestic violence, dating violence, sexual assault and stalking that are within the jurisdiction of the Committee and are set to expire this fiscal year.

The Committee on the Judiciary has authorizing jurisdiction over the Department of Justice. The Justice Department is presently comprised of over 50 separate components, including the Federal Bureau of Investigation, the U.S. Attorneys, the U.S. Marshals Service, the Drug Enforcement Administration, the Bureau of Prisons, the Office of Solicitor General, the Office of Justice Programs, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the various litigating divisions, and others.

H.R. 3402 reflect's the Committee on the Judiciary's continuing commitment to the authorization process. The highlights of H.R. 3402 are set forth below.

B. TITLE I—AUTHORIZATION OF APPROPRIATIONS

Title I contains authorizations of appropriations for the Department's various programs for fiscal years 2006 through 2009. These authorization levels are based on the FY 2006 authorized amounts in H.R. 3036 (108th Congress) and the President's budget request. For each fiscal year, the authorizations are increased for inflation.

The Committee went beyond the Administration's request for FY 2006 for the Office of the Inspector General, fees and expenses for witnesses, and the administration of the grant program offices including COPS, OJP and VAWA.

C. TITLE II—REFORM OF THE DEPARTMENT'S GRANT PROGRAMS

Title II generally reforms the Justice Department's grant programs, most of which are run through the Office of Justice Pro-

grams ("OJP") or the Community Oriented Policing Services ("COPS") Office. The Committee believes that many of the programs that these two offices administer are worthwhile and should be continued. The Committee also believes that the Justice Department has made many administrative reforms in the last several years that have greatly increased the efficiency of these programs. The reforms in H.R. 3402 are intended to build on that progress and should not be interpreted to indicate any lack of support for that work. In fact, most of the measures included in title II originated from a proposal formally submitted to the Congress by the Administration on June 4, 2003.

Title II makes numerous changes to DOJ's various grant programs many of which are relatively minor. Each of these is discussed in the section by section analysis below. The discussion in this section will focus on the most significant of the changes.

1. Merger of Byrne and LLEBG Programs

Section 201 merges the current Byrne Grant Program (both the formula and discretionary aspects) and the Local Law Enforcement Block Grant Programs (LLEBG) into one new Edward Byrne Memorial Justice Assistance Grant Program. This will allow States and local governments to make one application for this money annually for a 4-year term.

The formula for distributing these grants combines elements of the current Byrne and LLEBG formulas. For allocating money to the States, each State automatically receives 0.25 percent of the total. Of the remaining amount, 50 percent is divided up among the States according to population (the method currently used under Byrne) and 50 percent is divided up based on the violent crime rate (the method currently used under LLEBG).

Each State's allocation is then divided among State and locals in the following manner. Sixty percent of the allocation goes to the State. Then, that 60 percent is divided between State and locals based on their relative percentages of overall criminal justice spending within the State. The State keeps its portion of the 60% and gives out the local portion in the State's discretion. This follows how Byrne formula grants are now administered.

The remaining 40 percent of the State's allocation goes directly to the local governments from OJP. Each class of local governments (*e.g.,* cities, counties, townships, etc.) gets a share based on its relative percentage of local criminal justice spending within the State. Within each class, the class's share is divided up between the local governments in that class based on their crime rate. This is similar to how LLEBG grants are now done. The Committee believes it has devised a formula that gives all the recipients an amount that is as close as possible to the amount they would receive under current law.

The bill authorizes $1.095 billion for the combined grant program which represents a 2 percent increase over the amount appropriated for both programs in Fiscal Year 2006 and such sums as may be necessary for 2007–2009. A new feature of the program is that States will be allowed to keep grant funds in interest bearing accounts until spent and then keep the interest. However, all money must be spent during the 4-year grant period. In addition,

the new program consolidates the current 28 specific purposes for Byrne grants and 9 specific purposes for LLEBG grants into six broad purposes intended to cover the same ground while giving more flexibility to use the grants constructively.

The Committee believes that these reforms will work to give State and local governments more flexibility to spend money for programs that work for them rather than to impose a "one size fits all" solution. In addition, the reforms should lessen the administrative burden of applying for the grants.

2. Authorization of Weed and Seed Program

In 1991, DOJ established the Executive Office of Weed and Seed by administrative action. This program is a community-based multi agency approach to law enforcement, crime prevention, and neighborhood restoration. It has been successful, but it has never been permanently authorized. Section 211 creates a new Office of Weed and Seed Strategies. This office will replace the current Executive Office of Weed and Seed, and for the first time, this program will have a specific authorization.

3. Overall Management of OJP and COPS

Despite the laudable progress that the Department has made in the last several years, the Committee believes that additional measures are needed to instill a culture of accountability at OJP and COPS. Accordingly, the bill establishes three new offices within OJP: an Office of Audit, Assessment, and Management; a Community Capacity Development Office; and an Office of Applied Law Enforcement Technology. It also contains several other provisions designed to improve the management of OJP and COPS.

Section 248 creates the new Office of Audit, Assessment, and Management within OJP. This office is authorized to audit, exercise corrective actions with respect to, and manage information with respect to, the COPS programs, any grant program carried out by OJP, and any other grant program carried out by DOJ that the Attorney General considers appropriate. This will include establishing and maintaining an automated information management system to track all grants. The Office of Audit, Assessment, and Management will report directly to the Office of the Assistant Attorney General.

This office will address many of the problems that came to light during the Subcommittee on Crime, Terrorism, and Homeland Security's oversight hearings, particularly the lack of monitoring and outcome-based evaluations of OJP programs. This office will also address findings by the Department's Inspector General regarding failures to adequately review grant applications and undertake more aggressive and timely corrective action on audit findings, especially with grantees who do not comply with grant terms. A strategic objective of the Department of Justice for the Office of Justice Programs is to ensure meaningful outcomes, appropriate fiscal management, and accountability. This new office will help the Department achieve those objectives.

The new office will audit grants representing 10 percent of all funds awarded by the programs that it covers each year. Not to ex-

ceed 5 percent of the funding for each program that the new office covers shall be reserved to fund the office.

Section 249 creates a new Community Capacity Development Office within OJP. The Office will report directly to the Assistant Attorney General. This office will provide training on a regional and local basis to actual and prospective participants in the COPS programs, any grant program carried out by OJP, and any other grant program carried out by DOJ that the Attorney General considers appropriate. The office will also identify best practices for grantees and incorporate such practices into its training. Not to exceed 5 percent of the funding for each program that the new office covers shall be reserved to fund the office.

Section 250 creates an Office of Applied Law Enforcement Technology headed by a Director appointed by the Attorney General. This office will ensure that grant moneys provided to law enforcement for computer systems will be spent for equipment and software that is of good quality and suitable for its intended purposes. The Director and the Office will provide leadership and focus so grants that are made for use or improvement of law enforcement computer systems ensure that recipients of such grants will use such systems to participate in crime reporting programs administered by the Department. This will correct past practices of little or no coordination between Federal grant funds spent by localities on computer systems and the crime reporting programs authorized by Congress and administered by the Department of Justice.

Section 251 provides that unless otherwise specifically provided by an authorizing statute, money appropriated for grants in fiscal year 2006 and any subsequent fiscal year shall remain available to be awarded and distributed to grantees for the year appropriated and three subsequent fiscal years. If the money is reprogrammed, the time period begins again. It further provides that money distributed to grantees must be spent within the time period provided by the grant. In either case, money not meeting the requirement shall revert to the Treasury. This change will provide an incentive to get grant funds spent for their intended purposes rather than languishing at OJP or at the offices of the grantee.

Section 252 requires the Assistant Attorney General of the Office of Justice Programs to make two significant financial management reforms: (1) consolidate all accounting activities of OJP into a single financial management system under the direct management of the Office of the Comptroller by September 30, 2010, and (2) consolidate all procurement activities of OJP into a single procurement system under the direct management of the Office of Administration by September 30, 2008.

The Assistant Attorney General is required to begin the consolidation of accounting activities under the Office of the Comptroller and the consolidation of procurement activities under the Office of Administration. The Office of Administration is to begin the consolidation of procurement operations and financial management systems into a single financial system.

The Committee believes that these changes in Sections 248–52 form one integrated package of management reforms that will greatly enhance the efficiency of OJP and COPS and help them to achieve their missions.

D. TITLE III—MISCELLANEOUS PROVISIONS

Title III makes a number of miscellaneous technical changes to statutes involving the Department, in addition to several substantive changes.

Section 304 is intended to ensure that the Justice Department uses the most cost-effective training and meeting facilities for its employees. For any predominantly internal training or conference meeting, it requires the Justice Department to use only a facility that does not require a payment to a private entity for the use of such facility, unless specifically authorized in writing by the Attorney General. It further requires the Attorney General to prepare an annual report to the Chairmen and Ranking Members of the House and Senate Judiciary Committees that details each training or conference meeting requiring authorization. The report must include an explanation of why the facility was chosen and a breakdown of any expenditures incurred in excess of the cost of conducting the training or meeting at a facility that did not require such authorization. The Committee believes that this section will limit the practice of renting private facilities for Department retreats, conferences, meetings, and the like when Federal facilities are available for the same purpose.

Section 305 establishes a statutory privacy officer within the Department. It is intended to ensure that the Department safeguards personally identifiable information and complies with fair information practices pursuant to 5 U.S.C. § 552a. The responsibilities of the privacy officer will include: (1) assuring that the Department's use of technologies does not erode privacy protections relating to the use, collection, and disclosure of personally identifiable information; (2) ensuring that such information is handled in full compliance with fair information practices; (3) evaluating legislative and regulatory proposals concerning the collection, use, and disclosure of such information by the Federal Government; (4) conducting a privacy impact assessment of the Department's proposed rules on the privacy of such information; (5) reporting to Congress on the Department's activities that affect privacy; (6) ensuring that the Department protects such information and its information systems from unauthorized access, use, disclosure, disruption, modification, or destruction; and (7) advising the Attorney General and Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems.

Section 306 is intended to ensure the United States Trustee Program (a component of the Justice Department) actively identifies matters warranting criminal referrals and undertakes efforts to prevent bankruptcy fraud and abuse. It requires the Director of the Executive Office for United States Trustees to prepare an annual report to the Congress detailing: (1) the number and types of criminal referrals made by the Program; (2) the outcomes of each criminal referral; (3) any decrease in the number of criminal referrals from the previous year; and (4) the Program's efforts to prevent bankruptcy fraud and abuse, particularly with respect to a debtor's failure to disclose assets.

Section 307 was added by an amendment offered by Representative Adam Schiff. Section 307 requires the Attorney General to submit an annual report to Congress specifying the number of United States persons or residents detained on suspicion of terrorism and specifying the standards developed by the Department of Justice for recommending or determining that a person should be tried as a criminal defendant or should be designated as an enemy combatant.

E. COPS CONSOLIDATION

During the Committee on the Judiciary's markup of H.R. 3036, in the 108th Congress, Members of the Committee agreed in principle to consolidate a variety of programs within the COPS office into one single grant program encompassing all of the grant purposes that these programs currently encompass and allowing grants to be used for law enforcement devoted to homeland security and anti-terrorism efforts. As with the Byrne-LLEBG merger, this consolidation will allow State and local governments more flexibility to spend the money for programs that work in their locality while easing the administrative burden of applying to a different program for each different purpose.

F. VIOLENCE AGAINST WOMEN ACT REAUTHORIZATION ("VAWA")

The VAWA was first enacted in 1994, and was reauthorized in 2000. The authorization for many of VAWA programs is set to expire on September 30, 2005. Titles IV through title X reauthorize and improve core programs until FY 2010 to address domestic violence, dating violence, sexual assault, and stalking. These titles also establish new programs to address missing elements in the fight against violence such as training for court personnel, training of school personnel, and utilization of community-based approaches.

G. MANAGER'S AMENDMENT

A manager's amendment offered by Chairman Sensenbrenner and Ranking Member Conyers was accepted at markup to include some important priorities of Committee Members, including authorizations for the Department of Justice to focus on individuals who operate organized theft rings or engage in human trafficking. Additional provisions of the manager's amendment authorized grants for gang resistance education and encouraged current juvenile offender grant programs to focus on bullying prevention.

HEARINGS

Following House passage of the "21st Century Department of Justice Authorization of Appropriations Act," the Judiciary Committee has continued to maintain an active role overseeing the Justice Department. While hearings on H.R. 3402, were held before the Committee, the full committee and several subcommittees have conducted oversight hearings over Justice Department components within their respective jurisdictions that have informed consideration of this legislation. Additionally, the legislation is substantially similar to legislation that passed the Committee and the

House of Representatives in the 108th Congress. A number of reauthorization hearings were held by Subcommittees on these issues in the 108th Congress.

COMMITTEE CONSIDERATION

On July 27, 2005, the Committee met in open session and ordered favorably reported the bill H.R. 3402 with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the committee consideration of H.R. 3402.

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.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives 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. 3402, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 16, 2005.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has completed the enclosed cost estimate for H.R. 3402, the Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

Section 321. Police badges

This section amends the title 18 prohibition on use of a false badge to limit the defenses available to someone for using a counterfeit badge to use in a dramatic production or for a legitimate law enforcement purpose.

Section 322. Officially approved postage

This section amends title 18 to prevent prosecutions of individuals who create postage stamps with the approval of the United States Postal Service.

TITLE IV—VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2005

Section 401. Short title

This section establishes the short title for titles IV-X of this legislation.

Section 402. Definitions and Requirements for Programs

The Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting before section 2001 (42 U.S.C. 3796gg) the following new sections:

Sec. 2000A. Clarification that Programs Relating to Violence Against Women are Gender Neutral

Specifies that any grants or other activities for assistance to victims of domestic violence, dating violence, stalking, sexual assault or trafficking in persons shall be construed to cover both male and female victims.

Sec. 2000B. Definitions that Apply to Any Provision Carried Out by the Violence Against Women Office

This section provides definitions for programs carried out by the Office of Violence Against Women.

Sec. 2000C. Requirements that Apply to Any Grant Program Carried Out by the Violence Against Women Office

This section specifies privacy protections, approved activities, non-supplantation, use of funds, evaluation, prohibition on lobbying, and prohibition on tort litigation.

Congress recognizes the importance of ensuring that grantees and subgrantees of VAWA programs utilize funding effectively. The past 10 years have shown that both comprehensive technical assistance and targeted technical assistance and training for grantees have been extremely useful. In addition, local grantees and subgrantees have been very helpful in developing best practices in the work of their community partners in social services and the justice system. Peer to peer cross-training has improved system responses throughout the country. Educating existing grantees and new grantees about the scope and changes in the laws regarding domestic violence, dating violence, sexual assault, and stalking is crucial to ensuring efficient and consistent service delivery. It is important that any technical assistance and training model implemented under VAWA grant programs should anticipate, rather than simply respond to grantees' and subgrantees' questions. Good technical assistance and training for VAWA grantees and subgrantees includes offering proactive solutions, regular training, implementation guidance, and best practices.

TITLE V—ENHANCING JUDICIAL AND LAW ENFORCEMENT TOOLS TO COMBAT VIOLENCE

Section 501. STOP Grants Improvements

This section reauthorizes and makes modifications to the STOP grant program, which provides State formula grants that bring police and prosecutors in close collaboration with victim services for racial and ethnic minorities and ensures victim confidentiality. It also conditions receiving grants on the grantee not making available publicly on the Internet information regarding protection or restraining orders or injunctions. This section mandates that law enforcement officials who wish to receive grants under this program cannot mandate a polygraph test as a requirement for proceeding with an investigation or arrest. This section eliminates the matching requirements for small law enforcement agencies and victim service providers with an annual operating budget under $5 million.

Section 502. Grants to Encourage Arrest and Enforce Protection Orders Improvements

This section reauthorizes this program, which was adopted in the Violence Against Women Act of 1994. States and localities use this funding to develop and strengthen programs and policies that encourage police officers to arrest abusers who commit acts of violence or violate protection orders. This section includes modifications to this program to provide technical assistance to improve tracking of cases in a manner that preserves confidentiality and privacy protections for victims. Modifications to this program were made by this section to encourage victim service programs to collaborate with law enforcement to assist pro-arrest and protection order enforcement policies. In addition, this section authorizes family justice centers and extends pro-arrest policies to sexual assault cases.

Section 503. Legal Assistance for Victims Improvements

This section reauthorizes the grant program for legal services for protection orders and family, criminal, immigration, administrative agency, and housing matters. It allows victims of domestic violence, dating violence, stalking, and sexual assault to obtain access to trained attorneys and lay advocacy services, particularly pro bono legal services, when they require legal assistance as a consequence of violence. The program has been expanded to provide services to both adult and youth victims.

Section 504. Court training and improvements

This section authorizes a training program to educate the courts and court-related personnel in the areas of domestic violence, dating violence, sexual abuse and stalking. This section also authorizes one or more grants to create general curricula for State and tribal judiciaries to use when educating in the areas of domestic violence, dating violence, sexual assault and stalking in order to ensure that all States have access to consistent and appropriate information. Finally, it creates a program to improve court access for teens.

Section 505. Full faith and Credit Improvements

This section makes technical amendments to the criminal code to clarify that courts should enforce the protection orders (to both adult and minor victims) issued by civil and criminal courts in other jurisdictions.

Section 506. Privacy Protections for Victims of Domestic Violence, Dating Violence, Sexual Violence, and Stalking

This section establishes a task force to compose a best practices model on protecting privacy and authorizes the Attorney General to perform a demonstration project to implement the best practices model.

Section 507. Stalker Database

This section reauthorizes the stalker database for each fiscal year 2006 through 2010.

Section 508. Victim Assistants for District of Columbia

This section authorizes $ 1 million for fiscal year 2006 through 2010 for victim advocates for the prosecution of sex crimes and domestic crimes where applicable.

Section 509. Preventing Cyberstalking

This section amends title 18 to prevent stalking over the Internet by allowing Federal prosecutors more discretion in charging stalking cases that occur entirely over the Internet.

Section 510. Repeat Offender Provision

This section amends title 18 to permit doubling the applicable penalty for repeat Federal domestic violence offenders.

Section 511. Prohibiting Dating Violence

This section amends the existing definition of domestic violence to include dating violence.

Section 512. GAO Study and Report

This section directs the General Accounting Office to study the extent to which men, women, youth, and children are victims of violence and the availability of services to address the needs of these individual groups.

TITLE VI—IMPROVING SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

Section 601. Technical amendment to Violence Against Women Act

This section specifies that funds appropriated under this part may only be used for programs specified in the part.

Section 602. Sexual Assault Services Program

This section creates a separate and direct funding stream dedicated to sexual assault services for each fiscal year 2006 through 2010.

Section 603. Amendments to the Rural Domestic Violence and Child Abuse Enforcement Assistance Program

This section reauthorizes and expands the existing education, training and services grant programs that address violence against women in rural areas.

Section 604. Assistance for Victims of Abuse

This section consolidates programs to provides services for victims of abuse who are elderly or disabled, including programs to provide training, consultation, and information on domestic violence, dating violence, stalking, and sexual assault.

Section 605. GAO Study of National Domestic Violence Hotline.

This section requires the GAO to perform a study of the National Domestic Violence Hotline to determine the effectiveness of the Hotline.

Section 606. Grants for Outreach to Underserved Populations.

This section authorizes $2 million for fiscal year 2006 through 2010 to provide grants to carry out public information campaigns focused on addressing adult or minor domestic violence, dating violence, sexual assault, stalking or trafficking within tribal, racial, and ethnic populations and immigrant communities.

TITLE VII. SERVICES, PROTECTION AND JUSTICE FOR YOUNG VICTIMS OF VIOLENCE

Section 701. Services and Justice for Young Victims of Violence

This section establishes two grant programs to assist children and youth (between the ages of 12 and 24) who witness domestic violence in the home or are victims of domestic violence, dating violence, sexual assault or stalking. The first grant program would establish collaboration between law enforcement, the courts and child welfare agencies to enhance community responses to domestic violence and the effects on children. The second program includes grants to assist youth who are victims of domestic violence, dating violence, sexual assault and stalking.

Section 702. Grants to Combat Violent Crimes on Campuses

This section reauthorizes a program administered by the Department of Justice to provide grants to colleges and universities to develop and strengthen effective security and investigation strategies to combat domestic violence, dating violence, sexual assault and stalking.

Section 703. Safe Havens

This section improves and reauthorizes the Safe Havens program, which currently is authorized to provide a safe place for exchange of children in custody situation where there is domestic violence. This section improves the program by clearly authorizing the program to provide services to ensure the safety of parents and prevent the children from witnessing domestic violence.

Section 704. Grants to Combat Domestic Violence, Dating Violence, Sexual Assault and Stalking in Middle and High Schools

This section authorizes grants to train school personnel to recognize signs of violence in middle school and high school and establish policies for intervention.

TITLE VIII—STRENGTHENING AMERICA'S FAMILIES BY PREVENTING VIOLENCE IN THE HOME

Section 801. Preventing Violence in the Home

This section would authorize programs for mentoring, advocacy and counseling for young victims of domestic violence and training for and coordination for programs that serve children and youth. Grants to communities to establish alliances between men, women and youth to prevent domestic violence, dating, violence, sexual assault and stalking are also included in this section. This section authorizes $5 million to establish a program to train home visitation providers in recognizing signs of domestic violence.

TITLE IX—PROTECTION FOR IMMIGRANT VICTIMS OF VIOLENCE

Section 900. Short Title of Title; References to VAWA-2000; Regulations

This section requires that regulations implementing both this Act (including materials and dissemination under section 922) and the Act reauthorizing the Violence Against Women Act in 2000 ("VAWA 2000"), be issued within 180 days of this Act's enactment. In applying such regulations, in the case of petitions or applications affected by the changes made by the Acts, there shall be no requirement to submit an additional petition, application, or certification from a law enforcement agency with the date of the application for interim relief establishing the priority date of counting time towards adjustment of status. However, the Department of Homeland Security may request additional evidence be submitted when the documentation supporting an outstanding VAWA self-petition or justifying interim relief is now insufficient.

SUBTITLE A—VICTIMS OF CRIME

Section 901. Conditions Applicable to U and T Visas.

U visas are available to victims of certain crimes who cooperate with law enforcement in investigations and/or prosecutions. T visas are available to the victims of trafficking who cooperate with law enforcement in investigations and/or prosecutions. Certain family members of T visa recipients can also receive T visas.

Section 901(a) provides that certain family members and trafficking victims can receive T visas without having to first show that the visas are necessary to avoid "extreme hardship."

Section 901(b) provides that T and U visas shall be issued for 4 years and may be extended under certain conditions. This provides victims who qualify for permanent residence sufficient time to file before their visas expire. An extension shall be granted upon certification from a government official that the victim's presence is required to assist a criminal investigation or prosecution, or to give the Bureau of Citizenship and Immigration Services ("CIS") time to

adjudicate the petitions for permanent residence and for adjustment of status to permanent residence.

Section 901(c) provides that aliens in the U.S. on K (fiance or spouse) and S (informant) visas, or pursuant to the visa waiver program, are not prohibited from qualifying for T and U visa status. Aliens who came to the U.S. on J visas to receive graduate medical training, and aliens who are subject to the 2-year foreign residence requirement, may also qualify for T and U status.

Section 901(d) provides that aliens can qualify for T status if they respond to and cooperate with requests for evidence and information from law enforcement officials. It also permits State and local law enforcement officials investigating or prosecuting trafficking-related crimes to file a request (and certification) asking DHS to grant continued presence to trafficking victims.

Section 902. Clarification of Basis for Relief Under Hardship Waivers for Conditional Permanent Residence

The Secretary of Homeland Security can remove the conditional status of an alien who became a permanent resident, as the spouse of a U.S. citizen or permanent resident without the joint filing of a petition with the U.S. citizen or permanent resident spouse, upon the showing of hardship, battery, or certain other factors. This section provides that an application for such relief may be amended to change the ground or grounds for such relief without having to be resubmitted. The ability in current law to file hardship waivers while outside of the United States will not be available to applicants who have a final removal order in effect that was issued after the alien was granted conditional residency.

Section 903. Adjustment of Status for Victims of Trafficking

The Secretary of Homeland Security can adjust the status of a T visa recipient to that of a permanent resident after 3 years of physical presence in the U.S. under a T visa or after being granted "continued presence" by Federal law enforcement officials.

Section 903(a) provides that for aliens who have been granted both a T visa and continued presence, the required 3-year period may be counted by starting from the earlier of either the date on which an alien was granted continued presence by DHS, or the date on which the T visa was granted. In addition, the Secretary may waive or reduce the required 3-year period if the Federal, State, or local law enforcement official investigating or prosecuting the relevant trafficking has no objection. An alien seeking to adjust status must be of good moral character through the 3-year period.

Section 903(b) provides that the Secretary may waive a factor that would otherwise disqualify the alien from being considered to have good moral character if there is a connection between the disqualifying factor and the trafficking of the alien. The Committee recognizes that DHS has issued policy memoranda defining "connection" in two other VAWA related contexts. See USCIS Interoffice Memorandum HQOPRD 70/8.1/8.2, January 19, 2005, from Paul E. Novak to William R Yates and INS Memorandum HQADN/70/8, January 2, 2002, from Michael A. Pearson to Stuart Anderson. The Committee encourages the Department of Homeland Security to use standards and analysis similar to those described in

these memos when defining the term "connection" for the purposes of this section, sections 917, 919, 932, and 935 of this Act, and other VAWA-related provisions of the Immigration and Nationality Act ("INA").

Section 903(c) provides that the Secretary must, as part of an already required annual report, include statistics regarding the number of law enforcement officials who have been trained in the identification and protection of trafficking victims and their eligibility for T visas.

SUBTITLE B—VAWA PETITIONERS.

Section 911. Definition of VAWA Petitioner

This section defines a "VAWA petitioner" as an alien who has applied for classification or relief under a number of provisions of the INA, including those who have filed self-petitions for permanent residence as the battered spouses and children of U.S. citizens and permanent residents and, pursuant to this bill, as the battered parents of U.S. citizens. Also included in this definition are applicants for certain benefits under the Cuban Adjustment Act, the Haitian Refugee Immigrant Fairness Act ("HRIFA"), and the Nicaraguan Adjustment and Central American Relief Act ("NACARA").

In 1997, the Immigration and Naturalization Service consolidated adjudication of VAWA self-petitions and VAWA-related cases in one specially trained unit that adjudicates all VAWA immigration cases nationally. The unit was created "to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants . . .", to "[engender] uniformity in the adjudication of all applications of this type" and to "[enhance] the Service's ability to be more responsive to inquiries from applicants, their representatives, and benefit granting agencies." See 62 Fed. Reg. 16607–16608 (1997). T visa and U visa adjudications were also consolidated in the specially trained VAWA unit. See, USCIS Interoffice Memorandum HQINV 50/1, August 30, 2001, from Michael D. Cronin to Michael A. Pearson, 67 Fed. Reg. 4784 (Jan. 31, 2002).

Consistent with these procedures, the Committee recommends that the same specially trained unit that adjudicates VAWA self-petitions, T and U visa applications, process the full range of adjudications, adjustments, and employment authorizations related to VAWA cases (including derivative beneficiaries) filed with DHS: VAWA petitions T and U visas, VAWA Cuban, VAWA NACARA (§§ 202 or 203), and VAWA HRIFA petitions, 214(c)(15)(work authorization under section 933 of this Act), battered spouse waiver adjudications under 216(c)(4)(C) and (D), applications for parole of VAWA petitioners and their children, and applications for children of victims who have received VAWA cancellation.

Section 912. Self-Petitioning for Children

This section ensures that immigrant children who are victims of incest and child abuse get full access to VAWA protections. Additionally, this section extends Child Status Protection Act relief to children who qualify for VAWA immigration relief.

Section 912(a) provides that the minor child of a U.S. citizen or permanent resident may self-petition for permanent residence if

the abusive parent has died or otherwise terminated the parent-child relationship within the past 2 years (or, if later, 2 years after the date the child attains the age of 18). Also, the alien spouse of a permanent resident may self-petition for permanent residence if the abusive permanent resident spouse died within the past 2 years.

Section 912(b) provides protections that prevent children from "aging out" of access to VAWA relief. The section guarantees that child self-petitioners, who are abused by citizen parents, will continue to be treated as immediate relatives (or as petitioners for preference status if subsequently married) if they turn 21 during the processing of their petitions. Child self-petitioners who are abused by permanent resident parents will be treated as applicants for "2A" preference status as the minor children of a permanent resident, if they turn 21 during the processing of their petitions.

Section 912(c) provides that the application for adjustment of status to permanent residence of an alien who self-petitioned for permanent residence shall also serve as an adjustment application for any derivative children. Derivative children of self-petitioners will receive lawful permanent residency along with their self-petitioning parents.

Section 912(d) provides that alien child abuse and incest victims who would have qualified to self-petition as the minor children of U.S. citizens or permanent residents can file the petition until the aliens attain the age of 25. This allows child abuse victims time to escape their abusive homes, secure their safety, access services and support that they may need, and address the trauma of their abuse.

Section 913. Self-Petitioning Parents

This section extends the ability to self-petition to the parent of an adult U.S. citizen who resides or has resided with the U.S. citizen son or daughter, if the alien demonstrates that he or she has been battered by, or has been the subject of extreme cruelty perpetrated by, their U.S. citizen son or daughter.

Section 914. Promoting Consistency in VAWA Adjudications

This section promotes consistency in VAWA adjudications by making technical corrections that replace references to "domestic violence" with references to "battery or extreme cruelty," the domestic abuse definition codified in the Violence Against Women Act of 1994 ("VAWA 1994"), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and regulations implementing the battered spouse waiver.

Section 915. Relief for Certain Victims Pending Actions on Petitions and Applications for Relief

Section 915(a)(1) provides that the Secretary of Homeland Security may grant deferred action to an alien who has filed a prima facie valid petition as a VAWA petitioner, or for T or U visa status, during the pendency of the application. The current practice of granting deferred action to approved VAWA self petitioners shall continue. Aliens with deferred action status shall not be removed or deported. Prima facie determinations and deferred action grants

called for in this section shall be made by the specially trained unit of immigration benefits adjudicators (currently at CIS) responsible for adjudicating VAWA petitions. These immigration benefits adjudicators (CIS) have authority to grant deferred action status in VAWA cases for the Department of Homeland Security. Immigration enforcement officials (currently at the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Immigration Enforcement) are not authorized to revoke deferred action, but may ask the specially trained CIS unit to review a case and determine whether or not to revoke a deferred action grant. Only the Secretary of Homeland Security (or a delegated official but only if that official has management authority over both the immigration services and immigration enforcement functions) may overrule a CIS grant of deferred action to an alien victim. Immigration enforcement officers should refer aliens they encounter who may qualify for relief under this Act to immigration benefits adjudicators handling VAWA cases at CIS.

This Committee encourages the Secretary of DHS to (a) develop a training program for trial attorneys and other DHS staff who regularly encounter alien victims of crimes, and (b) craft and implement policies and protocols on appropriate handling by DHS officers of cases under VAWA 1994, the Acts subsequently reauthorizing VAWA, and IIRIRA.

Section 915(a)(2) aims to discourage detention of aliens whom VAWA offers immigration relief. This section requires that an alien whose application as a VAWA petitioner or for T or U visa status has been approved may not be detained unless detention is required for terrorist activity or certain criminal activity.

Section 915(a)(3) provides that an alien whose petition as a VAWA petitioner or for T status has been approved shall be granted work authorization. U visa applicants are provided work authorization under existing law.

Section 915(b) provides that an alien who has filed a prima facie application for cancellation of removal as a battered alien shall not be removed or deported during the pendency of the application.

Under current law DHS has the discretionary authority to consent to the readmission of a previously removed alien (using the existing I-212 process). The protection VAWA offers immigrant victims of domestic violence, sexual assault and trafficking is undermined when otherwise qualified victims are cut off from VAWA benefits because of a prior removal from the United States. The victims, should they return to the U.S. without authorization, become subject to reinstatement of removal. This Committee encourages DHS to make use of its discretion in granting readmission to appropriately assist aliens with humanitarian cases including but not limited to, victims of domestic violence, sexual assault, victims of trafficking and crime victims who are cooperating in criminal investigations.

Section 916. Access to VAWA Protection Regardless of Manner of Entry

Section 916 has been designed to address Congress' concerns about U.S. citizen abusers who use the K visa process to petition for aliens outside the United States and abuse them. This section

protects these abused aliens by allowing them to self-petition for permanent residence as well as making them eligible for VAWA cancellation of removal and VAWA suspension of deportation. The section also works in conjunction with section 922 to prevent further abuse by instituting measures to distribute information that can help the K visa recipients learn about domestic violence protections available to them in the United States. It also provides them specific information about their U.S. citizen petitioners' criminal conviction history. Additionally, this section limits the ability of abusive U.S. citizens to repeatedly petition for K visas for aliens outside the U.S.

Section 916(a) provides that an alien may self-petition as, or in the same manner as, the spouse of a U.S. citizen if the alien entered the U.S. under a K visa with the intent to enter into a valid marriage and the alien (or the alien's child) was battered or subject to extreme cruelty in the U.S. by the U.S. citizen who filed the K visa petition. Also, such an alien does not have to depart within 3 months if the marriage does not occur.

Section 916(b) provides that a VAWA petitioner and a K visa recipient who seeks adjustment of status to that of permanent residence on the basis of an approved petition as a VAWA petitioner does not have to first go through 2 years of conditional permanent residence. Also, an alien who entered under a K visa with the intent to enter into a valid marriage and the alien (or child) was battered or subject to extreme cruelty in the U.S. by the U.S. citizen who filed the K visa petition is eligible for cancellation of removal as a battered alien if the alien meets the other requirements for cancellation.

The Committee seeks to deter filing of K visa applications by U.S. citizens with histories of domestic violence, sexual assaults, and child abuse, by requiring full disclosure to K visa recipients of information on any criminal convictions for these offenses by their petitioners. Section 916(c) provides that a U.S. citizen filing a petition for an alien for a K visa must include information on any criminal convictions for domestic violence, sexual assault, or child abuse. Following current practice, this information will be provided under penalty of perjury. *See e.g.,* Form I–130 (Rev. 06/05/02) (requiring petitioner to "certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.").

A consular officer may not approve a petition without verifying that the petitioner has not previously petitioned for more than two aliens applying for K visas. If the petitioner has had such a petition previously approved, the consular officer must verify that 2 years have elapsed since the filing of the previous petition. The Secretary of Homeland Security may grant waivers of the 2-year waiting period or the limit on filing more than two petitions. The waivers included here were designed to give DHS the discretion to waive both the time and number limitations when K visa applications are filed by non-abusive U.S. citizens. Such waivers may be appropriate, for example, for non-abusive U.S. citizens who live abroad and may be more likely to marry foreign spouses, or in cases of unusual circumstances, such as the sudden death of an alien approved for a prior K visa.

Section 916(d) provides that an alien who was the spouse or minor child of an alien granted asylum at the time of the granting of asylum, and who (or whose child) was battered or the subject of extreme cruelty by the asylee, is eligible for adjustment of status although they may have divorced or separated from the asylee.

Under current law, visa waiver entrants who are placed in removal proceedings are precluded from obtaining relief from removal, other than asylum. Section 916(e) guarantees access to VAWA relief for entrants under the visa waiver program by allowing those placed in removal proceedings to seek VAWA adjustment of status, VAWA cancellation of removal, VAWA self-petition, VAWA suspension of deportation and T and U visas.

Section 916(f) provides that an alien who has failed to meet the 2-year return requirement of a J visa may still file a petition as a VAWA petitioner, or for a T or U visa.

Section 917. Eliminating Abusers' Control Over Applications for Adjustments of Status

VAWA 2000 created routes to lawful permanent residence for abused spouses and children of primary applicants under various nationality-based immigration laws. Section 917 assures that a family members' eligibility for status will hinge neither on an abuser's filing status, nor on an ongoing relationship with or marriage to the abuser in order to eliminate an abuser's control over the abused family member. See section 936 for further amendments regarding the motions to reopen removal proceedings for battered aliens under VAWA.

Section 917(a) and (b) provide that the motions to reopen for abused aliens apply to all VAWA petitioners, VAWA cancellation of removal applicants and to those seeking adjustment of status in proceedings.

Section 917(c) allows abused spouses and children eligible for legal immigration status as Nicaraguans or Cubans under NACARA to apply for such status, even if the abuser did not apply for status and even through the deadline for filing has past.

Section 917(d) provides that an alien who was the spouse of a Cuban eligible for adjustment under the Cuban Adjustment Act shall continue to be treated as such a spouse for 2 years after the date on which the Cuban dies, or for 2 years after the date of termination of the marriage, if the alien demonstrates a connection between the termination of the marriage and being battered or subject to extreme cruelty by the Cuban.

Section 917(e) provides that if an alien abuser was eligible for status under HRIFA, but did not apply for status, the alien's abused spouse or children at the time may now apply for legal immigration status on their own.

Section 917(f) allows abused spouses and children to file their own suspension of deportation applications under NACARA if they were abused by a Guatemalan, Salvadoran or Eastern European abuser who was eligible for suspension of deportation under pre-1996 rules pursuant to NACARA. Abused spouses and children are also allowed to file motions to reopen their prior removal or deportation case using VAWA.

Section 917(g) provides that an individual who was a VAWA petitioner, or had a T or U visa, may not file an immigrant or nonimmigrant petition for the person who committed the battery or extreme cruelty or trafficking against the individual which established the individual's eligibility as a VAWA petitioner, or for T or U status.

Section 918. Parole for VAWA Petitioners and for Derivatives of Trafficking Victims

VAWA 2000 allowed victims of domestic violence abused by U.S. citizen and lawful permanent resident spouses to file VAWA self-petitions from outside of the U.S. if they had been abused in the U.S. or if their abuser was a member of the uniformed services or a government employee. Modeled after the VAWA 2000 protection offered to children on VAWA cancellation of removal grantees, section 918 assures that VAWA petitioners, their derivative children and children of trafficking victims, can enter the U.S. by requiring the Secretary of Homeland Security to grant parole to:

- a VAWA petitioner whose petition was approved based on having been battered or subject to extreme cruelty by a U.S. citizen spouse, parent, or child and who is admissible and eligible for an immigrant visa;
- a VAWA petitioner whose petition was approved based on having been battered or subject to extreme cruelty by a permanent resident spouse or parent, who is admissible and who would be eligible for an immigrant visa but for the fact that an immigrant visa is not immediately available, if at least 3 years have elapsed since the alien's priority date; and
- an alien who the Secretary of State determines would, but for an application or approval, meet the conditions for approval for a T visa as a family member of the trafficking victim.

When a VAWA petitioner's abuser is a permanent resident spouse or parent, the 3 year waiting period for the petitioner and any derivative children will be calculated based on the priority date assigned to the VAWA petition under 8 C.F.R. § 204.2(h)(2).

Section 919. Exemption of Victims of Domestic Violence, Sexual Assault and Trafficking from Sanctions for Failure to Depart Voluntarily

Section 919 provides that an alien who is a VAWA petitioner, or is seeking a T or U visa, or is seeking cancellation of removal or VAWA suspension as a battered alien is not subject to the penalties for failing to depart after agreeing to a voluntary departure order, if there is a connection between the failure to depart and the battery or extreme cruelty, trafficking, or criminal activity making them eligible to seek such status. As discussed in section 903, the Committee encourages the DHS to define "connection" for purposes of this section using similar standards and analysis to those described in the two policy memoranda cited in section 903.

Section 920. Clarification of Access to Naturalization for Victims of Domestic Violence

Section 920 provides that any alien who was subject to battery or extreme cruelty by a U.S. citizen spouse or parent may naturalize after 3 years as a permanent resident, regardless of whether the lawful permanent resident status was obtained on the basis of such battery or cruelty. This section prevents alien domestic violence victims from being forced by naturalization laws to remain in abusive marriages or to wait two additional years to file for naturalization. It allows victims the same access to 3-year naturalization they would have if their U.S. citizen spouse did not abuse them.

Section 921. Prohibition of Adverse Determinations of Admissibility or Deportability Based on Protected Information

In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings. In 2000, and in this Act, Congress extended these protections to cover victims of trafficking, certain crimes and others who qualify for VAWA immigration relief. These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims' immigration cases, and encouraging immigration enforcement officers to pursue removal actions against their victims.

This Committee wants to ensure that immigration enforcement agents and government officials covered by this section do not initiate contact with abusers, call abusers as witnesses or relying on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence, sexual assault and trafficking, as prohibited by section 384 of IIRIRA. In determining whether a person furnishing information is a prohibited source, primary evidence should include, but not be limited to, court records, government databases, affidavits from law enforcement officials, and previous decisions by DHS or Department of Justice personnel. Other credible evidence must also be considered. Government officials are encouraged to consult with the specially trained VAWA unit in making determinations under the special "any credible evidence" standard.

Section 921(a) and (b) provide that the Secretary of Homeland Security and the Attorney General and other Federal officials may not use information furnished by, or derived from information provided solely by, an abuser, crime perpetrator or trafficker to make an adverse determination of admissibility or removal of an alien. However, information in the public record and government data bases can be relied upon, even if government officials first became aware of it through an abuser.

Section 921(c) provides that this provision shall not apply to prevent information from being disclosed, in a manner that protects victim confidentiality and safety, to the chairs and Ranking Members of the House and Senate Judiciary Committees, including the

Immigration Subcommittees, in the exercise of their oversight authority.

Section 921(d) provides that in the case of an alien applying for relief as a special immigrant juvenile who has been abused, neglected, or abandoned, the government may not contact the alleged abuser.

Section 921(e) provides that investigation and enforcement of these provisions shall be by the Office of Professional Responsibility of the Justice Department.

Section 921(f) establishes a system to verify that removal proceedings are not based on information prohibited by section 384 of IIRIRA. DHS must certify that:

- (1) no enforcement action was taken leading to such proceedings against an alien at certain places including a domestic violence shelter, a rape crisis center, and a courthouse if the alien is appearing in connection with a protection order or child custody case, or that
- (2) such an enforcement action was taken, but that there was no violation of the aforementioned provisions. Persons who knowingly make a false certification shall be subject to penalties.

Removal proceedings filed in violation of section 384 of IIRIRA shall be dismissed. However, further proceedings can be brought if not in violation of section 384.

Section 922. Information for K Nonimmigrants About Legal Rights and Resources for Immigrant Victims of Domestic Violence

Section 922 contains provisions designed to allow K visa applicants to make informed decisions about their marriage to a U.S. citizen and have information about how to gain help if they experience battering or extreme cruelty at the hands of their U.S. citizen spouse or fiance. This section provides that the Secretary of Homeland Security shall consult with non-governmental organizations with expertise on the legal rights of immigrant victims and the Departments of Justice and State to develop consistent and accurate materials, including an information pamphlet, on legal rights and resources for immigrant victims of domestic violence for dissemination to applicants for K visas. The following materials will be mailed to K visa applicants with an instruction packet regarding the visa process: the information pamphlet; a copy of the K visa application (including information about criminal convictions of the U.S. citizen sponsor for domestic violence, sexual assault and child abuse as provided for in section 916); and any information that DHS possesses about the petitioner who filed the K visa (e.g. from IBIS (the Interagency Border Inspection System), National Crime Information Center, or Federal and State domestic violence databases) regarding convictions for crime(s) of violence as defined in 18 U.S.C. sec. 16, any similar State conviction, or any domestic violence adjudication. Information from the pamphlet and regarding convictions will be orally transmitted by consular officers at the applicant's interview. It is the intent of Congress that this section does not create an actionable ground for lawsuits against DHS or other any government agency. In implementing this section, con-

sistent with and under the requirements of Section 900(c) of this Act, the Secretary of Homeland Security shall develop and put in use the information, materials and distribution mechanism described in section 922(a) through (e) not later than 180 days from enactment.

Section 923. Authorization of Appropriations

This section authorizes appropriations of such sums as may be necessary for the Department of Homeland Security's specially trained unit to adjudicate applications, adjustments, and employment authorizations related to VAWA cases (primary or derivative) filed with DHS.

SUBTITLE C—MISCELLANEOUS PROVISIONS

Section 931. Removing 2 Year Custody and Residence Requirement for Battered Adopted Children

Section 931 provides that an adopted alien qualifies as a child for immigration purposes, despite not having been in the legal custody of, or having resided with, the adopting parent for at least 2 years, if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household. This section, consistent with VAWA's protective purpose, ensures that child abuse victims are not required to suffer abuse or risk losing immigration benefits they would otherwise receive if they had not been subjected to child abuse.

Section 932. Waiver of Certain Grounds of Inadmissibility for VAWA Petitioners

Section 932(a) provides that the Secretary of Homeland Security may waive the ground of inadmissibility for falsely claiming to be a U.S. citizen in the case of a VAWA petitioner who demonstrates a connection between the false claim and the alien's being subjected to battery or extreme cruelty. As discussed in section 903, the Committee encourages the Department of Homeland Security to define "connection" for purposes of this section using the standards and analysis described in the previously cited policy memoranda.

Section 932(b) provides that the public charge ground of inadmissibility shall not apply to a VAWA petitioner or a qualified alien described in the Personal Responsibility and Work Opportunity Reconciliation Act.

Section 933. Employment Authorization for Battered Spouses of Certain Nonimmigrants

Section 933 provides that an alien spouse admitted under the A (foreign diplomats), E-3 (Australian professionals), G (international organizations), or H (temporary worker) visa programs accompanying or following to join a principal alien shall be granted work authorization if the spouse demonstrates that during the marriage he or she (or a child) has been battered or has been subjected to extreme cruelty perpetrated by the principal alien. This section is intended to reduce domestic violence by giving victims tools to pro-

tect themselves and hold abusers accountable. Research has found the financial dependence on an abuser is a primary reason that battered women are reluctant to cooperate in their abuser's prosecution. With employment authorization, many abused spouses protected by this section will be able to attain work providing them the resources that will make them more able to safely act to stop the domestic violence. The specially trained CIS unit shall adjudicate these requests.

Section 934. Grounds for Hardship Waiver for Conditional Permanent Residence for Intended Spouses

Section 934 adds an additional ground for a hardship waiver of the 2-year conditional permanent resident joint petition requirement for an alien spouse of a citizen or permanent resident. Under this section such spouses may qualify for a waiver if, following the marriage ceremony, the alien has been battered or subject to extreme cruelty by their intended U.S. citizen spouse. This section allows battered immigrants who participated in a marriage ceremony and unknowingly married an abusive U.S. citizen or lawful permanent resident bigamist to avail themselves of an intended spouse hardship waiver and attain lawful permanent residency.

Section 935. Cancellation of Removal

VAWA 2000 created several new waivers and exceptions to deportation and grounds of inadmissibility that might otherwise bar domestic violence victims from gaining immigration status. Due to a drafting error, immigration judges could not utilize many of these waivers and exceptions. Section 935(a) clarifies that immigration judges can utilize these waivers and exceptions to provide relief for VAWA applicants. This subsection shall apply retroactively as if included in VAWA 2000. Judges are expected to continue to exercise discretion, where appropriate, in determining ultimate eligibility for the waivers and exceptions, taking into account the ameliorative intent of these laws. This section also provides that an alien remains eligible for cancellation of removal as a battered alien if removable for failure to register or document fraud or for marriage fraud (if there was a connection between the marriage fraud and the battery or extreme cruelty; this Committee encourages the Department of Homeland Security to define "connection" for purposes of this section using standards and analysis similar to that described in the previously cited policy memoranda).

Section 935(b) provides that the 4,000 annual limit on cancellations of removal does not apply to cancellations of removal of battered aliens.

Section 936. Motions to Reopen

Section 936 contains amendments that clarify the VAWA 2000 motions to reopen for abused aliens, enabling otherwise eligible VAWA applicants to pursue VAWA relief from removal, deportation or exclusion. This section provides that the limitation of one motion to reopen a removal proceeding shall not prevent the filing of one special VAWA motion to reopen. In addition, a VAWA petitioner can file a motion to reopen removal proceedings after the normal 90-day cut-off period, measured from the time of the final adminis-

trative order of removal. However, such battered aliens must be physically present in the U.S. at the time of filing the special motion. The filing of a special VAWA motion to reopen shall stay the removal of the alien pending final disposition of the motion, including exhaustion of all appeals, if the motion establishes a prima facie case for the relief. One VAWA 2005 post-enactment motion to reopen may be filed by a VAWA applicant. Aliens who filed and were denied special VAWA motions under VAWA 2000 may file one new motion under this Act.

Section 937. Removal Proceedings

Some abusers have prevented their victims from attending their removal proceedings. As a result, these battered victims are ordered deported in absentia. Under current law, the in absentia orders may be rescinded if the applicant files a motion to reopen and demonstrates that there were exceptional circumstances for failure to appear at the removal hearing. Section 937 provides that battery or extreme cruelty of the alien (or a child or parent of the alien) shall qualify as exceptional circumstances justifying failure to appear at a removal proceeding.

Section 938. Conforming Relief in Suspension of Deportation Parallel to the Relief Available in VAWA-2000 Cancellation for Bigamy

Section 938 provides that suspension of deportation for battered aliens, as it existed before 1996, shall apply in cases of battery perpetrated by a U.S. citizen or permanent resident whom the alien intended to marry, but whose marriage was not legitimate because of the citizen's or permanent resident's bigamy. VAWA 2000 offered protection to intended immigrant spouses who unknowingly married bigamists for purposes of VAWA self-petitioning and VAWA cancellation of removal. This section adds protection under VAWA suspension of deportation.

Section 939. Correction of Cross-Reference to Credible Evidence Provisions

Technical corrections to conform correct cross-reference for VAWA credible evidence provisions in the Cuban Adjustment Act, NACARA, IIRIRA, and HRIFA.

Section 940. Technical Corrections

Technical corrections.

TITLE X—SAFETY ON TRIBAL LANDS

Section 1001. Purposes

This section establishes the purpose of this Title to reduce domestic violence, dating violence, sexual assault and stalking on tribal lands and hold perpetrators accountable.

Section 1002. Consultation

This section requires the Attorney General to consult with Indian tribes regarding ways to improve the grant funds to Indian tribes to address violent crimes on reservations.

Section 1003. Analysis and Research on Violence on Tribal Lands

This section requires the Attorney General to conduct a study and establish a task force to address domestic violence, dating violence, sexual assault and stalking on Indian reservations.

Section 1004. Tracking of Violence on Tribal Lands

This section allows the tribes and the Attorney General to exchange information with regard to incidents of domestic violence, dating violence, sexual assault and stalking on tribal lands.

Section 1005. Tribal Division of the Office of Violence Against Women

This section establishes a division within the Violence Against Women Office to focus on violence on tribal lands and allows consolidation of all the tribal set asides within the VAWA reauthorization.

Section 1006. GAO Report

This section requires GAO to study the status of prosecution on tribal lands and make recommendations about ways to increase the number of prosecutions.

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):

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

TITLE I—JUSTICE SYSTEM IMPROVEMENT

PART A—OFFICE OF JUSTICE PROGRAMS

* * * * * * *

DUTIES AND FUNCTIONS OF ASSISTANT ATTORNEY GENERAL

SEC. 102. (a) The Assistant Attorney General shall—

(1) * * *

* * * * * * *

(5) coordinate and provide staff support to coordinate the activities of the Office and the Bureau of Justice Assistance, the National Institute of Justice, the Bureau of Justice Statistics, *the Office for Victims of Crime,* and the Office of Juvenile Justice and Delinquency Prevention; and

(6) exercise such other powers and functions as may be vested in the Assistant Attorney General pursuant to this title or by delegation of the Attorney General*, including placing*

(B) VICTIMS OF SEXUAL ASSAULT.—Of the amount made available under this subsection in each fiscal year, not less than 25 percent shall be used for direct services, training, and [technical assistance to support projects focused solely or primarily on providing legal assistance to victims of sexual assault] *technical assistance in civil and crime victim matters to adult, youth, and minor victims of sexual assault*.

* * * * * * *

TITLE V—BATTERED IMMIGRANT WOMEN

* * * * * * *

SEC. 1506. RESTORING IMMIGRATION PROTECTIONS UNDER THE VIOLENCE AGAINST WOMEN ACT OF 1994.

(a) * * *

* * * * * * *

(c) ELIMINATING TIME LIMITATIONS ON MOTIONS TO REOPEN REMOVAL AND DEPORTATION PROCEEDINGS FOR VICTIMS OF DOMESTIC VIOLENCE.—

(1) * * *

* * * * * * *

(2) DEPORTATION PROCEEDINGS.—

(A) IN GENERAL.—[Notwithstanding any limitation imposed by law on motions to reopen or rescind deportation] *Notwithstanding any limitation on the number of motions, or the deadlines for filing motions (including the deadline specified in section 242B(c)(3) of the Immigration and Nationality Act before the title III–A effective date), to reopen or rescind deportation or exclusion* proceedings under the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)), [there is no time limit on the filing of a motion to reopen such proceedings, and the deadline specified in section 242B(c)(3) of the Immigration and Nationality Act (as so in effect) (8 U.S.C. 1252b(c)(3)) does not apply] *such limitations shall not apply to the filing of a single motion under this subparagraph to reopen such proceedings—*

[(i) if the basis of the motion is to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as so in effect) (8 U.S.C. 1254(a)(3)); and]

(i) if the basis of the motion is to apply for relief as a VAWA petitioner (as defined in section 101(a)(51) of the Immigration and Nationality Act (8 U.S.C.

1101(a)(51)) or under section 244(a)(3) of such Act (8 U.S.C. 1254(a)(3)); and

(ii) if the motion is accompanied by a suspension of deportation *or adjustment of status* application to be filed with the Attorney General or by a copy of the self-petition that will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen.

The filing of a motion under this subparagraph shall stay the removal of the alien pending a final disposition of the motion including the exhaustion of all appeals if the motion establishes a prima facie case for the relief applied for.

(B) APPLICABILITY.—Subparagraph (A) shall apply to motions filed by aliens *who are physically present in the United States and* who—

(i) are, or were, in deportation or exclusion proceedings under the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)); and

(ii) have become eligible to apply [for relief under clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note))] *for relief described in subparagraph (A)(i)* as a result of the amendments made by—

(I) * * *

* * * * * * *

IMMIGRATION AND NATIONALITY ACT

TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) * * *

* * * * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

(T)(i) subject to section 214(o), an alien who the [Attorney General] *Secretary of Homeland Security* determines—

(I) * * *

* * * * * * *

[(ii) if the Attorney General considers it necessary to avoid extreme hardship—

[(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; and

[(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien,

if accompanying, or following to join, the alien described in clause (i);]

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien so described who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien;

* * * * * * *

(51) The term "VAWA petitioner" means an alien whose application or petition for classification or relief under any of the following provisions (whether as a principal or as a derivative) has been filed and has not been denied after exhaustion of administrative appeals:

(A) Clause (iii), (iv), or (vii) of section 204(a)(1)(A).

(B) Clause (ii) or (iii) of section 204(a)(1)(B).

(C) Subparagraph (C) or (D) of section 216(c)(4).

(D) The first section of Public Law 89–732 (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty.

(E) Section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (division A of section 101(h) of Public Law 105–277).

(F) Section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1255 note; Public Law 105–100).

(G) Section 309(c)(5) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1101 note).

* * * * * * *

(b) As used in titles I and II—

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(A) * * *

* * * * * * *

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years *or*

if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided,* That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

* * * * * * *

(f) For the purposes of this Act—

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

(1) * * *

* * * * * * *

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and ⟦(9)(A)⟧ *(10)(A)* of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana); if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

* * * * * * *

(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i)—

(1) the ⟦Attorney General⟧ *Secretary of Homeland Security, the Attorney General,* and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and

(2) the ⟦Attorney General⟧ *Secretary of Homeland Security* shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

* * * * * * *

TITLE II—IMMIGRATION

CHAPTER 1—SELECTION SYSTEM

WORLDWIDE LEVEL OF IMMIGRATION

* * * * * * *

PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a)(1)(A)(i) * * *

* * * * * * *

(iii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification

of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that—

(aa) * * *

(bb) during the marriage *or relationship intended by the alien to be legally a marriage or to conclude in a valid marriage* or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien—

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; **[**or**]**

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and—

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to **[**an incident of domestic violence**]** *battering or extreme cruelty by the United States citizen spouse*; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse; *or*

(DD) who entered the United States as an alien described in section 101(a)(15)(K) with the intent to enter into a valid marriage and the alien (or child of the alien) was battered or subject to extreme cruelty in the United States by the United States citizen who filed the petition to accord status under such section;

* * * * * * *

(cc) who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) **[**or who**]**, *who* would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry*, or who is described in subitem (aa)(DD)*; and

(dd) who has resided with the alien's spouse or intended spouse *or who is described in subitem (aa)(DD)*.

(iv) An alien who is the child of a citizen of the United States, **[**or**]** who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to **[**an incident of domestic violence**]** *battering or extreme cruelty by such parent*, *or who was a child of a United States citizen parent who within the past 2 years (or, if later, two years after the date the child attains 18 years of age) died or otherwise terminated the parent-child relationship (as defined under section 101(b)),* and who is a person of good moral character, who is eligible to be classified as

an immediate relative under section 201(b)(2)(A)(i), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

* * * * * * *

(vii) An alien who—

(I) is the parent of a citizen of the United States or was a parent of a citizen of the United States who within the past 2 years lost or renounced citizenship status related to battering or extreme cruelty by the United States citizen son or daughter or who within the past two years died;

(II) is a person of good moral character;

(III) is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i); and

(IV) resides, or has resided in the past, with the citizen daughter or son;

may file a petition with the Secretary of Homeland Security under this subparagraph for classification of the alien under such section if the alien demonstrates that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen son or daughter.

(B)(i) * * *

(ii)(I) * * *

* * * * * * *

(II) For purposes of subclause (I), an alien described in this paragraph is an alien—

(aa)(AA) * * *

* * * * * * *

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and—

(aaa) whose spouse died within the past 2 years;

[(aaa)**]** *(bbb)* whose spouse lost status within the past 2 years **[**due to an incident of domestic violence**]** *related to battering or extreme cruelty by the lawful permanent resident spouse*; or

[(bbb)**]** *(ccc)* who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse;

* * * * * * *

(iii) An alien who is the child of an alien lawfully admitted for permanent residence, **[**or**]** who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status **[**due to an incident of domestic violence**]** *related to battering or extreme cruelty by such parent, or who was a child of a lawful permanent resident resident who within the past 2 years (or, if later, two years after the date the child attains 18 years of age) died or otherwise terminated the parent-child relationship (as*

defined under section 101(b)), and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien's permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

* * * * * * *

(D)(i)(I) Any child who attains 21 years of age who has filed a petition under ⟦clause (iv) of section 204(a)(1)(A)⟧ *subparagraph (A)(iv)* that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) ⟦a petitioner for preference status under paragraph (1), (2), or (3) of section 203(a), whichever paragraph is applicable⟧ *to continue to be treated as an immediate relative under section 201(b)(2)(A)(i), or a petitioner for preference status under section 203(a)(3) if subsequently married,* with the same priority date assigned to the self-petition filed under ⟦clause (iv) of section 204(a)(1)(A)⟧ *subparagraph (A)(iv). Any child who attains 21 years of age who has filed a petition under subparagraph (B)(iii) that was filed or approved before the date on which the child attained 21 year of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under section 203(a)(2)(A), with the same priority date assigned to the self-petition filed under such subparagraph.* No new petition shall be required to be filed *in either such case*.

* * * * * * *

(III) Any derivative child who attains 21 years of age who is included in a petition described in clause (ii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under ⟦paragraph (1), (2), or (3) of section 203(a)⟧ *section 203(a)(2)(A)*, whichever paragraph is applicable, with the same priority date as that assigned to the petitioner in any petition described in clause (ii). No new petition shall be required to be filed.

* * * * * * *

(ii) The petition referred to in clause (i)(III) is a petition filed by an alien under subparagraph ⟦(A)(iii), (A)(iv),⟧ (B)(ii) or (B)(iii) in which the child is included as a derivative beneficiary.

* * * * * * *

(iv) In the case of an alien who qualified to petition under subparagraph (A)(iv) or (B)(iii) as of the date the individual attained 21 years of age, the alien may file a petition under such respective subparagraph notwithstanding that the alien has attained such age or been married so long as the petition is filed before the date the individual attains 25 years of age. In the case of such a petition,

the alien shall remain eligible for adjustment of status as a child notwithstanding that the alien has attained 21 years of age or has married, or both.

* * * * * * *

(K)(i) In the case of an alien for whom a petition as a VAWA petitioner is approved, the alien is eligible for work authorization and shall be provided an "employment authorized" endorsement or other appropriate work permit.

(ii) A petition as a VAWA petitioner shall be processed without regard to whether a proceeding to remove or deport such alien is brought or pending.

(L) Notwithstanding the previous provisions of this paragraph, an individual who was a VAWA petitioner or who had the status of a nonimmigrant under subparagraph (T) or (U) of section 101(a)(15) may not file a petition for classification under this section or section 214 to classify any person who committed the battery or extreme cruelty or trafficking against the individual (or the individual's child) which established the individual's (or individual's child's) eligibility as a VAWA petitioner or for such nonimmigrant status.

* * * * * * *

ADJUSTMENT OF STATUS OF REFUGEES

SEC. 209. (a) * * *

(b) The Secretary of Homeland Security or the Attorney General, in the Secretary's or the Attorney General's discretion and under such regulations as the Secretary or the Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—

(1) * * *

* * * * * * *

(3)*(A)* continues to be a refugee within the meaning of section 101(a)(42)(A) or a spouse or child of such a refugee,

(B) was the spouse of a refugee within the meaning of section 101(a)(42)(A) at the time the asylum application was granted and who was battered or was the subject of extreme cruelty perpetrated by such refugee or whose child was battered or subjected to extreme cruelty by such refugee (without the active participation of such spouse in the battery or cruelty), or

(C) was the child of a refugee within the meaning of section 101(a)(42)(A) at the time of the filing of the asylum application and who was battered or was the subject of extreme cruelty perpetrated by such refugee,

* * * * * * *

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are

inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) * * *

* * * * * * *

(4) PUBLIC CHARGE.—

(A) * * *

* * * * * * *

(C) FAMILY-SPONSORED IMMIGRANTS.—Any alien who seeks admission or adjustment of status under a visa number issued under section 201(b)(2) or 203(a) is inadmissible under this paragraph unless—

[(i) the alien has obtained—

[(I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A), or

[(II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B); or]

(i) the alien is described in subparagraph (E); or

* * * * * * *

(E) SPECIAL RULE FOR BATTERED ALIENS.—Subparagraphs (A) through (C) shall not apply to an alien who is a VAWA petitioner or is a qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

* * * * * * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.—

(A) ALIENS PRESENT WITHOUT ADMISSION OR PAROLE.—

(i) * * *

(ii) EXCEPTION FOR CERTAIN BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who demonstrates that—

(I) the alien [qualifies for immigrant status under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1)] *is a VAWA petitioner*,

* * * * * * *

(C) MISREPRESENTATION.—

(i) * * *

* * * * * * *

(iii) WAIVER AUTHORIZED.—For provision authorizing waiver of [clause (i)] *clauses (i) and (ii)*, see subsection (i).

* * * * * * *

(9) ALIENS PREVIOUSLY REMOVED.—

(A) * * *

* * * * * * *

(C) ALIENS UNLAWFULLY PRESENT AFTER PREVIOUS IMMIGRATION VIOLATIONS.—

(i) * * *

(ii) EXCEPTION.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the

date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission. The Attorney General in the Attorney General's discretion may waive the provisions of [section 212(a)(9)(C)(i)] *clause (i)* in the case of an alien [to whom the Attorney General has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B)] *is a VAWA petitioner*, in any case in which there is a connection between—

[(1)] *(I)* the alien's having been battered or subjected to extreme cruelty; and

[(2)] *(II)* the alien's—

[(A)] *(aa)* removal;

[(B)] *(bb)* departure from the United States;

[(C)] *(cc)* reentry or reentries into the United States; or

[(D)] *(dd)* attempted reentry into the United States.

* * * * * * *

(d)(1) * * *

* * * * * * *

(5)(A) * * *

* * * * * * *

(C) Parole is provided for certain battered aliens, children of battered aliens, and parents of battered alien children under section 240A(b)(4).

* * * * * * *

(13)(A) The [Attorney General] *Secretary of Homeland Security* shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(T), except that the ground for inadmissibility described in subsection (a)(4) shall not apply with respect to such a nonimmigrant.

(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 101(a)(15)(T), if the [Attorney General] *Secretary of Homeland Security* considers it to be in the national interest to do so, the [Attorney General, in the Attorney General's discretion] *Secretary, in the Secretary's discretion*, may waive the application of—

(i) * * *

* * * * * * *

(e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence, (ii) who at the time of admission or

acquisition of status under section 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section 101(a)(15)(H) or section 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States *unless the alien is a VAWA petitioner or an applicant for nonimmigrant status under subparagraph (T) or (U) of section 101(a)(15)*: *Provided,* That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l): *And provided further,* That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Director a statement in writing that it has no objection to such waiver in the case of such alien.

* * * * * * *

(g) The Attorney General may waive the application of—

(1) subsection (a)(1)(A)(i) in the case of any alien who—

(A) * * *

* * * * * * *

(C) ⟦qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B)⟧ *is a VAWA petitioner*;

* * * * * * *

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it

relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) * * *

* * * * * * *

(C) the alien [qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B)] *is a VAWA petitioner*; and

* * * * * * *

(i)(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) *(and, in the case of a VAWA petitioner who demonstrates a connection between the false claim of United States citizenship and the petitioner being subjected to battery or extreme cruelty, clause (ii))* of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of [an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B)] *a VAWA petitioner*, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

* * * * * * *

ADMISSION OF NONIMMIGRANTS

SEC. 214. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(15) In the case of an alien spouse admitted under subparagraph (A), (E)(iii), (G), or (H) of section 101(a)(15) who is accompanying or following to join a principal alien admitted under subparagraph (A), (E)(iii), (G), or (H)(i) of such section, respectively, the Secretary of Homeland Security shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an "employment authorized" endorsement or other appropriate work permit if the alien spouse demonstrates that during the marriage the alien spouse or a child of the alien spouse has been battered or has been the subject to extreme cruelty perpetrated by the spouse of the alien spouse. Requests for relief under this paragraph shall be handled under the procedures that apply to aliens seeking relief under section 204(a)(1)(A)(iii).

(d)*(1)* A visa shall not be issued under the provisions of section 101(a)(15)(K)(i) until the consular officer has received a petition filed in the United States by the fiancée or fiancé of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. *Such information shall include in-*

formation on any criminal convictions of the petitioner for domestic violence, sexual assault, or child abuse. It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the admission of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be removed in accordance with sections 240 and 241 *unless the alien (and the child of the alien) entered the United States as an alien described in section 101(a)(15)(K) with the intent to enter into a valid marriage and the alien or child was battered or subject to extreme cruelty in the United States by the United States citizen who filed the petition to accord status under such section.*

(2)(A) Subject to subparagraph (B), a consular officer may not approve a petition under paragraph (1) unless the officer has verified that—

(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to more than 2 applying aliens; and

(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

(B) The Secretary of Homeland Security may, in the discretion of the Secretary, waive the limitation in subparagraph (A), if justification exists for such a waiver.

(3) For purposes of this subsection—

(A) the term "child abuse" means a felony or misdemeanor crime, as defined by Federal or State law, committed by an offender who is a stranger to the victim, or committed by an offender who is known by, or related by blood or marriage to, the victim, against a victim who has not attained the lesser of—

(i) 18 years of age; or

(ii) except in the case of sexual abuse, the age specified by the child protection law of the State in which the child resides;

(B) the terms "domestic violence" and "sexual assault" have the meaning given such terms in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2).

* * * * * * *

(l)(1) * * *

(2)(A) Notwithstanding section [248(2)] *248(a)(2)*, the Attorney General may change the status of an alien who qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(H)(i)(b). The numerical limitations contained in subsection (g)(1)(A) shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence require-

ment upon a request by an interested Federal agency or an interested State agency.

* * * * * * *

(o)(1) * * *

* * * * * * *

(7) The authorized period of status of an alien as a nonimmigrant status under section 101(a)(15)(T) shall be 4 years, but—

(A) shall be extended on a year-by-year basis upon certification from a Federal, State or local law enforcement official, prosecutor, judge, or other Federal, State or local authority investigating or prosecuting criminal activity relating to human trafficking that the alien's ongoing presence in the United States is required to assist in the investigation or prosecution of such criminal activity; and

(B) shall be extended if the alien files an application for adjustment of status under section 245(l), until final adjudication of such application.

(8) In the case of an alien for whom an application for nonimmigrant status (whether as a principal or derivative) under section 101(a)(15)(T) has been approved, the alien is eligible for work authorization and shall be provided an "employment authorized" endorsement or other appropriate work permit.

(p) REQUIREMENTS APPLICABLE TO SECTION 101(a)(15)(U) VISAS.—

(1) * * *

* * * * * * *

(6) DURATION OF STATUS.—The authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) shall be 4 years, but—

(A) shall be extended on a year-by-year basis upon certification from a Federal, State or local law enforcement official, prosecutor, judge, or other Federal, State or local authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii) that the alien's ongoing presence in the United States is required to assist in the investigation or prosecution of such criminal activity; and

(B) shall be extended if the alien files an application for adjustment of status under section 245(m), until final adjudication of such application.

* * * * * * *

CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

SEC. 216. (a) * * *

* * * * * * *

(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

(1) * * *

* * * * * * *

(4) HARDSHIP WAIVER.—The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

(A) * * *

(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) and the alien was not at fault in failing to meet the requirements of paragraph (1), [or]

(C) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse or child was battered by or was the subject of extreme cruelty perpetrated by his or her spouse or citizen or permanent resident parent and the alien was not at fault in failing to meet the requirements of paragraph (1)[.], *or*

(D) the alien meets the requirements under section 204(a)(1)(A)(iii)(II)(aa)(BB) and following the marriage ceremony has been battered by or was subject to extreme cruelty perpetrated by his or her intended spouse and was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis. In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child. *An application for relief under this paragraph may be based on one or more grounds specified in subparagraphs (A) through (D) and may be amended at any time to change the ground or grounds for such relief without the application being resubmitted. Such an application may not be considered if there is a final removal order in effect with respect to the alien.*

* * * * * * *

VISA WAIVER PROGRAM FOR CERTAIN VISITORS

SEC. 217. (a) * * *

* * * * * * *

(b) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the program unless the alien has waived any right—

(1) * * *

(2) to contest, other than on the basis of an application for asylum, *as a VAWA petitioner, or for relief under subparagraph (T) or (U) of section 101(a)(15), under section 240A(b)(2), or*

under section 244(a)(3) (as in effect on March 31, 1997), any action for removal of the alien.

* * * * * * *

CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

* * * * * * *

APPREHENSION AND DETENTION OF ALIENS

SEC. 236. (a) * * *

* * * * * * *

(f) LIMITATION ON DETENTION OF CERTAIN VICTIMS OF VIOLENCE.—(1) An alien for whom a petition as a VAWA petitioner has been approved or for whom an application for nonimmigrant status (whether as a principal or derivative child) under subparagraph (T) or (U) of section 101(a)(15) has been approved, subject to paragraph (2), the alien shall not be detained if the only basis for detention is a ground for which—

(A) a waiver is provided under section 212(h), 212(d)(13), 212(d)(14), 237(a)(7), or 237(a)(2)(a)(V); or

(B) there is an exception under section 204(a)(1)(C).

(2) Paragraph (1) shall not apply in the case of detention that is required under subsection (c) or section 236A.

* * * * * * *

GENERAL CLASSES OF DEPORTABLE ALIENS

SEC. 237. (a) CLASSES OF DEPORTABLE ALIENS.—Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) INADMISSIBLE AT TIME OF ENTRY OR OF ADJUSTMENT OF STATUS OR VIOLATES STATUS.—

(A) * * *

* * * * * * *

(H) WAIVER AUTHORIZED FOR CERTAIN MISREPRESENTATIONS.—The provisions of this paragraph relating to the removal of aliens within the United States on the ground that they were inadmissible at the time of admission as aliens described in section 212(a)(6)(C)(i), whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (4)(D)) who—

(i) * * *

(ii) **[**is an alien who qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B)**]** *is a VAWA petitioner or qualifies for a waiver under section 216(c)(4)***[**.**]***; or*

* * * * * * *

(7) WAIVER FOR VICTIMS OF DOMESTIC VIOLENCE.—

(A) IN GENERAL.—The Attorney General is not limited by the criminal court record and may waive the application of paragraph (2)(E)(i) (with respect to crimes of domestic violence and crimes of stalking) and (ii) in the case of an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship—

(i) upon a determination that—

(I) the alien was acting [is self-defense] *in self-defense*;

* * * * * * *

(d)(1) In the case of an alien in the United States for whom a petition as a VAWA petitioner has been filed, if the petition sets forth a prima facie case for approval, the Secretary of Homeland Security, in the Secretary's sole unreviewable discretion, may grant the alien deferred action until the petition is approved or the petition is denied after exhaustion of administrative appeals. In the case of the approval of such petition, such deferred action may be extended until a final determination is made on an application for adjustment of status.

(2) In the case of an alien in the United States for whom an application for nonimmigrant status (whether as a principal or derivative child) under subparagraph (T) or (U) of section 101(a)(15) has been filed, if the application sets forth a prima facie case for approval, the Secretary of Homeland Security, in the Secretary's sole unreviewable discretion, may grant the alien deferred action until the application is approved or the application is denied after exhaustion of administrative appeals.

(3) During a period in which an alien is provided deferred action under this subsection, the alien shall not be removed or deported.

* * * * * * *

INITIATION OF REMOVAL PROCEEDINGS

SEC. 239. (a) * * *

* * * * * * *

(e) CERTIFICATION OF COMPLIANCE WITH RESTRICTIONS ON DISCLOSURE.—Removal proceedings shall not be initiated against an alien unless there is a certification of either of the following:

(1) No enforcement action was taken leading to such proceedings against the alien—

(A) at a domestic violence shelter, a victims services organization or program (as described in section 2003(8) of the Omnibus Crime Control and Safe Streets Act of 1968), a rape crisis center, a family justice center, or a supervised visitation center; or

(B) at a courthouse (or in connection with the appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if

the alien is described in subparagraph (T) or (U) of section 101(a)(15).

(2) Such an enforcement action was taken, but the provisions of section 384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 have been complied with.

REMOVAL PROCEEDINGS

SEC. 240. (a) * * *

* * * * * * *

(c) DECISION AND BURDEN OF PROOF.—

(1) * * *

* * * * * * *

(7) MOTIONS TO REOPEN.—

(A) IN GENERAL.—An alien may file one motion to reopen proceedings under this section*, except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv)*.

* * * * * * *

(C) DEADLINE.—

(i) * * *

* * * * * * *

(iv) SPECIAL RULE FOR BATTERED [SPOUSES AND CHILDREN] *SPOUSES, CHILDREN, AND PARENTS*.—[The deadline specified in subsection (b)(5)(C) for filing a motion to reopen does not apply] *Any limitation under this section on the deadlines for filing such motions shall not apply—*

(I) if the basis for the motion is to apply for relief [under clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B)] *as a VAWA petitioner*, or section 240A(b)(2) *or section 244(a)(3) (as in effect on March 31, 1997)*;

(II) if the motion is accompanied by a cancellation of removal *or adjustment of status* application to be filed with the Attorney General or by a copy of the self-petition that has been or will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen; [and]

(III) if the motion to reopen is filed within 1 year of the entry of the final order of removal, except that the Attorney General may, in the Attorney General's discretion, waive this time limitation in the case of an alien who demonstrates extraordinary circumstances or extreme hardship to the alien's child[.]*; and*

(IV) if the alien is physically present in the United States at the time of filing the motion.

The filing of a motion to reopen under this clause shall stay the removal of the alien pending final disposition of the motion including exhaustion of all appeals if the

motion establishes a prima facie case for the relief applied for.

* * * * * * *

(e) DEFINITIONS.—In this section and section 240A:

(1) EXCEPTIONAL CIRCUMSTANCES.—The term "exceptional circumstances" refers to exceptional circumstances (such as *battery or extreme cruelty of the alien or any child or parent of the alien or* serious illness of the alien or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.

* * * * * * *

CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS

SEC. 240A. (a) * * *

(b) CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NONPERMANENT RESIDENTS.—

(1) IN GENERAL.—The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien—

(A) * * *

* * * * * * *

(C) *subject to paragraph (5),* has not been convicted of an offense under section 212(a)(2), 237(a)(2), or 237(a)(3) **[**(except in a case described in section 237(a)(7) where the Attorney General exercises discretion to grant a waiver)**]**; and

* * * * * * *

(2) SPECIAL RULE FOR BATTERED SPOUSE OR CHILD.—

(A) AUTHORITY.—The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

(i)(I) * * *

(II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident (or is the parent of a child of an alien who is or was a lawful permanent resident and the child has been battered or subjected to extreme cruelty by such permanent resident parent); **[**or**]**

(III) the alien has been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's or lawful permanent resident's bigamy; *or*

(IV) the alien entered the United States as an alien described in section 101(a)(15)(K) with the intent to enter into a valid marriage and the alien (or the child

of the alien who is described in such section) was battered or subject to extreme cruelty in the United States by the United States citizen who filed the petition to accord status under such section;

* * * * * * *

[(iv) the alien is not inadmissible under paragraph (2) or (3) of section 212(a), is not deportable under paragraphs (1)(G) or (2) through (4) of section 237(a) (except in a case described in section 237(a)(7) where the Attorney General exercises discretion to grant a waiver), and has not been convicted of an aggravated felony; and**]**

(iv) subject to paragraph (5), the alien is not inadmissible under paragraph (2) or (3) of section 212(a), is not removable under paragraph (2), (3)(D), or (4) of section 237(a), and is not removable under section 237(a)(1)(G) (except if there was a connection between the marriage fraud described in such section and the battery or extreme cruelty described in clause (i)); and

(B) PHYSICAL PRESENCE.—Notwithstanding subsection (d)(2), for purposes of subparagraph **[**(A)(i)(II)**]** *(A)(ii)* or for purposes of section 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence if the alien demonstrates a connection between the absence and the battering or extreme cruelty perpetrated against the alien. No absence or portion of an absence connected to the battering or extreme cruelty shall count toward the 90-day or 180-day limits established in subsection (d)(2). If any absence or aggregate absences exceed 180 days, the absences or portions of the absences will not be considered to break the period of continuous presence. Any such period of time excluded from the 180-day limit shall be excluded in computing the time during which the alien has been physically present for purposes of the 3-year requirement set forth in **[**section 240A(b)(2)(B)**]** *this subparagraph, subparagraph (A)(ii),* and section 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(C) GOOD MORAL CHARACTER.—Notwithstanding section 101(f), an act or conviction that does not bar the Attorney General from granting relief under this paragraph by reason of subparagraph (A)(iv) shall not bar the Attorney General from finding the alien to be of good moral character under subparagraph **[**(A)(i)(III)**]** *(A)(iii)* or section 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme

cruelty and determines that a waiver is otherwise warranted.

* * * * * * *

(E) RELIEF WHILE APPLICATION PENDING.—In the case of an alien who has applied for relief under this paragraph and whose application sets forth a prima facie case for such relief or who has filed an application for relief under section 244(a)(3) (as in effect on March 31, 1997) that sets forth a prima facie case for such relief—

(i) the alien shall not be removed or deported until the application has been approved or, in the case it is denied, until all opportunities for appeal of the denial have been exhausted; and

(ii) such an application shall be processed without regard to whether a proceeding to remove or deport such alien is brought or pending.

* * * * * * *

(4) **[**CHILDREN OF BATTERED ALIENS**]** *BATTERED ALIENS, CHILDREN OF BATTERED ALIENS, AND DERIVATIVE FAMILY MEMBERS OF TRAFFICKING VICTIMS,* AND PARENTS OF BATTERED ALIEN CHILDREN.—

(A) IN GENERAL.—The Attorney General shall grant parole under section 212(d)(5) to any alien who is a—

(i) child of an alien granted relief under section 240A(b)(2) or 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996); **[**or**]**

(ii) parent of a child alien granted relief under section 240A(b)(2) or 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996)**[**.**]***;*

(iii) VAWA petitioner whose petition was approved based on having been battered or subjected to extreme cruelty by a United States citizen spouse, parent, or son or daughter and who is admissible and eligible for an immigrant visa;

(iv) VAWA petitioner whose petition was approved based on having been battered or subjected to extreme cruelty by a lawful permanent resident spouse or parent, who is admissible and would be eligible for an immigrant visa but for the fact that an immigrant visa is not immediately available to the alien, and who filed a petition for classification under section 204(a)(1)(B), if at least 3 years has elapsed since the petitioner's priority date; or

(v) an alien whom the Secretary of State determines would, but for an application or approval, meet the conditions for approval as a nonimmigrant described in section 101(a)(15)(T)(ii).

(B) DURATION OF PAROLE.—**[**The grant of parole**]** *(i) The grant of parole under subparagraph (A)(i) or (A)(ii)*

shall extend from the time of the grant of relief under section 240A(b)(2) or section 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to the time the application for adjustment of status filed by aliens covered under this paragraph has been finally adjudicated. Applications for adjustment of status filed by aliens [covered under this paragraph] *covered under such subparagraphs* shall be treated as if [they were applications filed under section 204(a)(1) (A)(iii), (A)(iv), (B)(ii), or (B)(iii)] *the applicants were VAWA petitioner* for purposes of section 245 (a) and (c). Failure by the alien granted relief under section 240A(b)(2) or section 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) *of subparagraph (A)* may result in revocation of parole.

(ii) The grant of parole under subparagraph (A)(iii) or (A)(iv) shall extend from the date of approval of the applicable petition to the time the application for adjustment of status filed by aliens covered under such subparagraphs has been finally adjudicated. Applications for adjustment of status filed by aliens covered under such subparagraphs shall be treated as if they were applications filed under section 204(a)(1) (A)(iii), (A)(iv), (B)(ii), or (B)(iii) for purposes of section 245 (a) and (c).

(iii) The grant of parole under subparagraph (A)(v) shall extend from the date of the determination of the Secretary of State described in such subparagraph to the time the application for status under section 101(a)(15)(T)(ii) has been finally adjudicated. Failure by such an alien to exercise due diligence in filing a visa petition on the alien's behalf may result in revocation of parole.

(5) APPLICATION OF DOMESTIC VIOLENCE WAIVER AUTHORITY.—The provisions of section 237(a)(7) shall apply in the application of paragraphs (1)(C) and (2)(A)(iv) (including waiving grounds of deportability) in the same manner as they apply under section 237(a). In addition, for purposes of such paragraphs and in the case of an alien who has been battered or subjected to extreme cruelty and if there was a connection between the inadmissibility or deportability and such battery or cruelty with respect to the activity involved, the Attorney General may waive, in the sole unreviewable discretion of the Attorney General, any other ground of inadmissibility or deportability for which a waiver is authorized under section 212(h), 212(d)(13), 212(d)(14), or 237(a)(2)(A)(v), and the exception described in section 204(a)(1)(C) shall apply.

* * * * * * *

(e) ANNUAL LIMITATION.—

(1) * * *

* * * * * * *

(3) EXCEPTION FOR CERTAIN ALIENS.—Paragraph (1) shall not apply to the following:

(A) * * *

* * * * * * *

(C) Aliens with respect to their cancellation of removal under subsection (b)(2).

* * * * * * *

VOLUNTARY DEPARTURE

SEC. 240B. (a) * * *

* * * * * * *

(d) CIVIL PENALTY FOR FAILURE TO DEPART.—**[**If**]** *(1) Subject to paragraph (2), if* an alien is permitted to depart voluntarily under this section and fails voluntarily to depart the United States within the time period specified, the alien shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and be ineligible for a period of 10 years for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

(2) The ineligibility for relief under paragraph (1) shall not apply to an alien who is a VAWA petitioner, who is seeking status as a nonimmigrant under subparagraph (T) or (U) of section 101(a)(15), or who is an applicant for relief under section 240A(b)(2) or under section 244(a)(3) (as in effect on March 31, 1997), if there is a connection between the failure to voluntarily depart and the battery or extreme cruelty, trafficking, or criminal activity, referred to in the respective provision.

* * * * * * *

CHAPTER 5—ADJUSTMENT AND CHANGE OF STATUS

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

SEC. 245. (a) The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification **[**under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1) or**]** *as a VAWA petitioner* may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed. *In the case of a petition under clause (ii), (iii), or (iv) of section 204(a)(1)(A) that includes an individual as a derivative child of a principal alien, no adjustment application other than the adjustment application of the principal alien shall be required for adjust-*

ment of status of the individual under this subsection or subsection (c).

* * * * * * *

(c) Other than an alien having an approved petition for classification [under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 204(a)(1)] *as a VAWA petitioner*, subsection (a) shall not be applicable to (1) an alien crewman; (2) subject to subsection (k), an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H), (I), (J), or (K)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 212(d)(4)(C); (4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217; (5) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(S), (6) an alien who is deportable under section 237(a)(4)(B); (7) any alien who seeks adjustment of status to that of an immigrant under section 203(b) and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 274A(h)(3), or who has otherwise violated the terms of a nonimmigrant visa.

(d)*(1)* The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216. The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 101(a)(15)(K) *who is not described in section 204(a)(1)(A)(iii)(II)(aa)(DD)* except to that of an alien lawfully admitted to the United States on a conditional basis under section 216 as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 101(a)(15)(K) .

(2) Paragraph (1) shall not apply to an alien who seeks adjustment of status on the basis of an approved petition for classification as a VAWA petitioner.

* * * * * * *

(l)(1) If, in the opinion of the [Attorney General] *Secretary of Homeland Security*, a nonimmigrant admitted into the United States under section 101(a)(15)(T)(i)—

(A) *subject to paragraph (6),* has been physically present in the United States for a continuous period of at least 3 years since *the earlier of (i) the date the alien was granted continued presence under section 107(c)(3) of the Trafficking Victims Protection Act of 2000, or (ii)* the date of admission as a nonimmigrant under section 101(a)(15)(T)(i),

(B) *subject to paragraph (7),* has, throughout such period, been a person of good moral character, and

(C)(i) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or

(ii) the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States,

the [Attorney General] *Secretary* may adjust the status of the alien (and any person admitted under section 101(a)(15)(T)(ii) as the spouse, parent, sibling, or child of the alien) to that of an alien lawfully admitted for permanent residence.

(2) Paragraph (1) shall not apply to an alien admitted under section 101(a)(15)(T) who is inadmissible to the United States by reason of a ground that has not been waived under section 212, except that, if the [Attorney General] *Secretary of Homeland Security* considers it to be in the national interest to do so, the [Attorney General] *Secretary*, in the [Attorney General's] *Secretary's* discretion, may waive the application of—

(A) * * *

(B) any other provision of such section (excluding paragraphs (3), (10)(C), and [(10(E))] *(10)(E))*, if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I).

(3) * * *

* * * * * * *

(5) Upon the approval of adjustment of status under paragraph (1), the [Attorney General] *Secretary of Homeland Security* shall record the alien's lawful admission for permanent residence as of the date of such approval.

(6) The Secretary of Homeland Security may waive or reduce the period of physical presence required under paragraph (1)(A) for an alien's adjustment of status under this subsection if a Federal, State, or local law enforcement official investigating or prosecuting trafficking described in section 101(a)(15)(T)(i) in relation to the alien or the alien's spouse, child, parent, or sibling certifies that the official has no objection to such waiver or reduction.

(7) For purposes of paragraph (1)(B), the Secretary of Homeland Security, in the Secretary's sole unreviewable discretion, may waive consideration of a disqualification from good moral character described in section 101(f) with respect to an alien if there is a connection between the disqualification and the trafficking with respect to the alien described in section 101(a)(15)(T)(i).

* * * * * * *

CHANGE OF NONIMMIGRANT CLASSIFICATION

SEC. 248. [The Attorney General] *(a) The Secretary of Homeland Security* may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status and who is not inadmissible under section 212(a)(9)(B)(i) (or whose inadmissibility under such section is waived under section 212(a)(9)(B)(v)), except *(subject to subsection (b))* in the case of—

(1) * * *

* * * * * * *

(b) The limitation based on inadmissibility under section 212(a)(9)(B) and the exceptions specified in numbered paragraphs of subsection (a) shall not apply to a change of nonimmigrant classification to that of a nonimmigrant under subparagraph (T) or (U) of section 101(a)(15), other than from such classification under subparagraph (C) or (D) of such section.

* * * * * * *

TITLE III—NATIONALITY AND NATURALIZATION

* * * * * * *

CHAPTER 2—NATIONALITY THROUGH NATURALIZATION

* * * * * * *

MARRIED PERSONS AND EMPLOYEES OF CERTAIN NONPROFIT ORGANIZATIONS

SEC. 319. (a) Any person whose spouse is a citizen of the United States, or any person who obtained status as a lawful permanent resident by reason of his or her status as a spouse or child of a United States citizen who battered him or her or subjected him or her to extreme cruelty, may be naturalized upon compliance with all the requirements of this title except the provisions of paragraph (1) of section 316(a) if such person immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least three years, and during the three years immediately preceding the date of filing his application has been living in marital union with the citizen spouse (except in the case of a person who has been battered or subjected to extreme cruelty by a United States citizen spouse or parent*, regardless of whether the lawful permanent resident status was obtained on the basis of such battery or cruelty*), who has been a United States citizen during all of such period, and has been physically present in the United States for periods totaling at least half of that time and has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months. *The provisions of section 204(a)(1)(J) shall apply in acting on an application under this subsection in the same manner as they apply in acting on petitions referred to in such section.*

* * * * * * *

SEC. 320. (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

(1) * * *

* * * * * * *

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence *or the child is residing in*

the United States pursuant to a lawful admission for permanent residence and has been battered or subject to extreme cruelty by the citizen parent or by a family member of the citizen parent residing in the same household.

SECTION 107 OF THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

SEC. 107. PROTECTION AND ASSISTANCE FOR VICTIMS OF TRAFFICKING.

(a) * * *

(b) VICTIMS IN THE UNITED STATES.—

(1) ASSISTANCE.—

(A) * * *

* * * * * * *

(E) CERTIFICATION.—

(i) IN GENERAL.—Subject to clause (ii), the certification referred to in subparagraph (C) is a certification by the Secretary of Health and Human Services, after consultation with the Attorney General, that the person referred to in subparagraph (C)(ii)(II)—

(I) is willing to assist in every reasonable way in the [investigation and prosecution] *investigation or prosecution, by the United States or a State or local government* of severe forms of trafficking in persons; and

(II)(aa) * * *

(bb) is a person whose continued presence in the United States the [Attorney General] *Secretary of Homeland Security* is ensuring in order to effectuate prosecution of traffickers in persons.

(ii) PERIOD OF EFFECTIVENESS.—A certification referred to in subparagraph (C), with respect to a person described in clause (i)(II)(bb), shall be effective only for so long as the [Attorney General] *Secretary of Homeland Security* determines that the continued presence of such person is necessary to effectuate prosecution of traffickers in persons.

(iii) INVESTIGATION [AND] *OR* PROSECUTION DEFINED.—For the purpose of a certification under this subparagraph, the term "investigation [and] *or* prosecution" includes—

(I) * * *

(II) location and apprehension of such persons; [and]

(III) testimony at proceedings against such persons[.]*; or*

(IV) responding to and cooperating with requests for evidence and information.

* * * * * * *

(c) TRAFFICKING VICTIM REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Attorney Gen-

eral*, Secretary of Homeland Security,* and the Secretary of State shall promulgate regulations for law enforcement personnel, immigration officials, and Department of State officials to implement the following:

(1) * * *

* * * * * * *

(3) AUTHORITY TO PERMIT CONTINUED PRESENCE IN THE UNITED STATES.—Federal law enforcement officials may permit an alien individual's continued presence in the United States, if after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible, and such officials in investigating and prosecuting traffickers shall protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates. *State or local law enforcement officials may request that such Federal law enforcement officials permit the continued presence of trafficking victims. If such a request contains a certification that a trafficking victim is a victim of a severe form of trafficking, such Federal law enforcement officials may permit the continued presence of the trafficking victim in accordance with this paragraph.*

* * * * * * *

(5) CERTIFICATION OF NO OBJECTION FOR WAIVER OR REDUCTION OF PERIOD OF REQUIRED PHYSICAL PRESENCE FOR ADJUSTMENT OF STATUS.—In order for an alien to have the required period of physical presence under paragraph (1)(A) of section 245(l) of the Immigration and Nationality Act waived or reduced under paragraph (6) of such section, a Federal, State, and local law enforcement official investigating or prosecuting trafficking described in section 101(a)(15)(T)(i) in relation to the alien or the alien's spouse, child, parent, or sibling may provide for a certification of having no objection to such waiver or reduction.

* * * * * * *

(e) PROTECTION FROM REMOVAL FOR CERTAIN CRIME VICTIMS.—

(1) * * *

* * * * * * *

(5) STATUTORY CONSTRUCTION.—Nothing in this section, or in the amendments made by this section, shall be construed as prohibiting the **[**Attorney General**]** *Secretary of Homeland Security* from instituting removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) against an alien admitted as a nonimmigrant under section 101(a)(15)(T)(i) of that Act, as added by subsection (e), for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the **[**Attorney General**]** *Secretary of Homeland Security* prior

to the alien's admission as a nonimmigrant under such section 101(a)(15)(T)(i).

* * * * * * *

(g) ANNUAL REPORTS.—On or before October 31 of each year, the [Attorney General] *Secretary of Homeland Security* shall submit a report to the appropriate congressional committees setting forth, with respect to the preceding fiscal year, the number, if any, of otherwise eligible applicants who did not receive visas under section 101(a)(15)(T) of the Immigration and Nationality Act, as added by subsection (e), or who were unable to adjust their status under section 245(l) of such Act, solely on account of the unavailability of visas due to a limitation imposed by section 214(o)(2) or 245(l)(4)(A) of such Act. *Each such report shall also include statistics regarding the number of law enforcement officials who have been trained in the identification and protection of trafficking victims and certification for assistance as nonimmigrants under section 101(a)(15)(T) of such Act.*

* * * * * * *

SECTION 202 OF THE NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT

SEC. 202. ADJUSTMENT OF STATUS OF CERTAIN NICARAGUANS AND CUBANS. (a) * * *

* * * * * * *

(d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHILDREN.—

(1) IN GENERAL.—The status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if—

(A) * * *

(B) the alien—

(i) * * *

(ii) was, at the time at which an alien filed for adjustment under subsection (a), the spouse or child of an alien whose status is adjusted*, or was eligible for adjustment,* to that of an alien lawfully admitted for permanent residence under subsection (a), and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the alien that filed for adjustment under subsection (a);

* * * * * * *

(E) applies for such adjustment before April 1, 2000*, or, in the case of an alien who qualifies under subparagraph (B)(ii), applies for such adjustment during the 18-month period beginning on the date of enactment of the Violence Against Women Act of 2005*.

* * * * * * *

(3) PROCEDURE.—In acting on an application under this section with respect to a spouse or child who has been battered

or subjected to extreme cruelty, the Attorney General shall apply section [204(a)(1)(H)] *204(a)(1)(J)*.

* * * * * * *

SECTION 1 OF THE ACT OF NOVEMBER 2, 1966

(Public Law 89–732)

AN ACT To adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act, the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States, except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section [204(a)(1)(H)] *204(a)(1)(J). An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies (or, if later, 2 years after the date of enactment of Violence Against Women Act of 2005), or for 2 years after the date of termination of the marriage (or, if later, 2 years after the date of enactment of Violence Against Women Act of 2005) if the alien demonstrates a connection between the termination of the marriage and the battering or extreme cruelty by the Cuban alien.*

* * * * * * *

SECTION 902 OF THE HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998

ADJUSTMENT OF STATUS OF CERTAIN HAITIAN NATIONALS

SEC. 902. (a) * * *

* * * * * * *

(d) ADJUSTMENT OF STATUS FOR SPOUSES AND CHILDREN.—

(1) IN GENERAL.—The status of an alien shall be adjusted by the Attorney General to that of an alien lawfully admitted for permanent residence, if—

(A) * * *

(B)(i) the alien is the spouse, child, or unmarried son or daughter of an alien [whose status is adjusted to that of an alien lawfully admitted for permanent residence] *who is or was eligible for classification* under subsection (a), except that, in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that the son or daughter has been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date on which the application for such adjustment is filed;

(ii) at the time of filing of the application for adjustment under subsection (a), the alien is the spouse or child of an alien [whose status is adjusted to that of an alien lawfully admitted for permanent residence] *who is or was eligible for classification* under subsection (a) and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the individual described in subsection (a); and

(iii) in acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section [204(a)(1)(H)] *204(a)(1)(J)*.

* * * * * * *

ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

* * * * * * *

DIVISION C—ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

* * * * * * *

TITLE III—INSPECTION, APPREHENSION, DETENTION, ADJUDICATION, AND REMOVAL OF INADMISSIBLE AND DEPORTABLE ALIENS

Subtitle A—Revision of Procedures for Removal of Aliens

* * * * * * *

SEC. 309. EFFECTIVE DATES; TRANSITION.

(a) * * *

* * * * * * *

(c) TRANSITION FOR CERTAIN ALIENS.—

(1) * * *

* * * * * * *

(5) TRANSITIONAL RULES WITH REGARD TO SUSPENSION OF DEPORTATION.—

(A) * * *

* * * * * * *

(C) SPECIAL RULE FOR CERTAIN ALIENS GRANTED TEMPORARY PROTECTION FROM DEPORTATION AND FOR BATTERED SPOUSES AND CHILDREN.—

(i) IN GENERAL.—For purposes of calculating the period of continuous physical presence under section 244(a) of the Immigration and Nationality Act (as in effect before the title III–A effective date) or section 240A of such Act (as in effect after the title III–A effective date), subparagraph (A) of this paragraph and paragraphs (1) and (2) of section 240A(d) of the Immigration and Nationality Act shall not apply in the case of an alien, regardless of whether the alien is in exclusion or deportation proceedings before the title III–A effective date, who has not been convicted at any time of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act) and—

(I) * * *

* * * * * * *

(VII)(aa) was the spouse or child of an alien described in subclause (I), (II), or (V)—

(AA) * * *

(BB) at the time at which the alien filed an application for suspension of deportation or cancellation of removal; **[**or**]**

(CC) at the time at which the alien registered for benefits under the settlement agreement in American Baptist Churches, et. al. v. Thornburgh (ABC), applied for temporary protected status, or applied for asylum; **[**and**]** *or*

(DD) at the time at which the spouse or child files an application for suspension of deportation or cancellation of removal; and

* * * * * * *

(iii) CONSIDERATION OF PETITIONS.—In acting on a petition filed under subclause (VII) of clause (i) the provisions set forth in section [204(a)(1)(H)] *204(a)(1)(J)* shall apply.

* * * * * * *

(g) MOTIONS TO REOPEN DEPORTATION OR REMOVAL PROCEEDINGS.—*(1)* Notwithstanding any limitation imposed by law on motions to reopen removal or deportation proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined in section 101(a) of the Immigration and Nationality Act)), *subject to paragraph (2),* any alien who has become eligible for cancellation of removal or suspension of deportation as a result of the amendments made by section 203 of the Nicaraguan Adjustment and Central American Relief Act may file one motion to reopen removal or deportation proceedings to apply for cancellation of removal or suspension of deportation. The Attorney General shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of the enactment of the Nicaraguan Adjustment and Central American Relief Act and shall extend for a period not to exceed 240 days.

(2) There shall be no limitation on a motion to reopen removal or deportation proceedings in the case of an alien who is described in subclause (VI) or (VII) of subsection (c)(5)(C)(i). Motions to reopen removal or deportation proceedings in the case of such an alien shall be handled under the procedures that apply to aliens seeking relief under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act.

* * * * * * *

Subtitle F—Additional Provisions

* * * * * * *

SEC. 384. PENALTIES FOR DISCLOSURE OF INFORMATION.

(a) IN GENERAL.—Except as provided in subsection (b), in no case may the Attorney General, or any other official or employee of the Department of Justice [(including any bureau or agency of such Department)], *or the Secretary of Homeland Security, the Secretary of State, the Secretary of Health and Human Services, or the Secretary of Labor or any other official or employee of the Department of Homeland Security, the Department of State, the Department of Health and Human Services, or the Department of Labor (including any bureau or agency of any such Department)*—

(1) make an adverse determination of admissibility or deportability of an alien under the Immigration and Nationality Act using information [furnished solely by] *furnished by or derived from information provided solely by*—

(A) * * *

* * * * * * *

(D) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty, [or]

(E) in the case of an alien applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act, the perpetrator of the substantial physical or mental abuse and the criminal activity, *or*

(F) in the case of an alien applying for continued presence as a victim of trafficking under section 107(b)(1)(E)(i)(II)(bb) of the Trafficking Protection Act of 2000 or status under section 101(a)(15)(T) of the Immigration and Nationality Act, the trafficker or perpetrator,

unless the alien has been convicted of a crime or crimes listed in section 241(a)(2) of the Immigration and Nationality Act; [or]

(2) permit use by or disclosure to anyone (other than a sworn officer or employee [of the Department,] *of any such Department,* or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) of any information which relates to an alien who is the beneficiary of an application for relief [under clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B)] *as a VAWA petitioner (as defined in section 101(a)(51) of the Immigration and Nationality Act), or under*, section 216(c)(4)(C), section 101(a)(15)(U), [or section 244(a)(3) of such Act as an alien (or the parent of a child) who has been battered or subjected to extreme cruelty.] *section 101(a)(15)(T), section 214(c)(15), or section 240A(b)(2) of such Act, or section 244(a)(3) of such Act (as in effect on March 31, 1997), or for continued presence as a victim of trafficking under section 107(b)(1)(E)(i)(II)(bb) of the Trafficking Protection Act of 2000, or any derivative of the alien; or*

(3) in the case of an alien described in section 101(a)(27)(J) of the Immigration and Nationality Act who has been abused, neglected, or abandoned, contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for special immigrant juvenile status, including after a request for the consent of the Secretary of Homeland Security under clause (iii)(I) of such section.

The limitation under paragraph (2) ends when the application for relief is denied and all opportunities for appeal of the denial have been exhausted.

(b) EXCEPTIONS.—

(1) [The Attorney General may provide, in the Attorney General's discretion] *The Attorney General, Secretary of Homeland Security, Secretary of State, Secretary of Health and Human Services, and Secretary of Labor may provide, in each's discretion*, for the disclosure of information in the same manner and circumstances as census information may be disclosed

by the Secretary of Commerce under section 8 of title 13, United States Code.

(2) [The Attorney General may provide in the discretion of the Attorney General] *The Attorney General, Secretary of Homeland Security, Secretary of State, Secretary of Health and Human Services, and the Secretary of Labor may provide, in each's discretion* for the disclosure of information to law enforcement officials to be used solely for a legitimate law enforcement purpose.

* * * * * * *

(5) The Attorney General [is authorized to disclose], *Secretary of Homeland Security, Secretary of State, Secretary of Health and Human Services, and Secretary of Labor, or Attorney General may disclose* information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(6) Subsection (a) shall not apply to prevent the Attorney General and the Secretary of Homeland Security from disclosing to the chairmen and ranking members of the Judiciary Committees of the House of Representatives and of the Senate in the exercise of Congressional oversight authority information on closed cases under this section in a manner that protects the confidentiality of such information and that omits personally identifying information (including locational information about individuals).

(c) PENALTIES FOR VIOLATIONS.—Anyone who willfully uses, publishes, or permits information to be disclosed in violation of this section *or who knowingly makes a false certification under section 239(e) of the Immigration and Nationality Act* shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each such violation. *The Office of Professional Responsibility in the Department of Justice shall be responsible for carrying out enforcement under the previous sentence.*

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 27, 2005

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

The Committee met, pursuant to notice, at 10:38 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill H.R. 3402, the "Department of Justice Appropriations Authorization Act" for fiscal years 2006 through 2009 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. 3402, follows:]